The Agency Agreement Review Template is designed to provide an educational overview of the core provisions producers should expect to find in an agency agreement, the purpose of such provisions, and sample language, with an eye towards protecting an agent's interests, as well as maintaining compliance with applicable laws and regulations. This Agency Agreement Analysis is not a legal opinion, and should not be relied upon as such; nor does IA&B recommend any course of action, including that the contract be signed or rejected. This tool is merely intended as a guide, and as a point of reference for an agent's independent review of the contract.

Company agreement: COMPANY NAME & Agreement ref. #

Date: mm/dd/yy

Category	Y/N or Silent	Explanation	Sample language
Agent's authority			
Does the agreement explicitly states that the agent has authority to act on behalf of the carrier?		An agreement generally contains a provision stating the agent's authority to act on behalf of the company, and describing what the role entails. The more explicit the provision is, the better. Agents perform many tasks on behalf of carriers, and would expect to be protected when they perform those tasks within their authority and in accordance with company guidelines. Vague descriptions may not adequately convey the extent of the authority and leave room for interpretation when an issue arises. This could be significant if a situation arises that could trigger an agreement's hold-harmless provision.	
Does the agreement give the agent authority to sell, solicit and negotiate on behalf of the company?		An AGENCY agreement generally gives the agent the authority to sell and solicit (v. submitting applications for approval), to develop, receive and transmit proposals	*"Company grants Agent authority to sell, solicit and negotiate insurance products on its behalf."*
Does the agreement give the agent binding authority?		Granting the ability to bind coverage is (also) a greater sign of a true AGENCY relationship. Only granting the ability to submit applications for approval is a weaker authority	*"Company grants Agent authority to bind, execute and issue the kinds of insurance policies [and bonds] which Company is licensed to write for the product line(s) designated in the schedule of authority and for which a commission rate is specifically listed in the Schedule of Commissions attached and made part of this Agreement."*
Does the agreement allows the agent to receive payment?		Receiving payment is frequently permitted, although agreements increasingly favor a direct-bill set-up. Producers should note that even when they are acting in a brokerage capacity and have a broker rather than an agency relationship with the insurer, they are still considered to be acting as an agent when receiving payment from an insured, even if only for the act of receiving payment	*"Company grants Agent authority to receive and receipt payments…"*
Does the agreement state/acknowledge that the agent is an independent contractor and not an employee?		The section generally acknowledges that the agent is acting as an Independent Contractor (in other words, this is not an Employer/ Employee relationship)	*Company recognizes that Agent is an independent contractor and is not an employee of Company.*
Does the agreement restrict the agent's ability to represent other carriers?		Since we are discussing agreements under the Independent Agency System, we should expect the agreement not to restrict the agent's ability to represent other carriers. While this may not be expressly stated, there should be no language restricting that right. While agreements are sometimes silent, conflicting language may warrant clarification	*This agreement does not alter Agent's right and ability to represent other companies and does not apply to Agent's exclusive control of his time.*
NOTE - Does the agreement allow the agent to accept/place brokered business from other producers?		The agreement may state whether brokered business is allowable or prohibited under the agreement. Agreements are often silent, or disallow the practice altogether.	*If prohibited: Agent shall have no authority to accept business from brokers on behalf of Company.*

Does the agreement place broad restrictions on certain types of business?		Producers should pay close attention to any broad restrictions placed on certain business and seek clarification as needed.	
Which types? How is it broad?			
Does the agreement place requirements or restrictions with which it is difficult to comply?		Producers need to review the requirements and assess the procedures they will need to implement to be compliant with the agreement	
What are they?			
Other:			
Agent's duties and representations			
Is the agreement specific in listing the agent's duties, procedures and timeframes?		This section normally states specific duties, including procedures and timeframes that producers must follow. There again, having precise direction is preferable to the use of broad terms such as "promptly" which can be subject to interpretation.	*All policies, binders, endorsements, filings, certificates of insurance, or any other form acted upon by the agent on behalf of the Company shall be forwarded to the Company with ____ days of execution (not less than three working days). Agent shall comply with all regulatory requirements applicable to him in the conduct of the business of insurance and in the operation of his agency in all jurisdictions in which the agency is doing business.* *Agent agrees to hold all premiums collected by or returned to the agent on behalf of the Company. This includes maintaining bank accounts that hold such insurance premiums in accordance with state laws and regulations.* *Agent agrees to pay all sums due Company in a timely and correct manner as required by the sections of the agreement pertaining to the accounting practices between Agent and Company.*
If not, why:			
Does the agreement indicate specific record retention requirements for the agency?		The company's record retention requirements, if any, will generally be described in this section. Agents should ascertain if the timeframe, if any is indicated, is reasonable in the context of their operations.	*Agent shall maintain complete and accurate records on all insurance transactions conducted on behalf of the Company. Such records shall be retained for a period of ____ years after the policy has been cancelled.*
NOTE - Does the company require the ability to audit records?		Companies often require the ability to audit the agency's records for the policies written with that company	*Agent will make those records available to the Company for inspection, review and copying during normal business hours.*
If so, is the audit to be conducted during reasonable business hours?		Any company audit would preferably be conducted during reasonable business hours	*Agent will make those records available to the Company for inspection, review and copying during normal business hours.*
If so, will proper advance notice be provided (no less than 3-7 days)?		In order to minimize business disruption, the identification of a set number of days ' notice in advance of the audit is preferred, and is generally provided in the agreement.	*When requesting access to Agent's records, Company shall notify Agent at least three business days in advance.*
If so, is cost for copies borne by the company or agency?		Some agreements spell out which party is responsible for copying costs	*Copying shall be at Company's expense.*
In the agreement, does the agent "warrant" or "guarantee" specific facts (or does he simply represent those facts)?		It is not unusual, in this section, to find language whereby the producer warrants (rather than represents) that it complies with applicable laws and regulations. Regardless of the word used, the carrier's goal is the same, i.e. making sure that agencies are taking care of and responsible for their legal obligations, and are not misrepresenting their abilities to perform their duties. The use of the term warrants, however, does not leave much room for error; further, it may obligate the agent beyond what he/she can materially vouch for. The use of the word "represents" is generally better suited to address the company's legitimate concerns while protecting the agent	
NOTE - Are electronic transactions addressed and specifically described in the agreement?		If different procedures are defined for electronic transactions, the company would state its expectations there	

