

APPENDIX A

DEFINITIONS

The following terms, when used in this Agreement shall have the meanings defined below:

A.M. Best

“A.M. Best” means A.M. Best Company, Inc.

Abandoned Property Law

“Abandoned Property Law” means New York Abandoned Property Law [].

Acceptable Bank

“Acceptable Bank” means any bank or trust company: (i) which is organized under the laws of the United States of America or any State thereof, (ii) which has capital, surplus and undivided profits aggregating at least \$[____], and (iii) whose long-term unsecured debt obligations (or the long-term unsecured debt obligations of the bank holding company owning all of the capital stock of such bank or trust company) shall have been given a rating of “A” or better by S&P, “A2” or better by Moody’s or an equivalent rating by any other credit rating agency of recognized national standing.

Acceptable Collateral

“Acceptable Collateral” means Cash, United States Governmental Securities or letters of credit from Acceptable Banks.

Adjusted LAE Reserve

“Adjusted LAE Reserve” means, at any time, the amount of the LAE Reserve multiplied by a fraction, the numerator of which is the Disputed Claim Reserve at such time and the denominator of which is the Original Disputed Claim Reserve.

Administrator

“Administrator” means an Affiliate of the Purchaser that is a party to a Claim Service Agreement.

ADR Procedures

“ADR Procedures” means the procedures set forth on Exhibit 1 hereto under which the Purchaser and the Holder of a Claim that has elected to opt into the Plan shall determine any Disputed Claim.

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Administrative Expense

“Administrative Expense” means Claims with respect to the actual and reasonable costs and expenses of administration, incurred by the Liquidator, under Article 74 of the Insurance Law including, but not limited to, costs and expenses incurred by the Liquidator and the Liquidation Bureau with respect to administering the liquidation of the Company.

Administrative Expense Reserve

“Administrative Expense Reserve” means an amount equal to \$_____ allocated by the Liquidator for the payment of Administrative Expenses that are incurred after the Effective Date.

Administrator

“Administrator” means an Affiliate of the Purchaser that has agreed to administer Policyholder Claims under the Claim Service Agreement.

Admitted Assets

“Admitted Assets” means assets which are admitted assets under SAP.

Affiliate

“Affiliate” means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person. A Person will be “controlled by” any other Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, contract, or otherwise.

Allocated Loss Adjustment Expenses

“Allocated Loss Adjustment Expenses” means: (i) out-of-pocket expenses and costs incurred or sustained in connection with mitigation, investigation, adjustment, settlement, workout, defense and litigation of claims and suits, satisfaction of judgments and other awards, resistance to or negotiations concerning a Loss or potential Loss, (ii) external legal and other out-of-pocket expenses and costs incurred or sustained in connection with (A) coverage questions regarding specific claims and legal actions, including without limitation declaratory judgment actions, connected thereto, (B) Loss or potential Loss prevention, mitigation or investigation in respect of any Loss, (C) the investigation or workout of a Loss or potential Loss, or (D) the protection, perfection and exercise of any subrogation or salvage or reimbursement rights or security interests relating to any Loss, (iii) all interest on judgments other than prejudgment interest when added to a judgment, and (iv) external legal and other out-of-pocket expenses and costs incurred or sustained to obtain recoveries, salvages or other reimbursements, or to secure the reversal or reduction of a verdict, judgment or award. Allocated Loss Adjustment Expenses shall not include: (x) salaries paid to employees of the Purchaser or Affiliate of the Purchaser, or overhead of the Purchaser or any Affiliate of the Purchaser, (y) any costs or expenses incurred with an Affiliate of the Purchaser, or (z) any costs or expenses which were not incurred under a commercially reasonable arms'-length arrangement. Any arrangement between the Purchaser or

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an Administrator with a Person that is not an Affiliate of the Purchaser shall be on terms at least as favorable to the Purchaser as the terms of any arrangement with such Person and an Affiliate of the Purchaser.

Allowed

“Allowed” with respect to any Claim, means that such Claim has been allowed by a Final Order of the Receivership Court.

Allowed Amount

“Allowed Amount” means the amount of a Claim that shall have been Allowed.

Amortized LAE

“Amortized LAE” means, at any time, the amount of the LAE Reserve multiplied by a fraction the numerator of which is the difference of subtracting the amount of the Disputed Claim Reserve at such time from the amount of the Original Disputed Claim Reserve, and the denominator of which is the amount of the Original Disputed Claim Reserve.

Ancillary Agreements

“Ancillary Agreements” means the following agreements:

- the Parental Support Agreement;
- the Claim Service Agreement with the Purchaser;
- the Claim Service Agreement with the Liquidator;
- the Purchaser Reinsurance Agreement;
- the Purchaser Endorsements;
- the Confidentiality Agreement;
- the Opt-In Reinsurance Certificates.

Anniversary Date

“Anniversary Date” means May 15, 2010 and each May 15 thereafter until the Termination Date.

Assets

“Assets” means, at any date of determination, the Cash and Investment Assets of a Person valued in accordance with SAP at the date of determination, plus all Reinsurance Recoverables valued as provided in the Bid and adjusted from time to time in accordance with SAP.

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Assumed Reinsurance Agreement

“Assumed Reinsurance Agreement” means a contract or agreement of reinsurance, however described or denominated, under which an insurer has ceded insurance risks to the Company, whether on a proportional, excess of loss, facultative, treaty or other basis.

Balance Sheet Date

“Balance Sheet Date” means December 31, 2008.

Bar Date

“Bar Date” means April 3, 1987, the date established by the Receivership Court in the Liquidation Order as the last day on which to file proofs of claim against the Company.

