

Revised

**UNIVERSITY OF ILLINOIS
LIABILITY SELF-INSURANCE PLAN**

DRAFT

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ARTICLE I

Definitions

As used herein:

1. The term “Agent” shall mean any student, volunteer worker, visiting faculty, or University Committee Member who at the time of an Occurrence, or the rendering of or failure to render University Service was acting on behalf of the University and within the scope of duties assigned to him or her by the University.
2. The term “Aggregate” shall mean the maximum monetary consideration payable by the University on behalf of any or all Covered Person(s) for all Loss resulting from Claims during any one policy period for which this Plan provides coverage.
3. The term “Claim” shall mean a demand seeking monetary Damages otherwise covered by this Plan.
4. The term “Claimant” shall mean any person, organization, corporation or unit of government making Claim against a Covered Person on a cause of action which resulted from an Occurrence or arose out of the rendering of or failure to render University Service.
5. The term “Clinical Services” shall mean related to or involving direct observation, examination and/or treatment of patients.
6. The term “Contracting Party” means any firm, corporation, association, unit of government, or person with which the University enters into a written agreement for (i) the use of property or the performance of any function, service or act, and (ii) the allocation or sharing of liabilities and Damages resulting from the performance of such agreement.
7. The term “Covered Person” shall mean any person or organization designated in the Covered Persons provisions of the Plan.
8. The term “Damages” shall mean any monetary consideration approved under the Plan for payment to a Claimant or the amount of a final judgment awarded to a Claimant by a court of competent jurisdiction, including but not limited to money, services, and waiver of amounts payable from patients and others who receive University services, but excluding payments of back pay for service rendered, fines, monetary penalties, costs of cleaning up contaminated sites, and payments which are contrary to public policy.
9. The term “Employee” shall mean a person, who at the time of an Occurrence, or the rendering of or failure to render University Service, was employed by Employer and acting within the scope of his or her University duties.

10. The term “Fund” means any account or fund established by the Board for the purpose of funding expenses or Claim payments incurred in the operation of the Plan.
11. The term “Injury” shall mean physical damage to or destruction of tangible property, bodily or mental injury, sickness or disease, including death, to which the Plan applies and resulted from an Occurrence in the conduct of University business. The term Injury shall not be deemed to mean intentional torts.
12. The term “Loss” means any monetary amount paid on account of an award, judgment or settlement, which the University is legally obligated to pay as a result of a Claim.
13. The term “Member of The Board” shall mean an individual member or former member of The Board of Trustees of the University of Illinois who at the time of an Occurrence or the rendering of or failure to render University Service was acting within the scope of his or her duties in that office.
14. The term “Occurrence” shall mean any incident or accident while the Plan is in effect, including continuous or repeated exposure to conditions, which results in an Injury or Personal Injury not expected or intended from the standpoint of the Covered Person.
15. The term “Officer of the Board” shall mean ~~a President of The Board, Secretary of The Board, Treasurer of The Board, Comptroller, or University Counsel~~ those Officers described in the *University of Illinois Statutes and The General Rules Concerning University Organization and Procedure*, who at the time of an Occurrence or the rendering of or failure to render University Service was acting within the scope of his or her duties as such Officer.
16. The term “Personal Injury” means Damages to which the Plan applies sustained by any person or organization and arising out of one or more of the following committed in conduct of University business:
 - A. false arrest, detention or imprisonment, or malicious prosecution
 - B. the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual’s right of privacy
 - C. wrongful entry or eviction, or other invasion of the right of private occupancy
 - D. sexual harassment, humiliations, or discrimination
 - E. infringement of copyright, title, or slogan
 - F. plagiarism, piracy, or unauthorized use of materials

- G. advertising, broadcasting, telecasting, or publishing activities
- H. unfair competition
- I. false or improper service or process
- J. violation of property rights
- K. violation of a civil or constitutional right.

