

CASUALTY EXCESS OF LOSS REINSURANCE CONTRACT (FC10049109-2024)

(hereinafter, the "Contract")

EFFECTIVE: July 1, 2024

Between

Authority for California Cities Excess Liability Pool(ACCEL)

(hereinafter, the "Company")

and

Everest Reinsurance Company

(hereinafter, the "Reinsurer")

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ARTICLE 1- BUSINESS COVERED

- A. This Contract applies to all Policies covering Members, except as hereinafter excluded, which are written new or renewed during the Contract Period (“Business Covered”) and covering the following lines of business as specifically set forth in the Company’s Memorandum of Coverage on file with the Reinsurer, including any subsequent revisions, as agreed by the Reinsurer.
- Bodily Injury, Property damage, Public Officials Errors and Omissions, Employment Practices Liability, or Personal Injury
- B. The term “Policy” or “Policies”, whenever used herein, shall mean the Company’s Memorandum of Coverage, together with all applicable amendments, whether on an “Occurrence” form or a “Claims Made” form, and covering the lines of business set forth in Paragraph A.
- C. The Company and the Reinsurer have agreed on the Company’s underwriting guidelines, Memorandum of Coverage, forms, endorsements and amendments as respects the Business Covered and it is understood and agreed that the Company shall not make any material changes to the underwriting guidelines and Policies without the Reinsurer’s prior written approval. Should the Company fail to inform the Reinsurer of any such material change(s), the Reinsurer shall be excused of any liability in respect of losses under Policy(ies) affected by such change(s) and shall instead return the applicable reinsurance premiums relating to any period following the introduction of such change(s). The term “material change(s)” as used in this Contract means any deviation that potentially increases or extends the Reinsurer’s liability under this Contract in any manner or to any extent.
- D. The Company is required to submit in writing to the Reinsurer for acceptance prior to adding a prospective new Member. The Company shall advise the Reinsurer and provide underwriting information (including exposure information and loss data) for prospective new Member(s) prior to the Company issuing a bindable quotation. If said new member is accepted by the Reinsurer in writing, it shall be subject to the terms of this Contract, except as such terms are modified by such acceptance.
- E. The term “Member(s)” shall mean the entities insured under and defined in the Company’s Coverage Document, as follows:
- **City of Anaheim**
 - **City of Bakersfield**
 - **City of Burbank**
 - **City of Modesto**
 - **City of Monterey**
 - **City of Mountain View**
 - **City of Ontario**
 - **City of Palo Alto**
 - **City of Salinas**
 - **City of Santa Barbara**
 - **City of Santa Cruz**
 - **City of Santa Monica**
 - **City of Visalia**
- F. Business not within the terms of this Contract may be submitted to the Reinsurer for special acceptance and, if accepted by the Reinsurer in writing, shall be subject to all the terms of this Contract except as specifically modified by the special acceptance.

ARTICLE 2- COMMENCEMENT AND TERMINATION

- A. This Contract shall incept at 12:01 a.m., Local Standard Time, July 1, 2024, at the location of the Policy, with respect to Loss Occurrences with Dates of Loss on or after the July 1, 2024 on Policies written or renewed after the July 1, 2024 on Business Covered hereunder and shall remain in force until 12:01 a.m., Local Standard Time, July 1, 2025 (the “Contract Period.”)

- B. At expiration of the Contract Period, at the Company’s option:
 - 1. The Reinsurer shall remain liable for Net Loss subject to this Contract and arising from any Policy(ies) in force at the expiration of this Contract (“Run-Off”); however, the liability of the Reinsurer shall cease with respect to any Loss Occurrence or Claim Made with a Date of Loss subsequent to the first anniversary, natural expiration or cancellation of any such Policy(ies) ceded, whichever first occurs and in no event for any Loss Occurrence or Claim Made with a Date of Loss falling more than twelve (12) months after the expiration of the Contract Period; (being the expiration of the “Run-Off Period”) or
 - 2. The Reinsurer shall be relieved of all liability hereunder for any Loss Occurrence or Claim Made with a Date of Loss subsequent to the expiration of the Contract Period (“Cut-Off”).

