

# **WORKERS' COMPENSATION REINSURANCE ASSOCIATION**

**A Trusted Partner**  
**Serving Minnesota**  
Since 1979

## **PLAN OF OPERATION**

**Revised December 2010**

## **Plan of Operation**

Adopted by the WCRA Board of Directors on October 19, 1995

Amended by the WCRA Board of Directors on December 5, 1996

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# Plan of Operation

## I. DEFINITIONS

- A. Act. "Act" means Minn. Stat. §§ 79.34 to 79.40, as they may be amended, and any rules adopted by the Commissioner to implement these provisions.
- B. Actuarial Excess or Deficient Premium. "Actuarial Excess or Deficient Premium" means the cumulative actuarially determined amounts of Premium, including expected returns at the discount rates used in pricing, but excluding previous distributions or assessments of Actuarial Excess or Deficient Premium, that are greater or less than the cumulative claims payments plus updated estimates of Operating and Administrative Expenses and discounted funded loss and loss expense reserves for each accident year applying the investment rates of return used in determining Annual Reinsurance Premium Rates for each accident year.
- C. Annual Reinsurance Premium Rates. "Annual Reinsurance Premium Rates" means the rates charged by the Association to Members for Reinsurance for each calendar year or other period, as determined by the Board and approved by the Commissioner, pursuant to Article VI.D.2.b.
- D. Association. "Association" means the Workers' Compensation Reinsurance Association created by the Act.
- E. Board. "Board" means the Board of Directors of the Association.
- F. Claim. "Claim" means a notice, demand, or other written or oral communication to a Member by or on behalf of an insured employer or an employee or beneficiary for the payment of benefits under Minn. Stat. Ch. 176.
- G. Claim Expenses. "Claim Expenses" means those expenses of a Member incurred in determining the facts or disposition of a Claim, Loss, or legal proceeding, in evaluating the extent of disability, or in connection with any legal proceeding, and other such expenses incurred by a Member in administering its workers' compensation Claims which are not subject to indemnification by the Association, as provided by Operating Rule, as part of a Member's Ultimate Loss.
- H. Commissioner. "Commissioner" means the Commissioner of Labor and Industry for the State of Minnesota.
- I. Commissioner of Commerce. "Commissioner of Commerce" means the Commissioner of Commerce for the State of Minnesota.
- J. Deficiency. "Deficiency" means that the Board has determined that earlier Excess Surplus distributions resulted in inadequate funds being available to pay Claims that arose during the periods upon which the Excess Surplus distributions were made to Policyholders and Self-insurer Members.

- K. Director. "Director" means member of the Board.
- L. Excess Investment Earnings. "Excess Investment Earnings" means the difference between Surplus or Deficit as determined or adjusted by the Board and Actuarial Excess or Deficient Premium.
- M. Excess or Deficient Premium. "Excess or Deficient Premium" means the sum of Actuarial Excess or Deficient Premium and Member Excess Investment Earnings.
- N. Excess Surplus. "Excess Surplus" means the amount determined by the Board to be Excess Investment Earnings earned after May 25, 1993 on Premium charged for coverage provided from and after May 25, 1993.
- O. Exposure Base. "Exposure Base" means the measure of risk against which the Annual Reinsurance Premium Rates are applied. The Association exposure base shall be calculated in accordance with procedures established by Operating Rule, approved by the Board, and approved by the Commissioner, pursuant to Minn. Stat. § 79.35(d).
- P. Former Member. "Former Member" means an Insurer or Self-insurer which has withdrawn or been terminated from membership in the Association pursuant to Minn. Stat. § 79.34, subd. 3, but which continues to be entitled to receive indemnification from the Association for Ultimate Losses in excess of the applicable Retention Limit under policies no longer in force or under programs of self-insurance that have terminated.
- Q. Insurer. "Insurer" means any insurance carrier licensed by the Commissioner of Commerce and authorized to transact the business of workers' compensation insurance in Minnesota.
- R. Loss, Losses, or Loss Occurrence. "Loss," "Losses," or "Loss Occurrence" means one or more Claims arising out of a single compensable event, as determined by the Association, under Minn. Stat. Ch. 176.
- S. Member. "Member" means an Insurer or Self-insurer, but does not include a Former Member.
- T. Member Excess Investment Earnings. "Member Excess Investment Earnings" means Excess Investment Earnings earned prior to and after May 25, 1993 on Premium charged for coverage provided through May 24, 1993.
- U. Member Payments. "Member Payments" means that portion of the Ultimate Loss which has been paid by the Member, including any deductible amounts paid by insured employers.
- V. Operating and Administrative Expenses. "Operating and Administrative Expenses" means all expenditures authorized by the Board and reasonably incurred or estimated to be incurred to carry out the purposes of the Association set forth in the Act, the Plan, and the Operating Rules.

- W. Operating Rule. "Operating Rule" means rules adopted by the Board for the management of the affairs of the Association, pursuant to Minn. Stat. § 79.36(e).
- X. Plan. "Plan" means the Plan of Operation adopted or amended by the Association pursuant to Minn. Stat. § 79.38.
- Y. Policyholder. "Policyholder" means Minnesota workers' compensation policyholders of Insurer Members.
- Z. Prefunded Limit. "Prefunded Limit" means the level of risk, determined in accordance with Minn. Stat. § 79.35, below which the Association collects Premiums from Members before that portion of the Member's Ultimate Loss is actually paid and above which the Association collects Premiums from Members in the year in which that portion of the Member's Ultimate Loss is actually paid.
- AA. Premium. "Premium" means the amount or amounts charged to Members for Reinsurance pursuant to Minn. Stat. § 79.35(d).
- BB. Reinsurance. "Reinsurance" means the indemnification provided by the Association to the Members pursuant to the Act and this Plan.
- CC. Reinsurance Agreement. "Reinsurance Agreement" or "Agreement" means a document adopted or amended by the Board and approved by the Commissioner to govern the provision of Reinsurance by the Association as required by the Act and the Plan.
- DD. Retention Limit. "Retention Limit" means the level of risk selected by the Member from the Retention Limits available pursuant to Minn. Stat. § 79.34 below which the Association will have no liability for indemnification of any Loss Occurrence.
- EE. Surplus or Deficit. "Surplus or Deficit" means the amount determined and reported, under Generally Accepted Accounting Principles, in the Association's annual audited year-end financial statements as surplus or deficit.
- FF. Self-insurer. "Self-insurer" means any employer, employer group, trust, pool, political subdivision, the State of Minnesota, or other entity approved by the Commissioner of Commerce or authorized by law to self-insure its workers' compensation liability.
- GG. Ultimate Loss. "Ultimate Loss" means the amount which is paid or payable by a Member in accordance with Minn. Stat. Chs. 79 and 176 for a Claim or Claims arising out of a Loss Occurrence, but does not include Claim expenses, assessments, damages, penalties, or other payments specifically excluded by the Association. Any amounts paid by a Member pursuant to Minn. Stat. §§ 176.183; 176.221, subd. 1; 176.225; and 176.82 shall not be included in ultimate loss and shall not be indemnified by the Association. Employers' liability coverage is not provided by the Association. The Association does not cover claims under the Federal Employers' Liability Act, the Jones Act, the Longshoremen's and Harbor Workers' Compensation Act, or any other federal law.

