



WORKERS' COMPENSATION  
REINSURANCE ASSOCIATION

Reinsuring Minnesota Work Comp Since 1979

## Reinsurance Agreement

**Effective January 1, 2024**

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

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

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## **NATURE AND SCOPE OF AGREEMENT**

### **A. Purpose**

The purpose of this Reinsurance Agreement (“Agreement”) is to set forth the basic terms and conditions of the reinsuring agreement between the Workers’ Compensation Reinsurance Association (“Association” or “WCRA”) and the Member. This Agreement is authorized by the Act (Minn. Stat. §§ 79.34–79.40); the Plan; and the Operating Rules.

Ref: Plan, Article V.G.

### **B. Parties**

This Agreement is solely between the Member and the Association. All affiliated Insurers within a holding company system shall be considered a single entity for purposes of the exercise of all rights and duties of membership in the Association. An Insurer will be considered an affiliate within a holding company system if it is under the “control” of the holding company system as the term “control” is defined in Minn. Stat. § 60D.15, subd. 4. Except as expressly provided herein, nothing in this Agreement, the Plan, or Operating Rules 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 Agreement, the Plan, or Operating Rules shall create any liability or responsibility on the part of the Association for actions of the Member or other Members or any Entity in Interest.

Ref: Minn. Stat. § 60D.15, subd. 4.  
Minn. Stat. § 79.34, subd. 1.  
Plan, Article V.I.

### **C. Definitions**

To the extent defined in the Plan or in the Operating Rules, the words used but not defined in this Agreement shall have the meanings given them by the Plan and the Operating Rules.

Ref: Plan, Article I.

### **D. Agreement Incorporates by Reference the Plan of Operation and Operating Rules**

This Agreement incorporates by reference the Plan and the Operating Rules as they may from time to time be amended. The provisions of the Act, Plan, and Operating Rules shall be controlling over any conflicting provisions of this Agreement. The Member, on behalf of the Member and any future Entity in Interest relative to that Member, agrees to be bound by future amendments to the Plan and Operating Rules even if such amendments are adopted by the Association after the withdrawal or termination of a Member’s membership in the Association or after the occurrence of an event or transaction that creates an Entity in Interest.

Ref: Plan, Article VIII.C.

**E. Application to Entities in Interest**

With the exception of the following Parts and sub-Parts, wherever the term “Member” appears in the numbered Parts of this Agreement, Member shall also mean the Member’s Entities in Interest: Part One.A.; Part One.B.1.a. through c.; Part One.B.4.; Part Two; Part Three; Part Four.E.; Part Five.C.; Part Five.D.; Part Eleven; and Part Thirteen. Notwithstanding the foregoing, for purposes of Parts Five.E., Five.G., and Five.H. of this Agreement, “Member” does not mean an Entity in Interest in its capacity as a Net Worth Employer.

**F. Survival**

Certain rights and duties set forth in this Agreement shall survive the withdrawal or termination of a Member’s membership in the Association pursuant to Minnesota Stat. § 79.34, subd. 3, and an event or transaction that creates an Entity in Interest, including, but not necessarily limited to the rights and duties set forth in Part One.A.; Part One.B.1.b. through 1.d, 2., 3., 4., and 5.; Part Five.E., .G., and .H.; and Parts Six through Twelve.

**PART ONE: Reinsurance Agreements**

**A. Indemnification for Ultimate Loss**

Subject to the terms and conditions of the Act, the Plan, and the Operating Rules:

1. The Association shall provide and each Member shall accept indemnification for 100 percent of the Ultimate Loss sustained in each Loss Occurrence that takes place during the Term of this Agreement, 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, this Reinsurance Agreement, and any Operating Rules adopted by the Association.
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 Reinsurance Agreement applies. Reimbursement shall be provided for 100 percent of the Ultimate Loss it sustained, in each Loss Occurrence that takes place during the Term of this Agreement in excess of the Retention Limit selected by the Member and in effect at the time of the Loss Occurrence, but only if the Member or Entity in Interest has given the written notice to the Association required pursuant to Part One.B.1.c. of this Agreement.
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 that takes place during the Term of this Agreement, 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).

