



**Request for Proposal
Mass Tort Claims Administration**

June 5, 2019

Table of Contents

I.	DESCRIPTION OF SERVICES.....	1
II.	RULES AND INSTRUCTIONS	2
III.	INSURANCE REQUIREMENTS.....	4
IV.	CONTENTS OF PROPOSAL	5
A.	General Information.....	5
B.	Expertise	6
C.	Quality Assurance.....	6
D.	Reputation and Integrity.....	7
E.	Cyber Security	7
F.	Potential Conflicts Of Interest.....	8
G.	Fees	8
H.	EEO/Diversity/MWBE Status.....	8
V.	EVALUATION AND AWARD.....	9
VI.	ADDITIONAL TERMS AND INFORMATION	9

The New York Liquidation Bureau (“NYLB”) serves as the staff of the Superintendent of Financial Services of the State of New York (“Superintendent”) in her capacity as court-appointed receiver under New York Insurance Law Article 74 and as administrator of the New York Property/Casualty Insurance Security Fund (“P/C Fund”), among other funds.

The NYLB invites any qualified claims administrators (“Proponents”) to draft and submit, at the Proponent’s expense, a proposal (“Proposal”) in accordance with the requirements outlined in this request for proposal (“RFP”). The selected Proponent, if any, (“Awardee”) will perform services solely on behalf of the Superintendent as Receiver (“Receiver”) of impaired or insolvent insurance companies, not in her capacity as regulator.

The NYLB’s current mass tort claims administrator has three (3) full-time on-site claims adjusters dedicated to the existing project, which consists of approximately 2000 claims and 28 insureds. Fees for the current project are based on a cost-plus pricing model.¹ However, the NYLB will consider any staffing and pricing models that may be set forth in the Proposals. Therefore, Proponents should submit Proposals based on their assessment of the project.

I. DESCRIPTION OF SERVICES

The NYLB is seeking Proposals from experienced and qualified claims administrators authorized to do business in the State of New York to provide cost-effective mass tort (also referred to as “major policyholder”) claims administration for insolvent insurance companies including, but not limited to, Atlantic Mutual Insurance Company, CastlePoint National Insurance Company, Centennial Insurance Company, The Home Insurance Company, the Lumbermens Group (Lumbermens Mutual Casualty Company, American Manufacturers Mutual Insurance Company, American Motorists Insurance Company), and Reliance National Insurance Company (collectively, the “Estates”). As part of the Proposal, the Proponent must indicate how many claims its organization is capable of administering. The NYLB reserves the right to select multiple Awardees and distribute mass tort claims for handling among the Awardees as it deems appropriate. The term of service is two (2) years, with the Receiver’s option to renew for three (3) additional years.

The Awardee(s) will investigate, adjust and otherwise administer pending mass tort claims (“Existing Claims”) and any new mass tort claims (“New Claims”) that may be eligible for payment, in whole or in part, from the P/C Fund or the assets of the Estates. Examples of the types of Existing and New Claims include those arising out of injuries alleged due to asbestos exposure, toxic tort, products liability, and environmental damage claims.

With respect to New Claims, the Awardee(s) will construct a claim file for each claim in accordance with generally accepted claim handling practices. With respect to all claims (Existing and New Claims) contemplated by this RFP, the Awardee(s) will perform certain claim administration services, including, but not limited to, the following:

- a. Obtain all relevant policies and documentation and determine whether a New Claim is eligible for payment from the P/C Fund or assets of the Estates.