- HH. Unallocated Claim Expenses. "Unallocated Claim Expenses" means those expenses incurred by the Association to administer Claims reported to the Association.

## **II. ORGANIZATION AND OPERATION OF ASSOCIATION.**

A. Purpose.

The purpose of the Association is to provide Reinsurance to Members pursuant to the Act and Article VI. of this Plan. The Association may also have any other purposes provided by the Act, as it may be amended.

B. Form of Organization.

The Association is a nonprofit association governed by the provisions of the Act and the Plan, as the Act and Plan may be amended.

C. Operating Rules.

The Board is authorized to adopt and amend Operating Rules for the management of the affairs of the Association, consistent with the Act and the Plan. Operating Rules and any amendments thereto are effective on the date of approval by the Board unless otherwise specified in the resolution adopting or amending the Operating Rule.

D. Operations and Administration.

The Board is authorized to employ any persons, firms, or corporations necessary to administer the Association. The Association is authorized to enter into contracts for goods and services, and may purchase or lease such facilities and equipment as are necessary for the efficient operation of the Association.

E. Investment Policy.

The Board shall adopt and annually review the investment policy of the Association. It shall consider the long- and short-term cash needs of the Association, expected return on investments, price level trends, general economic conditions, and such other criteria as may be established by the Board. The establishment of specific investment guidelines for the administration of the Association's investment policy is the responsibility of the Board. The Board may adopt Operating Rules or resolutions governing its investment policy, and may (1) delegate to its committees, officers, employees, or agents, including investment counsel, the authority to act in place of the Board in investment and reinvestment of the Association's funds; (2) authorize contracts with independent investment advisors, investment counsel, or managers, banks, trust companies, or Members to assist in carrying out its investment policy; and (3) authorize the payment of compensation for investment advisory or management services.

### III. DUTIES OF MEMBERS.

#### A. Duty to Belong to Association.

As a condition of Insurers' authority to transact workers' compensation insurance and Self-insurers' authority to self-insure their workers' compensation liability, all Insurers and Self-insurers are required to be Members of the Association. Members shall pay Premiums to the Association for Reinsurance as provided in Article VI. of the Plan and shall be bound by the Plan and any Reinsurance Agreement or Operating Rules adopted by the Board pursuant to the Plan.

1. Termination and Withdrawal from Membership. The Commissioner or Commissioner of Commerce may, upon notice to a Member, take any appropriate action against a Member pursuant to procedures available to the Commissioner or Commissioner of Commerce, including revocation of the license of an Insurer to transact workers' compensation insurance or revocation of authorization of a Self-insurer to self-insure workers' compensation liability as authorized by law, for failure to pay Premiums to the Association when due, failure to comply with the Plan, Reinsurance Agreement, or Operating Rules, or failure to comply with Minnesota law. Revocation of authority to write workers' compensation insurance by an Insurer or to self-insure automatically terminates membership in the Association. An Insurer may voluntarily withdraw from membership in the Association only upon ceasing to be authorized by the Commissioner of Commerce to transact workers' compensation insurance in Minnesota and after final payment of its financial obligations to the Association. A Self-insurer may voluntarily withdraw from membership in the Association only when it stops self-insuring its workers' compensation liability and after final payment of its financial obligations to the Association, which voluntary withdrawal is effective on the date determined by the Commissioner of Commerce, provided that self-insured political subdivisions may voluntarily withdraw from the Association at any time they stop self-insuring and after final payment of their financial obligations to the Association. Any unpaid Premiums which have been charged to a withdrawing or terminated Member shall be due and payable as of the effective date of withdrawal or termination, as determined by the Commissioner of Commerce. A Former Member shall continue to be bound by the Act, Plan, and any Reinsurance Agreement or Operating Rules with respect to the performance and completion of any Claims administration, premium data reporting, unsatisfied liabilities and obligations to the Association.
2. Insolvent Members. Upon determination by the Commissioner of Commerce, or a competent authority of the State where the Member or Former Member is incorporated or organized, that a Member or Former Member is insolvent, or if otherwise necessary as determined by the Board, any liability to the Association of such Member or Former Member shall be apportioned among the remaining Members of the Association on the same basis as Premiums are charged. The Association shall have, on behalf of all of the remaining Members, all rights allowed by law against the estate or assets of the insolvent Member or any receiver of assets of the insolvent Member for sums due the Association, and any

amounts received by the Association as a result thereof shall be credited to the Members on the same basis as Premiums are charged.

3. Merger, Consolidation, Reinsurance of a Member's Entire Business, or Other Successor in Interest of a Member. When a Member has been merged or consolidated into another entity, experienced any change of ownership or legal structure that creates a successor in interest of the Member, or another Insurer has reinsured a Member's entire business, the successor in interest of the Member shall be liable for the Member's obligations to the Association, including payment of Premiums and all other obligations under the Act, Plan, and any Reinsurance Agreement or Operating Rules. A Member shall also promptly notify the Association in writing of reinsurance of all or a part of the Member's business and of any change of ownership or legal structure, or any other successor in interest, and shall promptly provide legal documentation of any such transaction to the Association.

B. Duty to Accept Indemnification.

All Members shall accept indemnification from the Association for 100 percent of the Ultimate Loss in each Loss Occurrence under Minn. Stat. Ch. 176, on or after October 1, 1979, in excess of the Member's Retention Limit in effect at the time that the Loss was incurred, as provided in Article VI. of this Plan. The Association shall reimburse Members only for Member payments of Losses in excess of the Retention Limit to the extent that Losses are not paid, payable, or reimburseable by any other insurance, reinsurance, Special Compensation Fund, or other recoverables. If a Member could have made timely and proper application for any such insurance, reinsurance, Special Compensation Fund, or other recoverables, but fails to do so, the Association may deny reimbursement for any amount which the Member could have received and which would have reduced the Association's reimbursements. Insurer Members which are determined by the Association to be controlled by or under common control with another Member, and which are liable for Claims from one or more employees entitled to compensation for a single compensable event, including aggregate Losses relating to a single Loss Occurrence, may aggregate their Losses for that single Loss Occurrence and obtain indemnification from the Association for the aggregate Losses in excess of the highest Retention Limit in effect at the time the Loss was incurred.

C. Duty to Report to Association.

All Members shall report accurate, complete, and timely data as required by the Association in a form approved by the Association. Members shall advise the Association immediately of Claims which may reasonably be anticipated to involve liability to the Association, and shall advise the Association of subsequent developments likely to materially affect the interests of the Association, as required in Article VI. of this Plan.

## IV. BOARD OF DIRECTORS.

### A. Duties.

The management of the Association is vested in a board of 13 Directors. Directors shall discharge their duties in good faith and with that diligence and care which an ordinarily prudent person in a like position would exercise under similar circumstances.

### B. Composition.

The Board is composed of four Directors representing Insurers, two Directors representing employers, two Directors representing Self-insurers, one Director representing the public, two Directors representing employees, the Commissioner of Minnesota Management and Budget or the Commissioner's designee, and the Executive Director of the Minnesota State Board of Investment or the Executive Director's designee. Directors shall continue to represent Insurers, employers, Self-insurers, the public, or employees, as determined by the Board and Commissioner, during their terms of office and their directorships shall automatically be terminated when they no longer represent their constituencies.