- C. The Company shall pay reinsurance premium for any Run-Off period in accordance with the Article entitled **REINSURANCE PREMIUM** of this Contract. If the Company elects the Cut-Off option, the Reinsurer shall refund to the Company any unearned reinsurance premium applicable to the unexpired liability (calculated on a pro rata basis) less any commission allowed by the Reinsurer thereon at the conclusion of the Run-Off if option B(1) above is elected, or at the expiration of the Contract Period if option B(2) above is elected.

ARTICLE 3- REINSURANCE COVERAGE

The Reinsurer shall be liable for Net Loss in excess of the Underlying Insurance and the Retained Limit as defined herein.

However, in no event shall the Reinsurer’s liability for Net Loss exceed:

- 1. \$5,000,000 Any one Loss Occurrence, Wrongful act or offense for Bodily Injury, Property Damage, Public Officials Errors and Omissions, Employment Practices Liability, or Personal Injury or any combination thereof, each member in excess of underlying insurance and of your Retained Limit

- 2. \$5,000,000 Completed Operations Hazard Annual Aggregate; and

- 3. \$20,000,000 Policy Pool aggregate for the Contract Period.

Should the Underlying Insurance be fully exhausted by loss in the amount(s) set forth in the Schedule below, the coverage provided hereunder shall drop down and respond as excess reinsurance of the remaining limit(s), subject always to the Retained Limit.

Schedule of Underlying Limits Carrier	Policy Number	Effective Date	Underlying Insurance
Gemini Insurance Company	CEX09600358-11	7/1/2024	\$10,000,000 xs \$25,000,000
Great American / Starstone ANML	1827326-09 / APEICS1827326-09	7/1/2024	\$10,000,000 xs \$15,000,000

For the purposes of this Certificate:

“Underlying Insurance” shall mean the underlying primary policy(ies) Aggregate Limit(s).

“Retained Limit” shall mean the Self Insured Retention as defined in the Company’s policy(ies) reinsured by this Certificate.

ARTICLE 4- DEFINITIONS

- A. “Claim” or “Claims Made” shall follow how these terms (or similar) are defined by the Policy(ies).
- B. “Date of Loss” for any Loss Occurrence shall follow how such term (or similar) is determined under the Policy. If not addressed under the Policy, “Date of Loss” shall be determined as follows:
 - 1. The first date of injury, damage or death as determined under an “Occurrence” Policy form.
 - 2. The first date the claim is made as determined under a “Claims Made” Policy form.
- C. Declaratory Action/Relief/Judgment shall mean a) statutory process and or remedy for the determination of a justifiable controversy where plaintiff is in doubt as to his legal rights; b) binding an adjudication of the rights and status of litigants even though no consequential relief or monetary damage is awarded; or c) declaration of rights in a controversy.
- D. Ex-gratia Settlements”, as used in this Contract, will mean all settlements of losses not covered under the express terms of the Policies that are primarily motivated by the customer business relationship. “Ex-gratia Settlements” will not include settlements of losses which (1) arise from court decisions or other judicial acts or orders nor (2) settlements made to avoid costs that could be incurred in connection with potential or actual litigation relating to coverage issues arising under the Policies.
- E. “Loss Adjustment Expense” includes those expenses paid by the Company and allocated to specific claims and settlements under the Policy(ies) subject hereto (including the investigation, appraisal, adjustment, settlement of said claims, as well as normal litigation expenses and interest on judgments (if not part of indemnity), but not including declaratory judgment expenses or similar), and shall be credited with its share of any recoveries. Loss adjustment expense does not include unallocated loss adjustment expenses. Unallocated loss adjustment expense includes, but is not limited to, the salaries and expenses of any Company officials or employees or the normal overhead expenses of the Company.
- F. “Loss Occurrence” or “Occurrence” shall follow how these terms (or similar) are defined by the Policy(ies).
- G. “Member(s)” shall mean the entities insured under and defined in the Company’s Memorandum of Coverage.
- H. “Memorandum of Coverage” shall mean the policy or coverage document and any endorsement, riders, forms or other documents issued by the Company to a Member for Business Covered herein.
- I. “Net Loss” means the actual loss, including Loss Adjustment Expense, paid by the Company on its net retained liability after making deductions for all recoveries, salvages, subrogations and all claims on inuring reinsurance, whether collectible or not; provided, however, that in the event of the insolvency of the Company, payment by the Reinsurer shall be made in accordance with the provisions of the Insolvency Article. Nothing herein shall be construed to mean that losses under this Contract are not recoverable until the Company's loss has been ascertained.

