

PUBLIC HEALTH MUTUAL AID AGREEMENTS –
A MENU OF SUGGESTED PROVISIONS

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Introduction

Mutual aid agreements* can be effective tools to assist U.S. state and local governments, Tribes, Canadian provinces, First Nations, and Mexican states in sharing information, data, supplies, resources, equipment, or personnel for the purpose of protecting the public’s health.

Public health officials with an interest in developing mutual aid agreements have frequently approached CDC’s Public Health Law Program to request the creation of “model” agreements. In an effort to be of assistance in that regard, the Public Health Law Program, in cooperation with CDC’s Coordinating Office for Terrorism Preparedness and Emergency Response (COTPER), gathered, reviewed, analyzed, condensed, and categorized provisions from numerous and varied mutual aid agreements.

*Parties intending to create informal or non-binding terms may choose to title the document a “memorandum of understanding” or a “memorandum of agreement” rather than a “mutual aid agreement.”

A workshop was then convened, comprised of public health attorneys and officials representing U.S. federal, state, and local governments, Canadian federal and provincial entities, and Tribes with a wide range of mutual aid responsibility, experience, and expertise. Workshop participants reviewed and analyzed the collected provisions, and provided valuable input concerning the types of provisions that could be considered for possible inclusion in agreements. This document is the product of those efforts. It is hoped that the document will be of immediate practical value to public health officials and their legal counsel in the development of mutual aid agreements involving a variety of jurisdictions.

While this document is intended to provide impetus for consideration of various mutual aid-related issues, and to suggest some possible approaches for addressing those issues, the suggested provisions must be carefully scrutinized and modified as necessary to accurately reflect the specific intent of the parties to an agreement. For example, the types of provisions to be included within a mutual aid agreement are necessarily dependent on the resources to be shared and the circumstances under which sharing may be contemplated. With varying degrees of specificity, resources to be shared may include information, data, supplies, equipment, or personnel. Some parties may wish to share resources only upon a declaration of emergency. On the other hand, resource sharing may be a method of providing surge capacity in response to smaller scale, non-declared emergencies. Resource sharing may even be an effective means of executing routine public health functions. Parties using the following provisions to assist in the negotiation and development of mutual aid agreements, therefore, must determine whether a particular type of provision is relevant to their contemplated agreement, and must then carefully tailor provisions to meet their specific needs.

Types of Provisions

Provisions are organized within sections under the following headings:

[Agreement Purpose or Background](#)

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Each section commences with a brief note describing the purpose and effect of provisions included within the section. Provisions in each section are in turn organized under sub-headings. Bulleted provisions within each section and under each sub-heading are mutually exclusive; i.e., a bulleted provision should be viewed as alternative to, rather than supplemental to, other provisions. As noted above, the suggested provisions are only examples intended to prompt negotiation and drafting of provisions that will comply with applicable laws and best meet the needs of the parties to a particular mutual aid agreement.

The suggested provisions are followed by a **Special Note Relating to Tribes**.

Agreement Purpose or Background

Descriptive Note

The initial paragraphs of an agreement often serve to introduce the subject matter of the agreement, provide background information, state the agreement's purpose, or cite to the legal authority underlying the agreement. In many instances, these sorts of provisions are not designed to create obligations, but to simply "set the stage" for the agreement. Provisions of this type may have a "political" motivation in that the primary intent may be to educate or persuade interested persons or entities not directly involved in developing the agreement concerning the issues to be addressed or benefits to be gained through the agreement. Such interested persons or entities might include legislators, chief government executives, the private sector, or other government jurisdictions or agencies.

Optional sample provisions

Providing background information or "setting the stage":

- The prompt, full and effective utilization of resources of the participating jurisdictions, including any resources on hand or available from any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a Party shall be the underlying principle on which all articles of this Agreement shall be understood.
- The Parties realize that influenza pandemics have occurred three times in the last century, and history and science suggest that the world could face one or more pandemics in this century. The Parties further recognize that a pandemic could cause severe illness, death, and disruption throughout the world, and outbreaks can occur in many different locations all at the same time.

Stating a general purpose or intent:

- The intent of this Agreement is to make equipment, personnel and other resources available to other Parties to the Agreement.

- The purpose of this Agreement is to protect the public health by providing mutual aid, and by establishing procedures in operating plans that will facilitate such aid.
- The purpose of this Agreement is to provide for mutual aid and assistance between the Parties entering into the Agreement when the resources normally available to a Party are not sufficient to cope with a situation which requires public health action. The public's health and well being will best be protected through the concerted efforts of multiple public health agencies providing assistance to one another. The promotion and coordination of this assistance through this Agreement is desirable for the effective and efficient provision of mutual aid and assistance.

