

**NORTH CAROLINA  
SELF-INSURANCE SECURITY ASSOCIATION**

**PLAN OF OPERATION**

[April 25, 2019 Amended Restatement]

**Article 1**

**Adoption and Restatement**

This Amended Restatement of the Plan of Operation (“Plan”) became effective upon adoption by the Board of Directors of the North Carolina Self-Insurance Security Association (“Association”) on April 25, 2019.

**Article 2**

**Definitions**

The Plan hereby incorporates the definitions set forth in N.C. Gen. Stat. § 97-130. The definition of a Member of the Association is also clarified by N.C. Gen. Stat. § 97-131(b). References to the “Security Act” refer to Article 4, Chapter 97, of the North Carolina General Statutes.

**Article 3**

**Statement of Purposes**

The Association was formed for the purposes set forth in N.C. Gen. Stat. § 97-131(a).

**Article 4**

**Amendment and Availability of Plan**

- A. Amendments to the Plan, as necessary or suitable to assure the fair, reasonable and equitable administration of the Association, may be periodically adopted by the Board in its discretion.
- B. The Plan is posted for public review and may be downloaded from the Association website. ([www.ncsisa.org](http://www.ncsisa.org))

## **Article 5**

### **Annual Meeting**

- A. An Annual Meeting of the Members of the Association is held for the election of Directors at the time, day and place designated by the Chairman of the Board in a written notice to all Members of the Association.
- B. Notice of the Annual Meeting is transmitted to all Members detailing the time, day and place of the Annual Meeting of the Members at least thirty (30) days prior to the meeting.
- C. Directors of the Association are elected by the Members at the Annual Meeting.
- D. At Annual Meetings of the Members, if there are more nominees than vacancies, Directors are elected by receiving a majority of votes cast by the Members present. Each member present at the Annual Meeting shall have one (1) vote for each Director to be elected.

## **Article 6**

### **Board of Directors**

- A. There shall be a Board of Directors (“Board”) in accordance with the provisions of N.C. Gen. Stat. § 97-132.
  - 1. The Board shall consist of eleven (11) persons who are owners, employees, or officers of Members, to be elected for staggered terms of three (3) years so that the terms of all Directors shall not expire in the same year. Elected Directors shall serve until their successors have been duly elected and qualified to serve. There is no limitation on the number of terms that a Director may serve.
  - 2. The Board shall:
    - a. Elect a Chairman, Vice Chairman and Secretary from among the Directors and may elect such other officers as it deems necessary. The Chairman, Vice Chairman, Secretary and any other officers elected by the Board shall serve a term of one year or until a successor is elected.
    - b. Appoint an Executive Committee from among the Directors. The members of the Executive Committee are the Chairman, the Vice Chairman and the Secretary, and other such Directors, if any, appointed by the Board. The Executive Committee has such powers as may be delegated by the Board, provided it shall not have the

authority to act on matters requiring a majority vote of the full Board as provided in Paragraph B.3. below.

- c. Appoint, from among the Directors, a Nominating Committee consisting of at least three Directors. The Nominating Committee shall select a nominee to succeed each Board member whose term expires at each Annual Meeting of the Members. The Nominating Committee shall annually solicit recommendations for Director candidates from Members by written notice through the transmission of the Association Annual Report. Prior to making its report to the Board, the Nominating Committee will consider all potential nominees from amongst the Members. The nominees shall be made known to the Members through the Notice of the Annual Meeting which shall be transmitted, by electronic mail, at least thirty (30) days prior to the Annual Meeting. The Notice of the Annual Meeting shall also be posted on the Association website at [www.ncsisa.org](http://www.ncsisa.org).

Additional nominees may be nominated for election to the Board of Directors upon the petition of a Member signed by at least five Members and submitted to the Secretary of the Association not less than ten calendar days prior to the Annual Meeting.

