

THE OHIO MANUFACTURERS' ASSOCIATION

WORKERS' COMPENSATION SERVICES AGREEMENT

The Ohio Manufacturers' Association, acting through The OMA Service Corporation (collectively, the "OMA"), and the Employer identified on the applicable Enrollment Form which is incorporated herein by reference, hereby enter into this Workers' Compensation Services Agreement ("Agreement") which is necessary in order for Employer to participate in the selected Workers' Compensation Program ("Program") identified on the Enrollment Form.

1

Section 1. PURPOSE

- a. The purpose of this Agreement is to provide the Employer certain management services relating to the administration of its workers' compensation plan and offer the Employer an opportunity to reduce workers' compensation premiums via inclusion in the OMA group rating programs as set forth below.

Section 2. MANAGEMENT SERVICES (APPLIES TO ALL PROGRAMS)

- a. The OMA shall provide the following Program benefits and services to the Employer ("Management Services"):
 - i. Maintain, manage and monitor individual claims of injured employees to help control awards and costs for compensation and medical payments chargeable to the Employer's account and influencing its premiums;
 - ii. Represent the Employer, upon proper notification, as is permissible under the Laws and the Rules and Regulations of the Ohio Bureau of Workers' Compensation ("Bureau"). Such representation shall include attendance at administrative hearings before the Industrial Commission and representation before the Bureau Adjudicating Committee or the Bureau Administrator's designee, unless requested otherwise by Employer. Specifically excluded are any hearings arising from an application for an award based on a Violation of a Specific Safety Requirement ("VSSR");
 - iii. Verify that the Bureau has included all applicable payrolls in calculation of Employer's expected losses;
 - iv. Upon request of Employer, consult with the Employer to determine the proper manual classifications for payroll reporting purposes based upon the Rules and Regulations of the Bureau. When appropriate, request the Bureau to inspect and, if appropriate, modify, erroneous workers' compensation manual classification in order to bring Employer in conformity with such Rules and Regulations;
 - v. Upon request of Employer, provide advice regarding the Employer's personnel in distributing payroll to the proper workers' compensation manual classifications;
 - vi. Review lost time claims to determine if awards are made within the rules and regulations of the governing Workers' Compensation program. Corrections will be requested in those cases where overpayments or incorrect reserves have been discovered and established, but only to the extent that such errors have the potential to result in rate changes and/or refunds;
 - vii. Annually perform an actuarial review of the Employer for the purpose of attempting to qualify the Employer for the OMA Workers' Compensation Group Experience or Group Retrospective Rating Programs;
 - viii. Notify the Employer of any action taken by the OMA directly on Employer's behalf before the Bureau and/or the Industrial Commission;
 - ix. Render advisory services concerning workers' compensation matters including telephone consultation during normal business hours;
 - x. Provide continuing education opportunities, such as thorough various publications, including the OMA website, and periodic webinars, to the Employer regarding claim procedures, accident prevention, and significant amendments made to the Ohio Workers' Compensation Laws and related developments;
 - xi. Review all claims to determine any "handicap refund" and/or "settlement opportunities" or other cost relief that may be available to the Employer. To obtain handicap relief, the OMA will obtain

- relevant medical information, make appropriate filings, and attend hearings as appropriate. To pursue lump sum settlement opportunities, the OMA will work with claimants, attorneys and other appropriate parties, determine and negotiate appropriate settlement amounts, and file appropriate paperwork with the Bureau; and
- xii. Provide appropriate management reports as they pertain to the Employer's individual experience modification, claims and Bureau program eligibility.

Section 3. GROUP EXPERIENCE RATING PROGRAM ONLY

- a. If the Group Experience Rating Program option is selected on the Enrollment Form, the OMA shall provide the following Program benefits and services:
- i. The OMA shall sponsor a Group Experience Rating Plan which complies with the requirements as set forth in OAC 4123-17-61;
 - ii. The OMA shall file with the Bureau, the completed Employer Statement for Group Experience Rating Plan and the Sponsoring Organization's Application for Group Experience Rating Plan for each policy year;
 - iii. The OMA shall provide all the Management Services listed in Section 2 of this Agreement.

