



October 2, 2023

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Standard Practice Manual Revisions

As noted previously (July 31, 2023 Circular Letter RF-23-9 and January 26, 2023 Circular Letter RF-23-1), the Fiftieth Annual Meeting of the North Carolina Reinsurance Facility will convene at 8:30 a.m. on Wednesday, October 25, 2023 at the Washington Duke Inn & Golf Club, Cameron Blvd., Durham, NC. One of the items on the agenda is recommended updates to the Plan of Operation in the Reinsurance Facility's Standard Practice Manual. Over the course of this year, substantial work has gone into updating the Plan of Operation. This project was launched in response to recent statutory changes, but the effort has also included updates and improvements to "modernize" the Plan.

Attached for your review are a tracked changes version reflecting the proposed revisions and a "clean" version of the Plan of Operation as it is proposed to be revised. The Board of Governors is recommending these revisions, and the revisions will be presented for your consideration at the Annual Meeting on October 25, 2023.

These proposed revisions are being distributed to all member companies as well as to all company representatives who have registered for the Annual Meeting. Please accept apologies if you receive them twice. Please familiarize yourself with the proposed edits in advance of the Annual Meeting.

If you have any questions, please contact me at [tfc@ncrb.org](mailto:tfc@ncrb.org).

As always, thank you for your contributions to the mission of the Facility.

Sincerely,

Terry F. Collins

Chief Operating Officer

North Carolina Reinsurance Facility

TFC/lad

Attachments

RF-23-11

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**Section 2  
PLAN OF OPERATION**

**ARTICLE I**

**MEMBERSHIP OBLIGATIONS, GENERAL**

**(1) Name, Creation, Membership**

There is created pursuant to Article 37 of Chapter 58 of the General Statutes of North Carolina a non-profit unincorporated legal entity to be known as the North Carolina Reinsurance Facility (hereinafter referred to as the "Facility") consisting of all insurers licensed to write and engaged in writing within this State motor vehicle insurance or any component thereof. Every such insurer, as a prerequisite to further engaging in writing such insurance in this State, shall be a member of the Facility and shall be bound by the provisions of said Article 37, and the Plan of Operation (hereinafter referred to as the "Plan") and the Rules of Operation promulgated by the Board of Governors (hereinafter referred to as the "Board") pursuant thereto. No company may withdraw from membership in the Facility unless it ceases to write motor vehicle insurance in this State or ceases to be licensed to write such insurance.

**(2) Obligations After Termination of Membership**

Any company whose membership in the Facility has been terminated by withdrawal shall, nevertheless, continue to be bound by the provisions of said Article 37, and the Plan and the Rules of Operation promulgated by the Board pursuant thereto.

**(3) Insolvency**

Any unsatisfied net liability to the Facility of any insolvent member shall be assumed by and apportioned among the remaining members in the Facility in the same manner in which assessments are apportioned by the Facility. The Facility shall have all rights allowed by law in behalf of the remaining members against the estate or funds of such insolvent member for sums due the Facility.

**(4) Merger, Consolidation, Reinsurance**

When a member has been merged or consolidated into another insurer, or another insurer has reinsured a member's entire motor vehicle insurance business in North Carolina, such member and its successors in interest and the other insurers with which it has been merged or consolidated shall remain liable for such member's obligations hereunder.

**(5) No Direct Liability**

No judgment against the Facility shall create any direct liability in the individual members.

**ARTICLE II**

**DEFINITIONS**

"Cede" or "Cession" means the act of transferring the risk of loss from an individual member to all members through the operation of the Facility.

"Commissioner" means the Commissioner of Insurance of North Carolina.

"Eligible risk," for the purpose of motor vehicle insurance other than nonfleet private passenger motor vehicle insurance, means:

- a. A person who is a resident of this State who owns a motor vehicle registered or principally garaged in this State;
- b. A person who has a valid driver's license in this State;
- c. A person who is required to file proof of financial responsibility under Article 9A or 13 of Chapter 20 of the General Statutes in order to register his or her motor vehicle or to obtain a driver's license in this State;
- d. A nonresident of this State who owns a motor vehicle registered ~~or~~ and principally garaged in this State; or
- e. The State and its agencies and cities, counties, towns and municipal corporations in this State and their agencies.

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However, no person shall be deemed an eligible risk if timely payment of premium is not tendered or if there is a valid unsatisfied judgment of record against such person for recovery of amounts due for motor vehicle insurance premiums and such person has not been discharged from paying said judgment, or if such person does not furnish the information necessary to effect insurance.

“Eligible risk,” for the purpose of nonfleet private passenger motor vehicle insurance, means:

- a. A resident of this State who owns a motor vehicle registered or principally garaged in this State;
- b. A resident of this State and who has a valid driver’s license issued by this State;
- c. A person who is required to file proof of financial responsibility under Article 9A ~~of~~ or 13 of Chapter 20 of the General Statutes in order to register his or her vehicle or to obtain a driver’s license in this State;
- d. A nonresident of this State who owns a motor vehicle registered and principally garaged in this State;
- e. A nonresident of the State who is one of the following:
  1. A member of the United States Armed Forces stationed in this State, or deployed outside this State from a home base in this State, who intends to return to his or her home state;
  2. The spouse of a nonresident member of the United States Armed Forces stationed in this State, or deployed outside this State from a home base in this State, who intends to return to his or her home state;
  3. An out-of-state student who intends to return to his or her home state upon completion of his or her time as a student enrolled in school in this State; or
- f. The State and its agencies and cities, counties, towns, and municipal corporations in this State and their agencies.

However, no person shall be deemed an eligible risk (a) if timely payment of premium is not tendered ~~or, (b) if there is a valid unsatisfied judgment of record against the person~~ which the person has not been discharged from paying, for recovery of amounts due for (i) motor vehicle insurance premiums and the person has not been discharged from paying the judgment or (ii) payments recoverable under a policy because the issuance of the policy was induced by a knowing and material misrepresentation of facts relating to the insured's status as an eligible risk, or (c) if the person does not furnish the information necessary to effect insurance.

“Motor Vehicle” means every self-propelled vehicle that is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers). “Motor vehicle” also means a motorcycle, as defined in G.S. 20-4.01(27)~~h~~, and a moped, as defined in G.S. 20-4.01(27)j. “Motor Vehicle” does not mean an electric assisted bicycle, as defined in G.S. 20-4.01(7a).

“Motor Vehicle Insurance” means direct insurance against liability arising out of the ownership, operation, maintenance or use of a motor vehicle for bodily injury including death and property damage and includes medical payments and uninsured and underinsured motorists coverages. With respect to motor carriers who are subject to the financial responsibility requirements established under the Federal Motor Carrier Act of 1980, the term “motor vehicle insurance” includes coverage with respect to environmental restoration. As used in this subsection the term, “environmental restoration” means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release, or escape into or upon the land, atmosphere, water course, or body of water of any commodity transported by a motor carrier. Environmental restoration includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

“Person” means every natural person, firm, partnership, association, trust, limited liability company, firm, corporation, government or governmental agency.

“Principally garaged” means the vehicle is garaged for six or more months of the current or preceding year ~~on~~ property in this State which is owned, leased, or otherwise lawfully occupied by the owner of the vehicle.”

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**ARTICLE III  
OFFICES, MEETINGS**

**(1) Offices**

The offices of the Facility shall be located ~~at~~in Raleigh, North Carolina or at such other location in North Carolina as may from time to time be determined by the Board.

**(2) Regular Meetings**

There shall be an annual meeting of the Facility ~~at~~in Raleigh, North Carolina ~~on the second Wednesday in June~~October (unless the Board shall designate some other date and place).

**(3) Special Meetings**

Special meetings of the Facility may be called at any time by the ~~Chairman of~~Chair of the Board, and special meetings shall be called by the ~~Chairman upon~~Chair upon the written request of the Commissioner or of five voting members of the Board.

**(4) Mode of Meetings**

A meeting of the Facility may be held in person or by remote means (including telephone or other electronic communication) which allow all meeting participants to communicate in real time. The Facility shall implement reasonable measures to verify the credentials of all participants. A member participating by remote means will be counted in determining whether a quorum is present.

**(4)(5) Notice of Meetings**

Notice of all annual and special meetings of the Facility shall be given or caused to be given by the ~~Chairman~~ in writing mailed to or by facsimile or electronic mail directed to each member at its latest address appearing upon the records of the Facility. Except where otherwise provided in this Plan, if notice is mailed, it shall be placed in the mail not less than 10 days prior to the date of the meeting. If notice is given by facsimile or electronic mail it shall be given not less than 5 days prior to the meeting. At least 20 days notice of the annual meeting of the Board of Governors shall be given to all Board members.

Notices shall specify the place and/or mode, date, and time of the meeting, and the means of remote participation, if any, by which members and proxy holders may be deemed to be present and vote at such meeting.

A quorum at any annual or special meeting of the Facility shall consist of 51% of the members, which members may be represented at the meeting in person, remotely or by proxy. =

**(5)(6) Powers**

The matters to be considered at any special meeting of the Facility shall be only those matters set forth in the notice of such meeting. At annual meetings members may consider and act upon all matters properly brought before them, whether or not contained in the notice thereof.

**(6)(7) Voting Rights**

Each member of the Facility shall be entitled to one vote at all meetings of the Facility. Except where otherwise provided in this Plan, action may be taken at any such meeting only upon a majority vote of the members voting provided such vote represents not less than 70% of the total North Carolina net direct motor vehicle insurance premiums written during the latest reported calendar year by all members voting in person, remotely or by proxy.

**(7)(8) Proxies**

Members may be represented at any meeting by proxy. Members may record their vote by mail on written propositions and such votes shall have the same standing as if cast by such member in person, remotely or by proxy.

**(8)(9) Minutes of Meeting**

Minutes of all meetings of the Facility and of the Board shall be available upon request. sent to all members and the Commissioner.

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**ARTICLE IV  
BOARD OF GOVERNORS**

**(1) Membership of Board**

The Board of Governors shall consist of twelve Board members having one vote each from the classifications hereinafter enumerated plus two nonvoting public members who are not employed by or affiliated with any insurance company or the Department of Insurance plus the Commissioner who shall serve ex officio without vote. ~~The two nonvoting public members shall be appointed by the Governor to serve at the Governor's pleasure.~~ Each member serving on the Board shall be represented by a senior officer. Not more than one member in a group under the same ownership or management shall be represented on the Board at the same time.

