

ROSENTHAL

INSURANCE CONSULTING

Maximizing Coverage • Minimizing Cost

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MEMO TO: AGENTS AND UNDERWRITERS

FROM: SAM ROSENTHAL

CC: STEVE STERLING
NORFOLK AIRPORT AUTHORITY

RE: **ADDENDUM TWO TO RFP**

DATE: MARCH 26, 2018

We are sending a copy of the VARISK2 program for your review so you can share the form with your excess liability underwriters to clarify if they can provide a following form program over the VARISK2's basic \$1,000,000 per occurrence limits.

Please include a signed copy of this addendum when submitting your proposal.

RECEIVED BY _____

DATE _____

AGENCY _____

SIGNED _____

COMMONWEALTH OF VIRGINIA

**VIRGINIA
LIABILITY RISK MANAGEMENT PLAN**

“VaRISK 2”

Administered by

Department of the Treasury
Division of Risk Management

Virginia Liability Risk Management Plan “VaRISK 2”

The Commonwealth of Virginia, Department of the Treasury, Division of Risk Management (hereafter referred to as “DRM”), in accordance with the requirements of §2.2-1839 of the *Code of Virginia*, as amended (“*Code*”), with the approval of the Governor, hereby establishes the terms and conditions of the Virginia Liability Risk Management Plan (hereafter referred to as “VaRISK 2” or “the Plan”) for the Commonwealth’s political subdivisions, state court-appointed and certain pro bono attorneys, free clinics and guardians of those consuming services provided by the Department of Mental Health, Mental Retardation and Substance Abuse Services or by community services boards and behavioral health authorities of the Commonwealth.

DRM is not an insurance company and the Plan is not insurance as those terms are defined in §38.2-100 of the *Code*. DRM is a division of a state agency, the Department of the Treasury, that obtains its authority to act from the statutory provisions of the *Code*.

DRM shall have final responsibility for interpretation and determination of coverage under the Plan.

I. WHAT VaRISK 2 WILL PAY

A. COVERAGE

When VaRISK 2 provides a defense, it will pay all Covered Damages, except as herein limited, on behalf of the Covered Party which the Covered Party is legally obligated to pay on all claims, either first made or arising from any act occurring during the term of coverage on causes of action established by law by reason of liability arising out of acts or omissions of any nature: (1) **in the case of political subdivisions of the Commonwealth of Virginia**, while the Covered Party is acting in an authorized governmental or proprietary capacity and in the course and scope of employment and authorization, (2) **in the case of clinics organized in whole or primarily for the delivery of health care services without charge (free clinics)**, while the Covered Party is engaged in the delivery of such health care services as provided in §§2.2-1839 and 32.1-127.3 of the *Code*, (3) **in the case of state court-appointed attorneys**, for acts or omissions arising out of the Covered Party’s appointment as approved by the Executive Secretary of the Supreme Court of Virginia. (4) **in the case of eligible pro bono attorneys**, while the Covered Party is engaged in the delivery of legal services arising from participation in a program approved by the Supreme Court of Virginia or by the Virginia State Bar, or (5) **in the case of guardians of those who consume services provided by the Department of Mental Health, Mental Retardation and Substance Abuse Services or those who consume services provided by community services boards and behavioral health authorities of the**

Commonwealth, while the Covered Party is serving as a guardian or limited guardian as defined in §37.1-134.6 of the *Code*.

B. DEFENSE

Unless defense is otherwise provided for, or mandated by, the *Code*, on matters covered by the Plan, VaRISK 2 shall have the right and duty to defend any suit against the Covered Party, even if any allegations are groundless, false or fraudulent. VaRISK 2 may make such investigation, negotiation, or settlement of any claim or suit, as it deems necessary. VaRISK 2 shall not be obligated to pay any claim or judgment or defend any suit after the Plan's limit of liability has been exhausted.

II. VaRISK 2 LIMIT OF LIABILITY

- A. Regardless of the number of (1) Covered Parties under the Plan, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought, the most VaRISK 2 will pay as compensation for any one claim will be one million dollars (\$1,000,000). Multiple claims arising from a single occurrence or series or related occurrences shall be considered as one claim for the purposes of the limit of liability, provided that the allegations made in each claim are of the same nature or arise out of the same occurrence or series of related occurrences.
- B. For any uninsured/underinsured motorist claim, the amount recoverable shall be limited to the amounts stated in §46.2-472 of the *Code*.
- C. For any claim against a health care provider as defined in §8.01-581.1 of the *Code*, the amount recoverable involving an act or acts of medical malpractice shall be limited to the amount provided in §8.01-581.15 of the *Code*.
- D. In addition to compensation for liability, VaRISK 2 will pay, for claims covered by the Plan:
 - 1. All expenses incurred by the Plan, including defense costs,
 - 2. Post-judgment interest until the date the Plan pays its part of the judgment,
 - 3. Reasonable expenses incurred at the request of the Plan, except salaries,
 - 4. Premiums on appeal bonds,

5. Court costs applicable to the defense, and
 6. Plaintiff's attorney's fees awarded pursuant to applicable federal and state statutes.
- E. In the event the Plan is rendered or becomes insolvent, neither the Commonwealth of Virginia, nor any department, agency, institution, board, commission, officer, agent or employee of the Commonwealth shall be liable for any claim that would have been covered under the Plan but for such insolvency. The establishment of the Plan does not, and shall not be deemed or construed to, pledge or obligate the full faith and credit of the Commonwealth of Virginia.

