

**PARTICIPATION AGREEMENT FOR THE  
NATIONAL FEDERATION OF INDEPENDENT BUSINESS  
MEMBER SERVICES CORPORATION (NFIB-MSC)  
WORKERS' COMPENSATION GROUP RETROSPECTIVE RATING PROGRAM**

The 2019 NFIB/Ohio Group Retrospective Rating Program (hereinafter referred to as "Program") is the program defined in the Ohio Revised Code Section 4123.29. The group rating law permits employers to group together to potentially achieve a lower premium rate that they may not otherwise be able to acquire as individual employers. The requirements and qualifications for organizing a group for group rating purposes are stated in the Ohio Bureau of Workers' Compensation (OBWC) group rating rules set forth in Section 4123-17-73 of the Ohio Administrative Code. Any services added beyond those in group rating rules and law are at the discretion of the National Federation of Independent Business - Member Services Corporation (hereinafter referred to as "NFIB-MSC") with all rights reserved by NFIB/Ohio (hereinafter referred to from time to time as "Sponsor"). The terms and conditions for participation in the 2019 Program are contained in this Agreement ("Agreement"). NFIB-MSC and Participating Employer (also referred to as "Employer" or "Participant") agree as follows:

**Section 1. ADDRESS OF THE GROUP RATING PROGRAM**

The principal office of the Program's Sponsor is located at 10 West Broad Street, Suite 2450, Columbus, Ohio 43215.

**Section 2. PURPOSES OF THE GROUP RATING PROGRAM**

The Program is intended to: (1) potentially achieve a lower workers' compensation premium for Program Participants, (2) foster safer working environments, and (3) foster cost-effective claims management processes and skills both in the areas of workers' compensation and unemployment compensation.

**Section 3. ELIGIBILITY**

The Employer's participation in the Program is conditioned upon meeting all of the following requirements: (1) being a governing dues-paying member in good standing of the National Federation of Independent Business and maintaining its membership during any year of participation in the Program; (2) meeting all of the criteria for participation as required by the NFIB-MSC in its sole discretion; (3) meeting all of the criteria for participation as required by Ohio law, including but not limited to the criteria set forth in Ohio Administrative Code Section 4123-17-73; and (4) complying with all of the terms and conditions of this Agreement. The Employer acknowledges that it shall have no right to continued participation in this group or any successor group formed for any succeeding one-year period. Such participation shall be at the sole discretion of the NFIB-MSC.

**Section 4. TERM OF AGREEMENT**

Subject to OBWC's approval of the group and the individual group participant and subject to the approval of NFIB-MSC, the term of this Agreement shall be from January 1, 2019 through December 31, 2019 and shall automatically renew itself for each subsequent Group Rating Year for additional twelve (12) month terms, beginning each January 1, subject to the participant meeting the eligibility criteria, unless the Participant provides written notice to the Group Administrator of its intent not to renew this Agreement at least sixty (60) days prior to the last business day in January. Participant also agrees that NFIB-MSC, has the right to remove any Participant or rescind the program invitation, at any time, at NFIB-MSC's discretion or pursuant to pertinent OBWC group rating rules by providing written notice to the Participant. The OBWC 2019 Group Rating Year begins on July 1, 2019 and ends on June 30, 2020 as it relates to payroll reporting and premium payment. If this Agreement is renewed automatically per this Section, the dates of the corresponding OBWC Group Rating year are adjusted accordingly and made a part of this Agreement.

Payment of Participant's Enrollment Fee, as provided in Section 7, or remittance of other documents, such as specified in Section 8, for 2019 constitutes Participant's acknowledgement and acceptance of all of the terms and conditions of this Agreement by the Participant. For any succeeding automatic renewal term, payment of the Participant's Enrollment Fee as provided in Section 7, remittance of other documents as specified in Section 8, and the inclusion of the Participant on the application for a group rating program filed with the OBWC constitutes the Participant's

application into the Program, and its continuing acknowledgement and acceptance of all of the terms and conditions of the renewed Agreement.

If, at any time, the Program fails to meet the requirements for group rating plans as set forth in Section 4123-17-73 of the Ohio Administrative Code, or NFIB-MSC decide to discontinue the Program, this Agreement will terminate immediately and Participant will receive a prorated refund based on the number of days the Program operated during the term of this Agreement, and Participant agrees that neither NFIB-MSC or the Group Administrator will have any liability to the Participant for any costs, expenses, losses or damages of any kind arising directly or indirectly from or related in any way to the discontinuance of the Program.

**Section 5. RISK MANAGEMENT**

The OBWC has made it a statutory requirement that a Group Retrospective Rating Program substantially improves accident prevention and claim handling of its participating members. Each Participant must, in good faith, comply with all federal, state, and local occupational and health regulations, and shall exert diligent efforts toward accident prevention. Participants are encouraged to work with the Group Administrator, as identified in Section 6, and/or NFIB-MSC staff to develop and implement a safety program that will reduce loss ratios, etc. and upon request, shall participate in such program. Failure to participate in such program may result in the Participant's rejection from this group or any successor group for the succeeding coverage period.

