



Independent Insurance Agents
& Brokers of America, Inc.

OFFICE OF THE GENERAL COUNSEL

Utica National Insurance Group Agency Agreement (January 2022)

Reviewed October 2021

This contract review includes only general information and comments, and is not intended to provide specific advice about individual legal, business or other questions. It was prepared solely for use as a guide, is not a substitute for Producers' independent evaluation of any provision in a contract, and is not a recommendation that the contract be signed or rejected. If specific legal or other expert advice is required or desired, the services of an appropriate, competent professional, such as an attorney, should be sought.

PLEASE BE ADVISED THAT THIS REVIEW FOCUSES ON ISSUES RELATING TO THE INSURANCE INDUSTRY, AND NOT GENERAL CONTRACT ISSUES.

KEY CONCERNS

- The Agreement lacks important protections for the Agent's expirations upon termination if the Agent has not paid all premiums.
- The Agreement imposes one-sided confidentiality, privacy and security requirements.
- The Agent is required to maintain a \$250,000 employee dishonesty bond.
- The Agreement does not contain a clear run-off and renewal provision.

REVIEW OF PROVISIONS

SECTION 1: This section states the Company "reserves the right to withdraw authority from the Agent to write any particular line of insurance and to decline or accept a risk or class of risk without previous notice." The Agent may wish to require prior written notice of such material changes.

Also note that, "[i]n the event the Agent elects to opt out of any of the Company's forms of communication, the Agent will be deemed to have received any Company communication made in that form, whether actually received or not, and will be responsible for complying with the contents of that communication." This appears to preclude the Agent from opting out of any form of communication. The Agent may wish to seek clarification about and ensure that it is comfortable with notice requirements.

SECTION 3: The Agent should note and ensure the premium collection policies set forth in the Agreement are acceptable as well as the requirement that the Agent "keep a complete record and account of all transactions pertaining to all of the business transacted by the Agent with the Company," which must be accessible to the Company "at any reasonable time" while the

Agreement is in force and within a year of termination. The Agreement also does not explicitly grant the Agent the ability to deduct commissions on agency-billed policies.

SECTION 4: The Company may hold the Agent responsible for unpaid premium determined by audit unless the Agent satisfies certain requirements. The Agreement requires both that the Agent has “made every effort to obtain and retain an adequate deposit premium, and that the Agent “has made every effort to collect the additional premium, provides the evidence thereof and notifies the Company within forty-five (45) days of the date of the audit invoice that he or she has been unable to do so, and has requested cancellation of coverage.” The Agent should ensure these terms are acceptable or seek to negotiate revisions.

SECTION 5: The Agent may wish to seek longer notice for commission changes, such as 90 days, and require that a reduction in commission will occur no more than once per year.

SECTION 8: The Agreement requires the Agent to provide 30 days’ advance notice of changes in ownership. An Agent may not be permitted to provide advance notice of such change, however, if it violates the terms of an applicable non-disclosure agreement.

SECTION 9: The Agent should note that it must seek and receive consent from the Company to appoint or submit any business from sub-agents/producers.

SECTION 12: This Section imposes largely one-sided confidentiality, privacy and security obligations on the Agent requiring compliance with “all applicable federal and state laws” as well as expressly requiring the Agent to indemnify the Company for any acts and omissions of third parties accessing information of applicants, policyholders, claimants and insureds. The Agent should seek mutual requirements of the Company to comply with applicable laws and protect confidential information provided by the Agent.

The Agreement also gives the Company the right to “audit and/or inspect the Agent’s security practices and implantation” and the Agent may be required to “supply an independent certification that meets current industry standards” upon request. This requirement is very broad, and compliance could be overly burdensome depending on what is required by the Company.

Sample Language on Privacy and Security

The parties agree to comply with the Gramm-Leach-Bliley Act and any other applicable state or federal law protecting consumer or customer personally identifiable information. Each party shall comply with the rules and policies of the other with regard to maintaining the privacy of any and all non-public, personal information. Each party represents and warrants that it has implemented and maintains an adequate and comprehensive information security program containing safeguards designed to prevent the destruction, loss, alteration, unauthorized access, use or dissemination of non-public personal information that meets or exceeds all applicable laws and regulations. Each party further agrees to provide prompt notice to and cooperate with the other in the event there is a confirmed breach involving non-public, personal information.

SECTION 13: The Agent should note the record retention requirements set forth in this section.

SECTIONS 14 & 15: The Agreement contains indemnification obligations for both the Company and the Agent, but the Agent’s obligations also cover failure of Agent to follow written or printed instructions “furnished by” the Company. The Agent should ensure it receives such written or printed instructions and understands the requirements imposed by them, and the Agent may want this provision to refer to written or printed instructions furnished by the Company that are “received by the Agent.”

