

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

**IN THE MATTER OF
RELIANCE INSURANCE COMPANY
AND IN THE MATTER OF THE
INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED
AND IN THE MATTER OF THE
*WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED***

B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

April 23, 2002

I. NATURE OF THE MOTION

1. This Report is respectfully filed in support of a motion by KPMG Inc., the liquidator (the "Liquidator") of Reliance (Canada) (as hereinafter defined) for an Order:

- (a) amending the Order of this Court dated January 30, 2002 to extend the date for Meridian Payments (as hereinafter defined) from April 30, 2002 to December 31, 2002 or such later date as this Court may order;
- (b) approving the Meridian Transfer Agreement (as hereinafter defined); and
- (c) amending the Appointment Order to extend the date for Policy Payments and payment of Defense Costs (all as hereinafter defined), as provided in paragraphs 8

and 11, respectively, thereof from April 30, 2002 to December 31, 2002 or such later date as this Court may order.

II. BACKGROUND

2. Reliance Insurance Company (“Reliance”) is a property and casualty insurer in the United States of America, domiciled in the Commonwealth of Pennsylvania. Reliance has carried on business in Canada as a “foreign company” within the meaning of the *Insurance Companies Act* through its branch since 1918.

3. Reliance was ordered to be liquidated by Order of the Commonwealth Court of Pennsylvania dated October 3, 2001, under the Pennsylvania *Insurance Department Act of 1921*. M. Diane Koken, Commissioner of Insurance for Pennsylvania, was appointed liquidator (the “U.S. Liquidator”).

4. By Order of the Honourable Mr. Justice Farley made December 3, 2001 (the “Winding-up Order”), the insurance business in Canada of Reliance Insurance Company (“Reliance (Canada)”) was ordered wound-up pursuant to the provisions of the *Winding-up and Restructuring Act*. A copy of the Winding-up Order is attached as Schedule “A” hereto.

5. By further Order of this Court made December 3, 2001 (the “Appointment Order”), KPMG Inc. was appointed provisional liquidator. A copy of the Appointment Order is attached as Schedule “B” hereto.

6. The relevant provisions of the Appointment Order for the purposes of this motion are as follows:

- (a) paragraph 8 provides that the Liquidator may pay all valid policyholder claims, including claims in respect of unearned premiums, to the amount of \$25,000 or the amount of the coverage limits of the Property and Casualty Compensation Insurance Corporation (“PACICC”) if any (the “Policy Payments”), until April 30, 2002 or such later date as the Court may order, subject to paragraph 9 of the Appointment Order, and that such payments are deemed to be payments made on account of claims in the liquidation;
- (b) paragraph 9 provides that the Liquidator may pay all valid claims, including claims in respect of unearned premiums, under the Meridian Program (as

hereinafter defined) and other warranty and surety programs to the amount of \$5,000 or the PACICC coverage limits, if any (the “Meridian Payments”), until January 31, 2002 or such later date as the Court may order, and that such payments are deemed to be payments made on account of claims in the liquidation;

- (c) paragraph 11 provides that the Liquidator may pay and continue to pay all reasonable legal and other costs, incurred to and including April 30, 2002 that Reliance (Canada) is obligated to pay for defending any insureds against losses under Reliance (Canada)’s policies in accordance with the applicable policy, subject to the terms and limits of such policies (the “Defense Costs”); and
- (d) paragraph 30 provides that the Liquidator may, with the approval of this Court, arrange for the transfer or reinsurance of all or a portion of the policies of Reliance (Canada) or cancel all or a portion of the outstanding policies of Reliance (Canada).

7. By Order of this Court dated January 30, 2002, the date of January 31, 2002 for Meridian Payments was extended to April 30, 2002.

III. THE MERIDIAN TRANSFER AGREEMENT

8. Attached hereto as Schedule “C” is a copy of the Report of the Liquidator dated January 28, 2002 in support of the application to extend the date for Meridian Payments. The Report describes the Meridian Program and the Liquidator’s considerations in exploring a transaction to transfer or reinsure the policies issued under the Meridian Program. In summary:

- (a) In October, 2000, Reliance stopped issuing new policies and began “running-off” or winding down its existing business. Among its remaining blocks of insurance business was a program under which Reliance (Canada) issued extended warranty coverage for automobiles and other vehicles, as described below (the “Meridian Program”). Coverage was written in all provinces, except Quebec. There are approximately 18,000 Meridian policyholders. The last policy expires in 2007.
- (b) In 1995, Reliance (Canada) entered into an arrangement with Meridian Warranty Management Inc. (an unaffiliated company), under which Reliance (Canada) issued certificates extending repair warranty coverage on vehicles. The coverage

was 100% reinsured by other insurers, being AXA Insurance and Lloyds Underwriters (the “Meridian Reinsurers”). This type of arrangement is known in the industry as a “fronting” arrangement, since the issuing insurer (here, Reliance (Canada)) is fully reinsured and retains no residual risk. The effect is that Reliance (Canada) earns a percentage fee from each of the reinsurers, rather than bearing the ultimate benefit or burden of the underwriting risk.

- (c) Although the Meridian Program is designed so that the ultimate underwriting risk is borne by the Meridian Reinsurers, Reliance (Canada) is the issuer of the policies and is therefore directly liable to the policyholders. This means that Reliance (Canada) bears the risk of the Meridian Reinsurers not paying and must reserve for these policies in the normal way, as liabilities of Reliance (Canada). Conversely, the policyholders bear the risk of Reliance (Canada)'s insolvency. The reinsurance amounts remain an asset of Reliance.
- (d) Attached hereto as Schedule “D” is a copy of a letter dated November 8, 2001 from KPMG Inc. to the Office of the Superintendent of Financial Institutions Canada, which was included as an exhibit to the affidavit filed in support of the application for the winding-up order. As indicated in that letter, it was KPMG Inc.'s view that a transfer or reinsurance of the policies would be in the best interests of policyholders, creditors and other parties interested in Reliance (Canada). KPMG Inc. recommended the making of the Policy Payments and the Meridian Payments to enhance the value to any potential transferee or reinsurer. The Liquidator has been making the payments.

9. The Liquidator has been engaged in a marketing process for the policies of Reliance (Canada), including those under the Meridian Program. With respect to the Meridian Program, the Liquidator considered the nature of the program and its limited profit potential, given that it is only a fee generating business. The Liquidator consulted management of Reliance (Canada), the third party administrators of the Meridian Program, the Meridian Reinsurers, and others involved in this area of the insurance market to identify potential purchasers. Five insurers were approached. One insurer, London Guarantee Insurance Company (“London Guarantee”), expressed an interest in continuing discussions.

10. Attached as Schedule "E" is a copy of an agreement made April 3, 2002 between the Liquidator and London Guarantee (the "Meridian Transfer Agreement"). In summary, it provides:

- (a) London Guarantee will assume Reliance (Canada)'s liabilities under the Meridian Program (the "Meridian Liabilities").
- (b) The benefit of underlying reinsurance will be transferred to London Guarantee simultaneously with its assumption of the Meridian Liabilities.
- (c) The warranties forming part of the Meridian Liabilities have been, to the extent they are known to the parties, listed in a listing initialled by the parties. London Guarantee will assume Reliance (Canada)'s liabilities for warranties not listed but for which either or both of the Meridian Reinsurers accepts liability. It will also assume Reliance (Canada)'s liabilities for warranties not listed for which neither Meridian Reinsurer accepts liability, but if there are more than 2,000 of such warranties, the liabilities for the 2,001st such warranty and each warranty discovered thereafter will not form part of the Meridian Liabilities and will not be assumed by London Guarantee.
- (d) On closing the Liquidator will:
 - (i) pay London Guarantee \$975,000.00;
 - (ii) transfer to London Guarantee amounts in various loss adjustment expense funds and loss reserve funds maintained by Reliance (Canada) in respect of various portions of the Meridian Liabilities; and
 - (iii) reimburse London Guarantee for the aggregate compensation London Guarantee pays a third party administrator, for reinsurance consulting services in relation to the Meridian Liabilities.
- (e) The Liquidator and London Guarantee will establish a trust account with Royal Trust Company of Canada to be designated as the "Claims Account" into which the Liquidator will deposit approximately \$10,500,000.00, being the current actuarial valuation of the Meridian Liabilities. London Guarantee will be entitled to draw on the Claims Account for loss or premium refund claims or any loss

adjustment expense due and payable for which the appropriate Meridian Reinsurer fails to make payment within 7 days of demand. However, London Guarantee may only make the withdrawal if any loss reserve fund or loss adjustment expense fund transferred to London Guarantee for such purpose is fully depleted.

- (f) The Liquidator will also deliver to London Guarantee on closing two letters of credit, each in the initial amount of \$1,000,000.00. London Guarantee will be entitled to draw down these letters of credit for the purpose specified in the preceding paragraph if and when the Claims Account has been depleted.
- (g) On or before the 60th day following each anniversary of closing until all of the policies to which the Meridian Liabilities relate have expired, a valuation of the Meridian Liabilities will be prepared. If the valuation amount shown in such valuation is less than the amount in the Claims Account, the amount of the difference is to be withdrawn from the Claims Account and paid to the Liquidator.
- (h) On the 180th day after the expiration of all policies assumed by London Guarantee, the Claims Account, if then still in existence, is to be closed and the balance therein remitted to the Liquidator, and London Guarantee is to surrender the letters of credit, subject to the Liquidator providing to London Guarantee cash or other security satisfactory to London Guarantee, acting reasonably, in an amount equal to the lesser of:
 - (i) an amount sufficient to pay all amounts then still claimed by persons in respect of the Meridian Liabilities; and
 - (ii) the amount in the Claims Account immediately prior to its closure and the undrawn balance of the letters of credit.
- (i) The security provided by the Liquidator in respect of each outstanding claim will be released to the Liquidator when the claim is resolved and the appropriate Meridian Reinsurer satisfies London Guarantee's liability in respect thereof.
- (j) London Guarantee has agreed with the Liquidator to use reasonable efforts to collect all amounts owing under the reinsurance contracts, and to permit the

Liquidator, at its expense, to commence legal action against a Meridian Reinsurer failing to meet its obligations under its reinsurance contract.

- (k) In addition to the execution of written reinsurance contracts with the Meridian Reinsurers, closing of this transaction is also conditional upon approval of the Minister of Finance under the *Insurance Companies Act*, approval of this court, and the execution of new administration and reinsurance consulting agreements with certain third party administrators in forms which have been attached to the Assumption Reinsurance Agreement.
- (l) The Liquidator anticipates that the conditions will be satisfied, and that closing will occur, no later than September 30, 2002.

11. The alternatives to the Meridian Transfer Agreement are:

- (a) to run-off the policies, in which case the estate would have to bear the costs of administration of the run-off until 2007; or
- (b) to cancel the policies. Given that vehicles warranties are generally sold at the time the vehicle is purchased, it is unlikely the policyholders would be able to replace the coverage. Cancelling the policies would involve payment of unearned premium to each of the individual policyholders. The administrative costs associated with the calculation of the unearned premiums would be significant. The calculation of the unearned premium is based on the percentage of the premium referable to the unexpired term of the policy. The term of the Meridian policies depends not only on the passage of time but also on the number of kilometres driven. Therefore the calculation of unearned premium would require eliciting and reviewing responses on this point from 18,000 policyholders. Further, it is not clear whether the Meridian Reinsurers are liable to refund premiums paid to them by Reliance (Canada) to compensate for the cancellation of the policies (on the issuances of the policies.) It is also not clear whether fees paid by Reliance (Canada) would be repayable.

12. Because Reliance (Canada) is fronting the Meridian Program and so bears the administrative costs but not the liabilities for claims under the policies and because the cost of calculating unearned premiums is so high, the cost of cancelling the policies is likely to exceed

the cost of running them off. The Meridian Transfer Agreement will have materially the same economic impact on the estate as a run-off, and therefore a more beneficial impact than cancellation of the policies.

13. The Liquidator is confident, based on the information presently available to it, that the estate of Reliance (Canada) will make full payment on all valid claims. However, for the reasons discussed more fully below, the Liquidator is not yet in a position to pay all policyholders 100%. In the view of the Liquidator, the Meridian Transfer Agreement is not prejudicial to the estate, notwithstanding that it theoretically could result in payment of 100% of their benefits to Meridian policyholders at a time when such payment is not assured to other Reliance (Canada) policyholders. The Liquidator is of the view that, given the alternatives to the Meridian Transfer Agreement, even if the claims were ultimately paid on the Meridian policies at less than 100%, the cost of administering the reduction in payments would more than offset any cost savings to the estate.

14. The Liquidator is recommending that this Court extend the date to which the Liquidator may make Meridian Payments to December 31, 2002, so that, should closing be delayed, there will be no interruption in payments, no further communication required to policyholders concerning the extension and no anxiety created among the Meridian policyholders.

IV. EXTENSION OF POLICY PAYMENTS AND DEFENSE COSTS PAYMENTS

15. As indicated above, the Liquidator has undertaken a process of seeking qualified insurers to assume all of the liability under all of the policies issued by Reliance (Canada) (other than the Meridian policies) in exchange for the transfer of assets. The Liquidator engaged Scotia Capital Inc. and KPMG Corporate Finance as co-advisors in this process. There have been expressions of interest and the co-advisors are currently working with a number of prospective purchasers in formulating a transaction which will meet the Liquidator's requirements. The U.S. Liquidator has been involved in the process as well. The Liquidator remains hopeful that an agreement will be reached in the near future. In the meantime, the Liquidator is recommending that Policy Payments and payment of Defense Costs should continue as at present until December 31, 2002 or such further date as this Court may order.

16. Payment of Defense Costs maintains the standards of claims adjudication, ensures the claims are properly handled and eases possible concerns of potential purchasers, as well as eliminating immediate hardship to policyholders. The Liquidator will report back to the Court

on his progress before December 31, 2002, but believes that all counsel and policyholders should have the assurance that the Defence Costs will be paid to that date, to reduce their anxiety and ensure claims are proceeding without disruption.

17. As indicated, the Liquidator is confident, based on the information presently available to it, that all valid claims against Reliance (Canada) will be paid in full. However, there are uncertainties. The major uncertainty is the potential that claims which were not reported in the books and records of Reliance (Canada) may be valid claims in its liquidation. These claims arise from policies written outside of Canada but which have some nexus with Canada, and which, arguably, should have been reported in the books of the branch and for which assets should have been deposited in Canada. There is no certainty as to the magnitude of such claims, given that they were never identified as being appropriately assigned to Reliance (Canada). Based on an initial review conducted by the U.S. Liquidator at the Liquidator's request, the magnitude of the claims would not prevent payment of full benefits to all policyholders with some remaining surplus available to the U.S. Liquidator, but the review was not definitive. Given this uncertainty, the Liquidator is not yet in a position to increase the level of Policy Payments. The Liquidator is of the view that the level of Policy Payments is a reasonable one in all of the circumstances, pending the result of the marketing efforts.

18. The Liquidator will be seeking the directions of this Court with respect to giving notice to any party who believes they have a claim properly assertable in Canada to come forward, and will then seek directions of this Court with respect to whether the claims should be allowed in the Canadian estate.

19. In the meantime, the Liquidator is of the view that continuing the Policy Payments and the payment of Defense Costs strikes the appropriate balance between ensuring identified policyholders and claimants are treated fairly, that the marketing process may continue, and that potential future claimants are not prejudiced.

V. RECOMMENDATIONS

20. The Liquidator therefore recommends that this Court make an Order:

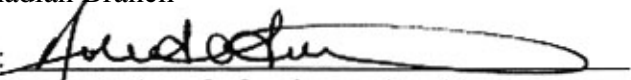
- (a) amending the Order of this Court dated January 30, 2002 to extend the date for Meridian Payments from April 30, 2002 to December 31, 2002 or such later date as this Court may order;

- (b) approving the Meridian Transfer Agreement; and
- (c) amending the Appointment Order to extend the date for Policy Payments and payment of Defense Costs, as provided in paragraphs 8 and 11, respectively, thereof from April 30, 2002 to December 31, 2002 or such later date as this Court may order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

KPMG INC., solely in its capacity as the
Liquidator of Reliance Insurance Company -
Canadian Branch

Per:



Robert O. Sanderson, President



Court File No. 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

THE HONOURABLE) MONDAY THE 3RD DAY
)
MR. JUSTICE FARLEY) OF DECEMBER, 2001
)
)

**IN THE MATTER OF
RELIANCE INSURANCE COMPANY**

**AND IN THE MATTER OF THE
*INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED***

**AND IN THE MATTER OF THE
*WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED***

B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

WINDING-UP ORDER

THIS APPLICATION made by the Applicant was heard this day without a jury at Toronto, in the presence of counsel for the Applicant, for the Respondent, for KPMG Inc., and for the Property and Casualty Insurance Compensation Corporation ("PACICC"), no one opposing.

ON READING the Notice of Application and the evidence filed by the parties, and on hearing submissions of counsel for the parties

1. THIS COURT ORDERS AND DECLARES that the Respondent Reliance Insurance Company is a foreign insurance company within the meaning of the *Insurance Companies Act* to which the *Winding-up and Restructuring Act* applies, and that the insurance business in Canada of the Respondent ("Reliance (Canada)") may be wound-up by this Court pursuant to Section 10.1 of the *Winding-up and Restructuring Act*.

2. THIS COURT FURTHER DECLARES that it has made no finding that Reliance (Canada) is insolvent.

3. THIS COURT ORDERS that Reliance (Canada) shall be wound-up by this Court pursuant to the *Winding-up and Restructuring Act*.

4. THIS COURT ORDERS AND DECLARES that the winding-up hereunder of Reliance (Canada) shall be deemed to commence November 8, 2001.

5. THIS COURT ORDERS that no suit, action or other proceeding shall be proceeded with or commenced against Reliance (Canada) or Reliance Insurance Company, except with leave of this Court and subject to such terms as this Court may impose.

6. THIS COURT ORDERS that every judgment, attachment, sequestration, distress, execution or like process put into force against Reliance (Canada) or Reliance Insurance Company, or the estate or effects thereof, after the commencement of the winding-up is void and of no effect.

DEC 09 2001
RECEIVED



THE ATTORNEY GENERAL OF CANADA
Applicant

and

RELIANCE INSURANCE COMPANY
Respondent

Court File No: 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

WINDING-UP ORDER

LAX O'SULLIVAN SCOTT LLP
Suite 1920
145 King Street West
Toronto, Ontario M5H 1J8

Charles F. Scott LSUC # 14534N
Brooke Shulman LSUC # 41032N
Tel: (416) 646-7997
Fax: (416) 589-3730

Solicitors for the Applicant



Court File No. 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

THE HONOURABLE) MONDAY THE 3RD DAY
)
MR. JUSTICE FARLEY) OF DECEMBER, 2001
)
)

**IN THE MATTER OF
RELIANCE INSURANCE COMPANY**

**AND IN THE MATTER OF THE
*INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED***

**AND IN THE MATTER OF THE
*WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED***

B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

ORDER

THIS APPLICATION made by the Applicant was heard this day without a jury at Toronto, in the presence of counsel for the Applicant, for the Respondent, for KPMG Inc., and for the Property and Casualty Insurance Compensation Corporation ("PACICC"), no one opposing.

ON READING the Notice of Application and the evidence filed by the parties, and on hearing submissions of counsel for the parties:

1. THIS COURT ORDERS that the service of the Notice of Application and the materials herein be and it is hereby good and sufficient notice thereof and that any further service of the Notice of Application and materials herein be and it is hereby dispensed with.

2. THIS COURT ORDERS that KPMG Inc. be and is hereby appointed as provisional liquidator (the "Liquidator") of the insurance business in Canada of the Respondent, including the assets in Canada of the Respondent, together with its other assets held in Canada under the control of its chief agent, including, without limitation, all amounts received or receivable in respect of its insurance business in Canada ("Reliance (Canada)").

3. THIS COURT ORDERS that the giving of security by the Liquidator upon its appointment as liquidator be dispensed with.

4. THIS COURT ORDERS that all moneys belonging to Reliance (Canada) received by or on behalf of the Liquidator and its agents shall be paid into a chartered bank to the account of the Liquidator immediately after the receipt thereof and an account or accounts shall be opened immediately, provided, however, that the Liquidator shall have the discretion to deposit funds to and use the bank accounts currently in the name of or operated by Reliance (Canada).

5. THIS COURT ORDERS that any cheques or drafts in respect of policies, issued by Reliance (Canada) prior to the making of the winding-up order herein and which are presented for payment thereafter, may be paid out of the estate and effects of Reliance (Canada).

6. THIS COURT ORDERS that the amount recoverable from, due or owed by any reinsurer to Reliance (Canada) shall be paid to the Liquidator and shall not be reduced as a result of this Order or the winding-up order, notwithstanding any terms or contractual agreement to the

contrary, and that any payment made directly by a reinsurer to an insured or other creditor or claimant of Reliance (Canada) or Reliance Insurance Company shall not diminish or reduce or affect such reinsurer's obligation to Reliance (Canada).

7. THIS COURT ORDERS that the Liquidator is authorized to cure such defaults and effect such arrangements as may be required to reinstate such reinsurance affecting the operations of Reliance (Canada), as the Liquidator deems to be in the interest and for the protection of policyholders, creditors and claimants of Reliance (Canada).

8. THIS COURT ORDERS that the Liquidator may pay all valid policyholder claims, including claims in respect of unearned premiums, to the amount of \$25,000 or the amount, if any, of the voluntary compensation payment of PACICC which may be paid under the terms of its Memorandum of Operations (the "PACICC Voluntary Compensation Payment") until April 30, 2002 or such later date as this Court may order, subject to paragraph 9 hereof, and such payments shall be deemed for all purposes to have been payments made on account of claims in the course of the liquidation of Reliance (Canada).

9. THIS COURT ORDERS that the Liquidator may pay all valid claims including claims in respect of unearned premiums under the Meridian and other warranty and surety programs to the amount of \$5,000 or the amount, if any, of the PACICC Voluntary Compensation Payment until January 31, 2002 or such later date as this Court may order, and such payments shall be deemed for all purposes to have been payments made on account of claims in the course of the liquidation of Reliance (Canada).

10. THIS COURT ORDERS that the Liquidator may, after consultation with the Inspectors, make such other payments as the Liquidator in the Liquidator's discretion deems advisable in the circumstances in respect of policies of Reliance (Canada) and such payments

shall be deemed for all purposes to have been payments made on account of claims in the course of the liquidation of Reliance (Canada).

11. THIS COURT ORDERS that in addition to the payments referred to in paragraphs 8 and 10, until April 30, 2002 or such later date as this Court may order, the Liquidator may pay and continue to pay all reasonable legal and other costs, incurred to and including April 30, 2002, which Reliance (Canada) is obligated to pay for defending any insureds against losses under Reliance (Canada)'s policies in accordance with the applicable policy ("Defence Costs"), subject to the applicable terms and limits of such policies. For greater certainty, all payments of Defence Costs shall be deemed for all purposes to have been payments made on account of claims in the course of the liquidation of Reliance (Canada) and to form part of the expenses of the liquidation as a first charge on the assets of the estate. However, if the applicable policy so provides, such payments shall be taken into account in determining the amount which would otherwise be distributed to the respective policyholders and claimants, or otherwise paid on account of Defence Costs, as the case may be, at such time as any further distributions or similar arrangements are made in respect of their policies.

12. THIS COURT ORDERS that any payments made by the Liquidator pursuant to paragraphs 5, 8, 9, 10 and 11 hereof, other than payments made pursuant to clerical errors (the "Payments"):

- (a) shall be deemed to be payments made on account of claims in the liquidation of Reliance (Canada) and shall be deducted from the amount which would otherwise be distributed at such time as further distributions or similar arrangements are made in respect of such claims;
- (b) shall be deemed to have been made in accordance with this Order;

- (c) in respect of any policy shall not obligate the Liquidator to make further payments in respect thereof; and
- (d) which may have exceeded the ultimate amount which the Liquidator determines is available for distribution to the respective policyholders and claimants, or available for payment of Defence Costs, as the case may be, (collectively, the “Overpayments”) shall be deemed not to be preferences and shall not be repayable by the recipients or policyholders.

Neither the Liquidator nor the Liquidator’s agents, advisers or employees shall be liable to any person in respect of the Overpayments.

13. THIS COURT ORDERS that PACICC, which shall designate from time to time one or more persons as its representative, and the Insurance Commissioner of the Commonwealth of Pennsylvania in her capacity as Liquidator of the Respondent or her designee are appointed inspectors (collectively the "Inspectors") to assist and advise the Liquidator in the winding-up of Reliance (Canada).

14. THIS COURT ORDERS that the Inspectors may apply to this Court on motion for directions concerning any matter relating to the liquidation of Reliance (Canada).

