

**MEMORANDUM OF AGREEMENT FOR  
FACILITY USE DURING EMERGENCY OCCURRENCES**

*Sauk County Health Department  
St. Clare Hospital*

This MEMORANDUM OF AGREEMENT FOR FACILITY USE DURING EMERGENCY OCCURRENCES is effective **May 20, 2022** ("Effective Date") by and between SSM Health Care of Wisconsin, Inc., a Missouri nonprofit corporation, doing business as **St. Clare Hospital** ("SSM") and **Sauk County Health Department**, a Wisconsin governmental agency ("SCHD").

WHEREAS, SSM owns and operates an acute care facility in Sauk County, Wisconsin, and both parties desire to locate alternate facilities for use in the event of emergencies rendering SCHD's facility unavailable; and,

WHEREAS, SSM possesses space that could be utilized by SCHD in the event of an occurrence rendering SCHD unavailable; and

WHEREAS, SSM desires to assist SCHD by providing space at its facilities for refrigerated and frozen storage for SCHD's vaccine supply in the event of a power failure on the terms and conditions hereinafter set forth.

THEREFORE, it is understood and agreed upon by the parties hereto as follows:

1. **Purpose.**

SSM will use commercially reasonable efforts, subject to any conflicting requirements of its own, to provide the limited use of its facilities to SCHD at no charge, with the exception of reasonable expenses described in Section 4.5 of this Agreement, in the event that the power is lost in the West Square Building, located at 505 Broadway, Baraboo, WI 53913, where the vaccines are currently being stored, such that SCHD's facilities are rendered unavailable for vaccine storage. The West Square Building has access to a back-up power source, which can power the facility for two to three days. SSM will act as a second backup source in the event the power outage lasts longer than two days.

2. **Agreement Coordinators.**

Each party may designate its own Agreement Coordinator in Exhibit A, attached hereto and incorporated by its reference, assigned to act as its agent and representative regarding this Agreement and to coordinate and administer amendments and attachments to this Agreement for SCHD. Each party may subsequently assign other staff to these roles and duties upon written notice to the other party.

3. **SCHD's Obligations.**

3.1 SCHD will contact SSM at (605) 355-1755 to request approval, prior to the use of SSM's facility, to transport vaccine from the West Square Building to St. Clare Hospital for placement in the refrigerator and freezer as soon as possible. It is understood that the need will be based on an emergency situation and limited time will be available for such notice.

3.2 SCHD will consolidate the vaccine(s) in as few containers as possible and appropriately label such as "Sauk County Health Department vaccine".

- 3.3 SCHD will provide all necessary moveable equipment and/or supplies for its use.
- 3.4 SCHD will provide all personnel necessary for its intended use at SSM's facility, including transporting the vaccine(s) to SSM for refrigerated and freezer storage.
- 3.5 Use of SSM's facilities will be temporary and follow a timeline as mutually agreed upon by the parties. SCHD will remove the vaccine from SSM as soon as feasible after power is restored.

4. **SSM's Obligations.**

- 4.1 SSM will allow SCHD staff to access refrigeration and freezer space for vaccine storage in the event of a power failure at the West Square Building.
- 4.2 SSM will ensure the safe storage of the vaccine(s), as per industry standard vaccine storage practices.
- 4.3 SSM will allow SCHD staff to remove the vaccine when refrigeration is available in the West Square Building.

5. **Term.**

The term of this Agreement shall commence on the Effective Date and will continue for an initial term of five (5) years unless terminated earlier as provided herein. In the event the parties fail to appropriately document an extension, and either party continues to provide services hereunder, the term of this Agreement shall be deemed to be automatically extended on a day to day basis until terminated by either party upon thirty (30) days prior written notice if the termination is without cause, or if the termination is not without cause, then as provided by the applicable time frame set forth in the Agreement.

6. **Termination.**

This Agreement may be terminated immediately by either party at any time, upon written notice, if any terms of the Agreement are violated. Either party may, upon thirty (30) days prior written notice to the other party, terminate this Agreement at any time with or without cause.

7. **Amendment.**

This Agreement may be amended or modified by a writing setting forth the proposed revisions and signed by each of the parties to this Agreement.

8. **Insurance.**

- 7.1 Each party shall purchase and maintain the insurance coverage set forth below, through a company or companies lawfully authorized to do business in the State of Wisconsin or through a funded self-insurance program, for claims arising out of or resulting from such party's performance under this Agreement and for which such party may be legally liable, whether such services be by such party or by anyone directly or indirectly employed by any of them. Such insurance shall be on an occurrence basis or if on a claims-made basis and such claims-made insurance is canceled or terminated for any reason, an extended reporting endorsement shall be purchased applicable to all claims arising during the term

of this Agreement. Insurance protecting each party from claims set forth below will be evidenced by issuance of a certificate of insurance upon request or, if a funded self-insurance program, by a letter in a form reasonably acceptable to the other party. If commercial insurance is utilized under this Agreement, such insurance will be provided by insurance carriers reasonably acceptable to the other party and by a carrier licensed to do business in the State of Wisconsin.

(a) Workers' Compensation insurance to cover its employees, in the amount prescribed by law.

(b) Comprehensive General Liability in the minimum amounts of One Million Dollars (\$1,000,000) per occurrence.

© In addition, SSM will carry professional liability insurance in the minimum amounts of One Million Dollars (\$1,000,000) per occurrence.

**9. Indemnification.**

SCHD will indemnify, defend and hold harmless SSM and its directors, officers, and employees against any liability, claim, damage, cost, fines, penalties, loss or expense (including, without limitation, reasonable attorneys', accountants' and consultants' fees and court costs) incurred by or imposed upon them in connection with any claims, suits, actions, demands or judgments arising out of SCHD's use of SSM's facilities or the failure to meet the requirements of this Agreement; provided, however, that SSM shall not be entitled to indemnification for any claims, liability, losses or damages to the extent caused by its own acts or omissions or those of its officers, employees or agents.

