



Independent Insurance Agents
& Brokers of America, Inc.

OFFICE OF THE GENERAL COUNSEL

The Cincinnati Insurance Companies Agency Agreement AA 100 (9/22)

Reviewed March 2015
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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

- A failure by the Agency to follow the premium collection provisions in the Agreement relieves the Company of any further obligations under the Agreement, which could result in onerous consequences for minor failures.
- The Agreement allows the Company to take control of the Agency's expirations and service the policies during the resolution of a dispute over the ownership of the expirations.
- The Agreement imposes wholly one-sided data security and privacy obligations on the Agency, which should also be required of the Company. Some of the requirements are ambiguous or unusual, such as requiring that the Agency obtain pre-approval before use of certain third-party data processors.
- To the extent applicable, the Agreement may include a Customer Care Center Addendum that makes material revisions to key terms. Of particular note, it amends the Agency's ownership of expirations and expressly permits the Company to service and renew policies and cross-market other insurance products without any Agency approval or notification.

REVIEW OF PROVISIONS

II. AUTHORITY

II.C This section provides that Agency's authority is limited by the Company's underwriting rules and practices as set forth in Company manuals, bulletins, documents, and other notices. The Agency may want this section revised to specify how the Company will communicate the

underwriting rules and practices (e.g., in writing), and the amount of notice prior to the effective date of the rules and practices.

III. OWNERSHIP OF BUSINESS

III.C. The Company agrees not to use records of the Agency's expirations in any marketing for the sale, service or renewal of insurance or other products "which shall abridge your right of ownership, use and control." The underlined language is a confusing qualifier to the Company's agreement not to use records of the Agency's expirations. The Agency may want to request that the Company delete the underlined language.

III.D. If the Agency has not accounted for and paid all premiums or other amounts owed at the time the Agreement is suspended or terminated, the Agency has a 15 day cure period. The Agency may wish to qualify that this provision only applies to "undisputed" premiums or amounts owed, as the current language does not allow for good faith disputes. The Agency may also want to request that the Company be required to retain commissions prior to soliciting expirations, and solicit expirations only in reasonable proportion to the Agency's indebtedness.

Additionally, the Agency may want to request that the Company accept commercially reasonable collateral to secure the Agency's indebtedness in lieu of the Agency forfeiting its rights to the expirations, and the Company using or selling the expirations. Although the Company agrees to accept some forms of security, this protection would take effect only after the Company has taken control of the Agency's expirations.

IV. YOUR GENERAL DUTIES AND RESPONSIBILITIES

IV.A This section imposes a "continuing duty" on the Agency to promptly send the Company information that it obtains that affects the insurability of the risk. This standard is amorphous and may create unintentional pitfalls for the Agency. If the Agency is concerned about this duty, it may want to request that the Company eliminate this duty, or revise it to require the Agency to reasonably cooperate with Company requests for such information.

IV.B Some may view this section as restricting the Agency's ability to manage its business because the Agency is required to notify the Company in advance of, among other things, changes in ownership of the Agency and purchases of other agencies. The Agency may want this provision to specify that it must notify the Company only upon the close of a sale or transfer of a majority interest in the ownership or control of the Agency's business, such that a sale or transfer of a lesser interest does not require notice and cannot trigger termination of the Agreement on 180 days' notice (Section IX.D.2.). In addition, the Agency should be aware that this provision may conflict with the confidentiality provision in a buy-sell agreement. Given that the Company has the right not to do business with a new owner if the Agency is sold, the Company is protected and should not need advance notice of a sale, especially considering that the Agency may be required to breach a buy-sell agreement to comply with the provision if the provision is not changed.

IV.J. & IV.K. This section requires the Agency to comply with the Company's claims procedures and the Company's policies, instructions, procedures, processes and underwriting rules and guidelines. The Agency may want this section revised to specify how the Company will

communicate this information (*e.g.*, in writing), and the amount of prior notice required.

IV.L This provision has been revised to require the Agency “immediately” notify the Company of both *charges* and convictions that may have a material effect on the ability to perform or any material violation of insurance laws or if a producer loses its license. Adding notification requirements for “charges” goes beyond the requirements of the Federal Violent Crime Control and Law Enforcement Act of 1994. The Agency may wish to limit the notification requirement to convictions and allow a reasonable period of time to report, such as within ten (10) days of becoming aware of such conviction.

V. PREMIUM COLLECTION

V.A., V.B., & V.C. The Agency is responsible for payment of premiums (which for direct bill policies is limited to the initial premium payable with each submitted application), 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.