15. THIS COURT ORDERS that each claim in respect of which PACICC makes a PACICC Voluntary Compensation Payment (a “Compensated Claim”) shall be deemed to be and shall hereby be assigned in its entirety to PACICC without specific assignment or further steps required. PACICC shall be entitled to assert each Compensated Claim in the Liquidation. Reliance (Canada) is hereby deemed to have acquiesced to the assignment of Compensated Claims provided for herein and to have received a copy of the deed of assignment. PACICC and the Liquidator shall be deemed to be and shall hereby be released and forever discharged from

any and all claims, actions, losses and liabilities which any person has or may have at present or in the future with respect to each Compensated Claim.

16. THIS COURT ORDERS that, notwithstanding the provisions of paragraph 15, the Liquidator may make funds in the estate available to PACICC from time to time to be used by PACICC to make PACICC Voluntary Compensation Payments pursuant to the terms and conditions of the loan and services agreement made effective as of the date hereof between the Liquidator and PACICC, which is hereby approved.

17. THIS COURT ORDERS that the Liquidator is authorised and empowered to act as administrator of insurance coverage on behalf of third parties who assume all or part of the insurance risk, and to be paid the fees earned by Reliance (Canada), pursuant to the terms of the contracts between Reliance (Canada) and such third parties.

18. THIS COURT ORDERS that the Liquidator is entitled forthwith to possession of all of Reliance (Canada)'s books, accounts, securities, documents, papers, computer programs and data, registers and records of any kind ("Books and Records") and that Reliance (Canada), its present and former shareholders, directors, officers, employees, salespeople and agents, accountants, auditors, solicitors, trustees, and every person having knowledge of this Order and having possession or control of such Books and Records, do forthwith deliver over to the Liquidator or to the Liquidator's agent all such Books and Records.

19. THIS COURT ORDERS that all persons, including, without limitation, employees, brokers, legal counsel, insurance agents, third party administrators, or salespeople having access to or knowledge of the affairs of Reliance (Canada) do co-operate with the Liquidator in providing information or documents necessary or incidental to the liquidation of Reliance (Canada).

20. THIS COURT ORDERS that any entity which has custody or control of any data processing information and records (including but not limited to source documents, all types of electronically stored information, master tapes or any other recorded information) relating to Reliance (Canada), shall transfer custody and control of such records in a form readable by the Liquidator to the Liquidator as of the date of this Order, unless instructed to the contrary by the Liquidator.

21. THIS COURT ORDERS that any entity furnishing claims processing or data processing services to Reliance (Canada) shall maintain such services and transfer any such accounts to the Liquidator as of the date of this Order, unless instructed to the contrary by the Liquidator.

22. THIS COURT ORDERS that Reliance (Canada) and its Chief Agent, officers, trustees, employees, consultants, agents, and legal counsel shall: surrender peacefully to the Liquidator the premises where Reliance (Canada) conducts its business; deliver all keys or access codes thereto and to any safe deposit boxes; advise the Liquidator of the combinations or access codes of any safe or safekeeping devices of Reliance (Canada) or any password or authorization code or access code required for access to data processing equipment; and shall deliver and surrender peacefully to the Liquidator all of the assets, books, records, files, credit cards, and other property of Reliance (Canada) in their possession or control, wherever located, and otherwise advise and cooperate with the Liquidator in identifying and locating any of the foregoing.

23. THIS COURT ORDERS that all persons, firms, corporations and other entities having agreements, whether written or oral, with Reliance (Canada) for the supply of goods or services, be and they are hereby enjoined from terminating, accelerating, suspending, modifying, determining or cancelling such agreements without the written consent of the Liquidator or leave

of this Court, and that all such parties shall continue to comply with their obligations under such agreements or otherwise on terms currently provided so long as the Liquidator pays the normal prices or charges for such goods or services incurred after the date of this Order in accordance with usual payment terms or as may hereafter be negotiated by the Liquidator from time to time.

24. THIS COURT ORDERS that all persons, firms, corporations and other entities be and they are hereby enjoined from disturbing or interfering with the occupation, possession or use by the Liquidator of any premises occupied or leased by Reliance (Canada) as at November 8, 2001 except upon further Order of this Court. From November 8, 2001 and for the period of time that the Liquidator occupies any leased premises, the Liquidator shall pay occupation rent to each lessor based upon the regular monthly base rent that was previously paid by Reliance (Canada) in respect of the premises so occupied or as may hereafter be negotiated by the Liquidator from time to time.

25. THIS COURT ORDERS that all persons, firms, corporations and other entities be and they are hereby enjoined from disturbing or interfering with computer software, hardware, support and data services or with utility services, including, but not limited to, the furnishing of oil, gas, heat, electricity, water, telephone service (including at present telephone numbers used by Reliance (Canada)) or any other utilities of like kind furnished to Reliance (Canada) and they are hereby enjoined from discontinuing or altering any such utilities or services to the Liquidator except upon further order of this Court, so long as the Liquidator pays the normal prices or charges for such goods and services incurred after November 8, 2001 as the same become due in accordance with usual payment terms or as may hereafter be negotiated by the Liquidator from time to time.

26. THIS COURT ORDERS that, without limiting the generality of the foregoing, and except upon further order of this Court having been obtained on at least 7 days' notice to the Liquidator:

- (a) all persons, firms, corporations and other entities be and they are hereby restrained from terminating, cancelling or otherwise withdrawing any licences, permits, approvals or consents with respect to or in connection with Reliance (Canada) as they were on November 8, 2001;
- (b) any and all proceedings or steps taken or that may be taken, wheresoever taken, by any person, firm, corporation or entity, including, without limitation, any of the policyholders or creditors of Reliance (Canada), suppliers, co-insurers, reinsurers, contracting parties, depositors, lessors, tenants, co-venturers or partners (hereinafter, in this paragraph "Claimants") against or in respect of Reliance (Canada) shall be and hereby are stayed and suspended;
- (c) the right of any Claimant to make demands for payment on or in respect of any guarantee or similar obligation or to make demand or draw down under any letters of credit, bonds or instruments of similar effect, issued by or on behalf of Reliance (Canada), to take possession of, to foreclose upon or to otherwise deal with any property, wheresoever located, of Reliance (Canada) whether held directly or indirectly, as principal or nominee, beneficially or otherwise, or to continue any actions or proceedings in respect of the foregoing, is hereby restrained;
- (d) the right of any Claimant to assert, enforce or exercise any right (including, without limitation, any right of dilution, buy-out, divestiture, forced sale, acceleration, termination, suspension, modification or cancellation or right to

revoke any qualification or registration), option or remedy available to it including a right, option or remedy arising under or in respect of any agreement (including, without limitation, any contract, debt instrument, guarantee, option, co-ownership agreement or any agreement of purchase or sale but not including any eligible financial contract, as defined in the *Winding-up and Restructuring Act*) to which Reliance (Canada) is a party, arising out of, relating to or triggered by the occurrence of any default or non-performance by Reliance (Canada) or the making or filing of these proceedings, or any allegation contained in these proceedings, is hereby restrained; and

- (e) all Claimants are restrained from exercising any extra judicial remedies against Reliance (Canada), including, without limitation, the registration or re-registration of any securities owned by Reliance (Canada) into the name of such persons, firms, corporations or entities or their nominees, the exercise of any voting rights attaching to such securities, the retention of any payments or other distributions made in respect of such securities, any right of distress, repossession, or consolidation of accounts in relation to amounts due or accruing due in respect of or arising from any indebtedness or obligation of Reliance (Canada) as of the date hereof.

27. THIS COURT ORDERS that no action lies against the Liquidator, any of its affiliates (the "Affiliates") any director, officer, agent, representative or employee of the Liquidator or of the Affiliates, any entity or person (or director, officer, agent, representative or employee of any such entity or person) acting under the direction of the Liquidator, or the Inspectors or any director, officer, agent, representative or employee thereof, for anything done or omitted to be done in good faith in the administration of the liquidation of Reliance (Canada) or in the exercise of the Liquidator's powers under this Order or otherwise.

28. THIS COURT ORDERS that no suit, action or other proceeding shall be proceeded with or commenced against the Liquidator, the Affiliates, any director, officer, agent, representative or employee of the Liquidator, or of the Affiliates, any entity or person (or director, officer agent, representative or employee of any such person) acting under the direction of the Liquidator, or the Inspectors or any director, officer, agent, representative or employee thereof, except with leave of this Court and subject to such terms as this Court may impose.

29. THIS COURT ORDERS that the Liquidator may, without the approval, sanction or intervention of this Court and without previous notice to the policyholders or creditors of Reliance (Canada) or any other person,

- (a) take control of the estate and effects of Reliance (Canada) or such part thereof as the Liquidator shall determine;
- (b) bring or defend any action, suit or prosecution or other legal proceeding, civil or criminal, in the Liquidator's own name as liquidator or in the name or on behalf of Reliance (Canada), as the case may be;
- (c) carry on the business of Reliance (Canada) so far as it is necessary or incidental to the winding-up of Reliance (Canada);
- (d) lease or mortgage or otherwise realize upon the undertaking, property and assets of Reliance (Canada) or any part or parts thereof;
- (e) sell the real and personal property, effects, intangibles and choses in action of Reliance (Canada), including all or any portion of Reliance (Canada)'s contracts and products and related assets, including, without limitation, Reliance (Canada)'s lists of policyholders and customers, by public auction or private contract, and transfer the whole thereof to any person or company, or sell them in parcels;

- (f) do all acts and execute, in the name of and on behalf of Reliance (Canada), all deeds, receipts, and other documents, and for that purpose use, when necessary, the seal of Reliance (Canada), and file any elections (tax or otherwise), objections or registrations, and file any notices, all as may be necessary or desirable in the opinion of the Liquidator for the better liquidation of Reliance (Canada);
- (g) prove, rank, claim and draw dividends in the matter of the bankruptcy, insolvency or sequestration of any contributory, for any sum due to Reliance (Canada) from the contributory, and take and receive dividends in respect of the bankruptcy, insolvency or sequestration, as a separate debt due from that contributory and rateably with the other separate creditors;
- (h) draw, accept, make and endorse any bill of exchange or promissory note in the name of and on behalf of Reliance (Canada);
- (i) give discharges of mortgages and other securities, partial discharges of mortgages and other securities, and pay property taxes and insurance premiums on mortgages and other securities taken in favour of Reliance (Canada);
- (j) pay such debts of Reliance (Canada) as may be necessary to be paid in order to properly preserve and maintain the undertaking, property and assets of Reliance (Canada) or to carry on the business of Reliance (Canada);
- (k) surrender possession of any premises occupied by Reliance (Canada) and disclaim any leases entered into by Reliance (Canada);
- (l) apply for any permits, licences, approvals or permissions as may be required by any governmental or regulatory authority;

- (m) re-direct Reliance (Canada)'s mail;
- (n) enter into any eligible financial contracts, as defined in the *Winding-up and Restructuring Act*;
- (o) take possession and control of all securities in which Reliance (Canada) has an interest (directly or indirectly) and exercise all rights that may be enjoyed by a holder of such securities including, without limitation, rights (i) that may arise by virtue of the holder being a party to a shareholder or similar agreement that may, by way of example, restrict the powers of the directors to manage or supervise the management of the business and affairs of the corporation, (ii) to receive information, (iii) to attend at and cause to be held meetings of holders of such securities, (iv) to vote such securities for the removal or election of directors and approval of significant transactions (such as the sale or disposition of all or substantially all of the assets of such company or the winding-up, liquidation, rehabilitation, bankruptcy, receivership, restructuring or amalgamation of such company), and (v) to sell or otherwise dispose of such securities;
- (p) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, demands and matters in dispute in any way relating to or affecting the assets of Reliance (Canada) or the winding-up of Reliance (Canada), on the receipt of such sums, payable at such times, and generally on such terms as are agreed on by the Liquidator;
- (q) make such compromise or other arrangements with creditors or persons claiming to be creditors of Reliance (Canada) as the Liquidator deems expedient; and

- (r) do and execute all such other things as are necessary for, or incidental to the winding-up of the affairs of Reliance (Canada), including without limitation entering into agreements incurring obligations.

30. THIS COURT FURTHER ORDERS that the Liquidator may, with the approval of this Court and on such notice as the Court may direct:

- (a) arrange for the transfer or reinsurance of all or a portion of the policies of Reliance (Canada); and
- (b) cancel all or a portion of the outstanding policies of Reliance (Canada).

31. THIS COURT ORDERS that the Liquidator and any of the Liquidator's agents, officers, directors, representatives or employees shall be deemed not to be an employer or a successor employer of the employees of Reliance (Canada) within the meaning of the *Pension Benefits Act* (Ontario), *Employment Standards Act* (Ontario), the *Labour Relations Act* (Ontario) or any other Federal, Provincial or Municipal legislation governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever and, further, that the Liquidator and any of the Liquidator's agents, directors, officers, representatives or employees shall not be and shall be deemed not to be, in possession, charge or control of the property or business or affairs of Reliance (Canada) pursuant to any Federal, Provincial or Municipal legislation, statute, regulation or rule of law or equity which imposes liability on the basis of such status including, without limitation, the *Environmental Protection Act* (Ontario), the *Canadian Environmental Protection Act*, or the *Ontario Water Resources Act*, and this shall be binding on all tribunals and administrative bodies.

32. THIS COURT ORDERS that the Liquidator may retain, employ or engage such actuaries, accountants, financial advisors, investment dealers, solicitors, attorneys, valuers or

other expert or professional persons as the Liquidator deems necessary or desirable to assist the Liquidator in fulfilling the Liquidator's duties, and all reasonable and proper expenses which the Liquidator may incur in so doing shall be costs of liquidation of Reliance (Canada).

33. THIS COURT ORDERS that the Liquidator may act on the advice or information obtained from any actuary, accountant, financial advisor, investment dealer, solicitor, attorney, valuer or other expert or professional person, and the Liquidator shall not be responsible for any loss, depreciation or damage occasioned by acting in good faith in reliance thereon.

34. THIS COURT ORDERS that the Liquidator shall be paid such remuneration as the Court Orders.

35. THIS COURT ORDERS that the Liquidator shall be at liberty to apply reasonable amounts against its remuneration, expenses and disbursements on a monthly basis and that such amounts shall constitute advances against its remuneration and expenses on, but subject to, the passing of its accounts.

36. THIS COURT ORDERS that this Order and any other orders in these proceedings shall have full force and effect in all Provinces and Territories in Canada.

37. THIS COURT SEEKS AND REQUESTS the aid and recognition of any Court or administrative body in any Province or Territory of Canada and any Canadian Federal Court or administrative body and any Federal or State Court or administrative body in the United States of America and any Court or administrative body in the United Kingdom or elsewhere to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

38. THIS COURT ORDERS that the costs of this application, including the costs of the Inspectors, are to be assessed on a solicitor and his own client basis and shall be costs of liquidation of Reliance (Canada).

39. THIS COURT ORDERS that interested parties may apply to the Court for advice and directions on 7 days' notice to the Liquidator and the Inspectors, and that the Liquidator may at any time apply to this Court for advice and directions.

DEC 08 2006
PER/PAE
[Handwritten signature]

Viktoria Seckl
Registrar

THE ATTORNEY GENERAL OF
CANADA
Applicant

and

RELIANCE INSURANCE COMPANY
Respondent

Court File No: 01-CL-4313

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

LAX O'SULLIVAN SCOTT LLP
Suite 1920
145 King Street West
Toronto, Ontario M5H 1J8

Charles F. Scott LSUC # 14534N
Brooke Shulman LSUC # 41032N
Tel: (416) 646-7997
Fax: (416) 589-3730

Solicitors for the Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

**IN THE MATTER OF
RELIANCE INSURANCE COMPANY
AND IN THE MATTER OF THE
INSURANCE COMPANIES ACT, S.C. 1991, C.47, AS AMENDED
AND IN THE MATTER OF THE
*WINDING-UP AND RESTRUCTURING ACT, R.S.C. 1985, C.W-11, AS AMENDED***

B E T W E E N:

THE ATTORNEY GENERAL OF CANADA

Applicant

- and -

RELIANCE INSURANCE COMPANY

Respondent

January 28, 2002

I. NATURE OF THE MOTION

1. This Report is respectfully filed in support of a Motion by KPMG Inc., the liquidator (the "Liquidator") of Reliance (Canada) (as hereinafter defined) for an Order:

- (a) extending the date for payment of valid claims including claims in respect of unearned premiums under the Meridian Program (as hereinafter defined) and other warranty and surety programs issued by Reliance (Canada) from January 31, 2002 to April 30, 2002 or such later date as this Court may Order; and
- (b) authorizing the Superintendent of Financial Institutions (the "Superintendent") to, among other things, attend and call meetings of inspectors of the estate of Reliance (Canada).

II. BACKGROUND

2. Reliance Insurance Company (“Reliance”) is a property and casualty insurer in the United States of America, domiciled in the Commonwealth of Pennsylvania. Reliance has carried on business in Canada as a “foreign company” within the meaning of the *Insurance Companies Act* through its branch since 1918.

3. Reliance was ordered to be liquidated by Order of the Commonwealth Court of Pennsylvania dated October 3, 2001, under the Pennsylvania *Insurance Department Act of 1921*.

4. By Order of the Honourable Mr. Justice Farley made December 3, 2001 (the “Winding-up Order”), the insurance business in Canada of Reliance Insurance Company (“Reliance (Canada)”) was ordered wound-up pursuant to the provisions of the *Winding-up and Restructuring Act*. A copy of the Winding-up Order is attached as Schedule "A" hereto.

5. By further Order of this Court made December 3, 2001 (the "Appointment Order"), KPMG Inc. was appointed provisional liquidator. A copy of the Appointment Order is attached as Schedule "B" hereto.

6. The relevant provisions of the Appointment Order for the purposes of this motion are as follows:

- (a) paragraph 8 provides that the Liquidator may pay all valid policyholder claims, including claims in respect of unearned premiums, to the amount of \$25,000 or the amount of the coverage limits of the Property and Casualty Compensation Insurance Corporation ("PACICC"), if any, until April 30, 2002 or such later date as the Court may order, subject to paragraph 9 of the Appointment Order, and that such payments are deemed to be payments made on account of claims in the liquidation (the “Policy Payments”);
- (b) paragraph 9 provides that the Liquidator may pay all valid claims, including claims in respect of unearned premiums, under the Meridian Program and other warranty and surety programs to the amount of \$5,000 or the PACICC coverage limits, if any, until January 31, 2002 or such later date as the Court may order, and that such payments are deemed to be payments made on account of claims in the liquidation (the "Meridian Payments");

- (c) pursuant to paragraph 13, PACICC and the liquidator of Reliance were appointed inspectors to assist and advise the Liquidator in the winding-up of Reliance (Canada); and
- (d) paragraph 30 provides that the Liquidator may, with the approval of this Court, arrange for the transfer or reinsurance of all or a portion of the policies of Reliance (Canada) or cancel all or a portion of the outstanding policies of Reliance (Canada).

III. THE MERIDIAN PROGRAM

7. In October, 2000, Reliance stopped issuing new policies and began "running-off" or winding down its existing business. Among its remaining blocks of insurance business was a program under which Reliance (Canada) issued extended warranty coverage for automobiles and other vehicles, as described below (the "Meridian Program"). Coverage was written in all provinces, except Quebec. There are approximately 18,000 Meridian policyholders. The last policy expires in 2007.

8. In 1995, Reliance (Canada) entered into an arrangement with Meridian Warranty Management Inc. (an unaffiliated company), under which Reliance (Canada) issued certificates extending repair warranty coverage on vehicles. The coverage was 100% reinsured by other insurers. This type of arrangement is known in the industry as a "fronting" arrangement, since the issuing insurer (here, Reliance (Canada)) is fully reinsured for the risk, and retains no residual risk. The effect is that Reliance (Canada) earns a percentage fee from the reinsurer, rather than bearing the ultimate benefit or burden of the underwriting risk.

9. Although the Meridian Program is designed so that the ultimate underwriting risk is borne by the reinsurer, Reliance (Canada) is the issuer of the policies and is therefore directly liable to the policyholders. This means that Reliance (Canada) bears the risk of the reinsurers not paying and must reserve for these policies in the normal way, as liabilities of Reliance (Canada). Conversely, the policyholders bear the risk of Reliance (Canada)'s insolvency. The reinsurance amounts remain an asset of Reliance.

10. Attached hereto as Schedule "C" is a copy of a letter dated November 8, 2001 from KPMG Inc. to the Office of the Superintendent of Financial Institutions Canada, which was included as an exhibit to the affidavit filed in support of the application for the winding-up

Order. As indicated in that letter, it was KPMG Inc.'s view that a transfer or reinsurance of the policies would be in the best interests of policyholders, creditors and other parties interested in Reliance (Canada). KPMG Inc. recommended the making of the Policy Payments and the Meridian Payments to enhance the value to any potential transferee or reinsurer. The Liquidator has been making the payments, as contemplated by the Appointment Order.

11. The Liquidator has been exploring the possibilities of transferring or reinsuring the policies of Reliance (Canada), including those under the Meridian Program. With respect to the Meridian Program, the Liquidator explored the industry and marketplace and identified those insurers who might have an interest in the program. The Liquidator then sought expressions of interest from them and has now entered into exclusive negotiations with one potential purchaser. The Liquidator is satisfied that the negotiations are serious and is optimistic that an agreement will be concluded, although one has not been concluded as of the date hereof.

12. The alternatives to a transaction are:

- (a) to run-off the policies, in which case the estate would have to bear the costs of administration of the run-off until 2007; or
- (b) to cancel the policies. Given that vehicles warranties are generally sold at the time the vehicle is purchased, it is unlikely the policyholders would be able to replace the coverage. Cancelling the policies would involve payment of unearned premium to each of the individual policyholders. The administrative costs associated with the calculation of the unearned premiums would be significant. The calculation of the unearned premium is based on the percentage of the premium referable to the unexpired term of the policy. The term of the policies issued under the Meridian Program is dependent not only on the passage of time but also on the number of kilometres driven which would require eliciting and reviewing responses on this point from 18,000 policyholders.

Given the serious expression of interest by the potential purchaser, the costs associated with cancelling the policies under the Meridian Program and the impact a cancellation would have on the individual policyholders, the Liquidator is of the view that cancellation of the policies at this time is not justified, in the circumstances.

13. The Liquidator is therefore seeking an extension of the January 31, 2002 date in paragraph 9 of the Appointment Order to April 30, 2002, which is coincident with the date contained in paragraph 8 of the Appointment Order. The Liquidator is hopeful that an agreement will be concluded by that time. In such a case, the Liquidator would seek the approval of this Court to the transaction as required by paragraph 30 of the Appointment Order.

IV. THE ROLE OF THE SUPERINTENDENT

14. As noted above, pursuant to the Appointment Order, PACICC and the liquidator of Reliance were appointed inspectors of the estate of Reliance (Canada). The Superintendent has indicated an interest in maintaining a role in the estate. However, the Superintendent has carefully considered his potential appointment as an inspector and has concluded that he does not wish to be appointed as an inspector.

15. The Superintendent has indicated that he wishes to maintain a role on the following basis:

- (a) he would receive notice of the meetings of inspectors and be entitled to attend and be heard at such meetings;
- (b) he would be entitled to call meetings of inspectors on reasonable notice to the inspectors and to the Liquidator;
- (c) he would receive notice of all proceedings and, subject to further order of this Court, be entitled to attend and be heard at such proceedings;
- (d) the protections offered to the other inspectors pursuant to paragraphs 27 and 28 of the Appointment Order would be extended to the Superintendent; and.
- (e) he would be entitled to apply to this Court on motions for directions concerning any matter relating to the liquidation.

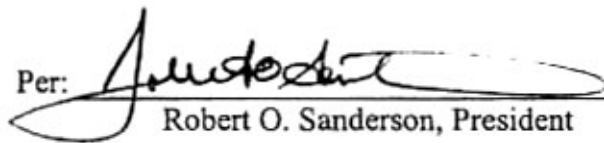
16. The Liquidator and the inspectors are content that the Superintendent play such a role and have agreed on the terms set out above.

V. RECOMMENDATIONS

17. The Liquidator therefore recommends that this Court make an Order:
- (a) extending the date set out in paragraph 9 of the Appointment Order from January 31, 2002 to April 30, 2002 or such later date as this Court may Order; and
 - (b) authorizing the proposed role of the Superintendent as set out above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

KPMG INC., solely in its capacity as the
Liquidator of Reliance Insurance Company -
Canadian Branch

Per: 
Robert O. Sanderson, President



Schedule "D"

KPMG Inc.

