

# MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION PLAN OF OPERATION

## ARTICLE I

### **Name**

**1.01.** The name of this unincorporated, non-profit association of insurers shall be the Michigan Catastrophic Claims Association (hereinafter referred to as the "Association").

## ARTICLE II

### **Purpose**

**2.01.** It is the purpose of the Association to implement Act No. 136, Public Acts of 1978, being Section 3104 of the Michigan Insurance Code of 1956, as amended, MCLA 500.3104, creating a Catastrophic Claims Association to indemnify members against ultimate loss in excess of the applicable amount set forth in Section 3104(2) of the Michigan Insurance Code, sustained under the statutorily required personal protection insurance coverages under policies of insurance providing the security required by section 3101(1) of the Michigan Insurance Code for the owners and registrants of motor vehicles required to be registered in the State of Michigan, resulting from each loss attributable to an accident which occurs on or after July 1, 1978.

**2.02.** Nothing in this Article II shall be construed to enlarge or otherwise affect the rights and obligations of the association or its Members and 3103 Members as specified in the following sections of this Plan or in the Michigan Insurance Code of 1956, as amended.

## ARTICLE III

### **Effective Date**

**3.01.** This Plan of Operation shall become effective on the date on which both of the following conditions shall have been satisfied: (i) The Commissioner issues written approval of this Plan or, if not sooner disapproved by written order of the Commissioner, thirty days has elapsed after the date of its submission to the Commissioner, and (ii) this Plan has been approved by majority vote of the Board and ratified by majority vote of the members, each member being allotted the number of votes equal to the number of its total Earned Car Years during the preceding calendar year.

## ARTICLE IV

### **Definitions**

**4.01.** As used in this Plan of Operation:

- (a) "**Board**" means the Board of Directors of the Association.
- (b) "**Commissioner**" means the Commissioner of the Office of Financial and Insurance Services of the State of Michigan or such person as may succeed the Commissioner in the regulation of insurance in the State of Michigan.
- (c) "**Michigan Insurance Code**" means the Michigan Insurance Code of 1956, as amended, as in force at the effective date of this Plan of Operation and as such law may thereafter be amended from time to time.

- (d) "**Member**" means (i) each insurer engaged in writing insurance coverages under policies of insurance providing the security required by Section 3101(1) of the Michigan Insurance Code for the owners and registrants of motor vehicles required to be registered in the State of Michigan, and (ii) each group self-insurance pool providing motor vehicle security under Section 9 of Act No. 138 of the Public Acts of 1982, being Section 124.9 of the Michigan Compiled Laws. If two or more such insurers are "affiliated" as that term is defined in Section 1301 of the Michigan Insurance Code, then such insurers shall be deemed to constitute and be one Member of the Association for all purposes of this Plan of Operation except where the context indicates otherwise. The term "Member" does not include 3103 Members.
- (e) "**3103 Member**" means each insurer engaged in writing insurance coverages under policies of insurance providing the security required by Section 3103(1) of the Michigan Insurance Code for the owners and registrants of motorcycles required to be registered in the State of Michigan. If two or more such insurers are "affiliated" as that term is defined in Section 1301 of the Michigan Insurance Code, then such insurers shall be deemed to constitute and be one 3103 Member of the Association for all purposes of this Plan of Operation except where the context indicates otherwise.
- (f) "**Earned Car Years**" means the number of earned vehicle years (or the total number of earned vehicle months divided by twelve, if so reported) of insurance providing to any and all vehicles the security required by Sections 3101 and 3103 of the Michigan Insurance Code, written in the State of Michigan by each Member and 3103 Member, or all such members, as applicable. As used in the term "Earned Car Years" and in this definition, "car" includes motorcycle. The Board may establish, by resolution, the manner for determining Earned Car Years with respect to commercial or other vehicles where some other unit of exposure is used.
- (g) "**Historical Vehicle**" means a vehicle that is a registered historic vehicle under section 803A or 803P of the Michigan Vehicle Code, 1949 PA 300 MCL 257.803A and 257.803P.
- (h) "**Written Car Years**" means the number of net direct written vehicle years (or the total number of net direct written vehicle months divided by twelve, if so reported) of insurance providing to any and all vehicles, except Historical Vehicles, the security required by Sections 3101 and 3103 of the Michigan Insurance Code, written in the State of Michigan by each Member and 3103 Member, or all such members, as applicable. The method each Member and 3103 Member uses to calculate Written Car Years for the purpose of reporting such information to the Association shall be the same method the member uses to calculate the number of written car years the member reports to its statistical agent. As used in the term "Written Car Years" and in this definition, "car" includes motorcycle. The Board may establish, by resolution, the manner for determining Written Car Years with respect to commercial or other vehicles where some other unit of exposure is used.
- (i) "**Written Historical Vehicle Years**" means the number of net direct written Historical Vehicle years (or the total number of net direct written Historical Vehicle months divided by twelve, if so reported) of insurance providing to any and all Historical Vehicles the security required by Sections 3101 and 3103 of the Michigan Insurance Code, written in the State of Michigan by each Member and 3103 Member, or all such members, as applicable. The method each Member and 3103 Member uses to calculate Written Historical Vehicle Years for the purpose of reporting such information to the Association shall be the same method the member uses to calculate the number of Written Car Years the member reports to its statistical agent, except that this method will be applied to policies on Historical Vehicles.

