

TEXAS WINDSTORM INSURANCE ASSOCIATION
Austin, Texas
QUOTA SHARE REINSURANCE
CONTRACT

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QUOTA SHARE REINSURANCE CONTRACT

(the "Contract") between

TEXAS WINDSTORM INSURANCE ASSOCIATION

Austin, Texas

(the "Association") and

_____,
an insurance company engaged in the business of property and casualty insurance in Texas
(the "Reinsurer") with offices located at _____

ARTICLE I

BUSINESS COVERED

- A. This Contract is to indemnify the Association in respect of the liability that may accrue to the Association as a result of loss or losses under Policies listed on the attached Schedule of Policies Reinsured in force at the inception of this Contract, including Policies that are renewed during the term of this Contract by or on behalf of the Association, subject to the terms and conditions herein contained.
- B. Policies listed on the attached Schedule of Policies Reinsured for which the policyholder has elected to opt out as provided by Texas Insurance Code §2210.705 and related administrative rules shall be retroactively removed from and shall not be subject to reinsurance under this Contract.

ARTICLE II

TERM

- A. This Contract shall become effective at 12:01 a.m., local time, December 1, 20__, as respects losses occurring at or after that time and date, and shall continue in effect until 12:01 a.m., local time, June 1, 20__, or until such time as this Contract is terminated in accordance with the provisions of the TERMINATION ARTICLE or until all obligations and liabilities under this contract have been fully performed and discharged. "Local time" shall mean the time specified in the Policies reinsured hereunder.
- B. Expiration or termination of this Contract shall be on a cut-off basis and the Reinsurer shall incur no liability for losses commencing at or after the date of expiration or termination.
- C. If this Contract expires while a Loss Occurrence covered hereunder is in progress, the Reinsurer's liability hereunder shall, subject to the other terms and conditions of this Contract, be determined as if the entire Loss Occurrence had occurred prior to the expiration of this Contract, provided that no part of such Loss Occurrence is claimed against any renewal or replacement of this Contract.

- D. Notwithstanding the expiration or termination of the Reinsurer's participation hereon, the provisions of this Contract will continue to apply to all obligations and liabilities of the parties incurred hereunder to the end that all such obligations and liabilities will be fully performed and discharged.

ARTICLE III

TERMINATION

- A. The Association may terminate this Contract at any time by giving written notice to the Reinsurer in the event of any of the following circumstances:
1. The Reinsurer ceases underwriting operations.
 2. A state insurance department or other legal authority orders the Reinsurer to cease writing business, or the Reinsurer is placed under regulatory supervision.
 3. The Reinsurer has become insolvent or has been placed into liquidation or receivership (whether voluntary or involuntary), or there have been instituted against it proceedings for the appointment of a receiver, liquidator, rehabilitator, conservator, trustee in bankruptcy, or other agent known by whatever name, to take possession of its assets or control of its operations.
 4. The Reinsurer's policyholders' surplus (or the equivalent under the Reinsurer's accounting system) as reported in such financial statements of the Reinsurer as designated by the Association, has been reduced by 20% of the amount thereof at any date during the prior 12-month period (including the period prior to the inception of this Contract).
 5. The Reinsurer has become merged with, acquired or controlled by any company, corporation, or individual(s) not controlling the Reinsurer's operations previously.
 6. The Reinsurer has reinsured its entire liability to an unaffiliated third party under this Contract without the Association's prior written consent.
 7. The Reinsurer's A.M. Best rating has been downgraded by two levels from the rating in place at any date during the prior 12-month period (including the period prior to the inception of this Contract).
 8. The Reinsurer has failed to comply with the funding requirements set forth in the RESERVES AND FUNDING ARTICLE.
- B. Any early termination circumstances exercised will be deemed effective 12/1/20___. The Reinsurer forfeits all premium stipulated in the PREMIUM ARTICLE. The Reinsurer is released of all present and future liabilities under this Contract.

- C. The Association may require that the Reinsurer commute all present and future liabilities under this Contract in return for a full and final release of all such liabilities. The commutation option is available to the Association at any time prior to 7/1/20__.
- D. The Association's option to require commutation under paragraph C, above, shall survive the expiration or termination of this Contract.

ARTICLE IV

DEFINITIONS

A. Declaratory Judgment Expense

“Declaratory Judgment Expense” shall mean all expenses incurred by the Association in connection with a declaratory judgment action brought to determine the Association's defense and/or indemnification obligations that are allocable to a specific claim subject to this Contract. Declaratory Judgment Expense shall be deemed to have been incurred on the date of the original loss (if any) giving rise to the declaratory judgment action.

