

# INDEPENDENT SCHOOLS COMPENSATION CORPORATION

## APPLICATION AND INDEMNITY AGREEMENT

THIS AGREEMENT is by and between Independent Schools Compensation Corporation (the "Group"), and \_\_\_\_\_ located in the Commonwealth of Massachusetts, (the "Member"), and is effective upon, and as of, the date of acceptance by the Group in the manner indicated below.

WHEREAS, the Group has received approval from the Commissioner of Insurance 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 is engaged in education or a related industry in Massachusetts and 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 Certificate of Coverage 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. **Representation and Warranty by the Member.** The Member represents and warrants that it is engaged in the education or a related industry as an employer in the Commonwealth of Massachusetts, and is a member in good standing of a bona fide industry, trade or professional organization designated by the Board of Directors of the Group. The Member further warrants that it has reviewed the Group's By-Laws and Operating Guidelines prior to entering into this Agreement.

3. **Conditions Precedent to Effectiveness of Agreement.** This Agreement shall not be effective unless and until the Board of Directors of the Group accepts on behalf of the Group the Member's application to become a Member of the Group.

4. **Classes of Membership.** There shall be two classes of Members, designated as "Class A Members" and "Class B Members." Class A shall consist of those Members who at the time first accepted into membership had an annual manual Massachusetts workers' compensation premium less than three hundred fifty thousand dollars (\$350,000) and/or who reported a total fund balance less than two hundred million dollars (\$200,000,000). Class B shall consist of those Members who at the time first accepted into membership had an annual manual Massachusetts workers' compensation premium equal to or greater than three hundred fifty thousand dollars (\$350,000) and whose total fund balance was equal to or greater than two hundred million dollars (\$200,000,000). For purposes of determining Member class, manual premium shall mean the sum for all applicable payroll classifications of the premiums developed by multiplying the approved rate for each payroll classification by the payroll in \$100s assignable to that payroll classification. Unless otherwise noted herein, the term "Member" shall refer to both Class A and Class B Members. The Member recognizes that it is being accepted into the Group as either a Class A or a Class B Member. After initial acceptance, Members shall not be transferred between Classes.

5. **Term.** The initial term of this Agreement ("Initial Term") shall be as determined by the Board of Directors. For purposes of this Agreement, the terms "Fund Year", "Full Fund Year", and "Partial Fund Year" shall have the meanings set forth in the By-Laws of the Group.

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. Capitalized terms herein shall have the same meaning as in the By-Laws, as amended from time to time, unless the context clearly requires another meaning.

7. **Coverage.** After the Member's application for coverage has been approved by the Board of Directors, the Group agrees to provide the Member with the Risk Reduction services described in Section 11 of this Agreement and workers' compensation and employer's liability coverage as described in the Group's Certificate of Coverage. The Member agrees to pay the Contributions, assessments, and entry fee, if any, as provided herein, for such services and coverage.

8. **Payroll Classification.** For every Fund Year, 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 at the end of each Fund Year to reflect the actual payroll on the books of the Member from

time to time during the Fund Year. The Member agrees to pay promptly any additional Contribution which results from this annual adjustment. The Group reserves the right to audit, or cause its Administrator or designee to audit, the payroll records of the Member.

**9. Contributions.**

a. The Member agrees to pay to the Group Contributions computed in accordance with a rating plan, as amended from time to time, on file with the Commissioner.

b. The Member agrees to pay a portion of the premium for the Initial Fund Year prior to the start of the Fund Year, such portion to be specified by the Board of Directors of the Group or its designee, but in no event to be less than twenty-five percent (25%) of the estimated premium for the Member. The balance shall be paid in accordance with the Payment Plan approved by the Board of Directors of the Group as described in Section 9(c) (the "Payment Plan"). The Member agrees to pay a portion of the premium for each subsequent Fund Year, commencing on January 1 and ending on December 31, or such other dates as may be established by the Board of Directors, on or before January 1 of that Fund Year, with such portion to be specified by the Board of Directors of the Group, but in no event to be less than twenty-five percent (25%) of the estimated annual premium for the Member. The balance shall be paid in accordance with the Payment Plan. If the Member becomes a Member of the Group on a date other than the beginning of a given Fund Year, it agrees to pay a portion of the premium for the Fund Year commencing on that date and ending at the conclusion of the Fund Year on or before its initial date of coverage, with such portion to be specified by the Board of Directors of the Group, but in no event to be less than twenty-five percent (25%) of the estimated premium for the Member. The balance shall be paid as specified by the Board of Directors of the Group.

