

## **CLAIM SERVICE AGREEMENT**

This Claim Service Agreement (as it may be amended from time to time, this “Agreement”), dated as of \_\_\_\_\_, \_\_, 2009, by and between [.....], a New York Insurance Company (“Purchaser”), Eric R. Dinallo, Superintendent of Insurance of the State of New York in his capacity as liquidator (the “Liquidator”) of the Midland Insurance Company, a New York insurance company in liquidation, and [.....], an affiliate of the Purchaser, as third party claim administrator (the “Administrator”). The Liquidator, Purchaser and Administrator are each a “Party” and are collectively referred to herein as the “Parties.”

### **RECITALS**

**WHEREAS**, the Company is currently the subject of liquidation proceedings pending in the Supreme Court of the State of New York, County of New York: IAS Part 7 (the “Receivership Court”) case number 41294/1986;

**WHEREAS**, the Receivership Court has confirmed the Plan<sup>1</sup> pursuant to which the Liquidator has solicited offers to assume the management of the Company pursuant to this Agreement;

**WHEREAS**, the Receivership Court determined that the offer set forth in the Purchase Agreement between the Purchaser and the Liquidator is the highest and best offer, and that it is in the best interest of the Company and the Company’s creditors;

**WHEREAS**, contemporaneously with this Agreement, the Purchaser and the Liquidator are entering into the Purchase Agreement and the Purchaser Reinsurance Agreement;

**WHEREAS**, in conjunction with the Purchase Agreement, the Parties wish for the Administrator to assume the role of administrator of certain claims against the Estate; and

**NOW THEREFORE**, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein and other valuable consideration, the Parties, intending to be legally bound, hereby agree as follows:

### **ARTICLE 1** **THE ADMINISTRATOR**

Section 1.1 Appointment of Administrator. As of the Closing Date, the Administrator is hereby engaged to provide to the Liquidator the services hereafter described. The Administrator’s actions on behalf of the Liquidator will be subject to the restrictions, procedures

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<sup>1</sup> Capitalized terms, when used in this Agreement or any subsequent amendments or modifications thereof, shall have the meanings set forth herein or in Appendix A attached hereto or in the Purchase Agreement or the Plan.

and guidelines set out in applicable provisions of the Insurance Law, the orders and rulings of the Receivership Court and the direction of the Liquidator.

Section 1.2 Responsibilities of Administrator. The Administrator will operate in a good faith and commercially reasonable manner when taking actions permitted by the terms of this Agreement. The Administrator will perform the following services and activities (“Services”) at the Liquidator’s direction:

(a) Review and analyze Disputed Opt-Out Claims, determine coverage and exposure of Disputed Opt-Out Claims and make recommendations to the Liquidator with respect to the Allowance or Disallowance thereof;

(b) Conduct audits of the Policyholder Claims to determine accuracy of data submitted in connection with Disputed Opt-Out Claims;

(c) Prepare any necessary agreements, pleadings or other papers in connection with the settlement of Disputed Opt-Out Claims and the Allowance or Disallowance thereof;

(d) Prepare for the Liquidator’s use initial and supplemental settlement/reserve authority reports on the largest Disputed Opt-Out Claims;

(e) Attend meetings of the Liquidator’s staff to present requests for Allowance or Disallowance of Claims, changes of reserves and for such other purposes as the Liquidator may reasonably request;

(f) Present any Allowed Claims to Reinsurers under Reinsurance Agreements, present any claims under Retrocession Agreements and take such action as may be necessary and appropriate to collect amounts owing under Reinsurance Agreements and Retrocession Agreements;

(g) Arrange for Distributions with respect to Allowed Claims as provided by the Plan, the Purchase Agreement and the Ancillary Agreements;

(h) Communicate on behalf of the Liquidator with the Holders of Disputed Opt-Out Claims and Reinsurers as required to obtain relevant claims information and maintain effective relations with such Holders and Reinsurers;

(i) At the request of the Liquidator, seek reimbursement or recovery by way of salvage, subrogation or otherwise with respect to any Policyholder Claim paid by the Purchaser;

(j) When and to the extent requested by the Liquidator, arrange for legal representation of the Liquidator in connection with any legal proceeding relating to the above services, including representing the Liquidator in court proceedings, the preparation of legal papers and other legal support;

