

## **EMPLOYER GROUP AGREEMENT**

This Employer Group Agreement (the “Agreement”) is between Minuteman Health, Inc. (“MHI”) and \_\_\_\_\_ (the “Employer”) regarding the provision of administrative services by MHI and the obligations of the Employer under the health benefits plan (the “Plan”) established by the Employer.

WHEREAS, MHI is a Consumer Operated and Oriented Plan Program (CO-OP) as that term is defined in, and subject to the requirements established by, or under the authority of, Section 1322 of the Patient Protection And Affordable Care Act of 2010; and

WHEREAS, MHI is licensed in the Commonwealth of Massachusetts as a health maintenance organization (“HMO”) under M.G.L. Chapter 176G, and

WHEREAS, MHI provides administrative, claims processing, and related services for health care delivery and reimbursement plans.

WHEREAS, the Employer is a business entity which has established the Plan described in the applicable Membership Agreement or Evidence of Coverage (“EOC”) which is incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual promises and agreements set out herein, MHI and the Employer agree as follows:

### **I. DEFINITIONS**

Except as otherwise provided herein, the definitions set forth in the applicable MHI Membership Agreement or EOC are specifically incorporated into this Agreement.

### **II. EMPLOYER GROUP APPLICATION**

The Employer’s MHI Employer Group Application is incorporated into this Agreement by reference.

### **III. ELIGIBILITY**

- A. Only bona fide employees and retirees of the Employer and their qualified dependents may be enrolled in the Plan, unless otherwise required by the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) or other applicable law.
- B. To be eligible for enrollment, and continuing participation, in the Plan, all employees and their dependents must meet the eligibility rules for the Plan which are set out in the applicable Membership Agreement, Underwriting Guidelines, and EOC. If the Employer wishes to modify these eligibility rules, such modification must be indicated on the Employer Group Application or in a written amendment thereto, which modification must be agreed to and accepted in writing by MHI. The eligibility rules will not be changed during the term of the Agreement except by mutual written consent of the parties. Upon approval, MHI will implement these eligibility rules.

- C. MHI is not responsible for verifying the eligibility status of employees or dependents, and will rely on information provided to it by the Employer. Employer is obligated to use best efforts to ensure that it obtains all information required to determine whether individuals covered under the Employer's plan are eligible. Employer will immediately inform MHI of any person who is either applying for Membership or who is already enrolled as a Member that may be ineligible. In the event that the Employer fails to provide such information to MHI, the Employer shall reimburse, indemnify, and hold harmless MHI for any expenses that MHI incurs as a result of the Employer failing to provide such information to MHI.
- D. MHI may terminate a Member, prospectively or retroactively, who fails to meet the eligibility rules of the Plan. The employer understands that if it has committed fraud or made a misrepresentation of any material fact in conjunction with this application, Minuteman may retroactively cancel coverage
- E. Employer represents and warrants that the information contained in the Membership Application is true and correct. This shall be an ongoing representation and warranty throughout the term of this Agreement.

#### **IV. MEMBER VERIFICATION**

- A. Upon request, the Employer shall provide MHI with any documents or records (including without limitation payroll records, documentation of residence, marital status, birth or adoption, documentation of pediatric dental coverage, and legal responsibility for health insurance coverage) reasonably necessary to verify Member eligibility, Employer contributions, or any other issues related to the services provided under this Agreement. MHI shall maintain the confidentiality of such records unless otherwise required to disclose such records by law.

#### **V. ENROLLMENT**

- A. An initial MHI open enrollment period shall take place prior to the effective date of this Agreement or other date agreed upon by MHI and the Employer.
- B. An annual open enrollment period shall be held prior to the Employer's Annual Anniversary date of this Agreement or such other date agreed to by MHI and Employer.
- C. During an enrollment period the Employer shall distribute information about MHI. The Employer will review with MHI any communication regarding MHI prior to its distribution to employees. Employer shall provide such information to MHI for approval prior to distribution.
- D. For Members enrolling outside the open enrollment period, MHI must receive proper notice from the Employer of any Member enrollment in the Plan at least fifteen (15) days prior to the requested effective date. MHI may, upon request, and in its sole discretion, which may be withheld for any reason, retroactively enroll a Member. However, in no event shall a Member's effective date be

retroactive more than sixty (60) days prior to the date MHI received the Employer's notice.

