

MEMORANDUM DESCRIBING THE
REVENUE PROTECTION PROGRAM
ADMINISTERED BY THE CALIFORNIA FAIR SERVICES AUTHORITY

Amended and restated by **Authority's** Board of Directors effective October 5, 2011, also incorporating amendments made on June 3, 2009, December 11, 2006, November 14, 2005, October 1, 2002, December 12, 2000, November 3, 1998, December 16, 1997, October 9, 1996 and February 7, 1996.

Originally adopted by the **Authority's** Board of Directors on October 5, 1994, as the Revenue Protection Program authorized pursuant to the **Authority's Joint Powers Agreement**.

PARTICIPATING ENTITY'S COVERED EVENT

**MEMORANDUM DESCRIBING THE
REVENUE PROTECTION PROGRAM
ADMINISTERED BY THE CALIFORNIA FAIR SERVICES AUTHORITY**
(A Joint Powers Authority herein referred to as the Authority)

Participating Entity:

Mailing Address:

Fair Time Event:

Covered Interim Event(s):

Current Protection Period:

From January 1, 2012 at 12:01 a.m. Pacific Standard Time to December 31, 2012 at 11:59 p.m. Pacific Standard Time.

Maximum Amount of **Fair Time** Protection:

Three Year History: _____
Two Year History: _____
One Year History: _____
*[Subject to all terms and conditions of this Memorandum, including Section 5 "Maximum Amount of Protection"]

Maximum Amount of **Covered Interim Event** Protection:

Three Year History: _____
Two Year History: _____
One Year History: _____
* [Subject to all terms and conditions of this Memorandum, including Section 5 "Maximum Amount of Protection"]

Loss Participation Percentage:

The percentage of each covered claim to be paid by the **Participating Entity** is specified in Section 4, "Loss Participation Percentage"

This Memorandum is a description of the terms and conditions of the **Program** administered by the **Authority**, through which **Participating Entities** share certain revenue **Losses**. *This Memorandum is not an insurance policy.* As provided in Section 990.8 of the Government Code, the pooling of risk among the **Participating Entities** and **Member Entities** of the **Authority** shall not be considered insurance nor be subject to regulation under the California Insurance Code.

California Fair Services Authority

By: _____
Executive Director

CALIFORNIA FAIR SERVICES AUTHORITY

REVENUE PROTECTION PROGRAM

MEMORANDUM OF COVERAGE

SECTION 1 INTRODUCTION

The purpose of this Memorandum is to describe the Revenue Protection Program as adopted by the California Fair Services Authority Board of Directors.

The **Program** provides that **Participating Entities** shall be reimbursed for certain revenue-interruption **Losses** from a segregated risk pooling arrangement. As provided in Section 990.8 of the Government Code, pooling of **Losses** in this **Program** is *not insurance*. The sole duty of the **Authority** is to administer the **Program** adopted by the **Authority's** Board of Directors. There is no transfer of risk from the **Member Entities** or **Participating Entities** to the **Authority**, nor assumption of risk by the **Authority**.

By electing to participate in the **Program**, the **Participating Entity** agrees to abide by all terms and conditions of the **Program**, to participate throughout the **Current Protection Period**, that any actual or alleged ambiguity herein will not be construed against the **Authority** or the **Program** and that because this **Program** is not insurance, legal principles associated with the interpretation of insurance terminology will not be given effect over legal principles used to interpret contracts in general.

The provisions of the **Program** are subject to and subordinated to the **Joint Powers Agreement**.

Throughout this Memorandum, including the Cover Page, words and phrases that appear in **bold print** are defined in Section 6.

SECTION 2 PROTECTION

A. Loss of Revenue

Except as excluded or limited elsewhere in the Memorandum, the **Program** will reimburse the **Participating Entity** for **Loss of Fair Time** or **Covered Interim Event Revenue** resulting from an interruption of the **Participating Entity's** business caused by an **Occurrence** during the **Current Protection Period**.

Any **Occurrence** occurring or alleged to have occurred during more than one **Protection Period** shall be deemed to have occurred during the first such **Protection Period** during which such **Occurrence** began.

B. Expenses

Expenses, over and above normal operating expenses, necessarily incurred by the **Participating Entity** in reducing **Loss** otherwise payable by this **Program** are covered hereunder, but in no event shall the **Program** pay for a total amount greater than that which it would have paid had the **Participating Entity** been unable to continue any operations or services.

