

**MUNICIPAL EXCESS LIABILITY JOINT INSURANCE FUND**  
**BYLAWS**

# **MUNICIPAL EXCESS LIABILITY JOINT INSURANCE FUND**

**Park 80 West, Plaza One  
Saddle Brook, NJ 07663**

## **Bylaws**

**Approved: April 1998  
Revised: November 2000**

**WHEREAS:** N.J.S.A. 40A:10-36 et seq. permits local units to join together to form a joint insurance fund; and

**WHEREAS:** Said statute was designed to give local units the opportunity to use alternative risk management techniques, providing they are based on sound actuarial principles;

**WHEREAS:** The Municipal Excess Liability Joint Insurance Fund, hereinafter the Fund, was established effective January 1, 1987 pursuant to said statutes,

**WHEREAS:** Revisions to said statute and the regulations promulgated by the Department of Banking and Insurance pursuant thereto require the Fund to revise its existing bylaws.

**NOW THEREFORE,** the membership of the Fund hereby adopts the following bylaws;

### **ARTICLE I - DEFINITIONS**

All terms used herein shall have the meaning consistent with the statutes and regulation then in effect. The definitions herein are for convenience.

**“ACTUARY”** means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving; an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving; or an associate in good standing of the American Academy of Actuaries who has been approved as qualified for signing loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries and who has seven years recent experience in loss reserving.

**“ADMINISTRATOR”** means a person, partnership, corporation or other legal entity engaged by the Fund to act as Executive Director to carry out the policies established by the Fund Commissioners or Executive Committee and to otherwise administer and provide day-to-day management of the Fund.

**“ALLOCATED CLAIMS EXPENSE”** means attorneys’ fees, expert witness fees (i.e. engineering, physicians, etc.), medical reports, professional photographers’ fees, police reports and other similar expenses. The exact definition of “allocated claims expense” or similar terms for any line of insurance coverage shall be the definition in the insurance policy issued by the Fund.

**“COMMISSIONER”** means the Commissioner of Banking and Insurance where the context so indicates. Elsewhere in these bylaws, the term commissioner refers to a member’s representative known as a commissioner or Fund Commissioner.

**“DEPARTMENT”** means the Department of Banking and Insurance.

**“EMPLOYER’S LIABILITY”** means the legal liability of a public employer to pay damages because of bodily injury or death by accident or disease at any time resulting therefrom sustained by an employee arising out of and in the course of his employment by the public employer, which is not covered by a workers’ compensation law. The exact definition of “Employer’s Liability” or similar terms shall be the definition used in the insurance policy issued by the Fund.

**“EXCESS INSURANCE”** means insurance purchased from an insurance company authorized or admitted in the State of New Jersey or deemed eligible by the Commissioner as a surplus lines insurer or from any other entity authorized to provide said coverage in this state pursuant to law, covering losses in excess of an amount set forth in insurance contracts on a specific occurrence, or per accident or annual aggregate basis.

**“FUND”** means the Municipal Excess Liability Joint Insurance Fund (hereinafter referred to as the Fund)

**“FUND YEAR”** means the Fund’s fiscal year of January 1st through December 31st.

**“GENERAL LIABILITY”** means any and all liability which may be insured under the laws of the State of New Jersey, excluding workers’ compensation, and employer’s liability. The exact definition of a “general liability” or similar terms is the definition used in the insurance policy issued by the Fund.

**“INCURRED CLAIMS”** means claims which occur during a Fund year including claims reported or paid during a later period. The exact definition of “incurred claims” or any similar term is the definition used in the excess insurance or reinsurance policy purchased by the Fund.

**“INDEMNITY AND TRUST AGREEMENT”** means a written contract signed by and duly adopted by the members of the Fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the Fund. The agreement shall specify the extent of the member’s participation in the Fund with respect to the types of coverage to be provided by the Fund and shall include the duration of Fund membership which shall not exceed three years pursuant to N.J.S.A. 40A:11-15 (6). The agreement shall also specify that the member has never defaulted on claims if self-insured and has not been canceled for non-payment of insurance premiums for a period of at least two years prior to application to the Fund.

**“MANUAL PREMIUM”** means the premium computed according to the Experience Rating Plan provided for in the New Jersey Worker’s Compensation and Employer’s Liability Insurance Manual on file with the Commissioner and similar insurance industry rating plans for other lines of coverage.

**“MEMBER”** means a joint insurance fund which is a member of the Municipal Excess Liability Joint Insurance Fund.

**“MOTOR VEHICULAR AND EQUIPMENT LIABILITY”** means liability resulting from the use or operation of motor vehicles, equipment or apparatus owned by or controlled by the members or owned by or under the control of any subdivision thereof including its departments, boards, agencies or commissions. The exact definition of “motor vehicular and equipment liability” or any similar terms shall be the definition of the insurance policy issued by the Fund.

**“OCCURRENCE”** means a single event. The exact definition of “occurrence” or any similar term shall be the definition used in the insurance policy issued by the Fund.

**“PRODUCER”** means any person engaged in the business of an insurance agent, insurance broker, or insurance consultant as defined in N.J.S.A. 17:22 A-1 et seq.

**“PROPERTY DAMAGE”** means any loss or damage, however caused, to property including monies and securities, motor vehicles, equipment or apparatus owned by the member or owned by or under the control of any of its departments, boards, agencies, commissions, or other entities which the membership may provide coverage for. The exact definition of “property damage” or similar terms shall be the definition in the insurance policy issued by the Fund.

**“SERVICING ORGANIZATION”** means an individual, partnership, association, or corporation, other than the administrator, that has contracted with the Fund to provide, on the Fund’s behalf, any function as designated by the Fund Commissioners including, but not limited to, actuarial services, claims administration, cost containment services, loss prevention/safety engineering services, legal services, auditing services, financial services, compilation and maintenance of the Fund’s underwriting file, coordination and preparation of coverage documents, risk selection and pricing, excess insurance or reinsurance producer services, which include producer negotiations on behalf of the Fund for excess insurance or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 40A:10-36, et seq. and N.J.A.C. 11:15-2 et. seq., and such other duties as designated by the Fund.

**“SURPLUS”** means that amount of monies in a trust account that is in excess of all costs, earned investment income, refunds, incurred losses and loss adjustment expenses and incurred but not reported reserves including the associated loss adjustment expenses attributed to the Fund net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular year.

