

**PARTICIPATION AGREEMENT FOR THE  
NATIONAL FEDERATION OF INDEPENDENT BUSINESS  
MEMBER SERVICES CORPORATION (NFIB-MSC)  
OHIO SELECT PROGRAM PLUS**

The terms and conditions for participation in the 2019 NFIB/Ohio Select Program Plus (hereinafter referred to as the “NFIB/Ohio SP”) are contained in this Agreement (“Agreement”). National Federation of Independent Business-Member Services Corporation (hereinafter referred to as “NFIB-MSC”), and the participating employer (hereinafter referred to as “Participant” or “Employer”) agree as follows:

**Section 1. ADDRESS OF THE SELECT PROGRAM PLUS**

The principal office of the NFIB/Ohio SP is located at 10 West Broad Street, Suite 2450, Columbus, Ohio 43215.

**Section 2. PURPOSES OF THE SELECT PROGRAM PLUS**

The NFIB/Ohio SP is intended to: (1) promote safer working environments, and (2) foster cost-effective claims management skills in the area of workers’ compensation and unemployment compensation.

**Section 3. ELIGIBILITY**

The Employer’s participation in the NFIB/Ohio SP 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 NFIB/Ohio SP; (2) meeting all of the criteria for participation as required by the NFIB-MSC in its sole discretion; (3) complying with the terms and conditions of this Agreement. The Participant acknowledges that it shall have no right to continued participation in this program or any successor program formed for the succeeding one-year period. Such participation shall be in the sole discretion of the NFIB-MSC.

Participant must have paid the Service Fee to participate in the NFIB/Ohio SP in accordance with the terms and conditions of Section 4 and Section 6 of this Agreement.

**Section 4. TERM OF AGREEMENT**

The term of this Agreement shall begin at the time the Service Fee and signed applications are received by the SP Administrator and continue through December 31, 2019, and shall automatically renew for each subsequent twelve (12) month term, unless the Participant provides written notice to the SP Administrator of its intent not to renew this Agreement at least sixty (60) days prior to the renewal date. Participant also agrees that NFIB-MSC and/or the SP Administrator has the right to remove any Participant at NFIB-MSC’s discretion by providing written notice to the Participant.

Payment of Participant’s NFIB/Ohio SP Service Fee for the initial term or any renewal term constitutes Participant’s application into the program, and its acknowledgment and acceptance of all of the terms and conditions of this Agreement and of the renewed Agreement.

**Section 5. SERVICES**

The NFIB-MSC has retained CareWorksComp as its NFIB/Ohio SP Administrator who will perform administrative, actuarial cost control, claims management, and consulting services for

Participant related to workers' compensation, unemployment compensation and workplace safety services. Each Participant agrees to provide a *Permanent Letter of Authorization (AC-2)* to CareWorksComp at the time of enrollment. The AC-2 must identify CareWorksComp as the Employer Representative to permit CareWorksComp to represent it before the Ohio Bureau of Workers' Compensation ("OBWC") and the Ohio Industrial Commission.

Participation in the NFIB/Ohio SP entitles any Participant to receive both workers' compensation services and unemployment compensation services from CareWorksComp.

## **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 SP 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 SP Administrator and supported by appropriate medical documentation.
- Attend hearings before the OBWC and Ohio Industrial Commission when necessary and permitted under the pertinent state regulations.
- Assist in developing a defense, where possible, for workers' compensation claims brought against Participant when deemed appropriate by the SP Administrator and contested by the Participant.

## **UNDERWRITING & RATES**

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

Rating Program.

## **MANAGEMENT REPORTS**

- Provide quarterly claims experience report to Participants having ten (10) or more claims in their workers' compensation experience and in the current year. Participants who have less than ten (10) claims in their workers' compensation experience and in the current year may request in writing to receive said 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 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 6. SERVICE FEE**

Each Participant agrees to pay a "Service Fee" for participation in the NFIB/Ohio SP. The Service Fee is to pay the administrative cost of the NFIB/Ohio SP and includes, but is not limited to, the SP Administrator fee, actuarial fees, legal fees for establishing the NFIB/Ohio SP, postage, secretarial support, staffing, and other fees or costs necessary to carry out the activity of the NFIB/Ohio SP. The Service Fee does not include NFIB membership dues unless otherwise specifically stated on the Invoice. The Service Fee is due at the time of application and covers both administrative and claims management costs for the term of this Agreement. Services begin at the time the Service Fee and signed documents are received by the SP Administrator, and end on December 31, 2019.

The Service 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 Service Fee on such date as is specified within the terms of said Amendment or Addendum or Invoice.

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

If the Participant who has made application to receive services under the NFIB/Ohio SP wishes to rescind the application and terminate services under the SP Agreement, Participant agrees to request such action in writing and direct such request to the SP Administrator. A request to terminate services must be directed to and received by the SP Administrator no later than thirty (30) days from the date of receipt of the NFIB/Ohio SP applications by the NFIB/Ohio SP Administrator. A pro-rated Service Fee shall be refunded less a \$75 processing fee. Any request to terminate services under this Agreement received after this thirty (30) day period shall not be considered and neither the SP Administrator nor NFIB-MSA shall be held responsible for any liability, loss, cost, or expenses arising out of the Participant's failure to request action in accordance with the terms of this Section.

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

Each Participant is solely liable for the payment of its own assessments, premiums, and penalties from the OBWC. The SP Administrator or the NFIB-MSA in no case will be liable for the Participant's OBWC assessments, premiums and any penalties assessed by any federal, state and local government, department, commission, bureau, agency official or regulators. Participant acknowledges and agrees that participation in the NFIB/Ohio SP does not guarantee any savings in the Participants' workers' compensation premium and/or assessments payments.

