

EXHIBIT A

EXECUTION VERSION

**AGREEMENT OF RESTRUCTURING IN
CONNECTION WITH THE LIQUIDATION OF
EXECUTIVE LIFE INSURANCE COMPANY OF NEW YORK**

by and among

**The Superintendent of Financial Services of the State of New York, in his
capacity as the statutory receiver of Executive Life Insurance Company of New York,**

The National Organization of Life and Health Insurance Guaranty Associations and

The Participating Guaranty Associations

and joined by

NEWCO

and

**The Life Insurance Guaranty Corporation
(existing under Article 75 of the New York Insurance Law)**

Dated: April 23, 2012

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*Execution and delivery is not a condition precedent to Closing.

**AGREEMENT OF RESTRUCTURING IN
CONNECTION WITH THE LIQUIDATION OF
EXECUTIVE LIFE INSURANCE COMPANY OF NEW YORK**

This AGREEMENT, dated as of April 23, 2012 (“**Agreement**”), has been made and entered into by and among the Superintendent of Financial Services (formerly known as the Superintendent of Insurance) of the State of New York (“**Superintendent**”), in his capacity as the statutory receiver (“**Receiver**”) of Executive Life Insurance Company of New York, a New York corporation (“**ELNY**”), the National Organization of Life and Health Insurance Guaranty Associations (“**NOLHGA**”) and the Participating Guaranty Associations (“**PGAs**”), and shall be joined by NEWCO (as defined herein), and The Life Insurance Guaranty Corporation existing under Article 75 of the New York Insurance Law (“**New York Article 75 GA**”).

RECITALS

A. The Receiver is acting as statutory rehabilitator of ELNY in an action pending before the Supreme Court of Nassau County of the State of New York (“**Receivership Court**”), captioned *In the Matter of the Rehabilitation of Executive Life Insurance Company of New York* (Index No. 8023/91) (“**Receivership Proceedings**”).

B. By order, dated December 17, 2010 (“**December 17 Order**”), the Receivership Court provided that the Receiver shall have until July 1, 2011 to confer with The Life Insurance Company Guaranty Corporation of New York (“**LICGCNY**”) (which is a PGA) and other interested parties in order to present the Receivership Court with an agreed-upon proposed order and plan of liquidation for ELNY.

C. By order, dated July 1, 2011, the Receivership Court extended until August 10, 2011 the deadline for the Receiver to present the Receivership Court with an agreed-upon proposed order and plan of liquidation for ELNY. On August 8, 2011, the Receiver advised the Receivership Court that it anticipated submitting to the Receivership Court, on or about August 26, 2011, a proposed order of liquidation and a proposed plan of restructuring in connection with the liquidation of ELNY that the Receiver and NOLHGA were jointly preparing and that NOLHGA would present to its affected members for ratification.

D. On September 1, 2011, the Receiver submitted to the Receivership Court a proposed order of liquidation and a proposed plan of restructuring in connection with the liquidation of ELNY. On September 1, 2011, the Receivership Court entered an Order to Show Cause in connection with the liquidation and restructuring of ELNY and ordered that the injunctions provided for in the Rehabilitation Order entered on April 23, 1991 shall remain in full force and effect and that the provisions of the Rehabilitation Order and the December 16, 1992 Order approving the Rehabilitation Plan are continued in force and effect. On November 7, 2011, the Receiver filed with the Receivership Court a list of the PGAs and a copy of Schedule 1.15 that sets forth a preliminary list of all Contracts and related information as required under Section 1.15 of this Agreement.

E. The Receiver has conferred extensively with LICGCNY and such other interested parties, including NOLHGA, leading to the development of this Agreement which the Receiver

proposes (with the concurrence of LICGCNY) to serve as the “Proposed Plan” referred to in the December 17 Order. No other “Proposed Plan” is being developed by NOLHGA and the Guaranty Associations (as defined below) as an alternative to or in place of this Agreement, and no other “Proposed Plan” will be available for participation by NOLHGA and the Guaranty Associations.

F. The Receiver is therefore seeking from the Receivership Court an order of liquidation against ELNY and an order approving this Agreement that, among other things, declares ELNY to be insolvent and approves this Agreement for handling ELNY’s remaining obligations under its outstanding insurance contracts.

G. This Agreement sets forth the terms and conditions pursuant to which the annuity obligations of ELNY will be restructured, with those obligations as restructured reinsured and assumed by a special purpose entity (“NEWCO”) created as provided herein in Article 2 to provide the liquidation benefits described in this Agreement.

H. The PGAs and the New York Article 75 GA will contribute cash and PGA Notes to NEWCO to enhance the benefits provided under certain restructured contracts in connection with which the PGAs and the New York Article 75 GA have accepted obligations. Such contribution by the PGAs and their participation in the transactions contemplated in this Agreement are based on the PGAs’ determinations that their participation will be in fulfillment of their statutory obligations to the Covered Persons (as defined below).

I. The Life Insurance Companies will provide a guarantee of NEWCO’s obligations with respect to the Wrapped Obligations pursuant to the terms of the Reinsurance and Participation Agreement (as defined below).

J. The Supplemental Benefits Participating Companies will provide a guarantee of NEWCO’s obligations with respect to the Supplemental Benefits pursuant to the terms of Supplemental Benefits Reinsurance and Participation Agreement (as defined below).

NOW, THEREFORE, in consideration of the promises, covenants and conditions contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1. DEFINITIONS

In this Agreement, unless otherwise specifically provided or the context so requires, the terms listed below shall have the following definitions:

Section 1.1 “**Accounting Procedure**” has the meaning set forth in Section 16.2.2.

Section 1.2 “**Agreement**” has the meaning set forth in the introductory paragraph hereof.

Section 1.3 “**Applicable Discount Rate**” means the rate of interest per annum used to determine the Liquidation Value of each Contract, which shall equal:

- 4.25% if the Initial Investment Index is greater than 3.85%; or
- 4.00% if the Initial Investment Index is greater than 3.55% and less than or equal to 3.85%; or
- 3.75% if the Initial Investment Index is greater than 3.25% and less than or equal to 3.55%.

Section 1.4 “**Article 75 Contracts**” has the meaning set forth in Section 7.2.1.

Section 1.5 “**Article 75 Excluded Contracts**” has the meaning set forth in Section 7.2.4.

Section 1.6 “**Assumption Certificates**” means the certificates in the form attached as Exhibit 1.6 hereto to be issued by NEWCO to Contractowners evidencing NEWCO’s assumption of the obligations under ELNY Restructured Contracts, subject to the terms of the Reinsurance and Assumption Agreement.

Section 1.7 “**Benefit Payments**” means all benefit payments which would have been due after the Liquidation Date under the terms of ELNY’s Contracts prior to any restructuring provided in this Agreement.

Section 1.8 “**Calculation Matter**” means any numerical calculations required by this Agreement, including, without limitation, those contemplated by Articles 3 and 5.

Section 1.9 “**Claim-Overs**” has the meaning set forth in clause (a) of Section 4.7.

Section 1.10 “**Closing**” means the closing of the transactions contemplated by this Agreement.

Section 1.11 “**Closing Date**” means the next month end which is at least thirty (30) days but not more than sixty (60) days after the satisfaction or waiver of the last remaining condition precedent to Closing as set forth in Article 11; **provided, however**, the parties shall use reasonable business efforts to effectuate the closing of the transactions contemplated by this Agreement within ninety (90) days after entry of the Order of Liquidation.

Section 1.12 “**Code**” means the Internal Revenue Code of 1986, as amended.

Section 1.13 “**Commercial Insurer**” has the meaning set forth in Section 6.2.1.

Section 1.14 “**Confirmation Date**” means the date on which the Receivership Court enters its Order Approving this Agreement.

Section 1.15 “**Contract**” means the following categories of single premium immediate annuities issued by ELNY (“**SPIAs**”): (i) structured settlement annuities (“**SSAs**”), (ii) individual certificates delivered under a group annuity issued by ELNY in connection with the termination by an employer of the employer’s defined benefit pension plan (“**Pension Close-Out Certificates**”), and (iii) all other SPIAs that are neither an SSA nor a Pension Close-Out

Certificate (“**Individual SPIAs**”). Throughout this Agreement, the term “Contract” may be preceded by (a) one of the abbreviations or phrases mentioned in the preceding sentence and (b) either the words “ELNY” or “ELNY Restructured.” When “ELNY” precedes the term “Contract” with one of the abbreviations mentioned in (i) through (iii) above, it refers to the particular type of ELNY Contract. When “ELNY Restructured” precedes the term “Contract” with one of such abbreviations, it refers to the particular type of ELNY Restructured Contract as restructured by the Receivership Court. Attached as Schedule 1.15 hereto is a preliminary list of all Contracts that sets forth, to the extent such information is reasonably available:

- (a) The Contract’s identification number;
- (b) The Contract’s estimated Liquidation Value (as defined in Section 1.45);
- (c) The category into which each such Contract falls (*i.e.*, SSA, Pension Close-Out Certificate or Individual SPIA);
- (d) The name and residency address under each Contract as of both April 23, 1991 (or such other date as close thereto for which records are reasonably available), and a current date (or with respect to the final Schedule 1.15, the Liquidation Date) of the Contractowner and each current payee or beneficiary;
- (e) Whether, according to ELNY’s available records or any other reasonably available information, it appears that the payee under the Contract has entered into any factoring transaction with respect to any or all of the benefits payable thereunder and the portion of the benefits that appear to have been factored;
- (f) The various portions of each Contract that qualify as a Covered Contract, an Article 75 Contract, an Excluded Contract or an Uncovered Contract hereunder;
- (g) For each Covered Contract:
 - i. The PGA providing coverage;
 - ii. The PGA Coverage Ratio;
 - iii. The ELNY Estate assets to be allocated to the Covered Contract, which shall be transferred directly to NEWCO and treated as a distribution from ELNY to the PGA providing coverage to the Covered Contract in satisfaction of such PGA’s statutory and common law subrogation and assignment rights against ELNY other than to the extent specifically provided in this Agreement;
 - iv. The PGA Contribution to be provided, which shall be credited by NEWCO to the Covered Contract;
 - v. The Covered Person;

- vi. The present value of the benefits to be paid under the Covered Contract in accordance with this Agreement;
- (h) For each Uncovered Contract:
- i. The portion, if any, of the Contract that is an Orphan Contract, and the Protected Orphan Benefits (expressed as a present value) that are part of the Wrapped Obligations;
 - ii. The portion (expressed as a present value), if any, of the Contract where the Benefit Payments exceed those benefits to be provided under all of the following, as applicable: (w) a Covered Contract, (x) an Orphan Contract, (y) an Article 75 Contract and (z) an Excluded Contract, and the benefits that are part of the Wrapped Obligations;
 - iii. The ELNY Estate assets to be allocated to the Uncovered Contract, which shall be transferred directly to NEWCO;
- (i) For each Article 75 Contract:
- i. The Article 75 coverage (expressed as a present value);
 - ii. The ELNY Estate assets to be allocated to the Article 75 Contract, which shall be transferred directly to NEWCO and treated as a distribution from ELNY to the New York Article 75 GA in satisfaction of its subrogation and assignment rights against ELNY other than to the extent specifically provided in this Agreement;
 - iii. The funds from the New York Article 75 GA to be provided, which shall be credited by NEWCO to the Article 75 Contract;
- (j) For each Excluded Contract:
- i. The non-participating Guaranty Association expected to provide coverage for such Excluded Contract;
 - ii. The amount of coverage (expressed as a present value) expected to be provided by such non-participating Guaranty Association;
 - iii. The ELNY Estate assets to be allocated to the Excluded Contract;
- (k) For each Contract:
- i. The Supplemental Benefits (expressed as a present value), if any, to be paid by NEWCO in accordance with this Agreement and the Supplemental Benefits Reinsurance and Participation Agreement.

The parties to this Agreement will cooperate in the preparation of Schedule 1.15. Schedule 1.15 may be in electronic form, and shall be updated prior to or contemporaneously with Closing to reflect all available information, and may be adjusted after Closing to the extent new information becomes available that as of the Closing any information listed for any Contract was manifestly incorrect (in all cases, such updates shall be subject to the joint consent of the Receiver and NOLHGA, which consent shall not be unreasonably withheld). The Receiver and NOLHGA agree to amend and adjust Schedule 1.15 to reflect any changes in PGA coverage and the benefits to be provided by NEWCO in a manner consistent with either (a) the settlement or other agreement between the PGA and the Covered Person or (b) the resolution by a court having proper venue and jurisdiction as described in Sections 1.64 and 16.9. The Receiver and NOLHGA will jointly determine the extent to which portions of Schedule 1.15 will be treated as confidential information and the methods to be used to attempt to preserve such confidentiality.

Section 1.16 **“Contractowner”** means, with respect to SSAs and Individual SPIAs, the owner of any such Contract, and for Pension Close-Out Certificates, the owner of the individual certificate.

Section 1.17 **“Covered Benefit Payments”** means those post-Closing payments from NEWCO under each Covered Contract, equal to the Benefit Payments multiplied by the PGA Coverage Ratio for such Covered Contract, and which are guaranteed by the applicable PGA in accordance with the applicable Guaranty Association Acts, Sections 5.5 and 5.7 of this Agreement, and the Reinsurance and Assumption Agreement, the form of which is attached hereto as Exhibit 1.73.

Section 1.18 **“Covered Contract”** means that portion, if any, of any Contract that is accepted for coverage by a PGA under its applicable Guaranty Association Act. For purposes of this Agreement, residency and coverage shall be reasonably determined in good faith by each PGA under its applicable Guaranty Association Act. No ELNY Contract that has any portion identified as a Covered Contract may have any other portion of the ELNY Contract designated as either (i) an Orphan Contract or (ii) an Excluded Contract. Each PGA will accept for coverage any Contract that is eligible for coverage and not otherwise subject to a coverage exclusion under its applicable Guaranty Association Act.

Section 1.19 **“Covered Person”** means, with respect to each Covered Contract, one of the following, as applicable:

- (a) The owner of:
 - (i) an Individual SPIA,
 - (ii) a Pension Close-Out Certificate, or
 - (iii) an SSA that is covered by a PGA that, under its applicable Guaranty Association Act (i.e., the version of its Guaranty Association Act that such PGA deems to be applicable), provides coverage to owners of SSAs, and

(b) The payee (or, if deceased, the beneficiary) under an SSA covered by a PGA that, under its applicable Guaranty Association Act (i.e., the version of its Guaranty Association Act that such PGA deems to be applicable), provides coverage to SSA payees or beneficiaries of deceased payees.

Section 1.20 “**Custodian**” means the custodian of ELNY’s assets at the Closing Date.

Section 1.21 “**December 17 Order**” has the meaning set forth in Recital B.

Section 1.22 “**Definitive Agreements**” means this Agreement, the Reinsurance and Assumption Agreement, the Reinsurance and Participation Agreement, the Supplemental Benefits Reinsurance and Participation Agreement, the Joinder Agreements, the PGA Participation Certificates and the PGA Notes.

Section 1.23 “**Department**” means the Department of Financial Services (formerly known as the Department of Insurance) of the State of New York.

Section 1.23A “**Difference**” has the meaning set forth in Section 5.6.3.

Section 1.24 “**ELNY**” or “**ELNY Estate**” means Executive Life Insurance Company of New York, in either rehabilitation or liquidation, as appropriate.

Section 1.25 “**ELNY Mortality Table**” means the mortality table applicable to the ELNY Contracts attached as Schedule 1.25 hereto.

Section 1.26 “**ELNY Restructured Contracts**” means the ELNY Contracts as restructured by the Receivership Court.

Section 1.27 “**ELNY Restructured Contractowners**” means the Contractowners of ELNY Restructured Contracts.

Section 1.28 “**ELNY Restructured Value**” has the meaning set forth in Section 3.1.

Section 1.29 “**Exchange**” has the meaning set forth in Section 9.1.

