

Model Trust Indenture

THIS INDENTURE, made this ____ day of _____ 20____, by and between ABC HMO, a health maintenance organization licensed under Section 3501 et seq. of 2000 P.A. 252, being MCL 500.3501 et seq. (hereinafter referred to as ABC HMO), XYZ Bank, a national banking association, (hereinafter referred to as the “Trustee”) and the Director of Insurance and Financial Services of the State of Michigan (the “Director”):

WHEREAS, ABC HMO is engaged in the business of operating a health maintenance organization, and in connection therewith is required by Section 3553 of the Michigan Insurance Code, being MCL 500.3553, to maintain a certain level of deposit under a trust indenture acceptable to the Director for the sole benefit of its Michigan subscribers and enrollees in case of insolvency;

WHEREAS, ABC HMO desires to deposit with a trustee, subject to the terms and conditions hereof, certain cash and securities that shall be available for the sole benefit of its Michigan subscribers and enrollees in case of insolvency as provided in Section 3553 of the Michigan Insurance Code;

WHEREAS, the Trustee is a Qualified United States Financial Institution;
and

WHEREAS, the Trustee is amenable to acting in a fiduciary capacity for the purpose of holding funds deposited by ABC HMO pursuant to the terms and conditions of this Indenture.

NOW THEREFORE, this Indenture is acknowledged, agreed and declared between the parties as follows:

1. Definitions. When used herein, the following terms shall have the following meanings:
 - (a) “Authorized Officer” shall mean any officer of ABC HMO given the authority by its Board of Directors to act on behalf of ABC HMO.
 - (b) “Enrollee” shall mean an individual who is a resident of Michigan and who is entitled to receive health maintenance services under a health maintenance contract or on whose behalf a health maintenance contract is entered into with ABC HMO.
 - (c) “Order” shall mean the written direction of a party or of the Director.
 - (d) “Qualified United States Financial Institution” shall mean a state or nationally chartered bank or trust company organized under the laws of any state or of the United States that has been granted authority to operate with fiduciary powers.
 - (e) “Subscriber” shall mean an individual who is a resident of Michigan and who enters into a health maintenance contract or on whose behalf a health maintenance contract is entered into with ABC HMO and to whom a health maintenance contract is issued.
 - (f) “Trust” shall mean the trust created pursuant to the provisions hereof for the deposit by ABC HMO of Trusteed Assets.
 - (g) “Trustee” shall mean XYZ Bank or any Qualified United States Financial Institution located in Michigan and appointed as successor trustee of the Trust by and approved by the Director in writing at the time of such appointment, which approval shall not have been withdrawn.
 - (h) “Trusteed Assets” shall mean, collectively, all cash and securities as defined in Sections 910 and 912 of the Michigan Insurance Code, being MCL 500.910; MSA 24.1910 and MCL 500.912; MSA 24.1912 at the lower of their cost or market value in accordance with generally accepted accounting procedures and all proceeds, income, earnings, dividends or interest accumulations with respect to such cash and securities held by the Trustee pursuant to the provisions hereof.

2. Appointment; Acceptance. The Trustee is appointed as trustee to receive, hold and dispose of the Trusteed Assets constituting the Trust in accordance with the provisions hereof.

3. Maintenance of Trusteed Assets. ABC HMO shall deposit with the Trustee Trusteed Assets so that at all times the total value of such Trusteed Assets shall be at least \$\$\$\$\$\$\$\$ and shall make further periodic deposits with the Trustee of Trusteed Assets in an amount agreeable to the Director in order to maintain compliance with MCL 500.3553. At the time of each deposit of Trusteed Assets, ABC HMO shall provide a certificate signed by an Authorized Officer stating that: (a) such assets are of the value and quality required by this Indenture, and (b) the Trustee has legal title to such assets.

4. Legal Title; Benefit of Trust.
 - (a) The Trusteed Assets shall be held in trust by the Trustee for the sole benefit of Michigan subscribers and enrollees of ABC HMO subject to all the provisions thereof. All investments and reinvestment of Trusteed Assets shall be made by ABC HMO and the Trustee shall not be responsible for the investment or reinvestment of Trusteed Assets in the Trust.
 - (b) Legal title to Trusteed Assets now or hereafter maintained with the Trustee hereunder is hereby transferred by ABC HMO to the Trustee and any successor Trustee and, upon such transfer, shall vest for the sole benefit of its Michigan subscribers and enrollees in case of insolvency.
 - (c) ABC HMO shall execute such documentation and take such action as shall be necessary to perfect and evidence legal title to the Trusteed Assets in the Trustee and any successor Trustee.
 - (d) ABC HMO shall maintain the Trust until such time as it and the Trustee receive written notice from the Commissioner that ABC HMO no longer has any outstanding liability to subscribers and enrollees.

