



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

OFFICE OF THE GENERAL COUNSEL

CNA Producer Agreement Effective April 1, 2022

Reviewed February 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

- Broad joint-and-several liability language for Groups has been added to the cover page, and it may affect certain agency alliances more unexpectedly and detrimentally than others.
- CNA may change commission rates on only 45 days' notice.
- The Agreement lacks express language acknowledging the agency's ownership of expirations outside of the context of termination.
- After acknowledging that information submitted through CNA systems may be intercepted by unintended third parties, the Producer must agree that CNA is not responsible for any damages caused by the unauthorized use or misappropriation of information concerning the Producer or the Producer's accounts by unintended third parties.

REVIEW OF PROVISIONS

COVER PAGE

The cover page has been updated and may include material terms applicable to your business. In particular, it states that "You and the Group [defined to include specific agencies you oversee as recorded in CNA's records] agree to be jointly and severally liable for any and all obligations that arise under this Agreement and any default under this Agreement either by you or any Member will be deemed to be a default by you and the Group." The Producer may want to seek to remove or more narrowly tailor this broad language, especially if it is not appropriate for the structure and control mechanisms of your Group.

I. YOUR AUTHORITY

I.E. Note that the Producer may bind, alter, or cancel coverage only if it has specific authorization from CNA.

I.F. This section provides that the Producer's authority is subject to CNA's underwriting rules and guidelines, which may be amended from time to time. The Producer may want this section revised to specify how CNA will communicate the underwriting rules and guidelines and the amount of notice prior to the effective date of the rules and guidelines (*e.g.*, upon 90 days' written notice).

II. YOUR RESPONSIBILITIES

II.A.1., II.A.3, and II.A.5.. The Producer should be aware that the Producer is responsible for payment of premiums, regardless of whether those premiums are collected from the insureds. CNA may charge the Producer for any fees or expenses incurred by CNA as a result of any legal action it must take to collect unpaid premiums. Additionally, CNA reserves the right to suspend the Producer's authority as a result of unpaid premiums. Finally, CNA will consider the Producer's failure to report or pay premiums or report discrepancies "within a reasonable time" as the Producer's indication that the policy should be cancelled, and CNA will send the policy holder a notice of cancellation without prior notice to the Producer.

II.A.2. CNA reserves the right to change the Producer's method of accounting at any time by providing prior notice. If this concerns the Producer, the Producer may want to request that CNA provide prior written notice of at least 90 days before changing the Producer's method of accounting.

II.B.3. CNA is allowed to offset commissions owed to the Producer to meet the Producer's undisputed obligations to CNA. The Producer may want this language limited to circumstances when the Producer is past due in paying such obligations.

II.B.4. CNA agrees not to use the records of direct-billed business to solicit other or additional lines of insurance products from policyholders without the Producer's written authorization. This is a favorable provision. However, CNA includes an exception that written authorization is not necessary if the solicitation is made by CNA on the Producer's behalf pursuant to the terms and conditions of the Small Business Service Center Addendum. The Producer should review that Addendum to determine the circumstances under which CNA may make solicitations on the Producer's behalf and the extent to which the Producer is entitled to commissions for sales resulting from CNA's solicitations.

II.D.2. The Producer has no authority to investigate claims for his or her insureds. The Agreement does not define "investigate", which could be interpreted to include actions taken when advocating for a client's claim. If this concerns the Producer, the Producer may want CNA to delete or define the term "investigate".

III. COMMISSIONS

III.E. This section allows CNA to revise its commission rates upon 45 days written notice to the Producer. If this concerns the Producer, the Producer may want to request that CNA provide at least 90 days written notice before changing its commission rates.

V. TERMINATION AND EXPIRATIONS

V.A.4. This section allows CNA to terminate the Agreement upon only 10 days' written notice if the Producer fails to remit or report premiums for more than 15 days beyond the terms provided in the Agreement. If this concerns the Producer, the Producer may want to request an express opportunity to cure before the Agreement is terminated for failure to remit or report premiums.

V.C. This section addresses the Producer's ownership of expirations, and conditions where such ownership would transfer to CNA. This section can be improved in a few ways. First, this section does not provide the Producer with an opportunity to cure payment deficiencies when failure to pay or failure to pay timely is the reason for the termination and does not make an exception for all good faith disputes. If the Producer is concerned about this, the Producer can request that CNA provide the Producer with prior written notice and an express opportunity to cure all alleged deficiencies before taking the Producer's expirations, and that CNA agree not to do so if the parties have a good faith dispute.