- (j) **"Reimbursable Ultimate Loss"** means the actual loss payments (exclusive of optional wage loss payments and of wage loss, medical, hospital and related costs not required to be paid by a Member because of the coordination of benefits) in excess of the applicable amount set forth in section 3104(2) of the Michigan Insurance Code, sustained under personal protection insurance coverages under policies of insurance providing the security required by section 3101(1) of the Michigan Insurance Code for the owners and registrants of motor vehicles required to be registered in the State of Michigan, which a Member is obligated to pay by reason of an occurrence and which are paid or payable by the Member. For purposes of determining the amount applicable under section 3104(2), a policy of insurance is considered to be issued or renewed on the date the policy (or renewal, as the case may be) becomes effective. If a Member is obligated to pay such loss amounts to two or more claimants under one or more policies of insurance by reason of a single occurrence, the "Reimbursable Ultimate Loss" shall be the amount by which the aggregate of such actual loss payments exceed the applicable amount set forth in section 3104(2) of the Michigan Insurance Code (except as set forth in the next sentence). "Reimbursable Ultimate Loss" includes losses paid or payable on policies written by a Member on behalf of the Michigan Automobile Insurance Placement Facility, but losses payable under such a policy having an effective date on or after January 1, 1981, shall not be aggregated with losses under any similar policies or with losses under any other policy for purposes of determining the "Reimbursable Ultimate Loss" sustained by the Member. "Reimbursable Ultimate Loss" shall not include loss adjustment, investigating service or legal fees (except as otherwise provided in Section 10.06 of this Plan) or any other claim expenses (except as otherwise provided in Section 10.04 of this Plan); nor interest or court costs; nor exemplary or punitive damages; nor any amounts payable under the provisions of the Uniform Trade Practices Act, MCLA 500.2001 et seq., (as presently in force or hereafter amended), or similar provisions of law in another jurisdiction; nor any amounts payable for refusal by a Member to pay amounts due under a policy of insurance (unless the Association previously has specifically approved in writing the action taken by the Member out of which the claim arises).

## ARTICLE V **Membership**

**5.01. Membership.** Every insurer who, by virtue of the provisions of Section 3104(1) of the Michigan Insurance Code, as amended, is required to be a member of the Association as a condition of its authority to transact insurance in the State of Michigan, shall be a Member. (Notwithstanding the foregoing, the Assigned Claims Facility and Plan created pursuant to Section 3171 of the Michigan Insurance Code, shall not be a member of the Association.) Every group self-insurance pool providing motor vehicle security under Section 9 of Act No. 138 of the Public Acts of 1982, shall be a Member.

**5.02. 3103 Membership.** Every insurer who, by virtue of the provisions of Section 3103(1) of the Michigan Insurance Code, as amended, is required to be a member of the Association for assessment purposes as a condition of its authority to transact insurance in the State of Michigan, shall be a 3103 Member.

**5.03. Withdrawal.** An insurer may withdraw as a Member or 3103 Member of the Association upon ceasing to write insurance which provides the security required by Section 3101 or Section 3103 in the State of Michigan, provided that (i) such withdrawal shall be effective as of the day following the day on which the insurer's premium obligation is finally determined for the Association's fiscal year during which the insurer ceased to provide such insurance within the State of Michigan, (ii) all unpaid premiums and interest which have been charged to the withdrawing insurer shall be due and payable as of the effective date of the withdrawal, and (iii) the withdrawing insurer shall continue to be bound by the Plan of Operation with respect to the performance and completion of any unsatisfied liabilities and obligations (including the continuing obligation to submit reports regarding claims pursuant to Section 10.01) to the Association. A group

self-insurance pool may withdraw as a Member of the Association upon ceasing to provide motor vehicle security, provided that (i) such withdrawal shall be effective as of the day following the day on which the pool's premium obligation is finally determined for the Association's fiscal year during which the pool ceased to provide such security within the State of Michigan, (ii) all unpaid premiums and interest which have been charged to the withdrawing pool shall be due and payable as of the effective date of the withdrawal, and (iii) the withdrawing pool and its members shall continue to be bound by the Plan of Operation with respect to the performance and completion of any unsatisfied liabilities and obligations (including the continuing obligation to submit reports regarding claims pursuant to Section 10.01) to the Association.