4. For losses incurred on or after January 1, 1984, the Association shall indemnify the Member or its Entity in Interest for Ultimate Loss, in excess of the retention limit selected by the Member and in effect at the time of the Loss Occurrence, sustained in each Loss Occurrence relating to one or more Claims arising out of a single compensable event in another state provided that: (1) the Loss Occurrence takes place during the Term of this Agreement; and (2) the injured worker is eligible for benefits under Minn. Stat. § 176.041, subds. 2 or 3, but elects to receive benefits under the workers' compensation statute of such other state in lieu of benefits under chapter 176. The Ultimate Loss indemnified by the Association shall be determined as provided in Minnesota Statutes Chapter 79, except that the benefits shall be equal to those required to be paid under the workers' compensation statute of the state elected, as provided in Minn. Stat. § 79.34, subd. 7, provided further that the wages of the injured worker have been included in the total compensation reported by the Member to the Association.

Notwithstanding any other provision in Part One of this Agreement, a Member is liable for payment of its Ultimate Loss. and 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.

As a condition of indemnifying or reimbursing an Entity in Interest for Ultimate Losses pursuant to Part One of this Agreement, the Association may require the Entity in Interest to agree in writing to hold the Association harmless from any claims, whether asserted by the Member, another actual or purported Entity in Interest, or any other third party, alleging that the Association improperly indemnified or reimbursed the Entity in Interest. In no event shall the Association be required to indemnify or reimburse any Ultimate Loss more than once.

Ref: Minn. Stat. § 79.34, subd. 2.  
Minn. Stat. § 79.34, subd. 7.  
Minn. Stat. § 176.041, subds. 2 and 3.  
Plan, Article V.A.

## **B. Member's Duties**

The Member shall comply with all requirements of the Act, this Agreement, the Plan, and Operating Rules. These requirements include, but are not limited to, the following:

1. 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 this Agreement, the Plan, and Operating Rules, and shall be bound by the Plan and any Reinsurance Agreement or Operating Rules adopted by the Board pursuant to the Plan.

- a. 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, in the following circumstances: 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. In the event that a political subdivision or group of political subdivisions that self-insure workers' compensation liability fails to pay Premiums to the Association when due, fails to comply with the Plan, Reinsurance Agreement, or Operating Rules, or otherwise fails to comply with the Act, the Association shall notify the Commissioner and the State Auditor. 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 when all workers' compensation insurance policies issued by such insurer have expired. A Self-Insurer may voluntarily withdraw from membership in the Association only upon ceasing to be approved to self-insure workers' compensation liability in this state pursuant to section 176.181, provided that self-insured political subdivisions may voluntarily withdraw from the Association at any time they stop self-insuring and provide written notice 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. A Member shall continue to be bound by the Act, Plan, and any Reinsurance Agreement and Operating Rules even after the Member's withdrawal or termination from membership in the Association pursuant to Minn. Stat. 79.34, subd. 3.

- b. Insolvent Members. Upon determination by the Commissioner of Commerce, or a competent authority of the State in which the Member is incorporated or organized, that a Member is insolvent, or if otherwise necessary as determined by the Board, any material liability to the Association of such 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, funds, and assets of the insolvent Member, and with the exception of a Net Worth Employer, any Entities in Interest to the Member for sums due the Association. Any material amounts received by the Association as a result thereof shall be credited to the remaining Members on the same basis as Premiums are charged. The rights and duties set forth in Part One.B.1.b of this Agreement. apply regardless of when the Member is determined to be insolvent and even if the insolvency or determination of insolvency occurs after a Member has withdrawn from membership or experienced a termination of its membership in the Association pursuant to Minn. Stat. 79.34, subd. 3.

- c. Merger, Consolidation, Reinsurance of a Member's Business, or Other Entity in Interest of a Member. When any event or transaction occurs that creates an Entity in Interest relative to the Member, that Member and the Entities in Interest to the Member shall remain bound by the terms of the Act, Plan, and any Reinsurance Agreement with the Member and shall remain liable for the Member's obligations to the Association, including payment of Premiums and all other obligations under the Act, Plan, and any applicable Reinsurance Agreement or Operating Rules. A Member shall promptly notify the Association in writing of any change of ownership or legal structure and of the occurrence of any event or transaction that creates an Entity in Interest relative to the Member and shall promptly provide legal documentation of any such change, event, or transaction to the Association. The rights and duties set forth in Part One.B.1.c. of this Agreement apply regardless of when the event or transaction that creates an Entity in Interest occurs and even if the event or transaction occurs after a Member has withdrawn from membership or experienced a termination of its membership in the Association pursuant to Minn. Stat. 79.34, subd. 3.
- d. Third Party Administrators. Any Member choosing to hire a third-party administrator ("TPA") to administer any portion of its Association Member duties is required to notify the Association in writing and complete a TPA authorization in a form approved by the Association.

