

# **FACILITY ASSOCIATION**

## **Plan of Operation**

**Revised June 2002**

**Note:** This copy of the Plan of Operation incorporates all amendments made since the Plan of Operation was last consolidated in 1995. Facility Association Members and Insurance Regulators, in all jurisdictions where Facility Association operates, have approved these amendments and they have been noted in past bulletins.

Regulatory approval is required for recent housekeeping amendments, such as the name change from IBC to IICC and the inclusion of the new territory Nunavut. These amendments will be included in the next Mail Vote Bulletin and will be incorporated in the next consolidated version.

# **FACILITY ASSOCIATION**

## **Plan of Operation**

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B. Operating Principles

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Wherever appropriate herein the expression “broker” shall be deemed to include “brokerage”, “agent” and/or “agency”, the expression “brokerage” to include “agency” and the expression “his” to include “her”, “its” and/or “their”.

(Revised June 2002)

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**ARTICLES OF ASSOCIATION**

**ARTICLE I – ORGANIZATION**

1. The name of this organization shall be the “Facility Association” (hereinafter referred to in these Articles of Association and the Operating Principles as the “Association”). It shall have its central office in such place within Canada as the Board of Directors (hereinafter referred to in these Articles of Association and Operating Principles as the “Board”) may from time to time determine.
2. The fiscal year end of the Association shall be as determined from time to time by the Board.

**ARTICLE II – OBJECTS AND POWERS**

1. The object of the Association shall be to ensure the availability of automobile insurance for owners and licensed drivers of motor vehicles who may otherwise have difficulty obtaining such insurance.
2. The Association may operate in any Province or Territory in Canada (hereinafter referred to as “jurisdiction”) where the legislation so permits or requires.
3. Where permitted or required by legislation and authorized by resolution of the Board the Association may operate a plan in connection with claims arising with respect to uninsured or unidentified motorists.
4. Where permitted by legislation and authorized by a majority of members in a jurisdiction the Association may operate a risk sharing pool in such jurisdiction.

5.
  - (a) Where authorized by a majority of the votes of members in a jurisdiction and by resolution of the Board of Directors the Association shall operate a risk sharing pool or catastrophic claims fund to facilitate the due payment of statutory accident benefits to persons entitled thereto pursuant to the Ontario Insurance Act from a specified insolvent insurer that is subject to a winding-up order pursuant to the Winding-up Act R.S.C. 1985, c. W-10 as amended.
  - (b) Such pool or fund shall, as reasonably required by the insolvent insurer's liquidator, lend monies to the liquidator, or make guarantees to enable the liquidator to borrow monies, so as to ensure the prompt payment and administration of all such accident benefit claims.
  - (c) The Association may require that the administration of claims be undertaken by such member or members as proposed by the liquidator as the President and Chief Executive Officer may determine and may set such reasonable reporting requirements as the President and Chief Executive Officer may determine to be appropriate under the circumstances, following consultation with the liquidator.
  
6. The Association may establish, operate or participate in such programs, initiatives or activities and participate in such insurance industry programs, initiatives or activities as the Board may from time to time authorize in connection with the effective operation of the automobile insurance industry in a jurisdiction.

**ARTICLE III – MEMBERSHIP**

1. Every insurer licensed to write automobile liability insurance in any jurisdiction in which the Association is qualified to operate shall be eligible to be and remain a member of the Association and shall become a member by operation of law or by subscribing to these Articles of Association and the rules and directives adopted pursuant thereto.
  
2. Except as otherwise specifically provided, a group of insurers under either one ownership or common management shall constitute a single member for the purposes of these Articles of Association. A group of insurers under either one ownership or common management, but not both, may elect to be treated either as separate members or a single member for the purposes of termination of membership in the event such member discontinues writing automobile insurance in a jurisdiction.
  
3. In the event that an insurer is merged with another insurer or there is a consolidation of insurers, the continuing insurer shall receive and be responsible for the assessments of each insurer merged or consolidated until the proportionate share of each such merged or consolidated insurer as established by its writings prior to such merger or consolidation has been determined and paid; provided, however, that the continuing insurer may be relieved from such obligations if another insurer has agreed to assume such obligations in a manner satisfactory to the Board.
  
4. In the event a member discontinues writing automobile insurance in a jurisdiction, it shall continue to pay assessments until its proportionate share established by its writings prior to discontinuance of business has been determined or fixed by the Board and paid; provided, however, that if the automobile business of an insurer discontinuing the writing of automobile insurance in the said jurisdiction has been

purchased by, transferred to or reinsured by another insurer the latter shall receive and be responsible for the assessments of the former until the proportionate share of the former as established by its writings prior to such transfer has been determined and paid, unless another insurer has agreed to assume such obligation in a manner satisfactory to the Board.

**ARTICLE IV – VOTING RIGHTS OF MEMBERS**

1. Voting by members at an Annual General or Special meeting, or by mail, shall be based on the member's total volume of voluntary automobile third party liability direct written premiums for the latest available full calendar year in all jurisdictions in which the Association has operated during such year and shall be computed on the basis of one vote for the initial \$1 of such premium and one vote for each additional full \$5,000,000 of such premium.
2. If the Board determines that any matter to be determined at any meeting of members affects only one jurisdiction, or if it is determined by resolution passed at any such meeting of members that such is the case, such matter shall be voted upon only by members operating in such jurisdiction.

Voting by members operating in such jurisdiction shall be based on each member's total volume of voluntary automobile third party liability direct written premiums for the latest available calendar year in that jurisdiction, and will be computed on the basis of one vote for the initial \$1 of such premium and one vote for each additional full \$5,000,000 of such premium.

**ARTICLE V – PARTICIPATION RATIOS AND SHARING**

1. For the purpose of determining participation in Association business there shall be four classes of business:
  - (a) private passenger non-fleet non-pool automobile business;
  - (b) all automobile business other than that included in (a) or transferred to a risk sharing pool;
  - (c) business transferred to a risk sharing pool other than a pool or fund established pursuant to Section 5 of Article II;
  - (d) all uninsured or unidentified motorist claims and all amounts expended in connection with a pool or fund established pursuant to Section 5 of Article II.

At the end of each fiscal year, profit or loss for each class of business shall be determined separately for each accident year in each jurisdiction in accordance with accounting procedures approved by the Board. Calculations for an accident year shall include all policies earned during such calendar year. Profit shall be credited or distributed to each member and loss shall be charged against each member in accordance with the member's appropriate participation ratio determined in the manner hereinafter set forth in this Article V.

2.
  - (a) All of the data necessary to comply with any of the distribution procedures shall be reported to the Statistical Agency by each member.
  - (b) In order to facilitate proper identification of eligible risks and proper rating of risks each member is required to participate in any underwriting information tracking system operated on behalf of the automobile insurance industry by the Insurance Bureau of Canada or other contracted entity in any jurisdiction in which such member operates and to report to the

Insurance Bureau of Canada or such other contracted entity all information as required by such system.

- (c) The Association and each of its members shall take all reasonable steps to ensure that all information provided by members to the Insurance Bureau of Canada or such other contracted entity in connection with any such underwriting information tracking system is at all times maintained separate, distinct and apart from any information provided by members pursuant to any statistical plan or plans mandated by the legislation of any jurisdiction.
  - (d) The Association and each of its members shall take all reasonable steps to ensure that any information collected by the Insurance Bureau of Canada or such other contracted entity pursuant to such underwriting information tracking system is at no time permitted to fall into the custody or control of any “institution” within the meaning of the *Ontario Freedom of Information and Protection of Privacy Act* or any successors or amendments thereto, or of any similar legislation in any other jurisdiction.
3. (a) With respect to all business in Class 1 (a), participation ratios will be as follows:
- (i) in each jurisdiction in which a risk sharing pool is not in operation at any time during the year, other than the Northwest Territories, Nunavut and Yukon, each member will be liable for that proportion of private passenger non-fleet non-pool Association experience that its respective “voluntary private passenger non-fleet third party liability direct earned car years” less three times the member’s “voluntary private passenger non-fleet third party liability direct earned car years” for business designated in the Automobile Statistical Plan as Classes 08, 09, 10, 11, 12, 13, 18 and 19 bears to the relevant provincial or territorial total of all such car years for all members for such jurisdiction;