**“WORKERS’ COMPENSATION”** means the provisions of N.J.S.A. 34:15–7 et seq.

## **ARTICLE II - MEMBERSHIP**

### **MEMBERSHIP APPLICATIONS:**

1. Pursuant to N.J.S.A. 40A:10-36, et seq. a qualified joint insurance fund shall by resolution, agree to join the Fund. The resolution shall provide for execution of a written agreement specifically providing for acceptance of the Fund’s bylaws as approved and adopted pursuant to N.J.S.A. 40A:10-39. The resolution shall also provide for the execution of an Indemnity and Trust agreement as defined in Article I.
2. Any joint insurance fund seeking membership shall also submit an application for membership to the Fund on a form acceptable to the Commissioner. The application shall include the executed Indemnity and Trust agreement and the resolution required under Subsection 1 above.
3. An application may be approved by a majority vote of the Fund Commissioners or two-thirds vote of the full authorized membership of the Executive Committee based on the following criteria:
  - a. The applicant’s claims history shows safety performance consistent with the Fund’s objectives and the applicant’s physical location and makeup indicates a prospective likelihood of satisfactory future claim performance.

- b. The Fund has the administrative capability to absorb additional memberships without undue inconvenience or strain.
4. Each member shall agree to:
  - a. Engage a qualified Executive Director/Administrator to act as liaison between the Fund and the member.
  - b. Engage a qualified attorney to coordinate the legal defense of the member's claims with the Fund.
  - c. Maintain in full force and effect a contract with a qualified adjusting service company to adjust the member's claims.
  - d. In the event a member is not in compliance with the section, or the individuals or firms engaged do not meet the Fund's written criteria, the Fund may contract to provide these services and assess the cost of these engagements to the member.
5. Within 15 days of its approval by the Fund, the executed Indemnity and Trust Agreement and the resolution required under Subsection I above shall be concurrently filed with the Department and the Department of Community Affairs and shall be accompanied by such amendments to the Fund's Budget and Plan of Risk Management as well as any other documents required pursuant to N.J.A.C. 11:15-2 et. seq.
6. If a non-member is not approved for membership, the Fund shall set forth in writing the reasons for disapproval and send the reasons for disapproval to the non-member. The Fund shall retain a copy of all membership application disapproval's for five years.

### **Membership Renewals:**

1. Members may renew their participation by execution of a new resolution/ordinance to join the Fund ninety (90) days prior to the expiration of the term.
2. The Fund Commissioners/Executive Committee must act upon any renewal application no later than forty five (45) days prior to the expiration of the term period. Otherwise, the renewal application is automatically approved.
3. In order to deny a renewal application, the Fund's Commissioners/Executive Committee shall find by majority vote that the member has failed to fulfill its responsibilities as a member or no longer meets the Fund's risk management or

underwriting standards or other reasons approved by the Commissioner as reasons for termination.

4. If a member's renewal application is rejected, the Fund shall comply with the termination provisions as outlined below.
5. Non-renewal of a Fund member does not relieve the member of responsibility for claims incurred during its period of membership.

### **Termination And/Or Withdrawal Of Fund Members**

1. A member must remain in the Fund for the full term of membership unless earlier terminated by a majority vote of the Fund Commissioners or a two-thirds vote of the Executive Committee for non-payment of assessments or continued non-compliance after receiving written notice to comply with the Fund's bylaws, risk management or underwriting standards, or other reasons approved by the Commissioner as reasons for termination. However, a member shall not be deemed terminated until:
  - a. The Fund gives by registered mail to the member a written notice of its intention to terminate the member in thirty (30) days; and
  - b. Like notice shall be filed with the Department and Department of Community Affairs, together with a certified statement that the notice provided for above has been given; and
  - c. Thirty (30) days have elapsed after the filing required by "b" above.
2. Notwithstanding number 1 above, within ninety (90) days after the effective date of any amendment to these bylaws, a member which did not approve the amendment may withdraw from the Fund.
3. A member that does not desire to continue as a member after the expiration of its membership term shall give written notice to the Fund of its intent ninety (90) days before the expiration of the term period. The Fund shall notify the Department and the Department of Community Affairs that the member has given notice to leave the Fund.
4. A member that has been terminated or does not continue as a member of the Fund shall remain jointly and severally liable for claims incurred by the Fund and its members during the period of its membership, including, but not limited to being subject to and liable for supplemental assessments.
5. The Fund shall notify the Department and the Department of Community Affairs if the termination or withdrawal of a member causes the Fund to fail to meet any of the

requirements of N.J.S.A. 40A:10-36 et seq. or any other law or regulation of the State of New Jersey. Within fifteen (15) days of such notice, the Fund shall advise the Department and the Department of Community Affairs of its plan to bring the Fund into compliance.

## **ARTICLE III - ORGANIZATION**

### **Fund Commissioners:**

#### **1. Appointment:**

- a. **Commissioners:** In the manner generally prescribed by law, each member shall appoint one (1) commissioner to the Fund. Each member shall select a commissioner of one of its member local units.
- b. **Alternate:** Each member may appoint one (1) alternate to attend either regular or special meetings on behalf of the member in the absence of the Commissioner. The alternate shall exercise the full power and authority of the Commissioner in his/her absence, including the right to vote. Each member shall select a commissioner of one of its member local units.
- c. **Special Commissioner:** In the event that the number of members is an even number, one (1) additional commissioner and an alternate to the Special Commissioner shall be appointed annually by a member on a rotating basis determined alphabetically.

The member's privilege to appoint the Special Commissioner shall remain with that member for one entire Fund year and the subsequent admission to the Fund of a member with a preceding alphabetical prefix shall not deprive any member already a member of the Fund of its prerogative to appoint a Special Commissioner during a current Fund year.

#### **2. Terms of Office and Vacancy:**

- a. All terms of office shall expire on January 1st or until a successor is duly appointed and qualified.
- b. Commissioners shall hold office at the pleasure of the member joint insurance fund and can be removed by the member at any time without cause.

- c. The unexpired term of a commissioner other than the Special Commissioner, shall be filled by the appointing member in the manner generally prescribed by law.
- d. In the event of a vacancy of the Special Commissioner caused by reason other than the expiration of the term of office, the member which appointed the commissioner shall appoint the replacement for the unexpired term.
- e. Any commissioner can be removed from office for cause by two-thirds vote of the full membership of the Fund Commissioners/Executive Committee. Upon such a vote, it shall be incumbent upon the member to replace the commissioner.

**3. Responsibilities:**

- a. The Fund Commissioners are hereby required, authorized and empowered to operate the Fund in accordance with these bylaws and appropriate state laws and regulations in the interests of the total membership of the Fund.
- b. The Fund Commissioners shall determine and establish the Fund's budget, assessments, loss reserves, surplus, limits of coverage, limits of excess insurance or reinsurance, coverage documents, refunds and other financial and operating policies of the Fund.
- c. The Fund Commissioners shall invest monies held in trust in any account in accordance with the Fund's cash management plan and consistent with the statutes and rules governing the investment of public funds by joint insurance funds established pursuant to N.J.S.A. 40A:10-36, et seq.
- d. The Fund Commissioners shall collect and disburse all money due to or payable by the Fund, or authorize such collection and disbursement.
- e. The Fund Commissioners may enter into contracts with other persons or with public bodies of this state for any professional, administrative or other services as may be necessary to carry out the purposes of the Fund.
- f. The Fund Commissioners may purchase and serve as the master policy holders, if desired, for any insurance, including excess insurance or reinsurance.
- g. The Fund Commissioners shall prepare, or cause to be prepared, a risk management plan for the Fund.
- h. The Fund Commissioners, as the need arises, may amend the bylaws and the risk management plan of the Fund pursuant to N.J.S.A. 40A:10-36, et seq.

