

National Restaurant Owners PG, Inc.

Membership Agreement – Terms & Conditions of Membership

PARTIES TO THIS AGREEMENT

This Agreement (hereinafter “Agreement”) shall be by and between National Restaurant Owners PG, Inc. (hereinafter “PG”) and Applicant.

“Applicant” shall mean itself, its owners, directors, officers, employees, volunteers, and committee members, as well as any companies which are parents of, subsidiaries of, owned by, related to, or affiliated with Applicant.

ADDRESSES OF PARTIES TO THIS AGREEMENT

PG has its principal office at 20595 Lorain Road, Fairview Park, Ohio 44126.

Applicant has its principal office at the mailing address listed on the “Application for Insurance & Membership” or any application which incorporates this Agreement by reference.

EFFECTIVE DATE OF AGREEMENT

This Agreement shall be effective as of the date that an “Application for Insurance & Membership” is (1) signed by Applicant, (2) signed by Applicant’s Retail Insurance Broker (hereinafter “Retail Broker”), and, (3) accepted by PG or its authorized representative.

WHEREAS, PG is a “purchasing group,” as defined under federal law, formed to purchase liability insurance on a group basis for its Members to cover the similar or related liability exposure(s) to which the Members of PG are exposed by virtue of their related, similar, or common business or service, and,

WHEREAS, Applicant desires to become a Member of PG for the purpose of obtaining insurance coverage available exclusively to Members of PG, and,

WHEREAS, Applicant has signed an “Application for Insurance & Membership” or application which incorporates, by reference, this Agreement;

NOW THEREFORE, in consideration of the mutual promises and covenants herein set forth, and for other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Acceptance of Terms & Conditions of Membership Agreement

Applicant agrees to become a Member of PG and accept, abide by, and be bound by the terms and conditions of membership detailed in this Agreement, as well as any changes made subsequent to the execution of the “Application for Insurance & Membership” or application referenced above, which changes shall appear at www.purchasinggroups.com.

2. Membership Benefits

A. Offer of Benefits – Additions, Changes & Discontinuations of Benefits

PG may offer various benefits to its Members.

At its sole discretion, and at any time, PG may add, change, or discontinue any benefit programs which it offers to its Members.

B. Insurance Programs

A leading benefit provided to Members of PG is access to insurance programs designed for and available exclusively to Members of PG (hereinafter “Insurance Programs”). The Insurance Programs shall be underwritten by insurance companies selected by PG (hereinafter “Selected Carriers”).

Applicant agrees that it will accept, abide by, and be bound by the “Terms & Conditions of Insurance” in force as of the effective date of this Agreement, which shall appear at www.purchasinggroups.com, as well as any changes made subsequent to the effective date of this Agreement, which changes shall appear at www.purchasinggroups.com.

C. Other Benefits

From time to time, PG may provide other benefits, functions, and services to its Members, including, but not limited to:

- i. Educational materials and services;
- ii. Financial services;
- iii. Durable goods;
- iv. Physical and virtual forums for its Members to interact with one another; and,
- v. An information clearinghouse for Members.

3. Selection & Compensation of Administrator

PG shall select an administrator (hereinafter “Administrator”) to administer its business affairs. PG shall negotiate the Administrator’s compensation. Applicant agrees to accept and not dispute PG’s selected Administrator and its compensation plan.

Currently, the Administrator is Program Managers International, Inc. (hereinafter “PMI”).

4. Rights of Members

Applicant’s only rights as a Member of PG shall be to apply for and purchase insurance. Applicant shall have no other rights whatsoever as a Member or otherwise with respect to PG. Without limiting the generality of the foregoing, Applicant shall have no right as a Member of PG or otherwise under: (1) the bylaws, governing documents, or other corporate documents of PG; (2) the general corporation laws of any state, including, but not limited to, any state in which Applicant or PG is domiciled or in which Applicant or PG have connections or operations.

5. Term & Termination of Membership

Applicant's membership in PG shall commence on the inception date of insurance coverage under one of the Insurance Programs and shall terminate upon: (1) Applicant's written resignation from PG; (2) Applicant's failure to pay premiums, purchasing group membership fees (hereinafter "PGMF"), other fees, or taxes to PG, the Administrator, or an Managing General Underwriter (hereinafter "MGU") when due; (3) written notice of termination sent from PG to Applicant, which PG may give for any reason whatsoever, including, without limitation, any change in Applicant's business which could jeopardize the homogeneity of PG; or, (4) the expiration date of insurance coverage under one of the Insurance Programs.

6. Purchasing Group Membership Fees (PGMFs)

A. Purpose of Purchasing Group – Achieving Purpose; Methodology Arbitrary, Capricious &/or Discriminatory

A primary purpose of PG shall be to provide each of its Members, regardless of such Member's financial size and sophistication, with the ability to obtain quality insurance coverage and high limits of insurance protection at an affordable cost. To achieve this purpose, PG may charge PGMFs in a manner that varies from Member to Member and in a manner that might otherwise be considered arbitrary, capricious, or discriminatory.