Five Board members shall be selected by the members, one each from the following groups: The American Insurance Association (or its successors), the Property Casualty Insurers Association of American (or its successors), stock insurers not affiliated with those trade associations, nonstock insurers not affiliated with those trade associations, and the industry at large regardless of trade affiliation. The at-large insurer shall be selected by the insurer company members of the Board. The Commissioner shall appoint two Board members who ~~shall be~~ Facility insurance company members domiciled in this State. ~~The Commissioner shall appoint one Board member who shall be selected from a list of two nominees submitted by the Auto Insurance Agents of North Carolina, Inc. The Commissioner shall appoint one member of the Board who shall be selected from two nominees submitted by the Alliance of Insurance Agents of North Carolina.~~ The Commissioner shall appoint four Board members of the Board who shall be ~~fire and casualty insurance agents producers with property and casualty lines of authority~~ licensed in North Carolina and actively engaged in writing motor vehicle insurance in this State. ~~The Commissioner shall select two agents nominees insurance producers from among a list of four nominees submitted by the Independent Insurance Agents of North Carolina, Inc. (or its successors) the Alliance of Insurance Agents of North Carolina.~~ The term of office of the Board members shall be three years. All Board members shall serve until their successors are selected and qualified and the Commissioner may fill any vacancy on the Board from any of the aforementioned classifications until such vacancies are filled in accordance with the provisions of this Plan. ~~The nonvoting public members shall be appointed by the Governor to serve at his pleasure.~~

**(2) Selection of Board Members**

The names of the Board members selected ~~as described above by the insurer company members of the Board and the trade and non-trade associations named herein, and of the members of the Board selected by the Commissioner,~~ shall be announced at an appropriate annual or special meeting of the Facility. ~~At such meeting stock and non-stock members not affiliated with those trade associations shall separately select and announce their respective Board member.~~

Selection of the at-large insurer Board member and the Board members representing the trade associations shall be made in accordance with the procedures of each such selecting group. Nominations and voting for Board members representing unaffiliated members may be in person or remotely by a representative of the unaffiliated member or by proxy. Each unaffiliated member shall be entitled to one vote at all such Board member selection meetings. The votes of a majority of the members voting within the particular group (stock or non-stock members) shall select its respective Board member. No unaffiliated member which is a part of a group under the same ownership or management shall by reason thereof be deprived of the right to vote unless such owner or manager is a member of one of the trade associations named herein.

**(3) Election of Chair~~man~~**

The Board shall annually (or at such other times as may be necessary) elect from its membership a Chairman and Chair and shall meet as often as the Chairman shall require or at the request of four Board members. The Chairman shall Chair shall retain the right to vote on all issues. ~~Seven members of the Board entitled to vote shall constitute a quorum.~~ The same member may not serve as Chairman for more than two consecutive years; provided, however, that a member may continue to serve as Chairman until Chair until a successor Chairman is elected and qualified. ~~The Board may provide for proxy voting in person at meetings of the Board.~~

**(4) Functions of the Board**

The Board shall have full power and administrative responsibility for the operation of the Facility.

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**(5) Reimbursement of Board Member Expenses**

Board members shall receive reimbursement from the Facility for their actual and necessary expenses incurred on Facility business, en route to perform Facility business, and while returning from Facility business plus a per diem allowance of \$25.00 which may be waived. The Board may make provision for reimbursement for actual and necessary expenses incurred by others on Facility business.

**(6) ~~Location of Board~~ Meetings**

~~Seven members of the Board entitled to vote shall constitute a quorum. All meetings of the Board shall be held in North Carolina, or at some other place as may be designated by the Chair, at such time and place as may be designated by the Chairman.~~ Meetings of the Board may be held in person or by remote means (including telephone or other electronic communication) which allow all meeting participants to communicate in real time. The Facility shall implement reasonable measures to verify the credentials of all participants in Board meetings. The Board may provide for proxy voting at meetings of the Board.

**(7) Mail or Electronic Mail Votes**

Except as otherwise provided in this Plan of Operation, the ~~Chairman of~~Chair of the Board or the Facility general manager appointed by the Board shall have authority to submit any matter to the Board for action by a mail or electronic mail vote. The submission to the Board shall specify the final date for voting, which date shall be not less than ten days following the mailing or transmission thereof to all members of the Board. Except as provided below, any motion, recommendation or proposal which receives a favorable mail or electronic mail vote within the allotted time from eight or more of the members of the Board eligible to vote shall be deemed to be adopted to the same extent and with the same effect as if it had been approved and adopted at a duly constituted meeting of the Board of Governors. Notwithstanding the foregoing, a motion, recommendation or proposal will not be deemed to have been adopted as a result of a mail or electronic mail vote if the Facility office receives on or before the final date fixed for voting written or verbal requests from two or more members of the Board that the matter be considered at a meeting of the Board.

**ARTICLE V  
COMMITTEES**

**(1) Establishment of Advisory Committees**

The Board shall establish the following advisory committees of the Facility:

- a. ~~Market Committee~~
- b. Claims Committee
- c. Audit Committee
- d. ~~Methods and Procedures Committee~~
- e. ~~Accounting and Statistical Committee~~
- f. Rating Committee
- g. Compliance Committee

**(2) Miscellaneous Committees**

The Board may establish such other committees of the Facility as it deems necessary.

**(3) Committee Meetings**

Meetings of committees of the Facility may be held in person or by remote means (including telephone or other electronic communication) which allow all meeting participants to communicate in real time. The Facility shall implement reasonable measures to verify the credentials of all participants of such meetings.

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**ARTICLE VI  
STATISTICAL DATA**

Each member shall furnish or cause to be furnished such statistics in connection with insurance subject to the Facility as may be required by the Facility, and each member agrees to permit its statistical agent to release any such data as may be requested by the Facility. Such statistics shall be furnished at such times and in such form and detail as may be required by the Facility.

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**ARTICLE VII  
ANNUAL REPORT**

**(1) Operations of the Facility**

There shall be furnished to each member an annual report of the operations of the Facility in such form and detail as may be determined by the Board.

**(2) Financial Statement of the Facility**

The annual report shall include a financial statement of the Facility audited by an independent auditor approved by the Legislative Services Commission of the North Carolina General Assembly.

**ARTICLE VIII  
INDEMNIFICATION**

**(1) Qualification of for Indemnification**

Any person or member made or threatened to be made a party to any action, suit or proceeding, because such person or member served on the Board or on a committee of the Facility or was an officer or employee of the Facility, shall be indemnified by the Facility against all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorney's fees and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding, except in relation to matters as to which ~~he~~ such person or #member shall be adjudged in such action, suit or proceeding to be liable by reason of breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance or reckless disregard of the responsibilities in the performance of his-such person's or its-member's duties or obligations to the Facility and, with respect to any criminal actions or proceedings, except when such person or member had reasonable cause to believe that ~~his or its the~~ conduct was unlawful. Such indemnification shall be provided whether or not such person or member is a member or is holding office or is employed at the time of such action, suit or proceeding and whether or not any such liability is incurred prior to the adoption of this Plan. Such indemnification shall not be exclusive of other rights such person or member may have and shall extend to the successors, heirs, executors or administrators of such person or member. In the event of settlement or other termination of a matter before final adjudication, indemnification shall be provided only if the Board is advised by independent counsel that the person or member to be indemnified did not in counsel's opinion commit such a breach of duty.

**(2) Entitlement of for Indemnification**

In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in the first paragraph of this Article VIII, shall be determined by the Board which shall also determine the time and manner of payment of such indemnification; provided, however, that a person or member who or which has been wholly successful, on the merits or otherwise, in the defense of a civil or criminal action, suit or proceeding of the character described in the first paragraph of this Article VIII shall be entitled to indemnification as authorized in such paragraph. Nothing herein shall be deemed to bind a person or member who or which the Board has determined not to be entitled to indemnification, or to preclude such person or member from asserting the right to such indemnification by legal proceedings. Such indemnification as is herein provided shall be apportioned among all members, including any named in any such action, suit or proceeding, pursuant to this Plan.

**ARTICLE IX  
THE FACILITY**

**(1) Cession of Risks**

Cessions of eligible risks shall be made in accordance with this Plan of Operation, the rules and regulations of the Board of Governors adopted and promulgated pursuant hereto and any amendments thereto.

**(2) Coverage and Limits Eligible for Cession**

The following coverages of motor vehicle insurance and in at least the following amounts of insurance shall be eligible for cession to the Facility:

- a. Bodily Injury Liability: \$30,000 each person, \$60,000 each accident;

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- b. Property Damage Liability: \$25,000 each accident;
- c. Medical Payments: \$1,000 each person, except that this coverage shall not be available for motorcycles or mopeds;
- d. Uninsured Motorists: \$30,000 each person, \$60,000 each accident for bodily injury; \$25,000 each accident for property damage (\$100.00 deductible);
- e. Any other motor vehicle insurance or financial responsibility limits for such insurance in the amounts required by any federal law or federal agency regulation; by any law of this State; or by any rule duly adopted under Chapter 150B of the General Statutes or by the North Carolina Utilities Commission.

**(3) Additional Ceding Privileges**

Additional ceding privileges for motor vehicle insurance shall be provided by the Board up to the following:

- a. Bodily Injury Liability: \$100,000 each person, \$300,000 each accident;
- b. Property Damage Liability: \$50,000 each accident;
- c. Single Limit Bodily Injury and Property Damage liability: A limit per accident equal to the total of the minimum per accident Bodily Injury and Property Damage Liability limits required under the North Carolina Vehicle Financial Responsibility Act of 1953 as it is in effect on the date of cession to the Facility;
- d. Medical Payments: \$2,000 each person, except that this coverage shall not be available for motorcycles or mopeds;
- e. Uninsured Motorists: \$1,000,000 each person and \$1,000,000 each accident for bodily injury and \$50,000 each accident for property damage (\$100.00 deductible).
- f. Combined Uninsured and Underinsured Motorists:  
\$1,000,000 each person and \$1,000,000 each accident for bodily injury and \$50,000 each accident for property damage (\$100.00 deductible).