Stating a purpose relating to public health emergencies:

- The purpose of this Agreement is to create a system of mutual aid between the Parties. Each Party recognizes that public health emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential for the protection of lives and for best use of available assets. The system shall provide for mutual assistance among the Parties in the prevention of, response to, and recovery from, any public health emergency.

Stating a purpose relating to an emergency declared by the governor [Such a declaration may trigger activation of the Emergency Management Assistance Compact (EMAC). Mutual aid agreements intended to be operational during a declared emergency should be supplementary to and consistent with the provisions of EMAC, which has been enacted in all states and territories]:

- The purpose of this Agreement is to provide for mutual assistance between the Parties in managing any emergency or disaster that is duly declared by the governor, whether arising from natural disaster, infectious disease outbreak, technological hazard, man-made disaster, community disorder, insurgency, terrorism, or enemy attack.

Stating a purpose regarding particular resources:

- The purpose of this Agreement is to facilitate sharing of public health related data, both individually identified and population-related, between Parties for the purpose, and no additional purpose, of preventing, detecting, or responding to a public health event, thus assuring prompt and effective identification of infectious disease and other agents that could affect public health, and to prevent further spread of disease.

Stating a “surge capacity” purpose:

- The primary goal of the collaborative approach between the Parties is to respond to surge capacity demands on public health systems and health resources efficiently when public health emergencies arise.

Stating a “surge capacity” purpose regarding particular resources:

- The purpose of this Agreement is to address surge capacity. The Agreement describes the levels and sharing of laboratory services, procedures,

responsibilities and reimbursement for laboratory testing, training and identification of infectious diseases and/or suspected bioterrorism select agents.

Stating legal authority:

- This Agreement is made pursuant to (citation to relevant legal authority).
- The Parties have authority to enter into this Agreement pursuant to (citation to relevant legal authority).
- Party A is (description of Party A's roles and responsibilities under applicable laws).

Organization and Coordination

Descriptive Note

To effectively implement an agreement or to promote continuity, parties to the agreement may wish to incorporate provisions creating a standing committee or similar working group comprised of members appointed by the parties. The function of the committee or group may be to monitor or coordinate activities under the agreement, or to provide ongoing advice to the parties concerning the agreement's operation. Implementation may also be enhanced through the use of provisions promoting the exchange of information, requiring development of collaborative procedures or protocols, or contemplating periodic drills or exercises.

Optional sample provisions

Establishing a coordinating committee or working group:

- Each Party will designate an authorized representative to attend meetings of the Advisory Committee, which shall promote emergency management coordination and preparedness at regional levels by:
 - providing a forum where members can raise issues and receive advice on emergency preparedness matters;
 - encouraging and supporting preparation and exercising of emergency plans for all members;
 - serving as a regional link to related groups.
- The Parties will maintain a joint working group to confer at least annually for the purpose of reviewing and maintaining the procedures by which to share the information necessary for an effective response to a public health event and to conduct joint communication and coordination of information before and during a public health event.

Envisioning information exchange/coordination procedures:

- To the extent practical, each Party shall:
 - Initiate a process to exchange contact lists, and develop a plan that will determine the mechanism for cooperation;

- Coordinate the exchange of appropriate public health information between the Parties to better protect the communities of the region;
- Develop procedures to resolve any identified inconsistencies or overlaps in existing or developed plans;
- Develop comprehensive guidelines and procedures that address, including but not limited to, the following: projected or anticipated costs, checklists for requesting and providing assistance, record keeping for all participating political subdivisions, reimbursement procedures and other necessary implementation elements along with the necessary forms for requests and other records documenting deployment and return of assets.

Agreeing to participate in exercises or drills:

- Each Party agrees to participate in any annual disaster exercise or drill as called upon by appropriate federal, state, or local governmental agencies with such authority. Such participation could include communicating to the agency a set of data elements or indicators describing the Party’s resource capacity under the situation that may be proposed as part of the exercise or drill.

Request and Response Procedures

Descriptive Note

Particularly with regard to emergency-related mutual aid agreements, articulation of the steps to be followed in requesting aid and responding to requests [including “incident command” provisions compliant with the National Incident Management System (NIMS)] is advisable.** Related provisions may include specification of the resources to be provided and the circumstances under which aid may be withheld or withdrawn. Procedural provisions should be drafted with a view to the type of emergency triggering their use. For example, EMAC provides the request and response mechanisms to be used during a declared emergency; additional procedural agreements not in conflict with EMAC requirements should be contemplated only if EMAC procedures are considered to be in need of supplementation.