(k) At the Liquidator’s discretion, arrange for the payment of Distributions with respect to Allowed Opt-Out Claims twice per annum in accordance with the Plan;

(l) At the Liquidator's request, assist in the investigation and adjustment of Claims of Cedents pursuant to Section 8.2.4 of the Plan;

(m) Report unclaimed Distributions to the Liquidator and transfer funds related to those Distributions to the Liquidator pursuant to Section 13.1 of the Plan; and

(n) Perform such other and further services in connection with the Disputed Opt-Out Claims, and the administrative duties of the Liquidator under the Plan, the Purchase Agreement and Ancillary Agreements or any related services as the Liquidator shall reasonably request from time to time.

Section 1.3 Approval of Actions by the Liquidator. The Liquidator shall maintain final authority on all matters pertaining to the Company, the Estate, Disputed Opt-Out Claims, Reinsurance Agreements and requests for Allowance of Opt-In Claims before the Receivership Court after payment by the Purchaser.

Section 1.4 Incurrence of Allocated Loss Adjustment Expense. The Administrator may incur reasonable Allocated Loss Adjustment Expense in connection with the resolution of Disputed Opt-Out Claims. The Purchaser shall reimburse the Administrator for such reasonable Allocated Loss Adjustment Expenses. The Administrator shall not have recourse to the Liquidator or the Estate for such Allocated Loss Adjustment Expenses.

Section 1.5 Compensation. The consideration for the Services is exclusively the consideration provided under the Purchase Agreement entered into pursuant to the Plan, the sufficiency of which is mutually agreed, and no additional consideration shall be paid by the Liquidator to the Administrator for the Services either hereunder or otherwise. The Administrator shall not have recourse to the Liquidator or the Estate for such services.

## **ARTICLE 2** **ADJUSTMENT OF CLAIMS AND PAYMENT TO CLAIMANTS**

Section 2.1 Disputed Opt-Out Claims. The Administrator shall comply with all procedures established by the Plan, the Purchase Agreement, the Ancillary Agreements and the Receivership Court with respect to the Allowance or Disallowance of Claims, including, without limitation, the ADR Procedures.

## **ARTICLE 3** **TRANSITION ISSUES**

Section 3.1 Cooperation; Transfer of Assets, Books and Records. Commencing on the Closing Date, Liquidator shall deliver possession to the Administrator of originals or copies of such books, records, data, files and other property of the Company which will be needed by the Administrator to perform its obligations hereunder. The Liquidator shall retain such original receivership documents as may be required by the Insurance Law. The Liquidator shall arrange to transfer any electronic data and software pertaining to the receivership as may be reasonably necessary for the performance by the Administrator of its obligations hereunder.

Section 3.2 No Obligation to Engage Personnel of Liquidator. The Administrator shall not be obligated to retain or engage any personnel of the Liquidator or professionals engaged by the Liquidator after the Effective Date. The Administrator shall not retain or engage any personnel of the Liquidator or professionals engaged by the Liquidator after the Effective Date without the Liquidator's prior written consent.

#### **ARTICLE 4** **OTHER AGREEMENTS**

Section 4.1 Failure of Effectiveness. The Parties hereto agree that in the event the Closing Date does not occur for any reason prior to [ ], or such other date as is mutually agreed upon in writing between the Parties, then this Agreement shall become null and void and of no further force and effect, and this Agreement and all negotiations and proceedings relating thereto shall be without prejudice to the Parties, who shall be restored to their respective positions prior to execution of this Agreement, with each Party to bear its own cost and expenses.

Section 4.2 Insurance Requirements. Administrator hereby agrees and covenants with the Liquidator that, from the date hereof, Administrator, at its own expense, shall maintain insurance with respect to any of Administrator's assets, wherever located, that are necessary to the fulfillment of all of Administrator's obligations under this Agreement, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses as Administrator. Administrator also agrees to maintain business interruption, applicable professional liability (including, but not limited to errors and omissions), public liability, and product liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation. All such policies of insurance shall be with responsible and reputable insurance companies and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event in amount, adequacy and scope reasonably satisfactory to the Liquidator.

