

# Guidelines for Effective Agent-Carrier Technology Agreements

## An Agents Council for Technology Report

### Introduction

The level of electronic interaction between agencies and carriers has increased dramatically in recent years, and this pace is likely to accelerate. In this environment, ACT believes it is important that agent-carrier agreements accurately address the expectations and commitments of the parties on these technology issues.

As part of its research in developing this report, ACT reviewed the technology agreements provided by several carriers. The work group performing this analysis concluded that these agreements—where they existed—have not kept up with the new electronic relationships that are being forged today between agencies and carriers. The agreements reviewed were “all over the lot” in the scope of issues that they addressed, and many seemed to be adapted from technology software agreements which did not take into account the unique aspects of our distribution system.

This report identifies the key principles which should be included in these technology agreements. It is written from a business point of view by agents and carrier representatives who are on the front lines of implementing new technology solutions for their agencies and companies. **It is not intended to be a legal analysis, but a tool for agents and carriers to use to identify the types of issues they should cover in these technology agreements. This report is *not* a substitute for agents and carriers carefully and independently reviewing their specific agreements with their legal counsel and is not a recommendation that a contract be signed or rejected.**

### General Issues

Some carriers have separate agreements or amendments to handle their technology issues which are incorporated by reference into their agency agreements. Other carriers include these issues directly in their agency agreement. The approach really does not matter. What’s important is that these two agreements do not conflict with each other and that the principles and protections provided to the respective parties in the agency agreement are not taken away in the technology agreement, just because the agent happens to be using an electronic medium. For example, just as an agency agreement should provide that the carrier will stand behind the agent when the agent reasonably relies on incorrect policy information provided by the carrier on the paper policy or over the phone, the carrier should also stand behind the agent if the agent accesses incorrect policy data from the carrier’s web site.

The work group also felt that these technology agreements should focus on the key principles and that detailed instructions should be handled using separate procedures

documents which can be modified more easily as technology evolves. These procedures documents should not be used to modify the major rights and duties of the parties but are appropriate for implementing updates and revisions. Focusing on the key principles will also generate a greater understanding of the agreement's requirements by agents.

The relationships that agencies have with their carriers are central to their respective businesses. These relationships can be enhanced by the effective use of technology. It is imperative, however, that the parties exercise the same degree of care when doing business online that they use in their offline business dealings. This means, for example, that online agreements between the parties should be clearly labeled as such and should require that only authorized representatives of the parties enter into the agreements. Any online agreements should be printable so they can easily be re-reviewed by the parties. And, the "signing" party should carefully review the text of the agreement prior to agreeing to its terms, just as would be appropriate for an agreement presented to the agent on paper. Agents with questions or concerns should be able to contact the carrier and discuss these issues, as well as any modifications the agent proposes. In this way, the parties benefit from the expediency offered by the available technology while still having the ability to review and comment upon the agreement, just as they would with a written document.

### **Agency & Carrier Responsibility to Limit Access to Authorized Users**

The technology agreement should spell out each party's responsibility to ensure that only current, authorized personnel access the carrier's web site. The agency should have the right to identify who will be an authorized user. An agency systems administrator should actively manage the logon privileges for that agency, and agency procedures should ensure that the access of former personnel is terminated immediately and similar procedures should be in place for carriers. Agency personnel should be instructed to keep their passwords confidential and not share their passwords with any other party. **Careful agency control and safeguarding of passwords that are used by its employees is a critical agency security measure to protect the agency's customer data.<sup>1</sup>**

ACT recommends as a best practice that the agency administrator periodically check the agency's systems and carrier web sites to make sure only authorized users have access.

ACT recommends several best practices for carriers in the password management area: implement controls to authenticate the identity of the agency administrator, periodically verify with agencies that user id's reflect current agency personnel, and check that id's which have been submitted for termination have in fact been terminated. Carriers should also design their web sites to permit the agency to provide restricted access to specific

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<sup>1</sup> Training in agency security issues is very important for those employees or consultants who help the agency frame its password management policies. Please see ACT's Password Guidelines and various security related articles, improvement tools, and reports for more specific guidance on password management. These are found on the ACT web site at [www.independentagent.com/act](http://www.independentagent.com/act).

elements of the site for particular employees rather than to provide just all or nothing access to the site for agency employees.

