

## Preamble

### 1.0 Purpose

1.1 An introduction to the treaty

1.2 Many treaties no longer contain a Preamble. Those without a Preamble include the necessary parts in other treaty articles.

### 2.0 Scope

2.1 See description of individual elements

### 3.0 General Elements

#### 3.1 Parties to the Agreement

*“This is a [YRT or Coinsurance] agreement for indemnity reinsurance (the “Agreement”) solely between [Ceding Company name] of [Ceding Company jurisdiction of domicile] (the “Ceding Company”), and [Reinsurer name] of [Reinsurer jurisdiction of domicile] (the “Reinsurer”), collectively referred to as the “parties”*

*The acceptance of risks under this Agreement will create no right or legal relationship between the Reinsurer and the insured, owner, or beneficiary of any insurance policy or other contract of the Ceding Company.*

*The Agreement will be binding upon the Ceding Company and the Reinsurer and their respective successors and assigns.”*

3.1.1 Purpose – Defines the contractual relationship under the agreement.

3.1.2 Scope – Relates to the contractual rights of the ceding company and reinsurer.

#### 3.1.3 General Elements

- Defines the technical legal entities that are parties to the agreement
- The agreement is solely between the ceding company and the reinsurer
- Protects the reinsurer from direct actions taken by a party other than the ceding company.
- The acceptance of risks under the agreement will create no right or legal relationship between the reinsurer and

the insured, owner, beneficiary or assignee of any insurance policy or other contract of the ceding company.

- The agreement will be binding upon the ceding company and the reinsurer and their respective successors and assigns.

#### 3.1.4 Variations

- Parties can be defined on the cover page of the agreement or in a Liability section.
- No legal relationship between reinsurer and others can be addressed in General Provisions.
- Binding between successors and assigns can be addressed in General Provisions.
- On occasion, two related parties can both be ceding companies in a single treaty.

### 3.2 Compliance

*“This Agreement applies only to the issuance of insurance by the Ceding Company in a jurisdiction in which it is properly licensed.”*

3.2.1 Purpose – Ceding Company must comply with its licensing requirements.

3.2.2 Scope

3.2.3 General Elements

- Agreement applies only to the issuance of insurance by the ceding company in a jurisdiction in which it is properly licensed.

3.2.4 Variations – Often not found in agreements.

### 3.3 Governing Law

*“This agreement will be construed in accordance with the laws of the state of [jurisdiction].”*

3.3.1 Purpose – Specifies which jurisdiction’s laws will apply to the agreement.

3.3.2 Scope

3.3.3 General Elements

- Specifies the jurisdiction that the agreement will be governed by and construed in accordance with.

- Typically the Ceding Company's domiciliary jurisdiction. Alternative is to select a jurisdiction that has a strong base of reinsurance regulation and case law.

#### 3.3.4 Variations

- Without regard for conflicts of laws principles.
- Often addressed in General Provisions, under the heading Law & Venue.

### 3.4 Entire Agreement

*"This Agreement constitutes the entire agreement between the parties with respect to the business reinsured hereunder. There are no understandings between the parties other than as expressed in this Agreement. Any change or modification to this Agreement will be null and void unless made by amendment to this Agreement and signed by both parties."*

3.4.1 Purpose – Specifies that the treaty document constitutes the entire agreement. Prohibits side agreements. State requirements for reinsurance reserve credit require this provision.

#### 3.4.2 Scope

#### 3.4.3 General Elements

- Treaty constitutes the entire agreement between the parties.
- No understandings between the parties other than as expressed in the agreement.
- Any change or modification to the agreement will be null and void unless made by written amendment to the agreement.

#### 3.4.4 Variations

- In the event of any discrepancies between the Agreement and the Exhibits, the Exhibits will control.
- Occasionally includes a "gentleman's agreement" clause, although this has become rare.
- Often found in General Provisions.

### 3.5 Severability

*"If any provision of this Agreement is determined to be invalid or unenforceable, such determination will not impair or affect the validity or the enforceability of the remaining provisions of this*

*Agreement.”*

3.5.1 Purpose – Problem found in one treaty provision will not affect the validity of other provisions.

3.5.2 Scope

3.5.3 General Elements

- If any provision of the agreement is determined to be invalid or unenforceable, such determination will not impair or affect the validity or the enforceability of the remaining provisions of the agreement.

3.5.4 Variations

- Both parties should work together to fix any problems that may arise.
- A provision can be severed only if it does not change the intent of the agreement.
- Often found in General Provisions.