



ARIAS U.S. – SAMPLE FORM 3.3: CONFIDENTIALITY AGREEMENT

In the Matter of the Arbitration Between

_____)	
)	
)	
)	
)	<i>Before:</i>
)	
- and -)	Umpire:
)	Arbitrator:
)	Arbitrator:
)	
_____)	
Respondent.)	

**CONFIDENTIALITY AGREEMENT
AND PROTECTIVE ORDER [1]**

1. The Petitioner and Respondent (as hereinafter defined, also referred to as “parties”) intending to be bound by this Confidentiality Agreement and Protective Order (“Agreement and Order”) are:

- a. The _____ and its parent corporation, subsidiaries, affiliates, agents (including counsel and counsel’s law firm in this Arbitration), employees, officers and directors (“Petitioner”).
- b. The _____ and its parent corporation, subsidiaries, affiliates, agents (including counsel and counsel’s law firm in this Arbitration), employees, officers and directors (“Respondent”).

2. Except as provided in Paragraph 3 below, and absent written agreement between the parties to the contrary, it is agreed and ordered that all briefs, depositions and hearing transcripts generated in the course of this arbitration, documents created for the arbitration or

1 THIS CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER IS INTENDED TO BE A TEMPLATE AND NOT A MANDATED FORM TO BE USED IN ALL REINSURANCE ARBITRATIONS. THE PARTIES MAY AND SHOULD CONSIDER AMENDING THE PROVISIONS OF THIS TEMPLATE AS NECESSARY.

produced in the proceedings by the opposing party or third-parties, the result and all other terms of the final award and any interim decisions, and all correspondence, oral discussions and information exchanged in connection with the proceedings (hereinafter collectively referred to as “Arbitration Information”), whether generally or specifically, will be kept confidential and not disclosed or characterized.

3. Disclosure of Arbitration Information may be made:
 - a. as is necessary to obtain compliance with the interim decisions or the final award issued in this arbitration, or to secure payment from reinsurers or retrocessionaires of amounts at issue in or incurred for this arbitration;
 - b. as is necessary in connection with court proceedings relating to any aspect of the arbitration, including but not limited to motions to confirm, modify, vacate or enforce an award issued in this arbitration;
 - c. as is necessary in communications with auditors retained by any party, or federal or state regulators;
 - d. as is necessary to comply with subpoena, discovery requests or orders of any arbitral authority (i.e., a single arbitrator or panel) or court;
 - e. as is necessary in any future arbitration proceedings between the parties, provided the arbitration authority in the future arbitration proceeding:
 - (1) has been convened under the same reinsurance agreements at issue in this Arbitration; and/or
 - (2) requires disclosure for good cause shown.
 - f. to the extent Arbitration Information is already lawfully in the public domain.

Any disclosures pursuant to subparagraphs (a) (compliance/payment) and (c) (auditors/regulators) shall be accompanied by a copy of this Agreement and Order and an instruction to any recipient to maintain the confidentiality of all Arbitration Information. In connection with any disclosures pursuant to subparagraph (b) (court proceedings), the parties agree, subject to court approval, that all submissions of Arbitration Information to a court shall be sealed and/or redacted so as to limit disclosure of Arbitration Information. If a party is requested or required under subparagraph (d) (subpoenas/discovery requests) to disclose Arbitration Information, the procedures as further outlined in paragraph 5 shall govern.

4. For the purpose of conducting this arbitration, Arbitration Information may be disclosed as needed or appropriate to the following persons only:

- a. the Arbitration Panel, who evidence by their execution hereof their undertaking to maintain Arbitration Information in confidence as set forth herein;

- b. counsel for a party or employees of counsel's law firm who are assisting counsel;
- c. employees and agents of the parties for purposes consistent with this Agreement and Order;
- d. any party's deposition or trial witness;
- e. any person retained by counsel for a party to assist in this arbitration, including court reporters or videographers arranged by any party; provided, however, that such persons shall agree to be bound by the terms of this Agreement and Order as if that person were a party, and shall so acknowledge by executing, prior to receipt of or access to Arbitration Information, an Acknowledgment in the form attached hereto as Exhibit A; or
- f. any non-party deposition or trial witness; provided, however, that such person shall agree to be bound by the terms of this Agreement and Order as if that person were a party, and shall so acknowledge by executing, prior to receipt of or access to Arbitration Information, an Acknowledgment in the form attached hereto as Exhibit A.

5. If a party is requested or required to disclose Arbitration Information pursuant to subpoenas/discovery requests as referenced in paragraph 3, subject to applicable legal restrictions, that party will:

- a. Notify the other party(ies) in writing as soon as possible after the subpoena, request or arbitral or court order is received, to permit the other party(ies) to seek legal protection against any such disclosure; and
- b. Tender the defense of that demand to the party that produced the Arbitration Information, or permit that party to associate in the defense of that demand.

Unless the demand has been timely limited, quashed or extended, the obligated party will thereafter be entitled to comply with such demand, request or arbitral court order to the extent required by law. If requested by any other party(ies), the obligated party will cooperate (at the expense of the requesting other party(ies)) in the defense of a demand.

6. The parties have agreed to use the following reasonable methods to protect the data and other information in this proceeding from cyber breaches [insert mandated use of cyber protection software or encryption procedures]. Any breach or loss of data as a result of a cyber breach shall be reported to the other party(ies) as soon as reasonably possible, so that appropriate remediation measures may be undertaken.

7. The parties recognize that, in addition to any injury which may result in damages, serious, immediate or irreparable harm not compensable by actual or liquidated damages will

result to any party and its business if the other party breaches its obligations under this Agreement and Order. Therefore, each party agrees that all parties will be entitled to see a restraining order, injunction or other equitable relief if another party breaches its obligations under this Agreement and Order, in addition to any other remedies and damages that would be available at law or equity. Further, nothing in this paragraph shall prohibit the Arbitration Panel, prior or coincident to issuing its final order or final award, from ordering appropriate relief to any party aggrieved by a breach of this Agreement and Order by the other party.

8. This Agreement and Order shall survive the termination of the arbitration and any subsequent legal proceedings related thereto.

AGREED:

_____ for _____ Petitioner

_____ for _____ Respondent

SO ORDERED:

Members of the Arbitration Panel:

Arbitrator: _____

(Printed Name) _____

Arbitrator: _____

(Printed Name) _____

Umpire: _____

(Printed Names) _____

Dates: _____

EXHIBIT A

In the Matter of the Arbitration Between

Petitioner,

- and -

Respondent.

ACKNOWLEDGEMENT

_____ states as follows:

1. I live at _____

2. I am employed as (position) _____ by (name and address of employer), _____

3. I am aware that the parties to *In the Matter of the Arbitration Between* _____
_____ and _____

have agreed to, and the Arbitration Panel has executed, a Confidentiality Agreement And Protective Order dated _____ (“Agreement And Order”). I have received and read a copy of that Agreement And Order.

4. I agree to review and otherwise use the material produced in the instant arbitration by _____

only under supervision of a party’s counsel and only in connection with this particular arbitration.

5. I agree that I am bound by the terms of the Agreement And Order as though I were a party to the arbitration, and I will not disclose or discuss material produced by _____

_____ or _____ to
or with any person other than those permitted access to such material under the Agreement And Order.

(Signature) _____

(Printed Name) _____

Witnessed:

Party:

By: _____