- i The Fund Commissioners may authorize the Fund to become a member of other joint insurance Funds organized pursuant to N.J.S.A. 40A:10-36, et seq. and may authorize the Fund Chairman to execute such documents including but not limited to an indemnity and trust agreement as required to secure such membership(s).
- j The Fund Commissioners shall do all other things necessary and proper to carry out the purposes for which the Fund is established.
- k. Each Commissioner shall have one vote provided, however, that the Special Commissioner, if any, shall only vote in the event of a tie.

**Officers:**

1. As soon as possible after the beginning of each year, the commissioners shall meet to elect the officers of the Fund from its own membership. Fund officers shall serve until January 1st of the following year, or until a successor is duly elected and qualified.
  - a. **Chairperson:** The Chairperson shall preside at all meetings of the Fund Commissioners/Executive Committee and shall perform such other duties provided for in these bylaws and the laws and regulations of the State of New Jersey.
  - b. **Secretary:** The Secretary shall serve as Acting Chairperson in the absence of the Chairperson, and shall perform such other duties as provided for in these bylaws and the laws and regulations of the state of New Jersey.
2. In the event of a vacancy in any of the officer positions caused by other than the expiration of the term of office, the commissioners/Executive Committee may, by majority of vote, fill the vacancy for the unexpired term. In the event of a vacancy of both the Chairperson and Secretary, the longest serving member of the Executive Committee, or otherwise the longest serving commissioner shall serve as Acting Chairperson until the vacancies are filled.
3. Any officer can be removed with cause at any time by a two-thirds vote of the full membership of the Fund Commissioners.

**Executive Committee:**

1. If the total number of commissioners exceeds seven (7), as soon as possible after the beginning of the year the Fund Commissioners and special Fund Commissioner, if

any, shall meet and elect five (5) of their number to serve with the Chairperson and the Secretary as the Executive Committee of the Fund. During their term of office, members of the Executive Committee shall exercise the full power and authority of the commissioners except as otherwise provided. Wherever the term “commissioners/Executive Committee” appears in these Bylaws, that term shall be interpreted to mean “Executive Committee”, except in those cases where the express language and content of these Bylaws or applicable statutes dictate otherwise.

2. The Executive Committee shall only meet when the full Board of Fund Commissioners lacks a quorum.
3. The Executive Committee shall serve until January 1st of the following year, or until their successors are duly elected and qualified.
4. In the event the commissioners shall elect an Executive Committee as provided for above, they may also elect up to seven (7) additional commissioners to serve as alternate members of the Executive Committee to attend either regular or special meetings to serve in the absence of a member or members of the Executive Committee. An alternate or alternates serving in the absence of a member, or members, of the Executive Committee shall exercise the full power and authority of that absent member or members. Alternates shall have all privileges and responsibilities of Executive committee members except they shall only vote when so designated below:
  - a. Alternates shall vote in established priority order, designated as alternate #1, alternate #2 etc. Alternate #1 shall vote in the absence of one member of the Executive Committee or in the absence of Alternate #1, Alternate #2 may vote, and so on.
5. Vacancies on the Executive Committee caused by a reason other than the expiration of the term of office may be filled by a majority vote of the full remaining membership of the Executive Committee.

### **Fund Professionals:**

As soon as possible after the beginning of each year, the commissioners/Executive Committee shall meet and select persons to serve in the following professional positions. No professional nor any employee, officer or director, or beneficial owner thereof, shall be a Fund Commissioner. All professionals shall be retained pursuant to the “Local Public Contracts Law.”

1. **Treasurer:**

The treasurer shall be a Certified Municipal Finance Officer and have the following duties and responsibilities:

- a. Custodian of the Fund's assets and shall maintain the various trust funds.
- b. Approval of all receipts, disbursements, and financial records.
- c. Draft the cash management plan and invest all balances.
- d. Ascertain availability of sufficient unencumbered funds in any account to fully pay all charges or commitments prior to any payment or commitment.
- e. The treasurer shall perform such other duties as provided for by the Fund Commissioners/Executive Committee, these bylaws and in the laws and regulations of the State of New Jersey.
- f. The treasurer shall be covered by a fidelity bond protecting the Fund's assets in a form and amount to be determined annually by the commissioners/Executive Committee. Said bond to be paid for by the Fund.

2. **Executive Director/Administrator:**

- a. The Administrator shall serve as Executive Director of the Fund and shall have demonstrated experience in the management and administration of joint insurance funds of New Jersey public entities.
- b. The Administrator shall have the following duties and responsibilities:
  - i) Carry out the policies established by the commissioners and to otherwise supervise the management of the Fund.
  - ii) Advise the commissioners on risk management matters and shall prepare a draft Risk Management Plan.
  - iii) Prepare the Fund's budget, compile and bill assessments.
  - iv) Maintain underwriting files, prepare new members submissions for review of the commissioners.

- v) Prepare draft requests for proposals for services to be provided by servicing organizations and monitor the performance of the service companies.
  - vi) Prepare filing required by state regulations.
  - vii) Coordinate the fund's meeting agenda, minutes, elections, contracts, and maintain the Fund's official records and office.
  - viii) Maintain the Fund's general ledger, accounts payable and accounts receivable function.
  - ix) Perform such other duties as provided for by the Fund Commissioners, these bylaws, and the laws and regulations of the State of New Jersey.
- c. The Administrator shall assume overall executive responsibility for the operations of the Fund except that the Administrator shall not be responsible for the errors and omissions of any other servicing organization except as to generally monitor the compliance of said organization with the directives of the Fund Commissioners, its Service Provider contract, or the applicable statutes and regulations as to the form and timeliness of said undertaking. For example, the Executive Director shall be responsible to verify the issuance of excess or reinsurance policies, and the timely receipt of said policies by the Fund, however, the Executive Director shall not be responsible for the content of the policies or the adequacy of the coverage.
- d. The Administrator shall be bonded in a form and amount acceptable to the Commissioner. The Administrator shall also be covered by Errors and Omissions insurance as provided by N.J.A.C. 11:15-2. Said coverage is to be paid by the Fund.

3. **Auditor:**

The auditor shall be an independent Certified Public Accountant (CPA) or a registered municipal accountant (RMA) who has evidenced the ability and experience to properly examine a joint insurance fund. The auditor shall conduct the annual audit of the Fund in accordance with, N.J.S.A. 40A:10-36, and N.J.A.C. 11:15-2.24, and shall perform such other duties as provided for by the Fund Commissioners/Executive Committee, these bylaws and the laws and regulations of the State of New Jersey.

