

## FILING MEMORANDUM

### ITEM RM-01(NC)—MODIFIED NORTH CAROLINA WORKERS COMPENSATION INSURANCE PLAN

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(To be effective 12:01 a.m. on July 1, 2001, applicable to new and renewal assigned risk business only.)

#### PURPOSE

The purpose of the filing is to propose certain workers compensation insurance plan changes to bring the North Carolina Workers Compensation Insurance Plan (WCIP or Plan) and the National Workers Compensation Reinsurance Pool (NWCRP) Articles of Agreement into congruity with changes approved and implemented over the last few years in almost all states that have similar types of residual market plans for workers compensation insurance.

The proposed changes primarily add provisions that expressly authorize consultation between the North Carolina Rate Bureau, as Plan Administrator, and the Board of Governors of the National Workers Compensation Reinsurance Pool. The latest version of the Articles of Agreement of the NWCRP are incorporated into the Plan, and have been approved in fifteen (15) states where the National Pool provides residual market reinsurance.

#### BACKGROUND

The NWCRP Articles of Agreement provide certain powers and abilities to the NWCRP Pool Board to make filings directly with insurance regulators. However, the NWCRP Pool Board recognizes that, by law in North Carolina, all workers compensation insurance plan filings must be made by the North Carolina Rate Bureau.

Article XI of the NWCRP Articles of Agreement contains a specific severability clause in recognition of variations among state laws. Specifically, "In the event any term or provision of these Articles of Agreement shall to any extent be held to be illegal, invalid, unenforceable, or non-operative as a matter of law, the remaining terms and provisions hereof shall not be affected thereby, and each such term and provision shall be valid and shall remain in full force and effect."

#### PROPOSAL

It is recommended that the changes (identified in **Exhibit I** by bold and underlined language) proposed for the North Carolina Workers Compensation Insurance Plan, which incorporate the NWCRP Articles of Agreement (**Exhibit II**), be adopted effective 12:01 a.m., July 1, 2001, applicable to new and renewal assigned risk business only.

#### IMPACT

There is no premium level impact expected as a result of this filing.

#### IMPLEMENTATION

In order to implement this proposal, the revisions from this modified Plan will be printed in the **Basic Manual for Workers Compensation and Employers Liability Insurance** and appropriate revisions will be made to the **Assigned Risk Supplement to the Basic Manual**.

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## EXHIBIT I

### NORTH CAROLINA WORKERS COMPENSATION INSURANCE PLAN

#### SECTION I WCIP DEFINITIONS

##### **Articles of Agreement or Articles**

The reinsurance mechanism authorized under this Plan to provide reinsurance to the servicing carriers on employers assigned to them under this Plan. **The term "Board of Governors" as used in this Plan refers to the Board of Governors established under Article V of the Articles of Agreement.**

#### SECTION IV PARTICIPATION

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

Option 1 becoming a direct assignment carrier and receiving direct assignments from the Plan Administrator as provided for in this Plan; or

Option 2 subscribing to the Articles of Agreement which are attached hereto and by this reference are incorporated as a part of this Plan **to the extent that the Articles of Agreement are not inconsistent with this Plan and applicable North Carolina law.**

[Final paragraph]

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

#### SECTION V PLAN ADMINISTRATOR

**In recognition of the interests of the participating companies who have subscribed to the Articles of Agreement, the Plan Administrator will consult with the Board of Governors, as appropriate, in the course of carrying out its duties and responsibilities with respect to the establishment of servicing carrier eligibility requirements under Section VI(1) and performance standards under Section VI(3).** The Plan Administrator shall also be responsible for determining the expenses for the operation of the Plan, exclusive of the Plan Administrator's expenses incurred in connection with responsibilities it has under the Articles, and shall assess each insurer participating in the Plan for those expenses on an equitable basis as determined by the Plan Administrator.

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#### SECTION VI SERVICING CARRIERS

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

##### **(1) Eligibility to Act as a Servicing Carrier**

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

##### **(3) Standards for Servicing Carrier Performance, Compensation, and Incentives**

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

##### **(4) Monitoring and Enforcement**

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

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**SECTION X  
DISPUTE RESOLUTION PROCEDURE**

[Final paragraph]

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

**EXHIBIT II**  
**NATIONAL WORKERS COMPENSATION REINSURANCE POOL**  
**ARTICLES OF AGREEMENT**

**PREAMBLE**

Whereas, the undersigned parties hereto (hereinafter referred to as “participating companies” or “participants”) are engaged in the business of insuring against liability under workers compensation acts of the United States of America, of the various states, territories thereof and of the District of Columbia (hereinafter referred to generally as State or States, as the context may require); and