Participant may be required to: (1) provide a written safety and health policy to its employees signed by an officer of the Participant that outlines Participant's values and commitment to workplace safety and health, (2) promote the belief that safety management is an organizational value, (3) involve its employees in the safety management process and recognize its employees who participate in safety management, (4) provide regular communications on safety and health to keep all employees informed and to encourage feedback and suggestions from employees, (5) provide orientation and training for all of its employees, (6) review publications provided by NFIB-MSC that provide the employees with information on how to safely accomplish their job requirements, (7) assign an employee the role of coordinating safety efforts for the Participant, (8) work on return-to-work strategies to assist injured or ill workers in returning to work, (9) work with the NFIB-MSC to perform internal verification to evaluate the effectiveness of the Participant's safety program, and (10) work with NFIB-MSC on any other safety program issues that NFIB-MSC deems necessary to comply with Sections 4123-17-68 and 4123-17-73 of the Ohio Bureau of Workers' Compensation, Division of Safety and Hygiene Group Sponsor Safety Program Requirements.

Participant also agrees to attend at least one safety seminar sponsored by NFIB/Ohio or approved by the Ohio Bureau of Workers' Compensation, Division of Safety and Hygiene during the term of this Agreement that is directly related to the above parameters of the effective safety process. Participant, who has a workers' compensation injury within the "green year", also agrees to comply with the OBWC's requirements as set forth in 4123-17-68 (C) (2) of the Ohio Administrative Code. Participant also agrees to comply with requirements established by NFIB-MSC and/or Group Administrator including but not limited to: (1) payment of salary continuation, (2) transitional duty program, (3) lump sum settlements, (4) on-site inspections, etc.

**Section 6. SERVICES**

CareWorksComp, as the Group Administrator, will perform administrative, rates and underwriting services cost control, claims, and consulting services for Participants related to workers' compensation, unemployment compensation and workplace safety services. Each Participant at the time of enrollment agrees to provide a *Permanent Letter of Authorization* (AC-2) identifying CareWorksComp as the Group Risk/Claim Representative to permit CareWorksComp to represent it before the OBWC and the Ohio Industrial Commission. Participation in the Program entitles any Participant to receive both workers' compensation group rating services, claims management services and unemployment compensation services from CareWorksComp.

The obligation of Participant to provide a Permanent Letter of Authorization (AC-2) identifying CareWorksComp as the Group Risk/Claim Representative to permit CareWorksComp, at CareWorksComp's discretion, to manage workers' compensation claims and to represent Participant before the OBWC and the Ohio Industrial Commission for workers' compensation claims incurred at any time during any policy years Participant participated in the Program, shall survive any termination or cancellation of this Agreement.

## **WORKERS' COMPENSATION SERVICES**

CareWorksComp will provide the following services to each Participant in good standing as defined in Section 3 provided, however, it is specifically understood and agreed that CareWorksComp shall not be obligated to take any action(s) which constitutes, at any time, the practice of law or medicine in Ohio.

### **CLAIMS MANAGEMENT & PROCEDURES**

- Provide an outline of recommended internal procedures for the processing of claims and payroll reports.
- Maintain records of claims and awards at the Group Administrator's discretion during the period of time in which this Agreement is in effect.
- Consult with Participant on claim management and/or cost control techniques to initiate appropriate action in workers' compensation matters.
- File requests for cost relief such as handicap reimbursement and military-service-related disabilities, if deemed appropriate by the Group Administrator and supported by appropriate medical documentation.
- Attend hearings before the OBWC and Industrial Commission when necessary and permitted under the pertinent state regulations.
- Assist in developing a defense, where possible, for workers' compensation claims brought against each Participant when deemed appropriate by the Group Administrator or contested by the Participant.

### **UNDERWRITING & RATES**

- Review, upon Participant's written request, OBWC manual classification changes and file request(s) for correction as necessary.
- File request(s) for correction of duplicate or erroneous awards and reserves to reduce the cost as used in Participant's actuarial experience when identified.
- Review, when submitted by Participant, workers' compensation payroll report calculations based on the information provided by Participant.
- Review Participant's annual experience rating and verify the annual premium rates.

### **MANAGEMENT REPORTS**

- Provide an annual claims experience report to Participants having up to 10 claims in experience and in the current year. Participants who have more than 10 claims in experience and in the current year will receive reports on a quarterly basis. Participants who have fewer than 10 claims in experience and in the current year may request in writing to receive reports on a quarterly basis.
- Furnish an annual analysis of all industrial claims received, coded by accident type, body part, and nature of injury to evaluate frequency and severity.

