

CAUSE NO. D-1-GN-23-001549

THE TEXAS DEPARTMENT OF INSURANCE,	§ § § § § § § § § §	IN THE DISTRICT COURT OF    TRAVIS COUNTY, TEXAS
PLAINTIFF,		
v.		
FRIDAY HEALTH INSURANCE COMPANY, INC.,		
DEFENDANT.		345th JUDICIAL DISTRICT

**AXA FRANCE VIE’S REQUEST TO STAY SPECIAL DEPUTY RECEIVER’S  
APPLICATION TO APPROVE COMMUTATION AGREEMENT WITH ODYSSEY  
REINSURANCE COMPANY, OR ALTERNATIVELY, AXA FRANCE VIE’S  
OBJECTION TO APPLICATION TO APPROVE COMMUTATION AGREEMENT**

AXA France Vie (“AFV”) respectfully requests this Court to stay the Application of the Special Deputy Receiver (“SDR”) for Friday Health Insurance Company, Inc. (“Friday”) to approve a Commutation Agreement with Odyssey Reinsurance Company (“Odyssey Re”) to permit AFV and Friday to undertake good faith and best efforts to resolve their disputes, including in an arbitration if necessary. Friday materially breached the Quota Share Reinsurance Agreement between AFV and Friday (the “Quota Share Agreement”)<sup>1</sup> by, among other ways, modifying Friday’s excess of loss reinsurance agreement (“XOL Agreement”) with Odyssey Re. Friday’s breaches must be resolved—even if in an arbitration—before this Court can make a determination on the SDR’s Application.

Alternatively, if the Court does not stay the SDR’s Application to approve the Commutation Agreement, AFV objects to the Application because (1) the Quota Share Agreement

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<sup>1</sup> The “Quota Share Agreement” means the Quota Share Reinsurance Agreement between Friday Health Insurance Company, Inc. and AXA France Vie, effective January 1, 2021, Agreement Number CR 4661, and amended as of January 1, 2022, by Amendment No. 1, Reference Number CR 4661-2. Exhibits referenced herein are attached to the attached **Exhibit A**, Declaration of James B. Danford Jr. The Quota Share Agreement is **Exhibit 1**. Amendment No. 1 to the Quota Share Agreement is **Exhibit 2**.

prohibits amending the XOL Agreement (including a commutation) without AFV's prior approval, which the SDR has not sought or received and (2) AFV has a right to its quota share of any collections from Odyssey Re to offset obligations, if any, that AFV may have to Friday under the Quota Share Agreement.

Moreover, the Application fails to disclose any rationale for entering into the Commutation Agreement, including any information about what is owed for which year and why any receivable from Odyssey Re is being discounted. There is a well documented history of Friday's accounting errors with respect to Odyssey Re, and without this basic information about the financial basis for the Commutation Agreement, AFV is concerned that the SDR has premised its negotiations, or agreed to discounts, on erroneous assumptions.<sup>2</sup>

## **I. INTRODUCTION**

The SDR's Application is the latest instance of Friday's pattern of concealing information from, and skirting its obligations to, AFV under Friday's and AFV's Quota Share Agreement. The Quota Share Agreement required Friday to purchase excess of loss reinsurance to mitigate high-cost medical claims,<sup>3</sup> which Friday ultimately obtained from Odyssey Re. Payments made to or from Friday's excess of loss reinsurer, Odyssey Re, under Friday's XOL Agreement, have a direct effect on AFV under the Quota Share Reinsurance Agreement. AFV's liability under the Quota Share Agreement is net of any recoveries that Friday receives from Odyssey Re under the XOL Agreement.

Because any change to Friday's excess of loss reinsurance coverage would directly affect AFV's potential liabilities, the Quota Share Agreement expressly required Friday to obtain AFV's

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<sup>2</sup> Where applicable, references to actions of "Friday" include actions taken on Friday's behalf by the Receiver or Special Deputy Receiver.

<sup>3</sup> Ex. 1, Quota Share Agreement, at Art. 5(2).

prior approval for any alterations to the XOL Agreement. Specifically, Friday “agree[d] to submit for approval to [AFV] any amendment to the Excess of Loss agreements.”<sup>4</sup>

Yet the SDR never discussed its Application or the Commutation Agreement with AFV nor sought AFV’s approval to modify the XOL Agreement. Nor did it provide AFV (or the Court) with any analysis regarding how the payment amount of \$11,578,525 was determined (“Commutation Amount”), how the Commutation Amount is allocated between claim years, or an accounting of premiums received, claims paid, or experience refund owed or paid under the XOL Agreement. Without this information, it is impossible for AFV (or the Court) to determine the appropriateness of the Commutation Agreement or the effect that the Commutation Agreement will have on AFV or more broadly on Friday’s estate.

Further, Friday materially breached the Quota Share Agreement by modifying the XOL Agreement without AFV’s approval.<sup>5</sup> Under the Quota Share Agreement, the Parties must first “undertake in good faith to use all reasonable best efforts to settle” any dispute.<sup>6</sup> Any unresolved dispute, controversy or claim between AFV and Friday in relation to the Quota Share Agreement must then be referred to arbitration.<sup>7</sup> Consistent with the provisions of the Quota Share Agreement, AFV therefore demanded that Friday undertake good faith and best efforts to settle its disputes with AFV or else agree to arbitration.<sup>8</sup>

Accordingly, the Court should stay the Application until AFV and Friday have informally resolved their disputes or arbitrated Friday’s breaches of the Quota Share Agreement. Alternatively, if the Court denies AFV’s request to stay consideration of the Application, the Court

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<sup>4</sup> Ex. 1, Quota Share Agreement, at Art. 5(2).

<sup>5</sup> Ex. 1, Quota Share Agreement, at Art. 5(2).

<sup>6</sup> Ex. 1, Quota Share Agreement, at Art. 19.

<sup>7</sup> Ex. 1, Quota Share Agreement, at Art. 19.

<sup>8</sup> Ex. 14, AFV’s April 24, 2025 Letter.

should refrain from granting the Application until Friday has obtained AFV's approval of the Commutation Agreement. Friday must first provide AFV with all financial information supporting the Commutation Amount, as required under the Quota Share Agreement.<sup>9</sup>

## **II. STATEMENT OF FACTS**

### **A. Friday and AFV Enter into the Quota Share Agreement, which Requires Excess of Loss Reinsurance.**

In March 2021, Friday and AFV entered into the Quota Share Agreement. Under the Quota Share Agreement, AFV was to reimburse Friday for AFV's quota share of claims paid by Friday for certain policies<sup>10</sup> for the period of January 1, 2021, to December 31, 2021, in accordance with the reinsurance accounting procedures provided for in the Quota Share Agreement.<sup>11</sup> In addition to its reporting and accounting obligations, Friday was required, in good faith, to utilize customary and usual practices in the health insurance industry in its underwriting, claims assessment, administration, and management of the business.<sup>12</sup>

The Quota Share Agreement also specified that Friday was to purchase excess of loss reinsurance to protect AFV's liabilities under the Quota Share Agreement.<sup>13</sup> Pursuant to the Quota Share Agreement, Friday entered into the XOL Agreement with Odyssey Re. Under the XOL Agreement, Odyssey Re reinsured 90% of losses incurred by Friday under certain policies specified therein in excess of \$500,000.

The coverage provided by Odyssey Re is inextricably linked to AFV's liabilities under the Quota Share Agreement. Article 5(2) of the Quota Share Agreement provides:

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<sup>9</sup> AFV and Friday are currently meeting and conferring regarding disputed issues between them, including AFV's claims against Friday. If those issues cannot be resolved amicably, AFV reserves all rights and remedies, including to seek to compel arbitration of its claims against Friday (and any claims that Friday may seek to assert against AFV).

<sup>10</sup> Ex. 1, Quota Share Agreement, at Annex 1.

<sup>11</sup> Ex. 1, Quota Share Agreement, at Art. 9(2).

<sup>12</sup> Ex. 1, Quota Share Agreement, at Art. 26.

<sup>13</sup> Ex. 1, Quota Share Agreement, at Art. 5(2).



[AFV]'s Quota Share of liabilities ceded hereunder shall be protected by an Excess of Loss reinsurance agreement purchased by [Friday] that provides excess of loss reinsurance for 90% of loss incurred under Policies set forth in Annex 1 (Scope) in excess of \$500,000 per person and per year and unlimited capacity. . . . [AFV] shall benefit from and receive its Quota Share of the Excess of Loss recoveries which includes, but is not limited to, any profit-share that may be received by [Friday] from any excess of loss reinsurance arrangement applicable to the Policies. [Friday] hereby agree[s] to submit for approval to [AFV] any amendment to the Excess of Loss agreements.<sup>14</sup>

Under Annex 7 to the Quota Share Agreement, excess of loss recoveries are netted out for purposes of the reinsurance balance calculation. AFV's quota share of excess of loss premium paid by Friday to Odyssey Re are deducted from AFV's quota share of the Net Reinsurance Premium paid to AFV under the Quota Share Agreement.<sup>15</sup> In addition, AFV is entitled to its quota share portion of the profit share of the XOL Agreement premium.<sup>16</sup> Thus, payments and recoveries under the XOL Agreement have a direct effect on any claim payments or recoveries between Friday and AFV.

**B. AFV Sends Notice of Dispute Letter, and Friday is Placed into Liquidation.**

On February 20, 2023, AFV sent a Notice of Dispute letter to Friday, which raised myriad concerns about Friday's fraudulent and deceptive acts and omissions and breaches of the Quota Share Agreement ("Notice of Dispute").<sup>17</sup> The Notice of Dispute explained in detail that Friday had engaged in numerous wrongful acts and breached its duty of utmost good faith and warranties, covenants, and duties set forth in the Quota Share Agreement. The Notice of Dispute also provided notice that, as a result of Friday's wrongdoing, the Quota Share Agreement was terminated no later than January 1, 2022, with no further obligations existing between the Parties.<sup>18</sup>

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<sup>14</sup> Ex. 1, Quota Share Agreement, at Art. 5(2).

<sup>15</sup> Ex. 1, Quota Share Agreement, at Art. 7(2).

<sup>16</sup> Ex. 1, Quota Share Agreement, at Art. 5(2).

<sup>17</sup> Ex. 3, Notice of Dispute Letter.

<sup>18</sup> Ex. 3, Notice of Dispute Letter, at 2. AFV expressly reserves all rights that the Quota Share Agreement was terminated no later than January 1, 2022. By filing this request to stay and objection, AFV is not waiving any of its rights to enforce the obligation to arbitrate disputes with Friday, including this matter, or waiving any other rights.

One of Friday's breaches detailed in the Notice of Dispute was Friday's unilateral modification to the terms of the XOL Agreement without notice to AFV.<sup>19</sup> Despite AFV's clear approval rights in the Quota Share Agreement, AFV learned that Friday and Odyssey Re unilaterally modified the Quota Share Agreement in 2022. The modification increased the premium rate per Member and introduced an Aggregating Specific Deductible, in return for an insignificant increase in coverage.<sup>20</sup> Friday and Odyssey Re made these changes to the XOL Agreement without notification to, or approval by, AFV, in violation of the Quota Share Agreement.

The modifications to the XOL Agreement directly and negatively impacted AFV's rights and interests under the Quota Share Agreement. By increasing the premium rate per Member, AFV's quota share of the XOL Agreement premium similarly increased.<sup>21</sup> As a result, higher premium rates were deducted from the Net Reinsurance Premium due to AFV under the Quota Share Agreement—thereby reducing amounts paid to AFV under the Quota Share Agreement.

On March 10, 2023, Friday's interim chief legal officer sent a letter in response to AFV's February 20, 2023 letter.<sup>22</sup> Friday's letter ***did not*** dispute or otherwise challenge AFV's assertion that Friday modified the terms of the XOL Agreement without consulting with AFV.

On March 23, 2023, Friday was placed into liquidation. *See* Plaintiff's Original Petition. A week later, on April 1, 2023, AFV sent a letter detailing the dispute to the SDR that enclosed a copy of the February 20, 2023 Notice of Dispute.<sup>23</sup> AFV sent an additional letter to the SDR on

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<sup>19</sup> Ex. 3, Notice of Dispute Letter, at 10.

<sup>20</sup> *Compare* Ex. 15, January 1, 2021 Odyssey Re Reinsurance Agreement at 5 *with* Ex. 16, January 1, 2022 Odyssey Re Reinsurance Agreement at 5. Due to confidentiality provisions in the agreements, exhibits 15 and 16 are being provided to the Special Master's Docket Clerk and to counsel for the SDR by separate email.

<sup>21</sup> *Compare* Ex. 15, January 1, 2021 Odyssey Re Reinsurance Agreement at 5 *with* Ex. 16, January 1, 2022 Odyssey Re Reinsurance Agreement at 5.

<sup>22</sup> Ex. 4, Friday's March 10, 2023 Letter.

<sup>23</sup> Ex. 5, AFV's April 1, 2023 Letter.

May 17, 2023, which disputed Friday's withdrawal, without notice to AFV, of approximately \$117 million that AFV had placed in a trust account pursuant to the Quota Share Agreement.<sup>24</sup>

The SDR responded on October 5, 2023, asserting that it was entitled to withdraw the trust funds and insisting that AFV owed \$243 million to the Friday estate for paid claims.<sup>25</sup> On December 7, 2023, AFV sent a letter reiterating that Friday had still not substantively responded to the February 2023 Notice of Dispute.<sup>26</sup> AFV's letter also questioned the SDR's claim amount, given Friday's history of inaccurate and erroneous calculations, and requested supporting information and data to substantiate the calculation.<sup>27</sup>

On August 7, 2024, AFV submitted a proof of claim in the amount of \$136,528,122.<sup>28</sup> AFV's proof of claim illustrated the significant damages AFV has incurred as a result of Friday's fraudulent and deceptive actions, and attached AFV's February 2023 Notice of Dispute.<sup>29</sup>

The SDR finally responded to AFV's December 7, 2023, letter nearly a year later, on November 4, 2024.<sup>30</sup> Because the SDR had not provided all of the information AFV requested a year earlier, counsel for AFV sent an email to counsel for the SDR on December 19, 2024, renewing AFV's request for information, data, and documentation the SDR used to calculate its claim.<sup>31</sup> Counsel for the SDR has not responded to AFV counsel's December 19, 2024, email.

AFV's claims in the Notice of Dispute and subsequent letters remain unresolved. If Friday is unwilling to make a good faith effort to resolve these disputes informally, AFV is prepared to

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<sup>24</sup> Ex. 6, AFV's May 17, 2023 Letter.

<sup>25</sup> Ex. 7, Friday's October 5, 2023 Letter.

<sup>26</sup> Ex. 8, AFV's December 7, 2023 Letter.

<sup>27</sup> *Id.*

<sup>28</sup> Ex. 9, AFV's August 7, 2024 Proof of Claim.

<sup>29</sup> Ex. 9, AFV's August 7, 2024 Proof of Claim, at Ex. 1.

<sup>30</sup> Ex. 10, Friday's November 4, 2024 Letter.

<sup>31</sup> Ex. 11, AFV Counsel's December 19, 2024 email.

implement an arbitration at the appropriate time in accordance with terms of the Quota Share Agreement.<sup>32</sup>

**C. Friday Files Its Application Without Prior Notice to or Approval from AFV.**

On April 14, 2025, the SDR filed its Application, seeking authority to enter into the Commutation Agreement with Odyssey Re. Under the Commutation Agreement, the parties agreed that Odyssey Re's net current and future obligations to Friday under the XOL Agreement for claim years 2021, 2022, and 2023 are \$11,578,525. The Commutation Agreement neither allocates the Commutation Amount per claim year nor provides any analysis on how the amount was determined or what the total losses were in each claim year. In consideration for Odyssey Re paying the Commutation Amount, the SDR agrees to release and forever discharge Odyssey Re from all past, present, or future liabilities relating to the XOL Agreement, whether known or unknown.

On April 16, 2025, AFV sent a letter to the SDR notifying the SDR that its failure to first seek AFV's approval for the Commutation Agreement violated the Quota Share Agreement.<sup>33</sup> The April letter also expressed concerns that the Commutation Agreement may be based on erroneous representations or assumptions and that it could negatively impact AFV's rights under the Quota Share Agreement. On April 22, 2025, the SDR responded to AFV's April letter.<sup>34</sup> While the SDR's letter disputes AFV's contention that the Commutation Agreement is grounded in flawed representations and assumptions, the SDR's letter ***does not*** dispute that Friday (and now the SDR) never sought or obtained AFV's approval before modifying the XOL Agreement terms in 2022 or filing its Application to approve the Commutation Agreement.

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<sup>32</sup> Ex. 1, Quota Share Agreement, at Art. 19.

<sup>33</sup> Ex. 12, AFV's April 16, 2025 Letter.

<sup>34</sup> Ex. 13, SDR's April 22, 2025 Letter.

Because the SDR did not first seek AFV's approval, and because the Commutation Agreement adversely affects AFV's rights under the Quota Share Agreement, AFV timely files this request to stay and objection to the Application.

**D. AFV Sends a Further Letter to Friday Requesting that It Undertake Good Faith and Best Efforts to Settle the Dispute or Otherwise Arbitrate**

On April 24, 2025, AFV sent Friday a letter demanding that Friday undertake good faith and best efforts to settle its disputes or otherwise agree to arbitration.<sup>35</sup> The letter notes that the Quota Share Agreement requires Friday and AFV to resolve disputes through binding arbitration if they cannot resolve their disputes informally. Article 19 of the Quota Share Agreement provides that “any dispute, controversy or claim arising between the Parties in connection with or in relation to this Agreement, including formation and validity, and whether arising before or after termination of this Agreement, shall be referred to an arbitration tribunal.”<sup>36</sup> Before arbitration may be commenced, Article 19 first obliges the parties to “undertake in good faith to use all reasonable best efforts to settle such dispute.”<sup>37</sup> If those informal settlement discussions are unsuccessful, “after written notice of a dispute and a reasonable opportunity to cure under the circumstances,” the unresolved dispute must be arbitrated.<sup>38</sup> AFV is prepared to arbitrate if necessary once informal efforts at dispute resolution have been completely exhausted.

### **III. LEGAL ARGUMENT**

**A. Friday Never Presented AFV with the Commutation Agreement for Approval.**

Circumventing its obligations under the Quota Share Agreement, Friday never provided AFV with an opportunity to review or approve the Commutation Agreement. Because AFV's

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<sup>35</sup> Ex. 14, AFV's April 24, 2025 letter.

<sup>36</sup> Ex. 1, Quota Share Agreement, at Art. 19.

<sup>37</sup> Ex. 1, Quota Share Agreement, at Art. 19(1).

<sup>38</sup> Ex. 1, Quota Share Agreement, at Arts. 19(1), 19(2)(ii).

rights and liabilities under the Quota Share Agreement are directly affected by the XOL Agreement, AFV took steps to safeguard its rights when negotiating the Quota Share Agreement with Friday. The Quota Share Agreement expressly required that Friday “submit for approval to [AFV] any amendments to the Excess of Loss agreements.”<sup>39</sup> This right to prior approval ensured that the XOL Agreement could not be altered in a manner that exposed AFV to greater financial risks and liabilities without AFV’s acknowledgment and approval.

In blatant disregard of the approval requirement and knowing about AFV’s prior objection to Friday’s unauthorized purported modification to the XOL Agreement, Friday filed its Application and seeks to enter into the Commutation Agreement with Odyssey Re without ever discussing the Commutation Agreement or Commutation Amount with AFV. On April 16, 2025, AFV sent another letter to Friday again reminding Friday of its obligations under the Quota Share Agreement, and offered to discuss with Friday the connection between the XOL Agreement and the Quota Share Agreement as well as the parties’ history related to the two agreements.<sup>40</sup> On April 22, 2025, the SDR responded, defending its actions in relation to the Commutation Agreement.<sup>41</sup> The SDR, however, does not (because it cannot) assert that it ever sought or obtained AFV’s approval before filing its Application.

Unfortunately, this is not the first time Friday has failed to consult with AFV regarding alterations to the XOL Agreement. AFV learned that Friday unilaterally modified the terms of the XOL Agreement in 2022, adding a feature that changed the protective and cost structure of the excess of loss cover—all without notification to, or approval by AFV, in violation of the Quota

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<sup>39</sup> Ex. 1, Quota Share Agreement, at Art. 5(2)

<sup>40</sup> Ex. 12, AFV’s April 16, 2025 Letter.

<sup>41</sup> Ex. 13, SDR’s April 22, 2025 Letter.

Share Agreement.<sup>42</sup> Given Friday’s contention that AFV is bound by the Quota Share Agreement for 2022, the negative consequences that the modification would have on AFV (i.e., unnecessarily decreasing amounts owed to AFV under the Quota Share Agreement by increasing the cost of excess of loss coverage) are precisely the reason AFV negotiated for a contractual right to approve of any changes to the XOL Agreement.

Because the Quota Share Agreement requires Friday to obtain AFV’s approval to “any amendment to the Excess of Loss agreements,” and because Friday did not provide notice to AFV of the Commutation Agreement, much less obtain AFV’s approval, the Court should stay the Application until the disputes between AFV and Friday are resolved. Alternatively, the Court should withhold ruling on the Application until Friday consults with AFV regarding the Commutation Agreement and its effects on AFV (and the Friday estate)—and obtains AFV’s approval.

**B. The SDR has Provided No Information Underpinning the Commutation Agreement or Commutation Amount.**

Friday’s Application fails to provide any accounting or other economic information that supports the Commutation Agreement or the Commutation Amount. For example, Friday has not disclosed the amount of premium paid to Odyssey Re, the amount of recoveries Friday received, the amount of experience refund Odyssey Re owed or paid to Friday, or how the Commutation Amount is allocated between the years 2021, 2022 and 2023. This basic information is necessary for AFV (and the Court) to understand the reasonableness of the Commutation Agreement and its impact on the rights and liabilities under the Quota Share Agreement. Without this information,

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<sup>42</sup> Ex. 3, Notice of Dispute Letter, at 10; Ex. 14, AFV’s April 24, 2025 Letter; *Compare* Ex. 15, January 1, 2021 Odyssey Re Reinsurance Agreement at 5 *with* Ex. 16, January 1, 2022 Odyssey Re Reinsurance Agreement at 5.

it is impossible for AFV to determine whether the Commutation Amount is appropriate, a prerequisite to AFV's deciding whether to approve the Commutation Agreement.

Throughout its relationship with AFV, Friday consistently committed material errors and made misrepresentations in its contractually required quarterly reports when calculating excess of loss premiums and recoveries.<sup>43</sup> AFV routinely provided Friday with assistance in identifying and correcting Friday's persistent errors. Given Friday's history of preparing erroneous calculations, it would be no surprise if there are substantial errors in the underlying calculations that resulted in the Commutation Amount.

For example, Friday's November 4, 2024, letter attaches a 2022 Runout (as of June 30, 2024) that is replete with errors related to excess of loss calculations.<sup>44</sup> The 2022 Runout includes an XOL Premium amount of -\$41,097,202 that is far off the mark. The XOL Agreement includes a \$24 million Aggregating Specific Deductible that is combined for Friday and its affiliates in other states, meaning that Friday deducts \$24 million from the premium before any payment to Odyssey Re.<sup>45</sup> Based on the latest records Friday has provided to AFV, the Aggregating Specific Deductible was allocated at \$18 million for Friday for Texas, which would result in an XOL Premium of \$23 million, not \$41 million. The XOL Premium would then be further reduced by AFV's quota share portion of a profit share under Article 5.2 of the Quota Share Agreement.<sup>46</sup>

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<sup>43</sup> Ex. 8, AFV's December 7, 2023 Letter.

<sup>44</sup> Ex. 10, Friday's November 4, 2024 Letter. As discussed before and in prior communications with Friday and the SDR, AFV contends that the Quota Share Agreement was terminated by January 1, 2022, given the fraud and misrepresentations by Friday; however, the SDR has taken the position that it was valid and binding. Accordingly, the argument herein related to 2022 is based on the SDR's position on behalf of Friday that the 2022 Quota Share Agreement was in effect.

<sup>45</sup> As explained in the Notice of Dispute and AFV's April 16 and 24, 2025 letters, Friday unilaterally modified the terms of its excess of loss reinsurance agreement with Odyssey Re in Texas in 2022—changing the protective structure of the excess of loss cover—without notification to, or approval by, AFV. AFV contends its agreement with Friday terminated by January 1, 2022, however, Friday and the SDR disagree with AFV's position. *See* Exs. 3-14.

<sup>46</sup> Ex. 1, Quota Share Agreement, at Art. 5(2); Ex. 12, AFV's April 16, 2025 Letter.



In addition, under the XOL Agreement, the experience refund is calculated on an aggregate basis for all of the different excess of loss agreements (aggregate premium paid & aggregate losses incurred under the excess of loss agreements applicable to Friday and its affiliates in Colorado, Georgia, Nevada, North Carolina, and Oklahoma). Friday has not provided information necessary to know whether the Commutation Agreement negatively affects the experience refund owed by Odyssey Re under the other excess of loss agreements for the different affiliates, or whether Friday has agreed to a special arrangement with Odyssey Re to deviate from the contractual rules of calculating this experience refund.<sup>47</sup>

Given Friday's history of incorrect calculations—the likelihood of which is exacerbated by the complexities Friday added to the XOL Agreement through its modifications without AFV's approval—AFV has serious doubts about the accuracy of Friday's calculations that support the Commutation Amount, which could adversely affect AFV's rights under the Quota Share Agreement. The Court should permit Friday and AFV to discuss the Commutation Agreement, and the related underlying accounting, before it decides Friday's Application to approve the Commutation Agreement.

#### **IV. CONCLUSION**

For the foregoing reasons, AFV respectfully requests that this Court stay Friday's Application until the disputes between Friday and AFV are resolved. Alternatively, if the Court does not stay the Application, then AFV respectfully requests that this Court deny Friday's Application until Friday has properly presented the Commutation Agreement, including any

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<sup>47</sup> AFV makes these statements to point out the errors in Friday's calculations, and is without prejudice to AFV's argument Friday breached the Quota Share Agreement by modifying the XOL Agreement without AFV's approval.

underlying economic analyses, to AFV for approval pursuant to the Quota Share Agreement and has in fact obtained AFV's approval.<sup>48</sup>

Dated: April 24, 2025.

Respectfully Submitted,

MAYER BROWN LLP

By: /s/ Robert S. Harrell

Robert S. Harrell

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*Attorneys for AXA France Vie*

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of April, 2025, a true and correct copy of the foregoing was served on all counsel of record via the Court's electronic filing system and by email to the Special Master's Docket Clerk (specialmasterclerk@tdi.texas.gov), Greg Pierce (gpierce@gpiercelaw.com), and all interested parties, including those listed on the SDR's Certificate of Service, in accordance with the Texas Rules of Civil Procedure.

/s/ James B. Danford, Jr.

James B. Danford, Jr.

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<sup>48</sup> Ex. 1, Quota Share Agreement, at Art. 5(2).

CAUSE NO. D-1-GN-23-001549

THE TEXAS DEPARTMENT OF  
INSURANCE,

PLAINTIFF,

V.

FRIDAY HEALTH INSURANCE  
COMPANY, INC.,

DEFENDANT.

§ IN THE DISTRICT COURT OF  
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§ TRAVIS COUNTY, TEXAS  
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§  
§ 345th JUDICIAL DISTRICT

**DECLARATION OF JAMES B. DANFORD JR.**

I hereby affirm and state:

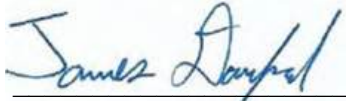
1. My name is James B. Danford Jr. I am over the age of twenty-one, I have not been convicted of a felony or crime of moral turpitude, and I am otherwise fully competent and able to make this declaration. I have personal knowledge of the statements in this declaration, all of which are true and correct.
2. I am an associate at Mayer Brown LLP (“Mayer Brown”). Mayer Brown represents AXA France Vie (“AFV”) with regard to wrongdoing by Friday Health Insurance Company, Inc. (“Friday”) in connection with the Quota Share Reinsurance Agreement, Agreement Number CR 4661, effective January 1, 2021, as amended (the “Quota Share Agreement”).
3. I am familiar with the correspondence between AFV and Friday, including the correspondence between AFV and its counsel and the Special Deputy Receiver (“SDR”) for Friday and its counsel.
4. A true and correct copy of the Quota Share Agreement is attached to this declaration as Exhibit 1.
5. A true and correct copy of Amendment No. 1 to the Quota Share Agreement is attached to this declaration as Exhibit 2.

6. On February 20, 2023, AFV sent a notice of dispute letter to Friday. A true and correct copy of the February 20, 2023 notice of dispute letter is attached to this declaration as Exhibit 3.
7. On March 10, 2023, Friday's interim chief legal officer sent a letter to AFV. A true and correct copy of the March 10, 2023 letter is attached to this declaration as Exhibit 4.
8. On April 1, 2023, counsel for AFV sent a letter to the Friday SDR, which enclosed a copy of the February 20, 2023 notice of dispute letter. A true and correct copy of the April 1, 2023 letter is attached to this declaration as Exhibit 5.
9. On May 17, 2023, counsel for AFV sent a letter to the Friday SDR. A true and correct copy of the May 17, 2023 letter is attached to this declaration as Exhibit 6.
10. On October 5, 2023, counsel for the Friday SDR sent a letter to counsel for AFV. A true and correct copy of the October 5, 2023 letter is attached to this declaration as Exhibit 7.
11. On December 7, 2023, counsel for AFV sent a letter to counsel for the Friday SDR. A true and correct copy of the December 7, 2023 letter is attached to this declaration as Exhibit 8.
12. On August 7, 2024, AFV submitted a proof of claim in this liquidation proceeding. A true and correct copy of AFV's August 7, 2024 proof of claim is attached to this declaration as Exhibit 9.
13. On November 4, 2024, counsel for the Friday SDR sent a letter to counsel for AFV. A true and correct copy of the November 4, 2024 letter is attached to this declaration as Exhibit 10.
14. On December 19, 2024, counsel for AFV sent an email to counsel for the Friday SDR. A true and correct copy of the December 19, 2024 email is attached to this declaration as Exhibit 11.

15. On April 16, 2025, counsel for AFV sent a letter to counsel for the Friday SDR. A true and correct copy of the April 16, 2025 letter is attached to this declaration as Exhibit 12.
16. On April 22, 2025, counsel for the Friday SDR sent a letter to counsel for AFV. A true and correct copy of the April 22, 2025 letter is attached to this declaration as Exhibit 13.
17. On April 24, 2025, counsel for AFV sent a letter to the Friday SDR. A true and correct copy of the April 24, 2025 letter is attached to this declaration as Exhibit 14.
18. A Reinsurance Agreement (No. PID254677) with an effective date of January 1, 2021, between Friday and Odyssey Reinsurance Company is cited in AFV's Request to Stay Special Deputy Receiver's Application to Approve a Commutation Agreement with Odyssey Reinsurance Company, or Alternatively, AXA France Vie's Objection to Application ("Request") as Exhibit 15. Due to confidentiality provisions in the agreement, a true and correct copy of the agreement will be sent to the Special Master's Docket Clerk (specialmasterclerk@tdi.texas.gov) and to Greg Pierce, counsel for the SDR (gpierce@gpiercelaw.com), by separate email.
19. A Reinsurance Agreement (No. PID501243) with an effective date of January 1, 2022, between Friday and Odyssey Reinsurance Company is cited in AFV's Request as Exhibit 16. Due to confidentiality provisions in the agreement, a true and correct copy of the agreement will be sent to the Special Master's Docket Clerk (specialmasterclerk@tdi.texas.gov) and to Greg Pierce, counsel for the SDR (gpierce@gpiercelaw.com), by separate email.
20. My work address is 700 Louisiana St., Suite 3400, Houston, Texas 77002. My date of birth is April 28, 1989.

21. The foregoing is based on my personal knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 24th day of April, 2025, in Harris County, Texas.

A handwritten signature in blue ink, appearing to read "James Danford", written over a horizontal line.

James B. Danford Jr.

# **EXHIBIT 1**

**QUOTA SHARE REINSURANCE AGREEMENT**  
**BETWEEN**  
**FRIDAY HEALTH INSURANCE COMPANY, Inc**  
**AND**  
**AXA FRANCE VIE**

**Dated 22 March 2021**

**AGREEMENT NUMBER CR 4661**



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## **QUOTA SHARE REINSURANCE AGREEMENT**

This QUOTA SHARE REINSURANCE AGREEMENT (this "Agreement") is made and entered into on March 22<sup>nd</sup>, 2021 and effective as of the Effective Time by and between FRIDAY HEALTH INSURANCE COMPANY, INC., a Texas licensed insurer having its statutory address at 1999 Bryan Street, Suite 900, Dallas, Texas 75201 and its main administrative address at 700 Main St Ste 100, Alamosa, CO 81101, (the "Ceding Company") and AXA FRANCE VIE, a limited company registered in the Commercial Register of Nanterre under company number 310 499 959 00891, governed by the French Insurance Code (the "Reinsurer"). For purposes of this Agreement, the Ceding Company and the Reinsurer will each be deemed a "Party", and collectively, the "Parties".

### **ARTICLE 1**

#### **OBJECT AND SCOPE OF THIS REINSURANCE AGREEMENT**

- 1) This Agreement refers to all policies properly underwritten and issued by the Ceding Company as set out in the attached Annex 1 – Scope (the "Policies"). This Agreement does not apply to any other business underwritten by the Ceding Company.
- 2) This Agreement consists of this agreement, the Annexes hereto and any future amendments. The attached Annexes form and any future amendments will form integral parts of this Agreement and shall be equally binding. In the event of any discrepancy between this Agreement, an Annex or a future amendment, the terms of the respective Annex or future amendment will prevail.
- 3) Copies of current and accurate specimen policy forms, policy premium information, application forms and rate tables with respect to the Policies ("Policy Documentation") shall be furnished to the Reinsurer. The Ceding Company shall provide the Reinsurer with the updated version of the Policy Documentation for each year beginning with calendar year 2020 as part of the governance process described in Article 1, Section 4 below. The Policies shall be issued in accordance with the requirements of the applicable Policy Documentation.
- 4) In the second calendar quarter of each calendar year beginning in 2021, the Ceding Company will provide to the Reinsurer the proposed rating plans, pricing and related targeted Medical Loss Ratio (as defined, along with all otherwise defined terms, in Article 34, Section 3 below) with respect to each individual health policy product to be written within the territorial scope for the subsequent calendar year ("Annual Business Update"). Within thirty (30) days following delivery of the Annual Business Update, the Parties will meet to discuss the Reinsurer's views with respect thereto and the economic impact to the Reinsurer under this Agreement. The Ceding Company will take into account the Reinsurer's views with respect to the finalization of the plans and rates to be submitted to the state insurance department for review and approval. For the avoidance of any doubt, the Parties recognize that important deadlines are associated with such filings and nothing herein shall be interpreted to limit or impair Ceding Company's ability to make timely filings. Following the approval of the plan and rates by the state insurance department, which generally occurs in the third calendar quarter, the Ceding Company shall provide without any delay the Reinsurer with the final Annual Business Update for the subsequent calendar year. The Parties agree that if the Reinsurer is not satisfied with the final Annual Business Update for Subscription Year 2022 or 2023, the Reinsurer shall have the right to

terminate this Agreement respectively on 31 December 2021 or on 31 December 2022 in accordance with Article 22.

- 5) This Agreement applies only to those Policies properly underwritten and issued directly by the Ceding Company. Insurance policies assumed by the Ceding Company through reinsurance, acquisitions, mergers or portfolio transfers will not be reinsured automatically under this Agreement. The inclusion, for purposes of this Agreement, of any such other insurance policies, requires prior approval by the Reinsurer and appropriate terms and conditions will be mutually agreed upon between the Parties.

## **ARTICLE 2**

### **EFFECTIVE TIME – DURATION**

- 1) This Agreement will take effect as of 12:01 a.m. Eastern Standard Time on January 1<sup>st</sup>, 2021 (the "Effective Time") and will remain in force for a duration of two (2) years from the Effective Time, i.e. until 31 December 2022 (the "Initial Term").
- 2) This Agreement shall renew automatically each year for one (1) year after expiry of the Initial Term.

## **ARTICLE 3**

### **TERRITORIAL SCOPE**

This Agreement only covers Policies issued in the territories listed in Annex 2 – Territorial Scope.

## **ARTICLE 4**

### **RETENTION OF THE CEDING COMPANY**

- 1) Except as permitted by this Section, the Ceding Company is obligated to retain for its own account the share of the Policies not reinsured by the Reinsurer and is not entitled to adjust, sell, reinsure, assign, charge, or alienate its retention under this Agreement in any way without the Reinsurer's prior written consent, which consent may be withheld in the Reinsurer's sole discretion. The foregoing shall in no way apply to any excess of loss coverage covering the Policies detailed in Article 5, Section 2.
- 2) If the Ceding Company is in breach of Article 4, Section 1, the Reinsurer may terminate the Agreement on a run-off basis in accordance with Article 22.

## **ARTICLE 5**

### **LIABILITY AND SHARE OF THE REINSURER**

- 1) Pursuant to the terms and conditions of this Agreement, the Ceding Company shall cede to the Reinsurer and the Reinsurer shall accept and reinsure, automatically, the Reinsurer's Quota Share of liabilities in respect of the Policies set forth in Annex 1 – Scope and in compliance with the Policy Documentation.
- 2) The Reinsurer's Quota Share of liabilities ceded hereunder shall be protected by an Excess of Loss reinsurance agreement purchased by the Ceding Company that provides

excess of loss reinsurance for 90% of loss incurred under Policies set forth in Annex 1 (Scope) in excess of \$500,000 per person and per year and unlimited capacity. For the avoidance of doubt the \$ 500,000 limit is at 100% that is before applying the Reinsurer's Quota Share of liabilities. The Reinsurer's Quota Share of this Excess of Loss premium paid by the Ceding Company shall be deducted by the Ceding Company from the Gross Premium Earned in accordance with Article 7, Section 2 below. The Reinsurer shall benefit from and receive its Quota Share of the Excess of Loss recoveries which includes, but is not limited to, any profit-share that may be received by the Ceding Company from any excess of loss reinsurance arrangement applicable to the Policies. The Ceding Company hereby agree to submit for approval to AXA any amendment to the Excess of Loss agreements.

3) The "Companion Agreements" shall mean:

Any reinsurance agreements, other than this Agreement, between the Parties or their affiliates, including Friday entities located in other US States, the Parties (or their affiliates) would agree to enter into in addition to this Agreement.

- i. Quota Share Reinsurance Agreement, effective January 1, 2021, AXA reference CR 4660, between the Reinsurer and Friday Health Plans of Nevada, Inc.; and
- ii. Quota Share Reinsurance Agreement, effective January 1, 2020, AXA reference CR 4548, between the Reinsurer and Friday Health Plans of Colorado, Inc., as amended pursuant to amendment CR 4548-2, effective January 1, 2021.

To the extent the Parties (or their affiliates) agree to enter into additional reinsurance agreements between the Parties (or their affiliates), the Parties shall amend this Agreement to include such additional agreements as Companion Agreements.

For the avoidance of doubt, the first Subscription Year will last for a period of one (1) year, beginning on 1 January 2021 and concluding on 31 December 2021.

- 4) The Ceding Company represents and warrants that the maximum period of insurance of any one Policy shall not exceed twelve (12) months. Except as required by applicable law, no Policy may be issued for a period of insurance of less than one (1) month without the prior written approval of the Reinsurer, which approval may be withheld in the Reinsurer's sole discretion. All Policies covered under this Agreement have a period of insurance terminating on 31 December of the Subscription Year.
- 5) The Reinsurer shall not be liable under this Agreement for risks which are excluded under the Policy Documentation unless otherwise agreed in writing between the Reinsurer and the Ceding Company.
- 6) This Agreement is solely between the Ceding Company and the Reinsurer and nothing in this Agreement is intended or shall be construed to give any person or entity, other than the Parties, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein. Such persons and entities include, but are not limited to, the intermediary (if any), policyholders of Policies, beneficiaries of Policies and other reinsurers of the Ceding Company or its affiliates.



