

**COSE HEALTH AND WELLNESS TRUST**  
**Multiple Employer Welfare Arrangement**

**Section 1. Introduction**

Greater Cleveland Partnership has created the COSE Health and Wellness Trust ("MEWA") to provide Participating Employers belonging to COSE an arrangement for the payment or reimbursement of certain health care and other welfare benefit expenses incurred by Covered Persons.

Greater Cleveland partnership is a Code Section 501(c)(6) chamber of commerce membership organization focused on member services, economic development and business advocacy for the business community of Northeast Ohio.

The MEWA is intended to constitute a self-funded "multiple employer welfare arrangement" as defined by ERISA Section 3(40)(A) (provided that the MEWA itself is not intended to constitute an ERISA welfare benefit plan), and as defined by Ohio Revised Code Section 1739 and applicable regulations provided by the Ohio Department of Insurance. The MEWA is funded through a taxable trust (the "Trust") set forth in the Trust Agreement for the COSE Health and Wellness Trust (the "Trust Agreement"). It is intended that each Participating Employer is treated as sponsoring its own "welfare benefit plan" as defined under ERISA Section 3(1) of ERISA.

The MEWA is effective July 1, 2016, or such later date that the MEWA is issued a Certificate of Authority by the Ohio Department of Insurance.

Each Participating Employer will have a benefit book, with a "wrap" document. That documentation, combined with this MEWA document and the Trust Agreement, and any other documents intended to constitute a complete set of documents for the MEWA and for each Participating Employer's ERISA welfare benefit plan. The same documentation is intended to satisfy the requirements of a summary plan description for ERISA purposes.

The MEWA, Trust Agreement, and plan documentation are intended to meet all requirements of applicable sections of the Code, ERISA, and Ohio state law, and documents establishing this arrangement shall be interpreted and administered consistent with such requirements. Any mistake of fact or misstatement of fact shall be corrected when it becomes known, and the Plan Administrator or Participating Employer shall make such adjustment as it considers equitable and practical, including making corrections permitted under Department of Labor or Internal Revenue Service guidelines, if any, that are reasonable and appropriate in the circumstances.

**Section 2. Definitions**

Capitalized terms used in this document have the following meanings:

### **Benefits**

"Benefits" means medical and prescription drug benefits provided by the Participating Employer to Covered Persons under the MEWA and their dependents (if applicable). These benefits are set forth in related documents as described in Section 1.

### **Board of Trustees**

"Board of Trustees" means the Board of Trustees as set forth in the Trust Agreement.

### **Code**

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

### **Covered Person(s)**

"Covered Person(s)" means the Participant and the Participant's eligible dependents as defined in the benefit book.

### **Eligible Employee**

"Eligible Employee" means an individual who is employed by a Participating Employer and who works a normal week of 20 hours or more hours (or such higher number of hours as the Employer may specify in plan documentation, not to exceed 30 hours). "Eligible Employee" does not include a temporary or substitute employee, or a seasonal employee who works only part of the calendar year on the basis of natural or suitable times or circumstances, unless an employee would be defined as a "full time employee" under applicable law. Provided, however, that the documentation for a Participating Employer's plan may set forth a different definition of Eligible Employee, which shall be controlling, provided that such definition does not conflict with applicable law.

### **Employee**

"Employee" means any individual that an Employer classifies as a common-law employee and who is on the Employer's Form W-2 payroll, excluding:

- an individual who has been classified by the Employer as a contract worker, independent contractor, temporary employee, or casual employee for the period during which such individual is so classified by the Employer, whether or not such individual is on the Employer's Form W-2 payroll or is determined by any court or governmental agency to be a common-law employee of the Employer;
- "leased employees" within the meaning of Code Section 414(n), except to the extent required by Code Section 414(h), if applicable;
- nonresident aliens with no income from sources within the United States; and

- employees who are members of a collective bargaining unit that has bargained in good faith over benefits and whose participation is not provided for under the agreement.

Provided, however, that the documentation for a Participating Employer's plan may set forth a different definition of Employee, which shall be controlling, provided that such definition does not conflict with applicable law.

#### **ERISA**

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

#### **Funding Rate**

"Funding Rate" means the amount each Participating Employer must contribute to participate in the MEWA.

#### **Participant**

"Participant" means an individual employed by or retired from a Participating Employer who is eligible for and has elected to enroll in the MEWA. Participant also includes former employees who have lost eligibility under the MEWA and who are continuing coverage pursuant to federal or state health care continuation law.

#### **Participating Employer**

"Participating Employer" means a small employer that employs individual employees, including sole proprietors, that is a member of the Greater Cleveland Partnership (GCP) and/or the Council of Smaller Enterprises (COSE) and who has established a group health plan for its employees and their dependents; and that has enrolled for coverage for its group health plan through the MEWA.

