

2.04 Investment of Fund. The Trustee may invest and reinvest the principal and income of the Fund and keep the Fund invested, without distinction between principal and income, in stocks, bonds, notes, mortgages, other securities, trust and participation certificates, or in other property, including units of participation in any common trust funds established by the Trustee, or in any savings account, certificate of deposit, or similar instrument whether or not maintained by the Trustee, as the Trustee deems proper, provided that the investments are of a kind authorized by the law of the State of Wisconsin for investments by fiduciaries. The Trustee may not invest in securities or real property of the Clinic or any of its affiliates. Notwithstanding the foregoing, the Clinic may from time to time furnish the Trustee a written statement of investment policy which shall have the effect of limiting the nature of investments the Trustee is authorized to acquire and hold for the Fund, and the Trustee shall conform to the investment policy until instructed otherwise by the Clinic.

2.05 Expenses of Fund. The Trustee, upon the written direction of the Clinic, shall disburse money from the Fund solely for the purposes of meeting the financial responsibility requirements of ch. 655, Wis. Stat., as described in the Plan, and paying the administrative expenses of operating the Plan and the Fund. These expenses may include, but shall not be limited to, the following: expenses of establishing and maintaining the Fund, expenses for administering the claims management of the Plan, expenses involved with maintenance of the Fund by the Trustee, litigation and other legal expenses, actuarial expenses, excess insurance coverage, risk management, and any other expenses related to the Plan. If the losses or expenses of the Fund exceed the assets of the Fund, other than any letters of credit held by the Trustee, and if the Clinic does not, within thirty (30) days of the date of receiving notice of the insufficiency from the Trustee, make sufficient contributions to the Fund to cover the losses or expenses, the Trustee shall, in order to cover the losses or expenses, and after notifying the Clinic and obtaining the approval of the Commissioner of Insurance, draw upon any letters of credit held by the Trustee.

2.06 Reporting. The Trustee shall prepare for the Clinic and the Commissioner quarterly written statements showing the financial condition of the Fund, which shall be submitted no later than sixty (60) days after the calendar quarter. These financial statements shall include a balance sheet and an analysis of the Fund balance which shall show the balance in the Fund at the beginning and end of the period, current period contributions, Fund investment gains or losses, and the amount and nature of reserves and payments, including separate accounting for claims paid, claims management, legal expenses, and other expenses. An independent public accounting firm approved by the Trustee and the Clinic shall prepare annual audited financial statements of the Fund which shall be available to the Trustee, the Clinic, and the Commissioner no later than one hundred twenty (120) days after the close of the Fund's fiscal year, which is **(specify date)**. In addition, an independent actuary approved by the Trustee and the Clinic shall review the reserve levels, project losses for the fiscal year, and recommend a level of funding for the coming fiscal year. The actuarial report shall be submitted to the Commissioner at least sixty (60) days before the start of the fiscal year which is the subject of the report.

2.07 Income of Fund. Any income, including but not limited to interest, dividends, and capital gains, derived from the investment of the Fund shall inure directly to the Fund, except that if an independent actuary selected by the Clinic that has experience in the field of medical malpractice liability insurance determines that the Fund balance is excessive, with the approval of the Commissioner, income from the Fund may inure directly to the Clinic.

PART III - SCHEDULE OF CHARGES

3.01 Trustee Fee. The Trustee shall receive as its fee for the trustee and investment services rendered to the Plan a charge commensurate with the Trustee's usual and customary charges for trustee and investment agent services.

3.02 Payment of Fee. With the approval of the Clinic, the Trustee shall be reimbursed for its services directly from the Fund on a quarterly basis.

PART IV - GENERAL PROVISIONS

4.01 Governmental Regulations. All parties to this agreement shall comply with ch. 655, Wis. Stat., s. Ins 17.50, Wis. Adm. Code, and all other applicable provisions of statute, rule, or regulation of any governmental authority having jurisdiction over the parties.

4.02 Amendments. This agreement may be amended at any time by mutual agreement of the parties, but before any amendment takes effect, it shall be reduced to writing and approved by **(name of governing body of clinic)**, and the Commissioner.

4.03 Miscellaneous Rights and Responsibilities of Trustee. The Trustee shall be protected in relying upon any notice, instruction, or other document it believes to be genuine and correct and to have been signed or sent by the proper person or persons, and it shall not be required to investigate into the truth or accuracy of any statement contained in any notice, direction, or other document received by the Trustee.

The Trustee has no responsibility except for the performance of its express duties under this agreement, and no additional duties shall be inferred from or implied by this agreement.

Additionally, the Trustee shall have power and authority:

1. To exercise all voting rights with respect to any investment held for the Fund and in connection with it, and to grant proxies, discretionary or otherwise.
2. To cause any security or other property of the Fund to be registered and held in the name of one or more of its nominees.
3. To hold uninvested, without liability for interest thereon, any amounts of money which the Trustee may reasonably anticipate to be necessary for disbursements from the Fund, as required from time to time.
4. Generally, to do all acts, execute all instruments, take all proceedings, and exercise all rights and privileges with respect to any property constituting a part of the Fund as if the Trustee were the absolute owner thereof.

