

**MICHIGAN WORKERS' COMPENSATION PLACEMENT FACILITY**

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Member Information

(How to become a member of the MWCPF)

**Re: Membership - Michigan Workers' Compensation Placement Facility**

Dear Insurance Carrier:

Provided on this website you will find the Plan of Operation for the Michigan Workers' Compensation Placement Facility (MWCPF). **Please be advised that Chapter 23 of the Michigan Insurance Code that went into effect on January 1, 1983, mandates that every insurer licensed to write workers' compensation insurance in the State of Michigan will belong to the Michigan Workers' Compensation Placement Facility.** Assessments for Facility operations will be made on the basis of the net direct written premium, excluding any excess or assigned risk premiums.

Please print a copy of the MWCPF's Plan of Operation for your records and an Acknowledgement of receipt and Acceptance of this plan (last page) which is to be signed by an authorized person from your organization and returned to us. Please indicate the title and contact information for the soigné and provide a copy of your Letter of Authority to write workers' compensation from the Office of Financial and Insurance Services.

If you need any further assistance, please contact Ms. Lois Terry at extension 211 or [lterry@caom.com](mailto:lterry@caom.com) or Mr. Jon Heikkinen, Senior Vice President, Data Services, at extension 225 or [jheikkinen@caom.com](mailto:jheikkinen@caom.com).

**MICHIGAN WORKERS' COMPENSATION PLACEMENT FACILITY**  
**PLAN OF OPERATION**

**ARTICLE I**

Name

1.01. The name of this unincorporated, non-profit association of insurers shall be the Michigan Workers' Compensation Placement Facility (hereinafter referred to as the "Facility").

**ARTICLE II**

Purpose

2.01. It is the purpose of the Facility to implement Act No. 8, Public Acts of 1982, being Chapter 23 of the Michigan Insurance Code of 1956, as amended, MCLA §500.2301 et seq., creating a workers' compensation placement facility to provide workers' compensation insurance to any person who is unable to procure the insurance through ordinary methods and to preserve to the public the benefits of price competition by encouraging maximum use of the normal private insurance system.

**ARTICLE III**

Effective Date

3.01. This Plan of Operation shall become effective upon approval by a majority vote of the Board of Governors, ratification by majority vote of the participating members and approval by the Commissioner of the Office of Financial and Insurance Services.

**ARTICLE IV**

Definitions

4.01. As used in this Plan of Operation:

(a) "Assessable premiums" means the direct voluntary premiums, including F classes, for workers' compensation insurance (exclusive of insurance provided under an excess policy for a qualified self-insured) written by a member in Michigan during a given calendar year.

(b) "Board" means the Board of Governors of the Facility.

(c) "Commissioner" means the Commissioner of the Office of Financial and Insurance Services of the State of Michigan.

(d) “F classes” means insurance written pursuant to the United States Longshoremen’s and Harbor-Worker’s Compensation Act.

(e) “Governor” means a member of the Board of Governors of the Facility.

(f) “Measurably adverse loss ratio” means a loss ratio for an employer which is greater than the Facility’s permissible loss ratio for the applicable policy year.

(g) “Member” means every insurer authorized to write workers’ compensation insurance in Michigan.

(h) “Participating Member” means a member of the Facility who in any given calendar year has a participation ratio greater than zero.

(i) “Participation ratio” means the ratio of a participating member’s assessable premiums to the comparable statewide totals of all participating members.

(j) “Workers’ compensation insurance” means insurance which provides any of the following:

- (i) The security required pursuant to Act No. 317 of the Public Acts of 1969, as amended, (MCLA §§418.101 to 418.941);
- (ii) The security required pursuant to the United States’ Longshoremen’s and Harbor Workers’ Compensation Act; or
- (iii) Employer’s liability insurance, when contained in or endorsed to a policy providing the security described in (i) or (ii).

## ARTICLE V

### Membership

5.01. Membership. Every insurer who, by virtue of the provisions of Section 2301 of the Michigan Insurance Code, as amended, is required to be a member of the Facility as a condition of its authority to transact insurance in the State of Michigan.

5.02. Withdrawal. An insurer may withdraw as a member upon ceasing to be authorized to write workers’ compensation insurance in the State of Michigan, provided that (i) withdrawal shall not be effective until the end of the Facility fiscal year during which the insurer ceased to be authorized to write such insurance in Michigan, and (ii) the withdrawing insurer shall continue to be bound by this Plan of Operation with respect to the performance and completion of any unsatisfied liabilities and obligations to the Facility, including assessments, losses, expenses, contracts or other obligations incurred with respect to the period during which the insurer was a member.