Section 4. GROUP RETROSPECTIVE RATING PROGRAM ONLY

- a. If the Group Retrospective Rating Program option is selected on the Enrollment Form, the OMA shall provide the following Program benefits and services:
- i. The OMA shall sponsor a Group Retrospective Rating Program ("Retro Group") which complies with the requirements as set forth in OAC 4123-17-73;
 - ii. The OMA shall submit a Retro Group application to the Bureau to enroll in the Program for each policy year;
 - iii. Upon request by the Bureau or the OMA, Employer shall submit additional information necessary for the Bureau to rule upon the Retro Group application (including Bureau form U-153);
 - iv. The OMA shall provide all the Management Services listed in Section 2 of this Agreement.
- b. The Bureau considers each member of a Retro Group individually in assessing the premium payments for the Retro Group policy year. The Retro Group is considered as a single entity for purposes of calculating Retro Group premium adjustments. The Bureau recalculates premiums during the evaluation period which is the three-year period beginning immediately after the end of the Retro Group policy year. The recalculations will occur three times during the evaluation period at twelve, twenty-four and thirty-six months after the end of the Retro Group policy year (each, an "evaluation date"). At each evaluation date, the Bureau recalculates the premium based on developed incurred claim losses, including reserves, for the entire Retro Group during the original policy year. The Bureau compares the new premium to the standard premium. If the retrospective premium is lower than the standard premium, the Bureau will distribute a refund to the employers in the Retro Group. If the retrospective premium is higher, then the Bureau will charge each employer in the group an assessment. The Bureau may hold a portion of refunds or defer assessments owed in the first and second evaluation periods to minimize the volatility of funds and assessments. Any net refund or assessment will be fully distributed or billed by the Bureau in the third evaluation period.
- c. Employer acknowledges that it may be assessed an additional premium or it may receive a premium refund depending on the above. The Bureau will distribute any owed refunds or assessments directly to Employer. The amount of refund or assessment is based upon the percentage of the total group standard premium paid by Employer at the time of evaluation. The refund or assessment is multiplied by this percentage and the resulting amount is distributed or billed to Employer. The Bureau shall send premium refunds, if any, within four months of the evaluation date. Premium assessments, if any, are due twenty-eight days after Employer receives the invoice. The Bureau will charge penalties on any additional premium not paid when due.
- d. Claim losses occurring during a Retro Group policy year will be tracked for all Retro Group members and refunds or assessments will be distributed based on those losses in the subsequent evaluation period. The Retro Group policy year start and end dates will match that of the rating policy year. Incurred losses used in

the retrospective premium will be limited to \$500,000 per claim. Incurred losses will not include surplus or VSSR costs.

- e. Notwithstanding anything to the contrary contained herein, the OMA reserves the right, in its sole discretion, to not create or sponsor a Retro Group to participate in the Program. The Bureau also has the right to cancel a Retro Group and/or the Program at its discretion. In any such instance, the OMA shall provide Employer with notice of the same, and this Group Retrospective Rating Program shall be terminated effective immediately. The Employer will automatically be converted to a Management Services Program.

*****The remaining sections of this Agreement apply to all Programs*****

Section 5. ELIGIBILITY

- a. The Employer's participation in any Program is conditioned upon meeting all of the following requirements:
 - i. Employer shall currently be, or shall become, a member of the OMA by paying appropriate dues, and shall maintain such membership in good standing during the term of this Agreement;
 - ii. Employer shall provide to the OMA an executed Form AC-2 to be filed with the Bureau;
 - iii. Employer shall meet any and all other criteria for participation as communicated from time to time by the OMA in its sole discretion; and
 - iv. Employer shall comply with all of the terms and conditions of this Agreement.
- b. The Employer's participation in the Group Experience Rating Program is conditioned upon meeting all of the following requirements:
 - i. Employer shall meet all of the criteria for participation as required by Section 5(a) of this Agreement;
 - ii. Employer shall be a private state funded employer;
 - iii. Employer shall meet all of the criteria for participation in a Group Experience Rating plan as required by Ohio law, including but not limited to the criteria set forth in Ohio Administrative Code 4123-17-61; and
 - iv. Employer shall comply with certain Safety Program requirements as set forth in Exhibit A, which is attached hereto and incorporated as if fully rewritten herein.
- c. The Employer's participation in the Group Retrospective Rating Program is conditioned upon meeting all of the following requirements:
 - i. Employer shall meet all of the criteria for participation as required by Section 5(a) and 5(b) of this Agreement;
 - ii. Employer shall have active workers' compensation coverage according to standards provided in OAC 4123-17-73(D)(2);
 - iii. Employer shall not be a member of more than one retro group or a retro and non-retro group for the purpose of obtaining workers' compensation coverage; and
 - iv. Employer shall be homogeneous with the industry group of the Retro Group pursuant to OAC 4123-17-73(C)(2).