- (ii) in each jurisdiction in which a risk sharing pool is in operation at any time during the year, other than the Northwest Territories, Nunavut and Yukon, each member will be liable for that proportion of private passenger non-fleet non-pool Association experience that its respective “voluntary private passenger non-fleet third party liability direct earned car years” bears to the relevant provincial or territorial total of all such car years for all members for such jurisdiction;
  - (iii) in the Northwest Territories, Nunavut and Yukon each member will be liable for that proportion of private passenger non-fleet non-pool Association experience as set out in (i) and (ii) above except that the ratio to be used shall be that of the member’s “voluntary private passenger non-fleet third party liability direct earned car years” in all jurisdictions in which the Association was operating during that year to the totals of such amounts for all members in all jurisdictions;
- (b) With respect to all business in Class 1 (b), participation ratios will be as follows:
  - (i) in each jurisdiction, other than the Northwest Territories, Nunavut and Yukon, each member will be liable for that proportion of Association experience on automobile business other than that included in 1(a) or transferred to a risk sharing pool that its respective “all other voluntary automobile third party liability direct earned premiums” bears to the relevant provincial or territorial total of all such premiums for all members for such jurisdiction;
  - (ii) in the Northwest Territories, Nunavut and Yukon each member will be liable for that proportion of Association experience on business other than that included in 1(a) or transferred to a risk sharing pool as set out in (i) above except that the ratio to be used shall be that of the member’s “all other voluntary automobile third party liability direct earned premiums” in all jurisdictions in which the

Association was operating during that year to the totals of such amounts for all members in all jurisdictions;

- (c) With respect to all business in Class 1(c), participation ratios will be as follows:
- (i) with respect to 50% of such amount in the proportion that the member's total "voluntary private passenger non-fleet third party liability direct earned car years" is of the total of all such car years for all members for such jurisdiction; and
  - (ii) with respect to the other 50% of such amount on the basis of the proportion that the total earned third party liability car years with respect to risks ceded by such member to the risk sharing pool is of the total of such cars ceded by all members for such jurisdiction.
  - (iii) any directions necessary for the restating of sharing on the above basis from January 1, 1993 may be authorized by the Board.
  - (iv) with respect to members that are Servicing Carriers in such jurisdiction at the time of the commencement of operation of a risk sharing pool such members with respect to the period ending with the completion of the first full calendar year of operation of the risk sharing pool or such shorter period as may be determined by the Board having regard to the date of commencement shall share on the basis set out in paragraph (i) above as to 100% and the shares of the other members shall be adjusted accordingly. Thereafter all members shall share on the basis set out in paragraphs (i) and (ii).
  - (v) the sharing calculation for any period may be based upon estimated figures and such calculations shall be adjusted appropriately as soon as the actual figures become known.
- (d) With respect to all business and all amounts expended in connection with business in Class 1(d) each member will liable for that proportion of such amounts that its total voluntary automobile third party liability direct earned premium bears to the total of all voluntary automobile third party liability direct earned premium for all members for such jurisdiction.

4. (a) Each member shall be liable for all costs or expenses not chargeable to the allocated experience of any class of business in the proportion of the member's (i) "voluntary private passenger non-fleet third party liability direct earned car years", and (ii) "all other voluntary automobile third party liability direct earned premiums", as specifically hereinafter defined in (b), to the totals of such direct earned provincial and territorial amounts for all members for the current calendar year.
- (b) For the purposes of such allocation as described above, "voluntary private passenger non-fleet third party liability direct earned car years" and "all other voluntary automobile third party liability direct earned premiums" shall be as defined below:
- (i) "voluntary private passenger non-fleet third party liability direct earned car years" shall be the number of private passenger automobile third party liability car years which are coded as private passenger non-fleet automobile under the Automobile Statistical Plan earned by the member in each jurisdiction for the calendar year ending December 31 of the specific accident year's experience being distributed, excluding such Association car years.
- (ii) "all other voluntary automobile third party liability direct earned premiums" shall be the total automobile third party liability direct earned premiums as reported by the member to the Statistical Agency, excluding:
- A. the total private passenger non-fleet third party liability direct earned premiums (written either as voluntary business or written through the Association) and
- B. all other automobile third party liability earned premiums written through the Association
- in each jurisdiction during the calendar year ending December 31 of the specific accident year's experience being distributed.
- (c) As soon as possible after the closing date of each month's transactions the Association shall prepare and dispatch detailed statements of accounts to

each member in connection with each class of business. The statements shall combine the net result of the member's own transactions and the member's share of all transactions and shall indicate the date by which settlement is required to be effected between the member and the Association.

- (d) An ongoing system for periodic updating and adjustment of proportionate shares is provided for specifically in the Accounting and Statistical Manual. The Board shall authorize the establishment of transitional provisions for sharing necessitated by the change in the method of sharing from a policy year to an accident year basis and shall have transitional provisions set out in the Accounting and Statistical Manual.

#### **ARTICLE VI – MEETINGS OF THE MEMBERS**

1. An annual general meeting of the members shall be held not later than May 31<sup>st</sup> in each year, at such place and at such hour as may be designated by the Board.
2. A special meeting of the members may be called at any time by the Chairman of the Board. A special meeting shall be called by the Chairman of the Board whenever requested in writing by ten or more members. Notice of a special meeting shall state the purpose thereof and the time and place of holding of such meeting. No action shall be taken at a special meeting for a purpose not stated in the notice of meeting unless such action is approved at such meeting by the affirmative vote of a majority of the total votes held by all members.
3. Notice of each meeting of the members of the Association shall be given at least 15 days prior to the date of the meeting by ordinary mail to each member at its office address according to the records of the Association except that notice of a meeting to amend the Articles of Association shall be given in the manner provided above at least 30 days prior to the date of the meeting. Notices of

- meetings at which it is proposed to amend the Articles of Association shall include a copy of the proposed amendments. Notice shall be deemed to have been given at the time it is deposited in a post box or post office for mailing, or delivered to a courier or industry distribution agency for transmission, and the accidental omission to give notice to any member shall not thereby invalidate the proceedings taken at the meeting.
4. Members present in person or by proxy and representing 51% or more of the total votes held by all members shall constitute a quorum at any meeting of the Association. Except as otherwise provided in Article IV, Section 2 of Article VI and Article XVIII, all questions before a properly-called meeting of members where the quorum is present shall be decided by a simple majority of the votes cast in person or by proxy upon such question.

#### **ARTICLE VII – BOARD OF DIRECTORS**

1. The affairs and business of the Association shall be managed and controlled by a Board with authority Canada-wide. The Board shall be composed of fourteen directors of whom ten shall be elected or appointed from representatives of Insurers, three shall be elected or appointed from among any persons approved by the Insurance Brokers Association of Canada and one shall be the President and Chief Executive Officer. The ten Insurer representatives shall constitute a representative and equitably balanced cross-section of the automobile insurance industry. Of the three Insurance Brokers Association of Canada representatives one shall represent Alberta and the Territories, one Ontario, and one the Atlantic Provinces. To be eligible to be elected or appointed as a director, a person must be a senior official of a member insurer, elected or appointed as a representative of the Insurance Brokers Association of Canada or the President and Chief Executive Officer.

2. Members of the Board other than the President and Chief Executive Officer shall be elected for a term of two years with approximately one half of the directors to be elected at each annual general meeting.

There shall be a Nominating Committee appointed by the Board to nominate persons for election to the Board prior to each annual general meeting.

In the event of vacancy, the remaining members of the Board shall appoint a person qualified to be a director to hold office until the next annual general meeting, at which time a qualified person shall be elected for any unexpired portion of the original term.

3. At the first meeting of the Board following a meeting of members at which directors are elected, the directors shall elect a Chairman from among their number. The Chairman shall preside at meetings of the Board and perform such other duties as are prescribed by these Articles of Association. The Executive Committee shall appoint a Deputy Chairman of the Board from among the directors.
4. Meetings of the Board shall be held at such places and at such times as the Chairman may direct. Notice of each meeting shall be given to each director at least 24 hours before the time of such meeting. No notice shall be necessary if all directors are either present or have waived or waive notice. Notice may be given in writing or by oral, telephone, telefax or telegraph communication.
5. At any meeting of the Board a quorum shall be seven members present in person. Each member of the Board shall have one vote and, except as otherwise expressly provided, it shall require the affirmative votes of a majority of the directors present at a duly constituted meeting to pass any resolution of the Board. Members of the Board may vote by telephone on any particular resolution being considered by the Board.

6. The Board shall have all necessary power and authority to conduct the affairs of the Association with the exception of those powers specifically reserved for or delegated to others by these Articles of Association. For certainty and without limiting the generality of the foregoing, the Board shall have the express authority to:
- (a) incur or authorize expenses on behalf of and borrow money in the name of the Association;
  - (b) authorize the execution of any contract or agreement on behalf of the Association and designate the person or persons authorized to execute the same on behalf of the Association;
  - (c) establish and maintain standards in the provision of policy and claim services and accounting requirements for Servicing Carriers and members using a risk sharing pool;
  - (d) supervise audits of Servicing Carriers and members for adherence to such standards and the Rules of Operation;
  - (e) appoint such committees and sub-committees as may be deemed advisable from time to time;
  - (f) consider and where deemed advisable approve any proposed amendments to the Operating Principles;
  - (g) authorize the preparation and issuance of procedural manuals, bulletins and other material to members;
  - (h) consider and approve suggested rate changes and rate filings provided however that the Board may specifically delegate any specific part or parts of this authority to the Executive Committee.
  - (i) receive and consider regular reports from any Market Monitoring Committee or Committees and initiate action to respond to concerns identified by such reports.