5. Withdrawal or Transfer of Trusteed Assets.

- (a) Neither ABC HMO nor the Trustee shall make or permit any withdrawal or transfer of Trusteed Assets from the Trust without the express prior written approval of the Director, except: (1) pursuant to the Order of ABC HMO to deliver securities which are sold by ABC HMO or which are paid at maturity or redeemed, provided that immediately upon such transfer the Trustee receives the proceeds of such sale, payment or redemption and such proceeds become Trusteed Assets when received; (2) pursuant to a court of competent jurisdiction, transfer Trusteed Assets to a court appointed liquidator, receiver, conservator or rehabilitator of the Company.
- (b) The Trustee shall cause the interest, fee income, and non-liquidating dividends on the Trusteed Assets to be paid to ABC HMO, except upon written Order of the Director.
- (c) Pursuant to the Order of ABC HMO, the Trustee may make and permit withdrawals or transfers of Trusteed Assets from the Trust without depositing any other assets that are Trusteed Assets in the Trust, with the prior written approval of the Director.
- (d) Notwithstanding the foregoing, if at any time the Trustee is notified in writing by the Director or a court of competent jurisdiction that either (1) ABC HMO is deemed insolvent or impaired; (2) its trust deposits are below the minimum prescribed by applicable statute or by the Director; or (3) ABC HMO is the subject of disciplinary proceedings, such notice shall suspend all withdrawals and transfers pursuant to this Section 5 until such notice is withdrawn by the Director or reversed by a court of competent jurisdiction.

6. Powers and Authority of the Director. In the event the Director deems ABC HMO insolvent, the Director or his/her designee shall have the right to direct the Trustee to apply funds from the Trusteed Assets in accordance with the provisions of this Indenture when, in opinion of the Director, it is necessary to cure one of the following:

- (a) Continuation of necessary ABC HMO contractual obligations including payment to providers for such services.
 - (b) Payment to providers for authorized past services rendered to ABC HMO members for which members may be or have been personally liable.
 - (c) Payment of operating expenses necessary for administration by the Director and his staff.
 - (d) Payment for other services or expenses for the benefit of ABC HMO Michigan subscribers and enrollees that the Director, in her/her sole discretion, may deem necessary, just and equitable.
7. Duties of Trustee. It shall be the duty of the Trustee and the Trustee agrees:
- (a) To receive the Trusteed Assets delivered to it for the Trust without any obligation on its part to enforce payment, transfer or delivery.
 - (b) Except where evidenced by book entry, to keep all such Trusteed Assets separate and apart from any other deposits. The Trustee shall maintain such books of account and records as may be necessary to identify the Trusteed Assets as being held solely for the Trust and shall make proper records and entries therein of all dealings and transactions relating to such Trusteed Assets. The Trustee shall permit authorized agents of ABC HMO or of the Director to inspect such books and records relating to the Trusteed Assets at the expense of ABC HMO.
 - (c) To transfer Trusteed Assets upon the Order of ABC HMO, or in the case specified in Section 6 or 12, upon the Order of the Director, in each case in accordance with this Indenture.
 - (d) Notwithstanding anything herein to the contrary, except with the prior written approval of the Director, to continuously keep the Trusteed Assets in the United States.