c. The Group shall establish a Payment Plan which it shall file with the Commissioner. The Group, acting through its Board of Directors, reserves the right to amend the Payment Plan from time to time in its sole discretion, and the Member agrees to adhere, abide by and conform to the provisions of the Payment Plan as the same may be amended.

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 Contributions to the Group as determined by the Board of Directors of the Group in accordance with the By-Laws or rules and regulations of the Group, a vote of the Board of Directors of the Group or the requirements of the Division of Insurance.

e. The Member agrees to pay to the Group assessments computed in accordance with a Surplus Funds and Assessment Plan, as amended from time to time, on file with the Commissioner.

f. The Member agrees to execute necessary authorization forms permitting the Group or its Administrator or designee to obtain information and data required in determining the experience rating modification of the Member. The Member authorizes the Group or its Administrator to collect experience rating data and calculate the experience modification for all Members of the Group. The Member authorizes the Group or its Administrator or designee 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.

**10. Excess Insurance.** The Group agrees to maintain with qualified underwriter's excess insurance coverage as determined by the Board of Directors of the Group which shall conform to all relevant statutory or regulatory requirements.

**11. Risk Reduction Programs.** The Group, through its Administrator or other designee, 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.

**12. Claims.** The Group, through its Administrator or designee, agrees (a) to administer, investigate, adjust, settle, and pay all of the workers' compensation claims and such other liabilities as are defined in the Certificate of Coverage 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 or designee, 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 or designee, 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 cost of any legal counsel shall be an administrative expense of the Group and not an expense of the Administrator or his/her designee. The Member agrees to cooperate fully by supplying any information needed or helpful to defend such action. The Group, through its Administrator or designee, agrees to provide quarterly to the Member a computer printout showing a statement of claims, claims status, and activities report.

**13. Reporting of Injuries.** All injuries, no matter how insignificant in appearance, shall be reported through appropriate channels to the Group or its Administrator.

**14. Surplus Funds.** "Surplus Funds" shall refer to those monies in excess of the amount necessary to fund obligations, including but not limited to adequate contingency reserves, for such Fund Year. Any Surplus Funds will be available as either a policyholder dividend, or used as a reserve in accordance with a Surplus Funds and Assessments Plan as adopted and amended from time to time by the Board of Directors of the Group in its sole discretion.

**15. 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 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.

**16. Late Payment Fee.** If the Member is thirty (30) or more days late in making any payment, the Member agrees to pay the Group a late payment fee of six percent (6%) of the amount of the overdue payment plus interest on the overdue amount at a rate equal to the prime interest rate quoted in the Money Rate Section of the Wall Street Journal plus three percent (3%). However, at no time shall the Member be obligated or required to pay interest on the overdue payment at a rate which could subject the Group to either civil or criminal liability as a result of being in excess of the maximum rate which the Member is permitted by law to contract or agree to pay. If by the terms of this Agreement, the Member is at any time required or obligated to pay interest on the overdue amount at a rate which could subject the Group to either civil or criminal liability as a result of being in excess of the maximum rate which the Member is permitted by law to contract or agree to pay, the rate of interest under this Agreement shall be deemed to be immediately reduced to such maximum rate, and interest payable hereunder shall be computed at such maximum rate and the portion of all prior interest payments in excess of such maximum rate set by law shall be applied and shall be deemed to have been payments in the reduction of the amount due the Group by the Member.