Bid

“Bid” means the offer for the purchase of the Transferred Assets submitted by the Purchaser and approved by the Receivership Court.

Books and Records

“Books and Records” means all books and records in physical and electronic form related to the Claims and the Reinsurance Agreements.

Business Day

“Business Day” means any day on which lending institutions in New York, New York, are open for the transaction of banking business.

Capital Distribution

“Capital Distribution” means the declaration or payment of any dividend on or in respect of any shares of any class of Capital Stock of any Person, other than dividends payable solely in additional shares of Capital Stock of such Person; the purchase, redemption, defeasance, retirement or other acquisition of any shares of any class of Capital Stock of any Person, directly or indirectly through a Subsidiary of such Person or otherwise (including the setting apart of assets for a sinking or other analogous fund to be used for such purpose); the return of capital by any Person to its shareholders as such; or any other distribution on or in respect of any shares of any class of Capital Stock of any Person.

Capitalized Lease

“Capitalized Lease” means a lease under which the Purchaser is the lessee or obligor, the discounted future rental payment obligations under which are required to be capitalized on the balance sheet of the lessee or obligor in accordance with SAP.

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Capital Stock

“Capital Stock” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

Cash

“Cash” means legal tender of the United States of America of the Company and deposits with banks.

Cedant

“Cedant” means an insurer that has ceded insurance risks to the Company under an Assumed Reinsurance Agreement.

Choice of Law Ruling

“Choice of Law Ruling” means the decision of the Receivership Court, dated April 15, 2008, in the Receivership Case, as may be amended or modified from time to time.

Claim

“Claim” means a right to payment or an equitable remedy for breach of performance which gives rise to a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

Claim Service Agreement

“Claim Service Agreement” means the agreement entered into by the Liquidator and the Administrator substantially in the form attached to the Purchase Agreement, as Annex C, and/or the agreement entered into by the Purchaser and the Administrator that is attached to the Purchase Agreement as Annex D, as executed and delivered.

Claimant

“Claimant” means a Person which has a Claim against the Company.

Class

“Class” means a group of Claims or Interests classified by the Plan pursuant to Insurance Law Section 7434.

Class [] Claim

“Class [] Claim” means a Claim in the particular Class of Claims identified and described in Article 4 of the Plan.

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Closing

“Closing” means the closing of the transfer of the Transferred Assets from Liquidator to Purchaser pursuant to the Purchase Agreement.

Closing Date

“Closing Date” shall have the meaning specified in Section 4.1 of the Purchase Agreement

Company

“Company” means Midland Insurance Company.

Compliance Certificate

“Compliance Certificate” has the meaning ascribed to it in Section 8.4 of the Purchase Agreement.

Confidentiality Agreement

“Confidentiality Agreement” means that certain Confidentiality Agreement dated [] entered into between Purchaser and Liquidator.

Current Surplus

“Current Surplus” means, as of any date of determination, the amount determined by subtracting (a) the sum of the (i) Disputed Claim Reserve, (ii) the Adjusted LAE Reserve, and (iii) any capital contributions made to the Purchaser after the Closing Date, in each case as of such date, from (b) the Assets of the Purchaser as of such date.

Cutoff Date

“Cutoff Date” means the date established by the Receivership Court which is: (a) with regard to all Claims, the last day on which the Holder of a Claim that has filed, or is deemed to have filed, a timely proof of claim may file a proof of claim amendment, including any evidence or other relevant documents or materials, with the Liquidator, and (b) with regard to Class Two Claims, the date after which any timely filed proof of claim or proof of claim amendment will be barred (except by way of participation in the Opt-Out Reinsurance Pool) unless such Class Two Claim specifically identifies the event, accident or occurrence giving rise to the Claim, the person or property allegedly injured or damaged, and the nature of the alleged injury or damage.

Determined

“Determined” with respect to any Claim means that such Claim has been finally established as to amount and priority by agreement with the Purchaser or through a final resolution pursuant to the ADR Procedures.

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Determined Amount

“Determined Amount” means the amount of a Claim that has been Determined.

Disallowed

“Disallowed” means a Policyholder Claim that has been disallowed by a Final Order of the Receivership Court.

Disputed Claim

“Disputed Claim” means a Policyholder Claim which, as of the Effective Date, is not an Allowed Claim or a Disallowed Claim.

Disputed Claim Reserve

“Disputed Claim Reserve” means, at any time, the reserve established in accordance with SAP with respect to Disputed Claims and the Allocated Loss Adjustment Expenses in connection with such Disputed Claims that have not been paid at such time, including the amount owed with respect to any Disputed Claim that has become a Determined or Allowed Claim and any Allocated Loss Adjustment Expense that has been incurred but remains unpaid at such time. The Disputed Claim Reserve at any time shall be determined consistent with the methodology used to determine the Original Disputed Claim Reserve.

Disputed Opt-In Claim

“Disputed Opt-In Claim” means an Opt-In Claim that is a Disputed Claim.

Disputed Opt-Out Claim

“Disputed Opt-Out Claim” means an Opt-Out Claim that is a Disputed Claim.

Distribution

“Distribution” means a payment and/or distribution of Cash or other consideration to be made to Holders of Claims in accordance with the terms and conditions of this Plan.

ECO and XPL Losses

“ECO and XPL Losses” means losses and liabilities of the Company or the Liquidator for compensatory, consequential, punitive or exemplary damages incurred in connection with the handling of any Policyholder Claim, including without limitation failure to settle within Policy limits, or by reason of alleged or actual negligence or bad faith or fraud in rejecting an offer or settlement or in the preparation of the defense or in the trial of any action against an insured or in the preparation or prosecution of an appeal consequent upon such action.

