

**MASSACHUSETTS WORKERS' COMPENSATION
ASSIGNED RISK POOL**

AMENDED AND RESTATED PLAN OF OPERATION

ARTICLE I

NAME

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

ARTICLE II

DEFINITIONS

1. "Appeals Committee" means the WCRIBMA committee that administers appeals in accordance with the Constitution.
2. "Annual Meeting" has the meaning set forth in Article VI, Section 1.
3. "Commissioner" means the Commissioner of the Massachusetts Division of Insurance or any successor entity.
4. "Company Group" means companies controlling, controlled by, or under common control with other companies and shall be identified by the NAIC group number.
5. "Constitution" means the Constitution of the WCRIBMA.
6. "Days" shall refer to calendar days unless otherwise specified.
7. "DIA" means the Massachusetts Department of Industrial Accidents or any successor entity.
8. "Effective Date" has the meaning set forth in Article XV.
9. "Good faith" means an observance of reasonable commercial standards of fair dealing.
10. "Governing Committee" means the committee that administers the WCRIBMA in accordance with the Constitution.
11. "Insolvency Fund" means the Massachusetts Insurers Insolvency Fund or any successor entity.
12. "Insolvent" means being the subject of receivership, conservatorship, rehabilitation, liquidation, or similar proceedings, whether voluntary or involuntary, in any jurisdiction.

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13. "Insurer" has the meaning set forth in M.G.L.c. 152, §1(7).
14. "MA Manual" means the Massachusetts Workers' Compensation and Employers' Liability Insurance Manual.
15. "Member" has the meaning set forth in Article V, Section 1.
16. "NAIC" means the National Association of Insurance Commissioners.
17. "NCCI" means the National Council on Compensation Insurance.
18. "Net Workers' Compensation Insurance Premiums Written" means the calendar year Direct Premiums Written reported on the Workers Compensation line of the Annual Statement, exclusive of premiums for risks subject to this Plan of Operation, and for risks written under National Defense Projects Rating Plan and under excess policies; provided, however, that in the case of risks written or renewed on large deductible policies 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 associated with such policies.
19. "New business" as used in Appendix A, Performance Standards, means the first year that an employer is assigned to the carrier by the WCRIBMA. Block transferred policies are considered 'new business' to the receiving carrier, while policies that have been reassigned to the same carrier with a gap of no more than six months are not considered 'new business.'
20. "Plan of Operation" means the Amended and Restated Plan of Operation of the Massachusetts Workers' Compensation Assigned Risk Pool, including the Appendices.
21. "Participation Ratio" means the percentage of the Net Workers' Compensation Insurance Premiums Written during such calendar year by a Member, as adjusted by any applicable take-out credit, of the Total Net Workers' Compensation Insurance Premium Written by all Members excluding Voluntary Direct Assignment Carriers during such calendar year, as adjusted by any applicable take-out credit. Voluntary Direct Assignment Carriers are assigned Participation Ratios at the time of the VDAC Reapportionment.
22. (a) "Performance Standards", as applicable to Servicing Carriers designated pursuant to Article VIII, Section 2, and to Voluntary Direct Assignment Carriers designated pursuant to Article IX, Section 2, refer to the minimum performance standards set forth in Appendix A.

(b) "Performance Standards", as applicable to Servicing Carriers selected pursuant to Article VIII, Section 3, refer to the Performance Standards set forth in Appendix A of this Plan, including any enhancements contained in the Servicing Carrier contract.
23. "Residual Market Committee" means the committee described in Article VII.
24. "Run-off" means a state of affairs in which a Member is not writing any new or renewal business but continues to pay its outstanding claims or has transferred its Pool obligations/losses to a related or unrelated entity.
25. "Servicing Carrier" includes any Member company servicing for a fee coverage written by such Member and subject to this Plan of Operation.

26. "Standard Premium" is defined and described in Appendix F of the MA Manual, the Residual Market Premium Algorithm.
27. "Voluntary Direct Assignment Carrier", or "VDAC", means 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 authorizing such form of participation. Voluntary Direct Assignment Carriers retain the premiums collected on their direct assignment policies and are responsible to pay all losses and expenses associated with their direct assignment policies.
28. "WCRIBMA" means The Workers' Compensation Rating and Inspection Bureau of Massachusetts.

ARTICLE III

DESIGNATION OF ADMINISTRATOR

The Commissioner has designated the WCRIBMA as administrator of the Pool which shall be administered in accordance with M.G.L. c. 152, §65A et seq., as amended.

ARTICLE IV

PURPOSE AND LIMITATIONS

1. **Purpose.** The purpose of the Pool is to provide a mechanism for the equitable distribution among insurers of risks entitled to coverage under M.G.L. c. 152, §65A, as amended, and to provide, in accordance with M.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, the WCRIBMA shall make equitable assignments of risks entitled to coverage under M.G.L. c. 152, §65A, as amended, including assignments to Servicing Carriers or Voluntary Direct Assignment Carriers. The WCRIBMA shall each year submit to the Commissioner a report of the assigned risks for the preceding year.