2. Duty to Accept Indemnification.

All Members shall accept indemnification from the Association as provided in Part One.A. of this Agreement.

3. Duty to Report to Association.

All Members shall report to the Association such information and data as required by the Association on forms, including electronic forms, approved by the Association. Such information shall be reported in an accurate, complete, and timely manner.

4. Duty to Pay Benefits.

Members and their Entities in Interest shall pay all benefits for Loss Occurrences reinsured with the Association in accordance with Minn. Stat. Chs. 79 and 176, and other Minnesota law, the Plan, the Reinsurance Agreement, and Operating Rules adopted by the Board, and in accordance with the terms and conditions 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 or its Entities in Interest's liability to employers, employees, or others under Minn. Stat. Chs. 79 and 176, and other Minnesota law, nor shall anything in this Agreement, the Plan, or Operating Rules in any way limit such liability.



5. Duty to Take Actions to Limit the Liabilities of the Association.

Members shall take all actions necessary to limit the liabilities of the Association.

Ref: Minn. Stat. § 79.34, subds. 1, 2, 4, 5.  
Plan, Article V.

**PART TWO: Retention Levels**

The Retention Limit that applies to this Agreement is the Retention Limit appearing in the Declarations page of this Agreement.

The Member shall select the low, high, super, or jumbo retention level for each calendar year. 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. All affiliated Insurers within a holding company system shall select the same retention level.

Members which are determined by the Association to be controlled by or under common control with another Member on the date of the Loss Occurrence giving rise to the Ultimate Loss, and which are liable for Claims from one or more employees entitled to compensation for a single Loss Occurrence, 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 Ultimate Loss in excess of the highest Retention Limit selected by any of the Members in effect at the time of the Loss Occurrence provided that a Member shall not be determined by the Association to be controlled by or under common control with another Member for purposes of this paragraph unless the Member has given the written notice to the Association required under Part One.B.1.c. of this Agreement, if applicable.

Ref: Minn. Stat. § 79.34, subds. 1 and 2.  
Plan, Article V.A.

### **PART THREE: Large Deductible and Excess Policies; Reinsurance Provided by Association Exclusive**

A Member shall not issue large deductible or excess policies in Minnesota for amounts in excess of its selected Retention Limit except as otherwise provided by Minn. Stat. §79.34, subd. 2. A Member selecting the high, super, or jumbo retention level shall not purchase reinsurance for Ultimate Loss below its Retention Limit except in certain circumstances specified by statute. A Member selecting the low retention level may purchase reinsurance from other organizations to provide indemnification for Ultimate Loss below its Retention Limit.

Ref: Minn. Stat. § 79.34, subd. 2.  
Minn. Dept. of Commerce, Bulletin 2007-7, 11 and 15.

### **PART FOUR: Coverage**

#### **A. General Scope**

The Association shall have no liability for death benefits where an injury prior to October 1, 1979 causes or contributes to death on or after October 1, 1979.

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. The Association is not liable for, and Ultimate Loss shall not include, any dividends, interest, additional awards, or damages, or penalties resulting from a Member's dilatory conduct or other proscribed conduct pursuant to the foregoing statutes, or other damages or penalties, commissions, taxes, or any expenses incurred by any Member or Entity in Interest in connection with Loss Occurrences reinsured with the Association. A Member is liable for all such amounts on risks reinsured with 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.

Ref: Minn. Stat. § 79.34, subd. 2.  
Plan, Article V.

#### **B. Per-Occurrence Basis**

Coverage shall be provided on a per-occurrence basis as determined by the Association, except as otherwise provided by statute, including, in the case of occupational disease, where coverage is provided on a per-person, per-occurrence basis.

Ref: Minn. Stat. § 79.34, subd. 2.  
Plan, Article I.T. and Article V.  
Minn. Stat. § 176.011, subd. 15(d).