¹ See <https://www.investopedia.com/terms/c/cost-plus-contract.asp>

- b. Obtain and review relevant insurance policies, including the policies (excess and primary) of other insurers not managed by the NYLB for all years of exposure.
- c. Review coverage under such policies (and claim files for existing claims) and recommend denials if and when required under the terms of the policies and/or under the terms of New York Insurance Law Article 76, subject to the approval of the NYLB.
- d. Determine exposure under the policies in relation to the insured's claims history with emphasis on relevant case law and statutory provisions of receivership law in New York for the purpose of recommending loss and allocated loss adjustment reserves. This includes allocation analysis with respect to primary and excess coverage exposure, which may be performed with the assistance of independent contractors approved by the NYLB.
- e. Manage litigation, budget and strategy by working with in-house counsel and retained defense counsel and/or expert witnesses, and initiate settlement discussions with insurers and claimants' counsel.
- f. Prepare various reports for NYLB management, including settlement/reserve authority reports for reinsurers and status reports wherein Awardee(s) can seek allowance, disallowance or settlement of a claim or authority to change reserves.
- g. Review outside counsel legal invoices through the NYLB's electronic bill processing system to ensure adherence to the NYLB standards.
- h. Update the NYLB's Claim Assessment and Premium System (CAPS) regularly.

The NYLB will have final approval of all outside vendors utilized by Awardee, including attorneys and expert witnesses.

The NYLB will provide additional claims information on the subject matter of this RFP to each Proponent that returns an executed Confidentiality Agreement as outlined in Section II.

II. RULES AND INSTRUCTIONS

Please carefully review the instructions set forth herein. In order to facilitate a fair evaluation of all Proposals, each Proposal must adhere to the requirements outlined in this RFP. The NYLB may, in its sole discretion, modify, rescind or provide an addendum to this RFP.

A Confidentiality Agreement is attached hereto. **To obtain additional information regarding this RFP, including data sufficient to allow Proponent to understand the nature and complexity of the mass tort claims, Proponent must sign and return an original of the Confidentiality Agreement to the NYLB Chief Compliance Officer at the address listed above and e-mail a PDF copy of the executed Confidentiality Agreement to compliance@nylb.org.** Upon receipt of an executed Confidentiality Agreement from a qualified Proponent, the NYLB will electronically provide a selection of materials and information relevant

to the services being requested.

Proponents may e-mail written questions no later than 5:00 p.m., EST, on July 15, 2019, to compliance@nylb.org. The NYLB will, in its discretion, respond to questions it deems appropriate. Responses from the NYLB will be communicated by e-mail.

The Proponent must possess, in its own name, all of the necessary licenses, certifications, permits, approvals, and authorizations necessary to perform the services for which the Proponent is contracting and to conduct business in the State of New York, and each of the foregoing must be in good standing and not subject to any regulatory proceedings that could result in its revocation, suspension, or limitation.

Proposals must contain all items requested in Section IV below. Material deviations from the required format may result in disqualification of the Proposal. If any item in Section IV does not apply to Proponent, Proponent must specifically indicate that the item is not applicable. Proponents may not satisfy an item of requested information by submitting or referring to a brochure, promotional or descriptive literature, or any other document.

The cover of each Proposal must include the name of the Proponent and the subject matter as follows: **RFP for Mass Tort Claims Administration**. Each Proponent must deliver one original, fully executed Proposal to the NYLB at the address below, and e-mail a PDF copy to compliance@nylb.org. Each Proposal must be signed and dated in the name of Proponent and must bear the signature of the person authorized to sign the Proposal on behalf of Proponent. By submitting a signed Proposal, Proponent certifies that (1) the information in the Proposal is materially complete, truthful and accurate; (2) Proponent has thoroughly reviewed the scope of work sought through this RFP; and (3) Proponent possesses adequate staffing, administrative capacity, and resources (including financial, operational, and information and technology systems) to perform quality and cost-effective work to achieve the scope of work requested.

Original Proposals must be sent to:

New York Liquidation Bureau
180 Maiden Lane, 15th Floor
New York, New York 10038
Attn: Chief Compliance Officer
RFP for Mass Tort Claims Administration

Proposals must be received no later than 5:00 p.m., EST, on July 22, 2019, unless such deadline is extended in writing by, and in the sole discretion of, the NYLB. Late Proposals will be disqualified from consideration.