Section 6. TERMINATION AND NON-RENEWAL

- a. This Agreement shall remain in full force and effect until terminated as follows:
 - i. Employer provides the OMA with written notice of non-renewal no later than ninety (90) days prior to the next enrollment deadline of the Program the Employer is currently enrolled in;
 - ii. Employer fails to meet the requisite eligibility requirements as set forth in Section 5 of this Agreement;
 - iii. OMA provides Employer with written notice of termination no later than the date prescribed by the Bureau;
 - iv. Employer does not submit payment or any Program form by the respective due date; or
 - v. The Group Experience Rating Program fails to meet the requirements for group rating plans as set forth in chapters 4123-17-61 through 4123-17-68 of the Ohio Administrative Code, or the OMA decides to discontinue the Program. In such an event, the Employer will be automatically

converted to a Management Services Program enrollment and will receive a prorated refund based on the number of days the Group Experience Rating Program operated during the term of this Agreement, and Employer agrees that the OMA will not have any liability to the Employer for any costs, expenses, losses or damages of any kind arising directly or indirectly from or related in any way to the discontinuance of the Group Experience Rating Program.

4

Section 7. INDEMNIFICATION AND LIMITATION OF LIABILITY

- a. The Employer hereby agrees to indemnify the OMA and hold harmless the OMA and its members, officers, directors, employees and agents from and against all claims, liabilities, demands, obligations, costs, expenses, loss or damages, of any nature, and whether known or unknown, arising directly or indirectly out of or in connection in any way to the following:
 - i. The decision of the OMA to permit any Employer to participate in the selected Program;
 - ii. The Employer's contribution, premium, assessment, or distribution or discount levels;
 - iii. Any questions of workers' compensation claims, including but not limited to claims losses, claims management, coverage or lapse of coverage;
 - iv. Any termination of the Employer's involvement in the selected Program;
 - v. Any abandonment or failure to apply or qualify for group rating status, group retrospective status or any other Program in any year; and
 - vi. Any decision by the OMA or the Bureau regarding the Employer's eligibility to participate in the selected Program.
- b. The OMA shall not be liable to Employer for any damages caused by negligence or errors in the performance of the OMA's duties hereunder in excess of the amount of the most recent Administrative Fee paid by Employer.

Section 8. REPRESENTATIONS AND WARRANTIES

- a. Employer hereby represents and warrants as follows:
 - i. Employer is, or will become, a member in good standing of the OMA, and further agrees that it will continue to pay membership dues and remain a member in good standing throughout the term of this Agreement.
 - ii. As of the date of enrollment into the Group Experience Rating Program or Group Retrospective Rating Program, if applicable, Employer is in compliance and shall remain in compliance with the following Bureau group participation requirements:
 - 1. Employer has not joined more than one group plan for the Coverage Period;
 - 2. Employer is current (not more than forty-five (45) days past due) on any and all undisputed premiums, assessments, penalties or any other monies otherwise due to any fund administered by the Bureau;
 - 3. Employer is current on its payment schedule if participating in a partial payment agreement for premiums or assessments;
 - 4. Employer does not have cumulative lapses in workers' compensation coverage in excess of forty (40) days within the nine (9) month period prior to the enrollment date as stated on the Enrollment Form;
 - 5. Employer's coverage status cannot be cancelled or combined during the Coverage Period;
 - 6. Employer is in active status for workers' compensation premium purposes; and
 - 7. Employer has no pending or completed merger, acquisition or business reorganization that impacts the experience of the group. If Employer subsequently plans to merge its business, acquire another business or reorganize its business, it must notify OMA as soon as reasonably possible.
- b. OMA hereby represents and warrants as follows:
 - i. The services listed herein will be provided in a professional manner and that reasonable diligence will be exercised in the performance of all of its contractual responsibilities.

