

# Membership Application & Indemnity Agreement

*Please review the details of the following two legal documents. Signatures are required on pages 8 and 12.*

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AMENDED and RESTATED

## APPLICATION & INDEMNITY AGREEMENT

THIS APPLICATION AND INDEMNITY AGREEMENT (the “Agreement”), dated effective as of the date of acceptance by the administrator as set forth below, is made by and between Massachusetts Care Self-Insurance Group, Inc., a Massachusetts nonprofit corporation, (the “Group”), and the undersigned employer located in the Commonwealth of Massachusetts, (the “Member”).

WHEREAS, the Group has received a certificate of approval from the Massachusetts Commissioner of Insurance (the “commissioner”) to operate as a workers’ compensation self-insurance group under Chapter 152, Sections 25E through 25U of Massachusetts General Laws (the “Statute”); and

WHEREAS, the Member desires to become a member of the Group to obtain coverage for workers’ compensation benefits and employer’s liability.

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the Group and the Member agree as follows:

1. **Definitions.** For the purposes of this Agreement, the following terms shall have the following meanings:

“**Administrative Expenses**” shall mean all payments to a management company made pursuant to a management services agreement between the Group and the management company as in effect during the Fund Year as well as payments for reinsurance, security deposits, taxes, accounting and actuarial reviews, non-claims related legal work, investment management, outside consultants, or any other related expenses for the Fund Year.

“**Administrator**” shall mean the designated administrator of the Group, and its successor or assigns, which currently is Cove Risk Services, LLC.

“**Aggregate Surplus**” shall mean the aggregated member’s surplus for all members of the Group plus other accrued income of the Group.

“**Application and Indemnity Agreement**” shall mean each application and indemnity agreement entered into between the Group and a member and, collectively, all such application and indemnity agreements as from time to time in effect, whether before or after the date of adoption of the by-laws of the Group.

“**Contribution**” shall mean any payment to the Fund made by a member in response to an assignment in accordance with the Group’s by-laws, the application and indemnity agreement, or any other rules, regulations, policies, and procedures pursuant to incident thereto. Without limiting the generality of the foregoing, contributions shall consist in part of required premium payments and other payments made by members to cover the costs of purchasing excess insurance, establishing and maintaining a claims fund account and establishing and maintaining an administrative fund account.

“**Deficit Amount**” shall mean the amount by which the sum of the Member’s incurred claims, plus the Member’s pro-rata share (based upon the Member’s share of aggregate net premium paid by all members of the Group) of the administrative expenses, exceeds the Member’s net premium, plus net investment income or (loss).

“**Discount Amount**” shall mean the discount applicable to each member as offered by the Group from time to time.

“**Effective Date**” shall mean the later to occur of: (1) the date on which the Member has received written acceptance to the Group, or (2) the date specified in the Member’s certificate of coverage as the effective date of commencement of workers’ compensation and employers’ liability coverage.

“**Final Premium**” shall mean the aggregate premium owed by all members in each fund year to the Group after adjustments to manual premium due to payroll audits, and after the payment of any discount amounts that may become due.

**“Fund Deficit”** shall mean the amount by which the sum of incurred claims and administrative expenses exceeds the final premium for the fund year (for purposes of this definition of fund deficit, the definition of final premium shall include interest earned on all premium payments by all members and other earned and accrued income of the Group which shall accrue to the benefit of the Group).

**“Fund”** shall mean the sum of all contributions made by members pursuant to the Group’s by-laws, the application and indemnity agreement, and any rules, regulations, policies and procedures pursuant or incident thereto; all monies, contracts, policies or properties received by the Board of Trustees of the Group from the Members for the uses and purposes set forth in the Group’s by-laws, the application and indemnity agreements, and any rules, regulations, policies and procedures pursuant or incident thereto; and all income, gains and all other increments of any nature whatsoever therefrom.

**“Fund Year”** shall mean a period of twelve (12) consecutive months identified by the Board of Trustees of the Group. The initial fund year shall commence on January 1, and end on December 31, and each subsequent fund year shall commence on January 1, and end on December 31, unless otherwise provided by the Board of Trustees of the Group. A fund year may be a period of greater or fewer than twelve (12) months if it is the first or last such year of the Fund or a year involving a change in the commencement or termination date of the fund year. The fund year and the fiscal year shall be the same. A “full fund year” shall mean a fund year with a period equal to or greater than twelve (12) months.

**“IBNR”** shall mean subjective reserves established for incurred but not reported claims, within a range proposed by an independent actuary, as determined by the Board of the Group in the Board’s reasonable discretion.

**“Incurred Claims”** shall mean all medical, indemnity, legal, investigative, and other related expenses (including all allocated loss adjustment expenses) on all reported claims (the sum of both paid claim expenses and open claim reserves), net of any subrogation or excess insurance receivable (in the reasonable discretion of the Group’s administrator), and expressly excluding incurred but not reported claims for the fund year.