17. The term “Plan” shall mean the University of Illinois Liability Self Insurance Plan.
18. The “Plan Territory” shall be anywhere in the world where the University teaches, conducts research, or provides public service.
19. The term “Policy Period” is the University’s fiscal year.
20. The term “Registered Organization” shall mean those incorporated and unincorporated student, staff, and faculty organizations which have been registered with the appropriate University office. ~~in accordance with University regulations.~~
21. The term “Related Claim(s)” shall mean all Claims based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events, whether related logically, causally or in any other way.
22. The term “Service Company” shall mean a commercial company engaged by the Employer to perform Claim investigations, loss control, and other services on behalf of the Plan.
23. The terms “University”, “Employer”, and “Board” shall mean The Board of Trustees of the University of Illinois, a body corporate and politic of the State of Illinois.
24. The term “University Service” shall mean a service, or series of related services (including health care), performed directly for a person or organization by the University or by a member of the Board, Officer of the Board, Employee, or Agent of the University, while acting within the scope of his or her University duties.
25. The term “Vice President” shall mean the Vice President/Chief Financial Officer and Comptroller.

ARTICLE II

Effective Date

The effect date of the Plan is August 1, 1976.

ARTICLE III

Covered Persons

Each of the following is a Covered Person under the Plan to the extent set forth below:

1. The Employer
2. Officers and Members of the Board of Trustees
3. Employees
4. Agents
5. Contracting Party, but only as specified by written agreement with the University.

ARTICLE IV

Coverage Statement

The Employer, based on the provisions of the Plan and subject to its limitations, will pay on behalf of the Covered Person all Damages to which this Plan applies, which the Covered Person shall become legally obligated to pay for a Claim first made while this Plan is in effect:

1. because of Injury or Personal Injury caused by an Occurrence, or
2. because of Injury or Personal Injury arising out of the rendering of or failure to render University Service

The Employer shall have the right and duty to defend any Claim or suit seeking such Damages against the Covered Person, even if any or all of the allegations of the suit are groundless, false, or fraudulent, and may make such investigation and such settlement of any Claim or suit as it deems expedient, but the Employer shall not be obligated to pay any Claim or judgment or to defend any suit after the applicable Plan Fund has been exhausted by payment of judgments, settlements, and expenses.

In the event that any Covered Person elects to employ his own legal counsel (see Article VI below) and declines legal counsel provided by Employer, there is no obligation under the Plan to

pay any sum (including judgment, ~~and~~ legal fees **and expenses**) such Covered Person may become legally obligated to pay.

If the Covered Person shall refuse to consent to any settlement recommended by the Vice President and shall elect to contest the claim or continue any legal proceedings in connection with such claim, then the Plan's liability for the claim shall not exceed the lesser of the limit of Article IX or the amount for which the claim could have been settled including costs, charges, and expenses incurred up to date of such refusal.

ARTICLE V

Exclusions

The Plan does not apply:

1. to any obligation for which the Employer or any carrier as its insurer may be held liable under any workers' compensation law, occupational diseases law, unemployment compensation law or disability benefits law, or under any similar law.
2. to any obligation for which the Employer may be held liable under any breach of contract, **Claim**, or suit.
3. to an obligation payable under the State Self-Insured Motor Vehicle Liability Plan.
4. to any Occurrence, University Service, or obligation which is within the provisions of the Federal Tort Claims Act as provided in 38 USC 4116 or is payable by the United States under any federal legislation or program.
5. to the physical damage to or destruction of tangible property owned by, ~~or~~ leased **or otherwise in the care, custody or control of** ~~to~~ the University.
6. to liability assumed by a Covered Person in guaranteeing the result of any service.
7. to liability and **Damages** arising out of any activity of a Registered Organization.
8. to liability and **Damages** arising out of any activity of a **volunteer organization** unless they are a Covered Person pursuant to Article III, Item 5.
9. to liability and **Damages** caused intentionally or resulting from any dishonest, fraudulent, or criminal statement, act, or omission.
10. to liability and **Damages** arising from the rendering of emergency aid and assistance not in the scope of University duties.