- E. MHI must receive proper notice from the Employer of any Member terminations from the Plan no more than sixty (60) days after such change is to be effective. Any request for the termination of a Member as of a date earlier than sixty (60) days prior to receipt by MHI will be processed by MHI as effective sixty (60) days retroactive from the date of receipt.

## **VI. NONDISCRIMINATION IN EMPLOYEE CONTRIBUTION PERCENTAGES**

Massachusetts General Laws Chapter 176G, Section 6A states:

A health maintenance organization may only enter into a group health maintenance contract with an employer if the group health maintenance contract is offered by that employer to all full-time employees who live in the commonwealth; provided, however, the employer shall not make a smaller health insurance premium contribution percentage amount to an employee than the employer makes to any other employee who receives an equal or greater total hourly or annual salary for each specific or general blanket policy of insurance for all employees. Notwithstanding the foregoing, a health maintenance organization may enter into a group health maintenance contract with an employer that establishes separate contribution percentages for employees covered by collective bargaining agreements.

Employer hereby represents and warrants that the Employer is contracting with MHI to offer benefit plan(s) to all full-time employees who live in Massachusetts, and that the health insurance premium contributions for the Plan made by the Employer are not smaller for full-time employees who earn lower wages, computed hourly or annually, than for other full-time employees who receive an equal or greater total hourly or annual salary. A full-time employee is defined by the Commonwealth as any employee working thirty-five (35) hours per week or more, and who is not a temporary or seasonal employee.

The Employer is not required to offer the Plan to retirees, part-time, temporary or seasonal employees.

The Employer may establish:

- Different contribution percentages for different Plan choices.
- A fixed dollar amount as a contribution to premium for all employees regardless of salary.
- Greater contribution levels for persons who participate in Employer-sponsored health/wellness programs.
- Different contribution percentages for employees covered by collective bargaining agreements.

- Greater contribution levels for increasing lengths of service, as long as the schedule of contribution levels is part of a formal employee benefit plan designed as a reward for longevity and not as a pretext for providing better contributions to more highly paid employees.

## **VII. PAYMENTS**

### **A. Monthly Premiums:**

1. During the initial term of this Agreement, the monthly premium shall be the amount stated in the Employer Group Application or the current rate notice given under section VII.B, below. In subsequent years, the amounts will be determined as described in Section IX.
2. An Employer's effective date will be set on the first day of a month. However, MHI may allow, in its sole discretion, an Employer to enroll with an effective date other than the first of the month. In these cases, the Employer's premium for its first month of coverage will be prorated based on the Employer's effective date.
3. For groups with an initial effective date on or after January 1, 2014, MHI will charge the Employer for Members who enroll or terminate other than on the first day of the month on a prorated basis.
4. Prior to each month of coverage, MHI shall bill the Employer an amount equal to the Monthly Premium based on the Employer's enrollment as of the first day of the month in which the bill is sent plus any amounts past due. If additions, deletions, or other Membership changes are made after the bill is sent, they will be reflected by an appropriate adjustment in a subsequent bill.
5. The Employer shall pay the premium bill prior to the first day of each month of coverage. If any portion of the premium remains unpaid as of the first day of any given month, MHI may immediately terminate this Agreement and all benefits to Members, in accordance with Section VIII.C. MHI's decision not to terminate shall not operate as a waiver to terminate at any time prior to all outstanding premiums being paid.
6. At MHI's sole discretion, any payment of premium by the Employer may be allocated to payment of past due premiums under this Agreement in the order incurred.
7. The Employer shall pay MHI any and all taxes resulting from MHI's administering of services, including, but not limited to, premium taxes, and MHI shall have the right to collect such taxes on a monthly basis.
8. In the event payment in full is not received and the collection of the unpaid balance is assigned to a credit collection service, the Employer will pay all related collection and legal fees incurred related to the collection of the unpaid balance.