**ARTICLE VIII – ADMINISTRATION**

**(President and Chief Executive Officer, Committees and Executive Committee)**

1. The Board shall appoint an Executive Committee to carry out the duties and functions and to exercise the powers hereinafter specified together with such other duties as the Board may from time to time specifically require of it.
2. The Board shall appoint a President and Chief Executive Officer to carry out the duties and functions and to exercise the powers hereinafter specified together with such other duties as the Board may from time to time specifically require.
3. The Board shall appoint an Audit Committee and an Investment Committee. Such other committees, including a Rules and Rates Committee, an Accounting Committee, an Actuarial Committee, a Claims Committee, a Risk Sharing Pool Procedures Committee, Provincial Operating Committees, Market Monitoring Committees and other committees as may be considered advisable, shall be constituted and appointed as set out in the Articles of Association.
4. The Executive Committee shall have five members being the Chairman and Deputy Chairman of the Board, the President and Chief Executive Officer and, if a member of the Board, the immediate Past Chairman of the board (all ex officio) and one other member of the Board who shall be appointed by the Board so as to ensure representation on the Executive Committee of both Servicing Carrier and non-Servicing Carrier members. If the immediate Past Chairman of the Board is no longer a Board member, the Board shall appoint one other member from the members of the Board.
5. The Executive Committee shall deal with the administration of policy and the conduct of the affairs of the Association between meetings of the Board and shall

report to the Board in connection therewith. All actions and decisions of the Executive Committee shall be subject to review and reconsideration by the Board.

6. The Executive Committee shall have express authority to:
- (a) review and determine applications by Servicing Carriers for write-offs to a maximum of \$100,000.00;
  - (b) review audits of Servicing Carriers and of members and to approve such audits unless they give rise to some material concern in which case they shall be brought before the Board for consideration;
  - (c) monitor the financial performance of the Association, recommend a proposed budget and authorize interim changes thereto and report to the Board regarding any significant changes to or variance from the budget;
  - (d) represent the Association with regulatory authorities of any jurisdiction;
  - (e) review and make representations regarding applications for appointment as a Servicing Carrier;
  - (f) review all relevant factors and make recommendations regarding the termination or other action in connection with a Servicing Carrier;
  - (g) supervise and direct the conduct of any litigation involving the Association;
  - (h) consider and determine all matters concerning premises, equipment and facilities utilized or employed by the Association;
  - (i) consider and, where deemed advisable, approve proposed or suggested changes to the Rules of Operation;
  - (j) consider and make appointments to all committees where Board approval or appointment is not specifically required;
  - (k) appoint a Provincial Operating Committee in each jurisdiction where the Association has or is scheduled to become operational. Each Provincial Operating Committee will be composed of four members representing insurers operating in that jurisdiction, including representation from both Servicing Carriers and non-Servicing Carriers, and two representatives from the organizations representing brokers in that jurisdiction. Members

of these Committees may from time to time be invited to attend meetings of the Board. Provincial Operating Committee members shall be appointed for such terms as are established from time to time by the Executive Committee;

- (l) appoint a Market Monitoring Committee in any jurisdiction or jurisdictions in which it is deemed advisable to do so;
  - (m) review and make recommendations to the Board with respect to recommendations contained in reports from committees, staff, professional advisors or such other sources as the Board may direct;
  - (n) make recommendations regarding the appointment of a President and Chief Executive Officer;
  - (o) select and appoint a Deputy Chairman of the Board;
  - (p) review and determine any appeal by a broker, company or Servicing Carrier regarding an appointment of a broker or company to a Servicing Carrier.
7. The Executive Committee shall adopt its own procedures regarding meetings and communications but all decisions shall require the affirmative votes of a majority of the members of the Executive Committee.
8. A Market Monitoring Committee shall adopt its own procedures regarding meetings and communications but shall report to the Board on a regular basis.
9. The President and Chief Executive Officer shall manage, direct and supervise the daily operation of the Association, the Risk Sharing Pool and the Uninsured or Unidentified Motorist programs operated by the Association. The President and Chief Executive Officer shall have general authority over the engagement, discharge and supervision of staff, the expenditure of approved budgeted funds and for ensuring that directions from the Board and the Executive Committee are followed. The President and Chief Executive Officer shall direct the engagement and use of consulting support staff and facilities and shall be the initial contact

- person between the Association and others. Subject to the provisions of Section 6(d) of this Article VIII the President and Chief Executive Officer shall have authority to communicate and negotiate with regulatory bodies, and to make commitments as authorized by the Executive Committee.
10. For certainty and in addition, and without limiting the generality of the foregoing, the President and Chief Executive Officer shall have express authority:
- (a) to review and determine applications by Servicing Carriers for write-offs to a maximum of \$25,000.00 where recommended for approval by a Provincial Operating Committee;
  - (b) to make appointments and reassignments of brokers to Servicing Carriers in accordance with the Operating Principles;
  - (c) to consider and approve changes to the Rules of Operation where such changes are clerical in nature or are required due to approved amendments to the Articles of Association or the Operating Principles;
  - (d) to determine and give notice that a member is no longer an exempt member under the provisions of Article XII;
  - (e) in a situation of emergency, and upon consulting or using reasonable efforts to consult with at least one other member of the Executive Committee, to exercise any authority of the Executive Committee on an interim basis, any such action to be reported to the Executive Committee at the first reasonable opportunity;
  - (f) to carry out such other duties as are expressly delegated to him by the Board or the Executive Committee.
11. A vacancy in the membership of any Committee shall not impair the ability of the Committee to continue in operation as long as more than 50% of the membership of the Committee remains in office. Any such vacancy shall be filled as soon as is reasonably practicable.

**ARTICLE IX – SERVICING CARRIER APPOINTMENTS AND ALLOWANCES**

1. Pursuant to the Operating Principles the Board shall designate, from among the eligible members applying, those members of the Association who are authorized to act as Servicing Carriers. Additional Servicing Carriers may be designated as necessary. The Board shall provide for the establishment of the scope, terms, standards and compensation applicable to the services to be provided. Servicing Carriers so designated must meet the eligibility requirements for Servicing Carriers. It is desirable to designate one or more Servicing Carriers from each of the types of marketing methods, provided each is qualified to handle Servicing Carrier responsibilities in an efficient manner.

2. Servicing Carriers shall be reimbursed for servicing Association business on the following basis:

(a) For operating costs excluding claims expenses, the following percentage of written premiums:

Ontario 9.9%; Other jurisdictions 9%; plus

A service fee equal to the following percentage of written premiums:

Ontario 0.9%; Other jurisdictions 1.0%; plus

The actual costs of Driver Record Abstracts, as well as an amount to defray the costs of obtaining Prior Carrier Reports, such amount to be as from time to time determined by the Board; and

(b) For claims expenses, both allocated and unallocated, the following percentage of earned premiums:

Ontario 9.1%; Other jurisdictions 10%

The rates of reimbursement are predicated on an earned/incurred loss ratio as follows:

Ontario 61.7%; Other jurisdictions 67.5%

The rates will be adjusted retroactively in accordance with the formula described in the Accounting and Statistical Manual, Chapter 8, which, on average, increases (decreases) the rate by 0.5% for each 5% of increase (decrease) in that loss ratio.

“Loss Ratio” refers to losses only, does not include loss expense or I.B.N.R. and is computed by policy year and by jurisdiction.

- (c) For the purpose of this section the term “written premiums” shall mean direct written premiums including commissions.
3. The Board at its sole discretion may offer or allow a Servicing Carrier reimbursement in whole or in part for specific extraordinary expenses incurred in qualifying for, continuing as or ceasing to be a Servicing Carrier. Such expense must be explained and supported in such detail as is required by the Board, must in the judgment of the Board be significantly in excess of the normal additional expense expected to be incurred by the Servicing Carrier and must actually be incurred before reimbursement may be allowed.
4. The Board at its sole discretion may authorize reimbursement to Servicing Carriers of normal insurance business losses incurred in connection with Association business. Such normal business losses shall be as defined and designated by the Board but shall not include any loss or expense incurred as a result of fraud or dishonesty on the part of the Servicing Carrier’s claims personnel (including but

- not limited to independent adjusters), and in the event of any loss or expense of this nature the Servicing Carrier shall hold the Association harmless from and reimburse it for any such loss or expense incurred by the Association.
5. In the event that a Servicing Carrier is found liable, or agrees, to make payment to the Association of any amount as damages or compensation for any breach by such Servicing Carrier of any of its obligations to the Association, it will not be entitled either as a Servicing Carrier or as a member to share in the benefit of such payment.