When a customer accesses a carrier's consumer web site directly, authentication of the user should be the carrier's responsibility since the carrier is handling the password process. As methods are developed to permit customers to logon to the agent's web site and then gain direct access to the carrier's site, the respective responsibilities of the parties for authentication will need to be determined based upon how the process works and which party controls the password process.

### **Agency Rights to Use Electronic Data and Other Carrier Information**

The technology agreement should spell out the kinds of information and data on the carrier site which the agent is permitted to use and share with other parties for marketing, underwriting, loss control, etc. The agreement should also define the kinds of information which the agency must seek permission to use or which may be viewed only by the agency. In addition, any restrictions on the use of information should be clearly spelled out on the carrier web site for all agency personnel to see. Any such restrictions should not authorize less use of the information than the agent is entitled to under the agency agreement. It is important for agents to train their personnel regarding any restrictions in the use of carrier web site information.

Some carrier agreements state that the carrier "owns" all of the software and content constituting its web site and that the agent may not share any of this content with a third party, or requires specific permission to do so. This is understandable with respect to the site's software and trademarks, but it is overly restrictive with respect to the agent's right to use client and policy data from the site. Such agreements are examples where the carriers seem to have adapted technology software agreements and have not taken into account the fundamentals of the agent-carrier relationship. There is little question that the agency could use the client and policy data if it had obtained it from the paper policy or had received it over the phone from the carrier. Why should it be different if the agent accesses the data using an electronic medium—the web site? Moreover, such a restriction on the agent's use of client and policy data conflicts with the agent's Ownership of Expirations provision in the agency agreement. The ACT work group recommends that carrier "ownership" language not be used with regard to the client and policy data on the carrier web site, because it will just generate agency concerns and confusion.

### **Access to Client and Policy Data by Active and Terminated Agents**

Carriers are anxious to "turn off" the policy paper that agents have traditionally received and for the agents to rely on the carrier's web site for this information. In conflict with this objective, however, is the language typically found in current technology agreements, which provides for the termination of access to the carrier's site as soon as the agent's relationship with the carrier terminates. This is a great illustration of how the agreements have not kept up with the changes in how business is now being done.

Technology agreements must provide agencies with explicit protection that they will have continued access to client and policy data (covering the period when they were the agent on the risk) for no less than the period of time that state law requires them to retain such information, even if another agent takes over the business through an agent of record letter, the agency is terminated, or the status of the carrier changes (is acquired, withdraws from the line of business or state, or becomes insolvent). This information should be available in a usable format to the agent which may include, but is not limited to, electronic access or print image. Carriers may archive the information or retain it in different formats after a period of time as long as they commit to produce the information for the agent promptly when requested. Some carriers may meet this commitment by de-linking electronic policy view from other parts of their web sites. Others may provide the agency with a CD containing the information in a usable format to the agent. Such CDs should also employ a logon/password key that protects the agency's information from unauthorized access.

It is also important for the carrier to provide the agent, using electronic policy view, access in unalterable form to the actual policy forms and endorsements which were in effect when the risk was written. These documents will be required should the agent be called upon to produce the documents for a legal or administrative proceeding.

If carriers make this commitment of continued limited access to client and policy data to their agents, they will convert their web sites from the convenience that they are today to an integral business tool that agencies *can rely upon*, which will generate increased agency support for carrier initiatives to "turn off" the paper.

### **Warranties and Indemnification**

Most technology agreements provide agents with little or no recourse should the carrier's systems or web site cause damage to the agency's systems or business. In contrast, some of these agreements require the agent to indemnify the carrier should a loss arise if the agency's use of the carrier's systems causes the carrier damage. Other carriers limit the indemnification to the agent's "intentional or grossly negligent" failure to adhere to the carrier's Conditions for Use of its technology. Agents need to carefully review these indemnification provisions because they vary considerably from carrier to carrier, and they should be balanced and fair, and may impact the application of the indemnification provisions in the underlying agency agreement to technology related issues.

