

## TRANSITION SERVICES AGREEMENT

This **TRANSITION SERVICES AGREEMENT** ("Agreement") is made as of the 11th day of June, 2003, by and between the **Commissioner of Insurance of the State of New Hampshire, solely in her capacity as Liquidator** ("Liquidator") of The Home Insurance Company, a stock insurance company in liquidation in New Hampshire, and U.S. International Reinsurance Company, a stock reinsurance company in liquidation in New Hampshire, and **Risk Enterprise Management Limited**, a Delaware corporation ("REM"). The Liquidator and REM shall be referred to individually as "Party" and collectively as "Parties."

**WHEREAS**, pursuant to an Order of Liquidation entered June 11, 2003, by the Superior Court of Merrimack County, New Hampshire ("New Hampshire Court"), which was superseded by an Order of Liquidation entered June 13, 2003, The Home Insurance Company ("The Home") was placed in liquidation, and pursuant to an Order of Liquidation entered June 13, 2003, by the New Hampshire Court, U.S. International Reinsurance Company ("USI Re" and, together with The Home, the "Companies") was placed in liquidation; and pursuant to the Orders of Liquidation the Commissioner of Insurance of the State of New Hampshire was appointed Liquidator of the Companies (the two June 13, 2003 orders shall be referred to collectively as the "Orders of Liquidation");

**WHEREAS**, the Liquidator intends to create an effective, stand alone liquidation operation for the Companies in liquidation; and

**WHEREAS**, the Liquidator desires to engage REM to provide certain transition services to facilitate the orderly liquidation of the Companies, REM is willing and able to provide such transition services to the Liquidator, in accordance with this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises and agreements as set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Liquidator and REM, hereby agree as follows:

### **Section 1. Engagement.**

Pursuant to the Orders of Liquidation and New Hampshire RSA 402-C:25, II, the Liquidator engages REM to provide the transition services specified below with respect to the liquidation of the Companies in accordance with New Hampshire RSA 402-C on the terms and subject to the conditions set forth in this Agreement. REM hereby accepts such engagement, on such terms and subject to such conditions.

## **Section 2. Transition Services.**

(a) REM shall provide transition services in support of the liquidation of the Companies and the orderly transfer and marshaling of the assets, property, books and records of the Companies to and by the Liquidator ("Services"). The Services encompass the operations of the Companies worldwide and include but are not limited to the following:

(i) Provide information and support for follow-up notice mailings to potential claimants, including, without limiting the generality of the foregoing, property, international and third party administered claims;

(ii) Delivery of Proof of Claim system, as currently specified, including production and user signoff of systems and making the system operational by July 31, 2003;

(iii) Provide assistance in UDS data transfer from guaranty associations to Pyramid system and any additional transfers required as a result of new claims or newly identified claims;

(iv) Assist the Liquidator in separating Home data on the Pyramid system and transferring that data to Liquidator's Pyramid system by October 14, 2003;

(v) Upgrade personal computers and servers in offices at 59 Maiden Lane, New York, New York ("New York Office"), 286 Commercial Street, Manchester, New Hampshire (New Hampshire Office") in accordance with existing instructions from Liquidator; Assist in installation of personal computers at New Hampshire Insurance Department offices in Concord, New Hampshire and in an Atlanta Branch which may be established in the future ("Atlanta Office") and other location(s) as mutually agreed.

