

SELF-INSURANCE AGREEMENT AND DECLARATION OF TRUST

THIS AGREEMENT, made and entered into this ____ day of April 1993, by and between the parties hereto and which may become parties hereto, and the Trustees which have heretofore, or which may hereafter, be appointed to serve as provided herein.

WITNESSETH:

WHEREAS, several of the parties hereto have heretofore applied to the Worker's Compensation Board of the State of New York, for the establishment of a group Self-Insurance Trust pursuant to the provisions of Subdivision 3-a of Section 50 of the Workers' Compensation law, and

WHEREAS, the establishment of a group Self-Insurance Trust for the purpose of satisfying an employer's obligation with the New York State Workers' Compensation Act has been approved by the Workers' Compensation Board, and

WHEREAS, it is considered to be in the best interest of the Trust that an Agreement and Declaration of Trust fully setting forth the duties and responsibilities of the Trustees be entered into.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the *Health Care Providers Self-Insurance* Trust is hereby established as follows:

ARTICLE I

DEFINITIONS

Association - The New York State Association of Health Care Providers, Inc.

Trust - The group Self-Insurance Trust or Trusts which are hereby created for the purposes set forth herein.

Indemnity Agreement - The Indemnity Agreement which was filed by the *Health Care Providers Self-Insurance Trust* pursuant to the Rules for Self-Insurance, said Agreement being dated September 17, 1992, as the same may be amended from time to time.

Member - A member in good standing of the New York State Association of Health Care Providers, Inc. ("HCP Member") that is

(a) an agency or program within the State of New York, that provides health care services to the public and that is licensed or certified pursuant to Article 36 or Article 40 the New York Public Health Law or has an application for licensure or certification thereunder pending,

or is otherwise authorized to operate as a home care services agency or program under the said law; or

(b) a health related organization with an interest in the field of home care but that is not a provider of licensed or certified home care services including, but not limited to, an assisted living program, adult home, nursing home or community residence.

Or an entity that is a parent or subsidiary of, or owned in common with, such HCP Member and whose business is related or incidental to the business of the HCP Member.

Rules for Self-Insurance - The Rules for Self-Insurance under the Workers' Compensation Law as revised from time to time, and administered by the Workers' Compensation Board of the State of New York.

Program Administrator - Any individual, firm, corporation, partnership or association duly authorized or licensed to write or act as a broker in the writing of Workers' Compensation Insurance in this state who agrees to act as the manager of the group self-insurance program herein created.

Trustees - The Trustees appointed to serve on the Board of Trustees of this Trust as provided herein.

Third Party Administrator - Any individual, firm, corporation, partnership or association duly authorized to do business in the State of New York and approved by the Workers' Compensation Board for the resolution and payment of claims pursuant to the Workers' Compensation law.

ARTICLE II

CREATION OF THE TRUST

There is hereby established and created a Trust which shall be known as the "Health Care Providers Self-Insurance Trust," and the Trustees may hold property, enter into contracts and in all matters as hereinafter set forth act in behalf of the Trust in that name. This Trust shall be used for the purposes as hereinafter set forth.

The Members participating in this Trust jointly and severally covenant and agree to assume and discharge, by payment, any lawful awards entered by the Workers' Compensation Board against any member of the group, and any lawful award against or obligation of the Trust which it may become legally obligated to pay, in respect of any Trust year or part thereof that such Member participated in the Trust, whether or not still a Member in good standing, and which award or obligation shall have been sustained by the Courts where an appeal by either party is taken.

The Members jointly and severally covenant and agree to pay the necessary premiums and assessments, based upon appropriate classifications and rates in accordance with the rules of the Trust, into a designated cash reserve Trust Fund out of which lawful and proper awards and claims are to be paid, and that there will be no disbursement out of the designated cash reserve Trust Fund by way of dividends or distribution of accumulated reserves to the Members, except at the discretion of and direction by the Trustees in a manner that is consistent with the Workers' Compensation Law and the rules and regulations of the Workers' Compensation Board.