11. to liability incurred by a Covered Person arising from the performance of services for fees, compensation, or profit which are derived or intended to be derived from a source other than the Employer.
12. to liability and Damages arising from the failure of corporate stock to perform as represented by a Covered Person or arising from the investment or non-investment of funds.
13. to liability and Damages assumed by a Member ~~or Officer~~ of the Board, Officer, Employee, Agent, or Contracting Party under any contract, unless the University would be liable in the absence of such contract and then only to the extent of its proportionate share. In no instance shall University be liable for Damages occurring prior to the execution of a valid University contract.
14. to liability or Damages arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants, or financial obligations arising under any law, regulation, administrative order, or court order for the cleanup of a landfill or other contaminated site.

ARTICLE VI

Legal Services

The furnishing of all legal services, including investigations, claim management and legal defense, shall be the responsibility of the Employer through its University Counsel provided the Covered Person delivers summons and complaint to the University Counsel no later than 15 days after service of process. Required legal services may be provided by the University Counsel and his staff or by outside legal counsel or a "Service Company" as the University Counsel deems necessary.

In the event that the Covered Person elects to employ his own legal counsel to assist the University Counsel or counsel hired by the University Counsel such employment of legal counsel shall be at the personal expense of the Covered Person, and Employer and its University Counsel shall retain the right to make all decisions in regard to the defense of the Claim or suit.

ARTICLE VII

Claims Adjustment

The Vice President, with advice of University Counsel, is responsible for the Claim payments, denials, and settlements. Payments for settlements from the Plan Funds which exceed the Vice President's authorization established by The Board shall be submitted to The Board for prior

approval. The Vice President may utilize a “Service Company” in addition to University personnel in performing his responsibilities.

ARTICLE VIII

Payment of Claims and Suits

Claims arising from operations of the University hospital, clinics, infirmaries, and dispensaries are payable from the Hospital Professional and General Liability Fund. Professional liability Claims against Covered Persons who are involved in the medical care of people are payable from the Medical Professional Liability Fund. Other professional liability Claims and general liability Claims are payable from the Public Liability Fund. Claims for violation of civil and constitutional rights are payable from the Board Legal Liability Fund.

Moneys may be transferred between the Funds as may be necessary for the payment of Claims which are payable from any Fund.

If the balance of the Plan Funds is not sufficient to pay all expenses, final judgments and executed settlements, Claim payments will be made in the order that final judgments and executed settlements become payable, without regard to Claim reserves previously established, date of incident, date of Claim demand, or date suit was filed. If final judgments which are entered simultaneously exceed the Plan’s limit of liability, the Plan’s limit of liability shall be apportioned pro rata to those simultaneous judgments. Any deficiency in Plan Funds which would not permit full payment of any Claim or suit judgment shall not impose any liability on the Employer.

ARTICLE IX

Limit of Liability per Policy Period

1. Except as provided in Item(s) 2 and 3 of this Article, the University shall not pay from Plan Funds more than five million dollars (\$5,000,000) as Damages for all covered Claims, Related Claims or suits:
 - A. that result from one Occurrence, or
 - B. that result from the rendering of or failure to render a University Service to any one person or organization.

This is the maximum amount that the University will pay regardless of the number of Covered Persons, Claims, Related Claims or suits brought, or persons or organizations making Claims, Related Claims, or bringing suits.

2. For **Covered Persons** ~~medical professionals~~ **providing Clinical Services at a location owned, leased in whole or in part, and under the sole control of the University**, the maximum amount payable from Plan Funds will be any applicable medical professional liability self-insured retention **together with** ~~under~~ any program of excess medical insurance purchased by the University as **Damages** for all covered **Claims, Related Claims** or suits:
 - A. that result from one Occurrence, or
 - B. that result from the rendering of or failure to render a University Service to any one person or organization.

