

**AGREEMENT**

This Agreement (“Agreement”) is made and effective this \_\_\_\_\_ day of \_\_\_\_\_, 200X (“Effective Date”), between the **Florida Department of Financial Services, as Receiver for COMPANY IN RECEIVERSHIP** (hereinafter “XXXX”), whose principal place of business is located at 2020 Capital Circle, S.E., Ste 310, Tallahassee, Florida 32301 and \_\_\_\_\_ (hereinafter “XXXX”), whose principal place of business is located at \_\_\_\_\_.

**RECITALS**

- A. By Court Order entered on XXXX, 200X (“Order”), the Circuit Court of Leon County, Florida (“Court”) ordered the rehabilitation of **COMPANY IN RECEIVERSHIP**, a property and casualty insurance company, and appointed the Florida Department of Financial Services as its Receiver (“Receiver”); and
- B. Pursuant to the Order of Rehabilitation, the Florida Department of Financial Services as Receiver is in possession of or is now acquiring possession of the assets of **COMPANY IN RECEIVERSHIP** and is administering those assets under the general supervision of the Circuit Court; and
- C. **COMPANY IN RECEIVERSHIP** has outstanding and in force policies and is exiting this business and canceling those policies; and
- D. \_\_\_\_\_ is willing to write new policies to replace the policies currently underwritten by **COMPANY IN RECEIVERSHIP**, marketing those policies under the conditions stated below; and **COMPANY IN RECEIVERSHIP** has outstanding and in force insurance policies; and

**NOW, THEREFORE**, in consideration of the mutual covenants and understandings contained herein and upon the terms and conditions set forth below, the parties hereto agree as follows:

**ARTICLE I**

**Definitions:**

“Agreement” means this Agreement.

“Book of Business” collectively means all of the currently effective insurance policies written by **COMPANY IN RECEIVERSHIP**.

“Circuit Court” means the Circuit Court of Leon County, Florida.

“Effective Date” means the effective date of this Agreement, which is XXXX, 200X.

“Liability” means any liability, demand, claim, action or cause of action arising out of or in connection with an insurance policy, including all claims for credits due on the policy, refunds, commission claims of agents in connection with, any premium tax related to, and any special, incidental, consequential, extra-contractual or punitive damages arising out of a policy.

“Notice” means any notice, consent, request, waiver, election and other communication authorized, required or permitted to be given under this Agreement.

“OIR” means the Florida Office of Insurance Regulation.

“Order of Liquidation” means the order for which the Circuit Court will be petitioned to place XXXX in statutory liquidation.

“Order of Rehabilitation” means the order entered by the Circuit Court on XXXX, 200X, that ordered the rehabilitation of **COMPANY IN RECEIVERSHIP** and appointed the Florida Department of Financial Services as Receiver.

“Policyholder” means each person identified as an insured in a currently effective insurance policy written by **COMPANY IN RECEIVERSHIP**.

“Pre-Existing Condition” means damage or loss to property prior to the date of issuance of a policy by XXXX.

“XXXX” means XXXX, a property and casualty insurance company domiciled in the State of Florida.

“**COMPANY IN RECEIVERSHIP**” means the Florida Department of Financial Services in its capacity as Receiver of **COMPANY IN RECEIVERSHIP** (in Rehabilitation), a property and casualty insurer in the State of Florida.

## **ARTICLE II**

### **Business Covered /Temporary Exceptions:**

XXXX is not assuming any Liability relating to any **COMPANY IN RECEIVERSHIP** policy. XXXX shall not become a successor in interest of **COMPANY IN RECEIVERSHIP** that may result in XXXX assuming any obligation or Liability of **COMPANY IN RECEIVERSHIP**.

**COMPANY IN RECEIVERSHIP** is not assuming any Liability relating to any XXXX policy. **COMPANY IN RECEIVERSHIP** shall not be deemed a predecessor in interest of XXXX that may result in **COMPANY IN RECEIVERSHIP** assuming any obligation or Liability of XXXX.