B. Rate Changes:

1. MHI may change the premium rates under this Agreement from year to year on the Anniversary Date specified in the Employer Group Application or on the effective date of any benefit changes agreed to by MHI and the Employer. Premium rates also may be changed by MHI if (i) there is a change in law or regulation affecting the Plan, including a change in judicial case law, and any tax or surcharge, that is effective prior to the Employer's next Anniversary Date; or (ii) there is a change in the risk of providing coverage to the employees eligible to receive coverage under this Agreement, due to circumstances including, but not limited to, the addition, sale or transfer of a division, subsidiary or an affiliated company; or a change in the number of covered Employees by more than ten percent (10%).
2. MHI shall give written notice to the Employer of any rate increase at least thirty (30) days prior to the effective date of any rate increase, unless such rate increase is caused by a change in law or regulation, or a change in the risk of providing coverage, in which case, MHI may give notice of an immediate rate change.

C. Copayments, Coinsurance, Deductibles and Balances Due: Any copayments, coinsurance, deductibles and balances due for services provided to a Member will be collected directly from the Member by the provider.

D. Employer Contribution: The Employer shall contribute at least fifty percent (50%) of the premium for the Individual Coverage or at least thirty-three (33%) of the premium for Family Coverage applicable to each Subscriber. Any changes in the Employer contribution must be mutually agreed to in writing.

## VIII. TERM AND TERMINATION

- A. Term: The initial term of this Agreement is stated on the Employer Group Application. This Agreement shall continue in force and effect from year to year thereafter, without the requirement that a new agreement be signed, unless sooner terminated in accordance with this Agreement, or unless not renewed as provided for in Section IX.
- B. Termination by the Employer: The Employer may terminate this Agreement without cause at any time by written notice at least forty-five (45) days prior to the termination date specified in the notice. The specified termination date must be the last day of the month. Termination will be effective as of midnight of the date specified in the notice and premium payments prorated to reflect payment through the end of the termination date must be paid in full. All coverage and benefits for all employees and dependents under this Agreement shall terminate as of the specified termination date.

- C. Termination for Nonpayment of Premiums: If the Employer fails to make any payment when due, MHI may terminate this Agreement immediately by written notice to the Employer. The effective date of termination will be determined by MHI. Termination may be retroactive to the extent permitted by applicable law. MHI will notify Members of the Employer as to the termination date and the reason for termination. In such event, notice of termination will be sent to Members as required by law. In the event of termination due to nonpayment of premiums, the Employer shall remain liable to MHI for premiums due through and including the date of termination in addition to any other remedies to which MHI may be entitled.
- D. Termination for Cause: MHI may immediately terminate this Agreement for cause for any reason permitted by law, including, but not limited to, the following: fraud; violation of minimum participation or contribution rules; movement of all enrollees outside the MHI service area; or termination of the Plan. In the event of termination for cause, the Employer shall remain liable to MHI for premiums due through and including the date of termination in addition to any other remedies to which MHI may be entitled.

## **IX. RENEWAL OF THIS AGREEMENT; AMENDMENTS**

- A. Renewal:
  - 1. At least thirty (30) days prior to the end of the initial term of this Agreement, and at least 30 days before each renewal date thereafter, MHI shall either inform the Employer that it does not intend to renew this Agreement or inform the Employer of the projected premiums for the renewal term. MHI also will describe any proposed amendments or benefit changes for the renewal term.
  - 2. MHI may decline to renew this Agreement for any reason not prohibited by law.
  - 3. Notwithstanding Section VII.B, if the Employer desires not to renew this Agreement for the succeeding year, it shall notify MHI in writing at least fifteen (15) days before the renewal date.
  - 4. Payment by the Employer to MHI or the acceptance of benefits under this Agreement after the renewal date shall be deemed to constitute acceptance of continuing this Agreement for the succeeding one-year term and acceptance of any and all amendments, rate and benefit changes proposed by MHI.
- B. Amendments: Except as set forth herein, no alteration or modification of the terms and conditions of this Agreement shall be valid or of any force or effect unless it is expressed in a written amendment duly executed by the parties.

