

**NonProfits' United
Workers' Compensation Group, Inc.**

BYLAWS

(November 14, 2005)

BYLAWS
of
NonProfits' United Workers' Compensation Group, Inc.

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BYLAWS
of
NonProfits' United Workers' Compensation Group, Inc.

ARTICLE I - PREAMBLE

NonProfits' United Workers' Compensation Group, Inc. is established for the purpose of operating and maintaining a cooperative program of private **group**, workers' compensation, self-insurance, loss prevention, and risk management, as well to provide a forum for the discussion, study, development, and implementation of procedures of mutual benefits in risk sharing, loss prevention, and risk management programs among **Group Members** in other areas of insurance beyond workers' compensation liabilities.

ARTICLE II - PURPOSES

Section 1 - Purposes

The purposes of the **Group** are:

- A. To provide a private **group**, workers' compensation, self-insurance, loss prevention and risk management program through a system which will achieve the following objectives for the benefit of the **Group's Members** in all types of risks covered by the **Group**:
1. Reduced cost of workers' compensation over the cost of commercial insurance coverage through effective loss control practices and combined purchasing power;
 2. Reduced severity and frequency of losses of **Group Members** through loss control techniques;
 3. Reduced cost of claims administrative services through shared management, volume, and combined purchasing power;
 4. Greater stability of workers' compensation costs through long term commitments and relationships;
 5. Improved recovery from responsible third party tort-feasors;
 6. Increased awareness of hazards causing losses and providing guidance in the alleviation of such hazards.
- B. To provide funding for a **workers' compensation program**
1. To pay workers' compensation benefits pursuant to Memoranda of Coverage issued to the **Group Members**;
 2. To establish realistic reserves for expected future claims payment on all claims;
 3. To jointly purchase specific and/or aggregate excess commercial insurance, where such purchase is advantageous to the **Group Members** as a whole; and

4. To share administrative and other vendor services including risk management, consulting, excess brokerage, marketing, claims administration and adjusting, safety and loss prevention, data processing, legal, and related services.
- C. To acquire, hold, and dispose of property, real and personal, necessary or desirable for the purpose of providing the Members of the **Group** with a complete private **group** self-insurance and risk management program, including, but not limited to, the acquisition of necessary facilities and equipment, services, the employment of personnel, and the operation and maintenance of a system of risk management.

ARTICLE III - DEFINITIONS

Section 1 - Definitions

In these Bylaws unless the context otherwise requires:

- A. **Articles** shall mean the Articles of Incorporation creating the **NonProfits' United Workers' Compensation Group, Inc.**, as amended from time to time.
- B. **Board** or **Board of Trustees** is the governing body of the **Group** constituted as set forth in these Bylaws.
- C. **Certificate** or **Certificate of Consent to Self-Insure** shall mean the document from **DIR OSIP** that authorizes an employer to be self-insured for workers' compensation liabilities pursuant to Labor Code Section 3700.
- D. **Coverage Year** shall mean the period from January 1st of each year through December 31st of the same year that begins at 12:01 a.m. on January 1st and ends at midnight on December 31st.
- E. **DIR OSIP** shall mean the State of California Department of Industrial Relations, Office of Self-Insurance Plans.
- F. **Group** shall mean the corporation, the **NonProfits' United Workers' Compensation Group, Inc.**, also known as **NPU-WCG**.
- G. **Group Administrator** shall mean that person or **group** appointed by the **Board of Trustees** and given responsibility for the normal, day-to-day management, administration, and operation of the **Group** activities.
- H. **Group Member** shall mean a nonprofit organization employer in the State of California which is exempt from federal income tax pursuant to IRC Section 501(c)(3), and which has a primary three digit North American Industry Classification Code of 624. This industry is defined, in terms of their activities, as providing social assistance directly to their clients and providing special needs transportation to the infirm, elderly, or handicapped. These employers formed as a private non-profit public-benefit organization formed pursuant to the California business Nonprofit Corporation law § 5110 *et seq.* and described in California Education Code § 89901, *et seq.* and is a party to the **Articles** of Incorporation and the Bylaws, and must also has been granted a **Certificate of Consent to Self-Insure** as an Affiliate Member of the **Group**.

- I. **Joinder** shall mean the Indemnification Agreement and Power of Attorney that is executed by the applicant **Group Member** agreeing to assume joint and several liability of the discharge of any compensation liability of the **Group Members** and grants signature authority to the Group Administrator to bind the **Group** as set forth in **DIR OSIP** regulation Section 15479, and becomes incorporated into these Bylaws, and evidences the acceptance by the **Group** of the application of the prospective **Group Member**.
- J. **Memorandum of Coverage** shall mean a document issued by the **Group Administrator** to **Group Members** specifying the type, amount, and conditions of coverage provided to each participant by the **Group**.
- K. **Workers' Compensation Program** shall mean a self-insured funding program to provide workers' compensation coverage pursuant to a **Memorandum of Coverage** and/or provided by purchased excess insurance.

ARTICLE IV - NAME AND LOCATION

Section 1 - Name

The name of the corporation shall be, as stated in the **Articles**, as follows: **NonProfits' United Workers' Compensation Group, Inc.**, a California Corporation, hereafter referred to as the "**Group**".

Section 2 - Incorporation

The **Group** is incorporated as a California Corporation under the private, non-profit mutual benefit corporation statutes to operate as a **group** self-insurance plan for pooling of workers' compensation liabilities as a private **group** self-insurer pursuant to the laws of the State of California.

Section 3 - Principal Office

The **Group** shall locate and maintain its principal office at the following address in the State of California: 344 Thomas L. Berkley Way, Suite 340
Oakland, CA 94612

Other offices for the transaction of **Group** business may be located in the State of California at such places as the **Board** or **Group Administrator** may from time to time determine.

Section 4 - Records

The Corporation shall locate and maintain all its records within the State of California.

