



FOOD INDUSTRY SELF INSURANCE FUND OF NEW MEXICO
P.O. BOX 14710
ALBUQUERQUE, NM 87191-4710
(505) 298-9095
1-800-288-0893
FAX (505) 298-9094

APPLICATION FOR MEMBERSHIP AND INDEMNITY AGREEMENT

This Application and Agreement is made by and between each and every member of the Food Industry Self Insurance Fund of New Mexico (FISIF), and by said Fund itself, and is based upon the following understandings by the parties.

WHEREAS, the Members have organized and formed a FUND which shall be known as the Food Industry Self Insurance Fund of New Mexico, herein after referred to as the "FUND", and

WHEREAS, the FUND, on behalf of its Members, will submit to the Workers Compensation Administration, hereinafter referred to as the "WCA", an application to permit the Members to enter into an agreement to pool their respective liabilities under the New Mexico Workers Compensation Law, hereinafter referred to as the "LAW", and

WHEREAS, the LAW requires that each and every Member of the group self insurance FUND shall complete an application and execute and indemnity agreement, and

WHEREAS, the LAW requires that each and every Member belong to and are current Members of the New Mexico Restaurant Association, and/or the New Mexico Grocers Association.

WHEREAS, each Member of the FUND has elected to become a party to this agreement, to comply with conditions set forth herein and to establish a group self insurance association pursuant to the provisions of the LAW and the Rules of the WCA, and to execute such instruments and take such action as may be required to form and continue such FUND.

NOW, THEREFORE, and in consideration of the mutual covenants, promises, and obligations contained in this Agreement, which are given by the FUND and by each and every Member to each other Member and are so accepted by each and every Member and the FUND, the parties hereto covenant and agree as follows:

1. The FUND, through its BOARD OF TRUSTEES, hereinafter referred to as "BOARD", shall collect all premiums and assessments owed by each Member when same is due, the FUND may deduct from any dividend distribution to any Member any funds and owing to the Fund at the time of the distribution of any dividends. The FUND shall promptly terminate the member as provided by LAW and shall take all reasonable and necessary actions to collect such delinquent member accounts or any other funds due owing to the FUND from any terminated Member. The Member whose account is delinquent shall be responsible for payment of any delinquent accounts, any interest based on the prevailing legal rate of interest or past due judgments, and any attorney's fees, costs or expenses incurred by the FUND in the collection of any such delinquent amounts from any Member.
2. Regardless of whether the Member terminates its membership in the FUND voluntarily, or whether such membership is either terminated by the FUND or the WCA, this agreement shall continue in force and effect and shall remain completely unabated concerning any and all liabilities and obligations that the FUND, or its Members may incur under the LAW during any fiscal year in which the Member participates in the FUND.

3. The Members intend this Agreement as a mutual covenant of assumption and not as a partnership, but if any court of competent jurisdiction shall construe it to be a partnership, then it is the intent of the parties that such partnership be limited in scope to the uses for which this Agreement is executed and for no other.
4. The FUND and each and every Member agree with each other Member, including any future Members, to be bound by all the terms and conditions of this Agreement, by the rules and regulations that may be adopted and approved by the BOARD and the Bylaws of this FUND.
5. The Members jointly and severally covenant and agree that there shall be no disbursements out of funds of the FUND by the way of dividends or distribution of claim reserves until after provision has been made for all obligations of the FUND under the LAW and except at the discretion of the BOARD upon application and approval by the WCA.
6. Any Member may terminate its membership in the FUND by giving thirty (30) days written notice by certified mail, return receipt requested, to the Fund and to the WCA. Termination of a Member's membership by the FUND, or withdrawal of approval by the WCA, shall be upon thirty (30) days written notice by certified mail, return receipt requested, to the Member and the WCA.
7. The FUND shall acquire excess insurance in amounts required by the WCA for the protection of its Members against catastrophic loss.
8. Each and every Member authorizes the BOARD to designate and appoint an Administrator who shall be empowered to accept service on behalf of the FUND and its Members and shall have power of attorney of each and every Member in all transactions relating to or arising out of the operation of the FUND. The BOARD, in its discretion, may at any time revoke aforesaid powers of the Administrator and substitute another in his/her place.