**(4) Excess Limits**

For persons who must maintain liability coverage limits above those available under Section (3) of this Article IX in order to obtain or continue coverage under personal excess liability or personal "umbrella" insurance policies, additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors up to the following:

- a. Bodily Injury Liability: \$250,000 each person, \$500,000 each accident;
- b. Property Damage Liability: \$100,000 each accident;
- c. Medical Payments: \$5,000 each person, except that this coverage shall not be available for motorcycles or mopeds.

**(5) Notification of Facility**

In order to cede an eligible risk effective when the binder or policy first becomes effective, and in order to cede as of the renewal effective date a first renewal of such policy in effect at the effective date of this Plan, the member must within 30 days of the binder or policy or renewal effective date notify the Facility. The Facility shall accept eligible risks at other times on receipt of the required notice, but such acceptance shall not be retroactive. The Facility shall accept renewal business involving eligible risks after the member on underwriting review elects to again cede the business.

**(6) Definition of "Accident"**

As used in this Article the term "accident" shall mean "occurrence" where the coverage is written on such basis.

**(7) Establishment and Filing**

The Board of Governors shall establish and file with the Commissioner the classifications, rules, rates, rating plans and policy forms to be used on motor vehicle insurance policies reinsured or written by the Facility.

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The Board shall adopt and file with the Commissioner for ~~his or her~~ approval or modification proposed revisions in the classification and rating plans for other than non-fleet private passenger motor vehicle insurance ceded to the Facility.

The Board may authorize any licensed or statutory ~~rating-statistical~~ organization or bureau to establish and file any such classifications, rules, rates and rating plans on behalf of the Facility.

**ARTICLE X  
CESSIONS**

Subject to the limits of coverage and any limitations on cessions which are provided in this Plan and are not in conflict with the provisions of Article 37 of Chapter 58 of the General ~~Statutes~~, a member shall cede 100% of any eligible risks ceded.

**ARTICLE XI  
ASSESSMENTS, PARTICIPATION RATIOS, RECOUPMENT**

**(1) Facility Losses, Expenses and Gains**

Facility losses, expenses, and gains shall be determined on the basis of generally accepted insurance accounting principles as incorporated in the ~~NAIC Model Financial Annual~~ Statement ~~Blank~~ which the Commissioner furnishes casualty insurers pursuant to the provisions of G.S. 58-2-~~1654~~ and shall include all investment income from the premiums on business reinsured by the Facility.

**(2) Preliminary Assessment**

The Board shall, prior to commencement of operations of the Facility, levy a preliminary assessment on all members for necessary initial expenses. Such initial assessment may be a uniform flat charge payable by each member, or it may be on a uniform percentage basis (or bases) or any combination of the foregoing. Thereafter, each member shall be assessed an annual minimum fee of \$100.

**(3) Assessment, Distribution and Recoupment**

The Board periodically, ~~but not less frequently than annually~~, shall:

- a. Assess members if necessary to defray losses and expenses;
- b. Distribute any gains first to defray losses incurred since September 1, 1977, and then by credit or reduction of recoupment surcharges to policies subject to recoupment surcharges; and
- c. Recoup losses sustained by the Facility since September 1, 1977, by assessment of member companies or by way of a surcharge on motor vehicle policies issued by member companies or through the Facility.

**(4) Recoupment of Assessment**

Every member shall, following payment of any assessment, commence recoupment of that assessment by way of a surcharge on motor vehicle insurance policies issued by the member or through the Facility. Such surcharge shall be a percentage of premium adopted by the Board and the charges determined on the basis of the surcharge shall be combined with and displayed as a part of the applicable premium charges. Recoupment of losses sustained by the Facility with respect to nonfleet private passenger motor vehicles may be made only by surcharging nonfleet private passenger motor vehicle insurance policies. If the amount collected during the period of surcharge exceeds assessments paid by the member, the member shall pay over the excess to the Facility on a date specified by the Board. If the amount collected during the period of surcharge is less than the assessments paid by the member, the Facility shall pay the difference to the member.

Except as provided in Section (5) of this Article ~~XI~~, the recoupment of losses shall not be considered as the collection or imposition of rates or premiums for any purposes.

**(5) Agent Insurance Producer Compensation**

The Board of Governors shall adopt and implement a plan for compensation of ~~agents~~ **insurance producers** or members when recoupment surcharges are imposed on motor vehicle insurance policies written to become effective on or after October 1, 1981. Recoupment surcharges applied to such policies shall include an amount necessary to recover the amount of such compensation to ~~agents~~ **insurance producers**.

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**(6) Clean Risk Surcharge**

★The Board shall periodically determine the difference between the actual rates to be charged and the actuarially sound and self-supporting rates for "clean risks" as defined in G.S. 58-37-35(l). Such difference may be recouped through surcharges in the manner provided for in Sections 4 and 5 of this Article XI. ❖

**(7) Subsequent Assessments**

[Applicable with respect to business effective prior to January 1, 1980.]

Subsequent assessments to pay for Facility losses and expenses shall be levied as frequently as the Board deems necessary. Such assessments shall be allocated among the members in accordance with the following:

- a. Each member's allocated share of the private passenger non-fleet motor vehicle insurance experience on ceded risks shall be that proportion of such experience that its respective "total private passenger liability net direct written car years", as defined in the Rules of Operation, bear to the respective total of such net direct written car years of all members in North Carolina.
- b. Each member's allocated share of the all other motor vehicle insurance experience on ceded risks shall be that proportion of such experience that its respective "total all other automobile liability premiums", as defined in the Rules of Operation, bear to the respective total of such premiums of all members in North Carolina.
- c. All costs, charges, expenses, and liabilities in excess of the assessments provided in Paragraph (2) and all income, property and other assets, which the Board determines not to be properly chargeable to the profit or loss of ceded business shall be shared by the members in the respective proportions that each member's "direct written automobile insurance premiums" in North Carolina for the most recent calendar year bear to the total of such premiums for all members. "Direct written automobile insurance premiums" means such reported premiums as defined in the Rules of Operation.

**(8) Subsequent Assessments**

[Applicable with respect to business effective on and after January 1, 1980.]

All Facility costs, expenses, income, losses and gains shall be allocated among the members in accordance with the following:

- a. Each member's proportionate share of the private passenger non-fleet motor vehicle costs, expenses, income, losses and gains shall be determined as the average of (i) the ratio of its total North Carolina private passenger liability net direct written car years to the total such net direct written car years of all members and (ii) the ratio of its total North Carolina ceded private passenger liability net direct written car years to the total such ceded net direct written car years of all members.
- b. Each member's proportionate share of the all other motor vehicle costs, expenses, income, losses and gains shall be determined as the average of (i) the ratio of its total North Carolina all other motor vehicle insurance net direct written premiums to the total such net direct written premiums of all members and (ii) the ratio of its total North Carolina ceded all other motor vehicle insurance net direct written premiums to the total such ceded net direct written premiums of all members.

**(9) Determining Participation Ratios**

For purposes of determining participation ratios, private passenger liability net direct written car years and all other motor vehicle insurance premiums ceded to the Facility by a member as designated agency business pursuant to Article XIII shall not be included.

**(10) Allowances—Risk Distribution System**

Allowances for existing debits and credits in the present risk distribution system may be made as provided in the Rules of Operation.

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**ARTICLE XII**

**ALLOWANCES TO MEMBERS**

**(1) Underwriting Expenses**

Each member ceding risks shall, subject to the limits of coverage and the limitations on cessions provided in this Plan, receive a credit against its premiums written account on ceded business for underwriting expenses in connection with ceded business. Such credit for each member shall consist of the total of the following percentage allowances applied to premiums written on ceded business:

- a. For commissions, brokerage, other acquisition expenses, taxes, licenses, fees, and general expenses, a ceding expense allowance determined for each member as the lesser of: (i) such member's ratio, for the most recent calendar year, of its North Carolina motor vehicle insurance commissions, brokerage, other acquisition expenses, taxes, licenses, fees and general expenses to its total North Carolina motor vehicle insurance written premiums, or (ii) the average combined ratio of such expenses for all insurers adjusted to reflect the anticipated difference, if any, between the average combined ratio otherwise applicable and the provisions for such expenses underlying Facility rates.
- b. For unallocated claim adjustment expenses, a claims expense allowance equal to the ratio, for the most recent calendar year, of total North Carolina motor vehicle insurance unallocated claim adjustment expenses to the total North Carolina motor vehicle insurance written premiums for all insurers, adjusted to reflect the anticipated difference, if any, between such ratio and the provisions for unallocated loss adjustment expenses underlying Facility rates.

For purposes of determining the above ratios, the calendar year experience shall be adjusted to offset the effect of deviations filed and approved under the provisions of G.S. 58-36-30.

**(2) Losses and Allocated Claim Adjustment Expenses**

Each member ceding risks shall, with respect to losses incurred in connection therewith, subject to the limits of coverages and the limitations on cessions provided in this Plan, receive a credit against its premiums written on ceded business for losses and allocated claim adjustment expenses actually paid less recoveries received in each month.

**(3) Definition of "Allocated Claim Adjustment Expenses"**

For the purposes of this Article XII, "allocated claim adjustment expenses" means those expenses which can be directly allocated to a particular claim, as allowed and defined by the Board in the Rules of Operation. The Board may, however, decide after due consideration that the allowance for allocated claim adjustment expense shall be handled on the same basis as unallocated claim adjustment expense.

**(4) Frequency of Reports**

Each member shall report on a monthly basis separately for "private passenger non-fleet" and "all other" Facility business its respective premiums written and allowable credits with respect thereto.

**(5) Summary Reports**

The Facility shall, quarterly or less frequently as determined by the Board, issue summaries to all members reflecting each member's cumulative balances on Facility business, providing reimbursement for those members with allowable credits in excess of written premiums, and shall submit a statement to those members with premiums written which are in excess of allowable credits. A member so billed for premiums written shall remit such excess within 20 days after receiving such statement, subject to interest charges at a legal interest rate per month or fractional part thereof for late payment as provided in the Rules of Operation.

