



PUBLIC RISK, INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM)
CONTROLLED UNAFFILIATED BUSINESS AGREEMENT
EXCESS WORKERS' COMPENSATION PROGRAM

This Agreement is entered into by and between Public Risk, Innovation, Solutions, and Management (hereinafter referred to as PRISM) and _____ (hereinafter referred to as Participant). This Agreement constitutes the full and complete agreement between PRISM and Participant.

1. **Public Risk, Innovation, Solutions, and Management.** PRISM is a California Joint Powers Authority which is authorized pursuant to California Government Code § 6500 et seq., to enter into agreements with other public agencies, including out-of-state public agencies, such as Participant.
2. **Participant.** Participant is a public agency which is authorized to enter into agreements with other public agencies, including out-of-state public agencies.
3. **Captive Insurance Company.** PRISM has created the PRISM Affiliate Risk Captive (hereinafter referred to as PRISM ARC), a wholly owned pure captive insurance company, domiciled in and regulated by the State of Utah.
4. **Program Participation.** For PRISM's purposes, Participant will be considered a participant in PRISM's EWC Program for the period of time evidenced by an insurance policy or other related policy or reinsurance agreement issued by either PRISM ARC or a fronting company that is reinsured by PRISM ARC, including subsequent renewals.
5. **Responsibilities of Participant.** Participant shall have the following responsibilities under this Agreement:
 - (a) Appoint an officer or employee of Participant to serve as a liaison and primary contact with PRISM for all matters relating to risk management;
 - (b) Maintain an active risk management program, and consider recommendations of PRISM concerning the reduction of unsafe practices;
 - (c) Be ultimately responsible for the investigation, settlement, defense and appeal of any claim made, suit brought, or proceeding instituted against Participant or its member.
 - i. Participant shall use only qualified personnel to administer its workers' compensation claims.
 - ii. Qualified defense counsel experienced in workers' compensation law and practice shall handle litigated claims.
 - iii. Participant shall review PRISM's National Workers' Compensation Claims Administration Standards (Exhibit A). It is recommended that Participant's claims

administrator utilize these standards since they will be utilized in PRISM's workers' compensation claims audits.

(d) Provide written notice of any potential excess workers' compensation claim pursuant to the claims reporting requirements set forth in the policy or reinsurance agreement issued for the applicable coverage period.

(e) Maintain claims data for workers' compensation claims and provide such records to PRISM or PRISM ARC as requested. Participant shall maintain records of claims in each category of coverage (i.e. indemnity, medical, expense) or as defined by PRISM or PRISM ARC. Claim records shall include open and closed claims, allocated expenses, and shall be shown at full value (not limited to the layer of coverage provided by PRISM ARC, not capped by Participant's self-insured retention, etc.).

(f) Claims audits are provided as a service to Participant and to confirm for PRISM that appropriate claims practices are in place. Participant agrees to allow for and cooperate with PRISM or PRISM ARC for the auditing of Participant's claims and claims practices. Recommendations, if any, made in the claims audit provided by PRISM shall be considered by Participant and Participant shall provide a written response within 60 days of receipt of the audit report outlining either a plan to address the recommendation or an explanation of why Participant has decided not to do anything further with respect to the recommendation.

(g) Participant's fiscal health and ability to pay claims within its self-insured retention are important to PRISM and PRISM ARC. Participant is required to obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) at least once every three (3) years. A financial subsidy from PRISM of up to \$2,000 per fiscal year is available to Participant to assist in paying for the actuarial study. Based upon the actuarial recommendations, Participant should maintain reserves and make funding contributions equal to or exceeding the present value of expected losses and a reasonable margin for contingencies.

6. Responsibilities of PRISM. PRISM shall have the following responsibilities under this Agreement:

(a) Conduct a risk assessment survey of Participant prior to Participant binding coverage, which shall evaluate the current state of Participant's risk management program, including recommendations for improvements.

(b) Provide claims oversight and act as liaison between Participant and any insurers and/or reinsurers.

(c) Communicate availability of PRISM services and make all applicable risk management and risk control services available to Participant.

(d) Subsidize Participant's risk management costs by providing a \$1,000 subsidy per year for unspecified risk management services, and as noted above, up to \$2,000 per year for actuarial services.

