



**TEXAS WINDSTORM
INSURANCE ASSOCIATION**



Assumption Reinsurance Depopulation Program

Offer and Assumption Agreement



Offer and Assumption Agreement

This **Offer and Assumption Agreement** (hereinafter *Agreement*) is executed as of the First day of December, 2016 (hereinafter Execution Date) by and between:

- (1) _____, an insurance company engaged in the business of property and casualty insurance in Texas (hereinafter Insurer) with offices located at _____; and
- (2) Texas Windstorm Insurance Association, created by the Legislature of the State of Texas (hereinafter TWIA) with offices located at 5700 S. MoPac Expressway, Building A, Austin, Texas 78749.

RECITALS:

WHEREAS Subchapter O of Chapter 2210, Texas Insurance Code, enacted by the 84th Texas Legislature requires TWIA to administer, subject to commissioner approval, a depopulation program that encourages the transfer of association policies to insurers through assumption reinsurance (2210.701 et seq.)

WHEREAS the Texas Commissioner of Insurance has adopted a procedure for the transfer of TWIA policies to insurers through assumption reinsurance (Depopulation Program 28 TAC §5.4301 et seq.)

WHEREAS, Insurer desires to assume and remove from TWIA the policies described in **Exhibit A** to this *Agreement* in accordance with Subchapter O of Chapter 2210, Texas Insurance Code, the approved Depopulation Program and the written agreements constituting the assumption reinsurance program

WHEREAS, from December 1, 2016 through May 31, 2017 Insurer and TWIA shall be parties to a quota share reinsurance contract under which Insurer shall provide reinsurance to TWIA for a 100% quota share of the risk on the policies that are included in Insurer's offer of assumption

WHEREAS, Insurer agrees that TWIA policyholders will have until May 31, 2017 to reject Insurer's offer of assumption

NOW THEREFORE, in consideration of the mutual covenants and *Agreements* hereinafter set forth, the Parties hereto do covenant and agree as follows:



DEFINITIONS:

For purposes of this *Agreement*:

- A) "Aggregate Losses" shall mean those losses which include, but are not limited to, covered losses, consequential damages and other costs or damages arising from, and all loss adjustment expenses relating to, the adjustment or defense of any and all claims with respect to losses on policies of insurance of TWIA or Insurer.
- B) "Assumed Premium" shall mean the Initial Assumed Premium after being adjusted by the Bordereau Process.
- C) "Assumption" shall mean the novation and transference of risk from TWIA to the Insurer on a Removed Policy, whereby the Insurer is legally and contractually responsible for and is deemed to have directly issued the Removed Policy regardless of whether TWIA continues to provide services on the policy.
- D) "Assumption Date" shall mean June 1, 2017, the date upon which the Assumption of a Removed Policy occurs and becomes effective.
- E) "Assumption Procedures" shall mean the procedures adopted by the Commissioner for use with the Depopulation Program, 28 TAC §5.4301 et seq., attached as **Exhibit B**.
- F) "Bordereau Process" shall mean a monthly financial reconciliation by TWIA to account for policy cancellations, return premiums and policyholder requested coverage changes after the Assumption Date, with positive and negative adjustments.
- G) "Ceding Commission" shall mean the twenty-two (22) percent commission that Insurer will pay to TWIA.
- H) "Certificate of Assumption" shall mean the certificate required under Section 2.B. to be mailed with the Notice of Assumption and Policy Expiration by the Insurer to the policyholder, with a copy to the agent, to attach to the assumed TWIA policy.
- I) "Department" shall mean the Texas Department of Insurance.
- J) "Execution Date" shall mean the date this *Agreement* was executed by TWIA, as evidenced at the beginning of this *Agreement*.
- K) "Initial Assumed Premium" shall mean Written Premium, less the Written Premium earned by TWIA with respect to the Removed Policies as of the respective Assumption Dates of such policies.



