



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

OFFICE OF THE GENERAL COUNSEL

West Bend Mutual Insurance Company Agency Agreement Effective January 01, 2026

Reviewed December 2019
Updated October 2025

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 Indemnification and Business Procedure Sections impose onerous, non-mutual data privacy and security obligations on the Agency that exceed what may be required by applicable law. These should be mutual and consistent with what is required by law.
- The Ownership of Expirations Section does not expressly provide for an opportunity to cure any deficiencies with respect to rendering accounts and paying amounts due prior to the Company being able to take possession of the Agency's work product, records and expirations. It further provides that the Company may take control of expirations where the Agency has failed to move the business to another carrier within 18 months of termination.

REVIEW OF PROVISIONS

I. AUTHORITY OF AGENCY

Note that the Company requires prior approval of individual appointments of Agents at the Agency before those Agents have binding authority. The provision also requires the Agency to accept vicarious liability for the acts and omissions of all Agency employees.

II. COMPENSATION

The Company states it will pay Agency commissions on "eligible net written premium" in accordance with the applicable Schedule of Commission. However, the Agreement does not define "eligible," and the Agency may wish to seek clarification or removal of this

qualification. With respect to reduction of commission upon mutual agreement, the Agency may wish to add clarification that such agreement must be in advance and in writing.

III. CONFIDENTIALITY OF CONSUMER FINANCIAL AND HEALTH INFORMATION

Although there is an apparent carveout for information provided by clients to and maintained solely by the Agency, the Agreement sets significant restrictions on what the Company and the Agency may do with nonpublic personal financial and health information (“Personal Information”) submitted in connection with the Agreement. This includes using Personal Information “solely for purpose relating to the Company’s business” and not disclosing it to any third party unless permitted by the Company’s Privacy Policy or, in the case of financial information, subject to a separate joint marketing agreement between the Company and the Agency. The Agency should ensure that its practices and procedures with respect to Public Information are consistent with these restrictions or seek to amend the language accordingly. The Agency should also obtain and review the Company’s Privacy Policy.

IV. INDEMNIFICATION

While the general indemnification obligations in the first two paragraphs of this section are properly mutual, the Agreement applies contributory instead of comparative indemnity principles. Language such as “provided the Agency has not caused or contributed to such liability” creates a situation in which the Agent could lose all indemnification from the Company, even though the Company contributed significantly to the liability. Instead, this provision should require the Company to indemnify the Agency for all liability based on the extent to which each Party is at fault.

In the third paragraph, the Agreement requires Agency to secure, maintain and provide a copy of the declarations page for a cyber liability policy with at least \$1 million in coverage; or this section alternatively imposes on the Agency numerous non-mutual requirements that include and go beyond indemnity for any “act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Personal Information” or the safeguards related thereto.

First, as a general matter, these requirements should be mutual. The Agency has similar obligations to ensure that the carriers it works with are protecting Personal Information and has similar exposure to harm resulting from a failure by the Company to safeguard its clients Personal Information. As such, the Company should be subject to the same requirements and indemnity that may apply under the Agreement.

Second, many of the proposed requirements significantly exceed what may be required by law in the case of an actual security breach, e.g. notification within 24 hours of “becoming aware of such occurrence” without allowing time for investigation of suspected incidents, notification of affected individuals “as soon as practicable” and within 5 calendar days absent requirement, and requiring the provision of credit and identity monitoring services to affected individuals. While some state laws may include variations of these requirements in some form, they are far from standard across the country. If these obligations are made mutual per above, the Company may also be more open to reconsidering what requirements to include.

VI. DESIGNATION OF AGENCY BY POLICYHOLDER OR PRINCIPAL; AGENT OF RECORD; BROKER OF RECORD

Note that the Agreement states any Agent of Record or Broker of Record change that is “requested within one (1) year of the Agency signing its initial contract with Company...will be denied unless, Company, at its sole discretion, authorizes such request.” This language is very unusual. Moreover, it is unclear whether the Company can object to a policyholder requesting a change in agent or broker, unless the Company intends to terminate the policy.

VIII. BUSINESS PROCEDURES

Part 1 of this Section further imposes non-mutual security requirements on the Agency based on its use of the Company’s online processing system. In particular, Part 1.e broadly requires the Agency to establish and maintain a data privacy and information security program that, among other things, protects against unauthorized disclosures and access, ensures proper disposal of Personal Information and “ensures that all employees, agents, and subcontractors” comply. The Agreement also requires the Agency’s program be no less stringent than the Company’s program and provides the Company broad rights to audit the Agency’s program.

As noted in the Indemnification Section above, these requirements should be mutual for the reasons noted above. The Agency should also obtain and review information on the Agency’s data privacy and information security program and ensure the Agency has a mutual ability to audit upon reasonable notice and during regular business hours.

With respect to Part 2 of this Section on Direct Billed Policies, the Agency may wish to request the ability to obtain a list of direct billed policyholders with policy expiration dates within a reasonable time after termination and require the Company to send Agents a copy of all notices sent to insureds prior to mailing. The Agency should also note Part 2.h and Part 3.g require the Agency to notify the Company of its collection efforts for uncollected premium within 45 days of the initial premium date. If the Agency fails to do so, it is unclear whether the Company may hold the Agency responsible for such uncollected premium.

IX. TERMINATION OR SUSPENSION OF AGREEMENT

Part a.2 should make clear that the Agency has an opportunity to cure any alleged breaches within 30 days.

With respect to Part a.6, the Agency may want to request that termination not be automatic if the business is sold, transferred or merged without prior consent by Company. Also, this provision could be viewed as a restriction on the Agency’s ability to manage its own business because it requires notification to the Company in advance of any sale, transfer or merger. The Agency may also want this provision to specify that notifications is only required upon a sale, transfer or merger of a majority interest in the ownership of the Agent’s business, and a sale or transfer of a lesser interest has no effect on the Agreement.

The Agency should also note that Part (d) provides the Company with broad suspension rights that could potentially be used to suspend the agency’s authority indefinitely, as opposed to terminating the agreement pursuant to its terms in a timely fashion.

X. AFTER TERMINATION

The Agent may want to request that upon termination of the Agreement, all renewals that meet current underwriting standards and that come up within a one-year period following termination should be renewed for a term of at least one additional year upon the terms in effect prior to termination.

XI. OWNERSHIP OF EXPIRATIONS

While the Agreement recognizes that the Agency has ownership of its work product, records, use and control of expirations, it provides that the Company may take them if the Agency does not render and continue to render “timely accounts and payment of all amounts due the Company or provides security therefore acceptable to the Company.” The Agreement should clarify or strike “render timely accounts” and require the Agency only to pay all “undisputed” amounts due the Company. Additionally, the Agreement should provide the Agency an opportunity to cure any deficiencies identified by the Company, e.g. at least 30 days after receipt of notice.

Additionally, the Agreement provides the Company the right to take control of expirations where Agency “has failed to move the business to another carrier within eighteen (18) months following the date of termination of this Agreement and applicable state law allows Company to service the account directly.” This provision is not typical. Generally, an Agency should only allow the Company to take expirations if the Agency fails to make payments and does not cure such deficiency within a reasonable amount of time.

XII. AMENDMENTS

The Agent may want to request that the Company be required to provide the Agent with at least 180 days prior written notice of any amendments.