(e) Invite Participant to attend the PRISM annual public entity meeting hosted by PRISM.

(f) Conduct a claims administration audit utilizing the National Workers' Compensation Claims Administration Standards (Exhibit A) once every two (2) years. The claims audit shall be performed by a firm selected by PRISM, unless an exception is approved. In addition, an audit shall be performed within twelve (12) months of any of the following events:

- i. Initial binding of excess workers' compensation coverage with PRISM ARC or a fronting company;
- ii. There is an unusual fluctuation in the Participant's claim experience or number of large claims; or
- iii. Participant changes its workers' compensation claims administration firm.

7. **Termination.** At the end of a coverage period, Participant may decide not to renew. If Participant does not renew, then this Agreement shall terminate when the most recent policy or reinsurance agreement issued to Participant concludes. If Participant terminates the policy or reinsurance agreement at any point during the operation of the policy or reinsurance agreement, then this Agreement shall terminate as of the effective date of the termination. Should Participant decide not to renew or terminate the policy or reinsurance agreement issued, then Participant may not reapply for excess workers' compensation coverage for a period of three (3) years from the effective date of the policy termination or, in the event of withdrawal, from the date the most recent policy or reinsurance agreement issued to Participant concludes.

8. **Dispute Resolution.** Disputes regarding the provisions of this Agreement shall be addressed between Participant and PRISM pursuant to the following procedures:

(a) **Request for Reconsideration.** Participant shall make a written request to the appropriate PRISM committee for reconsideration of their position, citing the arguments in favor of Participant and any applicable case law that applies. Participant can also request a personal presentation to that PRISM committee, if it so desires.

(b) **Committee Appeal.** The PRISM committee responsible for or having jurisdiction over the decision in question shall review the matter including, but not limited to, the information provided by Participant and PRISM and render a decision. This committee appeal process is an opportunity for both sides to discuss and substantiate their positions based upon legal arguments and the most complete information available.

(c) **PRISM Executive Committee Appeal.** If Participant is not satisfied with the outcome of the committee appeal and wishes to continue the appeal process, Participant must make a written request to the PRISM Executive Committee for reconsideration. The Executive Committee shall review the matter including, but not limited to, the information provided by Participant and PRISM and render a decision.

(d) **Arbitration.** If Participant is not satisfied with the outcome of the PRISM Executive Committee appeal, the next step in the appeal process is arbitration. The nature of the arbitration, whether binding or non-binding, shall be mutually agreed upon by the parties.

If the parties are unable to reach an agreement on the nature of the arbitration, then the arbitration shall be non-binding. The matter shall be submitted for a determination to a mutually agreed upon arbitrator or panel of arbitrators. If Binding Arbitration is selected, then the decision of the arbitrator shall be final and both sides agree to abide by the decision of the arbitrator, with no right of appeal. The cost of the arbitrator(s) shall be shared equally by Participant and PRISM. Each party shall bear their own attorneys' fees and costs for the arbitration including any attorneys' fees and costs incurred through the committee and Executive Committee appeal process.

(e) **Litigation.** If, after exhausting the dispute resolution procedures set forth in paragraphs (a)-(d), either party is not satisfied with the outcome of the non-binding arbitration process, either party may initiate litigation to remedy the dispute.

9. **Amendment.** This Agreement may be amended by a subsequent agreement of the PRISM Executive Committee and signature on that Agreement by Participant's designated representative who shall have authority to execute the Agreement. Should Participant fail to execute any amendment to this Agreement within the time provided by the PRISM Executive Committee, Participant shall be deemed to have non-renewed as of the end of the coverage period.

10. **Severability.** Should any provision of this Agreement be judicially determined to be void or unenforceable, such determination shall not affect any remaining provision.

11. **Effective Date.** This Agreement shall become effective on the effective date of insurance or reinsurance coverage for Participant.

12. **Survival of Terms.** All obligations set forth above in Paragraph 5, subsections (c), (d), and (e), and Paragraphs 8, 10, and 13 shall survive the termination of this Agreement until all obligations between the parties have been finally settled.

