

CONSTRUCTION ASSOCIATION OF MICHIGAN
WORKERS COMPENSATION PLAN

Operating Procedures
First Amendment August 27, 2019

1. **Purpose.** The Construction Association of Michigan Workers Compensation Plan ("Plan") is a group self-insurance program which provides workers' disability compensation benefits to injured employees of Plan Participants. The total program is designed to give to Participants a greatly improved loss control program to help minimize the cost of workers' compensation claims, and to provide a mechanism for funding the workers' compensation obligations of participating employers through self-insurance, mutual indemnification and excess insurance against catastrophic loss.

2. **Plan Year.** The Plan operates on a fiscal year from 12:01 a.m. January 1 to 12:00 midnight December 31 of each year (the "Plan Year").

3. **Participation Criteria.** In addition to the eligibility requirements set forth in the Indemnity Agreement, Operating Procedures and By-Laws of the Plan, all Participants in the Plan shall:

- A. Have a current ratio of at least one (1) to one (1) (current assets at least equal to current liabilities);
- B. Have a positive net worth;
- C. Have an experience modification rate of 1.50 or lower. Mods higher than 1.50 need approval from excess carrier.
- D. In Business for at least 2 years.
- E. Supply two (2) years loss history and payroll experience.

An applicant who meets the foregoing criteria may be approved for participation in the Plan subject to ratification by the Trustees and Department of Labor, Bureau of Workers' Compensation (Bureau) approval. Any applicant for coverage that does not satisfy the criteria relating to minimum premium and/or experience of two (2) years may be admitted to participation only upon approval by the Trustees, which approval may be subject to review by the Bureau and by the excess insurance carrier of the Plan.

4. **Claims Fund.** Each Participant shall have its own account fund (hereinafter referred to as the "Claims Account"). The portion of the Participant's annual payments allocable to claims pursuant to Section 6 hereof shall be credited to the Participant's Claims Account. Workers' compensation benefits and awards payable by the Participant pursuant to Section 6, associated legal, investigative and other expenses, shall be charged to the Participant's Claims Account. The Trustees shall be the custodians of the assets of each Participant's Claims Account, except as specifically provided in this Section 4 and in Section 7 following. Neither the Plan nor any other Participant shall have any ownership interest in a Participant's Claims Account; provided that a Participant's Claims Account shall serve as security payment of the Participant's mutual indemnification obligation as set forth in the Indemnity Agreement. The Trustees may aggregate the assets of all the Claims Accounts for investment purposes, provided that the Trustees shall separately account for each Claims Account.

5. **Payments.** Standard premium is developed using rates allowed by the Trustees and approved by the Bureau, and by the excess insurance carrier of the Plan, based on payroll classifications as published by the National Council on Compensation Insurance. Initially, the standard premium will be based on experience modifications published by the Workers' Compensation Rating and Inspection Association of Michigan. In continuing Plan participation, each Participant will be separately experience rated according to the formulas developed by the National Council on Compensation Insurance. Annual payments charged by the Plan will consist of a percentage of standard premium for overhead charges paid into the "General Fund" and a percentage of standard premium to be paid into the Participant's Claims Account. These percentages may change based on costs incurred by the Plan and on directives of the Bureau and the excess insurance carrier. A General Fund shall cover overhead charges, claims service, loss prevention, data processing, reporting, specific and aggregate excess coverage and miscellaneous Plan expenses.

6. **Liability of Participants and Excess Insurance.** Certificates of excess insurance, showing policy limits and other information, will be provided to each Participant of the Plan. Should a Participant's aggregate losses during any Plan Year exceed the Participant's Claims Account, such excess, up to the aggregate amount of the Claims Accounts for all Participants of the Plan, shall be paid by the other Participants who shall then have positive balances in their Claims Accounts. The amount paid by such other Participants shall bear the same ratio to such excess as such Participant's positive Claims Accounts bear to the total positive Claims Accounts for all such Participants which have positive balances in their Claims Accounts (as adjusted for those Participants which have positive balances in their Claims Accounts which are less than their proportionate share of such excess). The amount payable by each Participant shall be paid out of the Participant's Claims Account. Losses in excess of the aggregate of the Claims Accounts for all Participants shall be borne by the excess carrier accruing to the terms and conditions of the excess contract.