Section 1.30 “**Excluded Contract**” means any Contract, or portion thereof, covered by a Guaranty Association that will have statutory coverage obligations as a result of the Order of Liquidation and elects not to become a PGA under this Agreement, but shall not include that portion of any such Contract attributable to Benefit Payments that exceed the coverage provided by such non-participating Guaranty Association, which shall be an Uncovered Contract hereunder. No ELNY Contract that has any portion identified as an Excluded Contract may have any other portion of the ELNY Contract designated as either (i) an Orphan Contract or (ii) a Covered Contract.

Section 1.31 “**Facilitation Plan**” means the facilitation plan contemplated by Article 8 hereof solely for the purpose of the ministerial coordination of payments that a Participating SSA Contractowner may agree to provide to payees under any ELNY SSAs owned by such Participating SSA Contractowner. Such a facilitation plan is not a Definitive Agreement

hereunder, nor is the execution and delivery of such a Facilitation Plan a condition to Closing. If such Facilitation Plan is completed, it will be attached hereto as Exhibit 1.31.

Section 1.32 **“Final Order Approving this Agreement”** means the Order Approving this Agreement after the statutory appeal period has lapsed or, if appealed, after such order has been affirmed in all material respects and no further appellate relief is available.

Section 1.33 **“GA Parties”** means NOLHGA and the PGAs.

Section 1.34 **“Guaranty Association Act”** means the law of any jurisdiction in which a Guaranty Association operates which governs the powers, rights and duties of such Guaranty Association.

Section 1.35 **“Guaranty Associations”** means the life and health insurance guaranty associations of the various states or any entity performing similar functions established under the laws of any jurisdiction, but excludes the New York Article 75 GA.

Section 1.36 **“Individual SPIAs”** has the meaning set forth in Section 1.15.

Section 1.36A **“Initial Investment Index”** means a rate calculated on the last business day prior to the Closing Date, equal to the following:

$$0.60 * A_{24} + 0.40 * BBB_{24} - 0.0100$$

Where: “A₂₄” means the 24 year “A” bond rate calculated as follows:

$$A_{24} = 0.60 * \text{Bloomberg Index C88220Y}$$

+

$$0.40 * \text{Bloomberg Index C88230Y}$$

“BBB₂₄” means the 24 year “BBB” bond rate calculated as follows:

$$BBB_{24} = 0.60 * \text{Bloomberg Index C88320Y}$$

+

$$0.40 * \text{Bloomberg Index C88330Y}$$

Section 1.37 **“Interim Investment Committee”** has the meaning set forth in Section 9.1.

Section 1.38 **“IRS”** means the United States Internal Revenue Service.

Section 1.39 **“Joinder Agreement”** means the agreements in the forms attached as Exhibit 1.39(a) with respect to NEWCO and Exhibit 1.39(b) with respect to the New York Article 75 GA.

Section 1.40 “**LICGCNY**” has the meaning set forth in Recital B.

Section 1.41 “**Life Contingent Contracts**” means those Contracts providing benefits some or all of which are contingent upon the life (or lives) of an annuitant (or annuitants).

Section 1.42 “**Life Insurance Companies**” means those certain life insurance companies that enter into the Reinsurance and Participation Agreement with NEWCO. A preliminary list of the Life Insurance Companies is set forth on Schedule 1.42 hereto, which shall be updated at Closing.

Section 1.43 “**Liquidation Asset Percentage**” means that fraction (expressed as a percentage) the numerator of which is the Transferable Assets Value, and the denominator of which is the aggregate of the Liquidation Value for all Contracts.

Section 1.44 “**Liquidation Date**” means the Closing Date.

Section 1.45 “**Liquidation Value**” means, for each ELNY Contract (whether or not factored or otherwise transferred), the present value as of the Liquidation Date of the Benefit Payments determined using the Applicable Discount Rate, with all life contingent benefits based on the ELNY Mortality Table, separately applied for males and females. The estimated Liquidation Value for each Contract is included in Schedule 1.15 hereto, and will be updated to the final Liquidation Value (based on the methodology described in this Section 1.45) in the updated Schedule 1.15 to be completed within thirty (30) days after Closing or promptly thereafter.

Section 1.46 “**Material Breach**” has the meaning set forth in Section 2.4.2.

Section 1.47 “**Net Proceeds Transfer**” has the meaning set forth in Section 6.2.2.

Section 1.48 “**NEWCO**” has the meaning set forth in Recital G, which as of the date hereof has been incorporated under the legal name “Guaranty Association Benefits Company” and which is sometimes referred to as such in some of the Definitive Agreements.

Section 1.49 “**NEWCO Liabilities**” has the meaning set forth in Section 4.1.

Section 1.50 “**NEWCO Regulator**” has the meaning set forth in Section 2.4.1.

Section 1.51 “**New York Article 75 GA**” has the meaning set forth in the introductory paragraph hereof.

Section 1.52 “**NOLHGA**” has the meaning set forth in the introductory paragraph hereof.

Section 1.53 “**NOLHGA ELNY Task Force**” means the Task Force of Guaranty Association Administrators from multiple state Guaranty Associations established by NOLHGA to address the insolvency of ELNY on behalf of NOLHGA’s member Guaranty Associations that might be affected by a liquidation of ELNY.

Section 1.54 **“Non-Covered Benefit Payments”** means the post-Closing benefits payable by NEWCO that are in excess of, or are otherwise not, Covered Benefit Payments.

Section 1.55 **“Order Approving this Agreement”** means the order of the Receivership Court which approves this Agreement.

Section 1.56 **“Order of Liquidation”** means the order of the Receivership Court converting the rehabilitation of ELNY to a liquidation of ELNY, which order may be the same as the Order Approving this Agreement.

Section 1.57 **“Orphan Contracts”** mean those ELNY Contracts that, under the state Guaranty Association laws that are applicable as of the Liquidation Date, would not be covered at all by any Guaranty Association (except, in some cases, by the New York Article 75 GA), due solely to ELNY’s insurance licensing history or status, as identified in Schedule 1.15. No ELNY Contract that has any portion identified as an Orphan Contract may have any other portion of the ELNY Contract designated as either (i) an Excluded Contract or (ii) a Covered Contract.

Section 1.58 **“Participating Guaranty Associations”** or **“PGAs”** means those Guaranty Associations that provide to NOLHGA and the Receiver, prior to the Closing Date, a certificate in the form attached as Exhibit 1.58 hereto (**“PGA Participation Certificate”**) and thereby participate in, and become parties to, this Agreement and fund Covered Benefit Payments for Contracts for which they have coverage obligations, but shall exclude the New York Article 75 GA and shall include LICGCNY.

Section 1.59 **“Participating SSA Contractowners”** means, as of any time, any Contractowner of an SSA that (i) proposes to make or provide for payments under its SSAs to supplement the payments provided under the corresponding ELNY Restructured Contract to be issued under this Agreement and (ii) has entered into a Facilitation Plan, the form of which will be attached hereto as Exhibit 1.31 when completed.

Section 1.60 **“Payment Percentage”** of a PGA means the fraction (expressed as a percentage), the numerator of which is the aggregate liability of such PGA under its Covered Contracts (determined after reasonable application of all exclusions and limitations of the state laws applicable to such PGA), and the denominator of which is the aggregate liability of all PGAs under all Covered Contracts (determined after reasonable application of all exclusions and limitations of the state laws applicable to the respective PGAs).

Section 1.61 **“Pension Close-Out Certificates”** has the meaning set forth in Section 1.15.

Section 1.62 **“PGA Aggregate Contribution”** means, for each PGA, the sum of all PGA Contributions to be provided for all Covered Contracts.

Section 1.63 **“PGA Contribution”** means, for each Covered Contract, the amount determined in accordance with Section 5.2 for such Covered Contract.

Section 1.64 **“PGA Coverage”** means, for each ELNY Contract that is covered in whole or in part by any PGA, the present value of Benefit Payments calculated using the

Applicable Discount Rate and, for Life Contingent Contracts, the expected mortality of the measuring life or lives for each such Contract as determined in accordance with the ELNY Mortality Table, subject to the statutory coverage limits specified under the applicable Guaranty Association Act. Unless otherwise required by law, the aggregate dollar limits for annuity benefit payments “with respect to any one life” pursuant to statutory coverage limits applicable to any PGA shall be determined by reference to the measuring life for payment of benefits under the terms of the applicable Covered Contract(s) on the Liquidation Date as reflected on the records of ELNY, and not by reference to the Contractowner (unless such Contractowner is also the measuring life). To the extent any person’s life is the measuring life under multiple Covered Contracts owned by the same person, the Covered Contracts shall be aggregated and a single limit applied. Additionally, any aggregate dollar limits applicable with respect to “each payee” shall be determined by reference to each current payee under the applicable Covered Contract as of the Liquidation Date as reflected on the records of ELNY, and not based on the annuitant or Contractowner, except to the extent the annuitant or Contractowner is also a payee. The parties agree and acknowledge that the foregoing is intended solely as a summary description of how PGA coverage is to be determined under the various Guaranty Association Acts governing the PGAs, and that each PGA’s coverage obligations will be determined for purposes of this Agreement by the PGA pursuant the Guaranty Association Act governing that PGA. In the event of any inconsistencies in this paragraph and the Guaranty Association Act governing a PGA, the Guaranty Association Act shall prevail. The proper venue and exclusive jurisdiction for the dispute of any coverage determination made by any Guaranty Association shall rest in the appropriate court in the state whose Guaranty Association Act governs the Guaranty Association. The proper venue and exclusive jurisdiction for the dispute of any coverage determination made by LICGCNY or the New York Article 75 GA shall be the Receivership Court.

Section 1.65 **“PGA Coverage Ratio”** means, for each ELNY Contract that is covered in whole or in part by any PGA, the ratio of (i) the PGA Coverage to (ii) the Liquidation Value for such Contract, which ratio cannot exceed 100%.

Section 1.66 **“PGA Notes”** means the Short-Term PGA Notes, the Long-Term PGA Notes and the Long-Term Contingent Coverage PGA Notes of the PGAs, and the Contingent Funding PGA Note of LICGCNY, in the forms of Exhibits 1.66(a), 1.66(b), 1.66(b-1) and 1.66(c), respectively, that may be transferred to NEWCO to fund some portion of a PGA’s PGA Aggregate Contribution.

Section 1.67 **“PGA Participation Certificate”** has the meaning set forth in Section 1.58.

Section 1.68 **“Protected Orphan Benefits”** means benefits payable under Orphan Contracts after the Liquidation Date, which shall be determined by assuming that each such Orphan Contract was covered by a hypothetical guaranty association with a \$100,000 statutory limit under the 1999 version of NAIC Life and Health Insurance Guaranty Association Model Act.

Section 1.69 **“Receiver”** has the meaning set forth in the introductory paragraph hereof, and includes the Superintendent in the roles of either rehabilitator or liquidator of ELNY under Article 74 of the New York Insurance Law.

Section 1.70 **“Receivership Court”** has the meaning set forth in Recital A.

Section 1.71 **“Receivership Proceedings”** means the legal proceedings involving ELNY described in Recital A.

Section 1.72 **“Rehabilitation Plan”** means the Plan of Rehabilitation for Executive Life Insurance Company of New York, dated March 26, 1992.

Section 1.73 **“Reinsurance and Assumption Agreement”** means the agreement in the form attached as Exhibit 1.73 hereto to be entered into at Closing by and among the Receiver, on behalf of ELNY in liquidation, NOLHGA, the PGAs, the New York Article 75 GA and NEWCO, pursuant to which NEWCO will reinsure and assume the ELNY Restructured Contracts.

Section 1.74 **“Reinsurance and Participation Agreement”** has the meaning set forth in Section 6.1.1.

Section 1.75 **“Retained Assets”** has the meaning set forth in Section 4.8.

Section 1.76 **“Retained Liabilities”** has the meaning set forth in Section 4.7.

Section 1.77 **“SPIA”** has the meaning set forth in Section 1.15.

Section 1.78 **“SSA”** has the meaning set forth in Section 1.15.

Section 1.79 **“Superintendent”** has the meaning set forth in the introductory paragraph hereof.

Section 1.79A **“Supplemental Benefits”** has the meaning set forth in the Supplemental Benefits Reinsurance and Participation Agreement.

Section 1.79B **“Supplemental Benefits Participating Companies”** means those certain life insurance companies that enter into the Supplemental Benefits Reinsurance and Participation Agreement with NEWCO. A list of the Supplemental Benefits Participating Companies shall be provided at Closing.

Section 1.79C **“Supplemental Benefits Reinsurance and Participation Agreement”** has the meaning set forth in Section 6.1.2.

Section 1.80 **“Transferable Assets”** means all of ELNY’s assets as of the Liquidation Date, less the Retained Assets.

Section 1.81 **“Transferable Assets Value”** means the agreed-upon value of all Transferable Assets as of the last business day immediately preceding the Closing Date. The prices for domestic and international equity securities and fixed income securities which are traded on an exchange shall be the prices published by Reuters (or, if such price is unavailable, from Interactive Data Corporation) (or any successor organization) and shall be valued at the last trade or official close price as determined by each individual exchange. The prices for fixed

income securities which are not traded on an exchange shall be obtained by the Custodian from independent pricing vendors that determine fair valuations for normal, institutional-size trading units of comparable securities, yield data relating to investments with similar characteristics and other market inputs, and such prices shall be valued based on bid prices as of 3:00 p.m. Eastern Time daily. If the Custodian is unable to obtain pricing vendor coverage for a fixed income security or determines that a price from a pricing vendor does not appear to be reasonable, such fixed income security may be valued on the basis of a quotation from a broker or dealer for such security. For fixed income securities that are issued and will mature within one year, and for which vendor quotes may not be available, prices shall be determined based on an amortized or accretion value to par using a straight line amortization approach.

Section 1.82 **“Transferred Assets”** means all of the Transferable Assets allocated to Covered Contracts, Article 75 Contracts and Uncovered Contracts in accordance with Section 3.3, all of which shall be transferred to NEWCO under the Reinsurance and Assumption Agreement, as more particularly set forth in Article 4. Transferable Assets allocated to Excluded Contracts may be transferred to the non-participating Guaranty Associations providing coverage to the Excluded Contracts, subject to agreement between the Receiver and each such Guaranty Association, but shall not in any case constitute Transferred Assets.

Section 1.83 **“Transferred Liabilities”** means the liabilities of ELNY to the holders of the ELNY Restructured Contracts as ceded to and assumed by NEWCO pursuant to the Reinsurance and Assumption Agreement.

Section 1.84 **“Uncovered Contract”** means any and all of the foregoing:

- (a) Any Orphan Contract, or
- (b) That Contract (or any portion thereof) that would be covered by a Guaranty Association (whether or not a PGA) that has obligations as a result of ELNY’s insolvency and liquidation, but such Guaranty Association has determined that such Contract (or any portion thereof) would not be covered for any reason other than ELNY’s insurance licensing history or status (and thus, such Contract or portion thereof is not an Orphan Contract), or
- (c) That portion of any Contract where the Benefit Payments exceed the aggregate of (as applicable):
 - (i) the benefits to be provided under a Covered Contract,
 - (ii) the Protected Orphan Benefits,
 - (iii) the benefits allocated to an Excluded Contract, and
 - (iv) the benefits allocated to an Article 75 Contract.

Section 1.85 **“Wrapped Obligations”** has the meaning set forth in Section 6.1.1.

ARTICLE 2. FORMATION OF NEWCO

Section 2.1 **Formation of NEWCO.** As of the date hereof, NOLHGA has caused NEWCO to be formed under the legal name "Guaranty Association Benefits Company" as a non-stock, not-for-profit corporation and is seeking to qualify it as a captive insurance corporation in the District of Columbia with authority from that jurisdiction to enter into this Agreement and to assume the ELNY Restructured Contracts. NEWCO's charter is attached as Exhibit 2.1 hereto. The members of NEWCO shall be limited to the PGAs. NEWCO shall be operated on a not-for-profit basis and has obtained from the IRS an exemption from federal taxation under Section 501(c)(6) of the Code.

