



Roy Stewart  
President

**THE WORKERS' COMPENSATION  
RATING AND INSPECTION BUREAU OF MASSACHUSETTS**  
101 ARCH STREET - 5TH FLOOR, BOSTON, MA 02110  
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August 5, 1994

**CIRCULAR LETTER NO. 1690**

**TO MEMBER HOME OFFICE ONLY**

**BUREAU CONSTITUTION AND POOL PLAN OF OPERATION**

The Commissioner of Insurance has approved the revisions to the Bureau Constitution and the Assigned Risk Pool Plan of Operation as voted on by the Membership at the Annual Meetings of the Bureau and Pool, June 8, 1994. We are providing you with a copy of the revised documents.

It will be necessary for Members to sign and return the original Acceptance of Membership form attached to the Constitution. We are enclosing two (2) copies of this Acceptance form for your convenience, the original to be returned to the Bureau, and one for your records.

In addition to the revised Pool Plan of Operation, we are enclosing a copy of revised page 23 of the Performance Standards For Servicing Carriers, the second paragraph, substituting the word "Bureau" for the words "Residual Market Committee," to be consistent with the action taken by the Pool Membership on June 8.

ROY STEWART  
President

RS/mvr

Enclosures



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**CONSTITUTION**

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**Effective June 8, 1994**

**THE WORKERS' COMPENSATION RATING AND INSPECTION BUREAU OF MASSACHUSETTS**

**CONSTITUTION**

**ARTICLE I**

**NAME**

The name of this organization shall be The Workers' Compensation Rating and Inspection Bureau of Massachusetts hereinafter referred to as the "Bureau."

**ARTICLE II**

**ORGANIZATION**

The Bureau shall be a voluntary, non-profit, association of insurers.

**ARTICLE III**

**OFFICES**

The principal office of the Bureau shall be in Boston, Massachusetts.

**ARTICLE IV**

**OBJECTS**

The objects of the Bureau shall be:

1. To make and to file, on behalf of its members and subscribers, with the Commissioner of Insurance of Massachusetts, hereinafter referred to as "the Commissioner," rates, rules, classifications, rating plans, policy

#### ARTICLE IV OBJECTS (Cont.)

forms and endorsements, and other material pertinent thereto for workers' compensation insurance and employers' liability insurance which is written in connection with workers' compensation insurance in the same policy.

2. To cooperate with the Commissioner in matters pertaining to workers' compensation insurance and employers' liability insurance as defined above.
3. To deal with the following matters in connection with the aforementioned objects:
  - (a) The formulation of statistical plans, and the collection and analysis of statistical data.
  - (b) The establishment of underwriting rules.
  - (c) The establishment of classifications of risks.
  - (d) The determination of pure premiums and rates for the various classifications of risks.
  - (e) The development of rating plans for individual risks and the administration of such plans for its members and subscribers.
  - (f) The making of filings on behalf of its members and subscribers which may be required by law.
  - (g) The encouragement of employers to reduce the number and severity of industrial accidents.
  - (h) The adoption of procedures to verify the accuracy of audits of payrolls and other bases of premium on policies of workers' compensation insurance and employers' liability insurance as defined above.
  - (i) The furnishing upon request to any insured of information concerning the rate for his risk, including the method of its computation.
  - (j) Acting as statistical agent for the Commissioner at his request and designation, for the collection, tabulation and analysis of statistical data.

#### ARTICLE IV OBJECTS (Cont.)

4. To administer the activities of the reinsurance pool for the residual market in Massachusetts.
5. To cooperate with other persons and organizations to carry out the foregoing objects, and to do anything necessary or appropriate to accomplish such objects.

#### ARTICLE V MEMBERS AND SUBSCRIBERS

Every insurer authorized by the Commonwealth of Massachusetts to issue policies affording workers' compensation insurance and employers' liability insurance as defined in Article IV (1), may become a member of the Bureau. Any insurer so authorized, but not a member, may subscribe to the services of the Bureau subject to rules and regulations to be made by the Governing Committee, approved by the Commissioner as reasonable. Each member and subscriber shall have the powers, privileges, rights and duties provided by law.

#### ARTICLE VI CHARGES, FEES AND ASSESSMENTS

1. The fiscal year of the Bureau shall end on December 31.
2. Each member and subscriber shall pay an annual fee, to be determined by the Governing Committee, which shall be credited to the expense of operating the Bureau. The balance of the net expenses of operation shall be assessed to the insurers on the basis of their Massachusetts workers' compensation insurance premiums as defined by the Governing Committee subject to any exceptions with respect to such premiums as the Governing Committee may determine.

## ARTICLE VI CHARGES, FEES AND ASSESSMENTS (Cont.)

3. Preliminary assessments may be made according to the best information available. Such assessments shall be revised when the final figures become available.
4. Insurers, not member or subscribers, filing statistical data with the Bureau as statistical agent designated by the Commissioner, shall pay such charges as may be determined by the Governing Committee and approved by the Commissioner as reasonable.

## ARTICLE VII ORGANIZATION AND COMMITTEES

1. At a meeting of the members of the Bureau called in accordance with the provisions of this Constitution, a Governing Committee shall be elected.
2. All Committees of the Bureau shall have a mixture of stock and non-stock carriers with a minimum participation of 30% from each such category. "Stock carriers" are defined as stock corporations. "Non-stock carriers" comprise carriers of all other classes. Stock and non-stock members of the Governing Committee shall be elected by a majority vote of those present and voting.
3. Each Committee of the Bureau shall be presided over by a Chairman, who shall have the right to vote, chosen by it from among its members by elections at its first meeting following the annual meeting of the Bureau. A Vice Chairman shall be elected in the same manner and shall preside in the absence of the Chairman.

ARTICLE VII ORGANIZATION AND COMMITTEES (Cont.)

4. The Governing Committee shall be composed of not more than twelve members. At each annual meeting, members of the Bureau shall elect members of such committee to serve until the next annual meeting.

The Governing Committee shall have charge of the administration of the Bureau, shall have supervision and direction over all other committees, shall have power to appoint or remove all officers of the Bureau, may appoint such supplementary committees as it deems necessary, and may provide for the stamping and verification of all policies, subject to the Bureau's jurisdiction, issued by its members and subscribers.

The Governing Committee shall directly fix the salary of the President and of all other employees through the budget approval process.

The Governing Committee shall make and adopt a statistical plan and shall make and adopt rates, classifications, rating plans and rules relating thereto, and shall have authority to order filings thereof to be made by the President, or such other person as the Governing Committee may appoint, on behalf of the Bureau and its members and subscribers.

5. The Residual Market Committee shall be composed of not more than ten members. At each annual meeting, members of the Governing Committee shall appoint members of such committee to serve until the next annual meeting.