(vi) Assist Liquidator in identification and engagement of outside vendor to the Liquidator to replace ZT Services as respects mainframe and AS400 systems to provide Legacy and ceded reinsurance services on same basis as ZT Services, including advising Liquidator on transfer, installation, and testing for accuracy during conversion;

(vii) Arrange installation of new PBX in Home's New Hampshire Offices;

(viii) Assist Liquidator to create separate data center on 5<sup>th</sup> floor of Home's New York Offices;

(ix) Assist in establishing access to data and systems for UK Branch (Proof Of Claim, Pyramid, and e-mail) for Joint Provisional Liquidators in the United Kingdom;

(x) Assist in transfer of mainframe and related AS400 systems (Legacy and Ceded) from Schaumberg to Zurich's California Processing Center or such other vendor as the Liquidator may choose;

(xi) Assist the Liquidator to acquire, at the expense of the Companies, any third party vendor software or maintenance agreements which the Liquidator may require for the liquidation of the Companies;

(xii) Separate the Liquidator's Great Plains Financial System data from REM data and transfer such data to Liquidator's Great Plains Financial System;

(xiii) Assist Liquidator in installing and accessing all data and databases and in transferring all data of the Companies to the Liquidator on the Liquidator's systems with the purpose of making those systems fully operable and data and databases accessible;

(xiv) Cross-train liquidation staff and REM staff to operate all systems;

(xv) Assist in installation and maintenance of all systems infrastructure, including back-up procedures and disaster recovery plan; and

(xvi) Perform any other services requested by the Liquidator and which are available from REM as agreed to by the Parties.

(b) In providing Services hereunder, REM shall use its best efforts and reasonable care and professional judgment and shall comply with applicable laws and regulations.

(c) All Services provided by REM hereunder shall be subject to the direction of the Liquidator, including the Special Deputy Liquidator appointed pursuant to RSA 402-C:25, I.

### **Section 3. Duties of the Parties.**

(a) REM and the Liquidator shall in good faith cooperate with one another in order to facilitate the purpose of this Agreement to assist in creating an independent operation for the liquidation of the Companies under the control of the Liquidator separate from and not reliant in any way upon REM.

(b) Unless mutually agreed as respects specific individuals employed by REM, REM shall vacate the space at 59 Maiden Lane, New York, New York (5<sup>th</sup> and 17<sup>th</sup> floors and basement storage space) and 286 Commercial Street, Manchester, New Hampshire leased by The Home on or before the end of the Term. REM will make available to the Liquidator six office spaces in the New York 5<sup>th</sup> floor office space within fourteen (14) days of signing of this Agreement.

(c) All employees of REM shall promptly resign as officers or directors of The Home or USI Re and of any subsidiaries, including, without limiting the generality of the foregoing, City International Insurance Company, Ltd., Cityvest International Limited, and Cityvest Reinsurance Limited.

(d) During the Term, REM and its affiliates shall not be prohibited or otherwise limited from engaging in any aspect of the insurance or reinsurance business on behalf of or with respect to persons other than the Companies; provided, that neither REM nor any of its affiliates retained to provide Services hereunder shall, during the Term, engage in any aspect of the insurance or reinsurance business with such persons if the terms of such engagement would be adverse to the interests of the Liquidator or the Companies or the liquidation process. REM shall disclose any potential conflicts of interest in writing to the Liquidator promptly upon becoming aware of them. The Liquidator acknowledges that REM has been engaged by state guaranty funds with respect to The Home and does not object.

(e) The Liquidator and REM are not partners or joint venturers with each other, and nothing herein shall be construed as to make them such partners or joint venturers, or impose any liability as such on either of them. REM shall perform its duties hereunder as an independent contractor.

(f) Subject to prior written approval of the Liquidator, REM on behalf of the Liquidator, may retain defense counsel, financial, actuarial and other advisors and service providers, including affiliates of REM, in connection with the provision of Services hereunder where such retention is specifically authorized by this Agreement; provided, however, that the terms pursuant to which such Services are provided by any such affiliates or third parties, and the charges or fees therefor, shall be fair and reasonable. The fees and expenses of service providers for such services shall be expenses of the liquidation to be paid by the Liquidator and are not included in the Fees under Section 4.

(g) REM shall hold any premiums collected, reinsurance or subrogation recoveries, or other amounts collected by it on behalf of the Companies in a fiduciary capacity for the benefit of the applicable Company in liquidation and shall immediately deposit such premiums or other amounts in the Account(s) established in the name of such Company under the control of the Liquidator.