In addition, indemnification obligations are typically limited “to the extent” that the other party caused or contributed to the act or omission that gave rise to the claim.

Sample Language on Indemnification

Each party agrees to indemnify, defend and hold harmless the other party (“Indemnified Party”) against any and all demands, claims, damages, losses, liabilities, judgments, or settlements including, without limitation, reasonable attorneys’ fees and costs of investigation and defense incident thereto (collectively “Claims”), arising out of or relating to the indemnifying party’s acts or omissions, except to the extent that the Indemnified Party’s acts or omissions caused the Claim. Each party shall promptly notify the Indemnified Party upon receipt of any Claim or legal action arising out of or relating to this Agreement or the parties’ relationship.

SECTION 16: The Agent should note the required insurance coverage, particularly cyber liability and employee dishonesty bond, and ensure the proposed limits are acceptable. While a requirement for cyber liability coverage in some amount is becoming more common, it is unusual for the Company to include the requirement of employee dishonesty coverage. Thus, the Agent may wish to seek removal of this requirement entirely. In addition, some companies will agree to lower limits on cyber liability coverage for smaller agencies at the agency’s request.

SECTION 18: Section 18.A of the Agreement allows for termination without cause upon 30-day advance written notice. The Agent may wish to seek longer notice, such as 90 days, as a short timeframe is detrimental to the Agent. The Agreement allows for immediate termination or suspension for various reasons including the Agent’s “delinquent payment of accounts.” At a minimum, this basis should allow for notice and an opportunity to cure, and only apply to delinquent payments of undisputed amounts. In addition, the Violent Crime Control and Law Enforcement Act applies to felonies involving misuse of funds, etc., so the Agent may want to replace “any crime or misdemeanor” with “felony”.

Section 18.B applies only to termination other than for cause. Again, under Part B.2, the Agent should seek to require notice, an opportunity to cure and the right to post collateral before the Company terminates the Agreement or takes the Agent’s expirations. The Agent may also wish to seek protections with respect to how the Company disposes of expirations if taken. Additionally, the Agreement does not fully address post-termination rights and responsibilities, such as run-off and renewal of policies in force. Sample language is below.

Sample Language on Expirations at Termination and Post-Termination Rights

If the Agent has not properly accounted for and paid to Company all premiums collected by the Agent (less the Agent's commissions) as of the effective date of termination of this Agreement, prior to taking any action against the Agent's expirations, the Company shall provide written notice to the Agent specifying such unpaid and undisputed amounts and giving the Agent at least 30 days from receipt of the notice to pay the unpaid and undisputed amounts or furnish collateral security reasonably acceptable to the Company. Following the Agent's receipt of the notice, the Company may withhold commissions as an offset against any unpaid and undisputed amounts owed by the Agent. If, within the time specified in the Company's written notice, the Company does not receive reasonably acceptable collateral security or payment in full of all undisputed amounts, the use and control of the Agent's expirations shall vest in the Company.

In the exercise of its right to collect any unpaid and undisputed amounts through the use and control of the Agent's expirations, the Company shall use reasonable business judgment in selling such expirations and shall be accountable to the Agent for any sums received, which, net of expenses, exceed the amount of indebtedness. The Agent shall remain liable for the excess of the indebtedness over the sums received by the Company from any such sale. Notwithstanding any other provision of this Agreement, the Company shall not have any right to the Agent's expirations to the extent of any good faith and reasonable dispute as to amounts owed by the Agent to the Company.

Policies in force prior to termination of this Agreement will be permitted to run to the applicable policy's expiration, or in the case of continuous policies, to the next anniversary of their effective dates. The Company agrees to renew all policies that come up for renewal within a one-year period following the date of termination of this Agreement and that meet the Company's current underwriting standards. The Company agrees that such renewals shall be on the terms in effect on the date of termination. Subject to requirements imposed by applicable law, the Agent shall continue to perform all other duties contemplated under this Agreement necessary for the proper servicing of all insurance policies in force prior to termination of this Agreement, as well as any renewal policies bound on or after the date of the termination of this Agreement, until all such in force policies expire. The Agent shall receive commission on all such policies at the rate in place on the date of the notice of termination.

SECTION 19: The Agent should note the requirement that the Agent must attempt to resolve any disputes informally with senior management and then, if not successful, through a formal mediation process before commencing any litigation, but no governing law or mediation process is specified.

SECTION 25: Thirty days is a unusually short notice period for amendments of appointment contracts. The Agent may want to request 90 days.