Does the agreement refer to the Violent Crimes Control and Law Enforcement Act, background checks on employees or does the agreement generally make representations as to the agency's employees criminal background?		If the agreement refers to the Violent Crimes Control and Law Enforcement Act (background checks), caution should be exercised in reviewing the provision. Sometimes the wording can extend beyond the VCCLEA's legal requirements, or place a burden on the Agent that cannot be met, such as "guaranteeing" that no employee has ever had a conviction falling within section 1033 (also see below).	*Agent represents that, to the best of its knowledge, no Agency employee has been convicted of a felony involving dishonesty or breach of trust, or if any Agency employee has been convicted of such a felony, that the Agency employee has obtained written consent from the Insurance Commissioner of the state in which he/she will do business indicating that the Agency employee may work in the insurance industry in accordance with the Violent Crimes Control and Law Enforcement Act of 1994. Agent agrees to notify Company in the event that any Agency employee is in the future convicted of any such felony.*
If so, is the provision properly worded in treating VCCLEA and background checks as a due diligence process?		A preferred wording would state that the Agent *represents* (rather than "warrants" or "guarantees") that the Agency either: - does not willfully employ someone who had a felony conviction for dishonesty or breach of trust, or - has verified that the individual secured written consent from the Insurance Department to work in the insurance industry (also referred to as a 1033 waiver).	*Agent represents that, to the best of its knowledge, no Agency employee has been convicted of a felony involving dishonesty or breach of trust, or if any Agency employee has been convicted of such a felony, that the Agency employee has obtained written consent from the Insurance Commissioner of the state in which he/she will do business indicating that the Agency employee may work in the insurance industry in accordance with the Violent Crimes Control and Law Enforcement Act of 1994. Agent agrees to notify Company in the event that any Agency employee is in the future convicted of any such felony.*
Other:			
Handling of funds			
Does the agreement state that the agent holds premium funds in a fiduciary capacity and not in trust?		Pursuant to state law and regulation, producers are required to hold funds in a "*fiduciary* capacity," which agents should expect to see reflected in the agreement. Due to rampant misconceptions in the industry, it is not uncommon to find agreements that require the agent to hold money in a "*trust* account" or to "*act as a trustee* ." Holding funds "in trust" has a different meaning under banking statutes, and bears important restrictions as to proper handling, permissible uses of the funds, and rights to the interest earned. These restrictions can include 1) the requirement to have separate accounts for each beneficiary of the trust, 2) the inability to have any monies of the trustee in the account (think commissions), and 3) no right to the interest earned, et al., which restrictions are not applicable to premium funds. The term "fiduciary" adequately protects company funds without limiting agents' rights.	*All premiums collected by the Agent are the property of the Company and shall be deposited and held by Agent in a fiduciary capacity for the benefit of Company. Agent shall have no ownership interest in premiums collected and shall make no deductions or expenditures from such funds before paying the Company except for commissions as agreed upon which are to be deducted and retained by the Agent in accordance with this Agreement.*
Does the agreement allow commingling?		The agreement will often address commingling (holding of premium funds together with the agent's operating funds)- - If commingling is permitted, the agreement should say so. In order to commingle, carrier consent is required, and addressing it in the agreement is the simplest way for agents to secure that consent. (Maryland members: the form of the consent under the Maryland regulation is very specific, and may need to be sought separately to make sure the entire provision is included)	*Consent is hereby given to commingle funds in your hands which are payable to us with other monies which you own or hold, in accordance with state regulation. If the funds are deposited in an appropriate interest bearing account, you are authorized to withdraw the interest for your own use.* *As part of this consent, however, we shall require that all funds payable to us, will at all times be ascertainable from an examination of your books and records.* *The consent herein given shall remain in effect until cancelled by us upon not less than 30 days' written notice." (Maryland members : the specific section of the regulation must be identified and the format of the consent is also regulated - Contact IA&B for more information)*
Does the agreement require to hold premium funds in an account that is separate from the agency's own funds?		- If commingling is not permitted (or for agencies that choose not to commingle), the agreement generally will state that the premiums must be held in a separate fiduciary account.	*All such premiums shall be deposited directly into and held in a separate specially designated fiduciary bank account ("Account"), in a bank which is a member of the Federal Reserve System, to be used exclusively for that purpose and so designated in the account name.*