In addition, the Producer may want to request that CNA accept commercially reasonable collateral to secure the Producer's indebtedness in lieu of the Producer forfeiting its rights to the expiration and allowing CNA to use or sell the expirations. The Producer may also want to request that CNA be required to retain commissions prior to soliciting expirations.

Finally, although CNA states that expirations will remain in the Producer's undisputed possession if the Agreement is terminated and the Producer has paid to CNA all premiums and other amounts due, the Agreement does not expressly state that this is the case during the term of the Agreement. The Producer may want to request that language be added to the Agreement to make this clear.

V.G.5. This section provides that CNA will give the Producer 60 days' prior notice of a policy cancellation that occurs during the runoff period following termination of this Agreement. CNA does not need to make the notice written and does not need to provide any notice for non-renewals. If this concerns the Producer, the Producer can request that CNA provide at least 60 days advance written notice before cancelling or non-renewing any policy during the runoff period.

VI. GENERAL PROVISIONS

VI.A.6. This provision requires that the Producer maintain a record retention procedure and retain records for a minimum of 7 years after creation. The Producer should prepare a record retention procedure if the Producer does not have one already.

VI.A.7. This section provides CNA with the right to inspect and audit the Producer's records after the termination of the Agreement. The Producer may want this right to end upon the termination of the last policy produced by the Producer.

VI.C.8. This section provides that the Producer must follow CNA's procedures and instructions whether issued by means of directives, letters, procedural or underwriting manuals, or otherwise. The Producer may want this section revised to specify how CNA will communicate the procedures and instructions (*e.g.*, in writing), and the amount of notice prior to the effective date of the procedures and instructions.

VII. ELECTRONIC COMMERCE

VII.B.4 & VII.B.5. After acknowledging that information submitted through CNA systems may not be secure and may be intercepted by unintended third parties, the Producer agrees that CNA is not responsible for any damages caused by the unauthorized use or misappropriation of information concerning the Producer or the Producer's accounts by unintended third parties (provided, however, that the limitation on damages will not apply in the event of gross negligence, fraud, or intentional misconduct by CNA). These provisions may present problems with the Producer's E&O or cyber liability carrier. If these provisions concern the Producer, the Producer may want to request that they be deleted.

VII.B.7 & VII.B.8. CNA may disable the Producer's access to CNA's electronic systems at any time, and all rights of the Producer to access CNA's electronic systems terminate immediately upon the termination of the Agreement. Producers will need access to the electronic systems during the term of the Agreement and after the termination of the Agreement in order to access data, including policy information and activity logs. The Producer may want to request that CNA agree to fulfill reasonable requests for data after termination of the Agreement.

- *Additional guidance regarding agency/carrier technology agreements and provisions is available on the Agents Council for Technology ("ACT") website in the "Carriers, E & S Markets" section. www.independentagent.com/Resources/AgencyManagement/ACT*

VIII. INSURANCE

VIII.B. The Producer should note the requirement, in the Enterprise version of this Agreement, to maintain at least \$1 million per claim and in the aggregate of cyber-insurance coverage. This is not yet a common requirement, and the Producer should ensure that it has this level of coverage. In the Small Business Only version of this Agreement, the coverage requirement may be reduced to \$500,000.

IX. CYBERSECURITY

IX. It is unusual for an agreement to require a representation and warranty that a cybersecurity program will be effective to protect the other party's information systems and nonpublic information. Even the strongest cybersecurity defenses might be breached. Also, CNA disclaims

any warranties and damages relating to breach of its electronic systems in Section VII. The Producer may want to request that the first representation and warranty is deleted at a minimum.

IX.B. This paragraph may go beyond what is required by law and requires notification of not just Cybersecurity Events that directly impact the other party, but also “any serious attempts at breach of systems or information that are not routine.” This language is overly broad and ambiguous, and the information is arguably irrelevant if there is no actual breach or impact on the other party’s data.

SIGNATURE BLOCK

The Producer should be aware that this Agreement terminates all other existing agreements between the parties even if unrelated to the matters covered by this Agreement.