

# DRAFT

## DOCUMENT CREATING THE MUS WORKERS COMPENSATION SELF-FUNDED PROGRAM

THIS document is made by the Montana University System hereinafter referred to as “MUS”. At some future time other agencies organized and existing under the laws of the State of Montana may choose to become signatories to the document by which they will indicate their agreement with the document and their intent to become bound by the terms and conditions contained herein. The references herein to “Members” refers to the Montana University System and should other signatories join the program all participants will be collectively referred to as “Members”. Members are sometimes referred to in this document as “party (ies)”.

### RECITALS

WHEREAS, 39-71-403 MCA authorizes the Montana University System to choose the workers compensation plan it deems most advantageous for the System, including a system of self insurance and the issuance of bonds for establishing a reserve; and

WHEREAS, Section 2-9-211, MCA, authorizes political subdivisions of the State of Montana to procure insurance, to use a deductible or self-insurance plan, wholly or in part, and to establish a self-insurance or deductible reserve fund; and

WHEREAS, Sections 39-71-117, MCA, and 39-71-2103, MCA, authorizes employers to form a voluntary organization to operate as a self-insured for purposes of Compensation Plan No. I under the Workers’ Compensation Act of the State of Montana; and

WHEREAS, the Members creating or agreeing to this document desire to create a Program for the purposes of:

1. Developing effective risk management programs to reduce the amount and frequency of their workers’ compensation losses;
2. Developing separately or jointly group deductibles on self-insurance plans and self-insurance on deductible reserve funds.
3. Jointly purchasing workers’ compensation insurance through a group program;
4. Jointly purchasing administrative and other services through a group program when related to any of the other purposes; and
5. Jointly issuing bonds or notes to fund a reserve; and

WHEREAS, each Member has determined that it is in its own best interest and in the

public interest that this Program be created and that it participate as a member of the entity created by this Agreement.

NOW, THEREFORE, in consideration of the benefits, promises, and agreements set forth below, the parties hereby agree as follows:

## ARTICLE I

CREATION OF THE PROGRAM AND COMMITTEE AND PURPOSES THEREOF Creation of Authority. There is hereby created a public entity separate and apart from the parties hereto, to be known as the MUS Worker's Compensation Self-Funded Program, called the "Program". There is also created a Self-funded Workers' Compensation Committee, to be known as the "Committee" with such powers as are hereinafter set forth. The Committee will be comprised of nine voting members, one from each of the campuses of the Montana University System and one from the Office of Commissioner of Higher Education. Each will serve a three-year term with initial terms being staggered. Three ex-officio members- a Montana State University (designee) and a The University of Montana (designee) responsible for occupational safety, health, and loss control, and the Director of the State of Montana Risk Management and Tort Defense Claims Division (or designee) also will serve as part of the Committee.

1.1 Purposes. This document is created or agreed to by the Members in order that they may develop and fund a Program for workers' compensation, such Program to encompass the creating of joint insurance funds, the funding of reserves, the purchase of reinsurance, and the provision of necessary administrative services. Such administrative services may include, but shall not be limited to, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, financial reporting, claims management, and legal defense services.

All such purposes shall be accomplished through this document, by the Authority created herein.

## ARTICLE II

### REPRESENTATION OF MEMBERS

2.1 Representations. Each Member certifies that it intends to and does contract with, for the purposes and to the extent as herein provided, all other parties who are signatories of this document and, in addition, with such other entities as may later be added as parties to, and signatories of, this document. Each party also certifies that the withdrawal from or termination of any party from the agreements enunciated herein, pursuant to Article VIII, shall not affect this Program or the remaining parties' intent to contract as described above with the other parties to the document then remaining.

## ARTICLE III

### POWERS OF THE COMMITTEE

3.1 Powers. The Committee shall have all of the powers common to its Members under applicable law and is hereby authorized to do all things necessary and proper for the exercise of said powers. Such powers include, but are not limited to, the following:

A. To make and enter into contracts.

B. To incur debts, liabilities, and obligations. I goofed up the numbering below and can't fix it

C. To issue Bonds and Notes on behalf of its Members for authorized purposes when expressly authorized by Members. acquire, hold, or dispose of property, contributions, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities.

D. To sue and be sued in its own name, and to settle any claim against it.

E. To receive contributions and donations of property, funds, services and other forms of assistance from any source.

F. To receive and use contributions and advances from Members, including contributions or advances or personnel, equipment, or property

G. To employ agents and employees, including a plan administrator to whom it may delegate those duties that contribute to the efficient operation of the Program.

