

# SELF INSURED LUMBER BUSINESSES ASSOCIATION, INC.

## APPLICATION AND INDEMNITY AGREEMENT

THIS AGREEMENT is by and between Self Insured Lumber Businesses Association, Inc., a Massachusetts nonprofit corporation, (the "Group"), and the undersigned employer located in the Commonwealth of Massachusetts, (the "Member"), and is effective upon, and as of the date of, acceptance in the manner indicated below by the Group and the Member.

WHEREAS, the Group has received from the Massachusetts Commissioner of Insurance (the "Commissioner") a certificate of approval to operate as a workers' compensation self-insurance group under Chapter 152, Sections 25E through 25U of the Massachusetts General Laws (the "statute"); and

WHEREAS, the Member desires to become a Member of the Group to obtain coverage for workers' compensation benefits and employer's liability.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the Group and the Member agree as follows:

1. **Indemnity Agreement.** The Member and the Group agree to comply with the provisions of Chapter 152 of the Massachusetts General Laws, as from time to time amended, and hereby agree to defend, indemnify and hold harmless each other and every other member of the Group which executes and delivers to the Group or its Administrator an agreement containing an indemnity agreement similar to this Section 1, from and against any claim or damage arising from the non-compliance by the indemnitor with a provision of said Chapter 152. Although recourse for any and all payments of workers' compensation and employers' liability benefits covered by the Group's Workers' Compensation and Employer's Liability Insurance Policy to a member shall first be made to the Group's assets (but not the individual assets of any Member of the Group), the Member understands, acknowledges and agrees that under said Chapter 152, the Member is jointly and severally liable for the workers' compensation and employers' liability obligations of the Group and its members which were incurred during the Member's period of membership in the Group, irrespective of the subsequent termination of Member's membership in the Group, the insolvency or bankruptcy of another member of the Group, or other facts or circumstances. This Section 1 shall survive termination of this Agreement and any termination of Member's membership in the Group.

2. **Definitions.** For the purposes of this Agreement, the following terms shall have the following meanings:

"Administrative Expenses" means all payments to the Administrator made pursuant to a Management Services Agreement between the Group and the Administrator as in effect during the Fund Year as well as payments for reinsurance, security deposits, taxes, accounting and actuarial reviews, non-claims related legal work, investment management, outside consultants, or any other related expenses for the Fund Year.

"Aggregate Surplus" means the aggregated Member's Surplus for all Members of the Group plus other unearned income of the Group.

"Annual Premium" means the Member's Manual Premium as adjusted to reflect the Discount Amount and any applicable experience modification factor.

"Application and Indemnity Agreement" means each Application and Indemnity Agreement entered into between the Group and a Member and, collectively, all such Application and Indemnity Agreements as from time to time in effect, whether before or after the date of adoption of the bylaws of the Group.

"Contribution" means a payment to the Fund made by a Member in response to an assessment in accordance with the Group's bylaws, the Application and Indemnity Agreement or any other rules, regulations, policies and procedures pursuant or incident thereto. Without limiting the generality of the foregoing, Contributions shall consist in part of required premium payments and other payments made by Members to cover the costs of purchasing excess insurance, establishing and maintaining a Claims Fund Account, and establishing and maintaining an Administrative Fund Account.

"Deficit Amount" means the amount by which the sum of the Member's Incurred Claims plus the Member's pro-rata share (based upon the Member's share of aggregate Net Premium paid by all Members of the Group) of the Administrative Expenses exceeds the Member's Net Premium.

"Discount Amount" is the discount applicable to each Member set forth in the Group's rating plan.

"Final Premium" means the aggregate premium owed by all Members in each Fund Year to the Group after adjustments to Manual Premium due to payroll audits.

"Fund" means the sum of all Contributions made by Members pursuant to the Group's bylaws, the Application and Indemnity Agreement, and any rules, regulations, policies and procedures pursuant or incident thereto; all monies, contracts, policies or properties

received by the board of trustees of the Group from the Members for the uses and purposes set forth in the Group's Bylaws, the Application and Indemnity Agreements, and any rules, regulations, policies and procedures pursuant or incident thereto; and all income, gains and all other increments of any nature whatsoever therefrom.

"Full Fund Year" means a Fund Year with a period equal to or greater than twelve (12) months.