Optional sample provisions

Prescribing procedures for request and response:

- The requesting Party shall include in its request for assistance the amount and the type of equipment and the number of personnel requested and shall specify the location where the equipment and personnel are needed. The responding Party shall have exclusive authority to determine the type of equipment and the number of personnel to be furnished. No Party may make any claim whatsoever against the other Party for refusal to send the requested equipment or personnel.

** Parties may prefer to specify such procedures or protocols in an agreement appendix, operating manual or other document rather than within the text of the agreement.

- When requested to provide assistance, Parties agree to assess their situation to determine availability of personnel, equipment, and other resources. Parties shall render assistance to the extent that personnel, equipment, and resources are available. Each Party agrees to render assistance in accordance with the terms of this Agreement to the fullest extent possible. When the Party determines that it has available personnel, equipment, or other resources, the Party shall so notify the requesting Party, and provide the following information:
 - A complete description of the personnel, equipment, and other resources to be furnished;
 - The estimated length of time that such personnel, equipment, and other resources will be available to assist;
 - The estimated time when the assistance provided will arrive at the location designated by the receiving Party.
 - The areas of experience, training, and abilities of the personnel and the capability of the equipment to be furnished, and
 - The name of the person or persons to be designated as supervisory personnel.
- The authorized representative of a Party may request assistance of another Party by contacting its authorized representative. These provisions only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. The authorized representative will confirm a verbal request in writing within 15 days.

Providing for incident command:

- Assets and equipment of a responding Party shall continue under the control of the appropriate officials within the incident management system of the Party receiving the assistance.
- The requesting Party shall be in command of the mutual aid scene. The personnel and equipment of the responding Party shall be under the direction and control of the requesting Party until the responding Party withdraws assistance.
- All equipment and personnel provided by the responding Party shall, at all times while at the site of an emergency, remain under the sole and exclusive control and direction of the designated representative of the Party supplying said equipment and personnel. Said representative shall have an absolute right to remove any or all equipment or personnel from the site at any time the representative deems it appropriate.
- Emergency personnel continue under the command and control of their regular leaders, but the organizational units come under the operational control of the emergency services authorities of the Party receiving assistance. These conditions may be activated, as needed, by the Party that is to receive assistance or upon commencement of exercises or training for mutual aid and continue as long as the exercises or training for mutual aid are in progress, the emergency remains in effect or loaned resources remain with the receiving Party, whichever is longer. The receiving Party is responsible for informing the responding Party when services will no longer be required.

Acknowledging discretion to withhold or withdraw aid:

- A responding Party may withhold resources to the extent necessary to provide reasonable protection and services for its own jurisdiction.
- The Party rendering aid shall at all times have the right to withdraw any and all aid provided, however, that the Party withdrawing such aid shall notify the Party requesting aid of the withdrawal of such aid and the extent of such withdrawal.
- It is expressly understood and agreed by the Parties that the rendering of assistance under the terms of this Agreement shall not be mandatory, but that the Party receiving the request may in its discretion refuse to furnish any equipment or personnel consistent with its primary responsibility of providing emergency services within its own jurisdiction. It is the understanding of the Parties that the responding Party shall furnish the requested assistance unless such responding Party is actively engaged in responding to a public health emergency in its own jurisdiction, and has no equipment or personnel available or the responding Party determines that the needs of the requesting Party are beyond the capacity of the responding Party. When responding to a request the responding Party shall do so in a timely and reasonable fashion. In situations where the responding Party is unable to furnish the requested assistance, it will notify the requesting Party as soon as practicable that assistance will not be rendered.

Licenses and Permits

Descriptive Note

Licenses, permits, certificates, and related credentialing or privileging requirements are generally controlled by state law. EMAC, for example has been statutorily enacted in all states. It provides in Article V:

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

“Deeming” or similar treatment of licenses, permits, etc., in circumstances not controlled by EMAC requires comparable supporting legal authority. Analysis and resolution of legal issues relating to such authority may be assisted by reference to the Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP) – Legal and Regulatory Issues Report, accessible at www.hrsa.gov/esarvhp/legregissues/default.htm, and the Uniform Emergency Health Practitioners Act (UEVHPA), accessible at www.uevhp.org.