H. To receive, collect, and disburse monies.

I. To invest any money that is not required for its immediate necessities, in the same manner and on the same conditions as Members pursuant to law. LeRoy our intent was to hold the reserve, funded with bond proceeds, with a Trustee—is this going to be a problem?

J. To carry out all provisions of the Program as reflected in this document.

## ARTICLE IV

### MEMBER RESPONSIBILITIES

4.1 Responsibilities. Each Member shall have the following responsibilities:

A. To provide statistical and loss experience data and other information as may be necessary or desirable for the Committee to carry out the purposes of the Program;

B. To pay Premiums and Special Assessments to the Program when due;

C. To cooperate fully with the Committee in determining the cause of Losses and in the settlement of claims;

D. To cooperate with and assist the Committee and any insurer, claims adjuster, legal counsel or other services provider engaged or retained by the Committee, in all matters relating to the Program;

E. To comply with and keep and perform its obligations under this document;

F. To have an audit of its risk management activities as required by the Committee. Such audit shall be at the expense of each Member but the charge for such audit may be included within the Premium to be charged for the Workers' Compensation Program;

G. As directed by the Committee, to maintain its own Claims and Loss records and provide copies of such records.

## ARTICLE V

### COVERAGE, PAYMENT OF CLAIMS AND AWARDS, PURCHASE OF COMMERCIAL INSURANCE, ISSUANCE OF BONDED INDEBTEDNESS

5.1 Coverage. The Program hereby provides the Workers' Compensation coverage to the Member, and the Member hereby agrees to accept the coverage, upon the terms and conditions set forth in this document.

5.2 Payment of Claims and Awards.

A. All claims will be investigated by the claims adjusting service company designated by the Committee. The service company is authorized to settle claims up to an amount designated by the Committee. On claims in excess of this amount, the service company shall present the claim to the Committee for settlement authorization. The Committee shall authorize settlements or take other appropriate action. Settled claims made pursuant to the Workers' Compensation and Occupational Disease Acts of Montana shall be paid from the assets of the Program.

B. With respect to all claims that are not settled, the Committee shall pay from the Program's assets all lawful awards by the Workers' Compensation Court, or other court of competent jurisdiction if the award is appealed, against any Member predicated on a claim by an employee of any Member, arising out of and in the course of such claimant's employment.

C. Any lawful award entered against a Member shall be a liability of the Program and a joint and several liability of each Member as provided in this document.

D. If the Program's assets are insufficient to pay the award, the Committee shall individually assess each Member to the extent necessary to pay the award, and the assessment charged each Member shall be determined on a proportionate basis in accordance with each Member's net contribution to the Program. An assessment shall be a contractual obligation of the Member. Provided that nothing contained in this subparagraph shall be construed as a limitation upon the joint and several liability of each Member.

E. The liability of the Program is specifically limited to such obligations as are imposed by the Workers' Compensation Act and the Occupational Disease Act of the State of Montana.

5.3 Subrogation. Each Member agrees that in the event of the payment of any loss by the Program under this contract, the Program shall be subrogated to the extent of such payment to all the rights of the Member against any person or other entity legally responsible for damages

for said loss, and in such event the Member hereby agrees to render all reasonable assistance, other than pecuniary, to effect recovery.

5.4 Purchase of Commercial Insurance or Reinsurance. The Committee may provide a portion of Coverage to the Members by purchase of specific and/or aggregate excess insurance with such self-insurance retentions as at the time are determined by the Committee to be in the best interest of Program and the Members.

5.5 Issuance of Bonded Indebtedness. The Committee may provide for reserves and coverage by the issuance of bonded indebtedness in an amount to be actuarially determined so as to assure the continued solvency of the Workers' Compensation program, the proceeds of which bonded indebtedness may be used in lieu of or in addition to excess insurance and surety bonds to the fullest extent permitted by applicable Montana law. Such indebtedness shall not be incurred without the prior written consent of all Members.

## ARTICLE VI

### PREMIUMS

6.1 Premium Contributions. The Committee shall set rates utilizing commonly accepted actuarial principles developed by a qualified actuary or actuaries. These rates shall then be applied to each Member's estimated payroll by rating classification, and may be further adjusted by an experience rating modification.