Section 2.2 **Purposes of NEWCO.** NOLHGA caused NEWCO to be formed to (i) facilitate the PGAs' and the New York Article 75 GA's satisfaction of their statutory and tax-exempt purposes related to ELNY in a coordinated and efficient manner, (ii) mitigate in accordance with Section 6.1 the losses experienced by those who rely upon ELNY's Contracts to the extent those Contracts provide Non-Covered Benefit Payments, and (iii) assume all the responsibility to provide all benefits under Covered Contracts and Wrapped Obligations and the Supplemental Benefits pursuant to the Reinsurance and Assumption Agreement. In addition, NEWCO shall use commercially reasonable efforts to further the special purpose of facilitating payments from Participating SSA Contractowners to payees in accordance with the Facilitation Plan.

Section 2.3 **Joinder in Agreement by NEWCO.** NOLHGA and the PGAs shall cause NEWCO to become a party to this Agreement by executing a Joinder Agreement, the form of which is attached hereto as Exhibit 1.39(a), with all of the rights and obligations assigned and delegated to NEWCO herein as if NEWCO was a party on the date hereof.

Section 2.4 **Receiver's Authority over NEWCO.**

2.4.1 Pursuant to its duties as statutory liquidator of ELNY, the Receiver shall have authority to make (or cause to be made) examinations into the affairs of NEWCO for the purpose of ascertaining compliance by NEWCO with this Agreement and the other Definitive Agreements (to the extent NEWCO is a party thereto) and the performance of its contractual obligations to ELNY Restructured Contractowners (or payees thereof). The PGAs, NOLHGA and NEWCO shall facilitate and cooperate with the examiners in conducting any examination. The costs of any examiners, consultants or advisors retained to conduct the examination of NEWCO shall be funded out of the Retained Assets to the extent the Retained Assets following such examination are equal to at least \$5 million; provided, thereafter, such costs shall be funded by NEWCO. The parties hereto agree and acknowledge that (i) NEWCO shall not be operating as a commercial insurer, (ii) any material expenses incurred by NEWCO could have a detrimental impact on the PGAs, the Life Insurance Companies and the Supplemental Benefits Participating Companies, and (iii) NEWCO shall be under the direct regulatory supervision of the District of Columbia Department of Insurance, Securities and Banking, or under any successor thereto having regulatory jurisdiction over NEWCO ("**NEWCO Regulator**"). Accordingly, assuming the substantial cooperation of the NEWCO

Regulator with the Receiver, the Receiver shall rely, to the extent relevant, primarily on the reports and analysis provided to or developed by the NEWCO Regulator rather than independent examinations of NEWCO.

2.4.2 In order to facilitate the Receiver's examination authority provided above, NEWCO shall from time to time provide to the Receiver such information as the Receiver requests to establish NEWCO's continuing compliance with its obligations under this Agreement, shall submit to the Receiver copies of all regulatory filings NEWCO makes with the NEWCO Regulator, and shall consent to the NEWCO Regulator sharing on a confidential basis any analysis or reports concerning NEWCO prepared or received by the NEWCO Regulator. In the event that the Receiver believes that NEWCO is in breach of its obligations under this Agreement to an extent that is material and adverse to the ELNY Estate or to the payees or beneficiaries under the ELNY Restructured Contracts (a "**Material Breach**"), the Receiver shall provide notice to NEWCO of such Material Breach and NEWCO shall have thirty (30) days to respond to the Receiver and cure any such Material Breach to the extent that such breach exists. If, after such thirty (30) day period, the Receiver continues to believe that there is a Material Breach by NEWCO of its obligations under this Agreement, then the Receiver shall consult with NEWCO in an effort to resolve the issue at hand. If, after a reasonable consultation period, the Receiver continues to believe there is a Material Breach by NEWCO of its obligations, then the Receiver may petition the Receivership Court for an injunctive order or order of specific performance against NEWCO to cure the Material Breach described in the petition.

2.4.3 The PGAs, NOLHGA and NEWCO will permit a non-voting representative named from time to time by the Receiver by written notice to NEWCO to attend telephonically or in person meetings of the Board of Directors of NEWCO.

2.4.4 NEWCO has presented this Agreement to the NEWCO Regulator as an integral part of NEWCO's "Business Plan of Operations," and the NEWCO Regulator has not objected to NEWCO's "Business Plan of Operations" or to NEWCO becoming a party to the Agreement. NEWCO shall promptly notify the NEWCO Regulator upon receipt of (i) notice that the Receiver intends to conduct an examination of NEWCO pursuant to this Article 2 or (ii) notice of a Material Breach pursuant to Section 2.4.2 above.

ARTICLE 3. RESTRUCTURING OF CONTRACTS

Section 3.1 **ELNY Restructured Values for Contracts.** As set forth in detail in Schedule 3.1 hereto, each Contract shall have a Liquidation Value assigned to such Contract, which will then be multiplied by the Liquidation Asset Percentage to yield the "**ELNY Restructured Value**" for such Contract. The Order Approving this Agreement shall include a provision that reduces the liabilities under each Contract to the ELNY Restructured Value for such Contract, and also reduces each Benefit Payment under such Contract by multiplying such Benefit Payment by the Liquidation Asset Percentage, with such reduced benefits subsequently enhanced as described herein and in Schedule 3.1. The difference between the Liquidation

Value assigned to each such Contract and its ELNY Restructured Value shall be a deemed indebtedness of ELNY to the Contractowner (or to any PGA covering a Covered Contract to the extent of such coverage), which indebtedness shall not be a Transferred Liability or otherwise a liability of NEWCO, and shall be a Retained Liability of ELNY. Such indebtedness, to the extent it remains unpaid and unfunded, shall only be discharged pursuant to any future order of the Receivership Court discharging the Receiver and closing the ELNY Estate.

Section 3.2 **Division of ELNY Restructured Contracts.** Each ELNY Restructured Contract shall be divided into one or more of the following:

- (a) A Covered Contract, if any,
- (b) An Excluded Contract, if any,
- (c) An Article 75 Contract, if any, and
- (d) An Uncovered Contract, if any, with each Uncovered Contract, or specific portions thereof, identified as either
 - (i) An Orphan Contract, or
 - (ii) A Contract (or portion thereof) that would have been a Covered Contract or an Excluded Contract, but for which coverage will not be provided by the applicable Guaranty Association (whether or not a PGA) because it has determined that such Contract (or any portion thereof) would not be covered for any reason other than ELNY's insurance licensing history or status (and thus, such Contract or portion thereof is not an Orphan Contract), or
 - (iii) An Uncovered Contract with respect to Benefit Payments under the ELNY Contract that exceed those benefits to be provided under all of the following, as applicable:
 - (A) A Covered Contract,
 - (B) An Excluded Contract,
 - (C) An Article 75 Contract, and
 - (D) An Orphan Contract.

The restructured benefit payments attributable to each Covered Contract will equal the product of the PGA Coverage Ratio for the original Contract multiplied by the reduced benefit payments determined in accordance with Section 3.1. The restructured benefit payments attributable to each Orphan Contract will equal the product of the reduced benefit payments determined in accordance with Section 3.1 multiplied by the ratio of the Protected Orphan Benefits to the Benefit Payments for such Contract. The restructured benefit payments attributable to each Excluded Contract will equal the product of the reduced benefit payments determined in

accordance with Section 3.1 multiplied by the coverage ratio for such Contract determined for the non-participating Guaranty Association expected to provide coverage. The restructured benefit payments attributable to each Article 75 Contract will be determined in accordance with Section 7.2. The restructured benefit payments attributable to each Uncovered Contract that is not an Orphan Contract will equal the difference between the reduced benefit payments under the ELNY Restructured Contract determined in accordance with Section 3.1 and the restructured benefit payments attributable to one or more of the corresponding Covered Contract, Excluded Contract, Article 75 Contract or Orphan Contract, as applicable.

Section 3.3 Allocation of Transferable Assets. A portion of the Transferable Assets shall be allocated to each ELNY Restructured Contract with a Transferable Assets Value equal to the Contract's ELNY Restructured Value. A portion of Transferable Assets allocated to each ELNY Restructured Contract shall be sub-allocated (by Transferable Assets Value) to that portion of each Contract that becomes a Covered Contract, an Excluded Contract, an Article 75 Contract or an Uncovered Contract in the same proportion as the benefit payments under each were determined under Section 3.2 above. Transferable Assets so allocated will not be further sub-allocated. No Transferable Assets will be allocated to the payment of Supplemental Benefits.

Section 3.4 Continuation of Contracts. The ELNY Restructured Contracts that are Covered Contracts, Article 75 Contracts or Uncovered Contracts will continue in force following such restructuring unless terminated by the terms of such Contract, and shall be ceded to and assumed by NEWCO pursuant to Section 4.1 and the Reinsurance and Assumption Agreement. It will be the individual responsibility of each non-participating Guaranty Association for providing its statutory coverage to each ELNY Restructured Contract allocated to it as an Excluded Contract.

ARTICLE 4.

TRANSFER AND RETENTION OF ASSETS, ASSUMPTION OF LIABILITIES AND OBLIGATIONS, AND BENEFIT ENHANCEMENTS

Section 4.1 Transfer of Assets and Obligations for Benefit Payments. On the Closing Date, the Receiver, on behalf of ELNY, shall deliver, transfer, and assign to NEWCO, all of ELNY's right, title, and interest in and to the Transferred Assets, and shall cede and assign the obligation to make all benefit payments under the ELNY Restructured Contracts that become one or more Covered Contracts, Article 75 Contracts and Uncovered Contracts, as enhanced in accordance with Section 4.2 (including any Supplemental Benefits in accordance with Section 4.2.5), and NEWCO shall accept such Transferred Assets and reinsure and assume the obligation to make all such benefit payments under such Covered Contracts (as transferred to NEWCO by each PGA), Article 75 Contracts and Uncovered Contracts as so enhanced ("**NEWCO Liabilities**"), all pursuant to and in accordance with the terms of this Agreement and the Reinsurance and Assumption Agreement. The transfer to NEWCO of the obligations under each Covered Contract and each Article 75 Contract, and the Transferred Assets allocable thereto, shall be deemed to be a direct transfer to each PGA and the New York Article 75 GA providing protection for each such Covered Contract or Article 75 Contract (as the case may be) and the contemporaneous transfer by each such PGA and the New York Article 75 GA to NEWCO of their respective coverage obligations and interest in the Transferred Assets. The Receiver shall

execute and deliver to NEWCO from time to time such additional documents and conveyances and shall take such actions as reasonably requested by NEWCO to perfect its ownership in the Transferred Assets. All Transferred Assets shall become the property of NEWCO. Other than as provided in this Agreement and in the Reinsurance and Assumption Agreement, no liabilities, undertakings, debts, covenants, commitments or other obligations of ELNY, either express or implied, shall be transferred to or in any way assumed by NEWCO, the GA Parties or the New York Article 75 GA.

Section 4.2 **Benefit Enhancements.** The benefit payments under the ELNY Restructured Contracts that become one or more Covered Contracts, Article 75 Contracts and Uncovered Contracts, as restructured and reduced in accordance with Section 3.1, shall be enhanced immediately upon the assumption by NEWCO as follows:

4.2.1 Covered Contracts. The benefits payable under each Covered Contract shall be enhanced up to Covered Benefit Payments for such Covered Contract.

4.2.2 Orphan Contracts. The benefits payable under each Orphan Contract shall be enhanced up to the Protected Orphan Benefits for such Orphan Contract.

4.2.3 Article 75 Contracts. The benefits payable under each Article 75 Contract shall be enhanced as provided in Section 7.3.

4.2.4 Uncovered Contracts. The benefits payable under each Uncovered Contract (other than, if such Uncovered Contract is an Orphan Contract, those benefits payable in respect of the Protected Orphan Benefits) shall be enhanced to 103% of the restructured benefit payments that would otherwise be payable under such Uncovered Contract as determined in accordance with Section 3.2 hereof; **provided, however**, that if the aggregate present value of Protected Orphan Benefits (determined in a manner consistent with the determination of Liquidation Values) exceeds \$56 million as of the Closing Date, then for every \$1 million of such excess present value of Protected Orphan Benefits, the 103% enhancement percentage will be reduced by 14 basis points. For the avoidance of doubt, the enhancement percentage provided in this Section 4.2.4 for Uncovered Contracts (which excludes Orphan Contracts) shall be the lesser of 103% and Y%, where Y = the greater of (a) $110.84 - 0.14 * X$ and (b) 100.1, and where X (in millions) is the present value of Protected Orphan Benefits rounded down to the nearest whole million number.

4.2.5 Supplemental Benefits. If, after all other benefits being provided under this Agreement are considered (including those benefit enhancements provided in Sections 4.2.1, 4.2.2, 4.2.3 and 4.2.4 above and specifically those being provided under the Reinsurance and Participation Agreement, but for the avoidance of doubt, excluding any benefit enhancements provided by any Contractowner or hardship fund), the present value of benefits payable to a payee by NEWCO, determined using the Applicable Discount Rate and the ELNY Mortality Table, is less than \$250,000, then such benefits shall be further enhanced with Supplemental Benefits determined in accordance with the Supplemental Benefits Reinsurance and Participation Agreement so that such payee receives from NEWCO benefit payments having a present value of \$250,000, determined

using the Applicable Discount Rate and the ELNY Mortality Table; **provided, however**, that in no event will any such benefit payment exceed the corresponding Benefit Payment. Schedule 3.1 includes a sample calculation of Supplemental Benefits.

Section 4.3 **Opt-Out.** Contractowners, payees and beneficiaries shall not be permitted to opt-out of this Agreement with respect to all or any portion of their Contracts because each person will receive benefits under a NEWCO contract with value at least equal to the ELNY Restructured Value (or the “liquidating value”) of such ELNY Contract.

Section 4.4 **Handling Statutory or Special Deposits.** To the extent that any state insurance commissioner or other regulator, official or agency, or any Guaranty Association, has seized, attached, sequestered, appropriated or otherwise taken control of or encumbered (“seizure” or “seized”) any special deposit, local asset or other funds or property of ELNY in such state, and fails or refuses to turn over such property to the Receiver by the Closing Date, the Covered Persons who reside in or are otherwise considered to be the Covered Person of such PGA may be segregated from the other Contractowners of ELNY and the ELNY assets otherwise allocated to such PGA’s Covered Persons pursuant to this Agreement may be reduced on a pro rata basis, by the dollar value of any funds or the fair market value of property so seized on the date of such seizure. In addition to all of the foregoing, the Receiver is authorized to initiate litigation to recover any ELNY special deposits or local assets. The net recoveries of special deposits or local assets will be applied to restore any reductions previously effected pursuant to this Section.

Section 4.5 **Cooperation to Implement Transaction.** The Receiver and NOLHGA shall use reasonable business efforts to assist NEWCO and any PGA in securing any third-party consents necessary or desirable in connection with the transaction contemplated by the Definitive Agreements. The Receiver shall also use reasonable business efforts to assist NEWCO and any PGA in securing any required regulatory approvals determined to be necessary or desirable in connection with the transaction contemplated by the Definitive Agreements from insurance regulatory authorities where the Covered Persons or ELNY Restructured Contractowners are resident.

Section 4.6 **Post-Transfer Actions.** Within 120 days after its assumption of the ELNY Restructured Contracts, NEWCO shall issue Assumption Certificates to the Contractowners in the form attached as Exhibit 1.6 hereto to evidence NEWCO’s assumption of the ELNY Restructured Contracts and the enhanced benefits NEWCO shall provide as described in Section 4.2.