**“Manual Premium”** shall mean the total premiums that would be paid in each fund year by each member to the Group pursuant to the rates approved for use by the Workers’ Compensation Rating and Inspection Bureau of Massachusetts if there were no adjustment for experience or the discount amount.

**“Massachusetts Law”** shall mean the applicable provisions of statutes, rules and regulations promulgated in the Commonwealth of Massachusetts to govern the administration of workers’ compensation laws and self-insurance groups thereunder, including but not limited to Chapter 152, Workers’ Compensation, under the General Laws of Massachusetts, as the same may be amended from time to time.

**“Member Surplus”** shall mean the amount by which the Member’s net premium, plus net investment income, exceeds the sum of the Member’s incurred claims plus the Member’s pro-rata share (based upon the Member’s share of aggregate net premium paid by all members of the Group) of the administration expenses.

**“Modified Premium”** shall mean actual manual premium paid in each fund year by each member to the Group after adjustments to manual premium due to payroll audits, modified by the experience modification factor (as calculated according to the Massachusetts Workers’ Compensation Rating Bureau experience modification formula).

**“Net Premium”** shall mean actual manual premium paid in each fund year by each member to the Group modified by the experience modification factor (as calculated according to the Workers’ Compensation Rating and Inspection Bureau of Massachusetts experience modification formula) plus or minus the discount amount, as the case may be. Final premium may be greater than net premium.

**“Positive Balance”** shall mean monies including interest earned on all premium payments by all members to the Group and other earned and accrued income of the Group which shall accrue to the benefit of the Group in a fund year in excess of the amount necessary to fund all obligations of the Group, including but not limited to adequate IBNR and other contingency reserves, for such fund year.

**2. Representations and Warranties by the Member.** To induce the Group to accept its application for membership, the Member represents and warrants to the Group and its administrator as follows:

(a) The Member represents and warrants that it/he/she is engaged in nursing home, long-term care or assisted residential living enterprises as an employer in the Commonwealth of Massachusetts that falls in one of the predominant classification codes of employee or one of the standard industrial classification codes or have one of the standard industrial classification codes, major indexes, as set forth in Exhibit A attached hereto and made a part hereof.

(b) If the Member is an enterprise organized as a partnership (general or limited), corporation or limited liability company, the Member represents and warrants that is a duly organized, validly existing and in good standing

under the laws of the state in which it was organized, and is duly licensed to conduct its business in the Commonwealth of Massachusetts.

(c) All financial statements or information delivered to the Group or its administrator are correct and complete, in accordance with the books and records regularly maintained by the Member with respect to the Member and prepared in accordance with generally accepted accounting principles (except as otherwise noted thereon), and they fairly present the assets and liabilities of the Member as at the respective dates, and all revenues and expenses of the Member for the fiscal periods ended on such dates.

(d) By submitting this application to the Group's administrator, the Member hereby consents to a pre-approval safety or risk management audit of its premises, and the Member covenants and agrees to provide all relevant information to the Group's administrator.

(e) The Member has received an explanation of the joint and several liability indemnification inherent in participation in a self-insurance group in the Commonwealth of Massachusetts.

(f) The Member has made its own evaluation of the risks and benefits of membership in the Group and has independently determined, without relying on any representations or warranties of the Group, the Administrator or any other of the members of the Group.

**3. Conditions Precedent to Effectiveness of Agreement.** This agreement shall not be effective unless and until; (a) the Group receives any required approvals for the application from the Commissioner; and (b) the Member is in good standing of a bona fide industry, trade or professional organization designated by the Board of Trustees of the Group, if any; and (c) acceptance of the application by a prospective member received from either the Board of Trustees of the Group or the Administrator consistent with the selection criteria adopted by the Board of Trustees of the Group. Acceptance of a prospective member's application by the Administrator must be consistent with the selection criteria adopted by the Board of Trustees of the Group, or the application must be approved by the Board of Trustees itself.

**4. Term.** The initial term of this agreement shall commence on the date of acceptance of the Member by the Group pursuant to Section 3 above, notwithstanding that coverage may not commence until the effective date, and shall continue in force from said date until December 31 of this calendar year and annually thereafter until terminated.

**5. By-Laws, Rules, Regulations, Policies and Procedures.** The Member covenants and agrees that it shall abide by the by-laws of the Group, and any other rules, regulations, policies and procedures in effect and hereinafter adopted by the Group the Board of Trustees or the Administrator from time to time.

**6. Coverages.** Upon the effective date, the Group agrees to provide the Member with the customary risk management services and workers' compensation and employers' liability coverage as and to the extent described in the Group's certificate of coverage. The Member covenants and agrees to pay the premiums, assessments and entry fee, if any, as provided herein, for such services and coverage, any late fees, interest or liquidated damages as provided in the by-laws from time to time, and all costs of collection thereof, including attorney's fees.