In addition to premium charges to the Members, the Committee will realize investment income, which shall be treated as income to the Program. In establishing the premiums to be charged, the Members, the actuary will be instructed to give appropriate credit for anticipated investment income.

6.2 Administrative Costs As Part of Premium. The premiums charged members will be sufficient to secure and pay for administrative services provided in a fashion determined by the Committee, including:

- A. General administrative
- B. Loss prevention
- C. Claims management
- D.
- E. Legal
- F. Financial reporting
- G. Actuarial
- H. Risk management consulting
- I. Brokerage

6.3 Premium Payments and Special Assessments.

- A. Each Member shall pay the established Premiums and Special Assessments. The

Committee shall give sixty (60) days advance notice of changes in rates or any special assets.

B. No Withholding. Subject to the provision of Section 6.6 hereof, notwithstanding any dispute between the Program and a Member, including a dispute as to the scope or nature of Coverage provided by the Program or the availability of funds to pay Claims made against any Member, or any other reason, the Member shall appropriate to pay and make all Premium payments when due and shall not withhold any Premium payments pending the final resolution of such dispute.

C. Interest on Overdue Payments. In the event a Member fails to make any of the payments required in this Article, the payment in default shall continue as an obligation of the Member until the amount in default shall have been fully paid, and in addition to any remedies available with respect to such default, the Member agrees to pay the same with interest thereon, at the rate of 1% per month until paid, from the date such amount was due.

D. Abatement. There shall be no abatement of Premium payments except as provided in Section 6.6 below

6.4 Reserve. A reserve will be established in order to assure that losses can be paid for any year in which premium income is inadequate to cover all losses. This Reserve initially will be funded from proceeds from the issuance of revenue bonds and premiums and investment income after all expenses have been paid and reserves established for incurred and incurred-but-not-reported claims.

6.5 Assessments in the Event of Losses and Expenses in Excess of the Program's Funds. In the event the expenses for the fiscal year exceed premium and interest income, the difference shall be charged to the Reserve, if funds are available. If funds are not available, the Committee, after receiving the advice of a qualified actuary, may impose a Special Assessment. Should funds be subsequently obtained by the Program from borrowing or from any other appropriate source for the next fiscal year, and then such funds shall be used to pay Claims.

Any sums expended by the Member in the interim to pay workers' compensation claims shall be reimbursed if they would otherwise be covered by the Program.

Nothing in this Section 6.5 shall be construed to limit the joint and several liabilities of individual members.

6.6 Abatement of Participation Premium in the Event of Failure to Pay Settlements. In the event that the Program fails to pay a Settlement of a Member pursuant to the terms of this document, other than by reason of good faith disputes to the scope of Coverage, the obligation of the Member to pay any Premium hereunder shall be abated in full.

## ARTICLE VII

### ADMISSION TO, WITHDRAWAL FROM AND TERMINATION OF A MEMBER

7.1 Conditions for Providing Coverage to a New Member. The Committee may provide Coverage to a new Member of the Program, which is not currently a Member under this Agreement, if MUS consents and such new member agrees to the terms of this agreement.

7.2 Withdrawal From or Termination of Membership. Any Member except MUS may withdraw from the Program by giving at least sixty (60) days notice in writing to the Committee of its desire to withdraw.

The Committee may terminate the membership of any Member giving at least sixty (60) days advance written notice to the Member of its termination.

Unearned premium shall be returned to the withdrawing or terminated Member on a prorate basis.

In no event shall withdrawal from the Program or termination of a Member's participation in the authority release a Member from its obligation to pay damages resulting from default under the terms of this Agreement, or shall such withdrawal or termination release a Member from its obligation to pay Premiums or Special assessments as provided in Section 4.1 hereof. Notice to withdraw shall be revocable only at the option of the Committee.

7.3 Obligation to Notify Workers' Compensation Division upon Withdrawal or Termination. Upon withdrawal or termination of a Member, the Committee and the Member shall promptly notify the Workers' Compensation Division of the Montana Department of Labor and Industry (the "Division").

## ARTICLE VIII

### JOINT AND SEVERAL LIABILITY

8.1 Member Liability. Each Member agrees to assume and guarantees to pay, or otherwise discharge promptly, any and all the liabilities and obligations which the Program may incur pursuant to the terms of this Agreement and the Workers' Compensation and Occupational Disease Acts of the State of Montana.