The Residual Market Committee, unless the Governing Committee otherwise directs, shall monitor and administer The Massachusetts Workers' Compensation Assigned Risk Pool.

6. A Safety Inspection Committee composed of six members shall be appointed by the Governing Committee. The Safety Inspection Committee shall advise

## ARTICLE VII ORGANIZATION AND COMMITTEES (Cont.)

the other committees of the Bureau on matters within their respective jurisdiction, with respect to the measurement of physical hazards and their effect on classifications, rules, rates and rating plans, and shall have such other powers and duties as may be prescribed elsewhere in this Constitution or conferred upon it by the Governing Committee.

7. An Actuarial Committee composed of not more than twelve members shall be appointed by the Governing Committee. The Actuarial Committee shall formulate a statistical plan and necessary amendments thereto for recommendation to the Governing Committee, shall advise and make recommendations to the other Committees of the Bureau on actuarial and statistical matters, and shall have such other powers and duties as may be prescribed elsewhere in this Constitution or conferred upon it by the Governing Committee.
8. Vacancies in the membership of a Committee shall be filled by the Governing Committee. Members selected to fill the vacancies shall serve until the next annual meeting.

## ARTICLE VIII OFFICERS

1. The officers of the Bureau shall be a President and such other officers as the Governing Committee may deem necessary or advisable, and the Governing Committee shall define their duties. The officers of the Bureau shall be required to give surety bonds in such forms and sums as the Governing Committee may determine, for the faithful and honest discharge of their duties and for the faithful and honest receipt, custody and disbursement of the funds of the Bureau. The expense of such bonds shall be borne by the Bureau.



## ARTICLE VIII OFFICERS (Cont.)

2. The President shall enforce this Constitution, preside at all meetings of the Bureau, and perform such other duties as may be required by the Governing Committee.

The President shall be a member ex officio of the Governing Committee, the Residual Market Committee, and of such other committees as the Governing Committee may appoint, but shall not have the right to vote. He shall cause to be kept a record of all proceedings of these committees and of the Bureau. The President shall be responsible for all property of the Bureau, shall receive and carefully keep all moneys of the Bureau, disburse the same only for the business of the Bureau, and shall account to the Governing Committee for all such disbursements.

The President, or such other person as the Governing Committee may appoint, may sign and endorse in the name and on behalf of the Bureau in the transaction of its business, but not otherwise, checks, drafts, notes and bills of exchange, subject to such countersignature as the Governing Committee may determine. The President, or such other person as the Governing Committee may appoint, shall make filings with the Commissioner, on behalf of the members and subscribers of the Bureau, as may be required by law, this Constitution, the action of the Bureau, the action of the Governing Committee, or the action of the Residual Market Committee.

3. In the absence or inability of the President, the Governing Committee shall designate another officer of the Bureau to act as President, with all the powers and duties conferred upon the President by the Constitution.

**ARTICLE IX**  
**MEETINGS**

1. An annual meeting of the Bureau shall be held in the City of Boston, Massachusetts, on such date and at such time and place as may be specified in the notice of the meeting.

In case the annual meeting for any year shall not be duly called or held, the Governing Committee shall cause a special meeting to be held as soon as may be thereafter, in lieu of and for the purpose of such annual meeting, and all proceedings at such special meeting shall have the same force and effect as if taken at the regular annual meeting.

2. Special meetings of the Bureau may be called at any time by the President, and shall be held in the City of Boston, Massachusetts, at such time and place as may be specified in the notice of meeting. Special meetings shall be called by the President upon the written request of a majority of the Governing Committee, or of five members of the Bureau.
3. Meetings of the Governing Committee shall be held at such times and places as the Governing Committee may from time to time determine, and may be called at any time by the President, and shall be so called by the President upon the written request of two members of the Governing Committee.
4. Meetings of the Residual Market Committee shall be held at such times and places as the Residual Market Committee may from time to time determine, and may be called at any time by the President, and shall be so called by the President upon the written request of two members of the Residual Market Committee.

## ARTICLE IX MEETINGS (Cont.)

5. At least ten days' written notice of all meetings of the Bureau shall be given and in each case an agenda of matters to be considered shall accompany the notice of meeting. Only those matters which are noted in the agenda shall be considered at such meetings, provided, however, that other matters may be considered upon unanimous consent of the members present.

## ARTICLE X QUORUM

1. At an annual or special meeting of the Bureau, thirty members shall constitute a quorum.
2. A majority of the members of any committee shall constitute a quorum.

## ARTICLE XI VOTING

1. In any meeting of the Bureau each member shall be entitled to one vote. In any meeting of a committee, each member of the committee shall be entitled to one vote.
2. At any meeting of the Bureau, proposed actions shall be deemed adopted when assented to by the vote of not less than three-fourths of the members present and voting. Any four members representing separate insurers or, in the case of groups of affiliated insurers, representing separate groups of insurers, who have been recorded as voting in the negative on the question of adoption may forthwith request that the action

## ARTICLE XI VOTING (Cont.)

be reconsidered at a subsequent meeting. In the event such request is made, the action shall not become effective until again adopted at a subsequent meeting of the Bureau, to be held not earlier than seven days, nor more than fourteen days, after the date on which the request was made, and then only if adopted by a three-fourths vote of the members present and voting at the second meeting. Any action so confirmed at a second meeting called for the purpose shall be final and binding upon all members. The provisions of this paragraph shall not apply to elections.

At all meetings of committees, the affirmative vote of a majority of the members present and voting shall be necessary for the adoption of any proposed action, subject to the requirement that there be at least one affirmative vote of a stock carrier and one affirmative vote of a non-stock carrier, except as otherwise provided for elsewhere in this Constitution with respect to the election of members of the Governing Committee. A mail vote or a telephone vote may be taken and such vote shall be binding unless the dissenting voter(s) requests a meeting at the time of such vote.

3. Voting by Proxy shall be permitted.

## ARTICLE XII INSPECTIONS

1. Inspections of risks for the purpose of applying or determining classifications, rules, rates and rating plans, as filed by the Bureau and approved by the Commissioner of Insurance, may be made by the carrying insurer or the Bureau.

## ARTICLE XII INSPECTIONS (Cont.)

2. The Bureau may, at the request of any member or subscriber, inspect any risk which is insured by such member or subscriber. The charge for such inspection shall be determined by the Governing Committee, and levied against the member or subscriber requesting the inspection.
3. The Bureau shall inspect an insured upon written application by such insured.
4. If an inspection report filed by any member or subscriber is not in such form as to enable the Bureau readily to determine the proper application of its classification, rules, rates and rating plans, as filed with and approved by the Commissioner of Insurance, the Bureau may require the member or subscriber to furnish a new or amended inspection report, or may cause such risk to be inspected by the Bureau, in which case the charge for such inspection shall be determined by the Governing Committee, and shall be paid by such member or subscriber.
5. If the inspections made by any member or subscriber are not satisfactory to the Bureau, an inspection may be made by the Bureau of all or any number of risks carried by such member or subscriber. The charges for such inspections shall be determined by the Governing Committee and shall be paid by such member or subscriber.
6. After the promulgation of the rate, but not before, any inspection or rating reports on file with the Bureau shall be available to the insured, and to any member or subscriber upon the written request of the insured.

