

# Fond du Lac Band of Lake Superior Chippewa Workers' Compensation Plan

## Section 1 – Purpose and Authority

**1.1 Purpose:** By adoption of this Plan, the Tribal Government of the Fond du Lac Band of Lake Superior Chippewa (hereinafter referred to as the Council) shall be liable for the benefits described herein to *Employees* of the *Tribe* or the *Tribes* economic enterprises (hereinafter collectively called *Employer*) for injuries arising out of the *Employee's* employment relationship with the *Employer*. This Plan is not remedial and is not to be given a broad liberal construction in favor of any claimant or *Employee*.

**1.2 Authority:** The Council is charged with the duty and authority to appoint an *Administrator* to carry out and enforce the provisions of this Plan.

**1.2.a** The Council has appointed a Third Party Administrator to administer the Plan under a separate Agreement.

**1.3 Responsibility of the Employer:** The responsibility of the *Employer* is limited to the benefits provided to its *Employees* by this Plan established hereunder. The *Tribe* or any *Employer* shall not construe enactment of this Plan as a waiver of sovereign immunity.

**1.4 Sovereign Immunity:** The sovereign immunity of all *Employers* with respect to any action to enforce only the provisions of this Plan is hereby waived by the Council, subject to the following limitations:

**1.4.a** No action may be brought against any *Employer* to enforce the provisions of this Plan except through de novo review by the Hearing Examiner appointed under **Section 7.4** of this Plan.

**1.4.b** No *Employer* shall be ordered to pay any amount in any such action in excess of the amount of compensation required to be paid under this Plan.

**1.4.c** No attorney's fees, costs, extraordinary or punitive damages shall be awarded against any *Employer* in any such action.

**1.5 Non-waiver of Rights:** No *Employer* shall require any *Employee* to waive their rights and remedies under this Plan as a condition of employment. No agreement, contract, rule or regulation, express or implied, shall operate to relieve an *Employer* in whole or in part of any obligation created by this Plan except as specifically provided herein.

## Section 2 – General Provisions

**2.1 Citation:** The Plan shall be known and cited as the **Fond du Lac Band of Lake Superior Chippewa Workers' Compensation Plan**.

**2.2 Assignment:** No claim for benefits under this Plan may be assigned and all benefits are exempt from any claims of creditors except those for child and spousal support obligations. If the *Employer* is served with a valid child support order or spousal maintenance support order by a court of any jurisdiction of the United States, the *Employer* shall deduct the child support or maintenance obligation from compensation otherwise payable under this Plan and pay the deducted amount directly to the court or its designated agent.

**2.3 Burden of Proof:** Except where explicitly stated otherwise, the burden of proof is on the *Employee* or *Dependent* making a claim for *injury* benefits and there must be a preponderance (greater weight) of evidence to support the *injury* claim.

**2.4 Exclusive Remedy:** The rights and remedies of an *Employee* or *Dependent* covered by this Plan for *injury* or death arising out of and in the course of employment are limited to those described in this Plan, and shall exclude all other rights and remedies the *Employee* or *Dependent* may have under common law or the workers' compensation statutes of any state, including those of the *Employee's* personal representative or next of kin for *injury* or death arising out of and in the course of employment against the *Employer* or any *Employee*. Any and all expenses incurred by the *Tribe* or the *Administrator* resulting from an *Employee's* pursuit of claims in such other jurisdictions shall be recouped from future payments of compensation to the *Employee*, whether for the same *injury* or not, and from the *Employee's* wages with the *Employer*, if any. Credit applied against future payments shall not exceed 25 percent of each future payment except in cases of lump sum payment of *permanent impairment* benefits, or final payment of wages upon the *Employee's* resignation or termination.

**2.5 Right of Action - Election by Employee:** Whenever an *injury* for which benefits are payable under this Plan occurs under circumstances creating a legal liability in a person other than the *Employer*, the injured *Employee* may either claim benefits under this Plan or proceed at law against such other person to recover damages. In no such case shall *Employee* be permitted to collect from both.

**2.5.a** If the *Employee* proceeds against a person other than an *Employer* with respect to such *injury* or condition and recovers any amount, that action shall constitute an irrevocable election to proceed against such person and the *Employee* shall have no rights to any compensation from an *Employer* under this Plan with respect to such *injury* or condition.

**2.5.b** If benefits have been awarded or paid under this Plan, and the *Employee* has suffered damages for which another person, other than an *Employer*, is legally liable on account of the same *injury* or condition for which benefits were paid, the *Employer* may collect in its own name or that of the injured *Employee* or may recover from the *Employee* an amount equal to the amount of benefits paid or payable by the *Employer* to the *Employee*. Acceptance of benefits under this Plan constitutes an assignment of the *Employee's* rights to the *Employer* to the extent of benefits paid or payable.

**2.6 Severability:** If any section of this Plan is held to be in conflict with a governing statute or relevant law, to exceed statutory authority, to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable, or to be invalid for any other reason, the validity and enforceability of the remaining provisions of the Plan shall in no manner

be affected.