B. Extra Contractual Obligations/Loss in Excess of Policy Limits

1. Extra Contractual Obligations

This Contract shall protect the Association for any “Extra Contractual Obligations” which as used herein shall mean any punitive, exemplary, compensatory or consequential damages, other than Loss in Excess of Policy Limits, paid or payable by the Association as a result of an action against it by its insured, its insured's assignee or a third party claimant, by reason of alleged or actual negligence, fraud or bad faith on the part of the Association in handling a claim under a Policy subject to this Contract.

2. Loss in Excess of Policy Limits

This Contract shall protect the Association for any “Loss in Excess of Policy Limits” which as used herein shall mean an amount that the Association would have been contractually liable to pay had it not been for the limit of the original Policy as a result of an action against it by its insured, its insured's assignee or a third party claimant. Such loss in excess of the limit shall have been incurred because of failure by the Association to settle within the Policy limit, or by reason of alleged or actual negligence, fraud, or bad faith in rejecting an offer of settlement or in the preparation of the defense or in the trial of any action against its insured or in the preparation or prosecution of an appeal consequent upon such action.

3. This paragraph B shall not apply where an Extra Contractual Obligation and/or Loss in Excess of Policy Limits has been incurred due to an admission of or an adjudicated finding of fraud committed by a member of the Board of Directors or a corporate officer of the Association acting individually or collectively or in

collusion with a member of the Board of Directors or a corporate officer or a partner of any other corporation or partnership.

4. Any Extra Contractual Obligations and/or Loss in Excess of Policy Limits shall be deemed to have occurred on the same date as the loss covered or alleged to be covered under the Policy.

C. Loss Adjustment Expense

“Loss Adjustment Expense” shall mean all costs and expenses allocable to a specific claim that are incurred by the Association in the investigation, appraisal, adjustment, settlement, litigation, defense or appeal of a specific claim, including court costs and costs of supersedeas and appeal bonds, and including (1) pre-judgment interest, unless included as part of the award or judgment; (2) post-judgment interest; (3) legal expenses and costs incurred in connection with coverage questions and legal actions connected thereto, including Declaratory Judgment Expense; and (4) a pro rata share of salaries and expenses of Association field employees, and expenses of other Association employees who have been temporarily diverted from their normal and customary duties and assigned to the field adjustment of losses covered by this Contract. Loss Adjustment Expense does not include unallocated loss adjustment expense. Unallocated loss adjustment expense includes, but is not limited to, salaries and expenses of employees, other than (4) above, and office and other overhead expenses.

D. Loss Occurrence

An event that causes direct physical loss to the property listed in the original policy and that is caused by windstorm or hail.

E. Losses Incurred

“Losses Incurred” shall mean ceded losses and Loss Adjustment Expense paid during the period under consideration, plus the ceded reserves for losses and Loss Adjustment Expense outstanding at the end of the period, minus the ceded reserves for losses and Loss Adjustment Expense outstanding at the beginning of the accounting period.

F. Net Liability

“Net Liability” shall mean the amount paid by the Association after making deductions for all recoveries, salvages, and subrogations, which are actually recovered.

G. Gross Earned Premium Income

“Gross Earned Premium Income” shall mean gross earned premium of the Association for the Policies subject to this Contract.

H. Policy

“Policy” or “Policies” shall mean the Association’s binders, policies and contracts providing insurance on the classes of business covered under this Contract.

ARTICLE V

TERRITORY

The territorial limits of this Contract shall be identical with those of the Association’s Policies.

ARTICLE VI

EXCLUSIONS

A. The following risks and kinds of insurance are excluded from coverage under this Contract and no loss or losses thereon shall be recoverable hereunder:

1. Ocean Marine business.
2. Life, Accident and Health business.
3. Flood and Earthquake Insurance when written as such.
4. Workers’ Compensation and Employers Liability.
5. Fidelity and Surety, Credit, Title and Financial Guarantee.
6. All liability of the Association arising by contract, operation of law, or otherwise, from its participation or membership, whether voluntary or involuntary, in any Insolvency Fund. “Insolvency Fund” includes any guaranty fund, insolvency fund, plan, pool, association, fund or other arrangement, howsoever denominated, established or governed, which provides for any assessment of or payment or assumption by the Association of part or all of any claim, debt, charge, fee, or other obligation of an insurer, or its successors or assigns, which has been declared by any competent authority to be insolvent, or which is otherwise deemed unable to meet any claim, debt, charge, fee or other obligation in whole or in part.
7. Reinsurance assumed.
8. Aviation, Aerospace and Satellites.
9. Growing, standing or drying crops or timber.
10. Nuclear Energy risks as set forth in the Nuclear Incident Exclusion Clause – Physical Damage – Reinsurance – U.S.A. attached to and forming part of this Contract.