Effective Date

“Effective Date” means the date on which the Closing shall have occurred.

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Encumbrance

“Encumbrance” means any lien, claim, charge, security interest, mortgage, pledge, easement, conditional sale or other title retention agreement, defect in title or other restrictions of a similar kind. Encumbrance does not include any right of setoff, recoupment or counterclaim under a Reinsurance Agreement or any right to funds withheld or a trust fund or letter of credit held by a Reinsurer.

Environmental Law

“Environmental Law” means any judgment, decree, order, statute, license, rule, regulation or other law pertaining to environmental matters, including without limitation, those arising under the Resource Conservation and Recovery Act (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (“CERCLA”), the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act, or any state, local or foreign law, statute, regulation, ordinance, order or decree relating to health, safety or the environment.

ERISA

“ERISA” means the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sections 1001-1461.

Estate

“Estate” means the liquidation estate of the Company in the Receivership Case.

Final Order

“Final Order” means an order entered by a court of competent jurisdiction which order shall be final and as to which all applicable appeal periods have expired and is not subject to a pending stay, appeal, or motion for reconsideration or reargument.

Fitch

“Fitch” means Fitch, Inc., Fitch Ratings Ltd., and their subsidiaries or any successors thereto.

GAAP

“GAAP” means principles that are: (i) consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors, as in effect from time to time, and (ii) consistently applied with past financial statements of the Parent adopting the same principles, provided that in each case referred to in this definition of “GAAP,” a certified public accountant would, insofar as the use of such accounting principles is pertinent, be in a position to deliver an unqualified opinion (other than a qualification regarding changes in GAAP) as to financial statements in which such accounting principles have been applied.

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General Reserves

“General Reserves” means all reserves for payment of policy benefits, losses, claims, expenses and similar purposes determined in accordance with SAP.

Guaranty Association

“Guaranty Association” means any insurance guaranty association or security fund or any other entity performing similar functions established under the laws of any jurisdiction.

Governing Documents

“Governing Documents” means, with respect to any Person, its certificate or articles of incorporation, its by-laws and all stockholder agreements, voting trusts and similar arrangements applicable to any of its capital stock.

Governmental Authority

“Governmental Authority” means any foreign, federal, state, regional, local, municipal or other government, or any department, commission, board, bureau, agency, public authority or instrumentality thereof, or any court or arbitrator.

Guaranteed Pension Plan

“Guaranteed Pension Plan” means any employee pension benefit plan within the meaning of Section 3(2) of ERISA maintained or contributed to by Purchaser or any Affiliate the benefits of which are guaranteed on termination in full or in part by the PBGC pursuant to Title IV of ERISA or a Multiemployer Plan within the meaning of Section 3(37) of ERISA.

Hazardous Substances

“Hazardous Substances” means hazardous waste, as defined by 42 U.S.C. Section 6903(5), any hazardous substances as defined by 42 U.S.C. Section 9601(14), any pollutant or contaminant as defined by 42 U.S.C. Section 9601(33), and any toxic substances, oil or hazardous materials or other chemicals or substances regulated by any Environmental Laws.

Holdback Percentage

“Holdback Percentage” means, at any time, one hundred percent minus the percentage determined by dividing the amount of the Disputed Claim Reserve at such time by the Original Disputed Claim Reserve.

Holder

“Holder” means the beneficial owner of any Claim or Interest.

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HSR Act

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. Section 18a, 15 U.S.C. Sections 1311-14.

Indebtedness

“Indebtedness” means as to any Person:

- (a) every obligation of such Person for money borrowed;
- (b) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments, including without limitation obligations incurred in connection with the acquisition of property, assets or businesses;
- (c) every reimbursement obligation of such Person with respect to letters of credit, bankers’ acceptances or similar facilities issued for the account of such Person;
- (d) every obligation of such Person issued or assumed as the deferred purchase price of property or services (including securities purchase agreements but excluding trade accounts payable or accrued liabilities arising in the ordinary course of business which are not overdue or which are being contested in good faith);
- (e) every obligation of such Person under any Capitalized Lease;
- (f) every obligation of such Person under any Synthetic Lease;
- (g) all sales by such Person of (i) accounts or general intangibles for money due or to become due, (ii) chattel paper, instruments or documents creating or evidencing a right to payment of money or (iii) other receivables (collectively “receivables”), whether pursuant to a purchase facility or otherwise, other than in connection with the disposition of the business operations of such Person relating thereto or a disposition of defaulted receivables for collection and not as a financing arrangement, and together with any obligation of such Person to pay any discount, interest, fees, indemnities, penalties, recourse, expenses or other amounts in connection therewith;
- (h) every obligation of such Person (an “equity related purchase obligation”) to purchase, redeem, retire or otherwise acquire for value any shares of Capital Stock issued by such Person or any rights measured by the value of such Capital Stock;
- (i) every obligation of such Person under any forward contract, futures contract, swap, option or other financing agreement or arrangement (including, without limitation, caps, floors, collars and similar agreements), the value of which is dependent upon interest rates, currency exchange rates, commodities, reference securities or other indices (a “derivative contract”);
- (j) every obligation in respect of Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent that such Person is

liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent that the terms of such Indebtedness provide that such Person is not liable therefor and such terms are enforceable under applicable law; and

(k) every obligation, contingent or otherwise, of such Person guaranteeing, or having the economic effect of guaranteeing or otherwise acting as surety for, any obligation of a type described in any of clauses (a) through (j) (the "primary obligation") of another Person (the "primary obligor"), in any manner, whether directly or indirectly, and including, without limitation, any obligation of such Person (i) to purchase or pay (or advance or supply funds for the purchase of) any security for the payment of such primary obligation, (ii) to purchase property, securities or services for the purpose of assuring the payment of such primary obligation, or (iii) to maintain working capital, equity capital or other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such primary obligation.