**2.7 Waiver of Privilege:** Application for or acceptance of any benefits under this Plan shall constitute a waiver of privilege by the *Employee* or the *Employee's* dependents. Immediately upon request by the *Administrator*, the *Employee* shall authorize access to or provide medical, employment, social security, state agency, education, or other pertinent information necessary to adjust the claim. Failure to provide the requested authorization or information shall result in delay or suspension of benefits or a dismissal of the claim, at the discretion of the *Administrator*.

### **Section 3 – Covered Employment**

**3.1 Employer Liability:** With respect to any *Employee* who sustains *injury*, such *Employer* shall be liable for the payment of compensation and medical benefits to the *Employee*, or the *Employee's Dependents*, as provided by this Plan.

**3.1.a** All *Employee's* of the Fond du Lac Band of Lake Superior Chippewa, whether Native American or non-Native American are covered under and bound by the provisions of this Plan, with the following exceptions; *Employee's* of Fond du Lac Heavy Equipment and Construction, *Employee's* of Fond du Lac Heavy Equipment and Construction, *Employee's* of the Center for American Indian Resources and *Employee's* of the Minneapolis Pharmacy.

**3.1.b** The liability of an *Employer* to an *Employee* or to the *Employee's Dependents* for *injury* is defined by this Plan and is exclusive. This Plan replaces any and all rights and remedies an *Employee* or an *Employee's Dependents* may have under Federal, Tribal or State law, common law or the worker's compensation statutes of any state against any *Employer* for the *injury*.

### **Section 4 - Exclusions**

**4.1 Exclusions:** To qualify for workers' compensation benefits under this Plan, an *injury* or death must arise out of and in the course of the *Employee's* employment. No benefits under this Plan shall be allowed for any *injury* or death caused by or arising out of any of the following exclusions:

**4.1.a Cumulative Trauma.** *Injury* arising from cumulative trauma, repetitive or overuse.

**4.1.b Disregard of Instructions.** Disregard by the injured *Employee* of instructions or established work or safety procedures, whether verbal or written, from the *Employer*; when the instructions or procedures, if followed, would have reasonably prevented or reduced the likelihood of the *injury* or death.

**4.1.c Emotional/Mental Condition.** Injury arising from an emotional and/or mental condition, component or dysfunction whether related or not related to a work place injury. The exception to this exclusion is for emergency/first responders suffering mental impairment following an exposure to a single traumatic event, which arose out of and in the course of employment due to causes in excess of the hazards ordinary of the employment. In those instances, up to 12 weeks of Temporary Total Disability and

\$25,000 in therapeutic Health Care Benefits, will be paid. Mental impairment is defined as a diagnosis of Post-Traumatic-Stress-Disorder (PTSD) by a licensed psychiatrist. Mental impairment cannot result from disciplinary action work evaluation, job transfer; lay off, demotion, promotion, termination, retirement, or similar action taken by the Employer.

**4.1.d Independent Contractors/Subcontractors.** *Injury* of an *independent contractor* or an *Employee* of a *subcontractor*, whether insured or uninsured for worker's compensation, even though the *injury* may occur on the *Reservation*.

**4.1.e Environmental Illness.** Environmental illness or chemical sensitivity caused by agents, to which the general public is exposed, including exposure to second hand smoke, on the *Employer's premises* or any other public location.

**4.1.f Failure to Disclose.** The *Employee's* failure to disclose a physical condition, prior to commencement of employment, which prevents the *Employee* from safely performing the work for which the *Employee* was hired or which was a substantial contributing factor to the *injury*.

**4.1.g Gross Negligence.** *Injury* resulting from the gross negligence or misconduct of the *Employee*.

**4.1.h Horseplay.** Horseplay engaged in by the *Employee*, which contributes to the *injury* or death.

**4.1.i Idiopathic injury.** *Injury* arising out of a condition from an obscure or unknown cause.

**4.1.j Injury by Third Person/Fellow Employees.** Acts by any persons or co-workers directed at an *Employee*, with the intent to injure, for personal reasons not related to the *Employee's* job duties or employment.

**4.1.k Intentional Acts.** *Injury* arising from the intentional or self-inflicted injuries by the *Employee*, including suicide.

**4.1.l Intoxication.** The *Employee's* use of alcohol, use of any illegal substances or abuse of any prescription medication which, in anyway, contributes to the *Employee's injury* or death.

**4.1.m On/Off Premises.** Activities of the *Employee* during all breaks or while traveling to or from the *Employer's* premises, except while engaged in business travel required by the *Employer*.

An *Employee* in the parking lot of the *Employer*, on the *Employer's* premises and while enroute to the *Employee's* next work shift for the *Employer*, shall be deemed to be in the course of employment for the *Employer*.

**4.1.n Personal Activities.** Activities, personal or otherwise, of the *Employee* which do not provide a benefit to the *Employer* and which contribute to the *injury* regardless if they occur on the *Employer's premises*. *Employee injury* arising from *Employer*

sponsored gatherings is excluded unless the *Employer* requires attendance.

**4.1.o Pre-existing Condition.** *Injury* due to a pre-existing degenerative condition, established by objective medical evidence, whether pre or post-injury, which causes, aggravates, or otherwise contributes to the disability or need for medical treatment. For purposes of this section, a pre-existing degenerative condition includes, but is not limited to, a degenerative disease, congenital condition or chronic illness or injury.