**ARTICLE X – ELIGIBILITY OF RISKS**

1. To be eligible for insurance through the Association **in any jurisdiction** a risk shall be insured for at least the statutory minimum automobile coverage in the jurisdiction concerned, in accordance with the Rules of Operation.
2. In addition, in any jurisdiction in which the Association is operating a risk sharing pool into which a risk is eligible for transfer, such risk shall be eligible for coverage in the Association other than through such risk sharing pool only if it is a “Residual Market Risk”.
- A RESIDUAL MARKET RISK is a risk which includes coverage in connection with:
- (a) any motor vehicle that is not a Private Passenger Vehicle; or
  - (b) any Private Passenger Vehicle with respect to which an insurer to whom an application has been made to insure the risk is authorized at law to decline to issue or refuse to renew a contract of insurance in respect of such risk.
3. Notwithstanding the provisions of section 2, the Association shall advise brokers during the period to the commencement of operation of a risk sharing pool in a particular jurisdiction that no renewals will be issued by a Servicing Carrier with

respect to non residual market risks after commencement of the operation of a risk sharing pool save and except where a broker foresees a problem in placing such risks in a regular market.

In such cases the broker may make an application to the Association for a direction to the applicable Servicing Carrier to continue to issue renewals in connection with non residual market risks in his portfolio for the account of the Association with respect to risks scheduled for renewal within a period not to exceed three months.

The Association may refuse to give such direction or may make it subject to such conditions, terms and limitations or for such shorter period as it deems advisable in order that the problem be corrected as soon as possible.

Any such application must be made prior to the commencement of the period for which the direction is sought and may only be made prior to the expiration of six months after the commencement of operation of a risk sharing pool in the jurisdiction.

A broker making such application must attend before a committee designated by the Board to consider and determine such applications and to consider what steps should be taken to prevent any further problems in connection with ensuring that such risks are placed in the regular market.

The renewal offer shall be clearly and conspicuously marked with notice that the insured can obtain insurance through the regular market. If the renewal is not refused or cancelled by the insured within 90 days of the renewal date the Servicing Carrier will send a second notice directly to the insured advising of the availability of coverage in the regular market. Any such coverage will not be renewed a second time and the appropriate procedure complied with upon such non-renewal as required by any applicable contractual or legislated provisions.

4. A risk for which coverage has been provided through the Association at a Discounted Tier rate for a total of two consecutive years since the date on which this Section becomes effective shall not be renewed by the Association for a further term unless an application is first made to an insurer and is refused by that insurer on a basis authorized by law.
  
5. Despite Section 2 of Article X and Section 4(a)(ii) of Article XI, if on the date on which this Section becomes effective a risk is in a risk sharing pool operated by the Association but is a Residual Market Risk as then defined, such risk is entitled to subsequent renewal or renewals with the same insurer for a term or terms not exceeding one year, and on each such renewal shall remain in the risk sharing pool provided that in the term immediately preceding renewal no condition has arisen as described in the Surcharged Tier or Basic Tier comprised in the Association's approved rating criteria.

**ARTICLE XI – RISK SHARING POOL**

1. The purpose of a risk sharing pool is to assist members in the provision of automobile insurance to certain owners or licensed drivers through the members' normal production facilities and their normal binding arrangements and to provide for the sharing of such risks.

The risk sharing pool (hereinafter called the "Pool") shall initially be restricted to Ontario members and Ontario business but the operation of the Pool or of a similar pool or pools in other jurisdictions may from time to time be authorized by the affirmative vote of members operating in such jurisdiction.

2. Where any word or expression not defined herein is defined by the regulatory authority for the jurisdiction concerned such definition shall apply herein. The following definitions shall apply for the purposes of Article X, Article XI and Part IV of the Operating Principles.

- (a) Dispatch Date: The date on which a transfer notification can be established to have left a member's Canadian head office, or the office designated by the member for that jurisdiction, for delivery to the Pool.

- (b) Jurisdiction: A province of Canada, the Northwest Territories, Nunavut or Yukon.

- (c) Private Passenger Vehicle:

A motor vehicle listed in the Private Passenger Rate Group Tables contained in the Manual of Rules and Rates and used for pleasure, commute or business. Business use does not include use as driver training vehicles, funeral vehicles, courtesy cars, vehicles held for sale or used for demonstrating or testing or any use listed in the Commercial or Public Sections of the Manual of Rules and Rates, even though Private Passenger rates are used to determine the premium;

but excluding any vehicle while in transit from a point of purchase to a permanent location where one of such points is within a jurisdiction in which the Pool is in operation and further excluding any vehicle insured as part of a fleet, synthetic fleet or group plan unless such vehicle is individually rated in accordance with rates filed with the applicable regulatory authority and is coded as a private passenger non-fleet automobile under the Automobile Statistical Plan.

**Note:** Any vehicle classified as a recreational vehicle, for example, an antique vehicle, a motor home or a motorcycle, is not eligible for placement in the Pool.

- (d) Residual Market Risk: a risk as defined in Article X.
  - (e) Voluntary private passenger non-fleet third party liability direct earned car years: as defined in Article V, Section 4(b)(i).
3. The Association hereby establishes a Pool, into which members are entitled to transfer, subject to the provisions hereinafter set out, the applicable percentage of any risk that satisfies the Eligibility Requirements.

The initial start up costs of the Pool or any subsequent risk sharing pool shall be borne by such of the members and on such basis as the Board may decide is appropriate.

The Board shall determine and declare the date upon which the Pool or any other risk sharing pool shall commence operation in any jurisdiction.

4. (a) The following are the requirements for a risk to be eligible for transfer to the Pool:
- (i) The vehicle is a Private Passenger Vehicle; and
  - (ii) The risk is not eligible for insurance through the Association as a Residual Market Risk as defined in Article X; and

- (iii) The member has followed all appropriate classification and rate procedures and has requested previous-insurer report(s) and driver record abstract(s); and
  - (iv) The risk is insured against Third Party Liability for at least the statutory limit; and
  - (v) The premiums charged by the member to the insured for those parts of the insurance that are transferable to the Pool are in accordance with its approved premiums for such risk.
- (b) A risk purportedly transferred to the Pool which was not eligible for transfer at that time due to a failure to comply with one or more of requirements (i), (ii) or (iii) due to an intentionally incorrect classification or rate will be considered ineligible for transfer, the purported transfer shall be deemed to be invalid and all claims, expenses and receipts or credits will be for the account of the submitting member. This provision shall not apply to a risk in relation to a specific term of transfer where a period ending the later of 24 months from the date of such transfer or 2 months after the first audit of the member following such transfer has expired.
- (c) A risk purportedly transferred to the Pool in connection with which there has been a failure to comply with one or more of the requirements with respect to previous-insurer report(s) or driver record abstract(s) shall be dealt with as set out in the Risk Sharing Pool Procedures Manual in accordance with provisions established by the Board from time to time.
- (d) If it is determined that a company is not ordering the appropriate reports, or has adopted a practice which fails to provide for proper compliance with its obligations, the company will be dealt with as an exception and a further investigation, or, where determined by the President and Chief Executive Officer to be appropriate, a full audit will follow.
- (e) Where it is decided that a full audit of all risks transferred by the member is appropriate the costs of the audit will be billed to the member.
- (f) Where such investigation or audit demonstrates to the satisfaction of the Executive Committee that there has been a general failure to order the

required reports on time the expense allowance referred to in subsection 6(b) to the member will be reduced by two percentage points for a period of six months.

- (g) Flagrant or continued failure to comply with these obligations could result in a directive to the member to remove all risks from the Pool. This penalty would only be applied after a follow-up review by the President and Chief Executive Officer and the Executive Committee, and referral to the Board.

5. In respect of an eligible risk that a member wishes to transfer to the Pool:

- (a) The member may provide whatever coverages and limits it deems appropriate.
- (b) During the first 12 months of operation of the Pool any risk transferred will be transferred as to 100% for the period that it is in force during that 12 month period. Thereafter all transfers and all risks previously transferred and in force will be 85% for the account of the Pool and 15% for the account of the member.
- (c) The applicable percentage of all coverages provided by the member shall be transferred, subject to the following limitations:
  - (i) The maximum transferable limit in respect of Third Party Liability shall be the applicable percentage of \$2,000,000 (two million dollars) or as from time to time determined by the Board.
  - (ii) Transferred basic All-Perils or Collision coverage shall be subject to a minimum deductible of the applicable percentage of \$100 (one hundred dollars) or as from time to time determined by the Board.
  - (iii) Transferred basic Comprehensive or Specified-Perils coverage shall be subject to a minimum deductible of the applicable percentage of \$50 (fifty dollars) or as from time to time determined by the Board.
  - (iv) The maximum transferable limit in respect of “Family Protection coverage” shall be the applicable percentage of \$2,000,000 (two million dollars) or as from time to time determined by the Board.

