



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation

Self-Insurance Regulation • MS-60

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**SELF-INSURER'S AGREEMENT TO POST
DOCUMENTARY IRREVOCABLE STANDBY LETTER OF CREDIT**

Date:

Employer:
(Name & Address)

Issuing Bank:
(Name & Address)

Letter of Credit (LOC) Number:

Amount:

Confirming Bank *(if required)*:
(Name & Address)

Confirmation Number:

This Agreement is made on _____ by and between the parties signatory hereto.
Date

I. Definitions applicable herein:

- A. The "Commissioner" means the Commissioner of the Texas Department of Insurance, Division of Workers' Compensation.
- B. The "Division" means the Division of Workers' Compensation.
- C. The "Act" refers to the Texas Workers' Compensation Act.
- D. The "Comptroller" means the Comptroller of Public Accounts – Treasury Operations.
- E. The "Association" means the Texas Certified Self-Insurer Guaranty Association.
- F. The "Bank" will include any Bank issuing documentary irrevocable standby letters of credit and any Confirming Bank issuing confirmations, whether one or more.
- G. The "Employer" will include all employers listed under this agreement and their parent organization, if any.
- H. The "LOC" will include any documentary irrevocable standby letter of credit and any confirmation, whether one or more.
- I. The "primary term" means the period from the effective date of the documentary irrevocable standby letter of credit until the original expiration date of the documentary irrevocable standby letter of credit.
- J. The "impaired employer" means an employer who has become impaired as defined by the Texas Workers' Compensation Act.

II. Purpose.

The above named Employer hereby agrees to deposit one or more LOC issued in favor of the Commissioner under the LOC number(s) listed above. This LOC is submitted to qualify, or continue to qualify the Employer as a certified self-insurer under the Act. As part of the Employer's obligations as a certified self-insurer, any LOC issued hereunder is for the purpose of securing the payment of the Employer's obligations and liabilities as a certified self-insurer under the Act.

If one or more Confirming Banks are named above, the Employer shall deposit with the Commissioner, confirmation of the above identified documentary irrevocable standby Letter(s) of Credit.

III. Effect of termination of certified self-insurer status.

Termination of the Employer's status as a certified self-insurer will not terminate this agreement, nor will it terminate the Employer's obligation to provide security satisfactory to the Commissioner in an amount sufficient to secure payment of the Employer's obligations and liabilities as a certified self-insurer under the Act.

IV. Return, supplementation and replacement of security.

Upon request of the Employer, the Commissioner shall return the LOC to the Bank, provided that:

- A. The Commissioner first determines in his or her sole discretion that the Employer, as a certified self-insurer, has no obligations or liabilities under the Act; or

- B. The Employer continues as a certified self-insurer under the Act and provides substitute security acceptable to the Commissioner.

With the written approval of the Commissioner, the LOC covered by this Agreement may be supplemented or replaced by another LOC in the event that the Employer or the Bank changes its name or in the event that the amount of security, which the Employer is required to provide, changes. Any LOC, which supplements or replaces the LOC identified above, shall also be held by the Commissioner for the purpose of qualifying, or continuing to qualify, the Employer as a certified self-insurer under the Act.

V. Permissible draws; impaired employer:

- A. Whenever the Employer is declared impaired by the Division, the Commissioner may draw all or part of the LOC, and in the exercise of his or her sole discretion, may:
 - 1. Deliver the proceeds of the LOC, or any part thereof, to the Association for the immediate payment of the Employer's obligations and liabilities under the Act; or
 - 2. Use the proceeds of the LOC, or any part thereof, for the immediate payment of the Employer's liabilities under the Act.
- B. If the Commissioner determines that a security deposit has not been made immediately available for the payment of the employer's workers' compensation obligations, the Commissioner shall determine, in the exercise of his or her sole discretion, the appropriate method of payment and claims administration, and the Commissioner may draw all or any part of any LOC and may use the proceeds of such draw for the immediate payment of the Employer's obligations and liabilities either directly or through the Association.
- C. If a particular LOC shall fail to be renewed under conditions that would not entitle the Employer to a return of the LOC, as provided in Section IV, or whenever the Commissioner shall determine that the Bank fails to satisfy the requirements provided by the Act or the applicable administrative rules of the Division, the Commissioner may draw the entire amount of any LOC and may, in the exercise of his or her sole discretion, deliver the proceeds to the Comptroller, who shall receive, hold, and keep safe said proceeds in a trust fund entitled the Self-Insurance Security Trust Fund.
- D. After all of the Employer's obligations and liabilities as a certified self-insurer under the Act have been satisfied, any remaining balance from the draw shall be returned to the Bank from which it was originally drawn. In the event that draws came from multiple Banks, any sums remaining shall be returned to those Banks on a pro-rata basis.