III. WHO IS COVERED BY VaRISK 2

Each of the following is covered, to the extent set forth below:

- A. In the case of political subdivisions, the Covered Party named in declarations, and any commission, board, authority or other similar units under the exclusive control and authority of the Covered Party while acting in an authorized governmental or proprietary capacity and within the course and scope of employment or authorization.
- B. In the case of political subdivisions, any elected or appointed official, employee, agent, individual officer or authorized volunteer of the Covered Party while acting in an authorized governmental or proprietary capacity and within the course and scope of employment or authorization.
- C. In the case of free clinics, the clinic named in the declarations and any individual director, officer, or employee while engaged in the delivery of health care services without charge as further described and defined in §32.1-127.3 of the *Code*.
- D. In the case of state court-appointed attorneys, the individual attorney appointed, as approved by the Executive Secretary of the Supreme Court of Virginia, while acting within the course and scope of the appointment.
- E. In the case of guardians, those who serve as guardians or limited guardians of those persons described in §2.2-1839 of the *Code* while acting in the capacity described in §37.1-134.6 of the *Code* and as approved by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services or by the executive director of a community services board or behavioral health authority.
- F. In the case of pro bono attorneys, the individual attorney providing legal services under a program approved by the Supreme Court of Virginia or

the Virginia State Bar while engaged in the delivery of legal services for custody and visitation to an eligible indigent person as described in §2.2-1839 of the *Code*.

Estates, heirs, legal representatives, committees, guardians or assigns of deceased or incapacitated Covered Parties shall not be considered eligible for coverage under VaRISK 2 unless (1) the claim was first made before death or incapacitation of the Covered Party and/or (2) the estates, heirs, legal representatives, committees, guardians or assigns can demonstrate to the satisfaction of VaRISK 2 their ability to cooperate, to actively participate in, and to actively assist with defense of claims against the deceased or incapacitated persons.

IV. WHAT VaRISK 2 WILL NOT COVER (EXCLUSIONS)

A. This Plan does not apply to:

1. Any obligation under fidelity or dishonesty bond, worker's compensation, unemployment compensation, disability benefits law, any administrative hearings or procedures or any similar plan, law or regulation.
2. Any claim, demand or action arising out of motor vehicle or watercraft or aircraft use or ownership unless separate application and contributions have been made to the Plan, however, in the case of political subdivisions, this exclusion does not apply to automobiles temporarily loaned for a Covered Party's use, or liability arising from an employee using a personal vehicle on official business.
3. Liability for damage to property used by, or under the care, custody and control of, a Covered Party in excess of one hundred thousand dollars (\$100,000) per event.
4. Liability arising out of pollution, mold, toxic chemicals, exposure to asbestos, hazardous waste or similar substances of any kind; however, this exclusion shall not apply to chemicals used in an authorized and recognized law enforcement context. VaRISK 2 shall have the final decision in determining what is a recognized law enforcement context under the Plan.
5. Any claim resulting from off-duty employment, unless, in the case of political subdivisions, (a) such employment is performed for an employer that is approved by a Covered Party authorized to make

such decisions, and (b) is performed in a recognized law enforcement context, and (c) if required by the Plan, a separate contribution has been paid to the Plan for this activity. VaRISK 2 shall have the final decision in determining what is a recognized law enforcement context under the Plan.

6. Any claim, demand or action arising out of a Covered Party's law enforcement activities unless a separate application has been accepted by DRM and a separate contribution has been paid.
7. Damages arising from malicious, willful, wanton or criminal acts. In addition, the Plan will not defend a Covered Party where a court or other trier of fact has determined that the Covered Party has engaged in any of the aforementioned acts.
8. Any claim for which the Covered Party is entitled to indemnity and/or payment from another resource by reason of having given notice of any circumstances which might give rise to a claim under any insurance policy or policies, or any other self-insurance Plan of any kind, the term of which has expired prior to the inception date of coverage under the Plan.
9. Liability arising from or assumed by contract, except, in the case of political subdivisions, mutual aid agreements between public entities.
10. Any claims arising from inverse condemnation, zoning matters, adverse possession or dedication by adverse use.
11. Claims, demands or other actions seeking relief or redress in any form other than monetary damages, including, but not limited to injunctive relief. For the purposes of this exclusion, a claim for attorney's fees, costs or expenses shall not be construed as a claim for monetary damages.
12. Any claim brought under §8.01-581.1, et seq. of the *Code* against any physician or other health care provider unless such coverage has been made and accepted by the Plan.
13. Any claim arising out of dishonesty or infidelity.
14. Any matter that involves or could involve an action or proceeding against an official or employee of the Covered Party, the nature of which is designed to determine whether discipline or other sanction of the official or employee for malfeasance or misfeasance is appropriate, or to otherwise determine the fitness of

