



April 7, 2009

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Workers Compensation Insurance

Changes to the *Workers Compensation Insurance Plan (WCIP)* and the *Basic Manual for Workers Compensation and Employers Liability Insurance*

The North Carolina Rate Bureau has adopted and the North Carolina Commissioner of Insurance has approved the adoption of changes to the *Workers Compensation Insurance Plan (WCIP)* and the *Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)*. The approval is effective January 1, 2010 and will impact the Governance of the National Workers Compensation Reinsurance Pool.

The National Workers Compensation Reinsurance Association (NWCRA) has been formed as a non-profit corporation. As a result of these changes, this filing amends Rule 4 of the WCIP and the Basic Manual to explain and outline the changes. The attached exhibits demonstrate the required amendments to the WCIP and to the Basic Manual.

These changes will be effective 1/1/2010. This filing was approved on behalf of all member carriers, and no company filing is required to adopt these changes.

Contact the Information Center at 919-582-1056 or winfo@ncrb.org, if you require additional information.

Sincerely,

Sue Taylor

Director of Insurance Operations

ST:dg

C-09-10

NORTH CAROLINA WORKERS COMPENSATION INSURANCE PLAN

Pursuant to North Carolina General Statute 58-36-1 there is hereby established a North Carolina Workers Compensation Insurance Plan ("Plan" or "WCIP") which provides for the equitable apportionment of employers who are in good faith entitled to workers compensation insurance as defined herein, but who are unable to procure such insurance in a regular manner. This Plan, and any future modification, is subject to the approval of the North Carolina Commissioner of Insurance (Commissioner).

SECTION I WCIP DEFINITIONS

Affiliated Insurer

An insurer that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, another insurer specified. The term "control" means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an insurer, whether through the ownership of voting securities, by contract, or otherwise. Control shall be deemed to exist if any person or business enterprise, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten (10) percent or more of the voting securities of any other insurer.

Agent

A fire and casualty agent properly licensed in the State of North Carolina whose privileges under the Plan have not been suspended or revoked; provided, however, that such agent shall, for purposes of this Plan, be considered to be acting on behalf of the insured or employer applying under this Plan and not as an agent of the Plan Administrator or of any assigned carrier for Plan business.

Application

The application currently used in the residual market is the form currently approved for use in applying for Workers Compensation insurance written under the plan.

Application Submission Methods

The methods approved by the plan administrator, in which eligible producers may submit completed applications which methods are as follows:

1. Online – Through WWW.NCRB.ORG and the ManageAR System
2. Mail – The U. S. Postal Service or private overnight delivery service
3. Hand delivery – To the North Carolina Rate Bureau at its offices on week days, excluding holidays, between the hours of 8:30 a.m. and 5:00 p.m. local time.

Assigned Carrier

The insurer that has been assigned to provide coverage to an employer who has applied for workers compensation insurance pursuant to the Plan. An assigned carrier can either be a servicing or a direct assignment carrier.

Association Bylaws or Bylaws

The Bylaws of the National Workers Compensation Reinsurance Association NFP (NWCRA), whose member insurers participate in the Reinsurance Agreement(s) authorized under this Plan to provide reinsurance to the servicing carriers on employers assigned to them under this Plan. The Bylaws are the agreement subscribed to by insurers selecting Option 2 – Subscription to the Association Bylaws as their means of satisfying their participation in the Plan. The Bylaws are attached hereto and by this reference are incorporated into and made part of this Plan to the extent that the Association Bylaws are not inconsistent with this Plan and applicable North Carolina law.

Board of Directors

The Board of Directors for the National Workers Compensation Reinsurance Association NFP.

Direct Assignment Carrier

An insurer, other than a servicing carrier, that has elected and been authorized by the Plan Administrator to receive direct assignments under Option 1 of the Participation section of this Plan.

Employer

Any business organization or enterprise that is required by statute or elects to maintain workers compensation insurance in this State. The term shall include any business organizations or enterprises that are affiliated as a result of common management or ownership.

Net Premiums Written

The gross direct premiums charged less all premiums (except dividends and savings refunded under participating policies) returned to insureds for all Workers Compensation and Occupational Disease Insurance, exclusive of premiums for (i) employers subject to this Plan, (ii) employers written under the National Defense Projects Rating Plan and (iii) excess policies.

North Carolina Rate Bureau or NCRB

The statutory rating organization authorized in this State to make and file loss costs, residual market rates, rating values, policy and endorsement forms, classifications, and rating plans for workers compensation insurance.

Plan Administrator

The North Carolina Rate Bureau, the organization which has been designated to administer the affairs of this Plan.

Premium in Dispute

A workers compensation insurance premium obligation over which a bona fide dispute exists and for which the employer or its representative has provided:

1. written notice to the insurer or the assigned carrier detailing the specific areas of dispute;
2. an estimate of the premium the employer believes to be correct, with an explanation of the premium calculation;
3. payment of the undisputed portion of the premium; and
4. a written report to the Plan Administrator which includes all documentation relevant to the dispute, describes the attempts to reconcile the differences and requests review and appropriate action to resolve the areas of dispute.

Producer

A licensed North Carolina agent, broker, producer, or insurance representative, as defined in the state insurance code, whose privileges under this Plan have not been suspended or revoked, designated by the employer or applicant applying under the Plan to secure and maintain workers compensation and employers liability insurance on behalf of the employer. For purposes of this Plan, the producer is considered to be acting on behalf of the insured or employer applying for coverage under this Plan and not as an agent of the Plan Administrator or of any assigned carrier for Plan business.

Reinsurance Agreement

A contractual arrangement among Association members providing a quota share reinsurance facility for workers compensation insurance in a number of states and for which administrative services are provided by the National Council on Compensation Insurance, Inc. in its capacity as Administrator as designated under the Association Bylaws.

Servicing Carrier

An insurer, other than a direct assignment carrier, authorized to receive Plan assignments and provide coverage to eligible employers on behalf of those participating companies subscribing to the Association Bylaws incorporated as part of the Plan in this State.

Undisputed Premium

A workers compensation insurance premium obligation that is not the subject of a bona fide dispute.

Workers Compensation Insurance

1. Statutory workers compensation and occupational disease liability insurance, including insurance for liability under the Longshore and Harbor Workers' Compensation Act, as amended, and the Federal Coal Mine Health and Safety Act of 1969, as amended;
2. Employers liability insurance written in connection with a workers compensation policy; and
3. Such other coverages as determined by the Plan Administrator and approved by the Commissioner.

**SECTION II
RULES FOR ELIGIBILITY AND ASSIGNMENT**

North Carolina General Statute 58-36-1(5) requires, in part, that as a prerequisite to the transaction of workers compensation insurance in the State of North Carolina, each carrier shall file written authority with the North Carolina Rate Bureau permitting the Bureau to assign to it employers which are in good faith entitled to workers compensation insurance as defined herein, but who are unable to procure such insurance in the regular manner. The following rules, which have been adopted by the North

Carolina Rate Bureau and approved by the Commissioner of Insurance, shall cover the assignment and the insuring of such employers as provided by the law mentioned above. Any dispute arising hereunder shall be subject to the dispute resolution procedures provided in this Plan.

1. Good Faith Entitlement

This Plan shall apply only to employers that in good faith are entitled to workers compensation insurance under the North Carolina Workers Compensation Law.

Good faith will be presumed in the absence of clear and convincing evidence to the contrary. An employer is not in good faith entitled to insurance, and the insurance may be refused or cancelled, if any of the following circumstances exist, at the time of application or thereafter, or other evidence exists that such employer is not in good faith entitled to insurance:

- a. At the time of application, a self-insured employer is aware of and fails to disclose pending bankruptcy proceedings, insolvency or cessation of operations involving the employer.
- b. At the time of application, a self-insured employer is aware, or with the exercise of reasonable diligence should be aware, of prior conditions, exposures, claims or any other information which make it likely that a significant number of occupational disease or cumulative injury claims will arise from exposure incurred while the employer was self-insured and the employer fails to disclose such prior conditions, exposures, claims or other information.
- c. The employer, while insurance is in force, knowingly refuses to meet reasonable health, safety or loss control requirements; does not allow reasonable access to the insurer for audit or inspection; or does not comply with any other policy or Plan obligations and conditions.
- d. The employer has an outstanding workers compensation insurance premium obligation or other monetary obligation, on either previous insurance or while a member of a licensed group self-insurance association, that is not subject to a bona fide dispute.
- e. The employer, or its representative and/or the agent/producer knowingly fails to comply with Plan procedures; or knowingly makes a material misrepresentation on the application by omission or otherwise, including but not limited to the following: estimated payroll, nature of business, name or ownership of business, previous insurance history or an outstanding premium obligation.

2. Employer Certification

An employer shall not be considered as subject to this Plan unless such employer has been certified to be difficult to place by a fire and casualty insurance agent licensed in North Carolina and such agent so certified in the prescribed application form.