- (v) Other transferred endorsement coverages shall be subject to the maximum limits and minimum deductibles that are from time to time determined by the Board.

Members may write coverage in excess of these limitations but such coverage and all expenses and liabilities in connection therewith will be for the member's own account.

- 6. In respect of each risk being transferred to the Pool:
  - (a) The premium actually charged by the member to the Insured net of any premium payment service charges charged to the Insured shall be the transfer premium in respect of each coverage provided that it is as approved by the regulatory authority concerned for the coverage and the applicable limit or deductible.
  - (b) The member shall be entitled as a result of the transfer of premium to an expense allowance in an amount equal to a percentage of the written premium applicable to the transferred coverages, such percentage for use during a calendar year to be calculated on the basis set out in the Accounting and Statistical Manual using the base information employed to calculate the expense factor included in the member's rate filing with respect to private passenger vehicle coverage last approved by the applicable rate approving body for the jurisdiction in which the Pool is operating prior to August 31<sup>st</sup> of the year immediately prior to the calendar year in which the transfer is made. The Board shall from time to time establish a maximum percentage of premium for such expense allowance and if the calculation of the member's expense allowance percentage is higher than such percentage, then the percentage established by the Board as a maximum shall be used.
  - (c) Each member shall provide to the Association written details of the component amounts of the expense factor included in the rate filing to be

used for the purposes of this calculation, such information to be provided in the form from time to time set out in the Accounting and Statistical Manual and such information being certified by the member's actuary. The member shall and hereby does authorize the release to the Association by the rate approving body of information in its possession in connection with the member's expense factor.

- (d) Such allowance is to settle all expenses incurred by the member including acquisition costs, operating costs and loss adjustment costs, but not including premium taxes and professional fees (such professional fees to be stipulated in the Facility Association "The Pool" Claims Guide with compensation to be as therein directed).
  - (e) In this section the word "member" shall mean "insurer" and the provisions of this section 6 shall apply to each insurer of a group of insurers separately.
7. In respect of an eligible risk that is "new" to the member – i.e., a new policy or a new (additional) vehicle:
- (a) If the required transfer notification by form, disc or tape is dispatched to the Pool no later than fifteen days after the commencement date of the period of insurance concerned, the transfer effective date shall be the said commencement date and there shall be no prejudice to the member's right to recover from the Pool in respect of a claim that arises within the period but prior to dispatch of the transfer form.
  - (b) If the required transfer notification is dispatched to the Pool more than fifteen days after the commencement date of the period of insurance concerned, the transfer effective date shall be the day following the date of dispatch of the notification and the transferred premium shall be pro-rata of that applicable to the period of insurance provided by the policy.
8. In respect of an eligible risk that is a "renewal" to the member:

- (a) If the required transfer notification is dispatched to the Pool no later than the commencement date of the period of insurance concerned, the transfer effective date shall be the said commencement date.
  - (b) If the required transfer notification is dispatched to the Pool later than the commencement date of the period of insurance concerned, the transfer effective date shall be the day following the date of dispatch of the transfer notification and the transferred premium shall be pro-rata of that applicable to the period of insurance provided by the policy.
- 9. In respect of all other eligible risks that are transferred to the Pool in mid-term the transfer effective date shall be the day following the date of dispatch of the transfer notification and the transferred premium shall be pro-rata of that applicable to the period of insurance provided by the policy.
- 10. Satisfactory evidence sufficient to establish the “dispatch date” for the purposes of sections 7 and 8 above shall be as determined from time to time by the Board.
- 11. A member may not in a calendar year in any jurisdiction in which the Pool is operating, transfer to the Pool any risk where such transfer would constitute a transfer by it in such calendar year of voluntary private passenger non-fleet third party liability direct written car years in excess of the number of such car years equal to 5% of its total voluntary private passenger non-fleet third party liability direct written car years for such jurisdiction in the immediately preceding calendar year provided that:
  - (a) any purported transfer in contravention of such restriction shall be ineffective and the risk shall remain solely for the account of the member purporting to effect the transfer unless authorized as hereinafter set out;
  - (b) a member may apply to the Board for approval of transfers in excess of such limit. Such approval may be given retroactively and in such form as the Board deems advisable.

12. Any risk transferred to the Pool within the first fifteen days after the commencement date of the period of insurance with respect to which a claim is incurred during such fifteen day period and any risk with respect to which a claim is incurred while such risk is within the Pool must remain within the Pool and may not be withdrawn by the member until at least the date of the first renewal following the incurring of such claim. Members may withdraw other risks transferred by them to the Pool in accordance with the procedures set out in the Risk Sharing Pool Procedures Manual.
  
13. Where the termination of the operation of the Pool is authorized by a majority of the members in a jurisdiction in which such pool is in operation, the Board shall determine and declare:
  - (a) the date or dates after which a risk or risks or any renewal thereof shall no longer be allowed to be transferred to the Pool.
  - (b) the date or dates upon which a risk or risks must be withdrawn from the Pool.
  - (c) any procedure to be followed and any notifications to be given in connection with the termination of the operation of the Pool.
  - (d) the date upon which and the conditions under which the “exit” program as set out in the Manual of Rules and Rates be brought into effect.

## **ARTICLE XII – INSURANCE POLICIES**

1. Each member shall ensure that any owner or licensed driver of a motor vehicle applying to it for automobile insurance is able to obtain automobile insurance either through issuing such insurance itself for its own account, issuing such insurance itself and placing it in a risk sharing pool where in operation or, where applicable, seeing that an application for such insurance is directed to enable coverage to be written through the Association by a Servicing Carrier.

Where, in a jurisdiction in which a risk sharing pool into which the risk can be transferred is being operated by the Association, an application received by a Servicing Carrier in connection with a risk that does not qualify as a Residual Market Risk, the Servicing Carrier shall instruct the submitting agent or broker to submit such application to one of the members with whom such agent or broker has the voluntary market contract or agreement and such agent or broker shall forthwith submit the application to such member.

In the event that such agent or broker does not have a voluntary market contract or agreement such agent or broker, unless otherwise authorized by the provisions of the Plan, shall immediately direct the applicant to an agent or broker who does not have a voluntary market agreement for submission of an application as herein before provided. In the absence of any agreement to the contrary this shall not result in a sub-agency or sub-brokerage relationship being created.

2. The Servicing Carrier shall be named as the Insurer on all automobile insurance policies and binders it issues on behalf of the Association.
3. No policy shall be issued on behalf of the Association in excess of the limitations established in the Plan or Rules of Operation.
4. In section 1 of this Article XII the word “member” shall mean “insurer” and notwithstanding section 2 of Article III the provisions section 1 of Article XII shall apply to each insurer of a group of insurers separately.

**ARTICLE XIII – JOINT LIABILITY FOR ASSOCIATION BUSINESS**

1. In the event of failure of any member, through insolvency or otherwise, to pay promptly its portion of any loss or expense after the Board shall have made written demand upon the member to pay such loss or expense, the Board shall report the delinquency to all members.
  
2. If the loss or expense remains unpaid beyond a reasonable period all of the other members, upon notification by the Board, shall promptly pay their respective shares of such loss or expense, each contributing its respective share as provided in Article V with the basis of sharing adjusted to exclude the car years or premiums earned of the member in default. Members having made such contributions shall have the right of recovery therefor against the member in default, provided, however, that the Board may enter into an agreement with any such member in default, or with the legal representative thereof, or, in the case of a member who has or is withdrawing from business in one or more jurisdictions, in connection with prospective shares of loss or expense in future years as to an amount which shall constitute a full settlement of all of the obligations of said member to the remaining members. The Board may authorize the commencement of a representative action to be taken in the name of the Association for the full amount of such unpaid loss or expense.

**ARTICLE XIV – INDEMNIFICATION**

1. Other than with respect to an action, suit, claim or proceeding by the Association as against a Servicing Carrier, any person or member made a party to an action, suit or proceeding because such person or member served or is serving on the Board, the Governing Committee, the Executive Committee or other committee or sub-committee of the Association, or was or is an officer, member or employee of

the Association, or acts or has acted as a Servicing Carrier pursuant to Article IX of these Articles, shall be indemnified and held harmless by the Association against all costs (including the amounts of judgments, settlements, fines or penalties) and expenses incurred in connection with such action, suit or proceeding; provided, however, that such indemnification shall not be provided in any matter in which the person or member shall be finally adjudged in any such action, suit or proceeding to have committed a breach of duty involving gross negligence, bad faith, dishonesty, wilful misfeasance or reckless disregard of the responsibilities of his office. In the event of settlement of a matter before final adjudication, indemnification shall be provided only if the Association is advised by independent counsel that the person or member to be indemnified did not in counsel's opinion commit such a breach of duty.