### C. Selection and Terms of Directors.

1. At the 2010 annual meeting and every third year thereafter, the Insurer Members shall elect two Insurer representatives. At all other annual meetings thereafter, the Insurer Members shall elect one Insurer representative. The Insurer representatives shall be nominated by an Insurer Nominating Committee pursuant to Section F.11.(b) of this Article and approved by the Commissioner.
2. At the 2011 and 2012 annual meetings and every third year thereafter, the Self-insurer Members shall elect one Self-insurer representative. The Self-insurer representative shall be nominated by a Self-insurer Nominating Committee pursuant to Section F.11.(d) of this Article and approved by the Commissioner.
3. At the 2010 annual meeting of Members and every third year thereafter, the Commissioner shall appoint one employer representative, one employee representative, and one public representative.
4. At the 2011 annual meeting of Members and every third year thereafter, the Commissioner shall appoint one employee representative.
5. At the 2012 annual meeting of Members and every third year thereafter, the Commissioner shall appoint one employer representative.
6. All Directors on the Board on the date of approval of this Plan, as amended, shall serve for the balance of their terms.
7. Except as expressly provided otherwise, all Directors shall be elected or appointed for three-year terms and shall serve until their successors are elected or appointed.

If a vacancy occurs among the Directors at any time, the Commissioner shall fill the vacancy for the unexpired term by appointment, maintaining the balance of composition of the Board as provided in Section B. of this Article. Insurer representatives shall be appointed from a list presented to the Commissioner by the Insurer Nominating Committee. Self-insurer representatives shall be appointed from a list presented to the Commissioner by the Self-insurer Nominating Committee.

D. Meetings.

1. The annual meeting of the Board shall be held immediately following or within 30 days after the annual meeting of Members of the Association for the purpose of the election of officers and the transaction of such other business as may properly come before the meeting.
2. In addition to the annual meeting, the Board shall hold such regular meetings as it determines are necessary. Special meetings of the Board may be called at any time by the Chair or the President and shall be called by the Chair upon written request of four Directors. Written notice shall be sent to each Director at least three days in advance of all meetings.
3. Meetings of the Board may be conducted, and any Director may participate in any meeting of the Board, by means of conference telephone or similar communications equipment which allows all persons participating in the meeting to hear each other. Participation in a meeting pursuant to this section constitutes presence in person at the meeting for the purpose of determining the existence of a quorum.
4. Any action required or permitted at any meeting of the Board may be taken without a meeting, without prior notice, and without a vote, if all of the Directors consent thereto in writing.

E. Quorum.

A majority of the Directors currently holding office constitutes a quorum. Action may be taken by a majority of the Directors participating in a meeting. Each Director has one vote.

F. Officers and Committees.

1. Annual Election. The Board, at its annual meeting, shall elect from its members a Chair and a Vice Chair of the Board. The Board may also elect a President, Vice Presidents, Secretary, Treasurer, Assistant Secretaries or Assistant Treasurers, and such other officers as the Board may determine, none of whom need be Directors. In the event the Board elects a President from among its members, the same person may hold the offices of the Chair and President. The same person may hold the offices of Secretary, Treasurer, and Vice President. All officers shall hold office at the pleasure of the Board.

2. Chair of the Board. The Chair is authorized to call meetings of the Board. The Chair shall preside at all meetings of the Members and of the Board. The Chair is authorized to execute with the Secretary or Assistant Secretary such instruments as may be authorized by the Board and shall have such other duties as may be prescribed by the Board.
3. Vice Chair of the Board. The Vice Chair shall perform the duties of the Chair in the event of the Chair's absence or disability to act for any cause and shall perform such other duties as may be prescribed by the Board.
4. President. The President is the Chief Executive Officer of the Association and has the power to call meetings of the Board. The President is authorized to execute deeds and mortgages, Reinsurance Certificates, Reinsurance Agreements, contracts with the Members of the Association, and other obligations, and to make and execute contracts in the ordinary course of business of the Association. The President is responsible, subject to the direction of the Board, for the general administration of the Association and shall perform all duties incidental to this office. In the event the President is also an employee of an independent contractor retained by the Association, the President shall not have the authority to make or execute contracts between that independent contractor and the Association.
5. Vice Presidents. Upon recommendation of the President, the Board may elect such Vice Presidents as it deems necessary. Each Vice President shall be in charge of a segment of the business of the Association as determined by the President. Upon recommendation of the President, the Board may appoint one or more Assistant Vice Presidents who shall have such duties as are assigned by the President.
6. Secretary. The Secretary, or upon the Secretary's absence or disability to act for any cause, an Assistant Secretary or a Secretary pro tem designated by the Chair, shall keep a full and permanent record of all meetings of the Members and the Board. The Secretary or Assistant Secretary shall execute or attest to all deeds, mortgages, and contracts of the Association and perform such other duties as may be prescribed by the Board.
7. Treasurer. The Treasurer of the Association shall have responsibility for keeping accurate and complete records of all receipts and disbursements and for the custodianship of all funds of the Association, subject to the direction of the Board.
8. Other Officers. The Board may designate other officers and prescribe their duties.
9. Bonds. Bonds may be required from any officer, employee, or agent of the Association for the faithful performance of their duties.
10. Vacancies. The Board may at any time declare an office vacant or remove an officer. Vacancies may be filled by election by the Board, the persons so elected to hold office until their successors are duly elected.

## 11. Committees.

- a. Executive Committee. The Board may establish an Executive Committee composed of five members appointed from among the Directors by the Chair, one of whom shall be the chair. The composition of this Committee shall include at least one but not more than two Insurer members; at least one but not more than two employer or Self-insurer members; and at least one but not more than two employee members. All appointments are subject to confirmation by the Board. The members of the Executive Committee serve at the pleasure of the Board and until their successors are appointed. Each member has one vote. The Executive Committee has such authority and shall perform such duties as the Board determines.
- b. Insurer Nominating Committee. The Chair, subject to confirmation by the Board, shall appoint an Insurer Nominating Committee composed of five members two of whom shall be Directors representing Insurers and three of whom shall be officers, employees, or agents of Insurer Members of the Association who are not Directors. The Chair shall designate the chair of the Committee from among its members. The members of the Insurer Nominating Committee shall be appointed to serve one-year terms. The Insurer Nominating Committee shall present the name or names of Insurer nominees to the Commissioner for approval at least 14 days before proposing the names for election by the Members in the notice of the annual meeting as required by Article V.C. The nominees shall be deemed to be approved 14 days after the date the name or names were submitted to the Commissioner, if not sooner disapproved by the Commissioner. The Insurer Nominating Committee shall present the name or names of Insurer nominees approved by the Commissioner for election as Directors at the annual meeting of the Members of the Association.
- c. Officer Nominating Committee. The Chair, subject to confirmation by the Board, shall appoint an Officer Nominating Committee composed of three Directors, including one Insurer representative, one representative of employers or self-insurers, and one representative of employees or the public. The Chair of the Board shall designate the chair of the committee from among its members. The members of the Officer Nominating Committee serve at the pleasure of the Board and until their successors are appointed. The members of the Officer Nominating Committee shall present nominees for election as Chair and Vice Chair at the annual meeting of the Board.
- d. Self-insurers' Nominating Committee. The Chair, subject to confirmation by the Board, shall appoint a Self-insurers' Nominating Committee composed of the Director or Directors representing Self-insurers whose terms are not expiring in that year and three additional representatives of Self-insurer Members. The Chair shall designate the chair of the Committee from among its members. The members of the Self-insurers' Nominating Committee shall be appointed to serve one-year terms. The Self-insurers' Nominating Committee shall present the name or names of Self-insurer nominees to the

Commissioner for approval at least 14 days before proposing the names for election by the Members in the notice of the annual meeting as required by Article V.C. The nominees shall be deemed to be approved when 14 days have elapsed after the date the name or names were submitted to the Commissioner, if not sooner disapproved by the Commissioner. The Self-insurers' Nominating Committee shall present the name or names of Self-insurer nominees approved by the Commissioner for election as Directors at the annual meeting of the Members of the Association.

