

## Indemnity Agreement & Membership Application

*Please review the details of the following two legal documents. Signatures are required on pages 6 and 8.*

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### INDEMNITY AGREEMENT

THIS AGREEMENT is made as of the date set forth below by and between the Massachusetts Retail Merchants Workers' Compensation Group, Inc. (the "Group"), and the undersigned employer located in the Commonwealth of Massachusetts, (the "Member").

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 purpose of this Agreement, the following terms shall have the following meanings:

**"Administrative Expense Fund Surplus"** means the allocated administrative expense fund including interest earned thereon which shall accrue to the benefit of the Group in a Fund Year in excess of the amount necessary to fund all Administrative Expenses of the Group.

**"Administrative Expenses"** means all payments to a management company made pursuant to an Administration 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.

**"Aggregate Surplus"** means the aggregated Members' Surplus for all Members of the Group plus other unearned income of the Group.

**"Application and Indemnity Agreement"** means each Application and/or 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 bylaws of the Group.

**"Charter Member"** means one of the original Members of the Group, as defined in the Bylaws of the Group.

**"Claims Fund Positive Balance"** means the allocated claims fund including interest earned thereon which shall accrue to the benefit of the Group in a Fund Year in excess of the amount necessary to fund all claims of the Group, including but not limited to adequate contingency reserves, for such Fund Year.

**"Contribution"** means a payment to the Fund made by a Member in response to an assessment in accordance with the Group's bylaws, the Application and Indemnity Agreement or and other rules, regulations, policies and procedures pursuant or 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 an administrative fund account.

**"Deficit Amount"** means 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.

**"Discount Amount"** is the discount applicable to each Member set forth in the Rating Plan attached to this Application and Indemnity Agreement.

**"Final Premium"** means the aggregate premium owed by all Members in each Fund Year to the Group after adjustments to Manual Premium due to payroll audits.

**"Fund"** means the sum of all Contributions made by Members pursuant to the Group's bylaws, the Application and Indemnity Agreement, and the rules, regulations, policies and procedures pursuant or incident thereto: all moneys, contracts, policies or

properties received by the Board of Directors of the Group from the Members for the uses and purposes set forth in the Group's bylaws, the Application and Indemnity Agreements, and the rules, regulations, policies and procedures pursuant or incident thereto; and all income gains and all other increments of any nature whatsoever therefrom.

**"Fund Year"** means a period of twelve (12) consecutive months identified by the Board of Trustees of the Group. The initial Fund Year shall commence January 1, 1998 and end on December 31, 1998 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 greater or fewer than twelve (12) months if it is the first or last such year of the Fund or a year involving change in the commencement or termination date of the Fund Year. The Fund Year and the Fiscal Year shall be the same.

**"Manual Premium"** means the total premium that would be paid in each Fund Year by each Member to the Group pursuant to the rates established by the Massachusetts Rating Bureau if there were no adjustments for the experience or the Discount Amount.

**"Member's Surplus"** means the amount by which the Member's Net Premium 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 pursuant to the rates established by the Massachusetts Rating Bureau if there were no adjustments for the experience or the Discount Amount) of the Administrative Expenses.

**"Net Premium"** means 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 NCCI experience modification formula) less the Discount Amount. Final Premium may be greater than the aggregate Net Premium of all of the Members.

**2. Representation and Warranty by the Member.** The Member represents and warrants that it is engaged in the business of providing retail services, and is a Member in good standing of a retail sponsoring association.

**3. Conditions Precedent to Effectiveness of Agreement.** This Agreement shall not be effective unless and until (a) the group receives from the Commissioner, prior to January 1, 1998, a certificate of approval as a workers' compensation self-insurance group under the "Statute", (b) the Group obtains reinsurance effecting the coverage described to the Group's certificate of coverage, (c) the Group determines that it will be financially viable, and (d) the administrator of the Group, (the "Administrator"), accepts on behalf of the Member's application to become a member of the Group which application must be approved by the Board of Directors of the Group.

**4. Bylaws, Rules, Regulations, Policies and Procedures.** The Member shall abide by the bylaws and any other rules, regulations, policies and procedures adopted by the Group from time to time.

**5. Coverages.** Upon the later of (a) the date the Member's application for coverage has been approved by the Administrator and the Board of Directors of the Group the Group agrees to provide the Member with the risk management services described in Section 10 of this Agreement and workers' compensation and employers' liability coverage as described in the Group's certificate of coverage. The Member agrees to pay the premiums, assessments, and entry fee, if any, as provided herein, for such services and coverage, and all costs of collection thereof, including attorneys' fees.

**6. Payroll Classification.** The Member shall furnish to the Administrator not less than (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 current payroll on the books of the Member. The Member agrees to pay promptly any additional premium which results from this annual adjustment or any audit of such Member's payroll records upon receipt of an invoice from the Administrator. If following the retirement of any Deficit Amounts there exists a Claims Fund Positive Balance or an Administrative Expense Fund Surplus, the Claims Fund Positive Balance or Administrative Expense Fund Surplus, as the case may be, shall be dealt with in accordance with the provision of Section 12 and Schedule 2. 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.