**4.1.p Safety Devices.** Refusal or failure of the *Employee* to use a safety device or appliance furnished by the *Employer* which if used would have reasonably prevented or reduced the likelihood of *injury* or death.

**4.1.q Volunteer Activities.** *Injury* or death resulting from the volunteer activities of the *Employee*, unless the *Employer* requires such volunteer activities.

**4.1.r Work Restrictions.** *Injury* or re-injury resulting from the *Employee's* failure to work within current documented medical restrictions.

## Section 5 –Employee Injury Benefits

**5.1 Health Care Benefits:** For any *Employee* who sustains a *compensable injury* under this Plan, the *Employer* shall be liable for the payment of all reasonable and necessary health care expenses of such *Employee*, but only if such expenses are incurred with a *Primary Healthcare Provider* (listed under section 8.1.p) or *Referral Healthcare Provider*. An *Employer's* responsibility for health care expenses shall be limited to the fees established under the Workers' Compensation Maximum Fee Schedule adopted by the *Tribe*.

**5.1.a** Medical mileage, resulting from a compensable *injury*, shall be paid at the same rate per mile as business travel for the *Employer* is reimbursed, not to exceed one hundred (100) miles per trip unless preauthorized by the *Administrator*. Other expenses such as parking, meals, child care or the lost wages of others are not covered.

**5.1.b** An *Employer* shall be liable for the purchase, repair or replacement of prosthetic or orthotic devices, splints, braces, hearing aids, prescription eyeglasses, eyeglass frames or contact lenses if such items were necessitated by, damaged or destroyed in a work accident that results in an *injury* which is compensable under this Plan.

**5.1.c** The liability of an *Employer* for chiropractic care to an injured *Employee* shall be limited to sixty (60) days from the date of referral by the *Primary Healthcare Provider* or twenty-four (24) treatments, whichever occurs first, except for good cause clearly shown. The burden of proving the reasonableness and necessity of additional chiropractic care shall be on the *Employee*.

**5.1.d** An *Employee* shall have only one treating *Primary Healthcare Provider* at a time coordinating the *Employee's* medical care. The *Administrator* must approve any change in the *Primary Healthcare Provider* or referral to a *Referral Healthcare Provider*, except in emergency situations. Services rendered by a new provider prior to such approval shall not be the responsibility of the *Employer* and shall not be paid.

**5.1.e** An *Employee* may not be compelled to undergo surgery or other invasive procedures. If an *Employee* desires a second opinion on the necessity of recommended surgery or other invasive procedures, the *Employee* shall pay the cost of obtaining any second opinion. Except in cases of emergency surgery, the *Employer*, at its expense, may require the *Employee* to obtain a second opinion on the reasonableness and the necessity of the surgery before the *Employee* undergoes surgery. The *Employee* shall submit to recommended pre-surgery tests, which are generally medically accepted to determine the reasonableness, necessity or advisability of the surgery, the *Employee* desires.

**5.1.e.1** In the case of need for medical services or surgery for which the services of the *Primary Healthcare Providers*, are not reasonably available because of medical emergency, an *Employer* shall pay the reasonable and necessary charges of emergency healthcare providers. The *Employee* must obtain follow-up care and treatment from a *Primary Healthcare Provider* as defined in this agreement.

**5.1.f Examinations:** An injured *Employee* must submit to reasonable examinations by an independent medical examiner if requested by the *Administrator*. The *Employer* shall pay reasonable travel expenses incurred by the *Employee* in attending the examination. The cost of any such examination shall also be borne by the *Employer*. If an *Employee* fails to attend a scheduled examination without good cause, the payment of any cancellation fee shall be recouped from future payments of compensation to the *Employee*, whether for the same *injury* or not, or from the *Employee's* wages with the *Employer*, if any. Credit applied against future payments shall not exceed twenty-five percent (25%) of each future payment except in cases of lump sum payment of permanent impairment benefits. The cancellation fee may not be recouped from medical expenses due or payable.

**5.2 Permanent Impairment Benefits:** An *Employee* sustaining an *injury*, found compensable under this Plan and resulting in permanent impairment, shall be compensated according to the MN Workers' Compensation Permanent Partial Disability Schedules. A rating of permanent impairment must be based upon objective medical evidence, meaning reproducible and consistent clinical findings. No permanent impairment rating shall apply to soft tissue, strain and sprain injuries. The percentage rating is multiplied by the following amounts to arrive at the amount of the *Employee's* entitlement, and shall be paid in accordance with *Section 5.2.b* of this Plan;

0-25%	:	\$75,000.00
26-50%	:	\$100,000.00
51-75%	:	\$125,000.00
76-100%	:	\$150,000.00

**5.2.a Apportionment:** If any portion of the *permanent impairment* rating is attributable to a pre-existing condition, whether previously rated or not, the *Employee* shall receive *permanent impairment* only for that portion of the permanent *injury* attributable solely to the *accident*.

