

## [GROUP NAME] BEX Benefit Plan

### ARTICLE I. – PURPOSE

**NEW PLAN:** Effective as of [EFFECTIVE DATE FIRST YEAR], [GROUP NAME] (the “Plan Sponsor”) has established the [GROUP NAME] BEX Benefit Plan (the “Plan”). By establishing this Plan, the Plan Sponsor has become a participating employer in a multiple employer welfare arrangement, Builders Exchange Benefit Plan (the “Arrangement”), which is composed of a collection of self-insured single employer group health plans sponsored by unrelated employers.

**RESTATEMENT:** Effective as of [EFFECTIVE DATE CURRENT YEAR], [GROUP NAME] (the “Plan Sponsor”) has amended and restated the [GROUP NAME][GROUP HEALTH BENEFITS PLAN] (the “Plan”) which the Plan Sponsor originally adopted effective as of [ORIGINAL EFFECTIVE DATE]. Through its continued sponsorship of this Plan, the Plan Sponsor continues to be a participating employer in a multiple employer welfare arrangement, [ARRANGEMENT NAME] (the “Arrangement”), which is composed of a collection of self-insured single employer group health plans sponsored by unrelated employers.

This document, and the documents incorporated by reference into this Plan, are intended to constitute the written plan documents for the Plan. The Plan is intended to meet the requirements of Sections 104, 105, and 106 of the Internal Revenue Code of 1986, as amended, the Employee Retirement Income Security Act of 1974, as amended, including Section 402 thereof, and the laws of the [STATE OR COMMONWEALTH] of [NAME OF STATE].

The Plan is maintained for the exclusive benefit of the individuals participating in the Plan and their beneficiaries. The Plan has been established with the intention of being maintained for an indefinite period of time. Notwithstanding such intention, the Plan Sponsor expressly reserves the right to amend or terminate the Plan at any time by written action of its Board of Directors or other governing body as to any rights, benefits, and claims of any sort which have not accrued or been incurred as of the date of amendment or termination. Additionally, the [ESTABLISHING ENTITY] or its designee, may amend or terminate the Arrangement or terminate the participation of the Plan Sponsor in the Arrangement as to any rights, benefits, and claims of any sort which had not accrued or been incurred as of the date such amendment or termination, pursuant to the Arrangement’s terms.

### ARTICLE II. – ELIGIBILITY AND BENEFITS

The documents listed in Appendix A describe the benefits under the [GROUP NAME][GROUP HEALTH BENEFITS PLAN] and are incorporated by reference into this Plan as if set forth fully in the Plan (such documents incorporated by reference shall include any amendments to the documents, whether such amendments exist now or are made in the future). The payment of all benefits under the Plan is expressly subject to the provisions of this Plan document, including the incorporated documents and any amendments.

In the case of any conflict between the terms of this document, the Summary Plan Description booklet, and the benefit booklet, the Plan Administrator shall, in its discretion,

interpret the terms and purpose of the Plan so as to resolve any conflict; provided, however, the terms of this Plan may not increase the rights of a participant or beneficiary to benefits available as described in any benefit booklet.

The conditions for eligibility to participate in the Plan are described in the Summary Plan Description for this Plan and other documents listed in Appendix A.

### **ARTICLE III. –ADMINISTRATION**

3.01. Powers and Duties of the Plan Administrator. The Plan Sponsor hereby designates the person or entity named in the Summary Plan Description for this Plan to be the Plan Administrator. The Plan Administrator shall have any and all such powers as may be necessary to discharge its duties hereunder. It is the principal duty of the Plan Administrator to see that the Plan is carried out, in accordance with its terms for the exclusive benefit of the persons entitled to participate in the Plan without discriminating among them. The Plan Administrator may engage and delegate its discretionary interpretative and administrative authority to a third party to act as a third party administrator or claims administrator. Such duties and powers shall include, but not by way of limitation, the following:

- (a) discretionary authority to construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any benefits under the Plan;
- (b) to prescribe procedures to be followed by participants filing applications for benefits;
- (c) to prepare and distribute, in such a manner as the Plan Administrator determines to be appropriate, information explaining the Plan;
- (d) to receive from the Plan Sponsor, any claims administrator, and from participants such information as shall be necessary for the proper administration of the Plan;
- (e) to communicate to any claims administrator the method of benefit payments for participants and their beneficiaries;
- (f) to communicate to the Plan Sponsor, according to the terms of the Plan, any need to disburse funds in payment of obligations under Plan to accomplish the purposes of this Plan;
- (g) to furnish the Plan Sponsor, upon request, such annual reports with respect to the administration of the Plan as are reasonable and appropriate;
- (h) to receive, review and keep on file (as it deems convenient and proper) reports of premium equivalent payments and benefit payments by the Plan Sponsor and reports of disbursements for expenses directed by the Plan Administrator; and
- (i) to appoint individuals to assist in the administration of the Plan and any other agents it deems advisable, including legal and actuarial counsel.

