



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

OFFICE OF THE GENERAL COUNSEL

The Hanover Insurance Group Agency Agreement (111-3179)

Reviewed November 2004
Updated November 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

- Upon termination, the Company can choose to allow or terminate the Agent's access to the Network information.
- The Agent is not entitled to commissions on business renewed six or more months after termination.

SECTION 2: CONDUCT OF THE BUSINESS.

Section 2.2: The Agent may want to request that the inspection be held at the Agent's office and take place after reasonable notice and during regular business hours.

Section 2.3: Note this section and see Section 10.5, which also covers the return by the Agent of Company property.

Section 2.5: Compliance with this provision could require that the Agent violate a confidentiality agreement in a buy-sell contract. The Agent may want to request language that would require the Agent only to report to the Company the closing of a sale, transfer or merger of 50% or more of the Agency's business. (See Section 10.1c.(3)-(4)) This would give the Company the notice it needs to determine if it wants to continue to do business with the new entity without obligating the Agent to a provision that will require the Agent to breach another contract. Also, in the event that the Agency is sold, transferred or merged and the Company terminates the Agreement, the Agent may want to request a reasonable transition period to be able to move the business placed with the Company to other carrier(s)

of the Agent's choice. Last, the Agent may not want to be required to give the Company prior written notice of a name change unrelated to a change of a majority interest in the Agency.

Section 2.12: Note that the Agent is required to maintain \$1,000,000 of professional liability coverage and must affirmatively provide a COI within 14 days of execution of the Agreement, not just upon request.

SECTION 3: COMPANY SYSTEMS & NETWORK ACCESS.

Opening paragraph: The Agent is required to "maximize" use of the Network if granted access to it. The Agent should be able to make that determination without running the risk of breaching the Agreement if the Company determines that the Agent should use the Network more. The Agent should be provided with a written copy of the "terms, conditions, rules and procedures" as established or changed in order to comply with them.

Section 3.1: The Agent should be provided with a written copy of the referenced guidelines.

Section 3.4: The responsibility assumed by the Agent for use of the Network should be limited to use of it by the Agent – as written, the Agent could be pursued for use made of the Network by anyone.

Section 3.5: The Agent may wish to have the Company be required to provide the Agent with notice of and reasons for terminating the Agent's Network access.

Section 3.7: The obligation to treat proprietary information as confidential should apply to the Company in the same way as it applies to the Agent. Also, upon termination, the Agent may want to have the right to retain access to the Network for a period of time to allow the Agent to obtain any files to comply with record retention laws.

Section 3.9: Paragraph 2: It is unusual for a company to require the Agent to "make a commercially reasonable effort to upgrade to the latest version of agency management software" – some Agents may view this as a decision they should be able to make on their own based on their own business needs and processes.

Section 3.13: The Agent may wish to clarify that liability is only shifted to Agent for data integrity, except to the extent the Company caused or contributed to any damages, claims, losses or expenses.

Section 3.14: The Agent may wish to have the terms of the agreements referenced in this paragraph communicated to the Agent in writing prior to being held responsible for compliance with them.

SECTION 5: PREMIUM COLLECTION.

Sections 5.1: The Agent may want the Agreement to provide that premium that is unpaid because of a legitimate dispute (e.g., over the amount due or minor accounting

discrepancies) between the Agent and the Company will not trigger the remedies in this section.

Section 5.2c.: The Agreement should specify that the Agent will promptly be provided with copies of all communications sent to policyholders.

Section 5.2d.: The Agent should be entitled to a list of all the Agent's expirations and records at any time, not just upon termination. Also, the Agent should be entitled to a list of the Agent's expiration information upon termination.

Section 5.3: Again, the Agent may want to request that legitimate disputes over the amount due or minor discrepancies in accounting between the Agent and the Company not trigger these remedies.

Section 5.3b.: Before taking any steps to terminate the Agreement (except termination for cause), in order to avoid termination, the Company should be required to make a good faith effort to reach mutual agreement with the Agent on a written plan for rehabilitation for a period of one year or more. That agreement should specify what the Agent must do to avoid termination, and how the Company intends to assist the Agent to avoid termination.

