

## **NONADMITTED INSURANCE MULTI-STATE AGREEMENT (NIMA)**

**WHEREAS**, the Nonadmitted Reinsurance and Reform Act of 2010 (“NRRA”), which was incorporated intact into the Dodd-Frank Financial Reform Bill, H.R. 4173, provides that only a insured’s “home state” may require a premium tax payment for nonadmitted insurance; and

**WHEREAS** that the placement of all nonadmitted insurance, including surplus lines insurance, shall be subject solely to the statutory and regulatory requirements imposed by the insured’s “home State”; and

**WHEREAS**, the NRRA authorizes states to enter into a compact or otherwise establish procedures to allocate among the States the *nonadmitted insurance* premium taxes; and

**NOW, THEREFORE**, in consideration of the foregoing, the Participating States who are signatories hereto, do freely and voluntarily enter into this Agreement under the following terms and conditions:

### **PART I**

#### **Purpose**

The purposes of this Agreement through means of joint and cooperative action among the Participating States are to:

1. Establish procedures concerning the premium tax revenues of the Participating States through facilitating the payment and allocation of premium taxes on Non-Admitted Insurance for Multi-State risks among the Participating States in accordance with the premium tax data allocation and formula contained in the Annex attached to this agreement and based on the rates established by each Participating State.
2. Coordinate reporting of premium tax data and transaction data on Multi-State Risk(s) among Participating States.
3. Establish a Clearinghouse for receipt and dissemination of premium tax and Clearinghouse transaction data related to Nonadmitted Insurance of Multi-State Risks.
4. Perform these and such other related functions as may be consistent with the purposes of this *Nonadmitted* Insurance Multi-State Agreement and Part I of the Nonadmitted and Reinsurance Reform Act of 2010.

## PART II

### Definitions

5. For purposes of this Agreement the following definitions shall apply:
- a. “**Agreement**” means this *nonadmitted* premium tax coordination agreement, entered into by the Participating States pursuant to Section 521(b)(1) of the NRRA.
  - b. “**Admitted Insurer**” means an insurer that is licensed, or authorized, to transact the business of insurance under the law of the home State.
  - c. “**Home State**” or “**home State**” means,
    - (1) In General.—Except as provided in subparagraph (B), the term “home State” means, with respect to an insured—
      - (A) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or
      - (B) if 100 percent of the insured risk is located out of the State referred to in *subparagraph (A)*, the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.
    - (2) “Principal place of business” means with respect to determining the home State of the insured, the principal place of business is the state where the insured maintains its headquarters and where the insured’s high-level officers direct, control and coordinate the business activities.
    - (3) “Principal residence” means, with respect to determining the home State of the individual, the State where the individual resides for the greatest number of days during a calendar year.
    - (4) Affiliated Groups.—If more than *one* insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “home State” means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.
  - d. “**Independently Procured Insurance**” means insurance procured by an insured directly by an insured from a Non-Admitted Insurer as permitted by the laws of the Home State.
  - e. “**Multi-State Risk**” means a risk *covered by a nonadmitted insurer* with insured exposures in more than one State.
  - f. “**Non-Admitted Insurance**” means any property and casualty insurance permitted in a State to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance. This Agreement shall not require a State to treat any property and casualty insurance as Non-Admitted Insurance where the laws of the State do not provide such treatment.
  - g. “**Non-Participating State**” means any State which has not executed this Agreement.
  - h. “**Participating State**” means any State which has executed this Agreement and which has not withdrawn or been terminated pursuant to Part VII.

- i. **"Single-State Risk"** means a risk with insured exposures in only one State.
- j. **"Surplus Lines Insurance"** means insurance procured by a Surplus Lines Licensee from a Surplus Lines Insurer or other Non-Admitted Insurer as permitted under the law of the Home State; for purposes of this Agreement "Surplus Lines Insurance" shall also mean excess lines insurance as may be defined by applicable State law.
- k. **"Surplus Lines Insurer"** means a Non-Admitted Insurer permitted under the law of the Home State to accept business from a Surplus Lines Licensee.
- l. **"Surplus Lines Licensee"** means an individual, firm or corporation which is licensed in a State to sell, solicit or negotiate insurance, including the agent of record on a Non-Admitted Insurance policy, on properties, risks or exposures located or to be performed in a State with Non-Admitted Insurers.

6. In this Agreement, unless otherwise specified, words or expressions used in this Agreement have the same meaning as in the Nonadmitted Reinsurance and Reform Act of 2010.

7. The following are the Annexes that are attached to, and that form an integral part of, this Agreement: **Annex "A"** - Tax Allocation; **Annex "B"** – Allocation Formula; and Exhibit 1.