**ARTICLE XIII  
AMENDMENTS**

This Constitution may be amended by a three-fourths vote of the members present and voting at a meeting of the Bureau regularly called in accordance with the provisions of Article IX and subject to the provisions of Article XI. Where amendments are submitted to the Bureau for adoption, the complete text of each suggested amendment must accompany the notice of the meeting. Once adopted, an amendment shall be submitted to the Commissioner for his approval, and shall not become effective until approved.

**ARTICLE XIV  
TERMINATION OF MEMBERSHIP OR SUBSCRIBERSHIP**

1. A member or subscriber of the Bureau may resign at any time upon giving thirty days' written notice but shall, nevertheless, be obligated to the Bureau for its proportion of all assessments for which it would have been liable with respect to the calendar quarter in which its resignation is effective.
  
2. Any member or subscriber who shall cease to be licensed to provide the insurance required by Massachusetts General Laws, Chapter 152, shall cease to be a member or subscriber of the Bureau. The membership or subscribership of any member or subscriber who fails to properly remit any dues or assessments that are owing and payable may be terminated by the Bureau when such failure is determined to exist by the affirmative vote of three-fourths of the members present and voting (exclusive of the member or subscriber alleged to be in arrears) at a meeting of the Bureau on recommendation of the Governing Committee. In such case, the Governing Committee shall first conduct a hearing, of which such member or subscriber shall have been given due notice. A record shall be kept of the proceedings and the recommendation of the Committee shall be based

#### **ARTICLE XIV TERMINATION OF MEMBERSHIP OR SUBSCRIBERSHIP (Cont.)**

upon a fair preponderance of the evidence. Such member or subscriber shall be obligated to the Bureau for its proportion of all assessments for which it is liable up to the date of cessation of its membership or subscribership. Any termination hereunder shall be subject to all rights afforded any terminated member or subscriber by statute or order of the Commissioner.

3. Any member or subscriber who resigns or for any reason ceases to be a member or subscriber shall have no right, title or interest in any of the statistical data, property, assets or services of the Bureau, other than refund of the excess of any assessments previously paid.

#### **ARTICLE XV INDEMNIFICATION**

1. 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 member or subscriber, or served on a committee or was an officer or employee of the Bureau shall be indemnified against all judgments, fines, reasonable amounts paid in settlement, reasonable costs and expenses including attorneys' fees and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding, except in relation to matters as to which he or it shall be adjudged in such action, suit or proceeding to be liable by reason of willful misconduct in the performance of his or its duties or obligations to the Bureau and, with respect to any criminal actions or proceedings, except when such person or insurer had reasonable cause to believe that his or its conduct was unlawful. Such indemnification shall be provided

## ARTICLE XV INDEMNIFICATION (Cont.)

whether or not such person or insurer is a member or subscriber 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 actions, 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 or it had reasonable cause to believe that his or its conduct was unlawful. If any such action, suit or proceeding is compromised, it must be with the approval of the Governing Committee of the Bureau.

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 Governing Committee 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. Nothing herein shall be deemed to bind a person or insurer who or which the Governing Committee 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 members and subscribers, including any named in any such action, suit or proceeding pursuant to Article VI of the Constitution of the Bureau.



**ARTICLE XVI**  
**ACCEPTANCE OF MEMBERSHIP OR SUBSCRIBERSHIP**

Each insurer, in order to become a member or subscriber of the Bureau, shall, through a duly authorized official, subscribe to a copy of this Constitution and file the same with the Commissioner, together with an authorization to the Commissioner to accept on behalf of such carrier the filings of the Bureau, subject to the applicable provisions of the General Laws of Massachusetts.

By subscribing to this Constitution as a member or subscriber, each insurer agrees that it shall not have or assert any claim against the Bureau, or any member or subscriber, or any former member or subscriber, or any officer, employee, committee or individual for any action taken in good faith authorized by this Constitution.

**ACCEPTANCE OF MEMBERSHIP  
IN  
THE WORKERS' COMPENSATION RATING AND INSPECTION BUREAU OF MASSACHUSETTS**

To the Commissioner of Insurance of Massachusetts:

Pursuant to the provisions of the Constitution of The Workers' Compensation Rating and Inspection Bureau of Massachusetts, the undersigned insurance carrier signifies its acceptance of membership in the said Bureau by subscribing to this Constitution and hereby authorizes the Commissioner of Insurance of Massachusetts to accept on its behalf all filings of said Bureau subject to the applicable provisions of the General Laws of Massachusetts. Nothing in this acceptance shall restrict in any way the right of the undersigned carrier to make independent filings on its own behalf.

\_\_\_\_\_  
(Name of Insurance Carrier)

By

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

\_\_\_\_\_  
(Title of Authorized Official)

\_\_\_\_\_  
(Place and Date)

**ACCEPTANCE OF MEMBERSHIP  
IN  
THE WORKERS' COMPENSATION RATING AND INSPECTION BUREAU OF MASSACHUSETTS**

To the Commissioner of Insurance of Massachusetts:

Pursuant to the provisions of the Constitution of The Workers' Compensation Rating and Inspection Bureau of Massachusetts, the undersigned insurance carrier signifies its acceptance of membership in the said Bureau by subscribing to this Constitution and hereby authorizes the Commissioner of Insurance of Massachusetts to accept on its behalf all filings of said Bureau subject to the applicable provisions of the General Laws of Massachusetts. Nothing in this acceptance shall restrict in any way the right of the undersigned carrier to make independent filings on its own behalf.

\_\_\_\_\_  
(Name of Insurance Carrier)

By

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

\_\_\_\_\_  
(Title of Authorized Official)

\_\_\_\_\_  
(Place and Date)

# Massachusetts Workers' Compensation Assigned Risk Pool

## PLAN OF OPERATION

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### ARTICLE I

#### NAME

**Name.** The reinsurance pool contemplated by G.L. c. 152, § 65C, as amended, shall be known as the Massachusetts Workers' Compensation Assigned Risk Pool (the "Pool").

### ARTICLE II

#### DESIGNATION OF ADMINISTRATOR

**Designation of Administrator.** The Pool shall be administered, in accordance with G.L. c. 152, § 65A et seq., as amended, by The Workers' Compensation Rating and Inspection Bureau of Massachusetts (the "Bureau").