The written rehabilitation plan will not be included in the Agreement because it will vary according to the circumstances. All rehabilitation agreements should, however, include the following elements:

- (i) identification by the Company of the problem areas;
- (ii) mutual agreement between the Company and the Agent on performance objectives and specific dates for accomplishment;
- (iii) periodic meetings at which the performance objectives will be reviewed; and

the length of plan, which generally should extend for one year.

Section 5.3c.: If this remedies section is triggered, the Agent should be aware that for the Agent to be able to take the actions specified to service existing business, prior written consent is required from the Company, which may be impractical to get. (See comments to Section 10.2)

Section 5.4: The Agent may want the same ability to seek legal fees and costs from the Company for legal actions to collect commissions/profit sharing as the Company has to seek legal fees and costs from the Agent to collect Funds due the Company.

SECTION 6: OWNERSHIP OF BUSINESS.

Section 6.1: The Agent may want to request that sums unpaid to the Company due to legitimate disputes about the amount due or minor accounting discrepancies between the Agent and the Company not cause the Agent to lose ownership of expirations.

Section 6.2: The Company should not solicit or encourage the policyholder to change agents, and the notification to the policyholder of the right to have a policy renewed directly or with another agency should be written to avoid conflict with Section 10.3 regarding renewals after termination and to respect the Agent's ownership of expirations.

Section 6.3: The Agent should only lose ownership of expirations upon a failure to pay Funds that are not the subject of a legitimate dispute or minor accounting discrepancy between the Agent and the Company. If the Company acquires the Agent's expiration, the Company should be required to use reasonable business judgment to sell the expirations.

Sample Language on Ownership of Expirations

A. The use and control of the Agent's expirations, including those on direct billed business, the records thereof, and the Agent's work product and data relating thereto, shall remain in the undisputed possession and sole ownership of the Agent. The Company shall not use the Agent'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 Agent's expirations, including records, work product, or data relating thereto, to any other Agent or broker, or affiliate or company, without prior express written permission from the Agent.

B. 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.

C. 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.

SECTION 8: TREATMENT OF PRIVATE AND CONFIDENTIAL INFORMATION.

Section 8.1: The Agent should consider requesting an amendment to address information security that includes mutual language, such as the following: "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 will, and will require its agents and contractors to, regularly test key controls, systems and procedures as part of its program. 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 8.2: The reference to information being “Confidential Information” if, under the circumstances, it “ought to be treated as confidential” may not convey clearly to the Agent or Company exactly what information is Confidential Information.

SECTION 9: SUSPENSION.

The Agent may want to request that legitimate disputes over amounts due or minor accounting discrepancies between the Agent and the Company not trigger this section.

SECTION 10: TERMINATION.

Section 10.1c.(4): This section allows the Company to terminate the Agreement if a minority interest of the Agent is sold or transferred, and the Agent may feel this is unnecessary for the protection of the Company. Also, if the Agent is required to obtain prior written consent to a merger or sale, but the Agent also is bound to a confidentiality provision as part of a merger or sale, then the Agent will have no choice but to breach one or both agreements, which would be avoidable by requiring prompt notice to the Company of a sale or merger of a majority interest in the Agent upon close of such merger or sale. (See comments to Section 2.5)

Section 10.1c.(6)-(8): The Agent may want these sections to provide an exception to termination for legitimate disputes over the amounts due or minor discrepancies in accounting between the Company and the Agent.

Section 10.1c.(7): The Agent should be aware that all breaches, including as to non-material aspects of the Agreement, entitle the Company to terminate the Agreement.

Section 10.2: These restrictions may be interpreted by some Agents as limitations that make the notice of termination function like the termination is effective immediately, rather than after a notice period. (See comments to Section 5.3c) While Agents can continue to conduct business with the Company, some Agents may feel the procedures required to do so are too cumbersome.

Section 10.3a.: The Agent may want to request that all policies in force upon termination be renewed for a period of at least one year, not just run until their expiration dates.

Section 10.4: Agents may want to request that commissions continue to be paid to the Agent on renewals that take place during the one year period after the effective date of termination of the Agreement, not just for the first six months.