

# Confidentiality Agreement

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is entered into by and between [LIQUIDATOR/RECEIVER] and the National Conference of Insurance Guaranty Funds of Indianapolis, Indiana and the Signatory Associations.

### I. Definitions

1.1 “Agreement” refers to this Confidentiality Agreement.

1.2 “Confidential Information” refers to any: a) documents, data or other information relating to [COMPANY], the NCIGF, and the Signatory Associations that are not either publicly available or public records, whether written or not, including but not limited to claims files and data; financial analyses, intellectual property, marketing information, reserve information modeling and projections; trade secrets, technical processes and know-how; agency agreements, arrangements, accounts, proposals, lists, and other information; policyholder and vendor lists and information; costs and standard and special pricing information; internal procedures, strategies and plans; and computer programs, and drawings and renderings, which is related to either Party’s or their affiliates’ previous, ongoing and proposed businesses, products and services, or those of their respective affiliates, which is provided or which has been provided to the Receiving Party by the Disclosing Party, or which is obtained by the Receiving Party from its meetings and contacts with the Disclosing Party, or any information derived by the Receiving Party from information so provided or obtained, whether any such information is oral, written, or electronic, whether such information is identified as confidential and whether such information was provided or furnished by or on behalf of the Disclosing Party before or after the date of this Agreement and shall include any notes, analyses, compilations, studies, interpretations or other documents prepared by a Receiving Party to the extent that they contain, reflect or are based upon, in whole or in part, the Confidential Information; b) work product or other information regarding [COMPANY] that is privileged; and, c) communications between the Parties regarding any potential or pending legal actions involving [COMPANY].

1.3 “Evaluation Material” refers to all information, oral or written, including but not limited to Confidential Information as defined herein, that is furnished to NCIGF or a Signatory Association under the terms of this Agreement, and all analyses, compilations, studies, or other materials prepared by NCIGF or a Signatory Association containing or based in whole or in part upon such information.

1.4 “COMPANY” refers to [FULL NAME OF COMPANY]. This term includes the wholly owned subsidiaries of [COMPANY], including [LIST SUBSIDIARIES].

1.5 “NCIGF” refers to the National Conference of Insurance Guaranty Funds.

1.6 “Party” and “Parties” refer to the Special Deputy Receiver, NCIGF and Signatory Associations, singularly and collectively.

1.7 “Receivership Court” refers to the [COURT]

1.8 “Receivership Proceeding” refers to [CAPTION AND CAUSE NUMBER OF PROCEEDINGS].

1.9 “Signatory Associations” refer to NCIGF member insurance guaranty associations that execute a counterpart to this Agreement.

1.10 “Special Deputy Receiver” refers to [NAME]

## **II. Recitals**

2.1 On [DATE], the Receivership Court [DESCRIBE ORDER]. The Commissioner of Insurance for the State of \_\_\_\_\_ was appointed as Receiver of [COMPANY]. The order [did/ did not] contain a finding of insolvency. On [DATE], [NAME OF SDR] was duly appointed as Special Deputy Receiver by [COURT].

2.2 On [DATE], the State \_\_\_\_\_ filed [DESCRIBE PETITION]. In the event that the Receivership Court enters an order to liquidate [COMPANY], certain insurance guaranty associations will be obligated to pay “covered claims” of [COMPANY].

2.3 NCIGF’s members are property and casualty insurance guaranty associations that have responsibility for payment of “covered claims” of admitted insurers that are placed into liquidation with a finding of insolvency by a court of competent jurisdiction, in accordance with their respective states’ laws.

2.4 As some of NCIGF’s members may become responsible for handling and paying claims against [COMPANY], the Parties anticipate that it will be necessary to share certain information regarding [COMPANY] with each other. The Parties desire to facilitate the sharing of information between them in connection with [COMPANY], while preserving the confidentiality of such information and the privileges associated therewith.