Section 4.7 **Retained Liabilities.** The following liabilities, undertakings, debts, covenants, commitments and other obligations of ELNY, of whatever type or form and however described or denominated, shall be retained by ELNY (collectively “**Retained Liabilities**”):

- (a) claims of persons under the Rehabilitation Plan who were holders of ELNY surrenderable policies and who have a claim as a result of surrendering those policies (“**Claim-Overs**”), regardless of the relationship of any and all such liabilities to the ELNY Restructured Contracts, and

(b) all other liabilities, undertakings, debts, covenants, commitments, and other obligations or claims that are not expressly assumed from ELNY by NEWCO under this Agreement or the Reinsurance and Assumption Agreement.

Neither this Agreement nor the Order of Liquidation nor the Order Approving this Agreement shall alter, modify, terminate or discharge any Retained Liability; **provided, however**, that the New York Article 75 GA and LICGCNY hereby unconditionally and irrevocably waive any and all claims each has or may have against ELNY or the Receiver which are or may be classified as claims under subpart (1) of Section 7435(a) of the New York Insurance Law. The Retained Liabilities, to the extent they remain unpaid and unfunded, shall only be discharged pursuant to a future order of the Receivership Court discharging the Receiver and closing the ELNY Estate.

Section 4.8 Retained Assets. ELNY shall retain (i) \$10 million (or such other amount as may be requested by the Receiver and consented to by NOLHGA, such consent not to be unreasonably withheld), **plus** (ii) assets sufficient to pay the claims, if any, of secured creditors of ELNY to the extent of the security held (it being intended that such assets would be the security held), **plus** (iii) assets sufficient to satisfy ELNY obligations due and unpaid at the time of Closing that are entitled to distribution priority under Section 7435(a) of the New York Insurance Law before or *pari passu* with the PGAs, **plus** (iv) any claims or causes of action ELNY may have against any third parties ((i), (ii), (iii) and (iv), collectively, the “**Retained Assets**”) as part of the ELNY Estate. The Retained Assets will be utilized to provide for such funding as the Receiver determines is necessary and appropriate for the post-Closing operation of the receivership, any liquidation proceedings, and the performance of its duties as statutory receiver of ELNY and to discharge claims, if any, against ELNY or the Receiver arising under subparts (1), (2) or (3) of Section 7435(a) of the New York Insurance Law and wage claims against ELNY under former Section 7426 of the New York Insurance Law. Any assets discovered, and any recoveries (by judgment, settlement or otherwise) made, subsequent to the date of this Agreement shall be added to the Retained Assets. ELNY shall retain all Retained Assets unless and until the Receiver determines, in his sole discretion, that a transfer of any Retained Assets to NEWCO is prudent. Upon receipt by NEWCO, such assets shall be treated as Transferred Assets and allocated on the same basis as all other Transferred Assets. Attached hereto as Schedule 4.8 is a list of known secured creditors of ELNY along with any assets of ELNY in which such secured creditors hold a security interest, which schedule shall be updated at Closing.

Section 4.9 Nature of Benefit Payments Attributable to Wrapped Obligations and Supplemental Benefits. For the avoidance of doubt, the obligation of NEWCO to make benefit payments for Wrapped Obligations and Supplemental Benefits is a full recourse obligation of NEWCO.

Section 4.10 NEWCO Disbursements to Contractowners or Payees. Upon Closing, NEWCO shall begin making payments of the benefits it has assumed hereunder to Contractowners or to payees under SSAs by check or wire transfer on each date benefits were payable under the terms of the original ELNY Contract; **provided, however**, the parties agree that in order to accommodate post-Closing administrative procedures in connection with any true-up or correction of information contained on Schedule 1.15 as of the Closing Date, NEWCO may, subject to the prior consent of the Receiver and with the cooperation of NOLHGA and the Receiver, delay payment of any benefits due and payable within the first thirty (30) days

following Closing for a period not to exceed thirty (30) days following the date on which such benefits are due and payable under the terms of such Contract; **provided, further**, that in the event that any such benefit payments are delayed for a period exceeding thirty (30) days, NOLHGA and the Receiver shall cooperate to calculate a make-whole payment by NEWCO to compensate for the additional delay and NEWCO shall make such make-whole payment as promptly as practicable. With respect to any delay of benefit payments as contemplated in the immediately preceding sentence, NEWCO shall use reasonable efforts to give notice thereof to all affected Participating SSA Contractowners.

ARTICLE 5. PARTICIPATING GUARANTY ASSOCIATION CONTRIBUTION

Section 5.1 **PGA Contribution.** The PGAs, through NEWCO, are, pursuant to the terms of this Agreement, providing Covered Benefit Payments to Covered Persons based on the PGAs' determinations of their respective statutory obligations and as a settlement among the various PGAs of all disputes concerning which PGA may extend coverage to any Covered Contract for purposes of implementing this Agreement. At Closing, pursuant to their statutory obligations to Covered Persons, each PGA shall transfer to NEWCO an aggregate amount of cash and PGA Notes, equal to the PGA Aggregate Contribution (determined in accordance with this Article 5) for all of the Covered Contracts of that PGA. If LICGCNY's PGA Aggregate Contribution exceeds its statutory lifetime maximum assessment authority in effect as of the Closing Date after taking into account outstanding assessments, LICGCNY (subject to obtaining any necessary statutory regulatory approval) and NEWCO shall confer to determine how best to address LICGCNY's statutory lifetime assessment limitation (and shall thereafter promptly advise the Receiver as to their conclusions), which shall be either (A) NEWCO will accept obligations for LICGCNY's Covered Contracts only up to the level LICGCNY can fund under its current statutory lifetime maximum assessment authority, with LICGCNY retaining all liability under its Covered Contracts to make those Covered Benefit Payments having a present value equal to the amount by which LICGCNY's PGA Aggregate Contribution exceeds its statutory lifetime maximum assessment authority, and with LICGCNY transferring to NEWCO at Closing an amount of cash and PGA Notes sufficient to fund the liability transferred to NEWCO, or (B) NEWCO will accept a Contingent Funding PGA Note from LICGCNY (as contemplated in Exhibit 1.66(c)) in respect of LICGCNY's liabilities in excess of its Closing Date statutory lifetime maximum assessment authority. If NEWCO and LICGCNY proceed under either clause (A) or (B) of the preceding sentence, then if and when LICGCNY's statutory lifetime maximum assessment authority is increased to a level sufficient for it to fund fully all of its obligations under its Covered Contracts, LICGCNY shall either (C) transfer to NEWCO, and NEWCO shall accept, the liabilities retained by LICGCNY at Closing along with total assets (which may include a PGA Note) sufficient to fund fully such obligations for the Covered Benefit Payments LICGCNY retained at Closing, or (D) pay immediately all accrued interest and principal under any Contingent Funding PGA Note LICGCNY may have issued to NEWCO. If NEWCO and LICGCNY proceed under either clause (A) or (B) above, and neither of the events described in clause (C) or (D) occur, NEWCO's future payments of the LICGCNY Covered Benefit Payments shall be reduced in accordance with Section 5.6 of this Agreement. In addition, NEWCO shall not have any liability to make any LICGCNY Covered Benefit Payments that LICGCNY retains at Closing if NEWCO and LICGCNY proceed under clause (A) until such time as the events described in clause (C) have occurred.

Section 5.2 **Determination of PGA Contribution for Covered Contracts.** Each PGA shall, in accordance with the provisions of Section 5.3, provide a PGA Contribution for each Covered Contract of that PGA equal to the difference between (a) the PGA Coverage for that Covered Contract and (b) the value of the Transferred Assets allocated to that Covered Contract in accordance with Section 3.3.

Section 5.3 **Computation of PGA Contributions.**

5.3.1 The Receiver shall provide, or cause to be provided, to NOLHGA, no later than thirty (30) days prior to Closing, a schedule, in computer readable form, as of a date no earlier than sixty (60) days prior to the anticipated Closing Date, setting forth (i) the name and address of each Contractowner, and each payee or beneficiary as reflected in the records of ELNY as of both April 23, 1991 (or a date as close in time thereto as reasonably available), and as of a current date; (ii) the policy form number of the Contract or Contracts issued to each such Contractowner; and (iii) the Benefit Payments under each such Contract. Such information shall be based on the books and records of ELNY and any necessary calculations and estimates, which calculations and/or estimates shall be described in reasonable detail, and may be provided as a proposed update to Schedule 1.15.

5.3.2 NOLHGA and the Receiver shall cooperate to (a) determine (i) the Liquidation Asset Percentage; (ii) the Liquidation Value and ELNY Restructured Value for each Contract; and (iii) the PGA Coverage Ratio and PGA Coverage for each Covered Contract on or before ten (10) days prior to the Closing Date, (b) develop a revised Schedule 1.15 to be used for Closing that contains the most recently available information required to be included, and (c) calculate the PGA Aggregate Contribution for each PGA. In the event that any PGA Contribution is allocable to two or more Covered Contracts, such PGA Contribution shall be allocated pro rata to such Covered Contracts in accordance with their Liquidation Values.

5.3.3 NOLHGA shall provide a confirmation of the Payment Percentage for each PGA prior to Closing.

5.3.4 At Closing, each Covered Contract shall be credited with the PGA Contribution applicable thereto.

5.3.5 After Closing, NOLHGA and the Receiver shall cooperate to true-up as of the Closing Date the various values and other information contemplated in Section 5.3.2. The parties shall make all necessary financial and ledger adjustments resulting from such true-up.

5.3.6 If it is determined after Closing that the PGA Contribution or any other calculation required to be performed pursuant to the terms of this Agreement was in error or did not include any Contractowner, the party discovering such error shall promptly provide written notice of such error to all other parties to this Agreement. All affected parties shall use their best efforts to resolve any disputes regarding such errors and adjustments within thirty (30) days of receipt of notice of such error. In the event the

affected parties are not able to resolve any disputes with respect thereto within the foregoing time frame, the Accounting Procedure shall be employed.

Section 5.4 Further NEWCO Obligations.

5.4.1 NEWCO shall provide prompt notice to a PGA of any claim affecting such PGA by any Covered Person of which NEWCO has been notified and which claims a PGA Contribution in excess of that portion of the PGA Contribution either credited to such Contract or paid to such Covered Person as a Covered Benefit Payment. NEWCO shall also provide a copy of such notice to the Receiver.

5.4.2 NEWCO shall maintain accurate and complete records of all amounts paid to Contractowners or payees under SSAs.

5.4.3 NEWCO shall promptly provide a copy to NOLHGA and the Receiver of any notice delivered to or by NEWCO under this Agreement relating to the liquidation of ELNY and of any proposed amendments to, or waiver of any condition or requirement of, this Agreement or any of the other Definitive Agreements to which it is or will be a party.

Section 5.5 **Liability for Obligations.** The liability of the various PGAs for their obligations under this Agreement shall be several and not joint, and includes a guaranty of performance of the Covered Contracts such PGA is covering which each PGA hereby acknowledges; **provided, however**, that nothing herein shall eliminate or reduce a PGA's liability or obligation to make its share of the contributions and the commitments in accordance with this Agreement and applicable law.

Section 5.6 Payment Defaults by Any Participating Guaranty Association.

5.6.1 If any PGA defaults with respect to any payment or contribution required pursuant to this Agreement or pursuant to a PGA Note, after written notice of such default (which may be notice from the Receiver) and a failure by such PGA to cure such default within thirty (30) days after receipt of such notice, NEWCO shall promptly enforce the obligations of the defaulting PGA; if NEWCO fails to timely do so, the Receiver shall have the right to do so at the expense of NEWCO. Consistent with such enforcement action, NEWCO, with the consent of the Receiver (not to be unreasonably withheld), shall be entitled (i) to terminate this Agreement as to such PGA or (ii) for Covered Contracts covered by such defaulting PGA to reduce the future periodic benefit payments of such Covered Contract that are the obligations of NEWCO by an aggregate amount up to the defaulted payment or contribution.

5.6.2 In the event NEWCO accepts a Contingent Funding PGA Note from LICGCNY and LICGCNY is unable for any reason to pay all principal and interest identified therein in full on or before the maturity date specified in the Contingent Funding PGA Note, even if LICGCNY's failure to make such payment is permitted under the terms of such Contingent Funding PGA Note, NEWCO shall, on such maturity date, immediately reduce the future periodic benefit payments due on each Covered Contract that is covered by LICGCNY in proportion to each such Covered Contract's allocable share of the aggregate amount of LICGCNY's unpaid principal and interest.

5.6.3 In the event NEWCO accepts obligations for LICGCNY's Covered Contracts only up to the level LICGCNY can fund under its current statutory lifetime maximum assessment authority, and LICGCNY does not transfer the remaining liabilities along with additional assets equal to the present value thereof, all in the manner contemplated by Section 5.1, NEWCO shall, commencing on the later of the second anniversary of the Closing Date and June 30, 2015, reduce the future periodic benefit payments due on each Covered Contract that is covered by LICGCNY in proportion to each such Covered Contract's allocable share of the difference between (1) LICGCNY's PGA Aggregate Contribution and (2) the amount of cash and PGA Notes transferred by LICGCNY to NEWCO at Closing, with such difference accumulated with interest from the Closing Date at the same rate and on the same basis as would have applied if NEWCO had accepted from LICGCNY a Contingent Funding PGA Note as contemplated in Exhibit 1.66(c) (such difference as so adjusted with interest being termed the "**Difference**").

5.6.4 Any reduction of future LICGCNY Covered Benefit Payments under either paragraph 5.6.2 or 5.6.3 shall be imposed as an immediate percentage reduction on all future benefit payments by NEWCO under each LICGCNY Covered Contract at the time paragraph 5.6.2 or 5.6.3, as the case may be, is implemented, which percentage shall be determined by a fraction where (a) the numerator is, in the case of 5.6.2, the amount unpaid by LICGCNY, and in the case of 5.6.3, the Difference, and (b) the denominator is the present value of the LICGCNY Covered Benefit Payments as of the date of the implementation of the benefit reduction, determined using the Applicable Discount Rate and the ELNY Mortality Table. No further consent of the Receiver shall be required in respect of any such reduction.

5.6.5 NEWCO shall retain all rights available at law to recover from any defaulting PGA any amounts which are due from such PGA pursuant to the terms hereof or of such PGA Note but not paid. NEWCO shall restore any reductions previously effected pursuant to this Section 5.6 to the extent of any net amounts recovered from such defaulting PGA, or from LICGCNY in the event that LICGCNY's statutory lifetime assessment authority is increased after the date of such reduction. With respect to any reductions in future periodic benefit payments of Covered Contracts, and any restoration of such reduction, as contemplated in this Section 5.6, NEWCO shall use reasonable efforts to give notice thereof to all affected Participating SSA Contractowners.

Section 5.7 **Future NEWCO Support.** If NEWCO determines that it needs additional funds to meet its obligations with respect to Covered Contracts hereunder, NEWCO shall notify the PGAs of the aggregate amount NEWCO needs to discharge the remaining Covered Benefit Payments. Each PGA shall, within thirty (30) days of the receipt of such notice deliver an aggregate amount of cash and PGA Notes (as measured by aggregate principal amount) to NEWCO equal to such PGA's Payment Percentage multiplied by the amount NEWCO identified it needed to discharge the Covered Benefit Payments, and any failure of a PGA to do so shall constitute a contribution default under Section 5.6. Any determination by NEWCO that it needs additional funds to meet its obligations under Covered Contracts shall be made by the NEWCO board of directors in accordance with the terms of the Reinsurance and Participation Agreement and the Supplemental Benefits Reinsurance and Participation

Agreement, including specifically Schedule 2 of each agreement, the forms of which are attached hereto as Exhibits 6.1.1 and 6.1.2.

ARTICLE 6.
GUARANTEES BY LIFE INSURANCE COMPANIES AND SUPPLEMENTAL
BENEFITS PARTICIPATING COMPANIES AND TRANSFER OF
NEWCO LIABILITIES

Section 6.1 Guarantees by Life Insurance Companies and Supplemental Benefits Participating Companies.