- d. Establish an Audit and Investment Committee which consists of at least three Directors. The Audit and Investment Committee will recommend the selection of the independent outside auditor and facilitate the annual audit of the Association by an independent outside auditor. The Audit and Investment Committee will also review and report to the Board regarding any financial reporting or operational issues reported by the independent outside auditors. The Audit and Investment Committee will recommend the selection of a qualified actuary and will review all actuarial reports issued by the independent actuarial firm. The Audit and Investment Committee will recommend the selection of a qualified investment advisor and will review all investment reports issued by the independent investment advisors. The Audit and Investment Committee is responsible for all financial matters of the Association.
- e. Appoint a Credit and Risk Management Committee, a Claims Committee, and any additional committees that the Board determines are appropriate.
- f. The powers delegated by the Board to its committees shall be set forth in written Committee Charters which are annually reviewed and approved by the Board.

3. The Board may fill vacancies occurring between Annual Meetings. Vacancies occurring in the offices of Chairman, Vice Chairman, Secretary or any other office created by the Board between the Annual Meetings shall be filled by majority vote of the remaining Directors.

B.

1. At any meeting of the Board, each Director shall have one vote.
2. A majority of the Board shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present at a meeting at which a quorum is present shall be the acts of the Board, except that certain Board actions require an affirmative vote of the full Board as provided in Paragraph 3 below.
3. An affirmative vote of a majority of the full Board is required to:
  - a. Approve a contract with a Servicing Facility for claims administration. The oversight of claims functions shall be subject to review by the Claims Committee pursuant to its Charter and does not require an affirmative vote of a majority of the full Board;
  - b. Assess Members or provide for a refund to Members;
  - c. Borrow money or establish or amend a line of credit;
  - d. Approve reinsurance contracts, bonds, financial guarantees, or related financial instruments;
  - e. Adopt amendments to the Plan of Operation; or
  - f. Retain or contract with any business entity or individual to provide the services of an Executive Director.

C. The Board will meet at least quarterly and may hold regular or special meetings at such times and with such frequency as it deems appropriate to conduct the business of the Association. Board meetings may be held by telephone or by video conference. Any Director may not consent to Board action by proxy. Any action approved by the required number of Directors, shall be a valid action by the Board

D. The Board may transact business in lieu of a meeting, but there must be unanimous consent in writing for valid action by the Board.

E. Special meetings of the Board may be called by the Chairman or upon the written request of any two Directors. At a special meeting, the Board may consider and decide any matter deemed necessary for the proper administration of the

Association. Not less than five (5) days electronic notice must be given to each Director of the time, place and purpose of any special meeting, provided that the Directors may waive notice by unanimous consent.

- F. Directors may be reimbursed from the assets of the Association for reasonable expenses incurred by them as Directors pursuant to a written reimbursement policy adopted by the Board that may be amended from time to time, but Directors shall not be compensated by the Association for their services as Directors.
- G. Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the Board.

## Article 7

### **Statutory Powers and Duties of the Association**

The Board exercises all of the powers and performs all of the duties of the Association as provided in the Security Act.

- A. Association Aggregate Security System
  - 1. The Board annually designs, adopts and operates an Association Aggregate Security System whereby individual Members collectively provide security for the payment of the workers' compensation liabilities of insolvent individual self-insured Members in accordance with N.C. Gen. Stat. § 97-133(2a)(a). The collective security is provided through a combination of cash on deposit in the Fund, securities, surety bonds, irrevocable letters of credit, reinsurance, insurance or other financial instruments or guarantees owned or entered into by the Association. Group self-insurers do not participate in the Association Aggregate Security System.
  - 2. The Association in accordance with N.C. Gen. Stat. § 97-133 (a)(13) and N.C. Gen. Stat. § 97-185(a1) annually requires each individual self-insurer to determine its total undiscounted workers' compensation claims liability and to notify the Association of this determination and to provide sufficient financial information so that the Association may determine the creditworthiness of each individual self-insurer. The Board annually determines whether any individual Member self-insurer will be excluded from participation in the Association Aggregate Security System pursuant to N. C. Gen. Stat § 97-185(a1). The Board also determines the aggregate total undiscounted outstanding claims liabilities of the individual Member self-insurers that are eligible to participate in the Association Aggregate Security System. The Board also develops the methodology to be used by the Association to assess and collect the Association Aggregate Security System assessments. below. The Association will notify the Commissioner and the individual Member self-insurers that has been excluded from