"Fund Positive Balance" means the amount by which the Members' premium and investment income related thereto exceeds the Members' Incurred Claims and share of Group Administrative Expenses, including but not limited to adequate contingency reserves, for such Fund Year.

"Fund Year" means a period of twelve (12) consecutive months identified by the board of trustees of the Group. The Fund Year shall commence on January 1<sup>st</sup> and end on December 31<sup>st</sup> unless otherwise provided by the board of trustees of the Group. A Fund Year may be a period of greater or fewer than twelve (12) months if it is the first or last such year of the Fund or a year involving a change in the commencement or termination date of the Fund Year. The Fund Year and the Fiscal Year shall be the same.

"Incurred Claims" means all medical, indemnity, legal, investigative and other related expenses on all reported claims and all incurred but not reported claims as determined by the actuary for the Fund Year.

"Manual Premium" means the total premiums that would be paid in each Fund Year by each Member to the Group pursuant to the rates established by the Massachusetts Workers' Compensation Rating and Inspection Bureau if there were no adjustment for experience or the Discount Amount.

"Members Surplus" means the amount by which the Member's Net Premium exceeds the sum of the Member's Incurred Claims plus the Member's pro-rata share (based upon the Member's share of aggregate Net Premium paid by all Members of the Group) of the Administrative Expenses.

"Net Premium" means actual Manual Premium paid in each Fund Year by each Member to the Group modified by the experience modification factor and ARAP factor, if any, (as calculated in accordance with the MWCRIB Experience Rating Plan) less the Discount Amount. Final Premium may be greater than the aggregate Net Premium of all of the Members.

3. **Representation and Warranty by the Member.** The Member represents and warrants that it is engaged in the lumber/building materials business and is a member or

an associate member in good standing of the Massachusetts Retail Lumber Dealers Association.

4. **Conditions Precedent to Effectiveness of Agreement.** This Agreement shall not be effective unless and until the administrator of the Group, (the "Administrator") accepts on behalf of the Group the Member's application to become a member of the Group which application must then be approved by the board of trustees of the Group.

5. **Term.** The term of this Agreement shall commence on the effective date of this Agreement and shall continue in force from said date until terminated.

6. **By-Laws, Rules, Regulations, Policies and Procedures.** The Member shall abide by the by-laws and any other rules, regulations, policies and procedures adopted by the Group from time to time.

7. **Coverage.** After the Member's application for coverage has been approved by the Administrator and the board of trustees of the Group, the Group agrees to provide the Member with the Risk Reduction Programs described in Section 13 of this Agreement and workers' compensation and employer's liability coverage as described in the Group's Workers' Compensation and Employer's Liability Insurance Policy. The Member agrees to pay the premiums, assessments, and entry fee, if any, as provided herein, for such services and coverage.

8. **Payroll Classification.** The Member shall furnish to the Administrator not less than thirty (30) days before coverage is to be provided, an annual estimated payroll by job classification. This estimate shall be adjusted annually by the Administrator at the end of each Fund Year to reflect the actual current payroll on the books of the Member. The Group shall direct its Administrator to conduct an annual audit of the payroll records of the Member, and the Member hereby agrees to submit to such annual audit when requested to do so by the Group. The Member agrees to pay promptly any additional premium which results from this annual adjustment upon receipt of an invoice from the Administrator.

9. **Premiums.**

a. The Member agrees to pay to the Group premiums computed in accordance with a rating plan, as amended from time to time in accordance with the requirements of 211 CMR 67.09.

b. The Group shall establish a Premium Payment Plan. The Group, acting through its board of trustees, reserves the right to amend the Premium Payment Plan from time to time in its sole discretion, and the Member agrees to adhere, abide by and pay its premium in accordance with the provisions of the Premium Payment Plan as the

same may be amended from time to time. A copy of the current Premium Payment Plan is attached for informational purposes as Schedule 1.

c. The Member agrees to pay its premium for each Fund Year, commencing on January 1 and ending on December 31 in accordance with the premium payment plan approved by the Board of Trustees of the Group as described in Schedule 1 of this Agreement. If the Member becomes a member of the Group on a date other than January 1 of a Fund Year, it shall and hereby agrees to pay twenty-five percent (25%) of the estimated pro rata premium for the Member for the partial Fund Year on or before its initial date of coverage, with the amount of such premium to be specified by the Administrator, with the remainder of the premium to be paid in accordance with the Premium Payment Plan.