#### **C. Claim Expenses**

Claim Expenses, assessments, and damages, and penalties shall not be indemnified by the Association unless otherwise covered by the Claims Operating Rule. Expenses subject to

indemnification include reasonable and necessary expenditures incurred in the preparation and development of a rehabilitation plan submitted to the Minnesota Department of Labor and Industry (“Labor and Industry”) and in the provision of rehabilitation services rendered in accordance with such a rehabilitation plan and other expenses as outlined in the Claims Operating Rule.

Ref: Minn. Stat. § 79.34, subd. 2.  
Plan, Article I.H.  
Claims Operating Rule.

**D. Assessments**

Assessments, including, without limitation, Special Compensation Fund assessments under Minn. Stat. § 176.129, shall not be included in Ultimate Loss or reimbursed by the Association. A Member is liable for all such amounts on risks reinsured with the Association.

Ref: Minn. Stat. § 79.34, subd. 2.  
Minn. Stat. § 176.129.  
Plan, Article I.II

**E. Term**

The Term of this Agreement is the period (a) commencing at 12:01 AM on the latter of the Start date appearing in the Declarations page of this Agreement or the date that the Member’s authority to either insure or self-insure workers’ compensation liabilities is authorized by Commerce; and (b) ending at 12:01 AM on the End date appearing in the Decalarations page of this Agreement, the date on which a new or amended Reinsurance Agreement becomes effective, or the effective date of the withdrawal or termination of the Member’s membership in the Association, whichever occurs first.

Ref: Minn. Stat. § 79.34, subds. 1 and 2.

**PART FIVE: Premiums**

**A. Annual Premium**

The Member shall pay an annual Premium, together with any Premium surcharges, for the Reinsurance coverage provided by the Association at the rate determined by the Board and approved by the Commissioner. Estimated Premium shall be calculated in accordance with procedures established in the Premium Operating Rule. When the actual Exposure Base figures for the billing year become available, the actual Premium shall be calculated. A Premium adjustment shall be made as provided in Part Five.C. of this Agreement.

Ref: Minn. Stat. § 79.35(4).  
Plan, Article V.D.  
Premium Operating Rule.

**B. Billing of Premium**

The estimated Premium shall be billed on an annual or quarterly basis, and other Premium adjustments will be billed when identified. Payments shall be due and payable in full within the period set by Premium Operating Rule. After a Member is deemed to have selected to be billed for Premium on either an annual or quarterly basis, that selection shall be fixed for the Term of this Agreement. Interest may apply if estimated Premium payments are not made within the period set by Premium Operating Rule based on the billing cycle selected by the Member. For Members whose estimated Premium is less than \$1,000, the estimated Premium shall be billed on an annual basis.

Ref: Plan, Article V.D.3.  
Premium Operating Rule.

**C. Annual Adjustment of Premium**

The Association shall annually provide to the Member a statement indicating adjustments for previous years' Premiums. Amounts due the Association as a result of the adjustment shall be due and payable in full within the period set by Operating Rule with late payments subject to interest charges established by the Board. Subject to Part Ten of this Agreement, amounts due the Member as a result of the adjustment may be credited to the Member's Premium account with the Association, and any credit Premium balance shall be refunded to the Member within the period set by Operating Rule.

Ref: Plan, Article V.D.  
Premium Operating Rule.

**D. Interim Adjustment of Premium**

Interim adjustments of estimated annual Premium will be provided if a Member provides sufficient documentation to support the change, as determined by the Association, under any one of the following circumstances:

1. When a Member ceases doing business in Minnesota;
2. When a Self-Insurer Member ceases to be an authorized Self-Insurer; or
3. When, after six months of a coverage year have elapsed, a Member can document that the Member's actual, annualized, six-month Exposure Base is at least 15 percent higher or lower than its estimated Exposure Base.

Ref: Premium Operating Rule.

**E. Premium Reporting Requirements**

Members are required to, annually and at any other time as requested by the Association, report financial and loss data, and any other information and data required by the Association by Operating Rule, in a form prescribed by the Association, to be used in the calculation of a

Member's Premium. 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.