3.02. Rules and Decisions. The Plan Administrator may adopt such rules as it deems necessary, desirable or appropriate. All rules and decisions of the Plan Administrator shall be uniformly and consistently applied to all participants in similar circumstances. When making a determination or calculation, the Plan Administrator shall be entitled to rely upon information furnished by a participant, the Plan Sponsor or any advisor to the Plan.

3.03. Application and Forms for Benefits. The Plan Administrator may require a participant to complete and file with the Plan Administrator an application for a benefit and any other forms approved by the Plan Administrator, and to furnish all pertinent information requested by the Plan Administrator. The Plan Administrator may rely upon all such information so furnish it, including the participant's current mailing address. Subject to applicable law, claims shall be accepted by the Plan Administrator until such date as set forth in the respective benefit documents.

3.04. Indemnification of the Plan Administrator. The Plan Administrator shall be indemnified by the Plan Sponsor against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of the Plan, including actual expenses reasonably incurred in the defense of any claim relating to the Plan.

3.05. Eligibility Determination and Claims Procedure. The Plan Administrator (or the claims administrator, as the case may be) shall make all determination as to eligibility and/or the right of any person to any benefit in accordance with the benefit booklets listed in Appendix A and other documents incorporated herein.

3.06. Funding Policy. Contributions to the Plan are made by the Plan Sponsor and participants. Contributions are based on the costs necessary to provide benefits under the Plan. The level of participant contributions are established by the Plan Sponsor periodically. The benefits provided under this Plan shall be paid from the Plan Sponsor's general assets or paid out of a trust holding Plan assets.

#### **ARTICLE IV. – AMENDMENT AND TERMINATION**

4.01. Amendment. Any amendment to this Plan shall become effective according to its terms upon its authorization by the Plan Sponsor's Board of Directors or other governing body and its execution by the individual so authorized by that governing body. No other action by any person or entity is needed before such an amendment is effective. Any amendment to the Arrangement shall be effective upon its execution by the [ESTABLISHING ENTITY] or its duly authorized designee. Any change to a benefit booklet or other document incorporated under Article II shall become effective according to its terms upon its adoption as part of the Arrangement by the [ESTABLISHING ENTITY] or its duly authorized designee.

4.02. Termination, Discontinuance of Benefits. The Plan Sponsor reserves the right to discontinue specific benefits or to terminate this Plan as to its employees and their beneficiaries at any time by written action of the Plan Sponsor's governing body. Notice of a discontinuance or termination is not required except as otherwise may be required by terms of law. The [ESTABLISHING ENTITY] or its duly authorized designee may terminate the Arrangement according to the Arrangement's terms. The [ESTABLISHING ENTITY] or its duly authorized designee may terminate the participation of the Plan Sponsor as a participating employer in the Arrangement pursuant to the terms of the Participation Agreement entered into by the Plan Sponsor and the [ESTABLISHING ENTITY].

## ARTICLE V. – PLAN PRIVACY RULES

5.01. Introduction. The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) mandates strict privacy and security standards to protect Protected Health Information (“PHI”) as defined below. Because of the manner in which the Arrangement is established and operated, the Plan Sponsor anticipates having access to no PHI and to no ePHI, however, if the Plan Sponsor should ever have access to any PHI or ePHI, the Plan Sponsor certifies and agrees to comply with the requirements of HIPAA including 45 C.F.R. § 164.504 and additionally, to cause the Plan to so comply.

5.02. Definitions.

- (a) “Individually Identifiable Health Information” means health information that either actually identifies an individual, or creates a reasonable basis to believe that the information would identify the individual.
- (b) “Protected Health Information” (“PHI”) means health information that:
  - (i) Is created or received by health care providers, health plans, or health care clearinghouses;
  - (ii) Relates to an individual's past, present or future physical or mental health condition, the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual; and
  - (iii) Identifies the individual or creates a reasonable basis to believe that the information, including demographic information, can be used to identify the individual.
- (c) “Electronic Protected Health Information” (“ePHI”) is PHI that is transmitted by or maintained in electronic media, as defined in 45 C.F.R. § 160.103.