**(6) Allowable Credits**

A member which in any month reports allowable credits substantially in excess of premiums written for "private passenger non-fleet" business or "all other" business shall be entitled to request reimbursement for such excess. Unless the Board determines otherwise, the Facility shall reimburse the member for such excess within 30 days after approving such request.

**(7) Audit Review**

~~Audit Review~~ Facility business written by members shall be subject to review and audit by the Audit Committee and/or the Compliance Committee, as appropriate, in a manner and time prescribed by the Board, and each member by subscription to this Plan specifically authorizes the Committee to audit that part of the member's business which is written subject to this Plan.

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**(8) Claim Review**

The Claims Committee shall, subject to review by the Board, establish and supervise procedures for the review of claim practices by members. Each member is required to adjust losses for ceded business fairly and efficiently in the same manner as voluntary business losses and to effect settlement where settlement is appropriate.

**(9) Rules and Credits**

The Board shall make provision for and promulgate rules for determining allowable credits to be applicable to newly admitted members and other members for whom the allowances developed under paragraphs (1) and (2) above are determined to be inappropriate. On a case by case basis, the Board, on its own motion or upon request, may also make reasonable exceptions for any member with respect to which it is determined or demonstrated that serious inequities result from the application of this Article or the rules promulgated pursuant thereto.

**ARTICLE XIII  
DESIGNATED AGENTS, FACILITY AGENTS-**

**(1) Appointment of Agents**

The Board of Governors shall contract with one or more members, as designated carriers, to appoint and contract with such licensed ~~insurance producers with property and casualty lines of authority fire and casualty agents~~ as have met the standards and security requirement specified in G.S. 58-37-35(g)(6) as determined by the Commissioner, in accordance with the following rules:

- a. Such appointment shall be made within twenty days after receipt of the Commissioner's determination and certification that such ~~agent insurance producer~~ has met the standards and security requirement.
- b. Except as provided in Rules c. and d. of this Section, such designated agent shall agree that all eligible motor vehicle insurance risks applying for coverage at limits which may be ceded to the Facility produced (i) by such designated agent or by the agency with which such designated agent is associated or (ii) by any other agency with which such designated agent is associated or which is affiliated with the agency with which such designated agent is associated, shall be written by the designated carrier; provided, however, that such designated agent may petition the Board of Governors for a partial exemption from the foregoing requirements of this subsection with respect to an agency in a separate geographical location. Such designated agent shall agree further that no eligible motor vehicle insurance risks applying for coverage at limits which may be ceded to the Facility shall be accepted under any form of brokerage arrangement by the designated agent, by the agency with which the designated agent is associated, or by any agency affiliated with the agency with which such designated agent is associated, for submission to the designated carrier.
- c. Designated agents appointed before September 1, 1987 may place liability insurance policies with a voluntary carrier if and only if all policies written by the voluntary carrier are either (i) retained by the voluntary carrier or (ii) ceded to the Facility using Facility rates. Designated agents who place business with a voluntary carrier must provide the Facility a list of policies written by their voluntary carrier. Such list shall be on a form approved by the Facility and shall be furnished at least annually and otherwise as requested by the Facility.
- d. If such designated agent is or becomes a licensed agent of a member exempted by the Board of Governors under Article XIV of this Plan of Operation and if such designated agent is or becomes authorized by such exempt member to solicit and accept premiums for motor vehicle insurance for any category of business for which such member is not exempt, such designated agent shall not submit to the designated carrier any motor vehicle insurance risks in any category of business with respect to which the agent is so authorized by the exempt member.
- e. Any designated agent who is disabled or retiring or the estate of any deceased designated agent may transfer the designation and the book of business to some other licensed insurance producer with property and casualty lines of authority meeting the requirements of law and under rules established by the Facility, and a transfer from a designated agent appointed before September 1, 1987, shall entitle the transferee designated agent to place liability insurance policies with a voluntary carrier. Such transfer shall immediately terminate the authority of such designated agent or his estate to operate as a designated agent.
- f. ~~The designated carrier shall cede to the Facility all business submitted to it by the designated agent.~~

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**(2) Designated Carrier Eligibility**

To be eligible to become a designated carrier, a member must:

- a. Be licensed in North Carolina to write and actively writing voluntary motor vehicle insurance as defined in G.S. 58-37-1(7) in sufficient volume in North Carolina to assure that it will have a significant financial interest in the adoption and use of reasonable underwriting guidelines.
- b. Satisfy the Board that it has and will maintain underwriting procedures and criteria assuring that business produced by designated agents will be appropriately classified and rated, pursuant to G.S. 58-37-35(g)(6).
- c. Satisfy the Board that it has and will maintain the ability to provide policy writing, claims service, accounting and reporting functions adequate (i) to serve the business produced by designated agents and (ii) to comply with the Facility's Plan and Rules of Operation.
- d. (i) Have a Best's Policyholders' Rating Classification of at least B+, and have passed at least eight of the National Association of Insurance Commissioners' Insurance Regulatory Information System (IRIS) tests for the last year for which test results are generally available; or (ii) otherwise satisfy the Board that its financial condition is and will be adequate to serve as a designated carrier.

Any member may apply to become a designated carrier by submitting a written application to the Board of Governors. The Board may direct the applicant member to provide information demonstrating eligibility under the requirements described above. Any applicant member meeting these requirements shall be appointed as a designated carrier upon majority vote of the Board of Governors.

**(3) License as Facility Agent**

If no member is willing to contract with any such ~~agent~~ **insurance producer** on terms acceptable to the Board of Governors, the Board shall ~~license~~ **authorize** such ~~agent~~ **insurance producer**, as a Facility, to write directly on behalf of the Facility, and, to assist the Facility in accomplishing this objective, the Board may contract with one or more servicing carriers or organizations.

**(4) Development of Procedures**

The Board of Governors shall develop reasonable procedures to assure that all business produced by designated agents or Facility ~~agents~~ **insurance producers** and ceded to the Facility shall be rated using Facility rates.

**(5) Contract Terms**

Any contract entered into pursuant to this Article shall contain terms agreeable to all parties, shall provide for cancellation by any party for reasonable cause, may be limited in duration for a fixed period or may contain renewal provisions, and shall be subject to such reasonable terms and conditions, not inconsistent with this Plan of Operation, as may be established by the Board of Governors.

**(6) Rules and Conditions**

The following rules and conditions shall govern all policies of motor vehicle liability insurance issued by a Facility ~~insurance producer~~ **agent** pursuant to the provisions of this Article:

- a. Such policies shall be issued in the name of the Facility if written by the Facility or in the name of the servicing carrier on behalf of the Facility if written by a contractual servicing carrier.
- b. Such policies shall be standard policies as prescribed by the Board of Governors and shall contain appropriate language to reflect liability there under of the Facility.
- c. Such policies shall be written for motor vehicle liability insurance only and shall not afford coverage in excess of the limitations established in Article IX of this Plan of Operation.

**(7) Books of Account**

~~Books of Account~~ Servicing carriers for Facility ~~agents~~ **insurance producers** shall be required to maintain records, procedures and reports as specified by the Board of Governors in the Accounting and Statistical portion of the Rules of Operation of the Facility. The books of account of servicing carriers shall be audited as directed by the Board of Governors.

**(8) Commissions**

The commission paid on the insurance coverages provided in this Article shall be the commission on insurance coverages written through the North Carolina Automobile Insurance Plan on May 1, 1973.

The same commission shall apply uniformly statewide.

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**ARTICLE XIV**

**EXEMPTIONS FROM STATUTORY REQUIREMENTS**

The Board may, upon proper petition, exempt a member and its agents from the requirements of Article 37, Chapter 58, General Statutes of North Carolina insofar as new business is concerned. The Board may upon proper petition further exempt a member and its agents from the requirements of such Articles regarding selling and servicing a particular category of business, if the member is not qualified to service the business.

**ARTICLE XV**

**HEARINGS, REVIEW**

★ For the purpose of ensuring that any person aggrieved by a decision of the Facility who is entitled to a hearing before the Facility Board of Governors ("Board") receive a full and complete opportunity to present all information the person aggrieved deems necessary for consideration ~~of~~ by the Board, the following procedures shall be observed in regard to any hearing provided for before the Board:

**(1) Formal Hearing Request**

Any person aggrieved with respect to the operation of the Facility may request a formal hearing and ruling by the Board on any alleged failure to comply with the Plan or any alleged improper act or ruling in the administration of the Facility. The request for hearing must be made within 15 days after the date of the alleged violation or improper act or ruling. The hearing shall be held within 15 days after the receipt of the request, provided that, upon agreement of the parties, the hearing may be held at a later date and may be held at a regularly scheduled Board meeting. The hearing shall be held by any panel of the Board appointed by the ~~Chairman consisting~~ Chair consisting of not less than three Board members entitled to vote. A written statement setting forth those facts and arguments that the person aggrieved desires the Board to consider shall be provided at least three (3) business days in advance of the hearing. The Facility staff may present to the Board a written statement setting forth any information it deems relevant to the Board's consideration of the matter not later than the commencement of the hearing. When the hearing is to be held at a regularly scheduled Board meeting, the presentation by the person aggrieved shall be limited to thirty (30) minutes, provided that the person aggrieved may at the time of requesting a hearing advise the Facility that thirty (30) minutes is insufficient for the person aggrieved to make a proper presentation to the Board, in which event the Facility Board shall set the hearing at a time and in a manner to allow the person aggrieved such time as that person deems necessary for a full and complete hearing. The Board may, in its sole discretion, decide the matter based upon the information presented, refer the matter to a Facility committee for a recommendation to be made to the Board, continue the hearing to a later date, and/or request or allow additional information to be presented at a later date. The ruling of a majority of the panel shall be deemed to be the formal ruling of the Board unless the full Board on its own motion shall modify or rescind the panel's action, and the ruling of the Board shall be issued in writing. ❖

**(2) Appeal of Board Ruling**

Any formal Board ruling may be appealed to the Commissioner by filing notice of appeal with the Facility and Commissioner within 30 days after the date of the ruling's issuance. The Commissioner shall, after a hearing held on not less than 30 days written notice to the appellant and to the Board, (i) issue an order approving the ruling or (ii) after setting out findings and conclusions as to how the ruling is not in accordance with the Plan of Operation, the Standard Practice Manual, or other provisions of Article 37 of Chapter 58 of the General Statutes of North Carolina, direct the Board to reconsider the ruling. If the Commissioner directs the Board to reconsider the ruling and the Board fails to take action in accordance with the Plan of Operation, the Standard Practice Manual, or other provisions of Article 37 of Chapter ~~586~~ of the General Statutes of North Carolina, the Commissioner may issue an order modifying the action of the Board to the extent necessary to comply with the Plan of Operation, the Standard Practice Manual, or other provisions of Article 37 of Chapter 58 of the General Statutes of North Carolina.