## **X. HEALTH CARE SERVICES ADMINISTRATION**

### **A. Obligation to Administer Plan Benefits:**

1. In consideration of the agreed periodic payments specified in the Employer Group Application, MHI shall administer the Plan in accordance with the terms and conditions of the applicable Membership Agreement or EOC. Except for the Employer's obligation to pay monthly premiums, neither MHI nor its participating providers shall bill or charge the Employer for any benefits to which Members may be entitled under the Plan.
2. MHI is obligated to administer the Plan described in the applicable Membership Agreement or EOC only for the period for which the applicable premium has been paid.
3. MHI may change the terms of the applicable Membership Agreement or EOC at any time if not prohibited by law or if required by state or federal law and regulation. MHI shall give the Employer, when possible, at least thirty (30) days notice prior to the effective date of any change. The Employer is responsible for notifying employees of any such amendments and the effects thereof. Any such amendment will be effective for benefits or services provided after the effective date of the change. However, any amendment will not apply to a Member receiving hospital inpatient care until the Member is discharged from the hospital.
4. This Agreement is not intended, nor shall it be construed, to affect any provider-patient relationship. The Employer acknowledges that MHI does not practice medicine or any other profession, or control the provision of covered services to Members. The Employer acknowledges that MHI does not employ or control any care and treatment decisions made by any health care providers that will provide health care benefits to Members. Both the Employer and MHI acknowledge that it is the attending health care provider who is exclusively responsible for the care and treatment of the Members under such provider's care.
5. The Employer acknowledges that physicians and providers in the MHI network are independent contractors and the composition of the network is likely to change from time to time. MHI cannot guarantee the continued participation of specific physicians or providers in its network.

- B. Subrogation and Coordination of Benefits:** MHI coverage is subject to the rules for coordination of benefits and subrogation described in the applicable Membership Agreement or EOC. MHI coordinates benefits with other insurers that may be liable for benefits to Members. The Employer agrees to cooperate with MHI in obtaining information concerning the potential liability of a third party for the cost of a Member's care, including, but not limited to, other insurance coverage available to Members. In the event that the Employer fails to cooperate with MHI consistent with this section, the Employer shall reimburse,

indemnify, and hold harmless MHI for any expenses that MHI incurs as a result of said failure.

- C. HIPAA and COBRA Administration: MHI neither will be responsible for nor assume any of the Employer's responsibilities under the Health Insurance Portability and Accountability Act ("HIPAA") or COBRA unless MHI agrees to do so in a separate agreement that sets forth each party's responsibilities in detail.

## **XI. AGREEMENT BINDING ON MEMBERS**

The Employer represents and warrants that all Members enrolling in Employer's Plan shall agree to all terms, conditions and provisions set out in the applicable Membership Agreement or EOC. The Subscribers shall be responsible for the compliance with the terms and conditions of the Membership Agreement or EOC by their dependents; minor dependents of employees will be bound by the action of the employee.

## **XII. CONFIDENTIALITY OF MEMBER INFORMATION**

- A. The Employer understands and acknowledges that MHI will only release *non-confidential* member information to Employer if the Employer requests such information, in writing, for purposes such as billing, enrollment or eligibility verification. For purposes of this Section XII.A., Non-confidential member information shall consist only of names, addresses and ages of enrolled subscribers and their dependents. No other information shall be released to employers, including brokers, agents and consultants for employers, unless the Employer obtains a specific consent from the Member or unless the Employer is auditing the Plan in accordance with subsection B of this section.
- B. Employer must give MHI thirty (30) days prior written notice of its intent to audit and provide a detailed narrative explaining the need for such information. All audits and information disclosure shall occur at a time and place and in a manner convenient to MHI and shall be conducted at Employer's expense. Any representative of the Employer engaged in such audit shall agree to use any disclosed information solely for the purposes of administering the Plan, to keep such information confidential and not to disclose the information to any other entity or person.
- C. MHI may release aggregate data to an employer, as long as the information is encrypted or de-identified so that all information that clearly identifies a member, or that could be used to identify a member, has been removed.
- D. Any reports, information or documentation provided, made available, or learned by either of the parties to this Agreement which contain personally identifiable or health information about any Member or health care provider or which contain information about either party's business or operations which is not available to the public, or which contain information which has been designated as proprietary or confidential by either party shall be held in strictest confidence, used solely to perform the obligations under this Agreement or to administer the