#### **Period of Coverage**

"Period of Coverage" means the period during which benefits are provided under the MEWA to Covered Person(s) of a Participating Employer.

#### **Plan Administrator**

"Plan Administrator" means the individual or entity that the Board of Trustees appoints to act as Plan Administrator, who acknowledges and accepts the appointment.

### **Section 3. Participating Employers**

#### **Participation Agreement**

A Participating Employer must submit an application, receive approval, execute a participation agreement, and comply with the terms of the participation agreement, including making required contributions toward the cost of providing benefits for their Covered Persons. Participating Employers may determine whether and the extent to which any MEWA benefits are to be provided on a contributory basis, in which case amounts are to be determined by the Participating Employer.

### **ERISA Plans**

*For purposes of ERISA, a Participating Employer is the plan sponsor, plan administrator, named fiduciary, and agent for service of legal process of its own ERISA welfare benefit plan. Participating Employers are responsible for complying with all applicable laws and regulations with respect to offering employee benefits to its Participants and their eligible dependents. It is the Participating Employer's responsibility to determine the tax treatment of MEWA benefits for reporting purposes. Neither the Employer nor the Plan Administrator makes any warranty or other representation as to whether any payment received under the MEWA will be treated as excludable from the Participant's gross income for federal or state income tax purposes.*

The Participating Employer's provisions for eligibility for its plan, eligibility for benefits under the plan, and employee contributions must comply with the nondiscrimination provisions of Code Section 105(h).

Neither the establishment of the MEWA or any amendment thereof will be construed as giving to any Covered Person or other person any legal or equitable right against the Plan Administrator or the Participating Employer, except as expressly provided herein and by applicable law. No Covered Person shall have any vested or nonforfeitable right to any coverage under any component benefit program under the MEWA by reason of participation herein.

### **Funding**

The costs and expenses incurred in the administration of this MEWA shall be paid from the Trust, unless paid by the Participating Employers. Such expenses shall include claims administration fees and costs, fees of accountants, legal counsel and other specialists, bonding expenses, and other costs of administering the MEWA. Participating Employers and Participants shall make contributions to the Trust. Funding Rates will be determined by the Plan Administrator, may be different for each Participating Employer, and may be modified by the Plan Administrator at any time. Greater Cleveland Partnership shall have no liability for the provision of any Benefits hereunder or for any of the costs of this MEWA, and no Covered Person shall, by virtue of this MEWA, have any right or interest in the assets of such Trust except to receive Benefits in accordance with plan terms. The MEWA may purchase insurance policies and stop-loss coverage. The MEWA may also accept funding pursuant to surplus notes.

All benefits under the MEWA shall be provided solely from the Trust and applicable insurance, if any. Greater Cleveland Partnership and its officers, directors, and

employees, the Plan Administrator and its officers, directors, and employees, and the Board of Trustees and its members shall not have any liability or responsibility for providing an benefits, including in the event the Trust is insufficient to provide for the payment of any benefit under the MEWA.

#### **Section 4. MEWA Administration**

##### **Plan Administrator**

The Board of Trustees has designated the Plan Administrator as the administrator of the MEWA. The Plan Administrator shall perform its duties as the Plan Administrator and in its sole discretion shall determine appropriate courses of action in light of the reason and purpose for which this MEWA is established and maintained. In particular, the Plan Administrator shall have full and sole discretionary authority to interpret all plan documents and to make all interpretive and factual determinations as to whether any individual is entitled to receive any benefit under the terms of the plan. Any construction of the terms of any plan document and any determination of fact adopted by the Plan Administrator shall be final and legally binding on all parties. Any interpretation, determination, or other action of the Plan Administrator shall be subject to reversal only if it is arbitrary or capricious or otherwise an abuse of discretion. Any review of a final decision or action of the Plan Administrator shall be based only on evidence presented to, or considered by, the Plan Administrator at the time it made the decision that is the subject of review. Accepting any benefits or making any claim for benefits under this Plan constitutes agreement with, and consent to, any decisions that the Plan Administrator makes, in its sole discretion and, further, constitutes agreement to the limited standard and scope of review described by this section.

The Plan Administrator may delegate to one or more individuals or entities part or all of its discretionary authority under the Plan, provided that any such delegation must be made in writing.

##### **Powers and Duties of the Plan Administrator**

The Plan Administrator serves without compensation, but may receive reimbursement for expenses actually incurred in the performance of services.