Whereas, in addition to being participating companies they are also members of Workers Compensation Insurance Plans (hereinafter referred to as “Insurance Plans”) that are in effect in various states and which generally provide for the issuance of workers compensation policies to employers who are in good faith entitled to workers compensation insurance as defined in the Insurance Plans but are unable to procure such insurance in a regular manner; and

Whereas the participating companies desire to adopt these Articles of Agreement to assist in providing efficient, cost-effective insurance to policyholders who qualify for insurance protection under Authorized Insurance Plans and, further, for the benefit of the participating companies, in order to facilitate their fulfillment of their obligations under an Insurance Plan provided that the Plan’s design, structure, and administration is acceptable to the Board of Governors and the participating companies; and

Whereas, the participating companies desire that the premiums, losses, costs and/or expenses arising under certain policies issued pursuant to Authorized Insurance Plans, whether as separate or combined components, be equitably distributed among the participating companies by reinsuring such policies under these Articles of Agreement on a quota share or aggregate excess of loss basis, or other reasonable and equitable basis approved by the Board of Governors, thereby mitigating the risk of undue loss to any one of the participating companies on account of any such policy and permitting the underwriting results, expenses and administration to be accounted for in a cost-effective and consistent manner; and

Whereas, the participating companies desire to form a mechanism to allow for the efficient and cost-effective provision of reinsurance to the Servicing Carriers selected under Authorized Insurance Plans, where such mechanism would provide efficient, centralized administration, including accounting, statistical and actuarial services, among other appropriate activities related to such reinsurance and the spreading of risk; and

Whereas, the participating companies desire that employers needing multistate coverage and who are in good faith entitled to workers compensation insurance as defined in the Authorized Insurance Plans be able to obtain efficient, cost-effective coverage under Authorized Insurance Plans through a single Servicing Carrier and under a multistate policy, where appropriate, thereby helping to reduce the cost of such insurance; and

Whereas, the participating companies have a direct financial interest in, and wish to be assured that, the reinsured Servicing Carriers under Authorized Insurance Plans provide efficient, cost-effective policyholder services, including claims handling and loss prevention services, and further, that Servicing Carriers diligently collect premium due under policies issued by the Authorized Insurance Plans; and

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Whereas, the participating companies must be able to rely upon the integrity and dependability of the administrators of the Authorized Insurance Plans, and the selected Servicing Carriers, to achieve the purposes of these Articles of Agreement; and

Whereas, the administration of Authorized Insurance Plans, including but not limited to the efficient and effective performance by the Plan Administrator of its duty to appropriately supervise the reinsured Servicing Carriers, is of substantial interest to the participating companies; and

Whereas, the participating companies may wish to propose new, amended, or revised Insurance Plans, where such changes are appropriate to allow participating companies to be assured that the benefits of these Articles of Agreement shall remain available in the most efficient, cost-effective and reasonable manner;

Now, therefore, for the purpose of reinsuring policies issued pursuant to Authorized Insurance Plans, for the protection of each participating company from the extraordinary hazards incident to the issuance of such policies, and to achieve the other purposes described above or elsewhere in these Articles of Agreement, the undersigned participating companies hereby subscribe to, become parties to, and adopt these Articles of Agreement.

#### ARTICLE I

##### Definitions—Rules of Construction

All terms defined in any Authorized Insurance Plan shall have the same meaning herein.

The terms “net premiums written,” “net workers compensation insurance premiums written,” “workers compensation premiums written” and “workers compensation insurance premiums,” wherever used in these Articles of Agreement, shall mean the gross direct premiums charged less all premiums (except dividends and savings refunded under participating policies) returned to policyholders for all Workers Compensation and Occupational Disease Insurance, exclusive of premiums for risks subject to these Articles of Agreement, and for risks written under National Defense Projects Rating Plan and under excess policies.

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

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

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The term "Reinsurance Agreements" shall mean those quota share reinsurance agreements entered into among the Servicing Carriers and the participating companies pursuant to these Articles of Agreement.

The term "Administrator" shall mean the entity designated by the Board of Governors to provide the necessary administrative services as are required to achieve the purposes of these Articles of Agreement.