ARTICLE 5- TERRITORY

The territorial limits of this Contract will be identical with those of the Company's Memorandum of Coverage.

ARTICLE 6- EXCLUSIONS

This Contract excludes anything not expressly subject to coverage under the Company's Policies. Moreover, this Contract does not apply to anything expressly excluded thereunder.

In addition, this Contract does not apply to and excludes the following:

1. Sanctions, in accordance with LMA 3100:

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

2. War.
3. Assumed reinsurance.
4. Pools (with the express exception of the Company), syndicates and associations, howsoever styled.
5. Assigned risks.
6. Fines or penalties, including but not limited to punitive damages and market conduct fines.
7. Fees and expenses of any third party administrator.
8. Insolvency.
9. Declaratory judgment/ action/ relief, or similar.
10. Extra contractual obligations.
11. Loss in excess of Policy limits.
12. Ex-gratia settlements or payments.
13. Nuclear incident and nuclear energy risks.
14. Cyber Notwithstanding anything to contrary, this Contract excludes any liability, including, but not limited to, losses, costs or expenses damage to, or loss of use of property of an insured, bodily injury, personal injury or property damage, and any loss or claim directly or indirectly caused by or arising out of cyber.

15. Terrorism Notwithstanding anything to contrary in this Certificate or anything to the contrary in any Policy, this Certificate excludes any and all coverage, including, but not limited to, coverage for loss, damage, liability cost, or expense whether arising by contract, operation of law or otherwise, that, in any way, form, or manner, directly or indirectly arises out of, is in connection with, or is related to Terrorism.

For purposes of this exclusion, "Terrorism" shall be defined as any act or any omission, whether actual, alleged, or threatened, by any person, persons, private or government entity or entities, or any other type of organization of any nature whatsoever, whether known or unknown, that causes alarm, fright, fear of danger, or apprehension for public safety in any person, persons, entity, or entities and which act or omission appears to be for political, religious, ideological, or social purposes or motives.

16. Communicable disease in accordance with the following: Notwithstanding anything to the contrary, this Contract does not cover and shall exclude all liability, loss, cost, and/or expense of any nature whatsoever, that, directly or indirectly, in whole or part, results and/or arises from, is in connection with, is related and/or contributed to, and/or is caused by any infectious and/or contagious disease, substance or condition including, but not limited to any pandemic, epidemic or other spread of pathogen, howsoever styled and whether or not declared or acknowledged as such by any government or competent authority.

17. Liability, including all loss, cost or expense, directly or indirectly arising out of, resulting as a consequence of, or related to:

- a. Asbestos; 1) Arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos products, asbestos fibers, or asbestos dust; or 2) any obligation to indemnify any party because of damage arising out of bodily injury or property damage due to an occurrence or loss due to a wrongful act or employment practices wrongful act at any time as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust; or 3) any obligations to defend any claim or suit seeking damages arising out of bodily injury or property damage due to an occurrence or loss due to a wrongful act or employment practices wrongful act, if such claim or suit results from or is contributed to any combination of the following: manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust.

In addition, any cost related to the defense, investigation, and settlement of any such claim or suit described in 1., 2., or 3 above shall also be excluded. Without limiting any provision of this Exclusion/Exclusion Endorsement, this Exclusion/Exclusion Endorsement is absolute and in no event will Reinsurer follow the fortunes of the Company.

- b. Silica, including the handling, storage or transportation of silica, disposal of silica, structures, products, property or manufacturing processes containing silica, any obligation to share in damages or repay another party or entity who must pay damages due to injury or damage resulting from silica, any warranties, whether they are expressed or implied, any supervision, instructions, recommendations, warnings or advice given or which should have been given and/or any necessary recall of products. Without limiting the foregoing this Contract also excludes any liability, including, but not limited to, losses, costs or expenses arising out of or resulting from the deleterious health effects associated with silica for any denial of access to property from any silica or cost or expense arising from the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or any manner responding to, or assessing the effects of silica sustained by an insured or another person or entity.
- c. "Fungus(i)", "Mold", Mildew or Yeast.