Members acknowledge and agree that, as a condition of their Association membership, they authorize Commerce, Labor and Industry, and MWCIA to release such information to the Association as is necessary for the Association to set, maintain, and audit Member rates, Premiums, Claims reserves, assessments, and capital distributions. Members also acknowledge and agree that, as a condition of their Association membership, they authorize the Association to exchange data with MWCIA, Commerce, Labor and Industry and other organizations, as necessary and appropriate to improve data quality, to facilitate reconciling Members' reported data, to reduce the amount of data requested from Members and to otherwise carry out the responsibilities of the Association.

Ref: Plan, Article V.B.

**F. Excess Surplus Distributions, Excess Premium Distributions, Deficiency Assessments, and Deficient Premium Assessments**

The Board may determine whether to declare a distribution or assessment of Actuarial 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.

Ref: Minn. Stat. § 79.34, subd. 2a, § 79.35(4), and § 79.361.  
Plan, Article V.D.1.d. and V.J.  
Premium Operating Rule.

**G. Premium Audits**

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 provide complete and timely information or otherwise do not cooperate. At the request of a Member, the Association will enter into a confidentiality and non-disclosure agreement in a form approved by the Association. It will not enter into a Member's proposed confidentiality and non-disclosure agreement. Any Member that uses a TPA agrees that the TPA is authorized to execute the Association's confidentiality and non-disclosure agreement on its behalf and that the Member, the TPA, and the Association shall all be bound by its terms.

If a Member refuses or otherwise fails to submit reports and information required by the Association 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.

Ref: Minn. Stat. § 79.34, subd. 2, and § 79.35(4).  
Plan, Articles V.B., V.D.3.

#### **H. Remedies for Untimely Premium Payments**

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 at such rates as the Board may establish 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.

Ref: Plan, Article V.D.3.

### **PART SIX: Reimbursement Procedure for Indemnification of Losses**

In order to receive indemnification or reimbursement from the Association in accordance with Part One.A. of this Agreement, Members shall submit to the Association an itemized account of Member Payments made in accordance with Ch. 176 and any additional documentation on forms approved by the Association from time to time and pursuant to the Plan or Operating Rule adopted by the Board. The first request shall be submitted within six months after Member Payments made in accordance with Ch. 176 exceed the Member's Retention Limit. Thereafter, the Member, if entitled to indemnification by the Association, may file a reimbursement request form periodically, at intervals set by the Claims Operating Rule, until the Claim is closed. The request shall be submitted to the Association in accordance with the provisions of the Claims Operating Rule. If a Claim settles on a full, final, and complete basis, or the Claim file is closed, a reimbursement request may be filed at any time. The reimbursement request shall itemize all Member Payments made since submission of the last reimbursement request.

Proper and complete reimbursement requests for indemnification shall be promptly paid by the Association, subject to the terms and conditions of this Agreement, the Act, Plan, and Operating Rules.

Ref: Minn. Stat. § 79.35(2), (3), and (7).  
Plan, Article V.A.  
Claims Operating Rule.

### **PART SEVEN: Management of Claims and Losses**

#### **A. Claims, Settlements, Inadequate Claims Procedures**

The Member shall have the primary responsibility for the investigation, management, and defense of all Claims. The Member shall exercise the same diligence in the investigation, management, and defense of Claims involving Ultimate Loss that has reached, will reach, or that has the potential to reach the applicable Retention Limit as it does relative to Claims for

which it retains full liability. A Member shall permit the Association, at the Association's expense, to associate in the defense or control of any Claim, Loss Occurrence, or legal proceeding which may potentially affect the Association's liability.

The Member may settle and compromise disputed Claims that are within the terms and conditions of the original insurance policies or programs of self-insurance issued by the Member provided that such settlement or compromise is consistent with the claims procedures established by the Association.

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 Ultimate Loss shall include the entire portion of the settlement amount that satisfies the definition of Ultimate Loss set forth in the Plan. 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, Ultimate Loss shall include only that portion of the settlement amount that the Association does not dispute and that satisfies the definition of Ultimate Loss set forth herein.

The Member may request a review of the Association's positions with respect to a Member's settlement 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 thirty (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, the dispute shall be resolved in accordance with Part Twelve of this Agreement.