## **UNEMPLOYMENT COMPENSATION SERVICES**

CareWorksComp will provide, upon receipt of the completed Ohio Department of Job and Family Services (ODJFS) *Employer's Representative Authorization* form JFS00501, the following services to each Participant in good standing as defined in Section 3 provided, however, it is specifically understood and agreed that CareWorksComp shall not be obligated to take any action(s) which constitutes the practice of law in Ohio:

### **CLAIMS MANAGEMENT & PROCEDURES**

- Process all of the Participant's Ohio unemployment insurance claims.
- Review all of the Participant's Ohio unemployment insurance claims for appropriate cost control actions, deemed to be necessary by CareWorksComp.
- Upon request by Participant, attend Ohio unemployment claims hearings, as permitted by the applicable laws

and regulations of Ohio and the applicable state agency regulating TPA services, with Participants.

- Provide an unemployment compensation claims procedural guide for Participants.
- Prepare an annual claims activity report for each Participant which will summarize all unemployment claims activity pertaining to that Participant during the period of service under this Agreement.
- Upon written request by Participant, perform a review of the unemployment tax rate assigned to that Participant.

#### **Section 7. ENROLLMENT FEE**

Each Participant agrees to pay an “Enrollment Fee” for participation in the Program. This fee is to pay the administrative cost of the Program and includes, but is not limited to the Group Administrator fee, actuarial fees, legal fees for establishing the Program, the legal defense program, unemployment claims management, postage, secretarial support, staffing, and other fees or costs necessary to carry out the activity of the Program. The Enrollment Fee does not include NFIB membership dues unless otherwise specifically stated on the Invoice. The Enrollment Fee is due at the time of the application and covers both administrative and claims management costs for the period from January 1, 2019 through December 31, 2019.

The Enrollment Fee due from each Participant for succeeding terms by automatic renewal pursuant to Section 4, shall be stated in an Amendment or Addendum to this Agreement or an invoice. The payment of the Invoice, which shall evidence acceptance of this Agreement, must be received or the appropriate document must be signed and returned to CareWorksComp with the correct Enrollment Fee on such date as is specified within the terms of said Amendment or Addendum or invoice.

*Failure to pay the Enrollment Fee, required by this Agreement or any Amendment or Addendum for succeeding term by automatic renewal, shall constitute a default of the Agreement and the Group Administrator, in addition to its other rights and remedies, shall at its discretion and without further obligation have the right to terminate this Agreement upon ten (10) days written notice to the Participant of default.*

The Group Administrator must receive the Participant’s application documents and Enrollment Fee (or Amendment or Addendum or Invoice or Employer Disclosure Form, or Enrollment Fee or application documents for succeeding automatic renewal terms) within **thirty (30) days from the date invoiced or any other date designated by NFIB-MSC or the Group Administrator**, to be considered for participation in the program. Those Participants whose application document(s) or Enrollment Fee are received after this date but before the OBWC group rating program application deadline, are not guaranteed consideration for enrollment into the program and any consideration for enrollment will be at the sole discretion of NFIB/Ohio. Any application received from a prospective Participant on or after the OBWC group rating application deadline, regardless of the reason, will not be filed with the OBWC for the 2019 program pursuant to pertinent OBWC group rating rules, and the prospective Participant will not be enrolled into the program.

The NFIB-MSC reserves the right to increase the Participant’s Enrollment Fee at any time if the Participant has failed to inform NFIB-MSC as to any past or pending mergers, acquisitions, reorganizations, consolidations or any other business activities that involve the potential combination by the OBWC of the Participant’s workers’ compensation account with other workers’ compensation policy accounts and/or other changes including but not limited to: changes in the Participant’s workers’ compensation coverage, manual classification, manual reclassification, changes caused due to audits by OBWC, Participant’s non-compliance with the terms of Agreement, etc., and that results or could result in a negative impact to the Program including, but not limited to, increased losses, decrease of total standard premium and/or reduction in Program refunds, increase in Program assessments, etc. In addition, the NFIB-MSC reserves the right to increase the Participant’s Enrollment Fee at any time if, prior to the beginning of the term of this Agreement and/or during the term of this Agreement, the Participant is involved in any mergers, acquisitions, reorganizations, consolidations or any other business activities that involve the potential combination by the OBWC of the Participant’s workers’ compensation account with other workers’ compensation policy accounts and that results or could result in a negative impact to the Program including, but not limited to, increased losses, decrease in total standard premium and/or reduction in Program refunds, increase in Program assessments and/or other changes including but not limited to: changes in the Participant’s workers’ compensation coverage, manual classification,

manual reclassification, changes caused due to audits by OBWC, Participant's non-compliance with the terms of this Agreement, etc. Any such increase in fee will be determined by the NFIB-MSC in its sole discretion. Payment of any additional Enrollment Fee shall be made by the Participant within thirty (30) days after receiving written notice from the NFIB-MSC or the Group Administrator. This provision shall survive the termination of this Agreement.

