MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is among the [state] Department of Insurance (“DOI”), the [Receiver of the insolvent company – if appointed] and the [guaranty fund in the state of domicile of the troubled company, the other insurance guaranty funds which have executed this agreement (collectively “Guaranty Funds”) and the National Conference of Insurance Guaranty Funds.(NCIGF)

Definitions:

## “Agreement” or “MOU” refers to this Memorandum of Understanding;

## “Confidential Information” refers to any:

### documents, data or other information relating to any domestic insurance company in the State of [state] where the Commissioner has determined that the financial condition of such company creates a material risk of Receivership that are not publicly available or public records, whether written or not, including but not limited to claims files and data; financial analyses, modeling and projections; trade secrets, technical processes and know-how; agency agreements, arrangements, accounts, proposals, lists, and other information; policyholder lists and information; costs and pricing information; internal procedures, strategies and plans; and computer programs;

### work product or other information regarding any such Company that is confidential and/or privileged; and

### communications between the Parties regarding any potential or pending legal actions involving any such company that is a threat to such companies’ solvency.

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

## “Company or Companies” refers to any domestic property and casualty insurance company in the State of [state]where the Commissioner has determined the financial condition of such company creates a material risk of receivership.

## “Commissioner” refers to the Commissioner of Insurance of the State of [state].

## “Party” and “Parties” refer to the Commissioner, the Receiver, if appointed, the signatory Guaranty Funds and the NCIGF.

## “Receivership Court” refers to the [court with jurisdiction over the receivership]

## “Receivership” refers to the rehabilitation or liquidation of any domestic insurance company in the State of [state].

## “Receiver” refers to [name of deputy receiver if appointed]or any of his or her successors.

## “Covered Claim” shall have the same meaning as contained in the applicable statutes of the Guaranty Funds.

# Recitals

## The Commissioner is responsible for the financial regulation of Companies. From time-to-time the financial condition of one or more of such Companies creates a material risk of Receivership.

## Should a Receivership occur of a Company, the Commissioner will appoint a special deputy receiver who will be responsible for the handling of such Receivership.

## If the Receivership of a Company includes an order of liquidation with a finding of insolvency, the Guaranty Funds will have the responsibility for the payment of “Covered Claims” arising from such Receivership.

## The Parties agree that in order to properly prepare for any Receivership, to provide for a smooth transition to liquidation should it become required, and in order to avoid delay in the payment of “Covered Claims,” it is essential to share Confidential Information among them with respect to any Company the Commissioner determines is at material risk of Receivership.

## It is agreed by the Parties that, subject to the Commissioner’s discretion, the Commissioner can freely consult with the Receiver (if appointed), the Guaranty Funds, and NCIGF, with respect to any Company, including but not limited to, the dissemination of Confidential Information and Evaluation Material as defined herein. It is understood that such consultations are to be held in strictest confidence and the Commissioner may, in his or her discretion, withhold the name of the Company being discussed from the Guaranty Funds and the NCIGF.

## The Guaranty Funds have determined that in order to protect consumers and to better fulfill their mission (*see* cite to applicable Guaranty Funds’ statutes) it is necessary and proper for them to enter into this Agreement and likewise it is necessary and proper for the NCIGF, as a membership organization that supports the Guaranty Funds in their mission, to enter into this Agreement. The DOI and Receiver have determined that this Agreement enables them to better serve the insurance consumers in [involved states] and to better protect them from the adverse consequences of a Company liquidation.

# Use and Treatment of Evaluation Material

## Subject to the terms of this Agreement, the Commissioner and Receiver will grant the Guaranty Funds and NCIGF Evaluation Material as they determine is appropriate. The Evaluation Material shall be used by the Guaranty Funds and NCIGF to determine potential obligations of the Guaranty Funds, prepare for the possible assumption of such obligations, and to perform such statutory obligations in the event they become obligated to pay “Covered Claims” under policies of insurance issued by a Company. The Guaranty Funds and NCIGF shall be allowed to copy such Evaluation Material for their own use consistent with the terms of this Agreement.