ARTICLE V - GOVERNING DOCUMENTS

Section 1 - Governing Documents

The Governing Documents of the **Group** shall be the **Articles** of the **Group**, these Bylaws, the Operating Plan, and the **Memorandum of Coverage** for the Program.

These Bylaws are adopted pursuant to and in compliance with the Laws of the State of California and with and in compliance with the State statutes and the administrative regulations relating to workers' compensation self-insurance adopted by the **State of California Department of Industrial Relations**.

ARTICLE VI - GROUP MEMBERS

Section 1 - Membership Eligibility

Any organization meeting the definition in Article III, Section 1.H. above may become a "**Group Member**" by agreeing to be bound by the Governing Documents, and by complying with all of the following requirements:

- A. Agreement to be a **Group Member** for at least three (3) consecutive full **coverage years** after commencement of membership in the **Group**;
- B. Completion of an application for Membership in the **Group**, along with supporting loss history, loss prevention, and financial statement documentation as needed to determine eligibility to join the **Group**;
- C. Meet the Underwriting requirements set for participation in the **Group** by the **Board**;
- D. Execution by the **Group Member** of a **Joinder** Agreement considered a counterpart to these Bylaws and incorporated herein;
- E. Execution of the Indemnity Agreement and Power of Attorney;
- F. A core **Group Member** shall submit certified, independently audited financial statements for the most recently completed two (2) year period. If not a core **Group Member**, submit a reviewed financial statement for the most currently completed twelve (12) months;
- G. Agree to follow safety and accident prevention guidelines established by the **Board of Trustees** or **Group Administrator**;
- H. Acceptance for membership by a two-thirds (2/3) vote of the **Board of Trustees** present and voting at any **Board** meeting. The **Group Administrator** shall advise the applicant of the **Board**'s decision on its application;
- I. Meet the approval of the excess risk insurance carrier;
- J. Agree to follow Claims Management Guidelines; and
- K. Apply for an Affiliate or Interim Affiliate **Certificate of Consent to Self-Insure** and be issued a **Certificate** by the **DIR OSIP** to participate in the **Group** as an Affiliate Member.

The **Board** may grant the **Group Administrator** or designated consultant, the authority to recruit new applicants for membership.

Section 2 - Approval of Membership

The **Group Administrator** shall review each application of proposed **Group Member** with respect to conformity with the established Underwriting Guidelines as established by the **Board** and approved by the **DIR OSIP**, review of its most recent Reviewed or Audited Financial Statement and associated management letters, and may schedule and coordinate a safety inspection of the facilities of the proposed **Group Member**. The **Group Administrator** shall report the results of this review to the **Board**. Action by the **Board** shall be reported back to the applicant by the **Group Administrator**.

Section 3 - Notice of Ineligibility/Termination of Membership

Any Group Member which receives a final determination that it no longer qualifies as an organization entitled to tax exempt status pursuant to IRC Section 501(c)(3) shall immediately notify the Group of such determination and the effective date of such determination.

ARTICLE VII - GOVERNING BOARD

Section 1 - Board of Trustees Functions

Except as specifically provided herein, the **Board of Trustees** shall be responsible for setting policy, overall operation and administration of the **Group**. Accordingly, the **Board of Trustees** will determine all instructions required hereunder, determine all questions, make all decisions, with advice from legal, financial, accounting, claims management specialists and the **Group Administrator** hired by the **Board of Trustees** to assist the **Group**.

Section 2 - Board of Trustees Powers

- A. The **Board of Trustees**, in addition to any and all other powers, specifically set forth in this Agreement, however, consistent with the overall functions of the **Board of Trustees** has the power to modify, waive, change or otherwise conform this Agreement at law or to meet circumstances or operational issues not otherwise provided in this Agreement. However, such modifications must be consistent with the stated purpose of the **Group** and the limitations set forth herein.
- B. The **Board of Trustees** may employ such agents, assistants, legal counsel and/or **Group Administrator**, as they may deem necessary. The **Board of Trustees** shall retain its own legal counsel, separate from any legal counsel that may handle day-to-day matters for the operation of the **Group** activities. In addition, the **Board of Trustees** may employ such accountants, clerical and other service providers as may be required in fulfilling the obligations under this Agreement.
- C. The **Board**, by a majority vote, shall elect officers and shall appoint a manager, referred to as the "**Group Administrator**," who shall not be a member of the **Board of Trustees**, but may serve as the **Board** Secretary and/or as Assistant Treasurer. In addition, the **Board** may appoint or hire such assistant and other officers or employees as they deem necessary. All officers so elected or appointed shall serve at the pleasure of the **Board of Trustees**.

- D. The Board shall provide policy direction for the Officers, the **Group Administrator**, and any standing committees. The **Board of Trustees** may delegate any or all of its responsibilities, except those requiring a vote by the **Board of Trustees**, as specified in the **Articles** or other governing **Group** documents, State statutes and regulations.
- E. The Trustees may authorize an individual, or more than one individual, to act as agents with regard to execution and delivery of instruments necessary for the furtherance of the Board of Trustee's responsibilities and duties.
- F. The **Board of Trustees** may take such actions as are necessary or desirable for the smooth flow of information in proper administration of the **Group**. However, such authority must be consistent with all provisions of Agreement including the stated purposes and operational goals herein provided.
- G. The Board reserves unto itself the power to:
1. Accept a new member to the **Group** (two-thirds vote of the Board), subject to subsequent approval by the **DIR OSIP** of the potential Member's application for an Affiliate **Certificate of Consent to Self-Insure**.
 2. Take all necessary precautions to protect the assets of the **Group**, including but not limited to:
 - (a) Accept indebtedness (two-thirds vote of the Board);
 - (b) Adopt an annual budget;
 - (c) Furnish or insure adequate fidelity coverage is provided; and
 - (d) Assess **Group Members** for necessary contributions for each covered time period and for the **Group Members'** share of ongoing liabilities and expenses of the **Group**, including any subsequent assessments for actuarially unsound **Coverage Years**.
 3. Amend these Bylaws (two-thirds vote of the Board);
 4. Approve a Memoranda of Coverage;
 5. Create an Office;
 6. Establish or terminate the **Group** (two-thirds vote of the Board);
 7. Elect the Officers of the **Group**;
 8. Expel a Member from the **Group** (two-thirds vote of the Board), subject to subsequent revocation of the **Certificate of Consent to Self Insure** by the **DIR OSIP** of the Member in this **Group**;
 9. Approve the rescission of a **Group Member** withdrawal notice;
 10. Employ and oversee an independent **Group Administrator**, who shall be responsible for the normal, day-to-day operations of the **Group** and the financial affairs of the **Group**, including, but not limited to, claims administration, injury and illness prevention programs, processing new member applications, general administration, and attorney-in-fact;