3. Application Requirements

A standard application form for insurance under this Plan must be completed by or on behalf of the employer. The application shall require:

- a. Complete underwriting information and reasonable payroll estimates.
- b. A statement that the employer will maintain a complete record of its payroll transactions in such form as the assigned carrier may reasonably require and that such record will be available to the assigned carrier at a designated place during the policy period and for one (1) year after.
- c. A statement that the employer will comply with all reasonable recommendations of the assigned carrier relating to the welfare, health and safety of employees.
- d. Payment to the North Carolina Rate Bureau of the appropriate deposit premium in the form of a valid electronic funds transfer (EFT), a check of the agent or producer, check of a premium finance company, or a certified check, cashier's check or money order of the applicant employer or its representative.

4. Plan Administrator

The Plan shall be administered by the North Carolina Rate Bureau (hereinafter referred to as the Plan Administrator), or its designee.

5. Assignment Procedures

Upon receipt of a properly completed application for insurance, the Plan Administrator shall (a) determine, to the extent possible based on the application, that the employer is in good faith entitled to insurance; (b) establish the appropriate classifications, rates and estimated annual premium; and (c) upon payment of the estimated annual or deposit premium, bind coverage and designate an assigned carrier.

The Plan Administrator may request additional information, at its discretion, to establish eligibility, to assign appropriate classification codes, to calculate applicable premium and to otherwise appropriately process the application. Such information may include tax documentation, ownership information, contracts or any other information deemed necessary to process the application. The employer and/or its representative shall provide this information/documentation or provide an acceptable explanation for failure to do so.

To secure a requested effective date, the employer or its representative must submit to the Plan Administrator a fully completed and signed application, using an approved application submission method.

Depending on the application submission method, the earliest effective date for coverage will be established in the following manner:

Application Submission Table 1

If the application (including the estimated annual or deposit premium) is submitted by regular mail and the envelope containing the application has ...	Then the earliest effective date will be 12:01 a.m. on the day after ...
A legible U. S. postmark	Postmark
An illegible U. S. postmark	Receipt of the application by the Plan Administrator
A private postage meter mark only	Receipt of the application by the Plan Administrator
Internet postage with a legible cancellation stamp	The date on the cancellation stamp
Internet postage without a cancellation stamp or an illegible cancellation stamp	Receipt of the application by the Plan Administrator

Application Submission Table 2

If the application (including the estimated annual or deposit premium) is submitted by overnight mail and ...	Then the earliest effective date will be 12:01 a.m. on the day after ...
The package containing the application has proof of mailing that can be verified	The application was sent to the Plan Administrator
The package containing the application does not have proof of mailing or proof of mailing cannot be verified	Receipt of the application by the Plan Administrator
Proof of mailing (i.e., certified mail receipt) provided by agent	Postmark
Proof of mailing cannot be obtained	Receipt of the application by the Plan Administrator

Application Submission Table 3

If the application (including the estimated annual or deposit premium) is hand-delivered to the Plan Administrator . . .	Then the earliest effective date will be 12:01 a.m. on the day after receipt by the Plan Administrator

Application Submission Table 4

If the application (including any necessary supplemental applications) is submitted through the Rate Bureau's ManageAR system and...	Then the earliest effective date will be 12:01 a.m. on the day after ...
The estimated annual or deposit premium is submitted electronically via a valid electronic funds transfer	Receipt of the completed online submission
The estimated annual or deposit premium is submitted via regular or overnight mail	Postmark

IF AN APPLICANT EMPLOYS A COMBINATION OF ANY OF THE ABOVE DESCRIBED METHODS OF SUBMISSION, THE BUREAU SHALL APPLY THE ABOVE DESCRIBED RULES USED TO DETERMINE THE EARLIEST EFFECTIVE DATE BASED ON THE METHODS OF SUBMISSION EMPLOYED AND THE EARLIEST EFFECTIVE DATE OF COVERAGE SHALL BE THE LATEST EFFECTIVE DATE OF SUCH METHODS EMPLOYED BY THE APPLICANT.

6. Policy Term

The assigned carrier shall issue a standard policy of insurance with an effective date as established by the Plan Administrator. The policy shall be effective for a period of one (1) year, unless another termination date is authorized by the Plan Administrator. A short-term policy may be obtained only once within a twelve-month period, unless agreed to by the assigned carrier.

7. Reassignment

Any employer which is dissatisfied with its assigned carrier may request reassignment upon expiration. Reassignment will require the submission of a properly completed application.

8. Additional States Coverage

All assignments under this Plan are to be made on an intrastate basis. However, any employer desiring insurance in additional states may request its assigned carrier to furnish insurance in such additional states in accordance with the Interstate Assignments section of this Plan.

9. Agent/Producer Information

a. Commission

Five percent (5%) of the total premium charged and collected from the employer shall be the commission to be paid to the producer of record or licensed agent designated by the insured employer.

b. Changes

The employer shall designate a licensed agent or producer of record and, with respect to any renewal of the coverage, may change the agent or producer by notice to the assigned carrier prior to the date of such renewal or, with the consent of the assigned carrier, at any other time.

10. Additional Coverage

Additional coverages may be available to the employer through the assigned carrier.

SECTION III ASSIGNED CARRIER RESPONSIBILITIES

The assigned carrier shall comply with all applicable state laws and regulations and all performance standards and procedures set forth in or promulgated under this Plan including, but not limited to the following:

1. Approved Classifications, Forms, Rates and Rating Plans

All policies must be written utilizing the classifications, forms, rates and rating plans that have been adopted for use in the residual market by the Plan Administrator and approved by the Commissioner.

2. Policy Information Page

The policy Information Page and all endorsements must be properly identified as **WCIP** or **AR** (Assigned Risk). Policies and endorsements submitted hard copy must show the WCIP or AR indicator directly above the policy number on the Policy Information Page. Policies and endorsements submitted electronically must be reported in the format established by the Plan Administrator.

3. Cancellation of the Policy

If, after the issuance of a policy, the assigned carrier determines that an employer is not entitled to insurance, or has failed to comply with reasonable health, safety or loss control requirements, or has violated any of the terms and conditions under which the insurance was issued, and after providing opportunity for cure, the assigned carrier shall initiate cancellation and inform the Plan Administrator of the reason for such cancellation.

Failure or refusal by an employer to make full disclosure to the assigned carrier or Plan Administrator of information regarding true ownership, change of ownership, operations, payroll or any other records pertaining to workers compensation insurance or any other information required under this Plan or to comply with policy or Plan terms or conditions shall be sufficient grounds for cancellation of the policy.

The assigned carrier shall also endeavor to contemporaneously send to the agent copies of correspondence to the employer relating to good faith entitlement, failure or refusal to comply, or other violations of policy or Plan terms or conditions.

Any insured employer so cancelled must reestablish eligibility or must demonstrate entitlement to the Plan Administrator before any further assignment can be made under this Plan.

4. Effective Date of Policy

Subject to Paragraph 6 below, policies must be issued, renewed, or reinstated without a lapse in coverage when premium is received or U.S. postmarked prior to the policy effective date or cancellation date.

5. Renewal and Nonrenewal of Coverage

At least forty-five (45) days prior to the expiration date of insurance, the assigned carrier shall send a renewal proposal or notice of impending expiration of coverage to the insured, the agent and the Plan Administrator. Upon receipt of the required premium, the policy shall be issued in the normal manner and a copy of such policy and all endorsements, properly identified as a WCIP or AR (Assigned Risk) policy, shall be furnished to the Plan Administrator within the time frame and in the format established by the Plan Administrator.

6. Reapplication and Reassignment to the Plan

Any assigned carrier unwilling to renew an employer assigned to it shall notify the employer, agent and the Plan Administrator at least forty-five (45) days in advance of expiration, giving a reason or reasons acceptable to the Plan Administrator. Reassignment will require the submission of a properly completed application.

7. Cancellation for Voluntary Coverage

Notwithstanding paragraph (10) of this section, any insurer that wishes to insure an employer as voluntary business may do so at any time. If such insurer is not the assigned carrier, the assigned carrier shall cancel its policy pro rata and the assignment shall automatically terminate as of the effective date of the voluntary insurer's policy.

8. Notification of Outstanding Premium

Outstanding premium or other monetary policy obligation information identified by the assigned carrier or its representative shall be provided to the Plan Administrator in accordance with the appropriate performance standards or other legal or regulatory requirements.

9. Policyholder Services

The assigned carrier shall provide to its policyholders and their designated agents/producers access to audit, loss control and safety services; prompt, professional handling of claims, including investigation, resolution and communication; fair and prompt responses to complaints and disputes; and access to appropriate information regarding the classification of the business and the factors influencing the policy premium.