#### ARTICLE II

##### Purpose and Limitations

1. **Purpose.** The purpose of this Agreement is to provide participating companies with an option for complying with Authorized Insurance Plan requirements by permitting the participating companies to share in the experience of certain assigned risks, thereby reducing both administrative costs and the annual fluctuation in the liability of participating companies arising from Authorized Insurance Plan participation. Under the Insurance Plans, an employer who qualifies for coverage is assigned to a carrier to issue and service the policy of insurance issued to such employer. For those participating companies that elect to subscribe to these Articles of Agreement, assignments are made to Servicing Carriers that are appointed pursuant to the Authorized Insurance Plans to write and service the policies issued to employers, which policies are then reinsured by the participating companies. The service provided by the Servicing Carriers includes underwriting and issuing the policy, auditing and collection of premiums, paying all premium and loss based taxes and assessments, providing loss control, and defending and paying claims.

All participating companies must enter into Reinsurance Agreements with Servicing Carriers ("Reinsurance Agreements") for the purpose of sharing, whether as separate or combined components, the premiums, losses, costs and/or expenses of the policies assigned to the Servicing Carriers. These Reinsurance Agreements distribute premiums, losses, costs and/or expenses and define the obligations among the Servicing Carriers and the participating companies. These Articles of Agreement are intended to: (1) facilitate the reinsurance by establishing uniform rules and procedures; (2) provide a framework which permits the participating companies to agree upon such rules and procedures in the future; and (3) provide a mechanism for resolving disputes arising under the Reinsurance Agreements and these Articles of Agreement.

The relationship between the Servicing Carriers and the participating companies shall be administered by such organization as provided for in a separate administration agreement (herein "Administration Agreement"). The Administrator's duties and obligations with respect to such administration are established by: (i) the Authorized Insurance Plans; (ii) these Articles of Agreement; and (iii) Administration Agreement. The Administrator is also designated as an agent for the participating companies to enter into

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contracts on their behalf to carry out the purposes of these Articles including but not limited to the Reinsurance Agreements.

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

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

Commencing on January 1, 1999, these Articles of Agreement shall be applicable to each Authorized Insurance Plan for terms of three (3) calendar years, unless action is taken pursuant to Article V, Section 8. At the end of each such term, these Articles shall automatically renew for an additional three (3) year term unless the Board of Governors shall recommend to the participating companies that no such renewal should be extended to that Authorized Insurance Plan. Any such recommendation by the Board shall be presented to the participating companies no later than the regular meeting of participating companies to be held during June of the third year of any such term for a specific Authorized Insurance Plan. Any such recommendation is subject to ratification by the affirmative vote, in person or by proxy, of participating companies writing at least 66 2/3% of the total net workers compensation premium written by all participating companies in such state during the latest available calendar year.

With respect to policies effective prior to the approval of the Insurance Plan as defined herein and to the extent the Articles of Agreement amended as of March 5, 1997, applied to such policies, those Articles of Agreement will continue to apply to such policies.

#### ARTICLE III

##### Participation

1. **Participation.** Any company licensed to write workers compensation insurance in any state that has an approved Authorized Insurance Plan may become a participating company by subscribing to these Articles of Agreement. Any State Workers Compensation Insurance Fund established by law also may become a participant by subscribing to these Articles of Agreement. The Board of Governors may permit participation at its sole discretion to any group, organization, association or other entity it deems appropriate, subject to such entity subscribing to these Articles of Agreement.

A company that elects to become a participating company need not participate in the reinsurance in all states where the Articles of Agreement apply. If, however, a participating company is part of a group or affiliation, its election as to which states it will



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participate in the reinsurance pursuant to these Articles of Agreement must be the same for all companies affiliated in the group. At the time a company becomes a participant, it must identify all affiliated companies and notify the Administrator which states it will participate in the reinsurance provided under these Articles of Agreement. Thereafter, any participating company may withdraw from providing reinsurance in any state by giving notice as required in paragraph 2 below subject to the withdrawal of all affiliated companies from such state or states.

2. **Withdrawal.** Any participating company may withdraw as a participating company with respect to the reinsurance in a given state or states only on December 31 of any year and must give ninety (90) calendar days' advance written notice to the Administrator. Any withdrawal must be made by all companies affiliated within a group.
3. **Expulsion.** The Board of Governors, by affirmative vote of at least nine (9) members then holding office and eligible to vote, may at any time expel any participating company which in the opinion of the Board shall have violated any of the provisions of these Articles of Agreement or of the rules forming a part hereof as then constituted. Prior to any such action by the Board, the participating company shall have the opportunity to present any relevant evidence to the Board concerning any such alleged violation after notice of no less than ten (10) calendar days by the Board which specifies the alleged violation. If, after the participating company has presented evidence to the Board, the Board determines that a violation has occurred, the Board shall send the participating company a notice of expulsion by mail, facsimile transmission, or delivery to such participating company at its latest home office address appearing on the records of the Administrator. If the violation is not cured within fifteen (15) calendar days following the mailing, transmission, or delivery of such notice, the expulsion shall become effective at a date to be determined by the Board but no later than December 31st of the current calendar year. No member of the Board of Governors may vote in a proceeding to expel a participating company by which it is employed or any of its affiliates.