11. Employ legal counsel, accountants, actuaries, claims administration service agency, and other such professional services, as the Board from time to time deems necessary;
12. Contract for specific excess and aggregate excess coverage as may be required by the **DIR OSIP** or desired;
13. Set requirements for the admission of **Group Members** in keeping with the regulatory requirements of the **DIR OSIP**, and which may include precautions that the Board from time to time shall deem appropriate to promote the safe and proper operation, financial stability, and injury and illness prevention within the **Group**;
14. Endeavor to see the **Group** is financially and prudently administered to ensure its financial stability and ability to pay all **Group Member** claims and **Group** expenses;
15. Perform any other function incident to their office and in keeping with the applicable laws and regulations of the State of California;
16. In addition to any and all indemnification provisions of this Agreement, the **Group** shall indemnify, defend and hold harmless each member of the **Board of Trustees** in his or her capacity as a Board Member. The **Board of Trustees** may require the Financial Institution, the **Group Administrator** and the TPA to hold the **Group** harmless from all damages, losses, injuries, claims, actions, suit, penalties, liabilities, costs and expenses, direct and indirect including but not limited to attorney's fees, arising out of or relating to the performance of their obligations and responsibilities hereunder, so long as the actions are consistent with and in discharge of such obligations and responsibilities, and provided that the same shall not advise or relate to the negligence of the **Board of Trustees**, a Board Member for matters concerning the **Group** are delegated under the terms of this Agreement.

Section 3 - Board of Trustees Actions

All orders, directives, instructions, and/or communications from the **Board of Trustees** to any person, the **Group Administrator** or any agents shall be in writing, signed by the Secretary, the Chairperson, or the full **Board of Trustees**. The Secretary of the **Board of Trustees** shall be responsible for the books and records of the **Board of Trustees** and for taking and maintaining the minutes of the **Board of Trustees'** meetings.

Section 4 - Meetings

- A. The Board will meet at least quarterly to review all operations of the **Group** conducted in accordance with the Governing Documents. The **Board of Trustees** will establish a time and place to hold such regular meetings. The Board Secretary, or other designated officer, will mail notices of all Board meetings to each Board member, keep minutes of the meetings, and send copies of such minutes to the Board members.

- B. A special meeting may be called by the Chairperson with 48 hours notice, stating the purpose, date, time, and place of the meeting, provided such notice is in writing. Special Meetings may be held in person, by telephone or teleconference, or any combination of these means.
- C. Annually the **Group** shall hold an annual membership meeting. The Secretary shall furnish each **Group Member** and the **DIR OSIP** a notice in writing of the time, place and date of the annual membership meeting at least thirty (30) calendar days prior to the date of the meeting. At each annual membership meeting of the **Group**, the **Group Administrator** shall submit a statement of the claims experiences of the **Group** during the proceeding year, together with an audited financial report of the **Group** for the same period.
- D. An organizational meeting of the Board shall be held each year immediately following the annual membership meeting of the **Group**. Notice of this meeting shall be included in the Notice of the Annual Membership Meeting given to all **Group Members** and to the **DIR OSIP**.
- E. Meetings shall be conducted pursuant to the most current edition of Robert's Rules of Order or such other procedural guide as the Board shall designate.

Section 5 - Composition, Selection, and Voting

- A. Composition. The **Board of Trustees** shall be composed of nine (9) members. Each Trustee shall be an officer, governing board member, or employee of a Member in good standing with the **Group** or NonProfits' United Vehicle Insurance Pool. In the event the Trustee ceases to be qualified under this requirement, the seat on the Board shall be deemed vacant and the Trustee will be replaced as set forth below. Pursuant to Title 8 of the California Code of Regulations, at least two-thirds of the trustees shall be employees or officers of the **Group Members**.
- B. Selection and Election of Board members. The initial membership of the **Board of Trustees** will be effective April 1, 2005. At the initial and all subsequent elections, nominations shall be made by the Board of Directors of the NonProfits' United Vehicle Insurance Pool. **Group members** will vote on the nominees, and all who receive majority vote will be elected. Should any nominee fail to receive a majority affirmative vote, **Group members** may nominate additional candidates for the vacant position(s) and the candidate(s) receiving the most votes for the open Board position(s) shall be elected. In the event of a tie, a runoff between the tied candidates shall be held. Trustees shall serve two year terms, except that the first term will run four years, through January 1, 2009, and each subsequent term will run through January 1 of each odd numbered year thereafter. Elections will be held at the **Group's** annual meeting immediately preceding the expiration of each term, or may be conducted by mailed ballots if the Board deems it appropriate. The NPU-VIP Board may establish the procedures for nominations, may interview candidates, and may publish recommendations.
- C. Voting. Each **Group Member** will be entitled to cast one vote for each position on the Board. Votes may not be cumulated; only one vote may be cast for any one individual by a **Group Member**.