### **PART III**

#### **Implementation**

8. The Participating State, as signatory herein, represents that it has the legal authority necessary to enter into this agreement for the purposes stated in the agreement, including the allocation among the other Participating States of applicable nonadmitted insurance premium taxes and the use of the designated Clearinghouse for such purposes.

9. Pursuant to the terms of this agreement each Participating State agrees to:

(a) allocate among the applicable Participating States the nonadmitted premium taxes required by an insured's home State as described herein;

(b) work collaboratively and in a timely manner towards the imposition of NRRA reforms by July 21, 2011;

(c) use a computer software system, agreed to by a majority of the Participating States, which will allow for efficient allocation, accounting, and auditing of premium taxes; and

(d) create a Clearinghouse for the purpose of a single point for allocating *and* auditing, nonadmitted insurance premium taxes to the Participating States.

### **PART IV**

#### **Collection and Allocation Procedures**

10. Each Participating State agrees to use a single Clearinghouse to allocate to the applicable Participating States, at the rate of taxation of the Participating State, a portion of the premium based on the Surplus Lines Premium Tax Allocation Formula listed in Annex "B". The allocation of premium tax

dollars will be based upon the amount collected. The Participating State agrees to use the Clearinghouse for all Multi-State Risks for which that state is the Home State, and each Participating State may, at its discretion, agree to use the Clearinghouse for any Single-State Risks for which that state is the Home State.

11. Each Participating States agrees to contract with the Clearinghouse to provide the services that are the subject of this Agreement. There shall be no material variations in the terms of the contract with the Clearinghouse and each such contract shall include, but not be limited to, terms prohibiting the Clearinghouse from: lobbying; accepting gifts or donations; political activity of any kind; or conflicts of interest.

12. Each Participating State agrees to establish a single statewide nonadmitted premium tax rate that will apply to all lines of Non-Admitted Insurance subject to this Agreement. That rate shall include any applicable tax rates and fees for Non-Admitted Insurance. Each Participating State shall give notice to the Clearinghouse of any changes to its statewide nonadmitted premium tax rate and any statewide assessments at least 90 days prior to the effective date of such changes. The Clearinghouse will send notice of any changes to all of the Participating States via electronic mail to the designated contact of each Participating State.

13. The Clearinghouse is authorized to collect a reasonable fee payable by the insured directly or through a Surplus Lines Licensee on each transaction processed through the Clearinghouse to cover the cost of the operations and activities of the Clearinghouse. If the Participating State has a stamping office, this fee shall be in addition to the service fee that is received by the stamping offices. Those Participating States that have existing stamping offices may continue to process surplus lines policies.

14. Each Participating State agrees to require, by statute or rule, for those policies of Non-Admitted Insurance where that State is the Home State, that the Surplus Lines Licensee on a policy, or insured who independently procures insurance, for which the payment of nonadmitted insurance premium taxes are due, shall forward such payments to the depository Clearinghouse account. The Participating State agrees to require that the payment of nonadmitted insurance premium taxes will be accompanied by transaction data consistent with Exhibit 1. After the Clearinghouse has collected and reconciled the payments, the appropriate amount will then be deposited into each Participating State's depository account at the banking institution selected to provide depository services to the Participating States and the Clearinghouse as contemplated by this Agreement. With respect to the depository accounts, the Clearinghouse shall only have the authority to transfer premium taxes collected and on deposit in the Clearinghouse account to the depository accounts of the other Participating States.

15. For those policies of Non-Admitted Insurance where transaction data consistent with Exhibit 1 is submitted prior to the payment of nonadmitted insurance premium taxes, the Participating States agree that the accounting of taxes due will be tracked by the computer software management system managed by the Clearinghouse, and the issuance of an invoice and its payment will be handled by the Clearinghouse. The Surplus Lines Licensee or insured who independently procures insurance, as applicable, will be responsible for how the premium is allocated based upon the exposure in each state and will enter these amounts or percentages for each risk reported. The computer software system will assess the allocated premium based upon each Participating State's statewide surplus lines tax rate and statewide assessments for each Participating State with exposure. At the end of the reporting period, the system would allocate the amount collected on behalf of the Home state to all other Participating States and net out the amounts owed to or from each of the states. The netting of taxes will be based on the actual amount collected.

16. The Clearinghouse will report to the Participating States, Surplus Lines licensees and insureds who independently procure insurance, all Premium Taxes owed to each of the Participating States; the dates upon which payment of such Premium Taxes are due and a method to pay them through the Clearinghouse.

17. Each Participating State shall require tax payments quarterly utilizing the following dates only: February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30.

18. The Home State agrees to enforce, if necessary, unpaid tax, interest due, and applicable penalties. and will follow the methods of collection governed by the laws of the Home State and any administrative procedures of the Agreement.