#### **Section 4. Fees and Payment.**

(a) In consideration of the Services provided, the Liquidator agrees to pay to REM, in accordance with the monthly funding and true-up procedure now in effect pursuant to the Liquidator's June 20, 2003 letter, from the assets of the Companies fees ("Fees") consisting of:

(i) actual reasonable compensation paid during and actual reasonable employee benefits for the Term (as defined below) of this Agreement (for avoidance of doubt, severance costs, long term incentive plan costs, bonus payments, pension costs, and other compensation and benefits arising from periods prior to the Term are excluded) multiplied by the percentage of time spent by REM personnel during the Term related to the provision of Services to the Liquidator; plus

(ii) a reasonable allocation of the reasonable costs, excluding fees and expenses of third-party services providers, which shall be paid directly to such providers by Liquidator, related to the provision of such Services to the Liquidator; plus

(iii) the sum of \$295,000 for REM's extraordinary transitional costs during this transitional period, payable upon the date later to occur of August 1 or approval of this Agreement by the New Hampshire Court.

(b) Fees and all other payments called for by the terms of this Agreement are Administration Costs pursuant to New Hampshire RSA 402C: 44, I.

(c) Notwithstanding anything to the contrary in this Agreement, all payments required to be made by the Liquidator under this Agreement, of any kind and for any reason, shall be made only from and are limited to the assets of the Companies in liquidation. The Liquidator shall have no other obligation to make payments and no obligation to seek funding from any other source. Without limiting the generality of the foregoing, neither Paula T. Rogers nor the State of New Hampshire shall have any obligation hereunder.

(d) The Parties shall have the right, at reasonable times, to inspect or audit the records in possession of the other to the extent that such records concern the Services rendered by REM under this Agreement. REM agrees to maintain such records separately from records concerning its other clients. The Parties agree to retain such records for a period of five (5) years from date of invoicing. Each Party shall promptly give access to such records to the other Party and/or her or its authorized representatives during normal business hours and upon reasonable advance notice.

**Section 5. Indemnification.**

(a) Indemnification of the Liquidator: REM shall, to the fullest extent permitted by law, indemnify the Liquidator and Companies from and against all losses, costs, obligations, liabilities, settlement payments, awards, judgments, fines, penalties, damages, and expenses (including but not limited to reasonable and necessary fees of counsel, investigators, expert witnesses, consultants and other professionals, court filing fees, court costs, arbitration fees or costs, witness fees and other similar expenses) (“Liabilities”) incurred by the Liquidator or the Companies in connection with any claim, demand, action, suit or proceeding to which the Liquidator or either Company is a party, but only insofar as the same have been determined by a final, non-appealable order of a court of competent jurisdiction to have arisen as a proximate result of the actual fraud, gross negligence or willful or wanton misconduct of REM in the provision of Services under this Agreement.

(b) Indemnification of REM:

(i) The Liquidator shall, to the fullest extent permitted by law, indemnify, defend, and hold REM harmless from and against Liabilities incurred by REM in connection with any claim, demand, action, suit or proceeding to which REM is made a party by reason of or arising or resulting from the Services provided to the Liquidator under this Agreement and after entry of the Orders of Liquidation; provided, however, that REM was not in material breach of this Agreement and acted (or failed to act) in good faith and such action or inaction does not constitute actual fraud, gross negligence or willful or wanton misconduct.

(ii) Without in any way limiting the effect of the foregoing Subsection 5(b)(i), the Liquidator shall indemnify, defend and hold REM harmless from and against any Liabilities arising out of or resulting from: (i) any act or omission of REM taken or omitted to be taken at the direction or approval of the Liquidator; (ii) any act or omission of the Liquidator or of any third party engaged by the Liquidator to provide services for the Liquidator; (iii) REM being responsible for the payment of claims or allocated expenses or for the loss of or payment of any premium, commission, deductible, or recovery to any person or party after entry of the Orders of Liquidation; (iv) the Liquidator’s failure to pay any claim or allocated expense(s), and (vi) the failure of the Liquidator to fulfill any of her duties or obligations under this Agreement.