**ARTICLE 6**  
**CHANGE IN LAW AND CHANGE OF CIRCUMSTANCES**

In the event of any change in the law, regulation, fiscal and/or administrative practices applicable to this Agreement, the Policy Documentation, and/or the Parties hereto (including any request from regulatory authorities to waive or alter deductibles, co-payments or other type of limitations or exclusions which are otherwise applicable under the existing Policy Documentation and/or this Agreement, and more generally any request from regulatory authorities to pay claims which are not due to be made according to the underlying Policy Documentation), whether arising from legislation, administrative acts, decisions of the courts or otherwise, at any time after commencement of this Agreement that Materially increases or extends the Reinsurer's liability, the Ceding Company shall inform the Reinsurer immediately following the Ceding Company's awareness of such change and provide the details of the regulation change and information regarding its potential impact on the Policy Documentation and/or this Agreement. Within thirty (30) days following the notification by the Ceding Company to the Reinsurer of the change in law or, failing such notification, following the Reinsurer's awareness of such change and upon the Reinsurer's request, the Parties will meet to discuss the Reinsurer's views with respect thereto, the economic impact to the Reinsurer under this Agreement and to discuss mitigation actions to cure the impact of such change on the Reinsurer. If, upon the expiry of the thirty (30) day period, the Reinsurer is still not satisfied with the general impact and/or specific impact on the liability and risk of the Reinsurer including but not limited to the evolution of the risk profile of the Policies reinsured and/or any significant modification to the Reinsurer's Quota Share of liabilities and/or Reinsurer Premiums described herein, it is agreed that the Reinsurer shall have the right to terminate this Agreement with immediate effect on a cut-off basis in accordance with Article 22.

**ARTICLE 7**  
**REINSURER PREMIUMS**

1) Corresponding to the ceded liability, the Reinsurer Premiums due by the Ceding Company to the Reinsurer shall be entered into the account for the relevant calendar quarter. The "**Reinsurer Premium**" shall mean the Reinsurer's Quota Share of the Net Reinsurance Premiums.

2) As used in this Agreement, "Net Reinsurance Premium" means an amount equal to:

**Gross Premiums Earned under the Policies**

- Stamp fee (if any)
- Any taxes (including but not limited to city, county, state, or federal taxes, added to insurance premium)
- /+ Risk Adjustment Payment (pursuant to the ACA, which, for the avoidance of doubt, do not include ACA fees)
- Excess of loss ("XOL") premium paid by the Ceding Company
- = **Net Reinsurance Premium**

3) As used The Reinsurance Premium terms are defined as follows:

- a) "Original Gross Premium Earned" means the premiums earned by the Ceding Company from the policyholder from each Policy sold.

- b) "Stamp Fees" means a tax on written documents or on certain transactions imposed by state and territory governments of the local market, expressed as a percentage of Original Gross Premium Earned.
- c) "Risk Adjustment Payment" means the total amount received by the Ceding Company in respect of the Initial Term or renewal term under the Risk Adjustment Program, operated by the Centers for Medicare & Medicaid Services (CMS) in the United States, in respect of the Policies reinsured for the Initial Term or renewal term.

**Risk Adjustment Payment amounts will be estimated by the Ceding Company and adjusted to actual upon receipt of the Risk Adjustment final report issued by CMS in the subsequent year.**

#### **ARTICLE 8 REINSURANCE COMMISSIONS**

- 1) The Reinsurer shall pay the Ceding Company reinsurance commissions, based on the Reinsurer Premium, as set out for each applicable Subscription Year on Annex 3 – Reinsurance Commissions & Profit Share Information.
- 2) If any Reinsurer Premium or installments of Reinsurer Premium are returned, repaid, reimbursed to the Ceding Company, any corresponding reinsurance commissions previously credited to the Ceding Company shall be reimbursed to the Reinsurer.

#### **ARTICLE 9 CLAIMS**

- 1) A condition precedent to any settlement of a claim due by the Reinsurer hereunder (a "**Reinsurance Claim**") is that the respective Reinsurer Premium has been paid to or entered into the relevant account of the Reinsurer in accordance with the terms of this Agreement.
- 2) Subject to Article 9, Section 1, the Reinsurer will reimburse the Ceding Company for the Reinsurer's Quota Share of claims paid by the Ceding Company during the applicable calendar quarter in accordance with the settlement procedures set out in Article 14.
- 3) The Ceding Company is responsible for the assessment of claims in a prudent and professional way and in accordance with the underlying Policy Documentation. The Ceding Company is furthermore responsible for the fulfillment of the claims information requirements agreed upon and as set out in the Annex 4 – Data Reporting.
- 4) The Ceding Company shall provide the Reinsurer with claims data for the Policies in accordance with the template set forth at Annex 4 – Data Reporting and shall provide the Reinsurer with any further claims information upon request.

- 5) The Reinsurer shall follow the settlements of the Ceding Company for the Reinsurer's Quota Share of any Policy Claim including interest and any external legal costs and expenses incurred in investigating and assessing such claim (both medical and non-medical). For purposes of this Agreement, "Policy Claim" means a claim reinsured by this Agreement. Any unallocated loss adjustment expenses, including but not limited to internal costs, salaries and travel expenses of the Ceding Company's employees or employees of any third party administrator designated by the Ceding Company and any internal Policy claims assessment costs, are excluded and not reinsured by this Agreement.
- 6) Subject to the above provisions of this Article, the decisions of the Ceding Company on claims payments reinsured by this Agreement are binding on the Reinsurer subject to the condition they are due according to the terms and conditions of the Policy Documentation. The payments made by the Ceding Company on an ex-gratia basis (i.e., those payments which the Ceding Company is not required to make according to the underlying Policy Documentation) will not be reinsured under this Agreement. Notwithstanding the foregoing, it is also acknowledged by the Reinsurer that due to the nature of the individual health insurance business, regulatory authorities may require the Ceding Company, from time to time, to pay claims for medically necessary services where coverage may otherwise have been denied. If the Ceding Company is required by a regulatory authority to make such a claims payment, such payment shall be reinsured hereunder subject to the Reinsurer's prior approval and subject to the provisions of Article 6. The Ceding Company shall provide the Reinsurer with a copy of the formal requirement by the regulatory authority.
- 7) Relief and recoveries, whether recovered or received prior or subsequent to loss settlement under this Agreement shall be shared proportionately with the Reinsurer based on the Reinsurer's Quota Share.
- 8) The Reinsurer will not be liable for Extra-Contractual Obligations. For purposes of this Agreement, "Extra-Contractual Obligations" means all liabilities to any person or entity arising out of or relating to the Policies (other than liabilities arising under the express terms and conditions and within the policy limits of the Policies), including, without limitation, any loss in excess of the limits arising under or covered by any Policy, any liability for fines, penalties, taxes, fees, forfeitures, compensatory, consequential, punitive, exemplary, special, treble, bad faith, tort, statutory or any other form of extra-contractual damages, as well as all legal fees and expenses relating thereto, which liabilities arise out of, result from or relate to, any act, error or omission, whether or not intentional, negligent, fraudulent, in bad faith or otherwise (actual or alleged), arising out of or relating to the Policies, including, without limitation, (i) the form, sale, marketing, distribution, underwriting, production, issuance, cancellation or administration of the Policies, (ii) the investigation, defense, prosecution, trial, settlement (including the failure to settle) or handling of claims, benefits, or payments under the Policies, (iii) the failure to pay or the delay in payment or errors in calculating or administering the payment of benefits, claims or any other amounts due or alleged to be due under or in connection with the Policies or (iv) fines or other penalties associated with escheat and unclaimed property liabilities, including any interest thereon, arising under or relating to the Policies.
- 9) The Ceding Company shall not delegate any administration with respect to the Policies to a third party (not Affiliated with Ceding Company) without the Reinsurer's prior written consent. In the case of any such permitted delegation, the Ceding Company remains liable for the compliance with all the conditions stated in this Article 9. For purposes of this Article



9, "Affiliated" means controlling, controlled by or under common ownership or control with Ceding Company.

- 10) If the Ceding Company is in breach of Article 9, Section 9, the Reinsurer may terminate the Agreement on a run-off basis in accordance with Article 22.

## **ARTICLE 10**

### **RESERVES, REINSURANCE CREDIT**

- 1) The Reinsurer shall provide to the Ceding Company acceptable forms of security to secure the Statutory Reserves corresponding to the Reinsurer's Quota Share of the Policies reinsured pursuant to this Agreement and to provide full reinsurance reserve credit to the Ceding Company for the reinsurance hereunder. The Reinsurer's obligation to provide acceptable forms of security shall be satisfied by holding assets in one or more credit for reinsurance trust accounts (pursuant to this Article 10). The Statutory Reserves shall be calculated on the basis set forth on Annex 5 – Statutory Reserves & IBNR Calculation Methodology.
- 2) MAINTENANCE OF THE RESERVE AND TRUST ACCOUNT.
  - i. The Ceding Company will provide to the Reinsurer a good faith written estimate of the Statutory Reserves (calculated in accordance with Annex 5 – Statutory Reserves & IBNR Calculation Methodology) by no later than fourteen (14) days after the first day of each calendar quarter for increase or decrease to the assets in the Trust Account and/or the Trusts Funds Withheld Account. If the Reinsurer disagrees with the estimated Statutory Reserves, it will notify the Ceding Company. In such event, the Parties will undertake in good faith to use all reasonable best efforts to expeditiously resolve any such dispute, with any unresolved disputes subject to arbitration pursuant to Article 19 hereunder (Arbitration). During the pendency of any dispute between the Parties with respect to the estimated statutory reserve amount, the Reinsurer shall provide for any increase/decrease of assets in the Trust Account and/or the Trusts Funds Withheld Account as of the relevant calendar quarter end needed to ensure sufficient reserve credit to the Ceding Company if the Ceding Company first furnishes the Reinsurer with an actuarial certification as to the estimated Statutory Reserves in dispute; provided, however, that any such provision of assets by the Reinsurer shall not be deemed a waiver or release of any rights of the Reinsurer under this Agreement with respect to any continuing dispute hereunder.
  - ii. The Ceding Company will provide to the Reinsurer a written notice of the actual Statutory Reserves as of each calendar quarter end no later than the twentieth (20th) Business Days following the end of such calendar quarter. The amount of security provided by the Reinsurer through Qualifying Assets held in the Trust Account and the Trust Funds Withheld Account shall be adjusted appropriately to reflect the actual Statutory Reserves as of such calendar quarter end. The Reinsurer shall have the absolute discretion to adjust the amount of security provided through Qualifying Assets when the market value of the amount of security of the Qualifying Assets is equal or higher to the outstanding value of the required Statutory Reserves corresponding to the Reinsurer's Quota Share of the Policies reinsured pursuant to this Agreement. If any such adjustment necessitates a decrease in the amount of Qualifying Assets held in the Trust Account, then the Ceding Company shall promptly

direct the Trustee, in accordance with the terms of the Trust Agreement, to distribute Qualifying Assets equaling the amount of any such decrease to the Reinsurer, as the designee of the Ceding Company.

3) STATUTORY TRUST AGREEMENT.

The Ceding Company and the Reinsurer will enter into a statutory trust agreement in compliance with the credit for reinsurance laws and regulations of the state of domicile of the Ceding Company in connection with reinsurance ceded to an unauthorized reinsurer (the "Trust Agreement") with a trustee (the "Trustee") establishing a trust account for the sole benefit of the Ceding Company (the "Trust Account"). The Trustee shall be a qualified United States financial institution authorized to act as a fiduciary of a trust. The institution shall not be a parent, subsidiary or affiliate of the Ceding Company or the Reinsurer. The Reinsurer and the Ceding Company may enter into more than one such Trust Agreement for purposes of providing reinsurance reserve credit to the Ceding Company.

4) QUALIFYING ASSETS.

- i. The Reinsurer shall arrange for assets to be deposited into the Trust Account. Prior to depositing non-cash assets with the Trustee, the Reinsurer shall execute assignments, endorsements in blank or transfer legal title to the Trustee or the Trustee's nominee of all shares, obligations or any other assets requiring assignment in order that the Ceding Company or the Trustee, upon direction of the Ceding Company, may, whenever necessary, negotiate any such assets without consent or signature from the Reinsurer or any other person or entity in accordance with the terms of the Trust Agreement.
- ii. Assets deposited in the Trust Account shall be valued according to their current fair market value. The Trust Account shall consist only of the following ("Qualifying Assets"): cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), instruments that are acceptable to the commissioner of the insurance department of the Ceding Company's state of domicile, and investments of the types specified in accordance with the requirements of the Ceding Company's state of domicile insurance law and investments; provided that such investments are issued by an institution that is not the parent, subsidiary or affiliate of either the Ceding Company or the Reinsurer.

5) DRAWING ON THE TRUST ACCOUNT.

- i. Qualifying Assets in the Trust Account established hereunder may be withdrawn by the Ceding Company by operation of law of the Ceding Company including, without limitation, any liquidator, rehabilitator, receiver or conservator of the Ceding Company, only for the following purposes:
  - A. To reimburse the Ceding Company for the Reinsurer's Quota Share of premiums returned, but not yet recovered from the Reinsurer, to the owners of Policies reinsured under this Agreement on account of cancellations of such Policies;
  - B. To reimburse the Ceding Company for the Reinsurer's Quota Share of benefits or losses paid by the Ceding Company, but not yet recovered from

the Reinsurer, pursuant to the provisions of the Policies reinsured under this Agreement;

- C. To fund an account with the Ceding Company in an amount at least equal to the deduction, for reinsurance ceded, from the Ceding Company's liabilities for the Policies reinsured hereunder. Such account shall include, but not be limited to, amounts for policy reserves, reserves for claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premiums; and
  - D. To pay any other amounts due to the Ceding Company under this Agreement.
- ii. The Ceding Company shall return to the Trust Account or to the Reinsurer assets attributable to the Reinsurer's share of Statutory Reserves and withdrawn in excess of the actual amounts required in Article 10, Section 5(i)(A)-(C), or, in the case of Article 10, Section 5(D), assets that are subsequently determined not to be due.
  - iii. Any assets attributable to the Reinsurer's share of Statutory Reserves and withdrawn by the Ceding Company pursuant to Article 10, Section 5(i)(C) and any assets attributable to the Reinsurer's share of Statutory Reserves and withdrawn from any Trust Account in excess of the actual amounts required for Article 10, Section 5(i)(A) and (B) or, in the case of Article 10, Section 5(i)(D), any amounts that are subsequently determined not to be due shall be held by the Ceding Company (or any successor by operation of law of the Ceding Company, including, but not limited to, any liquidator, rehabilitator, receiver or conservator of the Ceding Company) in trust for the benefit of the Reinsurer, subject to the Ceding Company's right to apply such assets to amounts due and payable by the Reinsurer to the Ceding Company under this Agreement, and shall at all times be maintained separate and apart from any assets of the Ceding Company in one or more designated funds withheld accounts (collectively the "Trust Funds Withheld Account") for the sole purpose of funding the payments and reimbursements described in subsections (i), (ii) and (iv). The Ceding Company (or any successor by operation of law of the Ceding Company, including, but not limited to, any liquidator, rehabilitator, receiver or conservator of the Ceding Company) shall ensure that any assets held in the Trust Funds Withheld Account pursuant to this Article 10, Section 5 consist of Qualifying Assets in accordance with its fiduciary obligations as trustee with respect to such amounts.
  - iv. For withdrawals by the Ceding Company pursuant to Article 10, Section 5(i)(C) and, with respect to Article 10, Section 5(i)(A), (B) and (D), in excess of the actual amounts applied to payment or reimbursement under such subsections, the Ceding Company shall pay interest in cash to the Reinsurer on the amount withdrawn at the then current prime rate as reported in the Federal Reserve Bulletin. Notwithstanding the foregoing, this Agreement permits the award, by any arbitration panel or court of competent jurisdiction, of:
    - A. Interest at a rate different from that provided in this paragraph,
    - B. Court or arbitration costs,
    - C. Attorney's fees, and

- D. Any other reasonable expenses.
  - v. At the Reinsurer's request, the Ceding Company shall promptly direct the Trustee, in accordance with the terms of the Trust Agreement, to distribute to the Reinsurer, as the designee of the Ceding Company, all or any part of the assets contained in the Trust Account, provided:
    - A. The Reinsurer shall, at the time of such withdrawal, replace the withdrawn assets with other Qualifying Assets having a market value equal to the market value of the assets withdrawn, so as to maintain at all times the Reinsurer's Quota Share of the Statutory Reserves; or
    - B. After such withdrawals and transfers, the aggregate market value of the Qualifying Assets in the Trust Account shall be no less than 102% of the Reinsurer's Quota Share of the Statutory Reserves less the aggregate amount of assets held pursuant Article 10, Section 5 in the Trust Funds Withheld Account.
  - vi. After all payments have been discharged in full by the Reinsurer under the terms of this Agreement, the Ceding Company shall not unreasonably or arbitrarily withhold its approval to remit any remaining balance of funds attributable to Reinsurer's share of Statutory Reserves in the Trust Account and Trust Funds Withheld Account to the Reinsurer. Any such funds not attributable to Reinsurer's share of Statutory Reserves shall belong to and payable to the Ceding Company
- 6) This Article 10 shall survive termination of this Agreement.

#### **ARTICLE 11 SUNSET CLAUSE**

Notwithstanding Article 18 – Errors and Omissions of this Agreement, the Reinsurer shall not be liable for any claim which the Ceding Company has not reported to the Reinsurer within twenty-four (24) months from the date of end of each calendar year; nor shall the Reinsurer be liable for any claim adjustments that increase the Reinsurer's liability which the Ceding Company has not reported to the Reinsurer within twenty-four (24) months from the date of end of each calendar year.

#### **ARTICLE 12 PROFIT SHARING**

- 1) This Article 12 sets forth the methodology for calculating the following potential annual payment: a profit share payment from the Reinsurer to the Ceding Company, if the result of the Profit Sharing Formula equals a positive number.
- 2) Formulas.
  - i. The following abbreviations, as used in the Profit Sharing Formula, have the respective meanings set forth below:



$P_i$ : total Reinsurer Premium for any given Subscription Year, for this Agreement or the Companion Agreement relating to state  $i$ .

$S_i$ : total Reinsurance Claims, minus XOL claims, plus IBNR for any given Subscription Year, for this Agreement or the Companion Agreement relating to state  $i$ .

$C_i$ : total reinsurance commissions (using the appropriate value in the table below, as a proportion of  $P_i$ ) for any given Subscription Year, for this Agreement or the Companion Agreement relating to state  $i$ .

$F_i$ : total Reinsurer fee (using the appropriate value in the table below, as a proportion of  $P_i$ ) for any given Subscription Year, for this Agreement or the Companion Agreement relating to state  $i$ .

$LCF_{i,N-1}$ : loss carried forward from the previous Subscription Year, for this Agreement or the Companion Agreement relating to state  $i$  (noting that  $LCF_{2019} = 0$ ) .:

$r$ : distribution rate of the profit (using the appropriate value in the table below).

The values of  $C_i$ ,  $F_i$ , and  $r$  are as below, and as reflected in Annex 3 – Reinsurance Commissions & Profit Share Information:

	For Subscription Year 2021			For Subscription Year 2022 and beyond		
C (commissions (% of total Reinsurer Premium))	Fixed	5%		Fixed	6%	
MLR as defined in Annex 6	Variable	MLR	Variable Commission	Variable	MLR	Variable Commission
		≤79.30%	11%		≤79.43%	10%
		(79.30%; 90.30%)	MIN(11.00%,MAX(((11.00%)- (MLR-79.30%),0))		(79.43%; 89.43%)	MIN(10.00%,MAX(((10.00%)- (MLR-79.43%),0))
		≥90.30%	0.00%		≥89.43%	0%
F (Reinsurer fee (% of total Reinsurer Premium))	1.70%			1.57%		
r (distribution rate)	90.00%			90.00%		

For the avoidance of doubt,  $C_i$  is calculated by (Fixed percentage + Variable percentage in the above table) \*  $P_i$ , and  $F_i$  is calculated by its percentage in the above table \*  $P_i$ .

ii. The "Profit Sharing Formula" is as set forth below:

$$PS_{TX} = R * \frac{\max(0; R_{TX})}{\sum_{i \in A} \max(0; R_i)} * r$$

Where  $A = \{NV, CO, NM \text{ and } TX\}$

$R_i$  being equal to  $P_i - S_i + LCF_{i,N-1} - C_i - F_i$ ,

$LCF_{i,N}$  being equal to  $\min\left(0, R * \left(\frac{\min(0, R_i)}{\sum_{i \in A} \min(0; R_i)}\right)\right)$

with  $i$  = Texas (TX) itself or Colorado (CO), New Mexico (NM), Nevada (NV) for Subscription Year 2021 and any subsequent Subscription Year, and beyond 2021, any other States in addition covered under any Companion Agreements.

$R$  being equal to  $R_{NV} + R_{CO} + R_{NM} + R_{TX}$

For the purposes of this Article 12, Section 2, "PS" means profit sharing.

- 3) Within fifteen (15) Business Days after the confirmation of the accounts for the final calendar quarter of each Subscription Year pursuant to Article 14, the Reinsurer shall deliver to the Ceding Company the Reinsurer's calculation of the Profit Sharing Formula for the prior Subscription Year for this Agreement, using the available amounts of premiums, claims, risk adjustment, XOL premiums and claims and IBNR and in accordance with Annex 3 – Reinsurance Commissions & Profit Share Information, with each of the resulting amounts reduced by 20% to arrive at the "Provisional Profit Share Amount".
- 4) If such Provisional Profit Share Amount is a positive number, the Reinsurer shall pay to the Ceding Company the Provisional Profit Share Amount promptly following the calculation of the Provisional Profit Share Amount, but in any event no later than forty-five (45) days after the confirmation of the accounts for the final calendar quarter of each Subscription Year pursuant to Article 14.
- 5) Within fifteen (15) Business Days after the confirmation of the accounts for the fourth quarter of the year following the Subscription Year, the Reinsurer shall deliver to the Ceding Company the Reinsurer's calculation of the Profit Sharing Formula for such Subscription Year for this Agreement, using the then-current amounts of premiums, claims, risk adjustment, XOL premiums, claims and IBNR and payment of any applicable amount shall be made in accordance with the terms of Article 12, Sections 6 to 10. The Provisional Profit Share Amount shall be deducted from the Profit Sharing Formula result for such Subscription Year to arrive at the "Profit Sharing Adjustment".
- 6) If such Profit Share Adjustment is a positive number, the Reinsurer shall pay to the Ceding Company the Profit Share Adjustment promptly following the calculation of the Profit Share Adjustment, but in any event no later than forty-five (45) days after the confirmation of the account as set forth in Article 12, Section 5.
- 7) If such Profit Share Adjustment is a negative number, the Ceding Company shall pay to the Reinsurer the Profit Share Adjustment promptly following the calculation of the Profit

Share Adjustment, but in any event no later than forty-five (45) days after the confirmation of the account as set forth in Article 12, Section 5.

- 8) The Ceding Company shall continue to provide the Reinsurer with quarterly accounts with respect to a given Subscription Year in accordance with Article 14 until the time of the first quarterly report that does not show any positive IBNR and the risk adjustment values are final for such Subscription Year under this Agreement or any of the Companion Agreements. At such time, the Reinsurer shall deliver final calculations of the Profit Sharing Formula and losses carried forward from previous years for such Subscription Year and payment of any applicable amount shall be made in accordance with the terms of Article 12, Sections 5 to 7. For purposes of this Section, such terms shall be applied mutatis mutandis, except that references in Article 12, Section 5 to "Provisional Profit Share Amount" shall be understood to mean "Provisional Profit Share Amount plus any previously paid Profit Share Adjustment".
- 9) For the avoidance of doubt, as long as any value of any inputs contributing to the calculation of the Profit Share and loss carry forward are not final, the Profit Share and losses carry forward shall be adjusted.

#### **ARTICLE 13 INFORMATION**

The Ceding Company shall report to the Reinsurer all information in respect of the Policies as set out in Annex 4 – Data Reporting.

#### **ARTICLE 14 ACCOUNTS**

- 1) Within thirty (30) days after 31st March, 30th June, 30th September and 31st December of each year, the Ceding Company shall prepare and submit to the Reinsurer quarterly accounts showing the accounting items as specified in Annex 7 – Reinsurance Balance Calculation. For the avoidance of doubt, the quarterly account for any given Subscription Year shall continue to be submitted by the Ceding Company following the end of such Subscription Year for so long as there is still a positive amount of IBNR and risk adjustment are not final for such Subscription Year.
- 2) Accounts shall be confirmed by the Reinsurer within thirty (30) days upon receipt. This also applies if the confirmation can only be given for part of the accounts. Such partial confirmation shall also specify the objections to that part of the accounts on which confirmation cannot be given.
- 3) Any net balance of account, as described in Annex 7 – Reinsurance Balance Calculation, due in favor of the Reinsurer shall be remitted by the Ceding Company promptly following receipt of the confirmation, but not later than forty-five (45) days after receipt of the accounts. Any balance, as described in Annex 7 – Reinsurance Balance Calculation, due in favor of the Ceding Company shall be remitted by the Reinsurer promptly following receipt of the confirmation, but not later than forty-five (45) days after receipt of the accounts.



- 4) In case that confirmation can only be given for part of the accounts, the balance shall nevertheless be settled in full without delay. Should there be any items incorrect in or missing from a statement of account, such errors or omissions shall be corrected in the next statement of account, unless the discrepancy is Material. In such a case, correction and settlement of the discrepancy shall be completed as promptly as possible.
- 5) If the balance is not paid in due time such outstanding balance shall accrue interest on late payment, calculated from the confirmation date due to the date of actual payment, at the interest rate equal to the greater of (i) Zero and (ii) the €STR, as published daily in the Wall Street Journal for the period beginning the fifteenth (15th) day following receipt of the quarterly accounts pursuant to this Article 14 plus eight point five (8.5) basis points. If for any reason such rate is no longer published in the Wall Street Journal, the Parties shall agree on a replacement index that most closely approximates such rate.
- 6) The Parties acknowledge and agree that settlement of all amounts due from one Party to another hereunder for the period covering the Effective Time to the date hereof shall be settled as part of the first quarterly settlement following the date hereof.

#### **ARTICLE 15 CURRENCY**

All payments made, all amounts advised and all accounts prepared by either Party in accordance with the terms of this Agreement shall be in U.S. Dollars, with all payments paid in cash via wire transfer to an account designated by the receiving Party.

#### **ARTICLE 16 SET OFF**

Any debits or credits incurred on and after the Effective Time in favor of or against either the Ceding Company or the Reinsurer with respect to this Agreement are deemed mutual debits or credits, as the case may be, and shall be set off and recouped, and only the net balance shall be allowed or paid. To the extent permitted by applicable law, this Article 16 shall apply notwithstanding the initiation or commencement of a liquidation, insolvency, rehabilitation, conservation, supervision or similar proceeding by or against the Ceding Company or the Reinsurer.

#### **ARTICLE 17 REINSURER'S RIGHT OF INSPECTION AND CEDING COMPANY'S DUTY TO COOPERATE**

- 1) The Reinsurer shall have the right, at any time, to inspect, through any duly authorized person or entity named in advance, all papers, books, accounts, documents and other records referring to the business reinsured under this Agreement at the head office of the Ceding Company or at any other place mutually agreed upon during the Ceding Company's normal business hours. Notification of such visits shall be given two (2) weeks in advance but in urgent cases at least forty-eight (48) hours in advance.
- 2) Upon request, the Ceding Company shall supply or cause to be supplied to the Reinsurer, at the Reinsurer's expense, copies of the whole or any part of such papers, books,



accounts, documents and other records relating to the business covered under this Agreement. Notwithstanding a termination of this Agreement, the Reinsurer's right of inspection under this Article 17 will continue until all of the Reinsurer's obligations under this Agreement have been terminated or fully discharged.

- 3) For the avoidance of doubt, all rights of inspection and any records requested or disclosed under this Article 17 will be subject to Article 23.
- 4) The Ceding Company agrees to fully and timely cooperate with all reasonable requests for information made by the Reinsurer. Reinsurer shall have full access to, and open lines of communications with, the senior management of the Ceding Company in connection with this Agreement. Each Party shall appoint an individual as its primary point of operational contact for the administration and operation of this Agreement. The Reinsurer hereby appoints Sébastien ROGER to act as its primary point of operational contact (the "Reinsurer Manager"), who shall have overall responsibility for coordinating, on behalf of the Reinsurer, the performance of the Reinsurer's obligations hereunder and acting as a day-to-day contact with the Ceding Company Manager (as defined below). The Ceding Company hereby appoints Kimberly Ammons to act as its primary point of operational contact (the "Ceding Company Manager"), who shall have overall responsibility for coordinating, on behalf of the Ceding Company, the performance of the Ceding Company's obligations hereunder and acting as a day-to-day contact with the Reinsurer Manager. Either Party may change its respective Manager hereunder by providing five (5) days advance written notice to the other Party, provided that at all times the Ceding Company Manager shall be a senior officer of the Ceding Company. Notwithstanding the foregoing, this Agreement does not limit or prevent the Reinsurer from communicating with persons acting on behalf of the Ceding Company other than the Ceding Company Manager.

#### **ARTICLE 18 ERRORS AND OMISSIONS**

- 1) In the event that any error, omission or unintentional delay should occur in connection with the performance of this Agreement, including any error or omission being reflected in the accounts, such error, omission or delay will not invalidate the rights and obligations of the Parties arising from this Agreement, even when this error or omission has been discovered after the settlement of the respective balance. Any errors and omissions shall be corrected by the Parties promptly upon discovery.
- 2) An error or omission is defined as an unintentional failure and the result of an innocent oversight or misunderstanding which needs to be demonstrated to the satisfaction of the Party not in default.
- 3) Any liability of the Reinsurer shall be subject to Article 11 - Sunset Clause hereunder and the Ceding Company not having committed gross negligence and/or intentional misconduct with respect to Ceding Company's underwriting or claims assessment procedures.

## ARTICLE 19 ARBITRATION

- 1) If a dispute controversy or claim arises between the Parties in connection with or in relation to this Agreement, the Parties undertake in good faith to use all reasonable best efforts to settle such dispute by oral or written consent directly with each other. Arbitration hereunder may only be commenced after written notice of a dispute and a reasonable opportunity to cure under the circumstances.
- 2) Where the Parties are unable to reach agreement in accordance with Article 19. Section 1 above, any dispute, controversy or claim arising between the Parties in connection with or in relation to this Agreement, including formation and validity, and whether arising before or after termination of this Agreement, shall be referred to an arbitration tribunal in the manner set out below.
  - i. To initiate arbitration, either Party shall notify the other Party in writing of its desire to arbitrate. The notice shall identify the claimant, the contract at issue, and the nature of the claims and/or issues. The arbitration will be deemed to have been commenced on the date the notice of arbitration is received.
  - ii. There will be three (3) arbitrators who will each have no less than ten (10) years of reinsurance and insurance experience, who have professional experience with accident or health insurance matters, and who are active or retired executive officers of insurance or reinsurance companies. The arbitrators shall not be under the control of any Party, shall not have ever worked for or performed substantial services for either Party, nor shall any member of the panel have a financial interest in the outcome of the dispute. Within thirty (30) days following the commencement of the arbitration proceedings, each Party will provide the other with the identification of their appointed arbitrator, and provide a copy of the arbitrator's curriculum vitae. If either Party refuses or neglects to appoint an arbitrator within thirty (30) days, the other Party may appoint the second arbitrator to act as the appointed arbitrator for the defaulting Party by providing notice and a copy of the arbitrator's curriculum vitae. Each Party's appointed arbitrator shall propose a candidate to serve as a third arbitrator (the "Umpire"), which shall be subject to the other Party's agreement. In the event the two Party-appointed arbitrators fail to reach an agreement on an Umpire within sixty (60) days of their appointment, then either Party may petition ARIAS-U.S. to appoint an Umpire meeting the qualifications of this Agreement in accordance with the ARIAS-U.S. Enhanced Umpire Selection Program. Each Party shall cooperate and take whatever action is required to give effect to the ARIAS-U.S. umpire appointment procedures. Notwithstanding the foregoing, the Parties may agree on an alternative Umpire appointment procedure, including but not limited to the appointment of a single arbitrator to decide the dispute. In the event any arbitrator fails, refuses, or becomes unable to act as such before an award has been rendered, a successor shall be selected in the same manner as the original arbitrator.
  - iii. The three (3) arbitrators shall decide by majority. If no majority can be reached, the opinion of the Umpire shall prevail. He shall also act as chairman of the tribunal and conduct the arbitration proceedings.
  - iv. In the event of the death of an arbitrator or if an arbitrator is unable to continue, another shall in such case be appointed in such arbitrator's stead by the Party who made the

original appointment. In the event of the death of the Umpire, or if the Umpire is unable to continue, the arbitrators shall agree upon the appointment of a new chairman within thirty (30) days in accordance with the procedures set forth above.

- 3) The arbitration tribunal shall have power to fix all procedural rules for the holding of the arbitration including discretionary power to make orders as to any matters which it may consider proper in the circumstances of the case with regard to pleadings, investigation of facts, the disclosure and inspection of documents, examination of witnesses and any other matter whatsoever relating to the conduct of the arbitration and may receive and act upon such evidence, whether oral or written, strictly admissible or not, as it shall in its discretion see fit.
- 4) The arbitrators will base their decision on the terms and conditions of this Agreement and, to the extent not inconsistent with such terms and conditions, the customs and practices of the accident and health insurance and reinsurance industry. The arbitrators, however, shall consider this Agreement an honorable engagement rather than merely a legal obligation. The arbitrators are relieved of all judicial formalities and may abstain from following the strict rules of evidence or procedure. Unless otherwise agreed by the Parties, the arbitration shall take place in New York City, New York and the arbitration tribunal shall apply the law of the State of Texas as the proper law of this Agreement.
- 5) The costs of the arbitration, including all reasonable fees paid to the arbitrators, shall be awarded to the prevailing Party. If a Party prevails in part, then the other Party shall bear the cost to that extent. Each Party shall, however, bear the costs of its own legal representation and assistance. The amount of the cost of the arbitration shall be determined as agreed between the Parties and the arbitrators prior to the conclusion of the arbitration. The arbitration tribunal shall, as a part of its award, specifically state the cost of the arbitration and the manner of its payment.
- 6) Any final award issued by the arbitrators shall be accompanied by a written statement of reasons for the arbitrators' decision, and shall issue not later than sixty (60) days from the conclusion of the final hearing. Judgment upon the award may be entered in any court having jurisdiction thereof. The award shall be final and binding and not subject to appeal. The Parties undertake to carry out the same without delay. If either of the Parties should fail to carry out any award, the other may apply for its enforcement to a court of competent jurisdiction in any territory in which the Party in default is domiciled or has assets or carries on business.
- 7) The arbitrators may consolidate an arbitration under this Agreement with any arbitration arising under or relating to any of the Companion Agreements or any other agreement between the Parties entered into pursuant hereto, as the case may be, provided that the subject of the disputes thereunder arise out of or relate to the same or substantially similar set of facts or transactions. Such consolidated arbitration shall be determined by the Umpire appointed for the arbitration proceeding that was commenced first in time.
- 8) This Article 19 shall survive termination of this Agreement.

**ARTICLE 20**  
**JURISDICTION - APPLICABLE LAW**

- 1) EXCEPT AS OTHERWISE SET FORTH HEREIN, THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING AS TO VALIDITY, INTERPRETATION AND EFFECT, BY THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS, TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD PERMIT OR REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.
- 2) The Reinsurer shall submit itself to the jurisdiction of any duly formed arbitration panel in accordance with Article 19 of this Agreement. Furthermore, the Reinsurer shall designate the Commissioner of Insurance in the State of Texas as its true and lawful attorney upon whom service of process may be effected within the United States. Any service effected in the manner shall be simultaneously provided to the Reinsurer consistent with Article (34) (Notices) of this Agreement.
- 3) This Article 20 shall survive termination of this Agreement.

**ARTICLE 21**  
**NORMAL TERMINATION**

- 1) This Agreement may be terminated upon the expiration of the Initial Term and any renewal term (31 December each year) by either Party giving at least three (3) months (notice) prior to the end of the initial and/ or renewal term (31 December each year) to the other Party.
- 2) Notice of termination shall be given in writing (registered letter, facsimile or any other means of communication that leaves a record of such communication) and addressed to the head office of the Party to receive the notice, or to any other address indicated for that purpose. Such notice is considered served upon dispatch or where communications between the Parties are interrupted upon attempted dispatch.
- 3) In case of termination of this Agreement at the end of the Initial Term or any renewal term, the Reinsurer's liability hereunder would not extend to any claims incurred after the end of the Agreement. The Reinsurer shall remain liable for any claims incurred under any Reinsured Policy on or prior to 31 December of the Agreement termination year but reported after such 31 December.
- 4) The Parties agree to terminate this Agreement on a run-off basis unless otherwise mutually agreed by the Parties.

**ARTICLE 22**  
**SPECIAL TERMINATION**

- 1) Either Party affected by one of the events mentioned in Article 22, Section 3 below may decide to terminate the Agreement by notifying the other Party in writing after the



occurrence of the event. The termination to be effective thirty (30) days after the notification, unless otherwise provided in this Agreement.

- 2) Except in respect of termination by the Reinsurer pursuant to Article 22, Section 3(viii) and/or for the Ceding Company's failure to pay Reinsurer Premium and/or pursuant to Article 22, Section 3(iv), termination of this Agreement in accordance with this Article 22 shall not affect the Parties obligations with respect to the Policies ceded hereunder prior to the effective date of termination, but no additional new Policies shall be ceded after the effective termination date. For the avoidance of doubt, the Reinsurer's liability hereunder may extent to claims incurred after the effective termination date for Polices ceded before the effective termination date but the Reinsurer liability will not extend to any claims incurred after 31 December of the Subscription Year and any renewal of a ceded Policy after the effective termination date will not be ceded or covered under the Agreement.
- 3) This Agreement may be terminated at any time (including during the Initial Term) on a run-off basis (except as otherwise stated in paragraphs (iv) and (viii) below which shall be terminated on a cut-off basis) with respect to Policies issued prior to the applicable termination date by giving written notice to the other Party:
  - i. If the Ceding Company has become insolvent or is unable to pay its debts or has a Risk-Based Capital ratio of less than 200% of its Authorized Control Level Risk Based Capital (each term as defined in the insurance laws and regulations in the Ceding Company's state of domicile) or has had the authority to transact any class of insurance withdrawn, suspended or made conditional by any court or regulatory authority.
  - ii. If the Reinsurer has become insolvent or is unable to pay its debts or has lost at least fifty percent (50%) of its paid up capital or has had the authority to transact any class of insurance withdrawn, suspended or made conditional by any court or regulatory authority.
  - iii. If the other Party ceases writing insurance and/or reinsurance and elects to run-off its existing business or if the performance of the whole or any part of this Agreement that Materially affects the interests of either of the Parties is prohibited or rendered impossible de jure or de facto for a period exceeding ninety (90) days.
  - iv. If the other Party fails to fulfill its Material Obligations under this Agreement within two (2) months after being requested in writing to do so; provided, that this Agreement may be terminated with immediate effect on a cut-off basis by the Reinsurer upon written notice to the Ceding Company if the Ceding Company fails to pay any Reinsurer Premium in accordance with Article 7, the Reinsurer notifies the Ceding Company in writing of such failure and such failure remains uncured ten (10) days after receipt of such notice.
  - v. If the other Party merges with or becomes acquired or controlled by any company, corporation or individual(s) who did not control it directly or indirectly at the inception of this Agreement and if (i) such company's, corporation's, or individual(s)' financial strength rating is below A- Standard & Poor's or A- A.M. Best and/or (ii) if such company, corporation, or individual(s) is not rated.
  - vi. If the Reinsurer's financial strength rating is downgraded below A- Standard & Poor's or A- A.M. Best and/or the Reinsurer loses its rating.