Section 4.3 Inspection Rights. Administrator hereby agrees and covenants with the Liquidator that Administrator will permit the Liquidator and each of its duly authorized representatives or agents to visit any of Administrator's properties and inspect any of its assets or books and records, to examine and make copies of its books and records, including examination of information pertaining to Allocated Loss Adjustment Expenses, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and intervals as the Liquidator may designate and, so long as an Event of Default (hereafter defined) does not exist, with reasonable prior notice to Administrator.

Section 4.4 Maintain Existence; Merger. Administrator hereby agrees and covenants with the Liquidator that Administrator shall keep in full effect its existence, rights and franchises under the Laws of the State of [ ], and will obtain and preserve its qualification to do business in New York and each other jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement. Administrator shall not consolidate with or merge into any other Person or convey, transfer or lease substantially all of its assets as an entirety to any Person unless the Person formed by such consolidation or into which Administrator has merged or the Person which acquires by conveyance, transfer or lease

substantially all the assets of Administrator as an entirety, can lawfully and properly perform the obligations of Administrator hereunder and executes and delivers to the Liquidator an agreement, in form and substance reasonably satisfactory to the Liquidator, which contains an assumption by such Person of the due and punctual performance and satisfaction of each covenant, obligation and condition to be performed or satisfied by Administrator under this Agreement. Under all circumstances, Administrator acknowledges that it must obtain the prior written consent of the Liquidator prior to Administrator's consolidation with or merger into any other Person or conveyance, transfer or lease of substantially all of Administrator's assets as an entirety to any other Person.

Section 4.5 Notice of Event of Default. Administrator hereby agrees and covenants with the Liquidator that Administrator will furnish the Liquidator with written notice of the occurrence of any Event of Default promptly, and in any event within five (5) days, after obtaining knowledge thereof, specifying in such notice the nature of such event of default and the action which Administrator is taking or proposes to take with respect thereto.

## **ARTICLE 5** **REPRESENTATIONS AND WARRANTIES**

Section 5.1 Representations and Warranties. As an inducement to the Liquidator to enter into this Agreement and to consummate the transactions contemplated hereby, the Administrator hereby represents and warrants to the Liquidator as of the date hereof and as of the Effective Date:

(a) Corporate Existence and Power. Administrator is a [ ] company duly organized, validly existing and in good standing under the Laws of [ ], and has all the requisite power and authority to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated under this Agreement. Administrator holds all necessary licenses, permits, authorizations and qualifications necessary to conduct its business and all aspects of the business contemplated by this Agreement.

(b) Authorization. The execution, delivery, and compliance with the terms of this Agreement and the performance by Administrator of its obligations hereunder have been duly and validly authorized by all necessary action on the part of Administrator, including the approval of the Board of Directors of Administrator. This Agreement has been duly executed and delivered by Administrator. This Agreement constitutes, and each other document executed and delivered or to be executed and delivered by Administrator pursuant to this Agreement will, upon such execution and delivery, constitute a legal, valid and binding obligation of Administrator enforceable against Administrator in accordance with its terms.

(c) Non-Contravention; Governmental Approvals. The execution and delivery of this Agreement by Administrator do not, and the performance of its obligations under this Agreement will not:

(i) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under, any of the terms, conditions or provisions of the certificate of formation, limited liability company agreement or similar organizational documents of Administrator;

(ii) violate any term or provision of any statute, Law, regulation or rule or any writ, judgment, decree, injunction, or similar order, or any agreement with any governmental or regulatory authority applicable to Administrator; or

(iii) require Administrator to obtain any material consent, approval, or action of, or make any material filing with or give any notice to, any Person.

(d) No Proceedings. There are no legal actions against or affecting Administrator which would restrain, enjoin, prohibit or in any way impair the ability of Administrator to consummate any of the transactions contemplated herein or to perform any of its obligations hereunder, including suits, claims, or investigations pending or, to the knowledge of Administrator threatened, nor any legal, administrative or arbitration proceedings pending or to the knowledge of administrator threatened, nor is there any outstanding order, writ, injunction or decree of any court, governmental agency or arbitration tribunal.

(e) Due Consideration. The consummation of the transactions contemplated by this Agreement have been executed and delivered by Administrator in good faith and in exchange for reasonably equivalent value.