- e. The Board may establish operating and or advisory committees to serve at the pleasure of the Board, the membership of which may include persons other than Directors, for the purpose of consulting with and assisting the Board in the conduct of the business of the Association. These committees may include, but are not limited to: (1) An Actuarial Committee; (2) An Investment Committee; (3) A Finance and Audit Committee; (4) A Member Appeals Committee; and (5) A Self-insurers' Committee. The Chair of the Board shall appoint a chair of each committee from among the Directors. Each committee chair shall appoint the members of each committee and shall develop a job description for the committee, which members and job descriptions shall be subject to the approval of the Board. Committee members serve at the pleasure of the Board.
- f. A quorum for any committee appointed by the Board shall consist of a majority of committee members. The records of the committee shall be maintained by the Secretary or the Secretary's designee.
- g. Meetings of any operating or advisory committee may be conducted, and any member of a committee may participate in any meeting of a committee, by means of conference telephone or similar communications equipment that allows all persons participating in the meeting to hear each other. Participation in a meeting pursuant to this section constitutes presence in person at the meeting for the purpose of determining a quorum.
- h. Any action required or permitted at any meeting of a committee may be taken without a meeting, without prior notice, and without a vote, if all of the members of a committee consent thereto in writing.

G. Reimbursement/Compensation.

- 1. Each Director shall be paid an annual stipend plus a per diem in amounts established by the Board, subject to approval by the Commissioner. A Director is eligible to receive per diem payments for attendance at Board meetings, committee meetings for committees of which the Director is a member, and committee meetings attended at the request of the Board Chair or the President. The annual stipend shall be paid as of the date of the annual meeting to each eligible Director, provided that the Director has held that office for at least three months prior to the date of the annual meeting. In the event that a Director resigns

or otherwise vacates the office prior to the annual meeting, no annual stipend shall be paid to that Director.

2. Each committee member who is not a Director shall be paid a per diem in an amount established by the Board. If a committee chair determines and states in writing that the attendance of a member of that committee who is not a Director is necessary at a Board or Executive Committee meeting, that committee member shall be entitled to the per diem established by the Board.
3. No Director or committee member shall receive more than one per diem for meetings held on the same day.
4. All actual and necessary expenses incurred on Association business by or on behalf of each Director or committee member shall be reimbursed.
5. Compensation shall be paid to the individual Director or committee member unless the individual elects in writing to waive compensation or to have the compensation paid to his or her employer. The election may be prospectively changed or revoked in writing.
6. In the event the Board schedules a special Board function, such as a conference or seminar, and determines that the attendance of all Directors at such function is necessary or desirable, the Board may adopt a resolution specifying the compensation to be paid to Directors for attendance at such function.

## **V. MEETINGS OF THE ASSOCIATION.**

### **A. Annual Meeting.**

The annual meeting of Members shall be held each year during the month of June at a time and place determined by the Board for the purpose of electing Directors and transacting any other business that may properly come before the meeting.

### **B. Special Meetings.**

Special meetings of Members may be called at any time by the Board for any purpose consistent with the Act.

### **C. Notice.**

At least 20 days' written notice of meetings shall be given to the Commissioner and to all known Members entitled to vote at the meeting. The Association shall exercise reasonable efforts to identify Members entitled to notice and to vote at meetings of the Association, but failure to so identify and give notice shall in no way excuse any person or entity which is eligible for membership in the Association from its obligations under the Act. Such persons or entities shall be bound by all actions of the Association or its Board taken pursuant to the Act or the Plan. When a meeting of the Members is adjourned to another time or place, notice of the adjourned meeting need

not be given other than by announcement at the meeting at which adjournment is taken.

D. Voting.

A Member's vote is a weighted vote based on the Member's Exposure Base or estimated Exposure Base, as determined pursuant to Article VI.D. of the Plan, if actual exposure base is not available, during the most recent calendar year for which Exposure Base data is available. Members with no Exposure Base and Members with negative Exposure Base shall have no vote. Votes may be cast by the Member in person or by proxy. When a Member votes in person through a representative at a meeting of the Members of the Association, the Member shall provide the representative with credentials, signed by an officer of the Member who is authorized to enter into contracts on behalf of the Member, indicating the representative's authority to vote on behalf of the Member, which credentials shall be filed with the Secretary or the Secretary's designee prior to or at the meeting. Members not voting in person or by proxy are deemed to have authorized proxy holders designated by the Board to vote on their behalf on any matters coming to a vote at any annual or special meeting, including any adjourned meeting of the Members. Cumulative voting is prohibited.

E. Quorum.

A quorum for meetings of Members is 51 percent of the total weighted votes of the Members present in person or by proxy. When a quorum is not present, any meeting may be adjourned and reconvened from time to time for that reason. When a quorum has been present at a meeting and Members have withdrawn from the meeting so that less than a quorum remains, the Members still present may continue to transact business until adjournment.

## **VI. PROVISION OF REINSURANCE.**

A. Indemnification for Ultimate Loss in Excess of Retention Limit.

The Association shall provide and each Member shall accept indemnification for 100 percent of the Ultimate Loss in each Loss Occurrence under Minn. Stat. Ch. 176, incurred on or after October 1, 1979, in excess of a Member's Retention Limit as provided in the Act, Plan and any Reinsurance Agreement or Operating Rules adopted by the Association, provided that the Association shall reimburse Members only for Member payments of Losses in excess of the Retention Limit, which Losses are not paid, payable, or reimbursable by any other insurance, reinsurance, Special Compensation Fund, or other recoverables. If a Member could have made timely and proper application for any such insurance, reinsurance, Special Compensation Fund, or other recoverables, but fails to do so, the Association may deny reimbursement for any amount which the Member could have received and which would have reduced the Association's reimbursements. Each retention level has a corresponding retention dollar limit, as determined in accordance with the requirements of Minn. Stat. § 79.34, subd. 2. New Members of the Association shall be deemed to have selected

the low retention level unless they notify the Association before the effective date of their membership that they wish to select a different retention level. Members may change retention levels only on January 1 of each year, provided that the Board may, in its discretion, allow all Members to change retention levels on dates other than January 1. Each Member's retention level shall be automatically renewed each January 1 for the following year unless a Member notifies the Association by the preceding December 1 that it wishes to select a different retention level. The Association shall annually provide, by certified mail, each Member with 30 days' notice of such an opportunity to change retention levels. All notices of retention level selection or changes shall be delivered to the Association or postmarked by December 1 preceding the date on which retention level selections or changes are to be effective. A Member is liable for a Loss up to the Retention Limit in effect at the time that the Ultimate Loss was incurred.