- vii. If the Party giving notice or the other Party is definitively prevented from performing its obligations under this Agreement because of a "force majeure" i.e. an event beyond the control of a Party, which could not reasonably have been foreseen at the time of the conclusion of this Agreement and whose effects cannot be avoided by appropriate measures. If the prevention is temporary, this Agreement may be terminated by either Party by notification to the other Party after ninety (90) days of non-performance due to a "force majeure".
  - viii. This Agreement may be terminated with immediate effect on a cut-off basis by the Reinsurer upon written notice to the Ceding Company pursuant to Article 6.
  - ix. If the Reinsurer terminates this Agreement pursuant to Article 9, Section 10 (with 30-day notice).
  - x. If the Reinsurer terminates this Agreement pursuant to Article 4, Section 2 (with 30-day notice).
  - xi. If the Reinsurer terminates this Agreement pursuant to Article 1, Section 4.
  - xii. If the Reinsurer terminates this Agreement for Material Breach of any representations, warranties or covenants set forth in Article 27 of this Agreement.
  - xiii. If the Reinsurer terminates this Agreement, pursuant to Article 29, Section 3.
- 4) Notice of termination shall be given in writing (registered letter, facsimile or any other means of communication that leaves a record of such communication) and addressed to the head office of the Party to receive the notice, or to any other address indicated for that purpose. Such notice is considered served upon dispatch or where communications between the Parties are interrupted upon attempted dispatch.
  - 5) If the Parties agree to terminate this Agreement on a cut-off basis, the Reinsurer shall be fully and finally released of its liability under this Agreement against payment of its share of any outstanding balances agreed upon by the Parties.
  - 6) If this Agreement is terminated in accordance with the terms of this Article 22, the Reinsurer Premium due to the Reinsurer to the termination date will be calculated pro rata temporis to the Reinsurer Premium payable in respect of the annual period during which the termination date falls. In the event this Agreement is terminated pursuant to Article 22, Section 3(iv) or Section 3(viii), all figures relating to the Ceding Company used in the calculations set forth in Article 12 shall be based only on the period in which the Agreement is in effect.
  - 7) For the avoidance of doubt if this Agreement is terminated by the Reinsurer for the Ceding Company's failure to pay Reinsurer Premium pursuant to Article 22, Section 3(iv) and Section 3(viii), the Reinsurer shall remain liable for covered losses incurred up to and including the date of the Ceding Company's failure to pay such Reinsurer Premium under this Agreement, but the Reinsurer shall otherwise be fully and finally released from any liability under this Agreement.
  - 8) Additionally, if any Companion Agreement is terminated, the Reinsurer shall have the right to terminate this Agreement on 31 December of the termination year of the Companion

Agreement (including during the Initial Term) in accordance with Article 22, Section 2 above.

- 9) If this Agreement is terminated by the Reinsurer pursuant to Article 22, Section 3(viii) and/or (iv), the Reinsurer shall remain liable for covered losses incurred up to and including the termination date thereunder, but the Reinsurer shall otherwise be fully and finally released from any liability under this Agreement and this Agreement shall be terminated on a cut-off basis.

### **ARTICLE 23**

#### **CONFIDENTIALITY**

- 1) The Parties agree that the Confidential Information constitutes confidential or proprietary information of the disclosing party unless expressly indicated otherwise by the disclosing party and the Parties agree that they shall only use the Confidential Information for the purposes of this Agreement.
- 2) Neither Party, except with the express prior written consent of the other, shall directly or indirectly, communicate, disclose or divulge to any third party any Confidential Information, subject always to compliance with all applicable Privacy and Security Laws. A "third party" is anyone other than the Parties or their subsidiaries, affiliates, parent company, employees, retrocessionaire, agents, subcontractors, representatives, auditors or other professional advisers. For purposes of this Agreement, "Privacy and Security Laws" means any applicable data privacy, data security, or data protection law or regulation applicable to a Party, including, without limitation, in the United States of America, the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations, including, without limitation, the amendments and associated regulations enacted and implemented pursuant to the Health Information Technology for Economic and Clinical Health Act (HIPAA) and the General Data Protection Regulation EU 2016/679.
- 3) Each Party shall use their best efforts to ensure that its respective employees, retrocessionaires, agents, subcontractors, representatives and auditors and other professional advisors, are fully informed of the provisions of this Article 23 and that they will be bound by the provisions of this Article 23 as if a signatory hereto.
- 4) Where disclosure is required by a court order or by an arbitrator or by a regulatory, legal or regulatory authority, such disclosures will not constitute a breach of confidentiality, provided always that the Party from whom such disclosure is requested shall immediately advise the other Party in order to allow each Party the opportunity to take such protective steps as may be appropriate.
- 5) Notwithstanding the foregoing, the Parties are not required to keep confidential Confidential Information which:
  - i. was publicly known prior to the time of disclosure by one Party to the other Party;
  - ii. has become publicly known and made generally available after disclosure to one Party through no fault of such Party;

- iii. was already in the lawful possession of one Party at the time of the disclosure by the other Party;
  - iv. has been obtained by a Party from a third party lawfully in possession of such information and without a breach of such Party's obligations of confidentiality; or
  - v. has been independently developed by one Party without use of or reference to other Party's Confidential Information.
- 6) The foregoing exceptions shall not apply to Personal Data.
  - 7) Each of the Parties agrees that the other shall be fully informed of any breach in these confidentiality provisions of which either Party becomes aware.
  - 8) This Article 23 shall survive termination of this Agreement.

#### **ARTICLE 24 SEVERABILITY, LAPSE**

If any provision of this Agreement is determined to be invalid or unenforceable, such determination shall not affect or impair the validity or the enforceability of the remaining provisions of the Agreement. The invalid or unenforceable provision shall be construed by the Parties hereto in such manner that the economic aim originally pursued with this provision without being invalid or unenforceable can be reached as far as it is possible. This Article 24 shall survive termination of this Agreement.

#### **ARTICLE 25 ENTIRE AGREEMENT, ASSIGNMENT**

- 1) This Agreement sets forth the entire agreement between the Parties with respect to its subject matter. This Agreement replaces and supersedes all other prior written, oral or electronic communications and treaties of any kind relating to the subject matter of this Agreement.
- 2) Any amendment to this Agreement shall be made by addendum attached to this Agreement, embodying such amendments as may be agreed upon, and will be regarded as part of this Agreement and be equally binding. Notwithstanding the above, any amendment may also be made by issuing a revised and restated version of this Agreement. Any amendment shall be null and void unless made in writing and signed by both Parties hereto.
- 3) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, permitted assigns and legal representatives. Except as otherwise provided herein, neither this Agreement nor any right or obligation hereunder may be assigned or delegated by any Party (in whole or in part) to a third party without the prior written consent of the other Party hereto. Any purported assignment or delegation not in compliance with the provisions of this Agreement will be void ab initio and of no force or effect.



- 4) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

## **ARTICLE 26**

### **UTMOST GOOD FAITH**

The parties acknowledge and agree that (1) the Reinsurer has placed its utmost good faith and confidence in the Ceding Company, and the parties assume that the underwriting, claims assessment, administration and other insurance practices employed by the Ceding Company with respect to the business reinsured by this Agreement are consistent with the customary and usual practices of the health insurance industry as a whole, including compliance with all applicable laws and regulations of the United States and State of Texas; and (2) the Ceding Company has placed its utmost good faith and confidence in the Reinsurer, and the parties assume that the reinsurance and trust agreement practices employed by the Reinsurer with respect to the business reinsured by this Agreement are consistent with the customary and usual practices of the reinsurance industry as a whole, including compliance with all applicable laws and regulations of the United States and State of Texas.

## **ARTICLE 27**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

The Ceding Company represents and warrants without limitation as follows:

- 1) No Policies reinsured hereunder have been sold, underwritten, brokered or issued by a Blocked Person, as such term is defined by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), and no policy owner, holder, insured or beneficiary thereof is a Blocked Person.
- 2) The Ceding Company is in compliance in all Material respects with all applicable laws and regulations relevant to the Ceding Company's operation, financial condition and data privacy, including, without limitation, all applicable laws and regulations related to its ability to issue and administer the Policies.
- 3) The Ceding Company is (a) duly licensed and validly exists as an insurer under the laws of the State of Texas; and (b) has full authority to issue the Policies.
- 4) The Ceding Company has full corporate power and authority to execute and deliver this Agreement, and to carry out the transactions contemplated herein. It has taken all necessary corporate action to authorize the execution and performance of this Agreement. This Agreement has been duly executed and is the valid and binding obligation of the Ceding Company, and is enforceable against the Ceding Company in accordance with its terms.
- 5) Financial information provided to the Reinsurer by the Ceding Company is to the knowledge of the Ceding Company, accurate and complete in all Material respects.

Reinsurer represents and warrants without limitation as follows:

- 1) The Reinsurer is in compliance in all Material respects with all applicable laws and regulations relevant to the Reinsurer's operation and financial condition.
- 2) The Reinsurer has full corporate power and authority to execute and to deliver this Agreement, and to carry out the transactions contemplated herein. It has taken all necessary corporate action to authorize the execution and performance of this Agreement. This Agreement has been duly executed and is the valid and binding obligation of the Reinsurer, and is enforceable against the Reinsurer in accordance with its terms.

The Ceding Company covenants, including, without limitation, each of the following:

- 1) It shall maintain all approvals necessary to perform its obligations under the Agreement and any related requirements.
- 2) It shall request promptly any consents, approvals or other authorizations, if necessary or required, with respect to this Agreement and to pursue diligently such request.
- 3) The Ceding Company shall continue to be in good standing and in compliance with all applicable laws and regulations.

#### **ARTICLE 28 SANCTION CLAUSE**

Neither the Reinsurer nor the Ceding Company shall be deemed to provide cover and neither the Reinsurer nor the Ceding Company shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would cause either the Reinsurer or the Ceding Company to violate or be liable for violations of any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

#### **ARTICLE 29 ANTI BRIBERY**

- 1) The parties acknowledge and agree that:
  - i. They shall not pay or offer to pay anything of value in order to obtain or retain business or to obtain an improper business advantage in violation of the U.S. Foreign Corrupt Practices Act, or any other applicable anti-corruption laws, regulations, or orders ("Anti-Corruption Laws"). The parties agree to take any actions necessary to prevent bribery; and
  - ii. They have implemented and will maintain within their organization policies to prevent any such actions by their officers, directors, representatives, employees or any other third party acting on their behalf.

- 2) To the extent permitted by applicable law, each Party shall notify the other Party immediately upon becoming aware that an activity carried out in connection with this Agreement has or may have contravened this obligation or any applicable Anti-Corruption Law or regulation.
- 3) Each party may terminate this Agreement on a run-off basis upon written notice - as of right and without any judicial authorization - if during the term of the Agreement the other Party is convicted of an act of bribery or fails to comply with any Anti-Corruption Law or regulation even if not connected to this Agreement. To the extent permitted by applicable law, such Party shall indemnify the other Party, its officers, directors, employees, affiliates, agents, subcontractors, or any other third party acting on its behalf, against any losses, liabilities, damages, costs (including legal fees) and expenses incurred related thereto.

### **ARTICLE 30**

#### **ANTI-MONEY LAUNDERING**

- 1) The Reinsurer is not subject to anti-money laundering and counter-terrorist financing ("AML-CTF") provisions. The Reinsurer will not however provide services to individuals or entities that are subject to assets freeze measures. The Ceding Company declares that it is subject to and undertakes to comply with AML-CFT regulations that are compliant with the recommendations of the Financial Action Task Force (FATF) and which impose requirements equivalent to those applicable in France. The Ceding Company declares being monitored by competent State department or federal financial regulator for that purpose.
- 2) Pursuant to Article 30, Section 1 above and to the extent permitted by the applicable law, the Reinsurer may at any time request evidence from the Ceding Company as to its policyholders, the Policies, or any other matters connected thereto in the context of anti-money laundering and counter-terrorism financing.

### **ARTICLE 31**

#### **DATA PRIVACY AND SECURITY**

- 1) The Parties acknowledge and agree that they:
  - i. are committed to protect the privacy and security of Personal Data in accordance with applicable law and regulation; and
  - ii. have implemented and will maintain within their organization policies and technical security measures preventing any such privacy breaches (e.g., of confidentiality) by their officers, representatives, employees or any other third party acting on their behalf;
  - iii. they are both acting as independent data controllers under applicable Privacy and Security Laws in respect of the processing of any Personal Data under or in connection with this Agreement.
- 2) Personal Data received by either the Reinsurer or the Ceding Company from the other shall not be:

- i. used by the receiving party other than in connection with performing its obligations under this Agreement; or for the purpose of any retrocession arrangements; or
  - ii. commercially exploited by the receiving party; or
  - iii. transferred abroad without the Ceding Company having implemented appropriate safeguards in accordance with the applicable law and regulation;
- 3) In particular, without prejudice to the generality of the foregoing, the Ceding Company confirms that it has obtained and undertakes that it will obtain on a continuing basis all requisite consents from its policyholders both for its own compliance purposes, for the purposes of this Agreement and for the purposes of any facultative business and retrocession arrangements to be entered into by the Reinsurer.
  - 4) To the extent permitted by the applicable law, each Party shall notify the other Party immediately upon becoming aware of privacy breaches related to Personal Data.
  - 5) The Parties shall establish a Technical Committee consisting of an equal number of one (1) or more representative(s) of each of the Reinsurer and the Ceding Company, which shall meet on a quarterly basis to monitor the assessment and evolution of the ceded liabilities and risks.
  - 6) This Article 31, Sections 1-4 shall survive termination of this Agreement.

## **ARTICLE 32**

### **CORPORATE RESPONSIBILITY**

- 1) The Parties acknowledges that the AXA Group adheres to certain principles designed to ensure that the AXA Group does business in a socially responsible manner by promoting sustainable development in its business through commitments towards its principal stakeholders (customers, suppliers, employees, environment, shareholders and community) as more fully set forth in the AXA Compliance and Ethics Guide located at <http://www.axa.com/en/governance/disclosure/ethics>. The AXA Group encourages its suppliers to be socially and environmentally responsible. The AXA Compliance and Ethics Guide may be supplemented or amended at any time at the sole discretion of the Reinsurer. In the event of any change to the AXA Compliance and Ethics Guide, the Reinsurer shall promptly send the newly revised version to the Ceding Company.
- 2) In addition, as part of AXA Group's principles and practices of sustainable development, the AXA Group requires its consultants to observe the following three main specific International Labour Organization (ILO) principles: (i) refrain from using, or accepting that their own suppliers and sub-contractors make use of child labour (under 15 years of age) or forced labour; (ii) ensure staff safe and healthy working conditions and environment, respecting individual and collective liberties; and (iii) promote non-discrimination (sex, race, religion or political conviction) as regards staff recruitment and management. For more information, see the ILO website: <http://www.ilo.org/public/english/standards/index.htm>
- 3) The Ceding Company agrees to use commercially reasonable efforts to comply with these standards. The Parties agree to negotiate in utmost good faith to resolve any dispute that



may arise regarding the adequacy of such efforts. In the event such negotiations are not successful, such dispute shall be resolved in accordance with the terms of Articles 19 and 20.

- 4) In the event that either Party becomes aware that any of its business practices are contrary to the foregoing ILO principles, such Party agrees to use its commercially reasonable efforts to remedy the practice in question and notify the other Party of the correction it made. In the event the Party does not appropriately address the issue in question or if it commits subsequent violations, the other Party may as of right and without any prior formality to terminate this Agreement on a run-off basis for breach of this Article 32 without liability of any kind (other than payment of amounts due and owing pursuant to this Agreement in connection with a run-off termination).

### **ARTICLE 33 INSOLVENCY**

- 1) Reinsurance Claims shall be payable by the Reinsurer on the basis of the liability of the Ceding Company under the Policies reinsured without diminution or increase because of insolvency of the Ceding Company. In the event of insolvency of the Ceding Company, payments by the Reinsurer shall be made directly to the Ceding Company or its liquidator, receiver or statutory successor except (i) where this Agreement specifically provides another payee for such reinsurance in the event of the insolvency of the Ceding Company, or (ii) the Reinsurer, with the consent of the direct insureds, has assumed such policy obligations of the Ceding Company as its direct obligations to the payees under such policies, in substitution for the obligations of the Ceding Company to such payees. The implementation of any novation shall be subject to the prior approval of the certificate of assumption on any risks by the Commissioner of Insurance of Texas.
- 2) The rehabilitator, conservator, liquidator, receiver or statutory successor of the insolvent Ceding Company shall give written notice to the Reinsurer of the pendency of the claim against the Ceding Company on any policy reinsured hereunder within a reasonable time after such claim is filed in the insolvency proceeding, and during the pendency of such claim, the Reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated any defense or defenses which it may deem available to the Ceding Company or its rehabilitator, conservator, liquidator, receiver or statutory successor. Such expense shall be chargeable, subject to court approval, against the insolvent Ceding Company as part of the expense of the conservation or liquidation to the extent of a proportionate share of the benefit, which may accrue to the Ceding Company solely as a result of the defense undertaken by the Reinsurer.

### **ARTICLE 34 NOTICES, CONSTRUCTION, DEFINITIONS**

- 1) All notices, requests and other communications to any party hereunder shall be in writing (including via electronic mail and overnight delivery from a service that provides confirmation of date of receipt)) and shall be given:
  - i. if to the Ceding Company, to:

Lisa Yacuzzo  
Chief Legal Officer  
Friday Health Plans, Inc.  
1777 S. Harrison Street, Suite 1100  
Denver, CO 80210  
United States

Electronic Mail: [lisa.yacuzzo@fridayhealthplans.com](mailto:lisa.yacuzzo@fridayhealthplans.com)

ii. if to the Reinsurer, to:

Sébastien ROGER  
AXA LIFE & HEALTH INTERNATIONAL SOLUTIONS  
313 Terrasses de l'Arche  
92727 NANTERRE CEDEX  
FRANCE

Electronic Email: [sebastien.roger@axa.fr](mailto:sebastien.roger@axa.fr)

or such other address or facsimile number as such Party may hereafter specify for the purpose by notice to the other Parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

- 2) Interpretation of this Agreement shall be governed by the following rules of construction: (a) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (b) references to the terms Preamble, Recitals, Article, Section, paragraph, Annex, Schedule and Exhibit are references to the Preamble, Recitals, Articles, Sections, paragraphs, Annexes, Schedules and Exhibits to this Agreement unless otherwise specified; (c) references to "\$" shall mean U.S. dollars; (d) the word "including" and words of similar import shall mean "including without limitation," unless otherwise specified; (e) the word "or" shall not be exclusive; (f) the words "herein," "hereof," "hereunder" or "hereby" and similar terms are to be deemed to refer to this Agreement as a whole and not to any specific Section; (g) the headings are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement; (h) this Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted; (i) if a word or phrase is defined, the other grammatical forms of such word or phrase have a corresponding meaning; (j) references to any statute, listing rule, rule, standard, regulation or other law include a reference to (A) the corresponding rules and regulations and (B) each of them as amended, modified, supplemented, consolidated, replaced or rewritten from time to time; (k) references to any section of any statute, listing rule, rule, standard, regulation or other law include any successor to such section; (l) references to any person or entity include such person's or entity's predecessors or successors, whether by merger, consolidation, amalgamation, reorganization or otherwise; and (m) references to any contract (including this Agreement) or organizational document are to the contract or organizational document as amended, modified, supplemented or replaced from time to time, unless otherwise stated.

- 3) For purposes of this Agreement, in addition to other terms operationally defined herein, the following terms have the respective meanings set forth below:
- i. "ACA Fees" means any "health insurer provider" or similar fee imposed by any governmental authority in connection with the Patient Protection and Affordable Care Act ("ACA"), including under Section 9010 thereof and including any assessments or fees imposed by any governmental authority of any state or other jurisdiction in connection with the existence or operation of, or participation in, any health insurance exchange or marketplace of such state or jurisdiction, or any other similar fee imposed under any other applicable law.
  - ii. "Agreement" has the definition set forth in the Preamble.
  - iii. "Annual Business Update" has the definition set forth in Article 1, Section 4.
  - iv. "ARIAS-U.S." means the AIDA Reinsurance and Insurance Arbitration Society.
  - v. "AXA Group" means the group of companies to which the Reinsurer is affiliated.
  - vi. "Business Day" means any day other than a Saturday, a Sunday or any other day on which banking institutions in New York City or in France are required or authorized by applicable law to be closed. Any reference herein to a day that is not a Business Day shall be deemed to be a calendar day.
  - vii. "Ceding Company" has the definition set forth in the Preamble.
  - viii. "Ceding Company Manager" has the definition set forth in Article 17, Section 4.
  - ix. "Companion Agreements" has the definition set forth in Article 5, Section 3.
  - x. "Confidential Information" means the information, data, analyses, studies, statements, representations and any other materials provided by the Ceding Company or the Reinsurer to the other in connection with the placement of and the course of performance under this Agreement.
  - xi. "Consolidated MLR" has the definition set forth in Annex 6 – Current Year and Consolidated Medical Loss Ratio Formulas.
  - xii. "Cut-off" means that the Ceding Company shall relieve the Reinsurer of all liability hereunder for claims incurred after the date of termination of the Agreement. In case of cut-off termination, the Reinsurer shall refund to the Ceding Company the part of the Premium paid to the Reinsurer applicable to the unexpired liability on Policies in force.
  - xiii. "Effective Time" has the definition set forth in Article 2, Section 1.
  - xiv. "Extra-Contractual Obligations" has the definition set forth in Article 9, Section 8.
  - xv. "FATF" means the Financial Action Task Force (on Money Laundering).
  - xvi. "IBNR" means reserves for claims incurred but not reported.
  - xvii. "Initial Term" has the definition set forth in Article 2, Section 1.

- xviii. "Insurance Companies" means collectively, the Ceding Company and each party to a Companion Agreement, excluding the Reinsurer
- xix. "Material/Materially" as generally referred to herein shall mean a term or provision that concerns significant issues, such as subject matter, price, quantity, type of work to be done, and terms of payment or performance of the business, operations, conditions (financial or otherwise) or prospects of the Parties and the ability of a Party to perform its obligations under the present Agreement;
- xx. "Material Obligation" means any obligation of a Party under this Agreement which, considering the general nature of this Agreement as a whole, is of such importance to a Party that it would not have entered into this Agreement unless substantial performance of that obligation was assured and such was apparent to the other Party at the time of entering into this Agreement.
- xxi. "Material Breach" giving rise to the basis of a right to terminate the present Agreement with immediate effect in accordance with Article 22, shall mean the non-fulfillment by a Party of an obligation stipulated in Article 27 that significantly affects the other Party in compliance with the obligations set forth therein.
- xxii. "Medical Loss Ratio" has the definition set forth in Annex 6 – Current Year and Consolidated Medical Loss Ratio Formulas.
- xxiii. "Net Reinsurance Premium" has the definition set forth in Article 7, Section 2.
- xxiv. "Party" or "Parties" has the definition set forth in the Preamble.
- xxv. "Personal Data" means and includes any of the following information that is acquired by, provided to, created by or maintained by a Party or any third party acting on behalf of a Party in connection with this Agreement: (i) any information that identifies or can reasonably be used to identify an individual, such as first and last name, social security number or other government issued number or identifier, date of birth, home or other physical address, e-mail address or other online contact information, financial account number, credit or debit card number, biometric data, mother's maiden name, or other personally identifiable information; and (ii) personally identifiable financial or insurance information, including but not limited to "non-public personal information" as that term is defined in the Gramm-Leach-Bliley Act, as amended, and implementing regulations, 15 U.S.C. § 6809(4); and (iii) protected health information as defined under applicable state and/or federal law of the United States including information (including all individually identifiable health information, including demographic data, medical histories, test results, insurance information, and other information used to identify a patient or to provide healthcare services or healthcare coverage), relating to past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual
- xxvi. "Policies" has the definition set forth in Article 1, Section 1.
- xxvii. "Policies Documentation" has the definition set forth in Article 1, Section 3.



- xxviii. "Policy Claim" has the definition set forth in Article 9, Section 5.
  - xxix. "Privacy and Security Laws" has the definition set forth in Article 23, Section 2.
  - xxx. "Profit Sharing Adjustment" has the definition set forth in Article 12, Section 6.
  - xxxi. "Profit Sharing Formula" has the definition set forth in Article 12, Section 2(ii).
  - xxxii. "Provisional Profit Share Amount" has the definition set forth in Article 12, Section 3.
  - xxxiii. "Qualifying Assets" has the definition set forth in Article 10, Section 4(ii).
  - xxxiv. "Reinsurance Claim" has the definition set forth in Article 9, Section 1.
  - xxxv. "Reinsurer" has the definition set forth in the Preamble.
  - xxxvi. "Reinsurer Manager" has the definition set forth in Article 17, Section 4.
  - xxxvii. "Reinsurer Premium" has the definition set forth in Article 7, Section 1.
  - xxxviii. "Reinsurer's Quota Share" shall mean 60% for Subscription Year 2021 and any Subscription Year subsequent to Subscription Year 2021.
  - xxxix. "Statutory Reserves" means, as of the date of determination, the aggregate amount of reserves of the Ceding Company in respect of the Policies calculated in accordance with statutory accounting practices prescribed or permitted by the insurance regulator in the Ceding Company's state of domicile and determined in accordance with the methodology set forth on Annex 5 – Statutory Reserves & IBNR Calculation Methodology.
  - xl. "Subscription Year" means a calendar year during which Policies are issued.
  - xli. "third party" has the definition set forth in Article 23, Section 2.
  - xlii. "Trust Account" has the definition set forth in Article 10, Section 3(i).
  - xliii. "Trust Agreement" has the definition set forth in Article 10, Section 3(i).
  - xliv. "Trust Funds Withheld Account" has the definition set forth in Article 10, Section 5(iii).
  - xlv. "Trustee" has the definition set forth in Article 10, Section 3(i).
  - xlvi. "Umpire" has the definition set forth in Article 19, Section 2(ii).
  - xlvii. "XOL" has the definition set forth in Article 7, Section 2.
- 4) This Article 34 shall survive termination of this Agreement.

In witness whereof, the Parties hereto by their respective duly authorized representatives have executed this Agreement in duplicate for and on behalf of:

The Ceding Company

Date and place: 3/22/21 DENVER CO.

Signature: [Signature]  
By: [Signature]  
Title: CEO

The Reinsurer

Date and place: Paris, on March 23rd, 2021

Signature: \_\_\_\_\_  
By: Jacques de Peretti  
Title: CEO AXA France Vie

Signé par Jacques de Peretti  
Le 23/03/2021

 Signed with  
**universign**

[Signature]

## ANNEX 1 – SCOPE

### Policies Covered

This Agreement applies to all individual and group health insurance health insurance policies corresponding to the Policy Documentation and issued or renewed by the Ceding Company in the State of Texas providing coverage commencing on 1 January 2021 or thereafter, and with a period of insurance expiring on 31 December. The Policies ceded under this Agreement are only those in effect as of 1 January 2021 or issued or renewed between January 1, 2021 and the date of termination of this Agreement. The Parties acknowledge and agree that the Policies included on this Annex 1 will be subject to modification by the Ceding Company, per and in accordance with the provisions of this Agreement, each Subscription Year to reflect the product offerings and other modifications for the applicable Subscription Year.

### 2021 Policies:

#### Individual

Texas IND	Friday Catastrophic (On & Off)	54837TX0030001
	Friday Bronze (On& Off)	54837TX0030002
	Friday Bronze Plus (ON & Off)	54837TX0030003
	Friday Bronze HSA (On & Off)	54837TX0030004
	Friday Silver (On & Off)	54837TX0030005
	Friday Silver (73%) On Only	54837TX0030005
	Friday Silver (87%) On Only	54837TX0030005
	Friday Silver (94%) On only	54837TX0030005
	Friday Gold (Off & On)	54837TX0030006

#### Small Group

Texas SG	Friday SG Bronze (Off Only)	54837TX0040001
	Friday SG Bronze Plus (Off Only)	54837TX0040002
	Friday SG Bronze HSA (Off Only)	54837TX0040003
	Friday SG Silver (Off Only)	54837TX0040004
	Friday SG Gold (Off Only)	54837TX0040005

### Policy Documentation:

Copies of current and accurate Policy Documentation shall be copied on a CD ROM that will be agreed as final by both Parties.

## **ANNEX 2 – TERRITORIAL SCOPE**

This Agreement shall only apply to Policies issued by the Ceding Company in Texas to insureds having their principal residence in Texas.

### ANNEX 3 - REINSURANCE COMMISSIONS & PROFIT SHARE INFORMATION

	For Subscription Year 2021			For Subscription Year 2022 and beyond		
C (commissions (% of total Reinsurer Premium))	Fixed	5%		Fixed	6%	
MLR as defined in Annex 6	Variable	MLR	Variable Commission	Variable	MLR	Variable Commission
		≤79.30%	11%		≤79.43%	10%
		(79.30%; 90.30%)	MIN(11.00%,MAX(((11.00%)- (MLR-79.30%),0))		(79.43%; 89.43%)	MIN(10.00%,MAX(((10.00%)- (MLR-79.43%),0))
		≥90.30%	0.00%		≥89.43%	0%
F (Reinsurer fee (% of total Reinsurer Premium))	1.70%			1.57%		
r (distribution rate)	90.00%			90.00%		

## ANNEX 4 – DATA REPORTING

### Monthly reporting dashboards:

- Portfolio: number of policies/persons by month covered by global/ metal /state
- Portfolio distribution (per gender/age) by global/metal/state
- Premiums by month global / per metal / per state
- Claims (split by % of reserves and paid by global/ metal/ state) (IBNR global / metal / state) (by month of occurrence)
- Claims by benefits category split by global/ metal / state
  - o Inpatient hospital
  - o Outpatient hospital
  - o Professional
  - o Other medical
  - o Capitation
  - o Prescription drug
- MLR by global / state / metal (current year, and n-1 year)

Risk adjustment estimate

### Quarterly Basis

- Cash flows (quarterly basis) according to the following template



4Q19 Reinsurance  
balance\_template.xlsx

### On a quarterly basis (according to regulatory possibilities)

Anonymized dataset

- Information about the insureds (biometrical & contract related data) at member level:
  - o member id
  - o main insured id or family id
  - o marital status

- relationship with the main insured of the contract
  - number of children
  - contract id
  - nationality
  - product name
  - metal
  - birth date
  - gender
  - benefits
  - address (state, county, zip code)
  - metal
  - start date of coverage
  - end date of coverage if contract has terminated
  - tobacco
  - pre existing diseases
  - premium (total premium for the policy and premium for each member)
- Information about claims:
- claim id
  - contract or family id
  - beneficiary id
  - category
  - billed amount
  - allowed amount
  - amount paid by insurer
  - amount paid by patient
  - amount paid by another insurer
  - direct billing
  - deductible amount
  - copayment
  - claim status
  - potential rebate
  - country of service
  - provider name and npa
  - provider location
  - hcpcs code
  - icd code (and the version of the ICD used)
  - hcg code
  - quantity of service
  - higher level medical category
  - start date and end date of the service
  - claim date
  - date of payment or claim rejection
  - medicare coverage
  - network fees if relevant
  - name of the network

For rx, if possible:

- national drug code
- type of drug
- drug name
- prescriber id

**On an annual basis (June)**

Presentation by the Ceding Company Technical team to AXA of the level of premium changes requests per state for the upcoming year and of the related repricing drivers

High-level reporting on fraud, waste and abuse cases and savings, and if possible a list of claims labelled as fraudulent or suspected of fraud



## **ANNEX 5 – STATUTORY RESERVES & IBNR CALCULATION METHODOLOGY**

### **Statutory reserves include:**

- Incurred but not reported claims (IBNR)
- Claims in course of settlement
- Claims due and unpaid
- Reserve margin

### **Actuarial Process Narrative**

The Ceding Company's current reserves processes include monthly valuations for all actuarial liabilities based on models developed in-house incorporating the most current views of the claim data available from our data warehouse.

### **Reserves:**

The In-house reserve model incorporates different methodologies based on the amount and recency of the claim. The completion factor development method is utilized and is supplemented by the incurred claim methodology for the most recent incurred months. This information is supplemented by case management data supplied by our medical and claims operations areas. Claims reserve triangles are segmented by type of service (IP, OP, Physician) within a given state, and all reserves are determined separately incorporating the current inventory of claims in course of settlement. The reserve model incorporates historical reserve payments and detail on prior period development down to the incurred month. Reserves accrued are best-estimates with an explicit margin for adverse deviation as well as an accrual for unpaid claim adjustment expenses. All margins are reviewed at least annually for appropriateness based on historical run-out. Claims reserve triangles are inclusive of medical and behavioral health claims only. Pharmacy claims are analyzed separately and are recorded based on actual invoices.

## **ANNEX 6 – CURRENT YEAR AND CONSOLIDATED MEDICAL LOSS RATIO FORMULAS**

### **Medical Loss Ratio Definition**

All claims and premiums refer to the current Subscription Year

Numerator: (Claims Paid + IBNR – XOL Claims)

Denominator: (Net Reinsurance Premium)

### **Consolidated MLR Definition**

Numerator: (Claims Paid + IBNR – XOL Claims)<sub>CO</sub> + (Claims Paid + IBNR – XOL Claims)<sub>NM</sub> +  
(Claims Paid + IBNR – XOL Claims)<sub>NV</sub> + (Claims Paid + IBNR – XOL Claims)<sub>TX</sub>

Denominator: (Net Reinsurance Premium)<sub>CO</sub> + (Net Reinsurance Premium)<sub>NM</sub> + (Net  
Reinsurance Premium)<sub>NV</sub> + (Net Reinsurance Premium)<sub>TX</sub>

## **ANNEX 7 – REINSURANCE BALANCE CALCULATION**

**(1) Income: quota share of:**

**Net Reinsurance Premium** (as defined in Article 7.2)

**(2) Outgo: quota share of:**

Paid claims

- Reliefs and recoveries

+ Reinsurance Commissions

- Excess of Loss recoveries

**Reinsurance balance = (1) - (2)**

(3) IBNR reserves beginning of period

(4) IBNR reserves end of period

(5) Outstanding claim reserve beginning of period

(6) Outstanding claim reserve end of period

**Technical result (for information) = (1) - (2) – ((4) - (3)) – ((6) - (5))**

## **EXHIBIT 2**

**AMENDMENT No. 1**  
**TO QUOTA SHARE REINSURANCE AGREEMENT**  
**BETWEEN**  
**FRIDAY HEALTH PLANS OF TEXAS, INC.**  
**AND**  
**AXA FRANCE VIE**

**AMENDMENT REFERENCE NUMBER CR 4661-2**

This Amendment No. 1 hereby modifies the to the Quota Share Reinsurance Agreement (the "Amendment"), AXA reference number CR 4661-2, is hereby entered into effective January 1, 2022 (the "Amendment Effective Date"), between Friday Health Insurance Company, Inc., (the "Ceding Company") a Texas licensed insurer having its registered address at 1999 Bryan Street, Suite 900, Dallas, Texas 75201 with its headquarters located at 700 Main Street, Suite 100, Alamosa, Colorado 81101, United States, and AXA France Vie (the "Reinsurer") a limited company located at 313 Terrasses de l'Arche 92727 Nanterre Cedex, France, registered in the Commercial Register of Nanterre under company number 310 499 959 00891, governed by the French Insurance Code.

Hereinafter respectively referred to as the "Party" and jointly referred to as the "Parties".

Capitalized terms used and not defined in this Amendment shall have the respective meanings as provided for in the Reinsurance Agreement.

By mutual agreement, the Parties acknowledge the following:

- WHEREAS** The Ceding Company, on the one hand, and the Reinsurer, on the other hand, entered into a quota share reinsurance agreement, effective January 1, 2021 (the "Reinsurance Agreement"), pursuant to which the Reinsurer agreed to provide quota share reinsurance to the Ceding Company on the terms set forth in the Reinsurance Agreement;
- WHEREAS** The Parties desire to enter into this Amendment, effective January 1, 2022, AXA reference number CR 4661-2 to clarify the terms of their mutual understanding relating to certain provisions of the Reinsurance Agreement;
- WHEREAS** The Parties hereto acknowledge and agree to amend their respective rights and obligations with respect to the maintenance of the reserve and trust account provided for in Section 2 of Article 10 Reserves, Reinsurance Credit;
- WHEREAS** The Parties wish to extend the Reinsurer's Quota Share for Subscription Year 2022 and the territorial scope of the Companion Agreements of the Reinsurance Agreement. In this regard, the Parties hereto acknowledge

and agree to modify their respective rights and obligations and corresponding calculations of their liability limitation in the relevant corresponding articles and any related annexes;

**WHEREAS** The Parties hereto acknowledge and agree to modify the definition of the Reinsurer's Quota Share referenced in Section 3 of Article 34 Notices, Construction, Definitions; and

**WHEREAS** The Parties hereto further acknowledge and agree to modify their respective rights and obligations with respect to the calculation of their liability limitation referenced in Annex 6 – Current Year and Consolidated Medical Loss Ratio Formulas.

**NOW THEREFORE**, in consideration of the foregoing, and the mutual representations, warranties, covenants and subject to the terms and conditions provided for in the Reinsurance Agreement and herein, the Parties hereto agree as follows:

- I. Modification of Section 2 of Article 10 Reserves, Reinsurance Credit. Article 10.2 of the Reinsurance Agreement is hereby modified in bold to include the following: :

**2) MAINTENANCE OF THE RESERVE AND TRUST ACCOUNT.**

- i. The Ceding Company will provide to the Reinsurer a good faith written estimate of the Statutory Reserves (calculated in accordance with Annex 5 – Statutory Reserves & IBNR Calculation Methodology) by no later than fourteen (14) days after the first day of each calendar quarter for increase or decrease to the assets in the Trust Account and/or the Trusts Funds Withheld Account. If the Reinsurer disagrees with the estimated Statutory Reserves, it will notify the Ceding Company. In such event, the Parties will undertake in good faith to use all reasonable best efforts to expeditiously resolve any such dispute, with any unresolved disputes subject to arbitration pursuant to Article 19 hereunder (Arbitration). During the pendency of any dispute between the Parties with respect to the estimated statutory reserve amount, the Reinsurer shall provide for any increase/decrease of assets in the Trust Account and/or the Trusts Funds Withheld Account as of the relevant calendar quarter end needed to ensure sufficient reserve credit to the Ceding Company if the Ceding Company first furnishes the Reinsurer with an actuarial certification as to the estimated Statutory Reserves in dispute; provided, however, that any such provision of assets by the Reinsurer shall not be deemed a waiver or release of any rights of the Reinsurer under this Agreement with respect to any continuing dispute hereunder.
- ii. The Ceding Company will provide to the Reinsurer a written notice of the actual Statutory Reserves as of each calendar quarter end no later than the twentieth (20th) Business Days following the end of such calendar quarter. The amount of security provided by the Reinsurer through Qualifying Assets held in the Trust Account and the Trust Funds Withheld Account shall be adjusted appropriately to reflect the actual Statutory Reserves as of such calendar quarter end. The Reinsurer shall have the absolute discretion to adjust the amount of security provided

through Qualifying Assets when the market value of the amount of security of the Qualifying Assets is equal or higher to the outstanding value of the required Statutory Reserves corresponding to the Reinsurer's Quota Share of the Policies reinsured pursuant to this Agreement. If any such adjustment necessitates a decrease in the amount of Qualifying Assets held in the Trust Account, then the Ceding Company shall promptly direct the Trustee, in accordance with the terms of the Trust Agreement, to distribute Qualifying Assets equaling the amount of any such decrease to the Reinsurer, as the designee of the Ceding Company.