11. Loss or damage occasioned by war, invasion, hostilities, acts of foreign enemies, civil war, rebellion, insurrection, military or usurped power, martial law or confiscation by order of any government or public authority, but not excluding loss or damage which would be covered under a standard policy form containing a standard war exclusion clause.
12. Any loss arising from mold, unless such loss arises from an otherwise covered peril, or is covered by a mold sublimit Policy endorsement. The Association's Policies shall exclude all other coverage for losses arising from mold, or so deemed.
13. Loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any Act of Terrorism arising out of or in connection with biological, chemical, radioactive, or nuclear pollution or contamination or explosion, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

“Act of Terrorism” means the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion shall not be construed to apply to loss occasioned by riots, strikes, civil commotion, vandalism or malicious damage as those terms have been interpreted by United States Courts to apply to insurance policies.

- B. If the Association inadvertently issues a Policy falling within the scope of one or more of the preceding exclusions, except exclusions A.10, A.11, and A.13, such Policy shall be covered hereunder, provided that the Association issues, or causes to be issued, the required notice of cancellation within 30 days after a member of the executive or managerial staff at the Association's home office having underwriting authority in the class of business involved becomes aware that the Policy applies to excluded classes, unless the Association is prevented from canceling said Policy within such period by applicable statute or regulation, in which case such Policy shall be covered hereunder until the earliest date on which the Association may cancel.

ARTICLE VII

COVERAGE

- A. The Association shall cede to the Reinsurer and the Reinsurer shall accept, as reinsurance of the Association, 100% of the Association's Net Liability in respect of Policies listed on the attached Schedule of Policies. In addition, regardless of whether the Association has paid or becomes liable to pay any Net Liability under its Policy, the Reinsurer shall also be liable for 100% of Loss Adjustment Expense, Extra Contractual Obligations, and Loss in Excess of Policy Limits.

- B. The Association shall be the sole judge of what constitutes one property risk. However, a dwelling and its contents shall not be considered more than one risk.
- C. The Association shall retain no share (0.0%) of the liability under Policies subject to this Contract.

ARTICLE VIII

PREMIUM

The Association shall cede to the Reinsurer 100% of the Gross Earned Premium Income on all Policies listed on the attached Schedule of Policies.

ARTICLE IX

CEDING COMMISSION

The Reinsurer shall allow a 24.0% ceding commission on all premiums ceded to the Reinsurer hereunder. The ceding commission shall include premium taxes of all kinds (with the exception of Federal Excise Tax, if applicable), local board assessments, and all other expenses and charges whatsoever based on the premium for business ceded under this Contract. The Association shall allow the Reinsurer return commission on return premiums at the same rate.

ARTICLE X

REPORTS AND REMITTANCES

- A. For the period of 12/1/20__ – 5/31/20__:
 - 1. Within 15 days following the end of each month, the Association shall furnish the Reinsurer with a report summarizing:
 - a. Ceded Gross Earned Premium Income accounted for during the month; less
 - b. Ceding commission on (1) above; less
 - c. Ceded loss, Extra Contractual Obligations, Loss In Excess of Policy Limits and Loss Adjustment Expenses; plus
 - d. Ceded subrogation, salvage or other recoveries during the month.
 - 2. In addition, the Association shall furnish the Reinsurer statement showing the reserves for outstanding losses including Loss Adjustment Expense.
 - 3. By 6/15/20__ the Association shall furnish the Reinsurer with a report summarizing:
 - a. Ceded Gross Earned Premium Income accounted for during the period of 12/1/20__ through 5/31/20__; less

- b. Ceding commission on (1) above; less
 - c. Ceded loss, Extra Contractual Obligations, Loss In Excess of Policy Limits and Loss Adjustment Expenses; plus
 - d. Ceded subrogation, salvage or other recoveries during the period; and
 - e. Net balance due either party.
4. The net balance shall be paid, by wire transfer, by 6/20/20__.
- B. For the period beginning 6/1/20__:
- 1. Within 15 days following the end of the month, the Association shall furnish the Reinsurer with a report summarizing:
 - a. Ceded Gross Earned Premium Income accounted for during the period of 12/1/20__ through 5/31/20__; less
 - b. Ceding commission on (1) above; less
 - c. Ceded loss, Extra Contractual Obligations, Loss In Excess of Policy Limits and Loss Adjustment Expenses; plus
 - d. Ceded subrogation, salvage or other recoveries during the month; and
 - e. Net balance due either party.
 - 2. The net balance shall be paid, by wire transfer, within 20 days after the close of the respective month.
 - 3. In addition, the Association shall furnish the Reinsurer statement showing the reserves for outstanding losses including Loss Adjustment Expense.