5.03. Merger. When a member has been merged or consolidated into another insurer or another insurer has reinsured a member's entire business in this State, the member and the insurer which is the successor in interest of the member shall be liable for the member's obligations to the Facility.

## ARTICLE VI

### Meetings of Members

6.01. Annual Meeting. The annual meeting of the members of the Facility shall be held in the State of Michigan, at a place determined by the Board. The annual meeting shall be held at a date and time fixed by the Board. The annual meeting shall be held for the purpose of transacting such business as may come before the meeting.

6.02. Special Meetings. Special meetings of the members may be called by the Board, the Chairperson of the Board, or upon the written request to the Board by any ten members of which no two or more are in a group under common management, ownership, or control.

6.03. Notice of Meetings. Written notice of the time, place, and purpose of a meeting of members shall be given not less than twenty (20) days before the date of the meeting to each member. Notices shall be mailed to the last address of the member as it appears on the books of the Facility. No notice need be given of an adjourned meeting of the members provided the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting the only business which is transacted is that which might have been transacted at the original meeting.

6.04. Quorum. The presence in person or by proxy of participating members who wrote at least 51% of the assessable premiums written by all members during the preceding calendar year shall constitute a quorum for the transaction of business at any meeting of the members.

6.05. Voting at Meetings. Only participating members shall be entitled to vote. A participating member may vote by means of its authorized representative appearing in person or by proxy duly executed in writing and delivered to the Secretary of the Board prior to or at the meeting. Each participating member shall be allotted the number of votes equal to the number of whole dollars of assessable premiums written by it during the preceding calendar year. Except as provided in Article XXIII, a proposal submitted to a vote of the members at a meeting at which a quorum is present shall be adopted if approved by a majority of the votes cast by participating members.

6.06. Mail Ballots. Any matter, including the amendment of this Plan of Operation, upon which the participating members are required or permitted to vote, may be submitted to the participating members and voted upon by them by mail, provided this procedure is authorized by a majority of the members of the Board present and voting at any meeting of the Board. The Board shall fix a date for the counting of votes on proposals submitted to the participating members by mail, and such proposals shall be mailed to the participating members for voting not less than twenty (20) days prior to the date fixed by the Board for the counting of the votes. A proposal submitted to the participating member for a vote by mail shall be adopted if approved by

a majority of the total number of votes which all participating members are entitled to cast as of the date the votes are counted.

## ARTICLE VII

### Board of Governors

7.01. Powers. The Board of Governors shall have responsibility for administration of this Plan of Operation and management of the affairs and operation of the Facility, consistent with the Plan of Operation and the provisions of the Michigan Insurance Code.

7.02. Number, Representation. The Board shall consist of nine (9) members appointed by the Commissioner in accordance with the following requirements:

- (a) Five Governors shall be participating members of the Facility.
- (b) Two Governors shall be representatives of workers' compensation policyholders.
- (c) One Governor shall be a licensed agent.
- (d) One Governor shall represent the general public.

7.03. Term. Each member of the Board shall be appointed for a two year term. A Governor shall hold office for the term for which appointed and until a successor shall have been appointed and qualified, or until the Governor's resignation.

7.04. Resignations; Vacancies. The resignation of a Governor is effective upon receipt by the Facility of written notice thereof or at a subsequent time set forth in the notice of resignation. Any vacancy in the Board shall be filled by appointment by the Commissioner, and the Governor so appointed shall hold office for the unexpired term in respect of which the vacancy occurred.

7.05. Appointment of Designated Representatives. Each member of the Board which is a corporation or other type of organization shall select a qualified person as its designated representative who shall act for the member in all matters, including attendance and voting at all meetings of the Board. In the event the designated representative of a member of the Board is absent from any meeting, the member shall appoint a qualified person as its substitute representative who may attend with like powers in the place and stead of its usual representative.

7.06. Reimbursement for Expenses. Members of the Board may be reimbursed, to the extent and in the manner approved by the Board, for their actual and necessary expenses incurred in attendance at the Board meetings, committee meetings or otherwise in connection with Facility business. The Board may authorize reimbursement of the actual and necessary expenses incurred by others in serving on committees established by the Board or otherwise assisting the Board in the performance of its duties. In addition, the Board may approve payment of a reasonable per diem allowance to non-insurer members of the Board to compensate such members for attendance at meetings of the Board or committees of the Facility.