Plan, not be disclosed to any other entity or person, and maintained in accordance with the requirements of all applicable laws.

### **XIII. RESOLUTION OF DISPUTES**

- A. Member Appeals: All Member appeals shall be resolved in accordance with the provisions of the applicable Membership Agreement or EOC.
- B. Employer – MHI Disputes: Any controversy, claim or dispute arising under this Agreement which cannot be resolved by negotiation between the Employer and MHI shall be submitted to binding arbitration administered by the American Arbitration Association in accordance with its rules, except as modified herein. Within fifteen (15) days of receipt of notice of arbitration, each party shall choose one arbitrator experienced in the financial aspects of employee benefit plans.

These two arbitrators, within fifteen (15) days, shall select a third independent arbitrator. Within fifteen (15) days after the selection of the third arbitrator, both parties will provide the arbitrators and, simultaneously each other, their written memoranda stating their positions. Within five (5) business days of the exchange of memoranda, the parties may submit rebuttals to each other's respective memoranda. Within twenty-five (25) days of the deadline for submitting rebuttals, the arbitrators shall make their decision which is final and unappealable. The parties shall share equally the cost of all arbitrators and the costs imposed by the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

By entering into this Agreement, the parties release their right to have any such claims or controversies decided in a court of law, and instead are accepting the use of arbitration as authorized by the laws of the Commonwealth of Massachusetts. Court proceedings may still be used for entering judgment upon or seeking judicial review of arbitration awards, or for collecting debts as to which there is no dispute.

### **XIV. CONFLICT OF LAWS**

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

### **XV. NOTICE**

Unless otherwise specified, any notice required under this Agreement shall be in writing delivered by any of the following methods: (i) by a national express mail order (notice deemed delivered upon receipt); (ii) by first class mail (notice deemed delivered three (3) business days from mailing); or (iii) by certified mail, postage prepaid (notice deemed delivered upon receipt). All notices shall be provided to the address shown on the Employer Group Application, unless otherwise notified in writing of an alternative address.

## **XVI. INVALID PROVISIONS**

If, for any reason, any provision of this Agreement shall be, or is hereafter determined to be invalid, such determination shall not nullify any of the other terms and provisions of this Agreement, and in such respects as may be necessary to conform this Agreement with the applicable provisions of law in order to prevent the invalidity of such provision, then such provision shall be deemed automatically amended to conform with such law.

## **XVII. INTERPRETATION**

All parties have been involved in the negotiation, review and execution of this Agreement, and each has had the opportunity to receive independent legal advice from attorneys of their choice with respect to the advisability of making and executing this Agreement. In the event of any dispute or controversy regarding authorship of this Agreement, the parties shall be conclusively deemed to be the joint authors of this Agreement, and no provision of this Agreement shall be interpreted against any party based on authorship.