4. **Attorney:**

- a. The Fund attorney shall be admitted to the New Jersey Bar and shall provide advice to the Fund on legal matters such as advising the commissioners of their obligations and responsibilities under N.J.S.A. 40A:10-36, et seq., the regulations and other pertinent law such as the Open Public Meetings Act.
- b. The attorney shall have the following responsibilities:
  - i) The attorney shall advise the Fund and the appropriateness of claim settlements recommended by the Claims Administrator.
  - ii) The attorney shall advise the commissioners on the selection of counsel to represent the Fund in the defense of claims.. The Fund attorney may also provide representation concerning incidental aspects of claim matters such as motions where it is more expeditious, cost effective or otherwise to do so. However, the attorney or any member of the attorney's law firm shall not defend claims which are the responsibility of the Fund without the authorization of the Commissioners.
  - iii) The attorney shall perform such other duties as provided for by the Fund Commissioners, these bylaws and the laws and regulations of the State of New Jersey.

5. **Actuary:**

The actuary shall certify the actuarial soundness of the Fund and shall report to the Fund Commissioners in a manner and at such times established by them, and shall provide such actuarial reports as required by the Department. The actuary shall certify claim reserves, reserves for "Incurred but Not Reported" (IBNR) losses, and unearned assessments and shall comment on the adequacy of the budget.

6. **Service Agent:**

The Fund shall designate and appoint an agent in New Jersey to receive service and process on behalf of the Fund.

7. All Fund professionals shall be retained on a contractual basis which shall be approved by the Fund Commissioners and submitted to the Commissioner and the Commissioner of Community Affairs.

8. Fund Professionals shall be compensated for their services pursuant to written fee guidelines submitted annually and approved by a majority of the Fund Commissioners. The written fee schedule shall be part of the official contract.

### **Servicing Organizations:**

1. The Fund may contract to have the following services performed:
  - a. Actuarial services
  - b. Claims Administration
  - c. Cost containment services
  - d. Loss prevention/safety engineering services
  - e. Legal services
  - f. Auditing services
  - g. Financial services
  - h. Compilation and maintenance of the Fund's underwriting file
  - i. Coordination and preparation of coverage documents
  - j. Risk selection and pricing
  - k. Excess insurance or reinsurance producer services
  - l. Member assessment and fee development
  - m. Report preparation pursuant to N.J.S.A. 40A:10-36, et seq. and N.J.A.C. 11:15-2 et.seq.
  - n. Other duties as designated by the Fund
2. The Fund may at its option contract for these services from different servicing organizations.
3.
  - a.) No servicing organization of the Fund, or producer that may be appointed pursuant to N.J.A.C. 11:15-2.6(c)10, or their employees, officers or directors shall have either a direct or indirect financial interest in the administrator of the Fund or be an employee, officer or director of the administrator unless notice of such interest has been provided to the Fund Commissioners and members.
  - b.) No administrator of the Fund, or their employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a servicing organization of the Fund, or the insurance producer that may be appointed by that fund pursuant to N.J.A.C. 11:15-2.6(c)10-1 unless notice of such interest has been provided to the Fund Commissioners and members.
  - c.) Any employee, officer or director of the administrator, servicing organization or insurance producer that may be appointed pursuant to N.J.A.C. 11:15-2.6(c)10 shall disclose to the Fund Commissioners or Executive

Committee, as applicable, any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization or insurance producer.

d.) No individual, partnership or corporation retained by the Fund to act as a producer to secure excess or reinsurance for the Fund, including its employees, officers or directors shall have either a direct or indirect financial interest in the administrator of the Fund.

e.) No administrator of the Fund, or its employees, officers or directors shall have either a direct or indirect financial interest in any individual, partnership or corporation retained by the Fund to act as a producer to secure excess or reinsurance for the Fund.

4. Each service contract shall include a clause stating “unless the Fund Commissioners otherwise permit, the servicing organization shall handle to its conclusion all claims and other obligations incurred during the contract period.”
5. Each Servicing Organization shall provide a surety bond and Errors and Omissions coverage if required by law, in a form and amount acceptable to the Commissioner.
6. All officers, employees and agents, including the Administrator and Servicing Organization of the Fund, on the final day of their contract or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to their contract or employment, or if no successor has been designated, delivery shall be made to the Administrator or Fund Chairperson.

#### **Indemnification Of Officers And Employees:**

1. The Administrator, Claims Service Provider(s), Producer, Risk Management Consultant(s) and such others as are required by regulation to do so, shall provide Errors and Omissions coverage in a form satisfactory to the Commissioner. The Fund Commissioners/Executive Committee may also require other professionals to provide evidence of Errors and Omissions coverage, and any other coverage as a requirement of their contract.
2. Except to the extent covered by Errors and Omissions insurance as may be required, as set forth above, the Fund shall indemnify any past, present or future Fund Commissioner, and may indemnify such other officials or professionals or service providers as the Fund Commissioners determine, for claims arising from an act or omission of such Fund Commissioner, official or employee within the

scope of the performance of such individuals' duties as Fund Commissioner, officials, professional or employee within the scope of the performance of such individual's duties as Fund Commissioner, official, professional or employee. Such indemnification shall include reasonable cost and expenses incurred in defending such claims. Nothing contained herein shall require the Fund to pay punitive damages or exemplary damages or damages arising from the commission of a crime by such an individual and the Fund shall not be required to provide for the defense or indemnification of such an individual when the act or omission which caused the injury was the result of actual fraud, malice, gross negligence or willful misconduct of such individual or in the event of a claim against such an individual by the State of New Jersey or if such Fund Commissioner, official, professional or employee is either covered, or required to be covered by errors and Omissions liability insurance. The determination as to whether an individual's conduct falls within any of the above exceptions shall be made by the Fund Commissioners/Executive Committee. Nothing herein contained is intended to shield omission or wrongdoing which would not customarily be covered by Errors and Omissions insurance if same had been required of said employee or appointed official.

3. A present, past or future Fund Commissioner, official, professional or employee of the Fund shall not be entitled to a defense or indemnification from the Fund unless:
  - a. Within ten (10) calendar days of the time he or she is served with the summons, complaint, process, notice or pleading, he or she delivers the original or exact copy to the Fund Chairman with a copy to the Fund attorney, together with a request that the Fund provide for his or her defense; and
  - b. In the event the Fund provides a defense or indemnification, he or she cooperates in the preparation and presentation of the defense with the attorney selected to defend the case; and
  - c. Except in those instances where a conflict of interest exists, as determined by an attorney selected by the Fund to handle such matters, the past, present or future Fund Commissioner, official, professional or employee shall agree that the Fund and its counsel shall have exclusive control over the handling of the litigation.
4. The foregoing right of indemnification shall not be exclusive of any other rights to which any Fund Commissioner, official, professional or employee may be entitled as a matter of law or which may be lawfully granted to him or her; and the right to indemnification hereby granted by this Fund shall be in addition to and not in restriction or limitation of any other privilege or power which the Fund may lawfully exercise with respect to the indemnification or

reimbursement of a Fund Commissioner, official, professional or employee; except that in no event shall a Fund Commissioner, official, professional or employee receive compensation in excess of the full amount of a claim and reasonable costs and expense incurred in defending such claim.