- D. Representation. Commencing with the April 1, 2005, election and for each election thereafter, if any **Group Member** pays a premium that amounts to twenty percent (20%) or more of the total annual premiums paid by all **Group Members**, that Member will be automatically entitled to two seats on the **Board of Trustees**, and may nominate two (2) candidates for that purpose. Those candidates will be considered as elected to two (2) of the nine (9) Trustee positions.
- E. Vacancies. If a seat becomes vacant, the remaining Board members shall elect a qualified Trustee to serve the remainder of the unexpired term. If a seat of a Trustee selected under paragraph (D) above becomes vacant, that **Group member** shall select a qualified Trustee to serve the remainder of the unexpired term.
- F. Quorum. Five (5) Trustees shall be necessary for conducting business, although Trustees may participate by telephone conference and need not be physically present to participate.
- G. Other. All matters within the purview of the Board shall be decided by a majority vote of a quorum of the Board, except those matters which the governing documents specify as requiring a super majority vote of the entire Board, which then must be decided by the vote specifically prescribed.

ARTICLE VIII - OFFICERS

Section 1 - Officers

The Officers of the **Group** shall consist of a Chairperson, a Vice Chairperson, a Treasurer, and a manager, referred to as the **Group Administrator**. The Chairperson, Vice Chairperson, and Treasurer shall be members of the Board elected to those positions by majority vote of the Board. The **Group Administrator** shall not be a member of the **Board of Trustees**, but may also be appointed by the Board to hold the positions of Board Secretary and/or Assistant Treasurer. In addition, the Board may appoint or hire such assistants and other officers or employees as they deem necessary. All officers so elected or appointed shall serve at the pleasure of the **Board of Trustees**.

Section 2 - Terms of Office

- A. The terms of office for the initial Chairperson, Vice Chairperson, and the Treasurer shall be for four calendar years, through January 1, 2009. Commencing January 1, 2009, and thereafter, terms shall be for two calendar years running through January 1 of each odd numbered year.
- B. All other offices shall be appointed by the Board. The term of all other offices is continuous until the Board elects to change officers or to eliminate the office.

Section 3 - Election of Chairperson and Vice Chairperson

- A. Election of officers will be conducted by the incoming Board at a meeting following its election, and preceding the expiration of the current term. A candidate must receive a majority vote of the Board in order to be elected. In the event no candidate receives a majority, a runoff will be held between the two candidates receiving the most votes.

- B. The Chairperson and Vice Chairperson will serve for their elected term of office with the **Group**, until termination of office, resignation, or until removal from office by a two thirds vote of the Board, whichever is earliest. An officer who ceases to be qualified as a Trustee under Article VII, Section 5 A above, shall be deemed to have resigned from office as well.
- C. Vacancies in the Chairperson, Vice Chairperson, and Treasurer offices will be filled, by majority vote of the Board, at the next regularly scheduled Board meeting held after the vacancy occurs.

Section 4 - Duties

- A. Chairperson - The Chairperson shall preside at all meetings of the **Group**. The Chairperson shall appoint the members of all committees that may be formed as necessary or appropriate for carrying on the activities of the **Group**. Committees appointed by the Chairperson may hold office beyond the appointing Chairperson's term of office. The Chairperson shall execute documents on behalf of the **Group** as authorized by the Board and shall serve as the primary liaison between this and any other organization. The Chairperson, the **Group Administrator**, and the Treasurer acting jointly may pay bills and conduct other related business which is necessary and for which, in the opinion of the Chairperson, there is no reason to call a special **Board of Trustees** meeting. However, all such actions shall be brought to the **Board of Trustees** for Ratification. The Chairperson shall serve as ex-officio member of all committees.
- B. Vice Chairperson - The Vice Chairperson shall also serve as ex-officio member of all committees, when the Chairperson is unable to attend. In the absence of or temporary incapacity of the Chairperson, the Vice Chairperson shall exercise the functions covered in Section A. above.
- C. Group Administrator - The duties and responsibilities of the **Group Administrator** shall be as set forth by contractual arrangement with the Board.
- D. Board Secretary - The Board Secretary will be responsible for preparing all minutes and agendas of the Board, and any other Committee meetings, preparing necessary correspondence, and maintaining files and records. The **Group Administrator** may serve also as the Board Secretary of the **Group**. The Board Secretary shall attest and apply the **Group** corporate seal (if any) to documents.
- E. Assistant Board Secretary - The Assistant Board Secretary may, when necessary, assist with preparing all minutes and agendas of the Board, and any other Committee meetings, preparing necessary correspondence, and maintaining files and records. The Assistant Board Secretary shall, when the Board Secretary is unavailable, attest and apply the **Group** corporate seal (if any) to documents.
- F. Treasurer - The Treasurer shall have responsibility for custody of and distribution of **Group** funds, bank accounts, and property. The Treasurer shall be responsible for supervision of the maintenance of such records to assure that financial accounts, records, funds, and property are maintained in accordance with accepted accounting practices and procedures prescribed by the Financial Accounting Standards Board and self-insurance regulations of **DIR OSIP**. The Treasurer shall make available for inspection all financial records.

- G. Assistant Treasurer - The Assistant Treasurer shall be responsible for the normal day-to-day deposits of funds, maintenance of such financial records as is necessary to assure the financial accounts, transactions, records, funds, and property are maintained in accordance with accepted accounting practices and procedures prescribed by the Financial Accounting Standards Board. The Assistant Treasurer shall advise and report to the Treasurer. The books of accounts shall be open to inspection by any Trustee during normal business hours. The **Group Administrator** may also serve as the Assistant Treasurer of the **Group**.
- H. Investment Trustee - The Board shall appoint an investment trustee, which may be a Bank or other financial institution, to hold and invest funds for the **Group** in accordance with provisions of California corporation law, the Labor Code, and regulations of the **DIR OSIP**, as applicable. The investment trustee shall make recommendations to the Board as to the securities in which the **Group's** funds may be invested or reinvested, provided that such investments shall be limited to investments permissible for the Board to make under **DIR OSIP** regulations and are acceptable to any further non-conflicting investment policy restrictions adopted by the **Board of Trustees**. The **Board of Trustees** may from time to time change their investment policies and the investment trustee at their discretion.