8. Administration of Trusteed Assets.

- (a) The Trustee may, at any time, for protection against the loss of any Trusteed Assets, and shall, when required by ABC HMO register such Trusteed Assets in the name of ABC HMO a nominee designated by ABC HMO, the Trustee, or, when expressly authorized by ABC HMO, a nominee entirely under the control of the Trustee, provided that, in each case where the Trusteed Assets are not registered in the name of the Trustee or the Trustee's nominee, ABC HMO shall, at the time of the deposit of such Trusteed Assets, execute such documentation and take such other action as may be necessary to permit the Trustee to re-register the Trusteed Assets in the name of the Trustee or the Trustee's nominee at any time for the protection of the Trusteed Assets or upon the Order of the Director. Registration in the name of the Trustee or its nominee shall not confer any beneficial interest in any Trusteed Assets in any such person or entity. If ABC HMO desires to withdraw or otherwise deal with any such Trusteed Assets which have been registered in the name of a person or entity other than ABC HMO as hereby authorized, the Trustee will take such action as may be necessary to transfer and convey to ABC HMO or its nominee or to a purchaser all right, title and interest in the Trusteed Assets to be withdrawn from the Trust, provided always that the requirements hereof with respect to withdrawal or transfer of Trusteed Assets from the Trust shall in all cases be met. With the prior written consent of ABC HMO, the Trustee may make use of the Federal Reserve book entry system, the facilities of the Depository Trust Company or any other securities depository or clearing agency, and sub custodians, provided that, except with the prior written approval of the Director, any such sub custodian (1) at all times when acting as such, shall be a Qualified United States Financial Institution, and (2) shall submit to jurisdiction and service of process in the State of Michigan pursuant to provisions substantially the same as Section 23, and further provided that the Trustee retains the same responsibility for

any loss of any Trusteed Assets deposited with such sub custodian as it would have had if it held the Trusteed Assets.

- (b) Upon Order of ABC HMO, the Trustee will execute and deliver, or cause to be executed and delivered, to ABC HMO or its nominee, proxies or other documents of agency and attorney sufficient in law to enable ABC HMO or its nominees to attend and vote at meetings of corporations and other bodies and generally to exercise all rights existing by virtue of the Trusteed Assets.
- (c) Unless the Trustee receives an Order of ABC HMO or of the Director to the contrary, the Trustee is authorized: (1) promptly to receive and collect all income and other distributions with respect to the Trusteed Assets and to credit receipts to the Trust; (2) promptly to exchange Trusteed Assets where the exchange is purely administrative (including, without limitation, the exchange of interim receipts of temporary securities for securities in definitive form and the exchange of warrants, or other documents of entitlement to securities, for the securities themselves); (3) promptly to surrender Trusteed Assets at maturity or when called for redemption upon receiving payment therefore; (4) to hold registered in the name of the nominee of the Trustee or its agent such securities as are required to be held in registered form; (5) to execute in ABC HMO name for the Trust such ownership and other certificates as may be required to obtain the payment of income from the Trusteed Assets; (6) to endorse for collection in the name of ABC HMO checks, drafts and other negotiable instruments; and (7) in general, to attend to all non-discretionary details in connection with the sale, purchase, transfer and other dealings with the Trusteed Assets.
- (d) Upon the termination hereof, the Trustee shall deliver the Trusteed Assets in accordance with the Order of ABC HMO with the prior written approval of the Director. Subject to receiving such Order, the Trustee, upon termination hereof, shall retain the Trusteed Assets.

9. Report.

- (a) Upon the Order of ABC HMO, the Trustee shall account to it for all monies (principal, interest, capital dividends, income or any other property) which constitute any part of the Trusteed Assets.
- (b) Not later than the first day of each March and from time to time as directed by the Order of the Director, (1) the Trustee shall prepare, certify as true and accurate and deliver to the Director a list of the Trusteed Assets held by it hereunder, such list to be as of the end of the prior calendar year or such other date and in such detail as the Director directs, and (2) ABC HMO shall certify to the Director the value of the Trusteed Assets set forth on the Trustee's certified list in accordance with procedures approved by the Director, provided, however, upon the Director's request, ABC HMO shall cause its certification of value to be confirmed in writing by an independent valuation expert or appraiser approved by the Director. Notwithstanding any valuation or appraisal of the Trusteed Assets pursuant to this Section 9(b), any determination of the value of the Trusteed Assets by the Director shall be final and binding absent manifest error.

10. No Liens. The Trustee and ABC HMO agree that (1) the Trusteed Assets are not subject to, and neither the Trustee nor ABC HMO will cause or permit the Trustees Assets to become subject to, any right, charge, security interest, lien encumbrance or other claim of any kind, and (2) the legal and beneficial ownership of the Trusteed Assets shall be freely transferable without the payment of money or other value other than for safe custody or administration.