7. A. **Method of Payment.** Prior to the beginning of each Plan Year, each Participant will make a deposit to the Plan Funds in an account equal to twenty five (25%) percent of the standard premium subject to modifiers as prescribed in Section 5 hereof. The remaining balance of the Participant's annual contribution to the Plan for the year will be paid in not more than nine (9) equal monthly payments, as determined by the Trustees. Participants joining the Plan at any time other than the beginning of a Plan Year will make contributions on an annualized basis. Invoices for each Participant's contribution will be prepared for mailing thirty (30) days prior to the beginning of the Plan Year, based on the information then available. Monthly contributions are due on the 20th day of each month, and invoices for such contributions will be sent to Participants on the 1st day of

each month. If payment is not received within fifteen (15) days of that due date, the Participant will be notified of termination of participation, to be effective twenty (20) days from the date of notice.

B. Annual Premiums and Penalties. It shall be the responsibility of each Plan Participant to timely provide the Plan with accurate estimates of payrolls for each forthcoming Plan Year. Annual premiums shall first be estimated based on the provided payroll estimates. However, except for demonstrable and good cause as reviewed and approved by the Trustees, a Participant's estimated premium for a new Plan Year shall be no less than the audited premium for the preceding Plan Year. Any Participant, whose underestimation of payroll results in a premium underpayment for the Plan Year, of the greater of twenty (20%) percent or Two Thousand and 00/100 (\$2,000.00) Dollars or more will be penalized at the rate of two (2%) percent above the prime interest rate at the close of the Plan Year for the entire amount of the underpayment.

Said penalty shall be computed based on the following formula:

Penalty = Audited Premium - Paid Premium x (prevailing prime interest rate + 2%).

8. Claims Fund-Positive Balance. Subject to the approval of the Trustees and the Bureau, twelve (12) months after the end of each fiscal year (the "calculation date"), the amounts remaining in a Participant's Claims Account in excess of a reserve for incurred losses and such other reserves as may be required by the Bureau and the excess carrier, taking into account the status of each Participant's Claims Account, will be returned to the Participant in the form of a reduction in the following year's payment or in cash. Participants will receive a share of the investment income of the Funds when and as distributed by the Trustees and subject to the approval of the Bureau, based upon the relationship of that Participant's standard premium to the total standard premium of the Plan. A Participant who on the calculation date is not deemed to be in good standing as is defined in the By-Laws, Article II, Section 3, shall not be eligible for the right to the return of excess reserves. A Participant's excess reserves can be reduced by the costs, including actual attorney fees, incurred by the Plan in correcting any Participant's failure to be or remain in good standing either as an active member or after a member's withdrawal or termination. A withdrawing or terminated Participant's return of excess reserves or surplus shall be subject to retention by the Plan until the applicable statutes of limitation shall expire on all open or potential claims for the fiscal year involved or the Bureau authorizes total closing of any such fiscal year.

9. Claim Payments. Claim payments are made to the injured employee by the contracted service company designated by the Trustees (subject to the terms of Paragraph 12 hereof), with notification of payment being given to the Participant.

10. Investments. In accordance with the rules of the Bureau, investments of the Funds shall be made by the Trustees' designated fiscal agent, in certificates of deposit, savings accounts, and U.S. Government bonds and notes. A monthly report on investments will be rendered by the designee to the Trustees. Investment income earned by the Funds will be returned to Participants as provided in Section 8.