- L) “Notice of Assumption and Policy Expiration” shall mean the final notice mailed by TWIA to the policyholder during the Offer Period informing the policyholder that their policy will be assumed on June 1, 2017 if the policyholder does not opt out.
- M) “Notice of Offer of Assumption and Novation” shall mean the notice required under 2.B. to be mailed by Insurer to the policyholder, with a copy to the agent, prior to the effective date of this *Agreement*, notifying the policyholder of the offer of Assumption.
- N) “Notice of Offer to Transfer Policy” shall mean the notice required under 2.B. to be mailed by TWIA to the policyholder, with a copy to the agent, notifying the policyholder of the offer of Assumption and nonrenewal of their TWIA policy.
- O) “Offer Period” shall mean December 1 through May 31 during which the policyholder may opt out of the Assumption.
- P) “Opt Out Form” shall mean the form required under 2.B. to be mailed by TWIA to the policyholder with a copy to the agent at the beginning of the Offer Period, notifying the policyholder of their right to opt out of the Assumption.
- Q) “Parties” shall mean the Insurer and TWIA.
- R) “Program” shall mean any program for the depopulation of policies by assumption approved by TWIA the Department pursuant to Subchapter O of Chapter 2210 of the Insurance Code.
- S) “Removed Policy” or “Removed Policies” shall mean any TWIA policy or policies that is/are assumed by the Insurer under this *Agreement*. Such policies are identified by TWIA policy number, insured name and address, agent name and address and effective and expiration dates on **Exhibit A** or any supplement thereto. The policies identified include policies that are renewed during the Offer Period.
- T) “Replacement Policy” or “Replacement Policies” shall mean a policy or policies issued by Insurer on its own policy form, to take effect upon the expiration or cancellation of a Removed Policy.
- U) “Written Premium” shall mean the gross written premium of TWIA on the Removed Policies, less policy cancellation and return premiums, as of the respective Assumption Dates of such policies. Written Premium shall not include any fees, taxes, assessments, or surcharges imposed on TWIA policyholders as determined by TWIA, the Department or the Legislature of the State of Texas.



TERMS AND CONDITIONS:

1) Agreement to Remove Policies

The Insurer and TWIA have agreed upon those Removed Policies to be removed under the Program and assumed by the Insurer on the Assumption Date and set forth those Removed Policies by TWIA policy number, insured name and address, agent name and address and effective and expiration dates on **Exhibit A** or any supplement thereto. **Exhibit A** or supplement shall be attached hereto and made a part hereof by reference.

2) Terms of Assumption

A) Liabilities

- i) With respect to a Removed Policy, the Insurer is liable and obligated to pay all Aggregate Losses occurring on or after 12:01 A.M. Central Standard Time on the Assumption Date of a Removed Policy, and TWIA has no obligation or liability with respect to such Aggregate Losses.
- ii) The Insurer, in addition, agrees to assume and undertake all other obligations with respect to the Removed Policies in the manner provided herein. Such obligations include, but are not limited to, accepting that the policy as written, and assumed, may not accurately reflect the risk.
- iii) TWIA shall remain directly liable for all Aggregate Losses for the Removed Policies occurring before the Assumption Date, and the Insurer shall have no responsibility with respect to such losses.
- iv) The Insurer shall comply with all applicable Assumption Procedures.

B) Notices to Policyholders

- i) The Insurer shall mail a Notice of Offer of Assumption and Novation to each assumed policyholder on December 1, 2016, with a copy to the agent. The Notice of Offer of Assumption and Novation must include an explanation of the differences, if any, between the TWIA coverage form and the Replacement Policy and an affirmative statement that the Replacement Policy provides generally comparable coverage and premiums. The notice must further disclose that a premium is “generally comparable” by statute if it does not exceed 115 percent of the TWIA premium. The Insurer must use the form of Notice of Offer of Assumption and Novation approved by the Department for use in the Program. The cost of providing the Notice of Offer of Assumption and Novation to TWIA policyholders to effectuate Assumption of the Removed Policies shall be borne solely by the Insurer.
- ii) TWIA shall mail a Notice of Offer to Transfer Policy and an Opt Out Form to each assumed policyholder on December 1, 2016, with a copy to the agent. The form of the Notice of Offer



to Transfer Policy and the Opt Out Form must be the forms approved by the Department for use in the Program. The cost of providing the Notice of Offer to Transfer Policy and the Opt Out Form to TWIA policyholders shall be borne solely by TWIA.