Participant acknowledges and agrees that if the OBWC determines that the Participant is ineligible to participate in the Program, Participant will be automatically converted to the NFIB/Ohio Select Program Plus by CareWorksComp only for the term of January 1, 2019 through December 31, 2019. Should the Participant determine that it does not want to participate in the NFIB/Ohio Select Program Plus it shall notify CareWorksComp in writing and will be entitled to a refund of a maximum of fifty percent of its payment as prorated at the time. Reasons for ineligibility to participate in a group rating program as determined by the OBWC can include, but are not limited to, any of the following reasons:

- Participant is not current on any and all premiums, administrative costs, assessments, fines or monies otherwise due to any fund administered by the OBWC as of the OBWC group rating program application deadline.
- Participant is not current on the payment schedule of a part-pay agreement for payment of premiums or assessment obligations as of the OBWC group rating program application deadline.
- Participant has cumulative lapses in workers' compensation coverage in excess of forty (40) days within the twelve (12) months preceding the OBWC group rating program application deadline.
- Participant's workers' compensation policy is not in active status as of the OBWC group rating Program application deadline and/or the beginning date of the rating year.
- Participant does not report actual payroll for the proceeding policy year and pay any premium due upon reconciliation of estimated premium and actual premium for that policy year no later than the date set forth in rule 4123-17-14 and 4123-17-16 (B) of the Ohio Administrative Code.
- Participant cannot be a member of more than one (1) retrospective group, or a retrospective and non-retrospective group, during the same policy year.
- Participant's operations are not substantially similar with the group rating program as required by Ohio Administrative Code Section 4123-17-73.

The Participant agrees and understands that if the Participant applies to multiple group rating plans for the 2019 group rating year or any succeeding renewal period, and elects not to participate in that year's NFIB/Ohio Program, the Participant will not be entitled to a refund of any fees paid to NFIB-MSC or the Group Administrator. Furthermore, the Participant will not be entitled to premium refunds or services as outlined in this Agreement.

The Participant agrees and understands that if the NFIB-MSC rescinds the program invitation before the OBWC application deadline, the Enrollment Fee will be refunded to the Participant. If NFIB-MSC rescinds the program invitation after the OBWC application as set forth in Section 4123-17-73 of the Ohio Administrative Code, the Participant shall be entitled to a refund less a prorated Enrollment Fee for the period of time that services were provided to the Participant pursuant to this Agreement. Neither NFIB-MSC nor the Group Administrator shall be responsible for any liability, loss, cost, expense, or damages of any kind arising directly or indirectly out of the NFIB-MSC's decision to rescind the program invitation.

At no time, regardless of the reason, shall the Participant be entitled to receive more than one hundred percent (100%) of its Enrollment Fee.

## **Section 8. APPLICATION BY PARTICIPANT**

Participation will depend on the Group Administrator receiving from the Participant the necessary documents, as required to participate by the OBWC, before the established deadline as outlined in Section 7. This may include the completion and/or submission of one or more of the following documents and is dependent upon the Participant's prior participation status, or change in status, in the Program: (1) a signed copy of the Group Retrospective Rating Program invoice ("*Invoice*"), (2) the OBWC form U-153 *Employer Statement for Group Retrospective-Rating Program*, (3) an AC-2 *Permanent Authorization*, (4) the Enrollment Fee, and (5) Employer Disclosure Form. Participant should refer to the *Invoice* for confirmation of the documents necessary to participate.

Participant understands and agrees that failure to execute and provide the necessary documents to the Group Administrator may nullify and void the terms of this Agreement in its entirety at the sole discretion of the NFIB-MSC or Group Administrator. Participant may not terminate this Agreement or withdraw from the Program once the necessary enrollment documents have been submitted and received by the Group Administrator without prior written consent from NFIB-MSC and further understands that any refund of fees is at the discretion of NFIB-MSC.

For any succeeding renewal term, Participant understands that it is responsible, under Section 14, for providing any and all documentation regarding a change in prior disclosures and representations at the time of reenrollment and reapplication into the Program. If Participant fails to provide the requisite update pursuant to Section 14 of this Agreement, and the false misrepresentation and/or failure to disclose results in a negative financial impact to the Program, NFIB-MSC's may seek reimbursement from Participant on behalf of the Program and/or participating members, as well as, removal of Participant from the Program.

#### **Section 9. DETERMINATION OF THE GROUP PREMIUM**

The Program's premium calculation will be determined by the OBWC utilizing the method below as described in its rules:

*The group retrospective premium calculation will occur at twelve (12), twenty-four (24), and thirty-six (36) months following the end of the group retrospective policy year. On the policy evaluation date, the OBWC will evaluate all claims with injury dates that fall within the retrospective policy year. The incurred losses and reserves that have been established for these claims are "captured" or "frozen". The group's retrospective premium will be calculated based on the developed incurred losses for the group. The group retrospective premium will be compared to the group standard premium (the combined standard premiums of retrospective group members for the retrospective policy year) and all subsequent group retrospective refunds/assessments. The difference will be distributed or billed to Participants as a refund or assessment subject to applicable law, the OBWC rules, regulations and limitations.*

Each Participant agrees that statements made by NFIB-MSC, and/or the Group Administrator, describing the Program and its potential financial benefit are not guarantees, but rather estimates, based upon information made available by the OBWC and/or the Participant(s) at the time of qualification review. Premium refunds or assessments may, therefore, change if any of the variables used in the qualification review change. The actual premiums paid by the individual participating members in the relevant Program Rating Year may change depending upon Participant or Participants and their claims losses or group retrospective rating program claims losses and other factors determined by the OBWC, which could include, but are not limited to, changes in risk factors, group retrospective premium components, adjustments in base rates, group retrospective premium calculations, etc.