The WCRIBMA is authorized to enter into agreements on behalf of the Members to carry out the purposes of this Plan of Operation, including but not limited to servicing carrier agreements. The WCRIBMA is authorized to select Servicing Carriers under the terms set forth in Article VIII of this Plan. The WCRIBMA is empowered to act as attorney-in-fact for each Member ; to enforce any rights of the Members , including without limitation, any rights against any other Member upon insolvency; to enforce the obligations of membership on behalf of all Members ; to prosecute, to defend, to submit to arbitration, to settle and to propose or to accept a compromise with respect to any claim existing in favor of, or against, such Member based on or involving any matter relating to this Plan of Operation; or to intervene in any action or proceeding related thereto.

2. Limitations.

- (a) This Plan of Operation shall apply only to workers' compensation policies including any one or more of the following coverages provided under such policies:
 - (i) Statutory workers' compensation and occupational disease as provided in M.G.L c. 152.
 - (ii) Employers' Liability when written in combination with coverage as specified in (1) above.
 - (iii) Such other coverages as the WCRIBMA may file for approval by the Commissioner for inclusion in the standard Workers' Compensation and Employers' Liability Insurance Policy.
- (b) Policies issued pursuant to the Plan of Operation shall not include Federal Employers' Liability Act coverage.
- (c) Nothing in this Plan of Operation shall affect the enforceability of any applicable bankruptcy, receivership, or other similar laws affecting the enforcement of creditors' rights in general.
- (d) This Plan of Operation shall apply to policies issued to policyholders whose risks have been assigned to and accepted by Members in accordance herewith.
- (e) If any article, section, paragraph, sentence, or clause of this Plan of Operation is held invalid by any court of competent jurisdiction, such decision shall not affect any of the remaining provisions of this Plan of Operation.

ARTICLE V

MEMBERSHIP

- 1. **Membership.** Every Insurer which has contracted with an employer to pay the compensation provided for by M.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, ("Member").
- 2. **Member Obligations.** Any or all Members shall, at the discretion of the WCRIBMA, be required to periodically provide, at intervals to be determined by the WCRIBMA, information on the ability to pay return premiums, losses and expenses which may be assessed pursuant to Article XII, Sections 4 and 5 for all risks which are subject to this Plan of Operation. Members shall provide all further information necessary for the WCRIBMA to ascertain a company's ability to pay its obligations to the Members, and for the WCRIBMA to determine if there is any significant likelihood that the company's future reserves will be inadequate to meet future obligations. Members shall cooperate fully in assisting the WCRIBMA in making these determinations, and shall cooperate fully in the conduct of any auditing procedure necessary to these determinations.

Should the WCRIBMA determine that a company's reserves are not adequate to meet its obligations to the Members, or that there is a significant likelihood that future reserves will be inadequate to meet future obligations, or should the WCRIBMA determine that the Member has not cooperated to the extent necessary to make these determinations, the WCRIBMA shall have the authority to ensure that the Member shall meet its obligations to the

other Members by taking actions which may include, any or all of the following as set forth in (a) through (d) below.

When a Member fails to make timely payment of its assessment or otherwise fails to honor its financial obligations to the Members, or if a Member is under the supervision of the insurance department or other regulatory authority of any jurisdiction, or when the insurance department or other regulatory authority of any jurisdiction represents, in writing, that a Member is unable to meet its financial obligations, or when a Member is in run-off, the WCRIBMA shall have the authority to protect the other Members by ensuring that the Member can meet its obligations to the Pool on a timely basis by taking actions which include but not be limited to any or all of the following:

- (a) Ordering that all or a portion of assessment distributions or refunds due the Member be paid into escrow or trust with the WCRIBMA to secure or pay any of the Member's current or future obligations and liabilities.
- (b) Ordering that all or a portion of assessment distributions or refunds due the Member be paid in trust with a third party to secure or pay any of the Member's current or future obligations and liabilities.
- (c) Upon approval by the Commissioner, ordering that the Member obtain a letter of credit approved by the WCRIBMA to secure or pay any of the Member's current or future obligations and liabilities.
- (d) Upon approval by the Commissioner, ordering that all or a portion of assessment distributions or refunds which have been distributed to the Member be placed into escrow or trust for the benefit of the Pool with the WCRIBMA or with a third party designated by the WCRIBMA, to secure or pay any of the Member's current or future obligations and liabilities.