In the event of an **Occurrence** resulting in or likely to result in a business interruption and **Loss** of Revenues, the **Participating Entity** shall give immediate written notice thereof to the **Authority**, 1776 Tribute Road, Suite 100, Sacramento, CA 95815, Attention: Revenue Protection Program Claims Committee.

Interpretation of the provisions, terms and conditions of this **Program** and the amount of any reimbursement under this **Program** shall be determined at the sole discretion of the **Program** Claims Committee, which shall consist of the following four individuals:

- A representative of the Department of Food and Agriculture, Division of Fairs & Expositions ("DFA,DFE"), appointed by DFA, DFE and to serve at the pleasure of DFA, DFE.
- A representative of the **Authority's** Board of Directors, appointed by the **Authority's** Board of Directors and to serve at the pleasure of the **Authority's** Board of Directors.
- A representative of the **Authority's** Risk Management Department, appointed by the Executive Director of the **Authority** and to serve at the pleasure of the Executive Director of the **Authority**.
- A Manager of one of the **Participating Entities*** elected for a term of two years by the affirmative vote of the majority of the **Participating Entities**, said election to be conducted by the Executive Director of the **Authority**. During said election, a first alternate* and a second alternate* shall be elected for a term of *two* years.

*In no event may an individual sit on a **Program** Claims Committee adjusting a claim by that individual's entity.

The amount of any **Loss** claimed hereunder will be adjusted by the **Program** Claims Committee on the basis of the three-year average of the **Participating Entity Fair Time** or **Covered Interim Event** Revenue less any revenues of any kind received by the **Participating Entity** at **Fair Time** or **Covered Interim Event** during the **Current Protection Period**. The three years used to determine the average **Fair Time** or **Covered Interim Event** revenue shall be those three years immediately prior to the **Current Protection Period**. Where a **Fair Time** or **Covered Interim Event** has only a two-year or one-year revenue history and the **Participating Entity** has paid the requisite increased fee, the amount of any **Loss** claimed hereunder will be adjusted by the **Program** Claims Committee on the basis of the two-year or one-year average of the **Fair Time** or **Covered Interim Event** Revenue less any revenues of any kind received by the **Participating Entity** at the **Fair time** or **Covered Interim Event** during the **Current Protection Period**. From the amount derived by this formula will be deducted any **Fair Time** or **Covered Interim Event Revenues** that are lost due to a total or partial business interruption caused by an event not specifically included in SECTION 2, PROTECTION.

In adjusting a claimed **Fair Time** or **Covered Interim Event Revenue Loss** and in determining the Maximum Amount of Protection pursuant to Section 5, the **Program** Claims Committee may consider the following: (1) the **Participating Entity's** amount of operating reserves and other financial resources; and (2) the conduct of the **Participating Entity's** Board of Directors and management in attempting to prevent and in mitigating the claimed **Loss**.

After a review of preliminary information establishing an **Occurrence** covered by this Memorandum, the **Program** Claims Committee Chair and California Fair Services Authority Representative may estimate the amount of the covered **Fair Time** or **Covered Interim Event Revenue Loss** excess of the Loss Participation Percentage (see Section 4 below) and, at the **Program** Claims Committee Chair and California Fair Services Authority Representative's sole discretion, may cause the **Program** to provide to the **Participating Entity** an

advance payment in an amount up to 50% of such estimated **Loss**. If the **Participating Entity** is not able to prove a **Fair Time** or **Covered**

Interim Event Revenue Loss equal to or greater than the amount advanced, the **Participating Entity** shall pay back to the **Program** the advanced amount in excess of the proven **Loss**.

SECTION 4 LOSS PARTICIPATION PERCENTAGE

For each covered claim, the **Program** Claims Committee shall determine and approve the total amount of the **Loss**. The **Program** shall pay the **Participating Entity** an amount equal to the approved total amount of the **Loss** times the **Program** Loss Participation Percentage as follows, up to the maximum amount available under Section 5 below. The **Participating Entity** is responsible for the unpaid amount.