ARTICLE III

PURPOSE

This Trust Agreement is made and executed for the purpose of meeting and fulfilling an employer's obligations and liabilities under Article 2 of the Workers' Compensation Law which provides for Workers' Compensation coverage and benefits; to form an overall Self-Insurance Trust pursuant to such Law; to provide maximum allowable advance discounts on premium payments made by employers for Workers' Compensation coverage; and to minimize the cost of providing Workers' Compensation coverage by developing and refining specialized claim services and a loss prevention program within the home health care industry.

ARTICLE IV

DESIGNATION OF TRUSTEES

SECTION 1. NUMBER OF TRUSTEES.

The operation and administration of the Trust shall be the joint responsibility of a Board of Trustees which shall be composed of five persons appointed as provided in this Article.

SECTION 2. APPOINTMENT OF TRUSTEES.

The Trustees shall be designated and shall serve terms in accordance with the provisions of the By-laws of the Trust, as the same may be adopted or amended from time to time by the Trustees. No Trustee may be appointed who is, or continue to serve as a Trustee after becoming, an owner, officer or employee of a third party administrator.

Each and every Trustee heretofore or hereafter named and each successor Trustee shall acknowledge and consent to their appointment as Trustees by giving written notice of acceptance of such appointment to the chairman or acting chairman of the Board of Trustees of this Trust.

SECTION 3. RESIGNATION OF A TRUSTEE.

A Trustee may resign and become and remain fully discharged from all further duties or responsibility hereunder, by giving at least thirty (30) days prior notice in writing sent by registered mail to the chairman or acting chairman of the Board of Trustees of this Trust, and to the Association, if such Trustee was designated by that Association. Such notice shall state the date said resignation shall take effect and such resignation shall take effect on such date unless a successor Trustee shall have been appointed, in which event resignation shall take effect immediately upon the appointment of such successor Trustee.

Any Trustee, upon leaving office, shall forthwith turn over and deliver to the chairman or the secretary of the Trustees, at the principal office of the Trust, any and all records, books, documents or other property in his/her possession or under his/her control which belongs to the Trust.

SECTION 4. LENGTH OF APPOINTMENT AND REMOVAL OF A TRUSTEE.

Each Trustee designated by the Association, and each successor Trustee, shall serve for a term of office specified in the By-laws of the Trust and may be removed only in accordance with the provisions thereof.

SECTION 5. APPOINTMENT OF A SUCCESSOR TRUSTEE.

In the event any Trustee duly appointed to serve on the Board of Trustees of this Trust shall die, resign, become incapacitated, or refuse to act, a successor Trustee shall be appointed forthwith in the same fashion as the Trustee who is being replaced was selected and shall meet the qualifications of the Trustee such successor is replacing. The notice of appointment of a successor Trustee shall be in writing to the chairman or acting chairman of the Board of Trustees by registered mail, and shall be accompanied by the written acceptance of the successor Trustee so appointed.

SECTION 6. TRUSTEES TITLE.

In case of death, resignation, refusal, or inability to act by any one or more of the Trustees, the remaining Trustees shall have all of the powers, rights, estates and interest of this Trust and shall be charged with its duties, provided that, in such case, no action may be taken unless it is concurred in by a majority of the remaining Trustees.

SECTION 7. TRUSTEE OFFICERS.

The Trustees shall meet as promptly as possible after execution of this Trust Agreement and elect from among the Trustees a chairman and a secretary of the Board of Trustees. The term of such officers shall commence on the date of their election and continue to the end of the fiscal year. Thereafter such officers shall be elected annually.

ARTICLE V

ADMINISTRATION OF TRUST

SECTION 1. MEETINGS.

The Trustees shall meet semi-annually and more often if required at the principal office of the Trust or at such other location as may be specified by the chairman or, in the alternative, by means of a conference phone call during the course of which each Trustee may at all times speak and hear what is being said. The chairman of the Trustees shall set the date, time and location of each meeting and notice thereof shall be furnished to each Trustee by the secretary or Program Administrator not less than ten (10) days prior to the date of such meeting. Such notice shall specify the date, time, and location of such meeting and may specify the purpose thereof and any action proposed to be taken thereat.