**5.04. Merger.** When a Member or 3103 Member has been merged or consolidated into another insurer or another insurer has reinsured such a member's entire business which provide the security required by Section 3101 or Section 3103 in this State, the member and the insurer which is the successor in interest of the member shall be liable for the member's obligations to the Association. When a member group self-insurance pool has been merged or consolidated into another pool which provides the security required by law, the member pool and the pool which is its successor in interest shall be liable for all the former's obligations to the Association.

**5.05. Michigan Automobile Insurance Placement Facility.** As used in this Plan of Operation, "policies written on behalf of the Michigan Automobile Insurance Placement Facility" means policies of insurance issued by a Member pursuant to a loss sharing plan as authorized by Sections 3320(1)(c) and 3330(1) (e) of the Insurance Code. Except as otherwise provided herein, policies written by a Member on behalf of the Michigan Automobile Insurance Placement Facility (hereinafter "MAIPF") shall be treated in the same manner as any other policy written by that member. Policies written by a Member under a special risk distribution procedure as authorized by Section 3320 (1) (a) of the Insurance Code shall be treated in the same manner as policies issued by the Member as voluntary business (including for purposes of aggregation under Section 4.01 (f)).

## ARTICLE VI **Board of Directors**

**6.01. Powers.** The Board of Directors shall have responsibility for the administration of the Plan and the management of the affairs and operation of the Association, consistent with the Plan of Operation and the provisions of the Michigan Insurance Code.

**6.02. Numbers, Selection and Qualifications.** The Board of Directors shall consist of five (5) Members, each of whom shall be appointed by the Commissioner pursuant to Section 3104(11) of the Insurance Code.

**6.03. Term.** A director shall hold office for the term for which appointed and until the successor shall have been appointed and qualified, or until resignation. All Directors appointed to serve terms (other than a vacancy) will be appointed for a four year term.

**6.04. Ex Officio Member of the Board.** The Commissioner, or a representative designated by the Commissioner, shall be an ex officio member of the Board without vote (but shall not be counted for purposes of determining if a quorum is present).

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

**6.06. Appointment of Designated Representatives.** Each member of the Board shall select a qualified

person as its designated representative who shall act for such member in all matters, including attendance and voting at all meetings of the Board. In the event of the absence of the designated representative from any meeting, the member shall appoint a substitute representative who may attend with like powers in the designated representative's place and stead.

**6.07. Reimbursement for Expenses.** Members of the Board shall serve without compensation, but they may be reimbursed, to the extent and in the manner approved by the Board, for their actual and necessary expenses incurred in attendance at Board meetings, committee meetings or otherwise in connection with Association business. The Board may authorize reimbursement of the actual and necessary expenses incurred by others in serving on committees established by the Board or otherwise assisting the Board in the performance of its duties.

## **ARTICLE VII**

### **Meetings of Board of Directors**

**7.01. Quorum and Votes.** At any meeting of the Board of Directors, four (4) members of the Board shall constitute a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board. Each member of the Board shall have one vote, and the Chair shall retain the right to vote on all issues.

**7.02. Annual Meeting.** A regular annual meeting of the Board of Directors shall be held at such time as is designated by the Board. The annual meeting shall be held at the office of the Association or at such other place within the State of Michigan as is designated by the Board. At each annual meeting or at a special meeting held pursuant to Section 7.03, the Board shall:

- (1) Review the Plan of Operation and determine if any changes are necessary.
- (2) Review each outstanding contract and determine if any changes are necessary.
- (3) Review the premium charges and determine the adequacy thereof.
- (4) Review the arrangements with any custodian bank or trust company.
- (5) Review the adequacy of the reports, information and statistics submitted by Members and 3103 Members and determine any necessary improvements or action.
- (6) Receive and consider reports from the standing committees and other committees.
- (7) Discuss and consider such other matters as may be appropriate.

**7.03. Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the Chair, the Commissioner, or any three members of the Board. Directors shall be notified of any special meeting of the Board at least three (3) days in advance of the meeting, and such notice shall state the time, place and purpose of the meeting. Any Director may waive notice of any meeting.

**7.04. Participation by Telephonic Means.** A member of the Board of Directors may participate in any meeting of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear and otherwise communicate with each other. Participation in a meeting pursuant to this section constitutes presence in person at the meeting. In addition to the foregoing, members of the Board may vote by telephone and a unanimous affirmative vote of the Board taken by a telephone poll shall be deemed the same as action taken at a Board meeting at which a quorum was present.

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

## ARTICLE VIII **Officers**

**8.01.** The Board of Directors shall elect a Chair, and may elect a Vice-Chair, at its annual meeting, and may elect such other officers from time to time as it shall deem desirable.

- (a) The Chair shall preside at all meetings of the Board of Directors. The Chair may sign any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed. The Chair shall discharge such other duties as may be incidental to the office or as shall be prescribed by the Board of Directors from time to time. The Chair shall serve as an ex officio member of all committees.
- (b) In the absence of the Chair, the Vice-Chair, if one is elected, shall perform the duties of the Chair.