This is the maximum amount that the University will pay regardless of the number of **Covered Persons, Claims, Related Claims** or suits brought, or persons or organizations making **Claims, Related Claims**, or bringing suits.

3. For **Covered Persons** **providing Clinical Services at a location not owned, leased in whole or in part, or under the sole control of the University**, the maximum amount payable from Plan Funds is one million dollars (\$1,000,000) per Claim and three million dollars (\$3,000,000) Aggregate, per Covered Person, as **Damages** for all covered **Claims, Related Claims** or suits:
 - A. that result from one Occurrence, or
 - B. that result from the rendering of or failure to render a University Service to any one person or organization.
4. The University shall provide the cost of reasonable legal expenses because of a proceeding initiated by the state body issuing a professional license to a Covered Person, related to the payment of a Claim, Related Claim or suit; provided however, the University required the Covered Person to be licensed in said jurisdiction. The maximum amount payable by the University is \$50,000 in any Policy Year, and \$100,000 lifetime. The University will not be responsible for legal expenses beyond the initial proceeding. Any fines or penalties assessed by the state licensing body will be the responsibility of the Covered Person, not the University.
5. The Plan's Limit of Liability for each Claim made or suit brought before July 1, 1992 shall be the balance of the Plan Funds at the time of execution of settlement or entry of final judgment less obligations of the Funds incurred through settlements previously executed and final judgments previously entered.
6. Notwithstanding Items 1- 5 of this Article, the Limit of Liability shall not exceed any constitutional, statutory, or other legal limitation imposed upon the University in the payment of funds for such purposes. The Plan's Limit of Liability shall not in any case exceed the balance of the applicable Plan Funds at the time of execution of settlement or

entry of final judgment, less obligations of the Plan Funds incurred through settlements previously executed and final judgments previously entered.

ARTICLE X

Plan Funding

The Plan will be financed under the following guidelines:

1. The funding of the Plan shall be determined by the Vice President with the advice of an independent actuary contracted by the Employer.
2. The Vice President shall ascertain appropriate funding levels for the payment of actuarially projected costs of Claims and expenses of the Plan, including the costs of administration, Claims adjustment, the purchase of commercial insurance, and legal defense.
3. The Vice President shall inform The Board of the recommended level of funding, as determined above, and shall transfer the proper amounts to accounts or Plan Funds.
4. The Vice President shall assess University units on an equitable basis for contributions to the Plan Funds.

ARTICLE XI

Fund

1. The Plan Fund(s) or accounts shall exist as long as any Claim or expense payable under the Plan, or any amendments adopted thereto prior to its termination, is outstanding and may become payable from said Fund(s). The money deposited in the Plan Fund(s) shall be used solely for the purpose of payment of such Claims and expenses and shall not be subject to diversion for any other purpose so long as the Plan shall be in effect.
2. The Plan Fund(s) shall be the sole source of all payments made pursuant to the Plan and in no circumstance shall any other funds of the Employer, any Officer or Member of The Board of Trustees individually, any Employee, or any other Covered Person be liable or responsible for payment of any Plan obligation.

ARTICLE XII

Miscellaneous Provisions

1. **Covered Person's Duties in the Event of Occurrence, Claim or Suit**

A Covered Person shall submit to the University Counsel or designee at the earliest reasonable time following an Occurrence, statement, act, or omission which might result in a Claim under the Plan, a written notice containing particulars sufficient to identify injured person(s), Covered Persons, witnesses, and the time, place, and circumstances of Occurrence or University service.

If Claim is made or suit is brought against a Covered Person, the Covered Person shall, not later than 15 days after receipt, forward to the University Counsel every demand, notice, summons, or other process received by him or his representative.

