

ASSUMPTION AGREEMENT

THIS ASSUMPTION AGREEMENT (the “Agreement”) is executed to be effective as of **TIME** on the _____ day of **Month**, 200**X** (the “Execution Date”) by and between , _____, a Florida licensed and authorized insurance company (hereinafter referred to as “INSURER”), and The Florida Department of Financial Services as Receiver of **COMPANY IN RECEIVERSHIP** (hereinafter referred to as “**XXXX**”).

RECITALS

- I. Definitions. Any term not defined in this section which is defined elsewhere in this Agreement shall have the meaning ascribed to it therein.
- a. “Aggregate Losses” means those losses which include, but are not limited to, compensatory, punitive, bad faith and other damages arising from, and all loss adjustment expenses relating to, the adjustment or defense of any and all claims.
 - b. “Assumed Policies” means the **COMPANY IN RECEIVERSHIP** policies assumed by the INSURER on the Assumption Date.
 - c. “Assumed Premium” means all unearned premium, net of unearned commissions due from agents payable as of the assumption date, all other agent balances, and premiums receivable.
 - d. “Assumption” means the transfer of risks from **COMPANY IN RECEIVERSHIP** to the INSURER whereby the INSURER agrees to assume all obligations of **COMPANY IN RECEIVERSHIP** with respect to the Assumed Policies in force and agrees to pay one hundred percent (100%) of the Aggregate Losses of the Policies as of a date and time certain.
 - e. “Assumption Date” means **TIME** on **DATE**, 200**X**.
 - f. “INSURER” means the assuming insurance company designated above which company is, and shall remain during the term of this Agreement, a duly licensed entity authorized to transact property and casualty insurance business in the state of Florida.
 - g. “INSURER’s Policy” means the insurance policy offered by the INSURER to **COMPANY IN RECEIVERSHIP** insured upon expiration of an Assumed Policy pursuant to this Agreement.
 - h. “OIR” means the Florida Office of Insurance Regulation.

- i. "Parties" shall mean the INSURER and COMPANY IN RECEIVERSHIP.
- j. "Written Premium" shall mean the gross written premium of COMPANY IN RECEIVERSHIP on the Policies, less policy cancellation and return premiums, as of the Assumption Date.

THEREFORE, in consideration of the mutual covenants and agreements set forth, the Parties hereto do covenant and agree as follows:

1. Agreement to Assume Policies.

- a. The Parties agree that all of the COMPANY IN RECEIVERSHIP in force policies are to be assumed by the INSURER on the Assumption Date. Policies to be assumed are set forth on Exhibit A by COMPANY IN RECEIVERSHIP policy number and expiration date.
- b. Pursuant to this Agreement and the Assumption Procedures, the INSURER shall assume all of the Assumed Policies set forth on Exhibit A or supplements thereto, if available for Assumption on the Assumption Date.

2. Terms of Assumption.

- a. Liabilities:
 - i. The INSURER agrees to assume and pay one hundred percent (100%) of the defined Aggregate Losses occurring on or after TIME on DATE, 200X (the "Assumption Date") for which COMPANY IN RECEIVERSHIP is or becomes obligated under the Assumed Policies in force set forth in Exhibit A.
 - ii. The INSURER, in addition, agrees to assume and undertake all other obligations of COMPANY IN RECEIVERSHIP with respect to the Assumed Policies subject to the following:
 - a. COMPANY IN RECEIVERSHIP shall remain fully liable for all Aggregate Losses for the Assumed Policies occurring prior to the Assumption Date. The INSURER shall have no responsibility with respect to such losses.
 - b. The cost of any notice and ancillary documentation to current COMPANY IN RECEIVERSHIP policyholders to effectuate the Assumption of the Assumed Policies

shall be borne equally by the Parties as such expenses are incurred.

B. Servicing of Policies:

- i. Commencing on the Assumption Date, the INSURER shall be responsible for all agent and brokerage commissions, as well as for all return premiums for cancellations of the **COMPANY IN RECEIVERSHIP** Policies for which it receives Assumed Premium. In addition, the INSURER shall be responsible for all fees to the INSURER's servicing companies for the Assumed Policies.
- ii. Commencing on the Assumption Date, or as soon as programming is completed, the INSURER shall become responsible for offering and processing renewals with respect to the Assumed Policies, utilizing INSURER's own approved rates and forms (the INSURER's Policy) and thereafter for processing endorsements to, and cancellations and renewals of, the INSURER's Policies. The INSURER shall be responsible for all agent and brokerage commissions for the INSURER's Policies, for all return premiums for cancellations of the INSURER's Policies occurring after renewal, and for all fees to its servicing companies accruing on or after the initial issuance of the INSURER's Policies. The INSURER shall be entitled to one hundred percent (100%) of the premiums payable with respect to the INSURER's Policies from date of renewal forward.

C. Loss Payments and Settlements:

- i. **COMPANY IN RECEIVERSHIP** shall service all claims for Aggregate Losses occurring prior to the Assumption Date.
- ii. Servicing of claims for losses on Assumed Policies occurring on or after the Assumption Date shall be the sole responsibility of the INSURER. **COMPANY IN RECEIVERSHIP** shall have no responsibility, except as provided for in the definition of Aggregate Losses, for payment of losses or loss adjustment expenses or for the servicing of claims with respect to losses occurring under the Assumed Policies on or after the Assumption Date.