An obligation shall be "Indebtedness" whether recourse is secured by or is otherwise available against all or only a portion of the assets of such Person and whether or not contingent.

Initial Profit Accrual Date

"Initial Profit Accrual Date" means a date which is the last day of the calendar quarter in which the Disputed Claim Reserve shall have been reduced by at least seventy five percent from the amount of the Original Claim Reserve.

Insolvency Event

"Insolvency Event" means, with respect to a Person:

(a) the involuntary commencement of a bankruptcy, insolvency or similar proceeding or the filing of an involuntary petition in a court of competent jurisdiction, that has continued undismissed for a period of thirty (30) or more consecutive days, or results in an order or decree approving: (i) relief in respect of such Person or all or substantially all of its property or assets under any applicable bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator, rehabilitator, liquidator or similar official with respect to such Person or all or substantially all of its property or assets, or (iii) the winding-up, liquidation or dissolution of such Person;

(b) the voluntarily commencement of any proceeding or filing of any petition seeking relief (or the taking of any similar or analogous action) under any applicable bankruptcy, insolvency, receivership or similar law;

(c) the Person's consent to the institution of, or its failing to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (a) above;

(d) the Person's filing of an answer admitting the material allegations of a petition filed against it in any proceeding or petition described in clause (a) above;

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(e) the Person's application for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator, rehabilitator, liquidator or similar official for itself or for all or substantially all of its property or assets;

(f) the Person's making of a general assignment for the benefit of its creditors; or

(g) the Person's insolvency or its inability to pay its debts or contractual obligations as they become due, or an admission of its insolvency or inability to pay its debts or contractual obligations as they become due.

Insurance Department

"Insurance Department" means the New York State Insurance Department.

Insurance Law

"Insurance Law" means New York Insurance Law [].

Insurance Regulatory Authority

"Insurance Regulatory Authority" means, in relation to any Person, the insurance regulatory authorities, commissions, agencies, departments, boards or other authorities having jurisdiction over such Person or over the business of such Person.

Interest

"Interest" means any claim of a shareholder or other owner in its capacity as shareholder.

Interposition Ruling

"Interposition Ruling" means that opinion of the Receivership Court entered [] ruling on the rights of reinsurers to interpose defenses with respect to the handling of Claims and any subsequent ruling by the Receivership Court or any appellate court with respect to the subject matter thereof.

Investments

"Investments" means all expenditures made and all liabilities incurred (contingently or otherwise) for the acquisition of stock or Indebtedness of, or for loans, advances, capital contributions or transfers of property to, or in respect of any guaranties (or other commitments as described under Indebtedness), or obligations of, any Person. In determining the aggregate amount of Investments outstanding at any particular time: (a) the amount of any Investment represented by a guaranty shall be taken at not less than the principal amount of the obligations guaranteed and still outstanding; (b) there shall be included as an Investment all interest accrued with respect to Indebtedness constituting an Investment unless and until such interest is paid; (c) there shall be deducted in respect of each such Investment any amount received as a return of capital (but only by repurchase, redemption, retirement, repayment, liquidating dividend or liquidating distribution); (d) there shall not be deducted in respect of any Investment any

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amounts received as earnings on such Investment, whether as dividends, interest or otherwise, except that accrued interest included as provided in the foregoing clause (b) may be deducted when paid; and (e) there shall not be deducted from the aggregate amount of Investments any decrease in the value thereof.

Investment Assets

“Investment Assets” means all bonds, shares of capital stock, treasury instruments and other investments owned by a Person but does not include Cash.

IRIS

“IRIS” means the NAIC Insurance Regulatory Information System tests.

LAE Reserve

“LAE Reserve” means \$ _____, which is the amount to be established as a reserve for unallocated loss adjustment expense with respect to all Policyholder Claims as specified in the Bid.

Late-Filed Claim

“Late-Filed Claim” means a Claim filed after the Bar Date.

Law

“Law” means the laws of any country or any political subdivision thereof, including all federal, state and local statutes, regulations, ordinances, orders or decrees.

Lien

“Lien” means any mortgage, deed of trust, security interest, pledge, hypothecation, assignment, attachment, deposit arrangement, encumbrance, lien (statutory, judgment, judicial, consensual or otherwise), or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any Capitalized Lease, any Synthetic Lease, any financing lease involving substantially the same economic effect as any of the foregoing and the filing of any financing statement under the UCC or comparable law of any jurisdiction).

Liquidation Bureau

“Liquidation Bureau” means the New York Liquidation Bureau.

Liquidation Order

“Liquidation Order” means the order entered by the Receivership Court on April 3, 1986, commencing liquidation proceedings with respect to the Company pursuant to Insurance Law Section 7404.

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Liquidator

“Liquidator” means Eric R. Dinallo, Superintendent of Insurance of the State of New York, in his capacity as liquidator of the Company and his predecessors and successors in office.

Loss

“Loss” means a claim, accident, occurrence, casualty, disaster or other happening covered, or alleged by a Claimant to be covered, by a Policy as to which both the injury and identity of the injured Person or property is identified.