Optional sample provisions

EMAC-like “deeming”:

- Whenever a person holds a license, certificate or other permit issued by any Party to the Agreement evidencing the meeting or qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving Party, such person is deemed to be licensed, certified or permitted by the Party requesting assistance to render aid involving such skill to meet an emergency or disaster, to the extent allowed by law and subject to such limitations and conditions as the requesting Party prescribes by executive order or otherwise.
- To the extent permitted by the law of the state in which the emergency occurs, a person or entity that holds a license, certificate, or other permit issued by a responding Party evidencing qualification in a professional, mechanical or other skill shall be deemed to be licensed, certified, or permitted in the jurisdiction of the Party requesting assistance for the duration of the emergency subject to any limitations and conditions the Party receiving the assistance may prescribe.

Assuring professional qualifications and regulatory compliance:

- The requesting Party will grant emergency privileges to the professional staff of the responding Party. The responding Party will cooperate with the requesting Party to provide the information necessary in a timely manner to verify employment status, licensure, and training necessary in order for professional staff to receive emergency privileges within the jurisdiction of the requesting Party.
- The Parties will comply with all Federal and State laws relating to provision of services under this Agreement and will maintain in effect all permits, licenses, governmental approvals and accreditations that may be necessary for that purpose. The Parties will notify each other immediately of any material change in such permits, licenses, governmental approvals or accreditation that would adversely affect the ability of the Parties to perform under this Agreement.

Liability, Immunity, and Indemnity

Descriptive Note

Constitutional provisions, including those relating to governmental or sovereign immunity, and statutes, including tort claims acts, volunteer protection acts, Good Samaritan laws, EMAC, and other emergency response statutes will strongly influence the content of mutual aid provisions concerning liability, immunity from liability, or indemnity. EMAC, Article VI, for example, provides:

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connections therewith. Good

faith in this article shall not include willful misconduct, gross negligence, or recklessness.

The ESAR-VHP Legal and Regulatory Issues Report and UEVHPA, cited as potential resources in the preceding section, may also be of assistance in analyzing and resolving legal issues, and in drafting agreement provisions, relating to liability, immunity, or indemnity. Obviously, involvement of legal counsel is particularly critical at all times when dealing with these complex legal issues.

Optional sample provisions

Establishing EMAC-like liability protection:

- Any person or entity of a Party rendering aid to another Party pursuant to this Agreement is considered an agent of the requesting Party for tort liability and immunity purposes. Any person or entity rendering aid to another Party pursuant to this Agreement is not liable on account of any act or omission in good faith while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith does not include willful misconduct, gross negligence or recklessness.

Conditionally indemnifying the responding party:

- The receiving Party, to the extent authorized by the laws of the State, agrees to indemnify and hold harmless the responding Party from liability.
- Each Party requesting aid pursuant to this Agreement expressly agrees to hold harmless, indemnify and defend the Party rendering aid and its personnel from any and all claims, demands, liability, losses, suits in law or in equity which are made by a third party. This indemnity shall include attorney fees and costs that may arise from providing aid pursuant to this Agreement. Provided, however, that all employee benefits, wage and disability payments, pensions, worker's compensation claims, damage to or destruction of equipment and clothing, and medical expenses of the Party rendering aid shall be the sole and exclusive responsibility of the respective Party for its employees, provided, however, that such claims made by a third party are not the result of gross negligence or willful misconduct on the part of the Party rendering aid.

Retaining liability (no immunity or indemnity):

- Each Party to this Agreement shall be responsible for its own acts and omissions and those of its officers, employees and agents. No Party to this Agreement shall be responsible for the acts and omissions of entities or individuals not a party to this Agreement.
- Each Party shall be responsible for any claim or cause of action made against the Party or its employees arising under the performance of duties under this Agreement, and none of the Parties shall be required to indemnify, defend or hold harmless the other Parties for any such claim or cause of action.
- Each Party shall be liable for its actions in accordance with this Agreement and federal and state law, as applicable, including law of sovereign and governmental

immunity. No term or terms of this Agreement may be construed as an express or implied waiver of sovereign and governmental immunity.

- Each Party shall be responsible for damages to or loss of its own equipment and waives the right to sue any other Party for any damages to or loss of its equipment, even if the damages or losses were caused wholly or partially by the negligence of any other Party, its officers, employees, or volunteers.