- iii. **COMPANY IN RECEIVERSHIP** agrees to abide by the loss settlements of the INSURER and/or its claims administration contractor with respect to the obligations assumed hereunder, such settlement to be considered as satisfactory payment of loss. The INSURER undertakes to settle losses on Assumed Policies and to provide staffing for the adjustment of such losses in accordance with INSURER'S Claims Manual and prudent insurance practice.
- iv. With regard to the Assumed Policies, **COMPANY IN RECEIVERSHIP** agrees that it shall give notice promptly to the INSURER of any claim by a third party or the commencement of any legal proceedings against **COMPANY IN RECEIVERSHIP** with respect to such claim. The INSURER shall have the exclusive right to control the contest and defense of any such claim or litigation and the result of any such proceeding will be binding upon the parties hereto. Except as it relates to claims of bad faith based on acts or actions occurring before the Assumption Date, INSURER shall assume liability for any and all costs associated with the defense and payment of any such claim or litigation.
- v. **COMPANY IN RECEIVERSHIP** agrees to assign to the INSURER any and all salvage and subrogation rights arising with respect to losses occurring on or after an Assumption Date, which **COMPANY IN RECEIVERSHIP** may have with respect to the Assumed Policies. Any and all salvage and subrogation rights arising with respect to losses occurring prior to the Assumption Date shall remain the sole and exclusive property of **COMPANY IN RECEIVERSHIP**.

D. Conditions to Closing:

The following conditions must be met prior to this Agreement becoming effective:

- i. **COMPANY IN RECEIVERSHIP** shall obtain approval of this Agreement by a Court Order from the Leon County Circuit Court having jurisdiction of the Receivership, which Order shall be attached hereto.

- ii. This Agreement shall be approved in writing by **OIR** as necessary to carry out the terms and conditions provided herein.

The Parties agree to cooperate with each other to obtain the necessary approvals and accomplish the terms set forth in the Assumption Agreement including, but not limited to: 1) executing any and all documents as may be necessary to carry out said terms; and 2) complying with any administrative, regulatory, judicial, or other requisite requirement necessary in furtherance of the terms of this Assumption Agreement.

3. Policy Data. **COMPANY IN RECEIVERSHIP** shall provide, or has provided, to the INSURER, by electronic data transfer, or by such other means as is acceptable to the INSURER, relevant information regarding the Assumed Policies. The first such transmission of data shall be provided to the INSURER at the earliest possible date convenient to the INSURER and **COMPANY IN RECEIVERSHIP** and thereafter on a basis as agreed to by the INSURER and **COMPANY IN RECEIVERSHIP**.
4. INSURER's Continuing Status. The INSURER, during the period of this Agreement, shall remain licensed and authorized to transact property and casualty insurance business in the states of Florida. Should the INSURER fail to maintain its authority and licensing to conduct such business, or should the INSURER fail to maintain or should the INSURER become subject to an adverse finding pursuant to Chapter 631, Florida Statutes, or any other order of OIR or a court of competent jurisdiction that in any material form or manner limits or constrains the ability of the INSURER to engage in the business of property and casualty insurance, other than the initial *Consent Order Appointing The Florida Department of Financial Services As Receiver For Purposes Of Rehabilitation, Injunction, And Notice Of Automatic Stay*, such occurrence shall constitute and be deemed a material breach and default of this Agreement by the INSURER.
5. Attorney's Fees. If either of the parties hereto shall bring a Court action alleging material breach of this Agreement or seeking to enforce, rescind, renounce, declare void or terminate this Agreement or any provisions thereof, the prevailing party shall be entitled to recover all of its legal expenses, including reasonable attorney's fees and costs (including attorney's fees and costs for any appeals taken), and to have the same awarded as part of the judgment in the proceeding in which such legal expenses and attorney's fees and costs were incurred.
6. Benefits. This Agreement shall be binding upon the parties, their heirs, legal representatives, successors and assigns.

7. Captions. The paragraph captions as to contents of the particular paragraphs herein are inserted only for convenience and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular paragraph in which they are referred.
8. Construction of Agreement. Words of a gender used in this Agreement shall be held to include any other gender, and words in a singular number shall be held to include the plural, when the sentence so requires.
9. Entire Agreement. This Agreement contains all oral and/or previously written agreements, representations, and arrangements between the parties hereto concerning the Program, and all rights which the respective parties may have had under any prior written or oral agreements are hereby canceled and terminated, and all parties agree that there are no representations or warranties other than those set forth herein.
10. Florida Law. It is acknowledged that this Agreement was executed in and shall be construed and governed in accordance with the laws of the State of Florida.
11. Modification. No change or modification of this Agreement shall be valid unless the same shall be in writing and signed by all of the parties hereto and not disapproved by OIR.
12. Notices. Any and all notices, designations, consents, offers, acceptances, or any other communications provided for herein shall be given in writing, by hand delivery, by overnight delivery, by registered or certified mail, or by facsimile transmission and shall be addressed as follows:

As to INSURER:

As to COMPANY: Department of Financial Services
In RECEIVERSHIP Division of Rehabilitation and Liquidation
Alexander Building
2020 Capitol Circle SE, Ste 310
Tallahassee, FL 32301
Attn: Mr. Wayne Johnson
Telefax: (850) 413-3992

Notices sent by hand delivery shall be deemed delivered on the date of hand delivery. Notices sent by overnight delivery shall be deemed delivered on the next business day after being placed into the hands of the INSURER or **COMPANY IN RECEIVERSHIP**. Notices sent by registered or certified mail shall be deemed delivered on the third business day after being deposited

into the post office. Notices sent by facsimile transmission shall be deemed to be delivered on the day when sent if sent prior to 4:30 p.m. (the time being determined by the time zone of the recipient) otherwise they shall be deemed delivered on the next business day.

13. Parties Represented. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

INSURER

By: _____

Title: _____

COMPANY IN RECEIVERSHIP

By _____

Title: _____