Suite 3300 Commerce Court West
PO Box 31 Stn Commerce Court
Toronto ON M5L 1B2

Telephone (416) 777-8500
Telefax (416) 777-3364
Telefax (416) 777-8818
<http://www.kpmg.ca>

November 8, 2001

Office of the Superintendent of Financial Institutions Canada
255 Albert Street
Ottawa, Canada
K1A 0H2

Attention: Francois Gilbert

Dear Sir:

Re: Reliance Insurance Company - Canadian Branch ("Reliance (Canada)")

The Superintendent has designated KPMG Inc. as one of his representatives in connection with his taking of control of the assets in Canada of Reliance (Canada). He has also requested that the Attorney General of Canada apply to the Ontario Superior Court of Justice for an order (the "Order") winding up Reliance (Canada) under the *Winding-up and Restructuring Act*. He is recommending that KPMG Inc. be appointed as liquidator of Reliance (Canada) (the "Liquidator").

In our capacity as the Superintendent's representative, we have become familiar with the business of Reliance (Canada). Based on our work thus far and on our experience in the liquidations of both property and casualty insurance companies and branches and life insurance companies, we consider that if Reliance (Canada) is liquidated, the best interests of policyholders, creditors and other parties interested in Reliance (Canada) would be best served if, in the initial phases of the liquidation, the Liquidator explored the possibility of arranging for transfer or reinsurance of all or a portion of the policies of Reliance (Canada). In order to enhance the value of the estate as much as possible to any potential transferee or reinsurer, the Liquidator should be specifically empowered in the Order to pay certain liabilities relating to the policies, including:

- (a) the reasonable legal and other costs which Reliance (Canada) is obligated to pay for defending insureds against losses under their policies in accordance with the policies;
- (b) all valid policyholder claims, except as described in paragraph (c) below, up to \$25,000 or the amount, if any, of the voluntary compensation payment ("PACICC Voluntary Payment") of the Property and Casualty Insurance Compensation Corporation ("PACICC"), discussed more fully below;
- (c) all valid claims under certain warranty and surety programs of Reliance (Canada) up to \$5,000 or the amount, if any, of the PACICC Voluntary Payment; and



Member Firm of
KPMG International

- (d) any other payments in respect of the policies that the Liquidator in its discretion deems advisable.

The Liquidator should also be empowered to pay cheques or drafts issued by Reliance (Canada) prior to the making of the Order but presented for payment thereafter and to enter into arrangements with PACICC.

In our view, making these payments will enhance the value of the business, maximizing any potential opportunity for its sale or transfer. It will also minimize the potential disruption or hardship to policyholders and creditors.

With respect to the payment of liabilities relating to policies:

- (a) the payment of defence costs will maintain the standards of claims adjudication, ensuring that claims are properly handled and easing possible concerns of reinsurers; and
- (b) the payment levels recommended are based on our review of the claims profiles, which indicate that the vast majority of the claims are under \$25,000, other than claims under the warranty and insurance programs referred to above, the vast majority of which are under \$5,000.

We recommend that the above provisions with respect to payments on policies be in place until April 30, 2002. By that time, the Liquidator will have had an opportunity to further consider the status of the business and the potential for its transfer, and to further report to the Court and seek directions if necessary.

PACICC was established by property and casualty insurers to compensate policyholders and third party claimants in respect of insolvent property and casualty insurers by making voluntary payments. We considered it prudent to contact PACICC and explore ways in which PACICC and the Liquidator could cooperate, to ensure both the least disruption to policyholders and third party claimants and the most expeditious and efficient handling of claims and processing of PACICC payments. We attach a draft loan agreement reached with PACICC which we would propose be executed by the Liquidator and PACICC if the Order is issued. The loan agreement provides that the Liquidator will advance payments up to PACICC limits from the assets of Reliance (Canada) in respect of policyholder claims covered under PACICC. PACICC will pay the Liquidator the difference between amounts so advanced and the ultimate percentage recovery which the estate would pay, with interest from the date each payment is made to policyholders and claimants.

We have reviewed all outstanding cheques or drafts issued prior to October 5, 2001, and approved them for payment. Any cheques or drafts issued after October 5, 2001 have been drawn with the authority of the representatives.

We respectfully request that the Attorney General include provisions in the Order being requested which would, if the Order is made, empower the Liquidator to make the payments described in this letter and enter into the loan agreement with PACICC.

Yours very truly,

KPMG INC.

A handwritten signature in black ink, appearing to read "Robert O. Sanderson", with a long horizontal flourish extending to the right.

Robert O. Sanderson
President

Attachment

Schedule "E"

ASSUMPTION REINSURANCE AGREEMENT

THIS AGREEMENT made the 3rd day of April, 2002

B E T W E E N:

LONDON GUARANTEE INSURANCE COMPANY

(hereinafter called "London Guarantee")

OF THE FIRST PART;

- and -

KPMG INC., in its capacity as liquidator
of the insurance business in Canada of
RELIANCE INSURANCE COMPANY
and not in its personal capacity

OF THE SECOND PART.

W H E R E A S:

- A.** Reliance Insurance Company is in liquidation pursuant to an order made the 3rd day of October, 2001 by the Commonwealth Court of Pennsylvania (the "U.S. Proceedings");
- B.** By order of the Court (as defined herein) dated December 3, 2001 the insurance business in Canada of Reliance Insurance Company was ordered wound-up and KPMG Inc. was appointed liquidator of Reliance Insurance Company's insurance business in Canada;
- C.** The Liquidator has agreed to cede and assign to London Guarantee, and London Guarantee has agreed to assume, the Policy Liabilities (as defined herein) on the terms and conditions hereinafter set forth.

NOW THEREFORE the parties agree as follows:

**ARTICLE I
INTERPRETATION**

1.1 Definitions.

In this Agreement, except as otherwise expressly provided, capitalized words or expressions shall have the meanings set out below:

- (a) "Actuaries" means J.S. Cheng & Partners Inc.

- (b) **“Administration Agreement”** means an administration agreement among London Guarantee, the Liquidator, George Bilyk and the Administrator substantially in the form of Schedule “A”.
- (c) **“Administrator”** means 3768279 Canada Inc.
- (d) **“Agreement”** means this Agreement and all schedules annexed hereto and all instruments in amendment or in confirmation of it.
- (e) **“AXA”** means AXA Pacific Insurance Company.
- (f) **“Block”** means any one of Block 1, Block 2 or Block 3.
- (g) **“Block 1”** means those Policies issued between November 1, 1995 and April 30, 1998 and 100% reinsured by Lloyd’s.
- (h) **“Block 2”** means those Policies issued between May 1, 1988 and April 30, 1999 and reinsured as to 47.5% by Lloyd’s and as to 52.5% by AXA.
- (i) **“Block 3”** means those Policies issued between May 1, 1999 and August 30, 2000 and 100% reinsured by AXA.
- (j) **“Business Day”** means every day except a Saturday, Sunday or a day which is a statutory holiday under the laws of Canada or Ontario.
- (k) **“Claims Account”** means the account to be so designated under Section 2.2(a)(iv).
- (l) **“Closing”** means the completion of the transactions described in this Agreement, and **“Closing Date”** or **“Date of Closing”** means the earlier of:
 - (i) May 31, 2002 (or such later date as may be agreed upon by the parties); and
 - (ii) the last Business Day of the month in which all of the conditions set out in Sections 7.1(c), (g) [and (i)] have been satisfied, if all of such conditions have been satisfied.

- (m) **“Court”** means the Ontario Court of Justice (General Division).
- (n) **“Declining Letter of Credit”** has the meaning attributed to such term in paragraph 2.2(a)(vi);
- (o) **“Deposit Amount”** means an amount determined by:
 - (i) starting with an opening balance as at December 31, 2001 equal to \$10,565,000.00;
 - (ii) deducting, as and when paid, any amounts paid on account of claims for loss or premium refund or on account of Loss Adjustment Expenses under or in respect of the Policies during the period from December 31, 2001 to Closing; and
 - (iii) accruing interest on the outstanding balance from time to time in accordance with (i) and (ii) above at an annual rate of interest equal to the rate of 2.25% per annum during the period from December 31, 2001 to Closing; and
 - (iv) deducting from the balance determined in accordance with (i), (ii) and (iii) above, the amounts transferred to London Guarantee on Closing pursuant to clauses 2.2(a)(i) and 2.2(a)(ii).
- (p) **“Existing Administration Agreement”** means the Program Administration Agreement between the Existing Administrators and Reliance Insurance Company dated November 1, 1995, as amended from time to time prior to the date hereof, a copy of which is attached as Schedule “B”.
- (q) **“Existing Administrators”** means the administrators appointed and authorized by Reliance Insurance Company under the Existing Administration Agreement, defined therein as Meridian Warranty Management Inc. and Nicole Demers & Associates Inc.
- (r) **“Fixed Letter of Credit”** has the meaning attributed to such term in paragraph 2.2(a)(vi).

- (s) **“Letters of Credit”** means the Declining Letter of Credit and the Fixed Letter of Credit and **“Letter of Credit”** means either one of such letters of credit.
- (t) **“Liquidator”** means the Person who from time to time is the liquidator of Reliance, it being acknowledged that as at the date hereof the liquidator of Reliance is KPMG Inc.
- (u) **“Lloyds”** means Lloyd’s Underwriters.
- (v) **“Loss Adjustment Expenses”** means all fees paid to the Existing Administrators pursuant to the Existing Administration Agreement or to the Administrator pursuant to the Administration Agreement, as the case may be.
- (w) **“Person”** means an individual, partnership, joint venture, association, corporation, trust or governmental authority, body, agency or department.
- (x) **“Policy Liabilities”** means all liabilities of Reliance under the Policies, which liabilities are outstanding as at Closing or which liabilities arise or are incurred after Closing, (including claims for premium refunds and/or claims for loss) and which in either case relate to:
 - (i) the warranties listed in that certain listing which has been initialled by the parties;
 - (ii) warranties not listed in the listing referred to in 1.1(x)(i) above but in respect of which the reinsurer or, for Block 2, both reinsurers under the applicable Reinsurance Contract(s) accept(s) liability; and
 - (iii) warranties not listed in the listing referred to in 1.1(x)(i) above and in respect of which the reinsurer or, for Block 2, either of the reinsurers under the applicable Reinsurance Contract(s) for the applicable Block denies liability,

provided that should there be more than 2000 warranties matching the description set out in subparagraph (iii) above, the liabilities of Reliance in respect of the 2001st

such warranty to be discovered and each such warranty to be discovered thereafter, will be deemed not to be “Policy Liabilities”.

- (y) **“Policies”** means all mechanical breakdown insurance policies and extended warranty service contracts issued by or on behalf of the Existing Administrators, the Administrator or Reliance in Canada and administered by the Existing Administrators or the Administrator (which for greater certainty include those policies named “Premium Plan 2”, “DFS Advantage” and “Suzuki”).
- (z) **“Records”** means all technical, business, financial books and records of account, books, manuals, data, reports, files, briefs, deeds, certificates, contracts, actuarial files, paper policy claim files, or similar documentation and information in any form or recording medium whatsoever relating to the Policy Liabilities in the Liquidator’s possession and control as at Closing.
- (aa) **“Reinsurance Contracts”** means written reinsurance contracts between London Guarantee and Lloyd’s and AXA in form and substance satisfactory to the Liquidator and London Guarantee (each acting reasonably), formalizing the arrangements reflected in the documentation pertaining to such reinsurers which has been provided to London Guarantee by the Liquidator; and also including:
 - (i) a “follow the fortunes” clause substantially in the form of Schedule “C” attached;
 - (ii) agreement by the reinsurers to be bound by the claims administration of the Administrator; and
 - (iii) in the case of AXA only, a “cut-through” clause to AXA Insurance Plc.
- (bb) **“Reliance”** means the Canadian assets and business of Reliance Insurance Company, in liquidation.
- (cc) **“Time of Closing”** means 2:00 p.m. (Toronto time) on the Closing Date.

- (dd) **“U.S. Proceedings”** has the meaning attributed to such term in the first recital of this Agreement.
- (ee) **“Valuation”** has the meaning attributed to such term in subparagraph 2.2(d).

1.2 Interpretation.

In this Agreement:

- (a) words denoting the singular include the plural and vice versa, and words denoting any gender include all genders;
- (b) any reference to a statute shall mean the statute in force as at the date hereof, unless otherwise expressly provided;
- (c) the use of headings is for convenience of reference only and shall not affect the construction of this Agreement;
- (d) when calculating the period of time within which, or following which, any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period shall end on the next Business Day. A day shall run from 00:01 A.M. to 12:00 A.M. of the following day;
- (e) “including” means “including, without limitation” and “includes” has a corresponding meaning;
- (f) all dollar amounts are expressed in Canadian Funds.

1.3 Schedules:

The following attached schedules form part of this Agreement:

Schedule “A” – Administration Agreement

Schedule “B” – Existing Administration Agreement

Schedule “C” - “Follow the Fortunes” clause

Schedule "D" – Form of Estoppel Certificate

Schedule "E" – Form of Reinsurance Consulting Agreement

Schedule "F" – Form of DFS Indemnity

ARTICLE II TRANSFER AND ASSUMPTION

2.1 Transfer and Assumption.

On Closing, the Liquidator shall assign and transfer to London Guarantee all of the Liquidator's and Reliance's right, title and interest in and to the Policies on the Closing Date and London Guarantee shall assume, carry out, discharge and indemnify the Liquidator and Reliance from and against, the Policy Liabilities. In consideration of the assumption, the Liquidator shall pay to London Guarantee on Closing the sum of \$975,000.00 plus any premium tax which may be exigible on such sum, and will transfer the other assets and make the other arrangements described in Section 2.2.

2.2 Closing Transactions and Post-Closing Adjustments.

- (a) On Closing the Liquidator will:
 - (i) transfer to London Guarantee cash in amounts equalling the amounts allocated as at Closing (in each case in accordance with the existing reinsurance contracts with AXA and Lloyd's) to the Loss Adjustment Expense funds maintained in respect of Block 1, Block 2 and Block 3 (it being acknowledged that as at December 31, 2001, the amount allocated to the Loss Adjustment Expense fund for Block 1 was \$45,878.00, the amount allocated to the Loss Adjustment Expense fund for Block 2 was \$115,785.00, and the amount allocated to the Loss Adjustment Expense fund for Block 3 was \$132,919);
 - (ii) transfer to London Guarantee cash in an amount equalling the amount allocated as at Closing (in accordance with the existing reinsurance contract with AXA) to the loss reserve fund maintained in respect of Block 3 (it

being acknowledged that as at December 31, 2001, \$3,186,791.00 was allocated to the Block 3 loss reserve fund, and the balance allocated to the loss reserve funds maintained in respect of both Block 2 and Block 1 was nil);

- (iii) reimburse London Guarantee for the reasonable out-of-pocket expenses incurred by London Guarantee in obtaining the approval(s) referred to in paragraph 7.1(h) and pay London Guarantee a sum equal to the aggregate compensation payable to George Bilyk under the reinsurance consulting agreement in the form attached hereto as Schedule “E”;
- (iv) in co-operation with London Guarantee, establish with Royal Trust Company of Canada a trust account for the benefit of holders of Policies, the Liquidator and, as provided in Section 2.2(c), London Guarantee to be designated as the “Claims Account” over which two officers of London Guarantee will have signing authority;
- (v) deliver to London Guarantee a written calculation of the Deposit Amount and deposit the Deposit Amount into the Claims Account; and
- (vi) deliver to London Guarantee two letters of credit, each in the initial amount of \$1,000,000.00, drawn on a Schedule 1 Canadian Chartered bank and having London Guarantee as its sole beneficiary, and entitling London Guarantee to draw thereunder upon presentation of a certification of a senior officer of London Guarantee stating that the Claims Account has been fully depleted, and that the amount drawn is required for the payment of a claim for loss or premium refund or a Loss Adjustment Expense due and payable in respect of the Policies, and that demand has been made of the appropriate reinsurer not less than seven days previously for the payment of such sum, and such sum has not been paid by such reinsurer (the “Letters of Credit”). The balance of one of the Letters of Credit (the “Declining Letter of Credit”) will decline in accordance with paragraph 2.2(e). The balance of

the other Letter of Credit (the “Fixed Letter of Credit”) will decline in accordance with paragraph 2.2(f).

- (b) London Guarantee will maintain and administer the Loss Adjustment Expense funds and the loss reserve fund referred to in subparagraph 2.2(a)(ii) above in accordance with the applicable Reinsurance Contract, and will maintain such loss reserve fund referred to above in a separate trust account in accordance with the requirements of the Reinsurance Contracts.
- (c) From and after Closing London Guarantee will have the authority to withdraw sums from the Claims Account solely for the purpose of satisfying and discharging claims for loss which are the Policy Liabilities and claims for premium refund which are Policy Liabilities, and for the purpose of paying Loss Adjustment Expenses provided that no such payment or withdrawal shall be made from the Claims Account in respect of Block 3 unless and until the loss reserve fund for Block 3 has been fully depleted, and no such payment or withdrawal shall be made from the Claims Account in respect of Loss Adjustment Expenses in respect of a Block unless and until the Loss Adjustment Expenses fund for such Block has been fully depleted, and provided further that no payment or withdrawal shall be made from the Claims Account in respect of a claim for loss unless demand has been made of the appropriate reinsurer in respect of such payment and funds have not been made available from such reinsurer within seven days of demand. After depletion of the Claims Account, London Guarantee may draw under the Declining Letter of Credit for the purpose specified in the immediately prior sentence and after the Declining Letter of Credit has been fully drawn down London Guarantee may draw under the Fixed Letter of Credit for the purpose specified in the immediately prior sentence. Funds ultimately paid by a reinsurer in respect of a claim initially satisfied from the Claims Account or the Letter of Credit will be deposited to the Claims Account by London Guarantee, or if the Claims Account is no longer in existence, will be paid by London Guarantee to the Liquidator. For so long as the Claims Account is in existence or either or both of the Letters of Credit are outstanding, within 30 days of the end of each calendar quarter after Closing,

London Guarantee will provide to the Liquidator a written report detailing payments made from the Claims Account or drawn under the Letters of Credit during such calendar quarter, amounts deposited to the Claims Account or paid to the Liquidator by London Guarantee during such calendar quarter, and the balance in the Claims Account and the undrawn balance of the Letters of Credit at the end of such calendar quarter.

- (d) The Liquidator shall cause the Actuaries to deliver to the Liquidator and London Guarantee, on or before the 60th day following each anniversary of Closing until all Policies have expired, a report setting out the Actuaries' assessment and valuation of the actuarial liabilities attributable to the Policy Liabilities as of such anniversary of Closing (each such report being a "Valuation"). Each Valuation will be prepared on a basis consistent with the Actuaries' report and valuation with respect to the Policies which was prepared by them as at December 31, 2001. If the valuation amount shown in the Valuation is less than the amount in the Claims Account as at the date which is 5 days after the delivery of such Valuation, London Guarantee shall withdraw from the Claims Account and pay to the Liquidator the amount of the difference.
- (e) On delivery of a Valuation, London Guarantee will deliver to the issuer of the Declining Letter of Credit a request that the Declining Letter of Credit be renewed for the following twelve month period in an amount equal to the lesser of (i) 18.93% of the valuation amount shown in the Valuation, less \$1,000,000.00 and (ii) the outstanding balance under the Declining Letter of Credit immediately prior to the renewal. The terms of the Declining Letter of Credit will provide for annual renewal on such terms.
- (f) Until drawn down, the Fixed Letter of Credit will renew annually in the amount of \$1,000,000.00. Once the Fixed Letter of Credit is drawn down, it will renew annually in the amount of its undrawn balance.
- (g) Sums in the Claims Account will be invested by London Guarantee at all times in debt obligations of the Government of Canada or the provinces thereof having a

term not exceeding 365 days. Interest income earned in the Claims Account shall be retained in and form part of the Claims Account. London Guarantee will earn and be entitled to deduct from the Claims Account on a quarterly basis (commencing the first calendar quarter after Closing) an investment fee of 25 basis points per year on the average balance in the Claims Account.

- (h) On the 180th day after the expiration of all Policies, the Claims Account, if then still in existence, will be closed and the balance therein will be remitted to the Liquidator, and London Guarantee will surrender the Letters of Credit for cancellation, subject to the Liquidator providing to London Guarantee cash or other security satisfactory to London Guarantee, acting reasonably, in an amount equal to the lesser of: (i) an amount sufficient to pay all amounts then still claimed by Persons in respect of Policy Liabilities, as evidenced by a certificate of a senior officer of London Guarantee which will be delivered to the Liquidator and which will itemize such claims and indicate the amount claimed under each claim, and (ii) the amount in the Claims Account to be remitted to the Liquidator pursuant to this paragraph 2.2(h) together with the undrawn balance of the Letters of Credit. If the Liquidator provides security in the amount described in clause (ii) above, then the Liquidator will be deemed to have provided security in respect of each claim in an amount equal to a percentage of the total amount provided by the Liquidator as security in respect of all such claims which corresponds to percentage which such claim is of all of the claims shown in the aforementioned officer's certificate. If the Liquidator provides security in the amount described in clause (i) above, it will be deemed to have provided security in respect of each claim in the amount equal to the amount shown as being claimed in respect of such claim in the aforementioned officer's certificate. As and when any such claim is resolved, London Guarantee will remit to the Liquidator the amount, if any, by which (i) the amount deemed to have been provided by the Liquidator as security in respect of the claim pursuant to the foregoing provisions exceeds (ii) the amount actually paid the claimant, less the reinsurance recovered in respect of the claim.

2.3 Records.

On Closing, the Liquidator shall transfer, convey and assign to London Guarantee all of its right, title and interest in the Records and shall deliver the Records to London Guarantee at a location in Toronto, Ontario specified by London Guarantee.

2.4 Assumption Certificates.

The Liquidator agrees, at its expense, to prepare and deliver to the holders of Policies an assumption certificate, in form acceptable to London Guarantee, acting reasonably, in respect of London Guarantee's assumption of the Policy Liabilities within sixty (60) days following the Closing.

2.5 Responsibility for Claims Arising From Administration.

For greater certainty, from and after the Closing and as between Reliance and the Liquidator on the one hand and London Guarantee on the other, London Guarantee will have all liability and responsibility for claims, damages, liabilities, costs or expenses (including claims for punitive damages) arising out of or attributable to London Guarantee's or the Administrator's (or any other administrator appointed by London Guarantee) administration, after Closing, of any liability expressly assumed by it pursuant to the provisions of this Agreement.

2.6 Reinsurance Contracts

After Closing, London Guarantee will diligently comply with its obligations under the Reinsurance Contracts, will not terminate the Reinsurance Contracts, will use all commercially reasonable efforts to collect amounts owing thereunder and keep the Liquidator informed of its collection efforts, and, if required by the Liquidator, will permit the Liquidator at its expense to commence legal action against a reinsurer failing to pay any amount alleged by the Liquidator to be owing under a Reinsurance Contract in the name and on behalf of London Guarantee, and will provide the Liquidator with all such cooperation in connection with any such legal action as the Liquidator may reasonably request.

2.7 Administration Agreement

It is acknowledged that the terms of the Administration Agreement have been approved by the Administrator and George Bilyk, but that such terms shall also require approval of AXA and Lloyd's. The parties hereto agree to use commercially reasonable efforts to obtain the approval of such reinsurers to such terms not less than seven (7) days prior to Closing. If the approval of the reinsurers to such terms has not been obtained at least seven (7) days prior to Closing as aforesaid, Reliance's rights under the Existing Administration Agreement will, with the consent of the Existing Administrators, be assigned to London Guarantee on the terms specified in clause (ii) of paragraph 7.1(d). After Closing, (a) the Administration Agreement, if entered into and approved by AXA and Lloyd's as aforesaid, or (b) the Existing Administration Agreement, if assigned as aforesaid, will not be amended in any manner which affects, or could reasonably be expected to impact upon, the Liquidator's rights and obligations hereunder without the Liquidator's prior written consent.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE LIQUIDATOR

3.1 Representations and Warranties.

The Liquidator hereby makes the following representations and warranties and acknowledges that London Guarantee is relying on such representations and warranties in entering into this Agreement:

- (a) Authority. KPMG Inc. was appointed Liquidator by order of the Court dated December 3, 2001, and such order remains in full force and effect. Subject only to obtaining the approval of the Court and notwithstanding the U.S. Proceedings, the Liquidator has the authority to enter into this Agreement and all other documents contemplated herein to which it is or will be a party, to perform the obligations of the Liquidator hereunder and thereunder, and to carry out the transactions contemplated hereby and thereby.
- (b) Validity of this Agreement. Notwithstanding the U.S. Proceedings but subject to obtaining the approval of the Court, this Agreement and all other documents

referred to herein to which the Liquidator is or will be a party are or will be as at Closing duly and validly executed and delivered and constitute or will at Closing constitute legal, valid and binding obligations of the Liquidator, enforceable against the Liquidator in accordance with the terms hereof and thereof.

- (c) Liquidator's Right to Transfer Records. Subject to obtaining the approval of the Court, the Liquidator has the right to transfer and assign Reliance's right, title and interest in the Records and the Policies and the Liquidator has not done any act to encumber, and shall not encumber, any of such Records or Policies, and nothing in the U.S. Proceedings affects or could affect the Liquidator's right to transfer and assign to London Guarantee its and Reliance's right, title and interest in the Records and the Policies.