Does the agreement expressly allow placement in an interest-bearing account?		The agreement may state that premiums can be held in an interest-bearing account, as long as the agent complies with applicable laws and regulations. While the specific consent may not be required in some states (including Delaware and Pennsylvania), having the authorization in the agreement removes all ambiguity, particularly if the agent operates in other states with that carrier	*The Account may be interest-bearing, provided that investment of all funds for such interest-bearing purpose complies with all applicable laws and regulations.*
Does the agreement prohibit placement in an interest-bearing account?		On the other hand, the agreement may state that premiums cannot be held in an interest-bearing account, in which case the agent may not collect any interest from the placement of premium funds. While this language would be unusual,	*The Account may be interest-bearing, provided that investment of all funds for such interest-bearing purpose complies with all applicable laws and regulations.*
Does the agreement restrict the agent's ability to mingle the company's premium funds with other carriers's premium funds?		Agreements generally allow mingling of premiums funds from the different carriers represented by the agent in a *single* fiduciary account as long as the funds are reasonably ascertainable from the agency's books and records (in accordance with applicable regulation). However, careful reading is recommended as the provision sometimes unwittingly implies that the agent must create a fiduciary account for *each* carrier it represents, something that in our experience may not have been intended by the carrier.	*The Account may also be used to hold premiums due other insurance companies represented by the Agent as allowed by law. Upon request of the Company the Agent will promptly furnish to the Company such information as the Company may require including, but not limited to, the amount on deposit in such account held for the benefit of the Company, the name of the financial institution and the account number where the Account is established. Agent agrees to immediately advise the Company of any change in the bank where such funds are so deposited.*
Other:			
Billing responsibility			
Agency-bill accounts:			
Does the agreement clearly describe the premium collection method?		The agreement generally describes whether billing is handled through an agency-bill or direct-bill setup, or both. This setup will describe the accounting method whereby the agency collects premiums on behalf of the company	*Agent agrees to pay Company net premiums due on all insurance placed by or through Agent with Company no later than [e.g. 45 days] after the end of the month in which the business written becomes effective, and to refund pro rata to Company commission on return premiums due or installment premiums uncollected at the same rate as that applicable to the commission originally allowed on such business.*
Does the agreement allow the agent to be relieved from collection for audit premiums?		The agency may want to see if a provision is included that allows the agent to return the policy for collection within X days of the due date provided a diligent effort to collect was made: - For audit premiums: the agent should clearly understand if and how he may be relieved from collection.	*Agent shall have the right to relief from responsibility for the payment of premiums developed from any Company interim or final audit or voluntary report from an insured subject to the following conditions:* *(a) Within ____ [e.g. forty-five (45)] days after receipt by the Agent of any statement of premiums developed from such audit or report, and being unable to collect from the policyholder after a reasonable attempt to do so, the Agent shall return same to the Company together with written advice giving the reason the audit or report is uncollectible and that he desires relief from such responsibility. The Agent agrees to waive commissions on any statement so returned, and the Company shall have the right to collect such premiums in any manner it may elect.* *(b) If the company does not receive return of such statement within the period above specified, that shall be construed as an election by the Agent to retain responsibility for the payment of such premiums.*
Does the agreement allow the agent to be relieved from collection for general (renewal) premiums?		The agency may want to see if a provision is included that allows the agent to return the policy for collection within X days of the due date provided a diligent effort to collect was made: - For regular premiums: the agent should clearly understand if and how he may request cancellation for non-pay (or be relieved from collection)	*If any premiums cannot be collected by Agent, Agent relinquishes responsibility for collection and Company shall assume collection of such premiums, provided that:* *1. Agent notifies Company within 60 days of Agent's receipt of Company's initial date of billing such premiums* *2. Agent demonstrates evidence of his due diligence in pursuing the payment; and,* *3. No commission shall be paid to Agent on the uncollected amounts.* *[…]*