V.B., V.C., & V.D. For policies billed by the Agency, the Agreement is internally inconsistent regarding the Agency’s authority to deduct commissions. Sections V.B.3. and V.C.2. state that the Agency may retain its commission from the gross premium and pay the net premium to the Company, whereas Section V.D. provides that the Agency must hold all premiums in trust and that commissions payable out of the premiums are debts the Company owes to the Agency. If these inconsistencies concern the Agency, it may want to request that the Company delete Section V.D.

V.E.3. This section provides the Company with a security interest in the Agency’s expirations. This undermines the Agency’s ownership of its book of business because it impairs the ability of the Agency to use the expirations as security for business loans or to sell the expirations it owns. The language is also unnecessary because the Agreement sufficiently addresses the sale of expirations as protection for the Company. If this concerns the Agency, the Agency may want the Company to strike Section V.E.3.

V.E.4. The Company is allowed to offset commissions owed to the Agency to meet the Agency’s obligation on unpaid accounts. The Agency may want this language limited to circumstances when the Agency is past due in paying premiums that it has received from insureds. As currently written, this implies that the Company can offset against premiums even when the insured has not paid.

V.F. This section also addresses some of the Company’s remedies if the Company terminates the Agreement because of the Agency’s failure to comply with Section V. The Company can require the Agency to establish a trust account where the Agency must deposit all premiums received from insureds. The Company is entitled to retain all amounts deposited into the trust account, without regard to commissions owed to the Agency. If this concerns the Agency, the Agency may want to request that this section be deleted, or modified to state that the Company will pay

to the Agency all commissions in excess of the Agency's indebtedness to the Company.

V.G. The Agency's failure to follow Section IV relieves the Company of any further obligations under the Agreement. By way of example only, this clause, once triggered, may affect the payment of commissions to the Agency, or remove the limits in the Agreement to the Company's use of expirations. This could result in onerous consequences for even minor failures to follow Company billing procedures. In addition, this subject is already covered in the Termination section, which is where an issue of this nature is typically addressed. Agencies concerned about this provision may want to request that Section V.G. be deleted.

VII. HOLD HARMLESS

The Agency is required to indemnify the Company, and its indemnification of the Company is broader than the Company's indemnification of the Agency. Also, the Company's indemnification of the Agency differs with respect to direct bill policies and agency bill policies, the latter of which is limited to civil liability only, and does not include administrative liability. The latest version of the Agreement further narrowed Section VII.B to apply only to a failure to comply with any applicable "insurance" law, instead of any applicable law in general. If this concerns the Agency, the Agency may want to request that the Company's indemnification obligation track the Agency's indemnification obligations and include indemnification for the acts of those working on the Company's behalf (e.g., inspectors, adjusters, subcontractors). In any event, the Agency should verify that its E&O policy will cover the liability assumed by the Agency in this provision, or the provision should be amended accordingly.

IX. TERMINATION

The Company 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. If the Agency is concerned about this, the Agency can request that the Company provide the Agency with prior written notice and an opportunity to cure the alleged deficiencies before terminating the Agreement, provide an exception for good faith disputes, and agree to negotiate a rehabilitation plan in good faith.

IX.C.3. The Company may terminate the Agreement immediately if it has evidence of malfeasance, fraud, material misrepresentation, insolvency, abandonment, willful misconduct, or abuse of authority of the part of the Agency, its employees, associates, or agents. This language is overbroad and permits immediate termination for conduct that has no relation to how the Agency conducts its business. If this concerns the Agency, the Agency may want this language limited to acts by the Agency and its principals in the conduct of their insurance business.

IX.D. See comments in Section III regarding the Company's ability to terminate based on mergers, changes in the ownership of the Agency, and changes to the form of the legal entity under which the Agency does business.

IX.F. This section also addresses the continuation of the unexpired policies written by the

Agency. Although the Company agrees to allow certain policies to run until expiration, the Company makes a few exceptions, including for policies with no expiration and multi-year policies. The Agency may want to request that the Company eliminate the exceptions and allow all policies with an expiration date to run until such date. The Agency may also want to request that the Company offer to renew all policies that expire within a year of the effective date of the termination – and pay commissions thereon at the same rate in force prior to termination – if those policies meet current underwriting guidelines.

IX.F.4. The Agency has limited authority after the termination of the Agreement to service policies and does not have express authority to handle claims. If this concerns the Agency, the Agency may want to request that the Company provide it with the authority to deal with claims after termination of the Agreement.