Proposals will be reviewed by an evaluation committee that will, under the supervision of the NYLB Chief Compliance Officer, consider Proponents based on the factors outlined in Section V, *infra*. During the process of evaluating Proposals, the NYLB's evaluation committee may request: an interview with a Proponent in-person or by telephone; written answers to questions; that Proponent submit additional information and/or supplemental responses; or that a Proponent

make presentation of its Proposal to the committee.

Except as otherwise necessary for conducting business operations previously established with the NYLB, Proponents may not communicate with NYLB personnel other than the NYLB Chief Compliance Officer. The NYLB will disqualify a Proponent who engages in any prohibited communication of a material nature, as determined by the NYLB in its sole discretion.

III. INSURANCE REQUIREMENTS

Proponent must demonstrate that, if selected, it will satisfy the insurance requirements as follows and will maintain all such coverage throughout the term of the service contract:

Proponent must maintain, and have available to pay claims of the NYLB in connection with this engagement, professional liability/errors and omissions insurance with a minimum limit of \$5,000,000 per occurrence and \$5,000,000 annual aggregate, to include coverage for all errors and omissions that result in financial loss to the vendor or the NYLB. If written on a “claims-made” basis, the retroactive date must pre-date the effective date of the contract or agreement. Coverage must remain in effect during the term of the contract or agreement and for three (3) years following the expiration.

Proponent must maintain, and have available to pay claims of the NYLB in connection with this engagement, commercial general liability insurance (property and bodily injury) with a minimum limit of at least \$1,000,000 per occurrence and at least \$2,000,000 annual aggregate. In addition, Proponent must maintain umbrella/excess insurance with a minimum limit of at least \$2,000,000 and must list the Receiver and the NYLB as additional insureds.

Proponent must maintain crime insurance with a minimum limit of liability of \$1,500,000, and Proponent must include the NYLB as a loss payee.

Proponent must maintain Network Security and Privacy Liability insurance (also known as “Cyber Liability”) covering liability involving privacy violations, information theft, damage to or destruction of electronic information, intentional or unintentional release of private information, alteration of electronic information, extortion or network security. Said insurance must be maintained with limits no less than \$5,000,000 per claim and \$5,000,000 in the aggregate. Cyber Liability coverage must remain in effect during the term of the contract or agreement and for three years following the expiration.

Said insurance must provide coverage for first party costs and third party liability including, but not limited to, the following:

- Forensic investigation of the breach;
- Notification costs of communicating the breach;
- Legal defense;
- Settlements, damages and judgments related to the breach; and
- Cost of responding to regulatory inquiries and payment of penalties.

If a policy is written on a claims made basis, Proponent must submit to the NYLB an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period (“tail coverage”) providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies.

Proponent must maintain, and have available to pay claims of the NYLB in connection with this engagement, at least the minimum Workers’ Compensation Insurance required by New York law for all employees of Proponent.

The policies of insurance required to be maintained by Proponent must be issued by insurance companies that are admitted or licensed insurers in the State of New York and have an A. M. Best rating of not less than "A-", and are in a size category not lower than "VIII."

Proponent must require its subcontractors, if any, to carry insurance with the same limits and provisions specified above.

It is the sole obligation of Proponent to insure any tools and equipment belonging to Proponent, its subcontractors, or agents for loss during the performance of the services required under the contract.

For all liability policies and the workers’ compensation insurance required herein, Proponent must cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer’s right of subrogation against the New York Liquidation Bureau, and the Superintendent of Financial Services and their officers, agents, and employees. Proponent must provide the NYLB with a Waiver of Subrogation Endorsement upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

IV. CONTENTS OF PROPOSAL

Proposals must set forth the following information:

A. General Information

1. Name of Proponent.
2. Primary Office Address.
3. Other Office Addresses.
4. General Telephone and Email Address.
5. Contact Person’s email address (include specific contact information).
6. Alternate Contact Person’s email address (include specific contact information).
7. List Proponent’s tax identification number and Certificate of Authority to do business in the State of New York.
8. List all relevant licenses held by Proponent in New York.
9. A general overview and history of Proponent, including without limitation the

- number of years in business, business focus and brief description of Proponent's organization, including ownership and any operating divisions or working groups.
10. Provide a list of all governments or quasi-governmental agencies for which Proponent has provided this type of service within the past five years.
 11. Provide a list of all other vendors with whom Proponent has a working or contractual relationship to assist in providing the services specified. Describe how Proponent manages vendors and charges for their services.