6.1.1 At Closing, NEWCO shall enter into an agreement with the Life Insurance Companies providing those matters set forth in Exhibit 6.1.1 hereto and in form and substance acceptable to the Receiver (“**Reinsurance and Participation Agreement**”), pursuant to which the Life Insurance Companies guarantee NEWCO’s payment of all benefits identified in Sections 4.2.2 and 4.2.4 (“**Wrapped Obligations**”). The Wrapped Obligations are guaranteed by the Life Insurance Companies as described in Exhibit 6.1.1 hereto. NEWCO shall promptly enforce all of its rights and remedies under the Reinsurance and Participation Agreement; if NEWCO fails to timely do so, the Receiver shall have the right to do so at the expense of NEWCO.

6.1.2 At Closing, NEWCO shall enter into an agreement with the Supplemental Benefits Participating Companies providing those matters set forth in Exhibit 6.1.2 hereto and in form and substance acceptable to the Receiver (“**Supplemental Benefits Reinsurance and Participation Agreement**”), pursuant to which the Supplemental Benefits Participating Companies guarantee NEWCO’s payment of all Supplemental Benefits identified in Section 4.2.5. NEWCO shall promptly enforce all of its rights and remedies under the Supplemental Benefits Reinsurance and Participation Agreement; if NEWCO fails to timely do so, the Receiver shall have the right to do so at the expense of NEWCO.

Section 6.2 Future Transfer of NEWCO Liabilities.

6.2.1 The PGAs, NOLHGA and NEWCO covenant to use their reasonable business efforts, from time to time as described below, to transfer all of the NEWCO Liabilities to a third party commercial life insurer (“**Commercial Insurer**”) in a manner intended to maximize the value obtained therefrom. No such transfer shall be consummated unless the PGAs, NEWCO, NOLHGA and the Receiver agree that the financial strength of the Commercial Insurer is adequate to provide reasonable assurances that the Commercial Insurer will be able to discharge all NEWCO Liabilities as transferred to the Commercial Insurer. No such transfer to any Commercial Insurer may be accomplished without the consent of the Life Insurance Companies and the Supplemental Benefits Participating Companies, in all cases not to be unreasonably withheld, unless the Commercial Insurer agrees to accept full responsibility for the Wrapped Obligations and the Supplemental Benefits.

6.2.2 Upon a transfer of the NEWCO Liabilities pursuant to Section 6.2.1 above or otherwise, 100% of the net proceeds (after deducting from the total transfer proceeds (i) all reasonable transaction expenses and taxes incurred, if any, in respect of such transfer, (ii) any initial capitalization of NEWCO provided by the PGAs, and (iii) sufficient assets to wind up and dissolve NEWCO (not to exceed the future value at the relevant time of Fifty Thousand 2012 United States Dollars)) shall be remitted to the ELNY Estate (“**Net Proceeds Transfer**”). All parties to this Agreement, including the GA Parties, unconditionally and irrevocably waive any and all claims or rights each has or may have with respect to the Net Proceeds Transfer.

6.2.3 The Net Proceeds Transfer shall, with the approval of the Receivership Court, be distributed as follows in absolute priority: **First**, on a pro rata basis in accordance with the Liquidation Values of the portions of ELNY Contracts that remain unpaid and unfunded by the ELNY Estate. (For purposes of such calculations, Liquidation Values will accrue interest at the Applicable Discount Rate from the Liquidation Date to the date of the Net Proceeds Transfer.) **Second**, on a pro rata basis to the Claim-Overs. (For purposes of such calculations, Claim-Over balances will accrue interest at 4% per annum, as contemplated in paragraph II.M. of the Rehabilitation Plan, from the Liquidation Date to the date of the Net Proceeds Transfer.) **Third**, on a pro rata basis in absolute priority, any claims under subparts (5) through (8) of Section 7435(a) of the New York Insurance Law. (For purposes of subpart (8), “stockholders or other owners” shall mean NEWCO for the same tax exempt purposes for which NEWCO was created or, if NEWCO shall have been dissolved, to the PGAs to satisfy their statutory obligations.) If (although there should be none) claims against the ELNY Estate exist at the time of distribution of the Net Proceeds Transfer which claims arise under subparts (1) through (3) of Section 7435(a) of the New York Insurance Law and are allowed by the Receivership Court, then such claims shall be paid fully and in absolute priority before any distribution is made under the sentence “First”, above. The Receiver shall distribute all allocated portions of the Net Proceeds Transfer on a lump-sum basis or otherwise as required by applicable law. All expenses incurred by the Receiver in the allocation and distribution of the Net Proceeds Transfer will be paid from and reduce the distributable amount of the Net Proceeds Transfer.

6.2.4 Unless any such transfer as contemplated above is accomplished beforehand, NEWCO and NOLHGA will solicit interest from potential Commercial Insurers during the calendar years of each twelfth (12th) anniversary of the Liquidation Date, unless NEWCO and NOLHGA reasonably determine, with the consent of the Receiver which shall not be unreasonably withheld, that a transfer of NEWCO’s Obligations is impracticable or impossible in such calendar year.

6.2.5 For the avoidance of doubt, the transfer of the NEWCO Liabilities to a Commercial Insurer shall be accomplished through such arrangements and agreements approved by the Receiver (such approval not to be unreasonably withheld) and shall require the Commercial Insurer to accept and discharge all the NEWCO Liabilities as may be enhanced under the terms of the agreement governing the transfer.

6.2.6 If no transfer of the NEWCO Liabilities has been consummated at such time that the last remaining contractual obligation of NEWCO to the ELNY Restructured Contractowners (or payees thereof) is satisfied in full, then to the extent there are assets remaining in NEWCO at such time, such assets shall be transferred in full to the ELNY Estate. The assets shall be allocated and distributed in the manner set forth in Section 6.2.3.

ARTICLE 7. NEW YORK ARTICLE 75 GA ENHANCEMENT

Section 7.1 **Overview of Coverage.** The parties understand that, given the value of the claims under ELNY Contracts that could be provided coverage by the New York Article 75 GA, the New York Article 75 GA's assessment cap of \$50 million will be exhausted by the liquidation of ELNY without the New York Article 75 GA discharging all of its coverage obligations unless the New York Article 75 GA, with the approval of the Superintendent, imposes terms and conditions that would reduce those obligations to the amount of the available funds. The New York Article 75 GA intends to impose, with the approval of the Superintendent, terms and conditions on the coverage that it will provide under Covered Contracts, including without limitation that no benefits from the New York Article 75 GA should be provided where, under another Guaranty Association Act, it would cause the Covered Contract to have benefits otherwise available from another Guaranty Association reduced or eliminated. The New York Article 75 GA shall become a party to this Agreement by executing a Joinder Agreement, the form of which is attached as Exhibit 1.39(b), with all of the rights and obligations assigned and delegated to the New York Article 75 GA herein as if the New York Article 75 GA was a party on the date hereof.

Section 7.2 **Requirements and Amount.** The New York Article 75 GA will seek approval of the Superintendent to apply coverage to ELNY Contracts up to its \$50 million assessment cap, less any amounts the New York Article 75 GA reasonably determines that it needs to retain for administrative expenses or tax liabilities (such amount to be communicated to NOLHGA and the Receiver no later than thirty (30) days prior to Closing), on an "excess over" basis as follows:

7.2.1 ELNY Contracts will be eligible for New York Article 75 GA coverage if they were issued prior to August 2, 1985, regardless of where the Contractowner, payee or beneficiary resides ("**Article 75 Contracts**").

7.2.2 If an Article 75 Contract is fully covered by another Guaranty Association, the New York Article 75 GA will not provide any coverage in respect of that Contract.

7.2.3 Subject to Sections 7.2.4, 7.2.5 and 7.3, if an Article 75 Contract is not fully covered by another Guaranty Association, the New York Article 75 GA will provide coverage in respect of any portion of the Contract that is in excess of the portion covered by another Guaranty Association. For purposes of this Section 7.2.3, Orphan Contracts shall be treated as if they were covered by a Guaranty Association to the extent of the Protected Orphan Benefits.

7.2.4 If another Guaranty Association would reduce or eliminate benefits for any reason under its applicable Guaranty Association Act for any of its Covered Contracts or Excluded Contracts that are also Article 75 Contracts due to benefits provided by the New York Article 75 GA under Section 7.2.3, the New York Article 75 GA will not provide any benefits for such Covered Contracts or Excluded Contracts (all such Covered Contracts and Excluded Contracts along with those identified in Section 7.2.2 shall collectively be referred to as the “**Article 75 Excluded Contracts**”).

7.2.5 The New York Article 75 GA will provide coverage on a pro rata basis in proportion to the amount of the otherwise uncovered portions of Article 75 Contracts other than the Article 75 Excluded Contracts.

Section 7.3 **Enhancement.** The coverage provided to Article 75 Contracts pursuant to Section 7.2 shall take the form of an enhancement to the ELNY Restructured Contracts. The New York Article 75 GA shall pay such enhancement to NEWCO on the Closing Date.

Section 7.4 **No Other Obligations.** The New York Article 75 GA shall assume no obligations in connection with the liquidation of ELNY other than as provided in this Article 7 and in Section 4.7. For the avoidance of doubt, if the funds provided by the New York Article 75 GA to NEWCO to pay the enhanced benefits under any Article 75 Contract are exhausted prior to fully satisfying NEWCO’s obligation for such Article 75 Contract, the New York Article 75 GA will not provide any additional funds to NEWCO, and NEWCO shall cease paying benefits for such Article 75 Contract.

Section 7.5 **Satisfaction of Statutory Obligation.** The New York Article 75 GA is pursuant to the terms of this Article 7, providing benefit payments to Article 75 Contracts in satisfaction of its statutory obligations and as a settlement among the New York Article 75 GA and the various PGAs of all disputes concerning coverage of Contracts.

ARTICLE 8. COORDINATION WITH PARTICIPATING SSA CONTRACTOWNERS

Section 8.1 **Cooperation to Implement Facilitation Plan.** The Receiver and NEWCO shall use commercially reasonable efforts to cooperate fully and work jointly in implementing the Facilitation Plan so as to enable Participating SSA Contractowners to make or to provide for appropriate payments under their SSAs to supplement the payments provided under the corresponding ELNY Restructured Contract to be issued under this Agreement. NOLHGA and the Receiver will continue to cooperate with the Participating SSA Contractowners to ensure that the information in ELNY’s records concerning the Contracts owned by each Participating SSA Contractowner is factually accurate.

ARTICLE 9. ELNY ACTIONS

Section 9.1 **Maintenance of ELNY’s Assets.** During the period from the date hereof and continuing until the Closing Date, the Receiver hereby agrees to cooperate with NOLHGA and the persons identified by NOLHGA as its investment committee for ELNY (“**Interim Investment Committee**”), and to advise the Interim Investment Committee of any proposed

transactions or management decisions materially affecting any of ELNY's assets with a value greater than \$2 million, and shall provide the Interim Investment Committee advance copies of the Receiver's motions for instructions, if any, regarding same. The Receiver agrees during the period until the Closing Date not to take any action which, from the viewpoint of a person exercising reasonable business judgment, would materially adversely affect the value or worth of ELNY's assets, and in connection therewith agrees not to (i) voluntarily exchange, hypothecate, encumber, file any petition or make any vote or election (other than voting ordinary course proxies) or give any waiver or consent or amendment with respect to, or otherwise enter into any agreement affecting the rights, title or interest of ELNY in any ELNY assets in each case with a value greater than \$2 million ("**Exchange**") or (ii) sell any such assets, other than in accordance with the provisions of this Article 9. The parties acknowledge that, although the Interim Investment Committee may be consulted or advised with respect to the management and investment decisions relating to the ELNY assets, the Receiver will conduct its own investigations, to the extent it determines necessary or desirable, in making its management and investment decisions, and further acknowledge that the Receiver will not rely on the Interim Investment Committee's statements, decisions or actions, unless the Interim Investment Committee objects to a sale or Exchange pursuant to Section 9.3 or 9.4. During the period from the date hereof and continuing until the Closing Date, any cash flow produced by the ELNY assets and any proceeds from the sale thereof and any other operating cash flow shall be invested by the Receiver as required by the Rehabilitation Plan.

Section 9.2 Investigation and Cooperation. The Receiver shall permit representatives of the GA Parties, as well as those independent actuaries, consultants, attorneys and accountants retained by NOLHGA, such access during normal business hours, and without material disruption to the business of the receivership, to the Transferred Assets and Transferred Liabilities, as well as those properties, books and records of ELNY as they may reasonably require, and shall cooperate with and cause the consultants, advisors and counsel retained by the Receiver to cooperate with and provide those representatives, actuaries, consultants, attorneys and accountants of the GA Parties all such information pertaining to ELNY and its affairs, operations and management as they may reasonably request and which is available to the Receiver without undue burden or material cost for purposes relating to this Agreement and the other Definitive Agreements.

Section 9.3 Pre-Confirmation Date Sales and Exchanges. For the period following the date hereof through the Confirmation Date, the Receiver shall use reasonable business efforts to give the Interim Investment Committee at least four (4) business days advance notice of any proposed sale or Exchange affecting ELNY assets with a value greater than \$2 million. The Receiver may consummate sales or Exchanges only on the terms and conditions disclosed to the Interim Investment Committee. The Receiver shall not effect such sale or Exchange if the Interim Investment Committee notifies the Receiver within two (2) business days of receipt of notice from the Receiver that the Interim Investment Committee reasonably objects to such sale or Exchange.

Section 9.4 Post-Confirmation Date Sales and Exchanges. During the period commencing with the Confirmation Date and continuing thereafter until the Closing Date, the Receiver shall not, without the prior consent of the Interim Investment Committee, which may be given or withheld by the Interim Investment Committee in its reasonable discretion, take any

material action, including without limitation, sales or Exchanges, affecting the ELNY assets, and other than in the ordinary course of business, ELNY data bases, computer systems and records. The Receiver will promptly notify the Interim Investment Committee of any proposed sale or Exchange affecting ELNY assets or of any other material action described above at least four (4) business days prior to any such Exchange or action. The Interim Investment Committee shall be deemed to have consented to such sale or Exchange or action unless the Interim Investment Committee notifies the Receiver within two (2) business days of receipt of notice from the Receiver that the Interim Investment Committee objects to such sale or Exchange or other material action. A sale or Exchange, if consented to by the Interim Investment Committee, may be consummated only on the terms and conditions disclosed to the Interim Investment Committee.

Section 9.5 Additional Procedures for Sales and Exchanges. The parties hereto acknowledge that events may occur and circumstances may develop in which it is not possible for the Receiver to comply with Sections 9.3 and 9.4. In that case, the Receiver shall use good faith efforts to advise the Interim Investment Committee of any proposed sale or Exchange or other action contemplated in this Article 9, solicit the Interim Investment Committee's views, and comply with the intent of Sections 9.3 and 9.4 to the extent practicable. Such good faith efforts shall constitute full compliance with this Article 9 for all purposes.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES

Section 10.1 Representations and Warranties of the Receiver. The Receiver hereby represents and warrants to NOLHGA, the GA Parties, the New York Article 75 GA and NEWCO as follows:

10.1.1 Valid Appointment. The Receiver has been duly and validly appointed in the Receivership Proceedings as the rehabilitator of ELNY as that term is used in Article 74 of the New York Insurance Law. To the knowledge of the Receiver, none of the Contracts issued and outstanding at the Liquidation Date are unallocated group annuity contracts.

10.1.2 Authorization, Enforceable Obligations. The Receiver has all requisite power, authority and legal right necessary to execute and deliver this Agreement and each of the other Definitive Agreements to which it is or will be a party and, subject to the entry of the Final Order Approving this Agreement and approval of the Receivership Court, to perform and carry out the transactions contemplated hereby pursuant to the terms and conditions hereof. Upon the Final Order Approving this Agreement, (i) no other or further authorization or approval from any party will be required in connection with the execution and delivery by the Receiver of this Agreement and each of the other Definitive Agreements, and (ii) this Agreement and each of the other Definitive Agreements will be legal, valid, and binding obligations of the Receiver, enforceable in accordance with their terms.