ARTICLE IX - AUDIT

Section 1 - Audit Required

The Board shall cause to be made, by a qualified, independent individual or firm, an annual audit of the financial accounts and records of the **Group**. The minimum requirements of the audit shall be those prescribed by State statutes and regulations.

Section 2 - Filing an Audit

The financial audit report shall be filed with the **DIR OSIP** within six (6) months of the end of the fiscal year under examination.

Section 3 - Costs of Audit

The **Group** shall bear all costs of the audit. Such costs shall be charged against the operating funds of the **Group**.

ARTICLE X - COVERAGE YEAR

Section 1 - Workers' Compensation Coverage Year

- A. Each **Coverage year** shall be a separate set of books in the accounting records of the **Group**. The income and expenses of each **Coverage year** shall be accounted for separately from any other **Coverage years'** income or expenses. The Board shall approve a contribution to be charged to each **Group Member** at the inception of the **Coverage year** to fund the losses and expenses anticipated for the life of the **Coverage year**.

- B. The life of the **Coverage year** may be many years. A **Coverage Year** shall not be closed until such time that the Board authorizes closure, being convinced that known claims for the year are all closed and the probability of further claims being discovered is minimal.

Section 2 - Actuarial Soundness

- A. The Board shall strive to maintain each **Coverage year** as actuarially sound as a separate unit, and assure the **Workers' Compensation Program** is actuarially sound as a whole. A contribution based on the findings of an actuarial study shall be charged annually and allocated to the **Group Member** in accordance with the Member's exposure to loss and its past record of claims.
- B. To maintain actuarial soundness, an actuarial study shall be performed annually and action shall be immediately taken by the Board to develop a plan to make up the deficit funding if the **Workers' Compensation Program** should be found to be actuarially deficient. The **Group** shall strive to maintain the program funding as a whole at the eighty percent (80%) confidence level.

Section 3 - Action required when the Workers' Compensation Program is found to be Actuarially Unsound

- A. If the **Workers' Compensation Program**, as a whole, is found to be actuarially unsound:
1. Each **Group Member** participating in the unsound **Coverage Year(s)**, may be assessed its pro rata share of the total funding necessary to make the **Workers' Compensation Program**, as a whole, actuarially sound beginning with the oldest **Coverage Year** and continuing to the next oldest **Coverage Year** until the **Workers' Compensation Program** as a whole is actuarially sound.
 2. Each **Group Member's** pro-rata share shall be determined as that percentage of the amount needed to make the **Workers' Compensation Program** actuarially sound which is equal to the **Group Member's** original annual contribution for the year as it relates to the total annual contribution for the **Workers' Compensation Program** for that year.
 3. The amounts contributed under this process shall be allocated to each respective **Group Member** for the year that is being augmented.
 4. The **Group Administrator** shall advise **DIR-OSIP** immediately if any calendar year funding is insufficient to cover all reported claims and costs for that year. The **Group Administrator** shall also provide to the Manager of **DIR OSIP** a plan to achieve full funding for the **Coverage Year (s)** for **DIR OSIP** approval.

- B. If the **Workers' Compensation Program** as a whole is sound, the **Group Administrator** may determine and recommend to the Board that no assessment is necessary, provided that there is sufficient surplus in the other **Coverage Years** to cover the actuarial deficiency in the deficient **Coverage Year**. Whenever the Board accepts the **Group Administrator's** recommendation for no assessment, the **Group Administrator** may determine the amount of interest which would have been earned on the funds of the other **Coverage Years** had the deficient **Coverage Year** been adequately funded. The difference between the amount of interest actually earned and the amount that could have been earned shall then be charged against the deficient **Coverage Year** and allocated to the other **Coverage Years**.

Section 4 - Equity Allocation

The redistribution of funds in excess of amounts required to maintain reserves at an eighty (80) percent confidence level for the program as a whole shall be determined by the **Board of Trustees**. The **Board of Trustees** is under no obligation to distribute surplus or declare dividends. Distributions of surplus shall be determined in the sole discretion of the **Board of Trustees**, and shall be made from program years that are at least three (3) years old at the time of the distribution, that have been determined by the Board to be actuarially sound. **Group Members** shall have no equity interest in any surplus, and **Group Members** that have withdrawn or been expelled from the **Group** shall not participate in any distribution of surplus. If any surplus is distributed, all or any part may be used for rate relief in determining contributions for the then-current or upcoming Program Year; or may be used for specific grants to individual **Group Members** for safety, training and loss control assistance relating to workers' compensation liability; or may be distributed as rebated premiums to current **Group Members** that participated in the program year(s) resulting in a surplus. The amount distributed as rebated premiums shall be a fixed liability of the **Group** at the time of the declaration and any surplus in the compensation loss fund shall be held for a minimum period of 12 months from the date of the **Board of Trustees'** declaration.

If rebated premiums are distributed, the Board shall adopt a formula for distribution, with one-half of the rebated premiums assigned pro rata in accordance with the respective shares of total premiums paid by current **Group Members** for the year(s) from which the surplus is rebated ("pro rata based on premiums"), and one-half assigned pro rata based on the respective positive balances of each **Group Member**, in each program year, of the difference between the loss fund premium contributed by that **Group Member** and claims paid or reserved for that **Group Member** at the time of the declaration ("pro rata based on losses"). Any **Group Member** for which the claims paid and reserved exceeds the loss fund premium paid in a program year shall receive no allocation of rebated premiums from that program year under the "pro rata based on losses" portion of the formula, but shall be entitled to rebated premiums from other program years for which the **Group Member** has a positive balance, and from the "pro rata based on premiums" portion of the formula.