11. Standard of Care.

- (a) In performing its duties and obligations hereunder, the Trustee shall exercise the care and diligence required of a prudent trustee.

- (b) The Trustee shall not be liable to any subscriber or enrollee or to ABC HMO to anyone else hereunder for any act or failure to act done or omitted in good faith in reliance upon any order or other written instrument which it reasonably believed to be genuine and unaltered and to have been signed or executed by the proper party or parties.
- (c) The Trustee shall not be liable to any subscriber, enrollee, ABC HMO or anyone else for any act or omission taken or not taken hereunder, except any such act or omission resulting from its own negligence or willful misconduct.
- (d) The Trustee shall accept as binding upon it any certificate, requisition, direction, order, demand or other written instrument signed in the name of ABC HMO by any Authorized Officer.
- (e) The Trustee shall be entitled to rely upon and may accept without inquiry or investigation, a certificate or other writing signed by two Authorized Officers, as conclusive evidence of any or all of the following: (1) that the monies mentioned in such certificate or other writing are to be paid in settlement of the liability of ABC HMO to a subscriber or enrollee; (2) that the Trusteed Assets mentioned in such certificate or other writing are of the value and quality specified there; (3) that the Trusteed Assets mentioned in such certificate or other writing that are being withdrawn pursuant to Section 5(a)(2) are to be redeposited or exchanged in accordance with the provisions thereto; and (4) without the generality of the following being limited by the foregoing enumeration, as to any other fact or circumstances or conditions pertaining to any transfer or withdrawal, provided the Trustee may not rely upon or accept a certificate or other writing of ABC HMO as to the approval of any fact or circumstances by the Director.

- (f) The Trustee shall be indemnified and held harmless by ABC HMO from any loss and expense (including attorney's fees and disbursements) it may incur hereunder unless such loss or expense is as a result of its own negligence or willful misconduct. Under no circumstances shall the Director have any liability or responsibility to the Trustee for any such indemnification.
- (g) The Trustee may, from time to time (1) deal with securities of the same class and nature as may constitute the assets held in trust in its own behalf or on behalf of accounts it manages, or (2) be affiliated with any party to whom or from whom such securities may be sold or purchased.

12. Rights of Subscribers and Enrollees.

- (a) No subscriber or enrollee, whether or not its claim has been reduced to judgment against ABC HMO, shall have any right whatsoever hereunder to have its claim paid from the Trust, except on the Order of ABC HMO in accordance with Section 5(a) or of the Director in accordance with Section 6.
- (b) The parties hereto acknowledge that for the purposes hereof, the Director acts for the protection of the subscribers and enrollees in the State of Michigan. Notwithstanding the foregoing, the Director has no power to waive any right of, or bind, the subscribers or enrollees with respect to ABC HMO.
- (c) Nothing herein shall be interpreted or construed to give any subscriber or enrollee the right to require an accounting from the Trustee or inquire into the administration of the Trust, question any of the Director's or the Trustee's acts or omissions or otherwise enforce this Indenture.
- (d) This Indenture is not intended, and shall not be deemed or construed, to give any third party rights or remedies of any kind, other than subscribers and enrollees in the State of Michigan, and then only as explicitly set forth herein.

13. Compensation. The Trustee is entitled to reasonable compensation for its services hereunder and reimbursement of expenses as may be agreed by ABC HMO and the Trustee. Under no circumstances shall the Director have any liability or responsibility to the Trustee for any such compensation or reimbursement.

14. Resignation: Replacement of Trustee.
 - (a) If the Trustee desires to resign as Trustee, it shall give notice to ABC HMO and the Director in writing. Unless ABC HMO, by Order within 90 days of the date of such notice, authorizes the Trustee to deliver the Trusteed Assets to any other Trustee, the Trustee shall, at the expiration of such 90-day period, deliver the Trusteed Assets at the direction of the Director to the Treasurer of the State of Michigan.
 - (b) ABC HMO reserves the right by written instrument to remove the Trustee and to appoint a new Trustee upon at least 30 days prior written notice to the Director. The Trustee, upon receipt of written notice from ABC HMO that a new Trustee has been appointed to perform the duties of the Trustee hereunder and approved by the Director, shall deliver all Trusteed Assets to the new Trustee.
 - (c) Upon a finding by the Director that the Trustee is in breach of the provisions hereof or is otherwise not qualified to act as Trustee, the Director shall give notice of such finding to ABC HMO and Trustee in writing. Unless ABC HMO, by Order within 30 days of the date of such notice or such shorter period as the Director may have designed in such notice, authorizes the Trustee to deliver the Trusteed Assets to another Trustee, the Trustee shall, at the expiration of such period, deliver the Trusteed Assets at the direction of the Director to the Treasurer of the State of Michigan.
 - (d) Each delivery of Trusteed Assets pursuant to this Section 14 shall be accompanied by a statement of the delivering Trustee to ABC HMO

and the Director certifying such Trusteed Assets and the delivery thereof.