13. **Venue and Governing Law.** The laws of the State of California shall govern the terms and conditions of this Agreement with venue in the Superior Court for the State of California, County of Sacramento, or, if filed in federal court, the Eastern District of California. Provided, however, the laws of the state of Utah shall govern the terms and conditions of this Agreement involving PRISM ARC; and venue with respect to any lawsuit with PRISM ARC as a party shall be in the Third Judicial District in Salt Lake County, State of Utah, or, if filed in federal court, the Central Division of the District of Utah.

14. **Execution in Counterparts.** This Agreement may be executed in several counterparts,

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each of which shall be an original, all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth below.

Dated: _____

Gina Dean, CEO
Public Risk, Innovation, Solutions, and Management

Dated: _____

Signed By:
Entity Name:
Effective Date:



EXHIBIT A NATIONAL LIABILITY CLAIMS ADMINISTRATION STANDARDS

The following Standards have been adopted by the Public Risk, Innovation, Solutions, and Management (hereinafter PRISM). It is the intent that these standards shall be followed by the Participant and/or third party administrator.

I. CLAIMS INVESTIGATION

- A. Complete initial investigation answering questions such as who, what, where, when and why. Investigations shall be completed within forty-five (45) days of the Participant's knowledge of claim, including statements from participants and witnesses, appropriate official reports, investigative reports, site inspections, relevant documents and photos/videos.
- B. Identify liability issues, including immunities, comparative negligence, joint tortfeasors and joint and several liability.
- C. Initiate the development of information on damages including, but not limited to:
 - 1. Property damage
 - 2. Nature and extent of injuries
 - 3. Medical costs (billed and paid)
 - 4. Lost wages (past and future)
 - 5. Other economic damages
 - 6. Non-economic damages
- D. Obtain and review relevant contracts and insurance documents, to determine whether there is any sharing or complete transfer of the risk.
 - 1. Hold-harmless and/or indemnity agreements
 - 2. Additional insured requirements
- E. Ensure proper preservation of evidence.
- F. Evaluate the need to utilize experts.
- G. Indexing.
 - 1. All bodily injury claims shall be initially reported to the Index Bureau and re-indexed on an as needed basis thereafter.

PRISM maintains a membership with the Index Bureau that Participants can

access.

- H. Secure estimates or appraisals for damaged property.
- I. All notices (pertaining to claim insufficiency, returning late claims, claims rejections, etc.) shall be done in accordance with the relevant Governmental Code provisions.

II. PRISM REPORTING REQUIREMENTS

A. First Report

The Participant shall give PRISM immediate written notice for any claims or suits which the Participant becomes aware of that include injury of the following types:

- a. Death
- b. Paralysis, paraplegia, quadriplegia
- c. Loss of eye(s), or limbs
- d. Spinal cord or brain injury
- e. Dismemberment or amputation
- f. Sensory organ or nerve injury or neurological deficit
- g. Serious burns
- h. Severe scarring
- i. Sexual assault or battery including but not limited to rape, molestation or sexual abuse
- j. Substantial disability or disfigurement
- k. Any class action
- l. Any claim or suit in which PRISM is named as a defendant;
or
- m. Any injury caused by lead.

Additionally, the Participant must report to PRISM an occurrence, offense, or wrongful act as follows:

As respect to the General Liability 1 Program Participants, this includes any occurrence, offense, or wrongful act in which the amount incurred has reached 50 percent or more of their individual self-insured retention or \$500,000, whichever is lower.

As respect to the General Liability 2 Program Participants, this includes any occurrence, offense, or wrongful act in which the amount incurred has reached 50 percent of their individual self-insured retention.

Utilize the current First Report Potential Excess Liability Claims form,

available through PRISM's website, and transmit to PRISM by email to LiabilityClaims@prismrisk.gov.

First report forms shall, at a minimum, include the following:

- Participant's name
- Participant's claim number
- Defense counsel's name and firm name
- Lead Claimant's first and last name
- Specific date of loss
- Brief description of the incident
- Established reserves for indemnity, litigation, and expense

B. Status Reports

After the First Report to PRISM, status reports, whether provided by the Participant, third party administrator or defense counsel, shall be provided at a minimum of every ninety (90) days (more frequently if warranted). Status reports shall focus on changes in liability analysis, damages, and reserves.