Surplus funds may also be transferred by the **Board of Trustees** to any program year that is deemed by the **Board of Trustees**, in its sole discretion, to be actuarially unsound, in order to supplement the assets needed to provide coverage for that Program Year, and to avoid the need to assess **Group Members**.

ARTICLE XI - BUDGET

Section 1 - Budget

The Board shall adopt an annual budget by November 1 of each year, with receipt of a draft budget thirty (30) days prior.

ARTICLE XII - ESTABLISHMENT AND ADMINISTRATION OF FUNDS

Section 1 - Administration and Investment of Funds

The **Group** is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It shall comply with every provision of law relating to the subject.

The funds received for each **Coverage Year** shall be accounted for separately on a full-accrual basis. The portion of each **Coverage Year**'s contribution allocated for payment of claims and losses, if any, shall be held by the **Group** in trust for the program participants in separate trusts for each **Coverage Year**. The Treasurer shall receive, invest, and disburse funds only in accordance with procedures established by the Board and in conformity with applicable law and self-insurance regulations.

ARTICLE XIII - GROUP ADMINISTRATOR

Section 1 - Administrative Officer

The Board shall appoint the **Group Administrator**. The **Group Administrator** shall be responsible for the daily administration, management, and operation of the **Group's** Programs and shall be subject to the direction and control of the Board. The **Group Administrator** may not be an employee of a **Group Member**, nor shall the **Group Administrator** be owned by or an employee of the Third Party Claims Administrator.

Section 2 - Responsibilities

The responsibilities of the **Group Administrator** or a designated contractor are, among other matters, to:

- A. Monitor the status of the **Group's** Programs and operations, member's losses, administrative and operational costs, service companies' performance, and broker's performance;
- B. Provide appropriate risk management counseling and information to **Members** and the **Board**;
- C. Prepare an annual budget;
- D. Advise **Members** of the risk impact of any proposed new Programs or changes to existing Programs;

- E. Assist the **Board** in selecting brokers, auditors, insurance companies, and claims administration services;
- F. Perform or contract for claims audits and actuarial studies to determine cost allocations;
- G. Develop criteria to assist **Members** in preparation of risk management plans;
- H. Conduct risk management audits to review the participation of each **Member** in the Program and submit an audit report to the **Member** within a reasonable time after such audit;
- I. Develop effective risk management and loss control procedures and advise **Members** of how to implement them;
- J. Implement, coordinate, and supervise the **Group's** Programs of Safety and Loss Control; and
- K. Design and implement new **Group** Programs of risk management and self-insurance as directed by the **Board**.

Section 3 - Limitations

Outlined below are the limitations of the Board of Trustee's delegation authority. The **Board of Trustees** may not delegate the following:

1. The appointment of successor Financial Institutions in which the **Group** funds are placed.
2. The investment decisions regarding the **Groups'** assets.
3. The removal or appointment of the Financial Institution in which the **Group** funds are placed.
4. The selection of CPA's necessary to audit the **Group**, although the **Board of Trustees** may base this selection on the recommendations of the **Group Administrator**.
5. Financial functions specifically outlined in self-insurance regulations in California Code of Regulations, Title 8, Section 15475 as retained by the **Board of Trustees**.

Section 4 - Compensation and Employment

The **Group** shall compensate the **Group Administrator** for services rendered to the **Group** in such amount and manner as may occasionally be adopted by the Board. Details respecting compensation, termination, and other employment related matters pertaining to the **Group Administrator** shall be governed by such terms and conditions as the Board shall establish.

Section 5 - Deposit and Investment of Group Funds

The Treasurer may deposit and invest **Group** funds, subject to any applicable provisions of the **DIR OSIP** regulations and in accordance with the Investment Policy adopted by the **Board of Trustees**.

Section 6 - Accounting Method for Pooled Programs

The accounting method for the **Workers' Compensation Program** shall be accounted for separately on a full-accrual basis and will be in accordance with the provisions and the principles established by the Financial Accounting Standards Board. Each calendar year of operation of the **Group** shall be maintained separately for accounting purposes for the benefit of Members active during that fiscal year. All claims shall be allocated to the fiscal year in which they were reported to the **Group**.

ARTICLE XIV - WORKERS' COMPENSATION PROGRAM

The **Group** shall make available to all **Group Members** in the Workers' Compensation Coverage through a combination of funding for losses, purchase of specific excess or aggregate excess insurance.

ARTICLE XV - DEFAULTS, EXPULSION, AND WITHDRAWAL FROM THE GROUP

Section 1 - Events or Conditions of Default Defined

- A. The following shall be "defaults" under the **Articles** and these Bylaws:
1. Failure by such **Group Member** to observe and/or perform any covenant, condition, or agreement under the Governing Documents, including but not limited to risk management or loss reporting procedures;
 2. Failure to pay any contribution or assessment amounts, including penalties and interest, due to the **Group** for more than thirty (30) days;
 3. Excessive losses as determined by the **Board of Trustees**;
 4. Any condition of the **Group Member** which the **Board of Trustees** believes jeopardizes the overall financial viability of the **Group**.
 5. A final determination from the IRS that the Group Member no longer has federal tax exempt status under IRC Section 501(c)(3). Each policy of insurance issued by the Group shall provide that such policy will not cover the insured with respect to events occurring after the date such final determination was issued to the insured by the IRS.
- B. The **Board of Trustees** shall give thirty (30) days notice of condition of default under Paragraph 1, 2, and 3 prior to expulsion in order to allow the **Group Member** to correct the condition of default.