d. The Member understands that there may be interim rate adjustments approved by the Commissioner and agrees to pay additional premiums resulting therefrom. The Member also agrees to pay additional premiums to the Group as determined by the board of trustees of the Group based upon recommendations of the Administrator in accordance with the bylaws or rules and regulations of the Group or a vote of the board of trustees of the Group or as otherwise required by law.

e. The Member agrees to execute necessary authorization forms permitting the Group or its Administrator to obtain information and data required in determining the experience rating modification of the Member and authorizing the Group or its Administrator to file with the appropriate authorities, loss and payroll data pertaining to the Member to be used to develop the Member's experience rating modification. Such authorization executed by the Member shall also permit the Group or its Administrator to obtain information and data to enable the Group to satisfy the permit application regulations in accordance with Massachusetts Regulations 211 CMR 67.09.

f. If, following the annual adjustment referenced in Section 8, a Deficit Amount exists for the Member the Member will be charged an assessment equal to the lesser of the Deficit Amount or 25% of their Net Premium.

If following this assessment, a Deficit Amount still exists for the Member but an Aggregate Surplus exists for the Group for the Fund Year in question, then the Deficit Amounts for all Members shall be aggregated and the Aggregate Surplus shall be applied to the aggregated Deficit Amounts. If, following the application of the Aggregate Surplus, aggregated Deficit Amounts still exist for the Members, then the Members shall pay an additional premium assessed pursuant to the provisions of Section 9.d and assessed pro-rata based on the Net Premium of each Member. These obligations with respect to the



Fund Year in question shall survive termination of this Agreement and any termination of the Member's membership in the Group.

If, following the annual adjustment described in Section 8 and following the retirement of any Deficit Amounts, there exists a Fund Positive Balance, this Fund Positive Balance shall be dealt with in accordance with the provisions of Section 10 and Schedule 2.

10. **Surplus Funds and Assessment Plan.** Any Fund Positive Balance resulting from overall loss experience of the Group shall be available for distribution to Members in accordance with a Surplus Funds and Assessment Plan as adopted and amended from time to time by the board of trustees of the Group. A copy of the current Surplus Funds and Assessment Plan is attached for informational purposes as Schedule 2.

11. **Automatic Assessment.** In the event that the Group incurs a fund deficit in any Fund Year, such deficit shall be made up immediately with surplus from a prior Fund Year or Administrative Funds, or the members of the Group shall be subject to automatic assessment without further action by the Group.

In the event a member fails to pay any premium, assessment, or other contribution to the Group when due, the members of the Group shall be subject to automatic assessment without further action by the Group.

These obligations with respect to the Fund Year in question shall survive termination of this Agreement and any termination of the Member's membership in the Group.

12. **Excess Insurance.** The Group agrees to maintain with qualified underwriters excess insurance or reinsurance coverage as determined by the trustees of the Group and as required by the Commissioner.

13. **Risk Reduction Programs.** The Group, through its Administrator, will provide risk reduction programs to the Member, designed to assist the Member in following a plan which may result in reduced losses and costs. The Member agrees to cooperate in instituting any and all such risk reduction programs. Notwithstanding the Group's and Administrator's responsibility for the risk reduction programs, the Group and the Administrators assume no responsibility for and are in no way ensuring the safety of the work place of the Member.

14. **Claims.** The Group, through its Administrator agrees (a) to administer, investigate, adjust, settle, and pay all of the workers' compensation claims and such other liabilities as are defined in the Workers' Compensation and Employer's Liability Insurance Policy issued to the Member, after notice of injury has been given and proof of liability has been

established, (b) to prepare all required forms, and (c) to provide a defense if required. The Group, through its Administrator, shall carry on all negotiations with the injured employee or his/her attorney and negotiate settlements. If a personal appearance by an employee of the Member is necessary in any dispute, the expense of such appearance shall be paid for by the Member. The Group, through its Administrator, shall retain and supervise legal counsel necessary for the prosecution or defense of any litigation on behalf of and at the expense of the Group. The Member agrees to cooperate fully by supplying any information needed or helpful to defend such action. The Group, through its Administrator, agrees to provide quarterly to the Member a computer printout showing a statement of claims, claims status, and activities report.