5. Expenses incurred by any Fund Commissioner, official, professional or employee in defending an action, suit or proceeding may be paid by the Fund in advance of final determination of such action, suit or proceeding as authorized by the Fund in a specific case upon receipt of an undertaking by or on behalf of such member or officer to repay such amount in the event of an ultimate determination that his or her conduct was such as to fall outside the scope of coverage under this indemnification provision.

#### **Advisory Committees:**

From time to time, the Fund Chairperson may establish advisory committees and may appoint any individual to serve on these committees except that only Fund Commissioners may serve on a Nominations Committee, if any, established for the purpose of proposing candidates to stand for election as a Fund officer or member/alternate of the Executive Committee.

#### **Field Services:**

1. Pursuant to the Bylaws of each member, the Fund shall recognize producers appointed in accordance to N.J.A.C. 11:15-2.6(c) 10 who shall have the responsibilities as provided for in the Bylaws of the member.
2. The Fund shall pay a producer's fee of 6% of the annual assessments of the local units served by the producer except that a member may establish a different rate or method of compensation in which case the Fund shall not pay the producer and shall compute the member's assessment net of this fee.

### **ARTICLE IV - OPERATION OF THE FUND**

#### **General Operation:**

1. The Fund shall be subject to and operate in compliance with the provisions of the Local Fiscal Affairs Law (N.J.S.A. 40A:5-1 et seq.), the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) and regulations (including but not limited to N.J.A.C. 5:34) and the various statutes authorizing the investment of

public funds, including but not limited to N.J.S.A. 40A:10-10 (b), 40A: 10-38, 17:12B-241 and 17:16L.

2. The Fund shall be considered a local unit for purposes of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) and shall be governed by the provisions of that law in the purchase of any goods, materials, supplies and services.
3. The Fund shall be operated with sufficient aggregate financial strength and liquidity to assure that all obligations will be promptly met. The Fund shall prepare a financial statement on a form acceptable to the Commissioner showing the financial ability of the Fund to meet its obligations. The members may, upon majority vote, request that the Commissioner order an examination of any Fund member which the Fund Commissioners/Executive Committee in good faith believes may be in a financial condition detrimental to other Fund members or to the public.
4. All monies, assessments, funds and other assets of the Fund shall be under the exclusive control of the Fund Commissioners.
5. The Fund shall adopt a resolution designating its fiscal year as January 1 through December 31st.
6. The Fund shall adopt a resolution designating a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. The resolution shall also designate a person to be custodian of funds for the Fund and shall authorize the custodian to invest temporarily free balances of any claim or administrative accounts periodically as authorized by law. The custodian of funds shall possess a Certified Municipal Finance Officer certificate issued pursuant to N.J.S.A. 40A:9-140.2. The custodian shall quarterly report to the Fund Commissioners on investment and interest income.
7. All books, records, files, documents and equipment of the joint insurance fund are the property of the Fund and, except as provided at N.J.A.C. 11:15-2.21(e), shall be retained by the Fund Administrator at the discretion of the Fund Commissioners in accordance with a record retention program adopted by the Fund. All books, records, files and documents of the Fund shall be retained for not less than five years. The Fund shall also retain claims information as per N.J.A.C. 11:15-2.4(g).
8. The minimum Workers' Compensation contribution of the members shall be collectively at least \$250,000 for the Fund's first year and at least \$500,000 for each subsequent year of operation unless otherwise approved by the Commissioner.

### **Risk Management Plan:**

1. The Fund Commissioners/Executive Committee shall prepare or cause to be prepared, a Risk Management Plan for the Fund including all information required in N.J.A.C. 11:15-2.6(e). The Risk Management Plan shall be adopted and approved by resolution of the Fund Commissioners/Executive Committee.
2. The Risk Management Plan and all amendments must be approved by the Commissioner and the Commissioner of the Department of Community Affairs before it takes effect.

### **Financial Statement And Reports:**

1. The Fund Commissioners shall provide its members with periodic reports covering the activities and status of the Fund for the reporting period. The reports shall be made at least quarterly, and may be made more frequently at the direction of the Commissioners, and shall include, but not be limited to, the minutes, the Administrator's report, the Treasurer's report, and a summation of Fund activity, including comments on previously reported claims and newly reported claims, and any other information required by the Commissioners. The Treasurer's report shall include budget status, account balances, claims information, investment status, earnings and the costs of making investments. These reports shall also be submitted, with a copy of the minutes of the closed session, to the Department.
2. A sworn annual report in a form prescribed by the Commissioner shall be prepared by the Fund, filed with the Department and be made available to each Fund member not later than one hundred eighty (180) days after the end of each Fund year. The report shall be accompanied by an annual audited statement of the financial condition of the Fund prepared by the Auditor, and performed in accordance with generally accepted accounting principles and N.J.S.A. 40A:10-36. and these bylaws.
3. For the initial two fiscal years of the Fund, the Fund shall file with the Department unaudited statements of the financial condition of the Fund in a form acceptable to the Commissioner within 60 days of the end of each calendar quarter.
4. After the initial two years, the Fund shall file with the Department semiannual unaudited statements of the financial condition of the Fund in a form acceptable to the Commissioner within 60 days after the end of each six month period. The semiannual report covering the six month period ending December 31 shall include a compilation of the results reported in the semiannual report for the period ending June 30 immediately preceding.

5. Such other information as may be required by the Department pursuant to N.J.A.C. 11:15-2.24.

**Coverages:**

The Fund may offer the following coverages to the members:

- a. Excess workers' compensation and employer's liability. The workers' compensation benefits levels will equal those required by the Workers' Compensation law and other applicable statutes. The Fund shall make payment to workers' compensation recipients in a timely fashion in accordance with the regulations of the Department of Banking and Insurance.
- b. Excess liability including motor vehicles, public official's liability and employment practices liability.
- c. Excess property damage including motor vehicle as well as comprehensive employee dishonesty including monies and securities.

**Services:**

The Fund may also provide its members with safety and loss control programs and may jointly purchase or lease, on behalf of its membership, safety and loss control services, training, equipment and apparatus, in connection with the provision of the coverage set forth above.