## **III. Use and Treatment of Evaluation Material**

3.1. Subject to the terms of this Agreement, the Special Deputy Receiver will grant NCIGF and Signatory Associations access to such Evaluation Material as the Receiver determines appropriate. The Evaluation Material shall be used by NCIGF and the Signatory Associations to determine their potential obligations, prepare for the possible assumption of such obligations, and to perform their statutory obligations in the event they become obligated to pay “covered claims” under policies of insurance issued by [COMPANY]. The NCIGF and Signatory Associations shall be allowed to copy such Evaluation Material for their own use.

3.2 NCIGF and the Signatory Associations severally agree to maintain the confidentiality of all Evaluation Material provided to them, and of any privileges with respect to such information. NCIGF and each Signatory Association severally agree not to disclose any Evaluation Material to any person or entity, except as expressly provided herein.

3.3 NCIGF and Signatory Associations may share Evaluation Material with their respective counsel, consultants or agents or among themselves as they deem necessary, provided that such persons agree to comply with terms of this Agreement, including but not limited to the remedies provided under Part IV. In the event of a breach of this Agreement by any person to whom Evaluation Material has been provided, the Party or Parties providing such information shall also remain liable for the breach.

3.4 Any Signatory Association may, to the extent it deems necessary share any Evaluation Material provided to it with an insurance department having jurisdiction in the state or territory in which the association exists, provided however, the Association shall notify the Receiver of such request and provide the Receiver a reasonable opportunity to object prior to any disclosure of any Evaluation Material.

3.5 NCIGF and each Signatory Association severally agree that no Evaluation Material shall be provided to any insurance companies or the owners, directors, officers, employees, agents, representatives, or affiliates of any insurance companies, except as necessary to discharge statutory duties, for official action or consideration by the Board of Directors of a Signatory Association, or by NCIGF's Board of Directors or an NCIGF Coordinating Committee.

3.6 In the event that NCIGF or a Signatory Association is served with process seeking the production of Evaluation Material, including but not limited to a subpoena or order of a court of competent jurisdiction, an investigation by a government entity, or discovery demand issued in connection with any action, NCIGF or such Signatory Association, as appropriate, shall notify the Receiver in writing as promptly as practicable. NCIGF or such Signatory Association, as appropriate, shall take reasonable actions to protect the confidentiality of such information, unless otherwise requested by the Receiver. If a protective order or other remedy is not obtained prior to the date that compliance with the request is legally required, NCIGF or a Signatory Association, as appropriate, will furnish only that portion of the Evaluation Material or take only such action as is legally required.

3.7 In the event that an order is entered by a court of competent jurisdiction or regulatory body which has the effect of obligating any Signatory Association to pay claims of [COMPANY], this Agreement shall terminate in all respects as of the date the Liquidation Order is entered, with no further obligation hereunder on the part of either party, in particular those that would otherwise survive under Section VI.

## **IV. Remedies**

4.1 The Parties agree that money damages would not be a sufficient remedy for a breach of this Agreement, and that the non-breaching Party shall be entitled to equitable relief, including injunctive relief, as a remedy for such breach. Such remedy shall be in addition to all other

remedies available at law or in equity, and shall not be deemed the exclusive remedy for a breach of this Agreement. Any action to enforce this Agreement shall be brought in the Receivership Court.

4.2 In the event of an action alleging a breach of this Agreement, the prevailing party shall be entitled to reimbursement for its reasonable attorney's fees. Any attorney's fees awarded to NCIGF or a Signatory Association shall be handled as an administrative expense in the Receivership Proceeding, subject to [INSERT CODE REFERENCE]. Any attorney's fees awarded to the Receiver shall be paid from the liable Party's funds, and shall not be submitted as a claim in the Receivership Proceeding.

4.3 No failure or delay by any Party in exercising any right, power or privilege shall operate as a waiver thereof. Any exercise of a right, power or privilege shall not be considered to preclude any other or further exercise thereof.

4.4 There shall be no liability on the part of the Special Deputy Receiver or the [COMPANY] receivership estate to NCIGF or a Signatory Association relating to or arising from the Evaluation Material or any other documents, material, information or communications provided by the Special Deputy Receiver under this Agreement.