ARTICLE XI

LOSS SETTLEMENTS

- A. The Association alone and at its full discretion shall adjust, settle or compromise all claims and losses.
- B. As respects losses subject to this Contract, all loss settlements made by the Association, whether under strict Policy terms or by way of compromise, and any Extra Contractual Obligations and/or Loss in Excess of Policy Limits, shall be binding upon the Reinsurer, and the Reinsurer agrees to pay or allow, as the case may be, its share of each such settlement in accordance with this Contract.

ARTICLE XII

SALVAGE AND SUBROGATION

The Association, at its sole discretion, may enforce its right to salvage and/or subrogation and may prosecute all claims arising out of such right.

The Reinsurer shall be credited with subrogation and salvage (e.g., reimbursement obtained or recoveries made by the Association) on any claims or settlements indemnified by the Reinsurer under the terms and conditions of this Contract. The Reinsurer shall incur any expense incurred by the Association in pursuing any such recovery.

ARTICLE XIII

LATE PAYMENTS

A. In the event any payment due either party is not received by the payment due date, the party to whom payment is due may require the debtor party to pay, and the debtor party agrees to pay, an interest penalty on the amount past due calculated for each such payment on the last business day of each month as follows:

1. The number of full days which have expired since the due date or the last monthly calculation, whichever the lesser; times
2. 1/365ths of a rate equal to 5% per annum; times
3. The amount past due, including accrued interest.

It is agreed that interest shall accumulate until payment of the original amount due plus interest penalties has been paid and received.

Interest shall accumulate until payment of the original amount due plus interest penalties have been paid and received.

B. The due date shall, for purposes of this Article, be determined as follows:

1. Payments from the Reinsurer to the Association shall be due on the date on which the demand for payment (including delivery of bordereaux or quarterly or monthly reports) is received by the Reinsurer, and shall be overdue 30 days thereafter.
2. Payments from the Association to the Reinsurer shall be due on the dates specified within this Contract. Payments shall be overdue 30 days thereafter. In the event a due date is not specifically stated for a given payment, the overdue date shall be 30 days following the date of billing.

C. If the information contained in the Association's demand for payment is insufficient or not in accordance with the conditions of this Contract, then within 30 days the Reinsurer shall request from the Association all additional information necessary to validate its claim and

the payment due date as defined in paragraph B shall be deemed to be the date upon which the Reinsurer received the requested additional information. This paragraph is only for the purpose of establishing when a payment is overdue, and shall not alter the provisions of the LOSS SETTLEMENTS ARTICLE, the REPORTS AND REMITTANCES ARTICLE, or other pertinent contractual stipulations.

- D. Should the Reinsurer dispute a claim presented by the Association and the timeframes set out in paragraph B be exceeded, interest as stipulated in paragraph A shall be payable for the entire overdue period, but only for the amount of the final settlement with the Reinsurer.
- E. In the event arbitration is necessary to settle a dispute, the panel shall have the authority to make a determination awarding interest to the prevailing party. Interest, if any, awarded by the panel shall supersede the interest amounts outlined herein.
- F. Any interest owed pursuant to this Article may be waived by the party to which it is owed. Waiver of such interest, however, shall not affect the waiving party's rights to other interest amounts due as a result of this Article.

ARTICLE XIV

ERRORS AND OMISSIONS

Inadvertent delays, errors or omissions made in connection with this Contract or any transaction hereunder shall not relieve either party from any liability which would have attached had such delay, error or omission not occurred, provided always that such error or omission is rectified as soon as possible after discovery.

ARTICLE XV

OFFSET

The Association and the Reinsurer shall have the right to offset any balance or amounts due from one party to the other under the terms of this Contract. The party asserting the right of offset may exercise such right any time whether the balances due are on account of premiums or losses or otherwise; however, in the event of the insolvency of any party hereto, offset shall be in accordance with applicable law.

ARTICLE XVI

CURRENCY

- A. Whenever the word "Dollars" or the "\$" sign appears in this Contract, they shall be construed to mean United States Dollars and all transactions under this Contract shall be in United States Dollars.
- B. Amounts paid or received by the Association in any other currency shall be converted to United States Dollars at the rate of exchange at the date such transaction is entered on the books of the Association.