## ARTICLE IX **Premiums**

**9.01. Calculation of Premiums.** The Board shall determine the Total Premium, the Average Total Premium Per Car and Historical Vehicle, the Average Premium Per Car, and the Average Premium Per Historical Vehicle prior to or at the earliest practicable time during the period for which the premium is applicable.

- (a) The Board shall calculate a “**Total Premium**” sufficient to cover the expected losses (including incurred but not reported losses for the period), charges payable to reinsurers under reinsurance agreements, and expenses of the Association (including any costs or expenses of indemnification payable pursuant to Article XVIII) which the Association will likely incur during each annual (or other) period for which the premium is applicable. In addition to the method described in section 9.08 for the return of surplus to Members and 3103 Members, the total premium may be adjusted for any excess or deficiency in premiums from previous periods and, at the discretion of the Board, any such excesses or deficiencies may be fully adjusted in a single period or may be adjusted over several periods ratably or in such proportion as the Board may deem advisable.
- (b) An “**Average Total Premium Per Car and Historical Vehicle**” is calculated by dividing the Total Premium determined pursuant to section 9.01.(a) by the sum of the estimated total Written Car Years of all Members and 3103 Members during the period to which the premium applies and 100% of the Written Historical Vehicle Years of all members and 3103 Members during the period to which the premium applies.
- (c) An “**Average Premium Per Car**” is calculated by dividing the total premium determined pursuant to section 9.01.(a) by the sum of the estimated total Written Car Years of all Members and 3103 Members during the period to which the premium applies and 20% of the Written Historical Vehicle Years of all members and 3103 Members during the period to which the premium applies.
- (d) An “**Average Premium Per Historical Vehicle**” is calculated by multiplying the Average Premium Per Car as determined pursuant to section 9.01.(c) by 20%.

**9.02. Preliminary Premium Assessment.** The Association shall charge to each Member and 3103 Member, prior to or at the earliest practicable time during the period for which the premium is applicable, a preliminary premium assessment to be calculated as follows:

- (a) For the annual period beginning July 1, 2002, the preliminary premium assessment for each Member and 3103 Member shall be an amount equal to such member's total Earned Car Years written during the 2001 calendar year, multiplied by the Average Premium Per Car for the annual period beginning July 1, 2002.
- (b) For annual (or other periodic) premium assessment periods beginning on or after July 1, 2003, the preliminary premium assessment for each Member and 3103 Member shall be an amount equal to the sum of (i) such member's total Written Car Years during the immediately preceding assessment period (or such other annualized period as the Board may select), multiplied by the Average Premium Per Car for the current assessment period, and (ii) such member's total Written Historical Vehicle Years during the immediately preceding assessment period (or such other annualized period as the Board may select), multiplied by the Average Premium Per Historical Vehicle for the current assessment period.

The preliminary premium shall be allocated among and charged to Members and 3103 Members on such periodic basis as the Board may establish. The periodic charges need not be uniform in amount.

**9.03. Final Premium Assessment.** As soon as is practicable after the end of each annual (or other) period for which the premium is applicable, the Association shall charge to each Member and 3103 Member a final premium assessment for the period just completed. The final premium payable by each Member and 3103 Member will be determined as follows:

- (a) For the annual premium assessment period beginning July 1, 2002, the final premium assessment for each Member and 3103 Member shall be an amount equal to such member's total Written Car Years and Written Historical Vehicle Years during such period, multiplied by the Average Total Premium Per Car and Historical Vehicle for the period.
- (b) For annual (or other periodic) premium assessment periods beginning on or after July 1, 2003, the final premium assessment for each Member and 3103 Member shall be an amount equal to the sum of (i) such member's total Written Car Years during such period, multiplied by the Average Premium Per Car for the period, and (ii) such member's total Written Historical Vehicle Years during such period multiplied by the Average Premium Per Historical Vehicle for the period.

**9.04. Application of Prior Premium Payments.** Any payments made by a Member or 3103 Member pursuant to Section 9.02 will be applied against the premium ultimately payable for the completed period pursuant to Section 9.03 and each Member and 3103 Member will be charged for any deficiency or credited for any excess (such credit, at the option of the Board, to be applied against premiums subsequently due pursuant to Sections 9.02 and 9.03 or refunded to the Member or 3103 Member).

**9.05. Payment.** Premiums charged under Sections 9.02 and 9.03 shall be paid by Members and 3103 Members in full within such period of time after the premium charge is billed by the Association as the Board may establish. The Association shall have the right to audit and verify any Member's or 3103 Member's determination of a premium payable under this Article IX. In connection with any such audit, a Member or 3103 Member shall provide such documentation supporting its determination of the premium payable as the Association may request.

**9.06. Policies on Behalf of MAIPF.** Any Member who writes policies on behalf of the MAIPF is ultimately liable for premiums based upon car years so written; nevertheless, that portion of a Member's premium that is

based upon policies written on behalf of MAIPF may be billed to and paid by either the Member or MAIPF for the account of the Member.