## **ARTICLE VIII**

### **Meetings of the Board of Governors**

8.01. Annual Meeting. A regular annual meeting of the Board of Governors shall be held immediately following the annual meeting of the members without notice other than this provision of the Plan of Operation.

8.02. Special Meetings. Special meeting of the Board may be called by or at the request of the Chairperson or by any three (3) Governors. Notice of any special meeting of the Board shall be sent or mailed at least five (5) days in advance of the meeting, and shall state the time, place and purpose of the meeting. Any Governor may waive notice of any meeting.

8.03. Quorum and Votes. At any meeting of the Board, five (5) Governors shall constitute a quorum for the transaction of business, and the acts of a majority of the Governors present at a meeting at which a quorum is present shall be the acts of the Board. Each member of the Board shall have one vote.

8.04. Participation by Telephonic Means. A member of the Board may participate in any meeting of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other. Participation in a meeting pursuant to this section constitutes presence in person at the meeting.

8.05. Written Consent. Any action required or permitted at any meeting of the Board may be taken without a meeting, without prior notice, and without a vote, if all of the Governors consent thereto in writing.

## **ARTICLE IX**

### **Officers**

9.01. The Board shall elect a Chairperson and Vice Chairperson at its annual meeting, and shall appoint a Secretary, a Chief Executive Officer, and any other officers it shall deem desirable.

(a) The Chairperson shall preside at all meetings of the Board and of members. The Chairperson may sign, with any other officer authorized by the Board, any deeds, mortgages, bonds, contracts or other instruments which the Board has authorized to be executed. The Chairperson shall discharge any other duties which are incidental to the office or are prescribed by the Board from time to time and shall serve as an ex-officio member of all committees.

(b) In the absence of the Chairperson, the Vice Chairperson shall perform the duties of the Chairperson.

(c) The Secretary shall keep the minutes of the meetings of the members and the Board; see that all notices are duly given in accordance with the provisions of this

Plan of Operation; and discharge any other duties which are incidental to the office or are required by the Board. The Secretary need not be a member of the Board.

(d) The Chief Executive Officer shall be responsible to the Board for supervision of the affairs of the Facility. The Chief Executive Officer shall receive, disburse, and properly care and account for all funds, prepare reports as are necessary to disclose in detail the financial condition of the Facility as required by the Board and shall have the authority and exercise the powers as are conferred from time to time by the Board. The Chief Executive Officer need not be a member of the Board.

## **ARTICLE X**

### **Committees**

10.01. Standing Committees. The Chairperson of the Board shall appoint standing committees (whose members shall be Governors or other members of the Facility) as follows:

(a) An Operations Committee, which shall review all aspects of the Facility's operations, and make recommendations to the Board regarding appropriate action to be taken with respect to operational matters.

(b) An Appeals Committee, which shall consider all appeals and render decisions thereon, and make reports as required to the Board. At least one member of the Appeals Committee shall be a Governor.

(c) An Audit Committee, which shall supervise the conduct of the audit called for by Section 11.07 hereof, review the results of the audit and report to the Board of the financial condition of the Facility.

(d) A Claim Committee, which shall monitor, review, audit and consult with Servicing Carriers with regard to claim handling procedures and problems, as directed by the Board, and take other action as may be required of it under this Plan of Operation or by the Board.

10.02. Other Committees. The Chairperson may appoint other standing committees or special committees as may be deemed necessary for the conduct of the Facility's affairs.

## **ARTICLE XI**

### **Administration**

11.01. Offices. The principal office of the Facility shall be at a location within the State of Michigan selected by the Board. The Board may purchase or lease housing and equipment, and may employ personnel, as it deems necessary to the efficient operation of the Facility.

11.02. Performance of Administrative Functions. The Board may employ persons, firms or corporations as it deems appropriate to perform the administrative functions necessary to

fulfill any of the duties imposed on the Board or the Facility. A person, firm or corporation employed by the Facility shall keep records of its activities as may be required by the Board.

11.03. Bank Accounts. The Board may open bank accounts for use in Facility business. Reasonable delegation of deposit and withdrawal authority to the accounts for Facility business may be made consistent with prudent fiscal policy.