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

4. **Obligations After Termination.** Any participating company which terminates participation by withdrawal or by expulsion or has withdrawn from providing reinsurance in a certain state or states shall, nevertheless, with respect to risks subject to these Articles of Agreement prior to midnight of the effective date of such termination or withdrawal, continue to be governed by these Articles of Agreement, the Reinsurance Agreements, and the rules and procedures promulgated thereunder.
5. **Insolvency**
  - (a) In the event any participating company shall become insolvent, as hereinafter defined, participation by such company under these Articles of Agreement and the Reinsurance Agreements shall be deemed terminated at the time such company becomes insolvent subject to the further provisions of Section 5(f). As used herein, "insolvent" means being the subject of receivership, conservatorship, rehabilitation,

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liquidation, or similar proceedings, whether voluntary or involuntary, in any jurisdiction.

- (b) In the event a Servicing Carrier becomes insolvent, the Administrator, acting on behalf of each of the participating companies as directed by the Board of Governors, shall have the option to:
- (i) pay to the receiver, conservator, rehabilitator, liquidator or other appropriate representative all losses and expenses for which such insolvent Servicing Carrier shall have come liable upon risks to which these Articles of Agreement apply; or
  - (ii) subject to the approval of the receiver, conservator, rehabilitator, liquidator or other representative, and subject to the approval of any court having jurisdiction over the proceedings, terminate the obligation of the participating companies to such insolvent Servicing Carrier to reinsure such insolvent Servicing Carrier for losses, costs and expenses for which the insolvent Servicing Carrier shall have become liable upon risks to which these Articles of Agreement apply. If this option is exercised, the Administrator shall make arrangements to have all risks that have been assigned to and are being serviced by such insolvent Servicing Carrier reassigned to another Servicing Carrier for servicing. Such successor Servicing Carrier shall assume all the duties and obligations of the insolvent Servicing Carrier and shall be entitled to the reinsurance provided by the participating companies. Payment made on account of such risks, including expenses for the servicing thereof, shall be apportioned ratably among the remaining participating companies in accordance with the method provided for the apportioning of assessments.
- (c) The outstanding liability to the participating companies of any insolvent participant, whether in its capacity as a Servicing Carrier or a participating company or both, and except for the portion unexpended of any amount of premium retained for servicing by such insolvent participating company (if a Servicing Carrier), shall, in event of such insolvency, and subject to any other or further provision with respect thereto which may be from time to time embodied in the rules and procedures adopted hereunder, be assumed by and apportioned among the remaining participating companies in the same manner in which liability for assessments is apportioned. No refund shall be made to such insolvent participating company until all of its liabilities to the participating companies and all liabilities assumed by the participating companies by virtue of the provisions in this section shall have been fully settled and satisfied.

The participating companies shall have all the rights allowed by law against the estate or funds of such insolvent Servicing Carrier for recovery of funds disbursed (including the payment of losses, costs, expenses and unearned Servicing Carrier allowance) to insolvent Servicing Carriers which have been absorbed by the participating companies as herein provided. The Administrator may assert and enforce such rights on behalf of the remaining participating companies.

Upon the insolvency of a Servicing Carrier, all amounts due to such insolvent Servicing Carrier from the participating companies as a result of the reinsurance provided to such Servicing Carrier and all amounts due from the insolvent Servicing

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Carrier as a participating company to other Servicing Carriers it reinsures shall be merged into one account and deemed mutual debts and credits which solvent participating companies and Servicing Carriers may offset.