Is the agreement clear in agent's ability to request cancellation for non-payment if funds were advanced by agent?		Most agency agreements only grant relief for audit premiums. Some also exonerate for regular (renewal) premiums, which is a significant benefit. If the agreement does not allow the agent to turn the policy over to the company for collection, it is essential to know: - how the agent should proceed to seek non-renewal of the policy for non-payment, and - what kind of support, if any, would be available to them under circumstances where a cancellation may not be possible (e.g. actions against a customer stayed due to initiation of a bankruptcy proceeding by or against the customer).	
Other:		CAUTION: Any billing responsibility should be examined in the context of an agent's fiduciary duties. State laws and regulations generally place requirements onto producers that specifically state the amount of money to be held at all times in the fiduciary account(s). Agreements often state that the agent is responsible for payment, whether the premium is collected or not. In that respect, agents must keep in mind that advancing premium payments on behalf of their customers exposes their liability, and should be avoided. If it cannot be avoided, some guidelines should be followed to ensure that the balance in the fiduciary accounts is always at a minimum what the regulation requires so that the agency is never found to be out of trust.	
Direct-bill accounts:			
Does the agreement clearly identify circumstances where agent can collect from clients, and/or provide clear procedures on how to handle funds improperly remitted to agency by clients?		This section states that premiums are collected directly by the company. Agreements sometimes fail to account for circumstances where direct collection results from special circumstances, including down-payments and/or customer error (i.e. when clients submit payments to the agency in contradiction with the instructions they have received). In such cases, proper procedures should be described, and/or producers should find out how to transfer payment to the carrier and avoid cancellation proceedings.	*The Company will pay commissions on premiums within thirty days after the end of the month in which it receives and records such premiums, subject to any offset to which it is entitled. Following collection by the agent of the initial premium, the company will assume full responsibility for billing and collecting all additional and renewal premiums, including any endorsement premiums. The company will provide the agent with amended declarations reflecting all policy changes and copies of all premium reminders, termination notices, and any other communications sent to the insured with the agent's permission or sent according to statutory requirements and will identify the agency by name on all policies, amended declarations, billings, premium reminders and termination notices.* *The Company acknowledges the agent's authority to receive payment from clients on the company's behalf according to the underwriting guidelines of the company. The Agent is to remit these payments to the company within a reasonable time (____ working days) and without deduction of commissions.*
Other:			
Commissions			
Does the agreement clearly indicate when and how commissions are paid to the agent?		The agreement normally includes the commission schedule and provide the timing for payment of commissions, particularly for direct-bill business.	*Commissions shall be paid by Company to Agent in accordance with the commission schedule, as it may be amended from time to time as permitted by this agreement and applicable Company procedures.*
Is the commission schedule clearly made part of the agreement?		It is preferable that the schedule of commissions be expressly made part of the agreement	*The commission schedule shall be deemed a part of this agreement.*
Does the agreement state conditions for changes to the commission schedule?		Agreements generally state conditions for any amendment to the commission schedule: For any rate decrease, the agent should ascertain whether sufficient advance notice is provided.	*Company shall not change the commission rates for any line of business at any time unless a 90 days' advance written notice has been provided to Agent.*
Does the agreement state that no changes will be made more than once in any 12-month period?		The agency may want to check if a provision is included whereby the carrier agrees not to modify the commission schedule more than once in any 12-month period.	*In addition, Company shall not change such commission rates more than once in any 12-month period.*

If the agency is under rehabilitation or termination, are commission levels unaffected (also see termination)?		If/when the agency is terminated or in rehabilitation, the agency is better protected if commissions remain at the rate in effect prior to the termination or rehabilitation.	*Upon termination of this agreement, Agency shall be entitled to commission at the rate in effect prior to termination as long as policies remain in effect with Company.*
If the agency is undergoing rehabilitation or termination procedure, is profit-sharing unaffected?		Profit-sharing provisions are often addressed as an addendum or a separate agreement. Some may include language eliminating the right to profit sharing upon termination. While the principle seems understandable, there can be a temptation to schedule terminations at the end of the year to remove eligibility. Agents should be mindful of such provisions, particularly as they rely consistently on profit sharing.	
Other:			
Ownership of expirations			
Does the agreement recognize the agency's rights to the expirations?		The American Agency System is founded upon the Independent Agent's ownership of expirations. Because this ownership right can be contracted away, having a provision that clearly affirms this right is ESSENTIAL. While common law recognizes an independent agent's right to the expirations, the inclusion of the provision in the contract is important in reducing the risk of conflict between the contract and common law. Having a provision clearly recognizing the agent's ownership rights will also make enforcement of any violation much easier.	*Agent shall retain the exclusive ownership, use and control of "policy expirations" and customer lists, including direct-bill business, the records thereof and Agent's work product.*
Does the agreement preclude the company from using and disclosing policyholder information?		Contracts will generally prohibit the use and disclosure of policyholder information by the company (other than for purposes of servicing the policy) unless agreed to in writing by the agent.	*Company shall not use its records in any manner which abridges Agent's right of exclusive ownership, use and control of these expirations, except as provided in this Agreement.*
Does the agreement limit the circumstances justifying vesting of ownership to the company, and arethose circumstances clearly identified?		Generally, agreements will address under what limited circumstances, if any, the company can assume ownership. This could happen in cases where the agency is not making payments when due, has defrauded clients or the company, has abandoned the agency (if abandonment is clearly defined), etc. Agents should review the circumstances justifying vesting of ownership to the company.	*In the event of Agent's failure to pay to Company any and all premiums due Company, then the ownership, use and control of all such policy expirations and customer lists, and all right, title and interest in and to the records thereof, including any insurance which was submitted by Agent pursuant to Company billing procedures, shall immediately become vested in Company.*
In case of agency indebtedness, Does the agreement allow for collateral security or a possessory lien on the expirations to be provided?		In case of agency indebtedness, an agreement that allows for collateral security or a possessory lien on the expirations to be provided provides the agent with more flexibility.	*With respect to nonpayment of premiums, Agent shall have the right to cure such default by furnishing collateral security acceptable to Company within ten days of default, in terms of type and amount to be held by Company until the indebtedness is satisfied.*
In case of agency indebtedness, is the vesting of ownership limited to the extent of the indebtedness?		Agents should verify if the vesting or takeover of the expirations is limited to the extent of the indebtedness.	*Company may, in its discretion, sell at private or public sale such expirations and records, and if the company does not realize sufficient funds to fully discharge Agent's indebtedness to Company, Agent shall remain liable for the balance of the debt owed to Company.*
In case of agency indebtedness, Does the provision clearly state that any amounts realized in excess of the indebtedness shall be returned to the agent?		Agents should review if the provision addresses the treatment of proceeds in case of sale of the expirations; the provision will often state that any amounts realized in excess of the debt will be returned to the Agent.	*Any amount realized by Company in excess of Agent's indebtedness to Company, after deduction of the expenses of selling such expirations and records, shall be returned to Agent.*
Does the agreement recognize that minor accounting disputes or discrepancies shall not affect the agency's ownership rights?		A provision indicating that minor accounting discrepancies or disputes will not affect the agency's ownership rights is good.	*A minor difference of opinion with respect to the balances owed by Agent does not constitute a failure to pay and does not have the effect of vesting title to expirations in Company provided Agent pays the amount not in dispute.*