## **7. Premiums.**

- a. The Member agrees to pay to the Group premiums computed in accordance with a rating plan, as amended from time to time, on file with the Commissioner.

b. The Member agrees to pay its premium for the initial Fund Year, commencing on January 1 in accordance with the premium payment plan approved by the Board of Directors of the Group as described in Section 7(c) (the “Premium Payment Plan”). If the Member becomes a member of the Group on a date other than at the beginning of a given Fund Year, it agrees to pay its entire pro-rata premium for the remainder of the Fund Year on or before its initial date of coverage, with the amount of such premium to be specified by the Administrator, with the rates in effect at the time of the coverage.

c. The Group shall establish a Premium Payment Plan which it shall file with the Commissioner. The Group, acting through its Board of Directors, reserves the right to amend the premium Payment Plan as the same may be amended. A copy of the current Premium Payment Plan is attached for information purposes as Schedule 1.

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 Directors in accordance with the bylaws or rules and regulations of the Group based upon recommendations or vote of the Board of Directors of the Group or 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 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. If, following the annual adjustment referenced in Section 6, a Deficit Amount exists for the Members, but an Aggregate Surplus exists for the Group for the Fund Year in question, Surplus shall be applied to the aggregated Deficit Amounts. If, following the application of the Aggregated Surplus, aggregated Deficit Amounts still exist for the Members, then the Members shall pay an additional premium assessed pursuant to the provisions of Section 7(d) and assessed pro-rata based on the Net Premium of each Member. If the Members fail to make the required payments, then the aggregated Deficit Amounts shall be made up immediately with the Aggregate Surplus from a prior Fund Year or the Members shall be subject to automatic assessment without further action by the Group. In the event an individual member fails to pay any premium, assessment or other contribution to the Group when due, the Members of the Group shall be subject to automatic assessment without further action by the Group. These obligations with respect to the Fund Year in question shall survive termination of this Agreement and any termination of the Member’s membership in the Group.

g. If, following the annual adjustment described in Section 6 and following the retirement of any Deficit Amount there exists a Claims Fund Positive Balance or an Administrative Expense Fund Surplus, this Claims Fund Positive Balance or Administrative Expense Fund Surplus, as the case may be, shall be dealt with in accordance with the provisions of Section 12 and Schedule.

**8. Entry Fee for New Members.** If the Member is not a Charter Member, the Member agrees to pay the Group a single entry fee in an amount determined by the Group’s Board of Directors. At the present time no entry fee is charged, however the Group, acting through its Board of Directors, reserves the right to amend the entry fee from time to time in its sole discretion.

**9. Excess Insurance.** The Group agrees to maintain with qualified underwriters excess insurance coverage as determined by the Board of Directors of the Group.

**10. Risk Management Programs.** The Group, through its Administrator, will provide risk management programs to the Member, designed to assist the Member in following a plan which may result in reduced losses and costs. The Member agrees to cooperate in instituting any and all such risk management programs. Notwithstanding the Group’s and Administrator’s responsibility for the risk management programs, the Group and the Administrator assumes the responsibility for and are in no way ensuring the safety of the workplace of the Member.

**11. 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 or employees 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 monthly to the Member a computer printout showing a statement of claims status, and activities.

**12. Refund or Credit Plan.** Any Claims Fund Positive Balance resulting from overall loss experience of the Group shall be available as a return of premium or to be taken into account in establishing the premium in subsequent years in accordance with a Refund or Credit Plan as adopted and amended from time to time by the Board of Directors of the Group. In addition, any Administrative Expense Fund Surplus will be available as a return of premium or will be taken into account in establishing individual policy premiums in subsequent years in accordance with such Refund or Credit Plan. A copy of the current Refund or Credit Plan is attached for informational purposes as Schedule 2.

**13. Termination of Coverage and Membership.** This Agreement and the Member's membership in the Group and Coverage thereunder may be terminated by the Board of Directors of the Group for failure to comply with the terms of this Agreement or the bylaws, rules, regulations, policies or procedures of the Group including, but not limited to, the failure to pay premiums. The condition of default and termination shall be in accordance with the terms and conditions of the bylaws of the Group. The Member may withdraw its membership and coverage at the end of a Fund Year by giving the administrator prior written notice of its intention to withdraw **at least ninety (90) 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. If the Group determines that because of modifications to or repeal of the laws pertaining to self-insurance groups or for any other reason that a more appropriate structure exists to fulfill the purpose of the Group to provide workers' compensation insurance coverage, then the Member will in good faith and with due diligence cooperate with the Group in formulating a new structure and new agreement between the Group and the Members to implement the more appropriate structure.