**7. Payroll Classification.**

(a) The Member shall furnish to the Administrator not less than thirty (30) days before coverage is to be provided, an annual estimated payroll by job classification. This estimate shall be adjusted annually by the Administrator at the end of each fund year to reflect the actual payroll on the books of the Member from time to time during the fund year. The Member agrees to pay promptly any additional premium that results from this annual adjustment upon receipt of an invoice from the Administrator. If, following the retirement of any deficit amounts, excess premium exists, this excess premium shall be dealt with in accordance with the provisions of Section 13 and Exhibit B. The Group reserves the right to conduct an annual audit, or cause its administrator or designee to conduct an annual audit, of the payroll records of the Member, and the Member hereby agrees to submit to such annual audit when requested to do so by the Group.

(b) The Member may challenge the Group's payroll audit within sixty (60) days of the date of the Member audit assessment, and in no event shall the results of the Group's payroll audit be open to challenge for any reason

whatsoever beyond eighteen (18) months after the end of the fund year in question or the date of the Member audit assessment, whichever occurs later.

## 8. Premiums.

(a) The Member agrees to pay to the Group premiums computed in accordance with a rating plan, as amended from time to time by the Board of Trustees. An example is attached hereto for informational purposes as Exhibit E.

(b) The Member agrees to pay a portion of the premium for the initial fund year, commencing on the effective date and ending on the following December 31, with such portion to be specified by the Board of Trustees of the Group. The initial deposit shall not be less than twenty-five percent (25%) of the estimated annual net premium for the Member, unless a lower deposit is permitted under Massachusetts law and adopted by the Group. The balance shall be paid in accordance with the premium payment plan approved by the Board of Trustees of the Group as described in Section 8(c) (the "Premium Payment Plan"). For each successive fund year, the Member agrees to pay a portion of the premium on or before January 1 of that fund year, with such portion to be specified by the Board of Trustees of the Group, but in no event to be less than twenty-five percent (25%) of the estimated annual net premium for the Member, unless a lower deposit is permitted under Massachusetts law and adopted by the Group. The balance shall be paid in accordance with the premium payment plan then in effect. If the Member becomes a member of the Group on a date other than the first day of a given fund year, it agrees to pay a portion of the premium for the fund year commencing on the effective date and on the following December 31, on or before its initial date of coverage, with such portion to be specified by the Administrator, but in no event to be less than twenty-five percent (25%) of the estimated annual net premium for the Member as though the Member were a member for the entire fund year; provided, however, this initial payment shall not exceed the total estimated net premium for the Member, as prorated; and provided, further, the rates in effect for the fund year shall be the rates in effect at the commencement of the fund year. The balance shall be paid in accordance with a schedule specified by the Administrator. Assume for illustration purposes only that a member joins the Group after half the fund year has expired; assume further that the Member's estimated annual net premium for the full fund year would have been \$200,000, so for half the fund year the Member's estimated annual net premium would be \$100,000. The portion of the estimated annual net premium the Member would have to pay upon joining the Group would equal twenty-five percent (25%) of \$200,000, or \$50,000.

(c) The Group shall establish a premium payment plan, which it shall file with the Commissioner. The Group, acting through its board of trustees, reserves the right to amend the premium payment plan from time to time in its sole discretion, and the Member agrees to adhere, abide, by and conform to the provisions of the premium payment plan as the same may be amended. A copy of the current premium payment plan is attached for informational purposes only as Exhibit C attached hereto and made a part hereof.

(d) The Member understands that there may be interim rate adjustments approved by the Commissioner and agrees to pay additional premiums resulting therefrom. The Member also agrees to pay additional premiums to the Group as determined by the Board of Trustees of the Group based upon recommendations of the Administrator in accordance with the by-laws or rules and regulations of the Group or a vote of the Board of Trustees of the Group, or as otherwise required by law.

(e) The Member agrees to execute necessary authorization forms permitting the Group or its administrator or designee to obtain information and data required in determining the experience rating modification of the Member and authorizing the Group or its administrator or designee to file with the appropriate authorities, loss and payroll data pertaining to the Member to be used to develop the Member's experience rating modification.

(f) (1) If, following the annual adjustment referenced in Section 7, a deficit amount exists for the Member, then the Member agrees that the Member will forthwith pay such deficit amount (subject to the recalculations set forth in subparagraph 2 below) promptly when due, and the Group reserves the right, as an alternative to demanding

prompt payment, to offset the deficit amount to be paid to the Group against any amounts the Group may be required to pay to the Member pursuant to this application and indemnity agreement or otherwise. In the event that any individual member of the Group fails to pay any premium, assessment or other contribution when due, the other Members of the Group, including the Member, shall be subject to automatic assessment without further action by the Group.