ARTICLE IV LIMITATIONS ON REPRESENTATIONS AND WARRANTIES

4.1 Disclaimer of Liability re: Information.

The Liquidator does not make and shall not be deemed to make any representation or warranty as to the accuracy of any information which has been provided to London Guarantee (including, without limitation, the Records) or may after the date hereof be provided to London Guarantee in connection with the Policy Liabilities, and all liability resulting from reliance on such information by London Guarantee or others is hereby expressly and specifically disclaimed.

4.2 Survival.

The representations and warranties of the Liquidator contained in Section 3.1 shall survive the execution of this Agreement and Closing for a period of one (1) year from Closing.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES OF LONDON GUARANTEE**

5.1 Representations and Warranties.

London Guarantee hereby makes the following representations and warranties and acknowledges that the Liquidator is relying on such representations and warranties in entering into this Agreement:

- (a) Due Incorporation. London Guarantee is a company duly incorporated under the laws of Canada, has not been dissolved, is duly licensed to carry on business as an insurer in all of the provinces and territories of Canada, and possesses all such licenses as are required in all of the provinces and territories of Canada to be the insurer under the Policies. London Guarantee has the corporate authority to enter into this Agreement and all other documents contemplated herein to which it is or will be a party, and to perform the obligations of London Guarantee hereunder and thereunder, together with the transactions contemplated hereby and thereby.
- (b) Validity of Agreement. This Agreement and all other documents referred to herein to which London Guarantee is or will be a party are or will be as at Closing duly and validly executed and delivered and constitute or will as at Closing constitute legal, valid and binding obligations of London Guarantee, enforceable against London Guarantee in accordance with the terms hereof and thereof.

5.2 Survival.

The representations and warranties of London Guarantee contained in Section 5.1 shall survive the execution of this Agreement and Closing for a period of one (1) year from Closing.

**ARTICLE VI
INTERIM COVENANTS**

6.1 Conduct Prior to Closing.

During the period from the date of this Agreement to the Time of Closing, the Policy Liabilities will continue to be administered in the ordinary course pursuant to the Existing Administration Agreement.

6.2 Consents and Approvals.

The Liquidator shall forthwith use its reasonable efforts to ensure that as of the Time of Closing, the approval of the Court referred to in paragraph 7.1(c) has been obtained, and London Guarantee shall render, at the expense of the Liquidator, all such assistance in connection therewith as the Liquidator may reasonably request. Each of the Liquidator and London Guarantee shall forthwith use its reasonable efforts to ensure that as of the Time of Closing, the actions, consents and approvals listed in paragraphs 7.1(d), (e), (f), (g), (h) and (k) have been taken and obtained. As used herein, reasonable efforts shall not, except as expressly provided otherwise herein, include the obligation to expend any funds other than such administrative fees as may be charged by a Person from whom any action, consent or approval is sought, and legal fees.

ARTICLE VII CONDITIONS OF CLOSING IN FAVOUR OF LONDON GUARANTEE

7.1 Conditions.

The obligation of London Guarantee to complete the transactions provided for herein and otherwise perform the obligations of London Guarantee to be performed on and after Closing is subject to the fulfilment, performance and satisfaction of each of the conditions set forth below. The Liquidator acknowledges that the following conditions are for the exclusive benefit of London Guarantee:

- (a) Representations and Warranties. All representations and warranties of the Liquidator made in or pursuant to this Agreement shall be true and correct as at the Time of Closing with the same force and effect as if made at and as of such time and date, and London Guarantee shall have received on Closing a certificate from a senior officer of the Liquidator to such effect.

- (b) Performance of Covenants. The Liquidator shall have performed or complied with in all respects all of the obligations, covenants and agreements in this Agreement which are to be performed or complied with by the Liquidator at or prior to the Time of Closing, and London Guarantee shall have received on Closing a certificate from a senior officer of the Liquidator to such effect.

- (c) Court Approval. The Liquidator shall have obtained from the Court an order in a form satisfactory to London Guarantee acting reasonably approving this Agreement and the fulfilment of the Liquidator's obligations hereunder and vesting title in the Policies and the Records in London Guarantee and such order shall be in full force and effect on Closing.
- (d) Administration Agreement. Either: (i) London Guarantee, the Liquidator, the Administrator and George Bilyk shall have entered into the Administration Agreement and the reinsurers under the Reinsurance Contracts shall have approved the terms thereof, or (ii) Reliance's rights under the Existing Administration Agreement shall have been assigned to London Guarantee with the consent of the Existing Administrators and amended by incorporating therein the provisions set out in Sections 6.5 and 6.6 of the form of Administration Agreement attached as Schedule "A", making George Bilyk a party thereto, on substantially the same terms as those provided for in the form of Administration Agreement attached as Schedule "A" and changing the Administrator under the Existing Administration Agreement from the Existing Administrators to the Administrator, and the Existing Administrators and the Administrator shall have executed and delivered to London Guarantee a certificate in the form attached as Schedule "D".
- (e) Reinsurance Consulting Agreement. London Guarantee and George Bilyk shall have entered into a reinsurance consulting agreement in the form attached as Schedule "E".
- (f) Reinsurance. The Reinsurance Contracts shall have been fully executed, and all claims for set-off which have been asserted by Lloyd's under its existing reinsurance arrangements with Reliance pertaining to the Policies shall have been settled.
- (g) DFS Indemnity. London Guarantee shall have received from Deutsche Financial Services Canada Corporation an indemnity substantially in the form attached as Schedule "F" hereto.

- (h) Minister of Finance Approval. London Guarantee shall have obtained the approval of the Minister of Finance to the transactions contemplated herein pursuant to Section 254 of the Insurance Companies Act (Canada) or the Office of the Superintendent of Financial Institutions shall have confirmed in writing that such approval is not required.
- (i) No Action to Restrain. No action or proceeding seeking to restrain or prohibit completion of the transactions contemplated by this Agreement shall be pending in any court or before any governmental authority, body, agency or department.
- (j) DFS, Bilyk and Existing Administrators Confirmation. Deutsche Financial Services Canada Corporation, George Bilyk and the Existing Administrators shall have confirmed to London Guarantee in writing that the information provided to London Guarantee with respect to the Policies is, to the best of their knowledge, accurate and complete in all material respects.

7.2 Satisfaction or Waiver.

If any of the conditions set forth in this Article have not been fulfilled, performed and satisfied at or prior to the Closing Date, London Guarantee may, by written notice to the Liquidator, terminate all of its obligations hereunder, without prejudice to London Guarantee's right to claim for damages arising from the non-fulfilment or non-performance of any covenant of the Liquidator contained herein. Any of these conditions may be waived in whole or in part by London Guarantee by instrument in writing, without prejudice to any of its rights of termination in the event of non-performance of any other condition, obligation or covenant in whole or in part, and without prejudice to its right to complete the transactions contemplated by this Agreement and claim damages for breach of representation, warranty or covenant.

ARTICLE VIII CONDITIONS IN FAVOUR OF THE LIQUIDATOR

8.1 Conditions.

The obligations of the Liquidator to complete the transactions provided for herein and perform the other obligations to be performed by the Liquidator on or prior to Closing is subject to

the fulfilment, performance and satisfaction of each of the conditions set forth below. London Guarantee acknowledges that the following conditions are for the exclusive benefit of the Liquidator.

- (a) Representations and Warranties. All representations and warranties of London Guarantee made in or pursuant to this Agreement shall be true and correct as at the Time of Closing with the same force and effect as if made at and as of such time and date, and the Liquidator shall have received on Closing a certificate from a senior officer of London Guarantee to such effect.
- (b) Performance of Covenants. London Guarantee shall have performed or complied with in all respects all of the obligations, covenants and agreements in this Agreement which are to be performed or complied with by London Guarantee at or prior to the Time of Closing, and the Liquidator shall have received on Closing a certificate from a senior officer of London Guarantee to such effect.
- (c) Court Approval. The Liquidator shall have obtained an order of the Court in a form satisfactory to the Liquidator, acting reasonably, approving this Agreement and the fulfilment of the Liquidator's obligations hereunder, and confirming that from and after Closing, the Liquidator and Reliance shall have no liability in respect of Policy Liabilities.
- (d) Reinsurance. The Reinsurance Contracts shall have been fully executed.
- (e) Other Approvals. The approval or confirmation described in paragraph 7.1(h) shall have been obtained.
- (f) No Action to Restrain. No action or proceeding seeking to restrain or prohibit completion of the transactions contemplated by this Agreement shall be pending in any court or before any governmental authority, body, agency or department.

8.2 Waiver.

If any of the conditions set forth in this Article have not been fulfilled, performed and satisfied at or prior to the Closing Date, the Liquidator may, by written notice to London

Guarantee, terminate all of its obligations hereunder without prejudice to the Liquidator's right to claim for damages arising from the non-fulfilment or non-performance of any covenant of London Guarantee contained herein. Any of these conditions may be waived in whole or in part by the Liquidator by instrument in writing, without prejudice to any of its rights of termination in the event of non-performance of any other condition, obligation or covenant in whole or in part, and without prejudice to its right to complete the transactions contemplated by this Agreement and claim damages for breach of representation, warranty or covenant.

ARTICLE IX INDEMNIFICATION

9.1 Indemnification by the Liquidator.

The Liquidator shall indemnify and hold London Guarantee harmless from and against any claim, loss, damages, award, liabilities, costs or expenses (including reasonable legal fees) which may be made or brought against London Guarantee, or which London Guarantee may suffer or incur as a result of any:

- (a) inaccuracy in, or breach of, any of the Liquidator's representations or warranties set forth in Section 3.1 hereof;
- (b) any breach of any of the Liquidator's covenants hereunder

whether such claim, loss, damages, award, liabilities, costs or expenses (including reasonable legal fees) arise before or after Closing.

The indemnities set forth above will terminate on the first anniversary of Closing, provided that to the extent that such indemnities relate to covenants of the Liquidator, if any, that by their terms are to be performed by the Liquidator after Closing, such indemnities shall survive indefinitely. However, the termination of the indemnities set forth above will not extinguish the Liquidator's obligations thereunder with respect to damage or actions or claims of which the Liquidator is notified by London Guarantee prior to termination.

9.2 Indemnification by London Guarantee.

London Guarantee shall indemnify and hold the Liquidator harmless from and against any claim, loss, damages, award, liabilities, costs or expenses (including reasonable legal fees) which may be made or brought against the Liquidator, or which the Liquidator may suffer or incur as a result of:

- (a) any inaccuracy in, or breach of, any of London Guarantee's representations or warranties set forth in Section 5.1 hereof; or
- (b) any breach of a covenant of London Guarantee to be performed at or before Closing; or
- (c) the failure of London Guarantee to discharge any liability to be assumed by London Guarantee pursuant to the provisions of Article II, and the failure of London Guarantee to perform any covenant which by its terms is to be performed after Closing.

whether such claim, loss, damages, award, liabilities, costs or expenses (including reasonable legal fees) arise before or after Closing.

The indemnities set forth in paragraphs (a) and (b) above will terminate on the first anniversary of Closing, and the indemnity set forth in paragraph (c) will survive Closing indefinitely. However, the termination of the indemnities set forth in paragraphs (a) and (b) will not extinguish London Guarantee's obligations under such indemnities with respect to damage or actions or claims of which London Guarantee is notified by the Liquidator prior to termination.

9.3 Procedure for Indemnification.

- (a) Claims Other Than Third Party Claims. Following receipt from the Liquidator or London Guarantee, as the case may be (the "Indemnified Party"), of a written notice of a claim for indemnification which has not arisen in respect of a Third Party Claim (as defined in paragraph 9.3(b) below), the party who is in receipt of such notice (the "Indemnifying Party") shall have 30 days to make such investigation of the claim as the Indemnifying Party considers necessary or desirable. For the purpose of such investigation, the Indemnified Party shall make

available to the Indemnifying Party the information relied upon by the Indemnified Party to substantiate the claim. If the Indemnified Party and the Indemnifying Party agree at or prior to the expiration of such 30 day period (or any mutually agreed upon extension thereof) to the validity and amount of the claim, the Indemnifying Party shall immediately pay to the Indemnified Party the full agreed upon amount of the claim. If the Indemnified Party and the Indemnifying Party do not agree within such period (or any mutually agreed upon extension thereof), such dispute shall be resolved by arbitration as set out in Section 12.1.

- (b) Third Party Claims. The Indemnified Party shall notify the Indemnifying Party in writing as soon as is reasonably practicable after being informed in writing that facts exist which may result in a claim originating from a Person other than the Indemnified Party (a “Third Party Claim”) and in respect of which a right of indemnification given pursuant to Section 9.1 or Section 9.2 may apply. The Indemnifying Party shall have the right to elect, by written notice delivered to the Indemnified Party within 10 days of receipt by the Indemnifying Party of the notice from the Indemnified Party in respect of the Third Party Claim, at the sole expense of the Indemnifying Party, to participate in or assume control of the negotiation, settlement or defence of the Third Party Claim, provided that:
- (i) such will be done at all times in a diligent and bona fide manner;
 - (ii) the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in accordance with the terms contained in this Agreement in respect of that Third Party Claim; and
 - (iii) the Indemnifying Party shall pay all reasonable out-of-pocket expenses incurred by the Indemnified Party as a result of such participation or assumption.

If the Indemnifying Party elects to assume such control, the Indemnified Party shall cooperate with the Indemnifying Party and its counsel and shall have the right to participate in the negotiation, settlement or defence of such Third Party Claim at its own expense. If the

Indemnifying Party does not so elect or, having elected to assume such control, thereafter fails to proceed with the settlement or defence of any such Third Party Claim, the Indemnified Party shall be entitled to assume such control. In such case, the Indemnifying Party shall cooperate where necessary with the Indemnified Party and its counsel in connection with such Third Party Claim and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim. In no event, however, may the Indemnified Party settle a Third Party Claim without the prior written consent of the Indemnifying Party (which consent, in circumstances where the Indemnified Party has assumed control of the Third Party Claim, will not be unreasonably withheld).

9.4 Additional Rules and Procedures.

The obligation of the parties to indemnify each other pursuant to this Article IX shall also be subject to the following:

- (a) if any Third Party Claim is of a nature such that the Indemnified Party is required by applicable law to make a payment to any Person (a “Third Party”) with respect to such Third Party Claim before the completion of settlement negotiations or related legal proceedings, the Indemnified Party may make such payment and the Indemnifying Party shall, forthwith after demand by the Indemnified Party, reimburse the Indemnified Party for any such payment. If the amount of any liability under the Third Party Claim in respect of which such a payment was made, as finally determined, is less than the amount which was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party shall, forthwith after receipt of the difference from the Third Party, pay such difference to the Indemnifying Party; and
- (b) the Indemnifying Party and the Indemnified Party shall provide each other on an ongoing basis with all information which may be relevant to the other’s liability hereunder and shall supply copies of all relevant documentation promptly as they become available.

**ARTICLE X
CLOSING PROCEDURE**

10.1 Closing.

The Closing shall take place at the offices of Goodmans LLP at the Time of Closing.

10.2 Procedure.

At the Time of Closing, upon satisfaction of all of the conditions set out in Articles VII and VIII which have not been waived as provided therein, the Liquidator shall make the payment required by Article II, and the Liquidator and London Guarantee shall do such other things and execute and deliver such other documents as are required hereunder to be done and executed on Closing.

**ARTICLE XI
CONFIDENTIALITY AND RECORDS**

11.1 Non-Disclosure of Reliance Information.

Any non-public information that London Guarantee may obtain from the Liquidator in connection with or in the course of the negotiation of and/or entry into this Agreement and any information relating to the negotiation or terms of this Agreement, shall be deemed confidential and London Guarantee shall not disclose any such information to any third party (other than its directors, officers and employees and representatives of its advisors whose knowledge thereof is necessary in order to facilitate the consummation of the transactions contemplated hereby and the discharge of its obligations related hereto) or use such information to the detriment of Reliance or the Liquidator; provided that:

- (a) London Guarantee may use and disclose any such information which has been publicly disclosed (other than by London Guarantee in breach of its obligations hereunder) or which has rightfully come into the possession of London Guarantee (other than from Reliance or the Liquidator);
- (b) London Guarantee may use and disclose any such information to the extent reasonably considered by it to be necessary to obtain the approvals listed in Section 7.1; and

- (c) to the extent that London Guarantee may be compelled by legal or regulatory requirements to disclose any of such information, London Guarantee may disclose such information if it shall have used all reasonable efforts to obtain and shall have afforded the Liquidator the opportunity to obtain an appropriate protective order or other satisfactory assurance of confidential treatment for the information compelled to be disclosed.

In the event of termination of this Agreement, London Guarantee shall use all reasonable efforts to cause to be delivered to the Liquidator, and shall retain no copies of, any documents, work papers and other materials obtained by London Guarantee or on its behalf from the Liquidator, pursuant to or in connection with this Agreement or the negotiation of this Agreement whether so obtained before or after the execution hereof.

The foregoing obligations of London Guarantee shall cease to apply to information pertaining to the Policy Liabilities upon Closing and shall terminate in their entirety on December 31, 2005.

11.2 Non-Disclosure of London Guarantee Information.

Any non-public information that the Liquidator may obtain from London Guarantee in connection with or in the course of the negotiation of and/or entry into this Agreement and any information relating to the negotiation or terms of this Agreement, shall be deemed confidential and the Liquidator shall not disclose any such information to any third party (other than employees of the Office of the Superintendent of Financial Institutions, employees of the U.S. liquidator of Reliance, the Liquidator's directors, officers and employees and such representatives of its advisors whose knowledge thereof is necessary in order to facilitate the consummation of the transactions contemplated hereby, and inspectors appointed in connection with the liquidation of Reliance), or use such information to the detriment of London Guarantee; provided that:

- (i) The Liquidator may use and disclose any such information which has been publicly disclosed (other than by the Liquidator in breach of his obligations hereunder) or which has rightfully come into the possession of the Liquidator (other than from London Guarantee);

- (ii) The Liquidator may use and disclose any such information to the extent reasonably considered by it to be necessary to obtain the approvals listed in Section 8.1; and
- (iii) to the extent that the Liquidator may be compelled by legal or regulatory requirements to disclose any of such information, the Liquidator may disclose such information if it shall have used all reasonable efforts to obtain, and shall have afforded London Guarantee the opportunity to obtain, an appropriate protective order or other satisfactory assurance of confidential treatment for the information compelled to be disclosed.

In the event of termination of this Agreement, the Liquidator shall use all reasonable efforts to cause to be delivered to London Guarantee, and shall retain no copies of, any documents, work papers and other materials obtained by the Liquidator from London Guarantee pursuant to or in connection with this Agreement or the negotiation of this Agreement, whether so obtained before or after the execution hereof.

The foregoing obligations of the Liquidator will terminate on December 31, 2005.

11.3 Retention of Records.

London Guarantee shall retain the Records for the periods required by law, and shall keep the Liquidator advised of the location of such Records. London Guarantee shall permit the Liquidator and its representatives to inspect such Records at any time, upon reasonable notice, during normal business hours. If London Guarantee intends to destroy any Records it shall first so notify the Liquidator and afford it the opportunity to take copies of the Records to be destroyed.

ARTICLE XII ARBITRATION

12.1 Arbitration.

Any controversy or claim arising out of or relating to this Agreement or any agreement delivered pursuant hereto, shall be settled by arbitration in accordance with the following procedures:

- (i) Arbitration shall proceed in accordance with the rules for the conduct of arbitrations of the Arbitration and Mediation Institute of Ontario Inc. (the “Rules”) in effect at the date of commencement of such arbitration by one arbitrator (the “Arbitrator”) appointed by the parties hereto, or failing agreement within five Business Days of one party giving notice to the other that it wishes a controversy or a claim hereunder to be resolved through arbitration, appointed in accordance with the Rules.
- (ii) If there are no Rules in effect at the date of the commencement of the arbitration, the arbitration shall proceed in accordance with the *Arbitration Act, 1991* (the “Act”) as may be amended from time to time.
- (iii) The arbitration shall take place in the City of Toronto unless otherwise agreed in writing by the parties hereto.
- (iv) The procedures and substance of the arbitration shall be governed by the laws of the Ontario.
- (v) The language to be used in the arbitration shall be English.
- (vi) Where a controversy or disagreement is to be referred to arbitration pursuant hereto, the making of an award by the Arbitrator shall be a condition precedent of any right of action by either of the parties hereto, or their successors or assigns against the other party or its successors or assigns.
- (vii) The Arbitrator shall have the right to determine all questions of law and jurisdiction including questions as to whether a claim is arbitrable and shall have the right to grant final and interim damages awards and shall have the discretion to award costs including reasonable legal fees and expenses, reasonable expert fees and expenses, reasonable witnesses’ fees and expenses, pre-award and post-award interest and the costs of the arbitration.

- (viii) The award of the Arbitrator shall be final and binding on the parties hereto and their successors and assigns. There is no right of appeal from the Arbitrator's award. The parties hereto shall be bound by any award granted by the Arbitrator and the parties hereto consent to judgment upon the award granted by the Arbitrator being entered in any court of competent jurisdiction.

ARTICLE XIII GENERAL

13.1 Failure to Deliver Assumption Certificates.

London Guarantee agrees that the failure to deliver any assumption certificate as provided herein shall not in any manner eliminate, reduce or alter any of its obligations under this Agreement, and further agrees not to raise in any manner, or in any forum, judicial or otherwise, such failure as a defence to its failure, actual or alleged, to satisfy in full its obligations hereunder.

13.2 Access.

After Closing, the Liquidator shall on reasonable prior notice be provided with such access to London Guarantee's books and records with respect to the Policy Liabilities (and London Guarantee's activities in connection therewith) as is necessary to enable the Liquidator to confirm London Guarantee's compliance with this Agreement.

13.3 Public Disclosure.

No public disclosure of any kind shall be made or permitted in respect of the subject matter of this Agreement by any party without consultation with and the written consent of the other party (such consent not to be unreasonably withheld). Notwithstanding the foregoing, a party may without the other party's consent make such disclosure of this Agreement as is required by law, the regulations of any stock exchange, or in connection with obtaining the consent and approvals listed in Sections 7.1 and 8.1, or to any third party to whom a party is expressly permitted to provide information pursuant to Section 11.1 or Section 11.2.

13.4 Notice.

All notices required or permitted by this Agreement shall be in writing and delivered by hand or sent by facsimile transmission to:

The Liquidator:

Address: KPMG Inc.
Suite 3300,
Commerce Court West
Toronto, Ontario
M5L 1B2

Attention: Robert O. Sanderson
Fax Number: (416) 777-3683

with a copy to: Goodmans LLP
250 Yonge Street, Suite 2400
Toronto, Ontario
M5B 2M6

Attention: Daniel J. Gormley
Fax Number: (416) 979-1234

London Guarantee:

Address: 77 King Street West,
Royal Trust Tower, 34th Floor,
Toronto, Ontario
M5K 1K2

Attention: Vice-President, Special Risk and Corporate Communications
Fax Number: (416) 360-8267

or at such other address or fax number of which the addressee may from time to time have notified the addressor. A notice shall be deemed to have been sent and received on the day it is delivered by hand or on the day on which transmission is confirmed, if telecopied. If such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice shall be deemed to have been sent and received on the next Business Day.

13.5 Costs.

Except as otherwise provided in this Agreement, each party shall be responsible for its own fees, expenses, and other costs incurred in connection with the transactions contemplated hereby.

13.6 Time of the Essence.

Time is of the essence to every provision of this Agreement. Extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

13.7 Further Acts.

The parties acknowledge that their co-operation is required to facilitate the Closing. The parties shall do or cause to be done all such further acts and things as may be necessary or desirable to give full effect to this Agreement.

13.8 Jurisdiction.

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein. Each party hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

13.9 Amendment.

This Agreement may be amended only by written agreement of the parties.

13.10 Waiver.

No waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence or forbearance by a party shall constitute a waiver of such party's right to insist on performance in full and in a timely manner of all covenants in this Agreement. Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement at any time.

13.11 Entire Agreement.

This Agreement and the Schedules attached to this Agreement constitute the entire agreement among the parties pertaining to all the matters herein.

13.12 Severability.

If any provision of this Agreement is invalid or unenforceable, such provision shall be severed and the remainder of this Agreement shall be unaffected thereby but shall continue to be valid and enforceable to the fullest extent permitted by law.

13.13 Counterparts.

This Agreement may be executed in one or more counterparts which, together, shall constitute one and the same Agreement. This Agreement shall not be binding upon any party until it has been executed by each of the parties and delivered to all other parties.

13.14 Assignment.

Neither this Agreement nor any rights or obligations hereunder may be assigned, directly or indirectly, by any party without the prior written consent of the other parties, except as expressly provided herein. Any assignment without such consent shall be null and void. Notwithstanding the foregoing, after Closing the Liquidator may, without consent, assign its rights hereunder to the liquidator in the United States of Reliance Insurance Company.