VI. Defense of claims; settlement.

For as long as the Employer has not been declared impaired, the Employer shall have the right, at its own expense, to defend and settle any claims against the Employer in accordance with the Act; however, no payment, settlement, or judgment of any claim shall be paid from the proceeds of any LOC as long as the Employer has not been declared impaired.

In the event that the Division determines the Employer is impaired, the Commissioner is authorized to administer, defend, and settle, in lieu of the Employer, any and all claims against the Employer under the Act; and to pay said claims and all related costs of defense and administration on behalf of the Employer, from the proceeds of any LOC, without the consent of the Employer or the Employer's successor in interest.

VII. Changes; termination.

The Commissioner may, from time to time, revise the form of this Agreement by which Employer agrees to secure the payment of its obligations and liabilities under the Act by means of a LOC.

Whenever said form is amended, the Commissioner shall send the Employer a revised Agreement or an Amendment to this Agreement reflecting the changes made to the form and require the Employer to have said revised Agreement or Amendment fully executed and returned to the Commissioner within thirty (30) days of its receipt. If the Employer fails to do so, the Division may terminate the Employer's self-insurance privileges or the Commissioner may require the Employer to provide an alternate form of security, as a means of securing the performance of its obligations and liabilities under the Act.

VIII. Use of Division LOC form.

Employer agrees to use the LOC form approved by the Division and entitled "Documentary Irrevocable Standby Letter of Credit". A blank copy of the LOC form is attached for your information.

Further, Employer agrees to the terms of the aforementioned LOC. The terms of the LOC are not subject to negotiation nor can they be altered, amended, or changed in any way by the Employer. Failure by the Employer or the Bank to use the LOC form or alteration, amendment, or any change of the LOC form by the Employer or Bank is prohibited. If the Employer or Bank fails to use the LOC form or attempts to alter, amend, or change the LOC form approved by the Division, the Commissioner may terminate the Employer's self-insurance privileges or the Commissioner may require the Employer to provide an alternate form of security as a means of securing the Employer's obligations and liabilities under the Act.

IX. Depository to hold the LOC.

It is agreed by the parties hereto that the Comptroller shall hold each LOC on behalf of the Commissioner.

X. Terms of LOC.

Each LOC shall have a primary term as stipulated in the LOC, but shall be automatically renewed upon each expiration date for additional time periods equal to the primary term, unless the Commissioner receives written notice of non-renewal at least sixty (60) days prior to the expiration date of the LOC. Notice shall be deemed given to the Commissioner only when it is actually received by the Commissioner at the Division's central office in Austin, Travis County, Texas.

XI. No responsibility of Banks.

It is agreed between the parties hereto that, regardless of whether the Bank(s) has notice of the existence of this Agreement, no Bank shall have any additional responsibilities to either party by reason of execution of this Agreement other than those to which the Bank agreed to in writing.

XII. Governing law; conflicts.

This Agreement shall be governed by and construed and enforced in accordance with the Laws of the State of Texas. Any action with respect to this Agreement shall be brought in Travis County, Texas. The Employer hereby consents to the said court's personal jurisdiction over the Employer in that action.

This agreement is intended to conform with, and is subject to, the Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. In the event of any conflict or ambiguity between this Agreement and the Act or the Rules of the Division, the Act and the Rules control.

In the event any provision of this Agreement is declared invalid or illegal for any reason, the parties intend that all remaining provisions of this Agreement, which have not been declared to be illegal or invalid, shall remain valid and effective. This Agreement is binding on the parties' successors in interest.

XIII. Costs of collection.

In addition to all other obligations and liabilities, and in amounts independent of, and in addition to the face amount of, and under the LOC, the Employer shall be liable for the payment of all costs of collection, including reasonable attorney fees.

XIV. Execution in multiple copies.

This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Employer

By: _____
Authorized Signature(s)

Date

Printed Name & Title

Affix Employer
Corporate Seal Below

Attest: _____
Corporate Secretary

Printed Name & Title

Texas Department of Insurance, Division of Workers' Compensation

Director, Self-Insurance Regulation

Date Received