Each Participant understands that the NFIB-MSC and the Group Administrator disclaim any and all responsibility and shall not be liable for any changes to the Program and its estimated results due to the factors which could include, but are not limited to:

- a. Increases in claims losses,
- b. The OBWC's interpretation and application of the various rules and regulations on group rating,
- c. Erroneous information provided to the Program or to the Group Administrator by the OBWC or by a participating member(s),
- d. Changes in applicable law.

Each Participant who ceases to participate in the Program shall have the right to refunds or be affected by assessments, if any, only for that period of participation as defined by the Program and realized within the timeframe from sixteen (16) months to forty (40) months after the end of the Program applicable policy year. Past group retrospective program results are no guarantee that there will be similar in the future.

Each Participant is solely liable for the payment of its assessments and premiums from the OBWC and ODJFS. The

NFIB-MSC or the Group Administrator in no case will be liable for any assessment or premium and any penalties as assessed by any federal, state or local government, department, commission, bureau, agency, official, or regulator.

#### **Section 10. EQUITY REDISTRIBUTION**

For the protection of the Program, NFIB-MSC reserves the right to implement some form of "Equity Redistribution" should the overall performance of the Program create unjust premium savings or losses among participating Program members. Equity Redistribution may be implemented at the discretion of the NFIB-MSC upon advice of its Group Administrator, and may be used to redistribute funds based upon the overall performance (refunds or assessments, etc.) of the entire Program. If implemented, participants with a higher rate of refunds, etc. than the average refunds, etc. recognized by the Program may be asked to remit a portion of their refunds, etc., to the Equity Pooling Fund. At the direction of the NFIB-MSC those funds may then be distributed in any coverage year to certain Program participants to insure the integrity and fairness of the Program. Any Participant required to contribute to the Equity Pooling Fund shall be notified of the amount of its contribution upon receipt of the renewal documents, and shall include that amount with its Enrollment Fee. Failure to pay the required contribution to this program will be grounds for removal or rejection of that Participant from the Program.

#### **Section 11. LEGAL DEFENSE PROGRAM**

A legal defense program will be established by the NFIB-MSC for legal counsel to be provided during the term of this Agreement to a Participant or Participants to defend against certain workers' compensation claims when it is determined that the outcome of a particular claim could have a negative impact on the Program and its premium calculation. This representation may include representation before the Ohio Industrial Commission and/or in state court on appeal or in an original action in mandamus to the extent that there are funds available from the portion of the Enrollment Fee allocated towards the Legal Defense Program. The designated legal counsel under the Legal Defense Program, and the determination as to when such legal counsel may be provided shall be made by the NFIB-MSC pursuant to the review process established under the NFIB-MSC's contract with the designated legal counsel. A copy of the provision that sets forth the review process is on file at the offices of the NFIB-MSC and will be made available for review, upon written request, by participating members during regular business hours. The Participant understands that the decision to provide legal representation under the Legal Defense Program rests entirely within the discretion of the NFIB-MSC and the designated legal counsel and may be withheld or denied for any reason. NFIB-MSC, Group Administrator, and the designated legal counsel do not guarantee that the recommendations, and/or defense services provided through the Legal Defense Program will reduce the Program's premiums or that the claims referred and agreed to be defended under this program will result in the Participant prevailing on a particular claim.

It is further agreed that if legal representation is not offered through the Legal Defense Program, this decision will not be construed as a recommendation or opinion that legal representation is not needed in the defense of a particular claim. Regardless of the decision whether to offer legal representation through the legal defense program, each Participant still maintains the discretion to determine if the Participant should retain legal representation in the defense of any workers' compensation claim. The Participant of the Program as a Group Participant, and individual entity, shall hold Group Administrator wholly harmless from and against any and all liability, loss, cost, expense, and damage whatsoever, incurred, or alleged to have incurred, as a result of Group Administrator's actions or inaction to refer a claim to the designated legal counsel for the Legal Defense Program.