Does the agency's ownership of expirations survive the agreement?		Maintaining ownership is important during the life of the agreement, but also after termination to protect the agent's book. Agents may want to verify if the ownership provision survives the agreement (i.e. continues post termination).	*This section governing Agent's ownership of expirations shall survive this agreement.*
Other:			
Indemnification/Hold harmless			
Is the indemnification or hold harmless provision bilateral and balanced (applies to both parties equally)?		An indemnification provision that is bilateral (where each party will exonerate the other in reciprocal fashion) and balanced (with mirroring provisions) treats both parties equally. -- NOTE: The indemnification or hold-harmless provision is important in any contract. Generally, co-contracting parties use it to release one or both parties from liability in specific circumstances. The provision would be triggered when a claim is brought against the agent for which the company is legally liable, or against the company for which the agent is legally liable. If the provision appears unclear or ambiguous, the agent may want to discuss it with his or her E&O carrier.	A. Company agrees to indemnify, defend and hold harmless Agent and its representatives from and against all claims, liabilities, losses, penalties, costs or expenses of any kind or nature (including, without limitation, attorneys' fees) resulting from and to the extent of any Company act or omission in violation of: (i) any applicable law; (ii) the terms of this agreement; or (iii) the terms, limitations or requirements of any Company procedure in effect at the time of the act or omission. B. Agent agrees to indemnify, defend and hold harmless Company and its officers, directors, agents and employees from and against all claims, liabilities, losses, penalties, costs or expenses of any kind or nature (including, without limitation, attorneys' fees) resulting from and to the extent of any Agent act or omission, or any act or omission of any of Agent's representatives, in violation of: (i) any applicable law; (ii) the terms of this agreement; or (iii) the terms, limitations or requirements of any Company procedure in effect at the time of the act or omission.
Does the language restrict the indemnification or make the provision inapplicable?		Agents should pay close attention to the wording, and particularly when the indemnification is limited or inapplicable: some agreements may limit indemnification to the extent of the act or omission of the indemnifying party; others will not provide any indemnification if the agent contributed to or compounded the loss.	
Other:			
Privacy / Confidentiality / Security			
Does the agreement simply require the agency to comply with all applicable federal and state laws and regulations governing privacy of consumer and customer information? Or does it attempt to describe in detail agents' obligations?		The provisions drafted can often encroach on both producers' rights to expirations and on their duties as agents: generally, agencies are better served by an agreement which simply requires the agency to comply with federal and state laws and regulations. This addresses the need for carriers to meet their obligations, and maintains the producers' rights under the same regulation. Agreements frequently provide more detail, and attempt to define agents' obligations under privacy laws and regulations (including GLBA and state privacy regulations, HIPAA, Data Breach Notification & Security rule). Ideally, the agreement will not attempt to describe/ restrict the agency's handling of information, as it often interferes with Agent's rights and duties. See sample language provided for illustration.	Agent shall comply with all applicable federal and state laws and regulations related to the privacy of client information. Or Agent shall not disclose any consumer or customer information other than as required or permitted by law.
Other:			
Agency change of ownership			
NOTE - Does the agreement require notification to the company of any changes in agency ownership?		This section generally requires the agent to notify the company of any potential sale, transfer or merger	Agency will give notice to the Company, as soon as possible, of the effective date of the transaction, of any sale, transfer, merger, consolidation or change of control or majority ownership of Agency's business, stock or assets.
Is the provision limited and clear as to the types of changes justifying notification?		Some agreements may require notification to the carrier in circumstances that are vague or may seem outside the scope of the carrier's interests (e.g. change of staff)	Agency will give notice to the Company, as soon as possible, of the effective date of the transaction, of any sale, transfer, merger, consolidation or change of control or majority ownership of Agency's business, stock or assets.