11.04. Borrowings. The Board may borrow money from any person or organization, including a member, on terms that the Board in its judgment deems advantageous for the Facility.

11.05. Contracting with Others. The Board may contract with one or more persons, firms or corporations (including a member) for goods and services required to carry out the efficient operation of the Facility, including claims management, actuarial services, investment services and legal services.

11.06. Disbursement of Funds. All moneys due the Facility shall be paid to the Facility and disbursed by the Board in accordance with this Plan of Operation and any resolutions which may be adopted by the Board. Pending disbursement, moneys may be invested in short term securities or deposited in interest bearing accounts in accordance with guidelines established by the Board.

11.07. Audits. The Board shall appoint a properly qualified firm of independent public accountants to conduct an annual audit of the books and records of the Facility.

## **ARTICLE XII**

### **Books and Records**

12.01. The Facility shall keep correct and complete books and records of accounts and shall also keep minutes of the important proceedings of each Board meeting and shall keep at the principal office a record giving names and addresses of all members.

## **ARTICLE XIII**

### **Fiscal Year**

13.01. The fiscal year of the Facility shall begin on the first day of January and end on the last day of December of each year.

## **ARTICLE XIV**

## Indemnification

14.01. Each person or entity (hereinafter referred to collectively as “the person”) who is or shall be in the future a governor, officer or employee of the Facility, a member of any committee or subcommittee of the Facility, or an agent of the Facility who with the approval of the Board is acting lawfully on behalf of the Facility, shall be indemnified and reimbursed by the Facility for expenses (including attorney’s fees) reasonably incurred by the person, the cost of reasonable settlement and liabilities imposed upon or incurred by the person in connection with or arising out of any claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, or threat thereof, in which the person may be involved by reason of being or having been a governor, officer, employee, agent or member of any committee or subcommittee of the Facility, by reason of any action taken or not taken by the person or obligation entered into in the performance of the person’s duties on behalf of the Facility (whether or not the person continues to be a governor, officer, agent or employee of the Facility or a member of a committee or subcommittee of the Facility at the time of incurring such expenses, cost or liabilities). The Facility shall not, however, indemnify or reimburse any person (a) in relation to any matter in any claim, action, suit, or proceeding as to which the person shall finally be adjudged to have been guilty of breach of duty as a director, officer, agent or employee of the Facility or as a member of any committee or subcommittee of the Facility, or (b) in relation to any matter in any claim, action, suit or proceeding, or threat thereof, which has been made the subject of a compromise settlement; unless in either case the person acted in good faith for a purpose which the person reasonably believed to be in the best interests of the Facility and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that the conduct in question was unlawful. The determination whether the conduct of the person met the standard required in order to justify indemnification or reimbursement in relation to any matter described in (a) or (b) of the preceding sentence may be made in any one of the following ways:

- (i) by a majority vote of those governors of the Facility who are not seeking indemnification hereunder as a result of the same occurrence;
- (ii) by the majority vote of participating members, each member being allotted the number of votes equal to the number of whole dollars of assessable premiums written by it during the preceding calendar year; or
- (iii) by independent legal counsel in a written opinion.

No adjudication of liability or guilt as to the person shall in itself create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement shall not be exclusive of other rights to which the person may be entitled as a matter of law and shall inure to the benefit of the successors, assigns, estate, heirs, executors, administrators, legatees and devisees of the person. The expense of indemnification and reimbursement shall be treated as a cost of administering the Facility in the year in which payment is made by the Facility and shall be charged to all participating members in the manner provided in Article XIX. Expenses incurred in defending a claim, action, suit or proceeding may be paid by the Facility in

advance of final disposition thereof, upon receipt of an undertaking by or on behalf of the person involved to repay such amount unless it shall ultimately be determined that the person is entitled to be indemnified by the Facility.

## ARTICLE XV

### Application for Placement

15.01. Application. The application for insurance through the Facility must be submitted to the Facility on the form and in the manner prescribed by the Facility.

15.02. Processing of Application. The Facility shall review the information contained in an application for placement and determine whether the applicant is unable to procure workers' compensation insurance through ordinary methods and is otherwise eligible for placement by the Facility.

15.03. Placement. If the Facility determines that an applicant is eligible for placement, the Facility shall designate which of the three rating plans described in Article XVII will be applied to the applicant and place the applicant with a Servicing Carrier.