2. The costs and expenses of such indemnification shall be prorated and paid for by the members, each contributing in accordance with Article V.

#### **ARTICLE XV – RECORDS AND REPORTS**

1. The books of account, records, reports and other documents of the Association shall be open to inspection by any member at such times and under such conditions and directives as the Board shall determine.
2. The books of account of the Association shall be audited at least every twelve months by a firm of auditors who shall be appointed by the members at each annual general meeting.
3. The books of account of Servicing Carriers shall be audited at least once a year by a firm of auditors designated by the Board.

**ARTICLE XVI – AUDITING OF MEMBERS**

The Association may audit the records of any member relating to the subject matter of the Plan of Operation and may establish what policies, records, books of account, documents and related material it deems necessary to carry out its functions. Such material shall be provided by the members in the form and with the frequency reasonably required by the Association.

**ARTICLE XVII – APPEALS**

1. Any broker aggrieved with respect to his appointment to a Servicing Carrier, and any Servicing Carrier aggrieved with respect to the appointment to it of a broker, may make a written request to the Executive Committee for specific relief. Any request so received will be considered and answered within 60 days.
2. Any member or Servicing Carrier aggrieved with respect to any action or decision of the Board, Executive Committee, President and Chief Executive Officer or the Association or any Committee thereof, may make written request of the Board for specific relief. Any request so received will be considered and answered within 90 days.

**ARTICLE XVIII – AMENDMENTS**

1. An amendment to these Articles of Association may be proposed at any time by the Board or by any member. Such amendment may be made at any properly constituted meeting of the members, provided that proper notice of the proposed amendment has been given to the members pursuant to Article VI and provided that such amendment received affirmative votes cast in person or by proxy at such

- meeting representing 51% or more of the total number of votes held by all members.
2. An amendment to these Articles of Association may also be made if the proposed amendment, set out in writing, is sent to each member at its last address of record with the Association and if within sixty days of the mailing of such amendment, signed consents to the amendment are received from members representing 51% or more of the total number of votes held by all members.
  3. An amendment to the Operating Principles may be proposed at any time by the Board, the Executive Committee or by any member.
  4. Where an amendment to the Operating Principles is proposed it shall be considered by the Board at a duly constituted meeting and may be approved in accordance with authorized procedure by the affirmative vote of at least 51% of the members of the Board, to become effective at such time as is designated by the Board or by operation of law.
  5. Where an amendment to the Operating Principles has been approved by the Board notice of such amendment, its effective date or proposed effective date and the reason therefore will be sent to the members within 30 days of its approval by the Board.
  6. Where an amendment to the Operating Principles has been proposed by a member and not approved by the Board a special meeting of members may be called if requested pursuant to Article VI to consider such proposed amendment and such proposed amendment shall become effective if approval is received from members representing 51% or more of the total number of votes held by all members.
  7. The Executive Committee shall have the power to amend the Rules of Operation by resolution at any time and from time to time and the President and Chief

Executive Officer shall have the power to approve amendments thereto as set out in section 9 of Article VIII, such amendments to be effective at such time as is designated or by operation of law. Members shall be advised of all such amendments and the effective date thereof.

#### **ARTICLE XIX – PLAN OF OPERATION AND RULES OF OPERATION**

1. The Plan of Operation (hereinafter called “the Plan”) and the Rules of Operation (hereinafter called “the Rules”) shall continue in force as currently constituted in any jurisdiction in which the Association is currently in operation. The Plan and Rules may become effective in any other jurisdiction upon being authorized or required by law at a date or dates to be established by the Board.
  
2. The Plan shall consist of:
  - (a) The Articles of Association;
  - (b) The Operating Principles
    - Part I - General
    - Part II - Servicing Carriers
    - Part III - Brokers
    - Part IV - Risk Sharing Pool
  
3. The Rules shall consist of:
  - (a) Accounting and Statistical Manual
  - (b) Manual of Rules and Rates
  - (c) Facility Association Residual Market Claims Guide
  - (d) Facility Association ‘The Pool’ Claims Guide
  - (e) Risk Sharing Pool Procedures Manual
  - (f) Such additional manuals, forms and procedures adopted and approved in accordance with the Plan.

3. With respect to non risk sharing pool business, the Rules shall include provisions establishing the coverages to be afforded, the limits of liability to be made available, the deductible options to be offered, the rating plans and classifications to be used for automobile insurance issued on behalf of the Association, premium payment requirements and commissions to be paid brokers on Association business and, with respect to risk sharing pool business, eligibility requirements, coverage acceptable for transfer, premium on transfer, transfer procedures, mid-term and other changes and claims handling and other expenses and allowances.

The Rules may include such other provisions as the Board or the members may approve as appropriate.

#### **ARTICLE XX – REPRESENTATIVE ACTIONS AND LAW**

1. In the event of the failure of a member or a Servicing Carrier to meet any of its obligations under these Articles of Association or under or pursuant to the Operating Principles or the Rules, an action to enforce such obligation may be commenced and prosecuted in the name of the Association which may include the interests of all of the members of the Association. Each member agrees that it will not plead nor rely upon as a defence, and that it will be estopped from pleading or relying upon, the lack of status or capacity of the Association to bring such action in its name or its right to assert and recover claims in the place and stead and on behalf of any or all members or to treat all such claims as a single claim vested in the Association.
2. The interpretation of the contract formed by the agreement between the members to accept and be bound by these Articles of Association, the Operating Principles and the Rules shall be governed by the laws of the Province of Ontario.

**OPERATING PRINCIPLES****PART I – GENERAL****SECTION 1 – RATES**

All automobile risks written through the Association by Servicing Carriers shall be subject to the rules, rates, surcharges, minimum premiums and classifications of the Association.

**SECTION 2 – EXTRA HAZARDOUS RISKS**

If an applicant presents a risk which is greater than that contemplated by the rate established by the Association, the Servicing Carrier shall consult with the Provincial Operating Committee and/or the Rules and Rates Committee for an increase in such rate.

**SECTION 3 – COMMISSIONS**

The rates of commission on Association business shall be as specified in Appendix C attached to this Plan and forming a part of this Section. The rates set out in Appendix C, or any of them, may be changed from time to time by a resolution of the Board, such change or changes becoming effective at such time as is specified by the Board and in accordance with any applicable legislation.

**PART II – SERVICING CARRIERS****INTRODUCTION**

The following Eligibility Requirement and Service Standards are to be used by the Board in its appointment of Servicing Carriers. Other specific requirements and standards are listed in:

1. Articles of Association
2. Rules of Operation
3. Servicing Carrier Contract

Groups of companies under one ownership or common management shall be treated as a single company under these provisions.

**SECTION 1 – ELIGIBILITY REQUIREMENTS**

A. To qualify as a Servicing Carrier in a particular jurisdiction a member must be a licensed automobile insurer currently providing service throughout such jurisdiction.

The member must also commit itself to having the capability of properly underwriting, processing and maintaining a level of policy and claim service for all Association risks equal to that rendered in the voluntary market.

B. If a Servicing Carrier normally services its voluntary market policies from an office not physically located in the jurisdiction, it is acceptable to service its Association policies from that office provided the same level of service is maintained. If a Servicing Carrier does not have claims facilities in the jurisdiction it will be necessary to designate another insurance company or an independent claims adjusting firm to provide some other means acceptable to the Board for the purpose of claims settlement and service.

C. Commercial Lines Automobile service facilities must be available to Servicing Carriers in order that proper service will be rendered in respect of this class of business.

D. Companies applying to the Board to be Servicing Carriers may make application to be reimbursed for extraordinary start-up expense. It will, however, be the responsibility of the Board to make the judgments as to what costs are extraordinary and to give due consideration to any extraordinary expense reimbursement applied for.

**SECTION 2 – SERVICE STANDARDS**

- A. Servicing Carriers must confirm driving records for New Business and Renewals through Driver Record Abstracts and also must confirm classifications and territories to ensure that the proper premium is charged.
- B. Servicing Carriers must issue policies by the expiration date of the 30-day binders. They must issue renewals at least thirty days in advance of their effective dates.
- C. Servicing Carriers must carry out all subsequent policy transactions on a timely basis.
- D. Servicing Carriers must carry out all necessary accounting procedures as outlined by the Rules of Operation.
- E. Servicing Carriers must properly identify the broker in regard to every transaction and make reports by broker to the Association as required.
- F. Servicing Carriers must collect the necessary data to disburse commission payments to brokers and store this data and report same to Revenue Canada, Taxation.
- G. Servicing Carriers must generate the statistical and accounting information in the report format required. The required content and format of these reports are as specified in the Rules of Operation.
- H. Servicing Carriers may, during periods authorized by the Board and upon compliance with such procedures as may be prescribed by the Board and for the purpose of depopulating the Association and after obtaining the approval of the agent or broker concerned, solicit and accept for their own account, rather than as a

Servicing Carrier on behalf of the Association, renewal applications with respect to coverage previously placed through the Association.