- (d) Any participating company that fails or has failed to make timely payment of its reinsurance obligations or any assessment made under these Articles of Agreement shall become immediately liable as of the earliest date on which such failure to pay occurs, for all current assessments and reinsurance obligations and an additional amount equal to the commuted value on such date of all outstanding reinsurance obligations that such participating company may have. For the purposes hereof, such commuted value shall total the amount of unearned premium reserves and loss reserves then allocated to such participating company hereunder, as determined by the Administrator and approved by the Board of Governors. The liability of the insolvent participating company for such commuted value under this provision shall be deemed fixed, liquidated, and noncontingent as of the date of such failure to pay. The Administrator may assert and enforce such liability on behalf of the participating companies.
  - (e) The Board of Governors shall have the discretion to terminate participation of any or all affiliated companies of the insolvent participating company. The termination of an insolvent participating company or any or all companies described in this section shall not be deemed a violation of the requirement contained in Article III, Section 1 relating to all insurers in a group becoming participating companies. A decision to terminate an affiliate of an insolvent participating company is reviewable under the applicable Authorized Insurance Plans.
  - (f) Anything in this Section to the contrary notwithstanding, the Board of Governors may, in the event such action is in its judgment feasible and desirable, and in a manner equitable to all participating companies, elect not to terminate the participation of such insolvent participating company, and permit such participating company to continue its participation under these Articles of Agreement upon such conditions as it may prescribe and subject in all respects to these Articles of Agreement and the rules and procedures hereunder as then constituted.
  - (g) No member of the Board of Governors that is either an insolvent participating company or affiliate thereof may vote in any proceeding under this Section.
6. **Participating Company Obligations.** Any participating company shall, at the discretion of the Administrator, be required to periodically provide, at intervals to be determined by the Administrator, such information to enable the Administrator to determine such participating company's ability to pay return premiums, losses, costs and expenses which may be assessed pursuant to Article X, Section 2 or may become due under the Reinsurance Agreements for all risks that are subject to these Articles of Agreement. If the Administrator determines at the time a participating company subscribes to these Articles or any time thereafter there is any significant likelihood that the participating company's reserves are not adequate to meet its obligations under the Reinsurance Agreements, or that there is a significant likelihood that future reserves will be inadequate to meet future obligations, or should the Administrator determine that the participating company has not cooperated to the extent necessary to make these

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determinations, the Administrator shall have the authority to ensure that the participating company has reserves adequate to cover its obligations by taking actions which may include, but need not be limited to, any or all of the following:

- (a) Ordering that all premium distributions or refunds due the participating company be paid into escrow or trust with the Administrator to secure the participating company's obligations.
- (b) Ordering that all premium distributions or refunds due the participating company be paid in trust with a third party to secure the participating company's obligations.
- (c) Ordering that the participating company obtain a letter of credit or such other form of security and in such amount approved by the Administrator to secure the participating company's future liabilities.

Compliance with any such order within the time specified therein shall be an obligation of each participating company. The above provisions will automatically apply to any member of an Insurance Plan that has failed to obtain approval from an insurance regulator to become a direct assignment carrier under any Insurance Plan unless it is shown to the satisfaction of the Administrator that such failure was unrelated to the member's financial status.

#### ARTICLE IV

##### Meetings and Voting Rights

1. **Regular Meetings.** The participating companies shall meet annually on the third Wednesday of June, or on such other date as the Board of Governors may determine, and at such place as the Board of Governors may determine.
2. **Special Meetings.** Special meetings of the participating companies may be called at any time by the Chair of the Board of Governors and shall be called by the Chair upon the written request of three (3) non-affiliated participating companies.
3. **Notice of Meetings.** Except as otherwise provided in Article VIII, notice of all annual and special meetings shall be given or caused to be given by the Chair, in writing, mailed or delivered to, or by facsimile transmission direct to, each participating company at the latest address appearing upon the records of the Administrator, or by telephone communication to any executive officer of such participating company. If notice is given by writing and mailed to the participating company, such notice shall be placed in the mail not less than ten (10) calendar days prior to the date of the meeting. If given by facsimile transmission or telephone communication, it shall be so given not less than five (5) calendar days prior to the meeting.