NOTE - Does the provision require a *specific advance* notice?		The provision may have a specific advance notice requirement. Producers should be cognizant of the notice provision when contemplating an agency sale or purchase.	
Does the provision allow assignment of the agreement to the successor?		The provision may mention whether the agreement can be assigned to a successor if approved (preferable language)	Upon receipt of this notice, or if no notice is given, upon the change in ownership, the Company may, at its sole discretion: (1) approve the assignment of this agreement in writing to the successor; or (2) execute a new agreement with the successor; or (3) terminate this agreement as provided in section _____ governing termination
Does the change of ownership trigger termination of the agreement (automatic)?		The change of ownership provision often has an automatic termination trigger &/or crossover language to the termination section // The duty to notify of a change in ownership should generally be read in conjunction with the termination section of the agreement. Most of the time, the successor clause appears fairly innocuous and simply solicits notification; the termination provision, however, may indicate that the agreement will terminate automatically once the sale, transfer or merger is effective. This can be detrimental to agents if they are not sufficiently prepared, and could also affect the valuation of the agency if the company appointment is viewed as an essential part of the transaction.	
Other:			
Termination			
Does the agreement defer to any applicable state law?		When a state statute provides specific conditions that must be met by the carrier, the law will normally prevail over any contractual language that is less favorable. Keep in mind that the law may not apply to all circumstances. A mention in the contract is preferable, since it reminds agents that the termination may also be governed by statutory provisions.	*If permitted by law, this agreement shall terminate:* *…*
Does the agreement provide sufficient advance notice of termination?		Agents generally want sufficient advance notice to be provided for a termination initiated by the company, preferably 120-180 days, but no less than 90.	*Either party may terminate this agreement without cause upon providing ninety (90) days' advance written notice to the other.*
Does the termination provision (and automatic or advance notice language) appropriately match the different grounds for termination? Does the termination provision adequately differentiates for-cause and not-for-cause terminations? Is any automatic or immediate termination properly limited to justifiable circumstances?		Agents should review the grounds for termination, and the manner in which the termination will be handled depending on the circumstances; in particular, what circumstances are grounds for automatic or immediate termination. For-cause terminations are generally used when there has been some type of misconduct, and provide for automatic/immediate termination (with or without notification). Is the list exhaustive and justified (e.g. misappropriation of funds, fraudulent conduct, revoked license)?	*If permitted by law, this agreement shall terminate:* *(1) Automatically if any public authority cancels or declines to renew Agency's license or certificate of authority; or* *(2) At any time by mutual written agreement of Agency and the Company; or* *(3) Upon either party giving at least 90 days' written notice in advance to the other, without cause; or* *(4) Upon either party giving ten days' written notice to the other in the event of abandonment, fraud, insolvency, or gross or willful misconduct on the part of the other party.*
Does the agreement provide for automatic termination in case of change in ownership or control of the agency (also see Agency change of ownership)?		Agreements often allow termination when changes in ownership/control occur. Those circumstances should be reviewed closely (Read in conjunction with the Agency change of ownership provision)	*If permitted by law, this agreement may terminate on the effective date of the sale, transfer, merger, consolidation or change of control or majority ownership of Agency's business, stock or assets, unless Company has approved the assignment of this agreement to the Agency's successor.*
Does the agreement provide for a rehabilitation plan prior to terminating?		If the company contractually provides for a rehabilitation plan (preferred), the rehabilitation procedure should be described.	*Prior to termination, Company shall offer a rehabilitation plan to Agent with specific goals and a specific deadline to reach those goals.* *- If the goals are met by the deadline, Agent shall be removed from rehabilitation.* *- If the goals are not met by the deadline, Company will proceed with the termination.*