**9.07. Allocation of Liabilities.** The Board shall establish, by resolution, the method for redistributing subsequently determined excesses or deficiencies in the premium assessment for a particular period. In any dispute as to the method to be used, the determination of the Board shall be final and the Member or 3103 Member shall be bound thereby.

**9.08. Lump Sum Distribution of Surplus.** At the discretion of the Board, excesses in premiums from previous periods may be adjusted at any time by way of a lump sum distribution of surplus to Members and 3103 Members. In the event the Board determines to adjust excesses in such manner, the distribution to each Member and 3103 Member shall be calculated in a manner determined by the Board. Without limiting the means available to the Board under the preceding sentence for calculating the distribution, the Board may base the amount of the distribution to each Member and 3103 Member on the sum total of (a) the number of vehicles subject to a premium assessment by the association for which the security required by section 3101(1) or 3103(1) of the Michigan Insurance Code is in effect as of a date specified by the Board by resolution, and (b) the number of vehicles subject to a premium assessment by the association for which the security required by section 3101(1) or 3103(1) of the Michigan Insurance Code is not in effect as of the specified date, but for which comprehensive and/or collision coverage is in effect as of the specified date and the security otherwise required by section 3101(1) or 3103(1) of the Michigan Insurance Code is not required because the vehicle is not being “driven or moved upon a highway” as that term is used in section 3101(1) of the Michigan Insurance Code.

## ARTICLE X Operations

**10.01. Reports Regarding Claims.** Members and 3103 Members shall report to the Association such information as the Board may require on forms prescribed by the Board: (a) As soon as practicable after the loss occurrence, Members shall report each claim which, on the basis of the injuries or damages sustained, may reasonably be anticipated to result in a Reimbursable Ultimate Loss, and for purposes of reporting the Member shall consider itself legally liable for the injuries and damages. (The Board may specify, in its discretion, the types of injuries and/or amounts of claims which must be reported to the Association); (b) Promptly, or on such periodic basis as the Board may prescribe, Members shall report any changes in the amount of the reserve established with respect to any such claim or of any subsequent developments likely to materially affect the interest of the Association in the claim; (c) At such times as the Board may fix, Members shall report such loss and expense data, statistics and other information as the Board may require; (d) The MAIPF shall promptly notify the Association when a Member ceases to be authorized to write policies on behalf of MAIPF. Such a Member is not relieved of its responsibility for providing the Association with all usual or necessary reports regarding claims arising from policies it wrote on behalf of MAIPF, unless MAIPF assigns this responsibility to another Member.

**10.02. Inadequate or Untimely Reports.** If a Member or 3103 Member refuses to timely submit the reports or information required of it pursuant to Section 10.01 or otherwise, or if the Board should determine that the reports and information submitted by a Member or 3103 Member are unreliable or incomplete, the Board may, at the member's expense, direct that an authorized representative of the Association (which may be another member) shall audit and inspect such member's records and compile the required information and data.

**10.03. Association's Data.** The Association shall maintain such loss and expense data as to its liabilities as the Board deems appropriate and necessary.

#### **10.04. Reimbursement.**

- (A) The Association shall reimburse each Member for 100% of the Reimbursable Ultimate Loss sustained by such Member resulting from a loss attributable to an accident which occurs on or after July 1, 1978. The Association shall also reimburse each insurer and group self-insurance pool (who shall be deemed to be a "Member" for purposes of Articles X and XI) who has withdrawn as a Member of the Association, or who has succeeded to the obligations of a former member by way of merger or consolidation, for 100% of the Reimbursable Ultimate Loss sustained by such former member, insurer or pool, as the case may be, resulting from a loss attributable to an accident which occurs on or after July 1, 1978.
- (B) With respect to any reimbursable ultimate loss eligible for reimbursement under Section 10.04(A), if the amount of the loss has been reduced through use of a medical bill repricing or other medical expense cost containment method, the Association shall reimburse for the reduced loss amount plus the actual cost of repricing or cost containment, but such reimbursement amount shall be limited to the before repricing amount.

**10.05. Reimbursement Payments.** With respect to any claim which involved a Reimbursement under Section 10.04 of this Plan, the Member shall submit to the Association an itemized account, on such forms and with such supporting documentation of claims payments or expenses as the Board may prescribe, as soon as practicable after the close of the fiscal quarter for which reimbursement is sought. A Member may elect reimbursement on a monthly basis if its surplus is \$10 million or less as shown on the most recent annual statement on file with the commissioner of insurance at the time the request for reimbursement is made. The Association shall, upon verification of the propriety and amount of the payments made and the Member's entitlement to reimbursement therefor, reimburse the Member the amount due it. Any such reimbursement arising under a policy issued by a Member on behalf of the MAIPF, may be paid directly to the Member or to MAIPF for the account of the Member. If responsibility for making payments under such a policy is transferred from one Member to another by MAIPF, reimbursement made under that policy will be as directed by MAIPF.