Loss Participation Percentage

Participating Entity Fair time or **Covered Interim Event** with 3 years or more of revenue history for the **Same Date(s)**:

80%	20%
Program Participation	Participating Entity Participation

Participating Entity Fair time or **Covered Interim Event** with less than 3 years of revenue history for the **Same Date(s)**:

70%	30%
Program Participation	Participating Entity Participation

SECTION 5 MAXIMUM AMOUNT OF PROTECTION

The Maximum Amount of Protection shown on the Cover Page and the terms and conditions herein determine the maximum amount the **Program** will reimburse the **Participating Entity** for **Loss of Fair Time** or **Covered Interim Event Revenue** resulting from an interruption or interruptions of the **Participating Entity's** business caused by one or more **Occurrences** during **Fair Time** or **Covered Interim Event** in the **Current Protection Period**. In no event will the **Program** reimburse a **Participating Entity** more than the limits sum set forth on the Cover Page for a covered claim or claims for **Loss of Fair Time** or **Covered Interim Event Revenue** occurring during the **Current Protection Period**.

The funds available for payment of covered claims under this **Program** shall be segregated and kept separate from funds of any other program or account of the **Authority**. In the event that the **Program** Claims Committee makes a determination that the **Program's** funds are not adequate to pay the covered claims of all **Participating Entities** for the **Current Protection Period**, the amount payable to each **Participating Entity** for any covered claim shall be prorated based on the ratio that each such claim bears to all covered claims multiplied by the total funds available for the **Current Protection Period**. To effect such proration, the **Program** Claims Committee shall have the authority to do any of the following: (1) pay only a portion of a covered claim, (2) delay payment of a covered claim, (3) set a schedule of payments for a covered claim, and (4) recapture a portion of a previously paid covered claim.

SECTION 6 DEFINITIONS

- A. **Authority** means the California Fair Services Authority.
- B. **Covered Interim Event** means the full run of an annual fair sponsored event listed on the Cover Page of this Memorandum for which records are documented showing revenues and

expenses on an annual basis; but Covered Interim Event shall not include any periodic seasonal activity or event such as a Fair sponsored seasonal car racing program.

- C. **Current Protection Period** means the period of time shown on the Cover Page of this Memorandum designating the inception and termination of protection under the **Program** to which this Memorandum applies.
- D. **Earthquake** means any natural earth movement caused by nature, including but not limited to earthquake, landslide or subsidence.
- E. **Excessive Heat** means that the National Weather Service has issued a heat warning notice covering the **Participating Entity's** site during **Fair Time** or **Covered Interim Event**. The National Weather Service issues a heat warning notice when the Heat Index is expected to exceed 105 degree F to 110 Degree F depending on local climatic conditions for at least two consecutive days.
- F. **Fair Time** means the full run of the annual fair which includes exhibits and competition pursuant to Business and Professions Code Section 19627.
- G. **Joint Powers Agreement** means the agreement creating and governing the **Authority** executed by the **Member Entities**, as amended from time to time.
- H. **Loss** or **Losses** means the total Revenue lost over the full run of **Fair Time** or **Covered Interim Event**, adjusted on the basis of **Fair Time** or **Covered Interim Event's** three-year average. Individual day losses, where total **Fair Time** or **Covered Interim Event** Revenues are above the three-year average, are **NOT** reimbursed under this Program.
- I. **Member Entity** or **Member Entities** means a Member Entity or Member Entities as defined in the **Joint Powers Agreement**.
- J. **Occurrence** means:
1. Accidental physical loss of or damage to tangible property (including trees and forests);
 2. Rain, sleet, snow, or other extraordinary climatic conditions;
 3. **Earthquake**, volcanic eruption or flood. Each **Earthquake** shall constitute a single **Occurrence**, provided that all earthquake shocks and all after shocks occurring during any 168 hour period shall be deemed to be a single **Earthquake**;
 4. Strike, riot or civil commotion;
 5. **Excessive Heat** or **Unhealthy Air Quality**;
 6. Act of government resulting in controls or restrictions upon transportation or an act of government by reason of war, national defense, terrorism or other declared emergency or disaster; or
 7. Fire, flood, epidemic, or other act of God or of the public enemy.
- K. **Participating Entity** means the entity named in the Cover Page; **Participating Entities** means collectively all entities participating in the **Program** for the **Current Protection Period**.
- L. **Program** means the Revenue Protection Program as adopted and amended by the **Authority's** Board of Directors.