- iii) TWIA shall mail a Notice of Assumption and Policy Expiration, to each assumed policyholder on May 10, 2017 informing the policyholder that their policy will be assumed by the Insurer on June 1, 2017, and a Certificate of Assumption to attach to the policyholder's TWIA policy.
- iv) The Insurer shall mail a certificate of Assumption to each assumed policyholder on May 10, 2017.
- v) The Parties shall coordinate the mailing of any notices required by this *Agreement*.

C) Assumed Premium

Assumed Premium minus the applicable Ceding Commission shall be reported via the Bordereau Process to the Insurer within 15 days following the end of each month. The net balance due either party shall be paid via wire transfer within 20 days after the close of the respective month.

D) Servicing Policies

Commencing on the Assumption Date of a Removed Policy:

- i) Until a Removed Policy is renewed onto the Insurer's policy form, on behalf of the Insurer TWIA shall process endorsements and cancellations and provide other policy services with respect to the Removed Policy.
- ii) On Removed Policies expiring before August 1, 2017, TWIA is responsible for offering and processing offers of renewal coverage.
- iii) On Removed Policies expiring on and after August 1, 2017, the Insurer is responsible for offering and processing offers of renewal coverage with respect to its Replacement Policies, utilizing its approved forms and filed rates. Insurer is responsible for all policyholder services with respect to its Replacement Policies.
- iv) TWIA shall provide information to Insurer regarding policy changes and endorsements processed on all Removed Policies during the Offer Period, on or before June 1, 2017. Thereafter TWIA will provide updates monthly regarding policy changes and endorsements processed until all Removed Policies have reached their final TWIA expiration date.

E) Policyholder Opt Out

Any policyholder may opt out of the Assumption by submitting or mailing a completed Opt Out Form to TWIA during the Offer Period. A policyholder who returns the Opt Out Form is not eligible for Assumption.



TWIA shall notify Insurer of all Opt Out Forms received during the Offer Period. TWIA shall provide insurer with a monthly report listing all Opt Out Forms received during the Offer Period through the date of each such report. On June 15, 2017, TWIA shall provide Insurer with a final report listing all Opt Out Forms received during the Offer Period. If Insurer receives any Opt Out Forms, Insurer shall promptly notify TWIA of such receipt and forward such to TWIA for its records.

F) Claims Servicing

- i) TWIA is solely responsible for servicing of claims for losses occurring prior to the Assumption Date.
- ii) Insurer is solely responsible for the servicing of claims for losses occurring on or after the Assumption Date.
- iii) Insurer shall adjust claims for losses occurring on or after the Assumption Date, excluding claims filed against Replacement Policies, in accordance with Chapter 2210, Texas Insurance Code and the TWIA policy terms and conditions.
- iv) TWIA shall have no responsibility for payment of losses or loss adjustment expenses or for the servicing of claims with respect to losses reported under any Removed Policy on or after the Assumption Date.
- v) TWIA agrees that in instances where the sharing of information will facilitate the resolution of a claim which has occurred after the Assumption Date, and in accordance with applicable state and federal laws, it will share prior claims, underwriting and other information with the Insurer. TWIA reserves the right at any time to deny access to any and all such information or to seek the permission of the policyholder for release of such information. Insurer agrees to treat all information provided to them as confidential and certifies that all such information provided to them by TWIA shall be used strictly to adjust a claim and for no other purpose.
- vi) With regard to losses occurring on Removed Policies after the Assumption Date, TWIA shall give notice promptly to the Insurer of any claim by a third party or the commencement of any legal proceedings against TWIA with respect to such claim.
- vii) Any error or omission of TWIA, its Board of Directors or the Department, or any of the foregoing's representatives, service providers, agents or employees in servicing or reporting claims shall in no way relieve the Insurer of its liability or obligations under this *Agreement*. It is understood and agreed that the Insurer shall follow and share the same fortune as TWIA under all circumstances. See also Section 6, below.



viii) TWIA agrees to assign to the Insurer any and all salvage and subrogation rights arising with respect to losses occurring on or after the Assumption Date, which TWIA may have with respect to the Removed Policies.