13.15 Enurement and Binding Effect.

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, heirs, executors, administrators, personal representatives and permitted assigns.

13.16 Third Party Beneficiaries.

Except as expressly set forth herein, each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person, other than the parties hereto, and that no Person other than the parties hereto, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.


13.17 Recourse

The Liquidator shall have no personal liability under or by virtue of this Agreement, whether in contract, tort or under any other legal or equitable theory, and London Guarantee's recourse in respect of the representations, warranties and covenants contain herein will be limited to the assets under the control of the Liquidator pursuant to the order of the Court referred to in Recital B hereof.


[The remainder of page has been intentionally left blank.]

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

LONDON GUARANTEE INSURANCE COMPANY

Per: 

I have authority to bind the Corporation

Per: 

I have authority to bind the Corporation
George Petropoulos
Executive Vice-President & C.U.O.

KPMG INC. in its capacity as liquidator of the Insurance Business in Canada of Reliance Insurance Company and not in its personal capacity.

Per: _____
I have authority to bind the Corporation

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

LONDON GUARANTEE INSURANCE COMPANY

Per:

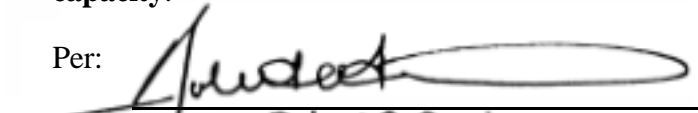
I have authority to bind the Corporation

Per:

I have authority to bind the Corporation

KPMG INC. in its capacity as liquidator of the Insurance Business in Canada of Reliance Insurance Company and not in its personal capacity.

Per:



I have authority to bind the Corporation
Robert C. Salmon
President

SCHEDULE "A"
ADMINISTRATION AGREEMENT

(Attached)

PROGRAM ADMINISTRATOR AND CONSULTING AGREEMENT

AMONG

LONDON GUARANTEE INSURANCE COMPANY

AND

3768279 CANADA INC.

AND

GEORGE BILYK

AND

KPMG INC.

TABLE OF CONTENTS

	Page
ARTICLE 1 INTERPRETATION	2
ARTICLE 2 APPOINTMENT OF ADMINISTRATOR AND BILYK	3
ARTICLE 3 TERM OF APPOINTMENT	3
ARTICLE 4 LIMITS OF AUTHORITY	3
ARTICLE 5 GENERAL AUTHORITY	4
ARTICLE 6 CLAIMS AUTHORITY	7
ARTICLE 7 ACCOUNTING AND STATISTICAL REPORTING AUTHORITY	8
ARTICLE 8 TERRITORY	10
ARTICLE 9 COMPENSATION AND EXPENSE ADJUSTMENTS	10
ARTICLE 10 RECORD KEEPING	10
ARTICLE 11 ADVERTISING	11
ARTICLE 12 [INTENTIONALLY OMITTED]	11
ARTICLE 13 SUSPENSION OF AUTHORITY	11
ARTICLE 14 TERMINATION OF AGREEMENT	12
ARTICLE 15 OWNERSHIP OF EXPIRATIONS	15
ARTICLE 16 CURRENCY	16
ARTICLE 17 INDEPENDENT CONTRACTOR RELATIONSHIP	16
ARTICLE 18 INDEMNIFICATION	16
ARTICLE 19 NON-ASSIGNABILITY	17
ARTICLE 20 NOTICE	17
ARTICLE 21 SERVICE OF PROCESS	19
ARTICLE 22 WAIVER	19
ARTICLE 23 CONFLICT OF LAW AND SEVERABILITY	19
ARTICLE 24 CONFIDENTIALITY OF INFORMATION	19
ARTICLE 25 AMENDMENTS	20
ARTICLE 26 MISCELLANEOUS	20
ARTICLE 27 BINDING ARBITRATION	21

An extra section break has been inserted above this paragraph. Do not delete this section break if you plan to add text after the Table of Contents/Authorities. Deleting this break will cause Table of Contents/Authorities headers and footers to appear on any pages following the Table of Contents/Authorities.

PROGRAM ADMINISTRATOR AND CONSULTING AGREEMENT

THIS AGREEMENT is entered into as of the • day of •, 2002

AMONG:

LONDON GUARANTEE INSURANCE COMPANY
(hereinafter referred to as “London Guarantee”)

OF THE FIRST PART

- and -

3768279 CANADA INC.
(hereinafter referred to as “Administrator”)

OF THE SECOND PART

- and -

GEORGE BILYK
(hereinafter referred to as “Bilyk”)

OF THE THIRD PART

- and -

KPMG INC., in its capacity as liquidator of
the insurance business in Canada of
RELIANCE INSURANCE COMPANY
and not in its personal capacity
(hereinafter referred to as the “Liquidator”)

OF THE FOURTH PART

WHEREAS London Guarantee has assumed the Policy Liabilities (as defined herein) pursuant to an assumption reinsurance agreement dated the date hereof between London Guarantee and the Liquidator (the “Assumption Reinsurance Agreement”);

AND WHEREAS Administrator will be responsible for the administration of all Policies (as defined herein) in accordance with the terms of this Agreement and will perform the administrative duties relating to the adjustment and processing of claims;

AND WHEREAS Bilyk will, in its capacity as a consultant to London Guarantee, assist in managing the relationship between London Guarantee and the Reinsurers (as defined herein);

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements as set forth in this Agreement, the parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 DEFINITIONS

In this Agreement, except as otherwise expressly provided, capitalized words or expressions shall have the following meanings set out below:

“Agreement” means this Agreement, including the Recitals and Exhibits and the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement

“Closing” has the meaning set forth in the Assumption Reinsurance Agreement;

“Dealer” means any person who was authorized by Administrator or Reliance to sell Policies;

“Former Program Administrator’s Agreement” means the program administrator’s agreement between Administrator and Reliance dated November 1, 1995, as amended;

“Net Dealer Cost” means the consideration paid by the Dealer to Administrator for the Policies, which amount includes, without limitation, the premium reserves, commissions and administrative and marketing fees;

“Policies” has the meaning set forth in the Assumption Reinsurance Agreement;

“Policyholder” or **“Contract Holder”** means the owner of any Policy;

“Reinsurance Contracts” has the meaning set forth in the Assumption Reinsurance Agreement;

“Reinsurers” means Lloyd’s Underwriters and AXA Pacific Insurance Company; and

“Reliance” means Reliance Insurance Company.

ARTICLE 2
APPOINTMENT OF ADMINISTRATOR AND BILYK

2.1 London Guarantee hereby appoints Administrator, subject to the provisions of this Agreement, and Administrator hereby accepts such appointment, as London Guarantee's administrator to directly or indirectly administer the Policies and handle all claims for the Policies pursuant to this Agreement.

2.2 London Guarantee hereby engages Bilyk, and Bilyk hereby accepts such engagement, to act as a consultant to London Guarantee and to manage the relationship between London Guarantee and the Reinsurers in accordance with the terms set forth herein.

2.3 In consideration of this appointment and engagement, each of London Guarantee, Administrator and Bilyk agrees to act in good faith and to use their best efforts, knowledge, skill, and judgment in the faithful performance of this Agreement.

ARTICLE 3
TERM OF APPOINTMENT

3.1 This Agreement shall commence immediately upon execution of this Agreement and shall apply to all Policies. This Agreement shall continue in full force and effect until terminated as hereinafter provided.

ARTICLE 4
LIMITS OF AUTHORITY

4.1 Each of Administrator and Bilyk agrees that it does not have express authority to act and that it will not do any of the following acts on behalf of London Guarantee without London Guarantee's prior written consent:

- (a) make, alter, waive or modify any of the terms, conditions or limitations of the Policies unless required to do so under applicable law or as otherwise expressly permitted under this Agreement;
- (b) obligate London Guarantee in any way to any agreement of any kind, except as expressly permitted under this Agreement;
- (c) incur any indebtedness, liability, expense, debt or obligation on behalf of London Guarantee, except as expressly permitted under this Agreement; or
- (d) waive any rights possessed by London Guarantee.

4.2 London Guarantee agrees that it does not have express authority to act and that it will not do any of the following acts on behalf of Administrator or Bilyk without Administrator's or Bilyk's prior written consent, as the case may be:

- (a) obligate Administrator or Bilyk in any way to any agreement of any kind, except as expressly permitted under this Agreement;
- (b) incur any indebtedness or liability on behalf of Administrator or Bilyk, except as expressly permitted under this Agreement; or
- (c) waive any rights possessed by Administrator or Bilyk.

ARTICLE 5 GENERAL AUTHORITY

5.1 This Agreement is expressly conditioned upon the Policies being fully insured at all times by London Guarantee. Adequate loss reserves with respect to such insurance shall be held by London Guarantee. Upon the termination of any Policy issued under this Agreement, Administrator shall notify all necessary government agencies, certificate holders, Contract Holders, and any other person or entity to whom Administrator has certified coverage or provided evidence of insurance if required under then-current federal or provincial laws or regulations.

5.2 Administrator is authorized and agrees to perform, directly or indirectly, the following activities on behalf of London Guarantee:

- (a) ensure the availability of adequate supplies and equipment to support the Policies;
- (b) provide all the usual and customary services to Policyholders, Contract Holders, insurance agents, solicitors, providers or brokers; and premium finance companies including, but not limited to, policy and contract information, delivery of Policies, and return of the Net Dealer Cost, if any, which is due to Policyholders or Contract Holders upon cancellation of their Policy;
- (c) prepare timely draft responses to consumer complaints accompanied by all relevant supporting documentation for London Guarantee's use;
- (d) cancel, not renew, or otherwise terminate Policies in accordance with all applicable federal, provincial, and local laws, contract and policy provisions, and the rates and rules established for the administration of the Policies;
- (e) maintain copies of all binders, Policies, certificates, endorsements, reinstatements, cancellations, non-renewals, and any other terminations processed by Administrator under this Agreement for a period of seven years and make them available for inspection by London Guarantee and any provincial or federal regulator upon reasonable notice;

- (f) be liable for and pay any and all costs and expenses associated with Administrator's performance under this Agreement including, but not limited to, Administrator's business expenses; claims expenses incurred pursuant to Article Six; any and all expenses incurred by Administrator related to or associated with commissions earned by Dealers; employees' compensation and benefits, and other related expenses; rent; travel expenses; postage; office supplies, maintenance of all Policies; license and registration fees; bond expenses; any other fees; and all other administrative expenses of whatever nature;
- (g) maintain competent, trained personnel to administer and supervise the Policies including ensuring that it and its personnel are sufficiently knowledgeable about the Policies to explain accurately to any Policyholder and Contract Holder the scope of the coverage provided and the Policy exclusion and limitations;
- (h) stay abreast of, and comply fully with, all applicable federal and provincial laws and regulations currently in effect or hereinafter enacted affecting the Policies;
- (i) upon receipt, promptly forward to London Guarantee all communications received from any federal, provincial, local executive or judicial branch official affecting Policies and cooperate fully with London Guarantee in preparing timely and appropriate responses and providing all relevant supporting documentation;
- (j) obtain and provide London Guarantee, upon request, with copies of all licenses and permits required by Administrator for the proper conduct of its duties under this Agreement;
- (k) safeguard and maintain the confidentiality of any proprietary information provided by London Guarantee to Administrator under this Agreement. London Guarantee similarly agrees to safeguard and maintain the confidentiality of any proprietary information provided by Administrator to London Guarantee under this Agreement; and
- (l) cancel or otherwise terminate Policies bound or written by or through Administrator as required by applicable underwriting standards and consistent with applicable regulatory and Policy conditions. London Guarantee shall always retain the right to direct the cancellation or termination of Policies by Administrator or to cancel or terminate Policies by Administrator or to cancel or terminate Policies by direct notice to insureds or, Policyholders. Administrator shall not make, permit or cause general or

indiscriminate cancellations, terminations or replacements of Policies. Administrator shall be responsible for notifying governmental agencies or other persons for whom Administrator has certified coverage or provided evidence of insurance.

5.3 Bilyk is authorized and agrees to perform the following activities on behalf of London Guarantee:

- (a) coordinate all reporting to Administrator, London Guarantee, the Reinsurers and the Liquidator;
- (b) act as the liaison between Administrator, London Guarantee, the Reinsurers and the Liquidator;
- (c) arrange for any special acceptances/ex-gratia payments with the Reinsurers;
- (d) perform regular audits on the claims handling process to ensure compliance with all regulatory requirements;
- (e) stay abreast of, and comply fully with, all applicable federal and provincial laws and regulations currently in effect or hereinafter enacted affecting the Policies;
- (f) safeguard and maintain the confidentiality of any proprietary information provided by London Guarantee to Bilyk under this Agreement. London Guarantee similarly agrees to safeguard and maintain the confidentiality of any proprietary information provided by Bilyk to London Guarantee under this Agreement; and
- (g) be liable for and pay any and all costs and expenses associated with his performance under this Agreement including, but not limited to, his business expenses; rent; travel expenses; postage; office supplies, license and registration fees; bond expenses; any other fees; and all other administrative expenses of whatever nature.

5.4 Each of Administrator and Bilyk has no authority to perform, nor shall it represent itself as having such authority to perform, nor shall it do any of the following activities:

- (a) hold itself out as an agent of London Guarantee unless properly licensed to do so in the applicable jurisdiction for any purpose not specifically authorized in this Agreement;
- (b) institute, prosecute, defend, or maintain any legal action or proceeding affecting London Guarantee or its interests unless otherwise specifically provided for in this Agreement. However, London Guarantee shall cooperate with Administrator in asserting

its collection rights against any Dealers in respect of its outstanding Net Dealer Costs; and

- (c) transact business in violation of any federal, provincial, or local law or in a manner contrary to the provisions of this Agreement.

ARTICLE 6 CLAIMS AUTHORITY

6.1 London Guarantee grants Administrator authority as provided in this Agreement, and Administrator hereby agrees to: investigate, adjust, compromise, settle, retain legal counsel to defend, approve, or deny claims against London Guarantee and, upon receipt of funds from the Reinsurers, pay all losses and allocated expenses under any Policy in accordance with the provisions set forth herein.

6.2 London Guarantee and any insurance regulatory authority shall have reasonable access to, and the right to copy, any of Administrator's claim files related to the Policies.

6.3 Administrator shall send or otherwise provide London Guarantee with access to a copy of any claim file upon London Guarantee's request.

6.4 Administrator shall give prompt written notice to London Guarantee of all claims involving any Policyholder or Contract Holder or a third party complaint or any action with any court or regulatory authority alleging bad faith or similar tort or any violation of any unfair or deceptive insurance claims settlement practices prohibited by statute or regulation

6.5 Administrator shall continue to maintain the imprest account that was established in connection with the Former Program Administrator's Agreement. Administrator shall pay all current claims using the funds in the imprest account. Administrator shall replenish the imprest account with the funds received by the Administrator from the Reinsurers for that purpose.

6.6 Immediately upon receipt by Bilyk of the information provided by Administrator pursuant to Section 7.2, Bilyk shall provide such information to the Reinsurers, as appropriate, and arrange for the payment by the Reinsurers of all claims within the timelines specified in the appropriate Reinsurance Contract. Administrator shall provide wire instructions to Bilyk, who shall instruct the Reinsurers where to transfer the funds to Administrator. Bilyk shall be solely responsible for following up on any outstanding claims payments and shall advise Administrator and London Guarantee immediately of any issue that shall cause a delay in the receipt of the funds by Administrator.

6.7 The Administrator shall, at the request of the Liquidator, account for the interest account and provide evidence that the balance of the imprest account is being

used solely to pay for claims under the Policies and said funds are held separately and apart from the general funds of the Administrator. The amount of the imprest account and any paid claims that have not been reimbursed shall be equal to amount originally advanced by Reliance, in the amount of \$300,000.

6.8 The amount of the imprest account will be returned to the Liquidator upon the earlier of termination of this agreement according to its terms or the expiry of the term of all of the Policies.

ARTICLE 7 ACCOUNTING AND STATISTICAL REPORTING AUTHORITY

7.1 Bilyk shall provide an accounting to London Guarantee as follow:

- (1) Bilyk shall provide any and all financial and statistical reports, either on a summary or transactional level, including a bordereau, as may be required by London Guarantee, the Reinsurers or the Liquidator, in the form and with the content required by such person. Bilyk shall ensure that any and all financial and statistical information is accurately coded, input, and balanced. Bilyk shall support London Guarantee in identifying and correcting any reconciliation issues which may emerge upon review by London Guarantee of the financial and statistical reports prepared by Bilyk.
- (2) The financial and statistical information prepared by Bilyk pursuant to this Section 7. 1, including a bordereau, shall be provided to London Guarantee and the Liquidator within thirty (30) days after the end of each calendar month.
- (3) Bilyk shall maintain complete and accurate accounting records in accordance with usual and customary accounting practices and/or as may be requested by London Guarantee.

7.2 Administrator shall collect all Net Dealer Costs, taxes, and any other funds due to London Guarantee and others on all Policies and provide an accounting to London Guarantee as follows:

- (1) Administrator shall provide any and all claims information, either on a summary or transactional level, including a bordereau, as may be required by London Guarantee, the Reinsurers or the Liquidator, in the form and with the content required by such person. Administrator shall ensure that any and all claims information is accurately coded, input, and balanced. Administrator shall support London Guarantee in identifying and correcting any reconciliation issues which may emerge upon review by London Guarantee of the claims reports prepared by Administrator.

- (2) The claims information prepared by Administrator pursuant to this Section 7.2, including a bordereau, shall be provided simultaneously to London Guarantee, Bilyk and the Liquidator within thirty (30) days after the end of each calendar month.
- (3) Administrator shall maintain complete and accurate accounting records in accordance with usual and customary accounting practices and/or as may be requested by London Guarantee.

7.3 Throughout the term of this Agreement and for as long after its termination as London Guarantee deems necessary, London Guarantee shall have access to, the right to copy, and the right to audit at its expense all of Administrator's or Bilyk's accounts and records related to business under this Agreement in a form usable by London Guarantee. Audits may be conducted at Administrator's offices, or wherever Administrator's or Bilyk's accounts and records may be located, during normal business hours, at such times and frequency as London Guarantee deems appropriate, upon reasonable prior notice. An audit may include, but not be limited to, the right to visit, inspect, examine, and verify any accounts, files, documents, books, reports, work papers, and other records, in whatever form, or property belonging to, or in the possession or control of Administrator, Bilyk or any other person regarding the Policies. Bilyk shall conduct regular audits on the claims-handling process. London Guarantee may conduct such additional audits through any person or persons it may designate, subject to Administrator's consent which consent will not be unreasonably withheld. Administrator may make copies and extracts of its accounting records as may be reasonably necessary

7.4 Throughout the term of this Agreement and for as long after its termination as Administrator deems necessary, Administrator shall have access to, the right to copy, and the right to audit at its expense all of London Guarantee's accounts and records related to business under this Agreement in a form usable by Administrator. Audits may be conducted at London Guarantee's offices, or wherever London Guarantee's accounts and records may be located, at such times and frequency as Administrator deems appropriate, upon reasonable prior notice. An audit may include, but not be limited to, the right to visit, inspect, examine, and verify any accounts, files, documents, books, reports, work papers, and other records, in whatever form, or property belonging to, or in the possession or control of London Guarantee or any other person regarding business written under this Agreement. Administrator may conduct such audits through any person or persons it may designate, subject to London Guarantee's consent which consent will not be unreasonably withheld. London Guarantee may make copies and extracts of its accounting records as may be reasonably necessary

7.5 If Administrator or Bilyk is substantially and materially delinquent in either accounting for or paying any sums due to London Guarantee under this Agreement, London Guarantee may immediately suspend or terminate Administrator's or Bilyk's authority under this Agreement in accordance with Article 13 or Article 14.

ARTICLE 8 TERRITORY

8.1 Administrator and Bilyk are appointed and authorized to perform all of their duties and responsibilities under this Agreement in all of the provinces of Canada in which London Guarantee is properly licensed, admitted, registered or eligible to write insurance.

ARTICLE 9 COMPENSATION AND EXPENSE ADJUSTMENTS

9.1 Administrator's sole and complete compensation for the performance of all of its duties and responsibilities under this Agreement shall be the compensation payable by the Liquidator in accordance with the terms of the Former Program Administrator's Agreement.

9.2 For policy cancellations or endorsements resulting in premium or contract charge refunds to Policyholders and Contract Holders or to premium finance companies, Administrator shall be responsible for refunding to the appropriate parties the entire amount of any of Administrator's amounts of commissions paid or allowed on the returned premium or contract charge, including any commissions retained by Dealers.

ARTICLE 10 RECORD KEEPING

10.1 During the term of this Agreement and for seven (7) years after its termination, or for such longer period as may be required by law, Administrator shall maintain separate, identifiable, orderly, accurate, complete, and timely records and accounts of all business and transactions relating to the Policies including, but not limited to, complete policy, underwriting, claims, accounting, premium, and banking records. All such records shall be the property of London Guarantee whether paid for by it or not. At the end of the seven year records retention period, Administrator shall so notify London Guarantee and forward the records to London Guarantee or otherwise dispose of them in accordance with London Guarantee's written instructions. Administrator retains all rights to copy and maintain such records.

10.2 Administrator shall retain all records described in Subsection 10.1 above in hard copy or electronic form, microfilm, or other generally accepted information storage and retrieval medium along with an appropriate and secure back-up copy for the entire records retention period. If any electronic underwriting or claims files are used by Administrator, all relevant data shall be transmitted or otherwise made available to London Guarantee in a prompt and timely manner.

10.3 Upon the request of any regulatory agency, Administrator shall permit regulators access to all Administrator's books, bank accounts, and records in a form usable to the regulators.

10.4 Administrator shall maintain a register and an appropriate record of all voided Policies.

10.5 London Guarantee shall have access to and the right to examine any and all of Administrator's and Bilyk's accounts and records pertaining to the Policies or the business transacted under this Agreement at all reasonable times and to make copies of any such accounts and records in a form usable by London Guarantee. London Guarantee shall not make available or share records with any other entity without the express written consent of Administrator and Bilyk.

10.6 The parties hereto acknowledge and agree that the books, records and accounts pertaining to Policies and maintained by Administrator in accordance with the Former Program Administrator's Agreement shall be the property of London Guarantee.

ARTICLE 11 ADVERTISING

11.1 None of Administrator, Bilyk or their representatives may use any of London Guarantee's trademarks, service marks, symbols, or letterheads in any advertisement, circular, pamphlet, illustration, or other publication without the prior written consent of London Guarantee or as otherwise authorized under this Agreement.

ARTICLE 12

[Intentionally Omitted]

ARTICLE 13 SUSPENSION OF AUTHORITY

13.1 Upon written notice to Administrator or Bilyk, as the case may be, London Guarantee may immediately suspend or amend any or all of Administrator's or Bilyk's authority under this Agreement for such time as London Guarantee may deem necessary to protect its interests or reputation should any of the following occur:

- (a) initiation of any proceedings against Administrator or any of its executive officers or Bilyk by a federal, provincial, or local regulatory agency relating to Administrator's or Bilyk's duties as an insurance agent, broker, provider or administrator that reflects adversely on the honesty or integrity of Administrator or any of its executive officers or Bilyk;
- (b) indictment of Administrator or any of its executive officers or Bilyk by any federal, provincial, or local law enforcement agency for violations of any criminal law relating to Administrator's or Bilyk's duties as an insurance agent, broker, provider or administrator, as applicable, that reflects adversely on the honesty

or integrity of Administrator or any of its executive officers or Bilyk; and

- (c) fraudulent practices or material default or delinquency of Administrator or Bilyk in the performance of its administrative, claims, or accounting responsibilities pursuant to this Agreement.

13.2 With respect to Subsection 13.1(c), above, London Guarantee is required to grant Administrator or Bilyk, as the case may be, a cure period of ninety (90) days in writing to correct the material default or delinquency of Administrator or Bilyk in its responsibilities identified by London Guarantee. If Administrator or Bilyk, as the case may be, does not correct the material default or the delinquency within the specified cure period to London Guarantee's satisfaction, then London Guarantee may suspend or amend any or all of Administrator's or Bilyk's authority, as the case may be, under this Agreement for such time as London Guarantee may deem necessary to protect its interests or reputation.

13.3 In the event any of Administrator's or Bilyk's authority is suspended during the term of this Agreement, Administrator and Bilyk shall continue to account to London Guarantee for all Net Dealer Costs, claims payments, or other transactions unaccounted for at the time of such suspension or arising thereafter with respect to the Policies. At London Guarantee's option, all of Administrator's and Bilyk's authority, rights, and obligations under this Agreement including, but not limited to, the collection of Net Dealer Costs, the accounting of Net Dealer Costs, commissions, losses, and claims payments, and the settlement of all balances shall remain in full force and effect until all liabilities of London Guarantee under all Policies are finally discharged.

