



Independent Insurance Agents
& Brokers of America, Inc.

OFFICE OF THE GENERAL COUNSEL

AUTO-OWNERS INSURANCE GROUP **AGENCY CONTRACT (13497) (7-22) for P&C; 10554 (7-22) for Life Ins.**

Reviewed August 2023

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 defines expirations narrowly and does not require the Company to provide the Agency with an opportunity to cure delinquencies before selling the expirations.
- The Agreement lacks a renewal/run-off provision.
- The Agreement contains a very broad confidentiality and data security addendum and GLBA general provision that may benefit from clarification.

PROVISION-BY-PROVISION REVIEW

PREAMBLE

(1) This section requires the Agency to comply with the Company's rules and regulations. The Agency may to confirm the amount of notice prior to the effective date of and any changes to the rules and regulations. Additionally, the Agency should ensure it has received and reviewed all relevant rules and regulations. This comment also applies to Part I(1) and Part II(1).

I. AGENCY AUTHORITY & RESPONSIBILITY

I(1) and I(8) The Agency should review the limitations on its authority and confirm that the parameters are consistent with how the Agency intends to perform.

I(2) It is not clear if the requirement that the Agent be responsible for the calculation and payment of all applicable taxes applies to policies or agency operations or both. If it

relates to policies, it is an uncommon term, and the Agent may want the Company to specify that this provision applies only to taxes for agency operations.

I(6) This provision requires the Agency to report any “improper or illegal activities or breaches of the Company policies” by any Agency employee, representative or affiliate. The language is vague and overly broad. Such provisions are typically limited to known federal or state felony crimes involving dishonesty or breach of trust.

I(7) Note this provision requires the Agency to notify the Company promptly if the Agency or its agents cease to be licensed.

I(9) The Agency is required to maintain a copy of each insured’s signed electronic application for the longer of five years or the time within which a person can file suit under written contract. The Agency should be familiar with the statute of limitations for contractual claims in the jurisdictions in which the Agency represents the Company. Sample language regarding preservation of records is below for consideration.

I(13) This provision states that all business information provided by the Company to the Agency is confidential and cannot be shared or copied without the Company’s express written consent. It could be construed to preclude the Agency from seeking accounting, legal or other business counsel about its relationship with the Company. The Agency may want the Company to amend this provision to clarify that the Agency may provide the listed materials in connection with seeking professional services without prior written consent.

II. COMPANY AUTHORITY & RESPONSIBILITY

II(1) Note that this provision allows the Company to amend its underwriting standards from time to time without prior notice. The Agency should ensure that all relevant materials have been provided and reviewed. Additionally, the Agency may wish to require at least 15 days’ notice of any material changes and/or new rules/policies/procedures.

II(5) The Agency is responsible for payment of premiums on agency billed business, regardless of whether those premiums are collected from the insureds. This is contrary to the typical result where non-payment by the insured will cause the policy to lapse or be cancelled. If this concerns the Agency, it may want to request that its responsibility be limited to remitting premiums that it actually receives.

II(7) The Company is allowed to offset commissions owed to the Agency to meet the Agency’s indebtedness to the Company. The Agency may want this language limited to circumstances when the Agency is past due on sums owed to the Company under this Agreement. As currently written, this language implies that the Company can offset against indebtedness owed under other agreements or indebtedness that is not past due.

II(8) Note that the Company is authorized to obtain credit reports about the Agency.

III. COMMISSIONS

III(1) This section allows the Company to amend the commission schedule on 90 days written notice to the Agency but does not limit the number of changes annually. If this concerns the Agency, it may want to request that the Company limit changes to the commission schedule to once per year. The Agency should also review the Commission Schedule to make sure it is applicable to the Agency's line of business and understanding of its compensation.

IV. OWNERSHIP OF EXPIRATIONS

IV(1)(A) This section addresses the Agency's ownership of expirations. This section can be improved in a few ways.