### ARTICLE III

#### PURPOSE AND LIMITATIONS

1. **Purpose.** It is the purpose of the Pool to provide a mechanism for the equitable distribution among insurers of risks entitled to coverage under G.L. c. 152, § 65A, as amended, and to provide, in accordance with G.L. c. 152, § 65C, as amended, for the equitable allocation among all insurers authorized to write workers' compensation insurance in the Commonwealth of the losses incurred on policies issued to employers under § 65A.

Under delegation from the Commissioner of Insurance (the "Commissioner"), the Bureau shall make equitable assignments of risks entitled to coverage under G.L. c. 152, § 65A, as amended, including assignments to servicing carriers or voluntary direct assignment carriers. The Bureau shall each year submit to the Commissioner a report of the assigned risks for the preceding year.

The Bureau is authorized to enter into agreements on behalf of the members of the Pool to carry out the purposes of this Plan including but not limited to servicing carrier agreements. The Bureau is empowered to act as attorney-in-fact for each member of the Pool, to enforce any rights of the members of the Pool, including without limitation, any rights against any other member of the Pool upon insolvency, 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

*Effective June 8, 1994*

against, such member based on or involving any matter relating to this Plan or to intervene in any action or proceeding related thereto.

**2. Limitations.** This Plan of Operation shall apply only to workers' compensation policies including any one or more of the following coverages provided under such policies:

- a. Statutory workers' compensation and occupational disease as provided in G.L. c. 152.
- b. Employers' Liability when written in combination with coverage as specified in (a) above.
- c. Such other coverages as the Bureau may file for approval by the Commissioner for inclusion in the standard Workers' Compensation and Employers' Liability Insurance Policy.

This Plan of Operation shall apply to policies issued to employers whose risks have been assigned to and accepted by members of the Pool in accordance herewith, and to become effective on or after 12:01 a.m. of the effective date.

#### ARTICLE IV

#### MEMBERSHIP

**1. Membership.** Every insurer, as defined in G.L. c. 152, § 1(7), and any insurance company, reciprocal or interinsurance exchange which has contracted with an employer to pay the compensation provided for by G.L. c. 152, that is authorized to write or to continue to write workers' compensation insurance in the Commonwealth shall be a member of the Pool.

**2. Insolvency.**

- (a) In the event any member company shall become insolvent, as hereinafter defined, membership of such company in the Pool shall be deemed terminated at the time such company becomes insolvent subject to the further provisions of subparagraph 2(g) hereunder. As used herein, "insolvent" means being the subject of receivership, conservatorship, rehabilitation, liquidation, or similar proceedings, whether voluntary or involuntary, in any jurisdiction.
- (b) Upon notice to the Bureau of the insolvency of a member company which is acting as a servicing carrier or as a voluntary direct assignment carrier, the Bureau shall reassign all risks previously assigned to the insolvent company to one or more servicing carriers or voluntary direct assignment carriers in accordance with the procedures set forth in this Plan.

Massachusetts Assigned Risk Pool Plan of Operation

- (c) In the event a servicing carrier becomes insolvent, the Bureau, acting on behalf of each of the members, shall have the option to:
- (i) pay to The Massachusetts Insurers Insolvency Fund, or to the receiver, conservator, rehabilitator, liquidator or other appropriate representative all losses and expenses for which such insolvent company shall have become liable upon risks to which this Plan of Operation applies; 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 members of the Pool to such insolvent company to reinsure such insolvent company for losses and expenses for which the insolvent company shall have become liable upon risks to which this Plan of Operation applies. If this option is exercised, the Bureau shall make arrangements to reassign all risks being serviced by such insolvent member to a successor servicing carrier. Such successor servicing carrier shall assume all the duties and obligations of the insolvent carrier and shall accede to the reinsurance provided by the members of the Pool. Payment made on account of such risks, including expenses for the servicing thereof, shall be apportioned ratably among the remaining members of the Pool in accordance with the method provided for the apportioning of assessments.
- (d) The outstanding liability to the members of the Pool of any insolvent member, whether in its capacity as a servicing carrier, or as a member, except for the unexpended portion of any premium retained by a servicing carrier for servicing an assigned risk, shall, in the event of insolvency, be assumed by and apportioned among the remaining members of the Pool in the same manner as liability for assessments is apportioned under this Plan. The right of such insolvent member to participate in the Pool or the funds thereof, except as to any refund if the right to such refund shall have accrued before the date of insolvency, shall thereupon terminate. No refund shall be made to such insolvent company until all its liabilities to the members of the Pool and all liabilities assumed by members of the Pool by virtue of the provisions of this Plan shall have been fully settled and satisfied.

In the event a direct assignment carrier becomes insolvent, the Pool shall have no obligation to pay any losses and expenses for which such insolvent company shall have become liable upon risks to which the Plan of Operation applies except to the extent, if any, that the Massachusetts Insurers Insolvency Fund or any successor entity is not obligated to pay such losses and expenses under the provisions of G.L. c. 175D.

The Pool members shall have all the rights allowed by law against the estate or funds of insolvent carriers for recovery of funds disbursed (including the payment of losses and servicing expenses) on risks carried by insolvent members as herein provided. The Bureau may assert and enforce such rights on behalf of the members

of the Pool.

The provisions of this section are subject to any other or further provisions with respect thereto which may be from time to time embodied in the rules and procedures adopted hereunder.

- (e) Any insolvent member company which fails or has failed to make timely payment of any assessment made under this Plan of Operation shall become liable to the members of the Pool, as of the earliest date on which such failure to pay occurs, for an additional amount equal to the commuted value on such date of all future assessments to be made against such member company. For the purposes hereof, such commuted value shall be the total amount of unearned premium reserves and loss reserves then allocated to such member company hereunder, as determined by the Bureau. The liability of the insolvent member company for such commuted value under this provision shall be deemed fixed, liquidated, and non-contingent as of the date of such failure to pay. The Bureau may assert and enforce such liability on behalf of the members of the Pool.
- (f) The Bureau shall have the discretion to terminate the membership of any or all affiliated companies of the insolvent company. No termination of an insolvent company or any or all companies described in this Section shall be deemed in abrogation of the membership requirement in Article IV, Section 1.
- (g) Anything in this Section to the contrary notwithstanding, the Bureau may, in the event such action is in its judgment feasible and desirable, and in a manner equitable to all members, elect not to terminate the membership of such insolvent company, and permit such company to continue to be a member of the Pool upon such conditions as it may prescribe and subject in all respects to this Plan of Operation and the rules and procedures hereunder as then constituted.
- (h) No member of any Committee of the Bureau representing an insolvent company or affiliate thereof may vote in any proceeding under this Section.
- (i) Nothing in this Section relating to the insolvency of a member company shall, without the express approval of the Bureau, increase the total liability of all members of the Pool (excluding the obligations of the insolvent member) to an amount greater than what the liability would have been if the insolvency had not occurred.