- iii. **The Ceding Company will provide to the Reinsurer written notice of any anticipated unsecured recoverable from the Reinsurer that is greater than the amount calculated in Section 5(ii). Furthermore, the Ceding Company will provide documentation explaining the amount of unsecured recoverable and its calculation. The Reinsurer, within thirty (30) days of the receipt of notification and documentation, will adjust the Qualifying Assets held in the Trust Account and the Trust Funds Withheld Account in an amount at least equal to the Ceding Company's unsecured recoverable.**
- iv. **The Ceding Company shall not unreasonably withhold their consent authorizing the Reinsurer to withdraw funds that are held in excess of the amount calculated in Section 5(ii).**

- II. Modification of Section 3 of Article 5 Liability and Share of the Reinsurer. Article 5.3 of the Reinsurance Agreement is hereby deleted and replaced in its entirety by the following:

3) The "Companion Agreements" shall mean:

Any reinsurance agreements, other than this Agreement, between the Parties or their affiliates, including Friday entities located in other US States, the Parties (or their affiliates) would agree to enter into in addition to this Agreement.

- i. Quota Share Reinsurance Agreement, effective January 1, 2021, AXA reference 4660, between the Reinsurer and Friday Health Plans of Nevada, Inc, as amended pursuant to amendment CR 4660-2, effective January 1, 2022, for the state of Nevada;
- ii. Quota Share Reinsurance Agreement, effective January 1, 2020, AXA reference CR 4548, between the Reinsurer and Friday Health Plans of Colorado Inc, as amended pursuant to amendment CR 4548-2, effective January 1, 2021, as amended pursuant to amendment CR 4548-3, effective January 1, 2022, for the states of Colorado and New Mexico;
- iii. Quota Share Reinsurance Agreement, effective January 1, 2022, AXA reference 4732, between the Reinsurer and Friday Health Plans of Georgia, Inc, for the state of Georgia;
- iv. Quota Share Reinsurance Agreement, effective January 1, 2022, AXA reference 4733, between the Reinsurer and Friday Health Plans of North Carolina, Inc, for the state of North Carolina; and

- v. Quota Share Reinsurance Agreement, effective January 1, 2022, AXA reference 4734, between the Reinsurer and Friday Health Plans of Oklahoma, Inc, for the state of Oklahoma.

To the extent the Parties (or their affiliates) agree to enter into additional reinsurance agreements, other than this Agreement, between the Parties (or their affiliates), the Parties shall amend this Agreement to include such additional agreements as Companion Agreements.

For the avoidance of doubt, the first Subscription Year will last for a period of one (1) year, beginning on 1 January 2021 and concluding on 31 December 2021.

- III. Modification Section 2, Subsection ii of Article 12 Profit Sharing. Article 12.2.ii of the Reinsurance Agreement is hereby deleted and replaced in its entirety by the following:

- ii. For Subscription year 2022 and any Subscription Year subsequent to Subscription Year 2022, the "Profit Sharing Formula" is as set forth below:

$$PS_{TX} = R * \frac{\max(0; R_{TX})}{\sum_{i \in A} \max(0; R_i)} * r$$

Where A = {NV, CO, NM, TX, OK, NC and GA}

$R_i$  being equal to  $P_i - S_i + LCF_{i,N-1} - C_i - F_i$ ,

$LCF_{i,N}$  being equal to  $\min\left(0, R * \left(\frac{\min(0, R_i)}{\sum_{i \in A} \min(0; R_i)}\right)\right)$

with i = Nevada (NV), Colorado and New Mexico (CO), Texas (TX), Oklahoma (OK), North Carolina (NC), or Georgia (GA) for Subscription Year 2022 and any subsequent Subscription Year, and beyond 2022, any other States in addition covered under any Companion Agreements.

R being equal to  $\sum_{i \in A} R_i$

For the purposes of this Article 12, Section 2, "PS" means profit sharing.

- IV. Modification of Section 3 Subsection xxxviii of Article 34 Notices, Construction, Definitions. Article 34.3 xxxviii of the Reinsurance Agreement is hereby modified in bold as follows:

"Reinsurer's Quota Share" shall mean 60% for Subscription Year 2021, **80% for Subscription Year 2022** and any Subscription Year subsequent to Subscription Year 2022.



- V. Modification of Annex 6 Current Year and Consolidated Medical Loss Ratio Formulas. Annex 6 of the Reinsurance Agreement is hereby deleted and replaced in its entirety by the following:

**Medical Loss Ratio Definition**

All claims and premiums refer to the current Subscription Year

Numerator: (Claims Paid + IBNR – XOL Claims)

Denominator: (Net Reinsurance Premium)

**Consolidated MLR Definition**

Numerator: (Claims Paid + IBNR – XOL Claims)<sub>CO</sub> + (Claims Paid + IBNR – XOL Claims)<sub>NM</sub> + (Claims Paid + IBNR – XOL Claims)<sub>NV</sub> + (Claims Paid + IBNR – XOL Claims)<sub>TX</sub> + (Claims Paid + IBNR – XOL Claims)<sub>NC</sub> + (Claims Paid + IBNR – XOL Claims)<sub>OK</sub> + (Claims Paid + IBNR – XOL Claims)<sub>GA</sub>

Denominator: (Net Reinsurance Premium)<sub>CO</sub> + (Net Reinsurance Premium)<sub>NM</sub> + (Net Reinsurance Premium)<sub>NV</sub> + (Net Reinsurance Premium)<sub>TX</sub> + (Net Reinsurance Premium)<sub>NC</sub> + (Net Reinsurance Premium)<sub>OK</sub> + (Net Reinsurance Premium)<sub>GA</sub>

The present Amendment shall supersede and replace the article(s) of the Reinsurance Agreement as modified herein as it relates to the agreed upon subject matter contemplated by the Parties.

This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same agreement and shall have the same legal force and effect as the Reinsurance Agreement. A signed copy of this Amendment delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment.

This Amendment constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

All other provisions of the Agreement and any other amendments remain unmodified and shall remain in full force and effect. In the event of any conflict or inconsistency of any term or provision provided for in this Amendment relating to the subject matter contemplated hereby and the Agreement, Amendment shall prevail.

IN WITNESS WHEREOF, the Parties hereto by their respective duly authorized representatives execute the present Amendment, in good faith, in duplicate for and on behalf of:

The Ceding Company

Date and place: 05/06/2022 | 9:46 AM MDT

Signature:  36B386998D4A482...

By: Salvatore Gentile  
Title: CEO

The Reinsurer

Date and place: 2<sup>nd</sup> May 2022, Nanterre

Signature:

By: Patrick Cohen  
Title: CEO AXA FRANCE VIE



## **EXHIBIT 3**



February 20, 2023

BY EMAIL AND OVERNIGHT DELIVERY

Friday Health Insurance Company, Inc.  
Attn: Ms. Elizabeth Bierbower  
Friday Health Plans, Inc.  
1777 S. Harrison Street, Suite 1100  
Denver, CO 80210  
beth.bierbower@fridayhealthplans.com

Friday Health Insurance Company, Inc.  
Attn: Lisa Yacuzzo, Esq.  
Chief Legal Officer  
Friday Health Plans, Inc.  
1777 S. Harrison Street, Suite 1100  
Denver, CO 80210  
lisa.yacuzzo@fridayhealthplans.com

Friday Health Insurance Company, Inc.  
Attn: Stacy Knowlton, Esq.  
Interim Chief Legal Officer  
Friday Health Plans, Inc.  
1777 S. Harrison Street, Suite 1100  
Denver, CO 80210  
stacy.knowlton@fridayhealthplans.com

Re: **Quota Share Reinsurance Agreement between Friday Health Insurance Company, Inc. and AXA France Vie dated January 1, 2021, Agreement Number CR 4661 and amended as of January 1, 2022 by Amendment No. 1 Reference Number CR 4661-2 for Texas (together, the “Agreement”)**

Dear Ms. Bierbower, Ms. Yacuzzo and Ms. Knowlton:

Mayer Brown LLP represents AXA France Vie (“AFV”) with regard to the serious wrongdoing by Friday Health Insurance Company, Inc. (“Friday”) in connection with the Agreement, which was recently discovered by AFV. Among other things, AFV has learned that Friday not only concealed its dire financial condition in Texas and failed to meet minimum risk-based capital requirements, but that Friday also concealed the additional accruals for the substantial risk adjustment transfer payment in the 2021 financial statements provided to AFV until *after* AFV agreed to increase its quota share in Texas. Moreover, Friday failed to oversee critical vendors such as Inovalon Holdings, Inc. (“Inovalon”) and Milliman, Inc. (“Milliman”) and, therefore,

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breached its obligations for the administration of the reinsured business, including the utmost good faith that AFV placed in Friday for such administration. Furthermore, Friday underpriced premium rates based on rate filings in Texas for 2022, which were based on false assumptions, and refused to provide many critical documents and access to key individuals at Inovalon, as required by Friday in connection with AFV's recent inspection.

Despite Friday's contractual obligation and legal duty to act with utmost good faith and transparency, Friday intentionally concealed critical financial and operational information about its performance in Texas not only so AFV would not terminate the Agreement, but also to induce AFV to increase its quota share under the Agreement from 60% to 80% based on false and misleading information provided by Friday.

Our client gives notice to Friday of these disputes and advises that, in accordance with the Agreement and applicable law, the Agreement is terminated no later than January 1, 2022, with no further obligations existing between the Parties as of such termination date, and it may well be the case that the Agreement should be rescinded altogether. Under no circumstance is Friday entitled to impose an 80% quota share on AFV for 2022. Indeed, all losses for 2021 and 2022 are subject to Articles 6 and 9(8) (among other provisions) and are the sole responsibility of Friday. Further, Friday must promptly direct the Trustee to distribute to AFV all assets contained in the Texas Trust Account.

Below we briefly discuss key examples of Friday's wrongdoing that our client recently discovered and note various relevant provisions in the Agreement related to these issues. In addition, attached hereto as Exhibit A is a list of information that Friday has failed or refused to provide during the inspection despite its obligation to do so under the Agreement.

As of the date of this letter, this notice of dispute applies to Texas only; however, as we note below, our client reserves all of its rights regarding this matter. AFV's review is ongoing and may lead to identification of other issues and examples of breaches and wrongdoing by Friday or its affiliates.

**I. KEY EXAMPLES OF WRONGDOING BY FRIDAY RECENTLY DISCOVERED BY AFV**

**A. Friday's Fraudulent Representations Regarding Its Financial Condition and Inducement of AFV to Increase Its Quota Share for 2022 from 60% to 80%**

By the end of 2021, Friday knew that the losses in Texas would be significant, yet failed to disclose this information or the additional accruals for the substantial risk adjustment ("RA") transfer payment in the financial statements provided to AFV. Friday waited to disclose this material information until *after* AFV signed the amendment to increase its quota share in Texas. Indeed, throughout the end of 2021 and into 2022, Friday continued to provide misleading assurances to AFV about the financial performance in Texas and lack of losses that Friday anticipated.

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Notably, in March, 2022, Wakely Consulting Group, LLC (“Wakely”)<sup>1</sup> performed a 2021 RA transfer payment analysis based on data paid through December 31, 2021.<sup>2</sup> Wakely’s analysis forecasted Friday’s final 2021 transfer payment amount to be \$136M, which essentially ended up being the final payment amount of \$138M.<sup>3</sup> At the time Wakely provided its estimate in March, Friday would have been finalizing its monthly financial close for the month ending February, 2022. Had Friday acted upon Wakely’s estimate at that time and made the corresponding accruals, there would have been more clarity as to Friday’s financial outlook for Texas earlier on in 2022 (i.e., as early as 1Q2022). Instead, Friday did not reflect the additional accruals until finalizing the May and August financial statements, which would have occurred toward the end of June and September, respectively (i.e., 3Q2022). During the inspection, a number of individuals at Friday shared the fact that a “war room” and other efforts were underway at Friday at the end of 2021 after Friday learned that its 2021 risk transfer payment could be substantially higher than projected based on its initial EDGE submissions.<sup>4</sup>

Only *after* Friday obtained the Texas quota share increase from AFV did Friday record RA transfer payment accruals of approximately \$40M in June 2022 and \$30M in August 2022 related to calendar year 2021. Had Friday timely recorded the total accrual of \$70M as of December 31, 2021, and not concealed this information from AFV, AFV (and Friday’s customers and regulators) would have seen that, in fact, Friday was insolvent at year-end 2021 (before receiving the subsequent \$95 million capital infusion), after applying a 60% reinsurance quota share, as shown below:

Capital and Surplus: as Reported Year Ending 12/31/2021	\$16,961,216	[A]
Risk Adjustment Re-statement in 2022 for Plan Year 2021	(\$70,000,000)	[B]
Quota Share (QS) %	60%	[C]
QS Impact to RA	(\$28,000,000)	[D]=[B]x(1-[C])
<b>Re-stated 2021 Surplus</b>	<b>(\$11,038,784)</b>	<b>[E]=[A]+[D]</b>

Friday intentionally disregarded the concerns raised by the 2021 initial EDGE submission and the Wakely report in an effort to conceal the substantial RA transfer payment that would be due for 2021 and the resulting losses. And worse yet, Friday did so with the intention to cause AFV to increase its quota share for 2022 from 60% to 80% in Texas. Had Friday disclosed this information in the accruals and the true state of its financial condition, AFV would never have increased its quota share and instead would have terminated the Agreement.

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<sup>1</sup> Wakely is an actuarial consulting firm that was engaged to analyze the 2021 RA transfer payment on behalf of Friday.

<sup>2</sup> Risk Adjustment Scenarios - 2022-03-25 - Texas and Nevada Only (Corrected CFs).xlsx

<sup>3</sup> Summary Report on Permanent Risk Adjustment Transfers for the 2021 Benefit Year.pdf

<sup>4</sup> EDGE submissions are discussed in more detail in Issue #6.



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### 1. Friday Concealed Its Dire Financial Condition.

AFV has now learned that Friday's ending capital and surplus as of December 31, 2021 for Texas was \$16,961,216.<sup>5</sup> Friday advised AFV that Friday received a capital infusion of \$95M after AFV agreed to increase the quota share in Texas. AFV also has learned that Friday issued revised financial statements in August 2022. The table below shows that Friday was insolvent as of April 30, 2022 with no surplus adjustment, and as of September 30, 2022 when including the surplus adjustment.

Month-Yr	Net Income <sup>6</sup>	Capital & Surplus	
		No Surplus Adj.	Incl. Surplus Adj.
01/01/22		\$16,961,216	\$95,000,000
01/31/22	\$3,514,591	\$20,475,807	\$115,475,807
02/28/22	(\$28,151)	\$20,447,655	\$115,447,655
03/31/22	(\$20,344,813)	\$102,843	\$95,102,843
04/30/22	(\$10,403,277)	<b>(\$10,300,434)</b>	\$84,699,566
05/31/22	(\$7,312,186)	(\$17,612,620)	\$77,387,380
06/30/22	(\$34,080,582)	(\$51,693,203)	\$43,306,797
07/31/22	(\$8,412,279)	(\$60,105,481)	\$34,894,519
08/31/22	(\$8,922,088)	(\$69,027,569)	\$25,972,431
09/30/22	(\$73,341,898)	(\$142,369,467)	<b>(\$47,369,467)</b>
10/31/22	(\$34,329,585)	(\$176,699,052)	(\$81,699,052)
11/30/22	(\$25,202,156)	(\$201,901,208)	(\$106,901,208)
12/31/22	(\$21,965,145)	(\$223,866,353)	(\$128,866,353)

<sup>5</sup> TX Monthly Financial Statements\_December 2022 v2.pdf, p. 6.

<sup>6</sup> FHP\_11+1\_Forecast 01.03.23.xlsx

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Month-Yr		Net Income <sup>6</sup>	Capital & Surplus	
			No Surplus Adj.	Incl. Surplus Adj.
Totals		(\$240,827,569)		

Had AFV been advised of this information, it would have immediately terminated the Agreement as AFV was entitled to do, and would never have agreed to increase its quota share for 2022 from 60% to 80%.

**2. Friday Failed to Meet Minimum Risk Based Capital (“RBC”) Requirements and Failed to Disclose the True Facts Regarding Friday’s Status in Texas.**

As Friday, a Texas domiciled insurer, well knows, Subchapter D of the Texas Administrative Code (28 TAC §7.401) addresses risk based capital and surplus and defines the regulatory actions relative to an insurance company’s capital level in relation to the Authorized Control Level. As shown in the table below, Friday’s RBC ratio for Texas was 406% at year-end 2021.<sup>7</sup> However, Friday’s negative financial performance in 2022 also greatly impacted its RBC levels (i.e., negative RBC), resulting in negative Total Adjusted Capital of -\$71M as reported for the quarter ending September 30, 2022.<sup>8</sup> Had AFV been advised of this information, it would have immediately terminated the Agreement and would never have agreed to increase its quota share for 2022 from 60% to 80%.

	Year Ending 12/31/2021	Quarter Ending 9/30/2022	Projected Year Ending 12/31/2022
Total Adjusted Capital	\$16,961	(\$70,886)	(\$128,866)
ACL Risk Based Capital	\$4,175		\$13,123
Risk Based Capital Ratio (TAC/ACL RBC) (%)	406%		-982%
Net Premiums Written	\$65,737	\$154,986	\$206,648

<sup>7</sup> SPGlobal\_FridayHealthInsuranceCompanyInc.\_HealthFinlHighlights\_TX.xls (S&P Capital IQ Pro)

<sup>8</sup> *Id.*

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ACL as % of Net Premiums Written	6.4%	6.4%
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*Note: \$s in 000's*

Despite AFV's requests for information about these issues before and during the recent inspection (and even to present day), Friday did not provide any quarterly statutory statements filed with the Texas Department of Insurance ("TDI") or any correspondence between Friday and TDI with respect to whether TDI was aware of Friday's RBC issues or whether TDI requested action plans to address these issues. Friday still has not advised AFV whether and to what extent the 2022 capital infusion was discussed and reviewed with TDI. These critical operational and regulatory changes occurred in Texas without notice or disclosure to AFV.

**B. Friday is Responsible For Any Failure to Meet the Forecasted Plan Liability Risk Score ("PLRS") Lift.**

Wakely was engaged to conduct an independent estimate of Friday's RA transfer payment for benefit year 2022. Wakely issued two reports in October and December 2022, both of which showed very high PLRS lifts. Friday advised that the figures in the December 2022 report were accurate. The reports also concluded that a realistic range for the PLRS lift for Texas was 12.4% (Pessimistic), 15.0% (Moderate) and 17.6% (Optimistic). Wakely based this range on their conservative estimate of the impact on PLRS of various risk adjustment coding initiatives that Friday represented were being done by Friday and its vendor, Inovalon.<sup>9</sup> Friday and Wakely advised AFV that they believed the range was reasonable because Friday had historically not had a risk score improvement program and had planned to implement several improvement processes that were standard in the market.<sup>10</sup>

Through the inspection, AFV learned that Friday may have mismanaged its relationship with Inovalon, a vendor providing critical risk adjustment services, and hid significant operational problems from AFV. During the inspection, AFV learned from Friday's Chief Financial Officer, Rhonda Bagby, that Friday could not even provide a status update regarding Friday's "Wave 1" retrospective medical record review initiative (apparently due to Friday's contract dispute with Inovalon). In addition, Ms. Bagby believed Inovalon had stopped performing medical record reviews, submitting data to the EDGE server and providing status updates to Friday because of the dispute. And even worse, Ms. Bagby was concerned that Friday could be at risk for a significant Risk Adjustment Default Charge exceeding \$450 million, and Friday had no "Plan B" to ensure this submission was made regardless of what happened with Inovalon.

AFV also learned from the inspection that Friday's leadership was well aware of the serious risk that Friday could be hit with a massive default charge and that Friday was in danger of missing the critical Wave 1/Wave 2 retrospective review goals.

<sup>9</sup> Wakely Risk Adjustment Report - all states 12.20.2022.pdf, pp. 1, 11.

<sup>10</sup> *Id.*, p. 11 (emphasis added).

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If Friday's final PLRS lift falls short of the assumed level of improvement—i.e., the Moderate Scenario of 15%—it will have been a direct and sole result of Friday's inability to successfully deliver the RA improvement initiatives identified and the related negative operational impact of the contract dispute as discussed above.

### C. Friday Underpriced Premium Rates in Texas.

In entering the Texas market, Friday retained an external actuarial consulting firm (Milliman) to develop its premium rate filings for Texas. As Friday was well aware, the impact of projected risk adjustment program payments and receipts must be included in the premium rate development process. For example, a projected risk adjustment program payment requires premium rates to be increased as part of the rate filing submission process. Conversely, a projected risk adjustment receipt decreases premium rates.

However, from the inspection, AFV learned that Friday determined that there was insufficient Texas experience available to use as a basis for Friday's 2022 rate filing given the deadline of mid-2021.<sup>11</sup> Instead, Friday used its affiliate company's Colorado individual market morbidity/demographic information as a proxy for Texas by adjusting the utilization assumptions by the ratio of the 2019 Texas Individual statewide PLRS to the 2019 Friday Colorado individual PLRS.<sup>12</sup> In doing so, Friday assumed its risk adjustment payment/receipt would be \$0:<sup>13</sup>

<b>Table C.1 – Market-Wide Adjusted Index Rate Build-Up</b>	
<b>Description</b>	<b>Value</b>
EHB Paid claims	\$380.32
<u>Average paid-to-allowed</u>	<u>0.81</u>
<b>Market-wide index rate</b>	<b>\$469.36</b>
Risk adjustment payment (receipt)	\$0.00
<u>Exchange fees</u>	<u>\$15.08</u>
<b>Market-wide adjusted index rate</b>	<b>\$484.44</b>

Friday concealed from AFV that Friday had no reasonable basis for assuming \$0 risk adjustment transfer in Texas. As two examples, Friday knew that its risk adjustment coding efficiency and morbidity (unit cost and utilization levels, due to out-of-network claims) were not at the state average level, yet it did not account for these facts in its 2021 and 2022 rate filing memos or otherwise disclose to AFV that Friday made knowingly baseless assumptions in pricing its rates in Texas.

<sup>11</sup> 20210529\_54837\_TX\_2022\_IND\_Part\_III\_Actuarial\_Memo.pdf, p. 5. Premium rate filings are usually submitted for regulatory approval in August for the upcoming calendar year.

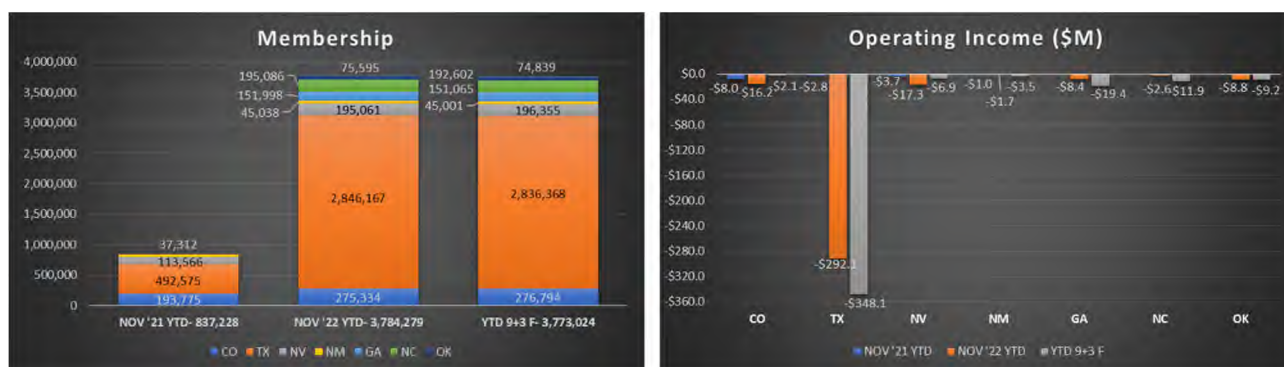
<sup>12</sup> *Id.*, p. 7.

<sup>13</sup> *Id.*, p. 8.

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In addition, the inspection revealed that Friday did not scrutinize its relative competitive premium rate position in the market and related impact on projected membership, particularly given that Friday was expanding to other Texas markets, resulting in a 60% increase in Friday's Total Addressable Market in Texas.<sup>14</sup> At a minimum, Friday should have, as is standard market practice, engaged in this type of strategic rate-membership discussion with Milliman, as reasonably expected, once the open enrollment period began in November-2021 and Friday's actual competitive rate position for 2022 was known.

The tables below reflect Friday's actual 2022 results, showing the significant membership gain *and* substantial financial loss in Texas:<sup>15</sup>



From the inspection, AFV further learned that Friday's 2023 rate filing finally addressed this issue and assumed a significant risk payment factor as shown in the table below, resulting in a 55% increase in the 2023 rates in Texas (the overall rate increase was 36.5%).<sup>16</sup>

Table C.1 – Market-Wide Adjusted Index Rate Build-Up	
Description	Value
EHB Paid claims	\$302.42
<u>Average paid-to-allowed</u>	<u>0.930</u>
<b>Market-wide index rate</b>	<b>\$325.01</b>
Risk adjustment payment (receipt)	\$259.72
<u>Exchange fees</u>	<u>\$18.99</u>
<b>Market-wide adjusted index rate</b>	<b>\$603.71</b>

It is evident now from the inspection that Friday's rate filings for 2021 and 2022 for Texas contained grossly erroneous assumptions that would have been known to Friday at the time.

<sup>14</sup> Friday-AXA Q3 2021 QBR\_updated.pptx, p. 9.

<sup>15</sup> STMT Review Packet- 202211 PRELIM.xlsx

<sup>16</sup> 20220817\_54837\_TX\_2023\_IND\_Part\_III\_Actuarial\_Memo.pdf, pp. 4 and 8.

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## **II. KEY PROVISIONS OF THE AGREEMENT**

As is customary in reinsurance agreements, Friday owed a duty of utmost good faith to AFV. Art. 26. Friday was obligated to utilize customary and usual practices in the health insurance industry in its underwriting, claims assessment, administration, and all other insurance practices and management of the business and legal compliance. *Id.* But the facts AFV has learned in the last two weeks about Friday's underwriting, claims management, administration, management, and compliance reveal that, instead of meeting its obligation of utmost good faith to AFV as the reinsurer, Friday actually concealed from AFV the substantial losses Friday anticipated—and knew were occurring in Texas. Friday was highly motivated to ensure it never gave AFV any information that might lead AFV to terminate the Agreement. Friday hid or misrepresented critical financial and operational information and misrepresented what Friday expected to happen so that AFV would stay on as reinsurer and even increase its quota share.

Friday made numerous representations, warranties and covenants that appear to have been false when made and since then. Specifically, Friday represented that it was in compliance in all material respects with all applicable laws and regulations relevant to its operation, financial condition, including all applicable laws and regulations related to its ability to issue and administer the Policies. Art. 27(2). Friday represented that the financial information it provided to AFV was accurate and complete in all material respects. Art. 27(5). Friday expressly promised to “maintain all approvals necessary to perform its obligations under the Agreement and any related requirements.” Art. 27, Covenants (1). Of course, we now know this is not the case with TDI and Friday's non-compliance with RBC requirements, as discussed above.

Under Annex 4 of the Agreement, Friday was obligated to provide monthly reporting dashboards, including the risk adjustment estimate. And under Article 9(3), Friday was “responsible for the assessment of claims in a prudent and professional way . . . .” Art. 9(3). Assessment of claims includes the risk adjustment process and CMS submissions. This too was not done, and Friday failed to manage its critical vendors such as Inovalon.

Under Article 6 of the Agreement, “in the event of any change in the . . . fiscal and/or administrative practices applicable to this Agreement . . . and/or the Parties . . . at any time after commencement of this Agreement that Materially increases or extends the Reinsurer's liability, the Ceding Company shall inform the Reinsurer immediately following the Ceding Company's awareness of such change and provide the details of the . . . information regarding its potential impact on . . . this Agreement.” Art. 6. The Agreement mandates that Friday—consistent with its duties of utmost good faith—affirmatively disclose such material changes. Not only did Friday not disclose such material changes, it actively concealed and misrepresented them to AFV. Had Friday performed in good faith and complied with the Agreement (including by making such required disclosures), AFV would have terminated the Agreement with immediate effect in accordance with Articles 5-6, 9, and 22 and Annex 1, among others.

In addition, the 2021 and 2022 losses constitute Extra-Contractual Obligations excluded from the Agreement, and AFV will not pay for them. The Agreement expressly provides that AFV is not



Friday Health Insurance Company, Inc.

February 20, 2023

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liable for Extra-Contractual Obligations, which are broadly defined to include any amounts and losses arising out of or relating to the “handling of claims, benefits, or payments under the Policies,” “errors in calculating or administering the payment of benefits, claims or any other amounts due or alleged to be due under or in connection with the Policies.” Art. 9(8). As we discuss above, such losses were caused by Friday’s handling of claims and associated risk adjustment. Such losses are Extra-Contractual Obligations that are the sole responsibility of Friday.

With regard to excess of loss reinsurance, Article 5(2) of the Agreement imposes specific requirements for excess of loss reinsurance that Friday must have in place for the underlying policies. As acknowledged in the Agreement, this excess of loss reinsurance serves an important benefit for AFV. The Agreement further provides that the “Ceding Company hereby agree[s] to submit for approval to AXA any amendment to the Excess of Loss agreements.” AFV discovered that Friday unilaterally modified the terms of this excess of loss reinsurance in Texas in 2022, adding a feature that changed the protective structure of the excess of loss cover—all without notification to, or approval by AFV, in violation of the Agreement.

Finally, AFV exercised its right to conduct an inspection in accordance with the Agreement. While Friday permitted AFV to conduct a limited inspection, Friday refused to provide many critical documents and allow access to key personnel at Inovalon. Nor has Friday provided any of its communications with TDI or advised of its current status in Texas. *See* Exhibit A hereto (listing information that Friday still has not provided).

We request that Friday “undertake in good faith to use all reasonable best efforts to settle” this dispute with us, in accordance with Article 19 of the Agreement.

All rights are reserved. We look forward to hearing from you.

Very truly yours,



Bronwyn F. Pollock  
Partner

Enclosure

Friday Health Insurance Company, Inc.

February 20, 2023

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**Exhibit A**

<b>Information Requested During Inspection and Not Provided By Friday</b>
Documentation supporting forecast variances and related action plans
Inovalon retrospective chart review targeting approach
NAIC Statutory statements and Annual audit reports for 2020, 2021 and 1Q/2Q/3Q 2022
Correspondence with Wakely regarding expected PLRS Lift
Wave 1 Program Structure
Wave 2 Program Structure
RADV 2021 Results
Financial Close P&L workbooks
CMS CO 2020 Audit/2021 Submission
Actuarial attestations related to annual filings and RA
Documented Wave I/II Action Plans under two scenarios: Plan A (“Resolve Inovalon Dispute”) vs. Plan B (“No Resolution of Dispute”)
Documented Data Submission Contingency Plan under two scenarios: Plan A (“Resolve Inovalon Dispute”) vs. Plan B (“No Resolution of Dispute”)
Documentation related to financial impact of the default risk charge associated with missing the CMS submission deadline
Confirmation if there were any material changes to the RA process since September
Information related to errors in data for Nevada and New Mexico
Internal Friday documents related to the PLRS lift projection
Forecasting methodology used to audit the reforecasting/adjustments and when financial issues started to occur

Friday Health Insurance Company, Inc.

February 20, 2023

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Documentation of the goals and effects of “War Room” launched at the end of 2021 in response to the CMS report.
2020/2021 year-end financial submissions
Inovalon coding policies and procedures
Communications between Inovalon and Friday
Communications between Friday and TDI
Interviews of Inovalon

## **EXHIBIT 4**



fridayhealthplans.com  
800-475-8466

700 Main Street  
Alamosa, CO 81101

March 10, 2023

VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Ms. Bronwyn Pollock  
Mayer Brown LLP  
333 S. Grand Ave.  
Los Angeles, CA 90071

BPollock@mayerbrown.com

RE: Quota Share Reinsurance Agreement between Friday Health Insurance Company, Inc. and AXA France Vie ("AFV") dated January 1, 2021, Agreement Number CR 4661 and amended as of January 1, 2022 by Amendment No. 1 Reference Number CR 4661-2 for Texas (together, the "Agreement")

Dear Ms. Pollock:

Friday Health Insurance Company, Inc. ("Friday") is in receipt of your letter dated February 20, 2023, which claims that Friday breached its obligations under the Agreement and, equally mistaken, purports to terminate the Agreement retroactive to January 1, 2022. Friday denies AFV's factual contentions and respectfully rejects AFV's interpretation of, and attempt to terminate, the Agreement. As detailed herein, Friday expects that AFV will fully perform all of its obligations under the Agreement, including providing full payment to Friday.

#### Inspection and Availability of Information

As your letter acknowledges, AFV recently exercised its right to conduct an inspection in accordance with Article 17 of the Agreement. AFV engaged a third party, FTI, to conduct that inspection on its behalf, which occurred remotely on January 25-26, 2023, and continued onsite during the AXA Mission on January 30-31, 2023. Your letter contends that Friday refused to provide critical documents and allow access to key personnel during the inspection. However, you fail to mention that AFV did not provide adequate notification for these requests, as required by Article 17 subsection 1 of the Agreement, which hampered Friday's ability to coordinate interviews and materials from its vendors. Indeed, requests for interviews and documents were made by FTI with less than 24 hours for Friday to respond. In one particularly egregious example, FTI sent a document request the day before the inspection and requested documents that day. The manner and nature of AFV's requests were not reasonable under the circumstances and inconsistent with the requirements of Article 17 subsection 4 of the Agreement.

Accordingly, contrary to your contention, Friday did in fact satisfy its obligations as set forth in Article 17. Among other things, Friday provided access to information that was on hand and available, including making a number of current employees available to AFV (former employees were, unsurprisingly, not available given the cessation of their relationships with Friday). As explained on multiple occasions to FTI, AFV's consultant, certain vendor work product could not be provided due to confidentiality provisions. In those instances, Friday instead walked through the information and processes with FTI directly. It also bears noting that some of the materials cited in your letter were never requested by FTI or AFV during the inspection or onsite visit.

#### Allegations of Wrongdoing

Your letter's allegations of fraudulent representation and inducement are equally meritless, and Friday

700 Main Street  
Alamosa, CO 81101

categorically denies them. Among other things, you cite a purported failure to meet forecasted Plan Liability Risk Score ("PLRS") lift and underpriced premiums as supposed wrongdoing on the part of Friday. As you certainly appreciate, and as demonstrated by the Wakely Risk Adjustment Estimates for Benefit Year 2022 report commissioned by AFV and dated December 20, 2022, premium setting and risk adjustment forecasting, including PLRS lift, are by definition inexact exercises. In truth, Friday took reasonable care, following usual and customary industry standards and practices, to set premiums and to estimate, project, and lower risk adjustment. Notably, Friday engaged established and respected experts such as Inovalon, Wakely, and Milliman to assist in these efforts. Friday also took extra measures to review and improve its risk adjustment scores by dedicating staff to perform additional medical record reviews. These efforts were, internally, referred to as the "war room"—nomenclature that reflects legitimate and good faith business activities, but was seemingly misconstrued in your letter.

AFV's allegations are also contradicted by the fact that AFV had an independent obligation to verify the information received from Friday and to evaluate the risks associated with the amendment modifying the quota share from 60% to 80% for 2022. Friday's quarterly and annual financial statements, filed with the Texas Department of Insurance, were publicly available. In short, AFV could have and should have performed appropriate due diligence before agreeing to the amendment.

Moreover, Friday had regular, twice-weekly meetings with AFV, supplied reporting in accordance with Annex 4 of the Agreement, and provided supplemental information to AFV when it was requested, including information that allowed Wakely to provide its Risk Adjustment Estimates for Benefit Year 2022 report to AFV.

#### Contract Provisions

Based on its unfounded allegations, AFV purports to terminate the Agreement retroactive to January 1, 2022. This effort to avoid liability under the Agreement is as erroneous as it is transparent. Given that there is no rescission or retroactive termination right in the Agreement, AFV argues that if it had better hindsight, it would not have agreed to the amendment for 2022. This position is not supported by the terms of the Agreement, which only allow termination on a run-off or cut-off basis under certain circumstances.

For example, AFV alleges Friday violated Article 6, Change in Law and Change of Circumstances, asserting that Friday's financial losses were a change in "fiscal and/or administrative practices" applicable to the Parties. However, Friday's financial losses didn't materially increase or extend AFV's liability for the risk adjustment transfer or claims; it only increased Friday's liability. Further, the remedy under Article 6, in the event of an actual violation, is a 30-day period to agree on mitigation and a right to terminate with immediate effect on a cut-off basis, not retroactive termination.

Your letter also alleges Friday failed to assess claims in a prudent and professional way in accordance with underlying Policy Documentation, yet tellingly the letter provides no example of this failure. AFV also incorrectly asserts that Friday failed to provide reporting under Annex 4. But as explained previously, reporting was provided regularly and consistently.

AFV also argues that it is not responsible for any payments under the Agreement because Friday's 2021 and 2022 losses are "Extracontractual Obligations" as defined in Article 9 subsection 8. That is also wrong. Friday's losses were directly related to claims and risk adjustment that were specifically included in the scope of the Agreement. Accordingly, they fail to meet the definition of "Extracontractual Obligations."

AFV next contends that Friday violated its obligation to act in "Utmost Good Faith" under Article 26. That



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is likewise unfounded. In reality, Friday used usual and customary practices in its underwriting, claims assessment, administration and other insurance practices. Moreover, Friday's financial information was not only publicly available, it was specifically shared with AFV. In short, Friday met its reporting obligations.

In closing, it is abundantly clear that AFV is simply unhappy with the losses it has legitimately incurred under the terms of the Agreement and is now attempting to shift responsibility to Friday. This misguided strategy has no basis in fact and will ultimately fail. Accordingly, and to put it in the starkest possible terms, Friday will accept nothing less than full payment of the obligations due from AFV.

Please contact me to discuss next steps.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stacy Knowlton", with a long horizontal flourish extending to the right.

Stacy Knowlton  
Interim Chief Legal Officer

cc: Sébastien Roger  
AXA Life & Health International Solutions  
313 Terrasses de l'Arche  
92727 Nanterre Cedex  
France  
Sebastien.roger@axa.fr

Constantine Skarvelis  
Kirkland & Ellis  
601 Lexington Ave.  
New York, NY 10022  
Constantine.skarvelis@kirkland.com



## **EXHIBIT 5**

April 1, 2023

BY EMAIL & UPS

Greg Pierce, Esq.  
P.O. Box 40  
Austin, Texas 78767  
gpierce@gpierceclaw.com

**Bronwyn F. Pollock**  
Partner  
T: +1 213 229 5194  
F: +1 213 576 8138  
BPollock@mayerbrown.com

Re: **Cause No. D-1-GN-23-001549, Texas Department of Insurance v.  
Friday Health Insurance Company, Inc., In the 345th Judicial  
District Court, Travis County, Texas**

Dear Mr. Pierce:

We write in response to your March 28, 2023 letter. Mayer Brown LLP represents AXA France Vie (“AFV”) with regard to the serious wrongdoing by Friday Health Insurance Company, Inc. (“Friday”) in connection with the Quota Share Reinsurance Agreement, Agreement Number CR 4661, dated January 1, 2021, between AFV and Friday (the “Agreement”), which was the subject of my February 20, 2023 letter to Friday giving notice of various disputes. A copy of my letter is enclosed. On March 10, 2023, Friday provided a summary denial of the notice, but has not complied with the required procedure to negotiate in good faith to resolve the dispute.

Without prejudice to, or waiver of any of AFV’s positions set forth in the notice of dispute or any of AFV’s other rights, we wish to draw your immediate attention to the fact that Friday’s retrospective initiatives to improve the PLRS 2022 must be conducted and submitted by the end of April, 2023 to the CMS EDGE server. As discussed in the notice of dispute, and as reiterated here, in addition to the fact that the Agreement terminated no later than January 1, 2022, AFV will of course not be liable for any portion of amounts that Friday might be obligated to pay or any losses that Friday might incur due to the failure to perform its obligations, including the failure to properly code, or submit correct and complete data to the CMS EDGE server, including all supplemental Diagnosis Codes identified by Friday.