(c) Procedure for Indemnification:

(i) If any suit, action, investigation, claim or proceeding is begun, made or instituted as a result of which the Liquidator, Companies, or REM (for the purposes of this Section 5, the “Indemnifying Party”) may become obligated to the Liquidator, the Companies, or REM, as the case may be (for the purposes of this Section 5, the “Indemnified Party”), hereunder, the Indemnified Party shall give written notice to the Indemnifying Party promptly to avoid prejudice to the Indemnifying Party, specifying

in reasonable detail the facts upon which the claimed right to indemnification is or may be based; provided, however, that the failure of the Indemnified Party to give notice as provided in this Section 5 shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent that such Indemnifying Party is actually prejudiced by such failure to give notice.

(ii) An Indemnifying Party may elect to defend, compromise and settle, at such Indemnifying Party's own expense and by such Indemnifying Party's own counsel reasonably satisfactory to the Indemnified Party, any third party claim. If an Indemnifying Party elects to defend a third party claim, it shall, within 30 days of its receipt of notice of such third party claim (or sooner, if the nature of such third party claim so requires), notify the Indemnified Party of its intent to do so and such Indemnified Party shall cooperate in the defense of such third party claim to the extent reasonably requested in writing by the Indemnifying Party. After notice from an Indemnifying Party of its election to assume the defense of a third party claim, such Indemnifying Party shall not be liable to such Indemnified Party under this Section 5 for any legal or other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof. If an Indemnifying Party elects not to defend against a third party claim, or fails to notify an Indemnified Party of its election as provided in this Section 5, such Indemnified Party may defend, compromise and settle such third party claim subject to the conditions set forth below. Notwithstanding the foregoing, (i) neither an Indemnifying Party nor an Indemnified Party, as the party controlling the defense of a third party claim, may compromise or settle any claim or consent to the entry of any judgment for other than monetary damages without the prior written consent of any other Indemnifying Party or Indemnified Party; provided, that (upon reasonable notice thereof) consent to compromise or settlement or the entry of a judgment shall not be unreasonably withheld or delayed, (ii) no Indemnifying Party shall consent to the entry of any judgment or enter into any compromise or settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party and all other Indemnified Parties, subject to such third party claim, of a full and final release from all liability in respect to such claim or litigation, and (iii) no Indemnified Party may compromise or settle any claim or consent to the entry of any judgment for money damages without the prior written consent of the Indemnifying Party, provided, that (upon reasonable notice thereof) consent to compromise or settlement or the entry of a judgment shall not be unreasonably withheld or delayed.

(d) For purposes of this Section 5, the terms "REM," "Liquidator" and "Companies" as Indemnified Parties shall include, respectively, any persons who are or were the directors, officers, employees, contractors, subcontractors, agents and other representatives of REM, Liquidator, or Companies.

(e) The provisions of this Section 5 are for the benefit of REM and the Liquidator and Companies and the heirs, successors, assigns, administrators and personal representatives of REM and the Liquidator and the Companies and shall not be deemed to create any rights for the benefit of any other persons.

(f) The indemnification provided by this Section 5 shall survive the expiration or termination of this Agreement and shall be in addition to any other rights to which the Parties may be entitled as a matter of law or otherwise, and shall continue as to a Party representative who has ceased to serve in a capacity for which it is entitled to indemnification and shall inure to the benefit of the heirs, successors, assigns, administrators and personal representatives of such Party.