**(3) Public Hearing Request**

Any aggrieved person or organization, any member of the Facility, or the Facility may request a public hearing and ruling by the Commissioner on the provisions of the Plan, rules, regulations or policy forms approved by the Commissioner. The request for a hearing shall specify the matters to be considered. The hearing shall be held within 30 days after receipt of the request. The Commissioner shall give public notice of the hearing and the matters to be considered not less than 15 days in advance of the hearing date.

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**(4) Timeliness of Ruling**

In any hearing held pursuant to ~~this Article~~G.S. 58-37-65 by the Board or the Commissioner, ~~the Board or the Commissioner~~ as the case may be, ~~the Board or Commissioner~~ shall issue a ruling or order within 30 days after the close of the hearing.

**(5) Judicial Review**

All rulings or orders of the Commissioner under ~~this Article~~G.S. 58-37-65 are subject to judicial review as provided in Section 58-2-75, ~~of the~~ General Statutes of North Carolina.

**ARTICLE XVI  
AMENDMENTS**

Any and all provisions of this Plan and any previous amendments shall be subject to amendment, alteration, repeal or re-enactment at any annual meeting of the Facility or at any special meeting called for the purpose. Not less than fifteen days' written notice of any such meeting shall be given, or caused to be given, by the ~~Chairman of~~Chair of the Board, in which notice the action proposed to be taken shall be fully set forth.

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**Section 2  
PLAN OF OPERATION**

**ARTICLE I**

**MEMBERSHIP OBLIGATIONS, GENERAL**

**(1) Name, Creation, Membership**

There is created pursuant to Article 37 of Chapter 58 of the General Statutes of North Carolina a non-profit unincorporated legal entity to be known as the North Carolina Reinsurance Facility (hereinafter referred to as the "Facility") consisting of all insurers licensed to write and engaged in writing within this State motor vehicle insurance or any component thereof. Every such insurer, as a prerequisite to further engaging in writing such insurance in this State, shall be a member of the Facility and shall be bound by the provisions of said Article 37, and the Plan of Operation (hereinafter referred to as the "Plan") and the Rules of Operation promulgated by the Board of Governors (hereinafter referred to as the "Board") pursuant thereto. No company may withdraw from membership in the Facility unless it ceases to write motor vehicle insurance in this State or ceases to be licensed to write such insurance.

**(2) Obligations After Termination of Membership**

Any company whose membership in the Facility has been terminated by withdrawal shall, nevertheless, continue to be bound by the provisions of said Article 37, and the Plan and the Rules of Operation promulgated by the Board pursuant thereto.

**(3) Insolvency**

Any unsatisfied net liability to the Facility of any insolvent member shall be assumed by and apportioned among the remaining members in the Facility in the same manner in which assessments are apportioned by the Facility. The Facility shall have all rights allowed by law in behalf of the remaining members against the estate or funds of such insolvent member for sums due the Facility.

**(4) Merger, Consolidation, Reinsurance**

When a member has been merged or consolidated into another insurer, or another insurer has reinsured a member's entire motor vehicle insurance business in North Carolina, such member and its successors in interest and the other insurers with which it has been merged or consolidated shall remain liable for such member's obligations hereunder.

**(5) No Direct Liability**

No judgment against the Facility shall create any direct liability in the individual members.

**ARTICLE II**

**DEFINITIONS**

"Cede" or "Cession" means the act of transferring the risk of loss from an individual member to all members through the operation of the Facility.

"Commissioner" means the Commissioner of Insurance of North Carolina.

"Eligible risk," for the purpose of motor vehicle insurance other than nonfleet private passenger motor vehicle insurance, means:

- a. A person who is a resident of this State who owns a motor vehicle registered or principally garaged in this State;
- b. A person who has a valid driver's license in this State;
- c. A person who is required to file proof of financial responsibility under Article 9A or 13 of Chapter 20 of the General Statutes in order to register his or her motor vehicle or to obtain a driver's license in this State;
- d. A nonresident of this State who owns a motor vehicle registered and principally garaged in this State; or
- e. The State and its agencies and cities, counties, towns and municipal corporations in this State and their agencies.

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However, no person shall be deemed an eligible risk if timely payment of premium is not tendered or if there is a valid unsatisfied judgment of record against such person for recovery of amounts due for motor vehicle insurance premiums and such person has not been discharged from paying said judgment, or if such person does not furnish the information necessary to effect insurance.

“Eligible risk,” for the purpose of nonfleet private passenger motor vehicle insurance, means:

- a. A resident of this State who owns a motor vehicle registered or principally garaged in this State;
- b. A resident of this State and who has a valid driver’s license issued by this State;
- c. A person who is required to file proof of financial responsibility under Article 9A or 13 of Chapter 20 of the General Statutes in order to register his or her vehicle or to obtain a driver’s license in this State;
- d. A nonresident of this State who owns a motor vehicle registered and principally garaged in this State;
- e. A nonresident of the State who is one of the following:
  1. A member of the United States Armed Forces stationed in this State, or deployed outside this State from a home base in this State, who intends to return to his or her home state;
  2. The spouse of a nonresident member of the United States Armed Forces stationed in this State, or deployed outside this State from a home base in this State, who intends to return to his or her home state;
  3. An out-of-state student who intends to return to his or her home state upon completion of his or her time as a student enrolled in school in this State; or
- f. The State and its agencies and cities, counties, towns, and municipal corporations in this State and their agencies.

However, no person shall be deemed an eligible risk (a) if timely payment of premium is not tendered, (b) if there is a valid unsatisfied judgment of record against the person which the person has not been discharged from paying, for recovery of amounts due for (i) motor vehicle insurance premiums or (ii) payments recoverable under a policy because the issuance of the policy was induced by a knowing and material misrepresentation of facts relating to the insured’s status as an eligible risk, or (c) if the person does not furnish the information necessary to effect insurance.

“Motor Vehicle” means every self-propelled vehicle that is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers). “Motor vehicle” also means a motorcycle, as defined in G.S. 20-4.01(27)h, and a moped, as defined in G.S. 20-4.01(27)j. “Motor Vehicle” does not mean an electric assisted bicycle, as defined in G.S. 20-4.01(7a).

“Motor Vehicle Insurance” means direct insurance against liability arising out of the ownership, operation, maintenance or use of a motor vehicle for bodily injury including death and property damage and includes medical payments and uninsured and underinsured motorists coverages. With respect to motor carriers who are subject to the financial responsibility requirements established under the Federal Motor Carrier Act of 1980, the term “motor vehicle insurance” includes coverage with respect to environmental restoration. As used in this subsection the term, “environmental restoration” means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release, or escape into or upon the land, atmosphere, water course, or body of water of any commodity transported by a motor carrier. Environmental restoration includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

“Person” means every natural person, firm, partnership, association, trust, limited liability company, firm, corporation, government or governmental agency.

“Principally garaged” means the vehicle is garaged for six or more months of the current or preceding year on property in this State which is owned, leased, or otherwise lawfully occupied by the owner of the vehicle.”

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**ARTICLE III  
OFFICES, MEETINGS**

**(1) Offices**

The offices of the Facility shall be located in Raleigh, North Carolina or at such other location in North Carolina as may from time to time be determined by the Board.

**(2) Regular Meetings**

There shall be an annual meeting of the Facility in Raleigh, North Carolina in October (unless the Board shall designate some other date and place).

**(3) Special Meetings**

Special meetings of the Facility may be called at any time by the Chair of the Board, and special meetings shall be called by the Chair upon the written request of the Commissioner or of five voting members of the Board.

**(4) Mode of Meetings**

A meeting of the Facility may be held in person or by remote means (including telephone or other electronic communication) which allow all meeting participants to communicate in real time. The Facility shall implement reasonable measures to verify the credentials of all participants. A member participating by remote means will be counted in determining whether a quorum is present.

**(5) Notice of Meetings**

Notice of all annual and special meetings of the Facility shall be given or caused to be given by the Chair in writing mailed to or by facsimile or electronic mail directed to each member at its latest address appearing upon the records of the Facility. Except where otherwise provided in this Plan, if notice is mailed, it shall be placed in the mail not less than 10 days prior to the date of the meeting. If notice is given by facsimile or electronic mail it shall be given not less than 5 days prior to the meeting. At least 20 days notice of the annual meeting of the Board of Governors shall be given to all Board members. Notices shall specify the place and/or mode, date, and time of the meeting, and the means of remote participation, if any, by which members and proxy holders may be deemed to be present and vote at such meeting.

A quorum at any annual or special meeting of the Facility shall consist of 51% of the members, which members may be represented at the meeting in person, remotely or by proxy.

**(6) Powers**

The matters to be considered at any special meeting of the Facility shall be only those matters set forth in the notice of such meeting. At annual meetings members may consider and act upon all matters properly brought before them, whether or not contained in the notice thereof.

**(7) Voting Rights**

Each member of the Facility shall be entitled to one vote at all meetings of the Facility. Except where otherwise provided in this Plan, action may be taken at any such meeting only upon a majority vote of the members voting provided such vote represents not less than 70% of the total North Carolina net direct motor vehicle insurance premiums written during the latest reported calendar year by all members voting in person, remotely or by proxy.

**(8) Proxies**

Members may be represented at any meeting by proxy. Members may record their vote by mail on written propositions and such votes shall have the same standing as if cast by such member in person, remotely or by proxy.

**(9) Minutes of Meeting**

Minutes of all meetings of the Facility and of the Board shall be available upon request.

