



WORKERS' COMPENSATION
REINSURANCE ASSOCIATION

Reinsuring Minnesota Work Comp Since 1979

Plan of Operation

Restated January 1, 2024

400 ROBERT ST. N,
SUITE 1700 ST. PAUL,
MN 55101-2026

WWW.WCRA.BIZ
651-293-0999
FAX: 651-229-1818

Plan of Operation

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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.
- 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 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. Due to legislation signed by the Governor on April 22, 2013 to eliminate the prefunded limit, Actuarial Excess or Deficient Premium also includes the loss payments and discounted loss reserves exceeding the prefunded limit for accident years 1979 through 2014 applying the discount rate of 6.5 percent reflected in the Association’s 2013 year-end financial statements.
- 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 V.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. Capital or Deficit. “Capital or Deficit” means the amount determined and reported, under Generally Accepted Accounting Principles, in the Association’s annual audited year-end financial statements as capital or deficit.
- G. Claim. “Claim” means a notice, demand, or other written or oral communication by or on behalf of an insured employer or an employee or beneficiary for the payment of benefits under Minn. Stat. Ch. 176.
- H. Claim Expenses. “Claim Expenses” means those expenses incurred in determining the facts or disposition of a Claim, Loss Occurrence, or legal proceeding, in evaluating the extent of disability, or in connection with any legal proceeding, and other such expenses incurred in administering workers’ compensation Claims. Without in any way limiting the foregoing, “Claim Expenses” include, but are not limited to, investigation and legal expenses, court costs, interest, and penalties. Except to the extent otherwise provided by Claims Operating Rule, Claim Expenses are not subject to indemnification by the Association and are not Ultimate Loss.
- I. Claims Operating Rule. “Claims Operating Rule” means rules relating to Claims or Claim Expenses adopted by the Board, from time to time, for the management of the affairs of the Association, pursuant to Minn. Stat. § 79.36(5).

- J. Commissioner. “Commissioner” means the Commissioner of Labor and Industry for the State of Minnesota.
- K. Commissioner of Commerce. “Commissioner of Commerce” means the Commissioner of Commerce for the State of Minnesota.
- L. 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-Insurers.
- M. Director. “Director” means member of the Board.
- N. Entity in Interest or Entities in Interest. “Entity in Interest” or “Entities in Interest” means one or more entities, associations, political subdivisions, or persons, which, by agreement or operation of law, succeed, in whole or in part, directly or indirectly, to the rights, liabilities, or obligations of a Member to which this Plan applies, provided, however, that such entity, association, political subdivision, or person is only an Entity in Interest for purposes of and to the extent that such entity, association, subdivision, or person succeeds to such rights, liabilities, or obligations of a Member. For the avoidance of doubt, “Entity in Interest” and “Entities in Interest” include Net Worth Employers, statutory successors (including, without limitation, liquidators, receivers, and conservators), and any entity, association, political subdivision, or person that has reinsured a part or all of Member’s business; provided, however, that, with the exception of a Net Worth Employer in its capacity as such, Entity in Interest and Entities in Interest do not include an insured employer, employee, or beneficiary that has made a Claim, regardless of whether that employer, employee or beneficiary has received an actual or purported assignment of a Member’s rights under this Plan or any Reinsurance Agreement.
- O. Excess Investment Earnings. “Excess Investment Earnings” means the difference between Capital or Deficit as determined or adjusted by the Board and Actuarial Excess or Deficient Premium.
- P. Excess or Deficient Premium. “Excess or Deficient Premium” means the sum of Actuarial Excess or Deficient Premium and Member Excess Investment Earnings.
- Q. 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.
- R. 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 Premium Operating Rule, approved by the Board, and approved by the Commissioner, pursuant to Minn. Stat. § 79.35(4).