- d. Any “spore(s)” or toxins created or produced by or emanating from such “fungus(i), “mold(s)”, mildew or yeast or any substance, vapor, gas, or other emission or organic or inorganic body or substance produced by or arising out of any “fungus(i)”, “mold(s)”, mildew or yeast OR any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbors, nurtures or acts as a medium for any “fungus(i)”, “mold(s)”, mildew, yeast or “spore(s)” or toxins emanating therefrom regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that loss, injury, damage, cost or expense.
- e. Lead; any liability for past, present or future claims arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, exposure to, ingestion of or testing for, lead whether or not the lead is or was at any time airborne as a particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever;

It is further agreed that this reinsurance does not apply to any liability including expenses for a)The costs of clean up or removal of lead or products and materials containing lead; b)The costs of such actions as may be necessary to monitor, assess and evaluate the release or threat of same, of lead or products and materials containing lead; c) The cost of disposal of lead substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result; d) The cost of compliance with any law or regulation regarding lead.

18. Pollution

- 19. Perfluorinated Compounds: Any and all liability, including, but not limited to, losses, costs or expenses related to, arising from, or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by Perfluorinated Compounds (PFCs), in whole or part, listed as part of State or Federal guidance or regulations, and county, state, or federal directives requiring PFCs to be investigated or cleaned up including, but not limited to, perfluoroalkyl substances (PFAS or any PFAS, PFOS and PFOA-related products and chemicals), including any constituents of, additives to, or daughter or degradation by-products thereof.
- 20. Any claim or suit under any no-fault, uninsured motorist, or underinsured motorist law or any similar law.
- 21. Wage and Hour: Any and all loss, liability or expense arising out of, based upon, relating to, or attributable to any violation (whether actual or alleged, in whole or in part) of the responsibilities, obligations or duties imposed by any federal, state, or local law or common law anywhere in the world (including, but not limited to the Fair Labor Standards Act or similar) or amendments to or regulations promulgated under any such law(s) that governs wage, hour and payroll policies and practices – or any similar policies or practices – including but not limited to:
 - a. the calculation, recordkeeping, timing or manner of payment of minimum wages, prevailing wage rates or other compensation alleged to be due and owing, including the refusal, failure or inability to pay wages or overtime pay for services rendered; or
 - b. garnishments, withholdings or other deductions from wages; or
 - c. improper payroll deductions with respect to any organization or person; or
 - d. any claim due to improper classification of any organization or person for wage and hour purposes including, but not limited to instances where an organization or person is (mis)labeled as “exempt”; or
 - e. child labor; or
 - f. pay equity or comparable worth; or
 - g. any claim or any tort arising out of any the foregoing including, but not limited to allegations of unfair business practice(s).

ARTICLE 7- REINSURANCE PREMIUM

- A. Company will pay the Reinsurer premium of \$2,004,276 payable on or before July 31, 2024 for all Members subject to this Contract as of the effective date of this Contract. Subject to a minimum premium of \$2,004,276. In the event of a cancellation, a 25% minimum earned premium will be applied.
- B. As set forth in the Article entitled **BUSINESS COVERED**, any potential new Member must be submitted to and approved by the Reinsurer prior to the Company issuing a bindable quotation. Additional premium will be due.
- C. Within thirty (30) days after the expiration of the Contract Period (if Cut-Off is elected) or the expiration of the Run-Off Period (if Run-Off is elected), the Company will provide a report to the Reinsurer setting forth the premium due hereunder, computed in accordance with paragraph B, which shall be remitted with the report to the Reinsurer.

ARTICLE 8- NET RETAINED LINE

- A. This Contract applies only to that portion of any Policy which the Company retains net for its own account, and in calculating the amount of any loss hereunder and also in computing the amount or amounts in excess of which this Contract attaches, only loss or losses in respect of that portion of any Policy which the Company retains net for its own account shall be included.
- B. The amount of the Reinsurer's liability hereunder in respect of any loss or losses shall not be increased by reason of the inability of the Company to collect from any other reinsurers, whether specific or general, any amounts which may have become due from such reinsurers, whether such inability arises from the insolvency of such other reinsurers or otherwise.