Section 9. COVENANTS

- a. Employer hereby covenants and agrees as follows:
- i. Payment of workers' compensation premiums and assessments is the sole responsibility of Employer. In no event shall the OMA be liable for any premiums, assessments or penalties as assessed by any federal, state or local government, department, commission, bureau, agency, official, or regulator;
 - ii. Employer will submit to the OMA all claim applications, supporting documentation and follow-up correspondence it receives pertaining to a claim filed against its risk;
 - iii. Upon enrollment in the Group Experience Rating Program or the Group Retrospective Rating Program, Employer will comply with all rules, regulations and policies established by the OMA and all statutes of the state of Ohio and rules adopted by the Administrator of the Bureau with respect to the Group Experience Rating Program and Group Retrospective Rating Program. Employer shall also comply with the Safety Program Guidelines adopted by the Bureau and any safety program and policies established by the OMA;
 - iv. Employer will cooperate with the OMA, the Bureau, the Industrial Commission, and their respective employees, agents and subcontractors and any independent contractors rendering services in connection with the Program, in promptly providing information, requested authorizations, access to relevant records and timely responses, and in complying with all reasonable requests pertaining to the Program and Employer's participation therein;
 - v. Employer agrees that its acceptance to the Group Experience Rating or Group Retrospective Rating Program for any rating year does not guarantee Employer's eligibility in any subsequent rating year;
 - vi. During the first thirty (30) days of the Initial Term, while the AC-2 Form is pending filing with the Bureau, the Employer agrees it is responsible to notify the OMA of any hearing notices as well as the Bureau and /or the Industrial Commission with respect to such matters; and
 - vii. When circumstances warrant, the OMA may recommend that the Employer request an independent medical examination of a claimant. Should the Employer authorize the OMA to arrange an independent medical examination of any claimant, the Employer agrees that the cost of such examination shall be the responsibility of the Employer. Other claims management expenses the OMA may recommend to Employer and Employer may elect to undertake and pay for include: Employer's attorney fees, medical record requests, court reporting, and private investigation/ surveillance expenses.
- b. OMA hereby covenants and agrees as follows:
- i. Upon receipt of all claim applications, supporting documentation and follow-up correspondence from Employer pertaining to a claim filed against its risk, the OMA will examine all such materials for accuracy, completeness and eligibility.

Section 10. MISCELLANEOUS

- a. Ownership of Documents. All claim files, claim logs, and computerized data files in OMA's possession ("Work Product"), shall be and remain the exclusive proprietary property of the OMA. At no time, including upon termination of this Agreement, shall the OMA be obligated in any way to provide any Work Product to Employer.
- b. Confidentiality. The OMA 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 Employer to fulfill its obligations under this Agreement or arising out of the Employer's relationship with claimants or the OMA, shall be considered confidential information for purposes of this Agreement. Therefore, the Employer agrees to comply with all state and federal privacy laws, including applicable 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 Employer and for no other purpose whatsoever.

- c. Modifications, Amendments or Alterations. This Agreement may be modified or amended only by mutual agreement of the parties hereto in a signed writing, with the exceptions that the OMA may unilaterally amend this Agreement to comply with any changes mandated by applicable law or regulations or for fee adjustment purposes. Any such unilateral amendment or modification by the OMA shall be communicated to the Employer in writing.
- d. Independent Contractor. The OMA is permitted to assist in the administrative work incident to the filing of claims and appeals. By executing the Agreement, the Employer grants the OMA the authority to execute and endorse, in the name of the undersigned, those documents related to the discharge of duties, solely to the extent expressly set forth in the Agreement. Each of the parties agrees that the OMA is acting as an independent contractor in performing under this Agreement.
- e. Compliance with Law and Regulations. It is understood that the services provided under this Agreement shall be in compliance with the Rules and Regulations of the Bureau and the Industrial Commission and shall specifically exclude any services that now or in the future may be deemed the practice of law.
- f. Severability. 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.
- g. Force Majeure. The OMA is not liable or otherwise responsible to Employer for nonperformance or delay in the performance of the terms and conditions of this Agreement due to acts of God, acts of government, strikes, accidents, fires, accidents in transportation, acts of terrorism, or other causes beyond the OMA's control and which could not have been reasonably foreseen or prevented.
- h. Governing Law. 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 or the services performed hereunder shall be heard exclusively in Franklin County, Ohio.
- i. 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.
- j. Survival. 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.
- k. Entire Agreement. This Agreement and the Enrollment Form constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they are related in any way to the subject matter hereof.

BY SIGNING THE ENROLLMENT FORM, OR BY SUBMITTING THE PROGRAM INVOICE WITH PAYMENT, OR BY SUBMITTING PAYMENT ALONE, THE EMPLOYER ACKNOWLEDGES IT HAS READ, UNDERSTANDS AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE ENROLLMENT FORM AND THIS AGREEMENT.

Effective date of this version of the Agreement: June 1, 2016