**10.06. Recovery from Other Sources.** Whenever a Member recovers from a third party an amount for which it has already been reimbursed by the Association, the Member shall promptly turn such recovered monies over to the Association to the extent of any reimbursement theretofore received, provided that the Board may permit a Member to retain therefrom such amount as the Board deems reasonable and necessary attorney fees and litigation costs incurred in connection with obtaining the recovery from the third party.

**10.07. Review of Claims Procedures and Practices.** The Association shall have the right, on the giving of reasonable notice, to review through its authorized representative (which may be another member) the claims procedures and practices of any member and to audit and inspect.

**10.08. Inadequate Claims Procedures and Practices.** Members shall adjust claims with the same level of care, and using the same claims procedures and practices, both before and after the ultimate loss sustained reaches the applicable amount stated in section 3104 (2) (a)-(k). If, in the judgment of the Board, a claims procedure or practice of a member is inadequate to properly service the liabilities of the Association or jeopardizes the interests of the Association, the Association may, at the member's expense, undertake or contract with another person (including another member) to adjust, or assist in the adjustment of, a claim or claims for the member creating a potential liability to the Association.

## ARTICLE XI

### **Defaults**

**11.01. Interest Charges.** If any Member or 3103 Member fails to timely pay the premium or interest charged to it, interest shall be charged the Member or 3103 Member on all past due amounts or deficiencies at such rate as the Board may establish from time to time.

**11.02. Other Action.** If any Member or 3103 Member fails to timely pay the premium or interest charged to it, and such deficiency is not cured within ten (10) days after notice in writing thereof is sent by the Association to the delinquent member, the Association may, at the discretion of the Board, offset the past due amount or deficiency against any reimbursement payment then or thereafter payable to Member or 3103 Member under Section 10.05 for the purpose of satisfying in full the liabilities and obligations of the Member or 3103 Member to the Association. The Board may also authorize the taking of such other action as it deems proper and appropriate, including the institution of legal action or invoking the assistance of the Commissioner with respect to such action as may be permitted under the Michigan Insurance Code. Any legal and other expenses incurred by the Association as the result of a Member's or 3103 Member's default, shall be charged to and paid by the Member or 3103 Member.

## ARTICLE XII

### **Insolvency of a Member**

**12.01. Apportionment of Liability Among Members.** If a domiciliary receiver is appointed for a present or former Member or a present or former 3103 Member for purposes of liquidation, any liability of such insurer left unsatisfied shall be apportioned among the remaining members of the Association in proportion to the premium charges made by the Association (exclusive of any premium charged the insolvent insurer) pursuant to Section 9.03 for the period within which the receiver was appointed by the final order of a court having jurisdiction over such insolvent insurer. The unsatisfied liability of the insolvent insurer so apportioned among the members of the Association, shall be part of the premium payable by such members pursuant to Section 9.03.

**12.02. Apportionment of Recovery.** The Association shall have, on behalf of all of the remaining members, all rights allowed by law against the estate or funds of the insolvent Member or 3103 Member for sums due the Association, and any amounts received by the Association as a result thereof shall be credited to the members in proportion to the share of the insolvent insurer's liability theretofore charged to them pursuant to Section 12.01. At the discretion of the Board, such credits may be handled in the manner described in Section 9.04.

## ARTICLE XIII

### **Administration**

**13.01. Address.** The official address of the Association shall be the address of the Association's administrative office unless otherwise designated by the Board.

**13.02. Performance of Administrative Functions.** The Board may employ such persons, firms or corporations as it deems appropriate to perform the administrative functions necessary for the performance of any of the duties imposed on the Board or the Association. The Board may use the mailing address of such person, firm or corporation as the official office address of the Association. Such person, firm or corporation shall keep such records of its activities as may be required by the Board.

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

**13.04. Borrowings.** The Board may borrow money from any person or organization, including a member insurer, as the Board in its judgment deems advantageous for the Association.

**13.05. Reinsurance.** The Board may reinsure all or any portion of the potential liability of the Association, with reinsurers licensed to transact insurance in Michigan or approved by the Commissioner. The Board may contract with such reinsurer(s) to perform any of the activities of the Association referred to in Article X and any other administrative functions of the Association.

**13.06. Office, etc.** The Board may purchase or lease such housing and equipment, and may employ such personnel, as it deems necessary to assure the efficient operation of the Association.

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

**13.08. Investments.** All monies due the Association for premiums or interest shall be paid to the Association and held, disbursed, invested and reinvested, and securities acquired by investment of the Association's cash funds or otherwise may be disposed of, by the Board in accordance with this Plan of Operation and such resolutions and rules as may be adopted by the Board, provided, however, that investments made hereunder shall only be such as may be made by domestic casualty companies under the Michigan Insurance Code and known as capital and reserve investments.