**5.2.b Payment of Permanent Impairment Benefits:** No *permanent impairment benefits* may be paid until the *Employee* reaches *maximum medical improvement*. When

the extent of the *permanent impairment* is not disputed, and if the *Employee* has been employed at least part-time for ninety (90) days post *injury*, payment of *permanent impairment benefits* shall be made in a lump sum within thirty (30) days of receipt of the medical report containing the undisputed rating.

If the *Employee* is not working, at the time *maximum medical improvement* is reached and the *permanent impairment* has been rated, *permanent impairment benefits* shall be paid periodically at the same rate and at the same intervals as *temporary total disability* benefits were paid. In no event shall the *Employee* be entitled to receive periodic payments of *permanent impairment benefits* in excess of the total amount of *permanent impairment benefits* due for the *injury*.

Periodic *permanent impairment benefits* and *temporary total disability* benefits shall not be paid concurrently. If the *Employee* begins working and continues working for a period of thirty (30) days after the commencement of periodic *permanent impairment benefits*, the remaining unpaid *permanent impairment benefits*, if any, shall be paid in a lump sum if requested by the *Employee*.

**5.2.c** If the extent of *permanent impairment* is disputed, the party disputing the permanency rating may request the appointment of a neutral medical examiner by the *Administrator* to determine the extent of *permanent impairment*. The determination of the neutral medical examiner shall be binding on both parties and payment of the *permanent impairment* shall be made within thirty (30) days of receipt of the neutral medical examiner's report by the *Administrator*.

**5.2.d Limitation of Aggregate Permanent Impairment Benefits.** The maximum *permanent impairment benefits* payable for a single *injury*, regardless of the number of body parts injured, shall be \$150,000.

**5.3 Disability Benefits:** The amount of benefits for *temporary total disability*, *temporary partial disability* and *permanent total disability* shall be determined by the *Administrator*.

**5.3.a Temporary Total Disability:** No compensation shall be paid for a *Compensable Injury*, that does not result in *temporary total disability* of an *Employee* as determined by a *Primary Healthcare Provider*, for a period of at least three (3) scheduled work days. An *Employee* who is deemed to have a *temporary total disability* shall receive compensation equal to sixty-six and two-thirds percent (66 2/3%) of the *Employee's average weekly wage* subject to a maximum compensation payment of \$850.00 per week. *Temporary total disability* benefits shall cease immediately upon the *Employee's* return to work or a determination that the *Employee* has reached *maximum medical improvement*, whichever occurs first. In no case shall *temporary total disability* benefits be paid beyond 104 weeks from the date of *injury*.

**5.3.b Temporary Partial Disability:** No compensation shall be paid for an *Compensable Injury*, which does not result in *temporary partial disability* of an *Employee* as determined by a *Primary Healthcare Provider*, for a period of at least three (3) scheduled work days. An *Employee* who is deemed to have a *temporary partial disability*, shall

receive compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference between the *Employee's* pre-injury *average weekly wage* and the amount of the *Employee's* post-injury weekly earning capacity, subject to a maximum compensation payment of \$850.00 per week. Payment of *temporary partial disability* benefits is limited to a maximum of 104 weeks from the date of *injury*.

**5.3.c Permanent Total Disability:** No *permanent total disability* benefits shall be paid for an *injury* that is not proven, by clear and convincing evidence, to result in an inability, of the *Employee*, to engage in any employment. An *Employee* who is deemed to be *permanently and totally disabled* shall receive compensation equal to Sixty-six and two-thirds percent (66 2/3%) of the *Employee's average weekly wage* subject to a maximum compensation payment of \$850 per week and subject to a *coordination of benefits*, as found in **section 5.3.c.1** of this Plan. Payment of *permanent total disability* benefits shall cease after 520 weeks of entitlement or upon the *Employee's* planned date of retirement, whichever occurs first. If no evidence of a planned date of retirement is produced, the *Employee's* presumed planned date of retirement shall be determined according to the following chart. In no instance shall more than 520 weeks of *permanent total disability* benefits be paid to an *Employee*, for an *injury*.

<u>Age on Date of Injury</u>	<u>Retirement Presumed</u>
60	60 months
61	48 months
62	42 months
63	36 months
64	30 months
65	24 months
66	21 months
67	18 months
68	15 months
69+	12 months

**5.3.c.1 Coordination of Benefits:** The amount of compensation payable to an *Employee*, who receives or is entitled to receive any other disability benefits, shall be reduced dollar for dollar. Other sources of benefits include but are not limited to:

1. Private disability benefits,
2. Social Security disability benefits,
3. Other benefits provided by an Employer,

An *Employee* receiving benefits under this Plan has an ongoing obligation to apply for any other public or private disability benefits to which the *Employee* may be entitled. If an *Employee* is entitled to receive these benefits, they shall be

primary over any *permanent total benefits*, and the sum of the two or more benefits shall not exceed the amount of *permanent total disability* benefits payable. An *Employee's* weekly *permanent total disability* benefits may be suspended for the *Employee's* failure to apply for such benefits which are reasonably attainable.

**5.3.d Incarceration Limitation:** Compensation shall not be paid for any period during which the *Employee* is incarcerated. Such incarceration shall not reduce the benefit period for which the *Employee* is eligible for benefits.