Whenever any notice is required to be given to any Trustee hereunder, such notice shall be directed to said Trustee by first class mail to the address of such Trustee as recorded in the office of the Trust.

Meetings of the Trustees may be held at any time and place without notice provided all Trustees execute a waiver of notice and consent to the said meeting.

For the purposes of a duly called and noticed meeting of the Board of Trustees a quorum shall consist of a majority of the said Board of Trustees.

The secretary, acting secretary, or the secretary's designee shall keep minutes of all meetings, proceedings and acts of the Board of Trustees, but such minutes need not be verbatim. Copies of all minutes of the meeting of the Board of Trustees shall be sent by the secretary, acting secretary, or a designee to all Trustees.

SECTION 2. VOTING.

All actions by, and decisions of, the Board of Trustees shall be by the vote of a majority of the number of Trustees attending a duly called meeting of the Trustees at which a quorum is present; provided, however, that actions by, and decisions of, the Board of Trustees may be taken by a vote of a majority of the number of Trustees attending a special meeting without notice when a proper waiver and consent has been obtained as provided in Section 1 above.

SECTION 3. OFFICE OF THE TRUST.

The Trustees shall establish and maintain an office of the Trust, the exact location of which is to be made known to the parties interested in or participating in the said Trust and to the

appropriate governmental agencies and departments of state. The books and records pertaining to the Trust and its administration shall be kept and maintained at the office of the Trust.

SECTION 4. EXECUTION OF DOCUMENTS.

A certificate signed by the chairman and secretary of the Trust shall be evidence of the action of the Board of Trustees and any such certificate or other instrument so signed shall conclusively be presumed to be authentic, and all facts and matters stated therein shall conclusively be presumed to be true.

SECTION 5. APPOINTMENT OF ADMINISTRATOR.

The Trustees may designate a fiscal agent and/or an administrator to administer the financial affairs of the Trust, provided, however, such fiscal agent or administrator shall not be an owner, officer, or employee of a third party administrator. Any fiscal agent and/or administrator so appointed shall furnish a fidelity bond with the Trustees as obligee, in an amount sufficient to protect the Trust against the misappropriation or misuse of any moneys or securities held by or in the name of the Trust. The amount of the bond shall be determined by the Trustees and evidence of such bond shall be filed with the appropriate governmental agencies and departments.

SECTION 6. COMPENSATION AND REIMBURSEMENT OF TRUSTEES.

The Trustees may establish, from time to time, a reasonable amount of compensation to cover attendance at meetings of the Board of Trustees and the performance of the normal duties of a Trustee which compensation may include reimbursement for necessary expenses incurred therein.

ARTICLE VI

POWERS AND DUTIES OF THE TRUSTEES

SECTION 1. AUTHORITY OF TRUSTEES.

The Trustees shall have the power and authority and shall be charged with the duty of general supervision and operation of the Trust, and shall conduct the business and activities of the Trust in accordance with this Declaration of Trust, applicable federal and/or state statutes and governmental rules and regulations and the By-laws of the Trust.

SECTION 2. CONSIDERATION OF NEW MEMBERS.

The Trustees, after the inception date of the Trust, shall receive applications for membership from prospective new members to the Trust and shall consider such application for membership in accordance with the Rules for Self-Insurance, the terms of the Indemnity Agreement, the By-laws of

the Trust and the rules and regulations established and promulgated by the Trustees for the admission of new members to the Trust. The Trustees may authorize the Program Administrator to execute in their behalf Indemnity Agreements and other documents necessary to effect the admission as members of the Trust of persons or entities approved therefor by the Trustees. All Members of the Trust shall acknowledge that they are jointly and severally liable for all claims made against the Trust.

SECTION 3. ESTABLISHMENT OF FUNDS.

The Trustees shall be responsible for establishing such Trust funds, loss funds, or other funds which may be required from time to time by the Workers' Compensation Law, or the Rules for Self-Insurance or the Rules of Conduct and Administration of this Trust as may be established by the Trustees from time to time.