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

3. **Insolvency.**

- (a) In the event any Member is declared Insolvent by a court of competent jurisdiction, its membership in the Pool shall terminate subject to the further provisions of subparagraph 3(g) hereunder. Under all circumstances, the WCRIBMA shall be entitled to offset any liabilities of the Insolvent Member to the Pool against any liabilities of the Pool to the Insolvent Member.
- (b) Upon notice to the WCRIBMA of the insolvency of a Member which is acting as a Servicing Carrier and/or as a Voluntary Direct Assignment Carrier, the WCRIBMA shall reassign all policyholders with active policies that were previously assigned to the Insolvent company to one or more Servicing Carriers and/or Voluntary Direct Assignment Carriers in accordance with the procedures set forth in this Plan of Operation.
- (c) In the event a Servicing Carrier becomes Insolvent, the WCRIBMA, acting on behalf of each of the Members, shall have the option to:
 - (i) pay to the Insolvency Fund, or to the receiver, conservator, rehabilitator, liquidator or other appropriate representative who has assumed the liabilities, all losses and expenses for which the Insolvent Servicing Carrier shall have become liable upon risks to which this Plan of Operation applies. Under all circumstances, the WCRIBMA shall be entitled to offset any liabilities of the Insolvent Member to the Pool against any liabilities of the Pool to the Insolvent Servicing Carrier; or

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- (ii) subject to the approval of the receiver, conservator, rehabilitator, liquidator or other representative, and subject to the approval of any court having jurisdiction over the proceedings, terminate the obligation of the Members to reinsure such Insolvent Servicing Carrier for losses and expenses for which the Insolvent Servicing Carrier shall have become liable upon risks to which this Plan of Operation applies. If this option is exercised, the WCRIBMA shall arrange to reassign all policyholders being serviced by such Insolvent Servicing Carrier to a successor Servicing Carrier. Such successor Servicing Carrier shall assume all the duties and obligations of the Insolvent Servicing Carrier and shall accede to the reinsurance provided by the Members. Payment made on account of such risks, including expenses for the servicing thereof, shall be apportioned pro rata among the remaining Members in accordance with the method provided for the apportioning of assessments.
- (d) The outstanding liability of an Insolvent Member, whether in its capacity as a Servicing Carrier or as a Member, or both, and except for the unexpended portion of any premium retained by such Insolvent Member (if a Servicing Carrier) for servicing an assigned risk, shall be assumed by and apportioned among the remaining Members in the same manner as liability for assessments is apportioned under this Plan of Operation. 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 Member until all its liabilities to the Members and all liabilities assumed by Members by virtue of the provisions of this Plan shall have been fully settled and satisfied.

In the event a Voluntary 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 in accordance with Article IX except to the extent, if any, that the Insolvency Fund is not obligated to pay such losses and expenses under the provisions of M.G.L c. 175D.

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

Upon the insolvency of a Member who is also acting in the capacity of a Servicing Carrier, all amounts due to such Insolvent Servicing Carrier from the Members as a result of the reinsurance provided to such Servicing Carrier and all amounts due from the Insolvent Servicing Carrier shall be merged into one account and deemed mutual debts and credits which the WCRIBMA may offset.

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 which fails or has failed to make timely payment of any assessment made under this Plan of Operation shall become liable to the other Members, 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. For the purposes hereof, such commuted value shall be the total amount of unearned premium reserves and loss reserves then allocated to such Member hereunder, as determined by the WCRIBMA. The liability of the Insolvent Member for such commuted value under this provision shall be

deemed fixed, liquidated, and non-contingent as of the date of such failure to pay. The WCRIBMA may assert and enforce such liability on behalf of the Members by taking actions which may include those set forth in Section 2, above.

- (f) The WCRIBMA shall have the discretion to terminate the membership of any or all affiliated companies of the Insolvent Member. The termination of an Insolvent Member or any or all companies described in this Section shall not be deemed an abrogation of the membership requirement in Section 1 of this Article V.
- (g) Anything in this Section to the contrary notwithstanding, the WCRIBMA 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 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 WCRIBMA Committee representing an Insolvent Member or affiliate thereof may vote in any proceeding under this Section.
- (i) Nothing in this Section relating to the insolvency of a Member shall, without the express approval of the WCRIBMA, 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.

ARTICLE VI

MEMBER MEETINGS

1. **Annual Meetings.** An Annual Meeting of the Members shall be held in Boston, Massachusetts, on such date and at such time and place as may be specified in the notice of meeting.

In the event 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 Annual Meeting.

2. **Special Meetings.** Special Meetings of the Members may be called at any time by the President of the WCRIBMA, and shall be held in Boston, Massachusetts, at such time and place as may be specified in the notice of meeting. Special Meetings shall also be called by the President of the WCRIBMA upon the written request of a majority of the Residual Market Committee, or of five (5) Members.
3. **Notice of Meetings.** At least ten (10) days' written notice of all meetings of the Members shall be given. 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 any Members' meeting, a quorum shall be reached when there are Members or Company Groups

present collectively representing 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.

5. Voting Rights.

- (a) In any meeting of the Members, each Company Group shall be entitled to one vote.
- (b) Proposed actions shall be deemed adopted when an affirmative vote has been cast by Company Groups 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.
- (c) Action may also be taken, without a meeting, by mail, telephone, electronically, or by any other method that is reasonably calculated to ensure the accuracy and security of the transmission, receipt, and recording of such action. Proposed actions by any of these methods shall be deemed adopted upon the affirmative vote of Company Groups 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 Company Groups 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 (including electronic 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 the Members shall be provided to Members and to the Commissioner.