(2) If, following the payment of the discount amount by a member, a deficit amount still exists for the Member, then the Member agrees that the Member will forthwith pay to the Group the deficit amount, provided such payment by the Member shall not exceed an amount equal to twenty percent (20%) (the “Corridor Factor”) of its modified premium paid during the fund year in which the deficit amount exists for the Member (the amount of such payment shall be determined by the Administrator). As an alternative to demanding prompt payment, the Group reserves the right to offset the amount of such payment to be paid to the Group against any amounts the Group may be required to pay to the Member pursuant to the application and indemnity agreement or otherwise. If, following the payment by each such Member of an amount equal to up to twenty percent (20%) of its modified premium, a deficit amount still exists for the fund year in question, then so long as an aggregate surplus exists for the Group for the fund year in question, then the remaining deficit amounts for all members shall be aggregated and the aggregate surplus shall be applied to the remaining aggregated deficit amounts. If, following the application of the aggregate surplus, aggregate deficit amounts still exist for the Members, then the aggregate discount amounts, if any, of all members not having an individual deficit amount shall be applied on a pro-rata basis (meaning the same percentage of each member’s discount amount) to the remaining aggregate deficit amounts of the Members. If, following the payment of the aggregate discount amount by such other members, a deficit amount still exists, then the Member shall pay an additional premium assessed pursuant to the provisions of Section 8 (d) and assessed pro-rata based on the net premium of each member. These obligations with respect to the fund year in question shall survive expiration or termination of this agreement and any termination of the Member’s membership in the Group. The Board shall in its reasonable discretion be empowered to set such corridor factor for the Member and provide written notice thereof in advance of the applicable fund year.

**(3) The example set forth below is for illustration purposes only, and does not supersede or modify any of the contractual language herein.**

Assume there are 5 members with the following modified premiums, net premiums, discount amounts and deficit amounts:

Member	Net Premium	Discount Amount	Deficit Amount	Deficit Amount after Repayment of Discount	Risk-Sharing Corridor	Net Deficit after Risk Sharing Corridor	Remaining Assessment to Membership
A	\$ 120,000	\$ 20,000	\$ (30,000)	\$ (10,000)	\$ 24,000	\$ -	\$ 1,820
B	225,000	25,000	-	25,000	45,000	-	3,640
C	330,000	30,000	(120,000)	(90,000)	66,000	(24,000)	5,200
D	435,000	35,000	-	35,000	87,000	-	6,760
E	<u>540,000</u>	40,000	(250,000)	(210,000)	108,000	(102,000)	8,580
	\$ 1,650,000						
						\$(126,000)	\$ 26,000
					Group Surplus	<u>40,000</u>	
					Aggregate Deficit	<u>\$(86,000)</u>	
						<u>60,000</u>	
						\$ (26,000)	

An aggregate surplus of \$40,000 exists for the Group. The discount amounts for A, C and E are applied to their respective deficit amounts, leaving A with a deficit amount of \$10,000, C with a deficit amount of \$90,000 and E with a deficit amount of \$210,000. Twenty percent (20%) of A’s modified premium equals \$24,000, \$10,000 of which will be paid by A to reduce its deficit amount to \$0. Twenty percent (20%) of C’s modified premium equals \$66,000 which, when paid by C, will reduce C’s deficit amount to \$24,000. Twenty percent (20%) of E’s

modified premium equals \$108,000 which, when paid by E, will reduce E's deficit amount to \$102,000. The aggregate deficit amounts equal \$126,000. The aggregate surplus of \$40,000 is then applied to the aggregate deficit amounts of \$126,000, leaving an aggregate deficit amount of \$86,000. The aggregate discount amounts of B and D (\$60,000) are applied to the aggregate deficit amount of \$86,000, leaving a fund deficit amount of \$26,000. All the members would be assessed an additional premium based on the modified premium of each member as follows: A- \$1,820; B - \$3,640; C - \$5,200; D - \$6,760; E - \$8,580.

(2) If, following the annual adjustment described in Section 7 and following the retirement of any deficit amount, there exists a positive balance, this positive balance shall be dealt with in accordance with the provisions of Section 13 and Exhibit B.

(g) The obligations contained in this Section 8 with respect to the fund year in question shall survive termination of this agreement and any termination, voluntary withdrawal or other expiration of the Member's membership in the Group. (h) If, following the annual adjustment described in Section 7 and following the retirement of any deficit amount, there exists a positive balance, this positive balance shall be dealt with in accordance with the provisions of Section 13 and Exhibit B.

9. **Entry Fee.** The Member agrees to pay the Group a single entry fee as prescribed by the Board of Trustees from time to time in its sole discretion. At the present time no entry fee is charged.

10. **Excess Insurance.** The Group may maintain with qualified underwriters excess insurance coverage, in amounts, terms, limitations and coverages as the Board of Trustees shall determine from time to time in their sole discretion, including, without limitation, giving due consideration to prevailing market conditions.