B. Expertise

Proponent shall provide a detailed statement of Proponent's qualifications and experience in performing the services, including a summary of recent, comparable projects (*e.g.*, adjudication of mass tort claims and working with impaired or insolvent insurance companies), along with project completion dates. Proponent must demonstrate that it has sufficient experience in the insurance industry to provide the services and provide evidence of Proponent's ongoing insurance practice, including the names of insurance companies, state guaranty funds and/or government entities for whom it has contracted to perform claims administration services and provide what percentage of its business relates to mass tort claims administration.

Proponent must demonstrate that it can provide, at the inception of the contract, enough full-time trained, competent, and licensed claims adjusters to perform the services outlined in this RFP in a manner commensurate with the highest professional standards, in good faith and in accordance with all applicable laws and regulations. Specifically, Proponent must demonstrate that its claims adjusters have knowledge and expertise to: (a) review and analyze insurance policies to determine coverage and exclusions, and (b) understand and apply coverage triggers, especially under occurrence policies for mass tort and/or other specialty claims.

Proponent must also provide resumes of all staff members, including partner and senior personnel, to be assigned to this project. Each resume should set forth the staff members' number of years of claims handling experience, the type of claims handled, specifically mass tort claims, the position the partner and/or staff member currently occupies, the length of time the partner and/or staff member has been employed by Proponent and a detailed description of the partner and/or staff member's involvement with projects of similar scope, including if they have worked on behalf of a state guaranty fund.

Proponent must identify roles and responsibilities for others expected to be actively involved in the NYLB account. Describe online access capabilities available to staff.

C. Quality Assurance

1. Confirm that Proponent will establish and maintain a quality control plan to assure the requirements of the contract are met by Proponent and its subcontractors, if any.
2. Confirm that Proponent will assure that its staff and subcontractors, if any, are qualified, properly trained, appropriately instructed and monitored to perform the services required under the contract.

3. Confirm that Proponent will develop a system for monitoring compliance with the services. Please outline the methods of identifying, correcting, and preventing deficiencies in the quality of service performed.

D. Reputation and Integrity

1. State Proponent's number of years in the business.
2. State all names used by Proponent within the past 10 years.
3. Certify that Proponent and all of the staff who will potentially work on the assignments are in good standing in all jurisdictions in which they have been licensed or certified.
4. Set forth a brief statement regarding the integrity and reputation of Proponent and its employees, including whether in the last ten years Proponent or any of its partners or senior officers have been the subject of any criminal conviction or any final non-appealable civil judgments for financial misconduct, fraud or other malfeasance (including actions or proceedings by governmental authorities).
5. For every judgment entered against Proponent and/or any of its staff as a result of a claim against Proponent and/or any of its staff for professional malpractice, negligence, financial misconduct, fraud or other malfeasance, Proponent must set forth the date, all monetary relief granted, all injunctive relief granted, and the amount of the monetary judgment that currently remains unsatisfied, if any.
6. Set forth the number of settlements within the last 10 years resulting in a payment of greater than \$25,000 in connection with any claims for professional malpractice, negligence, financial misconduct, fraud or other malfeasance brought against Proponent or any of its staff.
7. Provide a brief statement regarding whether Proponent has ever been disciplined, fined or sanctioned by any governmental or regulatory authority, licensing body, trade group or association, or disciplinary or ethics panel(s). Provide a detailed description of the underlying complaint and a summary of the finding.