It is apparent from a review of current agreements that carriers have concluded that providing Warranties and Indemnification protection to their agents for damages caused by their technology is inappropriate, even though they provide their agencies with indemnification for their other activities in their agency agreement. Shouldn't the same reasoning apply to requiring indemnification from their agency sales force regarding technology errors? Will not such requirements discourage agents from embracing the carrier's new technology? Would not a better approach be to train the agents on these required procedures and then to audit them when appropriate? Most agencies are not in

the position to indemnify their carriers, especially in an area where the risks posed by technology are still emerging and not fully understood.

If indemnification provisions are included, they should be balanced and fair, providing the same protection to each party.

The ACT work group did feel that agents should be able to rely on the client and policy data residing on the carrier's web site, just as they have been able to rely on the information contained on the paper policy or communicated by phone by a carrier employee. The group felt that the carrier should continue to indemnify for such incorrect information that the agent relies upon and which subsequently causes a loss. The fact that this data is displayed on a new medium—the web site—should not make a difference.

### **Commitment to Prompt Correction of Data & Systems Errors**

As discussed in the previous section, both agencies and carriers should take reasonable steps to protect their own systems from errors and problems caused by their business partners. It is, however, important for agencies and carriers to have a sense of urgency in correcting problems when they are found. Such problems as corrupt download files and inaccurate information on a web site might cause difficulties for their business partners. Just as for carriers, agencies have become totally reliant upon their systems to do business. The technology agreement should contain a provision where both parties commit to use reasonable efforts to resolve data errors and systems problems affecting the other party on a priority basis. Once a party discovers a data error or systems problem, they should communicate it to all affected parties. Where the issue involves inaccurate downloads, the carrier should work with all affected agencies to identify the historical inaccurate downloads and provide corrected downloads.

ACT recommends that the carrier provide its agents with a customer support initiative as a best practice. This initiative should clearly spell out the carrier's standards for providing support to its agency users and should include the people or departments agents may contact if they encounter problems.

### **Document Retention**

Most technology or agency agreements provide important guidance on the types of documents that the agency is responsible for retaining. Some of the provisions, however, require the agent to keep these documents in a paper format along with the customer's "wet" signature. Given the trend of agencies to retain their information electronically, ACT believes agencies should be given the option to retain these documents electronically where permitted by state law, provided the agency retains this information in a format that is not modifiable, backs it up, and can produce it promptly when requested. In addition, all document retention requirements included in technology or agency agreements should be clear as to when the retention period begins (e.g., on a

specific date or on the occurrence of a specific identifiable event) and it should be reasonable as to duration.

### **Third Party Information Reports**

Some technology or agency agreements spell out the agency's responsibility to obtain the consumer's permission if required before collecting this type of information (i.e., insurance scores, MVR's, C.L.U.E.<sup>TM</sup> reports), along with the need for agency personnel to use the information only for the business purpose for which it was collected.

Carriers should fulfill their own adverse action disclosure and compliance obligations directly and not shift these responsibilities to agents by contract or other means.

### **Conclusion**

This document and the needed provisions in technology agreements will continue to evolve as new electronic interactions are implemented among agencies, carriers, *and consumers*. A more effective use of technology in our distribution system is critical to secure our long-term competitive position. The technology agreements that are developed should encourage the parties to embrace this new technology by being balanced and as simple as possible. They should respond to the needs of both agencies and carriers and clearly communicate the responsibilities and commitments of each of the parties. They should avoid arcane and complex provisions that will just compound the concerns and confusion that agencies already have with implementing new technologies that they do not fully understand or that undermine the Ownership of Expirations or other provisions in agency agreements. The challenge for those drafting these technology agreements is to draft them in a manner that increases agency understanding of what is required of them and gives them assurances that using these new carrier electronic services is a positive move for the agency to take—rather than a move that puts the agency at greater risk.

***The Agents Council for Technology (ACT) is an association of agents, brokers, users groups, carriers, vendors, and industry associations dedicated to encouraging and facilitating the most effective use of technology and workflow within the Independent Agency System. ACT is affiliated with the Independent Insurance Agents & Brokers of America, Inc. (IIABA).***

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