

**LOSS PORTFOLIO TRANSFER AGREEMENT**

**by and between**

**The Florida Department of Financial Services, as Receiver of [Company in  
Receivership]**

**and**

**Purchaser [Name of Purchasing Company]**

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## LOSS PORTFOLIO TRANSFER AGREEMENT

### RECITALS

THIS LOSS PORTFOLIO TRANSFER AGREEMENT (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 200X, by and between The Florida Department of Financial Services, as Receiver of **[Company in Receivership]** (“Receiver”) and [Name of Company] hereinafter known as (“Purchaser”).

WHEREAS, Purchaser agreed to assume and accept from Receiver, the handling of all the existing open and future new claim liabilities of **[Company in Receivership]** (“assumed claims”) arising under or in connection with **[Company in Receivership]**’s contracts of coverage, subject to the terms, conditions and limitations set forth; and

WHEREAS, it is intended that as a result of the consummation of the transactions contemplated by this Agreement on the Effective Date, there shall have occurred a liability transfer with respect to each and all of the Assumed Claims pursuant to which Receiver shall be discharged from any further obligation in connection with the handling of said Assumed Claims; and

NOW, THEREFORE, in consideration of the mutual and several covenants and undertakings contained herein, and for other good and valuable consideration, the Receiver and Purchaser agree as follows:

## **Article 1 – Definitions**

“Agreement” means this Loss Portfolio Transfer Agreement.

“Agreement Date” means the date the Agreement was drafted.

“Applicable Law” means the laws of the State of Florida, which shall govern the terms of this Agreement.

“Assumed Claims” means all open, existing claims as well as any claims that may have occurred within the policy period while the policy was in effect.

“Assumed Claims Liabilities” means any liability, demand, claim, action or cause of action arising out of or in connection with the Assumed Claims.

“Claimant” means any insured or third party who has or may file a claim against **[Company in Receivership]**

“Closing Date” means the date the Agreement is executed and all terms and conditions of the Agreement are fulfilled. Closing shall take place within thirty (30) days after this transaction has been approved by the Florida Department of Financial Services and the Florida Office of Insurance Regulation.

“Contracts of Coverage” means all binders, contracts, certificates, and other obligations of coverage issued by the **[Company in Receivership]** to its policyholders.

“Effective Date” shall have the same meaning as “Closing Date.” “Open Claim Loss Run” means a report generated from claim data in the **[Company in Receivership]**’s system, which lists all open claims as of the date of the report (Loss Run). The Open Claim Loss Run may include, but may not be limited to, data reflecting the Insured’s name, policy number, claim number, date of loss, the loss amount paid to date and the amount of allocated expenses paid to date.

“Open Claims” means the existing known and open claims arising as a result of **[Company in Receivership]**’s insuring activities.

“Policyholder” means each person insured in a currently effective insurance policy written by **[Company in Receivership]**. Policyholder also includes each person that formerly had an insurance policy written by **[Company in Receivership]** that has an open, existing claim under the former policy as well as any policyholder that formerly

had an insurance policy written by [**Company in Receivership**] that may have a claim that arose during the policy period.

“Records” means all documents, correspondence, statements, and any and all other documentation in the possession of Receiver relating to the Assumed Claims

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## Article 2 –Assumption of Claims

### Section 2.1: Assumption of Assumed Claims Liabilities

(a) Subject to the terms and conditions of this Agreement, Receiver hereby transfers to Purchaser the following as of the closing date: (i) all of the Contracts of Coverage and the liability to pay all losses, including loss adjustment expenses, covered by said Contracts of Coverage issued by the **[Company in Receivership]** to all policyholders prior to the Effective Date, including all existing and incurred but not reported (“IBNR”) claims covered by the Contracts of Coverage and claims in litigation upon the Effective Date; (ii) the liability to pay losses relating to any and all bad faith claim actions that may be pending against the **[Company in Receivership]** due to its failure to timely evaluate claims and pay benefits based on a Contract of Coverage issued by **[Company in Receivership]**; and (iii) all rights the **[Company in Receivership]** may have now or in the future under or with respect to the Contracts of Coverage, including, without limitation, the right to collect and adjust premiums, adjust and settle claims, deny coverage, rescind Contracts of Coverage, etc. Once said transfer occurs, Purchaser shall be bound by all the terms and conditions of the **[Company in Receivership]**’s Contracts of Coverage as if they had been issued by the Purchaser.