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4. **Quorum.** A quorum at any annual or special meeting shall consist of participating companies that write not less than 50.1% of the total net workers compensation premiums written by all participating companies during the latest calendar year for which information is available in all states where these Articles of Agreement are operative. For purposes of determining a quorum and any vote taken hereunder, the net workers compensation premium written for each participating company shall only include those states where such participating company is providing reinsurance under these Articles.
5. **Powers.** The purpose of any special meeting shall be stated in the notice thereof; but at all such meetings and at annual meetings, participating companies may consider and act upon all matters brought before them, except where otherwise specifically provided in these Articles of Agreement.
6. **Voting Rights.** Except where otherwise provided in these Articles of Agreement, at all meetings action may be taken only upon affirmative vote of participating companies that write not less than 50.1% of the total net workers compensation premiums written by all participating companies during the latest calendar year for which information is available in all states where these Articles of Agreement are operative. If such meeting is limited to matters involving one State by the terms of the notice of meeting, no action may be taken unless there has been an affirmative vote of participating companies that write not less than 50.1% of the total net workers compensation premiums written by all participating companies providing reinsurance in such State during the latest calendar year for which information is available in such State. Action may also be taken without meeting by mail or telephone upon affirmative vote of participating companies which write not less than 50.1% of the total net workers compensation premiums written by all participating companies during the latest calendar year for which information is available in all States where these Articles of Agreement are operative provided that all participating companies are polled.
7. **Proxies and Mail Votes.** Participating companies may be represented at any meeting by proxy. Every proxy shall be in writing and signed by an authorized officer of the participating company. No proxy shall be valid after the expiration of six (6) months after the date thereof. Every proxy shall be revocable at the pleasure of the participating company executing it. Before any proxy can be voted, it shall first be filed with the Chair of the Board of Governors or the Chair's designee not later than one (1) full business day in advance of the meeting. No participating company shall hold proxies, which when combined with its own net workers compensation premiums written in the state or states in question, shall result in such proxy holder having the ability to cast votes totaling more than 30% of the total net workers compensation premiums written by all workers compensation companies in the state or states in question during the last calendar year for which such information is available. Participating companies may record their votes by mail on written propositions, and such votes shall have the same standing as if cast by such participating companies in person or by proxy.
8. **Minutes of Meetings.** Minutes of all meetings of the participating companies and of the Board of Governors shall be recorded and be available to all participating companies.

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#### ARTICLE V

#### Board of Governors

1. **Number and Term of Office.** Except for those powers specifically granted to the Administrator or an administrator under any Authorized Insurance Plan, these Articles of Agreement and the Administrative Agreement, the operation, business and affairs of all matters arising under these Articles of Agreement shall be managed and controlled by a Board of Governors composed of twelve (12) non-affiliated participating companies.

The Board shall be elected by the participating companies at the annual meetings of the participating companies. Board elections shall be made for staggered terms.

Four (4) participating companies shall be elected annually for a term of three (3) years. No participating company serving on the Board for a full term shall succeed itself, except where a sufficient number of non-succeeding participating companies cannot be induced to serve on the Board.

No more than five (5) of the twelve (12) participating companies of the Board of Governors shall be Servicing Carriers.

All participating companies elected to the Board shall designate a knowledgeable representative of suitable senior standing and shall select two (2) alternates of similar standing to attend Board meetings and vote on matters brought before the Board.

To facilitate voting for members of the Board of Governors at annual meetings, at least sixty (60) days prior to each annual meeting the Board shall appoint a Nominating Committee consisting of two (2) stock participating companies and two (2) non-stock participating companies. The Nominating Committee shall make nominations for the terms that are expiring at the next annual meeting. The Nominating Committee recommendations shall be reported to all participating companies at least one (1) week prior to the annual meeting. Any participating company can make additional nominations at the annual meeting.

2. **Vacancies.** If a vacancy occurs in the Board of Governors, the Board shall appoint a replacement which will serve until an election can be held at the next annual or special meeting of the participating companies to fill the unexpired term.
3. **Place of Meetings.** All meetings of the Board shall be held at a place designated by the Chair.
4. **Quorum and Voting Rights.** A majority of the Board of Governors shall constitute a quorum. Each Governor shall be entitled to one vote. A Governor's vote may be cast only by its representative, or in his or her absence, by its alternate. Proxy voting shall not be permitted. Any Board action requires an affirmative vote of a majority of the Board present for the meeting. If such votes are not cast, the matter fails adoption except as provided for elsewhere in these Articles of Agreement. In the absence of a quorum, the Board, subject, however, to the provisions of Section 2 of this Article V relative to filling vacancies on the Board, shall have no power except that a majority of the Board of

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Governors in attendance may adjourn the meeting from time to time until a quorum shall attend. Action may also be taken without meeting by mail or telephone upon affirmative vote of a majority of the Board of Governors, provided that all Governors are polled and no member demands a meeting.