#### **Section 12. HOLD HARMLESS CLAUSE**

The NFIB-MSC is not responsible for the acts of the Group Administrator, and any redress or remedy desired by the Participant against the Group Administrator must be sought directly against the Group Administrator. The Participant, and not the Program and NFIB-MSC, shall defend, indemnify and hold the Group Administrator wholly harmless from and against any and all liability, loss, cost, expense, and damage whatsoever (including reasonable fees of legal counsel and related disbursement) incurred by the Group Administrator as a result of the Participant's negligent or wrongful performance or non-performance of its obligations pursuant to this Agreement. This Agreement shall inure to the benefit of the Group Administrator and shall be enforceable by the Group Administrator against the Participant to the extent the negligent or wrongful performance or non-performance of

Participant hereunder results in incurred liability, loss, cost, expense, or damage to the Group Administrator. Participant agrees to relieve NFIB-MSC and/or the Group Administrator their officers, directors, employees and agents of any liability that the Participant may incur as a result of the Participant's non-compliance with state, local and federal laws, rules, and regulations as well as safety and occupational health codes.

The Participant hereby agrees to release and hold harmless the NFIB-MSC, the Group Administrator and their members, officers, directors, employees and agents from and against all claims, liabilities, demands, obligations, costs, expenses, or damages, of any nature, and whether known or unknown, arising directly or indirectly out of or in connection in any way to: (a) the decision of the NFIB-MSC or the Group Administrator to permit any Participant to participate in the Program, (b) the Participant's contribution, premium, refunds, assessments, or distribution or refunds or assessment levels, (c) any questions of workers' compensation and unemployment compensation claims, including but not limited to claims losses, claims management, coverage or lapse of coverage, etc. (d) any termination of the Participant's involvement in the Program, (e) any abandonment or failure to apply or qualify for group rating status or the Program in any year, and (f) any decision by the NFIB-MSC, the Group Administrator or OBWC regarding the Participant's eligibility to participate in the Program.

At no time, regardless of the reason, shall the Participant be entitled to receive more than one hundred percent (100%) of its Enrollment Fee.

### **Section 13. MANAGED CARE ORGANIZATION**

By enrollment into the Program, Participant agrees that NFIB-MSC shall have the right to recommend a Managed Care Organization for the Program in the event that the OBWC provides for a period of open enrollment in its Health Partnership Program pursuant to Ohio Revised Code Section 4121.441 during the term of this Agreement.

### **Section 14. CLIENT DISCLOSURES AND REPRESENTATIONS**

The Participant acknowledges that, as a part of the enrollment process, it has made representations to the NFIB-MSC regarding its past and present status as a Professional Employer Organization or Employment Leasing Operation. The Participant also acknowledges that it does not arrange, or has not arranged, with one or more client/customer employers, under written contract or by other agreement to employ or lease all or part of the workforce for that client/customer employer and to place those assigned workers/employees on a permanent basis with the client/customer employer. The Participant also represents and acknowledges that it does not provide, and has not provided, workers' compensation, unemployment compensation and other benefits and coverage to those employees while placed permanently with the client/customer employer. The Participant further acknowledges that it is not subject to nor has it been notified by the OBWC that its workers' compensation experience shall be impacted by Ohio Administrative Code Section 4123-17-15 and any other applicable laws, rules and regulations. Section 4123-17-15 of the Ohio Administrative Code defines a 'staff leasing/professional employer organization' and the 'client employer'. In addition, the ownership of the workers' compensation experience for the 'client employer' during the term of the contractual agreement with the 'staff leasing/professional employer organization' is clarified.

The Participant represents and acknowledges that it does not currently operate and does not intend to change its operations to perform, as either a Professional Employer Organization or Employment Leasing Operation, and has not, prior to this Agreement, leased all or part of its employment force from an Employment Leasing Operation or Professional Employer Organization. The Participant further recognizes that any false representations or failure by the Participant to disclose material information regarding employee leasing will result in an obligation to reimburse the Program and/or participating members for the negative financial impact of any successorship imposed by the OBWC on the Participant. Furthermore, in such case NFIB-MSC shall seek to have the Participant removed from the Program and the Participant grants to NFIB-MSC and to the Group Administrator and to NFIB/Ohio and to the designated legal counsel a permanent authorization/consent for such action. The Participant also agrees that in such case it will execute in good faith and immediately provide upon request to the Group Administrator, and/or NFIB-MSC, and/or NFIB/Ohio and/or the designated legal counsel, all documents necessary for such action as determined by one or more of those entities, in its/their sole discretion. The Participant agrees that, during the term of this Agreement, it will not change from its current business structure to operate as a Professional Employer Organization or Employment Leasing Operation as defined by the OBWC.