ARTICLE XVII

TAXES

In consideration of the terms under which this Contract is issued, the Association will not claim a deduction in respect of the premium hereon when making tax returns, other than income or profits tax returns, to any state or territory of the United States of America or the District of Columbia.

ARTICLE XVIII

FEDERAL EXCISE TAX

- A. The Reinsurer has agreed to allow the applicable percentage of the premium payable hereon (as imposed under the Internal Revenue Code) for the purpose of paying Federal Excise Tax to the extent such premium is subject to such tax. Should the Reinsurer claim exempt status from Federal Excise Tax, it shall provide to the Association, upon its request, proof that the exempt status adequately satisfies the rules as imposed under the Internal Revenue Code and/or other applicable U.S. government authority.
- B. In the event of any return premium becoming due hereunder, the Reinsurer shall deduct the applicable percentage from the return premium payable hereon and the Association or its agent shall recover such tax from the United States Government.
- C. As respects premiums ceded to the Reinsurer under this Contract, the Reinsurer agrees to indemnify the Association for any liability, expense, interest or penalty it may incur by reason of the Reinsurer's breach of this Article.

ARTICLE XIX

FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

- A. The Reinsurer shall provide the Association with all required documentation and information, upon the Association's request, that confirms that the Reinsurer is not subject to any withholding under the U.S. Foreign Account Tax Compliance Act ("FATCA").
- B. If the Reinsurer is or becomes subject to any withholding under FATCA, the Reinsurer must immediately notify the Association in writing, by electronic mail, certified mail, or a nationally or internationally recognized delivery service.
- C. To the extent the Reinsurer is subject to the deduction and withholding of amounts payable hereon as set forth under FATCA, the Reinsurer continues to remain fully liable for all of its obligations under this Contract and agrees to allow such deduction and withholding from the amounts payable under this Contract. The withholding of such amounts due under FATCA shall not be treated by the Reinsurer as a breach of any conditions, warranty or other clause whether or not entitling the Reinsurer to cancel, terminate or restrict this Contract, refuse, restrict or delay payment of any claim or invoke any interest, penalty or other late payment provision. The Reinsurer shall be liable under this Contract as if no such withholding had been made.

- D. In the event of any return amounts becoming due hereunder, the Reinsurer will not deduct any percentage from the return amounts payable hereon. To the extent the Association or its agent recovers such deductions and withholdings on the return amounts from the United States Government, the Association or its agent will reimburse the Reinsurer for such amounts.
- E. The Reinsurer agrees to indemnify the Association or its agents for any liability, expense, interest or penalty the Association or its agents may incur by reason of the Reinsurer's breach of this Article.

ARTICLE XX

RESERVES AND FUNDING

- A. The Reinsurer shall be authorized and regulated by the Texas Department of Insurance. The Association shall receive statutory credit for reinsurance ceded to the Reinsurer. If at any point the Reinsurer becomes unauthorized the Reinsurer shall fund 100% of its portion of such reserves in respect of:
1. Loss and loss expense paid by the Association but not recovered from the Reinsurer;
 2. Known outstanding losses that have been reported to the Reinsurer and loss expense relating thereto;
 3. Reserves for loss and loss expense incurred but not reported;
 4. Other amounts recoverable in Schedule F of the Association's NAIC Statement.

The Reinsurer's Obligations shall be funded by funds withheld, cash advances, escrow account for the benefit of the Association, Letters of Credit, Trust Account, or a combination thereof.

ARTICLE XXI

THIRD PARTY RIGHTS

This Contract is solely between the Association and the Reinsurer, and in no instance shall any other party have any rights under this Contract except as expressly provided otherwise in the INSOLVENCY ARTICLE.

ARTICLE XXII

ENTIRE AGREEMENT

This written Contract constitutes the entire agreement between the parties hereto with respect to the business being reinsured hereunder, and there are no understandings between the parties hereto other than as expressed in this Contract. Any change or modification to this Contract will be made by amendment to this Contract and signed by the parties. This Article shall not be construed as

limiting in any way the admissibility, in the context of an arbitration or any other legal proceeding, of evidence regarding the formation, interpretation, purpose or intent of this Contract.

ARTICLE XXIII

SEVERABILITY

If any provision of this Contract shall be rendered illegal or unenforceable by the laws or regulations of any state, such provision shall be considered void in such state, but this shall not affect the validity or enforceability of any other provision of this Contract or the enforceability of such provision in any other jurisdiction.