The Covered Person shall cooperate with the Employer and, upon the Employer's request, assist in making settlements, conducting suits, and enforcing any right of contribution or indemnity against any person or organization who may be liable to the Covered Person because of Injury or damage with respect to which coverage is afforded under the Plan; and the Covered Person shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The Employer may elect to reimburse a Covered Person certain expenses because of Covered Person's attendance at hearings and/or trials. For Employees such reimbursement may include reasonable out-of-pocket expenses for mileage and parking. If the Covered Person is no longer an Employee the Employer may elect to reimburse the Covered Person for reasonable airfare, hotel accommodations, and meals associated with their attendance at hearings and/or trials. Under no circumstance will the Plan cover loss of earnings, loss of hours and/or shifts, loss of vacation time and/or expenses associated with missed or cancelled vacations incurred because of Covered Person's attendance at hearings and/or trials. The Employer reserves the exclusive right to determine the amount of reimbursement and amount it deems reasonable.

The Covered Person shall not, except at his own cost, voluntarily make any payment, assume any obligation, or incur any expense.

Failure of the Covered Person to cooperate with the Employer or give any notice required under the Plan or deliver summons and complaint to the University Counsel not later than 15 days after service of process shall constitute a waiver of the coverage provisions provided by the Plan.

2. **Action Against Employer Under the Plan**

No action shall be brought or maintained against the Employer under the Plan unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of the Plan, nor until the amount of the Plan's obligation to pay shall have been finally determined either by final judgment against the Covered Person or by written agreement of the Employer and the Claimant.

No person or organization shall have any right under the Plan to join the Employer as a party to any action against the Covered Person to determine the Covered Person's liability, nor shall the Employer be impleaded by the Covered Person or his legal representative. Nothing in the Plan shall be construed as a waiver of any governmental immunity or legal remedy or defense of the University, any Officer or Member of The Board, Employee or Student of the University.

3. **Other Insurance Purchased by Employer**

Except as otherwise stated in Article IX, the coverage afforded by the Plan shall be apply in excess of any Employer self-insured retention and other valid and collectible insurance purchased by the Employer.

4. **Subrogation**

In the Event of any payment under the Plan, the Employer shall be subrogated to all the Covered Person's rights of recovery therefore against any person or organization and the Covered Person shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Covered Person shall do nothing to prejudice such rights.

5. **Changes in the Plan**

All amendments to the Plan subsequent to the date of first approval of the Plan by The Board of Trustees shall be prepared by the Vice President and subject to approval as to legal form by the University Counsel. The Vice President will submit the proposed amendments to the President of the University for review and recommendation to The Board of Trustees. Amendments adopted by the Board shall become effective on the date fixed by The Board of Trustees, without notice to Covered Persons. The Plan and all amendments thereto shall be available for inspection at reasonable times in the Office of the Secretary of the Board, and information regarding the Plan shall be distributed through campus publications.

6. **Assignment**

The interest hereunder of any Covered Person is not assignable. If the Covered Person shall die or be adjudged incompetent, this coverage shall thereupon terminate, but shall

cover the Covered Person's legal representative as the Covered Person with respect to Damages previously incurred and to which this Plan applies.

7. **Cancellation**

The Board may at anytime terminate the Plan and cancel the coverage provided therein. Notice of such termination of the Plan and cancellation of coverage will be given to all Covered Persons by publication in a newspaper of general circulation in Cook County and a newspaper of general circulation in Champaign County, Illinois, at least 30 days prior to the effective date of such termination and cancellation.

8. **Plan Severability**

In the event that any part of the Plan is held to be unconstitutional or otherwise declared illegal or invalid, the other part of the Plan will remain in full force and effect, subject to Board action.

9. **Applicability of Coverage**

The Vice President with the advice of the University Counsel shall decide questions regarding coverage or interpretation of the Plan.

10. **Conformity to Statutes**

This Plan shall conform to any new and existing Federal and/or State legislation that have reporting requirements and to which the Plan is subject, including but not limited to the Illinois Medical Practice Act, the Healthcare Quality Improvement Act, and Medicare, Medicaid, and the SCHIP Extension Act (MMSEA).