**17. 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 Directors 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 Contributions. Termination shall be in accordance with the terms and conditions of the By-Laws of the Group and in accordance with applicable provisions of law. The Member may withdraw its membership and coverage at the end of the Initial Term, if any, or any subsequent Fund Year by giving the Administrator prior written notice of its intention to withdraw at least one hundred and eighty (180) days in advance of the end of a Fund Year. Withdrawal shall be effective at the close of the Fund Year in which timely notice was received.

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) the amount of unpaid premium for the Fund Year calculated on a pro-rata basis. If the default is due to a reason other than non-payment of premium, the Member shall be entitled to a hearing prior to termination.

18. **Notice.** All notices hereunder shall be in writing and shall be personally 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. No notice shall be effective hereunder until actually received by the Group at the address designated.

19. **Reapplication.** A Member who withdraws from the Group pursuant to the By-Laws may reapply for membership in the Group at any subsequent date.

20. **General.** This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts. This Agreement may not be assigned by the Member without the prior written consent of the Group which may be withheld for any reason or for no reason. 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 as a Class \_\_\_\_ Member and agrees to be bound hereby if accepted as a Member in the Group.

The undersigned Member of the Independent Schools Compensation Corporation acknowledges that it has reviewed the terms of this agreement, including attached Schedules and agrees to be bound by the provisions contained therein.

\_\_\_\_\_  
[Name of Member]

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

Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary/Clerk

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

**INDEPENDENT SCHOOLS COMPENSATION CORPORATION**

By: \_\_\_\_\_  
FutureComp / Omni Underwriting Managers LLC *on behalf of*  
Independent Schools Compensation Corporation

*Mailing Address:*  
FutureComp  
711 East Main Street, Suite 201  
Chicopee, MA 01020

# INDEPENDENT SCHOOLS COMPENSATION CORPORATION

## PAYMENT PLAN

### Schedule 1

The Payment Plan for a **full** Fund Year shall have options as follows:

- a) Full payment of 100% of the premium on or before the commencement date of the Fund Year, or;
- b) 25% of the premium as a deposit on or before the commencement date of the Fund Year with the balance in three installments every two months, or;
- c) 25% of the premium as a deposit on or before the commencement date of the Fund Year with the balance in seven installments beginning the month after the commencement date and continuing the six subsequent months thereafter.

The Payment Plan for a **partial** Fund Year shall be as follows:

- a) Full payment of 100% of the premium on or before the commencement date of the **partial** Fund Year, or;
- b)
  - (i) For a **partial** Fund Year of 9-11 months, 25% of the premium as a deposit on or before the commencement date of the **partial** Fund Year with the balance in three installments every two months, or;
  - (ii) For a **partial** Fund Year of 9-11 months; 25% of the premium as a deposit on or before the commencement date of the **partial** Fund Year with the balance in four to six installments beginning the month after the commencement date and continuing the six subsequent months thereafter.
- c) For a **partial** Fund Year of 6-8 months; 50% of the premium as a deposit on or before the commencement date of the **partial** Fund Year with the balance in one to three installments beginning the month after the commencement date and continuing the two subsequent months thereafter, or;
- d) For a partial Fund Year of less than 6 months; full payment of 100% of the premium on or before the commencement date of the **partial** Fund Year.



## **LATE PAYMENT**

If the Member is thirty (30) days or more late in making any installment payment, the Board of Directors may elect to make all remaining installments due immediately. In addition, it shall be within the discretion of the Board of Directors of the Group to require that such Member pay 100% of the following year's premium on or before the commencement of that coverage year. 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 By-Laws of the Group.

If a Member is 30 or more days late in making any payment, the Member agrees to pay the Group a fee of six percent (6%) of the amount of the overdue payment plus interest on each such overdue payment at a rate equal to the prime interest rate plus three percent (3%).

