

Purchasing Group

Membership Agreement – Terms & Conditions of Membership

PARTIES TO THIS AGREEMENT

This Agreement (hereinafter “Agreement”) shall be by and between Applicant and the applicable purchasing group (“PG”) listed below:

Community Associations PG, Inc.
Cultural & Historical Institutions PG, Inc.
Great American Cities PG, Inc.
National Automobile Dealers PG, Inc.
National Restaurant Owners PG, Inc.
National Small Business Owners PG, Inc.

“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 & Purchasing Group Membership* or any application which incorporates this Agreement by reference (“*Membership Application*”).

EFFECTIVE DATE OF AGREEMENT

This Agreement shall be effective as of the date that a *Membership Application* is (1) signed by Applicant, (2) signed by Applicant’s retail insurance broker (“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, PG or its Representatives may supply other Membership Benefits & Services to its Members;

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

WHEREAS, Applicant has signed a *Membership Application*;

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

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 *Membership Application*, which changes shall appear at www.purchasinggroups.com.

2. Membership Benefits & Services

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

PG may offer various benefits and services to its Members via Membership Programs.

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

B. Insurance Programs

One of the leading benefits 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”).

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.

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 and services to its Members, including, but not limited to:

- i. Durable goods;
- ii. Educational materials and services;
- ii. Financial services;
- iii. Information clearinghouse;
- iv. Physical and virtual forums for its Members to interact with one another; and,
- v. Risk management resources, training, and tools.

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 (1) to receive Membership Benefits & Services; and, (2) to apply for and purchase insurance via the Insurance Programs. 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; or, (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 any PGMF when due; (3) Applicant’s failure to pay premiums, fees, or taxes to the Insurance Program Administrator (“IPA”) or Selected Carriers when due; (4) the expiration date of insurance coverage under the aforementioned Insurance Program; or, (5) written notice of termination of membership 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,

6. Purchasing Group Membership Fees (PGMFs)

PG shall charge its Members a purchasing group membership fee (“PGMF”).

A. Achieving Purpose of Purchasing Group: Pricing Methodology

PG shall endeavor to provide each of its Members, regardless of such Member’s financial size and sophistication, with high quality Membership Benefits & Services 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, provided that said PGMFs shall be charged in compliance with applicable state and federal law.

B. Collection & Use; Not Insurance Related

The Administrator shall collect the PGMFs on behalf of PG to fund the operations of PG. 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.

The PGMFs are not insurance related. Specifically, 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 & Purchasing Group Membership (hereinafter "EOIPG"); (3) in exchange for an insurance-related service, or, (4) to compensate an insurance agent or broker for services rendered.

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

The PGMFs 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 PG and the Administrator; it shall be based upon, but not limited to, such criteria as the complexity of admitting the Member to PG, the Member's finances and/or capability to pay, and the expected future service needs of the Member. However, PG and the Administrator may utilize, not utilize, change, or amend the criteria used to determine PGMFs at any time without prior approval of the Members. PG and the Administrator shall not be required to disclose the method by which they computed a given Member's PGMFs or to prove that the method by which they computed a given Member's PGMFs has achieved the purposes of PG.

D. Deductibles: Nature & Usage; Funding of Deductible

In certain Membership Programs, PG may be responsible for a group deductible. The amount of the group deductible varies from Membership Program to Membership Program. Group deductibles are billed on a post-occurrence basis. Members shall not be responsible for PG's group deductibles.

If, in the opinion of PG and Administrator, a particular Member increases the likelihood that a group deductible will be sustained by PG or that a group deductible sustained by PG will significantly increase in magnitude because of the membership of a particular Member, then PG or Administrator may charge that particular Member a higher PGMF.

PGMFs may be used by PG to fund an annual deductible in one or more of its Membership Programs.

E. No Changes in PGMF Without Change in Operations

Once Applicant has become a Member of PG, its PGMF shall not be changed until the expiration date of that Member's current Membership Term, unless Applicant has a change in operations. If a Member's operations increase or decrease, that Member's PGMF may be adjusted, accordingly.