11. **Risk Management Programs.** The Group, through its administrator, will provide risk management programs to the Member, designed (but not assured) to assist the Member in following a plan that may result in reduced losses and costs. The Member shall institute, and agrees to cooperate in instituting any and all such risk reduction programs at the Member's sole cost and expense. The Member further understands and agrees that these programs and other services to be provided by the Group, through its administrator, are provided without any warranties, either express or implied, and will be limited as set forth in published guidance to the Member from time to time. Risk management programs are implemented solely for the benefit of the Group, and are not designed to supplant the need for a safety executive or other responsible official at the Member's place(s) of business.

12. **Claims.** The Group, through its administrator or designee, agrees: (a) To administer, investigate, adjust, settle, and pay all of the workers' compensation claims and such other liabilities as are defined in the certificate of coverage issued to the Member, after notice of injury has been given and proof of liability has been established; (b) to prepare all required forms; and (c) to provide a defense if required. The Group, through its administrator or designee, shall carry on all negotiations with the injured employee or his/her attorney and negotiate settlements. If a personal appearance by an employee of the Member is necessary in any dispute, the expense of such appearance shall be paid for by the Member. The Group, through its administrator or designee, shall retain and supervise legal counsel necessary for the prosecution or defense of any litigation on behalf of and at the expense of the Group. The Member agrees to cooperate fully by supplying any information needed or helpful to defend such action. The Group, through its administrator or designee, agrees to provide quarterly to the Member a computer printout showing a statement of claims, claims status, and activities report.

13. **Refund or Credit Plan.** Any positive balance of the Group resulting from overall loss experience shall be available as a policyholder dividend in accordance with a refund or credit plan as adopted and amended from time to time by the Board of Trustees of the Group. A copy of the current refund or credit plan is attached for informational purposes as Exhibit B attached hereto and made a part hereof.

14. **Termination of Coverage and Membership.**

(a) This agreement and the Member's membership in the Group and coverage thereunder may be terminated by the Board of Trustees of the Group for failure to comply with the terms of this agreement or the by-laws, rules, regulations, policies or procedures of the Group including, but not limited to, the failure to pay premiums. The conditions of default and termination shall be in accordance with the terms and conditions of the by-laws of the

Group in effect from time to time. The Member agrees to maintain its membership in the Group for a period of at least one (1) full fund year (the "Initial Term"). The Member may withdraw its membership and coverage at the end of the first full fund year or any subsequent fund year by giving the Administrator prior written notice of its intention to withdraw at least one hundred and eighty (180) days in advance of the end of a fund year. Withdrawal shall be effective at the close of the fund year in which notice was received.

(b) In the event this agreement is terminated by the Group as a result of a default by the Member, the Member shall pay to the Group on the Termination Date (as that term is defined in the by-laws of the Group) the following amount as applicable: (i) if the termination occurs during the full fund year, the Member shall pay an amount equal to the balance of the unpaid estimated annual net premium for the fund year; or (ii) if the termination occurs during a partial fund year prior to the commencement of the first full fund year, the Member shall pay an amount equal to the balance of the unpaid estimated annual net premium for that portion of time remaining in a less than full fund year prior to the commencement of the first full fund year plus the estimated annual net premium for the full fund year in the initial term, the premium to be estimated for such full fund year to be equal to the estimated annual net premium being paid in the fund year in which the termination occurs. **The example set forth below is for illustration purposes only, and does not supersede or modify any of the contractual language herein.**

A member joins one-quarter of the way through a fund year and is paying a premium of \$150,000, with the estimated annual net premium for the full fund year being \$200,000. The Member's involvement in the Group is terminated three-quarters of the way through this partial fund year. The Member would owe \$50,000 (if not before paid) for the remaining portion of the partial fund year and \$200,000 for the subsequent full fund year based on the previous partial fund year's estimated annual net premium.

#### 15. **Indemnification Agreement of the Member.**

(a) The Member and the Group agree to comply with the provisions of Chapter 152 of the Massachusetts General Laws, as from time to time amended, and hereby agree to defend, indemnify and hold harmless each other and every other member of the Group which executes and delivers to the Group or its administrator an agreement containing an indemnity agreement similar to this Section 15, from and against any claim or damage arising from the non-compliance by the indemnitor with a provision of said Chapter 152.

(b) Massachusetts law prescribes joint and several liability for all members of a workers' compensation self-insurance group. Although recourse for any and all payments of workers' compensation and employers' liability benefits covered by The Group's certificate of coverage to a member shall first be made to the Group's assets (but not the individual assets of any member of the Group), the Member understands, acknowledges and agrees that, under said Chapter 152, the Member is and shall be jointly and severally liable for the workers' compensation and employers' liability obligations of the Group and its members which were incurred during the Member's period of membership in the Group, irrespective of the subsequent termination of the Member's membership in the Group, the insolvency or bankruptcy of another member of the Group, or other facts or circumstances. Notwithstanding any other term of this agreement, this Section 15 shall not be amended so long as the statutory requirements of such joint and several liability remain in place.

