



**Independent Insurance Agents
& Brokers of America, Inc.**

OFFICE OF THE GENERAL COUNSEL

Berkley Management Protection Agency Agreement AA-01-22

Reviewed January 2022

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 Ownership of Expirations provision not provide the scope of protection typically provided for an Agency's business.
- The Privacy and Data Security clause and related addendum impose unilateral requirements on the Agency that exceed what may be required of the Agency by law.
- The Agreement provides that the Agency is not entitled to commission on policies that must be renewed after termination, except as may be required by law.

REVIEW OF PROVISIONS

I. Authority and Responsibilities

- C. The Agreement requires the Agency comply with all applicable legal requirements, but it lacks a mutual requirement for the Company. The Agency may wish to request this be added.
- F. The Agreement requires the Agency to maintain E&O coverage limits of at least \$3 million, which is higher than usual (typically \$1-2 million at most).

III. Commissions

- D. The Agreement states: “Upon termination of this Agreement, Agency will not be entitled to commission on any policies or renewal issued after such termination.” This is less favorable and may be contrary to law/other terms of the Agreement (see e.g. Sec. IV.C and XI.C). More favorable sample language on renewals can be found below in Sec. XI.

IV. Ownership of Expirations

- A. The Agency may wish to request the Company provide a clearer description of the Agency’s sole ownership of expirations and records thereof, and set forth reasonable restrictions on the Company’s use of such information. Below is sample language to that effect.

Sample Language

A. The use and control of the Agency’s expirations, including those on direct billed business, the records thereof, and the Agency’s work product and data relating thereto, shall remain in the undisputed possession and sole ownership of the Agency. The Company shall not use the Agency’s expirations, records, work product or data relating thereto in any marketing method for the sale, service, or renewal of any form of insurance coverage or other product, nor shall the Company refer or communicate the Agency’s expirations, including records, work product, or data relating thereto, to any other Agency or broker, or affiliate or company, without prior express written permission from the Agency.

V. Privacy and Data Security

- A-C. The confidentiality and privacy and data security obligations should be mutual, instead of unilaterally imposed on the Agency. The Agency is subject to many of the same requirements and obligations to ensure third party business partners/service providers are maintaining their clients’ information as confidential and secure. As such, the Company should be subject to the same obligations.

Cybersecurity Addendum:

Note that the Company may require an additional Data Privacy and Protection Addendum that imposes more specific, unilateral requirements on the Agency. The same principles above (for Sec. VIII. (Privacy and Data Security)) apply equally and call for the obligations in the addendum to be mutual.

Additionally, the addendum reviewed by IIABA imposes onerous, one-sided requirements that go beyond what is required by law for most agencies, including but not limited to:

- overly broad, one-sided indemnification from the Agency to the Company for any security events (Information Security Events section);
- notice to the Company within 48 hours of an attempted security event without allowing time for investigation and determination (Information Security Events section); and
- requiring the Agency and its subcontractors to obtain annual end-to-end SOC audits (or their equivalents), which can be costly and time-consuming (Risk Assessment and Audit section).

While IIABA encourages member agents to undertake the most rigorous cybersecurity measures possible, some of these requirements go beyond what is required by most jurisdictions, and beyond what could be considered as industry standard at this time.

VI. Electronic Interface

- H-I. The Agency should note that the Company shifts all risk and disclaims all liability for the Agency's use of the electronic interface.

VI. Sale of Agency

- A. Requiring an Agency to provide advance notice of a sale or similar transactions is impractical and could require the Agency to breach its confidentiality obligations in other contracts. The Agency may wish to allow for prompt notice after such an event occurs since the Company is still protected by the ability to terminate if it does not wish to do business with any new owner.

X. Termination

- B. The Agency may want to request a reasonable opportunity to cure as opposed to automatic termination for cancellation of a license in case it is due, for example, to a correctable mistake or clerical error.
- C. The Agency may want to request the opportunity to notify the Company of a change in ownership and determine assignment promptly after a qualifying event as opposed to automatic termination. Also, the language should be qualified by a "substantial" or "majority interest" sale.

XI. Rights and Responsibilities After Termination of Agreement

- C. It is somewhat unusual for the Agreement to provide that the Agency is not entitled to commission on policies that must be renewed after termination, except as may be required by law. Below is more favorable sample runoff and renewal language.

Sample Language

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 then-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 Agency 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 Agency shall receive commission on all such policies at the rate in place on the date of the notice of termination.

XII. Indemnification

- C. The Agency may wish to seek language that mutually provides Agency is not responsible for any acts of obligations incurred by the Company.