Absolving parties from liability for withholding or withdrawing aid:

- No party to this Agreement or any officer of any Party shall be liable to any other Party or to any other person for failure of any Party to furnish assistance to any other Party, or for recalling assistance.
- The execution of this Agreement shall not give rise to any liability or responsibility for failure to respond to any request for assistance made in pursuance of this Agreement.

Granting release or waiver of claims:

- Each Party agrees and hereby releases and waives all claims against all other Parties with respect to any loss, damage, personal injury, or death sustained by that Party, its employees, or third parties as a result of its participation in the activities covered by this Agreement, except to the extent that such claim alleges gross negligence or willful and wanton misconduct by a Party participating in this Agreement.

Costs and Reimbursement

Descriptive Note

Federal and state statutes must be reviewed to ascertain their possible impact on reimbursement provisions. In declared emergencies, for example, EMAC, Article IX, generally provides that a responding state is entitled to reimbursement of costs from the receiving state. Relatedly, the Stafford Act specifies the circumstances under which federal funds may be available, and prescribes the steps necessary to secure reimbursement.

Optional sample provisions

Agreeing to provide aid without reimbursement:

- The Parties to this Agreement agree to provide the support and services specified in this Agreement on a gratuitous basis, with no expectation of direct reimbursement by the other Party. To the extent that any third-party payor, such as the United States Government, has funds or processes available for reimbursement of a Party's activities under this Agreement, the Parties agree to cooperate fully with one another in submitting any appropriate claim(s) for reimbursement and providing copies of records necessary to submit claims.
- Equipment, personnel, and/or services provided pursuant to this Agreement shall be at no charge to the Party requesting aid; however, any expenses recoverable

from third parties shall be equitably distributed among responding Parties. Nothing herein shall operate to bar any recovery of funds from any state or federal agency under any existing statutes.

Providing reimbursement to the responding party:

- Any responding Party rendering aid pursuant to this Agreement shall be reimbursed by the Party receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment and for the cost of all materials, transportation, wages, salaries and maintenance of personnel and equipment incurred in connection with such request. Nothing contained herein shall prevent any responding Party from assuming such loss, damage, expense or other cost or from donating such services to the receiving Party without charge or cost.

Providing reimbursement after a prescribed period of donated aid:

- No charges will be levied by a responding Party to this Agreement unless assistance continues for a period of more than 48 hours. If assistance provided under this agreement continues for more than 48 hours, the Responding Party will submit to the Requesting Party an itemized bill for the actual cost of any assistance provided after the initial 48 hour period, including salaries, overtime, materials and supplies and other necessary expenses; and the requesting Party will reimburse the Party providing the assistance for that amount. Charges are not contingent upon the availability of federal government funds.

Legal Scope or Effect

Descriptive Note

Well-crafted provisions addressing specific legal issues (e.g., liability, indemnification, reimbursement) will clearly and expressly state the intended legal scope or effect of the relevant provision. Nonetheless, on occasion, parties may, for various reasons, choose to incorporate a statement of an agreement's general legal scope or effect.

For example, states entering into agreements with one another (or possibly with a Canadian province or Mexican state) will obviously need to closely consult with legal counsel concerning the impact of U.S. Constitution, Article I, section 10, clause 3, which states that "No state shall, without the consent of the Congress, ... enter into any agreement or compact with another state, or with a foreign power...." In the course of legal analysis, including consideration of court decisions interpreting the "compact clause", counsel may wish to contemplate the advisability of the following sort of provision:

- Nothing in this Agreement is to be construed as an encroachment on the full and free exercise of U.S. federal authority, as an interference with the just supremacy of the U.S. or its several states, as affecting the federal structure of the United States or as enhancing the political power of the party states at the expense of each other or other U.S. states.

Additional optional sample provisions

Articulating agreement's compatibility with relevant laws:

- Nothing in the Agreement shall be interpreted to conflict with applicable laws within the jurisdiction of any Party. However, any Party may request from any other Party the suspension of such laws if their normal application might lead to delay or difficulty in the rapid execution of necessary public health emergency measures.
- The Parties will comply with all Federal and State laws relating to the provision of services under this Agreement and will maintain in effect all permits, licenses, governmental approvals and accreditations that may be necessary for that purpose.

Providing for continuing effect of remaining provisions if part of an agreement is ruled invalid by a court:

- The provisions of this Agreement are severable. If any portion of this Agreement is determined by a court to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement will remain in full force and effect.

Stating an intention to "bind" the parties:

- This Agreement shall be binding upon the Parties and inure to the benefit of any successor entity which may assume the obligations of any Party. A Party, however, may not assign this Agreement without prior written consent of the Parties.