4.04 Termination of Agreement. This agreement shall remain in force and effect for an indefinite term, unless and until, with the approval of the Commissioner, either of the parties gives the other party six (6) months' written notice that the agreement shall terminate, or unless and until the Commissioner orders its termination.

4.05 Termination of Fund. Notwithstanding section 4.04, if the Clinic terminates its Plan, with the approval of the Commissioner, the Fund created by this agreement will also terminate according to the following procedure. The adequacy of the Fund balance as of the date of the termination of the Plan will be determined by an independent actuary selected by the Clinic that has experience in the field of medical malpractice liability insurance. If the Fund is deemed inadequate at the time of termination, with the approval of the Commissioner, the Clinic will make any necessary contributions to the Fund. If the Fund is deemed excessive at the time of termination, with the approval of the Commissioner, the excess amount shall be returned to the Clinic.

Annually after the termination of the Plan, the adequacy of the Fund balance will be determined by an independent actuary selected by the Clinic that has experience in the field of medical malpractice liability insurance. With the approval of the Commissioner, the Clinic shall make any necessary contributions to the Fund, and any excess amounts in the Fund shall be returned to the Clinic. The Fund created by this agreement shall terminate when, pursuant to the provisions of this agreement, it is actuarially determined that there is no longer any necessity for the Fund and the Commissioner authorizes the termination.

4.06 Powers of Commissioner. The Commissioner may order the Trustee to draw upon letters of credit as necessary to assure the soundness of the Fund, and may order this agreement to terminate and order the Clinic to

maintain the adequacy of the Fund as provided in section 4.05.

IN WITNESS WHEREOF, this agreement has been executed this _____ day of _____,

(NAME OF PROVIDER)

(NAME OF FINANCIAL INSTITUTION)

By:

(Name of Authorized Representative)

(Title)

By:

(name)

Attest:

(Name)

(Title)

Attest:

(name)

SAMPLE

(NAME OF SELF-INSURED HEALTH CARE PROVIDER)
PROFESSIONAL LIABILITY SELF-INSURED PLAN

ARTICLE I - PURPOSE

This document provides for the establishment and operation of the **(name of self-insured provider)** Professional Liability Self-Insured Plan ("Plan"). The Plan is established under s. 655.23 (3) (a), Wis. Stat., and s. Ins 17.50, Wis. Adm. Code, in lieu of purchasing professional liability insurance coverage.

ARTICLE II - COVERAGE AGREEMENT

- A. Occurrence Coverage. The coverage provided by the Plan shall be occurrence coverage, i.e., coverage for any liability based on an act or omission which occurs during the effective dates of the Plan and which results in a claim being brought within the time allowed by the applicable statute of limitations. The Plan shall have annual limits in the amounts specified in s. 655.23 (4), Wis. Stat., for each fiscal year. It is intended that the Wisconsin Patients Compensation Fund shall pay the amounts in excess of the underlying limits of the Plan.
- B. Scope of Coverage. The Plan shall pay in full the settlement of any claim, arbitration award, or judgment for compensatory damages imposed against any covered person arising out of any covered activity as described in this article. In addition, and not subject to the annual limits of paragraph A of this article, the Plan shall pay in full all supplemental expenses of defending claims and negotiating settlements.
- C. Persons Covered. The following persons or organizations ("Participants") are covered under the Plan to the extent set forth below:
1. **(name)**.
 2. Any licensed physician or nurse anesthetist employed by **(name)**, while acting within the scope of his or her duties for **(name)**. The limits of liability in paragraph A of this article apply individually to each such physician or nurse anesthetist.
 3. Any other employe, student, or volunteer of **(name)**, while acting within the scope of his or her employment by **(name)**.
 4. Any other person for whom **(name)** is legally liable.
- D. Covered Activities. Activities which will be considered within the scope of employment for **(name)** and, therefore, covered by the Plan, shall include:
1. Coverage for providing or failing to provide health care services to a patient.
 2. Coverage for peer review, accreditation, and similar professional activities in conjunction with and incidental to the provision of health care services, when conducted in good faith.
 3. Coverage for utilization review, quality assurance, and similar professional activities in conjunction with and incidental to the provision of health care services, when conducted in good faith.
- E. Limitations on Coverage. The coverage afforded by the Plan does not apply to any of the following:
1. Criminal acts.
 2. Intentional sexual acts and other intentional torts.
 3. Restraint of trade, anti-trust violations, and racketeering.

4. Defamation.
5. Employment, religious, racial, sexual, age, and other unlawful discrimination.
6. Pollution resulting in injury to a third party.
7. Prior known acts.
8. Incidents occurring while a provider's license to practice is suspended, revoked, surrendered, or otherwise terminated.
9. Criminal and civil fines, forfeitures, and other penalties.
10. Punitive and exemplary damages.
11. Liability of the insured covered by other insurance, such as workers compensation, automobile, fire, or general liability.
12. Liability arising out of the ownership, operation, or supervision by the insured of a hospital, nursing home, or other health care facility or business enterprise.
13. Liability of others assumed by the insured under a contract or agreement.