**13.09. Income on Association's Assets.** All profit or loss arising from the investment of funds held by the Association, and all income from such investment of funds, shall be added to and become a part of, during the period realized or received by the Association, the general funds of the Association and may be used for the purpose of paying expenses of the Association and Reimbursable Ultimate Losses.

**13.10. Adoption of Rules, etc.** The Board may adopt reasonable rules and policies for the administration of the Association, enforce such, and delegate authority, as the Board considers necessary to assure the proper administration and operation of the Association consistent with this Plan of Operation.

## ARTICLE XIV **Committees**

**14.01. Standing Committees.** The Chair of the Board shall appoint standing committees (which may, but need not, consist of members of the Association) as follows:

- (a) An Actuarial Committee which shall make recommendations to the Board regarding the premium charges for each period and report to the Board regarding the sufficiency of prior premium charges.
- (b) An Investment Committee, which shall establish the investment policy of the Association, subject to such guidelines as may be established in this Plan of Operation and by the Board.
- (c) A Claims Committee, which shall review claims procedures and practices of member companies, generally or with respect to specific cases, pursuant to procedures approved by the Board, and

make recommendations to the Board, and take such action as may be deemed proper pursuant to Article X.

- (d) An Audit Committee, which shall, itself or through a designated representative, review and audit the books and records of the Association and report to the Board on the financial condition of the Association.

**14.02. Other Committees.** The Chair may appoint such other standing committees or special committees as may be deemed necessary for the transaction of business and conduct of affairs.

## ARTICLE XV **Complaints and Appeals**

**15.01.** Any Member or 3103 Member or other interested person aggrieved with respect to any action or decision of the Board or the Association, or any committee or representative thereof, may within thirty (30) days file a complaint with the Board of Directors concerning such. The Board, or a committee appointed by it, shall hear and render a determination upon the complaint within a reasonable length of time after receipt thereof.

## ARTICLE XVI **Records and Reports**

**16.01. Minutes.** A written record of the important proceedings of each Board meeting shall be made. The original of this record shall be retained by the Chair, with copies furnished to each Board member.

**16.02. Annual Reports.** The Board shall make an annual report to the Commissioner and to each Member and 3103 Member. Such report shall include a review of the Association's transactions, activities and affairs and an accounting of its income and disbursements for the past year.

**16.03. Examination of Records, etc.** The books of account, records, reports and other documents of the Association shall be open to inspection by Members and 3103 Members only at such times and under such conditions and regulations as the Board shall reasonably determine. Claim, underwriting and other nonpublic information relating to any specific risk, claimant, plaintiff or defendant shall be treated as confidential by the Association and will not be disclosed unless the Association is legally required or permitted to do so.

## ARTICLE XVII **Fiscal Year**

**17.01.** The fiscal year of the Association shall begin on the first day of July and end on the last day of June of each year, or on such other dates as the Board may determine by a duly adopted resolution.

## ARTICLE XVIII **Limitation of Liability and Indemnification**

**18.01. Limitation of Liability.** A director is not personally liable to the Association or its Members and 3103 Members for monetary damages for a breach of the director's fiduciary duty except for (i) a breach of the director's duty of loyalty to the Association or its Members and 3103 Members, (ii) acts or omissions not in good faith of that involve intentional misconduct or knowing violation of law, (iii) a transaction from

which the director derived an improper personal benefit or (iv) acts or omissions occurring before January 1, 1989.

**18.02. Non-Derivative Actions.** Subject to all of the other provisions of this Article XVIII, the Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal, other than an action by or in the right of the Association, by reason of the fact that the person is or was a director or officer of the Association, including a member of any committee or subcommittee of the Association, against expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Association or its members, and with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Association or its members, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

**18.03. Derivative Actions** . Subjects to all of the provisions of this Article XVIII, the Association shall indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that the person is or was a director or officer of the Association, including a member of any committee or subcommittee of the Association, against expenses, including actual and reasonable attorneys' fees, and amounts paid in settlement incurred by the person in connection with such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Association or its members. However, indemnification shall not be made for any claim, issue or matter in which such person has been found liable to the Association unless and only to the extent that the court in which such action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for the expenses which the court considers proper.

**18.04. Expenses of Successful Defense.** To the extent that a person entitled to indemnification has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 18.02 or 18.03 above, or in defense of any claim, issue or matter in the action, suit or proceeding, the person shall be indemnified against expenses, including actual and reasonable attorneys' fees, incurred by such person in connection with the action, suit or proceeding and any action, suit, or proceeding brought to enforce the mandatory indemnification provided by this Section 18.04.

**18.05. Contract Right; Limitation on Indemnity.** The right to indemnification conferred in this Article XVIII shall be a contract right, and shall apply to services of a director or officer as an employee or agent of the Association as well as in such person's capacity as a director or officer. Except as provided in section 18.04 above, the Association shall have no obligations under this Article XVIII to indemnify any person in connection with any proceeding, or part thereof, initiated by such person without authorization by the Board.