Material Adverse Effect

“Material Adverse Effect” means, with respect to any event or occurrence of whatever nature (including any adverse determination in any litigation, arbitration or governmental investigation or proceeding):

(a) As to the Purchaser, a material adverse effect on the business, properties, condition (financial or otherwise), assets, operations or income of the Purchaser, or on the ability of the Purchaser to perform any of the Purchaser Obligations;

(b) As to the Company, a material adverse effect on the Claims or Transferred Assets; in each case, other than changes resulting from (i) generally applicable economic conditions or conditions relating to the insurance industry generally, (ii) changes in applicable Laws or statutory accounting principles, or (iii) changes in regulatory conditions;

(c) As to the Parent, a material adverse effect on the business, properties, condition (financial or otherwise), assets, operations or income of the Parent, or on the ability of the Parent to perform any its obligations under the Parental Support Agreement and any other agreement with the Company or the Liquidator to which the Parent is a party or is otherwise bound.

Moody’s

“Moody’s” means Moody’s Investors Service or any successor thereto.

Multiple Policyholder’s Percentages

“Multiple Policyholder’s Percentages” means the Policyholder’s Percentage up to any stated threshold, a stated percentage of Profit in excess of such threshold, and any additional stated percentages of Profit in excess of any additional stated thresholds as specified in the Bid.

Non-Admitted Assets

“Non-Admitted Assets” means assets which are prohibited by Insurance Regulatory Authorities from being treated as assets for statutory reporting purposes.

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Opt-In Claim

“Opt-In Claim” means a Policyholder Claim held by an Opt-In Holder.

Opt-In Claim Payments

“Opt-In Claim Payments” means the payments required to be made by the Purchaser with respect to Opt-In Claims under the Plan.

Opt-In Guaranteed Percentage

“Opt-In Guaranteed Percentage” means the percentage of Pre-Effective Date Allowed Claims and Determined Claims that will be paid to Holders of Opt-In Claims pursuant to the Plan as provided in the Purchase Agreement and as set forth in the Bid.

Opt-In Holder

“Opt-In Holder” means a Holder of a Policyholder Claim that has elected with respect to such Policyholder Claim to opt into the Plan, has not made a timely election, or has otherwise been permitted to opt into the Plan by the Purchaser.

Opt-In Reinsurance Certificate

“Opt-In Reinsurance Certificate” means a document in the form of Annex F to the Purchase Agreement effecting the transfer to the Purchaser of the rights of the Company under Reinsurance Agreements with Opt-In Reinsurers..

Opt-In Reinsurer

“Opt-In Reinsurer” means a Reinsurer that has timely elected to opt into the Plan or has otherwise been permitted to opt into the Plan by the Purchaser.

Opt-Out Claim

“Opt-Out Claim” means a Policyholder Claim held by an Opt-Out Holder.

Opt-Out Claim Payments

“Opt-Out Claim Payments” means the payments required to be made by the Purchaser with respect to Opt-Out Claims under the Plan.

Opt-Out Guaranteed Percentage

“Opt-Out Guaranteed Percentage” means a percentage determined by the Receivership Court on recommendation by the Liquidator as to the amount which Holders of Policyholder Claims would have received if the Receivership Case had continued to conclusion without the transactions contemplated by the Plan.

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Opt-Out Holder

“Opt-Out Holder” means a Holder of a Policyholder Claim that has made a timely election with respect to such Policyholder Claim to opt out of the Plan, or has otherwise been permitted to opt out by the Purchaser, or the Receivership Court pursuant to the Plan.

Opt-Out Reinsurance Pool

“Opt-Out Reinsurance Pool” means a pool of assets controlled by the Liquidator which shall be segregated from other property of the Company and shall be accumulated and distributed in accordance with Article 10 of the Plan.

Opt-Out Reinsurance Proceeds Assignment

“Opt-Out Reinsurance Proceeds Assignment” means the assignment to the Purchaser of the proceeds of contracts of reinsurance provided by Opt-Out Reinsurers.

Opt-Out Reinsurer

“Opt-Out Reinsurer” means a Reinsurer that has elected to opt out of the Plan, or has failed to make a timely election with respect to the Plan, or has otherwise been permitted to opt out of the Plan by the Purchaser.

Option Deadline

“Option Deadline” means the 60th day after the Sale Confirmation Date.

Original Disputed Claim Reserve

“Original Disputed Claim Reserve” means \$ _____ which is the amount of the Disputed Claim Reserve as of the Effective Date plus the amount owing under the Purchase Agreement with respect to Pre-Effective Date Allowed Claims as determined by the Purchaser with the agreement of the Liquidator.

Original Surplus

“Original Surplus” means the amount determined by subtracting the Original Claim Reserve and the LAE Reserve from the Assets of the Purchaser as of the Closing Date.

Parent

“Parent” means [_____].

Parental Support Agreement

“Parental Support Agreement” means the Parental Support Agreement substantially in the form of Annex A to the Purchase Agreement.

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Parties

“Parties” means the Purchaser and the Liquidator.

Person

“Person” means an individual, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, joint venture, trust, estate, unincorporated organization, or a government or any agency or political subdivision thereof.

Plan

“Plan” means the Plan of Liquidation filed by the Liquidator in the Receivership Case as approved by the Receivership Court.

Plan Approval Date

“Plan Approval Date” means the date on which the clerk of the Receivership Court enters the Confirmation Order on the docket of the Receivership Court.

Plan Approval Order

“Plan Approval Order” means the order of the Receivership Court approving the Plan, together with any subsequent orders approving modifications to the Plan.

Policy

“Policy” means an insurance policy, insurance contract, or similar instrument or contract (but not including forward commitments to issue any of the foregoing), issued or written by the Company in the United States, the District of Columbia, Puerto Rico or the U.S. Virgin Islands.

Policyholder

“Policyholder” means the holder of a Policy issued by the Company prior to the Liquidation Order.