SECTION 4. POSTING OF SECURITY.

The Trustees shall be responsible for and shall undertake the posting of such security deposit and/or security bonds as may be required to be posted with the Workers' Compensation Board pursuant to §50 of the Workers' Compensation Law, or the Rules for Self-Insurance or such other legislative enactments or administrative regulations which may be established from time to time.

SECTION 5. REPORTS.

The Trustees shall be responsible for and shall cause to be filed such annual or other periodic audits, reports, and disclosures as may be required from time to time pursuant to applicable federal or state statutes or governmental regulations, including, but not limited to, periodic payroll audits, periodic summary loss reports, periodic statements of financial condition, certified audits, appropriate applications filed by prospective new members, reports as to financial standing, payroll records, coverage, accident experience and compensation payments, summary loss data statements, periodic status reports, and any other such reports as may be required from time to time.

SECTION 6. ASSET PROTECTION.

The Trustees shall take all necessary precautions to safeguard the assets of the Trust, which may include but need not be limited to the following:

- a. The designation of a fiscal agent and/or administrator to administer the financial affairs of the Trust provided, however, such fiscal agent and/or administrator shall not be an owner, officer or employee of a third party administrator. Further, the Trustees shall require the fiscal agent and/or administrator to furnish a fidelity bond with the Trustees as obligee to an amount sufficient to protect the Trust against misappropriation or misuse of any moneys or

securities, the amount of such bond shall be determined by the Trustees and evidence of the said bond shall be filed with the appropriate governmental agencies and departments.

- b. Retaining control of all moneys collected or distributed for the Trust; all loss funds or funds of any type shall remain in the custody of the Trustees or the authorized administrator; provided, however, that a revolving fund for payment of compensation benefits due and other related expenses may be established for the use of the authorized third party administrator.
- c. Designation of a third party administrator which shall be required to furnish a fidelity bond covering its employees, with the Trust as obligee, and in an amount sufficient to protect all moneys placed in any revolving Fund made available to such third party administrator for the payment of compensation benefits due and other related expenses; provided, however, in the event the bond required of the fiscal agent and/or administrator also covers moneys deposited in the revolving fund, then and in that event, a separate bond shall not be required of the third party administrator if the third party administrator is already covered by sufficient bond.
- d. Having the accounts and records of the Trust audited annually or at any time which may be required by the Workers' Compensation Board or other governmental agency, such audits to be made by a certified public accountant; to implement any uniform accounting system prescribed by the Workers' Compensation Board for use by Self-Insurance Trusts and/or third party administrators.
- e. Activate efforts to collect delinquent accounts resulting from any unpaid contributions by members which shall include any cost incurred in the collection of same.
- f. To prevent utilization of any of the moneys collected as contributions for any purpose unrelated to Workers' Compensation Insurance.
- g. To invest any surplus moneys not needed for current obligations in accordance with the Rules for Self-Insurance, or applicable federal or state statutes or regulations.
- h. To set up, operate and enforce administrative rules, regulations and By-laws as between the Trust and individual members of the Trust.
- i. To adopt and promulgate By-laws and rules and regulations for the proper administration of the Trust, the admission of members to the Trust, the suspension of members and the expulsion of members.

- j. To take all reasonable and necessary precautions to protect the members from losses and provide for excess insurance coverage designed to protect said members against excess losses.
- k. To abide by all applicable federal and state statutes and administrative regulations.

SECTION 7. RULES AND REGULATIONS.

The Trustees may prescribe such By-laws, rules and regulations as may, in their discretion, be proper and necessary for the sound and efficient administration of the Trust, provided the By-laws, rules and regulations shall not be inconsistent with the provisions of this Declaration of Trust, the Indemnity Agreement, the Rules for Self-Insurance, applicable federal and/or statutes, and applicable governmental regulations.

SECTION 8. TRUSTEES' LIABILITIES.