(c) This section (Section 15) shall survive termination of this agreement and any termination, voluntary withdrawal or other expiration of the Member's membership in the Group.

16. **Notices.** All notices hereunder shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, return receipt requested, to the Group at the address of the Administrator set forth below and to the Member at its address shown on the Group's records.

17. **Reapplication.** A Member which withdraws from the Group pursuant to the by-laws of the Group may not re-apply for membership in the Group for a period of at least one (1) year from the effective date of such withdrawal.

18. **General.** (a) This agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts. (b) This agreement may not be assigned by the Member without prior written consent of the Group, which consent may be withheld by the Group in the Group's absolute and sole discretion. (c) Failure of either party to enforce a

right under this agreement shall not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved or to terminate this agreement arising out of any subsequent default or breach. (d) Any assignment of responsibility by the Administrator shall relieve such administrator of responsibility hereunder, which shall inure to the successor administrator. (e) This agreement and any agreement referred to herein represent the entire, full and complete agreement among the parties hereto, and supersedes all prior agreements, no other representations, oral or otherwise, having induced the parties to execute this agreement. No amendment, waiver, change or variance from this agreement shall be binding on any party unless set forth in writing and executed by an authorized officer of the party to be bound. (f) Headings included herein are for convenience only, and shall not be used to construe this agreement.

**19. Non-Affiliation Agreement.** (a) The Member will not with any other member or members of the Group form another self-insurance group providing workers' compensation insurance coverage for the period of two (2) years after the Group ceases to qualify as a self-insurance group under Massachusetts General Law, c. 152 sections 25E-25U: provided, however, that the foregoing restriction shall not apply to any member who, at the time that the Group ceases to qualify as a self-insurance group under Massachusetts General Laws, c. 152 sections 25E-25U, was a member of the Group in good standing and had not notified the Group of an intent to withdraw from the Group or not to renew its membership in the Group. (b) The Member will not merge, combine, consolidate or otherwise affiliate with another self-insurance group providing workers' compensation insurance coverage, or enter into a partnership or joint venture with another self-insurance group providing workers' compensation coverage for a period of six months after the member leaves the Group. (c) The Member covenants and agrees that it will not cause any affiliated institution, organization or entity to not employ or offer to employ any of the persons engaged by the Management Company as employees or independent contractors without prior written consent of the Management Company during the term of the management services agreement and for six months from the date of termination of the management services agreement with the Member.

ON THE BASIS of the foregoing, the undersigned Member applies for membership in the Group and agrees to be bound hereby if accepted as a member in the Group.

THIS AGREEMENT PROVIDES FOR JOINT AND SEVERAL LIABILITY WITH OTHER MEMBERS OF THE GROUP. SEE § 15

180 DAY TERMINATION NOTICE REQUIRED. SEE § 14.

Company: \_\_\_\_\_

Contact Name & Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

FOR ADMINISTRATOR'S USE ONLY

This Membership is accepted and the foregoing is agreed to as of \_\_\_\_\_

ACCEPTED AND AGREED TO: **Massachusetts Care Self-Insurance Group, Inc.**

BY: **COVE RISK SERVICES, LLC** - As authorized Third Party Administrator of the Group

BY: \_\_\_\_\_ Date: \_\_\_\_\_

Name and Title: \_\_\_\_\_

## ELIGIBLE CLASS CODES

(Unless and Until Modified by the Board of Trustees)

### Classification Codes of Employee

- 8829 Nursing or Convalescent Home - All Employees
- 8824 Assisted Living Residences: Personal Care Employees (formerly 9052)
- 8826 Assisted Living Residences: All Other Employees (formerly 9058)

### Standard Industrial Classification Codes

- 8051 Skilled Nursing Care Facilities
- 8052 Intermediate Care Facilities
- 8059 Nursing & Personal Care Facilities, NEC

It is also agreed that in instances that there is common ownership of multiple entities within a Group participation, these entities would also be eligible as long as the entirety of all entities predominant classification code of employee and/or standard industrial classification code falls within one or more of the above listed schedule of codes.