B. Computation & Amount – Administrator & PG Not Required To Disclose Calculation Method or to Prove Purpose of PG Achieved by Calculation Method

The PGMF charged to each Member shall vary from Member to Member and shall bear no relation to the insurance exposures or operations of the Member. The amount of the PGMF charged shall be within the sole discretion of the Administrator and PG; it shall be based upon, but not limited to, such criteria as the complexity of admitting the Member to the purchasing group, the Member's finances and/or capability to pay, and the expected future service needs of the Member. However, the Administrator and PG may utilize, not utilize, change, or amend the criteria used to determine PGMFs at any time without prior approval of the Members. Further, the Administrator and PG may charge each Member a PGMF in an arbitrary, capricious, and/or discriminatory manner. The Administrator and PG shall not be required to disclose the method by which they computed a given Member's PGMF or to prove that the method by which they computed a given Member's PGMF has achieved the purposes of PG.

On average, the PGMF constitutes approximately 10% - 35% of the combined quote for insurance and membership that Applicant is provided by its Retail Broker (the PGMF varies from Insurance Program to Insurance Program and from Selected Carrier to Selected Carrier). However, as the PGMF varies from Member to Member, the PGMF charged a particular Member may either exceed or be less than the average.

C. Nature & Usage – Funding of Deductible

The Administrator shall retain the PGMFs, which PGMFs are not insurance-related, to fund the operations of the purchasing group. PGMFs charged to Applicant are not charged to Applicant: (1) in exchange for a policy of insurance; (2) in exchange for an Evidence of Insurance (hereinafter “EOI”); (3) in exchange for an insurance-related service, or, (4) to compensate an insurance agent or broker for services rendered. PGMFs received by the Administrator on behalf of PG shall become immediately part of PG’s general operating funds, which general operating funds may be disposed of, in the course of PG’s business affairs, as PG or the Administrator deem appropriate.

PGMFs may be used by PG to fund an annual deductible in one or more of its Insurance Programs. In some Insurance Programs, PG is responsible for up to the first \$2,500,000.00 of paid claims in any calendar year; however, the deductible varies from Insurance Program to Insurance Program and from Selected Carrier to Selected Carrier. **In no event will a Member ever be held liable for a deductible.** Deductibles are billed to PG by Selected Carriers on a post-loss basis.

D. No Changes in PGMF Without Change in Operations

Once Applicant has purchased insurance coverage through the Insurance Programs and become a Member of PG, the PGMF shall not be changed until the expiration date of that Member’s current insurance policy or coverage period unless Applicant has a change in operations. If a Member’s operations increase or decrease, that Member’s PGMF may be adjusted, accordingly.

E. Combined Quote for Insurance & Membership - PGMFs Delineated on Policies and/or EOIs; PGMFs May Be Requested Prior to Purchase

Applicant shall receive a combined quote for insurance and membership in PG (hereinafter “Quote”). That Quote shall include all premiums and PGMFs; it may also include other fees, (e.g.- State and/or Federal Taxes, State and/or Federal Surcharges, service fees, broker fees, etc.). Premiums, fees, and State and/or Federal Taxes and Surcharges shall not be individually delineated on Quotes; however, they shall be individually delineated on policies and EOIs. Applicants may request – prior to purchase – an individual delineation of the premium, PGMF, State and/or Federal Taxes (if applicable), and State and/or Federal Surcharges by sending a self-addressed, stamped return envelope with a request on Applicant’s letterhead therefore to PG.

F. Payment Due Prior to Receipt of Policy and/or EOI

Upon Purchase and payment of all premiums, fees, and taxes due, the relevant MGU shall send Applicant, via Applicant’s Retail Broker, a policy or EOI.

G. Agreement Not To Bring Claim, Law Suit, or Administrative Action Regarding Amount of PGMF

Member agrees and warrants that it shall never bring a claim, law suit, or governmental or administrative proceeding against PG, the relevant MGU, or the relevant Selected Carrier based upon the amount it was charged as a PGMF in relation to other Members or alleging that the amount it was charged in premiums, fees, or taxes was arbitrary, capricious, or discriminatory. Each Member shall receive an individually-tailored Quote, and it shall be the decision of each Member as to whether it accepts or rejects said Quote, understanding that the PGMF component of said Quote may have been calculated in an arbitrary, capricious, or discriminatory fashion.

H. Where Payment Made

Applicant agrees to pay the premium, PGMF, other fees (if applicable), State or Federal taxes and/or surcharges (if applicable) to the Administrator, which handles the business affairs of PG, or the relevant MGU. In any event, insurance premiums shall be remitted to relevant Selected Carriers via the relevant MGU. The Administrator shall retain the PGMF, which PGMF is not insurance-related, to fund the operations of the purchasing group.