**5.3.e Termination of Benefits:** Compensation shall be terminated, and shall not recommence, for any of the following reasons, if the *Employee*:

**5.3.e.1** Declines or quits work within the *Employee's* physical restrictions, as determined by the *Primary Healthcare Provider* or an independent medical examiner, or

**5.3.e.2** Is terminated for cause, or

**5.3.e.3** Fails to make diligent effort to find employment, or

**5.3.e.4** Fails to maintain contact with the *Employer* at least one time per week, or

**5.3.e.5** Fails to cooperate with reasonable medical treatment. This Section shall not be construed to require the *Employee* to undergo invasive medical procedures.

**5.4 Rehabilitation Benefits:** Rehabilitation and/or vocational rehabilitation services may be provided to the *Employee* at the sole discretion of the *Administrator* and/or the *Employer*. An *Employee* must cooperate fully in the rehabilitation process. Failure to cooperate, including not staying in contact with the rehabilitation specialist, not showing for scheduled medical appointments or rescheduling medical appointments without notifying the rehabilitation specialist, will result in a discontinuance of benefits.

**5.5 Death Benefits:** If, as a result of an *injury* found compensable under this Plan, an *Employee* dies leaving a *dependent spouse*, or a *dependent child*, or dependent children (see section **8.1.d** and **8.1.e**), compensation to the *dependent spouse* shall continue for a maximum of 260 weeks after the death of the *Employee*. Compensation to a *dependent child*/children shall be payable for a maximum of 260 weeks after the death of the *Employee* or until the *dependent child*/children reach the age of 18, which ever occurs later. If an *Employee* dies leaving a *dependent spouse* or one *dependent child* the *death benefit* payable shall be Fifty percent (50%) of the *Employee's average weekly wage* at the time of death, subject to a maximum compensation payment of \$850.00 per week. If the *Employee* is survived by a spouse and one or more children or two or more children and no spouse, the *death benefit* shall be Sixty-six and two thirds percent (66 2/3%) of the *Employee's average weekly wage* at the time of death subject to a maximum compensation payment of \$850.00 per week.

**5.5.a Appointment of Guardian:** The *Administrator* may require the appointment of a guardian or conservator to receive payments on behalf of minor children under this Section.

**5.5.b Allocation of Benefits:** In the event that the *Employee* is survived by a spouse and one or more children, the payments made by the *Employer* shall be divided among the multiple recipients equally. All payments to minor children will be made to surviving spouse or guardian.

**5.5.c Autopsy:** An *Employer* has a right to request an autopsy in the case of an *injury* to an *Employee* resulting in *death* to determine if the *death* was work related. The *Employer* shall pay the cost of any such autopsy.

**5.5.d Funeral Expenses:** An *Employer* shall pay funeral expenses in an amount not to exceed \$7,500 (including the expense of a headstone or grave marker) for an *Employee* whose death resulted from an *injury*. *Funeral expenses* shall be paid in addition to the weekly death benefits provided for in this section.

**5.6 Board Members:** If a member of any board of the Fond du Lac Band of Lake Superior Chippewa suffers a *Compensable Injury* while in the course of serving in their designated board duties, the *Tribe* shall pay for the reasonable and necessary Healthcare Benefits, subject to a maximum of \$25,000.00. No Disability Benefits shall be paid.

**5.7 Day Laborer:** Any *Employee* hired as part of a Day Labor Program who suffers a *Compensable Injury*, shall be subject to all of the provisions of this Plan, with the following limitations; Disability Benefits are limited to and shall not be paid beyond the length of the employment contract, not to exceed six (6) months, and Healthcare Benefits are subject to a maximum of \$50,000.00.

**5.8 Seasonal/Temporary Employment:** Any *Employee* hired for a seasonal position or on a temporary basis who suffers a *Compensable Injury*, shall be subject to all of the provisions of this Plan, with the following limitations; Disability Benefits are limited to and shall not be paid beyond the length of the employment contract and Healthcare Benefits are subject to a maximum of \$50,000.00.

## **Section 6– Reporting of Injuries**

**6.1 Notice of Injury:** No compensation shall be due under the Plan unless the *Employee* notifies the *Employer* of the *injury* or the *Employer* has a clear reason to know of the *injury*, within forty-eight (48) hours after the occurrence of the *accident*. An *occupational disease or illness* is deemed to have occurred when the *Employee* knows or should have known that the *injury* caused him or her to be unable to work. An *Injury* may be reported by another on the employee's behalf.

**6.2 Report of Injury:** Upon actual knowledge of the occurrence of an *accident*, or upon written or verbal notice from the *Employee*, the *Employer* will complete an First Report of Injury and file it with the *Administrator*.

**6.3 Limitation of Claims:** No compensation benefits shall be paid or awarded under this Plan unless the *Employee* seeks initial treatment within thirty (30) days of the *injury*. If treatment lapses for a period of sixty (60) days, *Employee* shall be considered at *maximum medical improvement* and no further compensation shall be paid or awarded under this Plan.