Moreover, in addition to damages, losses and other amounts identified in the notice of dispute or that otherwise may be due to AFV, and without waiving its right to any other amounts, the fact that the Agreement terminated no later than January 1, 2022 requires that the parties return to their original position before the termination of the Agreement, *status quo ante*, January 1, 2022, notably by offsetting the excess amounts in the trust and any amounts paid by either party corresponding to the first three quarters of 2022.

Finally, our client has received contact from various individuals associated with the Special Deputy Receiver. Please direct all communications to my office at this time. If there are operational discussions better suited for business discussions, we would be glad to set up a call with the appropriate individuals at AFV.

We would like to schedule a call with you at your earliest convenience to discuss these matters.

Greg Pierce, Esq.

April 1, 2023

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Our client reserves all rights with regard to these matters.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Bronwyn F. Pollock", is written over a light blue horizontal line.

Bronwyn F. Pollock

Partner

Enclosure



February 20, 2023

BY EMAIL AND OVERNIGHT DELIVERY

Friday Health Insurance Company, Inc.  
Attn: Ms. Elizabeth Bierbower  
Friday Health Plans, Inc.  
1777 S. Harrison Street, Suite 1100  
Denver, CO 80210  
beth.bierbower@fridayhealthplans.com

Friday Health Insurance Company, Inc.  
Attn: Lisa Yacuzzo, Esq.  
Chief Legal Officer  
Friday Health Plans, Inc.  
1777 S. Harrison Street, Suite 1100  
Denver, CO 80210  
lisa.yacuzzo@fridayhealthplans.com

Friday Health Insurance Company, Inc.  
Attn: Stacy Knowlton, Esq.  
Interim Chief Legal Officer  
Friday Health Plans, Inc.  
1777 S. Harrison Street, Suite 1100  
Denver, CO 80210  
stacy.knowlton@fridayhealthplans.com

Re: **Quota Share Reinsurance Agreement between Friday Health Insurance Company, Inc. and AXA France Vie dated January 1, 2021, Agreement Number CR 4661 and amended as of January 1, 2022 by Amendment No. 1 Reference Number CR 4661-2 for Texas (together, the “Agreement”)**

Dear Ms. Bierbower, Ms. Yacuzzo and Ms. Knowlton:

Mayer Brown LLP represents AXA France Vie (“AFV”) with regard to the serious wrongdoing by Friday Health Insurance Company, Inc. (“Friday”) in connection with the Agreement, which was recently discovered by AFV. Among other things, AFV has learned that Friday not only concealed its dire financial condition in Texas and failed to meet minimum risk-based capital requirements, but that Friday also concealed the additional accruals for the substantial risk adjustment transfer payment in the 2021 financial statements provided to AFV until *after* AFV agreed to increase its quota share in Texas. Moreover, Friday failed to oversee critical vendors such as Inovalon Holdings, Inc. (“Inovalon”) and Milliman, Inc. (“Milliman”) and, therefore,

Friday Health Insurance Company, Inc.  
February 20, 2023  
Page 2

breached its obligations for the administration of the reinsured business, including the utmost good faith that AFV placed in Friday for such administration. Furthermore, Friday underpriced premium rates based on rate filings in Texas for 2022, which were based on false assumptions, and refused to provide many critical documents and access to key individuals at Inovalon, as required by Friday in connection with AFV's recent inspection.

Despite Friday's contractual obligation and legal duty to act with utmost good faith and transparency, Friday intentionally concealed critical financial and operational information about its performance in Texas not only so AFV would not terminate the Agreement, but also to induce AFV to increase its quota share under the Agreement from 60% to 80% based on false and misleading information provided by Friday.

Our client gives notice to Friday of these disputes and advises that, in accordance with the Agreement and applicable law, the Agreement is terminated no later than January 1, 2022, with no further obligations existing between the Parties as of such termination date, and it may well be the case that the Agreement should be rescinded altogether. Under no circumstance is Friday entitled to impose an 80% quota share on AFV for 2022. Indeed, all losses for 2021 and 2022 are subject to Articles 6 and 9(8) (among other provisions) and are the sole responsibility of Friday. Further, Friday must promptly direct the Trustee to distribute to AFV all assets contained in the Texas Trust Account.

Below we briefly discuss key examples of Friday's wrongdoing that our client recently discovered and note various relevant provisions in the Agreement related to these issues. In addition, attached hereto as Exhibit A is a list of information that Friday has failed or refused to provide during the inspection despite its obligation to do so under the Agreement.

As of the date of this letter, this notice of dispute applies to Texas only; however, as we note below, our client reserves all of its rights regarding this matter. AFV's review is ongoing and may lead to identification of other issues and examples of breaches and wrongdoing by Friday or its affiliates.

**I. KEY EXAMPLES OF WRONGDOING BY FRIDAY RECENTLY DISCOVERED BY AFV**

**A. Friday's Fraudulent Representations Regarding Its Financial Condition and Inducement of AFV to Increase Its Quota Share for 2022 from 60% to 80%**

By the end of 2021, Friday knew that the losses in Texas would be significant, yet failed to disclose this information or the additional accruals for the substantial risk adjustment ("RA") transfer payment in the financial statements provided to AFV. Friday waited to disclose this material information until *after* AFV signed the amendment to increase its quota share in Texas. Indeed, throughout the end of 2021 and into 2022, Friday continued to provide misleading assurances to AFV about the financial performance in Texas and lack of losses that Friday anticipated.

Friday Health Insurance Company, Inc.  
 February 20, 2023  
 Page 3

Notably, in March, 2022, Wakely Consulting Group, LLC (“Wakely”)<sup>1</sup> performed a 2021 RA transfer payment analysis based on data paid through December 31, 2021.<sup>2</sup> Wakely’s analysis forecasted Friday’s final 2021 transfer payment amount to be \$136M, which essentially ended up being the final payment amount of \$138M.<sup>3</sup> At the time Wakely provided its estimate in March, Friday would have been finalizing its monthly financial close for the month ending February, 2022. Had Friday acted upon Wakely’s estimate at that time and made the corresponding accruals, there would have been more clarity as to Friday’s financial outlook for Texas earlier on in 2022 (i.e., as early as 1Q2022). Instead, Friday did not reflect the additional accruals until finalizing the May and August financial statements, which would have occurred toward the end of June and September, respectively (i.e., 3Q2022). During the inspection, a number of individuals at Friday shared the fact that a “war room” and other efforts were underway at Friday at the end of 2021 after Friday learned that its 2021 risk transfer payment could be substantially higher than projected based on its initial EDGE submissions.<sup>4</sup>

Only *after* Friday obtained the Texas quota share increase from AFV did Friday record RA transfer payment accruals of approximately \$40M in June 2022 and \$30M in August 2022 related to calendar year 2021. Had Friday timely recorded the total accrual of \$70M as of December 31, 2021, and not concealed this information from AFV, AFV (and Friday’s customers and regulators) would have seen that, in fact, Friday was insolvent at year-end 2021 (before receiving the subsequent \$95 million capital infusion), after applying a 60% reinsurance quota share, as shown below:

Capital and Surplus: as Reported Year Ending 12/31/2021	\$16,961,216	[A]
Risk Adjustment Re-statement in 2022 for Plan Year 2021	(\$70,000,000)	[B]
Quota Share (QS) %	60%	[C]
QS Impact to RA	(\$28,000,000)	[D]=[B]x(1-[C])
<b>Re-stated 2021 Surplus</b>	<b>(\$11,038,784)</b>	<b>[E]=[A]+[D]</b>

Friday intentionally disregarded the concerns raised by the 2021 initial EDGE submission and the Wakely report in an effort to conceal the substantial RA transfer payment that would be due for 2021 and the resulting losses. And worse yet, Friday did so with the intention to cause AFV to increase its quota share for 2022 from 60% to 80% in Texas. Had Friday disclosed this information in the accruals and the true state of its financial condition, AFV would never have increased its quota share and instead would have terminated the Agreement.

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<sup>1</sup> Wakely is an actuarial consulting firm that was engaged to analyze the 2021 RA transfer payment on behalf of Friday.

<sup>2</sup> Risk Adjustment Scenarios - 2022-03-25 - Texas and Nevada Only (Corrected CFs).xlsx

<sup>3</sup> Summary Report on Permanent Risk Adjustment Transfers for the 2021 Benefit Year.pdf

<sup>4</sup> EDGE submissions are discussed in more detail in Issue #6.

Friday Health Insurance Company, Inc.  
February 20, 2023  
Page 4

### 1. Friday Concealed Its Dire Financial Condition.

AFV has now learned that Friday's ending capital and surplus as of December 31, 2021 for Texas was \$16,961,216.<sup>5</sup> Friday advised AFV that Friday received a capital infusion of \$95M after AFV agreed to increase the quota share in Texas. AFV also has learned that Friday issued revised financial statements in August 2022. The table below shows that Friday was insolvent as of April 30, 2022 with no surplus adjustment, and as of September 30, 2022 when including the surplus adjustment.

Month-Yr	Net Income <sup>6</sup>	Capital & Surplus	
		No Surplus Adj.	Incl. Surplus Adj.
01/01/22		\$16,961,216	\$95,000,000
01/31/22	\$3,514,591	\$20,475,807	\$115,475,807
02/28/22	(\$28,151)	\$20,447,655	\$115,447,655
03/31/22	(\$20,344,813)	\$102,843	\$95,102,843
04/30/22	(\$10,403,277)	<b>(\$10,300,434)</b>	\$84,699,566
05/31/22	(\$7,312,186)	(\$17,612,620)	\$77,387,380
06/30/22	(\$34,080,582)	(\$51,693,203)	\$43,306,797
07/31/22	(\$8,412,279)	(\$60,105,481)	\$34,894,519
08/31/22	(\$8,922,088)	(\$69,027,569)	\$25,972,431
09/30/22	(\$73,341,898)	(\$142,369,467)	<b>(\$47,369,467)</b>
10/31/22	(\$34,329,585)	(\$176,699,052)	(\$81,699,052)
11/30/22	(\$25,202,156)	(\$201,901,208)	(\$106,901,208)
12/31/22	(\$21,965,145)	(\$223,866,353)	(\$128,866,353)

<sup>5</sup> TX Monthly Financial Statements\_December 2022 v2.pdf, p. 6.

<sup>6</sup> FHP\_11+1\_Forecast 01.03.23.xlsx



Friday Health Insurance Company, Inc.

February 20, 2023

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Month-Yr		Net Income <sup>6</sup>	Capital & Surplus	
			No Surplus Adj.	Incl. Surplus Adj.
Totals		(\$240,827,569)		

Had AFV been advised of this information, it would have immediately terminated the Agreement as AFV was entitled to do, and would never have agreed to increase its quota share for 2022 from 60% to 80%.

**2. Friday Failed to Meet Minimum Risk Based Capital (“RBC”) Requirements and Failed to Disclose the True Facts Regarding Friday’s Status in Texas.**

As Friday, a Texas domiciled insurer, well knows, Subchapter D of the Texas Administrative Code (28 TAC §7.401) addresses risk based capital and surplus and defines the regulatory actions relative to an insurance company’s capital level in relation to the Authorized Control Level. As shown in the table below, Friday’s RBC ratio for Texas was 406% at year-end 2021.<sup>7</sup> However, Friday’s negative financial performance in 2022 also greatly impacted its RBC levels (i.e., negative RBC), resulting in negative Total Adjusted Capital of -\$71M as reported for the quarter ending September 30, 2022.<sup>8</sup> Had AFV been advised of this information, it would have immediately terminated the Agreement and would never have agreed to increase its quota share for 2022 from 60% to 80%.

	Year Ending 12/31/2021	Quarter Ending 9/30/2022	Projected Year Ending 12/31/2022
Total Adjusted Capital	\$16,961	(\$70,886)	(\$128,866)
ACL Risk Based Capital	\$4,175		\$13,123
Risk Based Capital Ratio (TAC/ACL RBC) (%)	406%		-982%
Net Premiums Written	\$65,737	\$154,986	\$206,648

<sup>7</sup> SPGlobal\_FridayHealthInsuranceCompanyInc.\_HealthFinlHighlights\_TX.xls (S&P Capital IQ Pro)

<sup>8</sup> *Id.*

Friday Health Insurance Company, Inc.  
 February 20, 2023  
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ACL as % of Net Premiums Written	6.4%	6.4%
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*Note: \$s in 000's*

Despite AFV's requests for information about these issues before and during the recent inspection (and even to present day), Friday did not provide any quarterly statutory statements filed with the Texas Department of Insurance ("TDI") or any correspondence between Friday and TDI with respect to whether TDI was aware of Friday's RBC issues or whether TDI requested action plans to address these issues. Friday still has not advised AFV whether and to what extent the 2022 capital infusion was discussed and reviewed with TDI. These critical operational and regulatory changes occurred in Texas without notice or disclosure to AFV.

**B. Friday is Responsible For Any Failure to Meet the Forecasted Plan Liability Risk Score ("PLRS") Lift.**

Wakely was engaged to conduct an independent estimate of Friday's RA transfer payment for benefit year 2022. Wakely issued two reports in October and December 2022, both of which showed very high PLRS lifts. Friday advised that the figures in the December 2022 report were accurate. The reports also concluded that a realistic range for the PLRS lift for Texas was 12.4% (Pessimistic), 15.0% (Moderate) and 17.6% (Optimistic). Wakely based this range on their conservative estimate of the impact on PLRS of various risk adjustment coding initiatives that Friday represented were being done by Friday and its vendor, Inovalon.<sup>9</sup> Friday and Wakely advised AFV that they believed the range was reasonable because Friday had historically not had a risk score improvement program and had planned to implement several improvement processes that were standard in the market.<sup>10</sup>

Through the inspection, AFV learned that Friday may have mismanaged its relationship with Inovalon, a vendor providing critical risk adjustment services, and hid significant operational problems from AFV. During the inspection, AFV learned from Friday's Chief Financial Officer, Rhonda Bagby, that Friday could not even provide a status update regarding Friday's "Wave 1" retrospective medical record review initiative (apparently due to Friday's contract dispute with Inovalon). In addition, Ms. Bagby believed Inovalon had stopped performing medical record reviews, submitting data to the EDGE server and providing status updates to Friday because of the dispute. And even worse, Ms. Bagby was concerned that Friday could be at risk for a significant Risk Adjustment Default Charge exceeding \$450 million, and Friday had no "Plan B" to ensure this submission was made regardless of what happened with Inovalon.

AFV also learned from the inspection that Friday's leadership was well aware of the serious risk that Friday could be hit with a massive default charge and that Friday was in danger of missing the critical Wave 1/Wave 2 retrospective review goals.

<sup>9</sup> Wakely Risk Adjustment Report - all states 12.20.2022.pdf, pp. 1, 11.

<sup>10</sup> *Id.*, p. 11 (emphasis added).

Friday Health Insurance Company, Inc.  
 February 20, 2023  
 Page 7

If Friday's final PLRS lift falls short of the assumed level of improvement—i.e., the Moderate Scenario of 15%—it will have been a direct and sole result of Friday's inability to successfully deliver the RA improvement initiatives identified and the related negative operational impact of the contract dispute as discussed above.

### C. Friday Underpriced Premium Rates in Texas.

In entering the Texas market, Friday retained an external actuarial consulting firm (Milliman) to develop its premium rate filings for Texas. As Friday was well aware, the impact of projected risk adjustment program payments and receipts must be included in the premium rate development process. For example, a projected risk adjustment program payment requires premium rates to be increased as part of the rate filing submission process. Conversely, a projected risk adjustment receipt decreases premium rates.

However, from the inspection, AFV learned that Friday determined that there was insufficient Texas experience available to use as a basis for Friday's 2022 rate filing given the deadline of mid-2021.<sup>11</sup> Instead, Friday used its affiliate company's Colorado individual market morbidity/demographic information as a proxy for Texas by adjusting the utilization assumptions by the ratio of the 2019 Texas Individual statewide PLRS to the 2019 Friday Colorado individual PLRS.<sup>12</sup> In doing so, Friday assumed its risk adjustment payment/receipt would be \$0:<sup>13</sup>

<b>Table C.1 – Market-Wide Adjusted Index Rate Build-Up</b>	
<b>Description</b>	<b>Value</b>
EHB Paid claims	\$380.32
<u>Average paid-to-allowed</u>	<u>0.81</u>
<b>Market-wide index rate</b>	<b>\$469.36</b>
Risk adjustment payment (receipt)	\$0.00
<u>Exchange fees</u>	<u>\$15.08</u>
<b>Market-wide adjusted index rate</b>	<b>\$484.44</b>

Friday concealed from AFV that Friday had no reasonable basis for assuming \$0 risk adjustment transfer in Texas. As two examples, Friday knew that its risk adjustment coding efficiency and morbidity (unit cost and utilization levels, due to out-of-network claims) were not at the state average level, yet it did not account for these facts in its 2021 and 2022 rate filing memos or otherwise disclose to AFV that Friday made knowingly baseless assumptions in pricing its rates in Texas.

<sup>11</sup> 20210529\_54837\_TX\_2022\_IND\_Part\_III\_Actuarial\_Memo.pdf, p. 5. Premium rate filings are usually submitted for regulatory approval in August for the upcoming calendar year.

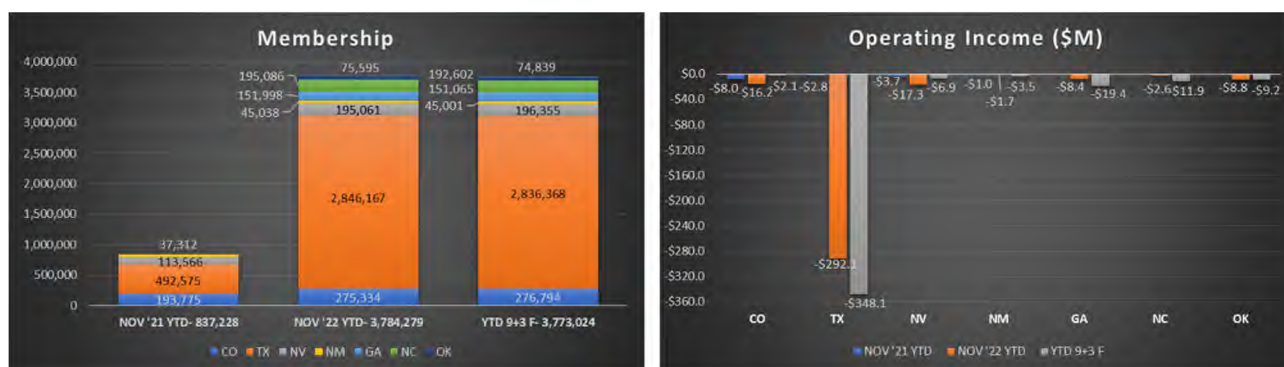
<sup>12</sup> *Id.*, p. 7.

<sup>13</sup> *Id.*, p. 8.

Friday Health Insurance Company, Inc.  
February 20, 2023  
Page 8

In addition, the inspection revealed that Friday did not scrutinize its relative competitive premium rate position in the market and related impact on projected membership, particularly given that Friday was expanding to other Texas markets, resulting in a 60% increase in Friday's Total Addressable Market in Texas.<sup>14</sup> At a minimum, Friday should have, as is standard market practice, engaged in this type of strategic rate-membership discussion with Milliman, as reasonably expected, once the open enrollment period began in November-2021 and Friday's actual competitive rate position for 2022 was known.

The tables below reflect Friday's actual 2022 results, showing the significant membership gain *and* substantial financial loss in Texas:<sup>15</sup>



From the inspection, AFV further learned that Friday's 2023 rate filing finally addressed this issue and assumed a significant risk payment factor as shown in the table below, resulting in a 55% increase in the 2023 rates in Texas (the overall rate increase was 36.5%).<sup>16</sup>

Table C.1 – Market-Wide Adjusted Index Rate Build-Up	
Description	Value
EHB Paid claims	\$302.42
<u>Average paid-to-allowed</u>	<u>0.930</u>
<b>Market-wide index rate</b>	<b>\$325.01</b>
Risk adjustment payment (receipt)	\$259.72
<u>Exchange fees</u>	<u>\$18.99</u>
<b>Market-wide adjusted index rate</b>	<b>\$603.71</b>

It is evident now from the inspection that Friday's rate filings for 2021 and 2022 for Texas contained grossly erroneous assumptions that would have been known to Friday at the time.

<sup>14</sup> Friday-AXA Q3 2021 QBR\_updated.pptx, p. 9.

<sup>15</sup> STMT Review Packet- 202211 PRELIM.xlsx

<sup>16</sup> 20220817\_54837\_TX\_2023\_IND\_Part\_III\_Actuarial\_Memo.pdf, pp. 4 and 8.

Friday Health Insurance Company, Inc.  
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## **II. KEY PROVISIONS OF THE AGREEMENT**

As is customary in reinsurance agreements, Friday owed a duty of utmost good faith to AFV. Art. 26. Friday was obligated to utilize customary and usual practices in the health insurance industry in its underwriting, claims assessment, administration, and all other insurance practices and management of the business and legal compliance. *Id.* But the facts AFV has learned in the last two weeks about Friday's underwriting, claims management, administration, management, and compliance reveal that, instead of meeting its obligation of utmost good faith to AFV as the reinsurer, Friday actually concealed from AFV the substantial losses Friday anticipated—and knew were occurring in Texas. Friday was highly motivated to ensure it never gave AFV any information that might lead AFV to terminate the Agreement. Friday hid or misrepresented critical financial and operational information and misrepresented what Friday expected to happen so that AFV would stay on as reinsurer and even increase its quota share.

Friday made numerous representations, warranties and covenants that appear to have been false when made and since then. Specifically, Friday represented that it was in compliance in all material respects with all applicable laws and regulations relevant to its operation, financial condition, including all applicable laws and regulations related to its ability to issue and administer the Policies. Art. 27(2). Friday represented that the financial information it provided to AFV was accurate and complete in all material respects. Art. 27(5). Friday expressly promised to “maintain all approvals necessary to perform its obligations under the Agreement and any related requirements.” Art. 27, Covenants (1). Of course, we now know this is not the case with TDI and Friday's non-compliance with RBC requirements, as discussed above.

Under Annex 4 of the Agreement, Friday was obligated to provide monthly reporting dashboards, including the risk adjustment estimate. And under Article 9(3), Friday was “responsible for the assessment of claims in a prudent and professional way . . . .” Art. 9(3). Assessment of claims includes the risk adjustment process and CMS submissions. This too was not done, and Friday failed to manage its critical vendors such as Inovalon.

Under Article 6 of the Agreement, “in the event of any change in the . . . fiscal and/or administrative practices applicable to this Agreement . . . and/or the Parties . . . at any time after commencement of this Agreement that Materially increases or extends the Reinsurer's liability, the Ceding Company shall inform the Reinsurer immediately following the Ceding Company's awareness of such change and provide the details of the . . . information regarding its potential impact on . . . this Agreement.” Art. 6. The Agreement mandates that Friday—consistent with its duties of utmost good faith—affirmatively disclose such material changes. Not only did Friday not disclose such material changes, it actively concealed and misrepresented them to AFV. Had Friday performed in good faith and complied with the Agreement (including by making such required disclosures), AFV would have terminated the Agreement with immediate effect in accordance with Articles 5-6, 9, and 22 and Annex 1, among others.

In addition, the 2021 and 2022 losses constitute Extra-Contractual Obligations excluded from the Agreement, and AFV will not pay for them. The Agreement expressly provides that AFV is not

Friday Health Insurance Company, Inc.

February 20, 2023

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liable for Extra-Contractual Obligations, which are broadly defined to include any amounts and losses arising out of or relating to the “handling of claims, benefits, or payments under the Policies,” “errors in calculating or administering the payment of benefits, claims or any other amounts due or alleged to be due under or in connection with the Policies.” Art. 9(8). As we discuss above, such losses were caused by Friday’s handling of claims and associated risk adjustment. Such losses are Extra-Contractual Obligations that are the sole responsibility of Friday.

With regard to excess of loss reinsurance, Article 5(2) of the Agreement imposes specific requirements for excess of loss reinsurance that Friday must have in place for the underlying policies. As acknowledged in the Agreement, this excess of loss reinsurance serves an important benefit for AFV. The Agreement further provides that the “Ceding Company hereby agree[s] to submit for approval to AXA any amendment to the Excess of Loss agreements.” AFV discovered that Friday unilaterally modified the terms of this excess of loss reinsurance in Texas in 2022, adding a feature that changed the protective structure of the excess of loss cover—all without notification to, or approval by AFV, in violation of the Agreement.

Finally, AFV exercised its right to conduct an inspection in accordance with the Agreement. While Friday permitted AFV to conduct a limited inspection, Friday refused to provide many critical documents and allow access to key personnel at Inovalon. Nor has Friday provided any of its communications with TDI or advised of its current status in Texas. *See Exhibit A hereto* (listing information that Friday still has not provided).

We request that Friday “undertake in good faith to use all reasonable best efforts to settle” this dispute with us, in accordance with Article 19 of the Agreement.

All rights are reserved. We look forward to hearing from you.

Very truly yours,



Bronwyn F. Pollock  
Partner

Enclosure

Friday Health Insurance Company, Inc.  
 February 20, 2023  
 Page 11

**Exhibit A**

<b>Information Requested During Inspection and Not Provided By Friday</b>
Documentation supporting forecast variances and related action plans
Inovalon retrospective chart review targeting approach
NAIC Statutory statements and Annual audit reports for 2020, 2021 and 1Q/2Q/3Q 2022
Correspondence with Wakely regarding expected PLRS Lift
Wave 1 Program Structure
Wave 2 Program Structure
RADV 2021 Results
Financial Close P&L workbooks
CMS CO 2020 Audit/2021 Submission
Actuarial attestations related to annual filings and RA
Documented Wave I/II Action Plans under two scenarios: Plan A (“Resolve Inovalon Dispute”) vs. Plan B (“No Resolution of Dispute”)
Documented Data Submission Contingency Plan under two scenarios: Plan A (“Resolve Inovalon Dispute”) vs. Plan B (“No Resolution of Dispute”)
Documentation related to financial impact of the default risk charge associated with missing the CMS submission deadline
Confirmation if there were any material changes to the RA process since September
Information related to errors in data for Nevada and New Mexico
Internal Friday documents related to the PLRS lift projection
Forecasting methodology used to audit the reforecasting/adjustments and when financial issues started to occur



Friday Health Insurance Company, Inc.

February 20, 2023

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Documentation of the goals and effects of “War Room” launched at the end of 2021 in response to the CMS report.
2020/2021 year-end financial submissions
Inovalon coding policies and procedures
Communications between Inovalon and Friday
Communications between Friday and TDI
Interviews of Inovalon

## **EXHIBIT 6**

May 17, 2023

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Re: **Cause No. D-1-GN-23-001549, *Texas Department of Insurance v. Friday Health Insurance Company, Inc.*, In the 345th Judicial District Court, Travis County, Texas**

Gentlemen:

Thank you again for the productive discussion on May 10, 2023. As a follow-up to our call, we are writing to you on behalf of AXA France Vie (“AFV”) with regard to the following items:

**1. Funds Taken Out of Trust Account**

As you know, AFV had placed assets in a trust account pursuant to the terms of the Quota Share Reinsurance Agreement, Agreement Number CR 4661 (the “Reinsurance Agreement”), dated January 1, 2021, between AFV and Friday Health Insurance Company, Inc. (“Friday”) and the Trust Agreement, also dated January 1, 2021, between AFV, Friday and Wells Fargo Bank (which was replaced by Computershare as the trustee pursuant to the First Amendment to Trust Agreement). As you are aware, AFV issued a notice of dispute to Friday on February 20, 2023 (the “Notice of Dispute”) asserting, among other things, numerous breaches of the Reinsurance Agreement and related fraudulent acts by Friday, as a result of which the Reinsurance Agreement was terminated by January 1, 2022, at the latest. Given the dispute and the serious allegations made by AFV against Friday, Friday did not have the right to withdraw the funds in the trust account.

However, we understand, according to the April 25, 2023 Report for Special Master’s Status Conference (the “April 25th Report”), that the Special Deputy Receiver (the “SDR”) for Friday “transferred all of the money in the trust account to a separate account at the [Texas Treasury Safekeeping Trust Company] on April 7, 2023.” The total amount transferred from the trust account was approximately \$117,438,426. In our call, you explained that the funds were transferred from the trust account because of SDR’s concern about recent bank failures and the potential lack of federal insurance to protect the funds. However, AFV is concerned about the

Mr. Pierce and Mr. Fuller  
May 17, 2023  
Page 2

transfer because it was made without a proper basis under the Reinsurance Agreement and the Trust Agreement. The April 25th Report states that “AXA owed over \$70 million in unpaid reinsurance remittances.” However, the report provides no explanation or justification for this statement. As noted above, the Friday estate did not have any right to withdraw the funds that were held in the trust account.

We understand from our call that the SDR has not yet had an opportunity to analyze the issues raised in the Notice of Dispute. As we offered previously, we would be happy to discuss further with you the allegations made by AFV regarding the serious wrongdoing by Friday and its previous officers, as well as Friday’s mismanagement of critical vendors. If it would be helpful to the SDR, we can provide a presentation to the SDR regarding AFV’s positions at the SDR’s convenience.

In the meantime, given the withdrawal of all funds from the trust account, AFV needs assurance that the approximately \$117,438,426 taken from the trust account has been sequestered in a separate account in accordance with the Reinsurance Agreement and that none of these funds will be spent or distributed to anyone, including the Guaranty Associations, until there is a full and final resolution of the dispute between AFV and Friday. Articles 10(5)(ii) and (iii) of the Reinsurance Agreement provide that any assets withdrawn from the trust account without a clear basis must be returned to AFV, and in the interim period, must be held “in trust for the benefit of [AFV] . . . and shall at all times be maintained separate and apart from any assets of [Friday].” Please note that the foregoing provisions apply explicitly to “any liquidator, rehabilitator, receiver or conservator” of Friday.

**Consequently, please confirm to us no later than May 24, 2023 that the SDR agrees that the approximately \$117,438,426 sum previously in the trust account shall be held in a separate account in trust for the benefit of AFV and will not be spent or distributed to anyone until there is a full and final resolution of the dispute between AFV and Friday.** Relatedly, please provide a current account statement for that separate account, showing that it contains the \$117,438,426 amount that was formerly in the trust account.

In addition, in accordance with Article 10(5)(iv) of the Reinsurance Agreement, AFV must be paid “interest in cash to the Reinsurer on the amount withdrawn at the then current prime rate as reported in the Federal Reserve Bulletin.” Similarly, under the Trust Agreement, AFV is entitled to “all payments of interest, dividends and other income actually received in respect to Trust Assets in the Trust Account,” and AFV has the right to withdraw these amounts at any time (Trust Agreement Section 5). Therefore, AFV reasonably expects that interest will be paid to it in accordance with the Reinsurance Agreement Article 10 and Trust Agreement Section 5.

Finally, you asked if AFV business personnel would be amenable to discussing reinsurance issues and calculations with the SDR’s reinsurance consultant, Truitte Todd. We can confirm that they are willing to do so, but the discussion should include counsel for the parties and would be without prejudice to either party’s rights or positions. Please let us know when you would like to schedule such a call.

Mr. Pierce and Mr. Fuller  
May 17, 2023  
Page 3

**2. Service List**

Thank you for agreeing to provide copies of documents filed in the liquidation proceeding to Mayer Brown as counsel for AFV. Also, we would appreciate it you would please inform us in advance of all status conferences/hearings before the Court or the Special Master. Please add the following individuals to your service list:

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BPollock@mayerbrown.com

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JDanford@mayerbrown.com

\* \* \* \* \*

Thank you again for taking the time to discuss these matters with us in our call. We look forward to further discussions with you and follow up on the points raised above.

Our client continues to reserve all rights with regard to these matters.

Very truly yours,



Bronwyn F. Pollock  
Partner

## **EXHIBIT 7**

**Greg Pierce**  
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(512) 474-2154  
[gpierce@gpiercelaw.com](mailto:gpierce@gpiercelaw.com)

October 5, 2023

*Via email: [BPollock@mayerbrown.com](mailto:BPollock@mayerbrown.com)*

Bronwyn F. Pollock  
Mayer Brown LLP  
333 S. Grand Ave.  
Los Angeles, CA 90071

Re: Cause No. D-1-GN-23-001549, *Texas Department of Insurance v. Friday Health Insurance Company, Inc.*, In the 345<sup>th</sup> Judicial District Court, Travis County, Texas

Ms. Pollock,

I write on behalf of CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Friday Health Insurance Company, Inc. (the “SDR” and “FHIC,” respectively) in response to your letter of May 17, 2023, demanding that the SDR segregate approximately \$117.4 million in estate funds (the “Funds”) and pay interest on the Funds to AXA France Vie (“AXA”), and your email of August 8, 2023 regarding the trust account.

As more fully discussed below, after review of information and evidence currently available to the SDR, the SDR does not agree to provide the special treatment requested by AXA in your May 2023 correspondence.<sup>1</sup> AXA has provided no legal or factual basis that would support such special treatment, and the SDR is unaware of any factual basis to support providing such special treatment. We recognize, however, that AXA may have evidence and other information not available to the SDR because the receivership was initiated after the events referred to in the February 2023 Notice letter. Accordingly, the SDR would like to invite AXA and its representatives to provide the SDR with such evidence/information at a mutually convenient date and place.

Estate records establish that, as of March 31, 2023, AXA owed approximately \$243 million to the FHIC estate for paid claims and an additional approximately \$39 million to fund AXA’s trust obligations to cover IBNR reserves of the FHIC estate – pursuant to AXA’s obligations under its reinsurance agreements<sup>2</sup> with FHIC.<sup>3</sup> This figure far exceeded the approximately \$117.4 million

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<sup>1</sup> Your letter also requested that you, Vikram Sidhu, Juliana Toes, Robert Harrell, and James Danford be added to the service list for filings by the SDR. All have been added and are receiving service from the SDR.

<sup>2</sup> The reinsurance agreements are the Quota Share Reinsurance Agreement Between Friday Health Insurance Company, Inc. and AXA France VIE Dated 22 March 2021 (Agreement Number CR 4661), Amendment No. 1 to Quota Share Reinsurance Agreement Between Friday Health Plans of Texas, Inc. and AXA France VIE (Amendment Reference Number CR 4661-2) (collectively, the “Reinsurance Agreement”) and the Trust Agreement dated as of January 1, 2021 (the “Trust Agreement”) among AXA France Vie (“AXA”), FHIC, and Wells Fargo Bank (“Wells Fargo”).

<sup>3</sup> As of June 30, 2023, the amounts owed by AXA to the FHIC estate have increased to approximately \$245 million for paid claims and approximately \$39 million to fund AXA’s trust obligations to cover IBNR reserves.



withdrawn by the SDR. The SDR carried out its obligation to protect assets of the receivership estate when it transferred the Funds to the Texas Treasury, rather than leaving them in a private, uninsured, non-interest-bearing bank account controlled by a stranger<sup>4</sup> to the original Trust Agreement.

Your correspondence has not identified any factual or legal basis to negate AXA's obligation to pay the above referenced sums. Your correspondence has not identified any factual or legal basis to negate the SDR's right to withdraw the Funds and apply them to AXA's obligations under the Reinsurance Agreement and/or Trust Agreement. Instead, the Texas Insurer Receivership Act ("TIRA") and the Agreed Order Appointing Liquidator, Permanent Injunction, and Notice of Automatic Stay (the "Permanent Injunction") unambiguously authorized the SDR to assume possession of the Funds, the terms of the Reinsurance Agreement and the Trust Agreement expressly authorized the SDR to apply the Funds to AXA's obligations under the Reinsurance Agreement, and those agreements further obligate AXA to pay the remaining balance due to the FHIC estate and to fund a trust account with an additional approximately \$39 million. While the SDR is amenable to amending the trust agreement to authorize AXA to deposit the remaining and future balances to the Texas Treasury rather than with Wells Fargo, the SDR will not agree to waive AXA's trust obligations.

#### **Texas Insurance Receivership Law**

Both TIRA and the Permanent Injunction authorized the SDR to take possession of the Funds. TIRA defines "property" of the insurer/estate to include:

All right, title, and interest of the insurer in property, whether legal or equitable, tangible or intangible, choate or inchoate, and includes choses in action, contract rights, and any other interest recognized under the laws of this state....

TEX. INS. CODE §443.004(a)(20).

The Trust Agreement states that the Trustee will hold property deposited with it "for the **sole and exclusive benefit** of [FHIC]." See Trust Agreement at p. 1 (fourth "whereas" paragraph) (emphasis supplied). Nothing in the Trust Agreement reserves any property interest in AXA for the funds held by the Trustee. Accordingly, FHIC's beneficial interest in the Funds pursuant to the Reinsurance Agreement and the Trust Agreement squarely falls within TIRA's definition of "property of the estate."

TIRA and the Permanent Injunction vested title of FHIC's property in the SDR. See TEX. INS. CODE §§443.151(a) ("As of the entry of the final order of liquidation, the Liquidator is vested by operation of law with the title to all of the property, contracts, rights of action, and books and records of the insurer ordered liquidated, wherever located."); Permanent Injunction at ¶3.1. TIRA and the Permanent Injunction provide expansive powers to the SDR to take any action it concludes

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<sup>4</sup> Those funds were under the control of ComputerShare Corporate Trust ("ComputerShare"), a stranger to the original Trust Agreement, at the time of receivership.

to be “*necessary or expedient to collect, conserve, or protect* the insurer’s property....” See TEX. INS. CODE §443.154(f) (emphasis supplied); *see also* TEX. INS. CODE §443.154(n) (the liquidator may take possession of records and property of the insurer as may be convenient for the purposes of efficient and orderly execution of the liquidation.”); Permanent Injunction at ¶3.2 (“The Liquidator is authorized to take control and possession of [FHIC’s] Property, wherever located,...”). Accordingly, at minimum, the SDR was entitled to withdraw the trust funds as property of the FHIC estate.

### **The Trust/Reinsurance Contracts Authorized the SDR’s Action**

The Trust Agreement and the Reinsurance Agreement also authorize the SDR to withdraw the Funds and apply them to AXA’s obligations under the Reinsurance Agreement.

The Trust Agreement specifically provides that FHIC “shall have the exclusive and *unconditional* right, at any time and from time to time, to withdraw from the Trust Account, subject only to the written notice from the Beneficiary to the Trustee (the “Withdrawal Notice”), all or part of the Trust Assets.” See Trust Agreement at ¶2(a) (emphasis supplied). Accordingly, the SDR was authorized under the Trust Agreement to direct Wells Fargo/Computershare to transfer funds held in the Trust Account to the SDR.

Article 10 ¶ 5 of the Reinsurance Agreement provides that FHIC may withdraw some or all of the Trust Funds to pay amounts owed by AXA to FHIC under the Reinsurance Agreement. The SDR calculates the amount AXA owes under the Reinsurance Agreement as of June 30, 2023 to be approximately \$165 million – approximately \$126 million (\$245 million due in paid claims less \$119 million currently held in the Texas Treasury) for claims paid and \$39 million to cover AXA’s trust obligation.

### **AXA’s Purported Termination Does Not Affect the SDR’s Right to the Funds or AXA’s Continued Payment Obligations under the Reinsurance Agreement or the Trust Agreement**

Your May 17, 2023 letter alleges that the letter dated February 20, 2023 from you to Elizabeth Bierbower, Lisa Yacuzzo, and Stacy Knowlton (the “February AXA Letter”) precluded the SDR from withdrawing the Funds and applying them to AXA’s obligations. To the contrary, the February AXA Letter did not preclude the SDR’s actions and does not alter AXA’s liability.

First, the termination provisions of the Reinsurance Agreement do not allow retroactive termination. See Reinsurance Agreement Art. 22. Instead, termination becomes effective only *after* notice of the termination is provided. See Reinsurance Agreement Art. 22. Accordingly, the February AXA Letter’s attempt to *retroactively* terminate the Reinsurance Agreement has no effect.