Stating an intention to create a "nonbinding" document:

- This Agreement is a voluntary, nonbinding agreement among the Parties. However, with its signature on this Agreement, each Party states its intent to cooperate with one another and coordinate response efforts in the event of a public health emergency. Each Party also agrees to incorporate the terms of this Agreement into its emergency management plans.

Workers' Compensation, Death Benefits, & Insurance

Descriptive Note

With respect to declared emergencies, EMAC, Article VIII, provides:

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

UEVHPA includes a provision that workers' compensation will be provided by a "host" state to volunteers who are otherwise unprotected by workers' compensation laws. As with other provisions, consultation with legal counsel is essential to determine the impact of laws relating to workers' compensation and death benefits.

Most, if not all, states, and many other jurisdictions are self-insured. Provisions suggested below relating to purchase or maintenance of insurance obviously have no relevance to those jurisdictions, but government entities not so situated may want to consider such provisions, consistent of course with applicable laws or policies.

Requiring parties to provide workers' compensation and death benefits to their personnel:

- Each Party shall provide, in accordance with its own laws, for the payment of workers' compensation and death benefits to injured members of the emergency forces of that Party and to representatives of deceased members of those forces if the members sustain injuries or are killed while rendering aid to another Party pursuant to this Agreement, in the same manner and on the same terms as if the injury or death were sustained within its own jurisdiction.
- Each Party shall be responsible for injuries or death of its own personnel. Each Party will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are providing assistance pursuant to this Agreement. Each Party waives the right to sue any other Party for any workers' compensation benefits paid to its own employee or volunteer or their dependants, even if the injuries were caused wholly or partially by the negligence of any other Party or its officers, employees, or volunteers.

Requiring (or not requiring) purchase and maintenance of general insurance coverage:

- Each Party shall procure and maintain, at its sole and exclusive expense, insurance coverage, including: comprehensive liability, personal injury, property damage, worker's compensation, and, if applicable, emergency medical service professional liability, with minimum limits of \$1,000,000 auto and \$1,000,000 combined single limit general liability and professional liability. No Party shall have any obligation to provide or extend insurance coverage for any of the items enumerated herein to any other Party or its personnel. The obligations of this provision may be satisfied by a Party's membership in a self-insurance pool, a self-insurance plan or arrangement with an insurance provider approved by a government authority. Upon request of a Party, Parties shall provide evidence of compliance with this provision.
- Each Party shall determine for itself what insurance to procure, if any. Nothing in this Agreement shall be construed to require any Party to procure insurance.

Dispute Resolution

Descriptive Note

This sort of provision is generally neither required nor prohibited by law. Nonetheless, it is advisable to consult with legal counsel before determining the means, if any, for

resolving disputes. Some states and other jurisdictions, for example, may be prohibited by law from consenting to binding arbitration as a dispute resolution mechanism.

Agreeing to informal resolution:

- Should disagreement arise on the interpretation of the provisions of this Agreement that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation is not reached within thirty days, the Parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

Establishing a dispute resolution entity:

- In the event that a dispute arises under this Agreement, the Parties will make every effort to resolve the disagreement at the lowest organizational level. If those efforts are not successful, the Parties will seek input from their next higher decision-making authority. Unresolved disputes shall be brought before a Dispute Board, composed of one member appointed by each Party. The Dispute Board shall review the facts, applicable statutes and rules, and make a determination regarding the dispute. The Parties agree to abide by the Dispute Board determination.

Submitting disputes to arbitration:

- Should a dispute arise between Parties, involved Parties will make every effort to resolve the dispute within 30 days of written notice of the dispute by the party asserting noncompliance. In the event that the dispute is not resolved within 90 days of the written notice, a Party may request the dispute be resolved through arbitration. Arbitration under this provision shall be conducted under the commercial arbitration rules of the American Arbitration Association.

Creating a right to withdraw from the agreement:

- In the event of a breach of this Agreement, the remedy will be the right to terminate this Agreement, in whole or in part, by any Party without penalty of cost or expenses associated with breach.

Fees, Funding, & Appropriations

Descriptive Note

Government entities are generally prohibited from obligating themselves to expenditures beyond legislatively appropriated amounts; they may therefore choose to insert a provision reflecting the prohibition. Beyond that, parties may choose to include provisions referencing “best efforts” (or similar language) to seek funding or to avoid imposition of costs on other parties.