8.2 Financial Guarantee. This Agreement represents a direct financial guarantee to the employees of all Members of the Program and dependents of the deceased employees of all Members of the Program for the full amount of any and all liabilities or obligations on amounts not limited to each Member's "prorate" share. Each Member understands and agrees that it shall be jointly and severally liable with the other Members for the full amount of any and all known and unknown claims of the Authority arising during the membership of the Member in the Program.

8.3 Limitation. This Agreement shall not cover or extend to any workers' compensation or



occupational disease liabilities of the Program, which are expressly insured by a carrier duly authorized to write Montana workers' compensation and occupational disease insurance. Provided that the liabilities assumed by an excess insurance carrier shall also remain the primary liabilities of the Program .

8.4 Authority Failure to Pay. In the event the Program shall fail to pay compensation, as compensation is defined in the Montana Workers' Compensation and Occupational Disease Acts, when due, the Member will pay the same, and the payment may be enforced against the Member to the same extent as if said payment was its sole liability. The Member understands and agrees that it shall be jointly and severally liable with the other Members for the full amounts of any and all known or unknown claims of the Program arising during the membership in the Program.

## ARTICLE IX

### INSPECTION OF FACILITIES AND EQUIPMENT; SAFETY CONSIDERATIONS AND NOTIFICATION OF ACCIDENT

9.1 Inspection of Facilities, Equipment, and Records. The Committee and any of the Program's agents, employees or attorneys shall be permitted at all reasonable times to inspect the work places, plants, works, machinery, and appliances covered by this document and shall be permitted at all reasonable times to examine Members' payroll, personnel, injury and accident records, and Members' books, vouchers, contracts, documents and records of any and every kind which show or tend to show or verify the premium which is payable under the terms hereof. This right to inspect or examine shall continue after termination of membership with respect to all claims or matters arising during or relating to membership status.

9.2 Safety Considerations. Each Member must follow the safety recommendations of the Committee in order to provide safe and sanitary working conditions.

9.3 Notification of Accident and Reimbursement to Authority for Penalty. Each Member must give immediate notification to the claims adjuster on the prescribed forms of any accident and reported claim for any benefits whatsoever payable under the Workers' Compensation and Occupational Disease Acts.

## ARTICLE X

### PROHIBITION OF UNAUTHORIZED PAYMENTS; PENALTY FOR EMPLOYMENT WITHOUT WORKERS' COMPENSATION COVERAGE

10.1 Prohibition of Unauthorized Payments By Members. No Member shall make voluntary payment of benefits or medical expenses or enter into any agreement with any employee or his agent committing payment or admitting liability for any workers' compensation benefits as

provided in the Workers' Compensation and Occupational Disease Acts without the prior approval of the Committee . Any Member making such voluntary payments or entering into such an agreement may be held individually and separately liable for reimbursement to the Program for all benefits and medical expenses paid or committed.

10.2 Penalty for Employment of Persons Without Workers' Compensation Coverage. No Member shall contract with any person including contractors or subcontractors, who has not produced evidence of current workers' compensation insurance or exemption according to the provision of the Workers' Compensation and occupational Disease Acts. Any Member who contracts with any person who does not have current workers' compensation insurance or an exemption will be charged an additional non-discounted premium based upon the full amount of the contract.

## ARTICLE XI

### ACCOUNTS AND RECORDS

11.1 Funds and Accounts. The Committee shall establish and maintain such funds and accounts as may be required by good accounting practices. Books and records of the Authority shall be open to inspection at all reasonable times by authorized representatives of Member Entities.

11.2 Annual Audit. The Committee shall either make or contract with a certified public accountant to make an annual fiscal year audit of all accounts and records of the Program. The audit shall be made available to each Member with six months of the end of the fiscal year under examination or as soon thereafter as the audit is presented by the auditor. Costs of the audit shall be considered a general expense of the Program.

## ARTICLE XII

### RESPONSIBILITIES FOR FUNDS AND PROPERTY

12.1 Custody of Funds. The Committee, or its designee, shall have the custody of and disburse funds. .

## ARTICLE XIII

### LIABILITY OF THE COMMITTEE

13.1 Standard of Care. The Committee shall use ordinary care and reasonable diligence in the exercise of their power and in the performance of the duties pursuant to this Agreement. The Committee shall not be liable for any mistake of judgment or any other action made, taken or omitted by them in good faith, or for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care, or for loss incurred through investment of Program funds, or failure to invest.