## ARTICLE XVI

### Servicing Carriers

16.01. Appointment. Subject to the approval of the Commissioner, the Board shall appoint one or more participating members ("the Servicing Carrier(s)") to act on behalf of the Facility for the servicing of insured's. Appointments may be rescinded for cause either by the Board, subject to the approval of the Commissioner, or by the Commissioner. The Board shall use a competitive bid process to select the member or members to be appointed as servicing carriers, except as otherwise approved by the Commissioner. The competitive bid process shall take place at least once every five years and will utilize objective and quantifiable criteria to the extent appropriate in the evaluation and scoring of bids. However, if the Board determines that the bids will result in unacceptable cost increases or be detrimental to the Facility's operations or the interests of policyholders or members, it may disregard the bids and utilize another method of selecting servicing carriers that is fair and reasonable and is in the best interests of policyholders and members. If it chooses to utilize another method of selecting servicing carriers, it shall seek prior approval of the Commissioner and inform the Commissioner of the reasons for its actions.

16.02. Criteria for Selection of Servicing Carriers. In order to be selected as a Servicing Carrier, a participating member must:

- (1) have an A.M. Best rating of "A-" or better
- (2) be licensed and have been writing workers' compensation insurance in the State of Michigan during at least the five (5) years immediately preceding the request to be designated a servicing carrier.

- (3) have the necessary facilities to provide insured's with the same level of service rendered to the member's voluntary market, including both policy and statewide claims service.
- (4) have sufficient personnel to provide support for the safety management services provided for in this Plan of Operation.

16.03 Performance Standards for Servicing Carriers. The following performance standards, together with other and further standards as may be adopted from time to time by the Board, shall apply to Servicing Carriers:

(1) Underwriting and Audit:

(a) New Business. The policy is to be issued within thirty days after the completed application and acceptable deposit premium are received by the Servicing Carrier.

(b) Renewals. The policy is to be issued within thirty days after receipt of the deposit premium.

(c) Endorsements. Endorsements are to be issued within thirty days after receipt of the request.

(d) Reinstatements. Notification of reinstatement is to be issued within thirty days after request and the premium, if due, is received.

(e) Certificates of Insurance. Certificates of insurance are to be issued within five working days after receipt of the request.

(f) Audits are to be completed within 120 days of receipt of: (a) a written request by an insured (although each insured is entitled to only one request per year), (b) the date required under the policy, or (c) the termination date of the policy, whichever is applicable, provided all information required to complete the audit has been made available. Any adjustment in premium resulting from an audit shall be paid to the insured within 60 days after completion of the audit.

(2) Loss Control:

(a) The Servicing Carrier shall make available appropriate consultation on accident prevention programs, seminars, safety literature and administrative aids which will contribute to the loss control programs of the insured.

(b) All new policyholders assigned to a Servicing Carrier must be advised of appropriate loss control services, either by letter or comparable means.

(c) Servicing carriers shall provide the services described in (a) - (c) of this subsection to their policyholders on a continuing basis.

- (3) Claims: Servicing Carriers shall take the following steps, which are required for the prudent handling of a claim:
- (a) Investigation:
    - (i) Make timely contact with the policyholder to determine if the claimant's injury arose out of and in the course of employment or if there is any question of liability.
    - (ii) Interview claimant and others as necessary to determine facts and obtain statements or other documentary information as appropriate.
    - (iii) Report, as required, in a timely and adequate manner, the following: clarifying investigation and questions of liability; wage data; subrogation; coverage; medical evaluation; final disposition; litigation involvement; etc.
    - (iv) Investigate any possible offsets against workers' compensation benefits.
  - (b) Medical:
    - (i) Handle medical aspects of the claim, including obtaining appropriate medical evidence supporting claim payment(s), and authorizing medical treatment commensurate with the injury.
    - (ii) Reasonableness of medical payments should be determined by reference to schedules of maximum charges promulgated pursuant to MCLA §418.315 (2).
    - (iii) Provide timely rehabilitation, if appropriate.
  - (c) Promptness of Handling:
    - (i) Investigations should be made promptly with no undue delays in order to insure timely first payment.
    - (ii) Timely medical information should be required for screening, evaluating, and determining whether such medical care is being furnished as may reasonably be required to cure and relieve the effects naturally resulting from the injury.
    - (iii) Originate timely and accurate reserves, based on evaluation of the evidence contained in the claim file. Changes in reserves and evaluation will be timely made as evidence reflects a need for change.