- I. Notwithstanding anything contained herein, Servicing Carriers must comply with the requirements of all applicable legislation.

**SECTION 3 – WITHDRAWAL AS A SERVICING CARRIER**

A Servicing Carrier who wishes to discontinue acting in that capacity shall notify the Board of its intention at least six months in advance of the intended date of discontinuance. The President & Chief Executive Officer will arrange for the re-assignment of brokers appointed to the Servicing Carrier and an orderly procedure for the writing of new and renewal Association business by another Servicing Carrier(s).

Unless other suitable arrangements are approved by the Board, the Servicing Carrier will (a) continue all policy service and accounting functions until existing policies expire and (b) administer all claims reported on Association policies to their ultimate conclusion, or to the expiry of a period of 60 months following the said date of discontinuance, whichever first occurs. The Board will assume control of claims outstanding beyond 60 months from the said date of discontinuance.

**PART III – BROKERS**

**APPOINTMENTS TO SERVICING CARRIERS**

Every licensed broker in a jurisdiction is eligible for appointment to a Servicing Carrier pursuant to this Plan of Operation. Each broker is appointed to only one Servicing Carrier and every effort will be made to ensure that the appointment is to a company operating in the broker's own marketing method. Individual brokers who are part of one brokerage will be appointed in the name of that brokerage to one Servicing Carrier.

Reassignment of brokers appointed to a Servicing Carrier that ceases to be a Servicing Carrier shall be based on the initial procedure for selection of a Servicing Carrier.

The form of application for appointment to a Servicing Carrier is appended hereto as Appendix D.

Each broker is required to complete a Facility Association Broker/Agency Contract with the Servicing Carrier on appointment (including re-assignment).

In appropriate circumstances the Association may authorize the transfer of a broker from one Servicing Carrier to another. In any such case, however, any sums payable to the first Servicing Carrier must be paid before the transfer is completed.

Notwithstanding the above provisions, under circumstances designated by the Board a broker may be appointed to a second Servicing Carrier solely for the purpose of placing risks with certain specific characteristics or servicing requirements. In such case a separate Facility Association Broker/Agency Contract will be completed.

## **PART IV – RISK SHARING POOL**

### **SECTION 1 – CHANGES AFFECTING A TRANSFERRED RISK**

#### **A. INITIAL CLASSIFICATION OR RATING**

If, subsequent to the transfer of a risk to the Pool, the member receives information that affects the initial classification and/or rating of the risk (such as an undisclosed use of the vehicle or undisclosed prior claims and/or convictions) and does not cancel the insurance for non-disclosure:

- (1) If the information does not affect the risk's eligibility for transfer, the risk may remain transferred to the Pool provided that the member amends the

premium appropriately and proceeds as stated in item B below – provided however that if the member received the information later than sixty days after the commencement date of the period of insurance, the member may permit the premium to remain unchanged until the expiry of that period of insurance.

- (2) If the eligibility requirement is no longer satisfied, the member shall cancel the transfer effective no later than twenty-one days after the date on which the information came to its knowledge and claim a refund of the transferred premium on a pro-rata basis – except that, if the member received the information later than sixty days after the commencement date of the period of insurance, the member may permit the transfer to remain until the expiry of that period of insurance.

**B. MID-TERM CHANGES**

Any change of coverage that occurs during the period of insurance, and any other change that affects the premium and/or statistical information previously reported, shall promptly be reported by the member by means of the Premium Transfer Form(s) or other approved method in the same manner as that required by the Automobile Statistical Plan. The occurrence of a claim and/or conviction during the period of insurance is not of itself regarded as requiring a change of premium during that period.

**SECTION 2 – TRANSFER FORMS**

- A. Members shall complete and submit individual Premium Transfer Forms and Premium Batch Control Forms in respect of all written premiums and refunds, in written, tape, disc or other approved method in accordance with the Risk Sharing Pool Procedures Manual. The individual forms or records shall contain all the applicable statistical information.

- B. Each member's premium forms or records shall be submitted to the Pool by the member's Head Office for Canada or by one office designated by the member for each jurisdiction.

**SECTION 3 – SERVICING OF TRANSFERRED RISKS**

A member who has transferred a risk to the Pool will provide the same services in connection with administration, payment options, claims investigation and handling and other consumer services and facilities as it would if such risk had been retained by it for its own account.

**SECTION 4 – CLAIM PROCEDURES**

**A. INVESTIGATION AND SETTLEMENT**

In respect of every claim on insurance transferred to the Pool:

- (1) It shall be the responsibility of the member concerned to investigate, defend and settle the claim or suit as it would in the absence of the Pool. The Association shall have the right and shall be given the opportunity of associating with the member in the defence of any claim or suit and shall receive the full co-operation of the member.
  
- (2) The Pool shall contribute to the loss adjustment cost in connection with internal costs and external loss adjustment costs other than professional fees through payment of the amount determined on a basis to be established by the Board from time to time as set out in Article XI, Section 6(b). The member shall be reimbursed in connection with expenses for professional fees on the basis established in the Association Claims Guide.

**B. TRANSFER FORMS**

In respect of claims on transferred risk:

- (1) Members shall promptly complete and submit individual Claim Transfer Forms and Claim Batch Control Forms by written, tape, disc or other approved method in respect of all claim payments and recoveries and all new reserves and reserve changes in accordance with procedures authorized by the Board and published by the Association. The individual forms shall contain all the applicable statistical information.
- (2) Such claim forms shall be submitted to the Pool by the member's Head Office for Canada or by one office designated by the member for each jurisdiction.

**C. LARGE CLAIMS**

- (1) When the cost of any one loss on a transferred risk is estimated by the member to reach or exceed such amount as may require reporting pursuant to the provisions of the Facility Association Risk Sharing Claims Guide as a large loss the member shall comply with the procedures set out in the Facility Association Risk Sharing Claims Guide as approved by the Board from time to time.
- (2) When the total amount paid by the member and recoverable from the Pool in respect of one accident exceeds \$100,000.00 or such other amount as may from time to time be determined by the Board it will upon the request of the member be paid such amount by special remittance immediately upon receipt by the Pool of the required information as stipulated in the Risk Sharing Pool Procedures Manual.

# **APPENDICES**

**APPENDIX A**

**FACILITY ASSOCIATION  
MEMBERSHIP AGREEMENT**

The undersigned, in consideration of the mutual promises and undertakings made and given by each member of the Facility Association to each and every other member and of the rights and benefits accruing through the Facility Association, hereby covenants and agrees with each of the other members of the Facility Association:

1. To be and remain a member of the Facility Association subject to the provisions of the Articles of Association of the Facility Association; and
2. To be bound and comply with all the provisions of the Articles of Association, Operating Principles and Rules of Operation of the Facility Association.

It is further acknowledged that this instrument is one of a series of instruments signed individually by members but with the intention that they, together with the Articles of Association, Operating Principles and Rules of Operation, be considered as a single contract.

Dated at the City of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ in the Province of \_\_\_\_\_.

\_\_\_\_\_ CORPORATE SEAL  
(Member)

Per: \_\_\_\_\_  
(Signature)

**FACILITY ASSOCIATION**

APPLICATION FOR APPOINTMENT AS A SERVICING CARRIER IN

1. Company Name \_\_\_\_\_

2. Canadian Head Office Address \_\_\_\_\_  
Province \_\_\_\_\_ Postal Code \_\_\_\_\_

3. Address of office that will handle Association business for the above jurisdiction:  
Province \_\_\_\_\_ Postal Code \_\_\_\_\_

4. Company is part of \_\_\_\_\_ group and, is  is not  under the same control and management.

5. Marketing method presently used: Independent Broker / Agent   
Exclusive Agent   
Other (specify)  \_\_\_\_\_

6. Latest available annual figures for Automobile insurance written by the Company in the above mentioned jurisdiction:  
Premiums \$ \_\_\_\_\_  
No. of risks \_\_\_\_\_

7. Estimated annual capability as a Servicing Carrier in above jurisdiction:  
Premiums \$ \_\_\_\_\_  
No. of risks \_\_\_\_\_

8. Location of POLICY SERVICE facilities in above jurisdiction (or elsewhere if not in the same jurisdiction):

**FOR PRIVATE PASSENGER (non-fleet) POLICIES**

**FOR ALL OTHER AUTOMOBILE POLICIES**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Province Postal Code

\_\_\_\_\_  
Province Postal Code

\_\_\_\_\_  
Name & Title of Person in charge

\_\_\_\_\_  
Name & Title of Person in charge

\_\_\_\_\_  
Telephone (Area Code and Number)

\_\_\_\_\_  
Telephone (Area Code and Number)

9. Location of CLAIM SERVICE facilities on jurisdiction-wide basis. If to be provided by other than the Company applying for appointment as a Servicing Carrier, please answer Question 10.