13.2 Indemnification. The funds of the Program shall be used to defend, indemnify, and hold harmless the Committee for their actions taken within the scope of this document . Nothing herein shall limit the right of the Program through the Committee to purchase insurance to provide such coverage, as is hereinabove set forth.

#### ARTICLE XIV

##### MUS WORKERS' COMPENSATION PLAN

14.1 MUS Program At the time of execution of this agreement by MUS, it has its own Self-funded Workers;program, which is funded partially through the issuance of revenue bonds for which MUS is obligated. The Committee shall remain solely liable for the MUS Claims, and no other member shall become liable for such claims and obligations. The reserve, which MUS shall transfer to the Authority, may be used to pay MUS Claims. A portion of the premiums and special assessments, if any, under this agreement may be utilized by the Committee to pay the debt on the MUS bonds as part of the over all expense of the Program. Notwithstanding any other provisions of this agreement, no Member other than MUS shall have any right, title, claim, or interest in the funds of the Program.

#### ARTICLE XV

##### TERMINATION OF PROGRAM AND DITRIBTUION OF ASSETS

15.1 Termination of Program The Program may be terminated at any time upon the election of MUS, provided, however, that the agreements reflected in this document and the Committee shall continue to exist after such election for the purpose of retiring any debt, disposing of all claims, distributing all assets, and performing all other functions necessary to conclude the affairs of the Program.

15.2 Future Assessments. Following termination of the Program, any Member may be required to pay an additional amount of premium, determined by the Committee, which may be necessary to enable final disposition of all claims arising from workers' compensation losses of Members pursuant to this agreement.

15.3 Distribution of Assets. Upon termination of the Program, after final disposition of all claims, all assets of the Program shall be distributed to MUS.

#### ARTICLE XVI

##### MISCELLANEOUS

16.1 Notices. The Authority shall address notices, billings, and other communications to a

Member at the address and to the attention of the individual set forth on each Member's signature page hereto or as otherwise directed by the Member. Members shall address notices and other communications to the Committee as follows:

**The MUS Worker's Compensation Self-Funded Program**

Attn: \_\_\_\_\_

Enter Address Here \_\_\_\_\_

16.2 Binding Effect. The agreements recited herein shall inure to the benefit of and shall be binding upon the Program and the Members and their respective successors and assigns.

16.3 Enforceability. The agreements recited herein are enforceable by the Committee, Members, employees of such member, and/or the Division of Worker's Compensation of the State of Montana. The parties are held and firmly bound for the payment of all legal fees and cost incurred by the State of Montana in any actions taken to enforce the agreements recited herein.

16.4 Severability. In the event any provision of this document shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

16.5 Further Assurances and Corrective Instruments. The Committee and the Members agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Coverage hereby provided or intended so to be or for carrying out the expressed intention of the agreements recited herein.

16.6 Waiver of Notice as to Current Condition of Program. Each Member waives any notices as to the current condition of said Program, insurance plan, any changes therein, and the manner of conducting or closing said plan or otherwise. The Undersigned also waives, in the event of non-compliance by the Program, any demand or notice in respect thereof and any requirement of legal or equitable proceedings or otherwise on the part of the Division against the Program as a condition precedent to enforcing the obligations of the Member hereunder.

16.7 Amendment. This document may be amended at any time by written agreement between the Members, provided, however, that no amendment may be made which would have the effect of altering or limiting any obligations of the Program there under.

16.8 Prohibition Against Assignment. No Member may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any Member shall have any right, claim or title to any part, share, interest, fund, premium or asset of the Program.

16.9 Agreement Complete. The foregoing constitutes the full and complete agreement of the parties with respect to the Program. There are no oral understandings or agreements not set forth in writing herein, provided, however, that participation in any insurance program of the Authority is subject to the terms and conditions of separate program agreements not inconsistent herewith.

16.10 Effective Date of the Program.

A. The Board of Regents shall approve the Self-funded Workers' Compensation Program provided for in this document.

B. The Committee shall determine the reinsurance available to the Program in such amount and with such insurers as the Authority shall designate and find acceptable.

The Committee, shall notify the Board of Regents when all of these requirements have been met, and shall state the effective date of workers' compensation coverage for the Members and the effective date of the Program.

16.11 Applicable Law. This document shall be governed by and construed in accordance with the laws of the State of Montana.

#### EXECUTION

This document may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreements.

IN WITNESS WHEREOF, the party or parties hereto have caused this document to be executed by their duly authorized officers and their respective seals, if any, to be affixed below and attested as of the dates written below.