- (iv) Adjust and pay claims promptly on the basis of good, sound claims judgment and practices.
  - (v) Provide vigorous defense of non-meritorious claims.
  - (vi) Make timely reports to the file as necessary for the file to reflect developments clearly.
  - (vii) Communicate with the engineering or underwriting department as to any serious violations or disregard for safety, reporting requirements, etc. by the policyholder which would materially reflect in the risk exposure.
- (d) Subrogation.
- (i) Adequate and timely subrogation investigation shall be made.
  - (ii) Appropriate follow-up for subrogation recovery shall be made and documented in the file.

16.04. Allowances. Servicing Carriers shall be compensated for Facility business on a reasonable basis, as determined by the Board from time to time and approved by the Commissioner, to compensate fairly for all operating costs incurred and the reasonable expense incurred in settling claims. The Operations Committee shall recommend the reimbursement method and monitor the results of the method adopted. The details of the method of compensating Servicing Carriers shall be determined by the Board and shall be stated in the Facility Procedural Manual. The servicing Carrier allowance shall be a consideration in the competitive bid process.

16.05. Termination.

- (1) Any member which voluntarily terminates its status as a Servicing Carrier shall be required to provide advance notice in writing to the Board of the Facility. Such notice shall be directed to the CEO of the Facility at its office. The CEO shall confirm in writing receipt of the notice of termination as a Servicing Carrier.

The advance notice of termination shall specify a period of time, no less than six months following receipt of the notice in the Facility office or an earlier date mutually agreed upon by the parties, when the Servicing Carrier will cease accepting new applications.

The terminating Servicing Carrier will in its letter of termination affirm its commitment to continue to provide service on all existing policies and those policies written during the notice period until their first renewal following the effective date of termination, unless the parties shall have mutually agreed on other arrangements for the servicing of such policies.

- (2) In the event it becomes necessary for the Board to terminate the Facility's association with a Servicing Carrier, such notice shall be given in writing by the Chairperson of the Board to the Chief Executive Officer of the Servicing Carrier. Such notice shall specify a future date, which shall be not less than six months hence or an earlier date mutually agreed upon by the parties, at which time the Servicing Carrier will no longer be authorized to accept new business on behalf of the Facility.

The Facility's notice to the terminated Servicing Carrier will further stipulate that the Servicing Carrier will be expected, in good faith and to the best of its ability, to continue to provide service on existing policies until the first policy renewal date following the effective date of the termination notice, unless the parties shall have mutually agreed on other arrangements for the servicing of existing policies.

- (3) In the event the Facility receives notice of termination from a Servicing Carrier or sends notice of termination to a Servicing Carrier, the Chairperson of the Board will within 10 days notify all the remaining Servicing Carriers of the action and solicit from them information needed to make a determination of the remaining Servicing Carriers' capacity to serve the insuring public. All Servicing Carriers are required to respond within thirty (30) days of the date of such a request.

Upon receipt of the responses of the remaining Servicing Carriers, the Board shall determine if the remaining carriers have adequate capacity to serve the departing Servicing Carrier's business in accordance with the performance standards for a Servicing Carrier. Should the Board find that the remaining Servicing Carriers may be unable to service the departing Carrier's customers and agents adequately, then the Board shall appoint one or more additional carriers which it deems can best serve consumers and producers on behalf of the Facility.

- (4) In the event any Servicing Carrier experiences unanticipated or unusual operational difficulties that would impair its ability to continue to meet the established Servicing Carrier performance standards, the Board, at its discretion, may take whatever action it may deem appropriate to alleviate the difficulties.

#### 16.06. Handling of Claims After Termination of Servicing Carrier

- (a) Any Servicing Carrier that voluntarily terminates its status as a Servicing Carrier shall, subsequent to the effective date of the termination, unless otherwise agreed, service to a conclusion all claims (including pendings, late reporteds and reopens) that occurred prior to the renewal, transfer or termination of the particular policy involved. Such claims will be subject to periodic review by the Facility's Claim Committee.

- (b) Upon receipt of advance notice of termination or insolvency, or if the Board finds it necessary to terminate a Servicing Carrier, the Board may request a Special Claim File Review of a representative sample of open claim files. The review will enable the Board to determine:

- (1) appropriate action for further handling of Facility claim files;
- (2) the level of work completed on the files; and
- (3) estimated future adjustment expenses for completion of claim file work.