ARTICLE XXIV

GOVERNING LAW

This Contract shall be governed as to performance, administration and interpretation by the laws of the State of Texas, exclusive of that state's rules with respect to conflicts of law, except as to rules with respect to credit for reinsurance in which case the applicable rules of all states shall apply.

ARTICLE XXV

ACCESS TO RECORDS

The Reinsurer or its designated representatives shall have access to the books and records of the Association on matters relating to this reinsurance at all reasonable times for the purpose of obtaining information concerning this Contract or the subject matter hereof. Notwithstanding the above, the Reinsurer shall not have any access to the books and records of the Association if it is not current in all undisputed payments due to the Association.

ARTICLE XXVI

CONFIDENTIALITY

The Reinsurer, except with the express prior written consent of the Association, shall not directly or indirectly, communicate, disclose or divulge to any third party, any knowledge or information that may be acquired either directly or indirectly as a result of the inspection of the Association's books, records and papers. The restrictions as outlined in this Article shall not apply to communication or disclosures that the Reinsurer is required to make to its statutory auditors, retrocessionaires, legal counsel, arbitrators involved in any arbitration procedures under this Contract or disclosures required upon subpoena or other duly-issued order of a court or other governmental agency or regulatory authority.

ARTICLE XXVII

INSOLVENCY

- A. In the event of the insolvency of the Association, this reinsurance shall be payable directly to the Association or to its liquidator, receiver, conservator or statutory successor, with reasonable provision for verification, on the basis of the liability of the Association without diminution because of the insolvency of the Association or because the liquidator, receiver, conservator or statutory successor of the Association has failed to pay all or a portion of any claim. It is agreed, however, that the liquidator, receiver, conservator or statutory successor of the Association shall give written notice to the Reinsurer of the pendency of a claim against the Association indicating the Policy or bond reinsured which claim would involve a possible liability on the part of the Reinsurer within a reasonable time after such claim is filed in the conservation or liquidation proceeding or in the receivership, and that during the pendency of such claim, the Reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses that it may deem available to the Association or its liquidator, receiver, conservator or statutory successor. The expense thus incurred by the Reinsurer shall be chargeable, subject to the approval of the Court, against the Association as part of the expense of conservation or liquidation to the extent of a proportionate share of the benefit which may accrue to the Association solely as a result of the defense undertaken by the Reinsurer.
- B. It is further agreed that, in the event of the insolvency of the Association, the reinsurance under this Contract shall be payable directly by the Reinsurer to the Association or its liquidator, receiver, conservator, or statutory successor, except as provided by Section 4118(a) of the New York Insurance Law or except (1) where this Contract specifically provides another payee of such reinsurance in the event of the insolvency of the Association or (2) where the Reinsurer with the consent of the direct insured or insureds has assumed such Policy obligations of the Association as direct obligations of the Reinsurer to the payee under such Policies and in substitution for the obligations of the Association to such payees.
- C. In the event of the insolvency of any company covered hereunder, the laws of the State of Texas shall apply. In the event of a conflict between any provision of this Article and Texas law, Texas law shall prevail.

ARTICLE XXIII

ARBITRATION

- A. As a condition precedent to any right of action hereunder, in the event of any dispute or difference of opinion hereafter arising with respect to this Contract, it is hereby mutually agreed that such dispute or difference of opinion shall be submitted to arbitration. One Arbitrator shall be chosen by the Association, the other by the Reinsurer, and an Umpire shall be chosen by the two Arbitrators before they enter upon arbitration, all of whom shall be active or retired disinterested executive officers of insurance or reinsurance companies or

Lloyd's London Underwriters. In the event that either party should fail to choose an Arbiter within 30 days following a written request by the other party to do so, the requesting party may choose two Arbiters who shall in turn choose an Umpire before entering upon arbitration. If the two Arbiters fail to agree upon the selection of an Umpire within 30 days following their appointment, each Arbiter shall nominate three candidates within 10 days thereafter, two of whom the other shall decline, and the decision shall be made by drawing lots. In the event of the resignation or death of any Arbiter, a replacement shall be appointed in the same manner as the resigning or deceased Arbiter was appointed.

- B. Each party shall present its case to the Arbiters within 30 days following the date of appointment of the Umpire. The Arbiters shall consider this Contract as an honorable engagement rather than merely as a legal obligation and they are relieved of all judicial formalities and may abstain from following the strict rules of law. The decision of the Arbiters shall be final and binding on both parties; but failing to agree, they shall call in the Umpire and the decision of the majority shall be final and binding upon both parties.