#### **PART V Dispute Resolution**

19. Best efforts will be exercised by the Participating States to reach consensus in respect to disputed issues arising on matters governed by this Agreement.

20. If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the affected Participating States agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

#### **PART VI Participating States, Effective Date and Amendment**

21. Any State is eligible to become a Participating State. This Agreement shall become effective and binding upon execution by the duly authorized representative of at least two (2) Participating States. Thereafter, it shall become effective and binding as to any other Participating State upon execution of the Agreement.

22. Amendments may be proposed by any of the Participating States for consideration and agreement of all other signatories to this Agreement. The amendment shall become effective after each Participating State agrees in writing to accept the amendment.

#### **PART VII Withdrawal, Default and Termination**

23. Withdrawal

- a. Once effective, this Agreement shall continue in force and remain binding upon each and every Participating State, provided that a Participating State may withdraw from the Agreement ("Withdrawing State") by providing 60 days written notice to all Participating States.

- b. The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

24. Default

- a. If any Participating State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Agreement, the Defaulting State shall be suspended from the effective date of default. The grounds for default include, but are not limited to, failure of a Participating State to perform its obligations or responsibilities as required by this Agreement.
- b. Reinstatement following termination of any Participating State requires renewed execution of the Agreement.

25. Dissolution of Agreement

- a. The Agreement dissolves effective upon the date of the withdrawal or default of the Participating State which reduces membership in the Agreement to one Participating State.
- b. Upon the dissolution of this Agreement, the Agreement becomes null and void and shall be of no further force or effect.

**PART VIII**

**Severability and Construction**

- 26. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Agreement shall be enforceable.
- 27. The provisions of this Agreement shall be liberally construed to effectuate its purposes.
- 28. Throughout this Agreement the use of the singular shall include the plural and vice-versa. The headings and captions of articles, sections and sub-sections used in this Agreement are for convenience only and shall be ignored in construing the substantive provisions of this Agreement.

**PART IX**

**Binding Effect of Agreement and Other Laws**

- 29. The terms of this Agreement and the procedures to be established as amendments to this Agreement, are binding upon the Participating States, except as may be provided herein.
- 30. Each Participating State agrees to abide by the applicable laws, regulations, and statutes concerning confidentiality and nondisclosure of information to the extent allowed by the law.

**PART X**

**Miscellaneous**

31. This Agreement may be executed in any number of counterparts, each of which will constitute an original and all of which taken together will constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the Participating States shall accept any signatures received by a receiving fax machine as original signatures of the Participating State; provided, however, that a Participating State providing its signature in such manner will promptly forward to the other Participating States and the Clearinghouse a signed copy of this Agreement which was so faxed.

32. By entering into this Agreement, a Participating State is *not* deemed to surrender or abandon any of the powers, rights, privileges or authorities vested in *it* under its State Constitution, statutes, Acts, or otherwise, or to impair any of such powers, rights, privileges or authorities.

33. This Agreement, including all Annexes attached, constitutes the entire agreement between the Participating States with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings between the Participating States with respect to that subject matter.

34. After execution of this Agreement, each Participating State will do, or cause to be done, all acts as the other Participating States may reasonably require from time to time for the purpose of giving effect to this Agreement and each Participating State will use reasonable efforts, and take all steps as may be reasonably within that Participating State's power, to implement to their full extent the provisions of this Agreement.

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**ANNEX "A"**  
**Nonadmitted Insurer Premium Tax ALLOCATION**

This Annex to the Agreement sets forth the provisions governing the determination of tax allocation, as defined in Part III:

CASUALTY	General Liability/Umbrella and Excess Liability/ Excess Workers' Compensation	Revenues (receipts) or Payroll , whichever is applicable
	Errors and Omissions/Professional	Revenues (receipts) or Number of professionals
	Medical Malpracticee	Revenues (receipts), or Number of professionals, or Bed count (facilities-e.g. hospitals, nursing homes)
PROPERTY	All classes	Total Insured Values
MARINE, OTHER THAN WET/OCEAN MARINE**	Vessels	Principal berthing location
	All other property	Total insured values
AUTOMOBILE/AVIATION	Vehicles	Garaging location
	Aircraft	Hangar location
CRIME	All coverages	Number of employees
ACCIDENT AND HEALTH	All coverages	Number of employees, or Head count
SINGLE STATE BASIS- FINANCIAL RISK	Directors' and Officers/Kidnap and Ransom/ Fiduciary Liability/Credit Risk	Corporate Headquarters - Single State Basis Only