10.1.3 Validity of Contemplated Transactions. The Receiver has no knowledge that the execution, delivery and performance by the Receiver of this

Agreement and each of the other Definitive Agreements to which it is or will be a party, when approved by the Receivership Court, will contravene or violate any law, rule or regulation to which the Receiver is subject, or any judgment, order, writ, injunction, decree or award of any court, governmental instrumentality, regulatory agency, administrative body, administrative officer or arbitrator which is applicable to the Receiver.

10.1.4 Employee Benefit Plans. ELNY has no employees currently, and has had no employees since January 1, 2009, and any and all employee benefit plans, or any other agreements, plans, programs, policies or arrangements or understandings known to the Receiver providing benefits of economic value to any prior employees of, or consultants to, or agents or brokers for ELNY or to any other person working or who has previously worked for ELNY or its predecessors for wage claims, severance compensation, accrued vacation, pension benefits or any other employee benefits of any kind, whether pursuant to a contract or contractual obligation or pursuant to any statute or regulation of any federal, state or local agency, have previously been terminated with no further liability of ELNY.

Section 10.2 Representations and Warranties of NOLHGA. NOLHGA hereby represents to the Receiver that (i) it has the necessary power and authority to enter into this Agreement and the other Definitive Agreements to which it is or will be a party solely as a facilitator and coordinating body for the PGAs and to consummate the transactions contemplated hereby and thereby; (ii) NOLHGA has no knowledge that the execution, delivery and performance of this Agreement and the other Definitive Agreements by NOLHGA will violate any laws or statutes to which NOLHGA is subject, or its organizational documents, bylaws or any material indenture, contract, agreement, instrument or other commitment to which NOLHGA is a party; (iii) there are no material actions, suits, arbitrations or other legal, administrative or other governmental proceedings pending against NOLHGA that would materially impair NOLHGA's ability to perform all of the terms, covenants and conditions of this Agreement or any of the other Definitive Agreements; and (iv) the persons executing this Agreement on behalf of NOLHGA and any of the other Definitive Agreements to which NOLHGA is or will be a party (as of the date of execution of any such Definitive Agreement) are duly authorized on behalf of NOLHGA to execute this Agreement and such other Definitive Agreements. Upon the Final Order Approving this Agreement, (i) no other or further authorization or approval from any party will be required in connection with the execution and delivery by NOLHGA of this Agreement and each of the other Definitive Agreements, and (ii) this Agreement and each of the other Definitive Agreements will be legal, valid, and binding obligations of NOLHGA, enforceable in accordance with their terms.

Section 10.3 Representations and Warranties of Participating Guaranty Associations and the New York Article 75 GA. Each PGA and the New York Article 75 GA hereby severally represents to the Receiver that, with respect to its obligations set forth in this Agreement: (i) it has the necessary power and authority to enter into this Agreement and the other Definitive Agreements to which it is or will be a party and to consummate the transactions contemplated hereby and thereby; (ii) the execution, delivery and performance of this Agreement or any other Definitive Agreement to which it is or will be a party will not violate (X) to the knowledge of the PGA or the New York Article 75 GA (as the case may be), any laws or statutes

to which it is subject, (Y) its corporate charter or bylaws, or (Z) any material indenture, contract, agreement, instrument or other commitment to which it is or will be a party or by which it is or will be bound, or be in conflict with, or result in a breach or default on the part of it (or be an occurrence which, with the lapse of time and/or the giving of notice, would constitute a breach or default) under any such indenture, contract, agreement, instrument or other commitment; nor will such execution, delivery and performance materially conflict with, or result in a violation of, or constitute a material default under, any term or provision of applicable law, or any judgment, writ, injunction, decree or order of any court, governmental authority, or arbitrator relating to it; (iii) no other or further authorization or approval from any party will be required in connection with the execution and delivery by it of this Agreement and each of the other Definitive Agreements; and (iv) the persons executing this Agreement or any of the other Definitive Agreements on behalf of it as a party are (as of the date of execution of any such Definitive Agreement) duly authorized by all necessary action to execute such Definitive Agreements. Upon the Final Order Approving this Agreement, (i) no other or further authorization or approval from any party will be required in connection with the execution and delivery by it of this Agreement and each of the other Definitive Agreements, and (ii) this Agreement and each of the other Definitive Agreements will be legal, valid, and binding obligations of each PGA and the New York Article 75 GA, enforceable in accordance with their terms.

Section 10.4 Expiration of Representations and Warranties. All representations and warranties made by the parties in this Agreement and the other Definitive Agreements, as well as in any certificate, recital, exhibit, schedule, statement, document or instrument furnished hereunder or in accordance with this Agreement or any other Definitive Agreement, shall expire upon the Closing.

ARTICLE 11. CONDITIONS PRECEDENT TO CLOSING

Section 11.1 Conditions Precedent to Closing for the Benefit of All Parties. Except as otherwise expressly provided herein, the obligations of each of the parties hereto to proceed with the Closing are subject to the fulfillment or satisfaction, prior to or at the Closing, of each of the following conditions precedent:

11.1.1 Order of Liquidation and Final Order Approving this Agreement. The parties shall have obtained from the Receivership Court both an Order of Liquidation and a Final Order Approving this Agreement and all of the provisions herein, which orders may, but need not, be combined in a single order.

11.1.2 Terms of the Orders. The Order of Liquidation and the Final Order Approving this Agreement shall, among other provisions, have (a) declared that ELNY is insolvent, (b) approved the terms and conditions of an Agreement substantially similar to this Agreement and all other Definitive Agreements, including, without limitation, the Exhibits and Schedules to this Agreement, in forms substantially similar to the Definitive Agreements attached to this Agreement; (c) approved the restructuring by ELNY of the liabilities in respect of the ELNY Contracts; (d) confirmed that the Receivership Court has subject matter jurisdiction over this Agreement; (e) confirmed that NEWCO may assume the obligation to pay benefit payments in accordance with the terms of this

Agreement; (f) approved the transfer of the Transferred Assets from ELNY to NEWCO; (g) approved a form of Assumption Certificate substantially similar to the form of Assumption Certificate attached to this Agreement; (h) approved the terms of the ELNY Restructured Contracts; (i) approved the preservation of Retained Liabilities and priority of distribution of the Net Proceeds Transfer contemplated in Section 6.2.3; and (j) determined that all Contracts shall remain in full force pending effectiveness of the Reinsurance and Assumption Agreement and shall upon such effectiveness be fully discharged as obligations of ELNY other than to the extent of the value of such obligations that are included in the Retained Liabilities.

11.1.3 NEWCO Organized. (a) NEWCO shall have been formed in a manner consistent with the provisions of this Agreement and (b) NEWCO shall have been duly organized, shall be in good standing as a captive insurance company in the District of Columbia and shall have joined in this Agreement. NEWCO shall have presented this Agreement to the NEWCO Regulator as an integral part of NEWCO's "Business Plan of Operations" as contemplated by Section 2.4.4 above, and NEWCO's authorization from the NEWCO Regulator to act as a captive insurance company shall not have required, or have been conditioned upon, the elimination or conditioning of any of the Receiver's rights hereunder.

11.1.4 NEWCO Forms. The forms of the Assumption Certificates and other documentation describing the Contract restructuring, the transfer to and assumption by NEWCO, and the benefit enhancements provided under this Agreement shall be submitted to the Receivership Court as an integral and indispensable part of this Agreement, and approval of this Agreement shall constitute approval of all such submitted documentation. In addition, the insurance regulatory authority of any other state where a PGA exists shall, to the extent required under the laws of that state, have approved the forms of the Assumption Certificates.

11.1.5 Approval by Superintendent. The Superintendent, in his capacity as head of the Department, shall have approved the plan of the New York Article 75 GA for the basis upon which it will provide its benefits as described in Article 7.

11.1.6 Exhibits and Schedules. The parties shall have agreed on the terms, conditions and content of each of the Exhibits and Schedules hereto which have been marked "TO BE SUPPLIED" and which are to be completed and appended hereto prior to Closing.

11.1.7 Consents, Approvals and Certifications. The parties shall have received the consents, approvals and certifications, in form and substance reasonably satisfactory to them, which are listed on Schedule 11.1.7 hereto.

11.1.8 NEWCO Agreements with Life Insurance Companies and Supplemental Benefits Participating Companies. NEWCO shall have entered into the Reinsurance and Participation Agreement with the Life Insurance Companies in form and substance substantially similar to the form of the Reinsurance and Participation Agreement attached hereto as Exhibit 6.1.1. All conditions precedent to the Life

Insurance Companies' obligations that must be satisfied prior to closing the Reinsurance and Participation Agreement shall have been satisfied or waived, and the Reinsurance and Participation Agreement shall be enforceable against the Life Insurance Companies in accordance with its terms. NEWCO shall have also entered into the Supplemental Benefits Reinsurance and Participation Agreement with the Supplemental Benefits Participating Companies (as listed therein) in form and substance substantially similar to the form of the Supplemental Benefits Reinsurance and Participation Agreement attached hereto as Exhibit 6.1.2. All conditions precedent to the Supplemental Benefits Participating Companies' obligations that must be satisfied prior to closing the Supplemental Benefits Reinsurance and Participation Agreement shall have been satisfied or waived, and the Supplemental Benefits Reinsurance and Participation Agreement shall be enforceable against the Supplemental Benefits Participating Companies in accordance with its terms.

11.1.9 Closing Deliveries. The parties shall have duly executed, authorized, certified or delivered, as applicable, for Closing, the Definitive Agreements and other documents, certificates, and receipts as required under Section 14.2.

11.1.10 Force Majeure. There shall not have occurred and be continuing on the Closing Date (a) any general suspension of, or limitation on prices for, or trading in, securities on the New York Stock Exchange, the American Stock Exchange or the over-the-counter market for a period of more than two (2) business days, (b) a declaration of a banking moratorium or any suspension of payments in respect of banks generally in the United States, (c) a commencement of war, armed hostilities or other international or national calamity or significant police activity directly involving the United States which materially adversely affects the conduct of commerce in the mainland United States, (d) any limitation (whether or not mandatory) by any governmental authority, or any other event which generally and substantially affects the extension of credit by banks or other financial institutions, or (e) in the case of any of the foregoing existing at the time of the execution of this Agreement, a material acceleration or worsening thereof.

11.1.11 Participation by Guaranty Associations. Guaranty Associations responsible for not less than 85% of the aggregate estimated Guaranty Association obligations from all Guaranty Associations triggered by the Order of Liquidation, as reasonably determined by NOLHGA, shall have become PGAs.

11.1.12 PGA Aggregate Contribution. The sum of the PGA Aggregate Contributions for all the PGAs transferred to NEWCO at Closing shall consist of (X) at least 70% in cash and, as determined by aggregate principal amount, Short-Term PGA Notes in the form of Exhibit 1.66(a) and Long-Term Contingent Coverage PGA Notes in the form of Exhibit 1.66(b-1); **provided, however**, in no event shall Long-Term Contingent Coverage PGA Notes constitute more than 15% (as determined by aggregate principal amount) of such sum of the PGA Aggregate Contributions for all PGAs and (Y) no more than 30% (as determined by aggregate principal amount) in Long-Term PGA Notes in the form of Exhibit 1.66(b).

Section 11.2 **Conditions Precedent to Closing for the Benefit of the GA Parties, NEWCO and the New York Article 75 GA.** The obligation of the GA Parties, NEWCO, and the New York Article 75 GA to proceed with the Closing is subject to the fulfillment or satisfaction, prior to or at the Closing, of each of the following conditions precedent:

11.2.1 **Performance by the Receiver and ELNY.** The Receiver and ELNY shall have performed and complied with all material provisions of the agreements and covenants required by this Agreement or the other Definitive Agreements to be performed or complied with by each of them prior to or at the Closing.

11.2.2 **Judgments.** There shall not have been any action taken, or any statute, rule, regulation, judgment, order or injunction promulgated, entered, enforced, enacted, issued or reasonably believed to be applicable to the transactions contemplated by this Agreement by any United States federal or state governmental authority, court or administrative agency which directly or indirectly (a) prohibits, or imposes any material conditions or limitations on, NEWCO or the GA Parties or their ownership or operation of all or a material portion of their businesses or assets to be owned by them by reason of the consummation of the transactions contemplated by this Agreement, or compels the GA Parties or NEWCO to dispose of or hold separate all or a material portion of their businesses or assets to be owned by them as a result of the transactions contemplated by this Agreement, (b) prohibits, or makes illegal, the consummation of the transactions contemplated hereby, (c) imposes any material conditions or limitations on the ability of NEWCO to own the Transferred Assets (provided, however, that a default or bankruptcy of the issuer of a bond or security shall not be deemed a material condition or limitation), or (d) which would materially adversely affect the value of the Transferred Assets to NEWCO, expressly excluding default or threatened default under any bond or other security, or the bankruptcy or insolvency of the issuer of any such bond or security.

11.2.3 **Litigation.** As of the Closing Date, there shall not have been instituted nor shall there be pending any action, proceeding, claim or counterclaim or appeal (a) challenging the consummation of the transactions contemplated by this Agreement or seeking to obtain any material damages as a result thereof, (b) seeking to prohibit the ownership or operation by the GA Parties or NEWCO of all or a material portion of their businesses or assets to be owned by them on and after the Closing Date, or to compel the GA Parties or NEWCO to dispose of or hold separate all or a material portion of their businesses or assets to be owned by them on and after the Closing Date, (c) asserting a material liability on the part of, or claim against, NEWCO in respect of its insurance operations, organization, regulatory compliance, and/or insurance products and contracts, (d) seeking to impose any material conditions or limitations on the ability of NEWCO to exercise full rights of ownership with respect to the Transferred Assets or on the ability of NEWCO to exercise full rights of ownership with respect to the business to be conducted by it on and after the Closing Date (provided, however, that a default or bankruptcy of the issuer of a bond or security shall not be deemed a material condition or limitation), (e) which would materially adversely affect the value of the Transferred Assets to NEWCO, or (f) challenging the authority of any GA Party or the New York Article 75 GA to enter into this Agreement or consummate the transactions contemplated by it.

11.2.4 Due Diligence Review. From the date hereof and prior to the date of the first filing by the Receiver of a petition seeking the Order Approving this Agreement, the GA Parties or NEWCO shall not have identified any data, contracts, commitments, claims, liabilities, circumstances or facts not previously known or disclosed to them as of the date hereof that, individually or in the aggregate, materially and adversely affect the financial condition of ELNY, including any claim by the IRS. In the event the GA Parties assert the failure of the condition stated herein as a basis for terminating the transaction, the GA Parties will provide to the Receiver data and projections substantiating their conclusions and the Receiver will have 180 days in which to cure the condition to the reasonable satisfaction of the GA Parties (acting through NOLHGA).

11.2.5 Representations and Warranties. The representations and warranties of the Receiver contained herein shall be true and correct in all material respects when made, and except as otherwise provided, shall be true and correct on the Closing Date with the same effect as though made on and as of the Closing Date.

11.2.6 Tax Matters. The GA Parties shall be satisfied, in their discretion, that there are no material federal or state tax liabilities, claims or actions that arise as a consequence of consummating the transactions contemplated by this Agreement which materially affect NEWCO or the PGAs. The condition in this Section 11.2.6 is limited to claims that arise as a consequence of consummating the transactions contemplated by this Agreement, and does not include unrelated, historical claims of the IRS against ELNY, which are covered by the condition in Section 11.2.4, or the future tax position of NEWCO. Furthermore, the failure of NEWCO to obtain an exemption from federal taxation under the Code shall not constitute a failure of the condition in this Section 11.2.6; **provided**, that in the event of the failure of NEWCO to obtain such exemption, the parties hereto shall endeavor in good faith through strategic and/or structural changes in order to conclude that such failure will not reasonably result in a materially adverse economic impact upon NEWCO or the PGAs, and only if such endeavors fail shall there be a failure of the condition in this Section 11.2.6.