(b) A list of each of the Open Claims by claim number is attached as Exhibit X and incorporated by reference as if fully set forth herein.

(c) No obligation for Excluded Liabilities. It is expressly understood and agreed that under the terms of this Agreement, on the Closing Date, Purchaser shall fully assume the Assumed Claims Liabilities. Except as otherwise specifically provided in this Agreement, Purchaser does not and shall not assume, pay or be responsible for any risk, liability or obligation of **[Company in Receivership]**, or any affiliate of **[Company in Receivership]**, or any risk, liability or obligation in any way attributable to any aspect of the business of **[Company in Receivership]** or any affiliate, except to the extent of or except if related to the Assumed Claims Liabilities.

### **Article 3 – Financial Statements and Asset Transfers**

#### Section 3.1: Financial Statements

(a) The Receiver has provided a copy of its most recent financial statement for the [month, quarter or year] ended \_\_\_\_\_, 200X, which to the best of the Receiver's knowledge accurately represents [**Company in Receivership**]'s statutory financial condition as of the date thereof

(b) No less than fifteen (15) calendar days prior to the Closing Date, the Receiver shall provide Purchaser with a Final Balance Sheet for [**Company in Receivership**] as of the close of the preceding quarter, or such other date as mutually agreed by the parties, which balance sheet shall (i) be prepared in the format in which such financial statements have previously been prepared and filed; (ii) to the best of the Receiver's knowledge fairly represent the financial condition of [**Company in Receivership**] as of \_\_\_\_\_, 200X (or such other date as mutually agreed by the parties); and (iii) clearly identify the total assets and liabilities of [**Company in Receivership**].

#### Section 3.2: Cash Payment to Purchaser

(a) In consideration for the Agreement of Purchaser to assume the Assumed Claims Liabilities pursuant to Article 2, the Receiver shall pay the Purchaser [Amount] in cash or cash equivalents on the Closing Date.

## **Article 4 – Administration, Claim and Benefit Payments**

### Section 4.1: Administration of Assumed Claims Liabilities by Purchaser

(a) On and after the Closing Date, the Purchaser shall be responsible for the administration of all aspects of the Assumed Claims Liabilities, including, but not limited to, the following: (i) the defense, adjustment, settlement, processing and payment of claims, benefits and obligations arising under the express terms and conditions of the assumed claims and (ii) the administration of all other aspects of the Assumed Claims Liabilities. On and after the Closing Date, Purchaser shall have full authority to administer all aspects of the Assumed Claims Liabilities and such matters shall be under the Purchaser's exclusive control and within its sole discretion, subject to the terms and conditions of the insurance policies which gave rise to the Assumed Claims Liabilities and any rights and duties with respect to the administration of the Assumed Claims Liabilities that are assigned to Purchaser.

### Section 4.2: Information, Claims and Notices

(a) The Receiver hereby covenants to Purchaser that, on and after the Closing Date, the Receiver shall cause (i) any records not previously delivered to Purchaser and the original or copies of all information, notices and other written communications the Receiver receives relating to the Assumed Claims Liabilities (including all inquiries or complaints from state insurance regulators, agents, brokers, producers, and insureds under Assumed Claims Liabilities to be reported and forwarded to Purchaser within ten (10) business days after either the receipt of such records or after the discovery of additional records by the Receiver after the Closing Date; and (ii) the original of all claims, pleadings, suit papers or similar documents relating to Assumed Claims Liabilities to be reported and forwarded to Purchaser within ten (10) business days after receipt by the Receiver. The Receiver shall also undertake any further arrangements reasonably requested by Purchaser to ensure that all such information, claims and notices are promptly delivered to Purchaser.

**Article 5 – Assignment of Rights**

Section 5.1: Assignment of Rights

(a) As of the Closing Date, the Receiver shall assign to Purchaser all of the **[Company in Receivership]**'s rights or in connection with the Assumed Claims Liabilities and the Receiver shall do any and all administrative acts which are necessary to effectuate the transfer of the Assumed Claims Liabilities to the Purchaser, as contemplated by this Agreement.

