

*Exemplar: for Educational Purposes*

**CONFIDENTIAL / ATTORNEY-CLIENT AND WORK PRODUCT PRIVILEGED**

**COMMON INTEREST AND CONFIDENTIALITY AGREEMENT**

This Common Interest Agreement (“Agreement”), effective as of this \_\_\_\_ day of 20\_\_\_\_, memorializes certain understandings reached among [Cedent] and [Reinsurer] (collectively, “the Parties”) with respect to the common evaluation, audit, investigation, legal undertaking or action, and pursuit of rights and remedies related to \_\_\_\_\_ (hereinafter, such matters collectively referred to as the “Claims”).

WHEREAS, the Parties believe and anticipate that the nature of the Claims will present various common legal and factual issues and that the Parties have a mutuality of interest in a joint evaluation, investigation and possible legal action regarding such Claims; and

WHEREAS, the Parties intend to pursue a common legal undertaking to advance their interest with respect to the Claims; and

WHEREAS, the Parties wish to continue to pursue their separate but common interests, and to avoid any suggestion of waiver of the confidentiality of communications and documents protected by the attorney-client privilege, the work product doctrine, or any other privilege, confidentiality, or protection vis-à-vis other parties, including but not limited to potentially or actually adverse parties; and

WHEREAS, it is the intention and understanding of the Parties that past and future communications among them, or among them and any counsel retained by any of them, and any joint interviews of prospective witnesses or any interviews obtained by counsel for one Party hereto with the knowledge, consent and on behalf of other Parties, are and shall remain confidential and are and shall continue to be protected from disclosure to any third party by all applicable privileges, except as set forth herein; and

WHEREAS, in order to effectively pursue a joint evaluation, investigation, defense, legal action, or other undertaking concerning the Claims, the undersigned have also each concluded that, from time to time, their interests will best be served by sharing documents and information, including but not limited to audit reports, actuarial studies, factual investigation and materials, mental impressions, memoranda, interview reports, litigation strategies, and other information, including the confidences of each Party – all of which will hereafter be referred to as the “Shared Information;” and

WHEREAS, it is the purpose of this Agreement to ensure that any exchange and / or disclosure of the Shared Information contemplated herein does not constitute a waiver of any privilege or protection otherwise available.

IT IS THEREFORE AGREED as follows:

1. Shared Information may be disclosed to or transferred among the Parties orally or in writing or by any other appropriate means of communication. The Parties intend that no claim of work product, attorney-client, common interest or any other privilege or protection be waived by reason of such disclosure or transfer of Shared Information.

2. The Parties agree that, except as specified below, all Shared Information received from each Party or its counsel or other agents or representatives shall be held in strict confidence by the receiving Party and by all persons to whom such confidential information is revealed by the receiving Party pursuant to this Agreement. The Shared Information may be shared by the receiving Party with its own officers, directors, employees, attorneys, accountants, experts, and representatives working on the Claims and may be used by such persons in connection with the Claims and conducting such other activities that are necessary and proper to carry out the purposes of this Agreement. The Shared Information shall not be used by the receiving Party for any other purpose without the prior written consent of the Party providing the information.

3. Shared Information that is exchanged in written or in documents form and is intended to be kept confidential may, but need not be, marked "Confidential" or with a similar legend. If such information may become the subject of an administrative or judicial order requiring disclosure of such information by a Party, the Party may satisfy its confidentiality obligations under this Agreement by notifying the Party that generated the information and by giving such Party a reasonable opportunity to intervene and to be heard and otherwise cooperating fully with such Party in any proceeding relating to the disclosure of Shared Information.

4. Each Party shall take all necessary and appropriate measures to ensure that any person who is granted access to any Shared Information or who participates in work on common projects or who otherwise assists such Party in connection with the Claims, is familiar

with the terms of this Agreement and complies with such terms as they relate to the duties of such persons.

5. The Parties intend to protect from disclosure all information and documents shared among the Parties to the greatest extent permitted by law regardless of whether the sharing occurred before the execution of this Agreement and regardless of whether the writing or document is marked, "Confidential." Notwithstanding the foregoing, nothing in this Agreement shall obligate one Party to share or communicate any material with the other Parties hereo.

6. This Agreement may be terminated by any Party hereto, prospectively, five business days subsequent to written notice of termination by that Party to the undersigned. The obligations of the Parties under this Agreement shall remain in full force and effect, without regard to whether this Agreement is terminated, whether the Parties cease to have interests in common or whether the Claims are resolved (either in whole or with respect to less than all the Parties) by final judgment, determination, or settlement. This Agreement shall not apply to information that is now or hereafter becomes public knowledge without violation of this Agreement.

7. Subject to restrictions on disclosure of Shared Information to third parties, this Agreement shall not constitute, be interpreted, construed, or used as evidence of any admission of liability, law, or fact, a waiver of any legal or contractual entitlement, right, or defense, or an estoppel by a Party or by any other person. Nothing herein shall be construed to diminish such duties and obligations as the Parties otherwise owed to one another.

8. Any waiver or modification of this Agreement must be in writing and signed by the Parties;

9. The existence of this Agreement is itself confidential and will be not be disclosed to a third party, except when necessary to assert a privilege.

10. This Agreement shall not be rendered void by virtue of one or more of the provisions hereof being held unenforceable, but shall remain in full force and effect as to the remaining provisions;

11. This Agreement is in addition to , and is in no way intended to alter, amend, or supersede the terms and conditions of the Parties' reinsurance contract(s).

12. Nothing in this Agreement shall create an attorney-client relationship. This Agreement is not intended to and does not impose any duty on any attorney to act for or on behalf of Participants who are not the attorney's client or clients.

13. This Agreement may be executed in counterparts. Each counterpart when so executed shall be deemed to be an original and all such counterparts together shall constitute the same instrument.

IN WITNESS WHEREFORE, the Parties hereto enter into this Agreement. Each person signing this Agreement represents and warrants that they have been duly authorized to enter into this Agreement by the entities or individuals on whose behalf it is indicated that the person is signing.

By \_\_\_\_\_

By \_\_\_\_\_