ARTICLE VII

RESIDUAL MARKET COMMITTEE

1. Appointment and Composition.

- (a) At its first meeting following the Annual Meeting of the WCRIBMA, the members of the Governing Committee shall appoint the members of the Residual Market Committee who shall serve until the next Annual Meeting of the WCRIBMA.
- (b) The Residual Market Committee shall be composed of no fewer than five (5) members and not more than ten (10) members, unless otherwise directed by the WCRIBMA's Governing Committee.
- (c) The President of the WCRIBMA shall be a member *ex officio* of the Committee, but shall not have the right to vote.
- (d) The Residual Market Committee shall have a mixture of at least five (5) but not more than eight (8) Members and two (2) non-Pool members. One non-Pool member shall represent policyholders' interests and the other shall represent producers' interests. No more than 80% of the Members shall be Servicing Carriers or Voluntary Direct Assignment Carriers. Committee memberships shall be in the name of the Member

company, which shall designate a knowledgeable representative of suitable senior standing.

2. **Powers.** The Residual Market Committee shall monitor and administer the Pool on behalf of the WCRIBMA, unless the Governing Committee otherwise directs.
3. **Organization and Procedure.**
 - (a) The Residual Market Committee shall be presided over by a Chairperson, who shall have the right to vote. The Chairperson shall be chosen from among its members by an election at the first meeting following the Annual Meeting of the WCRIBMA.
 - (b) A Vice Chairperson shall be elected in the same manner and shall preside in the absence of the Chairperson. Only Members are eligible to serve as Chairperson and Vice Chairperson. A Chairperson pro tem, elected by committee members present, shall act as Chairperson at any meeting in the absence of the Chairperson and Vice Chairperson.
4. **Meetings; Time, Place and Notice.**
 - (a) Meetings 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 of the WCRIBMA, and shall also be called by the President upon the written request of any two (2) members of the Residual Market Committee.
 - (b) The Commissioner shall be notified in advance of all Residual Market Committee meetings and will be invited to attend all such meetings.
 - (c) At least ten (10) 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.
 - (d) 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) A majority of the members of the Residual Market Committee shall constitute a quorum.
 - (b) At all meetings of the Residual Market Committee, an affirmative vote of a majority of the committee members present and voting shall be necessary for the adoption of any proposed action.
 - (c) Votes on any matter by committee members may be cast by telephone, mail, electronically, or by any other method approved by the Governing Committee that is reasonably calculated to ensure the accuracy and security of the transmission, receipt and recording of such vote. Proposed actions by any of these methods shall be deemed adopted upon the vote of a majority of the committee members. Such votes shall be binding unless the dissenting voter(s) requests a meeting at the time of such vote.
 - (d) Voting by proxy shall be permitted.
6. **Conditions.** The Residual Market Committee may fix the conditions upon which assigned risks are afforded

coverage and upon which claims shall be handled by Servicing Carriers and Voluntary Direct Assignment Carriers. All risks serviced by such carriers shall be insured and all claims shall be handled by such carriers in accordance with such conditions.

7. **Disputes and Appeals.** The Appeals Committee shall 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. A ruling of a majority of the Appeals Committee shall be final, unless within thirty (30) 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. **Rules of Operation.** The Residual Market 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 WCRIBMA and after a hearing.
9. **Records of Meetings.** Records of all meetings of the Residual Market Committee shall be provided to its members and to the Commissioner.

ARTICLE VIII

SERVICING CARRIERS

1. **Servicing Carriers.** An insurer may become a Servicing Carrier through designation by the WCRIBMA or through selection by the WCRIBMA pursuant to a competitive bid process. The designation and selection of Servicing Carriers are subject to approval by the Commissioner. Nothing in this Plan of Operation or any contract between the WCRIBMA and a Servicing Carrier shall affect the Commissioner's authority under M.G.L.c. 152, §65A to require one or more insurers to be Servicing Carriers issuing policies of insurance to employers qualified under section 65A.

Subject to the approval of the Commissioner, an insurer can be both a Servicing Carrier and a Voluntary Direct Assignment Carrier.

2. **Designation.** The WCRIBMA may recommend the designation of at least two (2) but not more than five (5) insurers as Servicing Carriers to issue policies of insurance to employers qualified for coverage under M.G.L.c. 152, §65A, as amended, subject to the approval of the Commissioner. The Servicing Carrier shall continue as a Servicing Carrier for subsequent years, unless it gives the Commissioner ninety (90) days advance written notice of its intention to resign as a Servicing Carrier, or unless such designation is rescinded by the Commissioner. The designation may also be rescinded for cause by the WCRIBMA, subject to the approval of the Commissioner. The WCRIBMA may rescind a designated Servicing Carrier's authority to issue new or renewal policies if the WCRIBMA gives at least sixty (60) days advance written notice to each designated carrier following its selection of any Servicing Carrier pursuant to a competitive bid process.
3. **Selection Pursuant to a Competitive Bid Process.**

- (a) The WCRIBMA may select, pursuant to a competitive bid process and in accordance with the criteria in this Plan, at least two (2) but not more than five (5) insurers as Servicing Carriers to issue policies of insurance to employers qualified for coverage under M.G.L c. 152 §65A, as amended. Each Servicing Carrier so selected shall continue as a Servicing Carrier for subsequent years in accordance with the terms of its written Servicing Carrier contract with the WCRIBMA, unless such selection is rescinded by the WCRIBMA or the Commissioner for cause.
- (b) No Request for Proposal (“RFP”) shall be issued by the WCRIBMA without the Commissioner’s prior approval of its contents. Any RFP submitted by the WCRIBMA for the Commissioner’s approval shall not be subject to a public hearing, and may be withdrawn by the WCRIBMA at any time. Any RFP that is approved by the Commissioner or is issued by the WCRIBMA may be withdrawn by the WCRIBMA at any time. The issuance of any RFP shall not commit or require the WCRIBMA to award any Servicing Carrier contracts.