E. Cyber Security

1. Confirm that Proponent will assure that all data provided by the NYLB will stay within the continental United States.
2. Confirm that all data provided by the NYLB will not reside in a shared hosted environment.
3. Confirm that all data transmitted will be protected and, to the extent possible, encrypted while in transit.
4. Confirm that all devices used by Proponent and its employees and subcontractors, if any, are protected and updated with the latest antivirus and malware software.
5. Provide the NYLB with certifications of information and technology audits on an annual basis.
6. Provide the NYLB with System and Organization Control Reports (Type I and Type II) on an annual basis.

F. Potential Conflicts Of Interest

1. Provide a list of all known employees of Proponent, or any parents, subsidiaries or affiliates of Proponent, who are related by blood or marriage to any NYLB employee and/or who are living in the same household as any NYLB employee.
2. Provide a list of all known employees of Proponent or any parents, subsidiaries or affiliates of Proponent, who were previously employed by the NYLB.
3. Provide a list of all known NYLB employees previously employed by Proponent or any parents, subsidiaries or affiliates of Proponent.
4. Indicate whether Proponent or any of its parents, subsidiaries or affiliates has been involved in litigation against the Superintendent, the NYLB and/or its estates within the last 10 years as a party, witness or otherwise.
5. List the names of all persons or entities, if any, asserting claims against the NYLB and/or its estates for which Proponent is currently performing work.
6. State whether Proponent has previously provided services to the NYLB, including whether Proponent has any financial interest in any organization that has contracted to provide services to the NYLB.

G. Fees

Set forth a statement of fees and expenses for the proposed services. In addition, Proposals must include a detailed assessment plan and timeline that specifies the expected staffing requirements.

H. EEO/Diversity/MWBE Status

1. Set forth facts sufficient to demonstrate that Proponent is an equal opportunity employer and complies with all relevant federal, state and municipal equal employment opportunity and non-discrimination laws, regulations and executive orders. Proponent may attach hard copies of any equal employment opportunity policy statements or other relevant official firm documents.
2. Indicate if Proponent is certified as a Minority or Women Owned Business Enterprise (“MWBE”) with the New York State Department of Economic Development, and if so, provide a copy of its certification. If not, list any other jurisdictions and/or certifying bodies that have deemed Proponent to be minority or women owned, and provide a copy of any such certification.
3. If Proponent has applied for, but has not, as of the date of this RFP, been awarded certification as an MWBE by the New York State Department of Economic Development, submit proof of a pending application, and indicate filing date.
4. Provide any additional information that may demonstrate Proponent’s commitment to equal employment opportunity and diversity in the workplace.

V. EVALUATION AND AWARD

This RFP does not commit the NYLB to select an Awardee. The NYLB reserves the right to: (a) rescind or revoke this RFP prior to execution of a contract with the Awardee; and (b) utilize any ideas from the Proposals. The NYLB may: (a) reject a Proposal for any reason, including if it is non-responsive or non-compliant with the requirements set forth in this RFP; or (b) waive discrepancies in any Proposal. All materials submitted in response to this RFP become the property of the NYLB and will not be returned.

In selecting an Awardee, the NYLB's evaluation committee will consider, among other factors it deems appropriate: (1) expertise to provide the particular services; (2) staffing and resources to perform the services; (3) reputation and integrity; and (4) cost. The NYLB is not bound to accept the lowest-priced Proposal or, for that matter, any Proposal. The evaluation committee's selection of an Awardee is subject to the approval of the Special Deputy Superintendent and the negotiation and execution of a contract acceptable to the NYLB. If the Awardee and the NYLB do not agree on a contract within the time deemed appropriate by the NYLB, then the NYLB reserves the right to revoke any award and choose another Awardee.

The contract with the Awardee will not contain a limitation of liability clause that limits the Awardee's liability to an amount below the insurance requirements in this RFP. The contract with the Awardee will contain a hold harmless provision in which the Awardee will fully indemnify the Receiver from and against any and all damages and expenses (including reasonable attorney's fees) from suits, actions and claims of every name and description arising out of Awardee's performance of the services; provided, however, that Awardee will not indemnify the Receiver to the extent that any claim, loss or damage arising under the contract is caused solely by the Receiver's negligence.

Written notification will be made to successful and unsuccessful Proponents.