## **XVIII. CAPTIONS**

The captions in this Agreement are inserted for convenience and reference, and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof

## **XIX. MISCELLANEOUS**

### **A. Amendments**

1. By MHI. MHI may amend this Agreement, without consent of the Employer, by providing (30) days prior notice to the Employer. Amendments will take effect on the date specified in the notice unless the Employer notifies MHI in writing at least (10) days before the proposed change takes effect that the Employer is terminating the Agreement. Except as specified in Section VII. above, MHI may change the premium rates only effective on each Contract Anniversary Date. The amended premium rate will be confirmed in a rate letter from MHI to the Employer, which will automatically amend this Agreement and be incorporated herein by reference. The Employer shall be solely responsible for providing notice to members of these amendments, and MHI shall not be responsible for any consequences of the Employer's failure to provide such notice.
2. By the Group. The Group must provide to MHI thirty (30) days prior written notice of any amendment of this Agreement proposed by the Group. Such amendment shall be effective only if MHI has accepted such proposed amendment in writing, which acceptance may be withheld by MHI in its sole and absolute discretion.

- B. Force Majeure.** If, in the event of circumstances beyond the control of MHI, including but not limited to an act of God, riot, natural disaster, epidemic, public emergency, strike, war, civil insurrection, the complete or partial destruction of

facilities of MHI or its providers of services, or the disability of their personnel, delays or renders MHI unable to arrange for the services set forth in this Agreement, MHI shall incur no liability or obligation for the delay, or failure to arrange for such services. In such event, MHI shall refund a pro rata amount of the prepaid subscription rate to the Employer for the period in which it was unable or to arrange for benefits set forth in this Agreement.

- C. Entire Agreement. This Agreement, the Employer Group Application, the enrollment applications submitted by all the Subscribers on behalf of themselves and their enrolled Dependents together with any attachments, rate letters, riders or endorsements, constitute the entire contract, agreement and understanding between MHI and the Employer and supersedes all other prior oral or written agreements. Any change or waiver to this Agreement shall be effective only if evidenced by a written amendment to this Agreement signed by an authorized officer of MHI. Failure to insist on strict performance of any provision of this Agreement shall not constitute a waiver of such provision. The waiver of a provision of this Agreement on any one occasion shall not be deemed a waiver of any other provision of this Agreement, or as a waiver of such provision on any subsequent occasion.
- D. Successors. This Agreement may not be assigned by one party without the other's written consent. This Agreement shall inure to be benefit of and binding upon the Group and MHI, and their respective successors and permitted assigns.
- E. Relationship of the Parties. MHI is and shall be construed to be an arranger of health care benefits, and the Employer is and shall be construed to be a purchaser of health care benefits on behalf of the Members. MHI and the Employer are and shall be construed to be independent entities and independent contractors. Neither party shall have the express or implied right of authority to assume or create any obligation on behalf of, or in the name of the other party through its actions, provisions, or regulations. It is expressly understood that MHI is not a provider of health care services or benefits; MHI or its designee has entered into contractual arrangements with providers of health care service or benefits, which providers are entities and contractors wholly independent of MHI and are not the employees, agents or representatives of MHI for any purposes; and that MHI shall not be responsible for the acts, omissions, representations or other conduct of any such provider of health care service or benefits, including, without limitation, representations, concerning this Agreement. It is also expressly understood that the Employer and the Members have no rights under any agreement between MHI and a provider of health care service or benefits and that this Agreement is not to be deemed to create rights in any third parties including, but not limited to members.
- F. Indemnification. The Employer agrees to indemnify and hold MHI harmless from and against all claims, losses, damages, costs or expenses, including reasonable attorneys' fees, arising out of the Employer's failure in the performance of its duties and obligations under this Agreement.
- G. The Employer shall notify MHI immediately of (i) any actual or suspected fraud, waste, or abuse, (ii) any unauthorized acquisition or disclosure of confidential

information (including but not limited to personal health information, personal information, and/or Minuteman’s confidential business information), and/or (iii) any other legal or compliance related matter in any way relating to or arising out of the good or services provided pursuant to this Agreement. The Employer can contact MHI directly, or provide anonymous information by calling the Minuteman Compliance Hotline at 855-400-0098.

Executed as a sealed instrument this \_\_\_\_ day of \_\_\_\_\_, 2017.

Employer Name:

\_\_\_\_\_

Contact Name (print):

\_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Minuteman Health, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_ (print)

Name: \_\_\_\_\_ (signature)

Title: \_\_\_\_\_