4. Eligibility Criteria for Servicing Carriers. No Member may be a Servicing Carrier, unless such Member:

- (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) currently maintains, and during the five (5) years immediately preceding the request to be designated or selected as a Servicing Carrier has maintained, a workers’ compensation voluntary market share of at least two percent (2%) in the Commonwealth of Massachusetts;
- (c) currently maintains, and during at least the five (5) years immediately preceding the request to be designated or selected as a Servicing Carrier has maintained, a record of financial stability and strength, including, but not limited to, an AM Best Financial Strength Rating (FSR) of “A-” or better; and
- (d) demonstrates to the satisfaction of the Commissioner, taking into account whatever technical advice may have been requested from the WCRIBMA, that it has the capacity to provide appropriate coverage to any risk that may be assigned to it pursuant to this program regardless of the size, industry type, and geographical location of such risk; and
- (e) has and maintains the capacity to conform to the Performance Standards.

A Servicing Carrier's failure to maintain the eligibility criteria described above shall be considered cause for rescinding its designation or selection as a Servicing Carrier. The WCRIBMA shall inform the Commissioner if it believes a Servicing Carrier may not be maintaining such eligibility.

5. New Servicing Carrier Review. A review shall be performed by the WCRIBMA or its designee on new Servicing Carriers within six (6) months of designation or selection as a Servicing Carrier. The following criteria shall be reviewed:

- (a) Timely and accurate policy issuance
- (b) Timely and accurate processing of premium bearing endorsements
- (c) Timely and accurate issuance of indemnity checks
- (d) Timely and accurate reporting of policy and financial data to WCRIBMA and NCCI.

6. Performance-Based Programs.

- (a) The performance based programs that shall apply to any Servicing Carrier designated pursuant to Article VIII, Section 2 are set forth in Appendices A, B, C and D of this Plan.
- (b) The performance based programs that shall apply to any Servicing Carrier selected pursuant to Article VIII, Section 3 shall be set forth in its Servicing Carrier contract and shall be at least as demanding as the performance based programs set forth in Appendices A, B, C and D of this Plan of Operation.

7. Compensation.

- (a) Servicing Carriers designated pursuant to Article VIII, Section 2 shall be compensated in the manner approved by the Commissioner and described in Appendix D, Determining the Servicing Carrier Fee.
- (b) Servicing Carriers selected pursuant to Article VIII, Section 3 shall be compensated as set forth in the Servicing Carrier contract between the WCRIBMA and the selected Servicing Carrier.

8. Assignments. The WCRIBMA will equitably assign applicants to each Servicing Carrier in accordance with Article XII.2.

9. Audit and Inspections. The WCRIBMA 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 Servicing Carrier with respect to any policy or policies and claims thereunder coming within the purview of this Plan of Operation.

ARTICLE IX

VOLUNTARY DIRECT ASSIGNMENT CARRIERS

1. Voluntary Direct Assignment Carriers. Any qualifying insurer may satisfy its assessment obligations as a Member by accepting voluntary direct assignments of risks from the WCRIBMA, in the manner specified in Article XII, Section 2(a) of the Plan of Operation. Voluntary Direct Assignment Carriers retain the premiums collected on their direct assignment policies and are responsible to pay all losses and expenses associated with their direct assignment policies. A participating insurer must satisfy the assessment obligation of its entire Company Group for a particular policy year in this manner, subject to the provisions of this Article.

Subject to the approval of the Commissioner, an insurer can be both a Servicing Carrier and a Voluntary Direct Assignment Carrier.

2. Designation. Any Member who wishes to become a Voluntary Direct Assignment Carrier shall make application to the Commissioner for such designation with a copy to the WCRIBMA prior to September 1. The Commissioner shall review the application and approve or disapprove it in writing within ninety (90) days of receipt. If the Commissioner fails to act within the ninety (90) day period, the application is deemed disapproved. If the application is approved, the Member will be designated a Voluntary Direct Assignment Carrier effective January 1 of the following year. It shall continue as a Voluntary Direct Assignment Carrier for subsequent years,

unless it gives the Commissioner advance written notice of its intention to resign as a Voluntary Direct Assignment Carrier prior to September 1 of a given year, or unless such designation is rescinded by the Commissioner for cause.