## The Guaranty Funds and the NCIGF agree to maintain the confidentiality of all Evaluation Material provided to them, and of any privileges with respect to such information. The Guaranty Funds and the NCIGF agree not to disclose any Evaluation Material to any person or entity, except as expressly provided herein.

## The Guaranty Funds and the NCIGF may share Evaluation Material with their respective counsel, consultants or agents as it deems 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.

## The Guaranty Funds and the NCIGF 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.

## In the event that the Guaranty Funds or the NCIGF are 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, the Guaranty Funds and NCIGF, as appropriate, shall notify the Commissioner and Receiver in writing as promptly as practicable. The Guaranty Funds and NCIGF, as appropriate, shall take reasonable actions to protect the confidentiality and, if applicable, the privileged status of such information, unless otherwise requested by the Commissioner or the Receiver. If a protective order or other remedy is not obtained prior to the date that compliance with the request is legally required, the Guaranty Funds and the NCIGF, as appropriate, will furnish only that portion of the Evaluation Material or take only such action as is legally required.

# Remedies

## The Guaranty Funds and the NCIGF agree that money damages would not be a sufficient remedy for a breach of this Agreement, and that the Commissioner or Receiver 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 [appropriate court for the proceeding].

## 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 the Guaranty Funds or the NCIGF shall be handled as an administrative expense in the proceeding, subject to [cite to applicable law]. Any attorney’s fees awarded to the Commissioner or Receiver shall be paid from the Guaranty funds and NCIGF’s funds, and shall not be submitted as a claim in the proceeding.

## 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.

## There shall be no liability on the part of the Commissioner or Receiver or the Company(ies) to the Guaranty Funds or NCIGF relating to or arising from the Evaluation Material or any other documents, material, information or communications provided under this Agreement.

# Warranties and Representations

## The Commissioner, the Guaranty Funds, and the NCIGF to the extent consistent with their statutory and other obligations, shall in good faith cooperate and communicate promptly with each other with respect to the performance of their duties under this Agreement.

## The Guaranty Funds and the NCIGF represent that they have the authority to enter into this Agreement and fulfill their obligations under this Agreement.

## Each undersigned person represents that he or she is authorized to sign this Agreement on behalf of the Party he or she represents.

## The Guaranty Funds and the NCIGF understand and acknowledge that the Commissioner or Receiver makes no representations or warranties as to the accuracy or completeness of any Evaluation Material provided under this Agreement.

# Termination

## This Agreement may be terminated at any time by agreement among the Parties or by any single Party 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. Further, this Agreement shall be terminated upon a determination in writing by the Commissioner or the Receiver that the Company no longer presents a material risk of Receivership.

## The Guaranty Funds and the NCIGF are permitted to use Evaluation Material in the manner and for purposes described herein until delivery by the Receiver or Commissioner of a written notice specifying the date of termination of this Agreement. Upon a receivership order wherein one or more Guaranty Funds are triggered this Agreement shall terminate in all respects without the obligation to destroy Evaluation material or maintain it as confidential.

## Except as provided in Paragraph 6.2, in the event of a termination of this Agreement, the Guaranty Funds and NCIGF shall immediately undertake to destroy all Evaluation Materials, and all copies, summaries, analyses and notes of the contents or parts thereof, and shall provide an affidavit attesting to the destruction of all such Evaluation Materials being provided to the Receiver, if appointed, and the Commissioner within 30 days after termination, and no part thereof shall be retained by the Guaranty Funds or NCIGF in any form without the prior written consent of the Commissioner or Receiver.

# Miscellaneous Provisions

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

## This Agreement shall be governed by and construed in accordance with the laws of the State of [state of domicile of the insolvency].

## 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.

## 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.

## All communications under this Agreement shall be in writing and shall be sent by email to the addresses 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 Commissioner:** | **The Receiver:** |
| [name, address, phone, email address] | [name, address, phone, email address] |
|  |  |
| **Guaranty Funds:**  [list of contact information for signatory funds] |  |

## The Parties agree to meet periodically, at least annually, to discuss issues arising under this Agreement and its implementation with respect to any specific Company.

[SIGNATURES OF PARTIES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2019:

Commissioner

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Receiver (if appointed)

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

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

NCIGF:

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

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Guaranty Fund:

Separate signature pages may be appropriate.