G) Implementation

- i) The Parties hereto acknowledge that, pursuant to all applicable laws and this *Agreement*, TWIA will use its sole judgment and discretion in implementing the Assumption Procedures, in accordance with Texas law.
- ii) TWIA shall not enter into an agreement with any other insurer for the removal of the Removed Policies unless such policies are not removed by the Insurer in accordance with the terms and provisions of this *Agreement* or are written new by TWIA after their removal by Insurer.

3) Conditions of Assumption

- A)** TWIA shall provide, or has provided, to the Insurer, by electronic data transfer, or by such other means as is acceptable to TWIA, relevant information regarding the Removed Policies. The Insurer understands that TWIA cannot guarantee the reliability and accuracy of this data and the Insurer agrees that Removed Policies will not be cancelled or returned to TWIA upon discovery that this information was not accurate, unless such inaccuracy amounts to a material misrepresentation or fraud on behalf of the insured.
- B)** Insurer warrants and represents that it has:
 - i) Satisfactorily complied with all requirements of the Department for participation in the Program including obtaining approval of policy forms evidencing generally comparable coverage and premiums.
 - ii) Satisfactorily complied with all requirements of TWIA for participation in the Assumption, including but not limited to the Assumption Procedures and securing approval from the current agent to assume each Removed Policy, as set forth in the Assumption Procedures.
 - iii) Appointed the agents of record or has entered into a limited servicing agreement with the agents authorizing such agents of record to service the Removed Policies and that policies will be written under the agent's prevailing terms, conditions and commissions.
- C)** Insurer agrees to offer a renewal policy to the policyholder of a Removed Policy for each of the next three years subject to Insurer's filed rate and underwriting guidelines, offering generally comparable coverage and generally comparable premiums.
- D)** The Insurer agrees that no bonus, incentive plan, or consideration beyond the Assumed Premium will be paid by TWIA for the Insurer's removal of Removed Policies.



4) Department Oversight

TWIA shall provide a fully executed copy of this *Agreement* to the Department. The Insurer shall respond to any requests for information by the Department regarding the proposal or this *Agreement*. The Insurer and TWIA are, and shall remain, subject to all applicable laws of the State of Texas and the supervision, rules, regulations and orders of the Department.

5) Right to Audit

TWIA or its representatives, upon reasonable advance written notice, shall be entitled to audit, at its own cost and expense, the relevant books and records of the Insurer during normal business hours to confirm the Insurer's compliance with the terms and conditions of this *Agreement*.

6) Release From Liability and Indemnification

A) Release From Liability

Except in the case of intentional or gross fault, Insurer releases TWIA, its Board of Directors and the Department, and any of the foregoing's representatives, service providers and employees ("TWIA Indemnitees") from any liability for damages Insurer may sustain in connection with this *Agreement*, including but not limited to any for claims servicing. See also Section 2.F. (vii), above.

B) Indemnification

Insurer shall defend, indemnify and hold harmless TWIA Indemnitees against any costs, expenses (including reasonable counsel fees and costs of litigation), claims, demands, actions, losses or liabilities that TWIA Indemnitees may suffer or that may be asserted or claimed against TWIA Indemnitees, caused by or arising out of any breach by Insurer (including the act or omission of any agent or affiliate of Insurer) of this *Agreement*.

7) Breach, Default, Cure, Termination and Other Remedies

A) Events of Default

A default under this *Agreement* occurs in the event of any material breach of an obligation, representation or undertaking of a party as set forth in this *Agreement*.

B) Cure

In the event of a default that may be cured, the non-defaulting party shall give the defaulting party written notice of the material breach or default. Failure of the defaulting party to cure the material breach or default within fifteen (15) days of the receipt of the written notice as herein provided shall constitute and be deemed a material breach and default of this *Agreement* unless the material breach or default is not capable of being cured within such period of time, and the defaulting party has commenced good faith efforts to cure such material breach or default within



fifteen (15) days, and thereafter continues in good faith to diligently pursue curing until the material breach or default is cured to the reasonable satisfaction of the non-breaching party.