3. **Scope of Coverage and Performance Standards.** The Performance Standards applicable to Servicing Carriers as set forth in Appendix A shall also apply to Voluntary Direct Assignment Carriers. The manuals of rules, rates, rating plans and classifications filed by the WCRIBMA, and approved by the Commissioner, to apply to residual market policies, shall also apply to policies issued by an insurer in its capacity as a Voluntary Direct Assignment Carrier.
4. **Eligibility Criteria for Voluntary Direct Assignment Carriers.** Any Member may apply to the Commissioner for Voluntary Direct Assignment Carrier designation, and shall be eligible for designation as a Voluntary Direct Assignment Carrier, provided the Member demonstrates to the satisfaction of the Commissioner, taking into account whatever technical advice may have been requested from the WCRIBMA, that it:
 - (a) has and has maintained for the five (5) year period immediately preceding the request to be designated a Voluntary Direct Assignment Carrier, a workers' compensation voluntary market share of at least one percent (1%) in the Commonwealth of Massachusetts; and
 - (b) has and maintains, at a minimum, a record of financial stability and strength by having an AM Best Financial Strength Rating (FSR) of "A-" or better; and
 - (c) has and maintains the capacity to provide appropriate coverage to any risk that may be assigned to it pursuant to this Plan of Operation regardless of the size, industry type, and geographical location of such risk; and
 - (d) has and maintains the capacity to conform to the Performance Standards as set forth in Appendix A.

A Voluntary Direct Assignment Carrier's failure to maintain the eligibility criteria described above shall be considered by the Commissioner as cause for rescinding its designation as Voluntary Direct Assignment Carrier. The WCRIBMA shall inform the Commissioner if it believes a Voluntary Direct Assignment Carrier may not be maintaining such eligibility.

5. **New Voluntary Direct Assignment Carrier Review.** A review shall be performed by the WCRIBMA or its designee on new Voluntary Direct Assignment Carriers within six (6) months of designation as a VDAC. The following criteria shall be reviewed:
 - (a) Timely and accurate policy issuance
 - (b) Timely and accurate processing of premium bearing endorsements
 - (c) Timely and accurate issuance of indemnity checks
 - (d) Timely and accurate reporting of policy and financial data to WCRIBMA and NCCI.
6. **Assignments.** The WCRIBMA will equitably assign applicants to each Voluntary Direct Assignment Carrier in accordance with Article XII.2.

7. Reconciliation Process.

- (a) For each policy year, a reconciliation process shall be undertaken to reconcile the percentage of premium assigned to each Voluntary Direct Assignment Carrier for that policy year with its share of the total assignable premium for that policy year. This process shall allow for:
 - (i) Intermediate Reapportionment - An optional intermediate reapportionment of pool shares may be made within two years of the beginning of the policy year.
 - (ii) Final Reapportionment - All policy years, including those policy years for which an intermediate reapportionment was completed, will be subject to a final reapportionment of pool shares to be made within three years of the beginning of the policy year.
- (b) Such reapportionment calculations shall be based on the current estimate of:
 - (i) The percentage of Residual Market premium assigned to the particular Voluntary Direct Assignment Carrier for the policy year.
 - (ii) The target percentage for the particular carrier for the policy year.
- (c) A participation ratio shall be calculated for each Voluntary Direct Assignment Carrier as follows:

$$(\text{Target Percentage} - \text{Assigned Percentage}) \times \left(\frac{\text{Residual Market Premiums}}{\text{Reinsurance Pool Premiums}} \right)$$

- (d) If a Voluntary Direct Assignment Carrier was assigned less than its proper share of assignable premium, as calculated by the WCRIBMA, it shall be given a positive participation ratio corresponding to the difference. If such carrier was assigned more than its proper share of assignable premium, it shall be given a negative participation ratio corresponding to the difference. The appropriate off-balance shall be applied to the participation ratios of carriers who are not Voluntary Direct Assignment Carriers, so that the total of all participation ratios is 100%.
 - (e) As used in the above formula, "Residual Market Premiums" shall be the total premiums in a policy year assigned to either Voluntary Direct Assignment Carriers or Servicing Carriers. As used in the above formula, "Reinsurance Pool Premiums" shall be the total premiums in a policy year assigned to Servicing Carriers.
 - (f) After the above reapportionments take place, each Voluntary Direct Assignment Carrier will have a participation ratio for each policy year and thus will share to some extent in the results of the Residual Market business written on behalf of the Pool by Servicing Carriers. However, that carrier will share to a lesser extent than if the carrier had not accepted voluntary direct assignments.
- 8. Audit and Inspections.** The WCRIBMA 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 with respect to any policy or policies and claims thereunder coming within the purview of this Plan of Operation.

ARTICLE X
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 or Governing Committee.
2. **Accounts.** Funds held temporarily for the benefit of Members shall be (a) held by the WCRIBMA, in its capacity as administrator of the Pool, or its designee, and (b) 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 or Governing Committee. The WCRIBMA or its designee shall have full authority to deposit, withdraw and invest such funds in order to carry out the purposes of this Plan of Operation. Accurate records shall be kept to identify such transactions.
3. **Investment Income.** All income on the funds held for the benefit of Members shall, upon receipt thereof, become subject to all the appropriate provisions of this Plan of Operation.