ARTICLE 9- REPORTS, LOSS AND LOSS SETTLEMENTS

- A. Company shall advise the Reinsurers promptly of all losses which equal or exceed fifty percent (50%) of the Reinsured's Retentions outlined in Article 3 entitled **REINSURANCE COVERAGE** and which, in the opinion of the Reinsured, may result in a claim hereunder and of all subsequent developments thereto that may materially affect the position of the Reinsurers. (Please note this statement also applies specifically to sub-categories below B. 1,2,3 and 13 in that they do not need to notify of every loss but will notify when loss is equal or exceeds fifty percent (50%) of the Reinsured's Retentions.
- B. The Company shall provide the Reinsurer, regardless of the liability of the Member or coverage under the Policy, a written report of any Loss Occurrence involving the following categories:
 - 1. Cases involving coverage issues including, but not limited to allegations of; civil rights violations, Employment Practices Liability, Employee Benefits Liability, punitive damages, environmental liability claims, advertising injury and any other non-specific coverage question.
 - 2. Any claim assigned a trial date, as soon as the trial date is on the court calendar.
 - 3. Claims involving allegations of harassment, including but not limited to sexual, employment-based or third-party, bullying or any other actionable harassment.
 - 4. Any claim involving Sexual Misconduct or molestation – including allegations of assault, misconduct, rape and related offenses.
 - 5. Class Action lawsuits
 - 6. Fatalities.
 - 7. Spinal Cord injuries resulting in any degree of paraplegia or quadriplegia.
 - 8. Nerve damage injuries resulting in paralysis or loss of sensation.

9. Brain damage claims including; but not limited to, closed head injuries, permanent disorientation, behavior disorder, personality change, seizure, motor deficit or other cognitive disorders.
 10. Burns – Third degree burns involving 10% of the body, or second-degree burns involving 30% of the body.
 11. Amputation – complete or partial.
 12. Impairment of vision or hearing – 50% or greater.
 13. Multiple injuries arising out of one occurrence, including but not limited to; massive internal injuries or multiple fractures involving more than one member or multiple claimants
- C. All loss settlements made by the Company, provided these are made under the strict terms and conditions of the Policy and of this Contract, shall be binding upon the Reinsurer, and the Reinsurer agrees to pay or allow, as the case may be, each such settlement within thirty (30) calendar days of receipt of verification of proof of loss satisfactory to Reinsurer.
- D. It is understood that when so requested the Company will afford the Reinsurer an opportunity to be associated with the Company, at the expense of the Reinsurer, in the adjustment, settlement or defense of any claim, suit or proceeding involving this Contract; and the Company and the Reinsurer shall cooperate in every respect in the adjustment, settlement or defense of such claim, suit or proceeding

ARTICLE 10- SALVAGE AND SUBROGATION

- A. The Reinsurer shall be subrogated, as respects any loss for which the Reinsurer shall actually pay or become liable, but only to the extent of the amount of payment by or the amount of liability to the Reinsurer, to all the rights of the Company against any person or other entity who may be legally responsible in damages for said loss. The Company hereby agrees to enforce its rights to salvage or subrogation relating to any loss, a part of which loss was sustained by the Reinsurer, and to prosecute all claims arising out of such rights. However, in the event that the Company neglects to do so, the Reinsurer is hereby authorized and empowered to bring any appropriate action in the name of the Company or its Member(s), or otherwise to enforce such rights. The Reinsurer shall promptly remit to the Company the amount of any recovery obtained net of the expenses sustained in such an action in excess of the amount of payment by, or the amount of liability to, the Reinsurer hereunder.

ARTICLE 11- ERRORS AND OMISSION

Inadvertent delays, errors or omissions made by the Company in connection with this Contract shall not relieve the Reinsurer from any liability which would have attached had such delay, error or omission not occurred, provided always that such shall be rectified immediately provided that the liability of the Reinsurer shall not exceed beyond the coverage provided by this Contract nor to extend coverage to the Coverage Document that are not the Business Covered hereunder.

ARTICLE 12- CURRENCY

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. Amounts paid or received by the Company 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 Company.

ARTICLE 13 - TAXES

In consideration of the terms under which this Contract is issued, the Company undertakes not to claim any deduction of the premium hereon when making tax returns, other than income or profits tax returns, to the appropriate tax authorities.