10. Confidentiality of Information

The assigned carrier shall keep in confidence and shall not, except as directed by the insured or the agent/producer of record, or as otherwise may be required by law or regulatory authority, disclose to any third party, or use for the benefit of itself or any third party, such information pertaining to a policyholder as it may obtain by virtue of its position as the assigned carrier. Such information shall be used solely for the evaluation, underwriting, and issuance of coverage under this Plan and not for any other purpose. The assigned carrier shall not use any information it obtains in its capacity as the assigned carrier to request, encourage, or solicit employers it insures under this Plan to utilize the services of any specific insurance agent, agency, broker, insurer or group of insurers for purposes of providing voluntary workers compensation insurance or other lines of insurance to such employer.

SECTION IV - PARTICIPATION

All insurers licensed to write workers compensation insurance in this state are required to participate in this Plan. All affiliated insurers must select the same option. An insurer must satisfy its participation required by selecting one of the following options:

Option 1 Provides for becoming a direct assignment carrier and receiving assigned risk assignments from the Plan Administrator. Any policy issued by an insurer that has selected this option will not be eligible for reinsurance through the Reinsurance Agreement(s) among members of the Association.

Option 2 Provides for subscribing to the Association Bylaws.

If Option 1 is selected, one insurer may be designated to accept direct assignments on behalf of all affiliated insurers.

Any insurer wishing to select Option 1 must receive prior approval from the Plan Administrator. Application for such approval must be made no later than ninety (90) days prior to the end of any calendar year. The Plan Administrator must review the application and approve or disapprove it within sixty (60) days of receipt of the request. If the application is approved, that insurer shall become a direct assignment carrier on January 1 of the year following the Plan Administrator's approval. Such approval shall continue in effect until terminated (a) by the mutual agreement of the insurer and the Plan Administrator, (b) upon notice from the insurer to the Plan Administrator at least 90 days prior to the end of the calendar year that the insurer elects, effective as of January 1 of the following year, another manner of satisfying its participation requirement under the Plan, or (c) upon the disqualification of the insurer as a direct assignment carrier.

Any insurer wishing to select Option 1 must:

- maintain a minimum Best's rating of A-;
- agree to conform, at a minimum, to such standards of performance as may be implemented by the Plan Administrator;
- agree to maintain necessary facilities to provide risks assigned to it the same level of service rendered to its voluntary business; and
- execute the Plan Administrator's direct assignment contract.

An insurer that fails to make application to the Plan Administrator for approval as a direct assignment carrier at least ninety (90) days prior to the end of any calendar year shall automatically be deemed to have selected Option 2 for the following year. If the Plan Administrator fails to act on a letter of application or disapproves the letter of application for direct assignment carrier status, such insurer shall automatically be deemed to have selected Option 2. During the period of time an application is pending or an appeal is pending before the Plan Administrator with regard to a disapproved letter of application for direct assignment carrier status, an insurer shall automatically be deemed to have selected Option 2 for the period during which approval has not been granted. If previously a subscriber to the Association Bylaws, an insurer seeking to become a direct assignment carrier must also comply with the withdrawal provision in the Bylaws.

An insurer applying to be licensed in this State to write workers compensation insurance after this Plan has been approved and which desires to become a direct assignment carrier must submit its application to become a direct assignment carrier at the time it subscribes to and becomes a member of the North Carolina Rate Bureau. The Plan Administrator shall approve or disapprove the application within sixty (60) days.

If a licensed workers compensation insurer has not made an election, that insurer shall be deemed to have selected Option 2 until the next Plan membership election, at which time the insurer may then make its own participation selection. An insurer shall automatically be deemed to have selected Option 2 for the following calendar year when the insurer has an opportunity to make a participation selection and fails to do so.

Whenever participation under the Association Bylaws consists of those insurers cumulatively writing less than forty (40) percent of the total net workers compensation insurance premiums written by all insurers in this state as calculated in accordance with the preceding calendar year figures or whenever the Plan Administrator determines the capacity of servicing carriers to handle assignments made pursuant to the Rules for Eligibility and Assignment section falls below a level which is adequate to handle all assignments being made, or whenever the reinsurance mechanism provided pursuant to the Association Bylaws is terminated, those insurers that selected Option 2 shall, as of January 1 of the following year, automatically be deemed to have selected Option 1 for employers insured effective on or after said January 1. Under this provision all licensed insurers shall automatically be deemed approved as direct assignment carriers and shall not need to seek Plan Administrator approval.

SECTION V PLAN ADMINISTRATOR

In recognition of the interests of the participating companies who have subscribed to the Association Bylaws, the Plan Administrator will consult with the Board of Directors, as appropriate, in the course of carrying out its duties and responsibilities with respect to the establishment of servicing carrier eligibility requirements under Section VI(1) and performance standards under Section VI(3). The Plan Administrator shall also be responsible for determining the expenses for the operation of the Plan, and shall assess each insurer participating in the Plan for those expenses on an equitable basis as determined by the Plan Administrator. The Plan Administrator will have the following duties and responsibilities in addition to any others set forth in this Plan:

1. administering, managing and enforcing the Plan subject to the provisions contained herein;
2. determining the methodology and formula for making assignments to assigned carriers pursuant to the Assignment Formula section and securing the necessary information in order to make the assignments;
3. processing assigned risk applications pursuant to the requirements of this Plan;
4. administering the Plan with respect to the approval of direct assignment carriers;
5. establishing eligibility criteria for servicing carriers and selecting servicing carriers by competitive bid process or otherwise;

6. establishing written performance requirements for servicing carriers, including but not limited to:
 - verification of ongoing Plan eligibility for the employer
 - issuance of policies and endorsements
 - filings with administrative agencies
 - maintenance of premiums on policies consistent with manual rules, rates, rating plans and classifications
 - completion and billing of final audits
 - collection of premium
 - claim services, including investigation, disability management and medical cost control
 - loss control services and safety information to encourage employers to make safety a part of their business
 - payment of agent commissions
 - issuance of renewal proposals and non-renewal notices
 - assurance of insured and insurer compliance with all terms and conditions of the policy contract
 - resolution of complaints and response to insured/agent inquiries
 - reporting financial and statistical data;
7. monitoring servicing carrier performance and enforcing performance requirements and incentives;
8. administering the dispute resolution mechanism as provided in the Dispute Resolution Procedure section;
9. developing and implementing assigned risk operating rules and forms to the extent necessary to carry out the purposes of this Plan;
10. informing the Commissioner of any insurer that is not participating in this Plan; and
11. monitoring the performance and operation of the Plan and initiating amendments thereto as appropriate.

SECTION VI SERVICING CARRIERS

With respect to the servicing carriers selected, the following shall apply:

The Plan Administrator shall also be responsible for determining the expenses for the operation of the Plan and shall assess each insurer participating in the Plan for those expenses on an equitable basis as determined by the Plan Administrator.

1. Eligibility to Act as a Servicing Carrier

The Plan Administrator shall establish written requirements that insurers must meet in order to be eligible to act as a servicing carrier. An insurer that has been approved as a direct assignment carrier pursuant to Option 1 under the Participation section is not eligible to be selected as a servicing carrier under this Plan. From among those insurers that are eligible and have applied to act as a servicing carrier, and subject to regulatory approval or review where applicable, the Plan Administrator shall select a sufficient number of servicing carriers that are needed to handle the assignments made pursuant to this Plan. Before the selection process begins, the Plan Administrator will consult with the Board of Directors, as appropriate, in determining the number of servicing carriers that are needed to handle the assignments made pursuant to this Plan. The Plan Administrator may terminate the servicing carrier status of any insurer that fails to meet the servicing carrier requirements on a continuing basis.

2. Servicing Carrier Operations Report

Each servicing carrier shall provide a report to the Plan Administrator in such format and time as determined by the Plan Administrator. This report, among other things, shall provide information on the servicing carrier's operations related to Plan business in the following areas: underwriting, auditing, claims, loss control, premium collection and customer service.

3. Standards for Servicing Carrier Performance, Compensation, and Incentives

The Plan Administrator shall establish written minimum levels of acceptable performance for servicing carriers and shall establish procedures for measuring servicing carrier performance. In recognition of the interests of the participating companies who have subscribed to the Association Bylaws, the Plan Administrator will consult with the Board of Directors, as appropriate, in establishing these standards. Servicing carriers shall manage losses in compliance with the performance standards established hereunder. The Plan Administrator shall also establish the compensation for servicing carriers which shall take into consideration, among other things, provisions for (a) rewarding servicing carriers for positive action targeted at reducing losses and costs, (b) disincentives for inefficiencies and poor service, and (c) servicing carrier capacity.

