



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

OFFICE OF THE GENERAL COUNSEL

Westfield Insurance Agency Agreement (AF 187 2021)

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

- The Agreement does not contain a clear run-off/renewal provision.
- The Agreement includes certain one-sided data security requirements that go beyond what may be required of the Agent by applicable law.

REVIEW OF PROVISIONS

III. ACCESS TO COMPANY SYSTEMS AND DATA

Overall, Section III imposes broad, unilateral data security requirements on the Agent that do not also apply to the Company. In general, these types of data security obligations should be mutual. The Agent is subject to similar requirements and obligations to ensure third-party business partners/service providers, like the Company, are maintaining their clients' information as confidential and secure.

- A.1.a) This section provides that the "Agent is responsible for maintaining the confidentiality of data in the Systems." This language is overly broad, and other parts of the provision already provide that Agent has responsibility for access to the System through Agents' log-on and/or operator identification codes.
- A.1.b) This section requires Agent to maintain a "record of the log-on and/or operator identification codes issued to the Agent's present and past personnel authorized to access Systems" and that Agent "must actively manage log-on privileges and revoke access immediately upon termination of personnel." The Agent should ensure it is comfortable with implementing a record and system for actively

managing access to Company systems as required. The Company also “reserves the right to suspend or terminate log-on and/or operator identification codes issued to any user...” The Agent may wish to seek language that qualifies such suspension or termination, e.g. upon written notice, based on Company’s “reasonable” discretion, and/or for the specific reasons listed at Section III.B.

- A.1.c) This requires the Agent use “multifactor authentication to access and retrieve Company information as required.” A Company representative has stated that this reference is only in regard to access to Westfield’s systems, and the Company is not mandating use of MFA on agency systems.
- A.2. Again, requiring Agent to “encrypt all Company information at all times” and immediately notify the Company within 72 hours upon discovery of any “impressible disclosure, loss, theft, access, use or destruction of Company information” may go beyond what is required of the Agent by applicable law. These types of requirements are, however, increasingly common, and the Agent may wish to seek mutual requirements for the Company.
- A.4. The indemnification obligations of the Company are significantly narrower than that of the Agent. The Company need only indemnify the Agent for damages “caused by Company’s error in design, maintenance, or operation of the Systems, except to the extent the Agent caused or contributed to the damages.” The Company’s indemnification should be broader and cover any breach of its Systems or client data not caused by Agent, to the extent Agent is being required to provide a similarly broad indemnity.
- A.5 The Agent must indemnify the Company from damages which may result from either the “Agent’s breach of confidentiality of the Systems” or “which may result from the improper use or logon and/or operator identification codes issued to the Agent’s present and past officers, employees, and agents.” At a minimum, these indemnity obligations should be qualified by language such as, “except to the extent Company caused or contributed to the damages.” Moreover, as currently drafted, it potentially exposes the Agent to extensive liability for any breach. Agents should seek to narrow the language or ensure they are comfortable with this risk, which may be mitigated to some extent by obtaining and maintaining adequate cyber insurance coverage.

IV. OWNERSHIP OF EXPIRATIONS

- A. The Agent may want to request that this provision be expanded to expressly protect the Agent’s work product and data. The Agent may also want to require the Company provide express written notice of indebtedness and an opportunity to cure before the Company is able to exercise any rights to expirations.
- B. The Agreement should require the Company to use reasonable discretion in any sale of the Agent’s expirations.

Sample Language

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.

V. HOLD HARMLESS AGREEMENT

- A. The Company's indemnity obligations are relatively narrow. The Agent may wish to consider seeking indemnification for Company's errors or omissions more broadly in connection with its duties and obligations under this Agreement.

X. COMMISSIONS

- A.2. The Agent may wish to seek language that restricts commission changes to no more than once per year.

X. AMENDMENT AND TERMINATION OF AGREEMENT

- A. The Agent should note that this provision allows for the Company to make unilateral changes to the agreement upon sufficient written notice without the Agent's written agreement.
- E. Following termination or expiration, the Agent should have the right to decide whether existing policies are renewed, replaced or continued in force. The Agent may want to request that the Agreement require all renewals that meet current underwriting standards and that come up within a one-year period following termination be renewed for a term of at least one additional year, upon terms in effect prior to termination. The Agent may also want to confirm any other terms of the Limited Agency Agreement.

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 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.

XV. ARBITRATION

The Agent may want to propose the Agreement designate the rules that will govern any arbitration, such as the rules of the American Arbitration Association (AAA).

XV. RIGHT TO AUDIT

- A. Note that the Company has the right to audit the Agent's "vendors or affiliates that provide a service for the processing, transport or storage of Company information." Thus, the Agent would likewise need its own contractual audit rights for such vendors or affiliates to allow for this. The Agent may also wish to qualify that any audit shall be conducted during regular business hours and at the Company's expense.
- C. It is unusual to require the Agent to provide access to sensitive internal privacy, info security, incident response and document retention policies, processes, procedures, and controls. It is more common for the Company simply to require security assessment questionnaires as provided under Section B.