Section 2 - Remedies on Default

- A. Whenever any event of default referred to in Section 1 of this article shall have occurred, it shall be lawful for the **Group** to exercise any and all remedies available pursuant to law or granted pursuant to the **Articles** and these Bylaws. However, no remedy shall be sought for defaults, except defaults under Paragraphs 5 in Paragraph A, Section 1. of this Article, until the **Group Member** has had at least thirty (30) days notice of default.
- B. Expulsion of a Member from the **Group**:
1. The Board, with at least a two-thirds (2/3) vote, may expel any **Group Member** that is in default, as defined in Section 1 of this Article, from the **Group**, and request involuntary revocation of the Member's **Certificate** in the **Group** by **DIR OSIP**.
 2. Such expulsion shall be effective on the date **DIR OSIP** officially revokes the **Certificate** of Consent of the Member from the **Group**, but not earlier than thirty (30) days after a notice of intent to revoke has been personally served on or sent certified mail to the **Group Member** by **DIR OSIP**.
 3. A **Group Member** that voluntarily leaves the **Group** will be required to adhere to the provisions listed in **DIR OSIP** regulation section 15422 regarding notification to **DIR OSIP**. Any **Group Member** involuntarily expelled from the **Group** for cause, the **Group Administrator** will request **DIR OSIP** to revoke the Member's **Certificate of Consent to Self Insure** in the **Group**.
 4. The expulsion of any **Group Member** from the **Workers' Compensation Program**, after the effective date of the **Coverage Year** has commenced shall not terminate the **Group Member**'s responsibility to contribute its share of premiums or funds to any fund or insurance Program created by the **Group**. All current and past **Group Members** shall be responsible for their respective share of the expenses, as determined by the **Group Administrator**, until all claims, or other unpaid liabilities, covering the period of the participant's participation in the risk pooling Program have been finally resolved and a determination of the final amount of payments due by, or credit to, the participant for the period of its participation has been made by the Board.
- C. Cancellation of Coverage under a Program:
1. Upon the occurrence of any event of default, the Board, with at least a two-thirds (2/3) vote, may cancel permanently all rights of the defaulting **Group Member** in any Program in which such Member is in default.
 2. The cancellation of rights of a defaulting **Group Member** shall not absolve the **Group Member** of any obligations to contribute its share of premiums or funds to any fund or insurance program created by the **Group**. Such obligations include its respective share of the expenses, as determined by the **Group Administrator**, until all costs of claims or other unpaid liabilities covering the period of the defaulting **Group Member's** participation are finally resolved and any final amount due by the defaulting **Group Member** is paid.

D. Exclusive Remedy:

No remedy contained herein is intended to be exclusive. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or shall be construed to be a waiver thereof.

Section 3 - Withdrawal

A. Withdrawal by a **Group Member** from the **Workers' Compensation Program** shall be in accordance with the provisions of these Bylaws.

B. **Group Members** must participate in the **Group** for a minimum of three (3) years. If during this period a **Group Member** terminates its participation in the **Group** or is expelled from participation in the **Group** for any reason, except for:

1. Its failure to continue to meet the Program Administrator's financial guidelines for inclusion in the **Group**.
2. A material change in its business activity or structure including business dissolution, significant change in ownership or declaration of bankruptcy.
3. The occurrence of any material change in the business of a **Group Member** that in the sole determination of the **DIR OSIP** or **Board of Trustees** might adversely impact the business of the **Group**. Determinations by the **Board of Trustees** must be made by a two-thirds (2/3) vote.

Such **Group Member** shall pay to the **Group**, in addition to the contributions due for the then current year, an amount equal to thirty percent (30%) of their annualized contributions for the then current year.

C. The withdrawal of any **Group Member** from the **Workers' Compensation Program** after the effective date of such Program shall not terminate its responsibility to contribute its share of premiums or funds to any fund or insurance Program created by the **Group**. All current and past participants shall be responsible for their respective share of the expenses, as determined by the **Group Administrator**, until all claims, or other unpaid liabilities, covering the period of the **Group Member's** participation in the risk pooling Program have been finally resolved and a determination of the final amount of payments due by, or credit to, the participant for the period of its participation has been made by the Board. All past participants shall be billed for their share of the additional expenses and shall receive any distribution of dividends based on the same methodology of the current participants. The withdrawal of any **Group Member** from any Program shall not require the repayment or return to that participant of all or any part of any contributions, payments, advances, or distributions except in conformance with these Bylaws. All claims and claim liability for any period of coverage of a Member in a **Group** will remain with the **Group**, unless such liability is sold off via a special excess workers' compensation insurance policy pursuant to Labor Code 3702.8.

- D. Withdrawal of the **Group Member** shall only be permitted at the end of any **Coverage Year**. After the initial three (3) year term, Members must provide the **Group** with notice prior to July 1st of the succeeding **Coverage Year**, of their intent to non-renew membership in the **Group**. Failure to do so will result in automatic renewal or payment of the early termination penalty specified herein.

Section 4 - Agreement to Pay Attorney's Fees and Expenses

In the event either the **Group** or a **Group Member** is in breach of the **Articles** and the other party employs attorneys or incurs other expenses for the collection of moneys or the enforcement of performance or observance of any obligation under the **Articles** on the part of the defaulting party, the defaulting party shall pay to the other party the reasonable fees of such attorneys and such other expenses so incurred by the other party.

Section 5 - No Additional Waiver Implied by One Waiver

In the event any agreement contained in the Governing Documents is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XVI - LEGAL REPRESENTATION

Section 1 - Counsel Authorized

The Board shall retain outside legal counsel to advise it. Legal counsel, to advise on normal day-to-day matters relating to the operation of the **Group**, may be provided by the **Group Administrator** and approved by the **Board of Trustees**.

The **Group** shall have the right to pay such legal counsel reasonable compensation for said services.

ARTICLE XVII - EXECUTION OF CONTRACTS

Section 1 - Authorization by Board

The **Board of Trustees** may authorize the **Group Administrator**, any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the **Group** and such authorization may be general or confined to specific instances. Unless so authorized by the **Board of Trustees**, no officer, agent, or employee shall have any power to bind the **Group** by any contract or to pledge its credit or to render it liable for any purpose or to any amount.