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**ARTICLE IV  
BOARD OF GOVERNORS**

**(1) Membership of Board**

The Board of Governors shall consist of twelve Board members having one vote each from the classifications hereinafter enumerated plus two nonvoting public members who are not employed by or affiliated with any insurance company or the Department of Insurance plus the Commissioner who shall serve ex officio without vote. The two nonvoting public members shall be appointed by the Governor to serve at the Governor's pleasure. Each member serving on the Board shall be represented by a senior officer. Not more than one member in a group under the same ownership or management shall be represented on the Board at the same time.

Five Board members shall be selected by the members, one each from the following groups: The American Insurance Association (or its successors), the Property Casualty Insurers Association of American (or its successors), stock insurers not affiliated with those trade associations, nonstock insurers not affiliated with those trade associations, and the industry at large regardless of trade affiliation. The at-large insurer shall be selected by the insurer company members of the Board. The Commissioner shall appoint two Board members who are Facility insurance company members domiciled in this State. The Commissioner shall appoint one member of the Board who shall be selected from two nominees submitted by the Alliance of Insurance Agents of North Carolina. The Commissioner shall appoint four Board members of the Board who shall be insurance producers with property and casualty lines of authority licensed in North Carolina and actively engaged in writing motor vehicle insurance in this State. The term of office of the Board members shall be three years. All Board members shall serve until their successors are selected and qualified and the Commissioner may fill any vacancy on the Board from any of the aforementioned classifications until such vacancies are filled in accordance with the provisions of this Plan.

**(2) Selection of Board Members**

The names of the Board members selected as described above shall be announced at an appropriate annual or special meeting of the Facility.

Selection of the at-large insurer Board member and the Board members representing the trade associations shall be made in accordance with the procedures of each such selecting group. Nominations and voting for Board members representing unaffiliated members may be in person or remotely by a representative of the unaffiliated member or by proxy. Each unaffiliated member shall be entitled to one vote at all such Board member selection meetings. The votes of a majority of the members voting within the particular group (stock or non-stock members) shall select its respective Board member. No unaffiliated member which is a part of a group under the same ownership or management shall by reason thereof be deprived of the right to vote unless such owner or manager is a member of one of the trade associations named herein.

**(3) Election of Chair**

The Board shall annually (or at such other times as may be necessary) elect from its membership a Chair and shall meet as often as the Chair shall require or at the request of four Board members. The Chair shall retain the right to vote on all issues. The same member may not serve as Chair for more than two consecutive years; provided, however, that a member may continue to serve as Chair until a successor Chair is elected and qualified.

**(4) Functions of the Board**

The Board shall have full power and administrative responsibility for the operation of the Facility.

**(5) Reimbursement of Board Member Expenses**

Board members shall receive reimbursement from the Facility for their actual and necessary expenses incurred on Facility business, en route to perform Facility business, and while returning from Facility business plus a per diem allowance of \$25.00 which may be waived. The Board may make provision for reimbursement for actual and necessary expenses incurred by others on Facility business.

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**(6) Board Meetings**

Seven members of the Board entitled to vote shall constitute a quorum. **All meetings of the Board shall be held in North Carolina, or at some other place as may be designated by the Chair.** Meetings of the Board may be held in person or by remote means (including telephone or other electronic communication) which allow all meeting participants to communicate in real time. The Facility shall implement reasonable measures to verify the credentials of all participants in Board meetings. The Board may provide for proxy voting at meetings of the Board.

**(7) Mail or Electronic Mail Votes**

Except as otherwise provided in this Plan of Operation, the Chair of the Board or the Facility general manager appointed by the Board shall have authority to submit any matter to the Board for action by a mail or electronic mail vote. The submission to the Board shall specify the final date for voting, which date shall be not less than ten days following the mailing or transmission thereof to all members of the Board. Except as provided below, any motion, recommendation or proposal which receives a favorable mail or electronic mail vote within the allotted time from eight or more of the members of the Board eligible to vote shall be deemed to be adopted to the same extent and with the same effect as if it had been approved and adopted at a duly constituted meeting of the Board of Governors. Notwithstanding the foregoing, a motion, recommendation or proposal will not be deemed to have been adopted as a result of a mail or electronic mail vote if the Facility office receives on or before the final date fixed for voting written or verbal requests from two or more members of the Board that the matter be considered at a meeting of the Board.

**ARTICLE V  
COMMITTEES**

**(1) Establishment of Advisory Committees**

The Board shall establish the following advisory committees of the Facility:

- a.
- b. Claims Committee
- c. Audit Committee
- d.
- e.
- f. Rating Committee
- g. Compliance Committee

**(2) Miscellaneous Committees**

The Board may establish such other committees of the Facility as it deems necessary.

**(3) Committee Meetings**

Meetings of committees of the Facility may be held in person or by remote means (including telephone or other electronic communication) which allow all meeting participants to communicate in real time. The Facility shall implement reasonable measures to verify the credentials of all participants of such meetings.

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**ARTICLE VI  
STATISTICAL DATA**

Each member shall furnish or cause to be furnished such statistics in connection with insurance subject to the Facility as may be required by the Facility, and each member agrees to permit its statistical agent to release any such data as may be requested by the Facility. Such statistics shall be furnished at such times and in such form and detail as may be required by the Facility.

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**ARTICLE VII  
ANNUAL REPORT**

**(1) Operations of the Facility**

There shall be furnished to each member an annual report of the operations of the Facility in such form and detail as may be determined by the Board.

**(2) Financial Statement of the Facility**

The annual report shall include a financial statement of the Facility audited by an independent auditor approved by the Legislative Services Commission of the North Carolina General Assembly.

**ARTICLE VIII  
INDEMNIFICATION**

**(1) Qualification for Indemnification**

Any person or member made or threatened to be made a party to any action, suit or proceeding, because such person or member served on the Board or on a committee of the Facility or was an officer or employee of the Facility, shall be indemnified by the Facility against all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorney's fees and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding, except in relation to matters as to which such person or member shall be adjudged in such action, suit or proceeding to be liable by reason of breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance or reckless disregard of the responsibilities in the performance of such person's or member's duties or obligations to the Facility and, with respect to any criminal actions or proceedings, except when such person or member had reasonable cause to believe that the conduct was unlawful. Such indemnification shall be provided whether or not such person or member is a member or is holding office or is employed at the time of such action, suit or proceeding and whether or not any such liability is incurred prior to the adoption of this Plan. Such indemnification shall not be exclusive of other rights such person or member may have and shall extend to the successors, heirs, executors or administrators of such person or member. In the event of settlement or other termination of a matter before final adjudication, indemnification shall be provided only if the Board is advised by independent counsel that the person or member to be indemnified did not in counsel's opinion commit such a breach of duty.

**(2) Entitlement of for Indemnification**

In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in the first paragraph of this Article VIII, shall be determined by the Board which shall also determine the time and manner of payment of such indemnification; provided, however, that a person or member who or which has been wholly successful, on the merits or otherwise, in the defense of a civil or criminal action, suit or proceeding of the character described in the first paragraph of this Article VIII shall be entitled to indemnification as authorized in such paragraph. Nothing herein shall be deemed to bind a person or member who or which the Board has determined not to be entitled to indemnification, or to preclude such person or member from asserting the right to such indemnification by legal proceedings. Such indemnification as is herein provided shall be apportioned among all members, including any named in any such action, suit or proceeding, pursuant to this Plan.

**ARTICLE IX  
THE FACILITY**

**(1) Cession of Risks**

Cessions of eligible risks shall be made in accordance with this Plan of Operation, the rules and regulations of the Board of Governors adopted and promulgated pursuant hereto and any amendments thereto.

**(2) Coverage and Limits Eligible for Cession**

The following coverages of motor vehicle insurance and in at least the following amounts of insurance shall be eligible for cession to the Facility:

- a. Bodily Injury Liability: \$30,000 each person, \$60,000 each accident;

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- b. Property Damage Liability: \$25,000 each accident;
- c. Medical Payments: \$1,000 each person, except that this coverage shall not be available for motorcycles or mopeds;
- d. Uninsured Motorists: \$30,000 each person, \$60,000 each accident for bodily injury; \$25,000 each accident for property damage (\$100.00 deductible);
- e. Any other motor vehicle insurance or financial responsibility limits for such insurance in the amounts required by any federal law or federal agency regulation; by any law of this State; or by any rule duly adopted under Chapter 150B of the General Statutes or by the North Carolina Utilities Commission.

**(3) Additional Ceding Privileges**

Additional ceding privileges for motor vehicle insurance shall be provided by the Board up to the following:

- a. Bodily Injury Liability: \$100,000 each person, \$300,000 each accident;
- b. Property Damage Liability: \$50,000 each accident;
- c. Single Limit Bodily Injury and Property Damage liability: A limit per accident equal to the total of the minimum per accident Bodily Injury and Property Damage Liability limits required under the North Carolina Vehicle Financial Responsibility Act of 1953 as it is in effect on the date of cession to the Facility;
- d. Medical Payments: \$2,000 each person, except that this coverage shall not be available for motorcycles or mopeds;
- e. Uninsured Motorists: \$1,000,000 each person and \$1,000,000 each accident for bodily injury and \$50,000 each accident for property damage (\$100.00 deductible).
- f. Combined Uninsured and Underinsured Motorists:  
\$1,000,000 each person and \$1,000,000 each accident for bodily injury and \$50,000 each accident for property damage (\$100.00 deductible).

**(4) Excess Limits**

For persons who must maintain liability coverage limits above those available under Section (3) of this Article IX in order to obtain or continue coverage under personal excess liability or personal "umbrella" insurance policies, additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors up to the following:

- a. Bodily Injury Liability: \$250,000 each person, \$500,000 each accident;
- b. Property Damage Liability: \$100,000 each accident;
- c. Medical Payments: \$5,000 each person, except that this coverage shall not be available for motorcycles or mopeds.

**(5) Notification of Facility**

In order to cede an eligible risk effective when the binder or policy first becomes effective, and in order to cede as of the renewal effective date a first renewal of such policy in effect at the effective date of this Plan, the member must within 30 days of the binder or policy or renewal effective date notify the Facility. The Facility shall accept eligible risks at other times on receipt of the required notice, but such acceptance shall not be retroactive. The Facility shall accept renewal business involving eligible risks after the member on underwriting review elects to again cede the business.

**(6) Definition of "Accident"**

As used in this Article the term "accident" shall mean "occurrence" where the coverage is written on such basis.