Judgment upon the final decision of the Arbiters may be entered in any court of competent jurisdiction.

- C. Each party shall bear the expense of its own Arbiter, and shall jointly and equally bear with the other the expense of the Umpire and of the arbitration. In the event that the two Arbiters are chosen by one party, as above provided, the expense of the Arbiters, the Umpire and the arbitration shall be equally divided between the two parties.
- D. Any arbitration proceedings shall take place at a location designated by the Association, but notwithstanding the location of the arbitration, all proceedings pursuant hereto shall be governed by the law of the State of Texas

ARTICLE XXIX

EXPEDITED ARBITRATION

- A. In the event that either party demands arbitration of a dispute between the Association and the Reinsurer, and the amount in dispute is \$500,000 or less, unless the arbitration notice includes a demand for rescission of this Contract, notwithstanding the terms of the ARBITRATION ARTICLE, the dispute shall be resolved by a sole arbitrator and the following procedures shall apply.
- B. The sole arbitrator shall be chosen by mutual agreement of the parties within 15 business days after the demand for arbitration. If the parties have not chosen an arbitrator within the 15 business days after the receipt of the arbitration notice, the arbitrator shall be chosen in accordance with the Neutral Arbitrator Selection Procedure modified for a single arbitrator, established by the AIDA Reinsurance and Insurance Arbitration Society – U.S. (ARIAS) and in force on the date the arbitration is demanded. The nominated arbitrator must be available to read any written submissions and hear testimony within 60 calendar days of being chosen.

- C. Within 10 business days after the arbitrator has been appointed, the parties shall be notified of deadlines for the submission of briefs and documentary evidence, as determined by the arbitrator. There shall be no discovery or hearing unless the parties agree to engage in limited discovery and/or a hearing. Also, the arbitrator can determine, without the consent of the parties, that a limited discovery and/or a limited hearing is necessary.
- D. The arbitrator shall render a decision within 10 business days after the latter of the date on which briefs are submitted or the end of the limited hearing. The decision of the arbitrator shall be in writing and shall be final and binding on both parties.
- E. Each party shall jointly and equally bear with the other party the cost of the arbitrator. The remaining costs of the arbitration shall be allocated by the arbitrator. The arbitrator may, at its discretion, award such further costs and expenses as it considers appropriate, including but not limited to attorneys' fees, to the extent permitted by law. However, the arbitrator may not award any exemplary or punitive damages.

ARTICLE XXX

SERVICE OF SUIT

(This Article is applicable if the Reinsurer is not domiciled in the United States of America and/or is not authorized in any State, Territory, or District of the United States where authorization is required by insurance regulatory authorities. This Article is not intended to conflict with or override the obligation of the parties to resolve their disputes in accordance with the ARBITRATION ARTICLE.)

- A. The Reinsurer hereby submits to the jurisdiction of any court of competent jurisdiction within the State of Texas and the parties agree that the mandatory and exclusive venue for any litigation arising out of or relating to this contract or the transactions contemplated hereby shall be state district court in Travis County, Texas. The Reinsurer hereby waives any rights to commence an action in any other court of competent jurisdiction, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States.
- B. Further, pursuant to any statute of any state, territory or district of the United States that makes provision therefor, the Reinsurer hereby designates the Commissioner of Insurance of the State of Texas, or other officer specified for that purpose in the statute, or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceedings instituted by or on behalf of the Association or any beneficiary hereunder arising out of this Contract.

ARTICLE XXXI

ORIGINAL CONDITIONS

All insurances and reinsurances falling under this Contract shall be subject to the same terms, rates, conditions, waivers and interpretations and to the same modifications, alterations, and

cancellations as the respective Policies of the Association. However, in no event shall this be construed in the same way to provide coverage outside the terms and conditions in this Contract.

ARTICLE XXXII

MODE OF EXECUTION

This Contract may be executed either by an original written ink signature of paper documents, by an exchange of facsimile copies showing the original written ink signature of paper documents, or by electronic signature by either party employing appropriate software technology as to satisfy the parties at the time of execution that the version of the document agreed to by each party shall always be capable of authentication and satisfy the same rules of evidence as written signatures. The use of any one or a combination of these methods of execution shall constitute a legally binding and valid signing of this Contract. This Contract may be executed in one or more counterparts, each of which, when duly executed, shall be deemed an original.

ARTICLE XXXIII

NO INTERMEDIARY

Neither the Association nor the Reinsurer has retained, employed or used the services of an intermediary with respect to this Contract.