**ARTICLE V - MEETINGS AND RULES OF ORDER**

**Meetings:**

1. **Annual Organization Meeting:**

As soon as possible after the beginning of the year, the Fund Commissioners shall meet to elect officers and the Executive Committee, if any, to appoint professionals and servicing organizations and conduct such other business as is necessary. The time and place for the meeting shall be established by the Chairperson, and the Secretary shall send written notice to the Fund

Commissioners and the Executive Director of each member at least two (2) weeks in advance.

2. **Business Meetings:**

The Fund Commissioners/Executive Committee shall establish an annual schedule of meetings to conduct the business of the Fund. All Fund Commissioners may attend open or closed sessions of the Executive Committee.

3. **Special Meetings:**

The Chairperson or three (3) Commissioners may call a special meeting by notifying the Fund's Secretary at least three (3) days in advance. The Secretary shall notify the Fund Commissioners and the Executive Director of each member by telephone. If the Secretary is unable to reach a member as of forty-eight (48) hours before the meeting, the Secretary shall telephone another official of the member using the following order: member's Chairperson, Secretary.

4. **Quorum:**

The quorum for a meeting of Fund Commissioners shall be as follows:

a. A majority of the Fund Commissioners unless the total number of members exceed 25.

b. If the total membership exceeds 25 in number, then a quorum shall be 13 plus a sum equal to 20% of the number of members in excess of 25 rounded to the next higher number.

5. A quorum for Executive Committee meetings shall be four, including the Chairperson, Secretary and alternates.

6. Whenever an election is required, the Fund Chairperson may cause a paper ballot to be mailed to each Fund Commissioner which shall be counted at a time and place established by the Chairperson. In the event the number of valid ballots is less than a quorum, the vote shall be null and void.

7. The Secretary shall cause written minutes to be maintained of all Fund meetings, and shall cause the minutes to be made available to the commissioner upon request.

8. Notwithstanding N.J.S.A. 40A:10-37, Fund Commissioners, Fund officers and members of the Executive committee shall not be compensated for attending meetings.

### **Conduct of Meetings:**

1. All meetings of the Fund shall be subject to the rules and regulations of the Open Public Meetings Act. (N.J.S.A. 10:4-6 et.seq.)
2. Unless otherwise provided in these bylaws, or in the laws or regulations of the State of New Jersey, "Robert's Rules of Order" shall govern the conduct of all meetings.

### **Amendments to the Bylaws:**

1. Any commissioner may propose an amendment to the bylaws by filing the proposed amendment in writing with the Secretary.
2. Upon receipt of a proposed amendment, the Secretary shall notify the Chairperson who shall schedule a hearing to be held not more than forty-five (45) days from the date the amendment was filed. The Secretary shall notify in writing all Fund Commissioners of the hearing date and shall send all Fund Commissioners a copy of the proposed amendment.
3. The amendment is adopted by the Fund when the governing bodies of three-fourths (3/4) of the members approve the amendment within six (6) months of the hearing on the amendment. In the event Section 40A:10-43 is amended, the procedure and vote required by said statute as amended shall control. If after six (6) months the Secretary has not received written notice of approval from three-fourths (3/4) of the members the Secretary shall notify the members that time has expired for the adoption of the amendment.
4. If adopted, the amendment shall not take effect until approved by the Commissioner and the Commissioner of the Department of Community Affairs.

### **ARTICLE VI - BUDGETS**

1. In November of each year, the Fund shall prepare the budget for the upcoming fiscal year. The budget shall identify the proposed items and amounts of expenditure for its operations, the anticipated amounts and sources of assessments and other income to be received during the fiscal year and the status of the self insurance or loss retention accounts. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim

reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year.

2. A copy of the Fund's proposed budget shall be made available to each member at least two (2) weeks prior to the time scheduled for its adoption. No budget shall be adopted until a hearing has been held in accordance with N.J.S.A. 40A:4-1 et. seq. giving all members the opportunity to present comments or objections.
3. Not later than December 31st of each year the Fund Commissioners/Executive Committee shall adopt by majority vote the budget for the Fund's operation for the coming fiscal year.
4. A copy of the adopted budget and actuarial certification shall be filed with the Department and the Department of Community Affairs within 30 days of its adoption.
5. An adopted budget may be amended by majority vote of Fund Commissioners/Executive Committee.
6. A copy of any amendment to the budget shall be filed with the Commissioner, the Commissioner of the Department of Community Affairs and the governing body of each member within 30 days of the adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total budget five (5) percent from the original budget or the latest filed amended budget.

## **ARTICLE VII - ASSESSMENTS**

### **Annual Assessment**

1. In November of each year, the Executive Director/Administrator shall compute each member's assessments for the upcoming Fund year, which shall consist of an amount allocated for the administrative account plus specific assessment to establish and/or replenish the claim or loss retention trust fund account for each type of coverage provided by the Fund and in which such member participates.
2. The annual assessment of each participating member shall be its pro rata share of the Fund's budget for the upcoming year for each line of coverage provided to the member.

3. The calculation of pro rata shares shall be based on each member's manual premium by Fund year for that line of coverage. Unless otherwise approved by the Commissioner, the assessment for Worker's Compensation and Employer's Liability shall be based upon the experience rating plan provided for in the New Jersey Worker's Compensation and Employer's Liability Insurance Manual on file with the Commissioner. The Fund Commissioners /Executive Committee may also adopt a capping formula which limits the increase in any member's assessment to the fundwide average increase plus a percentage established by the Fund Commissioners/Executive Committee.
4. The total amount of each member's annual assessment shall be certified by majority vote of the Fund Commissioners/Executive Committee to of each participating member at least one (1) month prior to the beginning of the next fiscal year.
5. The annual assessment shall be paid to the Fund in installments, to be determined by the Fund Commissioners/Executive Committee which shall conform with N.J.A.C. 11:15-2.15(a).
6. The Treasurer shall deposit each member's assessment into the appropriate accounts, including the administrative account and the claim or loss retention Trust Fund account.
7. If a member joins the Fund or elects to participate in a line of coverage after the start of the Fund year, such member's assessments and supplemental assessments shall be reduced in proportion to that part of the year which had elapsed.

### **Supplemental Assessments:**

1. The Fund Commissioners/Executive Committee shall by majority vote levy upon the members additional assessments wherever needed or so ordered by the Commissioner to supplement the Fund's claim, loss retention or administrative accounts to assure the payment of the Fund's obligations.
  - a. All supplemental assessments shall be charged to the members by applicable Fund year, and shall be apportioned by that year's assessments for that line of coverage.
  - b. All members shall be given at least thirty (30) days advance written notice of the Fund's intention to charge an additional assessment.
  - c. Members shall have thirty (30) days to pay the Fund from the due date established by the Fund Commissioners/Executive Committee at the

time any supplemental assessment is adopted. Whenever possible, the due date shall be no sooner than the beginning of the Fund's next fiscal year.