ARTICLE XVIII - COMPENSATION FOR DIRECTORS AND OFFICERS

Section 1 - Reimbursed Expenses

The **Group** may reimburse any Trustee or Officer, who does not otherwise receive compensation for actual expenses incurred and reasonable out of pocket expenses of the Trustee or Officer in the performance of his/her duty on behalf of the **Group**.

Section 2 - Directors and Officers Insurance

The **Group** shall purchase fidelity coverage and may purchase liability insurance indemnifying the Directors, Officers, and any Administrative employees for personal liabilities arising out of wrongful acts in the discharge of their duties to the **Group**. Fidelity coverage shall be in an amount determined by the Board to be adequate to insure the integrity of Member or **Group** funds handled by the **Board of Trustees**. The Board may require the **Group Administrator** and shall require the third party claims administrator to provide fidelity coverage for funds handled by each of these parties.

ARTICLE XIX - TERMINATION AND DISTRIBUTION

- A. The **Articles** and the **Group** continue to exist after termination for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the obligations and affairs of the **Group**.

Upon termination of the **Articles**, the assets of the **Group** shall be distributed and apportioned among the **Group Members** that have been participants in its Programs, including those **Group Members** which previously withdrew or were expelled pursuant to ARTICLES XIV and XV of these Bylaws. Any additional funds received after the above distributions are made, shall be returned in proportion to the contributions made.

- B. This **Group** may be terminated by the **Board of Trustees**, provided however, that the **Board of Trustees** and each **Group Member** has complied with all of the compensation provisions of the Labor Code, self-insurance statutes and regulations, and the terms and conditions of this Agreement. To effectuate the termination, the **Board of Trustees** must deliver a notice of intent to terminate to the Manager of the **DIR OSIP** and to the **Group Administrator**, executed by the authorized representatives of a two-thirds ($\frac{2}{3}$) majority of all current **Group Members** of record.
- C. If at any time the **Group** is found to be insolvent, fails to pay any required assessments under the self-insurance statutes and regulations, or fails to post required deposit or submit required reports to the Manager of the **DIR OSIP**, or fails to comply with any provisions of the workers' compensation statutes or with any regulations promulgated there under, the Manager of the **DIR OSIP** may revoke the **Group's** self-insured status and, at its discretion, may take control of the **Group** in lieu of the **Board of Trustees**, or may approve this Trust to operate as a Runoff Fund to pay existing claims incurred during the effective Period of Self-Insurance.
- D. If the **Group's** self-insurance status is revoked for any reason, the **Group Members** shall each insure their ongoing, new liability with a standard workers' compensation insurance policy issued by an admitted carrier authorized to write Workers' Compensation Insurance by the State of California. Upon **Group** coverage termination of any **Group Member** or **Group Member(s)**, all remaining balances of the revoked **Group Members** in the **Group** shall be applied to fulfill the existing obligations of the **Group** for each **Coverage Year** during which the Fund was providing Member coverage. When all claims arising out of each individual **Coverage Year** during which the Period of Self-Insurance applied have been satisfied, any remaining balance for each **Coverage Year** shall be distributed to the **Group Members** in such proportions as may be determined by the **Board of Trustees**.

- E. Any **Group Member** that leaves the **Group** for any reason shall leave all equity and all claims liabilities with the **Group** for the period of coverage provided by the **Group**. When all compensation liabilities of all periods of coverage are satisfied, any remaining **Group Member** balance shall be returned to the **Group Member**.
- F. Any **Group Member** may petition the **Board of Trustees** to permit the **Group Member** to sell off the **Group Member's** compensation liabilities with a special excess workers' compensation insurance policy pursuant to Labor Code Section 3702.8. The **Board of Trustees** may authorize such a transfer of liabilities to the special excess carrier, subject to the approval of the **DIR OSIP**.

ARTICLE XX - NOTICES

Section 1 - Notices to the Group

Notices to the **Group** shall be in writing and given by delivery of such notice to the mailing address of the **Group**.

Section 2 - Notices to Group Members

Notices to **Group Members** will be in writing and delivered to the appointed representative of each **Group Member** or mailed to the address on file with the **Group**.

Section 3 - Claims Against the Group

Claims against the **Group** shall be presented to the mailing address of the **Group**.

ARTICLE XXI - ARTICLES, SECTIONS AND PARAGRAPHS

Section 1 - Articles

The principal divisions of these Bylaws are "ARTICLES" followed by Roman numerals.

Section 2 - Sections

The principal divisions of articles are "SECTIONS" identified by Arabic numerals.

Section 3 - Paragraphs

The principal divisions of sections are "PARAGRAPHS" identified in upper case letters.

ARTICLE XXII - AMENDMENTS

Amendments to these Bylaws may be made by a vote of two-thirds (2/3) of the **Board of Trustees** present at any annual meeting, regular meeting or special meeting of the Board called for that purpose and subject to the approval of the Manager of **DIR OSIP**. Amendments to these Bylaws may also be made by two-thirds (2/3) of the **Group Members** present either at any annual meeting or any special meeting called for that purpose, but also subject to the approval of the Manager of **DIR OSIP**.

ARTICLE XXIII - EFFECTIVE DATE

Section 1 - Effective Date and Supremacy

These Bylaws shall be effective immediately upon the date of approval.

The adoption of the Bylaws shall supersede and cancel, as of the effective date of these Bylaws, any prior Bylaws and/or amendments thereto.

However, the adoption of these Bylaws shall not affect the **Articles** of Incorporation or any amendments to the **Articles** of Incorporation. Any clauses in these Bylaws that are inconsistent with the Articles of Incorporation shall be superseded by those clauses in the Articles of Incorporation but only to the extent of the inconsistency.