13.4 In the event that any of Bilyk's authority is suspended during the term of this Agreement, Administrator agrees to furnish London Guarantee directly with any information normally provided through Bilyk.

ARTICLE 14 TERMINATION OF AGREEMENT

14.1 London Guarantee may terminate this Agreement in its entirety or solely with respect to the rights and obligations of either the Administrator or Bilyk, immediately upon the occurrence of any of the following events unless the specific event for which London Guarantee elects to terminate shall, by law, require prior written notice, in which case the Agreement shall not be terminated without sending the requisite statutory notice:

- (a) Administrator or any of its executive officers or Bilyk is convicted of an indictable crime or is adjudged by any federal, provincial, or local court or administrative agency to have violated any law relating to Administrator's or Bilyk's duties as an insurance agent, broker, provider or administrator, as applicable, that reflects

adversely on the honesty or integrity of Administrator or any of its executive officers or Bilyk.

- (b) Any necessary insurance agent, broker, or producer license or registration of Administrator or any of its employees representing London Guarantee or Bilyk lapses, expires, terminates, or is suspended or revoked by any insurance regulatory authority for any reason and such regulatory action substantially impairs Administrator's or Bilyk's ability to materially perform its duties under this Agreement.
- (c) The bankruptcy, receivership, assignment for the benefit of creditors, or abandonment of Administrator or Bilyk, whether voluntary or involuntary.
- (d) Failure of Administrator or Bilyk to pay any Rinds to London Guarantee or its Policyholders and Contract Holders when reasonably due, except that the failure to pay any item that Administrator or Bilyk, in good faith, disputes shall not constitute a failure to pay provided that Administrator or Bilyk has paid the balance of the account when due and has notified London Guarantee and the Policyholder or Contract Holder (if applicable), in writing, of the disputed item or items at the time of such payment, including the reason for the dispute.
- (e) A material misapplication or misdirection or any misappropriation by Administrator or Bilyk of London Guarantee's funds or property or of funds received on its behalf from Policyholders and Contract Holders.
- (f) London Guarantee surrenders its licenses or loses its eligibility as an insurer to do business in a majority of the territories in which Administrator or Bilyk is authorized to represent London Guarantee as provided in this Agreement.
- (g) Administrator's or Bilyk's failure to use and comply fully and promptly with any of the rates and rules required to be filed (if any) with any appropriate provincial insurance departments regarding Policies.
- (h) Any substantial, material or continuing breach of this Agreement by Administrator or Bilyk.
- (i) Administrator or any of its executive officers or Bilyk engages in or is involved in fraudulent acts or illegal conduct during the period this Agreement is in effect.

14.2 London Guarantee may terminate this Agreement in its entirety or solely with respect to the rights and obligations of either the Administrator or Bilyk, upon thirty (30) days' notice to Administrator and Bilyk in the event of:

- (a) the number of complaints received by London Guarantee relating to Administrator's or Bilyk's performance and service to insureds, Policyholders, or members of the public is excessive, as may be determined by London Guarantee in its sole discretion; or
- (b) enactment of legislation which, in the opinion of London Guarantee, would adversely affect London Guarantee's rights or liabilities under this Agreement or the Policies; or
- (c) the failure of Administrator or Bilyk to perform its duties and responsibilities under this Agreement including the timely remitting of accounts and monies to London Guarantee, insureds or Policyholders and timely and full compliance with London Guarantee's directives, rules, regulations or manuals; or
- (d) a significant change in the ownership or management of or in the event of the execution of an agreement of sale, transfer or merger of Administrator or Bilyk without prior notice and consent of London Guarantee.

14.3 London Guarantee may terminate this Agreement in its entirety or solely with respect to the rights and obligations of either the Administrator or Bilyk, for any other reason upon one hundred and eighty (180) days prior written notice to Administrator and Bilyk. If the Agreement is terminated pursuant to this provision, Administrator and/or Bilyk shall, at the election of London Guarantee, continue to administer Policies in accordance with this Agreement during such 180 day period.

14.4 With respect to Subsections 14.2(b), 14.2(d), 14.2(g) and 14.2(h), London Guarantee is required to grant Administrator or Bilyk a cure period of up to sixty (60) days in writing to correct a breach or problem identified by London Guarantee. If Administrator or Bilyk does not correct the breach or problem within the specified cure period to London Guarantee's satisfaction, acting reasonably, then London Guarantee may terminate this Agreement in its entirety or solely with respect to the rights and obligations of either the Administrator or Bilyk, at any time and for any reason by giving written notice to Administrator and Bilyk specifying the effective date of termination, which shall not be less than thirty (30) days thereafter.

14.5 Upon termination of this Agreement in its entirety or solely with respect to the rights and obligations of either the Administrator or Bilyk, Administrator and Bilyk shall account to London Guarantee for all Net Dealer Costs, claims payments, or other transactions unaccounted for at the time of termination or arising thereafter with respect to Policies written under this Agreement. At London Guarantee's option, all of Administrator's and Bilyk's authority, rights, and obligations under this Agreement

including, but not limited to, the collection of Net Dealer Costs; the accounting of Net Dealer Costs, commissions, losses, and claims payments; and the settlement of all balances shall remain in full force and effect until all liabilities of London Guarantee under all Policies are finally discharged and all outstanding claims are investigated, negotiated and settled.

14.6 All undelivered Policies, forms, rates and rules documentation, equipment, computer software and hardware (except for such software and hardware as may have been purchased by Administrator or Bilyk for its own use), supplies, licensed or copyrighted materials, and other tangible or intangible property furnished to Administrator or Bilyk by London Guarantee or purchased or licensed by London Guarantee for Administrator's or Bilyk's use shall remain the exclusive property of London Guarantee. Administrator or Bilyk shall return any or all such property to London Guarantee promptly upon termination of this Agreement or at such other time as London Guarantee may designate in writing. Administrator and Bilyk agree to surrender such property peaceably and without expense to London Guarantee.

14.7 The termination of this Agreement or any part thereof shall not affect the rights and obligations of London Guarantee, Administrator, KPMG and Bilyk regarding any transactions or actions taken by either party prior to the effective date of the termination. The termination of this Agreement with respect to the rights and obligations of either Administrator or Bilyk (the "Terminated Party") shall not affect the rights and obligations of the parties to this Agreement other than the Terminated Party, except as specifically set forth herein.

14.8 As long as Administrator continues to perform its duties in accordance with the Agreement, Administrator shall continue to be entitled to the compensation payments as described in Article 9.

ARTICLE 15 OWNERSHIP OF EXPIRATIONS

15.1 Notwithstanding any provision of this Agreement to the contrary, Administrator owns all of the expirations of the Policies (the "Expirations"). The use and control of Expirations, including Expirations on direct-billed business, shall remain the property of Administrator and be left in its undisturbed possession.

15.2 Notwithstanding Section 15.1, if this Agreement is terminated by London Guarantee in its entirety or with respect to the rights and obligations of Administrator pursuant to Section 14.2, the Expirations shall vest in and become the sole and exclusive property of London Guarantee. London Guarantee may service those Expirations directly or dispose of them in any commercially reasonable manner. London Guarantee may collect premiums directly from any insured or policyholder who has not made payment to Administrator.

ARTICLE 16 CURRENCY

16.1 Unless otherwise specified in this Agreement, all transactions shall be reported and paid in Canadian dollars.

ARTICLE 17 INDEPENDENT CONTRACTOR RELATIONSHIP

17.1 This Agreement is not a contract of employment and nothing contained herein shall be construed to create a joint venture, partnership, or employer/employee relationship between London Guarantee and Administrator or between London Guarantee and any of Administrator's employees or representatives or between London Guarantee and Bilyk. Administrator, its employees and representatives and Bilyk shall not represent that they are employees of London Guarantee nor shall they in any manner hold themselves out to be employees of London Guarantee. It is the express intent of the parties that Administrator and its employees and representatives and Bilyk are not employees of London Guarantee for any purpose. Administrator and Bilyk are independent contractors for all purposes and in all situations and shall be free, subject to the provisions of this Agreement, to exercise independent judgment and discretion as to the time, place, and manner of its performance under this Agreement.

ARTICLE 18 INDEMNIFICATION

18.1 Administrator agrees to indemnify and hold harmless London Guarantee, its officers, directors, and employees from and against any and all claims, suits, complaints, damages, losses, costs, expenses (including attorney's fees), fines, penalties (including punitive or exemplary damages), and all other costs of defense resulting from any negligent act, error, or omission, whether intentional or unintentional, by Administrator or its officers, directors, employees, or contractors, related to or which arise out of the business covered under this Agreement.

18.2 Bilyk agrees to indemnify and hold harmless London Guarantee, its officers, directors, and employees from and against any and all claims, suits, complaints, damages, losses, costs, expenses (including attorney's fees), fines, penalties (including punitive or exemplary damages), and all other costs of defense resulting from any negligent act, error, or omission, whether intentional or unintentional, by Bilyk or its officers, directors, employees, or contractors, related to or which arise out of the business covered under this Agreement.

18.3 London Guarantee shall choose defense counsel for all lawsuits subject to indemnification from Administrator or Bilyk under Section 18.1 or 18.2, as the case may be, and shall defend itself. London Guarantee shall decide, in its sole discretion, acting reasonably, whether any claims or suits may be settled. Any such settlement shall be binding upon Administrator or Bilyk, as indemnitor under Section 18.1 or 18.2, as the

case may be. The Administrator or Bilyk expressly authorize London Guarantee, without precluding London Guarantee from exercising any other remedy it may have, to charge against all compensation due or to become due to Administrator or Bilyk under this Agreement any funds paid or liabilities incurred by London Guarantee by reason of any occurrence described herein.

18.4 London Guarantee agrees to indemnify and hold harmless Bilyk and Administrator, its officers, directors, and employees from and against any and all claims, suits, complaints, damages, losses, costs, expenses (including attorney's fees), fines, penalties (including punitive or exemplary damages), and all other costs of defense resulting from any negligent act, error, or omission, whether intentional or unintentional, by London Guarantee or its officers, directors, or employees related to or which arise out of the business covered under this Agreement.

18.5 Administrator or Bilyk, as the case may be, shall choose defense counsel for all lawsuits subject to indemnification from London Guarantee under Subsection 18.4 and shall defend itself. Administrator or Bilyk shall decide, in its sole discretion, acting reasonably, whether any claims or suits may be settled. Any such settlement shall be binding upon London Guarantee, as indemnitor under Section 18.4.

ARTICLE 19 NON-ASSIGNABILITY

19.1 None of the parties may assign any rights or delegate any duties under this Agreement except as expressly permitted under this Agreement without the prior written consent of the other parties. A party may not delegate all or any part of its duties hereunder to a wholly-owned subsidiary or affiliated entity without the consent of the other parties, which consent shall not be unreasonably withheld.

ARTICLE 20 NOTICE

20.1 All notices, requests, demands or other communications required to be given or made hereunder shall be in writing and shall be deemed to be well and sufficiently given if hand delivered or sent by prepaid courier or by means of printed electronic or printed telephonic communication, in each case to the applicable address set out below:

- (i) if to London Guarantee, addressed to:

London Guarantee Insurance Company
77 King Street West
Suite 3426, P.O. Box 284
Royal Trust Tower
Toronto, Ontario M5K 1K2

Attention: M. Anthony O'Brien
Facsimile No.: 416-360-8267

- (ii) if to Bilyk addressed to:

George Bilyk
[address]

Toronto, Ontario M5K 1K2

Facsimile No.: •

- (iii) if to Administrator addressed to:

3768279 Canada Inc. o/a
Excellence Risk Management
1600 Henri-Bourassa West, Suite 544
Montreal, Quebec H3M 3E2

Attention: Nicole Demers
Facsimile No.: 1-800-468-7175

- (iv) if to the Liquidator addressed to:

KPMG INC.
Suite 3300
Commerce Court West
PO Box 31
Stn Commerce Court
Toronto, Ontario M5L 1B2

Attention: Robert O. Sanderson
Facsimile No.: 416-777-3683

Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a business day in the place the communication is received and the communication is so delivered, faxed or sent before 4:30 p.m. (local time) on such day in the place the communication is received. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following business day in the place the communication is received. Any such communication sent by facsimile shall be deemed to have been given and made and to have been received on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the relevant facsimile number

of the recipient. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth business day in the place the communication is sent following the mailing thereof, provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.

Any party may from time to time change its address under this Section 20.1 by notice to the other Parties given in the manner provided by this Section 20. 1.

ARTICLE 21 SERVICE OF PROCESS

21.1 In the event any legal process or notice is served on Administrator, Bilyk or London Guarantee in an action or proceeding, the receiving party shall immediately forward such documents to the General Counsel, Legal Division at London Guarantee's mailing address first herein above written.

ARTICLE 22 WAIVER

22.1 No waiver or modification of this Agreement shall be effective unless it is in writing and signed by each of the parties hereto. The failure of a party to insist on strict compliance with, or to enforce any provision of this Agreement or to exercise any right or remedy shall not constitute a waiver by the party of any such provision, nor shall it stop the parties from thereafter demanding full and complete compliance, nor shall it prevent the parties from exercising such a remedy in the future. The past waiver of any provision by a party shall not constitute a course of conduct or a waiver in the future of that provision.

ARTICLE 23 CONFLICT OF LAW AND SEVERABILITY

23.1 If any term, part, or provision of this Agreement is declared illegal or invalid by a court of general jurisdiction or superseded by a specific law or regulation, such law or regulation shall control to the extent of such conflict without affecting the remaining provisions of this Agreement and the rights and obligations of the parties.

ARTICLE 24 CONFIDENTIALITY OF INFORMATION

24.1 It is understood and agreed by the parties that each deems this Agreement and any exhibits, addenda and amendments thereto, to be confidential and none of the parties shall reproduce or disclose to any third party, other than any provincial or governmental authority requiring same, any or all of such confidential matters, unless such reproduction or disclosure is consented to in writing by the other parties not so

reproducing or disclosing or required by order of a court order of competent jurisdiction or of a governmental body. It is further understood and agreed that none of the parties shall use or reproduce any documents for any purpose other than those contemplated by this Agreement.

ARTICLE 25 AMENDMENTS

25.1 Any amendment, alteration, or modification of this Agreement must be in writing and signed by an officer of London Guarantee, Bilyk and Administrator.

25.2 No oral agreement or representation concerning this Agreement or the parties' relationship to each other shall be binding on any party.

25.3 This Agreement cannot be amended by any subsequent practices or courses of dealing by the parties inconsistent herewith.

ARTICLE 26 MISCELLANEOUS

26.1 This Agreement, together with the Reinsurance Assumption Agreement, supersedes any previous agreements entered into between the parties hereto regarding the business. Any prior statements, agreements, covenants, warranties, or representations, whether oral or written, between the parties regarding this Agreement are merged herein.

26.2 The rights and obligations of the parties to this Agreement shall not be affected by its termination. All necessary transactions related to this Agreement will continue in accordance with this Agreement's provisions until all the obligations of the parties to each other are fully concluded and discharged. In the event that ownership or control of London Guarantee is transferred to a third party during the term of this Agreement, the new owners or controlling parties shall continue to be bound by the provisions of this Agreement.

26.3 This Agreement has been negotiated by the parties and the fact that the initial and final draft shall have been prepared by London Guarantee shall not be used in any manner in the construction or interpretation of this Agreement or any of its provisions.

26.4 This Agreement shall be considered an honorable undertaking made in good faith and subject to a liberal construction to give effect to the good faith and honorable intentions of the parties hereto.

26.5 Unless the context and circumstances require action sooner, the word "promptly" as used in this Agreement shall mean within five (5) business days. Any defined term herein shall be equally applicable to both the singular and plural forms of the terms defined.

26.6 Time shall be of the essence in all respects of this Agreement.

26.7 All headings are solely for convenience of reference and shall not affect the meaning, construction, or effect of this Agreement.

26.8 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and each of the parties hereto hereby irrevocably attorns to the jurisdiction of the courts of Ontario.

26.9 This Agreement may be executed in counterparts each of which shall be deemed an original but all of which when taken together shall be deemed one and the same document.

ARTICLE 27 BINDING ARBITRATION

27.1 *Arbitrable Claims.* Except as otherwise specified below, all actions, disputes, claims and controversies under common law, statutory law or in equity of any type or nature whatsoever between the parties which cannot be resolved and which touches upon the validity, construction, meaning, interpretation, performance or effect of this Agreement, whether arising before or after the date of this Agreement, and whether directly or indirectly relating to: (i) this Agreement and/or any amendments and schedules or exhibits hereto, or the breach, invalidity or termination hereof; (ii) any previous or subsequent agreement between the parties; (iii) any act committed by the parties or by any parent company, subsidiary or affiliated company of such party (the “Companies”), or by any employee, agent, officer or director of such party whether or not arising within the scope and course of employment or other contractual representation of the Companies provided that such act arises under a relationship, transaction or dealing between the parties; and/or (iv) any other relationship, transaction or dealing between the parties (collectively the “Disputes”), will be subject to and resolved by binding arbitration.

27.2 *Administrative Body.* All arbitration hereunder will be conducted by the Arbitration and Mediation Institute of Canada Inc. (“AMIC”). If AMIC is dissolved, disbanded or becomes subject to any provincial or federal bankruptcy or insolvency proceeding, the parties will remain subject to binding arbitration which will be conducted by a mutually agreeable arbitral forum. Within fifteen (15) days after the commencement of arbitration, each party shall select, from a list of available arbitrators provided by AMIC, one person to act as an arbitrator. These two arbitrators shall each be charged with the sole responsibility of selecting a third arbitrator. If the arbitrators cannot select a third arbitrator within ten (10) days of their appointment, then the third arbitrator will be selected by AMIC. The arbitration of Disputes hereunder shall proceed before the third arbitrator so selected acting as sole arbitrator. This sole arbitrator will be a lawyer with at least ten (10) years commercial transactions experience and will decide if any inconsistency exists between the rules of any applicable arbitral forum and the arbitration provisions contained herein. If such inconsistency exists, the arbitration provisions contained herein will control and supersede such rules. The site of all arbitration proceedings will be in the City of Toronto, Ontario.

27.3 *Discovery.* Discovery permitted in any arbitration proceeding commenced hereunder is limited as follows. No later than thirty (30) days after the filing of a claim for arbitration, the parties will exchange detailed statements setting forth the facts supporting the claim(s) and all defenses to be raised during the arbitration, and a list of all exhibits and witnesses. No later than twenty-one (21) days prior to the arbitration hearing, the parties will exchange a final list of all exhibits and all witnesses, including any designation of any expert witness(es) together with a summary of their testimony; a copy of all documents and a detailed description of any property to be introduced at the hearing. Under no circumstances will the use of interrogatories, requests for admission, requests for the production of documents or the taking of discoveries or depositions be permitted. However, in the event of the designation of any expert witness(es), the following will occur: (i) all information and documents relied upon by the expert witness(es) will be delivered to the opposing party, (ii) the opposing party will be permitted to discover or depose the expert witness(es), (iii) the opposing party will be permitted to designate rebuttal expert witness(es), and (iv) the arbitration hearing will be adjourned or continued to the earliest possible date that enables the foregoing limited discovery to be accomplished.

27.4 *Exemplary or Punitive Damages.* The Arbitrator will not have the authority to award exemplary or punitive damages.

27.5 *Confidentiality of Awards.* All arbitration proceedings, including testimony or evidence at hearings, will be kept confidential, although any award or order rendered by the arbitrator pursuant to the terms of this Agreement may be entered as a judgment or order in any provincial or federal court and may be confirmed within the judicial district which includes the residence of the party against whom such award or order was entered. The Arbitration Act (Ontario), as amended (“OAA”) will govern all arbitration(s) and confirmation proceedings hereunder.

27.6 *Legal Fees.* If a party brings any other action for judicial relief with respect to any Dispute, the party bringing such action will be liable for and immediately pay all of the other party’s costs and expenses (including all legal fees and disbursements) incurred to stay or dismiss such action and remove or refer such Dispute to arbitration. If a party brings or appeals an action to vacate or modify an arbitration award and such party does not prevail, such party will pay all costs and expenses, including all legal fees and disbursements, incurred by the other party in defending such action. Additionally, if a party (the “Initiating Party”) sues another party (the “Defending Party”) or institutes any arbitration claim or counterclaim against the Defending Party in which the Defending Party is the prevailing party, the Initiating Party will pay all costs and expenses (including all legal fees and expenses) incurred by the Defending Party in the course of defending such action or proceeding.

27.7 *Limitations.* Any arbitration proceeding must be instituted: (i) with respect to any Dispute for the collection of any debt owed by a party to another party, within two (2) years after the date the last payment was received by the instituting party; and (ii) with respect to any other Dispute, within seven (7) years after the date the incident giving rise thereto occurred. whether or not any damage was sustained or capable

of ascertainment or any party knew of such incident. Failure to institute an arbitration proceeding within such period will constitute an absolute bar and waiver to the institution of any proceeding, whether arbitration or a court proceeding, with respect to such Dispute.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

LONDON GUARANTEE INSURANCE COMPANY

Per: _____

Name:

Title:

Per: _____

Name:

Title:

KPMG INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

3768279 CANADA INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

GEORGE BILYK

SCHEDULE "B"
EXISTING ADMINISTRATION AGREEMENT

(Attached)

PROGRAM ADMINISTRATOR'S AGREEMENT

AGREEMENT between Meridian Warranty Management Inc. / Nicole Demers & Associates Inc. (Administrator), and Reliance Insurance Company with office located at:

200 King Street West
Suite 1906, P.O. Box 61
Toronto, Ontario
M5H 3T4

Administrator and Reliance agree as follows:

ARTICLE I. Term of Agreement

This Agreement begins on November 1st, 1995, and will continue until terminated under the provisions of Article XII.

ARTICLE II. Engagement of Administrator Authority

Reliance engages Administrator as exclusive program manager for Reliance as follows:

- A. **Authority:**
Administrator is authorized to manage the Meridian Warranty program ("Program") in accordance with the terms and conditions of this agreement and also Exhibit A attached to be made a part of this Agreement.
- B. **Territory**
Administrator's authority is limited to Warranty Business within Canada.
- C. **Restrictions**
Administrator's appointment and authority is subject to any restrictions set forth in Exhibit A.
- D. **Reinsurance Availability**
Administrator's appointment and authority for business written under this Agreement is subject to the following:
 - 1. Reliance is able to obtain and maintain in force at all times 100% reinsurance satisfactory to Reliance for Business written under this Agreement.
 - 2. Obtaining reinsurance is the sole responsibility of Reliance. When Reliance obtains satisfactory reinsurance for all of the Business, Reliance will give Administrator notice that Administrator may write and bind those classes of Business, policies and lines and limits of insurance for which reinsurance has been obtained.
 - 3. If reinsurance is terminated or no longer in full force and effect or restricted in any form, for all or any part of the Business, Administrator's authority for the business affected shall be suspended, or limited immediately upon notice to Administrator from Reliance until further notice.

each authorized line of insurance such information as Reliance may request, and the following:

- a. Gross written premium,
 - b. Policies issued or bound by insured including location, limits, and effective date,
 - c. Policies canceled,
 - d. Premium adjustments due to endorsement or audits,
 - e. Written Premium received,
 - f. Written Premium delinquent by policy,
 - g. Gross written premium delinquent,
 - h. Commission payable to or retained by Administrator,
 - i. Net balance due,
2. The Administrator shall pay Reliance balances due within forty (40) days of the end of each reporting month.
 3. Cumulative reports for each plan and/or treaty term shall also be made on a monthly basis. These reports shall provide earned vs. unearned premium, and other statistical information.

J. Copies of Policies

To forward to Reliance promptly copies of all Policies, endorsements, Policy cancellations and other terminations processed by the Administrator, as required by Reliance.

K. Credit Extensions

To assume the obligation for any extensions of credit to insureds and policyholders and be fully responsible for the full amount of the premium due Reliance on policies written or bound under this Agreement whether or not Administrator has collected the premium due from policyholders.

L. Administrator Expenses

To pay, assume the obligation for and to be fully responsible for all costs and expenses associated with the Administrator's performance under this Agreement including: travel expense, employee and clerical salaries, benefits and expense, fees, countersignature fees and expense, postage, advertising, exchanges, and licenses fees, Reliance shall be responsible only for its own costs and expenses unless otherwise agreed by Reliance. In the event Reliance is required to pay any costs or expenses that are the responsibility of the Administrator, the Administrator shall promptly reimburse Reliance for its payments.

M. Legal Compliance

To keep fully informed of and comply fully with all applicable laws and regulations.

N. Governmental Contacts

To promptly notify Reliance of all contacts and correspondence received from insurance regulatory or other governmental authorities, to forward promptly upon receipt all summonses, complaints, subpoenas or other court documents, and to cooperate fully with Reliance in making any responses.