(f) Access to Information. Administrator acknowledges that it has been furnished with such documents, materials and information as Administrator deems necessary or appropriate for evaluating the transaction contemplated by this Agreement. Administrator confirms that it has made such further investigation of the Company as was deemed appropriate to evaluate the merits and risks of this Agreement. Administrator further acknowledges that it has had the opportunity to ask questions of, and receive answers from, the Liquidator and Persons acting on the Liquidator's behalf, concerning the terms and conditions of the transaction contemplated by this Agreement.

(g) No Pre-Merger Notification Filings. Administrator has reasonably determined in good faith that no pre-merger notification is required to be filed with the Federal Trade Commission and the Antitrust Division of the Department of Justice under the HSR Act with respect to the transactions contemplated hereby.

(h) No Broker Fees. Neither Administrator nor any Person acting on its behalf has paid or become obligated to pay any fee or commission to any broker, finder or intermediary for or on account of the transactions contemplated by this Agreement.

## **ARTICLE 6** **TERMINATION**

Section 6.1 Term and Termination. Except as provided in Article 7, this Agreement shall continue until the earlier of: (i) the date upon which the Receivership Case is closed; or (ii) an early termination date mutually agreed upon in writing by the Liquidator and Administrator.

Section 6.2 Effect of Termination. Upon termination under this Article 6, the Administrator shall deliver to the Liquidator such books, records, documents, data and copies of

software or other computer programs as the Liquidator shall request or as may be required by applicable law.

## **ARTICLE 7** **EVENTS OF DEFAULTS; REMEDIES**

Section 7.1 Events of Default. The occurrence of any of the following events (each, an “Event of Default”) shall be considered an Event of Default hereunder:

(a) The Administrator shall have breached any of its obligations hereunder and shall have failed to cure such breach within ten (10) business days of receipt of notice of such breach from the Liquidator, unless such breach cannot reasonably be cured within ten (10) business days, in which case, the period to cure shall be as set forth by the Liquidator, in his sole discretion, in such notice.

(b) Any representation or warranty made, or deemed made, by Administrator herein shall prove to have been materially incorrect when made or deemed made.

(c) Administrator shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against Administrator seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of thirty (30) days, or any of the actions sought in such proceeding (including the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or Administrator shall take any corporate action to authorize any of the actions set forth above in this subsection (c).

(d) Any Event of Default under the Plan, the Purchase Agreement or any Ancillary Agreement shall have occurred.

Section 7.2 Remedies. If an Event of Default shall have occurred and be continuing, the Regulator shall be entitled to the following rights and remedies:

(a) The Liquidator shall have the right to terminate this Agreement immediately upon written notice to the Administrator.

(b) The Liquidator shall be entitled to specific performance of any obligation under this Agreement.

(c) The Liquidator shall have the right to demand that Administrator immediately deliver to the Liquidator such books, records, documents, data and copies of software or other computer programs as the Liquidator shall request or as may be required by

applicable law and the Administrator shall, upon such demand, be required to comply with such demand.

(d) The Liquidator shall be entitled to recover from the Administrator damages for the cost and expenses of engaging an alternate administrator to furnish the Services described in Section 1.2 hereof or the cost and expenses incurred by the Liquidator in the event that the Liquidator undertakes such services without the use of a third party.

(e) The Liquidator shall have the right to enforce all of the rights hereunder simultaneously and any other rights or remedies which the Liquidator may have under the Plan, the Purchase Agreement and the Ancillary Agreements. Such rights and remedies shall be cumulative with the foregoing rights and remedies, and shall not be exclusive of other rights which the Liquidator may have under applicable Law.

## **ARTICLE 8** **MISCELLANEOUS**

Section 8.1 Entire Agreement; Amendments. This Agreement, the Plan, the Purchase Agreement, the Ancillary Agreements, the Annexes, Exhibits and Schedules referred to herein, and the Confidentiality Agreement contain the entire understanding of the Parties hereto with regard to the subject matter contained herein or therein, and supersede all other prior representations, warranties, agreements, understandings or letters of intent between or among any of the Parties hereto. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties hereto.

### Section 8.2 Rules of Construction.

(a) Capitalized terms which are used in this Agreement, and not otherwise defined herein, shall have the meanings ascribed to them in Appendix A.