[The Plan may also contain other exclusions which are not inconsistent with the coverage described under paragraph D of this article.]

- F. Coverage Period. The coverage period with respect to each Participant shall begin on **(effective date of this Plan)**, or thereafter on the date on which the Participant is first employed by **(name)**, and shall end at 12:01 a.m. on the day following the day on which the Participant is last employed. Claims arising from professional activities during the coverage period but filed after that period will be covered by the Plan.
- G. Prior Acts Coverage. The Plan shall also cover claims occurring before **(Plan's effective date)** and on or after **(retroactive date of the previous carrier's claims-made policy)** if:
1. The claim arose from the professional activities of a person who, at the time the claim arose, was a covered insured under **(name of previous carrier)**'s claims made policy, and
 2. The claim was not reported to **(name of previous carrier)** before **(Plan's effective date)**.

[Include this paragraph if applicable.]

- H. Investigation, Defense, Settlement. **(name)** will undertake on behalf of itself and the Wisconsin Patients Compensation Fund, the investigation, defense, settlement, or other disposition of any claim, suit, or proceeding made, brought, or instituted against a Participant. **(name)** will contract with a qualified insurance company or agency approved by the Wisconsin Commissioner of Insurance ("Commissioner") to provide claim investigation services. The decision as to settlement or other disposition of any claim shall be solely at the discretion of **(name)**, except that if the disposition may require payment by the Patients Compensation Fund, the Plan shall obtain prior approval by the Fund's Board of Governors. The defense of all claims shall be undertaken by counsel designated by **(name)**.

ARTICLE III - CONDITIONS

- A. Standard of Practice. Participants are expected to follow accepted and established practices in their field, to adequately document the care provided in accordance with the policies of **(name)**, and to refrain from soliciting or encouraging the filing of claims or suits. Participants shall also cooperate with and participate in **(name's)** risk management program.

B. Participants' Duties in Event of Occurrence, Claim, or Suit.

1. Whenever a Participant has information from which it is reasonable to believe that an act or omission involves injuries or damages which are likely to involve this Plan, or whenever a Participant receives information of a potential claim against him or her, the Participant shall immediately submit written notice to the Plan containing details sufficient to identify the incident, and the names and addresses of any injured person or persons known to the Participant, including the names and addresses of any witnesses.
2. If a claim is made or suit is brought against a Participant, the Participant shall immediately forward to the Plan every demand, notice, summons, or other process received by the Participant or his or her representative. Furthermore, the Participant shall make available to the Plan any information, assistance, and statements relating to the claim that may reasonably be required.
3. The Participant shall cooperate with the Plan and, upon the Plan's request, assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Participant because this Plan. The Participant shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

C. Subrogation. In the event of any payment under this Plan, the Plan shall be subrogated to all of the Participant's rights of recovery against any person or organization and the Participant shall execute and deliver instruments and papers and do any other act necessary to secure those rights. The Participant shall do nothing after a loss to prejudice those rights.

D. Assignment. The rights of a Participant under the Plan are not assignable.

E. Other Insurance. The coverage provided by this Plan is primary coverage, but if other valid insurance is available to the Participant, the coverage afforded by this Plan shall only be available in conjunction with the other insurance.

ARTICLE IV - SELF-INSURANCE FUND

In order to provide the funding necessary to assure the financial soundness of this Plan, the Plan will create a Self-Insured Trust Fund with the **(name of bank)** a **[Wisconsin-chartered]** **[federally-chartered]** bank with trust powers, which is located in **(name of city)**, Wisconsin. The operation of this Fund shall be governed by the Trust Agreement between **(name of self-insured provider)** and the **(name of bank)**, a copy of which is attached and incorporated into the Plan by reference.

ARTICLE V - AMENDMENTS

This Plan may be amended at any time by **(name)**, but before any amendment becomes operative or valid, it shall be reduced to writing and approved by **(name of governing body)** and the Commissioner of Insurance.

ARTICLE VI - TERMINATION

- A. Termination by Participants. If a Participant ceases to be employed by **(name)**, the Plan coverage shall terminate with respect to the Participant but shall continue to cover the Participant with respect to any liability covered by the Plan which was incurred while the Participant was an employee of **(name)**.
- B. Termination of Plan. Pursuant to the provisions of the Trust Agreement, the Plan may be terminated at any time by **(name)**, if the termination has been approved by **(name of governing body)** and the Commissioner of Insurance. Before termination takes effect, the Plan shall notify all of the Participants and the Commissioner of Insurance that the termination of the Plan will take effect on a specified date which is not less than sixty (60) days after the date of the notice.

IN WITNESS WHEREOF, the **(name)** Professional Liability Self-insured Plan Document was adopted this day of .

(NAME OF SELF-INSURED PROVIDER)

By:
(name of authorized representative)
(title)

Attest:
(name)
(title)