O. Premium Financing

To promptly and appropriately respond to all correspondence and notices related to financing or proposed financing of premiums on Policies issued under this Agreement, and forward copies to Reliance.

P. Competent Staff

To maintain sufficient supplies and equipment and a staff of competent and trained personnel, to produce, develop, underwrite, and supervise the Business covered by this Agreement.

- Q. Reliance Interests**
To promote and safeguard the best interests and good name of Reliance
- R. Accurate Records**
To keep and maintain separate, identifiable, orderly, accurate, complete and timely records and accounts of all Business and transactions pertaining to Policies bound or written under this Agreement including complete underwriting and rate files. Such records and files shall be the property of Reliance.
- S. Audit**
To permit Reliance during the term of this Agreement and as long as Reliance considers necessary, to visit, inspect, examine, audit and verify, at Administrator's offices or elsewhere, at such times and as often as Reliance may deem appropriate, with or without prior notice any of the properties, accounts files, documents, books reports, work papers and other records belonging to or in possession or control of Administrator or any other person relating to the Business covered by this Agreement. Reliance may make copies and extracts as may as be reasonably necessary. Reliance may conduct any audit through any person or persons it may designate.
- T. Licenses**
To obtain and provide Reliance, upon requests, with copies of all licenses and permits required by Administrator for the proper conduct of its duties under this Agreement.
- U. Policy Cancellation**
To cancel or otherwise terminate Policies bound or written by or through Administrator as required by applicable underwriting standards and consistent with applicable regulatory and Policy conditions. Reliance shall always retain the right to direct the cancellation or termination of Policies by Administrator or to cancel or termination Policies by Administrator or to cancel or terminate Policies by direct notice to insureds or policyholders. Administrator shall not make, permit or cause general or indiscriminate cancellations, terminations or replacements of Policies. Administrator shall be responsible for notifying governmental agencies or other persons for whom Administrator has certified coverage or provided evidence of insurance. No canceled or terminated Policy may be reinstated without the prior written approval of Reliance.

ARTICLE IV. Claims Settlement

Administrator shall:

- A.** Give immediate notice upon receiving notice or knowledge of any claim or loss, and cooperate fully with Reliance to facilitate the investigation, adjustment, settlement and payment of each and all claims, and assign such claims or loss for handling as may be directed by Reliance.
- B.** Take steps to recover any deductible, or other sums recoverable due.
- C.** Give immediate notice of any claim or suit brought against Reliance where Reliance or any of its affiliated companies is named or defendant, to Reliance. Reliance shall assume sole and full control of the defense of such claim or suit.
- D.** Receive a claims processing fee of \$25.00 for each claim paid. This amount will be deducted from the claims handling fund.
- E.** Collect money to be paid into the loss adjustment expense fund as per addendum A. This loss adjustment expense shall be retained by Reliance. At expiration of all Reliance liabilities, Reliance will allow release of all surplus funds, to the Administrator.

The administrator will not be reimbursed by Reliance for the salaries, office expenses or any other expenses incurred in the processing of claims (other than that specified in Item D above), unless otherwise expressly agreed to in writing by Reliance.

ARTICLE V. Administrator's Compensation

Reliance will pay the Administrator as full compensation for all of its duties and responsibilities under this Agreement as follows:

- A. Production and Administration Commission
 1. Claims processing fee of \$25.00 per claim
 2. Program Administration Fees
 3. Sales and Marketing
 4. Brokerage

- B. Unearned Commission
Administrator shall promptly refund pro-rata to Reliance the production and administration commissions on cancellations, refund and return premiums at the rate originally allowed when such Policy or Policies were bound, written renewed or extended.

ARTICLE VI. Advertising

Administrator will not refer to Reliance or the Business covered by the Agreement in any advertisement, letter, circular, pamphlet or other publication or statement without the prior written consent of Reliance. Whether or not Reliance gives its consent, Reliance will not be responsible for any advertising expense.

ARTICLE VII. Representation With Respect to Policies

Administrator will not make any representation to applicants, insureds, policyholders or claimants as to the existence or extent of coverage either available from Reliance or under a Policy that is not consistent with the terms and conditions of coverages available from Reliance or of a Policy. Administrator shall establish procedures to ensure that Administrator and Administrator's employees will make known to any applicant, insured or policyholder the full scope and effect of all exclusions and limitations upon or under coverage provided under the Policy.

ARTICLE VIII. Insurance of Administrator

Administrator will maintain for as long as this Agreement remains in force with insurers and on forms acceptable to Reliance.

- A. Professional errors and omissions policy in an amount of at least \$2,000,000, and
- B. Comprehensive General Liability Policy in an amount of at least \$2,000,000
- C. Blanket Employee Dishonesty Bond for all employees of at least \$100,000.

Reliance may require certificates of insurance or other evidence that the insurance required by this Article is and remains in force.

ARTICLE IX. Indemnification

- A. Administrator shall be responsible to Reliance, and shall indemnify, save, defend and hold Reliance, including its affiliates, and all officers, directors and employees harmless against any and all claims, suits, hearings, actions, damages of any kind, liability, fines, penalties, loss or expense, including attorney's fees caused by or resulting from any allegation of any misconduct, error, omission, or other act; or breach of this Agreement by Administrator, or Administrator's employees or representatives, unless the conduct giving rise to the allegation was performed at the specific direction of Reliance.

- B. Reliance shall be responsible to Administrator and shall indemnify, save defend and hold Administrator harmless against any and all claims, suits, hearings, actions, damages of any kind, liability, fines, penalties, loss or expense, including attorney's fees caused by or resulting from any allegation of any direct misconduct, error, omission, or other act by Reliance, provided Administrator has not contributed to or compounded the act alleged.

ARTICLE X. Flat Cancellation

If a Policy is canceled flat, the originals of the canceled Policy or a lost policy release shall be promptly forwarded by Administrator to Reliance. Administrator will not cancel flat a Policy after it has been in effect without the prior written consent of Reliance.

ARTICLE XI. Suspension of Administrator's Authority

Reliance may, by immediate notice to Administrator, suspend any part or all of Administrator's authority under this Agreement for such time as Reliance may deem necessary to protect its interests or reputation if any of the following occur:

- A. **Loss of Reinsurance**
In accordance with Article II.D.3; or
- B. **Administrative Action**
As administrative accusation of violation of insurance law or regulation against Administrator or any Administrator's executive officers by and insurance regulatory agency; or
- C. **Grounds for Immediate Termination**
For any reason that would permit termination of Administrator under this Agreement under Article XII.A.1; or
- D. **Default**
The failure of Administrator to perform its duties and responsibilities under this Agreement including the timely remitting of accounts and monies to Reliance insureds or policyholders and timely and all compliance with Reliance directives, rules, regulations or manuals; or
- E. **Termination by Administrator**
If the Administrator gives notice of termination under Article XII.B; or
- F. **Dispute Over Termination**
In the event of a dispute over the reason for termination of the Agreement; or
- G. **Premium Limitations**
In the event the total gross written premiums for Business written under this Agreement exceeds or Reliance decides to restrict its premiums for the Business written under this Agreement

ARTICLE XII. Termination of Agreement

- A. Reliance may terminate this Agreement as follows:
 - 1. Immediately upon notice to Administrator in the event of:
 - a. **License Suspension or Revocation**
An order of suspension or revocation of Administrator's license by any insurance regulatory authority; or
 - b. **Misapplication of funds**
A misapplication misdirection or misappropriation by Administrator of funds or property of Reliance or funds received for it or policyholders by Administrator, or in the event of failure by Administrator to remit to Reliance or policyholders, funds due promptly after written demand therefore by Reliance; or

- c. **Violation of Law**
A charge brought against Administrator or any of Administrator's executive officers of violation of the insurance laws or regulations of any jurisdiction, or of any law constituting an offense which may be prosecuted as an indictable offense or is a felony in the jurisdiction in which committed, or of any law whose violation reflects adversely upon the honesty or integrity of Administrator or any of Administrator's executive officers whether or not classified as a felony; or
 - d. **Insolvency**
The Administrator shall become insolvent or make a general assignment for the benefit of creditors; if a petition is filed for bankruptcy or other law providing for its reorganization, dissolution or liquidation, or a trustee or receiver is appointed for the Administrator, its asset or a substantial part thereof.
2. Upon Thirty (30) days notice to Administrator in the event of:
- a. **Excessive Complaints**
The number of complaints received by Reliance relating to Administrator's performance and service to insureds, policyholders, or members of the public is excessive, as may be determined by Reliance in its sole discretion; or
 - b. **Adverse Legislation**
Enactment of legislation which in the opinion of Reliance would adversely affect Reliance rights or liabilities under this Agreement or the Policies; or
 - c. **Conflict with Law**
As provided for in Article XVII.B; or
 - d. **Default**
The failure of Administrator to perform its duties and responsibilities under this Agreement including the timely remitting of accounts and monies to Reliance, insureds or policyholders and timely and full compliance with Reliance directives, rules, regulations or manuals; or
 - e. **Ownership Change**
A significant change in the ownership or management of or in the event of the execution of an agreement of sale, transfer or merger of Administrator without prior notice and consent of Reliance; or
- B. Either Reliance or Administrator may terminate this Agreement at any time upon ninety (90) days prior notice to the other.
- C. On the first anniversary of the beginning of this Agreement shown in Article I subject to the ninety (90) days notice in Item B., unless Reliance and Administrator agree in writing to extend this Agreement for successive annual terms.

ARTICLE XIII. Continuing Duties of Administrator after Termination

- A. If Reliance elects upon termination of this Agreement, and for as long as Reliance continues to desire the services of Administrator will perform all of the duties necessary for the proper servicing of all Policies bound or written under this Agreement until all those Policies shall have expired or been terminated. These services shall include canceling, issuing mandatory endorsements, and collecting returning premiums.
- B. So long as the Administrator continues to perform duties in accordance with this Article, the Administrator shall continue to receive the production and administration commission set forth in Article V.A.

- C. Should Administrator not continue to perform any duties for any reason, Reliance may discontinue payment of any production and administration commission set forth in Article V.A.
- D. If this Agreement is terminated by Reliance for any reason under Article XII and Reliance is required to renew any Policies under the law of any jurisdiction the Administrator will not be entitled to any production and administration commission with respect to that renewal Business except as provided in XIII.B.

ARTICLE XIV. Waiver of Statutory Termination Rights of Administrator

Both Administrator and Reliance are aware that there are or may be laws or regulations in the various jurisdictions served by Administrator that may be interpreted to provide Administrator with certain rights of notice, runoff, continuation of Business written through Manager, prevention of termination and regulatory review and possible disapproval of the termination of this Agreement. Because this Agreement has been mutually entered into for a special purpose, and places responsibilities, duties and obligations upon Administrator both beyond those and different from those of a normal soliciting agent, Administrator acknowledges that this therefore involves and necessitates a different relationship. Administrator hereby specifically waives any and all rights with respect to termination of this Agreement that may now or hereafter be provided Administrator by statute or regulation in recognition of that different relationship, and agrees not to impose upon or require compliance by Reliance of any obligations relating to termination of this Agreement other than those provided for specially in this Agreement.

ARTICLE XV. Ownership of Expirations

- A. Records of insureds, policyholders and Policies and their use and control of solicitation of Business written or bound by or through Administrator ("Expirations") as between Administrator and Reliance, shall be the sole and exclusive property of Administrator except:
1. Underwriting Records and Files
as described in Article III.R above.
 2. Account and Payment Delinquency
If Administrator's authority under this Agreement is suspended or terminated, in part or in full, and Administrator fails to render all accounts due or pay any amounts due to Reliance. Reliance will be entitled to solicit, write and to sell insurance to any and all existing insureds or policyholders written by or through Administrator. In such event the Expirations will vest in and become the sole and exclusive property of Reliance.
 3. Limited License
If the Administrator's authority under this Agreement is suspended or terminated, in part or in full, and if any applicable insurance law or regulation prohibits Reliance from terminating any Policies or obligates Reliance to offer to continue or to renew, directly or through another producer of Reliance, any Policies, or insureds or policyholders previously bound or written under this Agreement, then Reliance shall be permitted and is hereby granted by Administrator a limited license in, and a right to use the expirations of those Policies, insureds and policyholders without any payment to Administrator to permit Reliance to comply within its reasonable discretion and in good with any such insurance law or regulation.
 4. Default
If this Agreement is terminated by Reliance for a reason that permits immediate notice of termination to Administrator under Article XII.A.1., the Expirations will vest in and become the sole and exclusive property of Reliance.
- B. Upon the occurrence of any event which gives rise to the vesting of the ownership of Expirations in Reliance, Reliance may take immediate possession of all records relating to those Expirations and Administrator shall upon request immediately gather such records together at Manager's principal place of Business and allow Reliance access to take possession of those records. Reliance may service those

Expirations directly or dispose of them in any commercially reasonable manner. Reliance may collect premiums directly from any insured or policyholder who has not made payment to Administrator.

- C. If Reliance disposes of Administrator's records and Expirations and does not realize sufficient money to discharge in full any and all of Administrator's indebtedness to Reliance (including any cost incurred by Reliance in connection with its recovery and disposal of the records and Expirations). Administrator will remain liable to Reliance for the balance of the Administrator's indebtedness to Reliance.
- D. If Reliance disposes of Administrator's records and Expirations and there is any excess over the Administrator's indebtedness to Reliance (including any cost incurred by Reliance in connection with its recovery and disposal of records and expirations) realized by Reliance, to the extent of commissions due to the Administrator, the excess shall be remitted to Administrator.

ARTICLE XVI. Arbitration

A. Submission to Arbitration

As a condition precedent to any right of action hereunder, any dispute arising out of this Agreement, including its formation of validity, during or after termination of this Agreement, shall be submitted to the decision of a board of arbitration composed of two arbitrators and an umpire meeting in Toronto unless otherwise mutually agreed.

B. Notice

The notice requesting arbitration shall state in particulars all principal issues to be resolved and shall set a date for the hearing, which date shall be not sooner than 120 days and no later than 150 days from the date that the notice requesting arbitration is mailed. The other party may submit additional issues for resolution by giving notice to the party requesting arbitration within 10 days of receipt of the notice of arbitration.

C. Arbitration Board Membership

The members of the board of arbitration shall be disinterested, impartial, active or retired officials within the insurance industry, with insurance experience. Each party shall appoint its own arbitrator and the two arbitrators shall choose a third arbitrator as umpire before the date set for the hearing. If a party fails to appoint its arbitrator within 30 days after having either received or given the notice requesting arbitration, the other shall appoint the second arbitrator.

D. Submission of Briefs

The parties shall submit their initial briefs within 20 days from appointment of umpire. Each may submit reply briefs within 10 days after filing the initial briefs.

E. Arbitration Award

The board shall make an award of compensatory monetary damages, but not of punitive or exemplary damages. The award shall be made with due regard to the custom and usage of the insurance Business and shall be in writing stating the factual and legal basis for the award. The award shall be based upon a hearing in which evidence may be introduced without following strict rules of evidence but in which cross examination and rebuttal shall be allowed. At its own election or at the request of the board, either party may submit a post-hearing brief of consideration of the board within 20 days of the close of the hearing. The board shall make its award within 30 days following the close of the hearing or the submission of post-hearing briefs, whichever is longer, unless the parties consent to an extension. A decision by the majority of the members of the board shall become the award of the board and shall be final and binding upon all parties to the proceeding.

F. Arbitration Expense

Each party shall bear the expense of its own arbitrator and shall jointly and equally bear with other party the expense of the umpire. The remaining costs of the arbitration proceedings shall be allocated by the board.

- G. Survival This Article shall survive the termination of this Agreement.

ARTICLE XVII. Other Terms and Conditions

A. Waiver

The failure of Reliance or Administrator to insist on strict compliance with this Agreement, or to exercise any right or remedy shall not constitute a waiver of any rights provided under this Agreement, nor estop the parties from thereafter demanding full and complete compliance nor prevent the parties from exercising such a remedy in the future.

B. Conflict with Law

If any provision of this Agreement should be declared invalid by a court of general jurisdiction or superseded by specific law or regulation, such law or regulation shall control to extent of such conflict without affecting the remaining provisions of this Agreement. However, if either party believes that the voiding of any provision hereof materially affects the whole Agreement, or the relationship of the parties under this Agreement, the party by notice may terminate this Agreement by giving thirty (30) days notice to the other.

C. Assignment

Neither this Agreement nor any rights or obligations under this Agreement may be assigned or delegated by Administrator without the prior written consent of Reliance.

D. Headings

The headings preceding the text of the articles and paragraphs of this Agreement are intended and inserted solely for the convenience of reference and shall not affect the meaning, construction or effect of this Agreement.

E. Governing Law

The Agreement shall be governed as to performance, administration and interpretation by the laws of the Province of Ontario.

F. Honorable Undertaking

This Agreement shall be considered an honorable undertaking made in good faith and shall be subject to a liberal construction for the purpose of giving effect to the good faith and honorable intentions of Administrator and Reliance.

G. Promptly

Unless the context and circumstances require action sooner, the term "promptly" in this Agreement shall be defined to mean "within five (5) working days".

H. Notices

Wherever notice is required under this Agreement, it shall be in writing, and deemed to have been received either when actually received or 3 days after having been sent by certified mail.

I. Independent Contractor

This Agreement is not a contract of employment and nothing contained in this Agreement shall be construed to create the relationship of joint venture, partnership, or employer and Reliance and Administrator. Administrator is an independent contractor and shall be free, subject to the terms and conditions of this Agreement, to exercise judgment and discretion with regard to the conduct of Business.

J. Negotiated Agreement

This Agreement has been negotiated by the parties and the fact that the initial and final draft shall be prepared by Reliance shall not be used in any forum in the construction or interpretation of this Agreement or any of its provisions.

K. Entire Agreement

This Agreement supersedes all previous agreements, whether written or oral, between Reliance and Administrator, or the predecessors with respect to the Business to be written under this Agreement.

1. This Agreement may be amended, altered or modified only in writing signed by both parties.
2. Manuals, rules, regulations, guidelines, instructions and directions issued in writing by Reliance from time to time as provided in this Agreement, shall bind the Administrator as though a part of this Agreement.

L. Counterparts

This Agreement may be executed in duplicate counterparts each of which shall be deemed an original but both of which when taken together shall be deemed one and the same document.

The Administrator and Reliance, intending to be bound, have executed this Agreement in duplicate, each of which shall serve as an original:

FOR ADMINISTRATOR



BY: Ken Williams

TITLE: Vice-President

DATE 23/8/99

FOR RELIANCE



BY: Paul Primm

TITLE: FIRST VICE-PRESIDENT

DATE 23/8/99

EXHIBIT A

Attached to and forming part of
Program Administrator's Agreement
between
Reliance Insurance Company (Reliance)
and
Meridian Warranty Management Inc. / Nicole Demers & Associates Inc. (Administrator)

Preamble:

The purpose of this Agreement is to facilitate the procurement of certain insurance/warranty/vehicle service contracts coverages for extended warranty business.

Insurance/Warranty programs covered by this Agreement:

<u>The Premium Plan II</u>	<u>Loss Adjustment Expenses</u>
Premium Plan II - 11/95 - 06/30/98 - Auto	\$17.50
Premium Plan II - 07/01/95 - Auto	\$25.00

<u>DFS Program</u>	<u>Loss Adjustment Expenses</u>
Auto	\$20.00
Recreational Vehicles	\$20.00
Marine	\$15.00
Motorcycle / ATV's / Snowmobiles	\$15.00
Suzuki - Auto	\$25.00
- Motorcycles	\$15.00

Restrictions Imposed by this Agreement:

- i) Premium income limit \$9,000,000 net for term of May 1, 1999 - May 1, 2000.
- ii) Period of individual service contracts bound shall be a maximum of 84 months for new vehicle coverage and 48 months for used vehicle coverage.
- iii) Maximum limit under this Agreement \$25,000 per vehicle.
- iv) Rates are to be as approved by Reliance and the various reinsurers. Any changes in these rates are to be approved by Reliance Insurance Company.
- v) Proposal to reinsurers to be signed off by reinsurers and copy maintained in our office.
- vi) Terms and conditions of vehicle service contracts issued by Administrator, shall not be broader than that provided by reinsurance contract, of which a copy is attached.
- vii) Year 2000 exclusion to be included in contracts.

Reliance Compensation / Fee:

Dealer cost
9% of ~~Gross Policy Premiums~~ with an additional 6% of dealer commission in Provinces where sold as an insurance product, directly to customers.

Addendum
To
Program Administration Agreement

The Program Administrator's Agreement, effective November 1st, 1995, **between Reliance Insurance Company Canada ("Reliance") and Meridian Warranty Management Inc./ Nicole Demers & Associates Inc. ("Administrator")** is modified as stated herein.

WHEREAS, the parties wish to amend the terms of the above-referenced Program Administrators Agreement;

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. The parties ratify and confirm the Program Administrator's Agreement except as provided herein. Terms which are defined in the Program Administrator's Agreement and not otherwise defined herein shall have the meanings given them in the Program Administrator's Agreement.
2. The parties agree that no new **Policies** shall be accepted under this Agreement after July 31, 2000.
3. The parties agree that the **Administrator's** Compensation after July 31, 2000 shall be limited solely to the Claims Processing fee of C\$25.00 per claim.
4. Effective June 30, 2000, Article IV (Claims Settlement), Item E, shall be amended to read as follows: "Collect money to be paid into the loss adjustment expense fund. This loss adjustment expense fund shall be retained by **Reliance**. At expiration of all **Reliance** liabilities, Reliance will retain fifty per cent (50%) of all surplus funds, with the remaining 50% to be released to the **Administrator**."
5. For Policies bound with effective dates between July 1, 2000 and July 31, 2000 inclusive, the Reliance Compensation / Fee as outlined in Exhibit A is amended to read as follows: 10% of Dealer Cost with an additional 6% of dealer commission in Provinces where sold as an insurance product, directly to customers.
6. Effective June 30, 2000, the parties agree that Exhibit B shall be attached to and made part of this Program Administrator's Agreement.

IN WITNESS WHEREOF, the parties intending to be bound have executed this Addendum effective as of June 30, 2000.

Reliance Insurance Company

BY: [Signature]

TITLE: PROGRAMS MANAGER

DATE: AUG. 25, 2000

Meridian Warranty Management Inc.

BY: [Signature]

TITLE: PRESIDENT

DATE: AUG. 25, 2000.

EXHIBIT B

CLAIMS ADMINISTRATION

1. **Administrator** agrees, directly or through sub-contract approved by **Reliance**, to provide assistance and claims services, which shall include the following:
 - A. Provide information, pre-certification, emergency assistance and referrals, claim forms, and aid to benefit claimants under the **Policy**, for the proper filing of claims, as necessary.
 - B. Pay claims on behalf of Reliance Insurance Company Canada, or other entity as instructed by **Reliance**, in accordance with insurance policies it has issued and all of the provisions of this Exhibit B.
 - C. Establish claim files which shall be available for inspection by **Reliance** during **Administrator's** business hours. All claim files must include a written chronology of all actions taken with respect to each claim.
2. With respect to claims under the Insurance/Warranty programs covered by this Agreement:
 - A. Review all claims under such programs and determine the proper amounts payable.
 - B. Issue checks drawn on an account established in the name of **Administrator** for benefit amounts payable to claimants.
 - C. Advise payees as to how benefit amounts were computed, and notify claimants regarding rejected claims, stating the reasons therefore.
3. Follow the specific instructions of **Reliance** with respect to claim payments.
4. The following standards shall govern the performance of services hereunder:
 - A. **Administrator** shall pay, or cause to be paid, all claims in accordance with consistent and nondiscriminatory application of the provisions of the policy, applicable laws and guidelines set by **Reliance** from time to time. Without limiting the generality of the foregoing, such guidelines may address: (i) interpretation of policy

provisions and applicable laws, (ii) standards of investigating claims, (iii) manner of communicating with claimants and other persons, (iv) manner of identifying **Reliance**, the insurance company, and **Administrator**, (v) standards for accuracy of payment determinations, accuracy of coding, and timeliness of responses, (vi) guidelines for coding of claims, (vii) procedures for check or draft security, and (viii) record retention and confidentiality.