The purpose of this indemnity Agreement is to affirm the joint and several obligations of Members of the FUND to make any and all payments into the FUND, which may be necessary to meet the FUND'S obligation under the LAW. To this end, it is agreed by the undersigned as follows;

Because the amount required to fulfill workers' compensation obligations cannot be known precisely in advance, assessments, reserve requirements and other financial parameters of the FUND'S operation must be necessarily maintained by means of estimates. Any interim transactions and their effects on the FUND not with standing, it is mutually agreed by the FUND and each of its Members that all Members participate in the FUND for any period of time will be jointly and severally liable for payment of any assessments, premiums, and other amounts necessary to meet any benefit, expense or other lawful obligation of the FUND arising from that period of time. This joint and several liability will apply without limitation as to the amount, and without restriction as to when any portion of the obligation is identified. Specifically, any members who terminates their participation in the FUND, voluntarily, attributable to their period of membership, regardless of when part of all of those obligations became known.

Member Doing Business As _____

Federal Employer ID # _____ State Unemployment ID # _____

Signature _____

Title _____ Date _____

Received and Accepted by the Administrator of, and for, the FOOD INDUSTRY SELF INSURANCE FUND OF NEW MEXICO.

Fund Administrator _____ Date _____



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MEMORANDUM

To: Members & Agents

From: Tana Lucero-Ranke, Fund Administrator

Re: Joint & Several Liability

Thank you for requesting additional information regarding the “Joint and Several Liability” requirement of self-insurance funds.

The State of New Mexico Statutes require that any group, joining forces for the purpose of providing self-coverage in the area of Workers’ Compensation, guarantee that funds will be available to pay any and all claims arising from that group of employers. We collect premium from all members annually in amounts that are expected to be sufficient to meet that responsibility. Actuaries and auditors from the State and from private firms review the premium level each year to ensure that amounts on deposit are adequate. When joining this group, a new member must understand that they could be held proportionately responsible for the group’s claims expense. At the same time, the group’s performance in adjusting claims and administering the Fund must conform to conservative practices to keep the risk of claims expenses exceeding premium collection very low.

All of the above simply means, then, that each Member owns a share of the total Fund. If expenses for claims exceeds the premium collected, each Member must be assessed their share of the deficit. On the other hand, if the amount of premium collected exceeds the claims expense, each Member receives their share of the excess. So the payoff for being bold enough to take the risk of being self-insured through a group with its associated “Joint and Several Liability” is that if the Fund is well-administered and the Members maintain safe work environments, each Member gets surplus funds instead of an insurance company making profits.

This Fund – FISIF – is and has been well-administered since it was founded in 1989. The Fund has never needed to assess its Members under the “Joint and Several Liability” clause. In fact, Members have received over **\$18.7 MILLION in Surplus Funds**, with the potential for more to come!

Another very important step that FISIF has taken is the purchase of Excess Insurance. That is, the Fund has purchased insurance from an insurance company which reimburses the Fund if a large claim or too many claims cause Claims Expenses to go too high. FISIF is insured for any single claim which exceeds \$500,000 and for any time that Total Claims Expenses exceed a pre-determined factor of the premium collected for that year.

To summarize, while the Joint and Several Liability Clause is in effect for every Member, proportionate to their share of premium paid, the actual probability that an assessment would ever need to be made is minuscule. Make a good business decision and become a valued Member of FISIF!



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ACKNOWLEDGMENT

MEMBER: _____

ADDRESS: _____

CITY: _____, NM ZIP: _____

EFFECTIVE DATE: _____

“I hereby attest that I personally explained the Joint and Several Liability exposure in this Application and Indemnity Agreement prior to obtaining any signatures of acceptance.”

Producer Signature _____ Date _____

“By my signature below, I am accepting the terms as set forth in the Application and Indemnity Agreement and acknowledge that I have had explained to me and understand all aspects of the Joint and Several Liability exposure.”