## Section 7 – Claim Administration

### 7.1 Time and Method of Payment:

**7.1.a** Initial payment of compensation is payable within fourteen (14) days of notice of lost time by the *Administrator* for an *accident* determined to be compensable under this Plan.

**7.1.b** Compensation benefits shall be paid on a bi-weekly basis.

**7.1.c** Medical expenses shall be paid within forty-five (45) days after receipt by the *Administrator*. Health Care Providers will submit itemized billing and medical records or reports, at no cost to the *Administrator*, documenting the reasonableness and necessity of the authorized medical services.

**7.2 Denial of a Claim or Discontinuance of Benefits:** A denial of benefits or discontinuance of benefits must:

**7.2.a** Be made in writing by the *Administrator*;

**7.2.b** Be served on the *Employee* and *Employer*;

**7.2.c** Contain the specific reason for the denial in language easily readable and understandable to a person of average intelligence and education; and

**7.2.d** Clearly state the facts forming the basis for the denial.

The denial must include the following information:

1. *Employee* name,
2. The date of the claimed *accident*,
3. Claim number,
4. The type of benefits being reduced or discontinued,
5. An itemization of previous benefits paid,
6. The name and telephone number of the person making the decision,
7. Copies of any evidence, medical or otherwise upon which the discontinuance is based,
8. The reason for denial or discontinuance of benefits,
9. Instruction to the *Employee* and *Employer* of the rules and time limitations for challenging the denial.
10. A claim petition with instructions for completing and filing.

**7.3 Claim Petition:** The *Administrator* shall provide the *Employee* with a claim petition form with every notice of denial or discontinuance of benefits. If an *Employee* objects to the denial of a claim, or to a reduction or discontinuance of benefits, the *Employee* may file a claim petition with the *Administrator* within thirty (30) days of receipt of the denial or discontinuance.

**7.3.a** The claim petition shall contain the following information:

1. *Employee* name,
2. Date of *injury*,
3. Claim number,
4. Type of benefits being sought,
5. The basis of the claim for benefits,
6. Any evidence, medical or otherwise, in support of the *Employee's* claim.

**7.3.b** The claim petition must make concurrent all outstanding disputed claim issues. Failure to file the claim petition within thirty (30) days will result in the loss of the right of the *Employee* to pursue those benefits affected by the denial or discontinuance.

**7.4 Workers' Compensation Hearing Examiners:** The Council shall appoint Workers' Compensation Hearing Examiners (hereinafter referred to as Examiner) to resolve disputes arising under the application of this Plan. Prospective Examiner's shall be impartial, objective and qualified persons, licensed to practice law and who have a minimum of three (3) years experience in Tribal or State law relating to employer liability and workers' compensation liability. The *Administrator* shall recommend the number of Examiners needed and the Council shall have the contractual authority to select the Examiners and establish the compensation and terms of office of such persons.

**7.4.a Claim Petition Review:** Each claim petition shall be referred to an Examiner. The Examiner shall make a review of the denial of claims or discontinuance of benefits by the *Administrator*, the claim petition of the *Employee*, and any written evidence submitted by the *Administrator* or *Employee*. The Examiner may solicit or obtain such additional written evidence as the Examiner deems necessary or equitable to render a decision. The Examiner's review is de novo and shall be based on a preponderance of written evidence alone. The written determination of the Examiner shall be served on all parties within thirty (30) days of referral of the claim petition or receipt of any additional written evidence requested by the Examiner, whichever occurs later.

**7.4.b Discovery:** Any party may engage in discovery prior to an Examiner rendering a written decision, including but not limited to, requests for medical and employment records, statements and depositions of parties or witnesses, requests for statements and identification of witnesses and exhibits to be presented to the

Examiner. Such discovery shall be conducted in an informal manner. Refusal to respond to reasonable discovery requests may result in the imposition of sanctions, including delay or dismissal of claims or defenses, at the Examiner's discretion.

**7.4.c Intervention:** No third party who had paid benefits of any kind to or on behalf of an *Employee* whose *injury* is compensable under this Plan shall have the right to intervene in any proceedings under this Plan or to otherwise be reimbursed by the *Administrator* or any *Employer*.

**7.5 Tribal Court Appeals:** Parties shall have the opportunity to appeal an Examiner's decision to the Tribal Court of the Fond du Lac Band of Lake Superior Chippewa.

**7.5.a Right to an Appeal:** A decision by an Examiner concerning legal issues, whether the result of an evidentiary hearing or no hearing, may be appealed by either party to the Tribal Court of the Fond du Lac Band of Lake Superior Chippewa.

**7.5.b Filing an Appeal:** A Notice of Appeal must be filed with the Tribal Court in writing within 30 business days of the date of the Examiner's decision. The Notice of Appeal shall specify the Findings and Order appealed from and the basis for the appeal. A copy of the Findings and Order appealed from shall be attached to the Notice of Appeal. Prior to filing an appeal with the Tribal Court, the appealing party shall serve a copy of the Notice of Appeal and the Findings and Order appealed from on all other parties. Proof of such service shall be filed with the Tribal Court together with the Notice of Appeal. There shall be a \$25 filing fee for the Notice of Appeal.