In addition to indemnifying Members, the Association shall also reimburse a Former Member or an entity which has succeeded to the obligations of a Member for 100 percent of the Ultimate Loss, in excess of the Former Member's Retention Limit, resulting from a Loss incurred on or after October 1, 1979, and prior to the date of withdrawal, termination, merger, consolidation, or other transaction creating a successor in interest of a Former Member, provided that the Former Member has given the written notice to the Association required under Section A.3 of Article III. Entities which qualify under the provisions of Minn. Stat. § 176.185, subd. 8a may also be eligible for reimbursement by the Association.

If the Member becomes insolvent, indemnification for Losses payable by the Association shall be payable by the Association directly to the Member or its liquidator, receiver, or statutory successor.

If the Member or any other Member becomes insolvent, any liability of the insolvent Member to the Association shall be apportioned among the remaining Members on the same basis as reinsurance premiums are charged. The Association shall have, on behalf of all of the remaining Members, all rights allowed by law against the estate or funds of the insolvent Member for sums due the Association, and any amounts received by the Association as a result thereof shall be credited to the Members on the same basis as reinsurance premiums are charged.

#### B. Member Reporting and Reserving Requirements.

Members shall report to the Association such information as the Board may require on forms, including electronic forms, prescribed by the Association.

1. Immediately after a Loss is known to have been incurred, or at such times as the Association may require, Members shall report each Loss which, on the basis of the injury sustained, may reasonably be anticipated to involve liability to the Association. The Board may, by Operating Rule, determine, in its discretion, the types of injuries and/or amounts of Claims which must be reported to the Association. Further, the Board may, by Operating Rule, require Members to utilize specific methodologies for calculating reserves for purposes of reporting to

the Association, and may cause audits to be conducted, as deemed necessary or desirable, in the discretion of the Board, to assure that such methodologies are being properly utilized by the Members.

2. On a periodic basis as the Board determines, any changes in the amount of the reserve established by the Member with respect to any Loss, or any subsequent developments likely to materially affect the interest of the Association in a Claim, shall be promptly reported by the Member.
3. The Board may require the submission of loss and expense data, statistics, and any other necessary information at such times as determined by the Association.
4. Reporting Requirements. Members are required to annually report financial and loss data in a form prescribed by the Association to be used in the calculation of a Member's Premium.

Insurer Members are required to submit accurate and complete prior-year financial call and related information annually. Any Insurer Member failing to report data by the Association deadline agrees that its annual adjustment will be based on the Member's standard earned premium at company rate level as reported to the Minnesota Workers' Compensation Insurers Association (MWCIA).

Insurer Members acknowledge and agree that as a condition of their Association membership, they authorize Commerce and MWCIA to release such information to the Association as is necessary for the Association to set and maintain Member rates and Premiums.

Self-insurer Members are required to submit accurate and complete prior-year payroll data and related information annually. Self-insurer Members failing to report this data to the Association by the specified deadline shall be fined \$100 per calendar day for each report past due. Late reporting may be reported to Commerce and result in the termination of a self-insurer's ability to self-insure its Minnesota workers' compensation liability.

5. If a Member refuses or otherwise fails to submit reports and information required by the Board in a timely manner, or if the Association determines that the reports and information submitted by the Member are not reliable or complete, the Association may, at the Member's expense, directly, or through an agent (which may be another Member), audit and inspect such Member's records and compile the necessary information and data.
6. The Association is not relieved of any liability because of error or accidental omission of a Member in reporting any Claim provided that the error or omission is rectified promptly after discovery.

C. Association Reporting Requirements.

The Association shall maintain such data concerning Association liabilities as the Board deems appropriate and necessary. The financial statements of the Association shall be submitted to the Board and to the Commissioner no less frequently than annually, as determined by the Board, and shall be audited at least annually by a certified public accountant selected by the Board. An annual report of the operations of the Association containing the audited financial statements as adopted by the Board, and an account of the activities of the Association, shall be provided to Members. The books of account, records, reports, and other documents of the Association are open to inspection by Members at such times and under such conditions as the Association may reasonably determine. Information relating to any specific risk, Claim, plaintiff, defendant, or Member is confidential unless otherwise determined by the Board.

D. Premium Charges to Members.

1. The Board shall calculate and charge to Members Premiums which, together with the investment income earned thereon, are sufficient to cover the expected liability which the Association has incurred or may incur during the period established by the Board to which the Premium will apply. Member premium rates must be approved by the Commissioner. The following factors must be considered in setting premium rates:
  - a. Incurred and estimated to be incurred Ultimate Losses between the Retention Limits and the Prefunded Limit, together with unallocated Claim Expenses associated with those Ultimate Losses;
  - b. Anticipated investment income, at a rate determined by the Board, earned on funds held between the receipt of premiums and the payment of the Ultimate Loss between the Retention Limits and the Prefunded Limit;
  - c. Member Payments for Claims in excess of the Prefunded Limit, together with unallocated Claim Expenses associated with those Member Payments;
  - d. Excess or Deficient Premiums, as determined by the Board, from previous periods;
  - e. Operating and Administrative Expenses; and
  - f. Reinsurance Premiums charged to the Association pursuant to the reinsurance by the Association of all or any portion of its potential liability with a reinsurer pursuant to Section J. of this Article.
2. Premium charges shall be calculated as follows:
  - a. Exposure Base is the basis for Premium charges as follows: each Member shall be charged an amount equal to a ratio of the Member's Exposure Base to

the total Exposure Base of all Members for workers' compensation insurance and liabilities in Minnesota, as approved by the Commissioner.

- b. The Board shall approve Annual Reinsurance Premium Rates for all Retention Limits for Members at the beginning of each calendar year for Reinsurance during that year pursuant to procedures established by Operating Rule, and shall charge Premiums calculated based on the estimated Exposure Base for that year and charged pursuant to Section D.3. of this Article. These Premiums shall be adjusted and finalized after the year is ended to reflect the actual Exposure Base for each Member for the calendar year. An estimated Premium shall be calculated for each Insurer or Self-insurer which becomes a new Member of the Association after the beginning of a calendar year based on the Annual Reinsurance Premium Rates approved by the Board and on the Member's estimated Exposure Base for the calendar year during which the Insurer or Self-insurer becomes a Member of the Association. This Premium shall be adjusted and finalized at any time after the year is ended to reflect the actual Exposure Base for each such Insurer or Self-insurer for the Calendar Year.
- c. The Premium charged by the Association shall not be unfairly discriminatory, as determined under Minnesota law.
- d. Notwithstanding any other provision of this section, each Member may be charged a Premium surcharge or minimum Premium for membership in the Association as determined by the Board and approved by the Commissioner.