- S. Insurer. “Insurer” means any insurance carrier licensed by the Commissioner of Commerce and authorized to transact the business of workers’ compensation insurance in Minnesota.
- T. Loss Occurrence. “Loss Occurrence” means a single compensable event, as determined by the Association, under Minn. Stat. Ch. 176, out of which one or more Claims arise.
- U. Member. “Member” means an Insurer or Self-Insurer.
- V. 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.
- W. Member Payments. “Member Payments” means that portion of the Ultimate Loss which has been paid by the Member or its Entity in Interest, including any deductible amounts paid by insured employers. “Member Payments” include, without limitation, that portion of the Ultimate Loss which has been paid by the Member or its Entity in Interest after the termination of a Member’s membership, or a Member’s withdrawal from membership, in the Association.
- X. Net Worth Employer. “Net Worth Employer” means an employer whose Insurer became insolvent and the employer is liable for Claims that were covered under the employer’s policy with the insolvent Insurer, pursuant to Minn. Stat. §§ 176.185, subd. 8a.(a) and 60C.09, subd. 2.(3) and (4).
- Y. 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.
- Z. Operating Rule. “Operating Rule” means rules adopted by the Board, from time to time, for the management of the affairs of the Association, pursuant to Minn. Stat. § 79.36(5). The Operating Rules include but are not limited to the Claims Operating Rule and the Premium Operating Rule.
- AA. Plan. “Plan” means the Plan of Operation adopted or amended by the Association pursuant to Minn. Stat. § 79.38.
- BB. Policyholder. “Policyholder” means Minnesota workers’ compensation policyholders of Insurers.
- CC. Premium. “Premium” means the amount or amounts charged for Reinsurance pursuant to Minn. Stat. § 79.35(4).
- DD. Premium Operating Rule. “Premium Operating Rule” means rules related to the determination of a Member’s Exposure Base, billing, premium payments, assessments, and surplus distributions adopted by the Board, from time to time, for the management of the affairs of the Association, pursuant to Minn. Stat. § 79.36(5).

- EE. Reinsurance. “Reinsurance” means the indemnification provided by the Association pursuant to the Act and this Plan.
- FF. 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.
- GG. 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 Ultimate Loss.
- HH. 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.
- II. Ultimate Loss. “Ultimate Loss” means the amount which is paid or payable by a Member or Entity in Interest in accordance with Minn. Stat. Chs. 79 and 176 for a Claim or Claims arising out of a Loss Occurrence, subject to the reductions permitted in Parts Seven, Eight, and Ten of the Reinsurance Agreement, but does not include Claim Expenses, assessments, damages, penalties, or other payments specifically excluded by the Association. Any amounts paid 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.
- JJ. Unallocated Claim Expenses. “Unallocated Claim Expenses” means those expenses incurred by the Association to administer Loss Occurrences 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. 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 2022 annual meeting and every third year thereafter, the Insurers shall elect two Insurer representatives. At all other annual meetings thereafter, the Insurers 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 2023 and 2024 annual meetings and every third year thereafter, the Self-Insurers 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 2022 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 2023 annual meeting of Members and every third year thereafter, the Commissioner shall appoint one employee representative.
5. At the 2024 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 unless waived by a majority vote of Directors.

3. The Board may determine that any meeting of the Board may be conducted by any means of remote communication through which all persons participating in the meeting may participate. Participation by remote communication constitutes presence in person at the meeting for the purposes of determining the existence of a quorum. The Board may determine that any Director not physically present at any meeting of the Board conducted at a designated physical location may participate by means of any remote communication. Participation by remote communication constitutes presence in person at the meeting for the purpose of determining the existence of a quorum.
4. Any action required or permitted 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 or electronically.

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. The President may authorize any officer to enter into any contract or execute and deliver any instrument in the name and on behalf of the Association and such authority may be general or confined to specific instances.

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 may 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 Insurers 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 IV.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-Insurers. 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 IV.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 by any means of remote communication through which any member of a committee may participate. Members of any operating or advisory committee not physically present at any operating or advisory committee meeting conducted at a designated physical location may participate by any means of remote communication. Participation by remote communication as described in this section constitutes presence of such members at the meeting in person for the purpose of determining a quorum.
- h. Any action required or permitted 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 or electronically.

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 multiple meetings held on the same day unless the meetings are held by different committees or involve a meeting of the Board and separate meetings of a committee or committees.
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. 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.

IV. 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. Annual meetings also may be conducted by any means of remote communication in accordance with Article IV.F. hereof, if designated by the Association.

B. Special Meetings.

Special meetings of Members may be called at any time by the Board for any purpose consistent with the Act. Special meetings also may be conducted by any means of remote communication in accordance with Article IV.F. hereof, if designated by the Association.

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 V.D. of the Plan and Part Five of the Reinsurance Agreement, 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 by proxy 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, as described in Article IV.D. 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.

F. Remote Participation.

The Association may determine that any regular or special meeting of Members may be conducted by any means of remote communication through which Members and proxies may participate, if notice of the meeting is given in accordance with Article IV.C. hereof. Participation by that means constitutes presence of such Members at the meeting in person for all purposes, or by proxy for all purposes. The Association may determine that Members and proxies not physically present at any regular or special meeting conducted at a designated physical location may participate by any means of remote communication. Participation by that means constitutes presence of such Members at the meeting in person for all purposes, or by proxy for all purposes.