First, this section narrowly defines the term "expirations." The Agency may want expirations to include, at a minimum, all policy writing information and related Agency work product, whether as a list or in any other form.

Second, this section states that the Company will own the Agency's expirations if the Agency has not properly accounted for and paid premiums to the Company. The Agency may want to request that the Company provide at least 30 days to cure the non-payment, provide an exception for good faith disputes, accept commercially reasonable collateral to secure the Agency's indebtedness in lieu of the Agency forfeiting its rights to the expirations, and/or withhold premiums to pay down the Agency's debt before taking the Agency's expirations. Although the Company agrees in Part IV(2) to accept collateral, the Company retains the right to reject the Agency's collateral, even when the collateral is commercially reasonable. Sample ownership of expirations, communications with client/insureds, and post-termination rights and responsibilities language can be found below for consideration.

V. PURCHASE OR SALE OF AGENCY

V(1) This section requires the Agency to provide the Company with written notice of any sale or transfer of ownership in the Agency and allows the Company, in its sole discretion, to terminate the Agreement upon such sale or transfer. If this concerns the Agency, it may want to request that the Company limit this section to sales or transfers of a majority or controlling interest in the Agency.

VI. CONFIDENTIALITY AND DATA SECURITY

A(2)-(6) The terms of the confidentiality addendum are very broad. "Confidential Information" as defined in Addendum A includes not only commercial information, such as information about sales, projections, reports of operations, underwriting criteria,

underwriting rates and rules, computer software, method and style of doing business, policy forms, and prospect lists, but also the terms of the Contract itself.

Note also that section 6 provides that the parties shall not “sell, retain, use or disclose the Data shared other than for the specific purpose of performing services specified in the Contract.” The Agency may wish to confirm that this applies only to Data “shared” by the other party in connection with this Contract and not more broadly.

A(7) Note this provision requires each party to notify the other in the event of “any confirmed unauthorized access to, disruption or misuse of the other party's Confidential Information.” The reporting party is required to provide the notification as soon as possible but no later than within seventy-two (72) hours of confirming the unauthorized access, disruption, or misuse of Confidential Information.

A(8) This section provides the Company with a unilateral risk assessment and/or audit right. The Agency may wish to set limitations on the audit right, such as no more than once per year, upon reasonable notice and during normal business hours.

VII. TERMINATION

VII(1) This section allows either party to terminate without cause effective 90 days after providing a written notice of termination.

VII(2) While the previous section of the Contract allows either party to terminate without cause with 90 days notice, this provision allows only the Company to terminate the Contract immediately if the Agency if it (a) violates the Contract; (b) violates the Insurance Code; (c) fails to pay the Company amounts when due; (d) in cases of fraud, misrepresentation, insolvency, willful misconduct, violation of state or federal law, failure to remit premiums, applications, binders or documents in a timely manner. This section does not provide the Agency with an opportunity to cure any alleged deficiencies, does not make an exception for good faith disputes, and does not require the Company to make a good faith effort to enter into a rehabilitation plan with the Agency. Sample termination language is below for consideration.

VII(3) This provision governs the rights and duties of the parties post-termination. Note that the Agency is still required to perform all duties under the Agreement until all policies are cancelled or not renewed. This provision also requires that all policies collected or held on behalf of the Company will immediately come due. The Agency's access to Company Data and systems will also be significantly limited. The provision also requires that, once all policies have been cancelled or not-renewed, the Agency must return or destroy related records. If the Agency or any of its employees fails to do so, then the Agency is liable for the Company's attorneys' fees and expenses related to enforcing these provisions. Sample post-termination duties language is below for consideration.

VIII. ARBITRATION

Note that disputes arising out of the Contract must be submitted to binding arbitration in Eaton County, Michigan.

IX. INDEMNIFICATION

IX(1), (2) These sections describe the indemnification obligations owed by the parties to each other. The provisions are broad and mutual. The Agency may wish to seek language that clearly sets forth a comparative fault principle, e.g., “except to the extent such was caused, contributed to or compounded by the Company.”