Policyholder Claim

“Policyholder Claim” means a Claim which would be classified within Class Two as defined by Insurance Law Section 7434(a)(1)(ii), which is the subject of a proof of claim that meets the requirements of Insurance Law Section 7433, which was filed or deemed to have been filed pursuant to Insurance Law Section 7433 in the Receivership Case prior to the Bar Date, and which is either Allowed, Determined or unadjudicated.

Policyholder’s Percentage

“Policyholder’s Percentage” means % of the Profit in excess of the Purchaser’s Fixed Profit as set forth in the Bid.

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Policyholder's Opt-Out Reinsurance Pool Percentage

"Policyholder's Opt-Out Reinsurance Pool Percentage" means the stated percentage incorporated in the definition of Policyholder's Percentage.

Pool Date of Determination

"Pool Date of Determination" means the first day of the month which is not less than sixty nor more than ninety days prior to the date on which a distribution is required to be made from the Opt-Out Reinsurance Pool under Article 10 of the Plan.

Post-Cutoff Date Loss

"Post-Cutoff Date Loss" means a Loss as to which either the injury or the identity of the injured Person or property is not known until on or after the Cutoff Date.

Post-Effective Date Administrative Expenses

"Post-Effective Date Administrative Expenses" means Claims for Administrative Expenses incurred after the Effective Date.

Post-Effective Date Allowed Claim

"Post-Effective Date Allowed Claim" means a Policyholder Claim that has been Allowed after the Effective Date.

Post-Effective Date Determined Claim

"Post-Effective Date Determined Claim" means a Policyholder Claim that has been Determined after the Effective Date.

Post Receivership Contracts

"Post-Receivership Contracts" means all contracts and leases entered into by the Company after the date of the Liquidation Order and prior to the Closing Date.

Pre-Effective Date Administrative Expenses

"Pre-Effective Date Administrative Expenses" means Claims for Administrative Expense incurred on or before the Effective Date.

Pre-Effective Date Allowed Claim

"Pre-Effective Date Allowed Claim" means a Policyholder Claim that has been Allowed prior to the Effective Date.

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Pre-Receivership Contracts

“Pre-Receivership Contracts” means all executory contracts and unexpired leases entered into by the Company prior to the entry of the Liquidation Order, except for any executory contract or unexpired lease that: (a) has been adopted or abandoned pursuant to this Plan or an order of the Receivership Court prior to the Effective Date, or (b) is the subject of a separate motion filed by the Liquidator in the Receivership Court and pending on the Effective Date.

Prior Distribution

“Prior Distribution” means a distribution made prior to the Effective Date by the Liquidator to the Holder of an Allowed Claim in partial satisfaction of such Allowed Claim as authorized by a Final Order of the Receivership Court.

Pro Rata

“Pro Rata” means with respect to any Distribution to a Holder of a Claim entitled to Distribution from the Company, a proportionate share, so that the ratio of (a) the amount of property to be distributed on account of such Claim in the same Class to (b) the amount to be distributed on account of all Claims in the same Class is the same as the ratio of (i) the amount of such Claim to (ii) the aggregate amount of all such Claims in the same Class.

Profit

“Profit” has the meaning ascribed to it in Section 3.4 of the Purchase Agreement.

Profit Determination Date

“Profit Determination Date” has the meaning ascribed to it in Section 3.4 of the Purchase Agreement.

Profit Sharing Distribution

“Profit Sharing Distribution” means a Distribution of Profit as provided by the Plan and the Purchase Agreement.

Purchase Agreement

“Purchase Agreement” means the Purchase Agreement in the form approved by the Receivership Court pursuant to the Sale Approval Order except for modifications permitted by the Sale Approval Order.

Purchase Price

“Purchase Price” shall have the meaning specified in Section 3.1 of the Purchase Agreement.

Purchaser

“Purchaser” has the meaning specified in the first paragraph of the Purchase Agreement.

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Purchaser Endorsement

“Purchaser Endorsement” means an endorsement to be issued by the Purchaser to each Holder of a Disputed Claim substantially in the form of Annex E to the Purchase Agreement. The Purchaser Endorsement will provide that in the event the Purchaser shall become insolvent, the Holder shall, in addition to having a claim against the receivership estate of the Company, also have a direct claim as a policyholder against the receivership estate of the Purchaser.

Purchaser Reinsurance Agreement

“Purchaser Reinsurance Agreement” means the agreement entered into between the Liquidator and the Purchaser substantially in the form of Annex B to the Purchase Agreement.

Purchaser’s Fixed Profit

“Purchaser’s Fixed Profit” means the first \$ _____ of Profit as set forth in the Bid, which Profit shall be retained by the Purchaser.

Purchaser’s Obligations

“Purchaser’s Obligations” means any obligations of the Purchaser for payment or performance under the Purchase Agreement, the Ancillary Agreements and the Plan.

Purchaser’s Percentage

“Purchaser’s Percentage” means _____ % as set forth in the Bid.

Purchaser’s Percentage Profit

“Purchaser’s Percentage Profit” means, at any time, the Profit at such time minus the Purchaser’s Fixed Profit with the resulting sum multiplied by the Purchaser’s Percentage.

Rating

“Rating” means the lowest of the financial strength ratings assigned by S&P, A.M. Best, Moody’s or Fitch to: (a) the long-term unsecured debt or obligations of a Person, or (b) the rated Person.

Real Estate

“Real Estate” means all real property at any time owned or leased (as lessee or sublessee or subsublessee) by the Purchaser.

Receivership Case

“Receivership Case” means the proceedings with respect to the Company under Insurance Law Article 74 before the Receivership Court, presently entitled “In the Matter of Midland Insurance Company,” index number 41294/1986.