11. Termination of Participants. Participants in the Plan may be terminated by the Trustees only after twenty (20) days' notice has been given to the Participant and the Bureau. The Plan shall not be responsible for the payment of any claims arising out of any accident or injury to an employee of the terminated Participant occurring twenty (20) days after such notice. Participants in the Plan may be terminated for:

- A. Failure to make initial or monthly payments as required in the By-Laws and in Section 7 above;
- B. Failure to continue to meet Participant criteria, as specified in Section 3;
- C. Failure to comply with the Indemnity Agreement;
- D. Failure to continue to meet underwriting criteria; or
- E. Failure to remain in good standing as defined in the By-Laws, Article II, Section 3.

A Participant may terminate twenty (20) days' written notice to the Trustees or the Trustees' designated agent.

If termination occurs during the Plan Year, the standard short-rate penalty may be applicable to the Participant's portion of the premium paid to the excess insurance carrier. Upon termination of a Participant in the Plan, any balance remaining in the Participant's Claims Account will be returned to it at the times and in the manner as set forth in the By-Laws, Operating Procedures, the Indemnity Agreement and as designated by the Bureau. The amount which will be returned to a Participant will be calculated by deduction from its Claims Account paid claims, reserves on known claims and a factored reserve for incurred but not reported claims. To allow for possible adverse claim development following a surplus return, any amount credited to a Participant which terminated will be held in the Participant's Claims Account for a minimum of three (3) years and a maximum of five (5) years, before being returned to the Participant. Any amount returned to a terminated Participant will be subject to the obligation of the terminated Participant to pay such amount back to the extent claims develop subsequent to termination in excess of the reserve for incurred but not reported claims.

12. Operating Procedures. The Trustees have designated agents to handle claims administration, loss prevention, underwriting, data processing, and marketing services. The following services shall also be provided to the Plan Participants:

- A. Risk Management.
 - 1. Safety conferences for administrative and supervisory personnel.
 - 2. Risk management and/or safety surveys and audits of individual Participants.
 - 3. Monthly accident analysis and trend charts analyzing the nature and frequency and cause of accidents over time experienced by the Participant member.
- B. Claims Service.
 - 1. Thorough investigation of all claims.
 - 2. Verification of medical expenses.

3. Establishment of proper and fair reserves on all claims.
 4. Issuance of claim payments.
 5. Periodic service calls to discuss problem claims.
 6. Evaluation of status of claims.
 7. Arrangements for rehabilitation and job placement.
 8. All necessary preparation for settlement or hearing.
 9. All necessary filings with the Bureau of Workers' Disability Compensation.
- C. Insurance.
- Providing the necessary excess insurance for catastrophic coverage.

13. Application for Plan Participation. The Application for Plan Participation shall be signed by the proposed Participant and provided to the Trustees' designated agent for approval by the Trustees and the Bureau as required. Application for participation, when approved in writing by the Trustees' designated agent, confirmed by the Trustees and the Bureau as required, shall constitute a continuing contract for each succeeding fiscal period, unless participation in the Plan is terminated pursuant to the provisions in Section 11 hereof or the Bureau.

14. Policy Regarding Participant Cooperation in Loss Prevention Program.

A. The Trustees' designated agent and the Trustees shall receive copies of all loss prevention correspondence with Plan Participants from the designated claims servicing agent and such other consultants who are engaged.

B. The Trustees' designated agent will contact the Participant's personnel department (or other designated person) first, then chief executive officer if necessary, when so requested by a loss prevention consultant, regarding specific problems or Participant's lack of cooperation.

C. The Participant's continued lack of response to recommendations will be referred to the Trustees for review, for possible:

1. Probation of Plan Participant;
2. Claims Fund surcharge for continued membership; or
3. Termination of the Participant's membership in the Plan.

D. The Participant's chief executive officer will be notified of such referral, and invited to attend the Trustees' meeting at which such review will take place.