SSM will indemnify, defend and hold harmless SCHD and its directors, officers, and employees against any liability, claim, damage, cost, fines, penalties, loss or expense (including, without limitation, reasonable attorneys', accountants' and consultants' fees and court costs) incurred by or imposed upon them in connection with any claims, suits, actions, demands or judgments arising out of SSM's the failure to meet the requirements of this Agreement; provided, however, that SSM shall not be entitled to indemnification for any claims, liability, losses or damages to the extent caused by its own acts or omissions or those of its officers, employees or agents.

**10. Counterparts, Facsimile, or Electronic Signature.**

This Agreement may be signed in one or more counterparts including via facsimile or email, or by electronic signature in accordance with Missouri law, all of which shall be considered one and the same agreement, binding on all parties hereto, notwithstanding that both parties are not signatories to the same counterpart. A signed facsimile or photocopy of this Agreement shall be binding on the parties to this Agreement.

**11. Severability.**

In the event that any sections, paragraphs, sentences, clauses or phrases of this Agreement (individually, "Provision") shall be found invalid, void and/or unenforceable, for any reason, neither this Agreement generally nor the remainder of this Agreement shall thereby be rendered invalid, void and/or unenforceable, but instead each such Provision and (if necessary) other Provisions hereof, shall be reformed by a court of competent jurisdiction so as to effect, insofar as is practicable, the intention of the parties as set forth in this Agreement, and this Agreement shall

then be enforced as so reformed. Notwithstanding the preceding sentence, if such court is unable or unwilling to affect such reformation, the remainder of this Agreement shall be construed and given effect as if such invalid, void and/or unenforceable Provision(s) had not been a part hereof.

12. **Notice.**

Any notice or communication required or permitted to be given under this Agreement shall be served personally, sent by United States certified mail or sent by email to the following address:

If to SSM: SSM Health/St. Clare  
Hospital  
Attn: Dave Kitkowski  
Environmental Health and  
Safety Specialist/Safety  
Officer  
707 14<sup>th</sup> St.  
Baraboo, WI 53913  
Email:  
Dave.Kitkowski@ssmhealth.c  
om

If to SCHD: Sauk County Health Department  
Attn: Jessica Phalen, BSN, RN, Nurse Manager  
505 Broadway Street  
Baraboo, WI 53913  
Email: [Jessie.Phalen@saukcountywi.gov](mailto:Jessie.Phalen@saukcountywi.gov)

Legal Notices to County: County Clerk  
505 Broadway  
Baraboo, WI 53913

Any change to the notice address listed above must be given to the other party in the same manner as described in this section. The date of notice shall be the date of delivery if the notice is personally delivered, the date of mailing if the notice is sent by United States certified mail or the date of transmission if the notice is sent by email. Each party agrees to maintain evidence of the respective notice method utilized.

13. **SCHD's Representation and Warranty.**

SCHD represents and warrants to SSM that SCHD and its owners, employees, agents and any subcontractors (collectively "Personnel") are not: (i) listed on the System for Award Management website ("sam.gov") (formerly known as the General Services Administration ("GSA") Excluded Parties List System ("EPLS")); or (ii) suspended or excluded from participation in any federal health care programs, as defined under 42.U.S.C. § 1320a-7b(f), any form of state Medicaid program, and are not listed on the Office of the Inspector General's website ("oig.hhs.gov") (collectively, "Government Payor Programs"). SCHD also represents and warrants that to the best of its knowledge there are no pending or threatened governmental investigations that may lead to suspension or exclusion of SCHD or Personnel from Government Payor Programs or may be cause for listing on sam.gov or oig.hhs.gov (collectively, an "Investigation"). SCHD shall notify SSM of the commencement of any Investigation or suspension or exclusion from Government Payor Programs within three (3) business days of SCHD's first learning of it. SSM shall have the right to immediately terminate this Agreement upon learning of any such Investigation, suspension or

exclusion. SSM shall be timely kept apprised by SCHD of the status of any such Investigation. SCHD shall indemnify, defend, and hold SSM harmless from any claims, liabilities, fines, and expenses (including reasonable attorneys' fees) incurred as a result of SCHD's breach of this paragraph.

**[Remainder of Page Intentionally Left Blank - Signature Page to Follow]**

IN WITNESS WHEREOF, each person signing below represents and warrants that he or she is fully authorized to sign and deliver this Agreement in the capacity set forth beneath his or her signature and the parties hereto have signed this Agreement as of the date and year written below.

SCHD:

**Sauk County Health Department**

By: \_\_\_\_\_

Name: Brent Miller

Title: Administrator


Address: 505 Broadway  
Baraboo, WI 53913

Email: [brent.miller@saukcountywi.gov](mailto:brent.miller@saukcountywi.gov)

Date:

SSM:

**SSM Health Care of Wisconsin, Inc., doing  
business as St. Clare Hospital**

By:  \_\_\_\_\_

Name: Dave Kitkowski

Title: Environmental Health and Safety  
Specialist/Safety Officer

Address: 707 14<sup>th</sup> St.  
Baraboo, WI 53959

Email:  
[Dave.Kitkowski@ssmhealth.com](mailto:Dave.Kitkowski@ssmhealth.com)

Date:



**EXHIBIT A**  
**AGREEMENT COORDINATOR**

SCHD designates Jessica Phalen, BSN, RN, Nurse Manager, as its Agreement Coordinator.

SSM designates Dave Kitkowski as its Agreement Coordinator