Claim Service by Applicant.

Company Name \_\_\_\_\_

Address \_\_\_\_\_ Postal Code \_\_\_\_\_

Name and Title of Person in Charge \_\_\_\_\_

Telephone Area Code \_\_\_\_\_ Number \_\_\_\_\_

10. Alternative CLAIM SERVICE arrangements: give reasons for alternatives, the standards of service expected and attach written agreements and commitments from alternative sources:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Does the company applying as a Servicing Carrier meet the eligibility requirements as defined in the Operating Principles?

Yes  No  If no, explain \_\_\_\_\_

\_\_\_\_\_

12. Does the company applying have the necessary internal systems, procedures and controls to accurately report to the Facility Association all information in the categories below in accordance with format, frequency and other requirements specified in the Rules of Operation?

	YES	NO
A) Premium Statistics	<input type="checkbox"/>	<input type="checkbox"/>
B) Claim Statistics	<input type="checkbox"/>	<input type="checkbox"/>
C) Claim Reserves	<input type="checkbox"/>	<input type="checkbox"/>
D) Financial		
1) Premiums Written Earned and Collections	<input type="checkbox"/>	<input type="checkbox"/>
2) Accounts rendering and payment	<input type="checkbox"/>	<input type="checkbox"/>

CHIEF EXECUTIVE OFFICER: Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_ 20\_\_

**FACILITY ASSOCIATION**

The rates of commission on Facility Association non-pool business shall be as follows:

**O.P.F. 1**

- \* 1. Private Passenger Vehicles (see Note hereunder):
  - a. Class 10/11/12 ..... 9 %
  - b. Other ..... 11 %

**Subject to a Maximum Commission of \$200 per vehicle per annum.**

- \* 2. Motor-Homes.....
  - \* 3. Cabin/Home Trailers.....
  - \* 4. Other private-type trailers .....
  - \* 5. Camper Units.....
- } If used for pleasure purposes, see “Private Passenger Vehicles”; otherwise see “Other Commercial Vehicles”.
- 
- 6. Motorcycles/Mopeds.....
  - 7. All-Terrain Vehicles  
Snow Vehicles and  
other recreational vehicles.....
- } Including Police/Fire Department vehicles and Commercial use.....7 ½ %

**Subject to a Maximum Commission of \$100 per vehicle per annum.**

- 8. Long-Haul Vehicles (including trailers) .....
  - 9. Public Buses .....
  - 10. Taxis, Limousine Services (incl. airport) .....
- } ..... 6 %
- \* 11. Other “Public” Vehicles (including Police/Fire Department vehicles, Funeral vehicles, Buses other than Public Buses, Van Pool, Ambulances) ..... 10 %

**Subject to a Maximum Commission of \$200 per vehicle per annum.**

\* 12. Other Commercial Vehicles (including trailers) ..... 10 %

13. Experience-rated risks, Maximum Annual Fee per vehicle shall not exceed ..... 7 ½ %

\* Excluding experience-rated risks.

**O.P.F. 2** (“Driver’s policy”) – in accordance with the rating.

**O.P.F. 4** (“Garage” risks) ..... 10 %

**O.P.F. 6** (“Non-Owned Automobile Liability”) ..... 10 %

- Note:
1. The expression “Private Passenger Vehicles” includes Antique/Classic automobiles, Commercial-Type vehicles that are rated as Private Passenger vehicles and Driving School vehicles (Class 07), but excludes vehicles rated as Commercial or Public vehicles, Fire and Police Department vehicles (Class 53) and Funeral vehicles (Class 75).
  2. For six month policies the cap is 50% of the annual amount shown above.
  3. No other additional fee for Service may be charged.

*The base rate of commission on Risk Sharing Pool business must be the standard policy commission base rate that would be applicable if such business had been retained by the insurer for its own account.*

**APPENDIX C (All Provinces excluding Ontario)**

**FACILITY ASSOCIATION**

The rates of commission on Facility Association non-pool business shall be as follows:

**S.P.F. 1**

- \* 1. Private Passenger Vehicles (see Note hereunder):
    - a. Class 10/11/12 ..... 9 %
    - b. Other..... 11 %
  
  - \* 2. Motor-Homes.....
  - \* 3. Cabin/Home Trailers.....
  - \* 4. Other private-type trailers .....
  - \* 5. Camper Units.....
  - 6. Motorcycles/Mopeds.....
  - 7. All-Terrain Vehicles  
Snow Vehicles and  
other recreational vehicles.....
  - 8. Long-Haul Vehicles (including trailers) .....
  - 9. Public Buses .....
  - 10. Taxis, Limousine Services (incl. airport) .....
  - \* 11. Other “Public” Vehicles (including Police/Fire Department  
vehicles, Funeral vehicles, Buses other than Public Buses,  
Van Pool, Ambulances) ..... 10 %
  - \* 12. Other Commercial Vehicles (including trailers)..... 10 %
  
  - 13. Experience-rated risks except those for which the  
standard commission rate is lower..... 7 ½ %
- \* Excluding experience-rated risks.

<b><u>S.P.F. 2</u></b>	(“Driver’s policy”) – in accordance with the rating.	
<b><u>S.P.F. 4</u></b>	(“Garage” risks) .....	10 %
<b><u>S.P.F. 6</u></b>	(“Non-Owned Automobile Liability”) .....	10 %

Note: The expression “Private Passenger Vehicles” includes Antique/Classic automobiles, Commercial-Type vehicles that are rated as Private Passenger vehicles and Driving School vehicles (Class 07), but excludes vehicles rated as Commercial or Public vehicles, Fire and Police Department vehicles (Class 53) and Funeral vehicles (Class 75).



FACILITY ASSOCIATION
APPLICATION FOR APPOINTMENT TO A SERVICING CARRIER
(PLEASE TYPE OR PRINT)

Province [ ]

Item 1: Registered Name of Agency/Brokerage [ ]

Item 2: Mailing Address # 1 [ ]
Street City Postal Code

Mailing Address # 2 [ ]
Street City Postal Code

Business Telephone [ ] [ ] [ ] Area Code [ ] [ ] [ ] Fax [ ] [ ] [ ] Area Code [ ] [ ] [ ]

Item 3: a) Provincial Licence or Certificate Number [ ]

b) Effective and Expiry Dates of Licence or Certificate
Effective Date: [ ] [ ] Day Month Year
Expiry Date: [ ] [ ] Day Month Year

Item 4: Name of your Sponsoring Company of Automobile Insurance (if applicable) \_\_\_\_\_

Item 5: Please check (✓) the appropriate box:
A. [ ] Independent Broker/Agent
B. [ ] Direct Writer Agent
C. [ ] Exclusive Agent

If you are employed as a Direct Writer or Exclusive Agent, do you operate out of a Branch Office of the Company? If so, give the address of the Branch Office, if other than Item (2) above:

Street City Postal Code

Item 6: Name of you Principal Automobile Insurer \_\_\_\_\_

Item 7: List other Company (ies) with whom you write Automobile Insurance:
\_\_\_\_\_

Item 8: Have you previously operated as an Insurance Agent, Broker or Producer? If so, list the name of the Agency/Brokerage with whom you were associated and the name of its Facility Association Servicing Carrier:
\_\_\_\_\_

Item 9: Indicate the volume of Automobile premiums written through your Agency/Brokerage in the voluntary market.

Check (✓) the appropriate box:
A. 500,000 or less [ ]
B. 500,001 to 1,000,000 [ ]
C. 1,000,001 to 2,000,000 [ ]
D. 2,000,001 or more [ ]

Item 10: Indicate your Servicing Carrier preference (see the list in the enclosed letter of instruction).

NOTE: Do not indicate Companies not included on the list.

1st choice \_\_\_\_\_
2nd choice \_\_\_\_\_
3rd choice \_\_\_\_\_

I/WE HEREBY APPLY TO THE FACILITY ASSOCIATION FOR AN AGENCY/BROKERAGE APPOINTMENT

List of Principals in the Agency/Brokerage
\_\_\_\_\_

Authorized Signatures of designated individual or principal
\_\_\_\_\_

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

PLEASE RETURN THIS FORM TO THE FACILITY ASSOCIATION