**18.06. Determination That Indemnification is Proper.** Any indemnification under Section 18.02 and 18.03 above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in Sections 18.02 and 18.03, whichever is applicable. Such determination and evaluation shall be made in any of the following ways:

- (1) By a majority vote of a quorum of the Board consisting of directors who were not parties to the action, suit or proceeding.
- (2) If the quorum described in clause (1) above is not obtainable, then by a majority vote of a committee of directors duly designated by the Board who are not parties (or whose individual representatives were not parties) to the action. The committee shall consist of not less than two (2) disinterested directors.
- (3) By independent legal counsel in a written opinion.
- (4) By vote of the members.

**18.07. Proportionate Indemnity.** If a person is entitled to indemnification under Sections 18.02 and 18.03 above for a portion of expenses, including attorneys' fees, judgments, penalties, fines and amounts paid in settlement, but not for the total amount thereof, the Association shall indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

**18.08 Expense Advance.** The Association may pay or reimburse the expenses incurred by a person referred to in Sections 18.02 and 18.03 above who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding upon receipt of an undertaking by or on behalf of such person to repay the expenses if it is ultimately determined that such person is not entitled to be indemnified by the Association. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made but need not be secured.

**18.09. Non-Exclusivity of Rights.** The indemnification or advancement of expenses provided under this Article XVIII is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under a contractual arrangement with the Association. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

**18.10. Former Directors and Officers.** The indemnification provided in this Article XVIII continues as to a person who has ceased to be a director or officer and as to any other person entitled to indemnification who has ceased to hold the position creating such entitlement, and shall inure to the benefit of the heirs, executors and administrators of such person.

**18.11. Definition of Director, Etc.** For purpose of this Article XVIII, director, officer and committee or sub-committee member shall be deemed to include both the insurer designated, appointed or serving in that capacity and any individual designated by the insurer to act or serve as its representative, and the word "person" shall be deemed to include any such insurer.

**18.12. Indemnification of Employees and agents of the Association.** The Association may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Association to the fullest extent of the provisions of this Article XVIII with respect to the indemnification and advancement of expenses of directors and officers of the Association.

**18.13. Changes in Michigan Law.** In the event of any change of the Michigan statutory provisions applicable to the Association relating to the subject matter of this Article XVIII, then the indemnification to which any person shall be entitled hereunder shall be determined by such changed provisions, but only to the extent that any such change permits the Association to provide broader indemnification rights than such provisions permitted the Association to provide prior to any such change. Subject to Section 18.14 below, the Board is authorized to amend this Article XVIII to conform to any such changed statutory provisions.

**18.14. Amendment or Repeal of Article XVIII.** No amendment or repeal of this Article XVIII shall apply to or have any effect on any director or officer of the Association for or with respect to any acts or omissions of such director or officer occurring prior to such amendment or repeal.

**18.15. Treatment of Expenses.** The expense of any indemnification or reimbursement shall be treated as a cost of administering the Association in the year in which payment is made by the Association and shall be assessed among and paid by all Members and 3103 Members in the manner provided in Article IX.

**ARTICLE XIX**  
**Mail Ballot by Members**

**19.01.** Any matter, including the amendment of this Plan of Operation, upon which the members are required or permitted to vote, may be submitted to the Members and voted upon by them by mail. The Board shall fix a date for the counting of votes on proposals submitted to Members by mail, and such proposals shall be mailed to the Members for voting not less than fifteen (15) days prior to the date fixed by the Board for the counting of the votes.

**19.02.** Each Member shall be allotted the number of votes equal to the number of its total Written Car Years during the most recent annualized period for which such information is available. In the event Written Car Year data for all Members is not yet available to the Association, each Member shall be allotted the number of votes equal to the number of its total Earned Car Years written during the most recent annualized period for which such information is available. Unless otherwise provided herein, a proposal submitted to the Members for a vote by mail shall be adopted if approved by a majority of the total number of votes which Members are entitled to cast as of the date the votes are counted.

**ARTICLE XX**  
**Conformity to Statute**

**20.01.** Section 3104 of the Michigan Insurance Code (Act No. 136, P.A. 1978), as written, and as may be amended, is incorporated as part of this Plan of Operation.

**ARTICLE XXI**  
**Amendments**

**21.01.** This Plan of Operation may be amended, altered or repealed, in whole or in part, (i) by majority vote of the Board of Directors; (ii) ratified by a majority vote of the Members, each Member being allotted the number of votes equal to the number of its total Written Car Years during the most recent annualized period for which such information is available (or, if Written Car Year data for all Members is not yet available to the Association, each Member being allotted the number of votes equal to the number of its total Earned Car Years written during the most recent annualized period for which such information is available); and (iii) with the approval of the Commissioner.

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