C. Photos, diagrams, estimates, statements, contracts, medical, law enforcement and coroner's reports (where applicable), claim forms, lawsuits (including amended complaints), motions for summary judgment, demurrers, dismissals, appellate briefs and orders/rulings/judgments shall be in the claims file, and provided to PRISM, within ninety (90) days of receipt of the material.

D. Closure Reports

When a claim or suit that has been reported to PRISM is settled, dismissed or closed in any other fashion, PRISM shall be provided with the closing documents and an accounting of the final paid amounts on the exposure for indemnity, litigation, and expense within 90 days from the day the final defense bill is paid.

III. MEDICARE REPORTING

A. Proper verification of a claimant's status as to Medicare eligibility shall be completed and documented in every file involving a bodily injury. In those cases where the claimant does meet the eligibility requirements, mandatory reporting to the Center for Medicare and Medicaid Services (CMS) must be completed directly or through a reporting agent in compliance with State Children's Health Insurance Program (SCHIP) Section 111 of the Medicare Medicaid and SCHIP Extension Act of 2007.

IV. RESERVING

Each claim should be reviewed and evaluated according to the merits of the claim and based upon the most current and reliable information received, starting with the initial report of claim and continuing through final resolution. Delays result in understated reserves and, possibly, missed opportunities to settle.

- A. An accurate and appropriate initial indemnity reserve shall be established on all reportable claims based on facts known, upon completion of the initial investigative report or when suit is filed, whichever occurs first. In addition, separate legal and adjusting reserves shall be established.

Indemnity reserves shall reflect the most probable outcome plus exposure to plaintiff attorney's fees and costs.

Most probable outcome is the potential total amount a plaintiff could expect to receive, either through settlement or verdict, after factoring in the Participant's percentage of liability. (This approach is neither the best nor worst case outcome).

Factors to consider when evaluating the potential total settlement or verdict a plaintiff could expect to receive include but are not limited to:

- Extent of injuries and/or damages
- Medical expenses
- Loss of income
- Any other related expenses
- Future anticipated expenses
- Total of both gross and out-of-pocket expenses
- Permanent injury
- Disfigurement/scarring
- Pain and suffering
- Any other intangible factors which may result in a higher or lower claim value such as jurisdiction, credibility of parties/witnesses, etc.

Percentage of liability is determined by various factors that are discovered during an investigation. Reserves shall be adjusted accordingly, as facts are developed, to properly reflect the exposure. These factors include but are not limited to:

- a. Facts of loss
- b. Applicable laws
- c. Defense Counsel evaluations
- d. Jury Verdict evaluation
- e. The extent of plaintiff's liability (comparative negligence)

- f. The number of co-defendants and their percentage of liability
 - g. The ability of the co-defendants to respond financially to any settlement or verdict
 - h. Any other mitigating factors
- 2. Reserves shall be set at the most probable outcome even if it exceeds the Participant's Self-Insured Retention. In all litigated Excess reportable cases, the Participant shall set a meaningful indemnity reserve.
- 3. Reserves shall be evaluated for adequacy at least every ninety (90) days. All reserve changes shall be documented in a paper or electronic file providing explanation of the reason for the reserve change or notation that the current reserve is adequate and why. PRISM shall be notified of all reserve changes within thirty (30) days of the change being made.

V. DOCUMENTATION

- A. Each file shall contain information necessary to document the decisions made, including: all demands, offers of settlement and settlement authority.

For those cases in which the: (1) Bodily Injury claim is reserved above twenty five (25) percent of the SIR.; (2) Property Damage claim is reserved above twenty five (25) percent of the SIR; and (3) All claims that meet PRISM's excess reporting requirements regardless of reserves, the following information shall be contained in each file:

- 1. Claimant(s) Information
- 2. Date of Loss
- 3. Claim Number
- 4. Facts of accident or occurrence
- 5. Witness/Participant Statement
- 6. Reserve rationale
- 7. Assessment of liability
- 8. Damages/injuries, including medical costs, lost wages, dependency, property damage estimates, total loss evaluations, loss of use claims, and other damages
- 9. Index Bureau reporting
- 10. Coverage questions
- 11. Excess potential
- 12. Structured Settlement possibilities (where applicable)
- 13. Alternative Dispute Resolution
- 14. Subrogation potential (where applicable)
- 15. Immunities
- 16. Future course of action
- 17. Next diary date
- 18. If litigated, identify counsel on both sides

19. Offsets or liens that may need to be considered
20. Medicare eligibility and reporting
21. Risk and insurance transfer

VI. CASE SETTLEMENT FACTORS

- A. Settlement evaluation and authority by the Participant shall be documented. On cases exceeding the SIR, prior written settlement authority must be obtained from PRISM.
- B. The settlement shall be reasonable in light of damages, injuries, liability, and any obligations to Medicare.
- C. Settlements shall be effected in a timely manner, with consideration given to structures, statutory offers (Rule 68 or state statute) where applicable, and/or alternative dispute resolution.
- D. Contributions from joint tortfeasors shall be considered.
- E. Proper releases and dismissals shall be secured and copies provided to PRISM.

VII. LITIGATED FILES

- A. Defense litigation plan shall be in the file.
- B. Defense attorney's initial evaluation and budget shall be completed and in the file within sixty (60) days of assignment. If the billed amount of attorney's fees and costs exceeds seventy-five (75) percent of the total budget, then the defense attorney shall provide an updated budget.
- C. On litigated cases, defense counsel shall also include PRISM on their mailing lists for copies of correspondence, reports, evaluations, interrogatory summaries, deposition summaries and medical summaries. Actual deposition transcripts, interrogatories, their answers to interrogatories and interim billings are not required.

Updated reports shall provide a summary of pertinent information based on the status of a case. Pertinent information includes, but is not limited to:

- Identified experts – what their analysis has concluded, their credibility as a witness (both plaintiff and defense), and how their testimony will/will not influence the case potential.
- Witness deposition summaries including an evaluation of their

credibility as a witness and how their testimony will/will not influence the case potential.

- A summary of relevant documents disclosed or obtained through discovery and an analysis of their impact on the case.
 - A summary of applicable case law and immunities.
 - Updated evaluation of damages including, but not limited to, billed and paid medical bills, estimated future medical expenses, past and future wage loss estimates, and general damage estimates.
 - Analysis of liability and potential settlement/verdict value as well as suggested next steps (MSJ, Motion to Dismiss, Mediation, etc.).
- D. The defense attorney shall make proper follow-up requests for investigation.
- E. There shall be timely recommendations from defense firms regarding expert retention, settlements, and trial preparation.
- F. Defense costs shall be controlled by the Participant. Depositions, retention of experts, expert costs, and other defense costs shall be approved by the Participant.
- G. Litigation outcome and total costs shall be documented.
- H. There shall be timely notification to relevant employees and other parties regarding pending litigation.

No less than forty-five (45) days prior to trial, counsel shall provide a pre-trial report that discusses the following:

1. Case Summary
 - Plaintiff and any individual Defendants including counsel's opinion as to how each will be viewed by a jury
 - List of claims
 - Summary of Facts
 - Expected percipient witness testimony
 - Expected Liability Expert Testimony
 - Summary of Critical Liability Issues
 - Summary of Special and General Damages including expected damage expert testimony
 - Summary of Punitive Damages and non-monetary relief requested (if applicable)
 - Attorneys' fees and costs estimate for claims that involve

the potential award of attorneys' fees

2. Evaluation

- Potential Verdict Value
- Comparative Fault Analysis
- Settlement Discussion summary
- Probability of Defense Verdict

Throughout trial, a daily trial status update shall be provided to PRISM by defense counsel, the Participant, or the Third-Party Administrator. This can be informal, such as an email or voicemail advising of the day's activities, impressions of witnesses, any impacting developments, and an update regarding the next day's schedule.

- I. Appropriate Dismissal Motions shall be made for failure to meet the applicable jurisdictional statutes for timely serving a complaint, conducting discovery, or bringing a complaint to trial.

VIII. SUMMARY

The file shall be completely documented. Audits conducted by PRISM's Auditor shall measure whether performance is consistent with these standards.