**3. Member Obligations.** Any or all member companies shall, at the discretion of the Bureau, be required to periodically provide, at intervals to be determined by the Bureau, information on the ability to pay return premiums, losses and expenses which may be assessed pursuant to Article XIII, Section 7 for all risks which are subject to this Plan of Operation. Member companies shall provide all further information necessary for the Bureau to determine whether a company's ability to pay its obligations to the Pool members, and for the Bureau to determine

if there is any significant likelihood that the company's future reserves will be inadequate to meet future obligations. Member companies shall cooperate fully in assisting the Bureau in making these determinations, and shall cooperate fully in the conduct of any auditing procedure necessary to these determinations. Should the Bureau determine that a company's reserves are not adequate to meet its obligations to the Pool members, or that there is a significant likelihood that future reserves will be inadequate to meet future obligations, or should the Bureau determine that the member company has not cooperated to the extent necessary to make these determinations, the Bureau shall have the authority to ensure that the member company has reserves adequate to protect the other members of the Pool 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 member company be paid into escrow or trust with the Bureau to secure the member's obligations.
- (b) Ordering that all premium distributions or refunds due the member company be paid in trust with a third party to secure the member's obligations.
- (c) Ordering that the member company obtain a letter of credit approved by the Bureau to secure the company's future liabilities.

Compliance with any such order within the time specified therein shall be an obligation of membership.

## ARTICLE V

### MEETINGS AND VOTING RIGHTS

1. **Regular Meetings.** An annual meeting of the Pool membership shall be held in the City of Boston, Massachusetts, on such date and at such time and place as may be specified in the notice of meeting.

In case the annual meeting for any year shall not be duly called or held, the Residual Market Committee shall cause a special meeting to be held as soon as may be practicable thereafter, in lieu of and for the purpose of such annual meeting, and all proceedings at such special meeting shall have the same force and effect as if taken at the regular annual meeting.

2. **Special Meetings.** Special meetings of the Pool membership may be called at any time by the President of the Bureau, and shall be held in the City of Boston, Massachusetts, at such time and place as may be specified in the notice of meeting. Special meetings shall be called by the President of the Bureau upon the written request of a majority of the Residual Market Committee, or of five members of the Pool.

3. **Notice of Meetings.** At least ten days' written notice of all meetings of the Pool membership shall be given and in each case an agenda of matters to be considered shall



accompany the notice of meeting. Only those matters which are noted in the agenda shall be considered at such meetings, provided, however, that other matters may be considered upon unanimous consent of the members present.

**4. Quorum.** At an annual or special meeting of the Pool membership, members writing not less than 51% of the total net workers' compensation insurance premiums written by all members of the Pool during the latest calendar year for which information is available, shall constitute a quorum.

**5. Voting Rights.** In any meeting of the Pool membership, each member of the Pool shall be entitled to one vote.

At any meeting of the Pool membership, proposed actions shall be deemed adopted when an affirmative vote has been cast by members writing not less than 51% of the total net workers' compensation insurance premiums written by all members of the Pool during the latest calendar year for which information is available. Action may also be taken, without a meeting, by mail or telephone upon affirmative vote of members writing not less than 51% of the total net workers' compensation insurance premiums written by all members during the latest calendar year for which information is available, provided all members of the Pool are polled. In the event of a tie vote, the motion fails adoption.

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

**7. Records of Meetings.** Records of all meetings of members of the Pool shall be provided to members of the Pool and to the Commissioner.

## ARTICLE VI

### RESIDUAL MARKET COMMITTEE

**1. Appointment and Composition.** At each annual meeting of the Bureau, the members of the Governing Committee shall appoint the members of the Residual Market Committee who shall serve until the next annual meeting. The Committee shall be composed of not more than ten (10) members. The President of the Bureau shall be a member ex officio of the Committee, but shall not have the right to vote. The Committee shall have a mixture of eight (8) Pool and two (2) non-Pool members. One non-Pool member shall represent policyholders' interests and the other shall represent producers' interests. No more than six (6) of the eight (8) Pool members shall be servicing carriers. Pool memberships shall be in the name of the member company, which shall designate knowledgeable representatives of suitable senior standing. Each company member of the Committee shall select two (2) alternates of similar standing.

**2. Powers.** The Residual Market Committee shall monitor and administer the Pool, unless the Governing Committee of the Bureau otherwise directs.

**3. Organization and Procedure.** The Committee shall be presided over by a Chairperson, who shall have the right to vote, chosen by it from among its members by an election at its first meeting following the annual meeting of the Bureau. A Vice Chairperson shall be elected in the same manner and shall preside in the absence of the Chairperson.

**4. Meetings; Time, Place and Notice.** Meetings shall be held at such times and places as the Committee may from time to time determine, and may be called at any time by the President of the Bureau, and shall be so called by the President upon the written request of any two members of the Committee. At least ten days' written notice of all meetings of the Residual Market Committee shall be given and in each case an agenda of matters to be considered shall accompany the notice of meeting. Only those matters which are noted in the agenda shall be considered at such meetings, provided, however, that other matters may be considered upon unanimous consent of the members present.

**5. Quorum and Voting Rights.** A majority of the members of the Committee shall constitute a quorum. An affirmative vote of a majority of the members present and voting shall be necessary for the adoption of any proposed action, subject to the requirement that there be at least one affirmative vote of a stock carrier and one affirmative vote of a non-stock carrier. A mail vote or a telephone vote may be taken and such vote shall be binding unless the dissenting voter(s) requests a meeting at the time of such vote. Voting by proxy shall be permitted.

**6. Conditions.** The Committee may fix the conditions upon which assigned risks are afforded coverage and upon which claims shall be handled by servicing carriers. All risks serviced by servicing carriers shall be insured and all claims shall be handled by such carriers in accordance with such conditions.

**7. Disputes and Appeals.** In addition to the powers elsewhere conferred upon it by this Plan of Operation, the Residual Market Committee may sit as an "Appeals Committee" or may designate a subcommittee of at least three but not more than five members, to act as an Appeals Committee to pass upon all disputes arising with respect to this Plan of Operation, or rules promulgated thereunder, including without limitation, any questions as to the application, scope and effect of this Plan of Operation. Any subcommittee designated to act as an Appeals Committee shall include the appointment of a public member and, at the least, one stock and one non-stock carrier member of the Residual Market Committee. A ruling of a majority of the Appeals Committee shall be final, unless within thirty (30) calendar days after the mailing of notice of the Committee's ruling, the aggrieved party shall have appealed the ruling in writing to the Commissioner. The aggrieved party shall send a copy of such appeal to the Committee. The action of the Commissioner upon such ruling shall be final.