The Association shall establish procedures to verify that Members' claims practices are adequate to properly service Claims which may potentially affect the Association's liability. If the Association determines that the claims procedures, practices, or reporting 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 Ultimate Loss, reduce reimbursements to the Member, or withhold reimbursements or any other amounts due to the Member, until the Association determines that the deficiencies in the claims procedures, practices, or reporting 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. Except as provided in Minn. Stat. § 79.35(7), the Association may charge the costs and expenses of these activities, including legal expenses, to the Member (except an Entity in Interest in its capacity as a Net Worth Employer), and the Member shall cooperate fully with the Association in such claims management. If the Board determines that the claims procedures, practices, or reporting of a Member (except an Entity in Interest in its capacity as a Net Worth Employer) 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, if applicable, may also recommend to the Commissioner and the Commissioner of Commerce that an Insurer's license to transact workers' compensation insurance, or a Self-Insurer's authorization to self-insure workers' compensation liability, pursuant to Minn. Stat. § 176.181, be revoked.

Ref: Minn. Stat. § 79.35(7).  
Minn. Stat. §176.181.  
Claims Operating Rule.

## **B. Claims Audits**

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. At the request of a Member, the Association will enter into a confidentiality and non-disclosure agreement in a form approved by the Association. It will not enter into a Member's proposed confidentiality and non-disclosure agreement. Any Member that uses a TPA agrees that the TPA is authorized to execute the Association's confidentiality and non-disclosure agreement on its behalf and that the Member, the TPA, and the Association shall all be bound by its terms.

Ref: Minn. Stat. § 79.35(7).  
Plan, Article V.B.  
Claims Operating Rule.

## **C. Reporting and Reserving Requirements**

Immediately after a Loss Occurrence is known to have been incurred, and at such other times as the Association may require, Members shall report each Loss Occurrence, which, on the basis of the injury sustained, 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 by this Agreement, the Plan, and Operating Rule. The Board may, by Operating Rule, determine, in its discretion, the types of injuries and/or amounts of expected Ultimate Loss which must be reported to the Association.

Without in any way limiting the foregoing, Members shall promptly notify the Association in a form approved by the Association of any Loss Occurrence or Claim meeting reporting criteria identified in the Claims Operating Rule.

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 and desirable, in the discretion of the Board, to assure that such methodologies are being properly utilized by the Members.

On a periodic basis as the Board determines, any changes in the amount of the reserve established by a Member with respect to any Loss Occurrence, or any subsequent developments likely to materially affect the interest of the Association in a Loss Occurrence, shall be promptly reported by the Member, regardless of whether the Member has, at the time of the changes, withdrawn from or experienced a termination of its membership in the Association pursuant to Minn. Stat. § 79.34, subd. 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.

The Association is not relieved of any liability because of an error or accidental omission of a Member in reporting any Claim provided that the error or omission is rectified promptly after discovery.

Ref: Minn. Stat. § 79.35(2) and (3)  
Plan, Article V.B.  
Claims Operating Rule.

#### **D. Legal Proceedings**

The Association may intervene in legal proceedings under Minn. Stat. Chs. 79 and 176 and in any other legal proceedings when the Association may be affected by such proceedings. The Association shall notify the affected Member prior to intervening.

Ref: Minn. Stat. § 79.36(6).  
Plan, Article V.E.  
Claims Operating Rule.

### **PART EIGHT: 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. All recoveries therefrom shall be applied to reduce the Ultimate Loss.

1. Whenever a Member recovers from third parties, pursuant to Part Eight of this Agreement, 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.
2. 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, the Association may reduce the Ultimate Loss by the amount the Member would have recovered from such third parties. In the alternative, the Association, which shall

be subrogated to the Member's interest in such claim, may, in the Association's sole discretion, prosecute such a claim in its own name or in the name of the Member, employer, employee, beneficiary, or other person. 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 Member shall cooperate to the fullest extent with the Association in the enforcement of any such claim. Whenever, as a result of the prosecution of such a claim, the Association recovers from third parties an amount for which the Association has already reimbursed a Member, the Association shall retain such proceeds, plus the costs of recovery, to the extent of any reimbursement already paid by the Association, and any excess shall be paid to the Member or other party entitled thereto.

3. Notwithstanding any provision to the contrary in Part Eight of this Agreement, 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 Loss Occurrence. If the Member waives its subrogation rights after a Loss Occurrence 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 reduce the Ultimate Loss by the amount the Association determines could have been recoverable through subrogation. The Association may withhold reimbursements to the Member for other Claims and may offset any other amount due to the Member pursuant to Part Ten of this Agreement, to recover reimbursements already made in connection with the Claim for which subrogation was waived in violation of this section.