15. Notices. Unless otherwise provided herein or by statute, any and all notices, orders, demands, or communications required or permitted to be given hereunder shall be deemed to have been duly given when personally delivered or sent by United States first class certified or registered mail, return receipt requested, or by commercial courier, addressed to the parties at the addresses set forth below, or transmitted using the telecopier number set forth below, or in each case as otherwise notified to the parties:

If to ABC HMO	Contact Person c/o ABC HMO Address Phone e-mail
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If to the Trustee	Contact Person c/o ABC Bank Address Phone E-mail
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If to the Director	Director Department of Insurance Financial Services Stevens T. Mason Building, 7th Floor 535 W. Allegan Street Lansing, MI 48933-1521 Toll Free 877-999-6442
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Any such notice, order, demand or other communication shall be deemed received if (a) delivered by hand, on the date of receipt; (b) sent by mail or commercial courier, when actually received; and (c) sent by telecopier, on the date sent.

16. Termination. This Indenture shall continue until terminated by written instrument executed by ABC HMO and the Trustee with the prior written approval of the Director.

17. Severability. If any provision of this Indenture is held to be invalid or unenforceable for any reason, the remaining provisions shall nevertheless be in effect.
18. Cumulative Remedies. The rights and remedies of the Director hereunder are cumulative and may be exercised singularly or concurrently, or concurrently with, and are not exclusive of, any rights and remedies provided by law, regulation, order or otherwise.
19. Waiver. No waiver by any party of any breach of any of the provisions hereof shall take effect or be binding upon that party unless expressed in writing under the authority of that party and any waiver so given and approved shall extend only to the particular breach so waived and shall not limit or affect any rights with respect to a future breach.
20. Further Assurances. Both ABC HMO and the Trustee shall each execute and deliver all such instruments and assurances and do all other acts and things as are necessary to give full effect to and carry out their respective obligations hereunder.
21. Amendment; Modification. This Indenture shall not be supplemented, modified, altered, revoked or withdrawn without the prior written consent of the Director.
22. Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State of Michigan.
23. Submission to Jurisdiction; Service of Process.
 - (a) The Trustee and ABC HMO hereby irrevocably submit to the non-exclusive jurisdiction of the Michigan circuit court sitting in Ingham County, Michigan in any action or proceeding arising out of or relating hereto. The Trustee and ABC HMO hereby irrevocably waive any

defense as to the standing of the Director or of any inconvenient forum to the maintenance of such action or proceeding. Both the Trustee and ABC HMO further each agree that the final judgment against it in any action or proceeding referred to herein shall be conclusive and may be enforced in any other jurisdiction, within or outside the United States, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of such judgment.

- (b) Both the Trustee and ABC HMO each hereby irrevocably appoint the Director as its agent to receive, accept and acknowledge receipt for and on behalf of it and its property, service of any and all legal process, summonses, notices and documents that may be served on such agent in accordance with legal procedures prescribed for such courts.

24. This Indenture shall be binding upon the parties hereto and their successors.

IN WITNESS WHEREOF, the parties hereto have executed this Indenture as of the date first set forth above.

Witness: Name (printed)

Contact Person
c/o ABC HMO
Address
Phone:
Fax:
E-mail:

by: _____

by: _____

Witness: Name (printed)

Contact Person
c/o ABC Bank
Address
Phone:
Fax:
E-mail:

by: _____

by: _____

Witness: Name (printed)

State of Michigan
Deputy Director
Department of Insurance and Financial
Services
On behalf of the Director
Toll Free: 877-999-6442

by: _____

by: _____

Authorized by PA 218 of 1956, as amended. Required by MCL 500.3553.



Michigan Department of Insurance and Financial Services

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