Second, even assuming the February AXA Letter could have immediately<sup>5</sup> terminated the Reinsurance Agreement, termination on that date would not affect AXA's obligations under the Reinsurance Agreement and Trust Agreement. Termination under the Reinsurance Agreement generally cannot apply to policies ceded prior to the termination. *See* Reinsurance Agreement Art. 22. To the extent termination can apply to policies previously ceded, such termination applies only on a "cut-off" basis, meaning that the Reinsurance Agreement continues to apply to claims *incurred* prior to termination. *See* Reinsurance Agreement Art. 22, Art. 34(3)(xii) (defining "cut-off").

As you know, FHIC issued no new policies after December 31, 2022. As you know, all FHIC policies had been ceded to AXA prior to February 20, 2023. As you know, every claim against FHIC policies that had been ceded to AXA had been incurred prior to February 20, 2023. Accordingly, AXA's obligations under the Reinsurance Agreement remain unchanged even assuming those contracts had been immediately terminated by the February AXA Letter.

Additionally, AXA's purported termination has no effect on the SDR's right to withdraw funds from the Trust Account pursuant to Article 10 ¶ 5 of the Reinsurance Agreement. Nothing in the Reinsurance Agreement or the Trust Agreement restricts the right to withdraw funds from the Trust Account after a notice of termination. Nothing in the Reinsurance Agreement or the Trust Agreement restricts the right to withdraw funds from the Trust Account after a notice of dispute. Accordingly, neither the right to withdraw nor the amount owed were affected by the February AXA Letter.

As acknowledged in the February AXA Letter, AXA did not rescind the Reinsurance Agreement. Instead, both in that letter and in your May 17, 2023 letter, AXA has instead asserted rights<sup>6</sup> under the Reinsurance Agreement. Accordingly, AXA has no basis to claim an interest in the Funds based upon rescission.

With respect to AXA's request to terminate the Trust Account, the SDR is willing to allow AXA to fund a special account with the Texas Treasury under the same terms and conditions as set forth in the Trust Agreement. The SDR is not willing to generally waive AXA's obligation to fund a trust account to cover its ongoing obligations under the Reinsurance Agreement.

To the extent that AXA wishes to provide the SDR with evidence supporting its apparent position that FHIC violated duties owed to AXA, and that such violation excuses AXA's performance under the Reinsurance Agreement and the Trust Agreement, the SDR will be happy to review and discuss such evidence.

Alternatively, should AXA wish to pursue any action against the FHIC estate, AXA will be required to first submit a proof of claim (a "POC") in compliance with the forms and procedures

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<sup>5</sup> The SDR disputes that immediate termination was possible. *See* Reinsurance Agreement at Art. 22 (2).

<sup>6</sup> For example, AXA's demand for interest is a demand for benefits under the Reinsurance Contract. Of course, AXA owes the FHIC estate \$114 million in addition to the Funds. Accordingly, the provisions of the Reinsurance Contract do not entitle AXA to any interest.

ultimately approved by the Receivership Court. The Receivership Court has not yet approved the forms and procedures, so the SDR is not accepting claims at this time. When the Receivership Court has approved the forms and procedures for submitting POCs, the SDR will provide AXA with notice of the relevant forms and procedures so that AXA can properly file a POC and have its claim adjudicated in accordance with TIRA.

Finally, please be advised that TEX. INS. CODE § 443.008(k) provides that “[t]he estate of an insurer that is injured by any wilful violation of a stay provided by this section is entitled to actual damages, including costs and attorney's fees. In appropriate circumstances, the receivership court may impose additional sanctions.” The SDR will seek to recover its reasonable and necessary attorney’s fees and any other expense or damages to the estate in the event that AXA takes any action that violates the stay and permanent injunction.

I look forward to hearing from you regarding potential dates to meet and discuss AXA’s claims.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Pierce", is written over the typed name.

Greg Pierce

## **EXHIBIT 8**





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December 7, 2023

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Re: **Cause No. D-1-GN-23-001549, Texas Department of Insurance v. Friday Health Insurance Company, Inc., In the 345th Judicial District Court, Travis County, Texas**

Dear Mr. Pierce:

We write on behalf of AXA France Vie (“**AFV**”) in response to your letter dated October 5, 2023. Thank you for taking the time to respond to our prior letter dated May 17, 2023.

As an initial matter, we remind you that the notice of dispute dated February 20, 2023 (the “**Notice of Dispute**”) issued by AFV to Friday Health Insurance Company, Inc. (“**Friday**”) raised serious concerns about Friday’s fraudulent and deceptive acts and omissions and breaches of the Quota Share Reinsurance Agreement, Agreement Number CR 4661, dated January 1, 2021, as amended (the “**Reinsurance Agreement**”) and the Trust Agreement, also dated January 1, 2021, between AFV, Friday and Wells Fargo Bank (the “**Trust Agreement**” and, together with the Reinsurance Agreement, the “**Agreements**”) and provided a clear basis for, among other things, why AFV has no obligation to reinsure, and therefore does not owe, Friday any amount for 2022.

However, neither Friday nor the Special Deputy Receiver (the “**SDR**”) has ever substantively responded to the Notice of Dispute.

Although we appreciate your response, we are troubled by the apparent failure to understand or even recognize the serious concerns AFV communicated to Friday, including in the Notice of Dispute, and the consequent mischaracterizations of AFV’s positions reflected in your letter. Equally troubling is that your letter makes substantial demands for payment without any explanation or supporting documentation for the paid claim amounts and incurred but not reported (“**IBNR**”) reserve amount that you demand from AFV, as discussed below. Therefore, while we agree with your suggestion to have a meeting to discuss these issues, AFV proposes that such a meeting take place after the SDR provides supporting documentation for the paid claims and IBNR reserve amounts that you claim AFV owes, as detailed further below. Finally, AFV also renews its demand that Friday sequester and preserve the funds previously held in trust, the rights to which remain in dispute.

Greg Pierce, Esq.  
December 7, 2023  
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## **1. Purported Amount Owed to the Friday Estate for Paid Claims**

Your correspondence states that “[e]state records establish that, as of March 31, 2023, AXA owed approximately \$243 million to the FHIC estate for paid claims . . . .” Your correspondence does not, however, specify or provide the estate records that support Friday’s calculation or otherwise explain the basis for such contention.

Even if we were to accept the SDR’s unsupported (and incorrect) contention that AFV’s performance under the Agreements has not been excused and the Agreements were not rescinded, from a technical standpoint, we are unable to reconcile your demand with the previous account information, data, and documentation provided (and required to be provided) by Friday and our client’s internal technical analysis of those numbers. Moreover, Friday’s history of wildly incorrect and erroneous calculations inspires little confidence that the amounts you claim to be owed by AFV could be supported or even accurate, aside from the fundamentally different positions between the parties regarding the validity of the Agreements for 2022.

As you are aware, AFV’s February 20, 2023 Notice of Dispute outlined numerous breaches of the Reinsurance Agreement and related fraudulent acts and omissions by Friday, many of which relate to or arose from Friday’s inadequate and often absent claims and operational procedures. These inadequacies became more apparent, and Friday’s operations became more dysfunctional, as key personnel left Friday and critical vendors such as Inovalon Holdings, Inc. (“**Inovalon**”) ceased working with Friday. In the Notice of Dispute, AFV highlighted Friday’s numerous glaring accounting failures and Friday’s persistent operational problems. For example, Friday consistently made material errors and transparent misrepresentations in its contractually required quarterly reports when calculating pharmacy claims, pharmacy rebates, and excess of loss (“**XoL**”) premiums and recoveries, among other critical accounting items. Friday’s claims management continued to deteriorate significantly as it was heading into insolvency. Despite that, AFV acted in good faith by carefully reviewing the quarterly reports, identifying Friday’s persistent errors and providing assistance to Friday to correct them.

As a result, due to the substantial discrepancies and misstatements in Friday’s calculations and its continual material errors in the critical and contractually required information, data, and documentation provided in the accounting reported to AFV, the parties will need to carefully analyze the underlying data and actuarial analysis for there to be any technical understanding of the basis of your demand—and meaningful discussion about it. AFV is entitled to this information under the Reinsurance Agreement whether or not the Agreement was effective for 2022. *See, e.g.*, Reinsurance Agreement Art. 14(1) (requiring Friday to provide quarterly reports that contain information set forth on Annex 7 of the Reinsurance Agreement). AFV is also entitled to particular claims data and “any further claims information upon request”, and is expressly given the right, “at any time” to inspect all papers, books, accounts, documents and other records referring to the business reinsured under the Reinsurance Agreement. *See* Reinsurance Agreement Art. 15



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(requiring Friday to provide certain monthly and quarterly claims information in accordance with Annex 4, and “any further claims information upon request”) and Art. 17(1) & (4) (granting AFV the right to inspect all books and records referring to the business reinsured under the Reinsurance Agreement and requiring Friday to *fully and timely cooperate* with such requests) (emphasis added).

Accordingly, we request that the SDR provide all information, data, and documentation used to calculate SDR’s \$245 million demand:

- A dataset containing a separate row for each incurred month, each metal, each market segment (individual on exchange / off exchange / small group):
  - Member months;
  - Gross earned premium;
  - Allowed medical claims;
  - Paid medical claims;
  - Allowed Rx claims;
  - Paid Rx claims (excluding administrative cost); and
  - Paid vision claims (excluding administrative cost).
- On an aggregated basis for the whole state, on a separate row:
  - Local stamp fees and taxes;
  - Rx rebates; and
  - Below items should be following the terms and conditions of the reinsurance treaty between Friday and Odyssey Group Holdings Inc. (f/k/a Odyssey RE Holdings Corp.) (“**Odyssey Re**”):
    - XoL premium paid to Odyssey Re;
    - XoL recoveries; and
    - Any experience refund received from Odyssey Re.

## **2. Purported Amount Owed to the Friday Estate for IBNR Reserves**

Your letter also claims that “[e]state records establish that, as of March 31, 2023, AXA owed . . . an additional approximately \$39 million to fund AXA’s trust obligations to cover IBNR reserves of the FHIC estate . . . .” As an initial matter, AFV disputes that it has any legal or contractual obligation to deposit additional funds into the trust account, which the SDR has since drawn down in full. As you are no doubt aware, under the Reinsurance Agreement, the sole purpose of the trust was to provide full reinsurance reserve credit to Friday (referred to therein as the “Ceding Company”) for the reinsurance Friday sought from AFV. *See* Reinsurance Agreement Art. 10(1). Texas law similarly provides that the purpose of a reinsurer maintaining security in a trust account is to allow the ceding insurer to receive credit for the reinsurance on its statutory financial

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statements. TEX. INS. CODE §493.104; 28 TEX. ADMIN CODE §7.608. Given Friday's insolvency, there are no filed statutory financial statements on which Friday (or the SDR or other successor entity) needs to receive credit for reinsurance. Simply put, the purpose of the trust account no longer exists, the reinsurance no longer exists and the SDR has identified no legal requirement to fund the trust account.

Setting aside that AFV has no legal or contractual obligation to fund the trust account, AFV need not fund the trust account because Friday engaged in, among other things, substantial fraud and breached the Agreements, as a result of which the Reinsurance Agreement was terminated by January 1, 2022, at the latest, or otherwise rescinded. Not only did Friday conceal its dire financial condition, fail to meet minimum risk-based capital requirements, conceal additional accruals for the substantial risk adjustment transfer payment in its 2021 financial statements, and fail to oversee critical vendors such as Inovalon and Milliman, Inc., but, even more appallingly, Friday knowingly and intentionally withheld key information from AFV so that AFV would not terminate the Reinsurance Agreement and to induce AFV to increase its quota share under the Reinsurance Agreement from 60% to 80%. Thus, AFV has no obligation to place any additional funds into the trust account.

Further, your letter fails to explain how the IBNR reserves were calculated or provide the basis for the claim that AFV has any obligation to further fund the trust account for IBNR. To enable the parties to have a meaningful discussion as to amounts the SDR claims are purportedly owed for IBNR reserves, please provide the information, data, and documentation used to calculate the IBNR amounts allegedly owed by AFV, including in a separate file:

- IBNR triangles, calculated following the methodology set in Annex 5 of the Reinsurance Agreement; and
- IBNR triangles for 2021 and 2022.

### **3. Amounts Formerly Held in Trust Must be Sequestered and Preserved**

As explained on our May 10, 2023 phone call, and subsequently in our May 17, 2023 letter, neither the Friday estate nor the SDR has a right to withdraw or distribute any portion of the funds formerly held in the trust account unless permitted under the Agreements. However, without notice to AFV as required under the Reinsurance Agreement, in or around April 2023, the SDR transferred all of the funds out of the trust account. In our call on May 10, 2023, you informed us that the SDR had no intention to distribute any portion of the funds formerly held in trust to the Texas Property and Casualty Insurance Guaranty Association until there was a final resolution of the dispute between

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AFV and Friday. Indeed, the SDR's quarterly reports have continued to reference these funds as a "restricted asset," described as "Funds Held in Trust – AXA France Vie."<sup>1</sup>

Yet, your recent letter suggests that the SDR has done an about-face and is now considering spending or distributing the funds formerly held in the trust account, despite the ongoing dispute raised by AFV regarding the estate's right to withdraw the funds in the first place. As such, it is both improper and premature to distribute any portion of the funds. As explained in our May 17, 2023 letter, Friday cannot draw down on the trust amounts unless and until these amounts are indeed owed, which cannot occur until the dispute between Friday and AFV is resolved. While you state in your letter that the SDR is authorized to take possession of the funds due to their being "property" of Friday, we note that "property" of the insurer is defined in relevant part under the Texas Insurance Code as "***all right*** . . . of the insurer in property[.]"<sup>2</sup> Friday's rights to withdraw the funds was limited to amounts actually owed under the Reinsurance Agreement, which again cannot be determined until the dispute between Friday and AFV is resolved. AFV reiterates that the SDR's improper withdrawal will require reimbursement to AFV, with interest, for all improperly withdrawn funds.

Further, Friday's insolvency does not permit the SDR to withdraw and use funds from the trust account at will. Section 3(a) of the Trust Agreement states that "[t]he Beneficiary shall undertake to use and apply any amounts withdrawn from the Trust Account, without diminution because of the insolvency of the Beneficiary or the Grantor, solely in accordance with the provisions of the Reinsurance Agreement." Under the Reinsurance Agreement, Friday (and now the SDR) is only permitted to withdraw assets from the trust account for specified reasons, such as to "reimburse the Ceding Company for the Reinsurer's Quota Share of premiums returned" or to "reimburse the Ceding Company for the Reinsurer's Quota Share of benefits or losses paid by the Ceding Company." Reinsurance Agreement Art. 10(5)(i). As a direct result of Friday's fraud and breach of the Agreements, as detailed in the Notice of Dispute, and as provided in the Agreements, the SDR lacked any valid legal basis on which to withdraw assets from the trust account. In addition, the SDR certainly has no basis to now refuse to sequester those funds in an interest-bearing account as required under the Agreements. In fact, the SDR is obligated under the Reinsurance Agreement to return to the trust account or to AFV any excess withdrawals and until then must hold those amounts in "trust" for AFV. *See* Reinsurance Agreement Art. 10(5)(ii) and (iii). Moreover, the SDR must pay interest on any withdrawn amounts in excess of actual amounts due at the applicable prime rate as reported in the Federal Reserve Bulletin. *See* Reinsurance Agreement Art. 10(5)(iv).

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<sup>1</sup> *See* SDR's June 15, 2023 quarterly financial report; SDR's September 15, 2023 quarterly financial report.

<sup>2</sup> TEX. INS. CODE §443.004(a)(20) (emphasis added).

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Thus, the SDR cannot withdraw or spend any amounts formerly held in the trust account until the dispute between Friday and AFV is resolved.

Additionally, with respect to the bank account where the trust funds *were* held, we emphatically disagree with your incorrect characterization of ComputerShare Corporate Trust (“**ComputerShare**”) as a “stranger” to the Trust Agreement. As you should be aware, ComputerShare has decades of experience and is one of the largest trustees in this country, and ComputerShare acquired Wells Fargo’s US corporate trust business in 2021. Neither AFV nor Friday could or did contest to having ComputerShare serve as the trustee to replace Wells Fargo. Therefore, the SDR did not have a legitimate basis to withdraw funds held in the trust account with ComputerShare.

#### **4. Notice of Dispute**

We were surprised to read your plainly false accusation that AFV has not provided any legal or factual bases to support the claims made in our earlier letters. On February 20, 2023, AFV provided a 10-page Notice of Dispute, exclusive of exhibits, describing Friday’s numerous breaches and fraud supported by both the law, the Reinsurance Agreement, and actuarial analysis underlying the disputes.

Nonetheless, neither Friday nor the SDR (despite being in place for eight months now) has ever responded to the law or facts discussed in the Notice of Dispute, much less addressed any of our concerns and issues raised. Indeed, it is wholly unclear based on your letter whether the SDR has done any investigation into the allegations and supporting facts points we raised in our Notice of Dispute.

As a suggested path forward, we propose the following course of action:

1. Once the SDR has provided the information, data, and documentation requested under Sections 1 and 2 above, AFV will review that information and provide its analysis of the SDR’s claimed amounts, without prejudice to the matters raised in the Notice of Dispute.
2. Once the parties have a common understanding of the amounts comprising the SDR’s claimed amounts, we are prepared to give you a presentation—as you suggest—that reiterates and expands upon the allegations and supporting facts that were identified in the Notice of Dispute. Prior to that meeting, it would be helpful to have detailed feedback from the SDR as to what elements, if any, of the Notice of Dispute it has been unable to investigate, or if it has identified any contrary information, so we can tailor that presentation to the SDR’s specific questions.

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We look forward to further discussions with you and follow up on the points raised above.

AFV continues to reserve all rights with regard to these matters.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Bronwyn F. Pollock", is written over a light blue circular stamp that contains the text "MAYER BROWN LLP".

Bronwyn F. Pollock  
Partner

## **EXHIBIT 9**

POC # \_\_\_\_\_  
Claim # \_\_\_\_\_  
Date Received \_\_\_\_\_

To be Completed by SDR

**Filing Deadline:**  
**September 5, 2024**  
**11:59 p.m. Central Daylight Time**

**FRIDAY HEALTH INSURANCE COMPANY, INC.**  
**PROOF OF CLAIM**

Return this completed Proof of Claim form and any supporting documents. A Proof of Claim must be **postmarked or received** by the SDR no later than **11:59 p.m. Central Daylight Time on September 5, 2024**, at one of the addresses shown below.

BY MAIL:  
CANTILO & BENNETT, L.L.P.  
Special Deputy Receiver  
Friday Health Insurance Company, Inc.  
P.O. Box 184  
Austin, Texas 78767  
ATTENTION: CLAIMS

BY COURIER OR HAND DELIVERY:  
CANTILO & BENNETT, L.L.P.  
Special Deputy Receiver  
Friday Health Insurance Company, Inc.  
11401 Century Oaks Terrace, Suite 300  
Austin, Texas 78758  
ATTENTION: CLAIMS

**Please read the Proof of Claim instructions carefully before completing this Proof of Claim.**  
**Please print or type.**

AXA France Vie  
Name of Claimant

\$136,528,122  
Total Amount of Claim

313 Terrasses De L'Arche  
Street Address

N/A  
Soc. Sec. or Tax ID Number

92727 Nanterre Cedex, France  
City State Zip

213-229-5194  
Telephone Number

bpollock@mayerbrown.com  
E-mail Address

213-625-0248  
Facsimile Number

**If the claimant is represented by an attorney, please complete the following section, and attach a copy of the Power of Attorney:**

Bronwyn Pollock  
Name of Attorney

CA #210912  
State Bar No.

Mayer Brown LLP  
Name of Law Firm

N/A  
Tax ID Number

333 S. Grand Ave., 47th Floor  
Street Address

213-229-5194  
Telephone Number

Los Angeles CA 90071  
City State Zip

213-625-0248  
Facsimile Number

bpollock@mayerbrown.com  
E-mail Address



Provide an explanation of your claim below, and state if there is any security on the claim or any payments that have been made on the claim. Attach additional pages if necessary.

This Proof of Claim is based on the losses, damages, and other amounts AXA France Vie ("AFV") is entitled to recover as a result of Friday Health Insurance Company, Inc.'s ("Friday TX") fraud, misrepresentations, mismanagement, negligence, breaches of the Quota Share Reinsurance Agreement, dated January 1, 2021, Agreement Number CR 4661 and amended as of January 1, 2022 by Amendment No. 1 Reference Number CR 4661-2 for Texas (together, the "Agreement") and other wrongdoing. Additional details are set forth in the February 20, 2023 notice of dispute letter from AFV to Friday TX attached as Exhibit 1 and as detailed in Appendix A to this Proof of Claim. By submitting this claim, AFV reserves all rights, including rights to require that all disputes and claims involving Friday TX be resolved in binding arbitration in accordance with the Agreement.
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<b>NOTE: ATTACH DOCUMENTATION TO SUPPORT YOUR CLAIM</b>
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**AFFIRMATION OF CLAIMANT**

**Texas law requires the following statement in a Proof of Claim**

Unless otherwise stated in this proof of claim:

I alone am entitled to file this claim. No others have an interest in this claim. No payments have been made on the claim. No third party is liable on this debt. The sum claimed is justly owing, and there is no set-off counterclaim, or defense to the claim. I declare, under penalty of perjury, that all of the statements made in this Proof of Claim and all documents attached to this form are true, complete, and correct. If I am making a claim against a person insured by Friday Health Insurance Company, Inc., I understand that I am waiving any right to pursue the personal assets of that person, to the extent of the coverage and limits provided by the policy issued by Friday Health Insurance Company, Inc. My name is Jerome Hemard, my date of birth is December 2, 1969, and my business address is 313 Terrasses De L'Arche, 92727 Nanterre Cedex, France.

  
\_\_\_\_\_  
Signature

Jerome Hemard  
\_\_\_\_\_  
Print Name

Executed on the 7<sup>th</sup> day of August, 2024, in NANTERRE FRANCE

## **Appendix A: AXA France Vie's Proof of Claim**

### **Introduction**

On January 1, 2021, Friday Health Insurance Company, Inc. ("Friday TX") and AXA France Vie ("AFV") entered into a quota share reinsurance agreement, which was subsequently amended as of January 1, 2022.<sup>1</sup> Under the Agreement, Friday TX was required, along with its reporting and accounting obligations, to utilize in good faith customary and usual practices in the health insurance industry in its underwriting, claims assessment, administration, and all other insurance practices and management of the business.<sup>2</sup> Friday TX failed to meet its obligations. To the contrary, Friday TX flagrantly breached its obligations under the Agreement by deliberately concealing and misrepresenting critical financial and operational information as well as concealing anticipated losses to induce AFV to increase its quota share from 60% to 80% for the reinsurance coverage and to enter into three additional reinsurance agreements with Friday TX's affiliates in Georgia, North Carolina, and Oklahoma. Not only did Friday TX's wrongful acts inflict substantial damages on AFV, it prevented AFV, to its detriment, from seeking immediate remediation measures or terminating the Agreement all together.

Friday TX's continual misrepresentations and fraudulent behavior form the basis of this proof of claim. As detailed below, as a result of Friday TX's wrongdoing and breaches of the Agreement, AFV submits this proof of claim in the amount of \$136,528,122.

### **Statement of Facts**

On January 1, 2021, Friday TX and AFV entered into the Agreement. Under the Agreement, AFV was to reimburse Friday TX for AFV's quota share (60%)<sup>3</sup> of claims paid by Friday for certain policies<sup>4</sup> for the period of January 1, 2021, to December 31, 2021, in accordance

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<sup>1</sup> The "Agreement" means the Quota Share Reinsurance Agreement between Friday Health Insurance Company, Inc. and AXA France Vie, dated January 1, 2021, Agreement Number CR 4661, and amended as of January 1, 2022, by Amendment No. 1, Reference Number CR 4661-2 ("Amendment No. 1"). The Agreement and Amendment No. 1 are already in the possession of Friday TX. AFV will provide a copy of the documents upon request.

<sup>2</sup> Agreement, at Art. 26.

<sup>3</sup> Agreement, at Arts. 5(1), 9(2), 34(3)(xxxviii).

<sup>4</sup> Agreement, at Annex 1.

with the reinsurance accounting procedures provided for in the Agreement, including Article 14.<sup>5</sup> In addition to its reporting and accounting obligations, Friday TX was required, in good faith, to utilize customary and usual practices in the health insurance industry in its underwriting, claims assessment, administration, and all other insurance practices and management of the business.<sup>6</sup>

Effective January 1, 2022, Friday TX and AFV entered into Amendment No. 1 to the Agreement. Under Amendment No. 1, among other items, AFV agreed to increase its quota share from 60% to 80% for the period of covered claims from January 1, 2022, to December 31, 2022.<sup>7</sup> During this time, AFV also entered into three new quota share reinsurance agreements with Friday TX's affiliates in Georgia, North Carolina, and Oklahoma.

To induce AFV to enter into Amendment No. 1, as well as three additional reinsurance agreements with Friday TX's affiliates, Friday TX concealed and misrepresented critical financial and operational information. By the summer of 2021, Friday TX knew that its losses in Texas would be significant, but Friday TX deliberately omitted its 2021 losses and additional accruals for a substantial risk adjustment transfer payment from the financial statements that it provided to AFV. Nor did Friday TX disclose these issues in its regular discussions with AFV.

Friday TX not only concealed its poor financial performances in Texas, but also concealed the poor financial performances of its affiliates in Colorado and Nevada and schemed to induce AFV to agree to an increase in AFV's quota share and enter into three additional reinsurance agreements with Friday TX's affiliates in Georgia, North Carolina, and Oklahoma. In fact, Friday TX waited to disclose this material information until *after* AFV signed Amendment No. 1 to increase AFV's quota share in Texas.

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<sup>5</sup> Agreement, at Art. 9(2).

<sup>6</sup> Agreement, at Art. 26.

<sup>7</sup> Amendment No. 1, at III.

**A. Examples of Friday TX's Wrongdoing.**

On February 20, 2023, AFV sent a notice of dispute letter to Friday TX that describes serious wrongdoing by Friday TX in connection with the Agreement. This notice of dispute, which AFV fully incorporates herein by this reference, is attached as Exhibit 1.

As detailed in the notice of dispute, Friday TX has engaged in numerous wrongful acts, breached its duty of utmost good faith, and breached its warranties, covenants, and duties set forth in the Agreement by (1) failing to utilize customary and usual practices in the health insurance industry; (2) concealing and/or misrepresenting material information, including information related to Friday TX's losses and its non-compliance with risk-based capital requirements; (3) failing to provide to AFV papers, books, accounts, documents, and other records AFV requested related to Friday TX's potential losses; (4) failing to oversee key vendors critical for the administration of claims; (5) severely underpriced premium rates; (6) failing to meet forecasted plan liability risk score lift; and (6) making fraudulent misrepresentations about critical financial and operational information and concealing anticipated losses from AFV to induce AFV to enter into Amendment No. 1 and to enter into the three additional agreements with Friday TX's affiliates.

AFV has incurred significant damages as a result of Friday TX's fraudulent and deceptive actions. For example, Friday TX conveniently waited to disclose material information about its losses until after AFV agreed to increase its quota share in Texas. Had AFV been aware of Friday TX's dire financial situation in Texas and that of its affiliates in Colorado and Nevada, AFV would have never increased its quota share in Texas or entered into additional reinsurance agreements in Georgia, North Carolina, or Oklahoma. In fact, AFV would have immediately exercised its right to terminate all agreements had it known the truth about Friday TX and its affiliates.

**B. The Special Deputy Receiver Has Not Substantively Addressed the Issues Raised in the Notice of Dispute Letter.**

On March 23, 2023, Friday TX was placed into liquidation. The next day, Cantilo & Bennett, L.L.P. was designated as special deputy receiver ("SDR") of Friday TX. A week later,



on April 1, 2023, AFV sent a letter to the SDR that enclosed a copy of the February 20, 2023 notice of dispute letter, to which the SDR never responded. Counsel for AFV sent an additional letter on May 17, 2023, which disputed Friday's withdrawal, without notice to AFV, of approximately \$117 million that AFV had placed in a trust account pursuant to the Agreement.

SDR waited nearly five months before responding to AFV's letters. On October 5, 2023, the SDR sent a letter to AFV asserting that it was entitled to withdraw the trust funds and insisting that AFV owed \$243 million to the Friday TX estate for paid claims. On December 7, 2023, AFV sent a letter reiterating that Friday TX had still not substantively responded to the February 2023 notice of dispute letter. AFV's letter also questioned the SDR's claim amount given Friday TX's history of inaccurate and erroneous calculations and requested supporting information and data to substantiate the calculation. Friday TX has yet to provide the requested information or to substantively address the issues raised in AFV's notice of dispute letter.

#### **Proof of Claim Calculation**

Friday TX's breaches of the Agreement and other wrongful acts have caused substantial damages to AFV. AFV thus submits this proof of claim in the amount of no less than \$136,528,122, which consists of:

<b>Amount Formerly Held in Trust</b> – Amount (as of July 31, 2024) formerly held in a trust account (acct. no. xx1800) paid by AFV, which must be returned to AFV	\$125,233,322
<b>Additional Losses / Damages</b> – Amount that AFV was entitled to under the Agreement had Friday TX met its obligations (based on 1.87% of net written premium)	\$11,294,800
Additional damages, losses, attorney's fees, costs, and other remedies to be established in arbitration	TBD
<b>TOTAL</b>	<b>\$136,528,122</b>

AFV reserves all rights with regard to this matter, including its right to amend its proof of claim upon discovery of additional information.

AFV further seeks recovery of its attorney's fees, costs, and other amounts. AFV reserves its right to require that all disputes and claims involving Friday TX be resolved in binding arbitration in accordance with the Agreement.

# **EXHIBIT 1**

February 20, 2023

BY EMAIL AND OVERNIGHT DELIVERY

Friday Health Insurance Company, Inc.  
Attn: Ms. Elizabeth Bierbower  
Friday Health Plans, Inc.  
1777 S. Harrison Street, Suite 1100  
Denver, CO 80210  
beth.bierbower@fridayhealthplans.com

Friday Health Insurance Company, Inc.  
Attn: Lisa Yacuzzo, Esq.  
Chief Legal Officer  
Friday Health Plans, Inc.  
1777 S. Harrison Street, Suite 1100  
Denver, CO 80210  
lisa.yacuzzo@fridayhealthplans.com

Friday Health Insurance Company, Inc.  
Attn: Stacy Knowlton, Esq.  
Interim Chief Legal Officer  
Friday Health Plans, Inc.  
1777 S. Harrison Street, Suite 1100  
Denver, CO 80210  
stacy.knowlton@fridayhealthplans.com

Re: **Quota Share Reinsurance Agreement between Friday Health Insurance Company, Inc. and AXA France Vie dated January 1, 2021, Agreement Number CR 4661 and amended as of January 1, 2022 by Amendment No. 1 Reference Number CR 4661-2 for Texas (together, the "Agreement")**

Dear Ms. Bierbower, Ms. Yacuzzo and Ms. Knowlton:

Mayer Brown LLP represents AXA France Vie ("AFV") with regard to the serious wrongdoing by Friday Health Insurance Company, Inc. ("Friday") in connection with the Agreement, which was recently discovered by AFV. Among other things, AFV has learned that Friday not only concealed its dire financial condition in Texas and failed to meet minimum risk-based capital requirements, but that Friday also concealed the additional accruals for the substantial risk adjustment transfer payment in the 2021 financial statements provided to AFV until *after* AFV agreed to increase its quota share in Texas. Moreover, Friday failed to oversee critical vendors such as Inovalon Holdings, Inc. ("Inovalon") and Milliman, Inc. ("Milliman") and, therefore,



Friday Health Insurance Company, Inc.  
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breached its obligations for the administration of the reinsured business, including the utmost good faith that AFV placed in Friday for such administration. Furthermore, Friday underpriced premium rates based on rate filings in Texas for 2022, which were based on false assumptions, and refused to provide many critical documents and access to key individuals at Inovalon, as required by Friday in connection with AFV's recent inspection.

Despite Friday's contractual obligation and legal duty to act with utmost good faith and transparency, Friday intentionally concealed critical financial and operational information about its performance in Texas not only so AFV would not terminate the Agreement, but also to induce AFV to increase its quota share under the Agreement from 60% to 80% based on false and misleading information provided by Friday.

Our client gives notice to Friday of these disputes and advises that, in accordance with the Agreement and applicable law, the Agreement is terminated no later than January 1, 2022, with no further obligations existing between the Parties as of such termination date, and it may well be the case that the Agreement should be rescinded altogether. Under no circumstance is Friday entitled to impose an 80% quota share on AFV for 2022. Indeed, all losses for 2021 and 2022 are subject to Articles 6 and 9(8) (among other provisions) and are the sole responsibility of Friday. Further, Friday must promptly direct the Trustee to distribute to AFV all assets contained in the Texas Trust Account.

Below we briefly discuss key examples of Friday's wrongdoing that our client recently discovered and note various relevant provisions in the Agreement related to these issues. In addition, attached hereto as Exhibit A is a list of information that Friday has failed or refused to provide during the inspection despite its obligation to do so under the Agreement.

As of the date of this letter, this notice of dispute applies to Texas only; however, as we note below, our client reserves all of its rights regarding this matter. AFV's review is ongoing and may lead to identification of other issues and examples of breaches and wrongdoing by Friday or its affiliates.

**I. KEY EXAMPLES OF WRONGDOING BY FRIDAY RECENTLY DISCOVERED BY AFV**

**A. Friday's Fraudulent Representations Regarding Its Financial Condition and Inducement of AFV to Increase Its Quota Share for 2022 from 60% to 80%**

By the end of 2021, Friday knew that the losses in Texas would be significant, yet failed to disclose this information or the additional accruals for the substantial risk adjustment ("RA") transfer payment in the financial statements provided to AFV. Friday waited to disclose this material information until *after* AFV signed the amendment to increase its quota share in Texas. Indeed, throughout the end of 2021 and into 2022, Friday continued to provide misleading assurances to AFV about the financial performance in Texas and lack of losses that Friday anticipated.

Friday Health Insurance Company, Inc.  
 February 20, 2023  
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Notably, in March, 2022, Wakely Consulting Group, LLC (“Wakely”)<sup>1</sup> performed a 2021 RA transfer payment analysis based on data paid through December 31, 2021.<sup>2</sup> Wakely’s analysis forecasted Friday’s final 2021 transfer payment amount to be \$136M, which essentially ended up being the final payment amount of \$138M.<sup>3</sup> At the time Wakely provided its estimate in March, Friday would have been finalizing its monthly financial close for the month ending February, 2022. Had Friday acted upon Wakely’s estimate at that time and made the corresponding accruals, there would have been more clarity as to Friday’s financial outlook for Texas earlier on in 2022 (i.e., as early as 1Q2022). Instead, Friday did not reflect the additional accruals until finalizing the May and August financial statements, which would have occurred toward the end of June and September, respectively (i.e., 3Q2022). During the inspection, a number of individuals at Friday shared the fact that a “war room” and other efforts were underway at Friday at the end of 2021 after Friday learned that its 2021 risk transfer payment could be substantially higher than projected based on its initial EDGE submissions.<sup>4</sup>

Only *after* Friday obtained the Texas quota share increase from AFV did Friday record RA transfer payment accruals of approximately \$40M in June 2022 and \$30M in August 2022 related to calendar year 2021. Had Friday timely recorded the total accrual of \$70M as of December 31, 2021, and not concealed this information from AFV, AFV (and Friday’s customers and regulators) would have seen that, in fact, Friday was insolvent at year-end 2021 (before receiving the subsequent \$95 million capital infusion), after applying a 60% reinsurance quota share, as shown below:

Capital and Surplus: as Reported Year Ending 12/31/2021	\$16,961,216	[A]
Risk Adjustment Re-statement in 2022 for Plan Year 2021	(\$70,000,000)	[B]
Quota Share (QS) %	60%	[C]
QS Impact to RA	(\$28,000,000)	[D]=[B]x(1-[C])
<b>Re-stated 2021 Surplus</b>	<b>(\$11,038,784)</b>	<b>[E]=[A]+[D]</b>

Friday intentionally disregarded the concerns raised by the 2021 initial EDGE submission and the Wakely report in an effort to conceal the substantial RA transfer payment that would be due for 2021 and the resulting losses. And worse yet, Friday did so with the intention to cause AFV to increase its quota share for 2022 from 60% to 80% in Texas. Had Friday disclosed this information in the accruals and the true state of its financial condition, AFV would never have increased its quota share and instead would have terminated the Agreement.

<sup>1</sup> Wakely is an actuarial consulting firm that was engaged to analyze the 2021 RA transfer payment on behalf of Friday.

<sup>2</sup> Risk Adjustment Scenarios - 2022-03-25 - Texas and Nevada Only (Corrected CFs).xlsb

<sup>3</sup> Summary Report on Permanent Risk Adjustment Transfers for the 2021 Benefit Year.pdf

<sup>4</sup> EDGE submissions are discussed in more detail in Issue #6.

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### 1. Friday Concealed Its Dire Financial Condition.

AFV has now learned that Friday's ending capital and surplus as of December 31, 2021 for Texas was \$16,961,216.<sup>5</sup> Friday advised AFV that Friday received a capital infusion of \$95M after AFV agreed to increase the quota share in Texas. AFV also has learned that Friday issued revised financial statements in August 2022. The table below shows that Friday was insolvent as of April 30, 2022 with no surplus adjustment, and as of September 30, 2022 when including the surplus adjustment.

Month-Yr	Net Income <sup>6</sup>	Capital & Surplus	
		No Surplus Adj.	Incl. Surplus Adj.
01/01/22		\$16,961,216	\$95,000,000
01/31/22	\$3,514,591	\$20,475,807	\$115,475,807
02/28/22	(\$28,151)	\$20,447,655	\$115,447,655
03/31/22	(\$20,344,813)	\$102,843	\$95,102,843
04/30/22	(\$10,403,277)	<b>(\$10,300,434)</b>	\$84,699,566
05/31/22	(\$7,312,186)	(\$17,612,620)	\$77,387,380
06/30/22	(\$34,080,582)	(\$51,693,203)	\$43,306,797
07/31/22	(\$8,412,279)	(\$60,105,481)	\$34,894,519
08/31/22	(\$8,922,088)	(\$69,027,569)	\$25,972,431
09/30/22	(\$73,341,898)	(\$142,369,467)	<b>(\$47,369,467)</b>
10/31/22	(\$34,329,585)	(\$176,699,052)	(\$81,699,052)
11/30/22	(\$25,202,156)	(\$201,901,208)	(\$106,901,208)
12/31/22	(\$21,965,145)	(\$223,866,353)	(\$128,866,353)

<sup>5</sup> TX Monthly Financial Statements\_December 2022 v2.pdf, p. 6.

<sup>6</sup> FHP\_11+1\_Forecast 01.03.23.xlsx



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Month-Yr		Net Income <sup>6</sup>	Capital & Surplus	
			No Surplus Adj.	Incl. Surplus Adj.
Totals		(\$240,827,569)		

Had AFV been advised of this information, it would have immediately terminated the Agreement as AFV was entitled to do, and would never have agreed to increase its quota share for 2022 from 60% to 80%.

**2. Friday Failed to Meet Minimum Risk Based Capital (“RBC”) Requirements and Failed to Disclose the True Facts Regarding Friday’s Status in Texas.**

As Friday, a Texas domiciled insurer, well knows, Subchapter D of the Texas Administrative Code (28 TAC §7.401) addresses risk based capital and surplus and defines the regulatory actions relative to an insurance company’s capital level in relation to the Authorized Control Level. As shown in the table below, Friday’s RBC ratio for Texas was 406% at year-end 2021.<sup>7</sup> However, Friday’s negative financial performance in 2022 also greatly impacted its RBC levels (i.e., negative RBC), resulting in negative Total Adjusted Capital of -\$71M as reported for the quarter ending September 30, 2022.<sup>8</sup> Had AFV been advised of this information, it would have immediately terminated the Agreement and would never have agreed to increase its quota share for 2022 from 60% to 80%.