participation in the annual Association Aggregate Security System so that the Commissioner will require the excluded individual Member self-insurer to deposit a statutory deposit with the Commissioner as required by N.C. Gen. Stat. § 97-185(b2).

3. If the Board determines in any year that the annual Association Aggregate Security System is not feasible or practical, the Association will notify the Commissioner by September 30 of the prior year. The Association will also inform all individual Member self-insurers that the Association Aggregate Security System will not operate for the following year and the Commissioner will require each individual self-insurer to deposit a statutory deposit with the Commissioner in lieu of participation in the Association Aggregate Security System.

B. Assessments.

The Association will assess and collect the following assessments from Members, as applicable:

1. Initial Assessment of New Members

- a. Individual Member self-insurers that do not participate in the Association Aggregate Security System pay an Initial Assessment to the Association. The Board will periodically adopt a resolution establishing the methodology for the Initial Assessment for individual Member self-insurers based on the considerations set forth in N.C. Gen. Stat. § 97-133(a)(3a)a.1, 2 and 3.
- b. Group self-insurers. The Board has discretion to establish an Initial Assessment based on the considerations set forth in N.C. Gen. Stat. §97-133(3a)c.

2. Assessment of Group Self-Insurers

Group Member self-insurers may be assessed on an annual basis in an amount established by the Board based on the considerations set forth in N.C. Gen. Stat. §97-133(a)(3a)f. in an amount not to exceed 2% of the Member group self-insurer's annual gross premiums for the preceding calendar year.

3. Association Aggregate Security System Assessments

The Board of the Association will determine the assessment for each individual Member self-insurer Member participating in the annual Association Aggregate Security System using the criteria set forth in N.C. Gen. Stat. §97-133(a)(3a)a.

4. Special Post-Insolvency Assessments

- a. If, at any time, the Board determines that the Fund is not sufficient to pay the anticipated obligations of the Association during a reasonable period of time, the Board may collect a Special Post-Insolvency Assessment pursuant to N.C. Gen. Stat. § 97-133(a)(3a)b.
- b. The amount of the Special Post-Insolvency Assessment for each Member will be determined based upon each Member's respective undiscounted claims liability divided by the aggregate undiscounted claims liability of all Members multiplied by the total assessment.

5. Billing and Collection of Assessments.

The Association will issue assessment invoices to Members which are due thirty (30) days following the date of the invoice. The Board will assess and collect interest on delinquent unpaid assessments at an interest rate established by the Board.

6. If a Member fails to pay any assessment made by the Association when due, the Association will recommend that the Commissioner revoke the delinquent Member's license to self-insure

C. Administration of the Fund

1. The Board will invest the Fund in a prudent manner and may engage an investment advisor to advise the Board. The Board may invest the Fund in interest-bearing accounts, financial investment instruments, equities or a combination of these investments. The Board will establish a written investment policy and will submit the policy to the State Treasurer for review and approval on an annual basis. The Audit and Investment Committee of the Board will meet on a quarterly basis to review investment, investment performance and the investment policy for possible revision. The Board will receive reports on the performance of Fund investments during its regular meetings. The investment policy adopted by the Board will take into account liquidity requirements for the payment of claims. All earnings derived from Fund assets will be credited to or placed in the Fund. The costs of administration of the Association will be paid from the Fund.
2. The Board may open one or more 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. The Board may borrow money from or establish a line of credit with any banking or lending institution as the Board may deem

appropriate. The Board may pledge all or a portion of the Fund to secure loans or lines of credit.