**Section 6. Term and Termination.**

(a) The Term of this Agreement shall commence June 11, 2003 and end forty-five (45) days after Court approval under Section 12 below. The Liquidator may extend the Term of this Agreement for an additional thirty (30) day period or periods by giving written notice to REM not less than ten (10) days prior to the end of the Term or any additional thirty (30) day period specifying the Services or individuals that the Liquidator will require, subject to REM having such Services or individuals available, during the additional period. The Fees payable to REM for such additional period shall be the Fees for the thirty (30) day period as determined under Sections 4(a)(i) and (ii) plus fifteen (15) percent.

(b) This Agreement may be terminated by either Party upon a material breach by the other Party in the performance of its duties or responsibilities as provided in this Agreement. The non-breaching Party shall advise the breaching Party of said material breach by written notice and the breaching Party shall have ten (10) days from the date of written notice within which to cure said breach. The non-breaching Party shall have the right to terminate this Agreement upon written notice to the breaching Party if the breaching Party fails to cure said breach to the reasonable satisfaction of the non-breaching Party within the ten (10) day period.

(c) The termination of this Agreement as to any Party shall be without prejudice to any rights or liabilities of any Party that shall have accrued prior to such termination and shall not affect any provisions of the Agreement that are expressly or by necessary implication intended to survive such termination.

**Section 7. Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns, except that neither Party may assign this Agreement or its rights or obligations required herein without the prior written consent of the other Party.

**Section 8. Amendments and Waivers.** This Agreement may not be amended, and none of its provisions may be modified, except expressly by an instrument signed by the Parties hereto. No failure or delay of a party in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or



power. No waiver by a party of any provision of this Agreement or consent to any departure therefrom shall in any event be effective unless the same shall be in writing and signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

**Section 9. Confidentiality.** The Parties acknowledge that in the course of dealings between each other, they each have and will acquire from the other information about business activities and operations, technical information and trade secrets, all of which are highly confidential and proprietary (“Confidential Information”). Confidential Information shall not include (i) information which now is or hereafter becomes publicly known through no wrongful act of a Party, (ii) information received by a Party from a third party without similar restriction and without breach of this Agreement; (iii) information independently developed by a Party; (iv) information approved for release by written authorization of the other Party; and (v) information which, after notice to a Party providing a reasonable opportunity to contest disclosure, must be disclosed pursuant to the requirements of a governmental agency or a binding order of a court of competent jurisdiction. A Party’s Confidential Information shall be safeguarded by the other Party with at least as great a degree of care as that Party uses to safeguard its own most confidential materials or data relating to its own business.

**Section 10. Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire (regardless of the laws that might otherwise govern under applicable principles of conflicts law) as to all matters, including, without limitation, matters of validity, construction, effect, performance and remedies. Any legal action commenced by either Party on any such matters shall be brought exclusively in the New Hampshire Court, and each Party irrevocably consents to the in personam jurisdiction of, and venue in, such court for purposes of any such action.

**Section 11. Notices.** All written notices required under this Agreement shall be given in writing and shall be deemed to have been given upon (i) transmitter's confirmation of a receipt of a facsimile transmission, (ii) confirmed delivery by a standard overnight carrier, (iii) receipted personal delivery, or (iv) the expiration of five (5) business days after the day when mailed by certified or registered mail, postage prepaid, addressed at the following addresses (or at such other address for a Party as shall be specified by like notice):

(a) if to the Liquidator, to:

- (i) Commissioner, as Liquidator of The Home/USI Re  
The State of New Hampshire  
Insurance Department  
56 Old Suncook Road  
Concord, NH 03301-7317

and

(ii) Peter Bengelsdorf  
Special Deputy Liquidator  
56 Old Suncook Road  
Concord, NH 03301-7317

and

(iii) Peter W. Heed, New Hampshire Attorney General  
33 Capitol Street  
Concord, New Hampshire 03301

(b) if to REM, to:

(i) Risk Enterprises Management Limited  
Suite 109  
2540 Route 130  
Cranbury, NJ 08512-3519  
Attn: General Counsel's Office

**Section 12. Court Approval.** This Agreement shall not become effective until approved by the New Hampshire Court. This Agreement is the result of negotiations between the parties undertaken with the understanding that it is to be submitted by the Liquidator for approval by the New Hampshire Court in its entirety, and is not subject to substantial modification by the Liquidator or the New Hampshire Court without the consent of REM.