- M. **Protection Period** means the period of time shown in any cover page of any Memorandum designating the inception and termination of protection under the **Program**, including the **Current Protection Period**.
- N. **Revenue(s)** is the revenue to the Participating Entity paid on the fairgrounds or generated on track (horse racing) by general patrons of the **Fair Time** or **Covered Interim Event**. Not included are any revenues from pre-sale payments or any payments made by exhibitors, concessionaires, livestock exhibitors, or individuals placing bets from off track locations.
- O. **Same Date(s)** means there has been no significant change of date(s) from year to year in the **Fair Time** or **Covered Interim Event**, as determined by the **Program** Claims Committee.
- P. **Unhealthy Air Quality** means that the designated Air Quality Management or Air Pollution Control District for the **Participating Entity** site has issued an unhealthy advisory notice during **Fair Time** or **Covered Interim Event**. An unhealthy advisory notice is issued when the Air Quality Index (AQI) for a geographical area is expected to exceed 150 AQI, or the current standard for unhealthy air quality.

SECTION 7 CONDITIONS

A. Subrogation

The **Authority** shall be subrogated to the extent of any payment hereunder to all of the **Participating Entity's** rights of recovery therefore, and the **Participating Entity** shall do nothing after any **Loss** to prejudice such rights and shall do everything necessary to secure such rights.

B. Other Protection

If collectible insurance or any other coverage or protection with any insurer, joint powers authority or other source is available to the **Participating Entity**, covering a **Loss** also protected hereunder (whether on a primary, excess or contingent basis), the protection hereunder shall be in excess of, and shall not contribute with, such insurance or other coverage or protection. Under no circumstances shall the protection afforded by this **Program** be considered primary, pro rata, concurrent or co-existent with such insurance coverage or other protection.

C. Participation

Participation in the **Program** shall be voluntary. Fees for covered events must be received by CFSA during the first 90 days of the **Protection Period**. However, fees for events occurring during the first 90 days of the **Protection Period** must be received 30 days prior to the covered event. Fees paid under this **Program** are non-refundable. The non-payment of **Program** fees at the beginning of a **Protection Period** by a **Participating Entity** shall be considered a voluntary withdrawal from the **Program**.

When a **Participating Entity** withdraws from the **Program**, a two year waiting period shall be imposed for re-entry into the **Program**. Should a former **Participating Entity** wish to re-enter the **Program** after only one year, a penalty shall be assessed against any payment awarded to the **Participating Entity** as a result of a claim filed in the **Current Protection Period**. The penalty is the amount of **Program** fees that would have been paid by the **Participating Entity** in the prior **Protection Period** for the same Maximum Amount of **Fair Time** or **Covered Interim Event** Protection.

**CALIFORNIA FAIR SERVICES AUTHORITY
REVENUE PROTECTION PROGRAM**

**SWORN STATEMENT
IN
PROOF OF LOSS**

Effective Date of Memorandum: January 1, 2012

Date Memorandum Expires: December 31, 2012

TO: Revenue Protection Program Claims Committee

FROM: _____
Participating Entity

Condition and severity that caused Fair Time or Covered Interim Event Revenue loss according to the terms and conditions of the "Memorandum Describing the Revenue Protection Program Administered by the California Fair Services Authority" and of all forms, attachments and amendments thereto:

**TIME AND
ORIGIN**

A _____ loss occurred about the hour of _____ o'clock ____ M., on the _____ day or days of _____ 20 12, the cause and origin of the said loss were:

**MAXIMUM AMOUNT
OF PROTECTION**

THE MAXIMUM AMOUNT OF REVENUE PROTECTION selected by the Participating Entity was, at the time of the loss \$ _____

THE AMOUNT OF FAIR TIME OR INTERIM EVENT REVENUE LOSS was \$ _____

LOSS

THE AMOUNT CLAIMED under the above coverage is \$ _____

**AMOUNT CLAIMED
STATEMENTS**

The said loss did not originate by any act, design or procurement on the part of _____, or this affiant; nothing has been done by or with the privity or consent of _____ or this affiant, to violate the conditions of said Memorandum, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss; no property saved has in any manner been concealed, and no attempt to deceive the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

State of _____ _____
Claimant Signature

County of _____ _____
Title

Subscribed and sworn to before me this _____ day of _____, 20 _____

Notary Public _____