Does the agreement clearly state that the commission rate that was in effect prior to any rehabilitation or termination will remain the same throughout the rehabilitation or termination procedure?		Agents may want to check that the commission level will not be affected during any rehabilitation or termination. Depending on the state, this may also be governed by statute, but a clear provision in the agreement would prevent ambiguity and/or conflict on the issue.	*Commissions shall continue to be paid through the rehabilitation and/or, if terminated, through the runoff period, at the rates in effect prior to such rehabilitation or termination.*
Does the agreement recognize that the agency's ownership rights survive the agreement?		Agents should expect the agency's ownership of the book to continue after termination ("survive the agreement") - Also see ownership of expiration provision.	*After the effective date of termination, the following sections of the agreement shall continue to apply: ownership of expirations […]*
Does the agreement contain language allowing the carrier to solicit agency customers after termination or to use or disclose their information during and after termination?		Agents should be mindful of any language that appears to allow the company to solicit customers during and after termination, since it could infringe on the agency's ownership rights.	*Throughout the duration of the agreement and following its termination, Company shall not use its records in any manner which abridges Agent's right of exclusive ownership, use and control of these expirations.*
Does the agreement address a temporary solution in case of death of the agency principal?		A provision addressing a temporary solution in case of death of the agency principal would be welcome. Agreements frequently only provide for an automatic termination in case of death of the agency principal. While seldom found, such a provision would allow for a spouse or other representative to step in and apply for a temporary license (as contemplated in producer licensing laws) to allow for a better transition. The payment of commissions to the estate or to the surviving entity would be confirmed in the agreement for a certain period of time. Most carriers will accommodate such situations, but occasionally problems will arise. Having language in the agreement that contemplates the circumstances and spells out the proper procedure would be beneficial to all parties, since those situations are generally fraught with uncertainty and stress for the surviving spouse or partner.	*In case of death of the agency principal, Company will work with the executor and the surviving spouse or partner to facilitate a transition (finding a suitable successor and/or selling the agency). If necessary, the surviving spouse or partner may secure a temporary license. Commissions will continue to be paid to the agency as long as the payment is not disallowed by statute. Termination will occur upon expiration of the temporary license.*
Other:			
E&O			
Does the agreement require the agency to have E&O coverage?		Agents should expect the agreement to require the agency to carry Errors & Omissions (E&O) insurance.	*Agent will continuously maintain in full force and effect a policy of errors and omissions insurance coverage issued by an insurer rated not less than "A-" by A.M. Best Company.*
Does the agreement identify specific limits, and are they within normal range? Do they match the agency's policy?		The provision generally will identify specific limits (most require $1 million per occurrence and $1 million in the aggregate). These limits could be higher based on the agency's size and/or lines of business.	*Such policy must provide minimum limits of liability of at least $1,000,000 per occurrence and $1,000,000 in the aggregate per year. Agent will provide evidence of such policy within thirty (30) days of execution of this agreement and when requested by the Company.*
NOTE - Does the agreement require a specific financial rating for the E&O carrier? Does the agency's E&O carrier meet the requirement?		If the company requires the E&O carrier to have a minimum financial rating, the provision should identify the acceptable rating (e.g. B+ or better by A.M. Best)	*Agent will continuously maintain in full force and effect a policy of errors and omissions insurance coverage issued by an insurer rated not less than "A-" by A.M. Best Company.*
Does the agreement contain any other unusual requirements with regard to E&O?		Agents should be mindful of unusual provisions regarding their E&O coverage, and whether they are able to meet the requirement. One example would be requiring that the company be named as an Additional Insured on the agent's E&O policy, something that most E&O carriers will decline to do.	
Other:			
Broker of Record			

Does the agreement specifically recognize broker of record (BOR) letters?		Not all states have a statute governing Broker Of Record (BOR) letters. Absent a statute, it is up to the company to determine how the BOR will be treated.	*The policyholder's written statement designating his or her Agent shall be binding upon the Agent and the Company as to which producer is authorized to represent an existing or prospective policyholder.*
Does the agreement address how a BOR will be treated (i.e. notification to current producer, timeline, when commissions vest to new producer, etc.)?		Addressing treatment of BORs in the agreement is a nice feature. In clearly spelling out upfront the procedure that will be followed, the company can avoid situations where producers feel that not all agencies are treated the same. It promotes transparency and consistency, and avoids unnecessary grievances.	*If Agent is designated as a new producer of record of an existing policyholder, Agent agrees to the following:* *1) Agent must submit a written producer of record letter signed by the policyholder naming Agent as producer of record,* *2) Agent will service the policy after the effective date of the designation* *3) Commissions on premium earned will be payable to the prior producer until expiration or cancellation of the policy, or the policy's next anniversary date, whichever occurs first. Anniversary date shall mean twelve months after inception date of the policy and the end of any twelve months thereafter.* *4) Agent will collect all premiums due Company, except those collected by Company directly.* *Upon receiving a policyholder's signed producer of record letter designating another producer on business currently held by Agent, Company agrees with Agent as follows:* *1) Company will notify Agent, and allow 10 business days from the date of notice to allow Agent to confirm the policyholder's intent to designate the other producer. At the end of the 10-day period, or sooner if Agent agrees to the substitution, the new designation shall be binding upon both Company and Agent unless Company receives a countermanding producer of record letter signed by the policyholder revoking the previous producer of record designation* *2) Agent is entitled to commissions on premium earned until expiration or cancellation of the insurance policy, or the next anniversary date of the insurance policy, whichever occurs first. Thereafter, all commission earned is payable to the new producer of record.* *3) Agent is no longer responsible for servicing any insurance policy for which Agent is no longer producer of record at the end of the 10-day period.*
Other:			
Dispute resolution			
Does the agreement contain a dispute resolution provision?		The agreement may contain a dispute resolution provision that is addressed either through arbitration or mediation: arbitration is binding, mediation is not.	
If yes, does the language clearly describe the scope of the provision (areas where dispute resolution is triggered)?		Generally, the provision will explain the areas where the dispute resolution mechanism would be triggered.	Arbitration: Agent and Company agree to settle by arbitration any material dispute concerning commercial or financial issues, but not including E&O insurance disputes. Any issues in dispute that are germane to the E&O area will not be arbitrated but will be litigated.
If yes, does the language clearly exclude areas outside the scope of the provision, including E&O claims and administrative remedies (where a regulator has jurisdiction over the dispute)?		The provision normally does not prevent the agent from seeking administrative remedy from the regulator when the regulator has jurisdiction over a dispute (e.g. appeal of an agency termination). Ideally, the provision will also state any other areas (such as E&O) that remain outside the scope of the arbitration proceeding.	Arbitration: Agent and Company agree to settle by arbitration any material dispute concerning commercial or financial issues, but not including E&O insurance disputes.
Does the provision properly describe the selection process for the mediator(s) or arbitrator(s)?		More often than not, agency agreements that address dispute resolution do so with an arbitration rather than a mediation provision. If so, the provision should state how to proceed, how many arbitrators will be involved, and how they will be selected. This will help expedite resolution.	Company will assign one arbitrator, Agent will assign the second arbitrator, and the two arbitrators will assign a third arbitrator. All of the arbitrators shall have agency law, contract law and insurance law background.
Does the process appear to maintain the neutrality and expertise of the mediator(s) or arbitrator(s)?		Since arbitration is binding, it is particularly important to be confident in both the neutrality and expertise of the arbitrators. One significant aspect to take into account is the selection process for the arbitrator(s) and their credentials	All of the arbitrators shall have agency law, contract law and insurance law background. More than general commercial law will apply to the issue. The arbitrators will also apply contract law, agency law, and insurance law when settling the disputed issue.
If the dispute resolution is arbitration, is it clear that the resolution will be binding?		Arbitration is binding.	The resolution to the disputed issue will be final and binding on both parties.