Optional sample provisions

Acknowledging legislative appropriation limitation:

- Nothing in this Agreement shall obligate the funds of any Party beyond those approved by appropriate legislative action.
- Nothing herein shall be construed as obligating the Parties to extend funds or involve them in any contract or other obligation for the future payment of moneys in excess of appropriations authorized by law and administratively allocated for work under this Agreement.

Agreeing to seek funds or accept gifts and grants:

- The Parties agree to seek funding to cover travel, per diem, and in some cases, salary costs for implementation of training and exercise plans.
- Parties may accept any and all donations, gifts, and grants of money, equipment, supplies, materials and services from any unit of government, or any agency thereof and from any person, firm or corporation, for any purposes and functions under this Agreement, and may receive and use the same subject to the terms, conditions, and regulations governing such donations, gifts and grants.

Seeking to limit taxes or fees imposed on other parties:

- Each Party will use discretionary power as far as possible to avoid levy of any tax, tariff, business license or user fees on the services, equipment and supplies of any other Party engaged in emergency response activities in the territory of another Party, and will use its best efforts to encourage relevant governmental units within its territory to do likewise.

Supplementary Agreements or Parties

Descriptive Note

Conceding that EMAC only provides the “elements of a broad base common to all states” and that “it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ,” Article VII bestows upon states the discretion to enter into supplementary agreements for the purpose of reconciling their differences. Parties entering into mutual aid agreements may similarly choose to incorporate provisions relating to supplementary agreements or additional parties to the agreement.

Optional sample provisions

Authorizing entry into supplementary agreements:

- Nothing in this Agreement precludes any Party from entering into supplementary agreements with another Party or affects any other agreements already in force among Parties.
- This is not an exclusive agreement and shall not prevent or limit other agreements of any nature between Parties to this Agreement.

Contemplating additional parties to the agreement:

- Nothing in this Agreement precludes additional jurisdictions with public health responsibilities from becoming Parties, subject to approval of Parties to the Agreement.

Restricting parties to the terms of the executed agreement:

- This Agreement incorporates all of the agreements, covenants and understandings between the Parties concerning the subject matter herein. No agreement or understanding of the Parties or their agents shall be valid or enforceable unless stated in this Agreement.

Amendments

Descriptive Note

Parties to an agreement may wish to incorporate a provision concerning the method, if any, of amending the agreement.

Optional sample provisions

- This Agreement may be amended by agreement of the Parties.
- Amendments to this Agreement can be made by simple majority vote of the Parties, and will take effect immediately upon passage.
- The Parties acknowledge that this Agreement may be modified or superseded by an agreement adopted by the Parties subsequent to the effective date of this Agreement.
- The Parties may mutually amend this agreement. Such amendments will not be binding unless they are in writing and signed by personnel of each agency who have the delegated authority to bind each of the Parties.

Effective Date, Term of Agreement, and Withdrawal

Descriptive Note

Agreements regularly include provisions for determining when and how an agreement becomes effective, the duration of the agreement, and how a party may withdraw from the agreement.

Optional sample provisions

- This agreement is made and entered into this ___ day of _____ by and between Party A and Party B.
- This Agreement will begin on _____, and will terminate on _____.
- This Agreement is effective upon its execution or adoption by any two Parties, and is effective as to any other Party upon its execution or adoption thereby. The

Agreement may be executed in multiple counterparts or duplicate originals, each of which shall constitute and be deemed as one and the same document.

- This Agreement will be reviewed annually and continued unless terminated by a Party by delivering written notice to the other Parties at least 30 days prior to termination.
- The initial term of this Agreement shall be five years. After the initial term, the Agreement shall automatically be renewed on a year-to-year basis. Any Party may terminate this Agreement by providing at least thirty (30) days written notice of intent to terminate participation in the Agreement to all other Parties to the Agreement.
- This Agreement shall continue in force and remain binding on each Party until such Party takes action to withdraw from the Agreement. Such action shall not be effective until sixty (60) days after notice of withdrawal has been sent to all other Parties.
- Withdrawal of any Party from this Agreement is effective 30 days after written notice of intent to withdraw is sent to the other Parties.

Signatories

Descriptive Note

Parties may elect to precede the signatures with a prefatory provision of the sort suggested below.

Optional sample provisions

- All undersigned Parties warrant they have the power and capacity to execute this Agreement.
- The Signatories below certify that this Agreement has been adopted and approved by ordinance, resolution, or other manner approved by law, a copy of which document is attached.
- The undersigned, Authorized Signatories for the Parties, affirm that each has been authorized to sign on behalf of the respective Party, and further affirm that the authorizing Party agrees to be bound by the terms of this Agreement.