4. Monitoring and Enforcement

The Plan Administrator shall monitor and review servicing carrier performance by (a) reviewing the operations reports, (b) requiring and reviewing self-audits, (c) conducting on-site audits, and (d) reviewing any other information available that relates to the servicing carrier. The Plan Administrator shall require servicing carriers to maintain desired performance levels and shall take appropriate remedial action where necessary, including, but not limited to, establishment and administration of a progressive discipline program which may lead to terminating an insurer's servicing carrier status. Any action taken by the Plan Administrator under this provision is subject to review under the Dispute Resolution Procedure section. In order to fulfill its responsibilities under this Plan, the Plan Administrator shall have the right, itself or through authorized representatives, at all reasonable times during regular business hours to audit and inspect the books and records of any servicing carrier with respect to any policies, claims, or related documents coming within the purview of this Plan, the Association Bylaws or the Reinsurance Agreement(s). The Plan Administrator may provide the Board of Directors with a report and other data as appropriate, concerning the Plan Administrator's monitoring and enforcement activities related to servicing carriers.

SECTION VII DIRECT ASSIGNMENT CARRIERS

The Plan Administrator shall establish written performance requirements. The Commissioner of Insurance shall monitor direct assignment carrier performance through market conduct examinations, or through such other methods that he shall deem appropriate.

SECTION VIII INTERSTATE ASSIGNMENTS

1. Additional States Requested During the Policy Period

Any employer assigned under this Plan and desiring workers compensation insurance for operations in states other than that covered by this Plan may request its assigned carrier to furnish such insurance in such additional states. Workers compensation insurance in such additional states may be written by the assigned carrier on a voluntary basis and in accordance with the law, rates, rules, classifications and regulations applicable to the voluntary workers compensation market in those states.

If the assigned carrier does not wish to provide the additional states on a voluntary basis, such assigned carrier may provide assigned risk coverage in such additional states subject to the following:

- a. Workers compensation insurance may only be provided in accordance with the Rules of Eligibility and Assignment section above in those states that have a Workers Compensation Insurance Plan that is similar to this Plan and that allows employers applying for coverage under those Plans to obtain coverage for operations in this State.
- b. An assigned carrier providing such insurance shall collect all premiums due on operations located in such other states. The effective date of such insurance in such additional states shall be the day after premium is received; however, in the event coverage in such additional states is on an "if any" basis, the effective date of such coverage shall be the day following receipt of an acceptable request for such insurance by the assigned carrier. A copy of the policy Information Page and all endorsements, properly identified as a WCIP or AR (Assigned Risk) policy, shall be submitted to the appropriate Plan Administrator having jurisdiction in the state where the coverage is effected.

- c. The rates, rating plans, classifications and policy forms used to provide coverage in such additional states shall be those that are applicable to the residual market and are on file and have been approved by the regulators in those additional states and authorized for use in the residual market by the Plan Administrator.
- d. In the event the assigned carrier is a servicing carrier, in order to combine multiple states on a single policy, the assigned carrier must also be a signatory to an agreement providing reinsurance for residual market employers similar to the Association Bylaws in each state where the coverage shall be provided. If the assigned carrier is a direct assignment carrier pursuant to Option 1 in the Participation section, in order to combine multiple states on a single policy, it must also be authorized to act as a direct assignment carrier or servicing carrier in each state where the coverage shall be provided. Separate policies must be issued for states in which the insurer is a direct assignment carrier and for states in which the insurer is a servicing carrier.

An assigned carrier unwilling or unable to provide insurance for an employer in additional states either on a voluntary basis or in accordance with this section shall refer the request to the Plan Administrator.

2. Multi-state Policy Procedure at Time of Application

Employers who make application for workers compensation insurance under another state's Workers Compensation Insurance Plan may purchase coverage for operations in this State without meeting the application requirements of this Plan, provided: (a) the employer qualifies for such insurance under the other state's Plan, (b) the employer is in good faith entitled to insurance under this Plan, (c) the other state's Plan is similar to this Plan, (d) that Plan also provides for interstate assignments, and (e) the payroll for the employer's operation in this State is not greater than the payroll in the other state.

The rates, rating plans, classifications and policy forms used to provide coverage in this State shall be those that are applicable to the residual market in this State and are on file and have been adopted by the Plan Administrator for use in the residual market and approved by the Commissioner.

The administrator of the other Plan is authorized to assign employers with operations in this State to the other Plan's assigned carriers subject to the following conditions:

- a. If the assigned carrier is a direct assignment carrier, it must also be a direct assignment carrier in this State pursuant to Option 1 of the Participation section or a servicing carrier in this State pursuant to paragraph (1) of the Servicing Carrier section.
- b. If the assigned carrier is a signatory to an agreement providing reinsurance for residual market employers similar to this State's Association Bylaws, it must also be a signatory to the Association Bylaws in this State or a direct assignment carrier in this State. In addition, if the payroll for the employer's operation in this State is greater than \$250,000, and if the assigned carrier is a signatory to the Association Bylaws or a similar document in the other state, it must also be a servicing carrier or a direct assignment carrier in this State. If there is no eligible assigned carrier in this State that is also an insurer in the state of assignment, then the above payroll limitation may be removed at the discretion of the Plan Administrator or the employer may be required to submit a separate application for coverage in this State.
- c. The other state's Plan must give the Plan Administrator in this State similar authority to make interstate assignments.

With regard to interstate assignments and policies, this Plan shall have jurisdiction over all disputes resulting from the application of rules, programs and procedures that are specific to this State. Disputes regarding application requirements shall be under the jurisdiction of the state's Plan where the application was filed.

SECTION IX ASSIGNMENT FORMULA

The following procedures describe the mechanism used to provide for the random and equitable distribution of employers under this Plan to assigned carriers. This distribution is based on each direct assignment carrier's allocable percentage and the combined allocable percentage of all servicing carriers, and the amount of estimated premium in the Plan, so far as practicable. When assigning an employer to an insurer, the mechanism considers the employer's prior Plan coverage, special requirements, (i.e., additional states or federal coverage) and premium size.

The mechanism provides that the allocable percentage for each assigned carrier shall be determined as follows:

- 1. If the assigned carrier is a direct assignment carrier, its allocable percentage will be equal to its net premiums written as compared to the total net premiums written in this State.

2. If the assigned carrier is a servicing carrier, it shall be responsible for providing services on behalf of those insurers that have elected to meet their Plan assignment requirements by subscribing to the Association Bylaws pursuant to Option 2 of the Participation section. Its allocable percentage will be determined by the Plan Administrator; however, the combined allocable percentages for all servicing carriers shall be equal to the combined net premiums written for all signatories to the Association Bylaws as compared to the total net premiums of all insurers participating in the Plan in this State.

The Plan Administrator may override the random assignment process to ensure the availability of requested Plan coverages to the employer.

SECTION X DISPUTE RESOLUTION PROCEDURE

Any person affected by the operation of the Plan including, but not limited to, participating companies, insureds, agents and assigned carriers, who may have a dispute with respect to any aspect of the Plan may seek a review of the matter by the Plan Administrator by setting forth in writing with particularity the nature of the dispute, the parties to the dispute, the relief sought and the basis thereof. The Plan Administrator may secure such additional information as it deems necessary to make a decision.

Appeals from employers and insurers on Plan matters regarding individual employer disputes shall be within the jurisdiction of the mechanism established to handle such appeals under the applicable rating law. All other disputes shall be handled as follows:

1. If the dispute relates to the general operation of the Plan, excluding individual employer disputes, those arising under the Association Bylaws, and those pertaining to the selection of servicing carriers, the Plan Administrator shall review the matter and render a written decision with an explanation of the reasons for the decision within thirty (30) days after receipt of all the information necessary to make the decision. Any party affected by such decision made by the Plan Administrator may seek a de novo review by the Commissioner by requesting such review, in writing, within thirty (30) days after the date of such decision.

In reviewing any such matter, the Commissioner shall follow normal hearing procedures. The Commissioner shall decide the dispute in accordance with applicable state laws and regulations, with due consideration to approved rules, procedures and rating plans and pursuant to the provisions of the approved North Carolina Workers Compensation Insurance Plan.

2. If the dispute relates to any competitive bid process, the Bid Protest Procedure contained in the applicable Request for Proposal shall apply.
3. Except as provided below, if the dispute arises under the Association Bylaws or Reinsurance Agreement(s), the administrator designated under the Association Bylaws (the "Reinsurance Administrator") shall first review the matter and render a written decision with an explanation of the reasons for the decision within thirty (30) days after receipt of all the information necessary to make the decision. Any party affected by the decision may seek a review by the Board of Directors established under the Association Bylaws by requesting such review, in writing, within thirty (30) days of the date of the decision by the Reinsurance Administrator under the Association Bylaws. The Board of Directors may (a) consider the matter and render its written decision pursuant to the procedures set forth in the Association Bylaws, or (b) waive its decision and offer the aggrieved party the option of appealing directly to the Commissioner or submitting the dispute to arbitration in accord with the terms and conditions established by the Board of Directors. Any party affected by a decision of the Board of Directors may seek a de novo review by the Commissioner by requesting such a review, in writing, within thirty (30) days of the date of the Board of Directors' decision.