ARTICLE 14- ACCESS TO RECORDS

The Company shall place at the disposal of the Reinsurer and the Reinsurer shall have the right to inspect, through its authorized representatives, at all reasonable times during the currency of this Contract and thereafter, the books, records and papers of the Company (or to which the Company has access) and which in any manner relates to the subject matter of the business reinsured hereunder or this Contract

ARTICLE 15- ARBITRATION

- A. Any dispute arising out of the interpretation, performance or breach of this Contract, including the formation or validity thereof, shall be submitted for decision to a panel of three arbitrators. Notice requesting arbitration shall be in writing and sent certified or registered mail, return receipt requested.
- B. One arbitrator shall be chosen by each party and the two arbitrators shall then choose an impartial third arbitrator who shall preside at the hearing. If either party fails to appoint its arbitrator within 30 days after being requested to do so by the other party, the latter, after 10 days' prior notice by certified or registered mail of its intention to do so, may appoint the second arbitrator.
- C. If the two arbitrators do not agree on a third arbitrator within 60 days of their appointment, the third arbitrator shall be chosen in accordance with the procedures for selecting the third arbitrator in force on the date the arbitration is demanded, established by the AIDA Reinsurance and Insurance Arbitration Society – U.S. (ARIAS). The arbitrators shall be retired executives of insurance or reinsurance companies who have no personal or financial interest in the result of the arbitration. If a member of the panel dies, becomes disabled or is otherwise unwilling or unable to serve, a substitute shall be selected in the same manner as the departing member was chosen and the arbitration shall continue.
- D. Within 30 days after all arbitrators have been appointed, the panel shall meet and determine timely periods for briefs, discovery procedures and schedules of hearings.
- E. The panel shall be relieved of all judicial formality and shall not be bound by the strict rules of procedure and evidence. Notwithstanding anything to the contrary in this Contract, the arbitrators may at their discretion, consider underwriting and placement information provided by the Company to the Reinsurer, as well as any correspondence exchanged by the parties that is related to this Contract. The arbitration shall take place in Warren, New Jersey or at such other place as the parties shall agree. The decision of any two arbitrators shall be in writing and shall be final and binding. The panel is empowered to grant interim relief as it may deem appropriate.
- F. The panel shall interpret this Contract as an honorable engagement rather than as merely a legal obligation and shall make its decision considering the custom and practice of the applicable insurance and reinsurance business as promptly as possible after the hearings. Judgment upon an award may be entered in any court having jurisdiction thereof.
- G. Each party shall bear the expense of its own arbitrator and its own attorney(ies) and shall jointly and equally bear with the other party the cost of the third arbitrator. The remaining costs of the arbitration shall be allocated by the panel.

ARTICLE 16- INSOLVENCY

In the event of the insolvency of the Company, the reinsurance provided by this Contract shall be payable by the Reinsurer directly to the liquidator on the basis of the amount of claim allowed in the insolvency proceeding without diminution by reason of the inability of the Company to pay all or any part of the claim. The Reinsurer shall be given written notice of the pendency of each claim against the Company on the policy(ies) reinsured hereunder within a reasonable time after such claim is filed in the insolvency proceedings. The Reinsurer shall have the right to investigate each such claim and interpose, at its own expense, in the proceedings where such claim is to be adjudicated, any defenses which it may deem available to the Company or its liquidator, the expense thus incurred by the Reinsurer shall be chargeable, subject to court approval, against the insolvent Company as part of the expense of liquidation to the extent of the proportionate share of the benefit which may accrue to the Company solely as the result of the defense undertaken by the Reinsurer

ARTICLE 17 - NO THIRD PARTY RIGHTS

This Contract is solely between the Company and the Reinsurer, and in no instance shall any Member, claimant or other third party have any rights under this Contract except as may be expressly provided otherwise herein.

ARTICLE 18 - OFFSET

The Company and the Reinsurer may offset any balance or amount due from one party to the other under this Contract or any other contract heretofore or hereafter entered into between the Company and the Reinsurer, whether acting as assuming reinsurer or ceding company. However, in the event of the insolvency of any party hereto, offset shall only be allowed in accordance with applicable law.

ARTICLE 19 – GOVERNING LAW

This Contract shall be governed as to performance, administration and interpretation by the laws of New Jersey, exclusive of the rules with respect to conflicts of law.

ARTICLE 20 – ENTIRE AGREEMENT

This Contract sets forth all of the duties and obligations between the Company and the Reinsurer and supersedes any and all prior or contemporaneous written agreements with respect to matters referred to in this Contract. This Contract may not be modified or changed except by an amendment to this Contract in writing signed by both parties. However, this Article shall not be construed as limiting the admissibility of evidence regarding the formation, interpretation, purpose or intent of this Contract.