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## **Article 6 – Records**

### Section 6.1: Access

(a) During the period from the date of the Agreement through the Closing Date, the Receiver shall allow the Purchaser's officers, employees, consultants, accountants, actuaries, attorneys and other designated agents the right to inspect such records as the Purchaser may request during normal business hours.

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## **Article 7 – Information Schedules**

### Section 7.1: **[Company in Receivership]**'s Open Claims

Exhibit X identifies all known Claimants entitled to any claims payments from Purchaser in connection with the transactions hereby contemplated.

### Section 7.2: Litigation

Based on the information obtained from the **[Company in Receivership]** and to the best of the Receiver's knowledge, Exhibit X lists all actions, suits, arbitrations, or other legal, administrative or other governmental proceedings pending, , threatened against **[Company in Receivership]**, before or by any court, bureau, commission, board or governmental agency or others, related to the Assumed Claims Liabilities.

### Section 7.3: Purchaser's Consents and Approvals

This Agreement is subject to the consent and/or approval of the Florida Office of Insurance Regulation and the Florida Department of Financial Services and cannot be cancelled or rescinded without the written approval of the Insurance Commissioner of Florida.

## **Article 8 – Additional Covenants of the Parties**

### Section 8.1: Conduct of the Receiver before the Closing

From the date of the Agreement through the Closing Date, the Receiver shall provide the following:

#### Section 8.1.1: Certain Transactions and Obligations

(a) **Services.** Continue to service the Assumed Claims at the same level of service as is being provided as of the Date of the Agreement and otherwise preserve or keep available those persons reasonably necessary to service the Assumed Claims through the Closing Date;

(b) **Maintenance of Records.** Maintain the records in a manner consistent with the current practices of the Receiver in relation to the maintenance of records of any Company in Receivership], including all necessary information related to the Assumed Claims;

(c) **Compliance with Laws.** Comply in all material respects with all laws, regulations and insurance regulatory requirements applicable to the Assumed Claims;

(d) **Insurance Business.** Not make any material change in [**Company in Receivership**]'s (i) reserves or method of establishing reserves under Assumed Claims Liabilities; (ii) actuarial practices relating to the Assumed Claims Liabilities; and (iii) loss and benefit administration relating to the Assumed Claims.

### Section 8.2: Consents and Reasonable Efforts

(a) The Receiver and Purchaser will cooperate with each other and take all reasonable action required to obtain all consents, approvals and agreements of, and to give and make all notices and filings with, any governmental authorities, regulatory or licensing agencies, and other persons necessary to authorize, approve or permit the consummation of the transactions contemplated by the Agreement and in each case, to provide the Receiver and Purchaser with the full benefit of this Agreement.

(b) The Receiver and Purchaser shall use their respective best efforts, both before and to the extent necessary after the Closing Date, to obtain judicial approvals necessary for,

and in general, to use their best efforts to satisfy all conditions precedent to the consummation of the transactions contemplated by this Agreement.

#### Section 8.3: Notification of Changes

(a) From the date of the Agreement through the Closing Date, The Receiver and Purchaser shall notify each other of any event, condition, change or circumstance occurring during that time period which may constitute a material violation or breach of any covenant contained in this Agreement.

#### Section 8.4: Expenses

(a) Except as may be otherwise provided in this Agreement, the parties to this Agreement shall each bear their respective expenses incurred in connection with the negotiation, preparation, execution, and performance of this Agreement, including, but not limited to, all fees and expenses of representatives, counsel, actuaries, and accountants.

#### Section 8.5: Confidential Information

(a) All non public information furnished by either party to the other party or its representatives, shall remain the property of the party furnishing the information and shall be held in strictest confidence by the party receiving said information and shall not be used for any purpose other than consideration of the transactions contemplated herein. If the transactions contemplated are not consummated, each party and its representatives shall return to the party furnishing such information all originals and copies of the information furnished and shall continue to hold the information in strictest confidence and not use it for any purpose whatsoever. Further, the Purchaser shall take adequate security precautions to prevent the intentional or inadvertent disclosure of any non-public personal information provided by the Receiver.