If the dispute relates to the expulsion of a participating company under the Association Bylaws by the Board of Directors or the non-continuation of the reinsurance afforded under the Association Bylaws, any appeal may be taken directly to the Commissioner without first complying with the procedures contained herein. The Commissioner shall have exclusive jurisdiction over all such disputes. In reviewing any such matter, the Commissioner shall follow those procedures applicable to administrative hearings as set out in Article 3A of Chapter 150B of the NC General Statutes and 11 NCAC 1.0400 et seq.

BYLAWS
NATIONAL WORKERS COMPENSATION REINSURANCE ASSOCIATION NFP

ARTICLE I

Definitions - Rules of Construction

Unless otherwise provided herein, all terms defined in any Authorized Insurance Plan shall have the same meaning in these Bylaws.

The terms “net premiums written,” “net workers compensation insurance premiums written,” “workers compensation premiums written” and “workers compensation insurance premiums,” wherever used in these Bylaws, shall mean the gross direct premiums charged less all premiums (except dividends and savings refunded under participating policies) returned to policyholders for all Workers Compensation and Occupational Disease Insurance, exclusive of premiums for risks subject to these Bylaws, and for risks written under National Defense Projects Rating Plan and under excess policies. (An excess workers compensation insurance policy is a policy issued to provide coverage for amounts above a self-insured retention.)

The term “Insurance Plan(s)” wherever used in these Bylaws shall mean workers compensation insurance plans or other assigned risk workers compensation insurance plans that are in effect in various states and which generally provide for the issuance of workers compensation policies to employers who are in good faith entitled to workers compensation insurance as defined in the insurance plans but are unable to procure such insurance in a regulatory manner.

“Authorized Insurance Plan” wherever used herein shall mean an Insurance Plan (i) approved by the insurance regulator in any state that provides workers compensation insurance to employers who are in good faith entitled to such insurance but are unable to procure such insurance in a regular manner and (ii) which has been authorized by the Board of Directors under Article V, Section 7.

The term “Workers Compensation” and the word “Workers” wherever used within these Bylaws mean Workers or Workmen’s as applicable.

The term “Reinsurance Agreements” shall mean those quota share reinsurance agreements entered into among the Servicing Carriers and the Members in the capacities as licensed insurance companies, as provided for in these Bylaws. These Reinsurance Agreements reinsure

the direct insurance obligations of the Servicing Carriers that issue insurance policies in their own names directly to policyholders under the Authorized Insurance Plans.

The term “Administrator” shall mean the entity designated by the Board of Directors to provide the necessary administrative services as are required to achieve the purposes of the Reinsurance Agreements.

The term “Servicing Carrier(s)” shall mean those licensed insurers which (i) have been selected pursuant to the Authorized Insurance Plans to issue to employers who are eligible for such coverage direct workers compensation insurance policies, as defined in those Plans, such policies being issued in the insurer’s own name; and (ii) with respect to such policies, have ceded reinsurance pursuant to the Reinsurance Agreements.

ARTICLE II

Purposes and Limitations

- 1. Purposes.** The purposes of the Corporation include those set out in the Corporation’s Articles of Incorporation and to provide Members with an option for complying with Authorized Insurance Plan requirements by permitting the Members to share in the experience of certain assigned risks through reinsurance, thereby reducing both administrative costs and the annual fluctuation in the liability of Members arising from Authorized Insurance Plan participation. Under the Insurance Plans, an employer who qualifies for coverage is assigned to a carrier to issue and service the policy of insurance issued to such employer. Assignments are made to Servicing Carriers that are appointed pursuant to the Authorized Insurance Plans to write and service the policies issued to employers, which policies are then reinsured by the Members in their capacities as licensed insurance companies pursuant to the Reinsurance Agreements. The service provided by the Servicing Carriers is the provision of direct insurance, which includes underwriting and issuing the policy, auditing and collection of premiums, paying all premium and loss based taxes and assessments, providing loss control, and defending and paying claims.

All Members must enter into Reinsurance Agreements with Servicing Carriers for the purpose of sharing through reinsurance, whether as separate or combined components, the premiums, losses, costs and/or expenses of the policies assigned to the Servicing

Carriers. The Reinsurance Agreements distribute premiums, losses, costs and/or expenses and define the obligations among the Servicing Carriers and the Members in their capacities as reinsurers. The Corporation will: (1) facilitate the reinsurance by establishing uniform rules and procedures; (2) provide a framework which permits the Members to agree upon such rules and procedures in the future; and (3) provide a mechanism for resolving disputes arising under the Reinsurance Agreements and these Bylaws.

The relationship under the Reinsurance Agreements between the Servicing Carriers and the Members in their capacities as reinsurers shall be administered by a separate organization (“Administrator”) as provided for in an administration agreement (herein “Administration Agreement”). The Administrator’s duties and obligations with respect to such administration are established by: (i) the Authorized Insurance Plans; (ii) these Bylaws; and (iii) the Administration Agreement. The Administrator is also designated as an agent for the Members to enter into contracts on their behalf to carry out the purposes of these Bylaws including but not limited to the Reinsurance Agreements.

2. **Limitations.** No Insurance Plan for any state shall be brought within the scope of these Bylaws and the rules and procedures adopted hereunder unless these Bylaws have been authorized for and incorporated as part of the Insurance Plan that has been filed with the insurance regulator in such state and approved, or the Bylaws are otherwise approved by the insurance regulator.

These Bylaws shall apply to policies issued to employers whose risks have been assigned to and accepted by Servicing Carriers in accordance with any Authorized Insurance Plan and the terms herein.

Commencing on January 1, 200__, these Bylaws shall be applicable to each Authorized Insurance Plan for terms of three (3) calendar years, unless action is taken pursuant to Article V, Section 8. At the end of each such term, these Bylaws shall automatically renew for an additional three (3) year term unless the Board of Directors shall recommend to the Members that no such renewal should be extended to that Authorized Insurance Plan. Any such recommendation by the Board shall be presented to the Members no later than the regular meeting of Members to be held during June of the third year of any such term for a specific Authorized Insurance Plan. Any such

recommendation is subject to ratification by the affirmative vote, in person or by proxy, of Members writing at least 66 2/3% of the total net workers compensation premium written by all Members in such state during the latest available calendar year.

ARTICLE III

Members

- 1. Eligibility.** Any company licensed to write workers compensation insurance in any state that has an approved Authorized Insurance Plan may become a Member. Any state Workers Compensation Insurance Fund established by law also may become a Member. The Board of Directors may permit participation at its sole discretion to any group, organization, association or other entity it deems appropriate.

A company that elects to become a Member need not participate in the reinsurance in all states where the Bylaws have been approved. If, however, a Member is part of a group or affiliation, its election as to which states it will participate must be the same for all companies affiliated in the group. At the time a company becomes a Member, it must identify all affiliated companies and notify the Administrator in which states it will participate. Thereafter, any Member may withdraw from providing reinsurance in any state by giving notice as required in paragraph 2 below subject to the withdrawal of all affiliated companies from such state or states.

- 2. Withdrawal.** Any Member may withdraw as a reinsurer with respect to the reinsurance in a given state or states only on December 31 of any year and must give ninety (90) calendar days' advance written notice to the Administrator. Any withdrawal must be made by all companies affiliated within a group.
- 3. Expulsion.** The Board of Directors, by affirmative vote of at least nine (9) directors then holding office and eligible to vote, may at any time expel any Member which in the opinion of the Board shall have violated any of the provisions of these Bylaws or of the rules forming a part hereof as then constituted. Prior to any such action by the Board, the Member shall have the opportunity to present any relevant evidence to the Board concerning any such alleged violation after notice of no less than ten (10) calendar days by the Board which specifies the alleged violation. If, after the Member has presented evidence to the Board, the Board determines that a violation has occurred, the Board shall send the Member a notice of expulsion by mail, facsimile transmission, or delivery to

Notice of an expulsion shall be given to the insurance regulator in each state where the expelled Member was providing reinsurance. The expelled Member shall have the right to request a review of the Board of Directors' decision by the insurance regulator pursuant to the Dispute Resolution Procedures under the applicable Authorized Insurance Plans.

4. Obligations After Termination. Any Member which terminates participation by withdrawal or by expulsion or has withdrawn from providing reinsurance in a certain state or states shall, nevertheless, with respect to risks in force prior to midnight of the effective date of such termination or withdrawal, continue to be governed by these Bylaws, the Reinsurance Agreements, and the rules and procedures promulgated thereunder.