XXXX will offer a new policy of insurance to all Policyholders of **COMPANY IN RECEIVERSHIP** in force policies with an effective date of either the thirty first (31<sup>st</sup>) day

following the date of the Order of Liquidation or upon expiration of the Policyholders coverage, whichever event occurs sooner. XXXX shall not be required to issue policies on properties that have a Pre-Existing Condition until the policyholder submits to XXXX a written representation and warranty that the Pre-Existing Condition has been repaired, together with a picture of the front and back of the insured property. XXXX retain the right to inspect the remedy of any such Pre-Existing Condition, and is only required to offer replacement coverage if the remedy has been performed to XXXX's sole satisfaction.

Upon acceptance of coverage from XXXX, the Policyholder's premium on said policy coverage will be due no later than XXXX, 200X.

### **ARTICLE III**

#### **Notice to Policyholders:**

XXXX shall cause to be issued and shall mail to each Policyholder the following:

If the policyholder's property does not have a Pre-Existing Condition:

1. An introduction letter to each Policyholder from XXXX.
2. A pre-filled abstract of coverage prepared based on the **COMPANY IN RECEIVERSHIP** policy data.
3. A premium quote based on the coverage abstract under XXXX's premium rates.
4. An invoice.

If the policyholder's property does have a Pre-Existing Condition:

A letter from XXXX instructing them to contact their agent or XXXX, whichever insurer is offering the policyholder coverage, when their Pre-Existing Condition has been remedied.

**COMPANY IN RECEIVERSHIP** shall cause to be issued and shall mail to each Policyholder the following:

If the policyholder's property does not have a Pre-Existing Condition:

A letter from **COMPANY IN RECEIVERSHIP** notifying the Policyholder that his/her policy is being canceled, informing them of this transaction and introducing XXXX as the replacement insurer. This letter will include information on obtaining a new policy and receiving an unearned premium refund.

If the policyholder's property does have a Pre-Existing Condition:

A letter from **COMPANY IN RECEIVERSHIP** notifying the Policyholder that his / her policy is being canceled, informing them of this transaction and introducing

XXXX as the replacement insurer. This letter will include information on the necessity of remedying the Pre-Existing Condition prior to being eligible for obtaining a new policy and receiving an earned premium refund.

All of the materials to be sent out by XXXX shall be reviewed and approved by COMPANY IN RECEIVERSHIP prior to mailing and will be sent out no later than XXXX, 200X.

#### ARTICLE IV

##### Indemnification:

XXXX, as applicable, will hold harmless and indemnify COMPANY IN RECEIVERSHIP from and against any liability, cost or expense (including reasonable fees of legal counsel and related disbursements) incurred by COMPANY IN RECEIVERSHIP for any claim, demand, action or cause of action asserted by any third party as a result of or related to: (a) XXXX's breach of any term contained in this Agreement; (b) an insurance policy written by XXXX pursuant to the terms of this Agreement; and (c) XXXX's negligent or wrongful performance or non-performance of its obligations pursuant to this Agreement or any other agreement provided for or contemplated in this Agreement. XXXX shall not be obligated to pay COMPANY IN RECEIVERSHIP any amounts which may be due and payable as a result of the other insurer's indemnity obligations hereunder.

#### ARTICLE V

##### Determination of Consideration:

XXXX shall provide COMPANY IN RECEIVERSHIP with documentation reporting all new policies accepted from COMPANY IN RECEIVERSHIP's former Policyholders. This report shall include the policyholder's information, the date of the inception of the policy and the premium charged for the coverage. All supporting documentation relating to the reports produced by XXXX will be subject to audit by COMPANY IN RECEIVERSHIP.

A second "true up" report shall be provided no later than XXXX days after the Order of Rehabilitation / Liquidation is entered by the Circuit Court and will include final information on any policy cancellations, endorsements, return premium, and other premium data pertaining to the policies issued by XXXX. Based on the second "true-up" report provided by XXXX, COMPANY IN RECEIVERSHIP shall have the option of determining the consideration to be paid by XXXX for the information received from COMPANY IN RECEIVERSHIP. The consideration will be either of the following:

- a) A renewal rights fee in an amount based on a percentage of the first year's written premium which is paid by the former COMPANY IN RECEIVERSHIP policyholders to XXXX; or

b) A one time fee to be determined by the parties prior to entering into this Agreement.