#### Section 8.6: Additional Information

(a) Within ten (10) calendar days after the Agreement Date, the Receiver shall provide Purchaser with the following information with respect to each of the assumed

claims: (i) the name and address of the Claimant and/or the representative of Claimant; (ii) the date of the claim; (iii) the current amounts paid and reserved for each Assumed Claim; and (iv) such other claim information, which is customarily obtained on an Open Claim Loss Run, concerning the Assumed Claims as may be reasonably requested by the Purchaser.

(b) Within five (5) calendar days after the Agreement Date, the Receiver shall provide the Purchaser with a list of all consents or approvals that the Receiver is required to obtain from, and all filings and notices that the Receiver is required to make with, or give to, governmental authorities or any other person in connection with the execution, delivery and performance of this Agreement.

#### Section 8.7: Financial Statements

(a) The Receiver shall duly file any financial statements required to be filed by it with the Florida Office of Insurance Regulation, The National Association of Insurance Commissioners and the Florida Department of Financial Services with respect to any period which ends on or before the Closing Date. Further, the Receiver shall provide Purchaser with copies of any such financial statements once filed.

## Article 9 – Closing

### Section 9.1: Time and Location

(a) The Closing of the transactions contemplated by this Agreement shall take place at \_\_\_\_\_ on \_\_\_\_\_ or such date as the parties mutually agree (the “Closing Date”)

### Section 9.2: Deliveries by Purchaser

The obligations of the Receiver to consummate the transactions contemplated by this Agreement is subject to the delivery of the following documents at Closing:

- (i) A certificate issued by an officer of Purchaser that all covenants and conditions of the Agreement have been complied with, satisfied or waived;
- (ii) Copies of corporate resolutions authorizing the execution, delivery and performance of this Agreement by Purchaser which has been certified by the Purchaser’s corporate secretary;
- (iii) A record of the filings made with the Florida Office of Insurance Regulation and approvals issued by the Florida Office of Insurance Regulation of the assumption agreement made or obtained pursuant to this Agreement;

### Section 9.3: Deliveries by Receiver

The assumption by Purchaser of the Assumed Claims Liabilities and the obligations of Purchaser to consummate the other transactions contemplated by this Agreement on the Closing Date are subject to the delivery of the following documents at Closing:

- (i) A certificate issued by the Deputy Receiver of **[Company in Receivership]** and attached to Exhibit X, the list of Assumed Claims delivered pursuant to Section 2.1 (b) confirming that the list is a complete list of all Assumed Claims that are known to the Receiver.
- (ii) All records not already delivered to Purchaser pursuant to Section 4.2.

Section 9.4: Further Assurances After Closing

(a) Each party, from time to time after the Closing, will take actions as reasonably requested by the other party, such as execute other documents as may be required or necessary to effectuate the intent and purpose of this Agreement.

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## **Article 10 – Termination**

### Section 10.1: Grounds for Termination

- (a) This Agreement may be terminated at any time prior to Closing:
- (i) by mutual written agreement of Purchaser and the Receiver;
  - (ii) by the Receiver if Purchaser breaches any covenant set forth in this Agreement and such breach is incapable of being cured or Purchaser fails to cure the breach within thirty (30) calendar days following notice of breach being given to Purchaser by the Receiver; or
  - (iii) by the Receiver, if it is unable to complete the transaction for any reason, in which case, any monies paid to Purchaser shall be refunded to the Receiver and the Receiver will retain all Assumed Claims Liabilities.

### Section 10.2: Effect of Termination

If this Agreement is terminated pursuant to Section 10.1, this Agreement will become null and void and have no legal effect.

## **Article 11 – Miscellaneous Provisions**

### Section 11.1: Amendment

This Agreement may only be amended in writing executed by all parties.

### Section 11.2: Assignment

No party may assign this Agreement or any of its rights, interests or obligations without the prior written consent of the other party.

### Section 11.3: 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.

### Section 11.4: 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.

### Section 11.5: 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.

### Section 11.6: 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.

### Section 11.7: Applicable Law

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

### Section 11.8: Jurisdiction

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

### Section 11.9: 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 Receiver:

If to Purchaser:

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 reason whatsoever, the party receiving the process, notice or regulatory bulletin, shall promptly and forthwith forward such process, notice or bulleting to the other party as directed above, via registered or certified mail, and with an additional copy sent via facsimile.

#### Section 11.10: Approval of Receivership Court

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

#### Section 11.11: 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.

#### Section 11.12: 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.