**7.5.c Production of the Record:** Within thirty (30) business days following the date a Notice of Appeal is filed, the *Tribe* shall transmit to the Tribal Court the entire underlying record before the Examiner relating to the decision being appealed. A copy of the record to the Tribal Court shall be transmitted by the *Tribe* to each party to the appeal. Within five (5) business days of receipt of the record submitted to the Tribal Court, a party may file a written request with the Court identifying additional documents or information which the party believes should be included in the record. If it is shown to the satisfaction of the Tribal Court that the additional documents or information cited by the party were part of the underlying record, the Tribal Court shall order that such documents or information be included in the record to be considered by the Tribal Court.

**7.5.d Briefing Schedule:** After receiving a Notice of Appeal, the Tribal Court shall issue a briefing schedule setting forth the deadlines for filing briefs and the oral argument date, if any. In order to set the brief schedule, the Tribal Court may schedule a conference to deal with matters such as:

1. Supplementation or shortening of the record;
2. Clarification of the specific issues presented on appeal;

3. Scheduling of briefs or other written argument;
4. Setting the date and time for oral argument;
5. Such other deadlines and other matters as may expedite the orderly and prompt resolution of the issues presented by the appeal.

**7.5.e Scope of Review:** The Tribal Court's review will be based upon the record established by the Examiner. The Tribal Court may not hold an evidentiary hearing or make new factual determinations. In determining whether the Examiner made an error of law or an arbitrary and capricious application of the law, the Tribal Court may be guided by State of Minnesota workers' compensation case law.

**7.5.f Decision:** After reviewing the briefs and conducting a hearing, if any, the Tribal Court shall issue a decision. The Tribal Court may decide as follows:

1. If the Tribal Court determines that the factual record is inadequate, the Court may remand the matter to the Examiner for additional factual determinations.
2. If the Tribal Court determines that the Examiner's decision was based on an error of law, the Tribal Court may reverse the Examiner's decision, modify the Examiner's decision, or reverse and remand for further proceedings.
3. If the Tribal Court determines that the Examiner's decision was based on an arbitrary and capricious application of the law to the facts, the Tribal Court may reverse the Examiner's decision, modify the Examiner's decision, or reverse and remand for further proceedings.
4. If the factual record is adequate, the Examiner's decision was not based on an error of law, and the Examiner's decision was not arbitrary and capricious, the Tribal Court shall affirm the Examiner's decision.

**7.5.g No Further Appeals:** The decision of the Tribal Court judge shall be final and not subject to further appeal.

**7.6 Settlement:** If the *Administrator* and *Employee* reach an agreement to settle all or any part of the *Employee's* claims for benefits under this Plan, a written and executed memorandum of the agreement shall be filed with the Examiner. The memorandum shall recite the terms and conditions of the agreement and shall be signed by the parties to the agreement. Upon filing of the memorandum with the Examiner, the agreement becomes binding and enforceable by the parties.

**7.7 Method of Service:** All notices, decisions or orders provided for in this Plan may be served personally or by United States mail. Time periods shall be calculated starting on the day following the beginning of the period, and shall include weekends and holidays. However, if the last day of the period falls on a weekend or holiday, the time shall be extended to the next

business day. When an attorney represents a party, service must also be made on the attorney. Where service is by mail, service is affected on the time mailed if properly addressed and stamped.

**7.8 Right to Legal Counsel:** Either party may be represented by an attorney at any stage of the proceedings. Attorney fees and costs shall be borne by the party incurring them. No attorney fees shall be awarded against an *Employer* or an *Employee* in connection with any dispute under this Plan.

**7.9 Reimbursement of Overpayments:** Payment of compensation made under a mistake of fact or law by the *Employer* or the *Administrator* may be recouped from future payments of compensation to the *Employee*, whether for the same *injury* or not, or from the *Employee's* wages with the *Employer*, if any. Credit applied against future payments shall not exceed twenty-five percent (25%) of each future payment except in cases of lump sum payment of permanent impairment benefits. Overpayments may not be recouped against medical expenses due or payable. Intentional misrepresentation by an *Employee* resulting in benefits paid under the Plan shall allow the *Employer* to bring an action at law in any court of competent jurisdiction against the *Employee* to collect benefits paid as a result of the intentional misrepresentation.

## Section 8 – Definitions

**8.1 Definitions:** Words with special meanings in this Plan will be indicated in *slanted boldface*.

**8.1.a Accident** means an unforeseen or unplanned event causing an *injury* to an *Employee* while in the course of employment.

**8.1.b Administrator** Berkley Risk Administrators Co., LLC shall be designated by the Council and charged with the day-to-day administration of the claim benefits in accordance with this Plan.

**8.1.c Average weekly wage** means the injured *Employee's earnings* during the 26 weeks prior to the date of *injury*, including personal time off, divided by the number of calendar weeks during the 26-week period that the *Employee* actually worked. If *Employee* has worked for an *Employer* for less than 26 weeks, only actual weeks worked shall be included in the calculation. If the *Employee* has transferred to a new position with the *Employer* during the 26-week period, compensation of *average weekly wage* shall be calculated from date of transfer to the new position even if the period is less than 26 weeks. For purposes of the number of weeks the *Employee* actually worked, weeks during which the *Employee* has received compensation for personal time off shall be included as working days. The determination of *average weekly wage* under this section shall only consider *earnings* paid to *Employee* by the *Employer* prior to the date of *injury*.