2. The Fund shall submit to the Commissioner and the Commissioner of Community Affairs a report of the causes of the Fund's insufficiency, the assessments necessary to replenish it and the steps taken to prevent a reoccurrence of such circumstances.

#### **Failure Or Refusal To Provide Required Assessments:**

Should any member fail or refuse to pay its assessments or supplemental assessments, or should the Fund fail to assess funds required to meet its obligations, the Chairperson or in the event by his or her failure to do so, the custodian of the Fund's assets, shall notify the Commissioner and the Commissioner of Community Affairs. Past due assessments shall bear interest at the rate of interest to be established annually by the Fund Commissioners/Executive Committee.

#### **Insolvency And/Or Bankruptcy Of Fund Members:**

The insolvency or bankruptcy of a member does not release the Fund, or any other member, of joint and several liability for the payment of any claim incurred by the member during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

#### **ARTICLE VIII - REFUNDS**

1. Any monies for a Fund year in excess of the amount necessary to fund all obligations for that fiscal year as certified by an actuary may be declared to be refundable by the Fund in accordance to N.J.A.C. 11:15-2.21. The Fund shall submit a written notification to the Department and the Department of Community Affairs at least 30 days prior to the proposed refund.
2. A refund for any fiscal year shall be paid only in proportion to the member's participation in the Fund for such year. Payment of a refund shall not be contingent on the member's continued membership in the Fund.
3. The Fund may apply a refund to any arrearage owed by the member to the Fund. Otherwise, at the option of the member, the refund may be retained by the Fund and applied towards the member's next annual assessment.

**ARTICLE IX**  
**EXCESS INSURANCE AND/OR REINSURANCE**

1. Consistent with N.J.A.C. 11:15-2.6(a)6, and N.J.A.C. 11:15-2.23 the Fund shall secure excess insurance or reinsurance in a form, in an amount and by an insurer, or other entity authorized to provide such coverage in New Jersey pursuant to law, acceptable to the Commissioner, if commercially available and unreasonably priced, as determined by the Fund Commissioners/Executive Committee for each Fund year, and as approved by the Department and the Department of Community Affairs.
2. The policies of excess insurance and/or reinsurance issued by an insurer to the Fund shall provide single accident (single occurrence) excess insurance and aggregate excess insurance.
3. Certificates of excess insurance and/or reinsurance showing policy limits, specific and aggregate retention, and other information shall be available for the inspection by each member and shall be filed with the Commissioner.
4. Losses in excess of the established self-insured retention shall be borne by the excess carrier(s) according to the terms and conditions of the excess contract(s).
5. Any proposed change in the terms or limits of excess insurance and/or reinsurance shall be submitted to the Department and the Department of Community Affairs for approval at least 30 days prior to the effective date of the proposed change.
6. Notwithstanding, A through E above:
  - a. The Fund is not required to maintain single accident (single occurrence) excess insurance if the Fund's single accident (single occurrence) limit of liability as set forth in its approved plan of risk management is equal to or less than its single accident (single occurrence) self-insured retention as approved by the Department.
  - b. The Fund is not required to maintain aggregate excess insurance if its accumulated budgeted losses pursuant to N.J.A.C. 11:15-2.23(g) qualify the Fund for an exemption pursuant to N.J.A.C. 11:15-2.23 (f), or the Fund maintains an excess loss contingency balance in the Claims Account in conformance with N.J.A.C. 11:15-2.23(f).

## **ARTICLE X - TRUST FUND ACCOUNTS, INVESTMENTS AND DISBURSEMENTS**

### **Establishment Of Trust Fund Accounts**

1. By resolution, the Fund shall designate a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. The resolution shall also designate a person to be custodian of funds for the Fund and shall authorize the custodian to invest temporarily free balances of any claim or administrative accounts periodically as authorized by law.
2. Consistent with N.J.A.C. 11:15-2.13, the Fund shall establish a separate Trust Fund Account from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums designated as the Claims or Loss Retention Fund Account.
  - a. Other than for claims, allocated claims expense, or excess insurance premiums, no transfers or withdrawals may be made from a claim or loss retention account without the prior written approval of the Commissioner except that refunds must be made in accordance with N.J.A.C. 11:15-2.21.
  - b. The Fund shall maintain accounting records allocating all income, disbursements, and assets in the Claims account by line of coverage and by Fund year. Accounting records for closed Fund year(s) shall be allocated by member. Accounting records for loss fund contingency or excess loss contingency shall also be allocated by member.
3. The Fund shall also establish an administrative account which shall be utilized for payment of the Fund's general operating expenses, loss prevention activities, data processing services, and general legal expenses. The Fund shall maintain accounting records for the administrative account per 2(b) above.

### **Investments**

1. The balance of any account shall be invested to obtain the maximum interest return practical. All investments shall be in accordance with the Fund's cash management plan and consistent with the statutes and rules governing the investment of public funds by local governments and pursuant to N.J.S.A. 40A:10-10b.

2. The investment and interest income earned by the investment of the assets of each claim or loss retention account shall be credited to each account.
3. The investment and interest income earned by investment of the assets of the administrative account shall be credited to that account.

## **Disbursements**

1. Prior to any commitment or agreement requiring the expenditure of funds, the custodian of the Fund's assets shall certify as to the availability of sufficient unencumbered funds to fully pay all charges or commitments to be accepted.
2. All disbursements, payments of claims or expenditure of funds must be approved by a majority vote of the Fund Commissioners/Executive Committee.
3. Notwithstanding numbers 1 and 2 above, the Fund may provide for the expedient resolution of certain claims by designating the Fund's Administrator or service organization as a "certifying and approving officer" pursuant to N.J.S.A. 40A:5-17. The Fund may authorize the certifying and approving officer to approve for payment any specified claims in an amount not to exceed an amount approved by the Commissioner in the Plan of Risk Management. The Fund shall establish such other procedures and restrictions on the exercise of this authority as the Fund deems appropriate.
4. Upon approval, the certifying and approving officer shall certify the amount and particulars of such approved claims to the custodian of the Fund's assets, directing that a check for payment be prepared.
5. Each month, the certifying and approving officer shall prepare a report of all claims approved since the last report, detailing the nature and the amount of the claim, the payee, the reasons supporting payment and any other pertinent information. This report shall be reviewed and approved or rejected by vote of the Fund Commissioners/Executive Committee at their next regularly scheduled meeting. If any payment is not approved, appropriate action shall be taken.
6. All requests for payments must be accompanied by a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct, and shall be certified by an officer or duly designated agent or employee of the Fund having knowledge of the facts that the goods have been received by, or the services rendered to the Fund. In the case of claims or losses to be charged against any loss fund, the Fund's claims administrator shall certify as to the claims correctness and validity.

7. All claims shall be paid by check. The checks shall be signed by two persons so designated by the Fund Commissioners/Executive Committee. Payment of claims may be made by wire transfer.
8. All claims or other disbursements approved for payment by the Fund shall be recorded in a claims register maintained by the custodian of the Fund's assets.

