§ 6106. Subscriber's agreement. (a) (1) Every subscriber of an authorized reciprocal insurer shall have executed a subscriber's agreement, and every subscriber executing such a subscriber's agreement containing a provision for contingent liability of subscribers shall execute and duly acknowledge the same, in a manner sufficient for the acknowledgment of conveyances of real property to be recorded in the state in which such subscriber is domiciled.

(2) Every subscriber's agreement shall be identical in terms, except as to the date and the name and address of the subscriber, with all other subscriber's agreements currently in force and effect with all other subscribers of such reciprocal insurers. However, in the case of any reciprocal insurer authorized pursuant to section six thousand one hundred eight of this article to issue non-assessable policies or agreements, or having a corporate attorney-in-fact wholly owned by the subscribers at such reciprocal insurer, the acceptance of a policy or binder of insurance containing the subscriber's agreement printed at the end of the standard policy provisions or the binder, as the case may be, preceded by the words printed upon the policy or binder:

> "The acceptance of this policy or binder shall constitute that insured designated therein is a subscriber of the reciprocal insurer and shall constitute the execution and delivery by the insured of the subscriber's agreement which is appended to this policy or binder, and hereby made a part thereof",

shall constitute the execution and delivery of said subscriber's agreement by that insured as fully and to the same extent as though said agreement had been signed and acknowledged by that insured.

(3) Every such subscriber's agreement shall contain in substance the following provisions:

(A) A designation and appointment of the attorney-in-fact to act for and bind the subscriber in all transactions relating to or arising out of the operations of such reciprocal insurer, subject to such limitations as may be lawfully provided.

(B) An agreement that service of summons or other legal process on the attorney-in-fact or on any other person appointed by the attorney-in-fact to receive such process, shall, in any action, suit or proceeding arising out of any contract, agreement or transaction of such

reciprocal insurer, be equivalent to personal service of such summons or other legal process on each and every subscriber.

(C) Unless the reciprocal insurer is authorized to issue non-assessable policies under section six thousand one hundred eight of this article an agreement for the contingent liability of the subscriber, which shall state that such subscriber agrees to pay on demand such subscriber's proportionate share of any assessment lawfully ordered or levied by the advisory committee or by the superintendent under article seventy-four of this chapter.

(D) A provision that there shall be an annual meeting of the subscribers, in person or by proxy, at a time and place to be determined in accordance with such agreement, of which each subscriber shall be duly notified and at which each subscriber shall have power to vote in person or by proxy for all members of the advisory committee to be chosen or appointed at such time, except that in the case of a foreign reciprocal insurer, the superintendent may permit a modification of such provision provided that he is satisfied that the interests of the subscribers are properly protected.

(E) A provision specifying the powers and duties of the advisory committee, which shall include the power and duty to regulate the compensation, powers and duties of the attorney-in-fact, if not specifically provided in the subscriber's agreement, and shall also include the power to make regulations for the effective control and custody of the funds and investments of the reciprocal insurer. In addition, the advisory committee of a municipal reciprocal insurer shall establish procedures to prevent any conflicts of interest between the attorney-in-fact and such insurer. Such procedures shall be submitted to and approved by the superintendent, who shall also approve the attorney-in-fact for a municipal reciprocal insurer.

(F) Provisions setting forth the rights, privileges and obligations of the subscriber as an underwriter, and as a policyholder subject to the terms of insurance contracts required or permitted by law to be issued.

(G) General provisions relating to the operations of the reciprocal insurer, including the subscriber's operating reserve requirements, regulations for the return of savings or dividends, for withdrawals and refunds and such other matters as may be necessary to maintain the operation of such reciprocal insurer in compliance with the provisions

of this chapter. In the case of a municipal reciprocal insurer, such agreement shall include procedures to: (i) establish and promote loss control, safety programs and other methods of risk management; (ii) establish equitable risk classifications; and (iii) establish uniform recordkeeping and reporting procedures.

(4) The following provisions shall be contained in either the subscriber's agreement or a separate management agreement between the attorney-in-fact and the advisory committee or the attorney-in-fact and any person to which its functions have been delegated after approval of the advisory committee:

(A) A provision that the attorney-in-fact shall provide written notification of, and make all necessary arrangements as provided in the subscriber's agreement, for the election, in person or by proxy, of the members of the advisory committee. The cost of notification, ballot, or proxy for any meeting of the advisory committee and for any meeting which may be called for the election shall be incurred by the reciprocal.

(B) A provision that the attorney-in-fact shall provide written notification to the members of the advisory committee of not less than ten days for any regular meeting or five days for any special meeting called pursuant to subsection (k) of section six thousand one hundred five of this article. The cost of such notification shall be incurred by the reciprocal.