**8. Servicing Carriers.** The Committee shall establish qualifications and other conditions for designating servicing carriers.

**9. Audit and Inspections.** The Bureau shall have the right, through its representatives, at all reasonable times during the business day, to audit and inspect the books and records of any voluntary direct assignment carrier or servicing carrier with respect to any policy or policies and claims thereunder coming within the purview of this Plan of Operation.

**10. Rules of Operation.** The Committee shall have the power, subject to the approval of the Commissioner, to promulgate and adopt Rules of Operation for the purpose of implementing this Plan. Such Rules may be made at the direction of the Commissioner, upon reasonable notice to the Bureau and after a hearing.

**11. Records of Meetings.** Records of all meetings of the Residual Market Committee shall be provided to its members and to the Commissioner.

## ARTICLE VII

### SERVICING CARRIERS

**1. Designation.** The Bureau may recommend the designation of one or more insurers as servicing carriers to issue policies of insurance to employers qualified for coverage under G.L. c. 152, § 65A, as amended, subject to the approval of the Commissioner. The designation may be rescinded for cause by the Bureau, subject to the approval of the Commissioner. The designation may also be rescinded by the Commissioner.

**2. Criteria for Selection.** Any member of the Pool may apply to the Pool for servicing carrier designation provided the member company:

- (a) has been writing workers' compensation insurance in the Commonwealth of Massachusetts during at least the five (5) years immediately preceding the request to be designated a servicing carrier;
- (b) has and maintains a record of financial stability and strength;
- (c) has and maintains, at a minimum, a workers compensation voluntary market share of 1% in the Commonwealth of Massachusetts; and
- (d) has and maintains the capacity to conform to such standards of performance ("Standards") as are from time to time promulgated by the Residual Market Committee.

A servicing carrier's failure to maintain eligibility shall be considered cause for rescinding its designation as servicing carrier.

**3. Performance Standards.** The Standards shall address but not be limited to; (a) underwriting and audit, (b) loss control, (c) claims, and (d) collections. Should a servicing carrier fail to meet the Standards, the Bureau will cause to be issued a notice to such carrier that it is not in compliance with the Standards. The notice shall direct the servicing carrier to prepare a plan for achieving compliance with the Standards including appropriate time tables. The servicing carrier shall submit its plan to the Bureau, which shall thereafter file a report with the Commissioner, including appropriate recommendations, if any.

**4. Compensation.** Servicing carriers shall be compensated on a reasonable basis in the manner approved by the Commissioner.

## ARTICLE VIII

### VOLUNTARY DIRECT ASSIGNMENT CARRIERS

**1. Designation.** Any Pool member may apply to the Commissioner of Insurance for designation as a voluntary direct assignment carrier based upon selection criteria approved by the Commissioner. The Commissioner may rescind this designation for cause.

**2.** The performance standards applicable to servicing carriers as set forth in Article VII, Section 3, shall also apply to voluntary direct assignment carriers.

## ARTICLE IX

### FISCAL MATTERS

**1. Fiscal Year.** The fiscal year for the purpose of administering this Plan shall be the calendar year unless otherwise established by the Residual Market Committee.

**2. Deposits.** Funds held temporarily by the Bureau for the benefit of members of the Pool, may be kept on deposit in such banks, trust companies or other depositories as may from time to time be designated and prescribed by the Residual Market Committee; and such designation shall be evidenced by an instrument signed by the Chairperson or the Vice-Chairperson of the Residual Market Committee, and countersigned by the President of the Bureau or the Treasurer. Accurate records shall be kept to identify the funds so deposited.

**3. Withdrawals.** Any two (2) officers of the Bureau duly authorized by the Residual Market Committee shall have power to sign and countersign all checks, drafts or other orders for payment of money and to cause the endorsement of all commercial paper payable under this Plan.

4. **Special Accounts.** Funds temporarily held for the benefit of members also may be kept on deposit with any authorized depository, but in a special account designated as such, subject to withdrawal upon check signed by any two (2) of the officers of the Bureau duly authorized by the Residual Market Committee if authorized by, and subject to, the terms and conditions contained in a written instrument signed by any two (2) of the officers of the Bureau authorized by the Residual Market Committee. Accurate records shall be kept to identify the funds so deposited.

5. **Safe Deposit.** Access may be had to any safe deposit box, hired vault, or like place of safekeeping, standing in the name of the Pool, by any two (2) officers of the Bureau, duly authorized by the Residual Market Committee.

6. **Investment Income.** All income on the funds held for the benefit of members of the Pool shall, upon receipt thereof, become subject to all the appropriate provisions of this Plan.

## ARTICLE X

### INDEMNIFICATION

**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 member of the Pool, or a servicing carrier, or served as a member or representative of a member on the Residual Market Committee or other Bureau committee, or was an officer or employee of the Bureau acting on behalf of the Pool, shall be indemnified against all judgments, fines, amounts paid in settlement, costs and expenses including attorney's fees, and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding, except in relation to matters as to which he, 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 Pool 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 member of the Pool, or a servicing carrier, 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 Residual Market Committee; provided, however, that the Residual Market Committee may delegate to the President of the Bureau the authority to approve any such compromise of financial liability requiring payment by the Pool which is less than an amount as may be fixed from time to time by the Residual Market Committee.

In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in this Article, shall be determined by the Residual Market Committee, 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 this Article shall be entitled to indemnification as authorized herein. The Residual Market Committee may delegate to the President of the Bureau 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 by the Pool which is less than an amount as may be fixed from time to time by the Residual Market Committee. Nothing herein shall be deemed to bind a person or insurer who or which the Residual Market Committee 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 members, including any named in any such action, suit or proceeding pursuant to this Plan of Operation.

## ARTICLE XI

### AMENDMENTS

**Amendments.** Amendments to this Plan of Operation may be made by the Bureau or may be made at the direction of the Commissioner upon reasonable notice to the Bureau and after a hearing, pursuant to G.L. c. 152, § 65C. All amendments to the Plan of Operation proposed by the Bureau shall be submitted to the Commissioner for approval and shall be effective as of the date indicated in the Commissioner's approval.

## ARTICLE XII

### EFFECTIVE DATE

**Effective Date.** This Plan of Operation shall become effective July 1, 1991, or at such later time as it has been approved by the Residual Market Committee, the Governing Committee of the Bureau, and the Commissioner of Insurance.

## ARTICLE XIII

### ASSIGNMENTS, ASSESSMENTS AND EXPENSES

**1. Application.** This Plan shall apply to all risks that are insured or seek to be insured through the Massachusetts Workers' Compensation Assigned Risk Pool. An application for workers' compensation insurance to be written through the Pool must be submitted to the Bureau on a form and in the manner prescribed by the Residual Market Committee.