Section 11.3 Conditions Precedent to Closing for the Benefit of the Receiver. The obligation of the Receiver to proceed with the Closing shall be subject to the fulfillment or satisfaction, prior to or at the Closing, of each of the following conditions precedent.

11.3.1 Performance by the GA Parties, the New York Article 75 GA and NEWCO. The GA Parties, the New York Article 75 GA and NEWCO shall have performed and complied with all material provisions of the covenants and agreements required by this Agreement or the other Definitive Agreements to be performed or complied with by each of them prior to or at Closing and there shall have been no adverse event which materially impairs or interferes with the ability of each GA Party, the New York Article 75 GA or NEWCO to duly execute this Agreement and perform its obligations hereunder.

11.3.2 Representations and Warranties. All representations and warranties of the GA Parties, the New York Article 75 GA and NEWCO contained herein shall be true

and correct in all material respects on the Closing Date with the same effect as though made on and as of the Closing Date.

11.3.3 **Tax Matters.** The Receiver shall be satisfied, in its sole discretion, that there are no material federal or state tax liabilities, claims or actions that arise as a consequence of consummating the transactions contemplated by this Agreement which materially affect ELNY or ELNY Contractowners or payees and shall have received a private letter ruling from the IRS to that effect for federal tax liabilities.

11.3.4 **Judgments.** There shall not have been any action taken, or any statute, rule, regulation, judgment, order or injunction promulgated, entered, enforced, enacted, issued or reasonably believed to be applicable to the transactions contemplated by this Agreement by any United States federal or state governmental authority, court or administrative agency which directly or indirectly prohibits, or makes illegal the consummation of the transactions contemplated hereby.

11.3.5 **Litigation.** As of the Closing Date, there shall not have been instituted nor shall there be pending any action, proceeding, claim or counterclaim or appeal brought by any private party or any United States federal or state governmental, regulatory or administrative agency or authority, including but not limited to the IRS, challenging the consummation of the transactions contemplated by this Agreement or seeking to obtain any material damages as a result thereof.

11.3.6 **Applicable Discount Rate.** As of the Closing Date, the Initial Investment Index shall be less than or equal to 4.75%. The calculation of an Initial Investment Index greater than 4.75% shall not constitute a failure of the condition in this Section 11.3.6; **provided**, that in the event the calculation of the Initial Investment Index produces a rate that is in excess of 4.75%, the parties hereto shall endeavor in good faith to reconsider the Applicable Discount Rate, and only if such endeavors fail shall there be a failure of the condition in this Section 11.3.6.

Section 11.4 **Satisfaction or Failure of Conditions.** Each condition precedent, whether for the benefit of the Receiver, the GA Parties, the New York Article 75 GA or NEWCO, or all of the parties, shall be deemed waived or satisfied as of Closing or, if earlier, upon written notice of such waiver or satisfaction by the performing party to the other parties, unless a party for whose benefit one or more of such conditions exists provides written notice to the other of the failure of one or more particular conditions precedent to be satisfied.

Section 11.5 **Termination.** This Agreement shall terminate upon the failure of any of the conditions precedent to Closing set forth in this Article 11, if such failure is neither waived by the party or parties in whose favor such condition runs, nor cured within a reasonable period of time (or a specified period of time if so stated in the condition) after the time for the occurrence or performance of such condition. In the event of termination of this Agreement for any reason, the parties hereto shall have no further rights, duties or obligations hereunder.

**ARTICLE 12.
LIMITATION OF LIABILITY**

Section 12.1 **Allocation of Certain Receipts.** In the event of a receipt of a federal or state tax refund with respect to the operations of ELNY prior to the Closing, the amount of such payment or receipt shall be treated as Transferred Assets and allocated on the same basis as all other Transferred Assets.

Section 12.2 **NOLHGA Not Liable.** The Receiver acknowledges that NOLHGA is a party to this Agreement solely as the facilitator and coordinator for the PGAs, and NOLHGA has no liability hereunder. Under a separate agreement, NOLHGA shall be indemnified by the PGAs for any liability arising from, related to, or in any way connected with this Agreement. Such indemnification obligations will not modify or reduce the obligations the PGAs under this Agreement.

**ARTICLE 13.
OTHER COVENANTS OF THE PARTIES**

Section 13.1 **Covenants of the Receiver.** The Receiver covenants to take the following actions:

13.1.1 The Receiver shall file this Agreement with the Receivership Court and shall apply to the Receivership Court for the Order Approving this Agreement. The form and content of the proposed Order Approving this Agreement shall be reasonably acceptable to the GA Parties. The Receiver shall take all reasonable actions requested by the GA Parties to make the Final Order Approving this Agreement binding on all Contractowners or payees and other interested parties and subject to full faith and credit in all state and federal courts.

13.1.2 The Receiver shall recommend this Agreement to the Receivership Court, and use reasonable business efforts to obtain the Order Approving this Agreement.

13.1.3 The Receiver shall use reasonable business efforts to cooperate with the GA Parties and NEWCO to ensure that all required consents and approvals of the appropriate regulatory and/or licensing authorities are obtained on a timely, expedited basis in those jurisdictions where the nature of the business to be conducted by NEWCO on and after the Closing requires the consent and/or approval of such regulatory or licensing authority; it being acknowledged and agreed that primary responsibility for obtaining such consents and approvals remains with the GA Parties.

13.1.4 To the extent that ELNY's rights under any agreement, contract, commitment, lease, license, permit or authorization to be conveyed or assigned to NEWCO hereunder may not be conveyed or assigned without the consent of another person which has not been obtained, the Receiver shall use reasonable commercial efforts to obtain any such required consents as promptly as possible but in all events shall do so prior to the Closing.

13.1.5 The Receiver shall cooperate with and assist the GA Parties and NEWCO in securing such orders, in a form reasonably satisfactory to the Receiver, from the Receivership Court as the GA Parties and NEWCO reasonably deem necessary in order to carry out the provisions of this Agreement.

13.1.6 The Receiver shall take all other actions required to be taken by him prior to the Closing Date pursuant to this Agreement and the other Definitive Agreements.

13.1.7 Advance copies of any motion, notice or proposed form of order prepared or filed by the Receiver with the Receivership Court or to any other person as contemplated by this Agreement shall be provided to the GA Parties and NEWCO.

13.1.8 The Receivership Proceedings shall continue post-Closing in order for the Receiver to (i) perform and carry out its duties as statutory receiver of ELNY (including as set forth in Section 2.4), (ii) perform and accommodate the obligations and transactions contemplated hereunder (including future transactions under Section 6.2) and under the other Definitive Agreements and (iii) effectuate the overall intent and purpose of this Agreement and the other Definitive Agreements.

Section 13.2 Covenants of the GA Parties. The GA Parties covenant to take the following actions:

13.2.1 The GA Parties shall take all actions required to be taken by them pursuant to this Agreement and the other Definitive Agreements. In connection with the covenants of the Receiver in Section 13.1, the GA Parties covenant to use reasonable business efforts and cooperate with the Receiver and NEWCO to ensure that the required consents and approvals of the appropriate regulatory and/or licensing authorities are obtained on a timely, expedited basis in those jurisdictions where the nature of the business to be conducted by NEWCO on and after the Closing requires the consent and/or approval of such regulatory or licensing authority.

13.2.2 Advance copies of any motion, notice or proposed form of order prepared or filed by the GA Parties with the Receivership Court (or any other court, if related to ELNY) or to any other person as contemplated by this Agreement shall be provided to the Receiver.

13.2.3 The GA Parties shall take all other actions required to be taken by them prior to the Closing Date pursuant to this Agreement and the other Definitive Agreements.

13.2.4 Although the GA Parties do not intend to sell NEWCO (as opposed to NEWCO's Liabilities), the GA Parties covenant that they will not sell, transfer or dispose of NEWCO without a prior amendment to Section 6.2 to which the Receiver shall have agreed to accommodate such action.

Section 13.3 Covenants of the Participating Guaranty Associations as to NEWCO. Each PGA, severally and not jointly, hereby covenants to the Receiver that, except to the extent that any of the following are precluded due to the failure, refusal or inability of such PGA to

obtain any necessary regulatory approval or authorization, it shall exercise reasonable business efforts through NOLHGA to accomplish the following as of the Closing: (i) NEWCO shall be formed as a non-stock, not-for-profit captive insurance company organized under the laws of the District of Columbia; (ii) NEWCO shall be funded in an amount equal to the sum of the PGA Aggregate Contributions for all the PGAs; (iii) NEWCO shall have the necessary power and authority to enter into this Agreement and any of the other Definitive Agreements to which it will be a party and to consummate the transactions contemplated hereby and thereby; and (iv) confirm, to the knowledge of such PGA, that the execution, delivery and performance by NEWCO of this Agreement and any other Definitive Agreements to which NEWCO will be a party (A) will not violate any laws or statutes to which NEWCO is or will be subject, or its corporate charter, bylaws or any material indenture, contract, agreement, instrument or other commitment to which NEWCO is a party or by which NEWCO is or will be bound and (B) will not conflict with, or result in a material breach or default on the part of NEWCO (or be an occurrence which, with the lapse of time and/or the giving of notice, would constitute a material breach or default) under, any such contract, agreement, instrument or other commitment.

Section 13.4 Covenants of All Parties. Each of the parties hereto covenants for the benefit of the other parties hereto to take the following actions: (i) act in mutual cooperation and provide to each other all reasonable assistance in furtherance of the implementation and effectuation of this Agreement; (ii) use reasonable best efforts to obtain the approval of this Agreement and all of the other Definitive Agreements in the Receivership Proceedings; and (iii) execute, acknowledge, deliver, file and record such further certificates, amendments, instruments, agreements and documents (including the filing of any notices with any regulatory agencies or other governmental entities), and to do all other acts and things as may be required by law or as may be reasonably necessary or advisable to carry out the intent of this Agreement.

ARTICLE 14. CLOSING EVENTS

Section 14.1 Closing. The Closing shall take place on the Closing Date in New York, New York, commencing at 9:30 a.m., local time.

Section 14.2 Items to be Delivered at Closing. At the Closing and subject to the terms and conditions herein contained:

14.2.1 The Receiver and ELNY will deliver, or cause to be delivered, to the GA Parties the following:

- (a) Duly authorized and executed Agreement and other Definitive Agreements to which the Receiver or ELNY is a party;
- (b) Such good and sufficient instruments of transfer as may be necessary to convey, transfer and assign to, and vest in NEWCO, good, clear and valid title to all of ELNY's right, title and interest in and to the Transferred Assets;
- (c) A certificate of the Receiver, dated the Closing Date, certifying that to the best of the Receiver's knowledge, the Receiver has performed and

complied with all agreements and conditions required by this Agreement to be performed and complied with by the Receiver or ELNY at or before the Closing, and that all representations and warranties made in this Agreement or in any other Definitive Agreements are true and correct on the Closing Date as if made on the Closing Date;

(d) All of the agreements, contracts, commitments, proposals, leases, licenses, permits, authorizations, instruments, computer programs and software, policies, policyholder lists, supplier lists, sales records, price lists, files, correspondences, and other documents, books, records, papers, files and data, in any form, belonging to ELNY which are part of the Transferred Assets (it being understood that the Receiver may retain copies of such materials as the Receiver determines in its sole discretion are necessary or appropriate for the continuation of the ELNY receivership), and simultaneously with such delivery, all such steps will be taken as may be required to put NEWCO in actual possession and operating control of the Transferred Assets; and

(e) a copy of the Final Order of Liquidation.

14.2.2 The GA Parties and NEWCO will deliver, or cause to be delivered, to the Receiver the following:

(a) Duly authorized and executed Agreement and other Definitive Agreements to which any of the GA Parties are a party;

(b) Certificates of the President or a Vice President of NEWCO and NOLHGA, dated the Closing Date, certifying that to the best of NOLHGA's and NEWCO's knowledge, NEWCO and the GA Parties have performed and complied with all agreements and conditions required by this Agreement to be performed and complied with by NEWCO and the GA Parties at the Closing and that all representations and warranties made by NEWCO and the GA Parties in this Agreement or in any other Definitive Agreements are true and correct on the Closing Date as if made on the Closing Date;

(c) An incumbency certificate for NEWCO and NOLHGA dated the Closing Date, including specimen signatures;

(d) A copy of all of the resolutions adopted by NEWCO's board of directors relating to the transactions contemplated by this Agreement and the Definitive Agreements, certified on the Closing Date to be complete and correct by the Secretary or an Assistant Secretary of NEWCO; and

(e) A duly executed receipt or similar evidence of the sum of all PGA Aggregate Contributions transferred to NEWCO by NOLHGA on behalf of each PGA.

Section 14.3 **Further Assurances.** From time to time after the Closing, the Receiver, at NEWCO's request, and the GA Parties and NEWCO at the Receiver's request, will execute,

acknowledge and deliver such other instruments of conveyance and transfer and will take such other proper actions and execute and deliver such other documents, certifications and further assurances: (a) as NEWCO may reasonably request in order to vest more effectively in NEWCO, or to put NEWCO more fully in possession of, any of the Transferred Assets; (b) as otherwise may be required to better enable NEWCO to complete, perform or discharge any of the liabilities or obligations assumed by NEWCO hereunder or to better enable any of the parties hereto to perform its obligations hereunder or under the Definitive Agreements; or (c) as may be reasonably required or necessary to effectuate the intent and purpose of this Agreement and the other Definitive Agreements.

ARTICLE 15. GUARANTY ASSOCIATION/NOLHGA MATTERS

Section 15.1 **Appointment of NOLHGA.** Each PGA hereby authorizes NOLHGA to act as the agent of such PGA for purposes of receiving all notices required or permitted to be given under this Agreement and to execute this Agreement and any of the Definitive Agreements necessary to implement this Agreement. Each PGA also hereby authorizes the NOLHGA ELNY Task Force to negotiate on behalf of and bind the PGAs to modifications and amendments to this Agreement and to negotiate Definitive Agreements and any additional ancillary agreements necessary to implement this Agreement; **provided, however,** that any such modifications or amendments to this Agreement or Definitive Agreements or any additional ancillary agreements shall not result in a material increase in the amount of the payment obligations of any PGA or a material decrease in benefits to Covered Persons as determined by the NOLHGA ELNY Task Force. Each PGA hereby (i) authorizes NOLHGA to appoint one or more persons or entities, including officers of NOLHGA, to act on behalf of NOLHGA to discharge its duties as an agent of the PGAs in all matters relating to this Article 15, and to perform other services relating to this Agreement and (ii) agrees to pay such PGA's pro rata share of the fees and expenses of such persons or entities so appointed by NOLHGA (which payment will not reduce the amount such PGA will pay or provide under this Agreement and the Definitive Agreements). The authorizations hereby granted by each PGA to NOLHGA and the NOLHGA ELNY Task Force shall be revocable only to the extent necessary for any PGA to prevent a statutorily prohibited delegation of such PGA's duties. NOLHGA will forward notices received under this Section to the PGAs, as appropriate, and will give notice of any amendments to this Agreement or any other Definitive Agreement to the PGAs.

Section 15.2 **Payment of Expenses.** Each PGA hereby agrees to pay such PGA's proportionate share of all fees and expenses incurred by NOLHGA (and its individual members acting in conjunction with NOLHGA) in connection with the development or implementation of this Agreement (which payment will not reduce the amounts the PGAs will pay or provide under this Agreement and the Definitive Agreements). For purposes of this Section 15.2, the NOLHGA Board of Directors shall conclusively determine (i) the fees and expenses so incurred and (ii) the PGA's pro rata share of such fees and expenses on the basis of each PGA's Payment Percentage.