E. As part of its participation in the loss prevention program, Participants may be subject to periodic inspection. Inspections shall not be deemed to be safety inspections but rather relate to the acceptability of the work places for participation in the Plan and to the premiums to be charged. Completion of these inspections shall not be interpreted as a warranty of a Participant's work place as to safety and health or compliance with law, regulations, codes or standards of the federal or state governments involved.

15. Policy Regarding Participant Cooperation in Claims Control Program. The Trustees or their designated agents are to provide for e receipt and review of claims correspondence. Participant has agreed in the Indemnity Agreement [Section (8)(a)] to abide by the safety recommendation of the Trustees and/or the Trustees' designated agent.

A. In the event a Participant fails to respond to or cooperate in the recommendations of a claims consultant; or recommendation of any other risk or claims control program authorized by the Trustees or the Trustees' designated agent, the same procedures will be followed as in (B),(C) and (D) of Section 14 above.

B. If a Participant has a loss ratio of six tenths (.60) or higher for two (2) consecutive years or one and no tenths (1.00) or higher at any time, notification will be made to the Trustees for possible implementation of Review Committee procedure, as described in Section 17.

16. Policy Regarding Settlement of Claims.

A. All final settlements shall be approved by the Trustees or their designated agent and by the Participant for that portion of the settlement to be covered by its Claims Account subject to the provisions of Paragraph 16 B hereof.

B. If the Trustees' designated agent and the Participant involved disagree on the amount to be allowed for settlement of a claim, the matter shall be submitted to the Trustees for resolution, which resolution shall be final and binding upon Participant.

17. Policy Regarding Procedure for Participation Reviews.

A. This review procedure is to be activated when a Participant's loss ratio exceeds one and no tenths (1.00) at any time, or six tenths (.60) for two (2) consecutive Plan fiscal years or in case of lack of response to recommendations of loss prevention or claims consultants.

B. At the time the procedure is activated, a Review Committee will be selected, consisting of three (3) Trustees.

C. The Participant will be notified in writing of the date set for review and the reason therefor and that failure on the part of the Participant to respond will be grounds for membership termination.

D. Prior to the meeting of the Review Committee, an underwriting report will be prepared by or at the direction of the Trustees' designated agent, which will include the following:

1. Report of loss prevention consultant;
2. Loss ratio;
3. Comparison of claim frequency with total Plan frequency (excluding non-compensable claims);
4. Comparison of severity with average Plan severity;
5. Specific problems experienced by claims and loss prevention consultants; and

6. Specific recommendations to assist Participant in reducing losses. The report will be mailed to the Review Committee and to the Participant prior to the meeting.

E. At the time of the meeting of the Review Committee, the underwriting report will be reviewed with the Participant, along with any other information that may be provided. Based on the discussion, the Participant will be notified of:

1. Intent to take no action; or
2. Placement on probationary status.

F. Probationary status will be a ninety (90) day period of time during which:

1. By the end of the first thirty (30) days the Participant's chief executive officer will respond in writing, indicating specific action it will take or has taken to reduce losses; and

2. Loss prevention consultants will intensify efforts to work with the Participant to implement recommendations, with frequent reports to the Trustees' designated agent.

G. Following ninety (90) days probationary period (or sooner if indicated by lack of response to recommendations), the Review Committee will again meet with loss prevention and claims representatives, and a representative of the Participant, and a recommendation will be made to the Trustees as follows:

1. Participation to be retained on normal basis;
2. Participation to be retained with surcharge to loss fund; or
3. Participation to be terminated on twenty (20) days' written notice.

The Participant's representative will be given an opportunity to be present at the Trustees' meeting to appeal to the Trustees in case of disagreement with the recommendation of the Review Committee.

18. Amendments to Operating Procedures.

These Operating Procedures have been adopted by the Trustees and may be amended or supplemented by the Trustees. A copy submitted and reviewed by the Bureau.

Dated _____
Board Approved 8/27/19
WCA Reviewed 9/5/19

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