### 3. Premium Payment.

- a. Premiums shall be charged to Members on a periodic basis as established by the Board.
- b. Premiums shall be payable in full within 25 days of the date of the mailing of a notice of Premium, or within such other period of time as the Board may establish.
- c. The Association may offset against the Premiums or any assessments charged to Members the amount of indemnification payable to Members pursuant to this Article, provided that no Member may offset against Premiums and assessments charged by and payable to the Association the amount of indemnification claimed from the Association by the Member pursuant to this Article unless authorized in advance by the Association.
- d. If any Member fails to pay the Premium or any assessments charged on the date that payment is due, interest may be charged to the Member on all past-due amounts at such rates as the Board may establish. Premium shall also be considered past due and interest may be charged if a Member's failure to timely provide the Association with Exposure Base Information necessary to calculate the Member's Premium results in a delay in Premium payments. Further, if past-due payments are not paid after notice in writing is given by

the Association, the Association may offset the past-due amount or deficiency, together with any interest accrued thereon, against any indemnification then or thereafter payable to the Member pursuant to Section A. of this Article. The Association may also take other necessary actions including instituting legal action against the Member or requesting the enforcement assistance of the Commissioner or the Commissioner of Commerce. Any legal or other expenses incurred by the Association as a result of the Member's failure to pay Premiums when due may be charged to and paid by the Member if there was not a bona fide dispute concerning the Premium payment, as determined by the Board.

4. The Association is entitled, at the Association's expense, either directly or through an agent, to audit and inspect, during reasonable business hours, each Member's records relating to the proper calculation of Premiums payable to the Association. This includes, but is not limited to, the right to inspect and audit records in the possession of an agent of the Member or a policyholder of a Self-insurer group, trust, or association. Members are required to cooperate in the audit process and to provide materials in a complete and timely manner, as determined by the Association, and will be responsible for any additional costs incurred by the Association if they do not cooperate.

E. Payment of Benefits.

1. Members shall pay all benefits for Losses reinsured with the Association in accordance with Minn. Stat. Chs. 79 and 176, and other Minnesota law, the Plan, the Reinsurance Agreement, or Operating Rules adopted by the Board, and in accordance with the terms of the Member's workers' compensation insurance policies or program of self-insurance, as appropriate, to the extent that such policy or program is not inconsistent with Minnesota law. The establishment of the Association does not in any way limit the Member's liability to employers, employees, or others under Minn. Stat. Chs. 79 and 176, and other Minnesota law.
2. In order to receive reimbursement from the Association in accordance with Section E.4. of this Article, Members shall submit to the Association an itemized account of actual Loss payments made in accordance with Ch. 176 and any additional documentation on forms approved by the Association and pursuant to the Reinsurance Agreement or Operating Rules adopted by the Board.
3. Whenever a Member recovers from third parties, pursuant to Section H. of this Article, an amount for which it has already been reimbursed by the Association, the Member shall promptly turn such proceeds over to the Association, less the costs of recovery, to the extent of any reimbursement already received from the Association.
4. The Association shall reimburse Members only for Member payments of Losses in excess of the Retention Limit to the extent that Losses are not paid, payable, or reimbursable by any other insurance, reinsurance, Special Compensation Fund, or other recoverables. If a Member could have made timely and proper application

for any such insurance, reinsurance, Special Compensation Fund, or other recoverables, but fails to do so, the Association may deny reimbursement for any amount which the Member could have received and which would have reduced the Association's reimbursements.

F. Monitoring Members' Claims Procedures and Practices.

1. Members shall defend against all questionable Claims and may settle Claims. A Member shall permit the Association, at the Association's expense, to associate with the Member in the defense or control of any Claim, Loss, or legal proceeding which may potentially affect the Association's liability.
2. The Association shall establish procedures to verify that Members' claims procedures and practices are adequate to properly service Claims which may potentially affect the Association's liability.
3. The Association is entitled, at the Association's expense, either directly or through an agent, which may be another Member, to audit and inspect, during reasonable business hours, each Member's records in relation to all Claims or related matters affecting the Association. If a Member refuses or otherwise fails to submit reports and information required by the Association in a timely manner, as determined by the Association, or if the Association determines that the reports and information submitted by the Member are not reliable or complete, the Association may, at the Member's expense, directly, or through an agent (which may be another Member), further audit and inspect such Member's records and compile the necessary information and data.
4. If the Association determines that the claims procedures or practices of a Member are inadequate to properly limit the liabilities of the Association, or may, in any way, jeopardize the interests of the Association, the Association may reduce reimbursements to the Member, or withhold reimbursements from the Member until the Association determines that the deficiencies in the claims procedures have been resolved, or the Association may, with the approval of the Board and at the Member's expense, undertake directly or contract with another person, including another Member, to adjust or assist in the adjustment of a Claim or Claims which create a potential liability to the Association. The Association may charge the costs and expenses of these activities, including legal expenses, to the Member, and the Member shall cooperate fully with the Association in such claims management. If the Board determines that the claims procedures or practices of a Member are inadequate to properly service the liabilities of the Association, or may, in any way, jeopardize the interests of the Association, the Association may impose a Premium surcharge and may also recommend to the Commissioner and the Commissioner of Commerce that an Insurer Member's license to transact workers' compensation insurance, or a Self-insurer Member's authorization to self-insure workers' compensation liability, pursuant to Minn. Stat. § 176.181, be revoked.

G. Settlements.

Members have the general authority and responsibility to adjust Claims, including the authority to settle Claims. The Association has the responsibility to provide prompt reimbursement to the Member for the settlement amount, subject to the following limitations.

1. Members are required to notify the Association prior to entering into claim settlements that may involve present or future Association reimbursements. Members must notify the Association of a proposed settlement in a timely manner so that the Association claims staff has sufficient time to adequately review the proposed settlement and discuss with the Member the accuracy and reasonableness of the settlement and its potential impact on the Association. If a settlement involving Association funds is executed without such notification to the Association, and the Association has no disagreement with the terms of the settlement as described in this section, the Association will reimburse the Member for the settlement amount. If the Association disagrees with the terms of a settlement entered into by a Member because of errors in applying the provisions of Minn. Stat. Ch. 176 in determining the settlement amount, or because it believes the settlement is excessive and materially and adversely affects the Association's interests, the Association will only reimburse any undisputed settlement amounts.
2. The Member may request a review of the denial of reimbursement to be conducted by the president of the Association or designee, together with a management representative of the Member designated at the time of the request for review. This review and decision will occur within 30 days of the request. If the Member is not satisfied with the result of the review process and the Association reduces the Member's reimbursement amount, it may choose to seek arbitration as provided in Article VIII.B. of the Plan.

H. Subrogation, Salvage and Third-Party Recoveries.

Each Member shall, to the extent permitted by law, prosecute or intervene in any and all Claims the Member or an employer, employee, beneficiary, or other person may have against any third party arising out of any Loss Occurrence. A Member may waive its subrogation rights in writing in advance of any Loss Occurrence. A Member must obtain the written approval of the Association if it wishes to waive its subrogation rights after the Claim has occurred. If the Member waives its subrogation rights after a Claim has occurred without first obtaining the agreement of the Association, and the Association determines that it was not in its best interests to waive subrogation, the Association may refuse to indemnify the Member for that Claim to the extent of amounts which the Association determines could have been recoverable through subrogation. The Association may withhold reimbursements to the Member for other Claims to recover reimbursements already made on the Claim where subrogation was waived. All recoveries therefrom shall be applied to reduce the Loss which the Association is required to reimburse to the Member pursuant to this Article. Should the Member, employer, employee, beneficiary, or other person

have such a Claim against any third party which it fails or neglects to enforce within a reasonable time, upon request of the Board, the Association shall be subrogated to the Member's interest in such Claim and the Member shall execute any and all papers and documents necessary to vest full right, title, and interest in said Claim in the Association. The Association may prosecute such a Claim in its own name or in the name of the Member, employer, employee, beneficiary, or other person. The Member shall cooperate to the fullest extent with the Association in the enforcement of any such Claim. The proceeds derived from such a Claim, less the cost of recovery, shall first be used to reimburse the Association and any excess shall be paid to the Member or other party entitled thereto.