ARTICLE XI
INDEMNIFICATION

1. Any person or insurer made, or threatened to be made, a party to any action, suit or proceeding (except an action to collect amounts billed by the Pool), because such person or insurer was a Member, or a Servicing Carrier, or served as a member or representative of a member on the Residual Market Committee or other WCRIBMA committee, or was an officer or employee of the WCRIBMA acting on behalf of the Pool, shall be indemnified against all judgments, fines, 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, 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 lawful.
2. Such indemnification shall be provided whether or not such person or insurer is a Member, 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.
3. With respect to any action or suit to which this Article applies, the party to be indemnified hereunder shall give notice to the WCRIBMA as soon as possible, but in no event later than one hundred and twenty (120) days of being served with litigation, of any action or suit. No expenses (including attorneys' fees) shall be reimbursed to such party, nor shall such action or suit be settled, without express written consent of the WCRIBMA, such consent not to be unreasonably withheld or delayed. Notices to the WCRIBMA shall be sent to the attention of the President

of the WCRIBMA with a copy to its General Counsel or to such other person(s) designated by the WCRIBMA. All notices shall be deemed effective upon personal delivery or when received if sent by overnight delivery.

4. 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 WCRIBMA 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.
5. 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.
6. The Residual Market Committee may delegate to the President of the WCRIBMA 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.
7. 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.
8. 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. Consistent with Article XII, Section (8), Members shall be assessed, as necessary, to fund the indemnification obligations provided in this Article.
9. Notwithstanding anything else to the contrary in this Plan of Operation, any Member that was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit in its capacity as a Voluntary Direct Assignment Carrier pursuant to the Plan of Operation shall not be entitled to indemnification under this Article.

ARTICLE XII

ASSIGNMENTS, ASSESSMENTS AND EXPENSES

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

2. **Assignment of Risks.** The WCRIBMA shall review the information contained in an application and determine whether the applicant is eligible for assignment under M.G.L.c. 152, §65A.
 - (a) If the WCRIBMA determines that an applicant is eligible for Pool coverage, the WCRIBMA shall assign the applicant to a Servicing Carrier or Voluntary Direct Assignment Carrier.
 - (i) The WCRIBMA will equitably assign applicants to each Voluntary Direct Assignment Carrier based on each such Voluntary Direct Assignment Carrier Group's percentage of the Total Net Workers' Compensation Insurance Premiums Written by all Members, as adjusted by any applicable take-out credit, in the most recent year for which data is available.
 - (ii) Applicants not assigned to a Voluntary Direct Assignment Carrier will be assigned to each Servicing Carrier based either on the terms of its Servicing Carrier contract with the WCRIBMA or based on each designated Servicing Carrier Group's percentage of the Total Net Workers' Compensation Insurance Premiums Written by all Members, unadjusted by take-out credit, in the most recent year for which data is available. The Servicing Carriers' percentages are adjusted so each is assigned its relative share of the residual market, after the Voluntary Direct Assignment Carriers are assigned their share.
 - (iii) The reconciliation procedure for Voluntary Direct Assignment Carriers is in Article IX.7.
 - (iv) 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 M.G.L.c. 152, §65A.
 - (v) The WCRIBMA shall, upon the request of any Servicing Carrier or Voluntary Direct Assignment Carrier, provide such carrier with a copy of the records used as the basis for assigning eligible applicants.
 - (vi) The assigned carrier shall keep in confidence and shall not, except as directed by the insured or the producer of record or as otherwise may be required by law or regulatory authority, disclose to any third party, such detailed information as it may obtain by virtue of its position as the assigned carrier.
3. **Premiums.** The WCRIBMA shall distribute the premiums received from Servicing Carriers to the participating Members in proportion to their Net Workers' Compensation Insurance Premiums Written, as adjusted by any applicable take-out creditor as otherwise determined by the Residual Market Committee. The premiums distributed are subject to each Member's obligations to the Pool as set forth in this Plan of Operation and in accordance with the provisions of Section 8, Assessments and Refunds, and 9, Netting Out.
4. **Losses and Expenses.**
 - (a) The WCRIBMA shall invoice the losses and expenses of the Servicing Carriers to the participating Members in proportion to their Net Workers' Compensation Insurance Premiums Written, as adjusted by any applicable take-out credit, or as otherwise determined by the Residual Market Committee. The losses and expenses invoiced are subject to each Member's obligations to the Pool as set forth in this Plan of Operation and in accordance with the provisions of Section 8, Assessments and Refunds, and 9, Netting Out.
 - (b) Except as the Residual Market Committee shall otherwise direct, payments to or on behalf of Members shall

be limited to administration expenses, reimbursement for losses paid under policies to which these Articles apply, and for return premiums on such policies, and the payment of such refunds as may be allowed under this Plan of Operation.

- (c) The Pool shall not assume for payment, and shall not be liable to pay, any expenses of any nature whatsoever incurred by Members, except as provided for in this Plan of Operation and its Appendices.