F. Delineation of PGMFs: Combined Quote for Insurance & Membership

In order to obtain insurance coverage through an Insurance Program, Applicant must first complete a *Membership Application*. After completing a Membership Application, and if Applicant qualifies for membership in PG and one of its Insurance Programs, Applicant shall receive a combined quote for membership in PG and insurance (hereinafter "Quote"). In addition to the PGMF, that Quote shall include all premiums, insurance-related taxes (e.g. – local, state, and federal insurance-policy taxes, such as Surplus Lines Taxes), insurance-related surcharges (e.g. – stamping fees charged by State Surplus Lines Offices), and insurance-related fees charged by the applicable IPA (collectively, "PTSF"). PTSFs shall or may be individually-delineated on Quotes; however, they shall be individually-delineated on policies and/or EOIPGs. Applicants may request – prior to purchase – an individual delineation of PGMFs and PTSFs by sending a request to PG or the Administrator on Applicant's letterhead, along with a self-addressed, stamped return envelope.

The purpose and intent of the EOIPG shall be to: (1) demonstrate each Member's membership in PG; and, (2) summarize each Member's limits and insurance coverages in a particular Insurance Program.

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

Upon purchase and payment of all PGMFs and PTSFs that are due, the IPA shall send Applicant, via Applicant's Retail Broker, a policy or EOIPG.

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

Each Member agrees and warrants that it shall never bring a claim, law suit, or governmental or administrative proceeding against PG, the Administrator, any IPA, or any Selected Carrier based upon the amount it was charged as a PGMF, based on the amount of the PGMF charged in relation to other Members, or alleging that the PGMF was unlawfully 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.

H. Where Payment Made

Applicant agrees to pay the PGMF and PTSFs to its Retail Broker. Its Retail Broker shall then remit the PGMF and the PTSFs to the Administrator or the applicable IPA, depending on how the Retail Broker is invoiced by either the Administrator or the applicable IPA. In any event, insurance premiums shall be remitted to relevant Selected Carriers via the applicable IPA. The Administrator shall retain the PGMF, which PGMF is not insurance-related, to fund the operations of the purchasing group.

7. Insurance Programs: Individual & Master Policies

In any Insurance Program, Members may be covered under an individual policy of insurance or a master policy of insurance (“MP”).

8. Indemnification & Hold Harmless Agreement

Applicant agrees to indemnify and hold harmless PG, its Administrators, its IPAs, and its Selected Carriers from the negligence, acts, or omissions of Applicant or its Retail Broker.

PG, its Administrators, its IPAs, and its Selected Carriers agree to hold harmless Applicant from the negligence, acts, or omissions of PG, its Administrators, its IPAs, and its Selected Carriers.

For the purposes of this paragraph, the terms “Applicant,” “PG,” “IPA,” and “Selected Carriers” shall be defined to include their past, present, and future owners, directors, officers, employees, agents, representatives, related companies, affiliated companies, trade-name entities, “doing business as” entities, parent companies, and subsidiaries.

9. 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 EOIPG 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 or Applicant fails to pay any PGMFs or PTSFs when due.

10. Entire Agreement & Merger of Previous Agreements

This instrument constitutes the entire Agreement between the parties and supersedes 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.

11. Not Assignable

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

12. 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

Should any section, paragraph, or provision of this Agreement be ruled by a court to be 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, the Administrator, and its IPAs to send Applicant 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 PG, the Administrator, or its IPAs to refrain from sending Applicant advertising information and correspondence even if this Agreement is terminated.

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

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 (provided that the other Party to this Agreement is notified in writing of same).

15. Jurisdiction; Choice of Law; 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 IPA, 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 Agreement, Applicant and PG agree that all arbitration shall be governed by the rules of the American Arbitration Association.

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

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 & Membership Application*

This *Agreement* may incorporate terminology and abbreviations from the *Terms & Condition of Insurance* and from the *Membership Application*.