**(7) Establishment and Filing**

The Board of Governors shall establish and file with the Commissioner the classifications, rules, rates, rating plans and policy forms to be used on motor vehicle insurance policies reinsured or written by the Facility.

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The Board shall adopt and file with the Commissioner for approval or modification proposed revisions in the classification and rating plans for other than nonfleet private passenger motor vehicle insurance ceded to the Facility.

The Board may authorize any licensed or statutory statistical organization or bureau to establish and file any such classifications, rules, rates and rating plans on behalf of the Facility.

**ARTICLE X  
CESSIONS**

Subject to the limits of coverage and any limitations on cessions which are provided in this Plan and are not in conflict with the provisions of Article 37 of Chapter 58 of the General Statutes, a member shall cede 100% of any eligible risks ceded.

**ARTICLE XI  
ASSESSMENTS, PARTICIPATION RATIOS, RECOUPMENT**

**(1) Facility Losses, Expenses and Gains**

Facility losses, expenses, and gains shall be determined on the basis of generally accepted insurance accounting principles as incorporated in the NAIC Model Financial Statement Blank which the Commissioner furnishes casualty insurers pursuant to the provisions of G.S. 58-2-165 and shall include all investment income from the premiums on business reinsured by the Facility.

**(2) Preliminary Assessment**

The Board shall, prior to commencement of operations of the Facility, levy a preliminary assessment on all members for necessary initial expenses. Such initial assessment may be a uniform flat charge payable by each member, or it may be on a uniform percentage basis (or bases) or any combination of the foregoing. Thereafter, each member shall be assessed an annual minimum fee of \$100.

**(3) Assessment, Distribution and Recoupment**

The Board periodically shall:

- a. Assess members if necessary to defray losses and expenses;
- b. Distribute any gains first to defray losses incurred since September 1, 1977, and then by credit or reduction of recoupment surcharges to policies subject to recoupment surcharges; and
- c. Recoup losses sustained by the Facility since September 1, 1977, by assessment of member companies or by way of a surcharge on motor vehicle policies issued by member companies or through the Facility.

**(4) Recoupment of Assessment**

Every member shall, following payment of any assessment, commence recoupment of that assessment by way of a surcharge on motor vehicle insurance policies issued by the member or through the Facility. Such surcharge shall be a percentage of premium adopted by the Board and the charges determined on the basis of the surcharge shall be combined with and displayed as a part of the applicable premium charges. Recoupment of losses sustained by the Facility with respect to nonfleet private passenger motor vehicles may be made only by surcharging nonfleet private passenger motor vehicle insurance policies. If the amount collected during the period of surcharge exceeds assessments paid by the member, the member shall pay over the excess to the Facility on a date specified by the Board. If the amount collected during the period of surcharge is less than the assessments paid by the member, the Facility shall pay the difference to the member.

Except as provided in Section (5) of this Article XI, the recoupment of losses shall not be considered as the collection or imposition of rates or premiums for any purposes.

**(5) Insurance Producer Compensation**

The Board of Governors shall adopt and implement a plan for compensation of insurance producers or members when recoupment surcharges are imposed on motor vehicle insurance policies written to become effective on or after October 1, 1981. Recoupment surcharges applied to such policies shall include an amount necessary to recover the amount of such compensation to insurance producers.

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**(6) Clean Risk Surcharge**

The Board shall periodically determine the difference between the actual rates to be charged and the actuarially sound and self-supporting rates for "clean risks" as defined in G.S. 58-37-35(l). Such difference may be recouped through surcharges in the manner provided for in Sections 4 and 5 of this Article XI. ❖

**(7) Subsequent Assessments**

[Applicable with respect to business effective prior to January 1, 1980.]

Subsequent assessments to pay for Facility losses and expenses shall be levied as frequently as the Board deems necessary. Such assessments shall be allocated among the members in accordance with the following:

- a. Each member's allocated share of the private passenger nonfleet motor vehicle insurance experience on ceded risks shall be that proportion of such experience that its respective "total private passenger liability net direct written car years", as defined in the Rules of Operation, bear to the respective total of such net direct written car years of all members in North Carolina.
- b. Each member's allocated share of the all other motor vehicle insurance experience on ceded risks shall be that proportion of such experience that its respective "total all other automobile liability premiums", as defined in the Rules of Operation, bear to the respective total of such premiums of all members in North Carolina.
- c. All costs, charges, expenses, and liabilities in excess of the assessments provided in Paragraph (2) and all income, property and other assets, which the Board determines not to be properly chargeable to the profit or loss of ceded business shall be shared by the members in the respective proportions that each member's "direct written automobile insurance premiums" in North Carolina for the most recent calendar year bear to the total of such premiums for all members. "Direct written automobile insurance premiums" means such reported premiums as defined in the Rules of Operation.

**(8) Subsequent Assessments**

[Applicable with respect to business effective on and after January 1, 1980.]

All Facility costs, expenses, income, losses and gains shall be allocated among the members in accordance with the following:

- a. Each member's proportionate share of the private passenger nonfleet motor vehicle costs, expenses, income, losses and gains shall be determined as the average of (i) the ratio of its total North Carolina private passenger liability net direct written car years to the total such net direct written car years of all members and (ii) the ratio of its total North Carolina ceded private passenger liability net direct written car years to the total such ceded net direct written car years of all members.
- b. Each member's proportionate share of the all other motor vehicle costs, expenses, income, losses and gains shall be determined as the average of (i) the ratio of its total North Carolina all other motor vehicle insurance net direct written premiums to the total such net direct written premiums of all members and (ii) the ratio of its total North Carolina ceded all other motor vehicle insurance net direct written premiums to the total such ceded net direct written premiums of all members.

**(9) Determining Participation Ratios**

For purposes of determining participation ratios, private passenger liability net direct written car years and all other motor vehicle insurance premiums ceded to the Facility by a member as designated agency business pursuant to Article XIII shall not be included.

**(10) Allowances—Risk Distribution System**

Allowances for existing debits and credits in the present risk distribution system may be made as provided in the Rules of Operation.

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**ARTICLE XII**

**ALLOWANCES TO MEMBERS**

**(1) Underwriting Expenses**

Each member ceding risks shall, subject to the limits of coverage and the limitations on cessions provided in this Plan, receive a credit against its premiums written account on ceded business for underwriting expenses in connection with ceded business. Such credit for each member shall consist of the total of the following percentage allowances applied to premiums written on ceded business:

- a. For commissions, brokerage, other acquisition expenses, taxes, licenses, fees, and general expenses, a ceding expense allowance determined for each member as the lesser of: (i) such member's ratio, for the most recent calendar year, of its North Carolina motor vehicle insurance commissions, brokerage, other acquisition expenses, taxes, licenses, fees and general expenses to its total North Carolina motor vehicle insurance written premiums, or (ii) the average combined ratio of such expenses for all insurers adjusted to reflect the anticipated difference, if any, between the average combined ratio otherwise applicable and the provisions for such expenses underlying Facility rates.
- b. For unallocated claim adjustment expenses, a claims expense allowance equal to the ratio, for the most recent calendar year, of total North Carolina motor vehicle insurance unallocated claim adjustment expenses to the total North Carolina motor vehicle insurance written premiums for all insurers, adjusted to reflect the anticipated difference, if any, between such ratio and the provisions for unallocated loss adjustment expenses underlying Facility rates.

For purposes of determining the above ratios, the calendar year experience shall be adjusted to offset the effect of deviations filed and approved under the provisions of G.S. 58-36-30.

**(2) Losses and Allocated Claim Adjustment Expenses**

Each member ceding risks shall, with respect to losses incurred in connection therewith, subject to the limits of coverages and the limitations on cessions provided in this Plan, receive a credit against its premiums written on ceded business for losses and allocated claim adjustment expenses actually paid less recoveries received in each month.

**(3) Definition of "Allocated Claim Adjustment Expenses"**

For the purposes of this Article XII, "allocated claim adjustment expenses" means those expenses which can be directly allocated to a particular claim, as allowed and defined by the Board in the Rules of Operation. The Board may, however, decide after due consideration that the allowance for allocated claim adjustment expense shall be handled on the same basis as unallocated claim adjustment expense.

**(4) Frequency of Reports**

Each member shall report on a monthly basis separately for "private passenger nonfleet" and "all other" Facility business its respective premiums written and allowable credits with respect thereto.

**(5) Summary Reports**

The Facility shall, quarterly or less frequently as determined by the Board, issue summaries to all members reflecting each member's cumulative balances on Facility business, providing reimbursement for those members with allowable credits in excess of written premiums, and shall submit a statement to those members with premiums written which are in excess of allowable credits. A member so billed for premiums written shall remit such excess within 20 days after receiving such statement, subject to interest charges at a legal interest rate per month or fractional part thereof for late payment as provided in the Rules of Operation.

**(6) Allowable Credits**

A member which in any month reports allowable credits substantially in excess of premiums written for "private passenger nonfleet" business or "all other" business shall be entitled to request reimbursement for such excess. Unless the Board determines otherwise, the Facility shall reimburse the member for such excess within 30 days after approving such request.

**(7) Audit Review**

Facility business written by members shall be subject to review and audit by the Audit Committee and/or the Compliance Committee, as appropriate, in a manner and time prescribed by the Board, and each member by subscription to this Plan specifically authorizes the Committee to audit that part of the member's business which is written subject to this Plan.

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**(8) Claim Review**

The Claims Committee shall, subject to review by the Board, establish and supervise procedures for the review of claim practices by members. Each member is required to adjust losses for ceded business fairly and efficiently in the same manner as voluntary business losses and to effect settlement where settlement is appropriate.

**(9) Rules and Credits**

The Board shall make provision for and promulgate rules for determining allowable credits to be applicable to newly admitted members and other members for whom the allowances developed under paragraphs (1) and (2) above are determined to be inappropriate. On a case by case basis, the Board, on its own motion or upon request, may also make reasonable exceptions for any member with respect to which it is determined or demonstrated that serious inequities result from the application of this Article or the rules promulgated pursuant thereto.