### Example:

|                                     |         |
|-------------------------------------|---------|
| Latepayment                         | \$5,000 |
| Late fee (6%)                       | \$300   |
| Interest (7.5% + 3%)<br>for 60 days | \$86    |
| Total Late Fee                      | \$386   |

**INDEPENDENT SCHOOLS  
COMPENSATION CORPORATION**

**SURPLUS FUNDS AND ASSESSMENTS PLAN  
FOR THE FUND YEAR  
JANUARY 1, 1993 - DECEMBER 31, 1993  
AND, UNLESS MODIFIED, FOR SUBSEQUENT YEARS**

**Schedule 2**

With advice from the Administrator and the actuary, the Board of Directors of the Independent Schools Compensation Corporation ("ISCC") will, approximately six months after the end of each Fund Year, estimate the Assessment needed or Surplus Funds for each Member Class. Surplus Funds may be available either for distribution to the Members of the Class or as a return of premium or taken into account in establishing the premium for subsequent years. A new estimate for that Fund Year will be calculated annually thereafter, as more claims are settled. Subject to compliance with the regulations of the Division of Insurance a portion of the Surplus Funds, if any, will be distributed to eligible Members. The amount distributed (versus held for future distribution) will vary depending on the extent to which the Group's final costs are certain – if many claims remain open, a smaller proportion of the Surplus Funds will be distributed (and more will be held for later distribution) than if all claims had been settled. Through its methodology for distributing Surplus Funds, ISCC offers an incentive to its Members to control workers' compensation claim costs. ISCC's philosophy for distributing surplus funds is to reward its Members for superior claim experience.

**APPORTIONMENT OF SURPLUS BETWEEN CLASS A AND CLASS B MEMBERS**

Surplus Funds for the Groups shall be calculated and apportioned between Class A Members and Class B Members based upon the profit or loss for each Member Class. In determining the profit and loss for each Member Class, the services and expenses applicable to Class A shall be paid for by Class A Members and the services and expenses applicable to Class B shall be paid for by Class B Members.

**DISTRIBUTING SURPLUS FUNDS BETWEEN INDIVIDUAL MEMBERS OF CLASS A**

Fifty percent (50%) of the Surplus Funds attributable to Class A Members will be returned to Class A Members pro-rata based on premium; the remainder will be distributed based on claim experience.

- Class A Members who generate surplus by favorable claim experience will receive a greater portion of surplus funds.
- Class A Members with poor claim experience will receive a lesser share of surplus funds.

**DETERMINING A CLASS A MEMBER'S SURPLUS CONTRIBUTION**

Surplus Funds for Class A will be divided equally into two funds to facilitate distribution to members:

Fund for Social Distribution (FSD)  
Fund for Incentive Distribution (FID)

The FSD will be distributed to each Class A Member proportionate to that Member's premium. For example, a Class A Member whose net premium represents ten percent (10%) of the total net premium of Class A Members would receive ten percent (10%) of the FSD.

A Class A Member will be eligible to receive a share of the FID if the Member has contributed to the Surplus. A Member's Surplus Contribution is calculated as follows:

**MEMBER'S SURPLUS CONTRIBUTION =**

(Member's Premium plus Member's Share of Investment Earnings)

minus

(Member's Claim Costs plus Member's Share of Claim Handling Costs plus Member's Share of Overhead Costs)

**WHERE;**

- MEMBER'S PREMIUM =** Net premium (after premium discount) paid into the program after adjustment on the premium audit
- MEMBER'S SHARE OF INVESTMENT EARNINGS =** Determined by allocation. Investment income is allocated to the Member proportionate to the Member's net premium. For example, a Member whose net premium represents ten percent (10%) of total ISCC premium would be allocated ten percent (10%) of investment earnings.
- MEMBER'S CLAIM COSTS =** The amount paid on claims made by the Member's employees plus the cost of allocated loss expenses (e.g. costs for legal defense and investigation) plus the estimated costs for future payments on reported claims (such estimates to be established by ISCC's claim service provider) plus the Member's share of any of ISCC's bulk claim reserves (shares determined by actuarial review)

**MEMBER'S SHARE OF CLAIM HANDLING COSTS=**

Charges by ISCC's claim service provider to adjust the Member's claims

**MEMBER'S SHARE OF OVERHEAD COSTS =**

Determined by allocation. All of Class A's costs other than claims and claims adjusting are allocated to the Member proportionate to the Member's net premium.