5. Pool Administration Related Expenses.

- (a) The amount of Net Workers' Compensation Insurance Premiums Written, as adjusted by take-out credit and used as the basis of all computations in this Plan of Operation, shall also be used as the basis for allocating each participating Member's share of expenses which are not allocable directly to any assigned risk and which are incurred by the WCRIBMA in the administration of the Pool.
- (b) 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 of Operation by participating in the Pool, by a charge against funds held by the WCRIBMA on behalf of such Members, or, in the discretion of the WCRIBMA and when deemed necessary, by an assessment levied under Section 8 of this Article.
- (c) Based on the amount of Net Workers' Compensation Insurance Premiums Written, as adjusted by take-out credit, Voluntary Direct Assignment Carriers shall be separately billed for their portion of the WCRIBMA's Pool-related administrative expenses.

6. 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 Residual Market 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.

7. Transactions, Accounts and Financial Statements. Separate accounts shall be maintained by the WCRIBMA covering transactions for each policy year. The WCRIBMA 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.

8. Assessments and Refunds.

- (a) Assessments shall be levied or refunds allowed by the WCRIBMA or its designee 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, as adjusted by any applicable take-out credit, during such calendar year by such Member shall bear to the total Net Workers' Compensation Insurance Premiums Written, as adjusted by any applicable take-out credit, 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 Article IX of this Plan of Operation.

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- (b) 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 any applicable Servicing Carrier agreement, shall be that shown by the records of the WCRIBMA. 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, the 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.
- (c) Unless otherwise approved by the Commissioner or the WCRIBMA, the amount of any assessment levied shall be paid by the due date indicated on the quarterly invoice, or other statement, and the amount of any refund allowed shall be distributed within such reasonable time as may be determined by the Residual Market Committee, following the submission of the quarterly invoice, or other statement referred to herein.
- (d) If a Member fails to pay its assessment by the due date indicated on the quarterly invoice, or other statement, the Member shall pay a late payment fee of one and one-half (1½) percent of the amount due for each thirty (30) day period of delay or portion thereof. If a Member has not paid its assessment, the WCRIBMA, or any third party designated by the WCRIBMA, may send a written notice of default to the Member. Any balance owed to the Pool must be paid on or before the fifteenth calendar day following the date of mailing of the written notice of default ("Due Date"). If such balance remains unpaid as of the Due Date, the Member shall compensate the Pool for all damages and expenses incurred by the WCRIBMA, or any third party designated by the WCRIBMA as a result of its failure to pay any balance owed to the Pool under this Plan of Operation. Damages and expenses as used herein shall include but not be limited to the reasonable attorneys' fees incurred by the WCRIBMA, or any third party designated by the WCRIBMA directly or indirectly with the collection of the balance due, the cost of all WCRIBMA staff time or staff time of any third party designated by the WCRIBMA spent in connection with staff efforts to collect the balance outstanding, all financial losses resulting from nonpayment, and all other expenses and losses relating thereto.
- (e) In accordance with M.G.L. c.152, §65G, any Member shall be entitled to appeal to the Commissioner any assessment, late payment fees, damages or expenses which were levied in accordance with this Plan of Operation. However, before commencing an appeal under §65G or any other appeal arising out of a dispute regarding the Plan of Operation, the Member shall pay all undisputed outstanding assessments and all other undisputed amounts owed to the Pool but not disputed late payment fees, damages, expenses or attorney fees that the WCRIBMA has previously levied, and shall remain current on all amounts owed to the Pool while any appeal is pending. If the Commissioner rules in favor of the Member, a proper adjustment, including interest at the prime rate and any damages and expenses assessed, will be made by the Pool to the Member's account.
- (f) In order to protect the other Members, the WCRIBMA shall have the authority to ensure that a member company pays all amounts owed to the Pool by taking actions which may include, any or all of those set forth in Article V, Section 3.
- (g) The WCRIBMA 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 within ten (10) business days of its receipt of the

Member's written request. Such a request for records, or any matters regarding the request for records, shall not suspend or abrogate the Member's obligation to pay and remain current on all amounts billed by the Pool.

9. **Netting Out.** Notwithstanding any contrary provisions in this Plan of Operation, 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 or the Pool at that time.
10. **Distribution Upon Termination of the Pool.** Upon termination of the Pool, distribution by way of refund (if any) shall be made to the Members entitled to participate therein 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 XIII

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 XIV

AMENDMENTS

Amendments to this Plan of Operation may be made by the WCRIBMA, in its capacity as Pool Administrator, following approval by the Residual Market Committee and the Governing Committee, or may be made at the direction of the Commissioner upon reasonable notice to the WCRIBMA and after a hearing, pursuant to M.G.L c. 152, §65C. All amendments to the Plan of Operation proposed by the WCRIBMA shall be submitted to the Commissioner for approval and shall be effective as of the date indicated in the Commissioner's approval.

ARTICLE XV

EFFECTIVE DATE

This Amended and Restated Plan of Operation, supersedes in its entirety the Plan of Operation dated July 1, 2016, as amended, and shall become effective as of the date indicated in the Commissioner's approval.