XII. MISCELLANEOUS

XII.G.4. & XI.G.5. These sections permit the Company to send information directly to policyholders. The Agency may want these provisions conditioned to require that all Company materials identify the Agency’s name and contact information, and direct policyholders to the Agency for questions and requests for service. The Agency also may want to request that a copy of all correspondence and information sent by the Company to the insured under Section XI.F.5. be sent to the Agency in advance, as is required under Section XI.F.4.

XII.I.3. This section restricts the Agency’s disclosure of customer information without the customer’s prior permission. Several exceptions to the restriction are listed, but the applicability of those exceptions is in the Company’s sole judgment. If this concerns the Agency, the Agency may want the Company to agree that the Agency will decide the applicability of the exceptions in the Agency’s reasonable judgment.

XII.I.5-6. These provisions impose wholly one-sided data security and privacy compliance obligations on the Agency. These requirements should apply mutually to the Company, which receives information from the Agency requiring protection as well. It incorporates the terms of a “Data Protection Agreement” by reference, discussed further below, and “[a]dditional privacy and security guidelines, as may be amended from time to time” by posting on the Company website. The Agency may wish to require written notice of any changes to such guidelines.

The Data Protection Agreement (“DPA”) further imposes one-sided obligations on the Agency. While it does not set out express minimum requirements for the Agency’s security program, it does “recommend” the Agency implement specific features set forth on Schedule 1. It also states that “Company may issue updated required minimum standards, which shall be effective upon publication.” This language suggests the Company may view the Schedule as required minimum standards despite the “recommendation” language. Moreover, updated standards should not be “effective upon publication” and should allow for a reasonable period of time to comply.

Provision XII.I.5 and Section 3 of the DPA require immediate notification of any unauthorized access. The Agency may wish to request “immediately” be struck and/or changed to within a reasonable notification period.

Section 6 of the DPA requires the Agency to notify the Company prior to “utilizing a robotic processing automation (RPA) or third-party outsourcer of insurance processes” and receive prior approval from the Company. This is an unusual provision and could be seen as an intrusion on the Agency’s business.

Section 7 imposes a broad, one-sided indemnification obligation on the Agency for any damages the Company incurs resulting from the Agency’s, its agents’ or subcontractors’ acts or omissions in connection with the DPA.

XII.I.8. If the Agency qualifies for access or uses Company’s APIs, note this provision incorporates additional terms and conditions by reference. Analysis of those terms is beyond the scope of this review, but the Agency should review and confirm they are agreeable.

XIII. ARBITRATION OF CONTRACT DISPUTES

XIII.A. The Agency and Company agree to informally mediate any disputes in good faith before proceeding with arbitration. The amount of time for the mediation is not specified. This could be problematic in time-sensitive disputes, such as disputes over ownership of expirations. If this concerns the Agency, the Agency may want the Agreement to specify that the parties are required to mediate in good faith for no more than 30 days.

XIII.E. This section allows the Company to take control of the Agency’s expirations during the pendency of any dispute over the ownership of the expirations. The Agency agrees to allow the Company or another agency to take exclusive control of the expirations and service the Agency’s policies, and to do so in the Agency’s name if the Company chooses. Commissions on such policies may be paid to the other agency, and any excess will be credited against the Agency’s debt. In addition, the last sentence does not expressly state that the Company will recognize the Agency’s ownership of expirations in the event the Agency prevails in arbitration. If this language concerns the Agency, the Agency may want to request that it be revised to allow the Agency to retain control of its expirations and service the Agency’s policies during the pendency of any dispute, and to expressly acknowledge the Agency’s sole ownership of the expirations following any arbitration resolved in the Agency’s favor.

XIV. EFFECTIVE DATE

The Agency should be aware that this Agreement replaces and supersedes all prior agreements except separately negotiated agreements for individual accounts or specific programs (see Section II.D.).

CUSTOMER CARE CENTER ADDENDUM

This addendum substantially amends key provisions of the Agreement for agency locations with policies enrolled in the Customer Care Center, especially protections afforded by the Agency’s ownership of expirations. The amended language provides that policies may be “serviced and renewed without [Agency’s] approval” and that policies may be removed by Company merely by

providing notice of intent. Moreover, there is no restriction on using the Agency's records for policies enrolled in the Customer Care Center for Company marketing, no notice to Agency is required to renew and service policies, and it expressly states the Company "may also market additional coverages and products to policyholders" without notifying the Agency.