If the dispute resolution is mediation, is it clear that it is non-binding?		Mediation is not binding	Mediation: If a dispute arises from or relates to this agreement, including its formation or the breach thereof, and if the dispute cannot be settled through direct discussions, Company and Agent agree to endeavor first to settle the dispute in an amicable manner by mediation administered by the American Arbitration Association under its Commercial Mediation Rules. The parties shall submit to mediation within thirty days of one party making a written demand upon the other party to submit to mediation.
Other:			
Miscellaneous			
Does the survival provision include appropriate sections of the agreement (that should continue after the agreement has been terminated, e.g. the agency's ownership rights)?		This clause identifies the sections of the agreement which will survive termination. This provision is often important in preserving and confirming the agent's right to the expirations and precluding companies from using policyholder information. Agents may want to check that the survival clause includes such language or refers to the appropriate sections of the agreement.	The terms of sections IV, V and VIII governing confidentiality, ownership of expirations and arbitration shall survive this agreement's termination.
Is the contract's governing law identified?		This paragraph addresses the laws of the state which will govern the interpretation of the agency agreement only. It is important to note that this governing law does not supersede any insurance law that apply to your transactions with customers, or to a termination of the agency contract.	This agreement, including the rights and obligations of the parties hereto, shall be interpreted and enforced in accordance with the laws of the state of Virginia.
Is there a severability provision?		This section states that if any part of the agreement is deemed invalid, it will not invalidate the rest of the agreement.	If any provision of this agreement is held to be invalid or unenforceable under the laws or regulations of any jurisdiction that may govern this agreement, such invalidity or unenforceability will not affect any other provision of this agreement.
Is there a waiver provision?		This provision states that a party's failure to enforce a breach of the agreement will not be considered a waiver of the right to enforce any subsequent breach.	Any failure of either party to act upon any breach by the other party of the terms of this agreement does not constitute a waiver of any subsequent breach of the same terms, conditions or provisions, or of any right of the non-breaching party, thereafter, to enforce any of the terms of this agreement.
Other:			

Antitrust statement

As a trade association, IA&B exists to advance knowledge and improve the skills of its members, as well as to facilitate and foster the exchange of ideas and information. IA&B meets these objectives, in part, by affording membership to competing, independent insurance agencies and agents. As competing business entities, independent agencies and agents are barred from engaging in collusive behavior by various federal and state antitrust laws. By their very nature, trade associations are especially susceptible to antitrust violations.
As an association, IA&B is permitted to participate in legislative, regulatory and court proceedings; provide information and viewpoints to insurance companies and their associations; and provide information and viewpoints to our members. However, these activities become prohibited restraints of trade if they are intended to encourage or facilitate refusals to deal, or other anti-competitive actions.
It is the policy of IA&B that it shall conduct all of its business, meetings and other activities in strict compliance will all applicable federal and state antitrust laws and trade regulations. Equal responsibility for antitrust compliance rests with the association, its individual board members, officers, and staff, as well as members of the association, each of whom shall, at all times, avoid discussions or engage in acts which could be construed, in any way, to restrict trade or competition.