Major Coverage	Coverage Type	Including	Allocation Method
Property	Additional Property	Leakage of Sprinklers both real & personal, Explosion, Riot & Civil Commotion both real and personal, Earthquake both real and personal, Blanket Form both real and personal, Water Damage both real and personal, Business Interruption, Time Element or similar time valued coverage	TIV (TIV= PD + BI) Total Insured Value = Physical Damage + Business Interruption
	All Risk	Real Property	TIV
	Animal	All classes	TIV
	Aviation	Physical Damage, All others	TIV
	Boiler & Machinery	Direct, Consequential, Engine & Machinery, All others	TIV
	Fire (including excess)	Fire & Allied Lines both real and personal, Excess of Loss both real and personal, Fire Only personal property including inland marine, Fire Only real property including buildings and other permanent additions	TIV
	Glass	All classes	TIV
	Inland Marine	Fine Arts Dealers, Jewelers Block, Furriers Block, Business & Personal Floater, Builders Risk, All Other non appearance & abandonment	TIV
	Inland Marine	Motor Truck Cargo	Garage Location
	Marine (non-exempt lines only)	All classes/marine, Watercraft	TIV
	Residual Value	All classes/residual value	TIV
	Wind, Hail	Crop, Hail, Tornado, Cyclone, Wind, Hail both real and personal property	TIV

Major Coverage	Coverage Type	Including	Allocation Method
Casualty	General Liability/ Umbrella/ Excess Liability/ Excess Workers Compensation	The coverage type General Liability includes, but is not limited to, Manufacturers and Contractors, Premises Operations, Owners and Contractors Protective, Products Completed Operations, Amusement Park Liability, Special Events, Day Care Center Liability, Liquor Liability and other third party liability policies.	Revenues (receipts) or payroll by state, whichever is applicable
	Errors & Omissions (E&O)/ Professional Liability	Includes, but is not limited to Architects & Engineers E&O, Contractors Professional, Data Processing/ Software E&O	Revenues (receipts) or number of professionals by state
	Medical Malpractice	Includes medical malpractice for individual healthcare providers or facilities, i.e. hospitals, nursing homes, psychiatric centers	Revenues (receipts), number of professionals or bed count by state
	Employment Practices Liability (EPLI)	EPLI for all industries	Headcount by state
Automobile/Aviation	Aircraft	Non-Owned Aircraft, Aircraft Liability	Hangar location
	Automobile	Automobile Liability, Excess Automobile Liability, Automobile Physical Damage	Garaging location
Financial Risk	Directors and Officers Liability	General Partnership Liability	Corporate Headquarters
	SEC Liability	Unauthorized Trading	Corporate Headquarters
	Kidnap & Ransom		Employees
	Excess SIPC		Corporate Headquarters
	Mortgage Impairment		TIV
	Patent Infringement		Corporate Headquarters
	Securities	Mail	TIV
	Media Liability		TIV
	Representative/Warranties		Corporate Headquarters
	Tax Opinion Guarantee		Corporate Headquarters
	Intellectual Property		Corporate Headquarters
Crime	Crime	Blanket Crime, Fidelity Bond, Individual Bond, Employee Dishonesty, Forgery, Theft, Robbery, Burglary, Fraud	Employees
Accident and Health	Accident and Health	Disease, Accidental Injury or Death, Medical, Surgical expenses and income payments	Location of Employees or Corporate Headquarters

Brokers, or surplus lines agents/agencies, must consistently apply the formula or methodology utilized across similar types of insurance policies and must maintain for a period of five years the worksheet used to determine the premium allocation.

## ANNEX "B"

For the purposes of this Annex and subject to Parts III, IV, and VII, the *nonadmitted insurance* premium tax revenue for a tax entitlement year or for a sub-period of a tax entitlement year, as the case may be, is the amount determined by the formula:

### Tax Allocation

The Clearinghouse or home state shall allocate the actual tax payment of each broker to the other Participating States based on the following formula:

Tax Allocation = Net Tax Due to Each State/Net Tax Due All States x Tax Collected

### Tax Netting

The Clearinghouse shall net taxes owed to or due from each home state based on the following formula:

Home State Net Taxes = Taxes remitted for the home state + taxes due from other states – taxes owed other states

## **Exhibit 1**

### **Information required to be submitted By the Broker via the Clearinghouse web portal**

#### **Submission Contact**

Name

Address

Phone Number

Email address

#### **Agency Data**

State License Number

Name

Address

Phone Number

#### **Agent Data**

State License Number

Name

Office Address

Mailing Address

Phone Number

E mail Address

#### **Billing Contact**

Name

Address

E mail Address

Phone Number

**Policy Data**

Policy Number

Expiration Date

Insured Name

Home State of Insured

**Transaction Data**

NAIC Insurer Code Number

Insurer Name

Total Policy Premium

Coverage Code

Tax Status

Transaction Type

Effective Date

Allocation States