3. In accordance with N.C. Gen. Stat. § 97-133(a)(1a), the Association may purchase insurance, reinsurance, primary excess insurance, other insurance, bonds, financial guarantees and related financial and investment instruments. The Board will invest Fund assets in accordance with an investment policy adopted by the Board and reviewed and approved annually by the State Treasurer. The earnings from the investment of Fund assets shall be placed in or credited to the Fund.
4. The financial statements of the Association will be maintained on a cash and accrual basis which will be submitted to the Commissioner and will be audited annually, and an audit report will be rendered annually by a certified public accountant selected by the Board. The audited financial statements will be provided to the Commissioner of Insurance on or before June 1 of each year after it is received and approved by the Board. The Association is subject to examination and regulation by the Commissioner pursuant to N.C. Gen. Stat. § 97-137.

#### D. Claims

##### 1. Claims Administration

- a. Upon the determination of a Member's insolvency in accordance with N.C. Gen. Stat. §97-135, the Board will make such investigation of the status of the insolvent Member's claims as it deems necessary; and, upon receiving the insolvent Member's claims files and records, the Association will notify the North Carolina Industrial Commission of the Association role, if any, in any pending workers' compensation cases before the Commission; and, for Covered Claims, make an appearance in each case through its designated legal counsel.

For Covered Claims involving the payment of indemnity to Claimants, the Association will verify the correct payment amount, the Claimant's correct address and will begin bi-weekly indemnity payments, in the appropriate amount for the required amount of time.

The Board is empowered to investigate, adjust, compromise and settle claims as it deems appropriate. The Board has delegated the administration of all Association claims to its Claims Committee or its Servicing Facility. The Claims Committee authorizes claims payment and makes settlement decisions and grants specific settlement authority limits in litigated and other appropriate cases to

its legal counsel. Periodic indemnity payments and medical expenses are authorized by the Claims Committee and are paid by the Association, directly from the Association claims account or through the Servicing Facility.

In every Member insolvency, the Association objective is to liquidate all Covered Claims against the insolvent Member as quickly as is reasonably possible through settlement or expedited mediation or litigation. The Claims Committee or the Servicing Facility may negotiate and settle claims for medical and claims-related services in a timely manner subject to the review and approval by the Claims Committee. In administering claims, the Association pays Covered Claims in a fair and fiscally responsible manner in order to minimize the assessment of solvent Members to pay Covered Claims and related costs resulting from Member insolvencies.

b. Pre-Association Claims

Pre-Association Claims means any claims against an insolvent Member arising out of an injury which occurred prior to October 1986. Pre-Association Claims are not Covered Claims and the Association does not pay Pre-Association Claims.

c. Proofs of Claim

The proof of claim process involves the filing of a proof of claim with the Association for a claim against the insolvent Member that is subject to statement as a sum certain.

The Association also processes claims for medical expenses and other claim related expenses for Covered Claims on an as-billed basis. However, if the Association and a medical or claims services provider that provided services for the insolvent Member prior to the determination of the Member's insolvency cannot agree on the amount of payment, the medical or claims services provider may file a proof of claim with the Association and the Board will determine the amount of payment to be made to the service provider. Proof of claim forms have been promulgated by the Association, are posted on the Association's internet website and require, at a minimum, the following information:

d. The name and address of the insolvent self-insurer;

e. If known by Claimant, the date on which insolvency was judicially determined or bankruptcy proceedings instituted together with the

name and address of the Court in which determination was made or proceedings begun;

- f. A description of the alleged compensable injury and the circumstances surrounding the occurrence of the injury;
- g. Any medical records relating to the injury and any statement or invoice for medical treatment received as the result of injury.