15. **Termination of Coverage and Membership.** This Agreement and the Member's membership in the Group and coverage thereunder may be terminated by the board of trustees of the Group for failure to comply with the terms of this Agreement or the by-laws, rules, regulations, policies or procedures of the Group including, but not limited to, the failure to pay premiums. The conditions of default and termination shall be in accordance with the terms and conditions of the by-laws of the Group. The Member agrees to maintain its membership in the Group for a period of at least one (1) Full Fund Year (the "Initial Term"). The Member may withdraw its membership and coverage at the end of the first Full Fund Year or at the end of any subsequent Full Fund Year by giving the Administrator prior written notice of its intention to withdraw at least ninety (90) days in advance of the end of a Full Fund Year. Withdrawal shall be effective at the close of the Full Fund Year in which such timely written notice was received. In the event the Member withdraws its membership without giving the Administrator such prior written notice, the withdrawing Member shall pay to the Group a termination fee equal to 25% of the premium for the Fund Year in question.

In the event this Agreement is terminated by the Group as a result of a default by the Member, the Member shall pay to the Group on the Termination Date (as that term is defined in the by-laws of the Group) any unpaid premium for the Fund Year in question as well as all amounts owing to the Group.

Termination of this Agreement, or termination, suspension or withdrawal of membership shall in no way affect obligations of the Member under this Agreement, including for unpaid premiums, termination fee or assessments.

The Member agrees that the Member will not collectively with any other members of the Group form another self-insurance group providing workers' compensation insurance coverage or merge, combine, consolidate or otherwise affiliate with another self-insurance group providing workers' compensation insurance coverage, or enter into a partnership or joint venture with another self-insurance group providing workers'

compensation insurance coverage during the period the Group qualifies as a self-insurance group and for a period of two (2) years thereafter.

If the Group determines that because of modifications to or repeal of the laws pertaining to self-insurance groups or for any other reason that a more appropriate structure exists to fulfill the purpose of the Group to provide workers' compensation insurance coverage, then the Member will in good faith and with due diligence cooperate with the Group in formulating a new structure and new agreements between the Group and the Members to implement the more appropriate structure.

16. **Notice.** All notices hereunder shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, return receipt requested, to the Group at the address of the Administrator set forth below and to the Member at its address shown on the Group's records.

17. **Reapplication.** A Member which withdraws from the Group pursuant to the by-laws of the Group may not re-apply for membership in the Group for a period of at least one (1) year from the effective date of such withdrawal.

18. **General.** This Agreement shall be construed under and governed by the law of the Commonwealth of Massachusetts. This Agreement may not be assigned by the Member without the prior written consent of the Group. Failure of either party to enforce a right under this Agreement shall not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved or to terminate this Agreement arising out of any subsequent default or breach. Headings included herein are for convenience only, and shall not be used to construe this Agreement.



ON THE BASIS of the foregoing, the undersigned Member applies for membership in the Group and agrees to be bound hereby if accepted as a member in the Group.

By: \_\_\_\_\_

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

Company: \_\_\_\_\_

This Membership is accepted and the foregoing is agreed to as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**SELF INSURED LUMBER BUSINESSES ASSOCIATION, INC.**

C/O Meadowbrook/TPA Associates  
10 New England Business Center, Suite 303  
Andover, MA 01810

**By:**

\_\_\_\_\_

**President**

**PREMIUM PAYMENT PLAN**

The Premium Payment Plan for a Fund Year shall be 25% of the estimated annual Net Premium paid on January 1 of the Fund Year, and the remaining 75% of the estimated annual Net Premium paid on or before September 1<sup>st</sup> of the Fund Year, such payments to be made by each member in eight (8) equal monthly payments thereafter.

A Member that becomes a member of the Group on a date other than January 1 of the Fund Year shall pay its estimated Net Premium for the period beginning on the date that coverage commences and ending on the following December 31 as follows. The Member's initial premium payment shall be equal to twenty-five percent (25%) of the estimated pro rata Premium for the period of membership in the Fund Year in question. The remaining percentage of the estimated Net Premium for the period of coverage shall be paid in a maximum of 8 equal monthly installments; provided, however, that such Member's premium must be fully paid on or before September 20<sup>th</sup> of the Fund Year.