**2. Assignment of Risks.** The Bureau shall review the information contained in an application for assignment and determine whether the applicant is eligible for assignment under G.L. c. 152, § 65A.

If the Bureau determines that an applicant is eligible for assignment, the Bureau shall assign the applicant to a servicing carrier or voluntary direct assignment carrier. The Bureau will equitably assign applicants to each voluntary direct assignment carrier based on each such carrier's percentage of the total net workers' compensation insurance premiums written, as adjusted by any applicable take-out credit, for all carriers in that policy year. Applicants not assigned to a voluntary direct assignment carrier will be assigned to each servicing carrier based on each servicing carrier's percentage of the total net workers' compensation insurance written premiums for all servicing carriers in the most recent policy year for which data is available. A reconciliation procedure for voluntary direct assignment carriers shall be established in accordance with such rules and procedures as the Residual Market Committee may adopt, subject to the approval of the Commissioner. Assignments may also be made in accordance with other specific rules and procedures as the Residual Market Committee may adopt, subject to the approval of the Commissioner pursuant to G.L. c. 152, S. 65A. The Bureau shall, upon the request of any servicing carrier or voluntary direct assignment carrier, provide such servicing carrier, or voluntary direct assignment carrier with a copy of the records used as the basis for assigning eligible applicants.

**3. Premiums.** With the exception of voluntary direct assignment carriers, the Bureau shall distribute the premiums received from Servicing Carriers to the members of the Pool in proportion to their workers' compensation insurance premiums written in the state on a calendar year basis, or as otherwise determined by the Residual Market Committee.

**4. Expenses and Payments.** The amount of net workers' compensation insurance premiums written and used as the basis of all computations in this Section, or elsewhere in this Plan of Operation, shall also be used as the basis for allocating each member's share of expenses which are not allocable directly to any assigned risk and which are incurred by the Bureau in the administration of the Pool. A record shall be kept of all such expenses, and the amount thereof may be recovered from members who satisfy their obligations under the Plan by participating in the reinsurance pool, by a charge against funds held by the Bureau on behalf of such members, or, in the discretion of the Bureau and when deemed necessary, by an assessment levied under Section 7 of this Article. Voluntary direct assignment carriers shall be separately billed for their portion of such administrative expenses. In addition, voluntary direct assignment carriers shall be separately billed for expenses associated with inspection and audit and such other expenses of oversight as may be appropriate, which are directly allocable to risks assigned to such carriers. Except with respect to claims, the cost of the interpretation of physical and X-ray examinations of employees in assigned dust hazard risks, shall be a proper charge against, and shall be paid from, the general funds held on behalf of the members of the Pool provided the employer pays for the making of such examinations. Except as the Residual Market Committee shall otherwise direct, payments to or in behalf of members shall be limited to administration expenses, reimbursement for losses paid under policies to which these Articles

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apply, and for return premiums on such policies, and the payment of such refunds as may be allowed under this Plan of Operation. Except for costs of premium collection as provided in the Servicing Carrier Agreement, the Pool shall not assume for payment, and shall not be liable to pay, any expenses of any nature whatsoever incurred by members.

**5. Examinations and Reserves.** The Residual Market Committee shall make or cause to be made such review as they may deem necessary of loss payments by members and reserves held by members for outstanding claims, which reserves, until the Committee shall have determined upon a different reserve, shall be the estimated value of the claims reported by the servicing carrier under the applicable servicing carrier agreement.

**6. Transactions, Accounts and Financial Statements.** Separate accounts shall be maintained by the Bureau covering transactions for each policy year. The Bureau shall prepare and deliver to the members a financial statement showing the apportionment of the expense of administration provided for herein and the condition of each account.

**7. Assessments and Refunds.** Assessments shall be levied or refunds allowed by the Bureau as it may from time to time deem reasonable and necessary. Assessments or refunds for account of a specified policy year shall be levied upon or allowed to all members who were such during the calendar year corresponding to such policy year, and each member shall pay such proportion of such assessment, and shall receive a proportionate share of such refund, as is determined by the relation which the net workers' compensation insurance premiums written during such calendar year by such member shall bear to the total net workers' compensation insurance premiums written during such calendar year by all members. A member may satisfy its obligation under this section by becoming a voluntary direct assignment carrier, and by satisfactorily discharging its responsibilities as a voluntary direct assignment carrier in accordance with this Plan and the rules governing the Voluntary Direct Assignment Program.

The amount of net workers' compensation insurance premiums written, which shall serve as the basis of all computations in this Section or elsewhere in this Plan of Operation and in the applicable servicing carrier agreement, shall be that shown by the records of the Bureau. If the amount of net workers' compensation insurance premiums written for a specified calendar year is not available at the time of the levying of any assessment or the distribution of any refund, net workers' compensation insurance premiums written for the preceding calendar year shall be used as the basis for a preliminary assessment or refund, but such preliminary assessment or refund shall be adjusted as soon as the net workers' compensation insurance premiums written for the specified calendar year become available. For the purposes of this section, the net written workers' compensation insurance premiums associated with large deductible policies which are written or renewed on or after January 1, 1994, or are in effect on or after January 1, 1995, shall be deemed to be the amount equal to the standard premium plus any applicable All Risk Adjustments Program amounts associated with such policies.

The amount of any assessment levied shall be paid within, and the amount of any refund allowed shall be distributed within, such reasonable time as may be determined by the Residual



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Market Committee, following the submission of the quarterly, or other statement referred to herein.

The Bureau shall, upon request of a member, provide such member with a copy of the records used as the basis of calculating the member's assessment or refund.

Any member that wrote Massachusetts workers' compensation insurance in the voluntary market in 1990, but that was not assessed or allowed a refund for account of policy year 1990 in connection with any deficit or surplus resulting from the operation of the workers' compensation insurance assigned risk pool in Massachusetts, may apply to the Commissioner to be certified for lump sum payments of pool liabilities for account of policy years 1991, 1992 and 1993. The lump sum payment shall equal the product of the eligible member's pool participation ratio and the present value at the time of the lump sum payment of the residual market results, for each respective policy year.

The Commissioner shall determine the present value of the residual market deficit for policy year 1991 in 1/1/94 dollars based on a discounted cash flow analysis with appropriate inputs selected by the Commissioner.

The Commissioner, if he or she deems it appropriate and necessary, shall determine the present value of the residual market results for policy years 1992 and 1993 in 1/1/95 dollars and 1/1/96 dollars, respectively. These determinations shall be made prior to 1/1/95 and 1/1/96 for each respective policy year. Certified members shall be eligible for lump sum payments for policy years 1992 and 1993, unless the Commissioner deems it inappropriate or unnecessary to determine the above mentioned residual market results.