5. Insolvency.

- (a) In the event any Member shall become insolvent, as hereinafter defined, participation by such company under these Bylaws and the Reinsurance Agreements shall be deemed terminated at the time such Member becomes insolvent subject to the further provisions of Section 5(e). As used herein, "insolvent" means being the subject of receivership, conservatorship, rehabilitation, liquidation, or similar court proceedings, whether voluntary or involuntary, in any jurisdiction.
- (b) In the event a Servicing Carrier becomes insolvent, the Administrator, acting on behalf of each of the Members as directed by the Board of Directors, shall have the option to:
 - (i) pay to the receiver, conservator, rehabilitator, liquidator or other appropriate representative all losses and expenses for which such insolvent Servicing Carrier shall have become liable arising out of policies reinsured

- (ii) subject to the approval of the receiver, conservator, rehabilitator, liquidator or other representative, and subject to the approval of any court having jurisdiction over the proceedings, terminate the obligation of the Members to such insolvent Servicing Carrier under the Reinsurance Agreements with such insolvent Servicing Carrier for losses, costs and expenses for which the insolvent Servicing Carrier shall have become liable. If this option is exercised, and where appropriate in the jurisdiction involved, the Administrator shall make arrangements to have all risks that have been assigned to and are being serviced by such insolvent Servicing Carrier reassigned to another Servicing Carrier or third party service provider for servicing. Such successor Servicing Carrier or third party service provider shall assume all the duties and obligations of the insolvent Servicing Carrier and shall be entitled to the reinsurance provided by the Members. Payment made on account of such risks, including expenses for the servicing thereof, shall be apportioned prorata among the remaining Members in accordance with the method provided for the apportioning of assessments.

- (c) The outstanding liability to the Members of any insolvent Member, whether in its capacity as a Servicing Carrier or a Member or both, and except for the portion unexpended of any amount of premium retained for servicing by such insolvent Member (if a Servicing Carrier), shall, in event of such insolvency, and subject to any other or further provision with respect thereto which may be from time to time embodied in the rules and procedures adopted hereunder, be assumed by and apportioned among the remaining Members in the same manner in which liability for assessments is apportioned. No premium distributions or refunds shall be made to such insolvent Member until all of its liabilities to the Members and all liabilities assumed by the Members by virtue of the provisions in this section shall have been fully settled and satisfied.

The Members shall have all the rights allowed by law against the estate or funds of such insolvent Servicing Carrier for recovery of funds disbursed (including the payment of losses, costs, expenses and unearned Servicing Carrier allowance) to insolvent Servicing Carriers which have been absorbed by the Members as herein provided. The Administrator may assert and enforce such rights on behalf of the remaining Members, and is hereby appointed as their attorney-in-fact for this purpose, to assist and enforce such rights or any compromise on their behalf.

Upon the insolvency of a Servicing Carrier, all amounts due to such insolvent Servicing Carrier from the Members as a result of the reinsurance provided to such Servicing Carrier and all amounts due from the insolvent Servicing Carrier as a Member to other Servicing Carriers it reinsures shall be merged into one account and deemed mutual debts and credits which solvent Members and Servicing Carriers may offset.

In the event of the insolvency of a Member, any amounts owed to such insolvent Member from any Servicing Carrier under any Reinsurance Agreement may be offset from any amounts owed (either due or to become due) by such insolvent Member to any Servicing Carrier under the same Reinsurance Agreements. It is the intent of this provision that all amounts due to or from an insolvent Member under this provision will be treated as mutual debts and credits for purposes of offset rights.

- (d) The Board of Directors shall have the discretion to terminate participation of any or all affiliated companies of the insolvent Member. The termination of an insolvent Member or any or all companies described in this section shall not be deemed a violation of the requirement contained in Article III, Section I relating to all insurers in a group becoming Members. A decision to terminate an affiliate of an insolvent Member is reviewable under the applicable Authorized Insurance Plans.
- (e) Anything in this Section to the contrary notwithstanding, the Board of Directors may, in the event such action is in its judgment feasible and desirable, and in a manner equitable to all Members, elect not to terminate the participation of such insolvent Member, and permit such Member to continue its participation under

- (f) No member of the Board of Directors that is either an employee or representative of the insolvent Member or affiliate thereof may vote in any proceeding under this Section.

6. Member Obligations.

- (a) The Administrator is authorized to establish a financial credit policy designed to protect the interests of all Members by making sure that each Member, where appropriate, has adequate financial resources to meet its obligations under the Reinsurance Agreements. The financial credit policy may include, but need not be limited to, such things as: (i) financial reporting to the Administrator; (ii) minimum financial standards which must be met by each Member; (iii) actions to be taken by the Administrator when such standards are not met; (iv) obligations of Members in respect to such financial credit policy; and (v) right of appeal. After soliciting individual input from various Members, the Administrator shall be responsible for the preparation and implementation of the financial credit policy and any subsequent amendments thereto.
- (b) Notwithstanding Section 6. (a) above and in the absence of a good faith dispute as determined by the Administrator, any Member that fails or has failed to make timely payment of its reinsurance obligations or any assessment made under these Bylaws shall become immediately liable as of the earliest date on which such failure to pay occurs, for all current assessments and reinsurance obligations and an additional amount equal to the commuted value on such date of all outstanding reinsurance obligations that such Member may have. For the purposes hereof, such commuted value shall total the amount of unearned premium reserves and incurred loss reserves then allocated to such Member hereunder, as determined by the Administrator and approved by the Board of Directors. The liability of the Member for such commuted value under this provision shall be deemed fixed, liquidated, and non-contingent as of the date of such failure to pay. The Administrator is hereby appointed the attorney-in-fact on behalf of all Members to assert and enforce such liability or any compromise thereof on their behalf.

(c) In addition to Sections 6. (a) and (b) above, if the Administrator determines that there is a substantial likelihood that a Member's reserves are not adequate to meet its obligations under the Reinsurance Agreements, the Administrator shall have authority to order that all premium distributions or refunds due or that may become due to the Member be paid into escrow or trust with the Administrator, or otherwise be withheld from distribution to the Member, to secure the Member's obligations and that the Member provide a letter of credit or such other form of security and in such amount approved by the Administrator to secure the Member's future liabilities.

7. Authority to Commute. The Board shall have the authority to direct the Administrator to enter into agreements on such terms as may be fair and reasonable for the following:

- (a) to commute with a Servicing Carrier all obligations owed by Members to such Servicing Carrier under the Bylaws or the Reinsurance Agreements;
- (b) to commute any specific policy year or years of an individual Member; or
- (c) to novate or reinsure policy years that have more than ten (10) years of experience.

When required under (a) or (c) above, such commutation or novation can only be effected with the agreement of the Servicing Carrier or carriers involved.

Any financial obligations arising under any agreement entered into under this Section 7 shall be binding upon the Member or Members.

ARTICLE IV

Member Meetings and Voting Rights

- 1. Regular Meetings.** The Members shall meet annually on the third Wednesday of June, or on such other date as the Board of Directors may determine, and at such place as the Board of Directors may determine.
- 2. Special Meetings.** Special meetings of the Members may be called at any time by the Chair of the Board of Directors and shall be called by the Chair upon the written request of three (3) non-affiliated Members.
- 3. Notice of Meetings.** Except as otherwise provided in Article IX, notice of all annual and special meetings shall be given or caused to be given by the Chair, in writing, mailed or

4. **Quorum.** A quorum at any annual or special meeting shall consist of Members represented in person or by proxy that write not less than 50.1% of the total net workers compensation premiums written by all Members during the latest calendar year for which information is available in all states where these Bylaws are operative. For purposes of determining a quorum and any vote taken hereunder, the net workers compensation premium written for each Member shall only include those states where such Member is providing reinsurance.
5. **Powers.** The purpose of any special meeting shall be stated in the notice thereof; but at all such meetings and at annual meetings, Members may consider and act upon all matters brought before them, except where otherwise specifically provided in these Bylaws.
6. **Voting Rights.** Except where otherwise provided in these Bylaws, at all meetings action may be taken only upon affirmative vote of a majority of the Members that write not less than 50.1 % of the total net workers compensation premiums written by all Members during the latest calendar year for which information is available in all states where these Bylaws are operative. If such meeting is limited to matters involving one state by the terms of the notice of meeting, no action may be taken unless there has been an affirmative vote of Members that write not less than 50.1% of the total net workers compensation premiums written by all Members providing reinsurance in such state during the latest calendar year for which information is available in such state.
7. **Proxies and Mail Votes.** Members may be represented at any meeting by proxy. Every proxy shall be in writing and signed by an authorized officer of the Member. No proxy shall be valid after the expiration of six (6) months after the date thereof. Every proxy shall be revocable at the pleasure of the Member executing it. Before any proxy can be voted, it shall first be filed with the Chair of the Board of Directors or the Chair's designee not later than one (1) full business day in advance of the meeting.

8. **Procedure / Minutes of Meetings.** Minutes of all meetings of the Members and of the Board of Directors shall be recorded and be available to all Members. Except as otherwise specifically provided in these Bylaws, all annual and special meetings shall be conducted in accordance with the rules of parliamentary procedure established in the most current edition of *Robert's Rules of Order*.
9. Action may be taken without a meeting in accordance with statutory requirements.