X. GENERAL PROVISIONS

X(3) The Agency should be aware that this Agreement supersedes all existing agreements between the parties.

X(6) The last sentence of this provision addresses the Company sharing NPPI with the Agency. If the Agency collects the NPPI on its own, the Gramm Leach Bliley Act does not impose such a restriction on the Agency’s use of the NPPI. The Agency may want to limit the last sentence to NPPI collected by the Company and shared with the Agency. Otherwise, the last sentence could be interpreted to prevent the Agency from using NPPI that it collects to sign up an insured with another insurance company.

LIFE CONTRACT (10554)

Note: The Life Contract contains many of the same provisions as the P&C Contract reviewed above with some differences of note addressed below.

VII. TERMINATION

VII(3) This provision governs the rights and duties of the parties post-termination. Note that if termination is for cause under VII(2), then the Agency loses its right to any further commissions. The Agency also loses its right to commissions if they are less than \$500/year, except first year renewal commissions. After ten years, if the combined renewal commissions are less than \$1,200/year, commissions will no longer be paid to the Agency and the Company reserves the right to transfer the remaining policies to another agency or the Company for servicing.

The Life Contract also incorporates a HIPAA Business Associate Agreement. The Agency should review and determine whether it is comfortable with the terms of the addendum and whether it goes beyond what is required by HIPAA. Such determination is beyond the scope of this review.

SAMPLE LANGUAGE:

Sample Felony Convictions Language

The Agency agrees to notify the Company in writing within ten (10) days of becoming aware that one of Agency's officers, principals, owners, employees, or producers has been convicted of a federal or state felony crime involving dishonesty or breach of trust. This requirement applies regardless of whether the Company has appointed such person. The Agency does not have to notify the Company if the person with the conviction has received the appropriate insurance regulatory official's consent to engage or participate in the business of insurance, provided that the consent complies with the Federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. 1033(e)(2).

Sample Preservation of Records and Company Property Language

Upon either the execution or the effective date of a particular document, the Agency agrees to diligently maintain, safeguard, and store, in an orderly fashion for a period of five (5) years after the final termination, non-renewal or cancellation of the last renewal of the policy to which the document applies, or the requirements of state law, whichever is greater, all originally signed applications, waivers, selections of coverage limits and any other policy related documents which are not forwarded to the Company for retention. These documents may be stored in electronic formats to the extent permitted by state law provided that these documents are properly date stamped, regularly backed-up, and may be produced promptly upon Company's request.

Sample Audit/Inspection Language

Upon advance written notice to the Agency, the Company may inspect the Agency's records relating to the Company's business during normal business hours. The Agency agrees to cooperate with such inspection, which the Company agrees to conduct at its own expense.

Sample Ownership of Expirations 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 to thereto, shall remain in the undisputed possession and sole ownership of the Agency. The Company shall not use its records or the Agency's expirations 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, work product, records or data relating thereto, to any other Agency, agent or broker, or affiliated or company, without prior express written permission from the Agency.

B. If the Agency has not properly accounted for and paid to Company all premiums collected by the Agency (less the Agency's commissions) as of the effective date of termination of this Agreement, prior to taking any action against the Agency's expirations, The Company shall provide written notice to the Agency specifying such unpaid and undisputed amounts and giving the Agency 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 Agency's receipt of the notice, The Company may withhold commissions as an offset against any unpaid and undisputed amounts owed by the Agency. 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 Agency'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 Agency's expirations, The Company shall use reasonable business judgment in selling such expirations and shall be accountable to the Agency for any sums received, which, net of expenses, exceed the amount of indebtedness. The Agency 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 Agency's expirations to the extent of any good faith and reasonable dispute as to amounts owed by the Agency to The Company.

Sample Post-Termination Rights and Responsibilities 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 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.