V. DUTIES OF MEMBERS AND PROVISION OF REINSURANCE.

This Article incorporates by reference the Reinsurance Agreement, as it may from time to time be amended. The provisions of the Act, Plan, and Operating Rule shall be controlling in the event that they conflict with any provision of the Reinsurance Agreement.

Except for sections A., C., and J., wherever the term “Member” appears in this Article, Member shall also mean the Member’s Entities in Interest; provided, however, that for purposes of section D., “Member” does not mean an Entity in Interest in its capacity as a Net Worth Employer.

Sections B., D.3., and I. of this Article survive the withdrawal or termination of a Member’s membership in the Association pursuant to Minn. Stat. § 79.34, subd. 3 and an event or transaction that creates an Entity in Interest.

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

1. The Association shall provide and each Member shall accept indemnification for 100 percent of the Ultimate Loss sustained in each Loss Occurrence on or after October 1, 1979, in excess of the Retention Limit selected by the Member and in effect at the time of the Loss Occurrence, as provided in the Act, Plan and any Reinsurance Agreement or Operating Rules adopted by the Association.

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 effective on January 1 of each year, provided that the Board may, in its discretion, allow all Members to change retention levels effective on dates other than January 1; and provided further that all retention-level changes shall apply prospectively and not retroactively. Each Member’s retention level shall be automatically renewed each January 1 for the following year unless a Member notifies the Association in writing by the preceding December 1 that it wishes to select a different retention level. The Association shall annually provide, by certified mail or electronic delivery method, 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. If the Association is not notified of the Member’s change of retention level for the next coverage year by December 1, the Member shall be deemed to have chosen for the next coverage year the same retention level (low, high, super, or jumbo) which was in effect on December 1. A Member is liable for payment of its Ultimate Loss.

2. Following a Member’s withdrawal or termination from membership in the Association pursuant to Minn. Stat. § 79.34, subd. 3, the Association shall reimburse a Member or, with the exception of a Net Worth Employer, an Entity in Interest that has succeeded to the obligations of a Member for Ultimate Loss to which this Plan applies for 100 percent of the Ultimate Loss it sustained, in each Loss Occurrence on or after October 1, 1979, and prior to the date of the Member’s withdrawal or termination from membership in the Association in excess of the Retention Limit selected by the Member and in effect at the time

of the Loss Occurrence, provided that the Member or Entity in Interest has given the written notice to the Association required under Part One.B.1.c. of the Reinsurance Agreement, if applicable.

3. Net Worth Employers, in their capacities as such, shall be eligible for reimbursement for 100 percent of the Ultimate Loss sustained in each Loss Occurrence occurring on and after May 23, 2003, in excess of the Retention Limit selected by the Net Worth Employer's former Insurer and in effect at the time of the Loss Occurrence, if the Net Worth Employer has complied with the requirements for reimbursement of such Ultimate Loss for Self-Insurers, pursuant to Minn. Stat. § 176.185, subd. 8a.(a), (f) and (h).

Notwithstanding any other provision in this Article, the Association shall reimburse a Member or Entity in Interest only for its respective Member Payments of Ultimate Loss in excess of the applicable Retention Limit, which is not paid, payable, or reimbursable by any other insurance, reinsurance, Special Compensation Fund, or other recoverables.

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.

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 made available 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, Loss Occurrence, 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 in excess of the Retention Limits, together with unallocated Association expenses for claims 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 in excess of the Retention Limits;
 - c. Member Payments for Claims in excess of the applicable Retention Limits together with unallocated Association expenses for claims 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 Parts Five.B., Five.G., and Five.H. of the Reinsurance Agreement. 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.

The Premium charged by the Association shall not be unfairly discriminatory, as determined under Minnesota law.

- c. 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. If any Member fails to pay the Premium or any assessments charged on the date on which 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. 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.

- E. 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.

- F. Authority to Reinsure Potential Liability.

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

- G. 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.

- H. 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.

I. Liability to Third Parties.

Except as expressly provided herein, 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.