## **V. Warranties and Representations**

5.1 The Special Deputy Receiver, NCIGF and the Signatory Associations, to the extent consistent with their statutory obligations, shall in good faith cooperate and communicate with each other with respect to the performance of their duties under this Agreement.

5.2 NCIGF and the Signatory Associations represent that they have the authority to enter into this Agreement and fulfill their obligations under this Agreement. 5.3 Each undersigned person represents that he or she is authorized to sign this Agreement on behalf of the Party he or she represents.

5.4 NCIGF and the Signatory Associations understand and acknowledge that the Special Deputy Receiver makes no representations or warranties as to the accuracy or completeness of any Evaluation Material provided under this Agreement.

## **VI. Termination**

6.1 This Agreement may only be terminated in writing with 30 days notice, provided that all Evaluation Material obtained prior to such termination shall remain confidential, unless otherwise agreed by the Parties, and except as otherwise provided by law.

6.2 NCIGF and each Signatory Association shall be permitted to use Evaluation Material in the manner and for purposes described herein until delivery by the Special Deputy Receiver of a written notice specifying the date of termination of this Confidentiality Agreement.

6.3 Except as provided in Paragraph 3.7, in the event of a termination of this Agreement all Evaluation Materials, and all copies, summaries, analyses and notes of the contents or parts thereof, shall immediately be destroyed with an affidavit attesting to the destruction being provided to the Special Deputy Receiver, and no part thereof shall be retained by NCIGF or the Signatory Associations in any form without the prior written consent of the Special Deputy Receiver.

## **VII. Miscellaneous Provisions**

7.1 Nothing in this Agreement shall be deemed to create an attorney-client relationship between any Party's counsel and any other Party.

7.2 This Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_.

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

7.4 This Agreement shall be effective upon the date signed by each party, and shall also apply to any and all Evaluation Material that has previously been shared between the Parties.

7.5 All communications under this Agreement shall be in writing and shall be sent by via email as specified below. A copy of any such notice shall also be personally delivered or sent by either first class registered or certified U.S. Mail, return receipt requested, postage prepaid, or by a bonded mail delivery service, to the address set out below:

The Special Deputy Receiver:

[NAME]

[ADDRESS]

[EMAIL ADDRESS]

NCIGF:

National Conference of Insurance Guaranty Funds

300 N. Meridian Street, Suite 1020

Indianapolis, Indiana 46204

[EMAIL ADDRESS]

If to a Signatory Association:

[Address identified below in signature block]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated below:

[COMPANY]

By and through [LIQUIDATOR/RECEIVER]

By:

Printed Name:

Date:

National Conference of Insurance Guaranty Funds

By:

Printed Name:

Title:

Date:

[Insert Name of Guaranty Association]

“Signatory Guaranty Association”

By:

Printed Name:

Title:

Date:

Address:

Email Address:

# [OPTIONAL ADDENDUM FOR STATES WITH SUNSHINE LAWS ]

## ADDENDUM

This is an addendum to the foregoing [COMPANY] [AGREEMENT]. In order to construe the [COMPANY] [AGREEMENT] (“Agreement”) in accordance with [STATE] law and paragraph VII (1) of the Agreement, the [STATE] Insurance Guaranty Association (“\_\_\_\_\_”) hereby executes the Agreement with the express understanding that as a quasi-state entity, it is required to comply with [STATE SUNSHINE LAW], and the relevant case law of [STATE] courts interpreting same. This body of law is commonly referred to as “[insert common name of state sunshine law].” [ASSOCIATION] does agree that it will notify the Special Deputy Receiver of [COMPANY] should any request be made for documents covered by the Agreement, so that the Special Deputy Receiver and any other party to the Agreement may file their objections to the disclosure of such documents in a court or forum with jurisdiction over the request, prior to the production of said documents.

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

On Behalf of the \_\_\_\_\_ Insurance Guaranty Association

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

On Behalf of the Special Deputy Receiver of \_\_\_\_\_ Insurance Company