**8.1.d Compensable injury** means:

1. An *injury* resulting from a work related *accident* not otherwise excluded under **Section 4 – Exclusions**.
2. The *injury* or disability is a natural and direct result of the *accident*.

**8.1.e *Dependent Child*** means a natural, adopted or step child of the *Employee* who is unmarried and under eighteen (18) years of age. Stepchildren, grandchildren, nieces and nephews may be considered dependent but only to the extent that actual dependency can be proven. Any such child must have been living with or receiving or entitled to receive support.

**8.1.f *Dependent Spouse*** means the lawful wife or husband of the *Employee*, unless voluntarily living apart from the *Employee* at the time of the *Employee's injury* or death. *Dependent spouse* does not include a “common-law” spouse.

**8.1.g *Earnings*** means compensation for work performed, excluding the value of any *Employee* welfare benefits (such as bonuses, and all fringe or employment benefits to include board, rent, housing, lodging, profit sharing or insurance received from the *Employer*). Overtime *earnings* shall be included as *earnings* only if the *Employee* earned overtime wages in more than half of the number of weeks the *Employee* actually worked in the 26 weeks preceding the injury. Tips and gratuities shall not be included as *earnings* unless reported by the *Employee* to the *Employer* or government revenue service prior to the date of *injury*.

**8.1.h *Employee*** means an individual legally hired by an *Employer* and who is paid or owed actual wages for work performed on behalf of the *Employer*.

**8.1.i *Employer*** means the *Tribe*, any business of the *Tribe* and any corporation wholly owned, directly or indirectly, by the *Tribe* and whose principal place of business is on *Reservation*.

**8.1.j *Injury*** means an actual physical *injury* that results in harm to the *Employee's* body including specific injury, *occupational disease or illness*, or *death*.

**8.1.k *Independent Contractor/Subcontractor*** is a person or business entity hired by the *Employer* to perform a specific job or function over a specified time where the *Employer* does not control the work schedules, furnish tools or equipment, hire or fire *Employees*, or does not take employment or tax information.

**8.1.l *Maximum Medical Improvement*** means the date after which no significant recovery from or significant lasting improvement to an *injury* can be anticipated, based upon reasonable medical probability, irrespective and regardless of subjective complaints of pain by the injured *Employee*. Once the date of *Maximum Medical Improvement* has been determined no change in the date of *Maximum Medical Improvement* for that injury shall be permitted. The determination that an *Employee* has reached *Maximum Medical Improvement* shall not be rendered ineffective by the worsening of the *Employee's* medical condition including, but not limited to, the need for subsequent surgery.

**8.1.m *Occupational Disease or Illness*** means any disease unique to the occupation in which the *Employee* was engaged, and due to causes in excess of the ordinary hazards of employment.

**8.1.n *Permanent Total Disability*** means an *injury* disability, proven by clear and

convincing evidence to have rendered an **Employee** unable to engage in any employment activities which yield an income. The **permanent total disability** must be solely a result of the compensable **injury**.

**8.1.o Premises** means the specific geographic area within which the **Employee** fulfills his/her duties and responsibilities to the **Employer** in the normal course of employment.

**8.1.p Primary Healthcare Provider** means a licensed medical doctor, physician's assistant or certified nurse practitioner with the MIN-NO-AYA-WIN Health Center, Puumala Clinic, Raiter Clinic, Duluth Clinic or the Cloquet Community Memorial Hospital, and from whom the **Employee** receives medical treatment for a **compensable injury**. Chiropractic care will be covered if referred by a **Primary Healthcare Provider**, however, a Chiropractor can not be considered a **Primary Healthcare Provider**.

**8.1.q Referral Healthcare Provider** means a licensed medical doctor, physician's assistant, certified nurse practitioner or chiropractor to whom the **Employee** is referred by the **Primary Healthcare Provider** for further specialized treatment and who has been pre-approved by the **Administrator**.

**8.1.r Reservation** means the Fond du Lac Reservation and any other land now or hereafter held in trust by the United States of America for the benefit of the **Tribe**, whether or not such land has trust status by federal law and over which the **Tribe** exercises sovereign authority.

**8.1.s Temporary Partial Disability** means an **injury** disability, as determined by a **Primary Healthcare Provider** and absent any evidence that an **Employee** is capable of performing work activities, which prevents the injured **Employee** from earning the equivalent of the **Employee's** pre-injury **average weekly wage**.

**8.1.t Temporary Total Disability** means an **injury** disability, as determined by a **Primary Healthcare Provider** and absent any evidence that an **Employee** is capable of performing work activities, which prior to the date of **Maximum Medical Improvement**, prevents an **Employee** from performing any work activities.

**8.1.u Tribe** means Fond du Lac Band of Lake Superior Chippewa, a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act and acting within its capacity as established under federal law.

**8.1.v Waiting Period** means the first three (3) scheduled work days following a **Compensable Injury**, for which no Disability Benefits are owed.