ARTICLE 16. GENERAL PROVISIONS

Section 16.1 **Amendment.** This Agreement may be amended only in writing executed by all of the parties hereto; **provided, however**, as to the GA Parties, amendments shall be approved in accordance with the procedures set forth in Section 15.1. No amendment to the Reinsurance and Participation Agreement or the PGA Notes may be made that could adversely affect NEWCO without the prior written consent of the Receiver.

Section 16.2 **Procedure for Disputes.**

16.2.1 In the event that any party to this Agreement does not agree with another party's determination of a Calculation Matter pursuant to this Agreement, then the disputing party shall, within five (5) Business Days following receipt of such other party's determination of such Calculation Matter, deliver notice to the other party of its objection, along with its own determination of the Calculation Matter. Each party shall use its best efforts to resolve such disputes within forty-five (45) days following delivery of the notice of such dispute.

16.2.2 In the event any dispute regarding a Calculation Matter remains unresolved following the forty-five (45) day period described in Section 16.2.1 above, NOLHGA, prior to the Closing Date, or NEWCO, after the Closing (in either case on behalf of any PGAs affected by the particular Calculation Matter or NEWCO), and the Receiver shall, as appropriate given the nature of the dispute, each retain one actuarial consulting firm or independent certified public accounting firm which will perform the calculations required as expeditiously as possible and issue their reports to NOLHGA or NEWCO, as the case may be, and the Receiver. To the extent the variation between the reports of the firms relates to dollar amounts and is less than five percent of the larger dollar amount, or the dollar difference is less than \$500,000 (if the Calculation Matter involves a determination of asset values, liabilities or surplus), the two shall be averaged, with the result deemed to be a final and determinative calculation of the amount at issue. In the event the reports have a variation of five percent or more of the larger dollar amount, or the difference is more than \$500,000 (if the Calculation Matter involves a determination of asset values, liabilities or surplus), the two firms shall choose a third firm, which shall perform the calculations and issue a report to NOLHGA or NEWCO, as the case may be, and the Receiver. Thereafter, the two calculations that are the closest shall be averaged, with the result deemed to be a final and determinative calculation of the amount at issue. Prior to the Closing, the fees and expenses of the actuaries and accountants retained pursuant to this Section 16.2.2 shall be paid equally by the PGAs (pro rata in accordance with their Payment Percentage), and by the Receiver from assets in the ELNY Estate. After the Closing, all such fees and expenses shall be borne by the PGAs. Such dispute resolution procedure described in this Section 16.2.2 shall be the **"Accounting Procedure"**.

16.2.3 In the event that any party to this Agreement does not agree with another party's determination of any matter relating to this Agreement, other than a Calculation Matter, the disputing party shall promptly deliver written notice to the other party of such

objection. Such parties shall use their best efforts to resolve any disputes within forty-five (45) days following delivery of the notice of such dispute. In the event the affected parties are not able to resolve the dispute with respect thereto within the foregoing time frame, the parties agree, other than in the case of a dispute regarding a PGA's (but not LICGCNY's) determination of its coverage obligations, to resolve such dispute in the Receivership Court.

Section 16.3 Assignment and Binding Effect. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of the Receiver, ELNY, the GA Parties and NEWCO.

Section 16.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

Section 16.5 Directors, Officers, Etc. Not Liable. None of the directors, officers, partners, agents, counsel, consultants or employees of any party hereto or of any third party beneficiary shall be personally liable for any action taken or omitted to be taken by any of them or by any such party under or in connection with this Agreement and the other Definitive Agreements, except for willful misconduct.

Section 16.6 Entire Agreement. This Agreement and the other Definitive Agreements constitute the entire Agreement among the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. There are no representations, promises, warranties, covenants, or undertakings, other than those expressly set forth or referred to in this Agreement and the other Definitive Agreements.

Section 16.7 Expenses; Brokers. Except as provided in this Agreement, each party shall pay its own expenses in connection with the authorization, preparation, execution and performance of this Agreement, including, without limitation, all fees and expenses of agents, representatives, attorneys, accountants and consultants. Each party represents and warrants to each other party that no broker or other person or entity acting pursuant to the authority of such party is entitled to any broker's commission.

Section 16.8 Further Assurances. Each party hereto shall execute and deliver all letters, applications, certificates and other documents which are reasonably requested by any other party hereto as are reasonably necessary to effect or carry out the provisions of this Agreement and the other Definitive Agreements. The parties also shall cooperate on regulatory and tax matters affecting their interests after the Closing Date.

Section 16.9 Governing Law. This Agreement and all other Definitive Agreements shall be governed and construed in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of law thereof (excepting Section 5-1401 of the New York General Obligations Law); provided that any matter relating to the authority, powers, obligations or rights of each PGA as they relate to determining coverage and assessment issues under its Guaranty Association Act shall be governed by the laws of the state of such PGA.

Each party hereby submits to the exclusive jurisdiction of the Receivership Court for the purposes of all legal proceedings arising out of or relating to this Agreement and all other Definitive Agreements and the transactions contemplated hereby and thereby; **provided, however,** (i) the proper venue and exclusive jurisdiction for the dispute of any coverage determination made by any Guaranty Association shall rest in the appropriate court in the state whose Guaranty Association Act governs the Guaranty Association and (ii) the proper venue and exclusive jurisdiction for the dispute of any coverage determination made by LICGCNY or the New York Article 75 GA shall be the Receivership Court.

Section 16.10 **Guaranty Association Participation.** Each Guaranty Association will retain the ability to determine whether to become a party to this Agreement. This Agreement will be presented to the Guaranty Associations under NOLHGA's normal procedures. The Receiver acknowledges and agrees that Guaranty Associations will become parties to this Agreement by execution and delivery of PGA Participation Certificates.

Section 16.11 **Headings, Gender and Person.** All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. Any reference to a "person" herein shall include an individual, firm, corporation, partnership, trust, governmental authority or body, receiver, association, unincorporated organization or any other entity.

Section 16.12 **Independent Rights and Obligations.** Each PGA is entering this Agreement on its own behalf and shall have no rights or obligations on account of the actions or omissions of any other Guaranty Association under this Agreement or on account of the actions or omissions of any of the Life Insurance Companies participating in the Reinsurance and Participation Agreement.

Section 16.13 **Liability of the Receiver; Recourse.** The Receiver is a party to this Agreement and the other Definitive Agreements only in its representative capacity as receiver of ELNY, and not individually, and the parties hereto agree and acknowledge that the Receiver shall not have any personal liability for any matters or obligations hereunder. The obligations of the Receiver hereunder are strictly limited to recourse against the assets of the ELNY Estate in accordance with the priorities of distribution under Section 7435(a) of the New York Insurance Law.

Section 16.14 **Releases.** For and in consideration hereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Receiver as to the GA Parties, New York Article 75 GA and NEWCO, and the GA Parties, New York Article 75 GA and NEWCO as to the Receiver, to the maximum extent permitted by law, except with respect to the obligations created by, acknowledged or arising out of this Agreement and the other Definitive Agreements, do hereby generally release and absolutely and forever discharge each other, and all of their partners, joint venturers, consultants, representatives, agents, attorneys and advisors, including their directors, officers, employees and shareholders, from any and all claims, liabilities, debts, demands, damages, obligations, costs, expenses, liens,

actions and causes of action of every kind and nature whatsoever whether known or unknown, suspected or not, arising out of and in connection with the receivership and rehabilitation of ELNY, the negotiation of this Agreement and the other Definitive Agreements, up to and including the Closing Date, and all contracts in force related thereto. The GA Parties, the New York Article 75 GA and NEWCO (together, the “releasing parties”) hereby generally release and absolutely and forever discharge the Receiver and ELNY and their respective consultants, representatives, agents, attorneys and advisors from any and all claims, liabilities, debts, demands, damages, obligations, costs, expenses, liens, actions and causes of action of every kind and nature whatsoever whether known or unknown, suspected or not, for all periods from and including the Closing Date and forever thereafter, relating to costs and expenses incurred by the releasing parties and their shareholders, members or owners, in connection with, and all payments, liabilities, obligations arising under, the transactions contemplated by this Agreement, the other Definitive Agreements and all contracts in force (including NEWCO Liabilities) related thereto; **provided, however**, that this release shall not apply to any distributions to NEWCO under Sections 4.8 and 6.2.3. For the avoidance of doubt and not in limitation, the release in the previous sentence applies to so-called “subrogation” claims and any other claims which arise from statute, common law or any other source by reason of the use of funds of entities other than ELNY to pay, fund or satisfy any obligations of ELNY or NEWCO, but such release does not apply to, or in any way impact, the liability of any persons other than ELNY or the Receiver.

Section 16.15 **No Benefit to Others.** The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the Receiver, ELNY, the GA Parties and NEWCO, and their successors and assigns, and they shall not be construed as conferring any rights on any other persons; **provided, however**, this Section 16.15 shall not operate to restrict any rights of NEWCO contractholders against NEWCO.

Section 16.16 **Notices.** Except as provided in Section 16.17, any notice, request, demand, waiver, consent, approval or other communication required or permitted to be made hereunder shall be in writing and shall be deemed given only if delivered by hand, or mailed by certified or registered mail with postage prepaid and return receipt requested, or sent by facsimile transmission (provided that, in the case of facsimile transmissions, such notifications are confirmed by telephone), as follows:

If to the Receiver or ELNY, to:

New York Liquidation Bureau
Superintendent of Financial Services of the State of New York
As Receiver of ELNY
110 William Street
New York, NY 10038
Phone: 212.341.6400
Facsimile: 212.964.7963

If to NOLHGA, NEWCO or the PGAs, to:

President
NOLHGA

13873 Park Center Road, Suite 329
Herndon, VA 20171
Phone: 703.787.4116
Facsimile: 703.481.5209

with a copy to:

If to a PGA, to the address and contact information contained in the PGA Participation Certificate;

or to such other address as may be designated by a party by written notice to the other parties hereto. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered, sent by facsimile or mailed.

Section 16.17 Notice of Claims. NOLHGA and/or the PGAs shall provide prompt notice to the Receiver and NEWCO of any claim affecting a PGA by any Covered Person of which NOLHGA or any PGA has been notified or claims a PGA Contribution in excess of that portion of the PGA Contribution either credited to such Contract or paid to such Covered Person as a Covered Benefit Payment.

Section 16.18 Notices to Contractowners, Creditors of ELNY, and Certain Other Authorities. Unless otherwise provided by law or order of the Receivership Court, any notice contemplated by this Agreement to be delivered to the Contractowners or payees, creditors of ELNY, state insurance regulatory authorities, state insurance guaranty funds, and state life and health insurance guaranty associations (or the equivalent authorities, funds and associations) shall be in writing and shall be deemed given if (i) delivered by hand or mailed by first class mail postage prepaid to the last known address of such person and (ii) published in the Wall Street Journal or New York Times, not less than once a week for four successive weeks. The Receiver and NOLHGA agree to cooperate in communications with Contractowners and payees in connection with the benefits to be delivered under this Agreement and in soliciting responsive information to (i) confirm the accuracy of ELNY's records concerning Contractowners and payees and any other information deemed necessary or appropriate to implement the benefits of this Agreement and (ii) determine eligibility for benefits.

Section 16.19 Press Releases and Interviews. The parties shall cooperate in the preparation of any and all press releases, press interviews or other public statements, written or oral, regarding this Agreement or the transactions contemplated hereby.

Section 16.20 Sale, Transfer and Documentary Taxes. Each of NEWCO and ELNY shall pay one-half of (i) all sales, transfer and documentary taxes, if any, due as a result of the transfer of the Transferred Assets to NEWCO; and (ii) all affidavit and acknowledgment fees and all other fees directly relating to the transfer of the Transferred Assets. Any such payment by ELNY shall be netted against and be in reduction of the Transferred Assets.

Section 16.21 Schedules and Exhibits. All Recitals, Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

Section 16.22 **Settlement; No Waiver.** This Agreement has been entered into as a settlement of numerous issues and shall not be deemed to constitute a precedent for any purposes whatsoever. Nothing herein shall prejudice or waive any statutory or common law subrogation and assignment rights of any PGA or its ability to pursue such rights arising from the coverage such PGA provides to its Covered Persons other than rights the PGA may have against the Receiver or ELNY. Nothing herein shall preclude or restrict the GA Parties from objecting to any action or determination by the Receiver or restrict the Receiver from objecting to any action or determination by the GA Parties under this Agreement. A Covered Person receiving Covered Benefit Payments from a PGA shall be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the subject Contract (to the extent of Covered Benefit Payments received) to such PGA to the full extent provided under the Guaranty Association Act governing the PGA, and nothing contained in this Agreement shall be construed to impair, supplement or otherwise alter any of the rights or obligations of any PGA, any Covered Person, or any Contractowner or payee claiming to be a Covered Person, with respect to such Contract. Neither a PGA's acceptance of a Contract as a Covered Contract under its applicable Guaranty Association Act nor payment of Covered Benefit Payments under any Covered Contract shall preclude: (1) any Covered Person from contesting the amount or conditions of such PGA's coverage or asserting that coverage should be provided under a different version of the PGA's Guaranty Association Act or provided by a different Guaranty Association, or (2) any PGA from seeking after Closing contribution or reimbursement from any other Guaranty Association for the coverage provided hereunder, or asserting that another Guaranty Association should be providing the coverage delivered under this Agreement to any Contract accepted by the PGA as a Covered Contract for purposes of this Agreement.

Section 16.23 **Time.** In the event that any party hereto becomes aware of circumstances or events which create a reasonable likelihood that any time requirement is inadequate, such party shall promptly provide notice thereof to all of the other parties hereto (and to NOLHGA on behalf of the PGAs) in accordance with the notice provisions hereof, which notice shall include a revised estimate by such party of the time of occurrence, completion or performance of the particular obligation. Such notice shall not excuse compliance with the original deadline unless such deadline is waived in writing by the party receiving the notice.

Section 16.24 **Waiver.** Any term or provision of this Agreement or any other Definitive Agreement may be waived at any time by the party or parties entitled to the benefit thereof by a written instrument duly executed by such party or parties.

Section 16.25 **No Benefits or Rights for non-Participating Guaranty Associations.** Nothing in this Agreement imposes any obligations on, nor provides any benefits for or to, any state life and health insurance guaranty association that elects to not participate in this Agreement, and any such guaranty association that has any statutory obligations as a result of the insolvency and liquidation of ELNY will be solely responsible for discharging its obligations and asserting its rights outside the terms of this Agreement.

Section 16.26 **Possible Future Redomestication of NEWCO.** The Receiver and the GA Parties agree and acknowledge that while the current expectation is that NEWCO shall be formed as a captive insurer in the District of Columbia, circumstances may arise in the future that would make the redomestication of NEWCO to a different jurisdiction desirable. If

NEWCO or the GA Parties determine that a redomestication would be desirable, they shall give notice of that decision to the Receiver and may proceed to redomesticate NEWCO upon the Receiver's approval which shall not be unreasonably withheld.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**SUPERINTENDENT OF FINANCIAL SERVICES OF
THE STATE OF NEW YORK,**
in his capacity as the statutory receiver of Executive Life
Insurance Company of New York

By: 
Name: Jonathan L. Bing
Title: Special Deputy Superintendent

**NATIONAL ORGANIZATION OF LIFE AND HEALTH
INSURANCE GUARANTY ASSOCIATIONS**

By: _____
Name: Peter G. Gallanis
Title: President

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**SUPERINTENDENT OF FINANCIAL SERVICES OF
THE STATE OF NEW YORK,**
in his capacity as the statutory receiver of Executive Life
Insurance Company of New York

By: _____
Name:
Title:

**NATIONAL ORGANIZATION OF LIFE AND HEALTH
INSURANCE GUARANTY ASSOCIATIONS**

By:  _____
Name: Peter G. Gallanis
Title: President