If the terminating Servicing Carrier is meeting and will continue to meet industry claim handling standards, it shall continue the handling of its Facility files to a conclusion.

If the terminating Servicing Carrier has not met industry claim standards, is insolvent or refuses or is unable to further handle the claims, the Board shall consider the following options.

- a. Allow the carrier to handle to a conclusion all outstanding claims reported to the carrier prior to its withdrawal. All subsequent reported claims are to be reassigned by the Facility.
  - b. Allow the carrier to retain suit files only if competent counsel is handling the case and the carrier is meeting industry standards. All other claims are to be reassigned by the Facility.
  - c. Place settlement authority limitations on all claims until reassignment by the Facility. Final settlement authority, until reassignment, is to be vested in the Facility Chief Executive Officer, in conjunction with the Claim Committee.
  - d. Return of all claim files and notices to the Facility for reassignment.
  - e. Transfer of the claim files to the applicable guaranty association for claims handling, adjustment and payment.
- (4) Reassignment of claims should be made to one Servicing Carrier, if practical, or to as limited a number of carriers as possible. If more than one succeeding carrier is required, the distribution will be under the direction of the Facility Chief Executive Officer with the assistance, when necessary, of the Claim Committee.

(c) The succeeding Servicing Carrier shall be reimbursed for reasonable servicing expenses on reassigned claims. The Board may consider the payment of:

- (1) A Flat Servicing Fee; or
- (2) A Flat Fee per file; or
- (3) Actual expenses based on the succeeding Servicing Carrier utilizing:
  - a. independent adjusters (with added increment for supervision); or
  - b. its own staff; or

- (4) Any other arrangement that is fair and equitable to all parties.

All previously incurred allocated adjustments expenses not paid by the withdrawing Servicing Carrier are subject to reimbursement to the succeeding Servicing Carrier by the Facility.

(d) The terminating Servicing Carrier has received a Claim Service Fee which contemplated its bringing the claims to a proper conclusion. The Board shall consider negotiation of reimbursement to the Facility from Claim Service Fees previously paid the terminating Servicing Carrier, based on added expenses to the Facility for services not completed. The amount negotiated should be based on the estimated incomplete claim work still to be performed on reported claims and on actuarially determined IBNR claims.

(e) The records of all reassigned indemnity payment expenses incurred must, among other required information, be kept statistically separate. It is the duty of the Facility Chief Executive Officer to notify the statistical and other interested agency of terminations of Servicing Carriers and reassignments of claim files.

## **ARTICLE XVII**

### **Rates and Rating Plans and Systems**

17.01. Determination of Classification and Rating Systems. The rates and classification and rating systems of the Facility shall be determined by the advisory organization designated pursuant to Section 2407 (2) of the Michigan Insurance Code, subject to the requirements of Chapter 23 of the Michigan Insurance Code and approval of the Commissioner.

17.02. Use of Facility Classification and Rating Systems. Every Servicing Carrier shall use the rates and classification and rating systems of the Facility on business placed through the Facility and shall not use other rates for workers' compensation insurance placed through the Facility.

17.03. Rating Plans. Subject to approval of the Commissioner, the Facility shall create three rating plans subject to the following requirements and further requirements and provisions as may be established from time to time in filings made by the Facility with and approved by the Commissioner:

(a) Rating Plan A shall provide coverage for insured's who have a demonstrated accident frequency problem, who have a measurably adverse loss ratio over a period of years, or who have demonstrated an attitude of non-compliance with safety requirements. This Plan shall contain a system of surcharges established by the Board and approved by the Commissioner.

(b) Rating Plan B shall provide coverage to those employers who apply for workers' compensation insurance in the Facility and are either self-insured or a member of a self-insurance group.

- (c) Rating Plan C shall provide coverage for all other insured's not subject to Rating Plan A or Rating Plan B. Rating Plan C shall not contain any surcharge system.

These rating plans shall be applied to insured's regardless of the number of employees or amount of payroll of the insured.

17.04. Retrospective Evaluation. The Board shall conduct a retrospective evaluation of premiums and loss and expense experience of insured's within each rating plan described in Section 17.03, in a manner approved by the Commissioner.

17.05. Deferred Premium Payment Plans. The Facility shall provide for deferred premium payment plans which shall include sufficient advance payments at least equal to the pro rata earned premium at all times.