such persons to hold office or to continue their employment. However, any subsequent civil suit arising from such an action or proceeding shall be covered.

15. Any claim arising out of disputes over tax assessments, similar to but not limited to those found in §58.1-3984 of the *Code*, disputes over property valuations or similar and related matters.
16. Any claim brought against a state court-appointed attorney for acts or omissions outside the course and scope of appointment as approved by the Executive Secretary of the Virginia Supreme Court.
17. Any claim brought against a pro bono attorney for acts or omissions outside the course and scope of the attorney's participation in an eligible program approved by the Virginia State Bar or by the Supreme Court of Virginia.
18. Any claim brought against a guardian of a person consuming services provided by the Department of Mental Health, Mental Retardation, Substance Abuse Services, by a community services board or by a behavioral health authority of the Commonwealth of Virginia for acts outside the course and scope of the guardian's responsibilities.
19. Any amounts a Covered Party is obligated to pay as a result of any self-insured layer, retained risk layer, or deductible due under any policies of insurance or programs of self-insurance purchased or established by a Covered Party to insure against liability arising from the activities of the Covered Party.
20. Criminal proceedings against a Covered Party, including any proceeding for the purpose of determining whether a crime has been committed by a Covered Party.

V. DEFINITIONS USED IN THE PLAN

- A. **Claim** means any demand, suit or legal action. However, administrative hearings or procedures, including but not limited to those conducted by the Equal Employment Opportunity Commission, the Virginia Office for Protection and Advocacy, the United States Department of Justice, grievance panels, and disciplinary actions by professional regulatory boards are not considered claims, regardless of whether or not monetary relief is sought.

- B. **Covered Damages** means compensatory or punitive damages awarded by a court of competent jurisdiction. In no event, however, shall Covered Damages mean (1) costs due or alleged to be due, including interest, solely on account of goods or services contracted for or allegedly contracted for, or (2) expenses associated with complying with any injunction, or (3) salaries, wages or employment benefits owed by a Covered Party, or (4) tax revenues collected for the benefit of the locality served by those covered under the Plan, or (5) any combination of (1), (2), (3) or (4).
- C. **Covered Party** means, in the case of any political subdivision or free clinic, any county, city, town, authority, board, commission, district, public service corporation or any other political subdivision or free clinic, that has enrolled in the Plan by (1) making an application, and (2) paying a contribution to the Plan in a timely manner, as well as their officials, employees, agents and authorized volunteers. **Covered Party** means, in the case of a state court-appointed attorney, pro bono attorney or guardian, the individuals described more fully in Section III of the Plan.
- D. **Defense costs** means all fees and expenses relating to the adjustment, investigation, defense or litigation of a claim including attorneys' fees incurred by the Plan, court costs applicable to the defense and interest on judgments accruing after entry of judgment. Defense costs shall not include the office expense of any Covered Party or the salaries of employees of any Covered Party.
- E. **Enrolled** means that an application has been made and accepted and a contribution has been paid for the coverage and services provided under the Plan.
- F. **Free Clinic** means any clinic that is organized in whole or primarily for the delivery of health services without charge or where only a reasonable minimum fee is charged to cover administrative costs.
- G. **Property damage** means (1) physical injury to or destruction of tangible property, or (2) loss of use of tangible property which has not been physically injured.
- H. **Immediately** means no later than close of business the next workday following receipt of notice of lawsuit, claim, delivery of subpoena, service of process or any other action that will generate a request for payment or other assistance from DRM.

VI. CONDITIONS

The Following Conditions Apply to the Plan:

A. Action against the Plan

No action shall lie against the Plan unless, as a condition precedent thereto, there shall have been full compliance with all terms of the Plan, nor until the amount of the Covered Party's obligations shall have been finally determined either by judgment against the Covered Party after actual trial or by written agreement of the Covered Party, VaRISK 2 and the claimant.

No person or organization shall have any right under the Plan to join VaRISK 2 as a party to any action against the Covered Party to determine the Covered Party's liability, nor shall VaRISK 2 be impleaded by the Covered Party or the Covered Party's legal representative.