ARTICLE V

Board of Directors

1. **Number and Term of Office.** Except for those powers specifically granted to the Administrator or an administrator under any Authorized Insurance Plan, these Bylaws and the Administrative Agreement, the operation, business and affairs of all matters arising under these Bylaws shall be managed and controlled by a Board of Directors composed of twelve (12) individuals, none of whom are employees or representatives of the same Member. Only individuals who are employees or representatives of Members shall be eligible for election as Directors.

The Board shall be elected by the Members at the annual meeting of the Members. Board elections shall be made for staggered terms, with such terms effective immediately upon adjournment of the annual meeting of the Members.

Four (4) individuals shall be elected annually for a term of three (3) years. No individual serving on the Board for a full term shall succeed himself or herself, except where a sufficient number of non-succeeding individuals cannot be induced to serve on the Board.

No more than five (5) of the twelve (12) Board members shall be employees or representatives of Members that are Servicing Carriers.

To facilitate voting for members of the Board of Directors at annual meetings, at least sixty (60) days prior to each annual meeting the Board shall appoint a Nominating Committee consisting of four (4) Members. The Nominating Committee shall make nominations for the terms that are expiring at the next annual meeting. The Nominating Committee recommendations shall be reported to all Members at least one (1) week prior to the annual meeting. Any Member can make additional nominations at the annual meeting.

2. **Vacancies.** If a vacancy occurs in the Board of Directors, the Board shall appoint a replacement which will serve until an election can be held at the next annual or special meeting of the Members to fill the unexpired term.
3. **Place of Meetings.** All meetings of the Board shall be held at a place designated by the Chair.
4. **Quorum and Voting Rights.** A majority of the Board of Directors shall constitute a quorum. Each Board member shall be entitled to one vote. Proxy voting shall not be permitted. Any Board action requires an affirmative vote of a majority of the Board present for the meeting at which a quorum is present. If such votes are not cast, the matter fails adoption except as provided for elsewhere in these Bylaws. In the absence of a quorum, the Board, subject, however, to the provisions of Section 2 of this Article V relative to filling vacancies on the Board, shall have no power except that a majority of the Board of Directors in attendance may adjourn the meeting from time to time until a quorum shall attend.
5. **Meetings.** The Board shall meet within thirty (30) calendar days next following the annual election of the Board for the purpose of electing officers to serve for the next ensuing year and for the transaction of all other business within the powers of the Board. Other regular meetings of the Board of Directors shall be held at such places and on such dates as the Board may from time to time determine. Special meetings of the Board may be called at any time by the Chair, or by the Chair upon written request of three (3) non-affiliated Board members. Such notice of regular and special meetings of the Board shall be given as may be determined by the Board or, in the event the period or method of notice shall not have been prescribed, as the Chair shall deem reasonable. Board members may participate in meetings of the Board by means of a conference telephone, video conference, or similar communications method by which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at such meeting.
6. **Action Without Meeting.** Any action of the Board of Directors may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the Board members then in office and is filed with the minutes of the Board of Directors. Such unanimous written consent shall have the same effect as a unanimous vote of the Board.

- 7. Authorization.** These Bylaws shall not apply to any Insurance Plan unless the incorporation of these Bylaws into such Insurance Plan is first authorized by the Board of Directors, or the Board approves their application upon some other form of approval by the insurance regulator. The Board has the power, through such vote, to take necessary and appropriate steps to incorporate the Bylaws into such Insurance Plans through filings with the appropriate regulators for consideration and approval, or to otherwise obtain approval from appropriate regulators. In the event that amendments to these Bylaws are not approved by the insurance regulator in a particular state, the most recently approved version of the Bylaws shall continue to apply to risks written through the Insurance Plan in that state.
- 8. Plan Changes.** The Board shall monitor and review any change in any Authorized Insurance Plan and any changes in the identity of the Plan Administrator for any such Plan. The Board shall assess the effect of any such changes on the interests of the Members and policyholders insured under any Authorized Insurance Plan and shall approve all such changes unless the Board finds that such changes would be inconsistent with the purposes of these Bylaws. If the Board does not approve such a change, the Board may elect to terminate reinsurance in accordance with the termination provisions of the applicable Reinsurance Agreement. Any decision by the Board to elect to terminate reinsurance shall be subject to the approval of the Members at any regular or special meeting thereof. At any time, the Board of Directors may develop and present proposed amendments, changes, or revisions to, or complete replacements for, an existing Authorized Insurance Plan or proposed Insurance Plan where the Board believes its proposal would be in the overall interest of the Members in a given state.
- 9. Organization and Procedure.** The members of the Board of Directors annually shall elect a Chair and a Vice-Chair. The Chair, or in his or her absence the Vice-Chair, or in the absence of both, a Chair pro tem elected by the Governors present, shall act as a Chair of every meeting of the Board; and the Chair shall appoint a person to act as secretary of the meeting, who shall keep a record of the Board's proceedings. The order of business at all meetings of the Board shall be determined by the Chair. Except as otherwise specifically provided in these Bylaws, all meetings of the Board shall be conducted in accordance with the rules of parliamentary procedure established in the most current edition of *Robert's Rules of Order*.

- 10. Disputes and Appeals.** In addition to the powers elsewhere conferred upon it by these Bylaws, the Board of Directors shall constitute a committee with full authority to pass upon all disputes arising with respect to these Bylaws, including without limitation any questions as to the application, scope, and effect of these Bylaws. The ruling or a majority of the Board as then constituted on any such dispute or question following reasonable notice and an opportunity for a hearing shall be final. All disputes reviewed by the Board of Directors and appeals therefrom shall be subject to and in accord with the Dispute Resolution Procedures provided for in the various Authorized Insurance Plans.
- 11. Rules and Procedures.** The Board of Directors shall have the right to promulgate and adopt rules and procedures for the purpose of implementing the terms of these Bylaws and may also delegate their power to promulgate and adopt rules and procedures to the Administrator, subject to repeal by the Board.
- 12. Authority of Administrator.** The Administrator is authorized to enter into agreements on behalf of the Members to carry out the purposes of these Bylaws, including but not limited to the Reinsurance Agreements. Upon direction by the Board of Directors, the Administrator is empowered to act as attorney-in-fact for each Member to prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, such Member based on or involving any matter relating to the Bylaws or to intervene in any action or proceeding related thereto. The Administrator or an officer thereof is authorized to certify these Bylaws, acts taken by the Board or the Members, the tenure of, signatures, identity and acts of officers or other officials, or other official acts; and such certificates may be relied upon by any person to whom the same shall be given, until receipt of notice to the contrary.
- 13. Chair.** The Chair shall be chief executive officer under these Bylaws, and shall have overall control of and responsibility for all activities subject to these Bylaws and other powers which are incidental thereto. The Chair shall serve for a term of one year and any Member serving as Chair for such term or any portion thereof may succeed himself or herself, provided further that the Chair shall be limited to two (2) consecutive one-year terms, unless otherwise approved by the Board of Directors. The Chair shall not vote in any matter requiring action by the Board of Directors under these Bylaws, except in the event of a tie vote among those Board members voting on any particular matter.
- 14. Vice-Chair.** The Vice-Chair shall have immediate charge, subject to the direction and

15. **Committees.** The Chair may from time to time appoint such committees, (which may include representatives from Members that are not represented on the Board), with such duties and subject to such rules or conditions, not inconsistent herewith, as the Chair may deem desirable. The Chair shall appoint a Chair of each committee, who shall have the same powers and duties with respect to the committee so chaired as the Chair of the Board of Directors has with respect to the Board as a whole. Committee meetings shall be convened and conducted, and action may be taken by each committee, in the same manner as is provided herein for meetings and action of the Board of Directors.

ARTICLE VI

Fiscal Matters

1. **Fiscal Year.** The Corporation's fiscal year shall be the calendar year unless otherwise established by the Board of Directors.
2. **Accounts.** Funds held temporarily for the benefit of Members, including funds withheld pursuant to Article III, Section 6, shall be held by the Administrator and kept on deposit in such banks, trust companies or other depositories as may from time to time be designated and prescribed by resolution of the Board of Directors. The Administrator shall have full authority to deposit, withdraw, and invest such funds in order to carry out the purposes of these Bylaws and the Reinsurance Agreements. The Administrator shall keep accurate records to identify such deposits, withdrawals, and investments which shall be available for review by the Board at any time.
3. **Investment Income.** All income on the funds held for the benefit of the Members shall, upon receipt thereof, become subject to all the appropriate provisions of these Bylaws and the Reinsurance Agreements, except for funds held pursuant to Article III, Section 6 in which case interest will be for the benefit of the Member that has provided the security required.