The Plan Administrator will have the powers and duties of the general administration of the MEWA, including the following:

- To keep and maintain plan documents and all other records pertaining to the MEWA;
- To establish, enforce and carry out the policies, interpretations, practices and procedures of this MEWA as it deems necessary or proper for the efficient administration of the MEWA, including for compliance with the Health Insurance Portability and Affordability Act of 1996, as amended;
- To administer the MEWA in accordance with its terms;

- To determine all questions of eligibility, status, and coverage;
- To interpret the plan documents, including the authority to construe possible ambiguities, inconsistencies, omissions, and disputed terms;
- To make factual findings;
- To, upon reasonable notice, audit the personnel records, tax returns, or other pertinent data of each Participating Employer to determine any matter of eligibility for coverage hereunder of any person;
- To decide disputes that may arise relative to a Covered Person's rights and/or availability of benefits;
- To prescribe procedures for filing a claim for benefits, to review claim denials and appeals relating to them and to uphold or reverse such denials;
- To file claims with the insurance companies, if any, who issue group term life, accidental death and dismemberment, or other insurance policies to the MEWA;
- To appoint and supervise a claims administrator to pay claims;
- To direct payment of amounts from Trust assets;
- To perform all necessary reporting and disclosure as required by applicable law;
- To establish and communicate procedures to determine whether a medical child support order is a qualified medical child support order;
- To delegate to any person or entity such powers, duties, and responsibilities it deems appropriate;
- To hire or appoint actuaries, attorneys, accountants, brokers, employee benefits consultants, and other specialists to render advice concerning any responsibility they have under the MEWA;
- To assist with or assume certain responsibilities on behalf of plans sponsored by Participating Employers, pursuant to written agreement with such Participating Employers;
- To establish one or more committees to assist in administration of the MEWA; and
- To perform each and every function necessary for or related to the MEWA's administration.

Failure by the Plan Administrator to enforce any plan provision of shall not affect the Plan Administrator's right thereafter to enforce such provision or any other provisions of the MEWA.

## **Indemnification and Insurance**

Whenever a person must or may act upon the written direction of another, he shall not be required to inquire into the propriety of such direction, and he shall follow the direction unless it is clear on its face that the actions to be taken under that direction are prohibited by law or the terms of the MEWA. Moreover, such person shall not be responsible for his or her failure to act absent such written direction .

To the full extent permitted under state and federal law, Greater Cleveland Partnership and its officers, directors, agents and employees, and the Board of Trustees, the Plan Administrator, and their delegates and service providers, will be defended, indemnified and held harmless by the Plan against any and all expenses, judgments, decrees, fines, taxes, penalties, or amounts paid in settlement or otherwise, including attorney's fees and other costs, in defense of any claim, action, proceeding or governmental audit to which Greater Cleveland Partnership and its officers, directors, agents and employees, and the Board of Trustees, the Plan Administrator, and their delegates and service providers are or may be made a party by reason, directly or indirectly, unless it is determined by a court of competent jurisdiction that Greater Cleveland Partnership and the affected officers, directors, agents and employees, and the Board of Trustees, the Plan Administrator, and their delegates and service providers was negligent or committed willful misconduct or fraud with respect to the subject matter of the claim, action, proceeding, or governmental audit.

To the extent permitted or required by law, the Plan Administrator may secure fidelity bonding, fiduciary insurance, and directors and officers liability insurance as appropriate for Greater Cleveland Partnership officers, directors, agents and employees, Board of Trustees, Plan Administrator, and their delegates and service providers, with respect to their involvement with the MEWA and Trust.

## **Section 5. Claims**

Questions regarding whether an individual is a Covered Person or is eligible to become a Covered Person under this MEWA shall be submitted to the Plan Administrator. The Plan Administrator shall determine such questions in its discretion based on its review and interpretation of the terms of the plan. Claims for Benefits under the MEWA shall be filed, processed, reviewed, and, if denied, appealed in accordance with the procedures set forth in the plan documents.

The Plan Administrator is granted discretionary authority to interpret and construe the terms of the plan and to decide disputed claims in accordance with provisions of this MEWA. The interpretations, determinations and decisions of the Plan Administrator shall be final and binding upon all persons with respect to any right, benefit or privilege hereunder. Except as otherwise provided by law, the review procedures set forth in the plan documents shall be the sole and exclusive remedy under the MEWA.

**Section 6. Amendment or Termination of the MEWA**

Greater Cleveland Partnership has the right to amend or terminate the MEWA at any time. The MEWA may be amended or terminated by a written instrument duly adopted by Greater Cleveland Partnership or any of its delegates. For this purpose, amending the MEWA includes making changes to a component benefit program. Terminating a component benefit program (including terminating an insurance contract through which such benefits are provided) is an amendment, not a termination of the MEWA. Upon termination or discontinuance of the MEWA, the assets of the MEWA, if any, shall be used to provide benefits to persons who are Covered Persons at such time and to pay administrative expenses of the MEWA and benefits offered through the MEWA, and to repay any surplus note obligation as permitted under state law.

**GREATER CLEVELAND  
PARTNERSHIP**

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

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

Date: \_\_\_\_\_