**ARTICLE XIII  
DESIGNATED AGENTS, FACILITY AGENTS-**

**(1) Appointment of Agents**

The Board of Governors shall contract with one or more members, as designated carriers, to appoint and contract with such licensed insurance producers with property and casualty lines of authority as have met the standards and security requirement specified in G.S. 58-37-35(g)(6) as determined by the Commissioner, in accordance with the following rules:

- a. Such appointment shall be made within twenty days after receipt of the Commissioner's determination and certification that such insurance producer has met the standards and security requirement.
- b. Except as provided in Rules c. and d. of this Section, such designated agent shall agree that all eligible motor vehicle insurance risks applying for coverage at limits which may be ceded to the Facility produced (i) by such designated agent or by the agency with which such designated agent is associated or (ii) by any other agency with which such designated agent is associated or which is affiliated with the agency with which such designated agent is associated, shall be written by the designated carrier; provided, however, that such designated agent may petition the Board of Governors for a partial exemption from the foregoing requirements of this subsection with respect to an agency in a separate geographical location. Such designated agent shall agree further that no eligible motor vehicle insurance risks applying for coverage at limits which may be ceded to the Facility shall be accepted under any form of brokerage arrangement by the designated agent, by the agency with which the designated agent is associated, or by any agency affiliated with the agency with which such designated agent is associated, for submission to the designated carrier.
- c. Designated agents appointed before September 1, 1987 may place liability insurance policies with a voluntary carrier if and only if all policies written by the voluntary carrier are either (i) retained by the voluntary carrier or (ii) ceded to the Facility using Facility rates. Designated agents who place business with a voluntary carrier must provide the Facility a list of policies written by their voluntary carrier. Such list shall be on a form approved by the Facility and shall be furnished at least annually and otherwise as requested by the Facility.
- d. If such designated agent is or becomes a licensed agent of a member exempted by the Board of Governors under Article XIV of this Plan of Operation and if such designated agent is or becomes authorized by such exempt member to solicit and accept premiums for motor vehicle insurance for any category of business for which such member is not exempt, such designated agent shall not submit to the designated carrier any motor vehicle insurance risks in any category of business with respect to which the agent is so authorized by the exempt member.
- e. Any designated agent who is disabled or retiring or the estate of any deceased designated agent may transfer the designation and the book of business to some other licensed insurance producer with property and casualty lines of authority meeting the requirements of law and under rules established by the Facility, and a transfer from a designated agent appointed before September 1, 1987, shall entitle the transferee designated agent to place liability insurance policies with a voluntary carrier. Such transfer shall immediately terminate the authority of such designated agent or his estate to operate as a designated agent.

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**(2) Designated Carrier Eligibility**

To be eligible to become a designated carrier, a member must:

- a. Be licensed in North Carolina to write and actively writing voluntary motor vehicle insurance as defined in G.S. 58-37-1(7) in sufficient volume in North Carolina to assure that it will have a significant financial interest in the adoption and use of reasonable underwriting guidelines.
- b. Satisfy the Board that it has and will maintain underwriting procedures and criteria assuring that business produced by designated agents will be appropriately classified and rated, pursuant to G.S. 58-37-35(g)(6).
- c. Satisfy the Board that it has and will maintain the ability to provide policy writing, claims service, accounting and reporting functions adequate (i) to serve the business produced by designated agents and (ii) to comply with the Facility's Plan and Rules of Operation.
- d. (i) Have a Best's Policyholders' Rating Classification of at least B+, and have passed at least eight of the National Association of Insurance Commissioners' Insurance Regulatory Information System (IRIS) tests for the last year for which test results are generally available; or (ii) otherwise satisfy the Board that its financial condition is and will be adequate to serve as a designated carrier.

Any member may apply to become a designated carrier by submitting a written application to the Board of Governors. The Board may direct the applicant member to provide information demonstrating eligibility under the requirements described above. Any applicant member meeting these requirements shall be appointed as a designated carrier upon majority vote of the Board of Governors.

**(3) License as Facility Agent**

If no member is willing to contract with any such insurance producer on terms acceptable to the Board of Governors, the Board shall authorize such insurance producer, as a Facility, to write directly on behalf of the Facility, and, to assist the Facility in accomplishing this objective, the Board may contract with one or more servicing carriers or organizations.

**(4) Development of Procedures**

The Board of Governors shall develop reasonable procedures to assure that all business produced by designated agents or Facility insurance producers and ceded to the Facility shall be rated using Facility rates.

**(5) Contract Terms**

Any contract entered into pursuant to this Article shall contain terms agreeable to all parties, shall provide for cancellation by any party for reasonable cause, may be limited in duration for a fixed period or may contain renewal provisions, and shall be subject to such reasonable terms and conditions, not inconsistent with this Plan of Operation, as may be established by the Board of Governors.

**(6) Rules and Conditions**

The following rules and conditions shall govern all policies of motor vehicle liability insurance issued by a Facility insurance producer pursuant to the provisions of this Article:

- a. Such policies shall be issued in the name of the Facility if written by the Facility or in the name of the servicing carrier on behalf of the Facility if written by a contractual servicing carrier.
- b. Such policies shall be standard policies as prescribed by the Board of Governors and shall contain appropriate language to reflect liability there under of the Facility.
- c. Such policies shall be written for motor vehicle liability insurance only and shall not afford coverage in excess of the limitations established in Article IX of this Plan of Operation.

**(7) Books of Account**

Servicing carriers for Facility insurance producers shall be required to maintain records, procedures and reports as specified by the Board of Governors in the Accounting and Statistical portion of the Rules of Operation of the Facility. The books of account of servicing carriers shall be audited as directed by the Board of Governors.

**(8) Commissions**

The commission paid on the insurance coverages provided in this Article shall be the commission on insurance coverages written through the North Carolina Automobile Insurance Plan on May 1, 1973.

The same commission shall apply uniformly statewide.

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**ARTICLE XIV**

**EXEMPTIONS FROM STATUTORY REQUIREMENTS**

The Board may, upon proper petition, exempt a member and its agents from the requirements of Article 37, Chapter 58, General Statutes of North Carolina insofar as new business is concerned. The Board may upon proper petition further exempt a member and its agents from the requirements of such Articles regarding selling and servicing a particular category of business if the member is not qualified to service the business.

**ARTICLE XV**

**HEARINGS, REVIEW**

For the purpose of ensuring that any person aggrieved by a decision of the Facility who is entitled to a hearing before the Facility Board of Governors ("Board") receive a full and complete opportunity to present all information the person aggrieved deems necessary for consideration by the Board, the following procedures shall be observed in regard to any hearing provided for before the Board:

**(1) Formal Hearing Request**

Any person aggrieved with respect to the operation of the Facility may request a formal hearing and ruling by the Board on any alleged failure to comply with the Plan or any alleged improper act or ruling in the administration of the Facility. The request for hearing must be made within 15 days after the date of the alleged violation or improper act or ruling. The hearing shall be held within 15 days after the receipt of the request, provided that, upon agreement of the parties, the hearing may be held at a later date and may be held at a regularly scheduled Board meeting. The hearing shall be held by any panel of the Board appointed by the Chair consisting of not less than three Board members entitled to vote. A written statement setting forth those facts and arguments that the person aggrieved desires the Board to consider shall be provided at least three (3) business days in advance of the hearing. The Facility staff may present to the Board a written statement setting forth any information it deems relevant to the Board's consideration of the matter not later than the commencement of the hearing. When the hearing is to be held at a regularly scheduled Board meeting, the presentation by the person aggrieved shall be limited to thirty (30) minutes, provided that the person aggrieved may at the time of requesting a hearing advise the Facility that thirty (30) minutes is insufficient for the person aggrieved to make a proper presentation to the Board, in which event the Facility Board shall set the hearing at a time and in a manner to allow the person aggrieved such time as that person deems necessary for a full and complete hearing. The Board may, in its sole discretion, decide the matter based upon the information presented, refer the matter to a Facility committee for a recommendation to be made to the Board, continue the hearing to a later date, and/or request or allow additional information to be presented at a later date. The ruling of a majority of the panel shall be deemed to be the formal ruling of the Board unless the full Board on its own motion shall modify or rescind the panel's action, and the ruling of the Board shall be issued in writing. ❖

**(2) Appeal of Board Ruling**

Any formal Board ruling may be appealed to the Commissioner by filing notice of appeal with the Facility and Commissioner within 30 days after the date of the ruling's issuance. The Commissioner shall, after a hearing held on not less than 30 days written notice to the appellant and to the Board, (i) issue an order approving the ruling or (ii) after setting out findings and conclusions as to how the ruling is not in accordance with the Plan of Operation, the Standard Practice Manual, or other provisions of Article 37 of Chapter 58 of the General Statutes of North Carolina, direct the Board to reconsider the ruling. If the Commissioner directs the Board to reconsider the ruling and the Board fails to take action in accordance with the Plan of Operation, the Standard Practice Manual, or other provisions of Article 37 of Chapter 58 of the General Statutes of North Carolina, the Commissioner may issue an order modifying the action of the Board to the extent necessary to comply with the Plan of Operation, the Standard Practice Manual, or other provisions of Article 37 of Chapter 58 of the General Statutes of North Carolina.

**(3) Public Hearing Request**

Any aggrieved person or organization, any member of the Facility, or the Facility may request a public hearing and ruling by the Commissioner on the provisions of the Plan, rules, regulations or policy forms approved by the Commissioner. The request for a hearing shall specify the matters to be considered. The hearing shall be held within 30 days after receipt of the request. The Commissioner shall give public notice of the hearing and the matters to be considered not less than 15 days in advance of the hearing date.

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**(4) Timeliness of Ruling**

In any hearing held pursuant to G.S. 58-37-65 by the Board or the Commissioner, the Board or the Commissioner as the case may be shall issue a ruling or order within 30 days after the close of the hearing.

**(5) Judicial Review**

All rulings or orders of the Commissioner under G.S. 58-37-65 are subject to judicial review as provided in Section 58-2-75 of the General Statutes of North Carolina.

**ARTICLE XVI  
AMENDMENTS**

Any and all provisions of this Plan and any previous amendments shall be subject to amendment, alteration, repeal or re-enactment at any annual meeting of the Facility or at any special meeting called for the purpose. Not less than fifteen days' written notice of any such meeting shall be given, or caused to be given, by the Chair of the Board, in which notice the action proposed to be taken shall be fully set forth.