ARTICLE VII

Indemnification

- 1. Indemnification in Actions Other than by or in the Right of the Corporation.** The Corporation shall indemnify any person or Member who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he, she or such Member is or was a director, officer, employee, member or agent of the Corporation, or (in the case of natural persons) who is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or Member in connection with such action, suit or proceeding, if such person (or, in the case of a Member, the natural persons acting as representatives of such Member) acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person or representative did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal action or proceeding, that the person or representative had reasonable cause to believe that his or her conduct was unlawful.
- 2. Indemnification in Actions by or in the Right of the Corporation.** The Corporation shall indemnify any person or Member, except as provided in Section 13 below, who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person or member is or was a director, officer, employee, member or agent of the Corporation, or (in the case of natural persons) who is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person or Member in connection with the defense or settlement of such action or suit, if such person (or, in the

- 3. Notice to Corporation.** With respect to any action or suit to which this Article applies, the party to be indemnified hereunder shall give notice to the Corporation as soon as practicable of any such action or suit, and no expenses (including attorneys' fees) shall be incurred by such party, nor shall such action or suit be settled, without consent of the Corporation, such consent not to be unreasonably withheld.
- 4. Determination of Conduct.** Any indemnification under Sections 1 and 2 of this Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case, upon a determination by the board of directors that indemnification of the party seeking such indemnification is proper in the circumstances because such party has met the applicable standard of conduct set forth in Sections 1 or 2 of this Article. Such determination shall be made with respect to a person who is a director or officer at the time of the determination (a) by the majority vote of the directors who are not parties to such action, suit or proceeding even though less than a quorum; (b) by a committee of the directors designated by a majority vote of the directors, even though less than a quorum; (c) if there are no such directors, or if the directors so direct, by independent legal counsel in a written opinion; or (d) by the members entitled to vote, if any.
- 5. Payment of Expenses in Advance.** Expenses (including attorney's fees) incurred by an officer or director in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding, as authorized by the board of directors in the specific case, upon receipt of an undertaking by or on behalf of the director or officer, to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Corporation as

- 6. Indemnification Not Exclusive.** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of Members or disinterested directors, or otherwise, both as to action in such party's official capacity and as to action in another capacity while holding such office, and shall continue as to a party who has ceased to be a director, officer, employee, member or agent, and shall inure to the benefit of the heirs, executors, administrators and corporate successors of such a party.
- 7. Insurance.** The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article.
- 8. Notice to Members.** If the Corporation has paid indemnity or has advanced expenses under Section 2 of this Article to a director or officer, the corporation shall report the indemnification or advance in writing to Members entitled to vote with or before the notice of the next meeting of the Members entitled to vote.
- 9. References to Corporation.** For purposes of this Article, references to "the Corporation" shall include, in addition to the surviving corporation, any merging corporation (including any corporation having merged with a merging corporation) absorbed in a merger which, if its separate existence had continued, would have had the power and authority to indemnify its directors, officers, employees, members or agents, so that any party who was a director, officer, employee, member or agent of such merging corporation, or was serving at the request of such merging corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article with respect to the surviving corporation as such party would have with respect to such merging corporation if its separate existence had continued.

- 10. Other References: Benefit Plans.** For purposes of this Article, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation that imposes duties on, or involves services by such director, officer, employee or agent with respect to an employee benefit plan, its participants, or beneficiaries. A person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Article.
- 11. Other References: Agent.** For purposes of this Article, the Administrator and officers and employees of the Administrator acting on behalf of one or more members as provided in these Bylaws shall not be deemed “agents” of the Corporation nor persons serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, and this Article shall not confer any indemnification rights on the Administrator or its officers and employees. However, nothing in this Article shall prohibit the Corporation from indemnifying the Administrator and its officers and employees or other affiliates by written contract, the terms of such indemnification to be set by such contract.
- 12. Apportionment and Assessment.** The Corporation’s liability for any indemnity provided in this Article shall be apportioned among all Members, including any named (directly or through their directors, officers, employees or agents) in any threatened, pending or completed action or suit under Sections 1 or 2 of this Article, pursuant to Article X of these Bylaws. To the extent that such threatened, pending or completed action or suit concerns matters in one or more identifiable states in which reinsurance is provided to an Authorized Insurance Plan under these Bylaws and to particular policy years of such reinsurance, the liability for such indemnification shall be ratably apportioned to the Members for those states and policy years in question. Consistent with this Section 12 and with Article X, the Administrator shall have power to assess Members as necessary to fund the indemnification obligations provided in this Article.
- 13. No Indemnification for Member when Action Brought by Corporation.** Any Member that is made a party to a lawsuit by the Corporation or settles a dispute with the

ARTICLE VIII

Dissolution

Dissolution. Upon the dissolution of the Corporation or the winding up of its affairs, the assets of the Corporation shall be distributed in the discretion of the Board of Directors exclusively for the common business interests of its Members or to organizations which are exempt from Federal Income Tax under IRC Section 501(c)(6) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws.

ARTICLE IX

Amendments to Bylaws

Amendments to Bylaws. Any and all provisions of these Bylaws and any amendments hereto shall be subject to amendment, alteration, repeal, or re-enactment at any annual meeting of the Members, or at any special meeting called for the purpose, by the affirmative vote of two-thirds (2/3) of the Members voting in person or by proxy and such two-thirds (2/3) of said Members shall write not less than 50.1% of the total net workers compensation premiums written by all Members during the latest available calendar year for which information is in all states where these Bylaws are operative. For purposes of this determination, the net workers compensation premium written for each Member shall only include those states where such Member is providing reinsurance under these Articles. Not less than fifteen (15) calendar days' written notice of any such meeting shall be given, or caused to be given, by the Chair, in which notice the action proposed to be taken shall be fully set forth. Any amendments to these Bylaws approved by the Members shall be binding on the Members for all outstanding policy years, but shall only be effective in those states where the amendments have been filed and approved by the insurance regulator as part of the Authorized Insurance Plans in effect in such states, or as otherwise approved by the regulator.

ARTICLE X

Effective Date

Effective Date. These Bylaws and any amendments thereto, as approved under the provisions of Article IX, shall become effective and binding on those Members that become Members hereto as of the date they become Members. Notwithstanding the foregoing, if pursuant to the terms of

any statute, regulation, or Authorized Insurance Plan, any Member was under a legal duty to participate in the reinsurance provided under these Bylaws but failed or refused to become a Member as required, the application of these Bylaws shall relate back to the policy year when the Member first became obligated to become a Member.

ARTICLE XI

Assessments and Expenses

- 1. Expenses and Payments.** Expenses incurred by the Administrator in the administration of the affairs subject to these Bylaws, shall be a proper charge against, and shall be an obligation of the Members. A record shall be kept of all such expenses, and the amount thereof shall be apportioned to the Members in the ratio of their interest under the various Reinsurance Agreements. Such expenses may be paid out of funds held by the Administrator or shall be assessed against the Members.
- 2. Audit.** An examination and audit of the Corporation's financial statements shall be made annually in accordance with generally accepted auditing standards by a Certified Public Accountant.
- 3. Transactions, Accounts, and Financial Statements.** In addition to maintaining the Corporation's books and records, separate accounts shall be maintained by the Administrator covering transactions for each policy year in each state based on the information provided to the Administrator by the Servicing Carriers pursuant to the Reinsurance Agreements. The Administrator shall prepare and deliver to each Member a statement showing the apportionment of only that Member's obligations under the Reinsurance Agreements, including the expenses of administration provided for herein and the condition of each account. The Administrator shall distribute premium and collect reinsurance recoverables as provided for in the Reinsurance Agreements. The Board shall select independent auditors for engagement by the Administrator to examine an annual special-purpose financial statement prepared by the Administrator for transactions pursuant to the Reinsurance Agreements. The preparation and examination of such special-purpose financial statement shall be performed pursuant to accounting policies and standards that may be adopted from time to time by the Board. As part of this process, the auditors shall make such actuarial determinations as are necessary and appropriate, including the validation of appropriate reserves for each policy year. Upon Board approval of the special-purpose financial statement examination report, the

4. **Actuarial Opinion.** A statement of actuarial opinion for the reserves on policies issued pursuant to Authorized Insurance Plans and reinsured under Reinsurance Agreements shall be prepared and certified by an actuary of the Administrator who meets the qualification standards of the American Academy of Actuaries and the Casualty Actuarial Society, upon the conclusion of each fiscal year. The Administrator shall make a copy of such statement of actuarial opinion available upon request to any participating company.

ARTICLE XII

Miscellaneous Provisions

1. **Titles.** The titles to the various articles and sections hereof are for reference purposes only and shall not be used in the construction or interpretation of these Bylaws.
2. **Severability.** In the event any term or provision of these Bylaws shall to any extent be held to be illegal, invalid, unenforceable, or nonoperative as a matter of law, the remaining terms and provisions hereof shall not be affected thereby, and each such term and provision shall be valid and shall remain in full force and effect.