**Section 13. General Provisions.**

(a) Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all other prior negotiations, commitments, agreements and understandings, both written and oral, between the Parties or any of them with respect to the subject matter hereof.

(b) Legal Enforceability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without affecting the validity or enforceability of the remaining provisions hereof. Any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

(c) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

(d) Interpretation. The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

(e) Specific Performance. Each of the Parties hereto acknowledges and agrees that in the event of a breach of this Agreement, each non-breaching party would be irreparably and immediately harmed and could not be made whole by monetary damages. It is accordingly agreed that the Parties hereto (i) will waive, in any action for specific performance, the defense of adequacy of a remedy at law and (ii) shall be entitled, in addition to any other remedy to which they may be entitled at law or in equity, not otherwise expressly waived herein, to compel specific performance of this Agreement in any action instituted in the New Hampshire Court.

(f) No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than REM and the Liquidator and their respective successors and assigns. Nothing in this Agreement is intended to relieve or discharge the obligations or liability of any third persons to REM, the Liquidator, or the Companies. No provision of this Agreement shall give any third persons any right of subrogation or action over or against REM, the Liquidator, or the Companies.

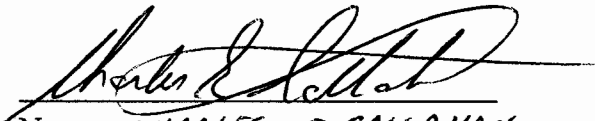
(g) Authority. Subject to the New Hampshire Court approval required by Section 12 above, each Party represents to the other that it is authorized to enter into this Agreement and that its execution of this Agreement does not and will not violate the terms of any statute, regulation, judgment, decree or ruling or any contract with any third party.

IN WITNESS WHEREOF, the Parties have executed this Transition Services Agreement as of the day and year first above written.

**THE COMMISSIONER OF INSURANCE OF THE STATE OF NEW HAMPSHIRE SOLELY IN HER CAPACITY AS LIQUIDATOR OF THE HOME INSURANCE COMPANY AND U.S. INTERNATIONAL REINSURANCE COMPANY**

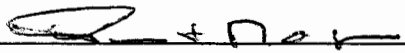
By: \_\_\_\_\_  
Paula T. Rogers

**RISK ENTERPRISE MANAGEMENT LIMITED**

By:   
Name: CHARLES E CALLAHAN  
Title: PRESIDENT

IN WITNESS WHEREOF, the Parties have executed this Transition Services Agreement as of the day and year first above written.

**THE COMMISSIONER OF INSURANCE OF THE STATE OF NEW HAMPSHIRE SOLELY IN HER CAPACITY AS LIQUIDATOR OF THE HOME INSURANCE COMPANY AND U.S. INTERNATIONAL REINSURANCE COMPANY**

By:   
Paula T. Rogers

**RISK ENTERPRISE MANAGEMENT LIMITED**

By: \_\_\_\_\_  
Name:  
Title:

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of  
The Home Insurance Company

Docket No. 03-E-0112

In the Matter of the Liquidation of  
US International Reinsurance Company

**CERTIFICATE OF SERVICE**

I, Peter C.L. Roth, do hereby certify that on July 25, 2003, I served a true copy of the Liquidator's Motion for Approval of (1) Short-Term Transition Services Agreement and (2) Asset Transfer Agreement With Risk Enterprises Management, by first class mail, postage pre-paid, upon the parties named on the attached Service List.

Dated: July 28 2003

  
Peter C.L. Roth

**SERVICE LIST**

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