5. **Meetings.** The Board shall meet within thirty (30) calendar days next following the annual election of the Board for the purpose of electing officers to serve for the next ensuing year and for the transaction of all other business within the powers of the Board. Other regular meetings of the Board of Governors shall be held at such places and on such dates as the Board may from time to time determine. Special meetings of the Board may be called at any time by the Chair, or by the Chair upon written request of three (3) non-affiliated Board members. Such notice of regular and special meetings of the Board shall be given as may be determined by the Board or, in the event the period or method of notice shall not have been prescribed, as the Chair shall deem reasonable. Board members may participate in meetings of the Board by means of a conference telephone, video conference, or similar communications method by which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at such meeting.
6. **Action Without Meeting.** Any action of the Board of Governors may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the Board members then in office and is filed with the minutes of the Board of Governors. Such unanimous written consent shall have the same effect as a unanimous vote of the Board.
7. **Authorization.** These Articles of Agreement shall not apply to any Insurance Plan unless the incorporation of these Articles of Agreement into such Insurance Plan is first authorized by the Board of Governors. The Board has the power, through such vote, to take necessary and appropriate steps to incorporate the Articles of Agreement into such Insurance Plans through filings with the appropriate regulators for consideration and approval.
8. **Plan Changes.** The Board shall monitor and review any change in any Authorized Insurance Plan and any changes in the identity of the Plan Administrator for any such Plan. The Board shall assess the effect of any such changes on the interests of the participating companies and policyholders insured under any Authorized Insurance Plan and shall approve all such changes unless the Board finds that such changes would be inconsistent with the purposes of these Articles of Agreement. If the Board does not approve such a change, the Board may elect to terminate reinsurance in accordance with the termination provisions of the applicable Reinsurance Agreement. Any decision by the Board to elect to terminate reinsurance shall be subject to the approval of the participating companies at any regular or special meeting thereof. At any time, the Board of Governors may develop and present proposed amendments, changes, or revisions to, or complete replacements for, an existing Authorized Insurance Plan or proposed Insurance Plan where the Board believes its proposal would be in the overall interest of the participating companies in a given state.

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9. **Organization and Procedure.** The members of the Board of Governors shall elect a Chair and Executive Vice-Chair. The Chair may also appoint one or more Vice-Chairs and assign such responsibility to them as the Chair may decide. The Chair, or in his or her absence the Executive Vice-Chair, or in the absence of both, a Chair pro tem elected by the Governors present, shall act as a Chair of every meeting of the Board; and the Chair shall appoint a person to act as secretary of the meeting, who shall keep a record of the Board's proceedings. The order of business at all meetings of the Board shall be determined by the Chair. If any Governor is absent from the meeting of the Board, such absent Governor, or the participating company that such Governor represents, may designate in writing any other Governor of the Board to act, but not to vote, in the place and stead of such absent Governor at such meeting.
10. **Disputes and Appeals.** In addition to the powers elsewhere conferred upon it by these Articles of Agreement, the Board of Governors shall constitute a committee with full authority to pass upon all disputes arising with respect to these Articles of Agreement, including without limitation any questions as to the application, scope, and effect of these Articles of Agreement. The ruling of a majority of the Board as then constituted on any such dispute or question following reasonable notice and an opportunity for a hearing shall be final. All disputes reviewed by the Board of Governors and appeals therefrom shall be subject to and in accord with the Dispute Resolution Procedures provided for in the various Authorized Insurance Plans.
11. **Rules and Procedures.** The Board of Governors shall have the right to promulgate and adopt rules and procedures for the purpose of implementing the terms of this agreement.
12. **Authority of Administrator.** The Administrator is authorized to enter into agreements on behalf of the participating companies to carry out the purposes of these Articles of Agreement, including but not limited to the Reinsurance Agreements. Upon direction by the Board of Governors, the Administrator is empowered to act as attorney-in-fact for each participating company to prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, such participating company based on or involving any matter relating to this Agreement or to intervene in any action or proceeding related thereto. The Administrator or an officer thereof is authorized to certify these Articles of Agreement, acts taken by the Board or the participating companies, the tenure of, signatures, identity and acts of officers or other officials, or other official acts; and such certificates may be relied upon by any person to whom the same shall be given, until receipt of notice to the contrary.
13. **Chair.** The Chair shall be chief executive officer under these Articles, and shall have overall control of and responsibility for all activities subject to this agreement and other powers which are incidental thereto.
14. **Vice-Chairs.** The Vice-Chairs shall have immediate charge, subject to the direction and control of the Chair, of such matters as may be assigned to them, respectively, by the Chair. In the Chair's absence or inability for any reason to act as the Chair, his or her executive duties and powers under these Articles of Agreement may, with like effect, be performed and exercised by the Executive Vice-Chair or, if the latter also be absent or unable to act, by any of the Vice-Chairs.