Authorized Representative for
Party A

Authorized Representative for
Party B

Date Signed

Date Signed

Definitions

Descriptive Note

Parties to mutual aid agreements may find it useful to define key terms. Some terms may in fact be defined by relevant statutes, ordinances, regulations, or policies. In any event, terms defined in agreements must be compliant with applicable laws, and carefully crafted to accurately reflect the parties' intent.

Optional sample provisions

- **Emergency:** A natural or manmade event that is, or is likely to be, beyond the control of the services, personnel, equipment, and facilities of a Party to this Agreement.
- **Health data:** Written, electronic, oral, telephone, or visual information, identifiable or population based, that relates to an individual's or population's past, present or future physical or mental health status, condition, treatment, service or products purchased and includes, but is not limited to, laboratory test data or samples;
- **Identifiable data or information:** Specific to an individual and may include elements such as demographic information, address, date of birth, etc. Data or information is "identifiable" if it directly identifies an individual or there is a reasonable basis to believe it could be used to identify an individual. Information may also be "identifiable" if it meets the definition as contained in an applicable law. This type of information is defined by applicable federal, provincial and state laws and the definitions in those laws may vary from jurisdiction to jurisdiction;
- **Infectious disease agent:** The causative agent of an illness or health condition that may trigger reporting requirements or requests under the governing law or regulations of any of the signatories' jurisdictions or of the Governments of the United States or Canada or implementation of public health protection measures and/or emergency response procedures.
- **Mutual aid:** Aid to another public health agency in the form of personnel, equipment, facilities, services, supplies, or other resources appropriate to public health programs, including but not limited to inspections; vaccination clinics; centers for the distribution of pharmaceuticals; administrative assistance; specimen collection, conveyance, and testing; consulting; environmental assessment; and other programs.
- **Party:** A governmental entity or agency that has adopted and executed the Agreement.
- **Public health emergency:** An occurrence or condition within a Party's jurisdiction which results in a situation of such magnitude or consequence that it cannot be adequately handled by the Party such that the Party determines the necessity and advisability of requesting mutual aid, including but not limited to, bioterrorism or terrorism events, outbreaks or release of dangerously contagious or infectious disease, infectious agents, chemical agents, or toxins, natural

disasters, technological hazards, man-made disasters, civil emergencies, community disorders, insurgency, enemy attack, or other public health emergencies that possess the high probability of death, long-term disability, or substantial future harm in the affected population.

- **Public health event:** An occurrence or imminent threat of an illness, communicable disease or health condition with the potential for cross-border implications that could trigger implementation of emergency health response procedures or reporting requirements or requests under the governing law or regulations of any of the signatories' jurisdictions or of the Governments of the United States or Canada;
- **Requesting Party (alternatively, "Receiving Agency" or "Recipient"):** A Party that requests assistance from other Parties.
- **Responding Party (alternatively, "Sending Agency" or "Provider"):** A Party that provides assistance to a requesting Party.

Special Note Relating to Tribes

Tribes represent an array of culturally rich and diverse communities spread across the country. There are over 560 federally recognized Indian tribes located in over 30 states. Tribal governments are sovereign entities with inherent authority to protect the health, safety and welfare of their communities. Jurisdictional authorities in Indian country, however, are complex because the delivery of public health services is often distributed across tribal, county, state, and federal public health service providers. Tribal communities are generally not subject to state public health laws and the extent to which tribal governments have codified public health authority within tribal law is not clear.

Public health legal preparedness is an emerging issue in Indian country that is gaining broader recognition by a wide array of tribal leaders. In response to requests from these tribal leaders, CDC established a Tribal Public Health Law Work Group. The Work Group recently coordinated a Tribal Forum on Legal Foundations for Public Health Practice in Indian Country. Mutual aid agreements were recognized as an essential component of public health legal preparedness, and development of such agreements will certainly be among the Forum-related "next steps" to be taken by the Work Group.

There are some recent examples of collaborative efforts demonstrating that agreements between tribes and other governmental entities can effectively facilitate the sharing of information, resources, equipment, or personnel for the purpose of protecting the public's health. As state and local governments continue their mutual aid efforts, and as they work to cultivate similar working relationships with tribes, the number of agreements between tribes and other levels of government (and perhaps Mexican states, Canadian provinces and First Nations as well) will undoubtedly increase.