(C) A provision that the advisory committee may, upon a vote of a majority of its members at any regular or special meeting thereof and upon written notice to the superintendent and the attorney-in-fact, recommend termination of the attorney-in-fact for a stated cause and appointment of a new attorney-in-fact, subject to the provisions of any management agreement approved by the superintendent. Termination of the attorney-in-fact shall require the approval of a two-thirds majority of the subscribers present in person or by proxy at a special meeting called for that purpose. The attorney-in-fact shall provide by mail not less than thirty days prior written notification of such meeting to all subscribers. The mailing of notification shall include the recommendation of termination and replacement as prepared by the advisory committee, and any other appropriate documents submitted by the attorney-in-fact. A copy of all documents mailed and certification of

their mailing to all subscribers shall be provided to all members of the advisory committee. The cost of notification and proxy for any such meeting shall be incurred by the reciprocal. For reciprocals with less than two thousand five hundred subscribers, at least twenty-five percent of all subscribers shall be required to constitute a quorum. For all other reciprocals, the greater of twenty-five hundred subscribers or five percent of all subscribers shall constitute a quorum.

(D) A provision that the attorney-in-fact shall cause all assets of the reciprocal and its subscribers to be invested in accordance with investment guidelines approved by the advisory committee and shall be properly accounted for on the financial records of the reciprocal as being held for or on behalf of the subscribers. All cash assets of the reciprocal and its subscribers, not otherwise invested in short term securities such as money market funds, covering policy obligations arising out of policies issued or issued for delivery in the United States shall be held in one or more appropriately identified accounts in banks that are members of the federal reserve system. These accounts shall be drawn on by the attorney-in-fact, or by employees or representatives of the reciprocal authorized by the attorney-in-fact for all payments on behalf of the reciprocal.

(E) A provision that if the attorney-in-fact is acting for more than one reciprocal, separate records and accounts shall be maintained for each reciprocal.

(F) A provision that the attorney-in-fact may not assign its responsibilities as detailed in the subscriber's agreement in whole or part or enter into management agreements delegating its duties in whole or part to another party without the prior approval of the advisory committee and the superintendent.

(G) A provision that the attorney-in-fact shall establish and maintain underwriting procedures and manuals, setting forth the rates and conditions for the acceptance or rejection of risks.

(H) A provision that the attorney-in-fact shall make a report to the advisory committee at each regular meeting of the committee on the financial condition of the reciprocal and all material transactions during the period since the last meeting.

(I) A provision that the attorney-in-fact shall annually provide to each member of the advisory committee:

(i) On or before March first of each year, a copy of the reciprocal's annual statement and the accompanying statement of actuarial opinion filed with the superintendent pursuant to section three hundred seven of this chapter; and

(ii) On or before June first of each year, a copy of:

(I) The certified statement filed with the superintendent pursuant to subsection (f) of section six thousand one hundred five of this article; and

(II) The certified annual statement of the reciprocal filed with the superintendent pursuant to section three hundred seven of this chapter.

(J) A provision specifying all forms and amounts (or formulas to determine the amounts) of compensation the attorney-in-fact will receive for services rendered and, if all or part of the compensation will be contingent upon the reciprocal's profits, a provision that such compensation shall not be paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other kind of insurance and, in no event shall the compensation be paid until the adequacy of reserves on outstanding claims has been independently verified by the same actuary who opined on the latest annual statement filed with the superintendent pursuant to section three hundred seven of this chapter.

(K) A provision that the independent certified public accountant who will prepare the annual report required by subsection (f) of section six thousand one hundred five of this article and the independent actuary who will prepare the opinion accompanying the annual statement pursuant to section three hundred seven of this chapter shall be selected by the attorney-in-fact, subject to the approval of the advisory committee.

(L) A provision that the books, accounts and records of the reciprocal shall be maintained by the attorney-in-fact to clearly and accurately disclose the nature and details of all transactions including all information necessary to determine that the compensation received by, or owing to, the attorney-in-fact is provided in a manner consistent with the subscriber's agreement and any management agreement. The books, accounts and records of the reciprocal shall be the sole property of the reciprocal.

(M) A provision that the attorney-in-fact shall conduct the affairs of the reciprocal in accordance with the provisions of this chapter.

(b) (1) The subscriber's agreement may contain such further provisions as may be necessary or proper; but neither the subscriber's agreement nor the articles of association, if any, of an authorized reciprocal insurer shall contain any provisions inconsistent with the provisions of subsection (a) hereof.

(2) The superintendent may, if he finds it necessary to carry out the purpose and intent of this article, by regulation prescribe additional provisions, not inconsistent with any law of this state, to be contained in the subscriber's agreement of reciprocal insurers.

(c) Every subscriber to a municipal reciprocal insurer shall agree to participate in a risk management program established by the attorney-in-fact. The attorney-in-fact of each insurer shall, with the approval of the advisory committee, establish, promote and manage a risk management program among the subscribers. Each program shall include identifying and reducing risks through the implementation of loss control, safety programs and other methods of risk management. The attorney-in-fact may enter into contracts with any person, firm, or corporation for services necessary to perform and administer the risk management program or to perform or administer other functions deemed necessary by the advisory committee and approved by the superintendent. An individual subscriber may enter into contracts with any person, firm or corporation for services necessary to perform and administer any function which that subscriber shall deem necessary.