No Trustee shall be liable for any action taken pursuant to this Trust Agreement in good faith or for an omission, except gross negligence, or for any act of omission or commission by any other Trustee or by any employee or agent of the Trust. The Trustees are hereby authorized and empowered to obtain, at the expense of the Trust, liability insurance fully protecting the Trustees and the Trust from any loss or expense incurred, including reasonable attorney's fees, for all acts of the Trustees except bad faith and gross negligence on the part of the Trustees. The Trust hereby agrees to save, hold harmless, and indemnify the Trustees from any loss, damage, or expense incurred by said Trustees while acting in the capacity of Trustees excepting bad faith and gross negligence.

SECTION 9. RELIANCE ON COUNSEL'S OPINION.

The Trustees may consult with legal counsel concerning any questions which may arise with reference to the duties and powers or with reference to any other matter pertaining to this Agreement or the Trust created hereby; and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by the Trustees hereunder in good faith in accordance with the opinion of such counsel, and the Trustees shall not be liable therefor.

ARTICLE VI

MISCELLANEOUS

SECTION 1. AMENDMENTS.

This Agreement may be amended in writing at any time by the concurrence of a majority of the Trustees. However, this Agreement may not be amended so as to change its purpose as set forth in Article III above or to permit the diversion or application of any of the funds of the Trust for any

purpose other than those specified herein. The Trustees, upon amending this Agreement, shall send a copy of any such amendment bearing the necessary signatures, to the Members.

SECTION 2. TERMINATION OF TRUST.

This Trust may be terminated at any time by a concurrence of all of the parties to this Agreement.

This Trust shall terminate in any case upon the death of the last survivor of such persons who were living at the time of the creation of the Trust and who were participating in the Trust, unless, without the benefit of this provision, the Trust does not violate the rule against perpetuities; in which case, the Trust may continue in perpetuity unless otherwise terminated.

This Agreement shall continue in full force and effect as may be amended and supplemented from time to time subject, however, to the above termination provision. In the event of termination, the remaining funds available in the Trust, after providing for all outstanding obligations, shall be distributed through a formula determined by the Trustees to the participating members.

SECTION 3. SITUS OF THE TRUST.

This Trust Agreement is executed by the parties hereto and accepted by the Trustees in the State of New York, and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of the State of New York.

SECTION 4. CONSTRUCTION.

Whenever any words are used in this Agreement in the masculine gender, they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply, and whenever all words are used in this Agreement in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply, and whenever words were used in this Agreement in the plural form, they shall be construed as though they were also used in the singular form in all situations where they would so apply.

IN WITNESS WHEREOF this Agreement and Declaration of Trust has been executed the day and year first above written.

NEW YORK STATE ASSOCIATION OF HEALTH CARE PROVIDERS, INC.
MEMBERS

DECLARATION OF TRUST -- ACCEPTANCE BY MEMBER

THE UNDERSIGNED hereby acknowledges that it has executed the within Self-Insurance Agreement and Declaration of Trust, together with the attached Indemnity Agreement, of the Health Care Providers Self-Insurance Trust, understands their provisions and the provisions of the attached By-laws and understands the potential benefits and liabilities of becoming a member of this group, freely accepts them and agrees to be bound by their terms and conditions in consideration for participating in such Trust.

[Full legal name of participant]

By: _____

Title: _____

Date: _____

This is to certify that the Trustees of the Health Care Providers Self-Insurance Trust have hereby accepted the above named Member into the Trust and have directed me to execute this attestation.

Program Administrator

By: _____

DECLARATION OF TRUST -- ACCEPTANCE BY MEMBER

THE UNDERSIGNED hereby acknowledges that it has executed the within Self-Insurance Agreement and Declaration of Trust, together with the attached Indemnity Agreement, of the Health Care Providers Self-Insurance Trust, understands their provisions and the provisions of the attached By-laws and understands the potential benefits and liabilities of becoming a member of this group, freely accepts them and agrees to be bound by their terms and conditions in consideration for participating in such Trust.

[Full legal name of participant]

By: _____

Title: _____

Date: _____

This is to certify that the Trustees of the Health Care Providers Self-Insurance Trust have hereby accepted the above named Member into the Trust and have directed me to execute this attestation.

Program Administrator

By: _____