Ref: Minn. Stat. § 79.36(6) and (7).  
Claims Operating Rule.

## **PART NINE: Recoveries Under Federal Terrorism Risk Insurance Programs**

If the Association has been determined by the Department of the Treasury to be a separate insurer under applicable federal terrorism risk insurance programs and, as such, the Association is eligible to directly submit Claims in accordance with the provisions of such programs for liabilities it incurs from its Members as the result of acts of terrorism identified as such by the Secretary of the Treasury, any loss reimbursement that a Member receives from the United States Government as a result of a Loss Occurrence during the term of this Agreement shall inure to the benefit of the Association in the proportion that the Member's insured losses, as defined under such programs, in that Loss Occurrence for coverage provided under this Agreement bear to the Member's total insured losses, as defined under such programs, in that Loss Occurrence.

If a loss reimbursement received by the Member under such programs is based on the Member's losses in more than one Loss Occurrence and the United States Government does not designate the amount allocable to each Loss Occurrence, the reimbursement shall be prorated among occurrences in the proportion that the Member's insured losses for coverage provided under this Agreement in each Loss Occurrence bears to the Member's total insured losses arising out of all Loss Occurrences to which the recovery applies.

## **PART TEN: Offsets**

Notwithstanding any other provision in this Agreement:

1. The Association may offset any amounts then or thereafter payable to a Member pursuant to this Agreement, the Plan, or Operating Rule against any amounts owed to the Association, provided that no Member may offset any amounts owed to the Association against the amount claimed from the Association by the Member unless authorized in writing in advance by the Association.
2. If a Member could have made timely and proper application for any other insurance, reinsurance, Special Compensation Fund, or other recoverables, but fails to do so, the Association may reduce Ultimate Loss for any amount which the Member could have received.

## **PART ELEVEN: Member Information Collected by the Association**

The Association will use reasonable efforts to safeguard Members' information to the same extent as the Association safeguards its own information.

## **PART TWELVE: Resolution of Disputes**

### **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, this 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 this provision, 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 Member Appeals 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 Member Appeals

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 Part Twelve of this Agreement. 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.

Ref: Minn. Stat. § 79.36(8).  
Plan, Article VII.

### **PART THIRTEEN: 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 of the Plan.
- 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 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 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.
- H. 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).
- I. Commissioner. "Commissioner" means the Commissioner of Labor and Industry for the State of Minnesota.
- J. Commissioner of Commerce. "Commissioner of Commerce" means the Commissioner of Commerce for the State of Minnesota.
- K. 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.
- L. Director. "Director" means member of the Board.
- M. 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 Reinsurance Agreement 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 the Plan or any Reinsurance Agreement.

- N. 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.
- O. Excess or Deficient Premium. “Excess or Deficient Premium” means the sum of Actuarial Excess or Deficient Premium and Member Excess Investment Earnings.
- P. 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.
- Q. 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).
- R. Insurer. “Insurer” means any insurance carrier licensed by the Commissioner of Commerce and authorized to transact the business of workers’ compensation insurance in Minnesota.
- S. 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.
- T. Member. “Member” means an Insurer or Self-Insurer.
- U. 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.
- V. 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.

- W. 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).
- X. 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.
- Y. 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.
- Z. Plan. “Plan” means the Plan of Operation adopted or amended by the Association pursuant to Minn. Stat. § 79.38.
- AA. Policyholder. “Policyholder” means Minnesota workers’ compensation policyholders of Insurers.
- BB. Premium. “Premium” means the amount or amounts charged for Reinsurance pursuant to Minn. Stat. § 79.35(4).
- CC. 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).
- DD. Reinsurance. “Reinsurance” means the indemnification provided by the Association pursuant to the Act and this Plan.
- EE. 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.
- 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 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 this 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.

Ref: Plan, Article I.

Adopted by action of the Board of Directors of the Workers' Compensation Reinsurance Association on the 1<sup>st</sup> day of June, 2023, and approved by the Minnesota Commissioner of Labor and Industry on the 1<sup>st</sup> day of June, 2023.