	Year Ending 12/31/2021	Quarter Ending 9/30/2022	Projected Year Ending 12/31/2022
Total Adjusted Capital	\$16,961	(\$70,886)	(\$128,866)
ACL Risk Based Capital	\$4,175		\$13,123
Risk Based Capital Ratio (TAC/ACL RBC) (%)	406%		-982%
Net Premiums Written	\$65,737	\$154,986	\$206,648

<sup>7</sup> SPGlobal\_FridayHealthInsuranceCompanyInc.\_HealthFinlHighlights\_TX.xls (S&P Capital IQ Pro)

<sup>8</sup> *Id.*

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ACL as % of Net Premiums Written	6.4%	6.4%
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*Note: \$s in 000's*

Despite AFV's requests for information about these issues before and during the recent inspection (and even to present day), Friday did not provide any quarterly statutory statements filed with the Texas Department of Insurance ("TDI") or any correspondence between Friday and TDI with respect to whether TDI was aware of Friday's RBC issues or whether TDI requested action plans to address these issues. Friday still has not advised AFV whether and to what extent the 2022 capital infusion was discussed and reviewed with TDI. These critical operational and regulatory changes occurred in Texas without notice or disclosure to AFV.

**B. Friday is Responsible For Any Failure to Meet the Forecasted Plan Liability Risk Score ("PLRS") Lift.**

Wakely was engaged to conduct an independent estimate of Friday's RA transfer payment for benefit year 2022. Wakely issued two reports in October and December 2022, both of which showed very high PLRS lifts. Friday advised that the figures in the December 2022 report were accurate. The reports also concluded that a realistic range for the PLRS lift for Texas was 12.4% (Pessimistic), 15.0% (Moderate) and 17.6% (Optimistic). Wakely based this range on their conservative estimate of the impact on PLRS of various risk adjustment coding initiatives that Friday represented were being done by Friday and its vendor, Inovalon.<sup>9</sup> Friday and Wakely advised AFV that they believed the range was reasonable because Friday had historically not had a risk score improvement program and had planned to implement several improvement processes that were standard in the market.<sup>10</sup>

Through the inspection, AFV learned that Friday may have mismanaged its relationship with Inovalon, a vendor providing critical risk adjustment services, and hid significant operational problems from AFV. During the inspection, AFV learned from Friday's Chief Financial Officer, Rhonda Bagby, that Friday could not even provide a status update regarding Friday's "Wave 1" retrospective medical record review initiative (apparently due to Friday's contract dispute with Inovalon). In addition, Ms. Bagby believed Inovalon had stopped performing medical record reviews, submitting data to the EDGE server and providing status updates to Friday because of the dispute. And even worse, Ms. Bagby was concerned that Friday could be at risk for a significant Risk Adjustment Default Charge exceeding \$450 million, and Friday had no "Plan B" to ensure this submission was made regardless of what happened with Inovalon.

AFV also learned from the inspection that Friday's leadership was well aware of the serious risk that Friday could be hit with a massive default charge and that Friday was in danger of missing the critical Wave 1/Wave 2 retrospective review goals.

<sup>9</sup> Wakely Risk Adjustment Report - all states 12.20.2022.pdf, pp. 1, 11.

<sup>10</sup> *Id.*, p. 11 (emphasis added).

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If Friday's final PLRS lift falls short of the assumed level of improvement—i.e., the Moderate Scenario of 15%—it will have been a direct and sole result of Friday's inability to successfully deliver the RA improvement initiatives identified and the related negative operational impact of the contract dispute as discussed above.

### **C. Friday Underpriced Premium Rates in Texas.**

In entering the Texas market, Friday retained an external actuarial consulting firm (Milliman) to develop its premium rate filings for Texas. As Friday was well aware, the impact of projected risk adjustment program payments and receipts must be included in the premium rate development process. For example, a projected risk adjustment program payment requires premium rates to be increased as part of the rate filing submission process. Conversely, a projected risk adjustment receipt decreases premium rates.

However, from the inspection, AFV learned that Friday determined that there was insufficient Texas experience available to use as a basis for Friday's 2022 rate filing given the deadline of mid-2021.<sup>11</sup> Instead, Friday used its affiliate company's Colorado individual market morbidity/demographic information as a proxy for Texas by adjusting the utilization assumptions by the ratio of the 2019 Texas Individual statewide PLRS to the 2019 Friday Colorado individual PLRS.<sup>12</sup> In doing so, Friday assumed its risk adjustment payment/receipt would be \$0:<sup>13</sup>

<b>Table C.1 – Market-Wide Adjusted Index Rate Build-Up</b>	
<b>Description</b>	<b>Value</b>
EHB Paid claims	\$380.32
<u>Average paid-to-allowed</u>	<u>0.81</u>
<b>Market-wide index rate</b>	<b>\$469.36</b>
Risk adjustment payment (receipt)	\$0.00
<u>Exchange fees</u>	<u>\$15.08</u>
<b>Market-wide adjusted index rate</b>	<b>\$484.44</b>

Friday concealed from AFV that Friday had no reasonable basis for assuming \$0 risk adjustment transfer in Texas. As two examples, Friday knew that its risk adjustment coding efficiency and morbidity (unit cost and utilization levels, due to out-of-network claims) were not at the state average level, yet it did not account for these facts in its 2021 and 2022 rate filing memos or otherwise disclose to AFV that Friday made knowingly baseless assumptions in pricing its rates in Texas.

<sup>11</sup> 20210529\_54837\_TX\_2022\_IND\_Part\_III\_Actuarial\_Memo.pdf, p. 5. Premium rate filings are usually submitted for regulatory approval in August for the upcoming calendar year.

<sup>12</sup> *Id.*, p. 7.

<sup>13</sup> *Id.*, p. 8.



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In addition, the inspection revealed that Friday did not scrutinize its relative competitive premium rate position in the market and related impact on projected membership, particularly given that Friday was expanding to other Texas markets, resulting in a 60% increase in Friday's Total Addressable Market in Texas.<sup>14</sup> At a minimum, Friday should have, as is standard market practice, engaged in this type of strategic rate-membership discussion with Milliman, as reasonably expected, once the open enrollment period began in November-2021 and Friday's actual competitive rate position for 2022 was known.

The tables below reflect Friday's actual 2022 results, showing the significant membership gain *and* substantial financial loss in Texas:<sup>15</sup>



From the inspection, AFV further learned that Friday's 2023 rate filing finally addressed this issue and assumed a significant risk payment factor as shown in the table below, resulting in a 55% increase in the 2023 rates in Texas (the overall rate increase was 36.5%).<sup>16</sup>

Table C.1 – Market-Wide Adjusted Index Rate Build-Up	
Description	Value
EHB Paid claims	\$302.42
<u>Average paid-to-allowed</u>	<u>0.930</u>
<b>Market-wide index rate</b>	<b>\$325.01</b>
Risk adjustment payment (receipt)	\$259.72
<u>Exchange fees</u>	<u>\$18.99</u>
<b>Market-wide adjusted index rate</b>	<b>\$603.71</b>

It is evident now from the inspection that Friday's rate filings for 2021 and 2022 for Texas contained grossly erroneous assumptions that would have been known to Friday at the time.

<sup>14</sup> Friday-AXA Q3 2021 QBR\_updated.pptx, p. 9.

<sup>15</sup> STMT Review Packet- 202211 PRELIM.xlsx

<sup>16</sup> 20220817\_54837\_TX\_2023\_IND\_Part\_III\_Actuarial\_Memo.pdf, pp. 4 and 8.



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## **II. KEY PROVISIONS OF THE AGREEMENT**

As is customary in reinsurance agreements, Friday owed a duty of utmost good faith to AFV. Art. 26. Friday was obligated to utilize customary and usual practices in the health insurance industry in its underwriting, claims assessment, administration, and all other insurance practices and management of the business and legal compliance. *Id.* But the facts AFV has learned in the last two weeks about Friday's underwriting, claims management, administration, management, and compliance reveal that, instead of meeting its obligation of utmost good faith to AFV as the reinsurer, Friday actually concealed from AFV the substantial losses Friday anticipated—and knew were occurring in Texas. Friday was highly motivated to ensure it never gave AFV any information that might lead AFV to terminate the Agreement. Friday hid or misrepresented critical financial and operational information and misrepresented what Friday expected to happen so that AFV would stay on as reinsurer and even increase its quota share.

Friday made numerous representations, warranties and covenants that appear to have been false when made and since then. Specifically, Friday represented that it was in compliance in all material respects with all applicable laws and regulations relevant to its operation, financial condition, including all applicable laws and regulations related to its ability to issue and administer the Policies. Art. 27(2). Friday represented that the financial information it provided to AFV was accurate and complete in all material respects. Art. 27(5). Friday expressly promised to “maintain all approvals necessary to perform its obligations under the Agreement and any related requirements.” Art. 27, Covenants (1). Of course, we now know this is not the case with TDI and Friday's non-compliance with RBC requirements, as discussed above.

Under Annex 4 of the Agreement, Friday was obligated to provide monthly reporting dashboards, including the risk adjustment estimate. And under Article 9(3), Friday was “responsible for the assessment of claims in a prudent and professional way . . . .” Art. 9(3). Assessment of claims includes the risk adjustment process and CMS submissions. This too was not done, and Friday failed to manage its critical vendors such as Inovalon.

Under Article 6 of the Agreement, “in the event of any change in the . . . fiscal and/or administrative practices applicable to this Agreement . . . and/or the Parties . . . at any time after commencement of this Agreement that Materially increases or extends the Reinsurer's liability, the Ceding Company shall inform the Reinsurer immediately following the Ceding Company's awareness of such change and provide the details of the . . . information regarding its potential impact on . . . this Agreement.” Art. 6. The Agreement mandates that Friday—consistent with its duties of utmost good faith—affirmatively disclose such material changes. Not only did Friday not disclose such material changes, it actively concealed and misrepresented them to AFV. Had Friday performed in good faith and complied with the Agreement (including by making such required disclosures), AFV would have terminated the Agreement with immediate effect in accordance with Articles 5-6, 9, and 22 and Annex 1, among others.

In addition, the 2021 and 2022 losses constitute Extra-Contractual Obligations excluded from the Agreement, and AFV will not pay for them. The Agreement expressly provides that AFV is not

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liable for Extra-Contractual Obligations, which are broadly defined to include any amounts and losses arising out of or relating to the “handling of claims, benefits, or payments under the Policies,” “errors in calculating or administering the payment of benefits, claims or any other amounts due or alleged to be due under or in connection with the Policies.” Art. 9(8). As we discuss above, such losses were caused by Friday’s handling of claims and associated risk adjustment. Such losses are Extra-Contractual Obligations that are the sole responsibility of Friday.

With regard to excess of loss reinsurance, Article 5(2) of the Agreement imposes specific requirements for excess of loss reinsurance that Friday must have in place for the underlying policies. As acknowledged in the Agreement, this excess of loss reinsurance serves an important benefit for AFV. The Agreement further provides that the “Ceding Company hereby agree[s] to submit for approval to AXA any amendment to the Excess of Loss agreements.” AFV discovered that Friday unilaterally modified the terms of this excess of loss reinsurance in Texas in 2022, adding a feature that changed the protective structure of the excess of loss cover—all without notification to, or approval by AFV, in violation of the Agreement.

Finally, AFV exercised its right to conduct an inspection in accordance with the Agreement. While Friday permitted AFV to conduct a limited inspection, Friday refused to provide many critical documents and allow access to key personnel at Inovalon. Nor has Friday provided any of its communications with TDI or advised of its current status in Texas. *See* Exhibit A hereto (listing information that Friday still has not provided).

We request that Friday “undertake in good faith to use all reasonable best efforts to settle” this dispute with us, in accordance with Article 19 of the Agreement.

All rights are reserved. We look forward to hearing from you.

Very truly yours,



Bronwyn F. Pollock  
Partner

Enclosure

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**Exhibit A**

<b>Information Requested During Inspection and Not Provided By Friday</b>
Documentation supporting forecast variances and related action plans
Inovalon retrospective chart review targeting approach
NAIC Statutory statements and Annual audit reports for 2020, 2021 and 1Q/2Q/3Q 2022
Correspondence with Wakely regarding expected PLRS Lift
Wave 1 Program Structure
Wave 2 Program Structure
RADV 2021 Results
Financial Close P&L workbooks
CMS CO 2020 Audit/2021 Submission
Actuarial attestations related to annual filings and RA
Documented Wave I/II Action Plans under two scenarios: Plan A (“Resolve Inovalon Dispute”) vs. Plan B (“No Resolution of Dispute”)
Documented Data Submission Contingency Plan under two scenarios: Plan A (“Resolve Inovalon Dispute”) vs. Plan B (“No Resolution of Dispute”)
Documentation related to financial impact of the default risk charge associated with missing the CMS submission deadline
Confirmation if there were any material changes to the RA process since September
Information related to errors in data for Nevada and New Mexico
Internal Friday documents related to the PLRS lift projection
Forecasting methodology used to audit the reforecasting/adjustments and when financial issues started to occur

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Documentation of the goals and effects of “War Room” launched at the end of 2021 in response to the CMS report.
2020/2021 year-end financial submissions
Inovalon coding policies and procedures
Communications between Inovalon and Friday
Communications between Friday and TDI
Interviews of Inovalon

## **EXHIBIT 10**

**Greg Pierce**  
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November 4, 2024

*Via email: [BPollock@mayerbrown.com](mailto:BPollock@mayerbrown.com)*

Bronwyn Pollock  
Mayer Brown LLP  
333 S. Grand Ave.  
Los Angeles, CA 90071

Re: Cause No. D-1-GN-23-001549, *Texas Department of Insurance v. Friday Health Insurance Company, Inc.*, In the 345<sup>th</sup> Judicial District Court, Travis County, Texas

Ms. Pollock,

I write on behalf of CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Friday Health Insurance Company, Inc. (the “SDR” and “FHIC,” respectively) in response to your December 7, 2023 letter.

First, the SDR disagrees with your assertion that neither FHIC nor the SDR “ever substantively responded to” AXA France Vie’s (“AXA”) letter of February 20, 2023 (the “February 2023 Letter”). On March 10, 2023, prior to receivership, FHIC provided a full response to AXA’s letter. Subsequently, the SDR also responded with additional information and with its own request that AXA provide evidence to substantiate its allegations. To date, AXA has provided no such evidence. However, in its continuing and reasonable best effort to resolve this matter in good faith, the SDR provides this further response to AXA’s February 2023 Letter. The SDR is also providing the documentation you requested as outlined in Sections I and II of your letter from December 7, 2023.

**I. Friday Health did not Breach the Reinsurance Agreement.**

The SDR denies AXA’s allegations that FHIC breached any obligations under the Reinsurance Agreement and denies that FHIC misled AXA in any way. AXA is a sophisticated reinsurer. Moreover, the SDR’s review of estate records demonstrate that AXA not only received substantial financial information from FHIC but also participated in financial discussions and provided feedback to FHIC on numerous financial topics throughout their relationship.

**A. AXA Participated in Rate Setting Discussions.**

In the February 2023 Letter, AXA alleges FHIC concealed information relating to the benefit rate setting. To the contrary, AXA was directly involved in rate setting discussions with FHIC. For example, AXA participated in a rate setting meeting for the 2022 benefit year with FHIC and Milliman in Spring 2021. After this meeting, AXA sent a follow-up email to Friday Health and Milliman saying:

Thank you for the pricing presentation yesterday. It was very insightful and thorough. We really appreciate your openness to share and we fully support your philosophy and principles of actions.

(emphasis supplied).<sup>1</sup> AXA clearly both understood and endorsed the pricing of FHIC's plans.

**B. FHIC Disclosed Information to AXA Including Regarding FHIC's Finances and the Risk Adjustment Transfer.**

The February 2023 Letter further alleged that FHIC concealed financial and risk adjustment transfer information in order to induce AXA to increase its quota share. To date, however, AXA has provided no support for this allegation.

The SDR's review of estate records reveals communications from AXA demonstrating that AXA leadership always planned to increase the Reinsurance Agreement quota share regardless of FHIC's finances. Estate records also reveal that, during its partnership with AXA, FHIC provided AXA with relevant financial and risk adjustment data as well as participated in numerous calls and meetings to discuss this data.

For example, during Open Enrollment in Fall 2020, FHIC informed AXA that FHIC would be "in need of capital or capital relief for [the] 2022 plan year."<sup>2</sup> In December 2021, FHIC provided AXA with financial information demonstrating Friday Health as a whole had experienced a \$15 million loss as of Quarter 3 of 2021.<sup>3</sup> Knowing of Friday Health's losses, and without any additional information, on January 31, 2022, AXA informed FHIC via email that its AXA France and AXA group decision bodies had approved an increase to the quota share from 60% to 80%.<sup>4</sup> In subsequent correspondence, AXA represented it believed part of its "mutually beneficial partnership" included working with Friday Health to ensure an adequate capital funding setup – explicitly demonstrating AXA's understanding that FHIC required capital relief.<sup>5</sup>

Likewise, as a sophisticated reinsurer, AXA was well aware of the uncertainty of the risk adjustment process. AXA's implicit allegation that the risk adjustment transfer estimates provided by FHIC were not subject to substantial future adjustment is belied by the fact the initial transfer estimate was \$0, the November 2021 estimate was around \$27 million,<sup>6</sup> and AXA was further

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<sup>1</sup> May 7, 2021 Email entitled "AXA/FHP 2022 rate setting discussion" sent by Raghvendra Agarwal to Kimberly Ammons, Sal Gentile, David Pinkert, Colleen Norris, Mary Creten, Travis Gray, Tatyana Malinina, Craig Domeracki, and Jennifer Mueller with Jerome Hemard, Sebastien Roger, Kaoutar Abdelsalam, and Hao Wu copied.

<sup>2</sup> November 12, 2021 Email entitled "OE results Texas" from Sal Gentile to Sebastien Roger.

<sup>3</sup> December 10, 2021 Email with Excel Attachment entitled "Q3 YTD Income Stmt" from Sal Gentile to Sebastien Roger. Mr. Roger confirmed receipt that same day and stated he would "forward now to Clémence, our new leader."

<sup>4</sup> January 31, 2022 Email entitled "Extension on Texas" from Jerome Hemard to Sal Gentile with Odette Cesari copied.

<sup>5</sup> February 9, 2022 Email entitled "Hanover Analysis" from Jerome Hemard to Sale Gentile with Odette Cesari and Sebastien Roger copied.

<sup>6</sup> November 23, 2021 Email entitled "Friday 2021 Q3 Reinsurance Balance – Modified" from Abderrahman Kilali to Kimberly Ammons with Jose Albert Dos Santos and Raghvendra Agarwal copied. The Excel attachment with AXA's modified Q3 reinsurance balance reflects a risk adjustment transfer for Texas amounting to \$27,238,044.



updated as FHIC received calculations from the Center for Medicare and Medicaid Services (“CMS”). For example, in March 2022, after the release of CMS’s preliminary risk adjustment transfer report, AXA and FHIC discussed the potential risk adjustment transfer for 2021 which was then estimated around \$105 million.<sup>7</sup> Subsequently, AXA and FHIC engaged in additional conversations and exchanges regarding the risk adjustment transfer, the IBNR, MLR, and PLRS scores.<sup>8910</sup> In one such conversation, AXA and Friday mutually agreed to adjust the MLR demonstrating AXA’s deep involvement in FHIC’s risk adjustment analysis.<sup>11</sup> Moreover, in the midst of risk adjustment calculations, AXA was discussing a potential equity investment with Friday Health demonstrating AXA’s lack of concern that the risk adjustment transfer for Texas had fluctuated.<sup>12</sup> Notably, all of these discussion between AXA and Friday Health occurred before AXA executed the Treaty amendment increasing its quota share.

Indeed, in a post hoc analysis of the 2021 risk adjustment transfer conducted by AXA and FHIC, AXA’s own executive concluded that FHIC had acted reasonably based on the information FHIC received from CMS regarding risk scores.<sup>13</sup> AXA clearly understood that the risk adjustment transfer was subject to change based on the ultimate calculations of CMS. AXA also clearly understood that the calculation was susceptible to outside factors beyond Friday Health’s control. AXA willingly accepted this risk and knowingly increased its quota share agreement with FHIC. It was not misled by FHIC.

## **II. FHIC Appropriately Supervised its Vendors.**

The SDR’s review of estate records demonstrates that, contrary to AXA’s assertions, FHIC appropriately supervised its vendors. One of AXA’s main concerns appears to be related to the Plan Liability Risk Score (“PLRS”) Lift for 2022. AXA alleges that FHIC mismanaged its relationship with Inovalon and that any PLRS lift falling short of the Moderate Scenario of 15% is due to FHIC’s “inability to deliver the RA improvement initiatives identified and the related negative operational impact of the contract dispute as discussed above.” February 2023 Letter at 7. Estate records demonstrate that AXA was well aware that Inovalon timely submitted all of

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<sup>7</sup> March 17, 2022 Email entitled “Friday 4Q 2021 reinsurance balance” from Kimberly Ammons to Abderrahman Kilali with Hao Wu and Claydy Laure Fortilme copied. Ms. Ammons provides an updated excel and notes “TX ha[s] Risk Adjustment at the most current, conservative estimate[] of ... \$105M.”

<sup>8</sup> April 14, 2022 Email entitled “RI template- revised” from Kimberly Ammons to Hao Wu.

<sup>9</sup> April 28, 2022 Email entitled “FW: PLRS Scores” from Sal Gentile to Jerome Hemard, Odette Cesari, and Hao Wu with Ahmed Abdelsalam copied.

<sup>10</sup> April 28, 2022 Email entitled “Risk Adjustment Call” from Jerome Hemard to Sal Gentile with Hao Wu and Ahmed Abdelsalam copied. The email appears to reflect AXA and Friday Health had a call on April 13, 2022, and were scheduling another call for April 29, 2022.

<sup>11</sup> April 14, 2022 Email entitled “Risk Adjustment Call” from Jerome Hemard to Sal Gentile with Ahmed Abdelsalam copied.

<sup>12</sup> April 28, 2022 Teams Meeting invite entitled “AXA/Friday Health Plan” from Jerome Hemard to Sal Gentile, Jean-Damien Letoquart, Yoann Laporte, Charlotte Coquebert de Neuville, and Odette Cesari.

<sup>13</sup> October 14, 2022 Email entitled “Meeting in Denver Next Week” from John Dawson to Odette Cesari, Sal Gentile, and Karan Rustagi with Jeff Stock, Joni Walker, Lea Dahan, Jerome Hemard, and Sebastien Roger copied.

FHIC's data to CMS. In addition, throughout Fall 2022, FHIC provided AXA member level data for the PLRS allowing AXA to have an updated view of the PLRS and conduct its own analysis.<sup>14</sup>

Moreover, the PLRS estimates completed by Wakely, specifically for the Inovalon Wave 2 scenario, used unaudited assumptions *from AXA* rather than FHIC or Inovalon thereby making these estimates unreliable.<sup>15</sup> Despite this, in January 2023, AXA was informed by Wakely that the PLRS for Texas was showing "an improvement of 4.4% [falling] halfway between [the] moderate and optimistic scenario."<sup>16</sup> Therefore, it is clear FHIC met efforts to improve the PLRS and AXA's allegations are unfounded.

### **III. AXA has a Duty to Provide Friday Health \$236.45 Million to Cover the Outstanding Risk Adjustment Transfer Liability.**

AXA alleges that the February 2023 Letter relieves it of all financial responsibilities owed to FHIC. As previously demonstrated by the SDR, no provision of the Reinsurance Agreement allows AXA to retroactively terminate coverage. Further, even if the February 2023 Letter constituted a valid termination of the Reinsurance Agreement, AXA would still be obligated to provide reinsurance coverage for all of FHIC's losses. FHIC is entitled, and intends, to pursue full coverage from AXA relating to its outstanding financial obligations, including the risk adjustment transfer.

The SDR's latest calculation of reinsurance payments owed to FHIC by AXA (as of June 30, 2024) pursuant to the Reinsurance Agreement for the 2022 loss year indicates that AXA owes \$236,253,831 to FHIC, with an additional trust obligation of \$9.9 million (80% of \$12.4 million) for IBNR. I have attached a copy of the June 30, 2024 calculation for your reference.

As you know, the SDR withdrew the \$117 million in Trust funds to partially cover this obligation. As previously demonstrated, the SDR was not only authorized to assume possession of the Trust under the Texas Insurer Receivership Act ("TIRA") and the Agreed Order Appointing Liquidator, Permanent Injunction, and Notice of Automatic Stay (the "Permanent Injunction"), but also empowered by the terms of the Reinsurance and Trust Agreements to withdraw these funds.

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<sup>14</sup> November 16, 2022 Email entitled "Weekly FHP/AXA Taskforce Meeting" from Kerri Phipps to John Dawson, Jeff Stock, Hao Wu, Sebastien Roger, Ahmed Abdelsalam, Asis Kaur, Ray Seggelke, Jesse Myers, Jennifer Clutter, Jennifer Mueller, Jedwin Celestino, Joni Walker, Nicholas Perrin, Gilles Cuvillier, Craig Domeracki, Jerome Hemard, and Lea Dahan.

<sup>15</sup> December 20, 2022 Wakely Report noting "AXA provided an assumption of 1.0 for PLRS improvement based on its knowledge of the conditions and the value of those conditions. We used this estimate without audit upon their request."

<sup>16</sup> January 3, 2023 Email entitled "Updated Risk Adjustment Estimates using Jan-Oct WNRAR report" from Karan Rustagi to Beth Bierbower, Rhonda Bagby, Laura English, Sebastien Roger, and Jeff Stock.

#### **IV. Proof of Claim**

On August 12, 2024, the SDR received a Proof of Claim ("POC") filed by AXA. This letter, subsequent communications and meetings, are not a determination of the POC under Texas Insurance Code § 443.253(b). The SDR reserves all rights regarding the adjudication of the POC.

#### **V. Meeting with AXA**

As previously stated, the SDR takes AXA's allegations of wrongdoing by FHIC seriously. The SDR has repeatedly requested that AXA provide evidence supporting its allegations, but AXA has, to date, declined. Accordingly, as detailed above, the SDR engaged in an extensive review of estate records seeking any indication that AXA's allegations of wrongdoing were well founded. Again, the SDR has found no basis to credit AXA's allegations or demonstrate any basis to relieve AXA of its obligations to the FHIC estate under the Reinsurance Agreement.

In your December 7, 2023 letter you suggested that, after the SDR provided you with the information requested in that letter, AXA would be prepared to meet with the SDR to provide evidence supporting AXA's allegations. We appreciate that offer and hope to schedule a meeting with the principals of both parties. Please provide us with several dates on which this presentation could occur so we can begin to coordinate a mutually agreeable time.

If you have any questions or comments, please let me know.

Sincerely,



Greg Pierce

2022 Runout - As of June 30, 2024

@100% QS

Year Valuation State	2022 202212 TX
Member Months	3,130,023
Gross Premium	1,497,753,266
Local Stamps and taxes	-26,206,745
Risk Adjustment	-634,864,844
XOL Premium	-41,097,202
<b>Net Premium</b>	<b>795,584,475</b>

Paid Medical	788,994,174
Rx	121,148,739
Vision	1,869,584
2022 IBNR as of 6/30/24	12,400,000
<b>Net Claims</b>	<b>924,412,497</b>
State Reinsurance (amount included in cell C19)	0
XOL Recoveries and State Reinsurance	-9,349,272
<b>Adjusted Claims</b>	<b>915,063,225</b>
MLR - FHP financials	111.3%
<b>YTD Medical LR</b>	<b>115.0%</b>
<b>UW Margin</b>	<b>-119,478,750</b>

<b>Net claims except IBNR</b>	<b>912,012,497</b>
<b>IBNR</b>	<b>12,400,000</b>
<b>Net Total claims</b>	<b>924,412,497</b>

<b>LCF 2021</b>	
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<b>2022 Treaty Economics</b>	<b>TX</b>
MLR	115.0%
Friday Fixed Commission	6.00%
Friday Variable Commission	0.00%
AXA fees	1.57%
CoR Fee	122.6%
LCF 2021	2.3%
Friday Variable	0.0%
MLR without SR	115.0%
Friday Variable Commission without SR	0.0%
CoR Fee <u>without State Reinsurance</u>	122.6%

Redistribution factor	90.00%
Profit Share Friday	0.00%
Profit Share AXA	0.00%
Profit Share Friday <u>without State Reinsurance</u>	0.00%
Profit Share AXA <u>without State Reinsurance</u>	0.00%

**80% AXA QS Summary** (amounts)

TX

Texas

**Income**

Net Reinsurance Premium

636,467,580

**Outgo**

Claims paid

729,609,998

Reliefs and recoveries

XOL Recoveries only

-7,479,418

Reinsurance commissions

38,188,055

**Reinsurance Balance without SR**-123,851,055

IBNR

9,920,000

**Technical result ( for info : with State Reinsurance included) before PS**-133,771,055**Profit share with State Reinsurance**

PS per state(weight)

0.00

Profit share for Friday (%)

0.00%

**AXA NLR**

122.36%

**Cashflow (for info with SR)****Total amount to be paid by Friday to AXA (\$) without PS**-123,851,055

(-) IBNR

9,920,000

(-) Estimated Friday's Profit share without State Reinsurance

0.00

**Net Due to AXA ( For information)**-133,771,055**Total Previous Payments**

112,402,777

**Amount to be paid by Friday to AXA**-236,253,831

FHP Commissions

38,188,055

AXA Commissions

9,992,541

FHP Profit Share

0

state	yyyy_mm	segment	metal	member_months	earned_premium	med_claims_allowed	med_claims_paid	rx_claims_paid	vs_claims_paid
TX	2022-01			-	-	-	-	-	1,412.00
TX	2022-01	Individual Off Exchange	Bronze	688	257,356.41	27,222.59	9,504.92	9,032.59	3,097.50
TX	2022-01	Individual Off Exchange	Catastrophic	87	20,878.50	862.97	800.59	533.23	137.50
TX	2022-01	Individual Off Exchange	Gold	271	115,631.26	12,687.31	10,134.55	15,661.94	750.00
TX	2022-01	Individual Off Exchange	Platinum	-	-	-	-	-	100.00
TX	2022-01	Individual Off Exchange	Silver	-	-	-	-	-	4,054.00
TX	2022-01	Individual On Exchange	Bronze	34,022	14,861,359.37	816,621.49	500,220.24	573,237.52	18,622.15
TX	2022-01	Individual On Exchange	Catastrophic	890	253,721.42	19,525.20	11,830.24	19,396.60	197.50
TX	2022-01	Individual On Exchange	Gold	14,883	9,432,137.19	457,985.41	297,606.69	574,516.43	5,134.70
TX	2022-01	Individual On Exchange	Silver	141,912	90,075,031.70	3,990,441.37	3,592,166.14	4,570,957.89	28,335.31
TX	2022-01	Small Group	Bronze	47	14,195.27	1,558.35	1,528.23	1,857.65	-
TX	2022-01	Small Group	Gold	13	5,265.79	-	-	859.55	-
TX	2022-01	Small Group	Platinum	38	17,371.52	741.46	663.94	549.07	-
TX	2022-01	Small Group	Silver	29	10,954.69	270.70	242.30	95.47	-
TX	2022-02			-	-	-	-	-	3,162.50
TX	2022-02	Individual Off Exchange	Bronze	744	193,580.46	173,104.13	114,988.56	5,263.73	3,435.75
TX	2022-02	Individual Off Exchange	Catastrophic	95	20,194.09	6,300.68	3,797.21	5.58	262.00
TX	2022-02	Individual Off Exchange	Gold	309	101,085.75	36,356.26	20,881.72	23,751.75	1,104.00
TX	2022-02	Individual Off Exchange	Silver	7	2,268.56	-	-	-	4,658.65
TX	2022-02	Individual On Exchange	Bronze	38,906	11,127,693.09	2,080,107.58	1,203,259.52	677,312.66	29,838.20
TX	2022-02	Individual On Exchange	Catastrophic	1,051	206,897.26	69,801.40	42,808.33	34,579.12	962.15
TX	2022-02	Individual On Exchange	Gold	17,761	6,350,721.72	1,800,071.50	1,217,685.72	766,311.72	10,154.00
TX	2022-02	Individual On Exchange	Silver	161,114	68,627,186.64	14,358,498.21	12,992,282.94	6,224,947.37	64,676.30
TX	2022-02	Small Group	Bronze	54	16,413.13	1,639.65	353.77	1,790.40	-
TX	2022-02	Small Group	Gold	17	6,526.97	-	-	3,132.28	-
TX	2022-02	Small Group	Platinum	37	17,030.20	1,631.17	1,243.87	1,426.18	-
TX	2022-02	Small Group	Silver	27	10,468.66	226.30	90.00	50.07	-
TX	2022-03			-	-	-	-	-	4,136.55
TX	2022-03	Individual Off Exchange	Bronze	732	231,116.97	169,457.51	125,835.84	26,930.99	4,305.85
TX	2022-03	Individual Off Exchange	Catastrophic	95	19,614.18	4,755.13	1,942.07	124.16	271.00
TX	2022-03	Individual Off Exchange	Gold	326	127,218.31	151,825.54	104,297.28	32,453.18	1,569.00
TX	2022-03	Individual Off Exchange	Silver	7	2,268.56	-	-	9,280.74	5,597.50
TX	2022-03	Individual On Exchange	Bronze	39,049	13,842,063.19	3,967,967.80	2,348,930.17	1,027,589.03	33,380.21
TX	2022-03	Individual On Exchange	Catastrophic	1,055	252,176.72	65,985.27	44,090.01	29,170.71	1,325.65
TX	2022-03	Individual On Exchange	Gold	18,179	8,667,941.51	3,537,595.10	2,361,249.69	1,121,041.84	14,274.00
TX	2022-03	Individual On Exchange	Silver	166,406	89,270,938.03	25,992,410.63	23,543,885.58	8,174,433.19	91,298.25
TX	2022-03	Small Group	Bronze	54	16,411.20	2,188.05	391.93	6,719.89	-
TX	2022-03	Small Group	Gold	23	8,741.31	550.74	105.84	2,090.95	-
TX	2022-03	Small Group	Platinum	46	21,217.94	8,943.76	7,164.33	7,848.22	-
TX	2022-03	Small Group	Silver	38	13,522.36	1,410.26	401.70	465.99	-
TX	2022-04			-	-	-	-	-	2,871.50
TX	2022-04	Individual Off Exchange	Bronze	745	254,491.42	145,714.51	98,392.34	15,996.79	3,245.74
TX	2022-04	Individual Off Exchange	Catastrophic	96	16,558.89	3,810.61	1,539.18	1,272.97	206.50

state	yyyy_mm	segment	metal	member_months	earned_premium	med_claims_allowed	med_claims_paid	rx_claims_paid	vs_claims_paid
TX	2022-04	Individual Off Exchange	Gold	340	129,025.66	233,878.25	210,542.49	25,136.45	924.00
TX	2022-04	Individual Off Exchange	Silver	7	2,268.56	-	-	14,493.75	4,937.50
TX	2022-04	Individual On Exchange	Bronze	39,659	14,276,727.29	4,568,000.07	2,803,946.30	955,379.87	35,624.48
TX	2022-04	Individual On Exchange	Catastrophic	1,043	253,550.86	134,598.90	95,187.71	53,892.65	1,209.00
TX	2022-04	Individual On Exchange	Gold	19,151	9,306,842.14	5,989,695.30	4,947,183.36	1,328,825.20	14,192.25
TX	2022-04	Individual On Exchange	Silver	176,291	93,527,704.34	38,162,454.01	35,248,062.35	9,021,469.10	99,090.01
TX	2022-04	Small Group	Bronze	62	19,046.18	1,856.32	1,276.45	6,511.50	67.50
TX	2022-04	Small Group	Gold	27	10,060.79	2,388.50	2,151.19	3,909.43	-
TX	2022-04	Small Group	Platinum	54	23,671.77	4,732.80	3,860.37	4,205.49	-
TX	2022-04	Small Group	Silver	50	16,327.70	7,419.98	2,126.70	60.38	-
TX	2022-05			-	-	-	-	-	2,864.00
TX	2022-05	Individual Off Exchange	Bronze	745	239,064.78	119,344.54	84,537.58	10,613.23	2,798.00
TX	2022-05	Individual Off Exchange	Catastrophic	94	21,154.16	3,904.57	1,305.34	3,371.77	65.00
TX	2022-05	Individual Off Exchange	Gold	356	133,536.90	128,416.81	87,294.92	29,233.80	673.50
TX	2022-05	Individual Off Exchange	Platinum	-	-	-	-	-	195.00
TX	2022-05	Individual Off Exchange	Silver	8	2,268.56	861.45	847.77	405.93	5,837.63
TX	2022-05	Individual On Exchange	Bronze	40,438	14,498,404.97	5,013,467.50	3,123,753.64	1,235,429.50	35,634.80
TX	2022-05	Individual On Exchange	Catastrophic	1,023	248,547.55	60,253.67	21,358.12	75,440.23	448.00
TX	2022-05	Individual On Exchange	Gold	20,156	9,640,221.93	4,238,720.33	3,101,350.43	1,392,301.61	13,942.30
TX	2022-05	Individual On Exchange	Silver	186,131	96,866,317.21	39,467,204.91	36,248,355.51	9,932,759.88	98,310.21
TX	2022-05	Small Group	Bronze	60	18,257.79	3,842.26	1,721.53	3,489.20	-
TX	2022-05	Small Group	Gold	24	9,041.83	3,642.36	1,297.16	3,760.45	-
TX	2022-05	Small Group	Platinum	57	24,589.41	9,863.38	7,394.37	17,718.20	-
TX	2022-05	Small Group	Silver	47	14,960.33	27,011.46	23,313.87	1,256.02	67.50
TX	2022-06			-	-	-	-	-	3,263.50
TX	2022-06	Individual Off Exchange	Bronze	737	232,123.85	104,528.18	63,897.86	15,284.12	2,240.25
TX	2022-06	Individual Off Exchange	Catastrophic	94	21,552.02	4,840.33	1,712.94	3,398.01	65.00
TX	2022-06	Individual Off Exchange	Gold	367	136,195.94	361,657.58	316,378.87	50,198.00	1,099.75
TX	2022-06	Individual Off Exchange	Silver	8	2,616.93	-	-	10,548.83	5,264.00
TX	2022-06	Individual On Exchange	Bronze	41,092	14,232,037.36	6,791,229.81	5,092,644.61	1,449,965.86	31,791.35
TX	2022-06	Individual On Exchange	Catastrophic	1,017	244,939.14	90,007.85	54,603.17	43,726.22	523.50
TX	2022-06	Individual On Exchange	Gold	21,129	10,008,681.68	5,693,126.17	4,528,757.12	1,406,164.75	12,756.65
TX	2022-06	Individual On Exchange	Silver	196,097	100,994,220.39	48,534,968.28	45,316,401.49	11,370,771.10	84,406.61
TX	2022-06	Small Group	Bronze	48	13,660.16	4,566.61	1,811.44	9,878.49	-
TX	2022-06	Small Group	Gold	36	12,630.44	9,641.48	4,982.31	2,867.98	-
TX	2022-06	Small Group	Platinum	57	24,589.41	9,377.60	7,392.04	27,673.06	-
TX	2022-06	Small Group	Silver	47	14,148.05	597.07	555.41	974.14	-
TX	2022-07			-	-	-	-	-	2,776.00
TX	2022-07	Individual Off Exchange	Bronze	733	233,019.47	182,317.54	138,624.48	16,264.16	2,657.00
TX	2022-07	Individual Off Exchange	Catastrophic	95	21,610.35	12,490.30	4,670.12	3,653.05	-
TX	2022-07	Individual Off Exchange	Gold	392	148,017.36	169,285.14	139,680.90	31,458.53	1,142.75
TX	2022-07	Individual Off Exchange	Silver	8	4,054.93	552.18	-	9,596.24	5,058.90
TX	2022-07	Individual On Exchange	Bronze	41,824	15,044,183.94	5,662,480.09	4,073,019.25	1,450,044.00	33,391.95