**14. Indemnity Agreement.** 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, each Member hereby agrees to defend indemnify and hold harmless each and every other Member of the Group from and against any claim or damage arising from the Member's noncompliance with a provision of said Chapter 152. 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 jointly and severally liable for the workers' compensation and employers' liability obligation 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 such Member's membership in the Group, of the insolvency or bankruptcy of another member of the Group, or of other facts or circumstances. Notwithstanding any other term of this Agreement, this Section 14 shall not be amended so long as the statutory requirements of such joint and several liabilities remain in place. The Section 14 shall survive termination of this Agreement and any termination of the Member's membership in the Group.

**15. Notice.** All notices hereunder shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by recognized overnight courier 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.

**16. Reapplication.** A Member who withdraws from the Group pursuant to the bylaws of the Group may not reapply for membership in the Group for a period of at least one (1) year from the effective date of such withdrawal.

**17. General.** This Agreement shall be construed under and governed by the bylaws of the Commonwealth of Massachusetts and is being executed as an instrument under seal. This Agreement may not be assigned by the Member without the prior written consent of the Group. 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. Headings included herein are for convenience only, and shall not be used to construe this Agreement.

#### **SCHEDULE 1 - PREMIUM PAYMENT PLAN**

The Premium Payment Plan for a full Fund Year shall be as follows:

- \$0 to \$2,000 - 50% due January 1st, 50% due April 1st.
- Over \$2,000 - 25% due January 1st, remainder due in 6 monthly installments February - July.
- Easy Pay/ EFT - 25% due January 1st, remainder due in 6 monthly installments February – July (all premium sizes)

Upon failure to make a required payment of premium by the due date, the required premium payment shall accumulate interest at a floating rate equal to the prime rate (as published by the Wall Street Journal), plus six percent (6%) 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 Schedule 1 shall in no way impair the right of the Group to declare a default and pursue any and all remedies for nonpayment of premium by a Member pursuant to the terms of this Agreement and the bylaws of the Group (including recovery of costs of collection and attorneys' fees).

#### **SCHEDULE 2 - ASSESSMENT PLAN**

In the event that the Group incurs a Deficit in any Fund Year, such Deficit shall be made up immediately. If such deficit exists the Members shall pay an additional premium assessed pursuant to the provisions of Section 7 (d) of the Indemnity Agreement and assessed pro-rata based on the Net Premium of the Members shall be subject to automatic assessment without further action by the Group. In the event an individual Member fails to pay any premium, assessment or other contribution to the Group when due, the Members of the Group shall be subject to automatic assessment without further action by the Group. These obligations with respect to the Fund Year in question shall survive termination of this Agreement and any termination of the Member's membership in the Group.

#### **SCHEDULE 3 - REFUND OR CREDIT PLAN**

For the Fund Year 2023 and, unless modified, for subsequent years.

With advice from the Administrator and approval from the Commissioner of Insurance, the Board of Directors of the Massachusetts Retail Merchants' Workers' Compensation Group, Inc. (the "Group") will, after the end of each Fund Year, determine the total Surplus available either for distribution to the Members of the Group as a return, or to be taken into account in establishing the Contribution for subsequent years.

The Surplus for any Fund Year shall be determined by an independent actuary for the Group and shall be equal to the market value of assets less the percent value of liabilities, less reserves for incurred but not reported claims, and less the contingency reserves for the Fund Year, if any. In order to participate in the distribution of the Surplus as a return, a Member must have continued to be a Member to the end of the Fund Year.

In order for a Surplus to be taken into account in establishing a Member's Contribution for subsequent Fund Years, the Member must have contributed to the Surplus in the Fund Year to which the Surplus arose.

Members can expect to receive a distribution from the Surplus as a return of premium, if any, no earlier than twenty-four (24) months after the end of the Fund Year and annually thereafter. Any such distribution shall be made in accordance with the terms of the Code of Massachusetts Regulations, as may be amended from time to time, including Section 67.08 (4) of said Regulations.

ON THE BASIS of the foregoing, the undersigned Member applied 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 § 14

90 DAY TERMINATION NOTICE REQUIRED. See § 13.

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 Retail Merchants Workers' Compensation Group, Inc.

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

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

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



Commonwealth of Massachusetts Division of Insurance

APPLICATION FOR MEMBERSHIP

IN A WORKERS' COMPENSATION SELF-INSURANCE GROUP

Name of Group **Massachusetts Retail Merchants Workers' Compensation 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 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 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 and 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 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: \_\_\_\_\_



PLEASE LIST **ALL** OWNERS, PARTNERS, CORPORATE DIRECTORS AND  
PRINCIPAL OFFICERS OF THE BUSINESS

[illegible]

\*Please list all persons included in the business registration filing with the State, according to their title, such as: President, Treasurer, Secretary, Member, Partner, Director, Trustee, etc... If there is no ownership interest for an individual, note "0" or "N/A" under PERCENT OWNERSHIP.