## ARTICLE VI. MISCELLANEOUS

6.01. Plan Year. The Plan year is defined in the Summary Plan Description booklet for the Plan.

6.02. Limitation of Liability. The Plan Sponsor and the Plan Administrator shall be the Plan's named fiduciaries as defined in Section 402(a)(2) of ERISA. Any directions given, information furnished or actions taken by a fiduciary shall be in accordance with the provisions of the Plan which authorized or provide for such direction, information or action. Each fiduciary may rely upon any such direction, information or action of another fiduciary as being proper under this Plan and is not required under this Plan to inquire into the propriety of any such direction, information or action except to the extent as may otherwise be required by law. It is intended that each fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations and shall not be responsible for any act or failure to act of another fiduciary.

6.03. Plan is Discrete. Neither a payment nor the creation, continuation, or change of the Plan or any document incorporated herein (or any fund or account) gives any person a nonstatutory legal or equitable right against the Plan Sponsor; against any Plan Sponsor officer, agent, or other person employed by the Plan Sponsor, against any claims administrator; or against the Plan Administrator.

6.04. Non-guarantee of Employment. Nothing contained in this Plan shall be construed as a contract of employment between the Plan Sponsor and the employee, or as a right of any employee to be continued in employment of the Plan Sponsor, or as a limitation of the right of the Plan Sponsor to discharge any of its employees, with or without cause.

6.05. Cooperation. Circumstances may arise in which the the Plan Administrator may require a participant or beneficiary to furnish information or pay an amount that directly or indirectly relates to participation in, or benefits paid or payable from the Plan. Each participant or beneficiary, in consideration of the coverage provided by the Plan, must fully cooperate, provide any and all information requested, execute any and all documents that will enable the Plan Administrator to access such information, and pay any amount due pursuant to the Plan. In the event a participant or beneficiary fails to comply with this cooperation provision within the time period set by the Plan Administrator in its sole and absolute discretion or provides false information in response to such request, payment of all benefits under the Plan (whether or not such benefits relate to the requested information or failure to pay) may be suspended and/or coverage may be terminated either retroactively or prospectively in the Plan Sponsor's sole discretion. In addition, the Plan Sponsor or the Plan Administrator may pursue any other remedy available to it, including obtaining an injunction to require cooperation, or recovering from the covered person or beneficiary damages for any loss incurred by it as a result of the failure to cooperate or make payment, or the provision of false information.

6.06. Construction. The Plan Sponsor's intent and purpose in adopting this Plan is to establish a single plan of welfare benefits consistent with relevant sections of the Internal Revenue Code of 1986, as amended. The Plan Sponsor intends to comply fully with statutes and regulations governing wages, compensation, and fringe employment benefits. All questions arising in the construction and administration of this Plan must be resolved accordingly. For construction, one gender includes all others and the singular and plural include each other where the meaning would be appropriate. This Plan is construed in accordance with the laws of [STATE OR COMMONWEALTH] of [NAME OF STATE], except to the extent that the laws of the United States of America have superseded those state laws. The headings and subheadings in the Plan have been inserted for convenience of reference only and are not to be construed as a part of this Plan. If a provision of this Plan is invalid, that invalidity does not affect other Plan provisions.

6.07. Nonalienation of Benefits. Except as required by applicable law, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the employee, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable under the Plan shall be void. The Plan Sponsor shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, and engagements of torts of any person entitled to benefits under the Plan.

6.08. Legal Remedies. Any action under ERISA Section 502(a) may be filed only after the Plan's review procedures described in the applicable benefit booklet have been exhausted and

only if the action is filed within 90 days after the final decision is provided, or if a later date is specified in a booklet or other documentation for a particular benefit, such later date with respect to a claim arising out of that benefit program.

6.09. Venue. Any claim or action filed in court or any other tribunal in connection with the Plan by or on behalf of a participant or other claimant or individual shall be brought or filed in a federal court located in [STATE OR COMMONWEALTH] of [NAME OF STATE].

IN WITNESS WHEREOF, the Plan Sponsor has executed this Plan document through the action of its duly authorized officer as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

**APPENDIX A**

**[BENEFIT BOOKLET(S) UNDER THE ARRANGEMENT]**

**SUMMARY PLAN DESCRIPTION BOOKLET FOR THE [GROUP NAME] [GROUP  
HEALTH BENEFITS PLAN]**