state	yyyy_mm	segment	metal	member_months	earned_premium	med_claims_allowed	med_claims_paid	rx_claims_paid	vs_claims_paid
TX	2022-07	Individual On Exchange	Catastrophic	1,012	244,432.01	151,784.67	109,660.64	48,995.70	537.50
TX	2022-07	Individual On Exchange	Gold	21,960	10,277,994.54	5,055,671.10	3,903,327.89	1,461,044.59	14,974.25
TX	2022-07	Individual On Exchange	Silver	204,822	104,442,197.10	49,352,525.00	46,003,843.50	11,427,459.83	100,833.60
TX	2022-07	Small Group	Bronze	47	13,241.90	2,904.75	1,770.60	6,780.67	-
TX	2022-07	Small Group	Gold	40	14,140.17	1,284.91	549.42	5,882.71	-
TX	2022-07	Small Group	Platinum	58	25,075.07	16,005.24	13,949.17	36,130.32	116.00
TX	2022-07	Small Group	Silver	47	14,148.05	74,340.19	71,429.20	2,564.39	-
TX	2022-08			-	-	-	-	-	4,347.50
TX	2022-08	Individual Off Exchange	Bronze	748	235,826.63	99,609.61	58,097.58	30,835.93	3,914.39
TX	2022-08	Individual Off Exchange	Catastrophic	98	22,027.69	6,392.51	2,992.50	3,364.37	490.50
TX	2022-08	Individual Off Exchange	Gold	395	159,020.64	310,445.54	268,385.51	34,512.72	1,192.50
TX	2022-08	Individual Off Exchange	Silver	10	3,765.70	9,261.03	8,629.76	12,150.90	8,638.91
TX	2022-08	Individual On Exchange	Bronze	42,564	14,980,720.04	6,453,465.48	4,667,991.10	1,592,850.19	36,516.28
TX	2022-08	Individual On Exchange	Catastrophic	1,011	238,324.55	114,889.87	95,031.57	65,105.92	654.50
TX	2022-08	Individual On Exchange	Gold	22,587	10,568,817.69	6,720,885.68	5,438,943.60	1,784,813.91	19,806.23
TX	2022-08	Individual On Exchange	Silver	211,703	108,058,732.92	58,887,867.35	54,978,358.75	13,096,571.96	112,984.08
TX	2022-08	Small Group	Bronze	41	11,731.78	2,682.81	881.30	316.92	-
TX	2022-08	Small Group	Gold	39	13,375.53	5,323.07	2,779.41	1,489.09	-
TX	2022-08	Small Group	Platinum	59	25,298.66	4,042.38	2,931.34	21,819.77	68.50
TX	2022-08	Small Group	Silver	48	14,691.33	24,529.67	22,801.79	95.83	-
TX	2022-09			-	-	-	-	-	2,973.51
TX	2022-09	Individual Off Exchange	Bronze	754	237,049.97	87,277.65	58,813.64	45,031.05	3,890.50
TX	2022-09	Individual Off Exchange	Catastrophic	95	21,275.99	12,135.54	9,262.76	3,624.91	70.00
TX	2022-09	Individual Off Exchange	Gold	406	125,714.52	247,083.29	214,462.38	35,842.93	828.00
TX	2022-09	Individual Off Exchange	Platinum	-	-	-	-	-	100.00
TX	2022-09	Individual Off Exchange	Silver	10	2,683.58	58,077.74	45,767.31	4,898.47	6,086.50
TX	2022-09	Individual On Exchange	Bronze	43,335	15,349,284.25	6,468,230.74	4,622,302.15	1,520,032.73	32,756.46
TX	2022-09	Individual On Exchange	Catastrophic	1,037	251,257.85	92,166.22	57,728.15	79,346.05	581.25
TX	2022-09	Individual On Exchange	Gold	23,162	11,024,973.90	5,344,648.09	4,131,243.87	1,619,055.51	12,525.75
TX	2022-09	Individual On Exchange	Silver	220,156	112,988,158.19	56,772,465.43	52,818,596.13	13,366,086.11	105,076.63
TX	2022-09	RMMIN-SLV7-70_RA2_CON001	Small Group	-	-	-	-	-	65.00
TX	2022-09	Small Group	Bronze	44	12,369.80	2,170.81	796.69	720.28	-
TX	2022-09	Small Group	Gold	35	12,174.44	2,533.56	1,875.11	2,099.18	-
TX	2022-09	Small Group	Platinum	58	24,876.10	19,472.82	17,595.61	19,351.68	-
TX	2022-09	Small Group	Silver	48	14,691.33	24,791.75	23,282.85	661.80	-
TX	2022-10			-	-	-	-	-	3,604.50
TX	2022-10	Individual Off Exchange	Bronze	751	235,498.84	161,877.38	98,779.87	27,217.06	2,994.70
TX	2022-10	Individual Off Exchange	Catastrophic	94	20,020.76	1,886.78	1,231.33	3,477.03	115.00
TX	2022-10	Individual Off Exchange	Gold	406	147,295.54	286,587.15	236,556.88	38,544.46	1,742.50
TX	2022-10	Individual Off Exchange	Platinum	-	-	-	-	-	165.00
TX	2022-10	Individual Off Exchange	Silver	12	4,376.22	26,444.68	23,093.95	11,377.86	6,689.50
TX	2022-10	Individual On Exchange	Bronze	44,002	15,666,613.03	7,600,444.10	5,422,999.93	1,739,319.48	40,589.65
TX	2022-10	Individual On Exchange	Catastrophic	1,034	247,270.26	106,851.84	81,358.25	51,894.73	690.50

state	yyyy_mm	segment	metal	member_months	earned_premium	med_claims_allowed	med_claims_paid	rx_claims_paid	vs_claims_paid
TX	2022-10	Individual On Exchange	Gold	23,592	11,210,382.43	7,637,274.43	6,069,030.59	1,961,243.67	16,432.23
TX	2022-10	Individual On Exchange	Silver	227,979	117,236,401.40	72,107,515.51	67,549,379.34	14,682,594.87	106,200.23
TX	2022-10	Small Group	Bronze	44	12,369.80	2,490.71	1,100.92	418.57	-
TX	2022-10	Small Group	Gold	37	12,481.80	3,448.11	2,433.61	414.41	-
TX	2022-10	Small Group	Platinum	58	24,876.10	6,181.32	5,832.20	15,958.99	-
TX	2022-10	Small Group	Silver	43	13,405.31	55,597.89	51,490.49	462.86	-
TX	2022-11			-	-	-	-	-	3,008.00
TX	2022-11	Individual Off Exchange	Bronze	752	232,516.06	129,249.26	104,176.71	34,628.10	3,738.15
TX	2022-11	Individual Off Exchange	Catastrophic	96	21,437.30	3,855.62	2,242.24	5,644.06	65.00
TX	2022-11	Individual Off Exchange	Gold	423	152,581.96	327,468.36	288,747.43	50,497.74	1,536.50
TX	2022-11	Individual Off Exchange	Silver	12	3,224.64	12,868.84	12,286.00	11,530.54	5,715.00
TX	2022-11	Individual On Exchange	Bronze	44,285	15,420,835.40	7,398,268.60	5,528,002.17	1,584,708.90	38,810.91
TX	2022-11	Individual On Exchange	Catastrophic	1,025	231,937.74	227,318.69	199,786.06	19,380.78	911.00
TX	2022-11	Individual On Exchange	Gold	23,880	10,994,823.93	7,950,945.77	6,646,638.04	2,009,190.16	15,690.20
TX	2022-11	Individual On Exchange	Silver	233,105	116,051,043.96	80,693,445.39	76,346,510.40	13,622,898.49	110,907.97
TX	2022-11	Small Group	Bronze	43	11,951.54	4,532.85	1,396.53	233.48	-
TX	2022-11	Small Group	Gold	30	9,436.80	6,202.43	5,478.66	1,064.33	-
TX	2022-11	Small Group	Platinum	60	25,554.23	6,830.41	5,823.89	15,125.77	-
TX	2022-11	Small Group	Silver	43	13,405.31	62,274.34	59,279.03	1,862.64	-
TX	2022-12			-	-	-	-	-	2,760.40
TX	2022-12	Individual Off Exchange	Bronze	729	(92,219.27)	477,050.79	434,588.53	32,871.22	3,311.00
TX	2022-12	Individual Off Exchange	Catastrophic	89	(20,031.12)	7,052.35	5,003.93	5,716.65	65.00
TX	2022-12	Individual Off Exchange	Gold	411	(43,360.26)	502,592.61	463,802.65	55,995.57	979.00
TX	2022-12	Individual Off Exchange	Platinum	-	-	300.92	300.92	-	-
TX	2022-12	Individual Off Exchange	Silver	10	(2,016.10)	12,345.66	12,134.68	112.46	4,357.00
TX	2022-12	Individual On Exchange	Bronze	43,892	7,720,310.59	9,367,025.43	7,032,929.18	2,177,609.30	48,573.33
TX	2022-12	Individual On Exchange	Catastrophic	1,021	(422,450.03)	133,351.27	87,566.34	48,320.94	398.50
TX	2022-12	Individual On Exchange	Gold	23,598	7,192,395.78	9,521,754.06	7,868,492.37	2,444,950.41	17,411.85
TX	2022-12	Individual On Exchange	Silver	232,410	110,776,874.09	96,208,490.16	90,874,767.93	17,922,069.39	115,998.14
TX	2022-12	Small Group	Bronze	42	11,705.54	13,872.78	4,222.33	207.54	-
TX	2022-12	Small Group	Gold	29	9,077.59	20,152.84	16,056.11	89.28	-
TX	2022-12	Small Group	Platinum	57	23,639.06	18,307.07	16,431.06	24,589.68	201.50
TX	2022-12	Small Group	Silver	43	13,405.31	34,785.33	27,477.90	809.63	-
TX	2023-01	Individual Off Exchange	Bronze	-	-	118,263.76	98,504.81	-	-
TX	2023-01	Individual Off Exchange	Catastrophic	-	-	1,214.04	774.98	-	-
TX	2023-01	Individual Off Exchange	Gold	-	-	227,348.52	209,735.50	-	-
TX	2023-01	Individual Off Exchange	Platinum	-	-	75,927.73	75,096.24	-	-
TX	2023-01	Individual Off Exchange	Silver	-	-	26,899.08	25,424.63	0.95	-
TX	2023-01	Individual On Exchange	Bronze	-	-	5,594,679.42	4,460,377.36	-	-
TX	2023-01	Individual On Exchange	Catastrophic	-	-	194,026.64	185,461.31	-	-
TX	2023-01	Individual On Exchange	Gold	-	-	5,633,294.60	4,804,150.97	-	-
TX	2023-01	Individual On Exchange	Silver	-	-	59,959,040.95	57,068,906.69	-	-
TX	2023-01	Small Group	Bronze	-	-	906.52	527.54	405.16	-

state	yyyy_mm	segment	metal	member_months	earned_premium	med_claims_allowed	med_claims_paid	rx_claims_paid	vs_claims_paid
TX	2023-01	Small Group	Gold	-	-	671.20	671.20	1.65	-
TX	2023-01	Small Group	Platinum	-	-	2,240.55	1,781.57	897.61	-
TX	2023-01	Small Group	Silver	-	-	369.52	338.08	10.38	-
TX	2023-02	Individual Off Exchange	Bronze	-	-	62,629.01	48,664.39	-	-
TX	2023-02	Individual Off Exchange	Catastrophic	-	-	1,423.97	360.97	-	-
TX	2023-02	Individual Off Exchange	Gold	-	-	152,847.79	124,470.09	0.94	-
TX	2023-02	Individual Off Exchange	Platinum	-	-	15,504.11	15,251.72	-	-
TX	2023-02	Individual Off Exchange	Silver	-	-	427.76	424.16	-	-
TX	2023-02	Individual On Exchange	Bronze	-	-	2,300,588.04	1,479,820.53	-	-
TX	2023-02	Individual On Exchange	Catastrophic	-	-	40,230.94	24,722.61	-	-
TX	2023-02	Individual On Exchange	Gold	-	-	2,540,037.51	1,932,430.69	-	-
TX	2023-02	Individual On Exchange	Silver	-	-	30,474,044.09	28,509,676.95	-	-
TX	2023-02	Small Group	Bronze	-	-	-	-	-	-
TX	2023-02	Small Group	Gold	-	-	11,556.95	3,704.20	948.49	-
TX	2023-02	Small Group	Platinum	-	-	3,395.90	2,779.35	1,285.85	-
TX	2023-02	Small Group	Silver	-	-	35.00	24.50	-	-
TX	2023-03	Individual Off Exchange	Bronze	-	-	10,052.06	8,520.50	-	-
TX	2023-03	Individual Off Exchange	Catastrophic	-	-	66.00	66.00	-	-
TX	2023-03	Individual Off Exchange	Gold	-	-	7,736.30	6,850.15	-	-
TX	2023-03	Individual Off Exchange	Platinum	-	-	196.58	196.58	-	-
TX	2023-03	Individual Off Exchange	Silver	-	-	20.00	20.00	-	-
TX	2023-03	Individual On Exchange	Bronze	-	-	523,152.09	429,799.78	-	-
TX	2023-03	Individual On Exchange	Catastrophic	-	-	25,344.09	10,994.89	-	-
TX	2023-03	Individual On Exchange	Gold	-	-	768,900.80	680,505.91	-	-
TX	2023-03	Individual On Exchange	Silver	-	-	9,411,674.90	9,216,808.46	-	-
TX	2023-03	Small Group	Bronze	-	-	111.40	-	28.94	-
TX	2023-03	Small Group	Gold	-	-	170.98	144.30	164.82	-
TX	2023-03	Small Group	Platinum	-	-	1,064.25	1,042.65	708.39	-
TX	2023-03	Small Group	Silver	-	-	-	-	0.99	-
TX	2023-04	Small Group	Gold	-	-	-	-	31.66	-
TX	2023-04	Small Group	Silver	-	-	-	-	-	-
TX	2023-05	Individual On Exchange	Bronze	-	-	270.89	270.89	-	-
TX	2023-05	Individual On Exchange	Gold	-	-	320.00	170.00	-	-
TX	2023-05	Individual On Exchange	Silver	-	-	9,342.25	7,604.78	-	-
TX	2023-05	Small Group	Gold	-	-	-	-	14.01	-
TX	2023-05	Small Group	Silver	-	-	-	-	-	-
TX	2023-06	Individual Off Exchange	Bronze	-	-	21,406.27	18,287.21	-	-
TX	2023-06	Individual Off Exchange	Catastrophic	-	-	1,058.17	713.85	-	-
TX	2023-06	Individual Off Exchange	Gold	-	-	1,062,157.70	1,036,049.92	-	-
TX	2023-06	Individual Off Exchange	Platinum	-	-	465.15	316.47	-	-
TX	2023-06	Individual Off Exchange	Silver	-	-	8,378.80	6,323.80	-	-
TX	2023-06	Individual On Exchange	Bronze	-	-	1,615,406.98	1,291,446.55	-	-
TX	2023-06	Individual On Exchange	Catastrophic	-	-	12,796.68	9,235.96	-	-

state	yyyy_mm	segment	metal	member_months	earned_premium	med_claims_allowed	med_claims_paid	rx_claims_paid	vs_claims_paid
TX	2023-06	Individual On Exchange	Gold	-	-	1,137,481.02	964,835.99	-	-
TX	2023-06	Individual On Exchange	Silver	-	-	10,480,248.87	9,939,758.04	-	-
TX	2023-06	Small Group	Gold	-	-	485.21	414.52	13.21	-
TX	2023-07	Individual Off Exchange	Bronze	-	-	695.78	695.78	-	-
TX	2023-07	Individual Off Exchange	Catastrophic	-	-	141.00	141.00	-	-
TX	2023-07	Individual Off Exchange	Platinum	-	-	111.00	111.00	-	-
TX	2023-07	Individual On Exchange	Bronze	-	-	544,335.59	529,158.66	-	-
TX	2023-07	Individual On Exchange	Catastrophic	-	-	6,526.00	6,526.00	-	-
TX	2023-07	Individual On Exchange	Gold	-	-	323,285.19	318,572.59	-	-
TX	2023-07	Individual On Exchange	Silver	-	-	865,590.49	839,706.66	-	-
TX	2023-08	Individual Off Exchange	Bronze	-	-	992.33	975.96	-	-
TX	2023-08	Individual Off Exchange	Gold	-	-	500.00	500.00	-	-
TX	2023-08	Individual On Exchange	Bronze	-	-	57,144.35	29,535.74	-	-
TX	2023-08	Individual On Exchange	Catastrophic	-	-	213.50	213.50	-	-
TX	2023-08	Individual On Exchange	Gold	-	-	273,435.16	242,392.88	-	-
TX	2023-08	Individual On Exchange	Silver	-	-	2,077,354.85	1,977,239.81	-	-
TX	2023-09	Individual Off Exchange	Bronze	-	-	13,517.03	13,517.03	-	-
TX	2023-09	Individual Off Exchange	Gold	-	-	4,640.94	3,750.25	-	-
TX	2023-09	Individual Off Exchange	Platinum	-	-	377.65	372.05	-	-
TX	2023-09	Individual On Exchange	Bronze	-	-	41,395.33	14,712.60	-	-
TX	2023-09	Individual On Exchange	Catastrophic	-	-	51.00	-	-	-
TX	2023-09	Individual On Exchange	Gold	-	-	557,694.39	538,978.53	-	-
TX	2023-09	Individual On Exchange	Silver	-	-	1,057,429.09	1,009,130.58	-	-
TX	2023-10	Individual Off Exchange	Bronze	-	-	3,294.48	-	-	-
TX	2023-10	Individual Off Exchange	Gold	-	-	193.40	193.40	-	-
TX	2023-10	Individual On Exchange	Bronze	-	-	176,274.73	142,310.63	-	-
TX	2023-10	Individual On Exchange	Catastrophic	-	-	843.69	25.00	-	-
TX	2023-10	Individual On Exchange	Gold	-	-	190,164.74	165,908.96	-	-
TX	2023-10	Individual On Exchange	Silver	-	-	840,994.61	794,987.37	-	-
TX	2023-11	Individual Off Exchange	Bronze	-	-	175.53	175.53	-	-
TX	2023-11	Individual Off Exchange	Gold	-	-	168.00	93.00	-	-
TX	2023-11	Individual On Exchange	Bronze	-	-	97,274.15	55,282.65	-	-
TX	2023-11	Individual On Exchange	Catastrophic	-	-	12,733.02	12,733.02	-	-
TX	2023-11	Individual On Exchange	Gold	-	-	238,531.05	196,982.39	-	-
TX	2023-11	Individual On Exchange	Silver	-	-	1,218,184.25	1,152,946.71	-	-
TX	2023-12	Individual Off Exchange	Bronze	-	-	1,251.94	696.40	-	-
TX	2023-12	Individual Off Exchange	Gold	-	-	683.15	546.52	-	-
TX	2023-12	Individual Off Exchange	Platinum	-	-	5,847.00	5,847.00	-	-
TX	2023-12	Individual On Exchange	Bronze	-	-	374,938.02	346,606.45	-	-
TX	2023-12	Individual On Exchange	Gold	-	-	349,681.70	310,362.02	-	-
TX	2023-12	Individual On Exchange	Silver	-	-	2,070,461.01	2,011,774.84	-	-
TX	2024-01	Individual Off Exchange	Bronze	-	-	2,344.32	390.74	-	-
TX	2024-01	Individual Off Exchange	Gold	-	-	1,653.61	1,322.89	-	-

state	yyyy_mm	segment	metal	member_months	earned_premium	med_claims_allowed	med_claims_paid	rx_claims_paid	vs_claims_paid
TX	2024-01	Individual Off Exchange	Platinum	-	-	89,552.61	89,279.73	-	-
TX	2024-01	Individual On Exchange	Bronze	-	-	231,286.15	182,964.26	-	-
TX	2024-01	Individual On Exchange	Gold	-	-	161,311.43	132,148.75	-	-
TX	2024-01	Individual On Exchange	Silver	-	-	1,250,959.75	1,168,784.49	-	-
TX	2024-04	Individual Off Exchange	Bronze	-	-	68.93	-	-	-
TX	2024-04	Individual Off Exchange	Gold	-	-	105.45	90.39	-	-
TX	2024-04	Individual Off Exchange	Platinum	-	-	25.55	23.00	-	-
TX	2024-04	Individual On Exchange	Bronze	-	-	210,803.36	178,893.33	-	-
TX	2024-04	Individual On Exchange	Catastrophic	-	-	376.03	153.78	-	-
TX	2024-04	Individual On Exchange	Gold	-	-	138,273.24	110,788.85	-	-
TX	2024-04	Individual On Exchange	Silver	-	-	3,484,643.04	3,395,732.84	-	-
TX	2024-05	Individual On Exchange	Bronze	-	-	1,006.34	506.14	-	-
TX	2024-05	Individual On Exchange	Gold	-	-	177,050.92	177,050.92	-	-
TX	2024-05	Individual On Exchange	Silver	-	-	119,173.39	114,841.26	-	-
TX	2024-06	Individual On Exchange	Bronze	-	-	3,095.21	1,733.01	-	-
TX	2024-06	Individual On Exchange	Gold	-	-	63,609.86	56,265.42	-	-
TX	2024-06	Individual On Exchange	Silver	-	-	80,402.66	73,530.38	-	-
				3,130,023.00	1,497,753,265.83	871,242,176.48	786,776,485.27	168,919,898.15	1,869,584.45
							3,625,607.48	-	-
							(221,581.15)	-	-
							(1,186,337.92)	-	-
							-	(47,771,159.13)	-
							788,994,173.68	121,148,739.02	1,869,584.45

## **EXHIBIT 11**

---

**From:** Pollock, Bronwyn F.  
**Sent:** Thursday, December 19, 2024 12:02 PM  
**To:** gpierce@gpierceclaw.com  
**Cc:** Sidhu, Vikram; Harrell, Robert S.; Danford, James B.; Toes, Juliana G.  
**Subject:** Re: Cause No. D-1-GN-23-001549; Texas Department of Insurance v. Friday Health Insurance Company, Inc.; in the 345th Judicial District Court, Travis County, Texas  
**Attachments:** 2024-11-04 Response to AXA counsel .pdf; Dataset\_063024.pdf; AXA\_2022\_063024.pdf; 2024-11-04 Response to AXA counsel .pdf; Dataset\_063024.pdf; AXA\_2022\_063024.pdf

Dear Mr. Pierce:

I am writing to acknowledge receipt of your November 4, 2024 letter, which was in response to our December 7, 2023 letter. We are reviewing your letter and will be sending you a response. In addition, we wanted to follow up on the information requests we made in our December 2023 letter, since the requested information was not provided in your letter last month. Secondly, could you please also provide the schedules in your letter in Excel format, as well as the emails referenced in your letter, so we can be sure we are reviewing the same emails that you have referenced?

Our December 2023 letter sought information, data, and documentation used by the SDR to calculate (1) the SDR's \$245 million demand (which the SDR has reduced to \$236.45 million in the November 2024 letter) for alleged claims paid and (2) IBNR reserves. Your November 2024 letter states that you have provided "the documentation [AFV] requested as outlined in Sections I and II of your letter from December 7, 2023." But that is not correct. To ensure you are working from the correct list, our December 2023 letter specifically requested the following items in connection with the SDR's paid claims demand:

- A dataset containing a separate row for each incurred month, each metal, each market segment (individual on exchange / off exchange / small group):
  - Member months;
  - Gross earned premium;
  - Allowed medical claims;
  - Paid medical claims;
  - Allowed Rx claims;
  - Paid Rx claims (excluding administrative cost); and
  - Paid vision claims (excluding administrative cost).
- On an aggregated basis for the whole state, on a separate row:
  - Local stamp fees and taxes;
  - Rx rebates; and
  - Below items should be following the terms and conditions of the reinsurance treaty between Friday and Odyssey Group Holdings Inc. (f/k/a Odyssey RE Holdings. Corp.) ("Odyssey Re"):
    - XoL premium paid to Odyssey Re;
    - XoL recoveries; and
    - Any experience refund received from Odyssey Re.

In connection with the SDR's IBNR reserve demand, our December 2023 letter requested:

- IBNR triangles, calculated following the methodology set in Annex 5 of the Reinsurance Agreement; and
- IBNR triangles for 2021 and 2022.



Please provide these materials so that we can make progress on understanding the amounts comprising the SDR's claimed amounts. If you have any questions about these items or otherwise, please give me a call.

AFV continues to reserve all of its rights.

Sincerely,  
Bronwyn

**From:** Greg Pierce <gpierce@gpiercelaw.com>

---

**Sent:** Monday, November 4, 2024 5:19 PM

**To:** Pollock, Bronwyn F. <BPollock@mayerbrown.com>

**Cc:** Toes, Juliana G. <JToes@mayerbrown.com>; Sidhu, Vikram <VSidhu@mayerbrown.com>; Danford, James B. <JDanford@mayerbrown.com>; Harrell, Robert S. <RHarrell@mayerbrown.com>

**Subject:** Cause No. D-1-GN-23-001549; Texas Department of Insurance v. Friday Health Insurance Company, Inc.; in the 345th Judicial District Court, Travis County, Texas

**CAUTION: External Email** - Only click on contents you know are safe.

Attached is correspondence regarding the Friday Health Insurance Company receivership.

Greg Pierce  
Attorney at Law  
P.O. Box 40  
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512/474-2154  
[gpierce@gpiercelaw.com](mailto:gpierce@gpiercelaw.com)  
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## **EXHIBIT 12**

April 16, 2025

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**By Email (gpierce@gpiercelaw.com)**

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gpierce@gpiercelaw.com

**Bronwyn F. Pollock**  
Partner  
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F: +1 213 576 8138  
BPollock@mayerbrown.com

Re: **Cause No. D-1-GN-23-001549, Texas Department of Insurance v. Friday Health Insurance Company, Inc., In the 345th Judicial District Court, Travis County, Texas**

Dear Mr. Pierce:

As you are aware, we represent AXA France Vie (“AFV”) with regard to the serious wrongdoing by Friday Health Insurance Company, Inc. (“Friday”) in connection with the Quota Share Reinsurance Agreement, Agreement Number CR 4661, dated January 1, 2021, as amended (the “Agreement”).

We understand that your office has been engaged in settlement discussions with Friday’s excess of loss reinsurer, Odyssey Reinsurance Company (“Odyssey Re”) and served my office on April 14, 2025, with the Special Deputy Receiver’s Application to Approve Commutation Agreement (Odyssey Reinsurance Company).

As you should be aware, the Odyssey Re agreement is linked to the Agreement with AFV—that is, Article 5(2) of the Agreement provides as follows:

[AFV’s Quota Share of liabilities ceded hereunder shall be protected by an Excess of Loss reinsurance agreement purchased by the Ceding Company that provides excess of loss reinsurance for 90% of loss incurred under Policies set forth in Annex 1 (Scope) in excess of \$500,000 per person and per year and unlimited capacity. . . . The Reinsurer shall benefit from and receive its Quota Share of the Excess of Loss recoveries which includes, but is not limited to, any profit-share that may be received by the Ceding Company from any excess of loss reinsurance arrangement applicable to the Policies. The Ceding Company hereby agree to submit for approval to AXA any amendment to the Excess of Loss agreements.

Under Annex 7 to the Agreement, Excess of Loss recoveries are netted out for purposes of the reinsurance balance calculation. Therefore, any settlement with Odyssey Re will affect AFV’s rights under the Agreement, including amounts due to AFV under the terms of the Agreement.

We also understand that Friday and Odyssey Re amended the Excess of Loss agreement to add a feature that changed the protective structure of the excess of loss cover. Friday and Odyssey Re

Greg Pierce, Esq.  
April 16, 2025  
Page 2

made the change without notification to, or approval by AFV, in violation of the Agreement. Thus in addition to affecting AFV's rights as noted above, we have concerns that you are entering into a settlement with Odyssey Re under the terms of an incorrect and inapplicable Excess of Loss agreement. Further, as you might also be aware, AFV had to repeatedly correct errors on the Friday quarterly accounts on how the Odyssey Re premium and recoveries should be calculated and accounted for. We are concerned that the proposed settlement and commutation that has been negotiated is based on erroneous representations and assumptions.

If it would be helpful, representatives from AFV would be willing to speak with you in more detail about this matter, without prejudice to AFV's rights and remedies.

AFV continues to reserve all rights regarding these issues and all other matters. In the event your office or Friday proceeds with waiving any rights or amounts due from Odyssey Re in connection with a commutation, settlement or otherwise, AFV will not be liable for any such amounts, and Friday will be liable for all such losses or damages including any losses or damages caused to AFV.

We look forward to further discussions with you on these issues at your earliest convenience.

Very truly yours,



Bronwyn F. Pollock  
Partner

## **EXHIBIT 13**

**Greg Pierce**  
ATTORNEY AT LAW  
P.O. Box 40  
Austin, Texas 78767  
(512) 474-2154  
gpierce@gpierceclaw.com

April 22, 2025

**Via Email: [bpollock@mayerbrown.com](mailto:bpollock@mayerbrown.com)**

Bronwyn Pollock  
MAYER BROWN LLP  
333 S. Grand Ave.  
Los Angeles, CA 90071

Re: Cause No. D-1-GN-23-001549, *Texas Department of Insurance v. Friday Health Insurance Company, Inc.*, In the 345<sup>th</sup> Judicial District Court, Travis County, Texas

Ms. Pollock:

I write in response to your correspondence to me dated April 16, 2025 on behalf of AXA France Vie (“AXA”).

You are correct that CANTILO & BENNETT, L.L.P., in its capacity as Special Deputy Receiver for Friday Health Insurance Company (the “SDR” and “FHIC,” respectively) has engaged in settlement discussions with Odyssey Reinsurance Company (“Odyssey Re”) and reached agreement for commuting the reinsurance contract(s) with Odyssey Re. As you know, that settlement is the subject of the Special Deputy Receiver’s Application to Approve Commutation Agreement (Odyssey Reinsurance Company).

Regardless of whether AXA corrected FHIC’s alleged errors regarding accounting for the Odyssey Re premium and recoveries prior to receivership, the SDR and its staff are familiar with the contract(s) and the application of the cessions to both the excess of loss agreements with Odyssey Re and the quota share reinsurance agreement(s) with AXA. The SDR and its staff remain confident that they have and will continue to properly account for all reinsurance relating to FHIC.

Your statement that there was an amendment to the excess of loss reinsurance agreement is incorrect. No amendment was made to the 2021 Reinsurance Agreement (PID254677) (“2021 XOL”) with Odyssey Re. The 2022 Reinsurance Agreement (PID501243) (“2022 XOL”) with Odyssey Re is a separate stand-alone agreement and is not affected by the 2021 XOL, with the exception of the three-year loss carry forward associated with the Experience Refund provision of the 2022 XOL. This same provision existed in the 2021 XOL with Odyssey Re.

Your contention that the 2022 XOL with Odyssey Re added “a feature that changed the protective structure of the excess loss cover” is also incorrect. In fact, the 2022 XOL with Odyssey Re actually enhanced the protective structure. The 2021 XOL with Odyssey Re provided for the cession of 90% of \$500,000 in excess of \$500,000 and 30% excess of \$1 million. The 2022 XOL

with Odyssey Re increased this cession to 90% of \$500,000 in excess of \$500,000 and 40% excess of \$1 million. As a result, the “protective structure” for AXA was enhanced via the 2022 XOL with Odyssey Re.

The only other changes between the two (2) excess of loss contracts with Odyssey Re are as follows:

- The reinsurance premium in the 2021 XOL with Odyssey Re (\$11.80 pmpm) was changed to \$13.13 pmpm for the 2022 XOL with Odyssey Re.
- The addition of an aggregating specific deductible (“ASD”) which allowed for a credit of \$2 million in twelve (12) monthly installments for a total of \$24 million against the reinsurance premium which was due to Odyssey Re. This ASD credit reduced the reinsurance premium due to Odyssey Re on a monthly basis and is of no moment in regard to the overall cession from FHIC (and AXA’s 80% participation) to Odyssey Re. The excess losses subject to the 2022 XOL with Odyssey Re would cede in normal course but would not be payable by Odyssey Re to FHIC until the ASD \$24 million credit was exhausted.

Finally, while the SDR does not believe that discussions with representatives of AXA are necessary, we are open to participating in such a discussion to provide an additional level of comfort to AXA if requested.

If you have any additional questions or comments, please let me know.

Sincerely,



Greg Pierce

GAP:pkm



## **EXHIBIT 14**

April 24, 2025

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**By Email (gpierce@gpiercelaw.com)**

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**Bronwyn F. Pollock**  
Partner  
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BPollock@mayerbrown.com

Re: **Cause No. D-1-GN-23-001549, *Texas Department of Insurance v. Friday Health Insurance Company, Inc.*, In the 345th Judicial District Court, Travis County, Texas – Demand To Undertake Good Faith and Best Efforts to Settle Dispute or Otherwise Arbitrate**

Dear Mr. Pierce:

As you are aware, we represent AXA France Vie (“AFV”) with regard to the serious wrongdoing by Friday Health Insurance Company, Inc. (“Friday”) in connection with the Quota Share Reinsurance Agreement, Agreement Number CR 4661, effective January 1, 2021, as amended (the “Agreement”). After more than two years, Friday has not remedied its wrongful acts and the parties have not resolved their dispute.

The Agreement specifies how disputes between Friday and AFV are to be resolved. Article 19 provides that “any dispute, controversy or claim arising between the Parties in connection with or in relation to this Agreement, including formation and validity, and whether arising before or after termination of this Agreement, shall be referred to an arbitration tribunal.”<sup>1</sup>

Before arbitration may be commenced, Article 19 first obliges the Parties to “undertake in good faith to use all reasonable best efforts to settle such dispute.”<sup>2</sup> If those informal settlement discussions are unsuccessful, “after written notice of a dispute and a reasonable opportunity to cure under the circumstances,” the unresolved dispute must be arbitrated before a panel of “three (3) arbitrators who will each have no less than ten (10) years of reinsurance and insurance experience, who have professional experience with accident or health insurance matters, and who are active or retired executive officers of insurance or reinsurance companies.”<sup>3</sup> Article 19 further specifies that,

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<sup>1</sup> Agreement, at Art. 19.

<sup>2</sup> Agreement, at Art. 19(1).

<sup>3</sup> Agreement, at Arts. 19(1), 19(2)(ii).

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Within thirty (30) days following the commencement of the arbitration proceedings, each Party will provide the other with the identification of their appointed arbitrator, and provide a copy of the arbitrator's curriculum vitae. . . . Each Party's appointed arbitrator shall propose a candidate to serve as a third arbitrator (the "Umpire"), which shall be subject to the other Party's agreement. In the event the two party-appointed arbitrators fail to reach an agreement on an Umpire within sixty (60) days of their appointment, then either Party may petition ARIAS-U.S. to appoint an Umpire meeting the qualifications of this Agreement in accordance with the ARIAS-U.S. Enhanced Umpire Selection Program. Each Party shall cooperate and take whatever action is required to give effect to the ARIAS-U.S. umpire appointment procedures. Notwithstanding the foregoing, the Parties may agree on an alternative Umpire appointment procedure, including but not limited to the appointment of a single arbitrator to decide the dispute.<sup>4</sup>

Article 19 further confirms that its arbitration clause "shall survive termination of this Agreement."<sup>5</sup>

On February 20, 2023, in accordance with Article 19 of the Agreement, AFV sent a letter to Friday to provide it with notice of the dispute ("Notice of Dispute"). AFV's Notice of Dispute explains in detail that Friday engaged in numerous wrongful acts, breached its duty of utmost good faith, and its warranties, covenants, and duties set forth in the Agreement, including by unilaterally modifying the terms of the excess of loss agreement with complete disregard of AFV's contractual right to prior approval. Friday's recent failure to seek consent and the prior approval from AFV before submitting its Application to Approve Commutation Agreement with Odyssey Reinsurance Company is yet another breach of the Agreement that is subject to arbitration under the terms of the Agreement.

AFV requests that Friday cease its tactics of delay and avoidance and instead undertake good faith and best efforts to settle its disputes with AFV. AFV is prepared to arbitrate if necessary once informal efforts at dispute resolution have been completely exhausted.

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<sup>4</sup> Agreement, at Art. 19(2)(ii).

<sup>5</sup> Agreement, at Art. 19(8). AFV expressly reserves all rights that the Agreement terminated no later than January 1, 2022.

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AFV continues to reserve all rights regarding these issues and all other matters. We look forward to further discussions with you on these issues at your earliest convenience.

Very truly yours,



Bronwyn F. Pollock  
Partner

CAUSE NO. D-1-GN-23-001549

THE TEXAS DEPARTMENT OF  
INSURANCE,

PLAINTIFF,

v.

FRIDAY HEALTH INSURANCE  
COMPANY, INC.,

DEFENDANT.

§ IN THE DISTRICT COURT OF  
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§ TRAVIS COUNTY, TEXAS  
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§ 345th JUDICIAL DISTRICT

**[PROPOSED] ORDER GRANTING AXA FRANCE VIE’S REQUEST TO STAY  
SPECIAL DEPUTY RECEIVER’S APPLICATION TO APPROVE COMMUTATION  
AGREEMENT WITH ODYSSEY REINSURANCE COMPANY**

On this date, the Court heard AXA France Vie’s (“AFV”) Request to Stay (“Request”) Special Deputy Receiver’s Application to Approve Commutation Agreement with Odyssey Reinsurance Company (“Application”). In accordance with the *Agreed Order of Reference to Master* entered on March 23, 2023 (“Order of Reference”), the Special Deputy Receiver’s Application was submitted to the Master appointed in this proceeding pursuant to TEX. INS. CODE § 443.007. The Master issued a recommendation pursuant to Rule 171 of the Texas Rules of Civil Procedure, which is incorporated herein, finding as follows:

1. Notice of the Application was provided in accordance with Tex. Ins. Code § 443.007(d), and the Order of Reference;
2. The Texas Life and Health Insurance Guaranty Association filed its acknowledgement and waiver;
3. AFV filed its Request to stay consideration of the Application;
4. The Court has jurisdiction over the Request, Application, and parties affected hereunder; and

5. The Application is stayed in all respects until otherwise ordered by the Court. The Special Deputy Receiver and AFV are ordered to update the Court after they have engaged in good faith and best efforts to settle their disputes.

Having considered the Request, Application, evidence submitted, and the recommendation of the Master, the Court accepts the Master's recommendation and stays consideration of the Application.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. The Application is STAYED in all respects until otherwise ordered by this Court. The Special Deputy Receiver and AFV are ordered to update the Court after they have engaged in good faith and best efforts to settle their disputes and/or commenced arbitration.

Signed on \_\_\_\_\_, 2025.

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JUDGE PRESIDING

CAUSE NO. D-1-GN-23-001549

THE TEXAS DEPARTMENT OF  
INSURANCE,

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v.

FRIDAY HEALTH INSURANCE  
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§ IN THE DISTRICT COURT OF  
§  
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§ TRAVIS COUNTY, TEXAS  
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§ 345th JUDICIAL DISTRICT

**AXA FRANCE VIE'S OBJECTING PARTY'S NOTICE OF ORAL HEARING**

Please take notice that AXA France Vie ("AFV") requests a hearing on its Request to Stay Special Deputy Receiver's Application to Approve a Commutation Agreement with Odyssey Reinsurance Company, or Alternatively, AXA France Vie's Objection to Application to approve a Commutation Agreement. AFV will confer with the Special Deputy Receiver and the Special Master's Docket Clerk on a mutually agreeable date for the hearing.

Dated: April 24, 2025.

Respectfully Submitted,

MAYER BROWN LLP

By: /s/ Robert S. Harrell

Robert S. Harrell

State Bar No. 09041350

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*Attorneys for AXA France Vie*



### **CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of April, 2025, a true and correct copy of the foregoing was served on all counsel of record via the Court's electronic filing system and by email to the Special Master's Docket Clerk (specialmasterclerk@tdi.texas.gov), Greg Pierce (gpierce@gpiercelaw.com), and all interested parties, including those listed on the SDR's Certificate of Service, in accordance with the Texas Rules of Civil Procedure.

/s/ James B. Danford, Jr.

James B. Danford, Jr.