Further, the Participant has made written representations to NFIB-MSC as to any past and pending merger, acquisition, reorganization, consolidation, divestiture, or any other business activity that involves the potential combination by the OBWC of the Participant's workers' compensation account with other workers' compensation policy accounts and/or other changes including but not limited to: changes in the Participant's workers' compensation coverage, manual classification, manual reclassification, standard premium, changes caused due to audits by OBWC, etc. prior to the beginning of the term of this Agreement. The Participant understands that this information is sought to permit NFIB-MSC to evaluate the potential impact that successorship and resulting risk combination by the OBWC, and other risk changes could have upon the Program. The Participant agrees that its application and acceptance into the Program is based on its represented operating structure, and resulting OBWC claim history at the time of application and enrollment. The Participant agrees that, prior to the beginning of the term of this Agreement and/or during the term of this Agreement, it will not be involved in a merger, acquisition, reorganization, consolidation, divestiture, or any other activity that will result in the OBWC finding that the Participant is a succeeding employer, and/or other changes including but not limited to: changes in the Participant's workers' compensation coverage, manual classification, manual reclassification, standard premium, changes caused due to audits by OBWC, etc. with negative financial impact on the Program. The Participant agrees to give written notice to NFIB-MSC ninety (90) days in advance of any such action so that a determination may be made as to the effect on the Program. Furthermore, in such case NFIB-MSC may seek to have the Participant removed from the Program. The Participant shall grant a permanent authorization/consent for such action to the following: NFIB-MSC and to the Group Administrator and to NFIB/Ohio and to the designated legal counsel. The Participant also agrees that in such case it will execute in good faith and immediately provide upon request to the Group Administrator, and/or NFIB-MSC, and/or NFIB/Ohio and/or the designated legal counsel, all documents necessary for such action as determined by one or more of those entities, in its/their sole discretion. The said permanent authorization/consent for such action shall survive any termination or cancellation of this Agreement.

The Participant agrees that it will be liable to NFIB-MSC and/or participating members, and shall pay to a fund held by NFIB-MSC, or its designee, an amount equal to any additional premiums, assessments imposed by the OBWC on the Program and/or its participating members, for any Program year, if as a result of Participant's actions and/or inactions, such actions and/or inactions have a negative financial impact on the Program, including, but not limited to, decreased refunds and/or incurred assessments. These moneys will be distributed on an equitable basis to participating members that paid additional premiums to the OBWC for the Program as determined by and in the sole discretion of NFIB-MSC and the Group Administrator. The Participant further agrees to defend, indemnify and hold harmless the Program, participating members, NFIB-MSC, the Group Administrator and its members, officers, directors, agents, agencies, assigns, affiliates, and/or subsidiaries, from all liability arising from Participant's actions and/or inactions, including all losses, assessments, costs, expenses and damages whatsoever.

The obligations of the parties under this Agreement that by their nature continue beyond the expiration of this Agreement shall survive any termination or cancellation of this Agreement.

#### **Section 15. GOVERNING LAWS AND ENTIRE AGREEMENT**

This Agreement is governed by the laws of the State of Ohio. The provisions of this Agreement constitute the whole and entire Agreement by and among NFIB-MSC and Participant and may be modified and altered only by mutual agreement, reduced to writing, executed by authorized representatives, and delivered to each other, except for enrollment fee adjustments. Any action brought under this Agreement in a court of law shall be in Franklin County, Ohio.

#### **Section 16. NON-WAIVER**

No term or provisions hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach of the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

#### **Section 17. GENERAL PROVISIONS**

The application for a group rating program must be filed with OBWC by the OBWC group rating program application deadline. Once filed, Participants are not permitted to withdraw nor is the Program permitted to add a

Participant. Once the application has been approved by the OBWC, the Program will remain in force for the entire rating year (July 1, 2019 through June 30, 2020). Thereafter, NFIB-MSC must reapply to the OBWC for annual approval each subsequent year NFIB-MSC continues the Program.

The initial term of this Agreement shall begin on January 1, 2019 and end on December 31, 2019 Participant acknowledges that its acceptance or invitation to the Program for the current rating year does not guarantee Participant's eligibility in any subsequent rating year.

Participant authorizes and agrees to accept communications relating to the Program that may be sent via facsimile, electronic mail or other means of electronic format and/or other methods, including telephone calls, from the NFIB- MSC, Group Administrator or by its vendors and/or subcontractors regarding enrollment into the Program in subsequent OBWC group rating years and regarding other programs and activities offered by NFIB- MSC. Participant also agrees the Participant will execute in good faith and immediately provide upon request to the Group Administrator, and/or NFIB- MSC, and/or NFIB/Ohio, and/or the designated legal counsel all necessary documents and/or authorizations/consents for the Group Administrator and/or NFIB- MSC, and/or NFIB/Ohio, and/or the designated legal counsel to comply with any and all communication standards issued by the applicable federal, state, local, or other authorities. The Participant also grants to the Group Administrator, and/or NFIB- MSC, and/or NFIB/Ohio, and/or the designated legal counsel a permanent authorization/consent to provide any communication to the Participant by any methods chosen by the Group Administrator, and/or NFIB- MSC, and/or NFIB/Ohio, and/or the designated legal counsel.

CareWorksComp values the privacy of its employees, customers, subcontractors, and its customers' claimants. All personal information relating to any such individual that may be shared with, or obtained by the Participant to fulfill its obligations under this Agreement or arising out of the Participant's relationship with claimants or CareWorksComp, shall be considered confidential information for purposes of this Agreement. Therefore, the Participant agrees to comply with all state and federal privacy laws, including provisions of the Gramm-Leach-Bliley Act. Accordingly, all such information shall be used solely for the purpose for which such material or information was provided to the Participant and for no other purpose whatsoever.