## **ARTICLE XI - CONFLICT OF INTEREST**

All officials or employees of a member or any members of the family of such officials or employees shall comply with N.J.S.A. 40A: 22.1 et. seq. (The "Local Government Ethics Law").

## **ARTICLE XII - VOLUNTARY DISSOLUTION OF THE FUND**

- 1 .If the Fund Commissioners/Executive Committee deem it in the best interest of the members to dissolve the Fund, they shall by majority vote direct that a written Plan of Dissolution be prepared.
- 2 The Plan of Dissolution must provide for the payment of all unexpired losses of the Fund and its members, including all incurred but not reported losses, as certified by an actuary, before any assets of the Fund or the trust fund accounts may be used for any other purpose.
3. Upon completion of the plan, the Chairperson shall call a general meeting of all Fund Commissioners/Executive Committee who shall review the plan and make any appropriate amendments. By majority vote, the Fund Commissioners may recommend to the members that the Fund be dissolved in accordance with the Plan of Dissolution.
4. A majority of the governing bodies of the members must by resolution vote to accept the Plan of Dissolution in order to dissolve the Fund.
5. Such Plan of Dissolution shall contain a statement of the Fund's current financial condition computed both on a statutory basis and according to generally accepted accounting principles as attested to by an independent certified accountant.

6. The Plan of Dissolution and other such information as may be required, must be filed with and approved in writing by the Commissioner and the Commissioner of the Department of Community Affairs not later than 90 days prior to the proposed effective date of dissolution.

## **ARTICLE XIII - CLAIMS HANDLING PROCEDURE**

### **Claims Reporting:**

Upon receipt of any information which makes a claim reportable under the guidelines established by the Fund, the member shall immediately forward notice of the claim and any other information available to the claims administrator and, where appropriate, to the Fund's attorney for initial contact, investigation, court actions or other appropriate response.

### **Registration of Claims:**

Upon receipt of initial notice of claim, whether by service of process, notice of claim or petition or otherwise, the claims administrator shall cause each claim to be numbered, and to be included on a monthly report to the Executive Director. The monthly report shall set forth the name of the claimant, the nature of the claim, the type insurance coverage claimed against, and to the extent known, an approximate estimate of the magnitude of the potential loss. This report shall be considered confidential.

### **Notice of Request for Settlement Authority:**

Whenever an investigation discloses that the prompt, fair and equitable settlement of a claim is appropriate and possible, and such settlement exceeds the authority of the claims administrator, the claims administrator shall submit to the fund administrator for review at a Fund Commissioners/Executive Committee meeting, a request for settlement authority. This notice shall be on forms approved by the Fund Commissioners/Executive Committee and shall set forth identifying information concerning the claim, recommendations where appropriate concerning the legal liability of the Fund, a summary of investigative work concerning the merits of the claim and the reasons underlying the recommended settlement authority.

### **Approval of Payments And Settlements:**

Whenever the Fund shall make any payment or settlement of any claim, a notation thereof identifying the claim, and the amount paid shall be entered upon a ledger of claims paid.

### **ARTICLE XIV - COMPLAINT HANDLING PROCEDURE**

1. Whenever any interested party shall submit a complaint in writing to the Fund, the executive director/administrator, or any member of the Fund, a copy thereof shall be forthwith communicated to the Fund Commissioners/Executive Committee for consideration at its next regularly scheduled meeting.
2. At said meeting the Fund Commissioners/Executive Committee shall consider the complaint, and by recorded vote take such action as might be appropriate.
3. The complaining party, and the Fund Commissioner from the member shall receive written notice of the Fund Commissioners/Executive Committee findings. The written notice to the complaining party, may where appropriate, include an opportunity for the complaining party to have a hearing concerning his/her complaint before the Fund Commissioners/Executive Committee.
4. The Fund shall keep a separate record of all complaints received and the disposition of same.
5. If the complaining party is dissatisfied with the Fund Commissioners/Executive Committee's decision, the complaining party may appeal this determination to the independent appeal organization or arbitrator designated by the Fund annually.
6. If the complaining party is dissatisfied with the determination of the independent appeal agency or arbitrator, the complaining party may exercise any remedies provided by law.

### **ARTICLE XV - OTHER CONDITIONS**

#### **Inspection and Audit:**

The Fund shall be permitted but not obligated to inspect, at any reasonable time, the workplaces and operations of each member covered by this agreement. Neither the right to make inspections nor the making thereof nor any report thereon shall constitute an

undertaking on behalf of or for the benefit of the member or others, to determine or warrant that such workplaces, operations, are safe or healthful, or are in compliance with any law, rule or regulation.

The Fund shall be permitted to examine and audit the member's payroll records, general ledger, disbursements, vouchers, contracts, tax reports and all other books, documents and records at any reasonable time as far as they show or tend to show or verify the amount of remuneration or other premium basis, or relate to the subject matter of this agreement.

**Notice of Injury:**

When an injury occurs, written notice shall be given by or on behalf of the member to the Fund or any of its authorized agents as soon as practical. Such notice shall contain particulars sufficient to identify the member and also reasonably obtainable information respecting the time, place and circumstances of the injury, the names and addresses of the injured and of available witnesses.

**Notice of Claim or Suit:**

If claim is made or formal petition or a suit or other proceedings are brought against the member, it shall immediately forward to the Fund every demand, notice, summons or other process received by the member or its representative.

**Assistance and Cooperation of the Participant:**

The member shall cooperate with the Fund, and upon the Fund's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits or proceedings. The member shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and other services at the time of injury as are required by the Workers' Compensation Law.

**Action against Fund:**

No action shall lie against the Fund unless, as a condition precedent thereto, the Member shall have fully complied with all the terms of this agreement, not until the amount of the member's obligation to pay shall have been finally determined either by judgment against the member after actual trial or by written agreement of the member, the claimant and the Fund. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to

recover under this agreement to the extent of the protection afforded by this agreement. Nothing contained in this agreement shall give any person or organization any right to join the Fund as a co-defendant in any action against the member to determine the member's liability.

Bankruptcy or insolvency of the member shall not relieve the Fund of any of its obligations.

**Subrogation:**

In the event of any payment under the agreement, the Fund shall be subrogated to all rights of recovery therefore of the member and any person entitled to the benefits of this agreement against any person or organization and the Member shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The member shall do nothing after loss to prejudice such rights.

**Conformance with Statute:**

In the event any portion of these bylaws conflict with any statute or administrative regulation covering joint insurance funds, the provision of any such regulation shall control to the extent it conflicts.

**THUS DONE, READ AND PASSED in my office in \_\_\_\_\_, state of New Jersey.**

**MUNICIPAL EXCESS LIABILITY JOINT INSURANCE FUND**

**By:**