Draft

Receivership Court

“Receivership Court” means the Supreme Court of the State of New York, New York County.

Recovery

“Recovery” means any amount payable to or received by the Company in reimbursement of any Loss paid by the Purchaser under the Reinsurance Agreement, whether by subrogation, salvage, reimbursement or other recovery from the Policyholder or otherwise.

Reference Period

“Reference Period” means, as of any date of determination, the period of four (4) consecutive fiscal quarters of the Purchaser ending on such date, or if such date is not a fiscal quarter end date, the period of four (4) consecutive fiscal quarters most recently ended (in each case treated as a single accounting period).

Reinsurance Agreement

“Reinsurance Agreement” means a contract or agreement of reinsurance, however described or denominated, under which the Company has ceded insurance risks to another Person, whether on a proportional, excess of loss, facultative, treaty or other basis.

Reinsurance Recoverable

“Reinsurance Recoverable” means an amount owed or which may be owed in the future under a Reinsurance Agreement in accordance with SAP.

Reinsurer

“Reinsurer” means an insurer that has reinsured insurance risks of the Company under a Reinsurance Agreement.

Released Parties

“Released Parties” shall have the meaning ascribed to such term in Article 16 of the Plan.

Report

“Report” means a report prepared by the Liquidator concerning the affairs of the Estate and filed with the Receivership Court.

Representatives

“Representatives” means the Company’s officers, directors, employees, agents, advisors, legal counsel, auditors, Affiliates or other representatives.

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Restricted Payment

“Restricted Payment” means, in relation to the Purchaser, any: (a) Capital Distribution, (b) payment or prepayment by the Purchaser to any Affiliate of the Purchaser, (c) derivatives or other transactions with any financial institution, commodities or stock exchange or clearinghouse (a “Derivatives Counterparty”) obligating the Purchaser to make payments to such Derivatives Counterparty as a result of any change in market value of any Capital Stock of the Purchaser, or (d) any principal, interest or other amounts due in respect of any Indebtedness which by its terms is subordinated to payment of the Purchaser’s Obligations.

Retrocedant

“Retrocedant” means a Reinsurer that has retroceded insurance risks under a Retrocession Agreement.

Retrocession Agreement

“Retrocession Agreement” means any contract or agreement of reinsurance, however described or denominated, under which the Company reinsured with another Person, the Company’s obligations under an Assumed Reinsurance Contract.

Retrocessionaire

“Retrocessionaire” means a reinsurer that reinsures the Company’s obligations under an Assumed Reinsurance Contract.

Risk Based Capital Ratio

“Risk Based Capital Ratio” shall be the ratio determined in accordance with Insurance Law Section 1324.

Sale Approval Order

“Sale Approval Order” means the order of the Receivership Court approving the selection of the Purchaser and consummation of the Purchase Agreement.

Sale Confirmation Date

“Sale Confirmation Date” means the date on which there shall be a Final Order approving the Sale Transaction.

Sale Transaction

“Sale Transaction” means the transaction effectuated pursuant to the Purchase Agreement, the Ancillary Agreements and the Plan.

S&P

“S&P” means Standard & Poor’s Ratings Services or any successor thereto.

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SAP

“SAP” means statutory accounting principles set forth in the Accounting Practices and Procedures Manual as of March 2008 published by the National Association of Insurance Commissioners, as adopted, supplemented and amended, from time to time, by the Insurance Department pursuant to Insurance Law Sections 307 and 308, and N.Y. Comp. Codes R. & Regs. Tit. 11, Part 83 (Regulation 172).

SAP Financial Statements

“SAP Financial Statements” means the Statutory Annual Financial Statements and the Statutory Quarterly Financial Statements required by Insurance Law Section 307 and Section 308 and N.Y.C.R.R. Sections 83.1 to 83.4.

Secured Claim

“Secured Claim” means any Claim secured by a Lien on property of the Company, but does not include Special Deposit Claims or Claims against general assets of the Company.

Special Deposit Claim

“Special Deposit Claim” means any Claim secured by a deposit made pursuant to a statute for the security or benefit of a limited class of persons, but not including any general assets.

Statutory Annual Financial Statements

“Statutory Annual Financial Statements” means the annual fiscal year-end financial statements required by SAP to be filed with the Insurance Department.

Statutory Quarterly Financial Statements

“Statutory Quarterly Financial Statements” means the quarterly financial statements required by SAP to be filed with the Insurance Department.

Statutory Surplus

“Statutory Surplus” means, at any time, the surplus of the Purchaser that appears or should appear on the SAP Financial Statements of the Purchaser determined in accordance with SAP.

Subsidiaries

“Subsidiaries” means any corporation, association, trust, or other business entity of which the designated parent shall at any time own directly or indirectly through a Subsidiary or Subsidiaries at least a majority (by number of votes) of the outstanding voting stock.

Synthetic Lease

“Synthetic Lease” means any lease of goods or other property, whether real or personal, which is treated as an operating lease under SAP and as a loan or financing for U.S. income tax purposes.

Draft

Taxes

“Taxes” means any and all federal, state, county, local, or foreign tax (including Transfer Taxes), charge, fee, levy, impost, duty, or other assessment, including taxes based upon or measured by income, gross receipts, profits, sales, use and occupancy, as well as excise, employment, transfer, recording, license, payroll, franchise, severance, documentary, stamp, windfall profits, environmental, highway use, commercial rent, customs duty, capital stock, paid-up capital, withholding, social security, single business, unemployment, disability, real property, personal property, registration, ad valorem, value added or other tax or governmental fee of any kind whatsoever, imposed or required to be withheld by any Governmental Authority, including any estimated payments relating thereto, any interest, penalties, and additions imposed thereon or with respect thereto, and including any liability for taxes of another person under Treas. Reg. Section 1.1502-6 or similar provision of state, local or foreign law, or as a transferee or successor, by contract or otherwise.