NUCLEAR INCIDENT EXCLUSION CLAUSE - PHYSICAL DAMAGE -
REINSURANCE - U.S.A.

- 1) This Agreement does not cover any loss or liability accruing to the Reinsured, directly or indirectly, and whether as Insurer or Reinsurer, from any Pool of Insurers or Reinsurers formed for the purpose of covering Atomic or Nuclear Energy risks.
- 2) Without in any way restricting the operation of paragraph (1) of this Clause, this Agreement does not cover any loss or liability accruing to the Reinsured, directly or indirectly and whether as Insurer or Reinsurer, from any Insurance against Physical Damage (including business interruption or consequential loss arising out of such Physical Damage) to:
 - I. Nuclear reactor power plants including all auxiliary property on the site, or
 - II. Any other nuclear reactor installation, including laboratories handling radioactive materials in connection with reactor installations, and “critical facilities” as such, or
 - III. Installations for fabricating complete fuel elements or for processing substantial quantities of “special nuclear material,” and for reprocessing, salvaging, chemically separating, storing or disposing of “spent” nuclear fuel or waste materials, or
 - IV. Installations other than those listed in paragraph 2) III above using substantial quantities of radioactive isotopes or other products of nuclear fission.
- 3) Without in any way restricting the operations of paragraphs 1) and 2) hereof, this Agreement does not cover any loss or liability by radioactive contamination accruing to the Reinsured, directly or indirectly, and whether as Insurer or Reinsurer, from any insurance on property which is on the same site as a nuclear reactor power plant or other nuclear installation and which normally would be insured therewith except that this paragraph 3) shall not operate
 - a) where the Reinsured does not have knowledge of such nuclear reactor power plant or nuclear installation, or
 - b) where said insurance contains a provision excluding coverage for damage to property caused by or resulting from radioactive contamination, however caused. However, on and after 1st, January 1960, this subparagraph b) shall only apply provided the said radioactive contamination exclusion provision has been approved by the Government Authority having jurisdiction thereof.
- 4) Without in any way restricting the operations of paragraphs 1), 2) and 3) hereof, this Agreement does not cover any loss or liability by radioactive contamination accruing to the Reinsured, directly or indirectly, and whether as Insurer or Reinsurer, when such radioactive contamination is a named hazard specifically insured against.

- 5) It is understood and agreed that this Clause shall not extend to risks using radioactive isotopes in any form where the nuclear exposure is not considered by the Reinsured to be the primary hazard.
- 6) The term “special nuclear material” shall have the meaning given it in the Atomic Energy Act of 1954, or by any law amendatory thereof.
- 7) Reinsured to be sole judge of what constitutes:
 - c) substantial quantities, and
 - d) the extent of installation, plant or site.

NOTE: Without in any way restricting the operations of paragraph 1) hereof, it is understood and agreed that:

- e) all policies issued by the Reinsured on or before 31st, December 1957, shall be free from the application of the other provisions of this Clause until expiry date or 31st, December 1960, whichever first occurs whereupon all the provisions of this Clause shall apply,
- f) with respect to any risk located in Canada policies issued by the Reinsured on or before 31st, December 1958, shall be free from the application of the other provisions of this Clause until expiry date or 31st, December 1960, whichever first occurs whereupon all the provisions of this Clause shall apply.

TERRORISM EXCLUSION CLAUSE

Notwithstanding any provision to the contrary within this reinsurance Contract or any endorsement thereto, it is agreed that this reinsurance Contract excludes loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any act of terrorism, as defined herein, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

An act of terrorism includes any act or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organization(s) or government(s) de jure or de facto, and which:

- (i) involves violence against one or more persons; or
- (ii) involves damage to property; or
- (iii) endangers life other than that of the person committing the action; or
- (iv) creates a risk to health or safety of the public or a section of the public; or
- (v) is designed to interfere with or to disrupt an electronic system.

This reinsurance Contract also excludes loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any act of terrorism.

Notwithstanding the above and subject otherwise to the terms, conditions and limitations of this reinsurance Contract, in respect only of Personal Lines, this reinsurance Contract will pay actual loss or damage (but not related cost or expense) caused by any act of terrorism provided such act is not directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with biological, chemical, nuclear or radioactive pollution or contamination or explosion.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this Contract as of the date specified below:

Signed this _____ day of _____, 20__.

TEXAS WINDSTORM INSURANCE ASSOCIATION

By: _____

Printed Name: John W. Polak

Title: General Manager

_____ **(Reinsurer)**

By: _____

Printed Name: _____

Title: _____