## **ARTICLE XVIII**

### **Agents and Commissions**

18.01. Every agent who is duly licensed and authorized to solicit, negotiate, or effect workers' compensation insurance on behalf of the Facility or on behalf of any participating member shall:

- (a) Offer to place workers' compensation insurance through the Facility for any applicant requesting the agent to do so; and
- (b) Be entitled to receive, and any participating member shall be entitled to pay, a commission for placing insurance through the Facility, provided the amount of the Commission does not exceed that then specified in Section 2312 (2) (d) of the Michigan Insurance Code.

## **ARTICLE XIX**

### **Assessments**

19.01. Calculation and Timing of Assessments.

- (a) The Board shall determine the total assessments necessary to cover, on a financial incurred basis, the expenses of operating the Facility for the fiscal year.
- (b) Each participating member will be assessed in proportion to its participation ratio with respect to the period for which the assessment is made.
- (c) The timing of assessments shall be determined by the Board.

(d) If for any reason the foregoing basis should not be applicable in a given case, the Board shall determine an equitable basis for assessment in that case.

19.02. Payment of Assessments. Assessments shall be due and payable in portions, or in their entirety, and at times as the Board shall determine.

## **ARTICLE XX**

### **Participation in Facility**

20.01. All members shall participate in the Facility.

Members shall share in the income, losses, and expenses of the Facility on the basis of the proportion which each member's assessable premium bears to the comparable statewide totals of all members.

## **ARTICLE XXI**

### **Hearings and Appeals**

21.01. Hearing.

(a) Any participating member, applicant or insured under a policy placed through the Facility may request a formal hearing and ruling on the following:

- (i) An alleged violation of this Plan of Operation.
- (ii) An alleged improper act or ruling of the Facility or a Servicing Carrier acting on behalf of the Facility affecting an assessment, premium, or coverage furnished.

(b) All hearings shall be conducted initially by the Appeals Committee, which shall render a written determination upon the matter within a reasonable length of time. The decision of the Appeals Committee shall constitute the final decision of the Facility.

21.02. Appeal. Any formal ruling by the Board or the Appeals Committee may be appealed to the Commissioner by filing written notice of appeal with the Facility and the Commissioner within 30 days after receipt of the Facility's written ruling. The Commissioner shall issue an order either upholding or reversing the ruling of the Board or Appeals Committee.

## **ARTICLE XXII**

### **Insolvency**

22.01. Insolvency. In the event any member fails, by reason of insolvency, to pay its portion of any assessment or of any loss incurred by the Facility, the unpaid expense or loss shall be paid by the remaining participating members, each contributing in the manner provided for the distribution of expenses and losses under Article XIX hereof, excluding from the calculation the share of the insolvent member.

22.02. Subrogation. The Facility shall be subrogated to the rights of the remaining members in any liquidation proceeding and shall have full authority to exercise those rights on their behalf in any action or proceeding.

## **ARTICLE XXIII**

### **Conformity to Statute**

23.01. Chapter 23 of the Michigan Insurance Code (Act No. 8, P.A. 1982), as written, and as may be amended, is incorporated as part of this Plan of Operation.

## **ARTICLE XXIV**

### **Amendments**

24.01. This Plan of Operation may be amended, altered or repealed, in whole or in part by:

- (i) majority vote of the Board,
- (ii) ratified by majority vote of the participating members, each member being allotted the number of votes equal to the number of whole dollars of assessable premiums written by it during the preceding calendar year, and
- (iii) with the approval of the Commissioner. In addition, the Plan is subject to revision at the request of the Commissioner.

**ACKNOWLEDGEMENT OF RECEIPT AND ACCEPTANCE  
OF  
THE PLAN OF OPERATION  
FOR  
THE MICHIGAN WORKERS' COMPENSATION PLACEMENT FACILITY**

In compliance with the Plan of Operation for the Michigan Workers' Compensation Placement Facility, the undersigned insurer hereby acknowledges acceptance of said Plan of Operation and understands, that, by virtue of the provisions of Section 2301 of the Michigan Insurance Code, as amended, every insurer who is authorized to write workers' compensation insurance in this state is required to be a member of the Facility.

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(Name of Insurer)

By: \_\_\_\_\_  
(Signature of Authorized Official)

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(Title of Authorized Official)

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(Place and Date)