These lump sum payments for policy year 1991 shall be paid to the pool by February 1, 1994 or an eligible member may elect to make payments on an installment plan whose term will end not later than December 31, 1995 and at an annual interest rate of 5% or at such other rate as the Commissioner may determine. These payments shall be used to pay pool liabilities for policy year 1991. Eligible members that elect to make a lump sum payment for policy year 1991 shall have their otherwise determined participation ratios set equal to zero for that policy year. Members that do not make these lump sum payments shall have their participation ratios increased in proportion to their otherwise determined participation ratio so that the sum of all members' participation ratios equals unity. Lump sum payments for policy years 1992 and 1993 shall be implemented in an analogous manner as described above.

In order to be certified for lump sum payments for policy years 1991, 1992 and 1993, the following requirements must be met:

- (a) By January 20, 1994, the member must file with the Division of Insurance documentation demonstrating to the satisfaction of the Commissioner that its failure to be certified for lump sum payments would threaten its technical solvency pursuant to statutory accounting principles. At such time the member shall indicate whether it will,

if certified, elect the lump sum payment option for policy year 1991 or whether such filing is solely for financial reporting requirements as set forth below. Within thirty days of any determination by the Commissioner of the present value of the residual market results for policy year 1992 or policy year 1993, the member shall indicate whether it is electing the lump sum payment option.

- (b) Prior to issuance of an order of certification the Commissioner shall require such member to demonstrate that it can meet its obligations under the lump sum payment plan set forth herein as well as obligations for pool liabilities and voluntary writings for policy years 1994 and beyond. In order to so demonstrate, such member must submit a satisfactory business plan describing the changes that would be made in the business and operations of the member in order to meet such obligations. The Commissioner may require such alterations to said plan as he or she deems necessary and may require that an independent actuarial review be performed at the member's expense.

Members who are certified and elect to make a lump sum payment for their pool liabilities for policy year 1991 shall reflect these liabilities in all required statutory filings (including Quarterly and Annual Statements) with the Division of Insurance beginning with their 1993 Annual Statement. Members who are certified and do not elect to make a lump sum payment for their pool liabilities for policy year 1991 shall reflect their pool liabilities for policy year 1991 as if they had elected to make the lump sum payment as described above in all statutory filings made in 1994 (including the 1993 Annual Statement). In addition, for all such statutory filings made in 1994 (including the 1993 Annual Statement) certified members shall not reflect any results of pool operations for policy years 1992 and 1993. For all statutory filings made after 1994, the Commissioner shall determine the manner in which certified members shall reflect their pool liabilities for policy years 1991, 1992 and 1993.

Any funds in escrow accounts established for an eligible member for those policy years where a lump sum payment will be made shall be returned to the pool.

For policy years 1994 and beyond, all pool members may apply to the Commissioner to be certified for lump sum settlement in a manner analogous to that set forth above.

**8. Netting Out.** Notwithstanding any contrary provisions in this Plan, and notwithstanding any contrary forms of accounting methods or reports that may for convenience be used to determine the underlying amounts of particular member or servicing carrier rights or obligations for any or all policy years, in computing at any given time the balance due to any member from the Pool or to the Pool from any member, whether or not a servicing carrier, all accounts for that member shall be netted out, with only the net amount to be due either the member company or the Pool at that time.

**9. Distribution Upon Termination of the Pool.** Upon termination of the Pool, distribution by way of refund (if any) shall be made to the members of the Pool entitled to participate

therein, subject to provisions of Section 2 (g) of Article IV of this Plan of Operation, within such reasonable period of time as the Residual Market Committee in its sound discretion shall determine; and all provisions of this Plan of Operation and the Rules of Operation adopted hereunder relative to administration of the Pool shall remain in full force and effect until final distribution shall have been made.

#### ARTICLE XIV

##### OBLIGATION OF MEMBERS AFTER TERMINATION OF MEMBERSHIP

**Obligation of Members after Termination of Membership.** Any company whose membership in the Pool has been terminated by withdrawal or by expulsion shall, nevertheless, with respect to risks subject to the Plan of Operation prior to midnight of the effective date of such termination, continue to be governed by this Plan of Operation and Rules of Operation promulgated hereunder.

#### ARTICLE XV

##### DEFINITIONS

1. The term "net workers' compensation insurance premiums written," wherever used in this Plan of Operation, 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 this Plan of Operation, and for risks written under Special National Defense Comprehensive Rating or Special National Defense Premium Discount Plans and under excess policies; provided, however, that in the case of risks written or renewed on large deductible policies on or after January 1, 1994, or in effect on or after January 1, 1995, the net workers' compensation insurance premiums written shall be deemed to be an amount equal to standard premium plus any applicable All Risk Adjustments Program amounts. The term "net workers' compensation insurance premiums written" shall also include all premium received by non-admitted carriers on policies issued by such carriers for coverage in the state if such policies are deemed to meet employer obligations under the workers' compensation statute of the state.
2. The term "servicing carrier" wherever used in this Plan of Operation shall include any member company servicing coverage written by such member and subject to this Plan of Operation.
3. The term "voluntary direct assignment carrier" shall mean an insurer that has elected to receive direct assignments, in lieu of participating in the Pool, and that has obtained prior approval from the Commissioner of Insurance authorizing such form of participation.

## **PERFORMANCE STANDARDS FOR SERVICING CARRIERS**

The following are the minimum performance standards for servicing carriers whether or not the carriers perform the services in-house or contract with outside service providers. The carrier is also responsible for complying with all statutes, regulations, and Pool rules and performance standards.

Failure to maintain these standards may result in penalties being imposed upon the servicing carrier by the Bureau in accordance with Article VII of the Pool's Plan of Operations.

For purposes of these standards, the day following the date of receipt, issuance, or other required action is counted as the first day.

### **A. UNDERWRITING AND AUDIT**

#### **1. POLICY ISSUANCE**

##### **a. General Information**

The carrier shall have operational responsibility for issuing policies accurately, utilizing forms prescribed by the Pool Administrator. All policies shall be issued in consideration of premiums and additional fees and charges as may be authorized by the Pool Administrator and approved by the Commonwealth.

The carrier is responsible for maintaining adequate safeguards to assure insurer compliance with all terms and conditions of the policy contract.

Proof of coverage (state filing) effective periods shall coincide with policy coverage periods.

The carrier shall include its telephone number either on the policy or on a stuffer to be included with the policy.

##### **b. New Business**

The policy will be accurately issued within 30 calendar days from the date the required premium and properly completed application is received from the Pool Administrator. All applicants shall be notified of the availability of the Waiver of Subrogation Endorsement within 30 calendar days of the Pool's receipt of applications.

If the application is not properly completed, the information shall be requested