Once **COMPANY IN RECEIVERSHIP** notifies **XXXX** of its determination of consideration, **XXXX** shall pay the consideration to **COMPANY IN RECEIVERSHIP** within thirty (30) days from the date it receives such notification.

## **ARTICLE VI**

### **Further Instruments:**

The parties hereto agree to execute and deliver such further instruments and do such further acts as may be reasonably necessary and proper to carry out the purposes of this Agreement.

## **ARTICLE VII**

### **Partial Invalidity:**

If any court holds any provision of this Agreement or its applicability to any person or circumstance invalid, the remainder of this Agreement, including the remainder of the section in which such provision appears, or the applicability of such provision to other persons or circumstances, shall not be affected thereby.

## **ARTICLE VIII**

### **Entire Understanding:**

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof; there are no restrictions, promises, warranties, covenants or undertakings with respect to such subject matter, other than those expressly set forth herein; and this Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

## **ARTICLE IX**

### **Burden and Benefit:**

This Agreement is binding on and shall inure to the benefit of the parties hereto, their successors and assigns.

## **ARTICLE X**

**Counterparts:**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**ARTICLE XI**

**Notices:**

All notices, consents, requests, waivers, elections and other communications (collectively “Notices”) authorized, required or permitted to be given under this Agreement shall be addressed as follows:

If to XXXX:

If to **COMPANY IN RECEIVERSHIP:**

The Florida Department of Financial Services as Receiver for  
**COMPANY IN RECEIVERSHIP**  
2020 Capital Circle SE, Ste 310  
Tallahassee, FL 32301

All Notices must be given in writing, mailed by first class registered or certified mail, and shall be deemed to be received three (3) days after the day of mailing. Either party may change its address for the receipt of Notices or the party to whose attention Notices are sent at any time by giving notice thereof to the other party hereto. In the event that any legal process, notice, regulatory bulletin, is served on one party in a legal action or proceeding against the other party, or for any other reason whatsoever, the party receiving the process, notice or regulatory bulletin, shall promptly and forthwith forward such process, notice or bulletin to the other party as directed above, via registered or certified mail, and with an additional copy sent via fax.

**ARTICLE XII**

**No Intermediary:**

The parties represent and warrant to each other that no intermediary was involved in the transactions contemplated by this Agreement nor are any payments being made as a result of the transactions contemplated by this Agreement.

**ARTICLE XIII**

**No Third Party Beneficiaries:**

This Agreement shall not confer any rights or remedies upon any person other than the parties and their respective affiliates or successors.

**ARTICLE XIV**

**Jurisdiction:**

The Circuit Court of Leon County, Florida (“Receivership Court”) shall have exclusive jurisdiction with respect to this Agreement.

**ARTICLE XV**

**Applicable Law:**

The laws of the State of Florida shall govern this Agreement.

**ARTICLE XVI**

**Drafting of Agreement:**

All parties participated in the drafting of this Agreement. Any language in this Agreement determined to be ambiguous shall not be construed against any party by reason of having drafted said language.

**ARTICLE XVII**

**Approval of Receivership Court AND:**

This enforceability of this Agreement is subject to the approval of the Receivership Court.

**ARTICLE XVIII**

**Notification of Agreement to the Florida Office of Insurance Regulation**

Prior to submitting the Agreement to the Receivership Court for approval, the Receiver shall send written notification of the Agreement to the Florida Office of Insurance Regulation in order to determine if any approvals are required from the Florida Office of Insurance Regulation.

**FLORIDA DEPARTMENT OF FINANCIAL SERVICES  
AS RECEIVER FOR COMPANY IN RECEIVERSHIP**

By: \_\_\_\_\_ Witness: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Date: \_\_\_\_\_

**XXXX**

By: \_\_\_\_\_ Witness: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Date: \_\_\_\_\_

SAMPLE