ARTICLE 21- SEVERABILITY

If any provision of this Contract shall be rendered illegal or unenforceable by laws, regulation or public policy of any applicable jurisdiction, such provision shall be considered void in such jurisdiction, but 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 22 – UNAUTHORIZED REINSURANCE

- A. This Article applies only to the extent the Reinsurer does not qualify for credit with any insurance regulatory authority having jurisdiction over the Company's reserves.
- B. The Company agrees, in respect of its Policies falling within the scope of this Contract, that when it files with its insurance regulatory authority, or sets up on its books liabilities as required by law, it shall forward to the Reinsurer a statement showing the proportion of such liabilities applicable to the Reinsurer. The “Reinsurer’s Obligations” shall be defined as follows:
 - 1. unearned premium (if applicable);
 - 2. known outstanding losses that have been reported to the Reinsurer and Loss Adjustment Expense relating thereto;
 - 3. losses and Loss Adjustment Expense paid by the Company but not recovered from the Reinsurer;
 - 4. losses incurred but not reported and Loss Adjustment Expense relating thereto;
 - 5. all other amounts for which the Company cannot take credit on its financial statements unless funding is provided by the Reinsurer.

- C. The Reinsurer's Obligations shall be funded by funds withheld, cash advances, Trust Agreement or a Letter of Credit (LOC). The Reinsurer shall have the option of determining the method of funding provided it is acceptable to the insurance regulatory authorities having jurisdiction over the Company's reserves.
- D. When funding by Trust Agreement, the Reinsurer shall ensure that the Trust Agreement complies with the provisions of the "Trust Agreement Requirements Clause" attached hereto. When funding by an LOC, the Reinsurer agrees to apply for and secure timely delivery to the Company of a clean, irrevocable and unconditional LOC issued by a bank and containing provisions acceptable to the insurance regulatory authorities having jurisdiction over the Company's reserves in an amount equal to the Reinsurer's Obligations. Such LOC shall be issued for a period of not less than one year, and shall be automatically extended for one year from its date of expiration or any future expiration date unless 30 days (or such other time period as may be required by insurance regulatory authorities), prior to any expiration date the issuing bank shall notify the Company by certified or registered mail that the issuing bank elects not to consider the LOC extended for any additional period.
- E. The Reinsurer and the Company agree that any funding provided by the Reinsurer pursuant to the provisions of this Contract may be drawn upon at any time, notwithstanding any other provision of this Contract, and be utilized by the Company or any successor, by operation of law, of the Company including, without limitation, any liquidator, rehabilitator, receiver or conservator of the Company, for the following purposes, unless otherwise provided for in a separate Trust Agreement:
1. to reimburse the Company for the Reinsurer's Obligations, the payment of which is due under the terms of this Contract and that has not been otherwise paid;
 2. to make refund of any sum that is in excess of the actual amount required to pay the Reinsurer's Obligations under this Contract (or in excess of 102% of the Reinsurer's Obligations, if funding is provided by a Trust Agreement);
 3. to fund an account with the Company for the Reinsurer's Obligations if such LOC is under notice of non-renewal or not replaced by the Reinsurer within 10 days prior to its expiration. Such cash deposit shall be held in an interest bearing account separate from the Company's other assets, and interest thereon not in excess of the prime rate shall accrue to the benefit of the Reinsurer. Any taxes payable on accrued interest shall be paid out of the assets in the account that are in excess of the Reinsurer's Obligations (or in excess of 102% of the Reinsurer's Obligations, if funding is provided by a Trust Agreement). If the assets are inadequate to pay taxes, any taxes due shall be paid or reimbursed by the Reinsurer;
 4. to pay the Reinsurer's share of any other amounts the Company claims are due under this Contract.
- F. If the amount drawn by the Company is in excess of the actual amount required for E(1) or E(3), or in the case of E(4), the actual amount determined to be due, the Company shall promptly return to the Reinsurer the excess amount so drawn. All of the foregoing shall be applied without diminution because of insolvency on the part of the Company or the Reinsurer.
- G. The issuing bank shall have no responsibility whatsoever in connection with the propriety of withdrawals made by the Company or the disposition of funds withdrawn, except to ensure that withdrawals are made only upon the order of properly authorized representatives of the Company.
- H. At annual intervals, or more frequently at the discretion of the Company, but never more frequently than quarterly, the Company shall prepare a specific statement of the Reinsurer's Obligations for the sole purpose of amending the LOC or other method of funding, in the following manner:
1. If the statement shows that the Reinsurer's Obligations exceed the balance of the LOC as of the statement date, the Reinsurer shall, within 30 days after receipt of the statement, secure delivery to the

Company of an amendment to the LOC increasing the amount of credit by the amount of such difference. Should another method of funding be used, the Reinsurer shall, within the time period outlined above, increase such funding by the amount of such difference.