For purposes of illustration, assume that a Member joins the Group on April 1 of the Fund Year and that the member's pro-rata premium for the Fund Year (ie for the last 8 months of the Fund Year) is \$100,000, the member shall pay to the group 25% of the member's pro rata premium or \$25,000 on April 1. Thereafter, the member would pay the remaining portion of the member's premium (\$75,000) in equal monthly installments with the final premium payment being made by the member on or before September 20<sup>th</sup> of the Fund Year.

Upon any failure to make a required payment of premium by the due date, the required premium payment may accumulate interest at a rate of eighteen percent (18%) per annum or, if such rate is illegal, at the maximum rate allowed by law from the date the payment was due until the date of payment of the required premium payment plus accumulated interest.

This Schedule 1 shall in no way impair the right of the Group to declare a default and pursue any and all remedies for non-payment of premium by a Member pursuant to the terms of this Agreement and the Bylaws of the Group.

**SURPLUS FUNDS & ASSESSMENT PLAN**

The distribution of surplus funds will be handled in a manner that rewards Members for sharing risk, and provides a bonus to the Members with particularly good loss ratios. Apportioning excess monies, at least in part, based on individual Member's loss ratios is important to regulatory bodies, and to the long-term success of the Group.

With advice from the Administrator, the actuary and other consultants, the Board of Trustees of Self Insured Lumber Businesses Association, Inc. (the "Group") will determine the funds available for distribution, if any, to the members of the Group as of December 31 of the Fund Year. Only members who have produced a Members Surplus in a given Fund Year will be eligible for a share of any surplus funds to be distributed relative to that Fund Year. Members who produced a Deficit Amount will be assessed to restore at least a portion of that Deficit Amount. Subject to any alternative methodology as may be adopted from time to time by the Board of Trustees in its sole discretion, this assessment will be the lesser of the amount of the Member's Deficit Amount or twenty-five percent (25%) of the Member's Net Premium and shall be paid by the Member within thirty (30) days of receipt of notice of the assessment.

Insofar as there exists a Fund Positive Balance, the Surplus shall be distributed as a dividend to the Members on a basis consistent with the Member's pro-rata share of the total Fund Year positive fund balance. The Fund Positive Balance will be determined after appropriate allowance is made for contingency reserves. In order to participate in the distribution of the Fund Positive Balance as a dividend, a Member must have become a Member of the Group sometime during the Fund Year, must have continued to be a Member through the end of the Fund Year and must have contributed to the Fund Positive Balance by producing a Members Surplus for the Fund Year.

The share of Fund Positive Balance otherwise payable to a Member may be withheld if that Member has failed to supply to the Administrator a "Certified Financial Statement" as that term is defined in 211 CMR 67.02 or, in the event that Member does not have a "Certified Financial Statement", a financial statement compiled by an independent Certified Public Accountant and including all the same schedules and notes.

Participation in a distribution based on a previous Fund Year shall not be contingent on a continued membership in the Group after that Fund Year provided

however that a distribution will be made to a former Member only (i) if the Member contributed to the Fund Positive Balance for that Fund Year by producing a Member's Surplus (ii) if distributions are being made to current members for that Fund Year and (iii) so long as the former member has met all member obligations. Dividend payments to a former member will be held and not distributed to the member until all incurred claims for that eligible fund year have been closed, provided that a dividend distribution will be deferred **a minimum of 2 years** from the date that the member withdraws from the group, whether voluntarily or involuntarily. Any dividends earned by a member will be used to offset any obligations of that member which have not been satisfied.

Distributions from the Fund Positive Balance, will be made no earlier than twenty four (24) months after the end of the Fund Year and in accordance with applicable laws and regulations.

In the event that the Group incurs a fund deficit in any Fund Year, such deficit shall be made up immediately with Surplus Funds from a prior Fund Year or administrative funds, or the Members shall be subject to automatic assessment without further action by the Group. In the event that a Member fails to pay any premium, assessment, or other Contribution to the Group when due, the Members of the Group shall be subject to automatic assessment without further action by the Group. These obligations with respect to the Fund Year in question shall survive termination of this Agreement and any termination of the Member's membership in the Group.