7. Mutual Hold Harmless

Applicant agrees to hold harmless PG, its Administrators (including Program Managers International, Inc.), its MGUs (including McGowan & Company, Inc.), and any relevant insurance companies from the negligence, acts, or omissions of its Retail Broker.

Each MGU shall be liable to Applicant for any of that MGU's negligence, acts, or omissions which give rise to legal liability with regards Applicant.

For the purposes of this paragraph, Applicant, PG, and MGU shall be defined to include their owners, directors, officers, employees, agents, representatives, related companies, affiliated companies, trade-name entities, "doing business as" entities, parent companies, and subsidiaries.

8. Agreement Subject to Change

This Agreement may be amended, modified, or changed at any time at the sole discretion of PG or the Administrator. However, once a policy or EOI has been issued to Applicant, its terms, conditions, and premium will not be changed until the expiration date of coverage unless Applicant's exposures or operations change.

9. Entire Agreement & Merger of Previous Agreements

This instrument constitutes the entire Agreement between the parties and supercedes all previous agreements entered into between the parties hereto with respect to its subject matter; and, all such previous agreements, whether oral or written, are hereby merged into this instrument.

10. Not Assignable

Applicant agrees that its rights under this Agreement are not assignable without the express written consent of PG or the Administrator.

11. Waivers

Failure by PG to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition.

No waiver of any breach or default of this Agreement shall be valid unless in writing and signed by PG, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

12. Provisions Determined to be Invalid By a Court

Should any section, paragraph, or provision of this Agreement be ruled unenforceable because of the effect of any law, or for any other reason, the remaining provisions herein shall remain unaffected and shall remain fully binding and enforceable.

13. Authorization to Receive Advertising Information & Correspondence

Applicant authorizes PG or its representative to send Applicant and any of its employees advertising information and correspondence, whether solicited or unsolicited, via any means of electronic or other communication or telecommunication, including, but not limited to, facsimile, telephone, modem, Internet, United States Mail, or independent package delivery service. Applicant agrees that the provisions of this paragraph "13." shall remain in force in perpetuity, even if this Agreement is terminated and that it shall not request Applicant to refrain from sending it or any of its employees advertising information and correspondence even if this Agreement is terminated.

14. Notice

Any notice required or which may be given under this Agreement shall be in writing and either delivered personally, sent by overnight courier, or mailed by certified mail (return receipt requested) to the addressee. Such notice shall be deemed given when so delivered personally, or, if sent by overnight courier, one (1) business day after the date so sent, or, if mailed by certified mail, three (3) business days after the date of mailing. Notices shall be sent to the address of PG or Applicant at the mailing address specified in the beginning of this Agreement or to such other address as any party to this Agreement shall request in writing from the other party to this Agreement.

15. Jurisdiction; Conflicts of Law

Each party hereby: (1) designates the federal and state courts of competent jurisdiction located in Cleveland, Ohio, as the exclusive courts of proper jurisdiction and venue of and for any and all lawsuits or other legal proceedings relating to this Agreement; (2) irrevocably consents to such designation, jurisdiction and venue; and, (3) waives any objection or defense relating to jurisdiction or venue with respect to any lawsuit or other legal proceeding initiated in or transferred to federal and state courts of competent jurisdiction located in Cleveland, Ohio.

This Agreement shall be construed in accordance with the laws of the State of Ohio without regard to its principles regarding conflicts of laws.

16. Mutual Binding Arbitration

Applicant and PG agree that any claims or controversies, whether such claims or controversies arose prior to, on, or subsequent to the date of this Agreement, which they bring against each other, the Administrator, an MGU, a Selected Carrier, or any of the present or former officers, directors, employees, agents, or representatives of Applicant, PG, the Administrator, an MGU, or a Selected Carrier shall be resolved by binding arbitration in Cleveland, Ohio. Applicant and PG agree that the results of the arbitration shall be final and binding, the arbitrator's award is not required to include factual findings or legal reasoning, and that their rights to appeal or to seek modification of rulings by the arbitrator is strictly limited. Applicant and PG shall agree to the arbitrator. If they do not, PG shall provide Applicant with the names of two additional arbitrators which are members of the American Arbitration Association, of which Applicant shall select one. Except for contrary provisions contained in this "Section 16.," Applicant and PG agree that all arbitration shall be governed by the rules of the American Arbitration Association.

17. Headers

Headers in this Agreement are used for organizational purposes and shall not be interpreted to convey any meaning.

18. Incorporation of Terminology from "Terms & Conditions of Insurance" & "Application for Insurance & Membership"

This "Membership Agreement - Terms & Conditions of membership" incorporates terminology and abbreviations from the "Terms & Condition of Insurance" and from the "Application for Insurance & Membership."