2. If, however, the statement shows that the Reinsurer's Obligations are less than the balance of the LOC (or that 102% of the Reinsurer's Obligations are less than the trust account balance if funding is provided by a Trust Agreement), as of the statement date, the Company shall, within 30 days after receipt of written request from the Reinsurer, release such excess credit by agreeing to secure an amendment to the LOC reducing the amount of credit available by the amount of such excess credit. Should another method of funding be used, the Company shall, within the time period outlined above, decrease such funding by the amount of such excess.

ARTICLE 23 – SERVICE OF SUIT

- A. This Article applies only if the Reinsurer is not domiciled in the United States of America, and/or not authorized in any state, territory and/or district of the United States of America where authorization is required by insurance regulatory authorities.
- B. This Article shall not be read to conflict with or override the obligations of the parties to arbitrate their disputes as provided for in the Arbitration Article. This Article is intended as an aid to compelling arbitration or enforcing such arbitration or arbitral award, not as an alternative to the Arbitration Article for resolving disputes arising out of this Contract.
- C. In the event of the failure of the Reinsurer to perform its obligations hereunder, the Reinsurer, at the request of the Company, shall submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Article constitutes or should be understood to constitute a waiver of the Reinsurer's rights to commence an action in any court of competent jurisdiction in the United States, 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. The Reinsurer, once the appropriate court is selected, whether such court is the one originally chosen by the Company and accepted by Reinsurer or is determined by removal, transfer, or otherwise, as provided for above, shall comply with all requirements necessary to give said court jurisdiction and, in any suit instituted against the Reinsurer upon this Contract, shall abide by the final decision of such court or of any appellate court in the event of an appeal.
- D. Service of process in such suit may be made upon: Messrs. Mendes and Mount, 750 Seventh Avenue, New York, New York 10019-6829.

The above-named are authorized and directed to accept service of process on behalf of the Reinsurer in any such suit.

- E. Further, pursuant to any statute of any state, territory or district of the United States that makes provision therefor, the Reinsurer hereby designates the Superintendent, Commissioner or Director of Insurance, 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 proceeding instituted by or on behalf of the Company or any beneficiary hereunder arising out of this Contract, and hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

ARTICLE 24 - MODE OF EXECUTION

- A. This Contract may be executed by:
1. an original written ink signature of paper documents;
 2. an exchange of facsimile copies showing the original written ink signature of paper documents;
 3. electronic signature technology employing computer software and a digital signature or digitizer pen pad to capture a person's handwritten signature in such a manner that the signature is unique to the person signing, is under the sole control of the person signing, is capable of verification to authenticate the signature and is linked to the document signed in such a manner that if the data is changed, such signature is invalidated.
- B. 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 25 - INTERMEDIARY

AmWins Insurance Brokerage, LLC is hereby recognized as the intermediary negotiating this reinsurance for all business hereunder. All communications (including but not limited to notices, statements, premiums, return premiums, commissions, taxes, losses, loss adjustment expense, salvages, and loss settlements) relating thereto shall be transmitted to the ceding carrier or reinsurer through AmWins Insurance Brokerage, LLC. Payment by the ceding carrier to AmWins Insurance Brokerage, LLC shall be deemed to constitute payment to the reinsurer. Payment by the reinsurer to AmWins Insurance Brokerage, LLC shall be deemed only to constitute payment to the ceding carrier to the extent that such payments are actually received by the ceding carrier.

In Witness Whereof, the parties hereto by their respective duly authorized representatives have executed this Contract as of the dates undermentioned at:

Company Name

Signed by: _____

Printed Name: _____

Title: _____

This _____ (day) of _____ (month), 20 ____ (year)

AND

Everest Reinsurance Company

Signed by: _____

Printed Name: _____

Title: _____

This _____ (day) of _____ (month), 20 ____ (year)