## **Section 7. APPLICATION BY PARTICIPANT**

The SP Administrator must receive from the Participant the necessary documents with the application to commence participation. These documents include, but are not limited to: (1) a signed copy of the NFIB/Ohio SP Invoice ("*Invoice*"), (2) the OBWC form AC-2 *Permanent Letter of Authorization*, and (3) the Service Fee. An executed AC-2 and the Service Fee must be received by the SP Administrator to be considered for participation in the NFIB/Ohio SP. Participant understands and agrees that failure to execute and provide the necessary documents to the SP Administrator may nullify and void the terms of this Agreement in its entirety at the sole discretion of the NFIB-MSA or SP Administrator.

## **Section 8. LEGAL DEFENSE PROGRAM**

A legal defense program will be established by the NFIB-MSA for legal counsel to be provided during the term of this Agreement to a Participant or Participants to defend against certain workers' compensation claims at the NFIB-MSA's discretion. 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 Service 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. 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, SP 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 Participant's premium 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 Participant, and individual entity, shall hold SP 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 SP Administrator's actions or inaction to refer a claim to the designated legal counsel for the Legal Defense Program.

#### **Section 9. HOLD HARMLESS CLAUSE**

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

The Participant hereby agrees to release and hold harmless the NFIB-MSC, the SP Administrator, and its 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 SP Administrator to permit any Participant to participate in the NFIB/Ohio SP, (b) the Participant's contribution, premium, assessment, or discount levels, (c) any questions of workers' compensation including, but not limited to, coverage or lapse of coverage, claims, claims losses, or claims management, etc. (d) any termination of the Participant's involvement in the NFIB/Ohio SP, (e) any abandonment or failure to apply or qualify for SP or group rating status in any year, and (f) any decision by the NFIB-MSC, the SP Administrator or OBWC regarding the Participant's eligibility to participate in the NFIB/Ohio SP.

The obligations of the parties under this Agreement that by their nature continue beyond the expiration of the Agreement shall survive any termination or cancellation of this Agreement. At no time, regardless of the reason, shall the Participant be entitled to receive more than one hundred percent (100%) of its Service Fee.

## **Section 10. MANAGED CARE ORGANIZATION**

By enrollment into the NFIB/Ohio SP, Participant agrees that NFIB-MSC shall have the right to recommend a Managed Care Organization for the NFIB/Ohio SP 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 11. 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 12. GENERAL PROVISIONS**

Participant authorizes and agrees to accept communication relating to the NFIB/Ohio SP that may be sent via facsimile, electronic mail or other means of electronic format and/or other methods including, but not limited to, telephone calls, from the NFIB-MSC, NFIB/Ohio, SP Administrator or by their vendors and/or subcontractors regarding enrollment into the NFIB/Ohio SP in subsequent 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 SP Administrator, and/or NFIB-MSC, and/or NFIB/Ohio all necessary documents and/or authorizations/consents for the SP Administrator and/or NFIB-MSC, and/or NFIB/Ohio to comply with any and all communication standards issued by the applicable federal, state, local, or other authorities. The Participant also grants to the SP Administrator, and/or NFIB-MSC, and/or NFIB/Ohio a permanent authorization/consent to provide any communication to the Participant by any methods chosen by the SP Administrator, and/or NFIB-MSC, and/or NFIB/Ohio.

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 SP Administrator's possession ("Work Product"), shall be and remain the property of the SP Administrator. At no time, including upon termination of this Agreement, shall the SP 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 SP Administrator may suggest Participant use a certain third party provider, the SP 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 SP Administrator will not assist in resolving any disputes between such third party providers and Participant.

Participant agrees that the SP 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 SP Administrator technology and confidential information, if any, developed by SP Administrator or Participant. Participant hereby assigns and agrees to assign to the SP 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 confidential information, delivered to Participant by the SP 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 SP Administrator, or NFIB-MSC, in each instance: (i) use in advertising, publicity, or otherwise the name of the SP Administrator, or NFIB-MSC, or any affiliate or subsidiary of the SP Administrator or NFIB-MSC, or any partner or employee of the SP Administrator or NFIB-MSC, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by the SP 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 SP Administrator or NFIB-MSC.

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 SP Administrator are not liable or otherwise responsible to a Participant for non-performance 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 SP Administrator's control and which could not have been reasonably foreseen or prevented. 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.

The Participant acknowledges and agrees that its participation in the NFIB/Ohio SP is not a result of any inducement by NFIB-MSC, NFIB/Ohio, SP Administrator for provision of any service other than the services as outlined in this Agreement.

The participant acknowledges and agrees that NFIB-MSC and NFIB/Ohio shall have the exclusive authority during any Select Program Plus 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 Select Program Plus Administrator and program services.

By signing and submitting the enclosed NFIB/Ohio Select Program Plus documents as outlined in Section 7 of this Agreement and/or *Invoice*, 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 NFIB/Ohio SP as provided under the applicable laws and regulations.

IN WITNESS WHEREOF, the parties acknowledge they have read the Agreement, understand it and agree to be bound by its terms. Each party has full power and authority to enter into and perform this Agreement, and the person signing and returning the Invoice on behalf of each has been properly authorized and empowered to enter into this Agreement.

NFIB-MSD by:



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

**PLEASE RETAIN THIS DOCUMENT FOR YOUR RECORDS**