If the Class A Member's Surplus Contribution is a positive amount, the Member is eligible to receive a share of the FID.

If the Class A Member's Surplus Contribution is a negative amount, the Member will not receive a share of the FID.

An eligible Class A Member will receive a share of FID in the proportion that the Class A Member's Surplus Contribution bears to the total of all eligible Class A Members' Surplus Contributions.

In the event of a shortfall in funds for Class A, all Class A Members will be assessed a share of the shortfall proportionate to their net premium.

**DISTRIBUTING SURPLUS FUNDS BETWEEN AND DETERMINING ASSESSMENTS FOR INDIVIDUAL MEMBERS OF CLASS B**

A Class B Member will be eligible to receive a share of the Surplus Funds attributable to Class B Members only if its Surplus Contribution is a positive amount. If a Class B Member's Surplus Contribution is a negative amount, the Member will be assessed for the shortfall ("Experience Assessment"); provided that the Experience Assessment shall not exceed forty percent (40%) of the Member's net premium. However, in the event of a shortfall in funds for Class B, even after individual Member Experience Assessments, all members, including those individually assessable, will share in the remaining shortfall proportionate to their net premium. A Member's Surplus Contribution and/or Assessment is calculated as follows:

**MEMBER'S SURPLUS CONTRIBUTION =**

(Member's Premium plus Member's Share of Investment Earnings)

minus

(Member's Claim Costs plus Member's Share of Claim Management Costs plus Member's Share of Overhead Costs)

**WHERE:**

|  |  |
|--|--|
| MEMBER'S PREMIUM =   | Net premium (after premium discount) paid into the program after adjustment on the premium audit   |
| MEMBER'S SHARE OF INVESTMENT EARNINGS ALLOCATED TO CLASS B = | Determined by allocation. Investment income is allocated to the Member proportionate to the Member's net premium. For example, a Member whose net premium represents ten percent (10%) of total Class B premium would be allocated ten percent (10%) of investment earnings.   |
| MEMBER'S CLAIM COSTS =                                       | The amount paid on claims made by the Member's employees <u>plus</u> the cost of allocated loss expenses (e.g. costs for legal defense and investigation) <u>plus</u> the estimated costs for future payments on reported claims (such estimates to be established by the Group's claim service provider) <u>plus</u> the Member's share of any of the Group's bulk claim reserves (shares determined by actuarial review) |
| MEMBER'S SHARE OF CLAIM HANDLING COSTS =                     | Charges by the Group's claim service provider to adjust the Member's claims  |
| MEMBER'S SHARE OF OVERHEAD COSTS =                           | Determined by allocation. All costs other than claims and claims adjusting are allocated to the Member proportionate to the Member's net premium.  |

An eligible Class B Member will receive a share of the Surplus Funds in the proportion that the Class B Member's Surplus Contribution bears to the total of all eligible Class B Members' Surplus Contributions.

In the event of a shortfall in funds for Class B, even after individual Member Experience Assessments, all Class B Members will be assessed a share of the shortfall proportionate to their net premium.

**THE SPECIAL CIRCUMSTANCES OF A MEMBER WHO WITHDRAWS FROM ISCC**

Any Member who withdraws from membership in ISCC (voluntarily or at the request of ISCC's Board of Directors) will continue to be entitled as allowed by law to any undistributed Surplus Funds earned during ISCC membership. Similarly, the Member will continue to be responsible for any assessments arising out of membership.

While a Member who withdraws from ISCC may be entitled to a share of ISCC's Surplus Funds, distribution of that Member's share of Surplus Funds will be delayed versus the distribution of Surplus Funds to active ISCC Members. Distribution of any share of Surplus Funds due a withdrawing Member will be deferred a minimum of twelve months.

During the period for which dividend distribution is deferred, interest will be credited to the amount of undistributed Surplus at a rate consistent with ISCC's rate of investment return.

### **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 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.