## REFUND OR CREDIT PLAN

(Unless and Until Modified by the Board of Trustees)

With advice from the Administrator and an actuarial review, the Board of Trustees of Massachusetts Care Self- Insurance Group, Inc. (the "Group") will determine the positive balance, if any, as of December 31 of the fund year. The positive balance will be determined after appropriate allowance is made for contingency reserves. In order to participate in the distribution of the positive balance as a policyholder dividend, a member must have continued to be a member at the end of the fund year and must have contributed to the positive balance in that fund year; provided, however, participation in a distribution based on a previous fund year shall not be contingent on a continued membership in the Group after that fund year provided a distribution will be made to a former member only (i) if the Member contributed to the positive balance in that fund year, (ii) only if distributions are being made to current members based on a current actuarial study, and (iii) if the Member voluntarily terminated its membership in the Group and not as a result of the Member's default under this agreement or the by-laws of the Group, and any such distribution to a former member may be paid over time based on a recommendation by the Administrator on the basis of an actuarial study, all of which shall be subject to the approval of the board of Trustees. In no event shall a former member receive a distribution until all incurred claims have been closed for the fund year in question. In order for a positive balance to be taken into account in establishing a member's policyholder dividend, the Member must have contributed to the positive balance in that fund year. Presently, the Massachusetts Division of Insurance prohibits, by regulation, the distribution of dividends, if any, earlier than twenty-four months from the end of the applicable fund year, in an amount not to exceed 25% of the available surplus, and then portions annually thereafter. See 211 CMR §67.08(4). The positive balance is allocatable to the Member for purposes of policyholder dividends on the basis of each member's percentage of contribution to the positive balance for the fund year.

## PREMIUM PAYMENT PLAN

(Unless and Until Modified by the Board of Trustees)

The Member shall have the right to elect one of the three following plans (referred to herein as "Premium Payment Plan") for a full fund year. Premium payment plans are subject to change at any time by decision of the Group's Board. The Member's election shall occur simultaneously with the Member's execution of the application and indemnity agreement and sixty (60) days prior to the commencement date of each fund year.

- (i) One hundred percent (100%) of the estimated annual net premium on or before the date of execution of this application and indemnity agreement and on or before the commencement date of each fund year; or
- (ii) (a) Twenty-five percent (25%) of the estimated annual net premium on or before the date of execution of this application and indemnity agreement and on or before the commencement date of each fund year (the first installment); and

(b) Twenty-five percent (25%) of the estimated annual net premium on or before the first day of the fourth, seventh and eighth month of each fund year.

(iii) (a) Twenty-five percent (25%) of the estimated annual net premium on or before the date of execution of this application and indemnity agreement and on or before the commencement date of each fund year (the first installment); and

(b) Twelve and a half percent (12.5%) of the estimated annual net premium on or before the first day of the second, third, fourth, fifth, sixth and seventh month of each fund year.

**If a member elects to participate in a multi-payment installment plan, time shall be of the essence for the due dates of each applicable installment payment.** The provisions of this premium payment plan do not diminish or affect the Group's rights of cancellation or termination for default, as prescribed under the agreement. If the Member is thirty (30) days or more late in making its first or second annual installment payments, the premium payment plan for the Member shall cease for the fund year's premium and, at the discretion of the Group, upon written notice, the balance of the present fund year's estimated annual net premium shall be immediately due and payable. If the Member is thirty (30) days or more late in making its third annual installment payment, (i) the premium payment plan for the Member shall cease for that fund year's premium and shall not be available for the following fund year's premium, (ii) the balance of the present fund year's estimated annual net premium shall be immediately due and payable and (iii) one hundred percent (100%) of the following fund year's estimated annual net premium shall be due and payable on or before the commencement of that fund year. Upon any failure to make a required payment of premium, contribution, discount amount, deficit amount or corridor factor the required payment shall accumulate interest at a rate of eighteen (18%) per annum or, if such rate is illegal, at the maximum rate allowed by law from the date the payment was due until the date of payment of the required premium payment plus accumulated interest. This Exhibit C shall in no way impair the right of the Group to declare a default and pursue any and all remedies for non-payment of premium by a member pursuant to the terms of this agreement and the by-laws of the Group. The member shall pay a reasonable attorneys fee, costs and expenses of litigation for any default or late payment.

EXHIBIT D – No Longer Used

EXHIBIT E

## RATING PLAN

The following plan will be used to develop premiums:

MASS. WORKERS' COMPENSATION RATES from: The Workers' Compensation Rating and Inspection Bureau of Massachusetts

RATE

x PAYROLL (per \$100)

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Manual Premium

x Experience Modification Factor

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Modified Premium

(as calculated according to the WCRB experience modification/ARAP formula)

- Discount

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Net Premium

+ Adjustments due to Payroll Audit

+ Deficit Amount\*

+ Corridor Amount\*\* (up to 20% of Modified Premium)

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Final Premium

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\* If applicable (See Section 8 (f)) \*\* If a Deficit Amount exists for the Member after application of the discount amount

**APPLICATION FOR MEMBERSHIP**

**IN A WORKERS' COMPENSATION SELF-INSURANCE GROUP**

Name of Group **Massachusetts Care Self-Insurance Group, Inc.**

Name of Company (Applicant) \_\_\_\_\_

Federal Employer I.D. Number \_\_\_\_\_

*Type of Business*

Corporation      LLC      Partnership      Individual      Other (Specify) \_\_\_\_\_