I. Authority to Sue and Intervene in Proceedings Under Minn. Stat. Chs. 79 and 176.

The Association is authorized to commence litigation when it appears necessary or desirable to do so in order to protect the Association's interests. The Association is further authorized to intervene in proceedings under Minn. Stat. Chs. 79 and 176 when the Association may be affected by such proceedings. The Association may establish standards and procedures for such intervention by Operating Rule.

J. Authority to Reinsure Potential Liability.

The Association is authorized to reinsure all or any portion of its potential liability, including liability in excess of the Prefunded Limit, with reinsurers licensed to transact insurance in Minnesota or otherwise approved by the Commissioner.

K. Dividends, Interest, Damages, Penalties, Commissions, Taxes, and Expenses.

The Association is not liable for any dividends, interest, additional awards, or damages, or penalties resulting from a Member's dilatory conduct or other proscribed conduct pursuant to Minn. Stat. §§ 176.221 and 176.183, or other damages or penalties, commissions, taxes, or any expenses, including assessments of the Special Compensation Fund or any other associations or funds, incurred by any Member in connection with Losses reinsured with the Association. A Member is liable for all such amounts on risks reinsured with the Association.

L. Reinsurance Agreement/Reinsurance Certificate.

The Board is authorized to adopt and amend a Reinsurance Agreement to govern the provision of Reinsurance by the Association as required by the Act and the Plan. The Reinsurance Agreement and any subsequent amendments shall become effective upon written approval of the Commissioner unless otherwise specified in any resolution adopting or amending the Reinsurance Agreement or unless otherwise specified by the Commissioner. The Association is authorized to issue to Members Reinsurance Certificates evidencing coverage pursuant to the Act and the Plan.

M. Other Necessary Acts.

The Association may perform all other acts necessary and proper to accomplish its purpose not inconsistent with the Act or the Plan and as authorized by the Board.

N. Liability to Third Parties.

Nothing in this Plan or the Reinsurance Agreement shall in any manner create any obligations or establish any rights against the Association or Members in favor of any third parties or any persons not Members of the Association. Nothing contained in this Plan or any Reinsurance Agreement or Operating Rules shall create any liability or responsibility on the part of the Association for actions of the Members.

O. Required Capital Band and Deficit Band; Excess or Deficient Premiums; Excess Surplus or Deficiency.

The Association will, as a policy objective, endeavor to maintain capital approximately within the Required Capital Band and Deficit Band, as defined in this section, or such higher or lower bands as the Board periodically may determine are reasonable and necessary. The Required Capital Band is that amount of capital, stated as a percentage of the Association's funded discounted loss and loss adjustment expense reserves, that the Association maintains to provide for variations between expected and actual investment returns, significant changes in reserves, adverse claims experience, and other unexpected financial developments. The Deficit Band is stated as a negative percentage of the Association's funded discounted loss and loss adjustment expense reserves and is intended to establish a level of deficit below which the Board should consider whether Deficient Premium or Deficiency Assessments are necessary. If the Association's capital exceeds the Required Capital Band or is less than the Deficit Band based on the Association's audited year-end financial statements, the Board may determine that a declaration and distribution or assessment of Excess or Deficient Premium or Excess Surplus or Deficiency may be made in accordance with the legal requirements of the Act, Plan, and Operating Rules as they have been interpreted by the courts.

## VII. INDEMNIFICATION.

A. Indemnification Mandatory; Standard.

The Association shall indemnify a person who is a present or former Director, officer, employee, committee member, or agent made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the Board determines that the person:

1. Has not been indemnified by another insurance company, organization, or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;

2. Acted in good faith;
3. Received no improper personal benefit and did not violate the Association's Conflict-of-Interest Policy adopted by the Board;
4. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
5. In the case of acts or omissions occurring in their official capacity, reasonably believed that the conduct was in the best interests of the Association and that the conduct was not opposed to the best interests of the Association. If the person's acts or omissions complained of in the proceeding relate to conduct as a Director, officer, trustee, employee, committee member, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the Association if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in this subdivision.

B. Advances.

If a person described in Article VII.A. is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the Association, to payment or reimbursement by the Association of reasonable expenses including attorneys' fees and disbursements incurred by the person in advance of the final disposition of the proceeding, (1) upon receipt by the Association of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in Article VII.A. have been satisfied, and a written undertaking by the person to repay all amounts so paid or reimbursed by the Association if it is ultimately determined that the criteria for indemnification have not been satisfied, and (2) after a determination that the facts then known to those making the determination would not preclude indemnification under this section. The written undertaking required by clause (1) is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

C. Reimbursement to Witnesses.

The Association may, at the discretion of the Board, reimburse expenses, including attorneys' fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

D. Determination of Eligibility.

All determinations whether indemnification of a person is required and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in Section B shall be made:

1. By the Board by a majority of a quorum. Directors who are at the time parties to the proceeding shall not be counted for determining either a majority or the presence of a quorum;
2. If a quorum under Section 1 cannot be obtained, by a majority of a committee of the Board, consisting solely of two or more Directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full Board including Directors who are parties;
3. If a determination is not made under Sections 1 or 2, by independent legal counsel, who may be the Association's regular counsel, selected either by a majority of the Board or a committee by vote pursuant to Sections 1 or 2 or, if the requisite quorum of the full Board cannot be obtained and the committee cannot be established, by a majority of the full Board including Directors who are parties;
4. If an adverse determination is made under Sections 1 to 3 or under the following paragraph, or if no determination is made under Sections 1 to 3, or under the following paragraph within 60 days after the termination of a proceeding or after a request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a Director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the Association, the determination whether indemnification of this person is required and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in Section 3 may be made by an appointed committee of the Board, having at least one member who is a Director. The committee shall report at least annually to the Board concerning its actions.

E. Insurance.

The Association is authorized, in the sole discretion of the Board, to purchase and maintain insurance on behalf of any present or former Director, officer, employee, committee member, or agent of the Association against any liability asserted against or incurred by the Director, officer, employee, committee member, or agent in the capacity of Director, officer, employee, committee member, or agent or arising out of such capacity.

F. Cumulative Rights.

The rights of indemnification provided in this Article do not limit, but are in addition to, any other rights to which such Director, officer, employee, committee member, or agent may otherwise be entitled by contract not inconsistent with this Article, law, statute, or otherwise. In the event of such person's death, such rights extend to his or

her heirs, legal representatives, or successors. Such rights shall also extend to a Former Member and the successors in interest of a Former Member. The foregoing rights are available whether or not such person continues to be a Director, officer, employee, committee member, or agent at the time of incurring or becoming subject to such liability and expenses, and whether or not the claim asserted against such person or entity is based upon matters which antedate the adoption or amendment of this Article.

