

FPIC ARBITRATION PROGRAM PARTICIPATION AGREEMENT & ACKNOWLEDGEMENT

This FPIC ARBITRATION PROGRAM PARTICIPATION AGREEMENT & ACKNOWLEDGEMENT (“Agreement”) is entered into between First Professionals Insurance Company, Inc. (“FPIC”) and the undersigned Insured (hereinafter “Insured”). This Agreement shall be effective and binding on the parties on the date signed by Insured.

RECITALS

WHEREAS, FPIC is an insurer that has issued a medical professional liability insurance Policy (the “Policy”) to Insured and has developed the FPIC Arbitration Program (the “Program”), which provides Insured with the Program Arbitration Agreement (“Arbitration Agreement”), Program arbitration information video (“Video”), and general guidance to enable Insured to enter into the Arbitration Agreement with its patient or the patient’s representative for the purposes of arbitrating medical malpractice claims; and

WHEREAS, Insured desires to participate in the Program to seek the potential but uncertain benefits of promptly resolving medical malpractice claims, reducing litigation costs, and avoiding unreasonable jury awards, which may lead to a positive impact on medical professional liability insurance rates as well as the cost and availability of healthcare services in Florida.

NOW THEREFORE, it is hereby agreed by and between the parties hereto as follows:

1. Compliance with Program. Insured agrees to exercise best efforts to implement procedures in its office so that all patients and/or their representative(s) view the entire Video and further agrees to present, obtain signatures, and maintain as a permanent record the Arbitration Agreement for as long as the Insured has a Policy issued by FPIC in effect unless applicable law governing the retention of medical records provides for a shorter period of time. Insured further agrees to comply with the Arbitration Agreement and to any reasonable instructions that FPIC may provide concerning the Program from time to time. Insured’s duty to maintain records in accordance with this Section 1 shall survive the termination of this Agreement.

2. Coverage For Arbitration. Insured agrees and understands that coverage for any arbitration matter or proceeding in conjunction with the Arbitration Agreement is contingent on the underlying claim being covered under the Insured’s Policy. Insured agrees and understands that FPIC makes no representation, promise, or guarantee as to the applicability or effect of coverage for any arbitration matter or proceeding in conjunction with any Arbitration Agreement as to any policy of insurance issued by any insurer other than FPIC.

3. Applicability of FPIC Policy. The Insured’s Policy (including but not limited to any coverage summary, endorsement, or binder) shall apply in the context of any arbitration matter or proceeding. The Insured’s Policy shall not be construed as being amended in any way by this Agreement.

4. Copyright. The Arbitration Agreement, Video, and Common Questions with Answers document developed by FPIC are and shall remain FPIC’s sole and exclusive property. FPIC reserves all of its right, title, and interest in and to these materials. Insured shall not use any of these materials for any purpose other than the purpose contemplated by the Program and shall not disseminate these materials to any other person or entity without the express written consent of FPIC. This Section 5 of this Agreement shall survive the termination of this Agreement.

5. Surveys & Requests For Information. Insured agrees to participate in surveys and to respond to reasonable requests for information concerning Insured’s participation in the Program. This requirement shall survive the termination of this Agreement for a period of six (6) years from the effective date of termination.

6. Termination. Either party may terminate this Agreement, without cause, at any time by providing the other party with written notice of any such termination. If a claim(s) is covered by Insured’s Policy and is being or may be litigated in accordance with any Arbitration Agreement and notwithstanding the termination of this Agreement or the cancellation or non-renewal of the Insured’s Policy, all of the terms of this Agreement shall remain in effect as to such claim(s).

7. Miscellaneous.

A. Amendments. This Agreement may be amended only by written agreement executed by both parties.

B. Severability. If an arbitration panel or court determines that any part of this Agreement is unenforceable, that part shall be deemed stricken and the remainder shall continue in force and effect.

C. Conflict with Law. Any portion of this Agreement in conflict with any applicable statute, insurance department regulation or directive, or any governmental ruling shall, without further action by the parties, be modified or deleted to the extent necessary to conform to such statute, regulation, directive, or ruling.

D. Headings. The headings in this Agreement are for reference only and shall not be construed to alter the meaning of any provision hereunder.