E. Member Asset and Security Recoveries

1. Member Security Deposits and Surety Bonds

In accordance with N.C. Gen. Stat. § 97-143, upon the determination of a Member's insolvency, the Department should assign and deliver a Member statutory deposit to the Association. The statutory deposit may be in the form of cash, securities, surety bond(s) or letter of credit. The deposit, bond, or letter of credit proceeds are deposited in the Fund by the Association and are designated as restricted funds, available only for payment of Covered Claims against and Association expenses attributable to that Member. An accounting of the use of the restricted funds is prepared quarterly and provided to the Department and the former Member self-insurer.

2. Recovery of Member Assets, Reinsurance Recoveries and Other Causes of Action

The Association files proofs of claim, when appropriate, in the insolvent Member's bankruptcy proceeding. The Association pursues Member subrogation claims against third parties, if applicable and appropriate. The Association pursues reimbursement for payment of Covered Claims from the member's reinsurance and excess insurance providers when appropriate. The Association pursues the reimbursement of attorneys' fees when appropriate.

F. Operations

- 1. The Association's mailing address is 1620 South MLK Jr. Avenue, Suite 107, Salisbury, North Carolina 28144. The Board maintains an internet website at [www.ncsisa.org](http://www.ncsisa.org) that includes communication links.
- 2. The Board may employ or contract for the services of an Executive Director or additional persons to serve as staff for the Association. If an Executive Director is employed, the Board may delegate, by resolution, any of its authority under the Act other than matters specifically requiring Board approval, to the Executive Director.

3. The Board may employ legal counsel, public accountants, actuaries, consultants, claims administrators or any other persons, firms or corporations to perform such administrative services and functions as are necessary for the Board's performance of the duties imposed on the Association and may negotiate and execute contracts for these purposes. The functions of administering and adjusting of claims shall not be performed by the same entity that provides legal representation to the Association for claims.
  - a. The Board or the Executive Director may authorize the filing of an action or actions on behalf of and in the name of the Association in any court, administrative agency or other tribunal to effectuate any of its statutory powers.

G. Exercise of Other Statutory Powers and Duties

Pursuant to the Act, the Board will exercise any and all of its statutory powers and duties under the Act that are not specifically enumerated in this Plan of Operation.

**Article 8**

**Indemnification**

- A. The Board, its individual Directors, its Executive Director, as well as any agents or employees of the Association together with any Member self-insurer acting on behalf of the Association, will be indemnified by the Association against all expenses incurred in the defense of any act or omission taken by the above-referenced individuals in the performance of their powers and duties under the Act, unless such person will be finally adjudicated by a court of competent jurisdiction to have committed a breach of duty involving gross negligence, bad faith, dishonesty, willful malfeasance or reckless disregard of responsibilities of their office. In the event of settlement before final adjudication, such indemnity will be provided only if the Association is advised by independent counsel that such person did not, in the opinion of the independent counsel, commit such a breach of duty.
- B. The expense of the above-referenced indemnification will be paid by the Fund.
- C. This indemnification is intended to operate as a supplement and an additional safeguard to the immunity set forth by N.C. Gen. Stat. § 97-139.

## **Article 9**

### **Conformity to Statute**

The Act and any subsequent amendments thereto, is incorporated herein and made a part of this Plan; and, any portion of this Plan which may be found to be in violation of or inconsistent with that Article will not render the remainder of the Plan invalid or unenforceable.

## **Article 10**

### **Appeal to Commissioner**

In accordance with N.C. Gen. Stat. § 97-134(3)h., any Member self-insurer that is aggrieved by any final action or decision of the Board may appeal such action or decision to the Commissioner within thirty (30) days after the action or decision by the Board.

## **Article 11**

### **Dissolution**

In the event of the dissolution of the Association, all assets remaining after provision for the satisfaction of all Covered Claims shall be distributed to the State Treasurer in accordance with N.C. Gen. Stat. §97-142 to establish a reserve to satisfy potential future claims against the Association. Once all potential claims are resolved the reserve shall be transferred to the General Fund.