



Independent Insurance Agents
& Brokers of America, Inc.

OFFICE OF THE GENERAL COUNSEL

The Auto Club Group / AAA Independent Agency Agreement Effective January 1, 2017

Reviewed December 2016

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 Company can market directly to the agency's clients for all products and services as long as it does not use the agency's expirations.
- The Company can use the agency's expirations to market directly to the agency's clients for products and services other than P&C and life insurance products and services.
- The agency's indemnification obligations are broader than the Company's indemnification obligations.
- All agents and producers are deemed employees of the agency for purposes of this Agreement, even if the agency characterizes them as independent contractors.

REVIEW OF PROVISIONS

I. Authority of Agent

I.C. This section provides that the licensed agents and producers of the agency are deemed employees of the agency. This language is concerning because the agency may designate its producers as independent contractors. In light of the U.S. Labor Department's efforts to stop worker misclassification, this language could cause problems for agencies that designate their producers as independent contractors. The agency may want the Company to amend this language to state that agents and producers will not be considered employees of the Company. This addresses the Company's concern without causing problems for the agency.

III. Ownership of Expirations

III.A. If the agency has not accounted for and paid all amounts it has collected as of the time the Agreement is terminated, the Company gains immediate control of the agency's expirations. The agency may want to request that the Company be required to retain commissions prior to taking expirations, and solicit expirations only in reasonable proportion to the agency's indebtedness.

This section does not provide the agency with an opportunity to cure any alleged deficiencies and does not make an exception for good faith disputes. 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 taking the agency's expirations, and that the Company agree not to do so if the parties have a good faith dispute. In addition, 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.

Note: Also, the Agreement states that if the agency has accounted for and paid all sums it owes to the Company, the agency's expirations remain its property for a period of one year following the effective date of the Agreement's termination. This language is uncommon in agency appointment contracts. One way this language could be interpreted is that the agency loses control of its expirations after that one-year period.

After reviewing the Agreement, the language is unnecessary because Section IX.C. already addresses non-renewal of policies after termination of the Agreement. The Company has said that the language is intended to encourage agents to move their books of business within one year after termination of the agreement, not for purposes of taking agents' expiration after that one-year period.

III.B. The agency should note that the Company retains use and control of expirations for AAA memberships. Some of the membership expiration information may overlap with policy expiration information.

IV. Agent's Duties

IV.A. The agency agrees that the Company shall have access to the agency's books and records for the purpose of determining any fact pertaining the business affairs between the parties. The agency may want the Company to specify that it will provide reasonable advance written notice before seeking access to the agency's books and records.

IV.H. 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, any sale or transfer of ownership in the agency. 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 does not trigger automatic termination of the Agreement (Section IX.A.3.). 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 or transfer, 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.

VI. Marketing

VI.A. & VI.C. The agency should be aware that the Company may use the agency's expirations to directly market products and services other than P&C and life insurance products and services. Also, the Company may directly market all products and services, including P&C and life products and services, to the agency's clients using lists acquired from sources other than the agency. For example, the Company may purchase marketing lists from other companies and may use those lists without having to scrub clients of the Company's independent agents. If this concerns the agency, the agency may want to request that the Company limit all or some of its marketing to the agency's clients.

VII. Indemnification

The agency is required to indemnify the Company, and its indemnification of the Company is broader than the Company's indemnification of the agency. If this concerns the agency, the agency may want to request that the Company's indemnification obligation track the agency's indemnification obligations. 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 of Agreement

The Company does not provide the agency with an opportunity to cure any alleged deficiencies and does not make an exception for good faith disputes. 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 and provide an exception for good faith disputes.

IX.A.2. & IX.A.7. The Company is permitted to terminate the Agreement upon 60 days written notice. Carriers often provide at least 90 days written notice prior to termination without cause. Also, the agency may want the Company to agree to provide at least the minimum amount of notice required by law prior to terminating the Agreement if the Company determines that it will no longer use independent agents.

IX.A.3 & IX.A.4. The Agreement terminates automatically on the effective date of any sale, transfer, or merger of the agency unless the Company consents, or if the agency's license is cancelled or non-renewed. As noted above, the sale, transfer, or merger of the agency should not trigger termination of the Agreement, and the agency should be provided an opportunity to cure any deficiencies prior to termination. At a minimum, the agency may want to request prior written notice of any termination so that it does not take action on the Company's behalf when the Company believes that the Agreement has been terminated.