All claim files, claim logs, and computerized data files in the Group Administrator's possession ("Work Product"), shall be and remain the property of the Group Administrator. At no time, including upon termination of this Agreement, shall the Group Administrator be obligated in any way to provide any Work Product to Participant.

Participant may, from time to time, utilize certain third party providers for services, including but not limited to independent medical examinations and private investigators. Participant understands and agrees that the use of any such services in the administration of its employees' workers' compensation claims will be solely at Participant's authorization and will be directly paid by Participant at its own expense. While the Group Administrator may suggest Participant use a certain third party provider, the Group Administrator in no way warrants or guarantees the services of any such third party provider and will not be liable for any damage or loss sustained by Participant from a third party provider. Participant further agrees and understands that the Group Administrator will not assist in resolving any disputes between such third party providers and Participant.

Participant agrees that the Group Administrator shall retain all title and all ownership rights to any and all copyrights, trademarks, trade names, trade secrets or patent rights including, without limitation, all corrections, modifications and derivative works to such Group Administrator technology and confidential information, if any, developed by Group Administrator or Participant. Participant hereby assigns and agrees to assign to the Group Administrator without further consideration all intellectual property rights it may possess in any such derivative works and agrees: (i) to execute all documents, and take all actions, that may be necessary to confirm or effect such rights, and (ii) to retain all proprietary marks, legends and patent and copyright notices that appear on the CareWorksComp Intellectual Property and confidential information, delivered to Participant by the Group Administrator and all whole or partial copies made by Participant thereof. Participant further acknowledges that Participant has no rights in any of CareWorksComp's Intellectual Property.

Participant agrees that it will not, without prior written consent of the Group Administrator, or NFIB- MSC, in each instance: (i) use in advertising, publicity, or otherwise the name of the Group Administrator, or NFIB- MSC, or any affiliate or subsidiary of the Group Administrator or NFIB- MSC, or any partner or employee of the Group

Administrator or NFIB-MSC, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by the Group Administrator or NFIB-MSC or its affiliates or subsidiaries, or (ii) represent, directly or indirectly, that any product or any service provided by such Participant has been approved or endorsed by the Group Administrator or NFIB-MSC.

The obligations of the parties under this Agreement that by their nature continue beyond the expiration of this Agreement shall survive any termination or cancellation of this Agreement. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be unenforceable in any respect under the law of any state or of the United States of America, such unenforceability shall not affect any other provision of this Agreement; this Agreement shall then be construed as if such unenforceable provision or provisions had never been contained herein. The construction and interpretation of this Agreement shall be under and in accordance with the laws of the State of Ohio, and any dispute between the parties arising out of, in connection with and/or related to this Agreement shall be venued in Franklin County, Ohio.

NFIB-MSC and the Group Administrator are not liable or otherwise responsible to a Participant for nonperformance or delay in the performance of the terms and conditions of this Agreement due to acts of God, acts of government, strikes, accidents, fires, accidents in transportation, acts of terrorism, or other causes beyond NFIB-MSC and the Group Administrator's control and which could not have been reasonably foreseen or prevented.

The Participant acknowledges and agrees that its participation in the Program is not a result of any inducement by NFIB-MSC, NFIB/Ohio, CareWorksComp and/or the designated legal counsel for provision of any service or premium savings other than the services and potential premium savings as outlined in this Agreement.

The Participant acknowledges and agrees that NFIB-MSC and NFIB/Ohio shall have the exclusive authority during any Group Rating period to determine whether any changes in the program are necessary for the better delivery of services to the Participant. Said determination shall include, but shall not be limited to, the selection of the Group Administrator and program services.

By signing and submitting the enclosed Program document(s) as outlined in Section 8 of this Agreement and/or *Invoice*, and/or Employer Disclosure Form hereby incorporated by reference in this Agreement though not physically attached, the Participant acknowledges it has read, understands and agrees to the terms and conditions of this Participation Agreement with the intent to be legally bound by those terms and conditions.

In consideration of the above listed requirements and responsibilities, the National Federation of Independent Business Member Services Corporation and the Participant agree to jointly participate in the Program as provided under the applicable laws and regulations.

IN WITNESS WHEREOF, the parties acknowledge that they have read the Agreement, understand it and agree to be bound by its terms and further agree that this agreement is the complete and exclusive statement of the agreement between the parties. Each party has full power and authority to enter into and perform this Agreement, and the person signing and returning the Invoice and/or Employer Disclosure Form on behalf of each has been properly authorized and empowered to enter into this Agreement.

NFIB-MSC by:



Roger R. Geiger  
Vice President & NFIB/Ohio Executive Director

**PLEASE RETAIN THIS DOCUMENT FOR YOUR RECORDS**