C) Termination and Other Remedies

Should the Insurer materially breach or default in any obligation as set forth in this *Agreement* and not timely cure such material default and breach as set forth in this section, TWIA may in its sole discretion take any or all or some of the follow actions:

- i) Terminate this *Agreement* or declare this *Agreement* canceled or void.
- ii) Prohibit Insurer from further assumption of policies pursuant to any future agreement.
- iii) Notify the Department of the violation of the *Agreement* and request that the Department take appropriate administrative action.

In addition to any rights and remedies set forth in this *Agreement*, the non-defaulting party shall have all rights and remedies available at law and/or equity, including, but not being limited to, the right to specific performance, damages or injunctive relief.

D) Removed Policies

Notwithstanding any breach of this *Agreement*, the Insurer shall remain responsible for Removed Policies unless and until a judicial determination is rendered relieving, altering or limiting Insurer's responsibility.

8) Benefits

This *Agreement* shall be binding upon the Parties, their heirs, legal representatives, successors and assigns.

9) 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.

10) Construction of the *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.

11) Entire Agreement



This *Agreement* contains all of the 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.

12) Texas Law and Jurisdiction

It is acknowledged that this *Agreement* shall be construed and governed in accordance with the laws of the State of Texas and the rules, orders and regulations of the Department in effect at the time of the execution of this *Agreement*. If any legal action is filed pursuant to this *Agreement* such action must be filed in a court of competent jurisdiction in Travis County, Texas.

13) Assignment

The Insurer may not assign or transfer this *Agreement*, or any benefit or right under this *Agreement* without TWIA's prior written consent. Any change in control or ownership is deemed a transfer of this *Agreement* requiring TWIA's written consent.

14) Invalidation

In the event any provision of this *Agreement* is determined to be invalid by a court of competent jurisdiction, the remaining provisions of this *Agreement* remain in full force and effect.

15) No Intermediary

The Insurer represents and warrants that it has not, and TWIA represents and warrants that it has not, incurred an obligation to make payment of any fees to any intermediary with respect to the obligations afforded under this *Agreement*.

16) 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 the Department.

17) Notices to Parties

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 mail, by registered or certified mail, or by facsimile transmission and shall be addressed as follows:

For TWIA: Texas Windstorm Insurance Association
 Attn: John Polak, General Manager
 5700 S. MoPac Expressway, Building A



Austin TX 78749

Fax:

For Recipient: [Insurer Name] _____
[Contact Person] _____
[Address] _____
[Fax:] _____

Notices sent by hand delivery shall be deemed delivered on the date of hand delivery. Notices sent by overnight mail shall be deemed delivered on the next business day after being placed into the hands of the overnight carrier. 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. Central Time otherwise they shall be deemed delivered on the next business day.

18) Parties Represented

The Parties acknowledge that each party and its counsel have reviewed 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.

19) Confidentiality

Insurer agrees to maintain the confidentiality of all policyholder information provided and agrees that all such information provided by TWIA shall be used strictly to select policies for assumption, adjust claims, service Removed Policies and not for any other purpose.

20) Survival of Terms

Sections 2., 3., 4., 5., 6., 7., 12., 13., 14., and 17., shall survive the termination of this *Agreement*.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized corporate officers as of the day and year first above set forth.

SIGNED for and on behalf of Insurer

SIGNED for and on behalf of TWIA

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____



TEXAS WINDSTORM
INSURANCE ASSOCIATION

Date: _____ Date: _____



TEXAS WINDSTORM
INSURANCE ASSOCIATION

EXHIBITS:

A) Schedule of Removed Policies (__ pages)



TEXAS WINDSTORM
INSURANCE ASSOCIATION

B) Texas Windstorm Insurance Association Depopulation Process December 1, 20__ (__ pages)

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TEXAS WINDSTORM
INSURANCE ASSOCIATION