B. The Covered Party's Responsibility

IMPORTANT NOTICE: VaRISK 2 SHALL NOT BE LIABLE FOR OR ASSUME RESPONSIBILITY FOR ANY CLAIM IN WHICH THE COVERED PARTY FAILS TO COMPLY WITH THIS SUBSECTION.

1. When a claim is made against any Covered Party, the Covered Party shall immediately notify VaRISK 2 and shall immediately forward to VaRISK 2 every notice, summons, demand or other process received.

Submit all claim information to:

**Department of the Treasury
Division of Risk Management-Claims
Attn: Director
P. O. Box 1879
Richmond, Virginia 23218-1879**

2. The Covered Party shall cooperate with VaRISK 2. A Covered Party shall not, except at the Covered Party's own cost, voluntarily make any payment, assume any obligation or incur any expense other than first aid or damage mitigation.
3. A Covered Party shall also attend hearings, trials and depositions, assist in securing and giving evidence, assist in obtaining witnesses and assist in effecting settlements.

C. The Plan's Responsibility

1. VaRISK 2 shall conduct a defense in the Covered Party's name and may, for the benefit of the Plan, pursue recovery from any third party. VaRISK 2 shall have full discretion in the handling of any claim.
2. VaRISK 2, in its discretion, may settle any claim, when it deems settlement to be in the best interest of the Plan. Where reasonably possible, VaRISK 2 will not make any offer or settle any claim without first contacting the Covered Party to advise of the reason and the intent in making such an offer of settlement.
3. If a Covered Party makes a demand that VaRISK 2 pursue litigation and not settle a claim, and that demand is accepted by VaRISK 2, and the litigation is lost or the judgment is greater than the amount for which VaRISK 2 could have settled the claim, VaRISK 2 shall be responsible for the cost of defense and Covered Damages only to the point where the claim could have been settled or for the original amount agreed to for settlement.

D. Other Coverage

The Plan is written to reflect the intent of all parties that any coverage under the Plan arises solely from DRM's statutory mandate under §2.2-1839 of the *Code*. Thus the parties agree that if, at the time of the loss, there is any other coverage or insurance available to persons covered by the Plan which covers such loss, or which could have covered such loss, VaRISK 2 shall not have any liability for such loss. Other coverage, insurance or self insurance includes, but is not limited to, bonds of any description, policies of insurance or programs of self-insurance purchased or established by or on behalf of persons covered by the Plan to insure against liability arising from the activities of such persons, regardless of whether or not the policy or program provides primary, excess, excess over excess, umbrella, or contingent coverage and regardless of the deductible of any other insurance or self-insured retention plan.

This condition shall not apply if the Director of DRM approves in writing, in advance, of the issuance of such other coverage or insurance, that the Plan is designated as primary and will provide the underlying coverage for any excess or umbrella coverage purchased by the Covered Party meeting the terms and conditions of the VaRISK 2 primary endorsement and a contribution for the coverage as determined by DRM has been paid to the Plan.

E. Subrogation

In the event of payment under this Plan, the Commonwealth of Virginia shall be subrogated to all the Covered Party's rights of recovery against any person or organization and the Covered Party shall execute and deliver instruments and papers and do whatever else is necessary to secure all rights of subrogation for the Commonwealth. The Covered Party shall do nothing after a loss to prejudice such rights.


F. Cancellation

This Plan may not be canceled mid-term. The Covered Party may cancel coverage under this Plan only upon written notice being delivered to DRM at least thirty (30) days prior to the anniversary date of the coverage. VaRISK 2 may cancel the Covered Party's coverage only for non-payment of the contribution, or for failure to meet the terms and conditions of the Plan with ten (10) days advance written notice. The only exception to this condition is when the Director of DRM denies a request that the Plan provide primary coverage.

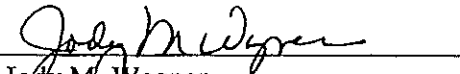
G. Changes

The Plan remains in effect until the Governor or his designee endorses a replacement plan. The Plan shall not be altered except in writing by the Department of the Treasury, Division of Risk Management in compliance with the *Code*.

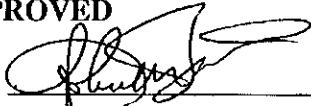
IN WITNESS THEREOF, the Department of the Treasury, Division of Risk Management, with the approval of the Governor, has executed the Plan to be effective immediately upon the signature of the Governor or his designee.

BY: 
Don W. LeMond, Director
Division of Risk Management

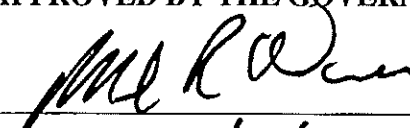
APPROVED

BY: 
Jody M. Wagner
State Treasurer

APPROVED

BY: 
John M. Bennett
Secretary of Finance

APPROVED BY THE GOVERNOR


DATE: 1/6/05