(b) For purposes of this Agreement:

(i) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; and

(ii) the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar meaning refer to this Agreement as a whole and not to any particular article, section, subsection or clause contained in this Agreement (unless there is specific reference to such article, section, subsection or clause); and



- (c) Unless the context otherwise requires, references herein:
- (i) to Annexes, Articles, Sections, Exhibits and Schedules mean the Articles and Sections of, and the Annexes, Exhibits and Schedules attached to, this Agreement;
  - (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof, this Agreement and applicable law;
  - (iii) to each term, whether stated in the singular or the plural, shall include both the singular and the plural;
  - (iv) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder; and
  - (v) to a Person as a Holder of a Claim or Interest includes that Person's legal representatives, successors and assigns.

(d) The Annexes, Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Agreement. Titles to Articles and headings of Sections are inserted for convenience of reference only and shall not be deemed a part of or to affect the meaning or interpretation of this Agreement.

Section 8.3 Governing Law and Consent to Jurisdiction. This Agreement shall be governed by the Laws of the State of New York, without giving effect to the conflict of laws provisions thereof. As of the Effective Date, the Parties submit to the exclusive jurisdiction of the Receivership Court so long as the Receivership Case continues, to the exclusion of all other courts, in connection with any suit, action or proceeding regarding the enforcement or interpretation of this Agreement, or otherwise arising under this Agreement, and release any right they may have to pursue any claims or causes of action against each other in any other forum. The Parties expressly waive any objection to the personal jurisdiction or venue of the Receivership Court and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such litigation brought in any such court has been brought in an inconvenient forum. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT and acknowledges that this waiver is a material inducement to each other Party's entering into this Agreement.

Section 8.4 Fees and Expenses. All fees and expenses incurred in connection with the formation of this Agreement shall be paid by the Party incurring such expenses, whether or not the transactions contemplated hereby are consummated.

Section 8.5 Notices. All notices, consents, demands, requests, approvals and other communications, which are required or may be given hereunder shall be in writing and shall be hand-delivered or sent by facsimile, overnight courier, or certified first class mail, return receipt requested, postage prepaid, or by email to the applicable parties at the addresses set forth below (or to such other address that all applicable Persons have been advised of in writing). Notices, consents, demands, requests, approvals and other communications shall be deemed given on the date of such hand delivery, facsimile or email, one (1) business day after deposit with an overnight courier or three (3) business days after the date of mailing of such certified mail:

- (a) if to the Administrator:

[INSERT ADMINISTRATOR CONTACT INFO]

with a copy (which shall not constitute notice) to:

[INSERT ADMINISTRATOR'S LEGAL COUNSEL CONTACT INFO]

- (b) if to the Liquidator:

New York Liquidation Bureau  
123 William Street  
New York, NY 10038  
Attention: General Counsel  
Telecopier: (212) [ ]

with a copy (which shall not constitute notice) to:

Bingham McCutchen LLP  
One State Street  
Hartford, CT 06103  
Attention: Harold S. Horwich  
Telecopier: (860) 240-2583

Section 8.6 Assignment. No Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld, except as herein provided. Notwithstanding the foregoing, upon the Closing Date, the Purchaser, with the advance written approval of the Liquidator (which shall not be unreasonably withheld), may delegate its duties and assign its rights under this Agreement to a wholly-owned subsidiary of the Purchaser and such subsidiary shall become the Administrator hereunder, however, in such event, the Purchaser unconditionally guarantees the performance of the new Administrator under this Agreement, including compliance with all covenants contained herein, performance of all duties under this Agreement and veracity of all representations contained herein.

Section 8.7 Successors and Assigns. This Agreement shall be binding upon, inure solely to the benefit of and be enforceable only by each Party and their respective successors and assigns, and any applicable receiver, rehabilitator, liquidator or trustee of any of the Parties, except as otherwise stated herein.

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Section 8.8 Third Party Beneficiaries. This Agreement is intended to confer rights and benefits only on the Parties hereto. No person or entity other than a signatory hereto shall have any legally enforceable rights under this Agreement.

Section 8.9 Waiver. The failure of the Liquidator to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

Section 8.10 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

Section 8.11 Counterparts. This Agreement may be executed and delivered in one or more counterparts (including via facsimile transmission and/or scanned attachments to emails), and by the Parties in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers or representatives as of the day and year first above written.

[LIQUIDATOR]

[PURCHASER]

[ADMINISTRATOR]

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APPENDIX A

**DEFINITIONS**