Taxing Authority

“Taxing Authority” means any Governmental Authority having jurisdiction over the assessment, determination, collection, or other imposition of any Taxes.

Tax Return

“Tax Return” shall mean any report of Taxes due, any information return with respect to Taxes, or other report, statement, declaration or document filed or required to be filed under the Internal Revenue Code or other laws in respect of Taxes, any amendment to any of the foregoing, any claim for refund of Taxes paid, and any attachments, amendments or supplements to any of the foregoing.

Termination Date

“Termination Date” means the date on which the Receivership Court enters an order dismissing or otherwise terminating the Receivership Case.

Transferred Assets

“Transferred Assets” means the tangible and intangible assets set forth on Schedule 2.1 to the Purchase Agreement.

Draft

Transfer Taxes

“Transfer Taxes” means all stamp, transfer, real property transfer, recordation, grantee/grantor, documentary, sales, use, value added, registration or other such similar taxes or fees incurred in connection with the consummation of the transactions contemplated by this Agreement, together with any interest or penalties imposed with respect thereto.

Web Site

“Web Site” means the internet web site maintained by the Liquidation Bureau concerning the Company at <http://www.nylb.org>.

EXHIBIT 1

ADR Procedures for Opt-In Claims

Any dispute concerning an Opt-In Claim shall be resolved by a referee who shall be a retired judge or justice from the panel of *[appointing agency]*, appointed pursuant to the provisions of the Plan. The following procedures shall be followed:

Selection of Referee: The parties will attempt to agree on a retired judge from the *[appointing agency]* panel. If the parties are unable to agree within fifteen days, *[appointing agency]* will provide a list of three available judges and each party shall, within fifteen days of receiving such list, strike one name from the list and rank the remaining two judges as first and second choices. If the parties strike different judges, the remaining judge will serve as the referee (unless he or she is disqualified as set forth below). If the parties strike the same judge: (a) and rank the same judge as first choice, then the first ranked judge shall serve as the referee (unless he or she is disqualified as set forth below); or (b) rank different judges as first choice, then the referee will be chosen by drawing lots by the appointing agency. If any referee is disqualified, the foregoing process shall be repeated to select a new referee. Either party may seek to disqualify a referee on motion to the Receivership Court. Any such motion will be based solely on the grounds set forth in Section 100.3E of the New York State Rules of the Chief Administrator of the Courts.

The Liquidator will determine the appointing agency (through a request for proposals) prior to [_____].

Prehearing Conference: The referee shall schedule a prehearing conference to reach agreement on or decide procedural matters, arrange for the exchange of information, obtain stipulations, and attempt to narrow the issues. The prehearing conference shall occur no later than thirty days after the selection of a referee.

Discovery: The parties will submit a proposed discovery schedule to the referee at the prehearing conference. All discovery methods (and sanctions and other remedies for noncompliance with discovery) available to litigants under NYCPLR Article 31 shall be available except that interrogatories shall be limited to requests for identification of persons with knowledge relevant to the dispute and the location and custodian of documents relevant to the dispute. Absent other agreement by the parties, the parties shall be afforded not less than two months and not more than four months to complete discovery.

Hearing

(i) Unless otherwise agreed by the parties, the hearing shall commence within four months of the prehearing conference.

(ii) Unless otherwise agreed to by the parties or otherwise ordered by the referee, the parties shall file briefs with the referee at least ten days before the hearing, specifying the facts each intends to prove and analyzing the applicable law.

(iii) The parties shall have the right to representation by legal counsel throughout the proceedings. The proceedings shall be held in New York City or at a location agreed by the parties.

(iv) New York rules of evidence and procedure relating to the conduct of the hearing, examination of witnesses, and presentation of evidence shall apply.

(v) The choice of law shall be based on the Choice of Law Ruling, unless such ruling shall have been reversed on appeal or vacated as of the date of the initial request for the commencement of the proceeding, in which case the choice of law shall be based on the appellate ruling as determined by the referee.

(vi) Any party desiring a stenographic record may secure a court reporter to attend the proceedings. The requesting party must notify the other parties of the arrangements in advance of the hearing and must pay for the cost incurred.

Draft

(vii) The Holder of a Claim shall have the burden of proof and the burden of going forward. The standard of decision shall be a preponderance of the evidence.

Decision

(i) The referee shall issue a written statement of decision which shall be mailed promptly to the parties.

(ii) The referee will have the ability to award attorneys' fees to the prevailing party in circumstances indicating bad faith or procedural abuse.

(iii) The ruling of the referee will be final and binding on the parties without confirmation or appeal to any tribunal.

(iv) The ruling of the referee may be vacated exclusively through an application to the Receivership Court filed within thirty days of the ruling. Such ruling shall be vacated only if the applicant can prove, by clear and convincing evidence, fraud, collusion or direct and material violation of Sections [_____, _____, _____ or _____] of the Plan to the satisfaction of the Receivership Court. In the event that the application is substantially denied, the reasonable fees and costs of the non-applicant shall be borne by the applicant unless the Receivership Court deems that the interests of justice require otherwise.

(v) The ADR process shall be completed and a decision rendered within 180 days of initiation, unless the parties shall mutually agree otherwise.

Fees and Expenses: The referee may order the referee's fees to be paid by one party or shared by the parties in such manner as the referee deems just. No award of interest shall be made.