J. Capital Threshold and Deficit Threshold; Excess or Deficient Premiums; Excess Surplus or Deficiency.

The Association will, as a policy objective, endeavor to maintain capital approximately above the Deficit Threshold, as defined in this section, that provides for variations between expected and actual investment returns, significant changes in reserves, adverse claims experience, and other unexpected financial developments. The Deficit Threshold is stated as a negative percentage of the Association's 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. The Capital Threshold is stated as a percentage of the Association's discounted loss and loss adjustment expense reserves and is intended to establish the minimum level of capital that the Association should retain when issuing a distribution of capital. The Capital Threshold and Deficit Threshold are based on the Association's audited year-end financial statements. If the Association's capital exceeds the Capital Threshold or is less than the Deficit Threshold, the Board may determine whether to declare a distribution or assessment of Excess or Deficient Premium or Excess Surplus or Deficiency in accordance with the legal requirements of the Act, Plan, and Operating Rules as they have been interpreted by the courts. Members shall timely submit such information and data to the Association as the Board deems necessary for the Association to set and maintain Member assessments and distributions.

VI. INDEMNIFICATION.

A. Indemnification Mandatory; Standard.

The Association shall indemnify a person who is a present or former Director, officer, employee, committee member, or agent of the Association and who is 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, reasonably 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 VI.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 VI.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. 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.

VII. RESOLUTION OF COMPLAINTS AND ARBITRATION.

Wherever the term "Member" appears in this Article, Member shall also mean the Member's Entities in Interest. This Article shall survive the withdrawal from, or termination of, a Member's membership in the Association and any event or transaction that creates an Entity in Interest.

A. Disputes.

The following provision applies in the event that a dispute arises between a Member and the Association or any agent of the Association relating to the Plan, the Reinsurance Agreement, or Operating Rules (a "Dispute").

B. Complaints to Association.

Prior to seeking any legal remedy in any other form, a Member must first describe any Dispute in connection with which it believes it has suffered or will suffer harm in writing and provide that writing to the Association. In the event that the Dispute has

not been resolved within thirty (30) days after a final decision of the President of the Association regarding the Dispute, the Member's sole and exclusive options shall be to pursue a remedy through either (but not both) of the processes described in Article VII, Member Appeals or Arbitration, by communicating such election to the Association within forty-five (45) days after receipt of the President of the Association's final decision regarding the Dispute. In the event a Member makes no election within that time period, the Dispute shall be resolved through Arbitration.

C. Member Appeals.

The Chair of the Association, 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 Member Appeals 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 Dispute to the Member Appeals Committee. The Dispute may be decided by the Member Appeals 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 Member Appeals Committee. The Member Appeals Committee shall follow procedures established by Operating Rule. A quorum for the Member Appeals Committee is three members, and a decision of a majority of the members participating is the decision of the Association.

Any Member aggrieved by a determination by the Member Appeals Committee regarding a Dispute pursuant to this provision may appeal such determination to the Commissioner within thirty (30) days of the determination. 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 order the parties to submit to the Arbitration process provided in this provision. 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.

D. Arbitration.

Unless otherwise agreed in writing between the Association and a Member, all Disputes not resolved through Member Appeals must exclusively be submitted to confidential, final and binding arbitration under the then current Commercial Arbitration Rules of the American Arbitration Association ("AAA"), by one (1) arbitrator in Minneapolis or St. Paul, Minnesota. Such arbitrator must either be a retired judge or an attorney with a minimum of ten (10) years of experience with legal issues relevant to the Dispute. The arbitrator meeting those qualifications shall be selected by the mutual agreement of the parties, or, failing such agreement, according to the AAA rules. The arbitrator will be instructed to prepare and deliver a written, reasoned opinion stating a decision within thirty (30) days of the completion of the arbitration.

The decision of the arbitrator shall be final and binding upon the Parties and nonappealable. Any award of the arbitrator may be enforced by the party entitled thereto in any court having jurisdiction over the subject matter or the parties.

VIII. AMENDMENTS.

A. Procedure with Members' Ratification.

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

1. Proposal of an amendment by a member of the Board and adoption by a majority vote of the Board at a meeting duly called for that purpose;
2. Ratification by a majority vote of the Members at any annual meeting or at a special meeting duly called for that purpose; and
3. Written approval by the Commissioner, except 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.

In addition, the Board and the Commissioner shall have powers to amend this Plan under procedures set forth in Minn. Stat. § 79.38, subd. 3.

All amendments to this Plan are effective upon written approval by the Commissioner unless a different effective date is specified in the resolution amending the Plan. The Commissioner's written approval is required unless otherwise specified by applicable law.

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.

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.

IX. FISCAL YEAR.

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

X. 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.