E. Entire Agreement. This Agreement constitutes the entire and complete understanding and agreement of the parties, exclusive of any other oral or written communication with respect to the subject matter hereof. This Agreement supersedes all prior agreements, understandings, and representations, whether oral or written, with respect thereto.

F. **Notice.** Notices required under this Agreement to insured shall be sent by United States Mail, registered or certified, postage prepaid, or delivered via overnight courier to the last address of record on file with FPIC or, if to FPIC, to 1000 Riverside Avenue, Suite 800, Jacksonville, Florida, 32204 to the attention of the Legal Department.

G. **Waiver.** The failure of either party to enforce any provision of this Agreement or to declare a breach of this Agreement shall not constitute a waiver by either party of any such provision. The past waiver of a provision by either party shall not constitute a course of conduct or a waiver in the future to that same provision.

H. **No Third Party Rights.** The parties have not created and do not intend to create by this Agreement any rights for any third parties. There are no third party beneficiaries to this Agreement.

I. **Interpretation.** The language in this Agreement shall be construed according to its fair meaning and not for or against any party hereto. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

J. **Binding Authority.** Each signatory to this Agreement represents and warrants that he or she possesses all necessary capacity and authority to act for, sign, and bind the respective entity or person on whose behalf he or she is signing.

K. **Governing Law & Venue.** The validity, construction, and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Florida. Any legal proceeding related to this Agreement shall be brought in a court located in Duval County, Florida.

L. **Attorney's Fees.** In the event of litigation arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and expenses at all levels of litigation, including appeals.

M. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of FPIC and Insured and their respective permitted successors and assigns.

8. ACKNOWLEDGEMENTS

A. Policy Limits & Excess Verdicts. INSURED ACKNOWLEDGES THAT THE LIABILITY OF FPIC FOR INDEMNITY PAYMENTS ON AN INSURED'S BEHALF OF AMOUNTS AWARDED FOR DAMAGES, ATTORNEY'S FEES, AND COSTS (COLLECTIVELY "DAMAGES") BY AN ARBITRATION PANEL IS SUBJECT TO THE APPLICABLE LIMIT OF THE INSURED'S POLICY. INSURED FURTHER ACKNOWLEDGES THAT IF THE TOTAL AMOUNT AWARDED BY AN ARBITRATION PANEL IS IN EXCESS OF THE INSURED'S POLICY LIMIT, INSURED WILL BE PERSONALLY LIABLE FOR THOSE DAMAGES. INSURED AGREES AND UNDERSTANDS THAT FPIC MAKES NO REPRESENTATION, PROMISE, OR GUARANTEE THAT THE DECISION OF AN ARBITRATION PANEL WILL NOT SUBJECT THE INSURED TO A JUDGMENT IN EXCESS OF THE INSURED'S POLICY LIMIT OR THAT THE DECISION OF AN ARBITRATION PANEL WILL BE MATERIALLY DIFFERENT IN REGARD TO A GIVEN CLAIM RELATIVE TO LITIGATING THAT CLAIM IN A TRADITIONAL COURT.

B. Effect of Binding Arbitration on Right of Appeal. INSURED ACKNOWLEDGES THAT ENTERING INTO A BINDING ARBITRATION AGREEMENT WITH YOUR PATIENT MEANS THAT THE DECISION OF AN ARBITRATION PANEL WILL BE FINAL AND THE PARTIES TO THE LITIGATION WILL GENERALLY NOT HAVE A RIGHT TO APPEAL AN ADVERSE DECISION.

C. No Guarantee that Arbitration Agreement will be Upheld as Valid. Insured acknowledges that there are no Florida statutes or court cases specifically on point regarding the enforceability of a mandatory binding arbitration agreement like the one developed for the Program and it is possible that such agreement may be declared unenforceable in whole or in part.

D. Effect of Termination. Insured acknowledges that the Arbitration Agreement is a separate contract between Insured and the Insured's patients that will not be effected by the termination of this Agreement. Notwithstanding the termination of this Agreement or the cancellation or non-renewal of Insured's Policy, Insured shall continue to be obligated to follow the terms of the Arbitration Agreement.

E. Recommendation to Seek Personal Legal Counsel Prior to Signing this Agreement. Insured acknowledges that FPIC has encouraged Insured to seek personal legal counsel prior to signing this Agreement.

INSURED

Name of Corporate Entity

Date

Signature

Name of Insured

Date