VI. ADDITIONAL TERMS AND INFORMATION

The NYLB may revoke the selection of an Awardee: (1) for any misrepresentations in the Awardee's Proposal, (2) for Awardee's failure to comply with any of the requirements of this RFP; or (3) if the NYLB, in its sole discretion, believes it is in the best interest of the NYLB. If the Receiver and Awardee have already executed a contract, the Receiver may terminate the contract according to its terms.

The information contained herein shall be used for the sole purpose of responding to this RFP. The NYLB will not, and is under no obligation to, pay the costs, in whole or in part, incurred by Proponent for the preparation of a Proposal. The NYLB disclaims responsibility and liability for any costs related to Proponent's participation in this RFP.

REQUEST FOR PROPOSAL FOR MASS TORT CLAIMS ADMINISTRATION CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”), effective as of the later date signed below, is executed by the party (“Proponent”) signing the agreement in favor of Linda A. Laceywell, Acting Superintendent of Financial Services of the State of New York, in her capacity as court-appointed Receiver (“Receiver”) pursuant to Article 74 of the New York Insurance Law, so that the Receiver may provide Confidential Information (as defined below) to Proponent during the request for proposal (“RFP”) process (“RFP Process”) pursuant to Proponent’s request for certain non-public information in order to prepare a proposal in response to the Receiver’s RFP for Mass Tort Claims Administration Services.

DEFINITIONS

“Confidential Information” means any information and data, including claims and reserve information, disclosed by the Receiver or any of her Representatives to Proponent or any of its Representatives in connection with the RFP Process, whether oral, written, digital/electronic or other form, including without limitation any analyses, compilations, studies, communications, documents, summaries, reports, notes or other material prepared by or on behalf of Proponent or any of its Representatives to the extent that they use, contain, reflect or are derived from or incorporate, in whole or in part, any such information or data. “Confidential Information” does not include information that (i) Proponent already possesses through means other than a breach of this Agreement or any other confidentiality agreement; (ii) becomes available to Proponent on a non-confidential basis from a source other than the Receiver or the NYLB, so long as that source, to Proponent’s knowledge after reasonable inquiry, is not bound by a confidentiality obligation to the Receiver relating to such information; (iii) is independently developed by Proponent or any of its Representatives without use or benefit of or access to any Confidential Information; or (iv) is or becomes available in the public domain other than as a result of disclosure by or on behalf of Proponent or any of its Representatives in breach of this Agreement.

“New York Liquidation Bureau” and/or “NYLB” means the organization that acts as the staff for the Receiver, and includes any employee of or any accountant, attorney, actuary, or other professional or technical consultant or advisor retained by the Receiver or the NYLB.

“Person” must be broadly construed and includes without limitation any natural person, business, corporation, company, association, partnership, joint venture, trust, governmental authority or other legal entity.

“Representatives” means, with respect to Proponent, any director, officer, employee, any member of that party’s group of companies and their directors, officers, employees or consultants or any of that party’s advisors (including attorneys, accountants and other professional advisors engaged by it) and agents, and with respect to the Receiver, the NYLB.

NOW, THEREFORE, in consideration of the Receiver making Confidential Information available to Proponent and the possibility of entering into an agreement for services with the Receiver as set forth in the RFP, and with the intent to be legally bound, Proponent agrees as follows:

1. Proponent and its Representatives will use the Confidential Information solely for the purpose of evaluating the RFP, preparing a proposal in response to the RFP, or otherwise solely in connection with the RFP Process, and will keep the Confidential Information strictly confidential, except as otherwise permitted by this Agreement. Proponent will not disclose the Confidential Information except to its Representative who:
 - a. needs to know the Confidential Information as it relates to the RFP Process;
 - b. has been informed that the Confidential Information is subject to the terms of this Agreement;
 - c. has reviewed a copy of this Agreement; and
 - d. has agreed to comply with and be bound by the terms of this Agreement to the same extent as if he or she were a party hereto.
2. Proponent will be liable for any breach of this Agreement by Proponent or any of its Representatives and for any use of Confidential Information by any other Person if such Person acquired the Confidential Information through a breach of this Agreement.
3. Proponent hereby acknowledges and agrees that money damages would not be a sufficient remedy for any breach of this Agreement and that the Receiver will be entitled to seek injunctive or other equitable relief and specific performance, without proof of actual damages and without the need to post a bond or other security, as a remedy for any such breach. Such remedies will not be deemed to be the exclusive remedy for any breach of this Agreement but will be in addition to all other remedies available at law or in equity.
4. As between the parties, Confidential Information is the sole and exclusive property of the Receiver. At any time upon written request by the Receiver, and in any event at the conclusion of the RFP Process, Proponent will promptly return to the Receiver or destroy all Confidential Information in the possession or control of Proponent or any of its Representatives. Proponent and any of its Representatives may retain Confidential Information only to the extent required by applicable law or regulation, or to comply with established data retention policies; provided that such Confidential Information, if any, remains subject to the terms of this Agreement. Upon the Receiver's request, Proponent will certify in writing that it has complied with the provisions of this paragraph.
5. In the event that Proponent or any of its Representatives is requested or required by requests for information or documents, subpoenas, investigative demand or similar legal, regulatory or judicial process to disclose any Confidential Information, Proponent will (unless legally prohibited) promptly provide the Receiver with written notice of the existence, terms and circumstances of such request prior to disclosing any Confidential Information so that the Receiver may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or waiver, Proponent or any of its Representatives is legally compelled to disclose Confidential Information, Proponent or its Representative may disclose only such portion of

Confidential Information that it is legally required to disclose; provided that Proponent or its Representative will use reasonable efforts to obtain assurances that, consistent with the terms of this Agreement, the Confidential Information will be treated confidentially.

6. All Confidential Information remains confidential, privileged or protected when communicated to Proponent and the sharing of Confidential Information pursuant to this Agreement does not constitute, and will not be construed in any way to constitute, a waiver of any attorney-client privilege, work product protection or any other applicable privilege or immunity. If, in violation of this Agreement (whether intentional or otherwise), Proponent or any of its Representatives discloses to a third party any Confidential Information, such disclosure will not waive any other party's right to claim any applicable privilege or protection, and will not affect the privileges, rights and/or protections that are or may be applicable to such Confidential Information.
7. This Agreement and any dispute related hereto or arising hereunder will be governed by the laws of the State of New York without regard to any conflicts of laws principles.
8. Proponent agrees that all actions or proceedings seeking enforcement of this Agreement will be tried and litigated exclusively in the Supreme Court of the State of New York, county of New York, or if said court cannot have subject matter jurisdiction over the action or proceeding, in the United States District Court for the Southern District of New York. In connection with such actions or proceedings, but not for any other actions or proceedings, Proponent hereby: (a) stipulates that the foregoing courts will have *in personam* jurisdiction over such Proponent; (b) waives any right Proponent may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue; and (c) waives its right to a jury trial.
9. The Parties agree to provide any notices required hereunder as follows:

<p>By hand or overnight delivery to:</p> <p>New York Liquidation Bureau 180 Maiden Lane, 15th Floor New York, New York 10038 Attn: General Counsel</p> <p>With copy by email to:</p> <p>Chief Compliance Officer compliance@nylb.org</p>	
--	--

10. Nothing herein obligates either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate discussions regarding the RFP and the RFP Process.

11. Except for paragraphs 5, 7 and 8, which remain binding after this Agreement expires, this Agreement will expire the date that is two years after the effective date of this Agreement, at which time Proponent will certify in writing to the Receiver that it has complied with paragraph 4 of this Agreement.
12. Proponent represents that this Agreement has been duly executed and delivered on its behalf by a duly authorized individual and constitutes its legal, valid, binding and enforceable obligation.

Proponent Name:
By: _____
Name: Title:
Date: _____

Receiver
By: _____
Name: Title:
Date: _____

L 26856/map