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

#### ARTICLE VI

##### Fiscal Matters

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

#### ARTICLE VII

##### Indemnification

1. **Indemnification.** Any person or insurer made, or threatened to be made, a party to any action, suit or proceeding, because such person or insurer was a participating company, or served as a member or representative of a member of the Board of Governors or other committee, or was an officer or employee as provided in this agreement or of the Administrator acting on behalf of the participating companies shall be indemnified 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

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action, suit or proceeding, or threatened action, suit or proceeding, except in relation to matters as to which he, she or it shall be adjudged in such action, suit or proceeding to be liable by reason of willful misconduct in the performance of his, her or its duties or obligations to the participating companies and, with respect to any criminal actions or proceedings, except when such person or insurer had reasonable cause to believe that his, her or its conduct was unlawful. Such indemnification shall be provided whether or not such person or insurer is a participating company, 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 Article. Such indemnification shall not be exclusive of other rights such person or insurer may have, and shall pass to the successors, heirs, executors or administrators of such person or insurer. The termination of any such civil or criminal action, suit or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such person or insurer was liable by reason of willful misconduct, or that he, she or it had reasonable cause to believe that his, her or its conduct was unlawful. If any such action, suit or proceeding is compromised, it must be with the approval of the Board of Governors; provided, however, the Board of Governors may delegate to the Administrator the authority to approve any such compromise of financial liability.

2. In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in Section 1 of this Article, shall be determined by the Board of Governors which shall also determine the time and manner of payment of such indemnification; provided, however, that a person or insurer 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 Section 1 of this Article shall be entitled to indemnification as authorized in such section. The Board of Governors may delegate to the Administrator the authority to determine, in a manner consistent with this Article, entitlement to indemnification, and the time and manner of payment of such indemnification, for any indemnification requiring payment which is less than an amount as may be fixed from time to time by the Board of Governors. Nothing herein shall be deemed to bind a person or insurer who or which the Board of Governors has determined not to be entitled to indemnification, or to preclude such person or insurer from asserting the right to such indemnification by legal proceedings. Such indemnification as is herein provided shall be apportioned among all participating companies, including any named in any such action, suit or proceeding pursuant to Article X.

#### ARTICLE VIII

#### Amendments to Articles of Agreement

**Amendments to Articles of Agreement.** Any and all provisions of these Articles of Agreement and any amendments hereto shall be subject to amendment, alteration, repeal, or re-enactment at any annual meeting of the participating companies, or at any special meeting called for the purpose, by the affirmative vote of two-thirds (2/3) of the participating

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companies voting in person or by proxy and such participating companies shall write not less than 50.1% of the total net workers compensation premiums written by all members during the latest available calendar year for which information is in all states where these Articles are operative. For purposes of this determination, the net workers compensation premium written for each participating company shall only include those states where such participating company is providing reinsurance under these Articles. Not less than fifteen (15) calendar days' written notice of any such meeting shall be given, or caused to be given, by the Chair, in which notice the action proposed to be taken shall be fully set forth. Any amendments to these Articles of Agreement approved by the participating companies shall only be effective in those states where the amendments have been filed and approved by the insurance regulator as part of the Authorized Insurance Plans in effect in such states.

**ARTICLE IX**

**Effective Date**

**Effective Date.** These Articles of Agreement and any amendments thereto shall become effective and binding on those insurers that become signatories hereto as of the date of execution by an authorized representative of any such insurer.

**ARTICLE X**

**Assessments and Expenses**

1. **Expenses and Payments.** Expenses incurred by the Administrator in the administration of the affairs subject to these Articles of Agreement, shall be a proper charge against, and shall be an obligation of the participating companies. A record shall be kept of all such expenses, and the amount thereof shall be apportioned to the participating companies in the ratio of their interest under the various Reinsurance Agreements. Such expenses may be paid out of funds held by the Administrator or shall be assessed against the participating companies.

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2. **Transactions, Accounts, and Financial Statements.** Separate accounts shall be maintained by the Administrator covering transactions for each policy year in each state based on the information provided to the Administrator by the Servicing Carriers pursuant to the Reinsurance Agreements. The Administrator shall prepare and deliver to the participating companies a financial statement showing the apportionment of the obligations under the Reinsurance Agreements and the expenses of administration provided for herein and the condition of each account. The Administrator shall distribute premium and collect reinsurance recoverables as provided for in the Reinsurance Agreements.

#### ARTICLE XI

##### Miscellaneous Provisions

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

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**ARTICLE XII**

**Acceptance of Articles of Agreement**

THE ARTICLES OF AGREEMENT may be simultaneously executed by the participating companies in any number of counterparts, written or printed or both, and each counterpart so executed shall be deemed to be an original and all such counterparts shall constitute one and the same document.

IN WITNESS WHEREOF the undersigned have respectively caused their corporate names to be hereunto subscribed by the President or a Vice-President and their corporate seals to be hereto affixed, attested by a duly authorized officer.

\_\_\_\_\_  
Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

SEAL

Date Subscribed:  
\_\_\_\_\_