G. Protected Action.

The Association, its Directors, and officers shall be fully protected in making any determination under this Article, in purchasing or failing or refusing to purchase the insurance authorized under this Article, in making or refusing to make any payment under this Article, and in reliance upon the advice of legal counsel.

H. Disclosure.

If the Association indemnifies or advances expenses to a person in accordance with this Article in connection with a proceeding by or on behalf of the Association, it shall report the amount of the indemnification or advance and to whom and on whose behalf it was paid as part of the annual financial statements furnished to Members covering the period when the indemnification or advance was paid or accrued under the accounting method of the Association reflected in the financial statements.

## **VIII. RESOLUTION OF COMPLAINTS AND ARBITRATION.**

A. Complaints to Association.

Any Member or other interested party aggrieved by any action or decision of the Board or the Association, or any agent of the Association, may, in addition to any other recourse available at law, including judicial review, file a written complaint with the Association concerning such action or decision within 30 days. The complaint will be resolved either through arbitration or by the Member Appeals Committee in accordance with the following procedures.

B. Arbitration.

Any dispute arising between a Member (or Former Member or successor in interest of a Member) and the Association with respect to Article VI. of the Plan or any provisions in the Reinsurance Agreement or Operating Rules adopted by the Board relating to coverage, Claim, or Premium issues, as determined by the Association, shall be arbitrated in accordance with this section and the procedures in Minn. Stat. §§ 572.08 to 572.30, the Uniform Arbitration Act. A single neutral arbitrator shall be agreed upon by the Member and the Association. If the parties are unable to agree upon a single neutral arbitrator, three arbitrators shall be chosen, one by each party and the third by the two arbitrators so chosen. If either or both parties refuse or neglect to appoint an arbitrator or arbitrators within 30 days after receipt of written notice from the other party requesting the party to do so, the Commissioner may choose the arbitrator or arbitrators which the party or parties refuse or neglect to

choose, and the two arbitrators so chosen shall choose the third. If the two arbitrators fail to select the third arbitrator within 30 days after the second of the first two arbitrators is chosen, the Commissioner shall choose the third arbitrator. Each party shall submit its case to the arbitrator or arbitrators within 30 days of the appointment of the arbitrator. The decision of the arbitrator or a majority of the arbitrators shall be a final determination, binding upon both the Member and the Association. The expense of the arbitrator or arbitrators and the arbitration shall be divided as follows: the prevailing party shall pay 25 percent and the remainder shall be paid by the other party. In the event that no one party clearly prevails, the arbitrator or arbitrators shall specify the percentage of expenses to be contributed by the parties. Any such arbitration shall take place in Minneapolis or Saint Paul, Minnesota, unless some other location is mutually agreed upon by the Member and the Association.

C. Member Appeals Committee.

Any other unresolved complaint filed by a Member (or Former Member or successor in interest of a Member) shall be decided by a Member Appeals Committee. The Chair, subject to confirmation by the Board, shall appoint the Member Appeals Committee composed of three members, one of whom shall be the Vice Chair of the Board, who shall serve as chair of the Committee, one of whom shall be a Director representing insurers, and one of whom shall be a Director representing self-insurers. If any member of the Committee is unable to serve for any reason, the Chair shall appoint a temporary substitute, who represents the same constituency on the Board as the member who is replaced, and who shall serve to decide the dispute before the Committee. The Association must refer the complaint to the Member Appeals Committee. The complaint may be decided by the Committee based on written submissions by the Member and the Association, through an informal conference, or through a formal hearing, at the sole discretion of the chair of the Committee. The Committee shall follow procedures established by Operating Rule. A quorum for the Committee is three members, and a decision of a majority of the members participating is the decision of the Association.

D. Appeal to Commissioner.

Any Member aggrieved by a determination by the Member Appeals Committee on a complaint pursuant to Section C. of this Article, may appeal such determination to the Commissioner within 30 days, provided that, in addition, such Member shall have any other recourse available at law, including judicial review. Upon receipt of such an appeal the Commissioner may, in the Commissioner's discretion, affirm, reverse, or modify the determination of the Member Appeals Committee, or may order the parties to submit to the arbitration process provided in Section B. of this Article. The Commissioner, in considering any appeal, may utilize any procedures available to the Commissioner, including but not limited to, the procedure set forth in Minn. Stat. Ch. 14 relating to contested cases.

## **IX. AMENDMENTS.**

### **A. Procedure with Members' Ratification.**

This Plan may be amended, in whole or in part, as follows:

1. Proposal of an amendment by the Board and adoption by a majority vote of the Board at a meeting called for that purpose;
2. Preliminary approval of the Commissioner;
3. Ratification by a majority vote of the Members at any annual meeting or at a special meeting duly called for that purpose; and
4. Final approval of the Commissioner, provided that amendments shall be deemed approved when 30 days have elapsed after the date of ratification by the Members, excluding the date of the Members' meeting, if not sooner disapproved by written order of the Commissioner.

### **B. Delegation of Authority to Ratify.**

At the Organizational Meeting of Members of the Association on September 6, 1979, a majority of the Members voting in person or by proxy at the meeting called for that purpose authorized the Board to exercise the power of amendment of the Plan without ratification by the Members. The Board may, by a majority vote of the Directors, amend the Plan. Such authority shall continue until revoked by the Members, provided that the Members, by a majority vote of the Members voting in person or by proxy at a meeting called for that purpose, may prospectively revoke the authority of the Board to amend the Plan without ratification of Members. All amendments to the Plan must be approved by the Commissioner.

### **C. Terms of Plan and Reinsurance Agreement Conformed to Statute.**

The terms of this Plan or of the Reinsurance Agreement adopted by the Board which are in conflict with the Act or other Minnesota law are hereby amended to conform to the Act or to such law, and the Plan and the Reinsurance Agreement shall be deemed to be automatically amended to conform to any amendment to the Act, or to adoption of or amendment to other Minnesota law by the Minnesota Legislature, after the effective date of the Plan or Reinsurance Agreement. Such automatic amendment to the Plan or Reinsurance Agreement is effective on the effective date of such amendment to the Act or adoption of or amendment to other Minnesota law.

## **X. FISCAL YEAR.**

The fiscal year of the Association commences on January 1 of each year and ends on December 31.

## **XI. EFFECTIVE DATE.**

### **A. Effective Date of Initial Plan.**

This Plan is effective on the date the Commissioner issues final written approval of the Plan subsequent to ratification of the Members, provided that if the Members ratify the Plan in the form preliminarily approved by the Commissioner, the Plan will be deemed finally approved by the Commissioner and will become effective on the date on which the Plan is ratified by the Members.

### **B. Amendments.**

All amendments to this Plan are effective upon written approval of the Commissioner unless otherwise specified in the resolution amending the Plan or unless otherwise specified by the Commissioner.

## **XII. SEVERABILITY.**

If any provision in this Plan or the Reinsurance Agreement is for any reason determined to be invalid, the remaining provisions of the Plan or the Reinsurance Agreement shall not be affected thereby, but shall remain in full force and effect.