The following documents **must be included** with this application:

1. An **ACORD Workers' Compensation Application** or similar form providing underwriting and rating information.
2. The **current financial statement of a member**, which is either audited, reviewed, or compiled by an independent Certified Public Accountant, including, at a minimum, a balance sheet, a profit and loss statement, a statement of change in the fund position and a statement of the member's net worth and including all notes of the Certified Public Accountant that are an integral part of the financial statement. Reviewed financial statements must be accompanied by a Federal Income Tax return for the most recent calendar of fiscal year.
3. A **written agreement to pay** the group no less than twenty-five percent (25%) of the member's estimated annual net premium not later than the initial day of coverage afforded by the group.
4. Any member with an experience modification of greater than 1.25 must include a **written explanation describing the causes of its high experience modification** and outlining remedial measures it has taken and will be taking in the future to lower its modification.

**DISCLOSURE OF JOINT AND SEVERAL LIABILITY AND WARRANTIES OF MEMBERS OF THE WORKERS' COMPENSATION SELF-INSURANCE GROUP**

If the applicant is a single proprietorship, this disclosure form must be signed by the owner. If it is a partnership, it must be signed by each general partner. If the applicant is a corporation, this disclosure form must be approved by its board of directors, and signed by its secretary, clerk, or authorized officer.

1. The applicant understands that this is **not** an application for insurance coverage; it is an application to join a workers' compensation self-insurance group.

2. [This Section Does Not Apply to Groups of Public Employers]

a. **Assumption of Joint and Several Liability Without Time Limit:** the applicant agrees that it is assuming unlimited joint and several liability for all the losses of the group arising during the applicant's period of its membership to the group. This means that even though the losses may be reported and paid many years later, the applicant is still liable, even if it leaves the group. This also means that if in future years, the assets of the group are not sufficient to pay the losses for the years in which the applicant is a member, the applicant will be assessed to pay those losses. The applicant remains liable to assessment for losses as long as the applicant is in existence.

b. **Liability of the Applicant in the Event of Insolvency of Another Member:** the applicant is assuming joint and several liability for all losses of the group. This means that if any other member becomes insolvent and is unable

to pay its share of the losses, the applicant will be required to pay a proportionate share of the insolvent member's losses.

c. **Liability of Unincorporated Applicants:** if the applicant is a single proprietorship, or a partnership the owner or individual general partner may be held personally liable for the applicant's share of any assessment without limit or diminution. This may mean that if a group becomes insolvent, owners of corporations may well have their liability limited to their investment in their corporations. The liability of unincorporated members will not be limited to their investment in their companies, but may be extended to their personal assets as well.

3. **PREMIUMS:** during the first three years a group is in operation, it is required to use the Workers' Compensation Rating and Inspection Bureau (WCRB) workers' compensation rates. During its third year, it can apply to the Division of Insurance to use its own rates starting with the fourth year, but there can never be any guarantee that the Division will permit a rate decrease.

4. **RATING PLANS:** all groups are required to use the rating plans and classifications filed by the WCRB. All experience modifications will be calculated in accordance with the rules promulgated by the WCRB.

5. **DIVIDENDS AND OTHER DISTRIBUTIONS:** may be declared before the end of the policy year, but no payment can be made until at least two years after the end of the policy year and then the group can pay up to twenty-five percent (25%) of the dividend each year for the following four years. Each year, before dividends are paid, the group shall review its losses and adjust the dividend upward or downward to reflect maturing loss experience.

6. **AUTOMATIC ASSESSMENTS:** if, at any time, the claims against the group for a particular policy year exceed the assets the group is holding to pay those claims, it will automatically assess all members. Non-payment of the assessment will be grounds for termination of the applicant's coverage by the group. Since it is unlikely that any other insurer or self-insured group will provide coverage until the assessment is paid, the applicant may find itself subject to penalty by the Department of Industrial Accidents. These penalties may range from fines to stop work orders.

7. **WARRANTIES:** The undersigned employer warrants that:

a. It is not in debt to any insurance company for any unpaid premium for workers' compensation coverage other than additional premiums resulting from audits of current policies or retrospective additional premiums, which have not yet been billed.

b. It has reviewed the Payment Plan attached hereto and agrees to pay the group not less than twenty-five percent (25%) of its estimated annual premium not later than the initial day of coverage afforded by the group, and the balance shall be paid in full within the first eight months.

c. It has reviewed the group's automatic assessment plan attached hereto and agrees to pay any assessments promptly.

## CERTIFICATION

Name of Company (Applicant) \_\_\_\_\_

I/We have read and understood the above disclosure of joint and several liability and the warranties.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name & Title: \_\_\_\_\_