Member Signature _____ Date _____

FINANCIAL BALANCE SHEET

NAME: _____

ADDRESS: _____

ASSETS

CASH _____

ACCOUNTS RECEIVABLE _____

INVENTORY _____

OTHER CURRENT ASSETS _____

TOTAL CURRENT ASSETS _____

LAND _____

BUILDINGS _____

EQUIP., FURN., FIXTURES _____

VEHICLES _____

LESS DEPRECIATION _____

OTHER FIXED ASSETS _____

TOTAL FIXED ASSETS _____

TOTAL ASSETS _____

LIABILITIES

SHORT TERM NOTES _____

TRADE ACCOUNTS PAYABLE _____

ACCRUED TAXES _____

OTHER CURRENT LIABILITIES _____

TOTAL CURRENT LIABILITIES _____

LONG TERM NOTES _____

OTHER LONG TERM LIABILITIES _____

TOTAL LONG TERM LIABILITIES _____

TOTAL LIABILITIES _____

TOTAL ASSETS _____

MINUS TOTAL LIABILITIES _____

EQUALS NET WORTH _____

SIGNATURE: _____ **DATE:** _____

TITLE: _____

SPECIAL MEETING OF THE BOARD OF DIRECTORS

NOW ON THIS _____ DAY OF _____, _____, the Board of Directors of the corporation met at the company office in _____, all members of the Board being present and in person.

The meeting was called to order by the President who announced that the purpose of the meeting was a discussion as to whether or not the corporation would join in an Association for the purpose of having its “own-risk” workers compensation coverage. After full discussion and after motion having been duly made and seconded, the following resolution was unanimously adopted:

“BE IT RESOLVED that the appropriate officers are hereby authorized and directed, to make, execute, and deliver to the Food Industry Self Insurance Fund of New Mexico, and unincorporated Association, such Application for Membership, Indemnity Agreement, applications, and such other guarantees as are required.”

There being no further business to come before the meeting, and upon motion having been duly made and seconded, the meeting was thereupon adjourned.

President

Secretary

**STATE OF NEW MEXICO
WORKERS' COMPENSATION ADMINISTRATION**

EXECUTIVE EMPLOYEE AFFIRMATIVE ELECTION FORM

I, _____ (Please print name), am a "worker" as defined in the New Mexico Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law ("the Acts"). I am employed by _____ (Name of corporation or limited liability company), a company subject to the provisions of the Acts. Pursuant to NMSA 1978, §52-1-7 or §52-3-6, I affirmatively elect **NOT TO ACCEPT** the provisions of the Acts. I meet the qualifications set forth in §52-1-7 or §52-3-6 as follows:

- I am the chairperson of the board, president, vice president, secretary, treasurer, or other executive officer of the employer corporation or limited liability company; and
- I own ten percent or more of the outstanding stock of the employer corporation or have at least a ten percent ownership interest in the employer limited liability company

If my business is licensed with the Construction Industries Division or is engaged in business activities that fall under the Construction Industries Licensing Act I understand that all employees, including those hired on a temporary basis, are required to be covered by workers' compensation insurance unless they are an executive employee and have filed an affirmative election form to not accept the provisions of the Act.

I understand that I may face significant monetary penalties, up to \$1,000 for each occurrence, and that my business may be shut down, if my business fails to secure workers' compensation insurance when it is required. I also understand that if my business fails to obtain workers' compensation insurance when it is required to, I may be responsible for the costs associated with any claim for workers' compensation benefits, including the costs of medical and disability payments.

I understand that by making this affirmative election, it applies to all corporations or limited liability companies in which I have a financial interest. I understand that if I wish to revoke my election, I am required by law to file a revocation with my insurance carrier and with the Workers' Compensation ("WCA") Director's Office, and to mail a copy of the revocation to the board of directors of employer corporation or limited liability company. I also agree to notify the WCA of any changes in my §52-1-7 or §52-3-6 status.

I further understand that by making this election not to accept the provisions of the Acts, I will not be entitled to workers' compensation benefits from the Uninsured Employers' Fund.

I swear or affirm under penalty of perjury that I have read the foregoing affirmative election in its entirety and understand the information contained therein is true and correct to the best of my knowledge.

Signature: _____ UI Number: _____

Executive Title: _____ FEIN Number: _____

Business Address: _____ Phone Number: _____

City/State/Zip: _____

STATE OF _____)

) ss.

COUNTY OF _____)

SUBSCRIBED AND SWORN OR AFFIRMED to before me on the _____ day of _____,
20____ by _____.

Notary Public

My commission expires:

Please retain a copy of this form for your records.