- B. **Administrator** may not issue checks or drafts with respect to any one claim in excess of C\$25,000 without having first obtained consent of **Reliance**.
 - C. **Administrator** agrees to reimburse **Reliance** for any funds wrongfully disbursed, including but not limited to funds disbursed as a result of stolen instruments, employee dishonesty, or gross negligence. This provision does not apply to fraudulent claims where **Administrator** has no reason to believe a fraud has been committed, or nuisance claims settled within the guidelines established by **Reliance**.
 - D. **Administrator** shall immediately report to **Reliance** all complaints or notices of litigation from insureds or regulatory agencies to be answered by **Reliance**. **Administrator** will attach to such report any and all information from its records to assist **Reliance** in its response.
 - E. **Administrator** shall close no claim file involving a claim in excess of the authority limit without written approval from **Reliance**. **Administrator** shall obtain written releases, stipulations and other appropriate documents, releasing **Reliance** from all liability in connection with the underlying claim.
 - F. **Administrator** will adjust, settle or resist all claims in excess of the authority limit of C\$25,000 with express prior approval of **Reliance**.
 - G. **Administrator** shall provide **Reliance** with weekly claims statements or bordereaus until all **Policies** bound under this agreement shall have expired or been terminated.
5. In the event that the claims payments are to be made on a bank account established by **Administrator**, **Reliance** agrees to fund said bank account with an initial deposit of C\$5,000 from the Loss Adjustment Expense fund. Upon receipt of weekly statements from **Administrator** identifying claim checks which have been drawn on this account, **Reliance** agrees to deposit funds into this account on a weekly basis so that the amount on deposit will equal or exceed the amount necessary to

maintain a proper balance. **Administrator** may withdraw only compensation for contracted claims adjusters, as approved by **Reliance**, from any claims paying account, but never its own compensation. **Administrator** shall not be required to make any payments beyond those properly funded by Reliance under this Agreement.

6. Notwithstanding anything to the contrary in this Agreement, **Reliance** shall have the right to assume responsibility for the administration of any claim, upon notice to **Administrator**. Such assumption shall include responsibility for the related responsibility under any subcontract with a third party previously approved by **Reliance**. Upon receipt of any such notice, **Administrator** shall immediately turn over to **Reliance** all of its files and records relating to such claim, and will thereafter immediately turn over to **Reliance** any correspondence or information thereafter received with respect to that claim.

7. In the event **Administrator** fails to perform claim payment services in a manner satisfactory to **Reliance**, **Reliance** may immediately suspend or terminate **Administrator's** authority to pay claims upon written notice to **Administrator**. In such case, **Administrator** shall immediately surrender any supplies of checks or drafts and claim files maintained hereunder to **Reliance**, and **Administrator's** compensation with respect to claims administration services shall cease immediately. Additionally, the **Administrator** would forfeit all rights to 50% of the surplus funds of the loss adjustment expense fund at expiration of all **Reliance** liabilities.



Reliance Insurance Company
Reliance National Risk Specialists

April 11, 2000

Mr. George Bilyk
President
MERIDIAN WARRANTY MANAGEMENT INC.
625 Cochrane Drive, Suite 907
Markham, Ontario
L3R 9R9

RE: Program Cancellation / Meridian Warranty

Dear George:

On December 9, 1999, Paul Primiani tendered written notice of termination of this program, to take effect on April 30, 2000. Due to the difficulties DFS has encountered in the interim, we have agreed to extend our participation under this program until June 30, 2000.

In view of the diminished premium volume without DFS going forward past June 30, 2000, Reliance believes that our internal administrative costs would not justify our continued participation on any of the Meridian business. Our participation will lapse as of June 30, 2000, at which time you will have to make alternative fronting arrangements.

I will be in touch with you over the next few days to discuss the continuing duties of Meridian as Administrator of the in force business past the program termination date.

Regards,

Robert Jordan
Programs/ Commercial Lines Manager



Reliance Insurance Company
Reliance National Risk Specialists

December 9, 1999

Mr. George Bilyk
President
MERIDIAN WARRANTY MANAGEMENT INC.
625 Cochrane Drive, Suite 907
Markham, Ontario
L3R 9R9

Re: Program Cancellation / Meridian Warranty

Dear George:

As per our telephone conversation of December 7th, 1999, this is to advise you as per condition C of Article XII Termination Agreement, we are giving you official notice of termination to be effective April 30th, 2000.

Regards,

Paul Primiani
First Vice President

PP/fa

Encl.

SCHEDULE "C"

The Underwriters' liability shall attach simultaneously with that of the Company and shall be subject in all respects to the same risks, terms, conditions, interpretations, waivers, and to the same modification, alterations and cancellations as the respective insurances (or reinsurances) of the Company, the true intent of this Agreement being that the Underwriters shall, in every case to which this Agreement applies, follow the fortunes of the Company.

SCHEDULE "D"

ESTOPPEL CERTIFICATE

In connection with the assignment to London Guarantee Insurance Company ("London Guarantee") by KPMG Inc., in its capacity as liquidator of the insurance business in Canada of Reliance Insurance Company and not in its personal capacity, of a program administrator's agreement effective November 1, 1995, as amended by an addendum dated June 30, 2000 (the "Administrator's Agreement") among Meridian Warranty Management Inc. and Nicole Demers & Associates Inc. (together the "Existing Administrators") and Reliance Insurance Company ("Reliance"), and further amended by an amending, agreement dated _____, 2002 among Reliance, the Existing Administrators and 3768279 Canada Inc. (the "New Administrator", and together with the Existing Administrators, the "Administrators"), each of the Administrators and George Bilyk hereby confirms as follows:

1. A true and complete copy of the Administrator's Agreement and all amendments thereto are attached hereto and are in full force and effect and remain unmodified. There are no other agreements between the Administrators, George Bilyk and Reliance with respect to the subject matter therein.
2. All compensation payable to the Administrators and to George Bilyk under the Administrator's Agreement has been paid and Reliance is otherwise current in all of its obligations under the Administrator's Agreement.
3. None of the Administrator's Agreement or any rights or obligations thereunder has been assigned by any party thereto.
4. There is no presently outstanding monetary default, non-monetary default or waiver of default by any party under the Administrator's Agreement, and no condition or event which might with the passage of time become such a default or waiver of default.

DATED this _____ day of _____, 2002.

EXISTING ADMINISTRATORS:

MERIDIAN WARRANTY MANAGEMENT INC.

By: _____
Name:
Title:

NICOLE DEMERS & ASSOCIATES INC.

By: _____
Name:
Title:

NEW ADMINISTRATOR:

3768279 CANADA INC.

By: _____
Name:
Title:

GEORGE BILYK:

Witness

George Bilyk

SCHEDULE "E"

FORM OF REINSURANCE CONSULTING AGREEMENT

(Attached)

[Letterhead of London Guarantee]

•, 2002

George Bilyk
[address]

Dear Mr. Bilyk:

Re: Program Administrator and Consulting Agreement

In consideration of the mutual covenants, promises and agreements as set forth in the Program Administrator and Consulting Agreement (the "Agreement") dated •, 2002 among London Guarantee Insurance Company ("London Guarantee"), 3768279 Canada Inc., KPMG Inc. in its capacity as liquidator of the insurance business in Canada of Reliance Insurance Company and not in its personal capacity (the "Liquidator") and yourself, you agree as follows:

Your sole and complete compensation for the performance of your obligations under the Agreement shall be a fee paid by London Guarantee and funded by the Liquidator in the aggregate amount of \$106,800. The compensation payable to you shall be paid in 12 equal monthly installments for each of the years following the date hereof as follows:

Year 1: \$3,200 per month
Year 2: \$2,400 per month
Year 3: \$1,800 per month
Year 4: \$1,000 per month
Year 5: \$500 per month

Notwithstanding the foregoing:

- (1) if you fail to perform any of your obligations set forth in the Agreement, your compensation shall be withheld until you have performed such obligations. If your failure to perform in accordance with the Agreement extends for a period greater than 60 days, you shall forfeit your compensation for the period of time in which you have failed to perform such obligations;
- (2) if London Guarantee suspends your authority in accordance with Article 13 of the Agreement, you shall forfeit your compensation for the period of time in which the suspension is in effect; and
- (3) if London Guarantee terminates the Agreement with respect to your engagement as a consultant of London Guarantee, you shall forfeit any further compensation as at the effective date of termination;

If London Guarantee suspends your authority in accordance with Article 13 of the Agreement or terminates the Agreement with respect to your engagement as a consultant, and London Guarantee elects to have you continue to perform your duties under the Agreement for a period of time after such suspension or termination, you shall continue to be entitled to the compensation payments described herein for such period of time, to a maximum aggregate payment of \$106,800.

It is understood and agreed by the parties hereto that each deems this letter agreement and any exhibits, addenda and amendments thereto, to be confidential and neither of the parties shall reproduce or disclose to any third party, other than any provincial or governmental authority requiring same, any or all of such confidential matters, unless such reproduction or disclosure is consented to in writing by the other party not so reproducing or disclosing or required by order of a court order of competent jurisdiction or of a governmental body.

All actions, disputes, claims and controversies under common law, statutory law or in equity of any type or nature whatsoever between the parties which cannot be resolved and which touches upon the validity, construction, meaning, interpretation, performance or effect of this letter agreement, whether arising before or after the date of this letter agreement, and whether directly or indirectly relating to: (i) this letter agreement and/or any amendments and schedules or exhibits hereto, or the breach, invalidity or termination hereof; (ii) any previous or subsequent agreement between the parties; (iii) any act committed by the parties or by any parent company, subsidiary or affiliated company of such party (the "Companies"), or by any employee, agent, officer or director of such party whether or not arising within the scope and course of employment or other contractual representation of the Companies provided that such act arises under a relationship, transaction or dealing between the parties; and/or (iv) any other relationship, transaction or dealing between the parties, shall be subject to and resolved by binding arbitration in accordance with Article 27 of the Agreement.

This letter agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Please sign and return the extra copy of this letter agreement enclosed for that purpose, where upon there will be a binding agreement between us. This letter agreement may be signed in counterpart and a facsimile of an executed counterpart shall have the same force and effect as an original executed counterpart.

Yours very truly,

**LONDON GUARANTEE INSURANCE
COMPANY**

By: _____

Agreed.

George Bilyk

SCHEDULE "F"
FORM OF DFS INDEMNITY

(Attached)

INDEMNITY AGREEMENT

THIS AGREEMENT made as of the • day of •, 2002

BETWEEN

LONDON GUARANTEE INSURANCE COMPANY
(hereinafter referred to as “London Guarantee”)

OF THE FIRST PART

- and -

DEUTSCHE FINANCIAL SERVICES CANADA CORPORATION
(hereinafter referred to as “DFS”)

OF THE SECOND PART

WHEREAS London Guarantee has assumed the Policy Liabilities (as defined herein) in accordance with an assumption reinsurance agreement dated •, 2002 between London Guarantee and KPMG Inc., in its capacity as liquidator of the insurance business in Canada of Reliance Insurance Company (the “Assumption Reinsurance Agreement”);

AND WHEREAS, in order to induce London Guarantee to assume the Policy Liabilities, DFS has agreed to indemnify London Guarantee for any payment required to be made by London Guarantee, whether such payment is required to be made to DFS, any additional named insured or insureds or any third party, on account of any claim incurred or made against the Policies (as defined herein) (the “Claims”);

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto, in consideration of the premises, and mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged agree as follows:

1. **Interpretation.** The following words and phrases shall have the following meanings for the purposes of this Agreement:

“**Administrator**” means 3768279 Canada Inc.;

“**Agreement**” means this Agreement, including the Recitals and Exhibits and the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby”

and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

“Assumption Reinsurance Agreement” has the meaning ascribed thereto in the first recital to this Agreement;

“Closing” has the meaning ascribed thereto in the Assumption Reinsurance Agreement;

“Existing Administration Agreement” means the Program Administration Agreement between the Existing Administrators and Reliance Insurance Company dated November 1, 1995, as amended from time to time, a copy of which is attached as Schedule “B”;

“Existing Administrators” means the administrator appointed and authorized by Reliance under the Existing Administration Agreement, defined in the Existing Administration Agreement as Meridian Warranty Management Inc./Nicole Demers & Associates Inc.;

“Indemnified Parties” has the meaning ascribed thereto in Section 2 of this Agreement;

“Person” means an individual, partnership, joint venture, association, corporation, trust or governmental authority, body agency or department;

“Policy Liabilities” has the meaning ascribed thereto in the Reinsurance Assumption Agreement, but only with respect to Policies;

“Policies” means those of the extended warranty service contracts issued by or on behalf of the Existing Administrators or the Administrator and policies of insurance issued on behalf of and underwritten by Reliance in Canada and which are set out in Schedule “A” hereto [**Note to draft: Schedule to conform to DFS-related policies only**];

“Policyholder” or “Contract Holder” means the owner of any Policy;

“Third Party” has the meaning ascribed thereto in Section 4 of this Agreement; and

“Third Party Claim” has the meaning ascribed thereto in Section 3 of this Agreement.

2. **Indemnity.** DFS shall indemnify and hold harmless London Guarantee, its directors, officers, employees and agents (the **“Indemnified Parties”**) in respect of all actions, causes of action, losses, demands, expenses, costs, liabilities, penalties and expenses whatsoever, including without limiting the generality of the foregoing, punitive damages, exemplary damages, aggravated damages, legal fees and adjuster’s fees which the Indemnified Parties may hereafter incur, suffer or be required to pay by reason of any occurrence or Claims under the Policies or

arising out of any breach, violation or non-performance by DFS or its designated representatives, subsidiaries or affiliates, of any covenant, obligation, condition or agreement of DFS contained in this Agreement.

The indemnity provided for herein shall be irrevocable and unconditional and shall continue notwithstanding the termination, cancellation or expiration of this Agreement. London Guarantee shall not be obliged to take any action or exhaust its recourse against any other person, firm or corporation before requiring or being entitled to payment from DFS of the full indemnity provided for herein and DFS shall forthwith after demand or request by London Guarantee pay over to London Guarantee such amounts as may be claimed from time to time by London Guarantee under such indemnity.

3. **Procedure for Indemnification.**

- (1) **Claims Other Than Third Party Claims.** Following receipt from an Indemnified Party of a written notice of a claim for indemnification which has not arisen in respect of a Third Party Claim (as defined in subsection 3(2) below), DFS shall have 30 days to make such investigation of the claim as DFS considers necessary or desirable. For the purpose of such investigation, the Indemnified Party shall make available to DFS the information relied upon by the Indemnified Party to substantiate the claim. If the Indemnified Party and DFS agree at or prior to the expiration of such 30 day period (or any mutually agreed upon extension thereof) to the validity and amount of the claim, DFS shall immediately pay to the Indemnified Party the full agreed upon amount of the claim. If the Indemnified Party and DFS do not agree within such period (or any mutually agreed upon extension thereof), such dispute shall be resolved by arbitration as set out in Section 5.
- (2) **Third Party Claims.** The Indemnified Party shall notify DFS in writing as soon as is reasonably practicable after being informed in writing that facts exist which may result in a claim originating from a Person other than the Indemnified Party (a "Third Party Claim") and in respect of which a right of indemnification given pursuant to Section 2 may apply. DFS shall have the right to elect, by written notice delivered to the Indemnified Party within 10 days of receipt by DFS of the notice from the Indemnified Party in respect of the Third Party Claim, at the sole expense of DFS, to participate in or assume control of the negotiation, settlement or defence of the Third Party Claim, provided that:
 - (a) such will be done at all times in a diligent and bona fide matter;
 - (b) DFS acknowledges in writing its obligation to indemnify the Indemnified Party in accordance with the terms contained in this Agreement in respect of that Third Party Claim; and
 - (c) DFS shall pay all reasonable out-of-pocket expenses incurred by the Indemnified Party as a result of such participation or assumption.

If DFS elects to assume such control, the Indemnified Party shall cooperate with DFS and its counsel and shall have the right to participate in the negotiation, settlement or defence of such Third Party Claim at its own expense. If DFS does not so elect or, having elected to assume such control, thereafter fails to proceed with the settlement or defence of any such Third Party Claim, the Indemnified Party shall be entitled to assume such control. In such case, DFS shall cooperate where necessary with the Indemnified Party and its counsel in connection with such Third Party Claim and DFS shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim. In no event, however, may the Indemnified Party settle a Third Party Claim without the prior written consent of DFS (which consent, in circumstances where the Indemnified Party has assumed control of the Third Party Claim, will not be unreasonably withheld).

4. **Additional Rules and Procedures.** The obligation of DFS to indemnify the Indemnified Parties pursuant to Section 3(2) shall also be subject to the following:

- (a) if any Third Party Claim is of a nature such that the Indemnified Party is required by applicable law to make a payment to any Person (a “Third Party”) with respect to such Third Party Claim before the completion of settlement negotiations or related legal proceedings, the Indemnified Party may make such payment and DFS shall, forthwith after demand by the Indemnified Party, reimburse the Indemnified Party for any such payment. If the amount of any liability under the Third Party Claim in respect of which such a payment was made, as finally determined, is less than the amount which was paid by DFS to the Indemnified Party, the Indemnified Party shall, forthwith after receipt of the difference from the Third Party, pay such difference to DFS; and
- (b) DFS and the Indemnified Party shall provide each other on an ongoing basis with all information which may be relevant to the other’s liability hereunder and shall supply copies of all relevant documentation promptly as they become available.

5. **Arbitration.**

- (1) **Arbitrable Claims.** Except as otherwise specified below, all actions, disputes, claims and controversies under common law, statutory law or in equity of any type or nature whatsoever between the parties which cannot be resolved and which touches upon the validity, construction, meaning, interpretation, performance or effect of this Agreement, whether arising before or after the date of this Agreement, and whether directly or indirectly relating to: (i) this Agreement and/or any amendments and schedules or exhibits hereto, or the breach, invalidity or termination hereof; (ii) any previous or subsequent agreement between the parties; (iii) any act committed by the parties or by any parent company, subsidiary or affiliated company of such party (the “Companies”), or by any employee, agent, officer or director of such party whether or not arising within the scope and course of employment or other contractual representation of the Companies provided that such act arises under a

relationship, transaction or dealing between the parties; and/or (iv) any other relationship, transaction or dealing between the parties (collectively the “Disputes”), will be subject to and resolved by binding arbitration.

- (2) **Administrative Body.** All arbitration hereunder will be conducted by the ADR Institute of Canada Inc. (“IAMC”) under their AMIC Rules of Procedure for Commercial Arbitration (the “Rules”). If IAMC is dissolved, disbanded or becomes subject to any provincial or federal bankruptcy or insolvency proceeding, the parties will remain subject to binding arbitration which will be conducted by a mutually agreeable arbitral forum. Within fifteen (15) days after the commencement of arbitration, each party shall select, from a list of available arbitrators provided by IAMC, one person to act as an arbitrator. These two arbitrators shall each be charged with the sole responsibility of selecting a third arbitrator. If the arbitrators cannot select a third arbitrator within ten (10) days of their appointment, then the third arbitrator will be selected by IAMC. The arbitration of Disputes hereunder shall proceed before the third arbitrator so selected acting as sole arbitrator. This sole arbitrator will be a lawyer with at least ten (10) years commercial transactions experience and will decide if any inconsistency exists between the rules of any applicable arbitral forum and the arbitration provisions contained herein. If such inconsistency exists, the arbitration provisions contained herein will control and supersede such rules. The site of all arbitration proceedings will be in the City of Toronto, Ontario.
- (3) **Discovery.** Discovery permitted in any arbitration proceeding commenced hereunder is limited as follows. No later than thirty (30) days after the filing of a claim for arbitration, the parties will exchange detailed statements setting forth the facts supporting the claim(s) and all defenses to be raised during the arbitration, and a list of all exhibits and witnesses. No later than twenty-one (21) days prior to the arbitration hearing, the parties will exchange a final list of all exhibits and all witnesses, including any designation of any expert witness(es) together with a summary of their testimony; a copy of all documents and a detailed description of any property to be introduced at the hearing. Under no circumstances will the use of interrogatories, requests for admission, requests for the production of documents or the taking of discoveries or depositions be permitted. However, in the event of the designation of any expert witness(es), the following will occur: (i) all information and documents relied upon by the expert witness(es) will be delivered to the opposing party, (ii) the opposing party will be permitted to discover or depose the expert witness(es), (iii) the opposing party will be permitted to designate rebuttal expert witness(es), and (iv) the arbitration hearing will be adjourned or continued to the earliest possible date that enables the foregoing limited discovery to be accomplished.
- (4) **Exemplary or Punitive Damages.** The Arbitrator will not have the authority to award exemplary or punitive damages.
- (5) **Confidentiality of Awards.** All arbitration proceedings, including testimony or evidence at hearings, will be kept confidential, although any award or order

rendered by the arbitrator pursuant to the terms of this Agreement may be entered as a judgment or order in any provincial or federal court and may be confirmed within the judicial district which includes the residence of the party against whom such award or order was entered. Subject to application of the Rules, the Arbitration Act (Ontario), as amended (“OAA”) will govern all arbitration(s) and confirmation proceedings hereunder.

- (6) **Legal Fees.** If a party brings any other action for judicial relief with respect to any Dispute, the party bringing such action will be liable for and immediately pay all of the other party’s costs and expenses (including all legal fees and disbursements) incurred to stay or dismiss such action and remove or refer such Dispute to arbitration. If a party brings or appeals an action to vacate or modify an arbitration award and such party does not prevail, such party will pay all costs and expenses, including all legal fees and disbursements, incurred by the other party in defending such action. Additionally, if a party (the “Initiating Party”) sues another party (the “Defending Party”) or institutes any arbitration claim or counterclaim against the Defending Party in which the Defending Party is the prevailing party, the Initiating Party will pay all costs and expenses (including all legal fees and expenses) incurred by the Defending Party in the course of defending such action or proceeding.
- (7) **Limitations.** Any arbitration proceeding must be instituted: (i) with respect to any Dispute for the collection of any debt owed by either party to the other, within two (2) years after the date the last payment was required or received by the instituting party; and (ii) with respect to any other Dispute, within seven (7) years after the date the incident giving rise thereto occurred, whether or not any damage was sustained or capable of ascertainment or either party knew of such incident. Failure to institute an arbitration proceeding within such period will constitute an absolute bar and waiver to the institution of any proceeding, whether arbitration or a court proceeding, with respect to such Dispute.

6. **Subsidiaries and Associates of DFS.** DFS hereby agrees that this Agreement shall also apply to any additional subsidiary or associate of DFS added as a named insured by endorsement to the Policies. DFS covenants to cause any such additional subsidiary or associate to be bound by and comply with the terms of this Agreement, provided that the liability of DFS and such subsidiaries and associates shall at all times be joint and several. The terms “subsidiary” and “associate” shall have the meanings ascribed thereto in the *Business Corporations Act* (Ontario).

7. **Governing Law.** This Agreement shall be governed by the Laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The parties hereby attorn to the courts of Ontario which shall have exclusive jurisdiction to entertain any action in respect of this Agreement.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written.

9. **Successors and Assigns.** This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns. DFS shall not assign this Agreement or any part thereof without the prior written consent of London Guarantee, which consent may not be unreasonably withheld.

10. **Notices.** All notices, requests, demands or other communications required to be given or made hereunder shall be in writing and shall be deemed to be well and sufficiently given if hand delivered or sent by prepaid courier or by means of printed electronic or printed telephonic communication, in each case to the applicable address set out below:

(i) if to DFS addressed to:

Deutsche Financial Services Canada Corporation
90 Burnhamthorpe Road West
Suite 500
Mississauga, Ontario
L5B 3C3

Attention: Jeff Allen
Facsimile No: (905) 566-7400

(ii) if to London Guarantee addressed to:

London Guarantee Insurance Company
77 King Street West
Suite 3426, P.O. Box 284
Royal Trust Tower
Toronto, Ontario M5K 1K2

Attention: M. Anthony O'Brien
Facsimile No: (416) 360-8267

Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a business day in the place the communication is received and the communication is so delivered, faxed or sent before 4:30 p.m. (local time) on such day in the place the communication is received. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following business day in the place the communication is received. Any such communication sent by facsimile shall be deemed to have been given and made and to have been received on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the relevant facsimile number of the recipient. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth business day in the place the communication is sent following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services.

Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.

Any party may from time to time change its address under this Section 10 by notice to the other Parties given in the manner provided by this Section 10.

11. **Severability.** The parties agree that all of the provisions in this Agreement are reasonable and valid and that, if any provision in this Agreement is determined to be void or unenforceable in full or in part, it shall be severed from the balance of this Agreement without affecting or impairing the validity of the remaining provisions of this Agreement.

12. **Amendment and Waiver.** No amendment of this Agreement will be effective unless made in writing and signed by the parties. A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the party to be bound by the waiver. No waiver shall be inferred from or implied by any failure to act or delay in acting by a party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other party. The waiver by any party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

13. **Further Assurances.** At any time and from time to time, both while this Agreement is in effect and after termination thereof, DFS agrees to execute and deliver to London Guarantee, or as London Guarantee may direct, such further instruments, documents and written assurances London Guarantee may request in order to more fully carry out the provisions of this Agreement.

14. **Time of Essence.** Time shall be of the essence in all respects of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day and year first written above.

**LONDON GUARANTEE INSURANCE
COMPANY**

By: _____
Name:
Title:

By: _____
Name:
Title:

**DEUTSCHE FINANCIAL SERVICES
CANADA CORPORATION**

By: _____
Name:
Title:

By: _____
Name:
Title: