

**MEMORANDUM STATING THE TERMS AND CONDITIONS
OF THE PRIMARY GENERAL LIABILITY RISK SHARING PROGRAM
ADMINISTERED BY THE CALIFORNIA FAIR SERVICES AUTHORITY**

Amended and restated by **Authority's** Board of Directors effective January 1, 2004 on December 7, 2004, also incorporating amendments made on September 16, 2003.

Originally adopted by the **Authority's** Board of Directors effective January 1, 2000 on September 26, 2000 as the General Liability Risk Sharing Program as authorized by the **Authority's Joint Exercise of Powers Agreement**.

MEMO COV GEN LIAB 2004 PRIMARY .wpd

COVER PAGE

**MEMORANDUM STATING THE TERMS AND CONDITIONS
OF THE PRIMARY GENERAL LIABILITY RISK SHARING PROGRAM
ADMINISTERED BY THE CALIFORNIA FAIR SERVICES AUTHORITY**

(A Joint Powers Authority herein referred to as the **Authority**)
1776 Tribute Road, Suite 100, Sacramento, CA 95815

This Memorandum is not an insurance policy; it is a description of the terms and conditions through which certain risks of liability are administered by the **Authority** and shared by all **Participating Entities**.

PARTICIPATING ENTITY: See Attachment A

Protection Period: From January 1, 2004 at 12:01 a.m. Pacific Standard Time until terminated.

NOTE: The prior Memorandum Stating the Terms and Conditions of the General Liability Risk Sharing Program Administered by the California Fair Services Authority effective January 1, 2003 is hereby terminated effective January 1, 2004 12:01 a.m. Pacific Standard Time.

Maximum Limits of Protection: For **Personal Injury, Property Damage, Public Officials Errors and Omissions, or Employment Practices Liability**

\$1,000,000 Per any one **Occurrence** or **Wrongful Act**, inclusive of **Defense** obligations.

\$1,000,000 Aggregate Limit of Protection during each **Annual Period**, applied separately to: (a) All **Occurrences** arising out of the **Products Hazard** and **Completed Operations Hazard**, inclusive of **Defense** obligations; (b) All **Wrongful Acts** arising out of **Public Officials Errors and Omissions**, inclusive of **Defense** obligations; or (c) All **Wrongful Actions** arising out of **Employment Practices Liability**, inclusive of **Defense** obligations.

For **Non-Profit Organization Liability** under Attachment B

\$1,000,000 Per any one "Wrongful Act", inclusive of "Costs of Defense" obligations.

\$1,000,000 Aggregate Limit of Protection during each **Annual Period**, applied separately as result of: All "Wrongful Acts" arising out of **Non-Profit Organization Liability**, inclusive of "Costs of Defense" obligations.

Deductibles See Attachment A

Retroactive Dates See Attachment A

The Maximum Limits of Protection apply separately to each **Participating Entity** in this **Program**.

California Fair Services Authority

By: _____
Executive Director

CALIFORNIA FAIR SERVICES AUTHORITY
GENERAL LIABILITY RISK SHARING PROGRAM
MEMORANDUM OF PRIMARY LIABILITY COVERAGE

SECTION 1 INTRODUCTION

This Memorandum is issued pursuant to California Government Code Sections 989 et seq. and 6500 et seq., and is subordinate to all provisions of the **Joint Exercise of Powers Agreement** for the California Fair Services Authority (referred to herein as "**JEPA**"). In the event of a conflict between the provisions of this Memorandum and the **JEPA**, the terms of the **JEPA** will control.

Throughout this Memorandum, including the Cover Page, words and phrases that appear in bold type have special meanings. You must refer to SECTION 6 and SECTION 10 and carefully review the definitions of these words and phrases to determine their meaning and effect.

The **Authority** is not an insurance company. The **Authority** is a joint powers authority which was formed for the purpose of pooling resources of its **Member Entities** and **Participating Entities**, for purposes of purchasing insurance for its **Member Entities** and **Participating Entities** and for the administration of joint-purchased insurance and other programs, including pooling programs, self-insurance programs and risk-sharing programs for its **Member Entities** and **Participating Entities**. The **Authority** also enters into contracts pursuant to Government Code Section 6916.9 to provide these same services directly to non-profit entities.

The intent herein is to delete all references to the term "insurance" and all terminology associated with that concept. However, failure to delete all such references and terminology is not to be construed as mitigating or negating the fact that this Memorandum and the **Program** it describes are not insurance and that the provisions herein are not to be construed as insurance.

It is acknowledged by **Member Entities**, **Participating Entities** and **Protected Parties** under this Memorandum that any alleged or actual ambiguity herein will not be construed against the **Authority** or the **Program**. It also is acknowledged that, because this **Program** is not insurance, legal principles associated with the interpretation of insurance terminology will not be given effect over the legal principles used to interpret contracts in general.

The **Authority** is an administering entity only and is not responsible for any risks of liability or obligations beyond the extent of the pooled resources of its **Member Entities** and **Participating Entities**. Should the reserves maintained under any of the joint protection programs administered by the **Authority** be exhausted, the **Authority** may assess its **Member Entities** and **Participating Entities** in order to meet the obligations of its **Member Entities** and **Participating Entities**.

SECTION 2 PROTECTION

Subject to the Maximum Limits of Protection set forth in the Cover Page and SECTION 4, the **Authority** shall cause this **Program** to pay on behalf of the **Protected Party** the **Ultimate Net Loss** that the **Protected Party** becomes legally obligated to pay as **Damages** because of:

- | | |
|--------------|--|
| Protection A | Personal Injury; |
| Protection B | Property Damage; |
| Protection C | Public Officials Errors and Omissions; or |
| Protection D | Employment Practices Liability; |

to which this Memorandum applies caused by an **Occurrence** or **Wrongful Act** during the **Annual Period**.

SECTION 3 DEFENSE AND SETTLEMENT

The **Authority**, as the shared expense of the **Participating Entities** in this **Program**, shall have the right and duty to defend any **Claim** or suit against a **Protected Party** which, in the opinion of the **Authority**, is or may be encompassed by this **Program**; however:

- (A) The **Authority**'s right and duty to defend is terminated when the applicable Maximum Limit of Protection is exhausted due to any payment or payments by the **Authority** of **Ultimate Net Loss**;
- (B) The **Authority** may investigate, negotiate and settle any **Claim** or suit at its sole discretion;
- (C) Such defense shall be provided even if such suit is groundless, false or fraudulent;
- (D) **Defense** costs incurred by the **Authority** in connection with the right and duty to defend under this Section of the Memorandum shall be included within the Maximum Limits of Protection; and
- (E) Notwithstanding (B) above, the **Authority** may seek from a **Protected Party** the reimbursement of funds expended on a **Claim** or suit, including, but not limited to, costs of **Defense**, settlement, or judgment, if it is later judicially determined that the **Authority** had no right and duty to defend or provide protection for the **Claim** or suit against the **Protected Party** under the terms of this Memorandum.

SECTION 4 MAXIMUM LIMITS OF PROTECTION

The Maximum Limits of Protection shown in the Cover Page are the most the **Program** shall pay, inclusive of **Defense** costs, regardless of the number of:

- (A) **Protected Parties** under this Memorandum;
- (B) Persons or organizations who sustain or allege injury or **Damages**; or
- (C) **Claims** made or suits brought.

This Memorandum is subject to the Aggregate Limit of Protection as stated in the Cover Page, Maximum Limits of Protection. This Aggregate Limit of Protection is the maximum amount, inclusive of **Defense** costs, that shall be paid under this Memorandum for all **Occurrences** or **Wrongful Acts** with respect to a **Participating Entity** during the **Annual Period** applying separately to:

- (1) **Products Hazard and Completed Operations Hazard** combined; or
- (2) **Public Officials Errors and Omissions**; or
- (3) **Employment Practices Liability**.

SECTION 5 ANNUAL PERIOD - TERRITORY

This Memorandum applies to **Personal Injury, Property Damage, Public Officials Errors and Omissions, or Employment Practices Liability** occurring anywhere in the world during the **Annual Period**.

SECTION 6 ENTITIES AND PERSONS ENTITLED TO PROTECTION

The following entities and persons are **Protected Parties** under this **Program**:

- (A) **Participating Entity** named in the Cover Page;

- (B) Those individuals who were or now are elected or appointed officials of the **Participating Entity** named in the Cover Page, including members of its governing body, directors, officers, trustees, or any other members of committees, boards or commissions of the **Participating Entity**, but only while acting within the scope of their duties; and
- (C) Past or present **Employees, Contract Employees** or volunteers of the **Participating Entity**, but only while acting within the scope of their duties.

SECTION 7 LIMITED PROTECTION FOR PRIOR UNREPORTED CLAIMS

The **Authority** shall, subject to the Maximum Limits of Protection set forth in the Cover Page and SECTION 4, cause this **Program** to pay on behalf of the **Protected Party** the **Ultimate Net Loss** which the **Protected Party** becomes legally obligated to pay as **Damages** resulting from any **Claim** or **Claims** first made against the **Protected Party** during the **Annual Period** and reported to the **Authority** during the **Annual Period** for a **Wrongful Act** arising from **Employment Practices Liability**, but only if such **Wrongful Act** occurs after the **Retroactive Date** but prior to the end of the **Annual Period**, subject always to the terms and conditions of this Memorandum and subject to the following:

- (A) Any **Claim** or **Claims** that have been made, or Notice of a Potential Claim given, under a prior claims made insurance policy which was purchased by or on the behalf of the **Participating Entity** shall not be covered by this Memorandum; or
- (B) Any **Claim** or **Claims** made which are covered under an extended reporting period, discovery period, or similar clause of a prior claims made insurance policy which was purchased by or on the behalf of the **Participating Entity** shall not be covered by this Memorandum.

SECTION 8 LIMITATIONS

The express use of any Limitation in this SECTION 8 shall not be construed as implying or otherwise meaning that this **Program** would otherwise cover such liabilities or similar liabilities.

This **Program**, including any **Defense** obligations, does not apply:

- (A) To any **Claim**, injuries, damages, obligation or alleged obligation for which a **Protected Party**, or any insurance company, as its insurer, or any self-insurance plan may be held liable under any workers' compensation, occupational disease, unemployment compensation, or disability benefits law or under any similar law, plan or agreement.
- (B) To any **Claim**, liability or alleged liability for **Bodily Injury** to any **Employee** of a **Participating Entity** arising out of and in the course of his or her employment by a **Participating Entity**, but this Limitation does not apply to liability assumed by the **Participating Entity** under any **Protected Contract**.
- (C) To any **Claim**, liability or alleged liability for **Property Damage** to:
 - (1) Real property owned by, occupied by, rented to or leased to the **Protected Party**, its agents or subcontractors;
 - (2) Real or personal property used by the **Protected Party**, its agents or subcontractors;
 - (3) Real or personal property in the care, custody or control of the **Protected Party**, its agents or subcontractors.

It is agreed, however, that Limitation (C) (3) shall not apply as respects liability for **Property Damage** to personal property in the care, custody or control of the **Protected Party** up to a maximum of \$50,000 per **Occurrence**.

- (D) As respects liability assumed by the **Protected Party** under any contract:

- (1) To any **Claim**, judgment or agreement from any arbitration proceeding wherein the **Authority** is not entitled to exercise with the **Protected Party** the **Protected Party's** rights in the choice of arbitrators, and in the conduct of such proceedings;
- (2) If the indemnitee of the **Protected Party** is an architect, engineer or surveyor, to the liability of the indemnitee, its agents or employees, arising out of:
 - (a) The preparation or approval of contracts, maps, plans, drawings, opinions, reports, tests, surveys, change orders, designs or specifications; or
 - (b) The giving or the failure to give directions or instructions by the indemnitee, its agents or employees, provided such giving or failure to give is the primary cause of **Personal Injury** or **Property Damage**.

It is agreed, however, that Limitation (D) (2) shall not apply as respects liability assumed by a **Protected Party** under any contract where the indemnitee is also a **Protected Party** under this Memorandum.

- (E) To any **Claim**, injuries or damages arising out of the ownership, maintenance, loading or unloading, use or operation of any **Aircraft**, airfields, runways, hangars, buildings or other properties in connection with aviation activities.

It is agreed, however, that the "loading" or "unloading" of any **Aircraft** as set forth above shall not apply to such loading or unloading by emergency medical personnel, including but not limited to, paramedics, emergency medical technicians, physicians, or nurses, but only when in the employ of or under contract to a **Protected Party**.

- (F) To any **Claim**, liability or alleged liability for **Personal Injury** or **Property Damage** due to the use or operation by, or on behalf of, the **Protected Party** as respects:
 - (1) Any hospital;
 - (2) Any health care provider because of his or her professional acts, errors or omissions, except for emergency medical personnel, including but not limited to, paramedics, emergency medical technicians, physicians, or nurses, but then only when in the employ of or under contract to the **Protected Party**;
 - (3) Any clinic or infirmary that has (a) overnight facilities; or (b) that performs invasive surgery of any kind; or
 - (4) Any pharmacy operated by or for the **Protected Party**.

- (G) To any **Claim**, injuries or damages arising out of the ownership, maintenance, operation, use, loading or unloading of any **Automobile** by any **Protected Party**, but this Limitation does not apply to (a) **Mobile Equipment** or (b) the parking of an **Automobile** on premises owned by, rented to or controlled by a **Protected Party** or on the ways and means adjoining such premises, if such **Automobile** is not owned by or rented or loaned to any **Protected Party**.

It is agreed, however, that the "loading" or "unloading" of any **Automobile** as set forth above shall not apply to such loading or unloading by emergency medical personnel, including but not limited to, paramedics, emergency medical technicians, physicians, or nurses, but only when in the employ of or under contract to a **Protected Party**.

- (H) To any **Claim**, liability or alleged liability, damage or loss arising out of or in any way connected with the principles of eminent domain, condemnation procedures or inverse condemnation, by whatever name called, regardless of whether such **Claims** are made directly against the **Protected Party** or by virtue of any agreement or contract entered into by or on behalf of the **Protected Party**.

This Limitation does not apply to physical injury to or destruction of tangible property, caused by an **Occurrence**, even though a legal theory of upon which a **Claim** seeks recovery is the principle of inverse condemnation.

- (I) To any **Claim**, liability or alleged liability arising out of the failure to supply a specific amount of electrical power, fuel or water or arising out of the interruption of the electrical power, fuel or water supply.

However, this Limitation applies only if:

- (1) Such failure arises out of an **Occurrence** or a **Wrongful Act**; and
 - (2) Such failure or inability to supply or provide an adequate supply of electrical power, fuel or water due to liability arising out of the delivery or non-delivery of electrical power, fuel or water is based on any decision made by the governing body of a **Protected Party** entity with respect to either obtaining or supplying the available supply of electrical power, fuel or water among the users of electrical power, fuel and water.
- (J) To any **Claim**, injuries or damages arising out of the ownership, maintenance, operation, use, loading or unloading of (1) any **Watercraft** owned or operated by or rented or loaned to the **Protected Party**, or (2) **Watercraft** operated by any person in the course of his or her employment by the **Protected Party**.
- (K) To any **Claim** for **Personal Injury, Property Damage, or Public Officials Errors and Omissions**:
- (1)
 - (a) With respect to which the **Protected Party** is also an **Protected Party** under a nuclear energy policy issued by the Nuclear Energy Liability-Property Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an **Protected Party** under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (b) Resulting from the “hazardous properties” of “nuclear material” and with respect to which (i) any person or any organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, (ii) the **Protected Party** is, or had this policy not been available would be, entitled to indemnity from the United States of America or any agency thereof.
 - (2) Under any liability coverage, to **Bodily Injury or Property Damage** resulting from the “hazardous properties” of “nuclear material”, if:
 - (a) The “nuclear material” (i) is at any “nuclear facility” owned by the **Protected Party** or operated by the **Protected Party** or on the **Protected Party's** behalf, or (ii) has been discharged or dispensed therefrom;
 - (b) The “nuclear material” is contained in “spent fuel” or “waste” at any time possessed, handled, used, processed, stored, transported or disposed of by the **Protected Party** or on the **Protected Party's** behalf; or
 - (c) Such **Personal Injury, Property Damage, or Public Officials Errors and Omissions** arises out of the furnishing by the **Protected Party** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operating or use of any “nuclear facility”, but if such facility is located within the United States of America, its territories or Canada, this Limitation (2) (c) applies only to **Bodily Injury or Property Damage** to such “nuclear facility” and any property thereat.
 - (3) As used in this Limitation:
 - (a) "hazardous properties" includes radioactive, toxic or explosive properties;
 - (b) "nuclear material" means “source material”, “special nuclear material” or “byproduct material”;

"source material", "special nuclear material" and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or any law amendatory thereof;

- (c) "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";
- (d) "waste" means any waste material (i) containing "byproduct material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material contents and (ii) resulting from the operation by any person or organization of a "nuclear facility" included within the definition of "nuclear facility" below;
- (e) "nuclear facility" means:
 - (i) any "nuclear reactor"
 - (ii) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "wastes";
 - (iii) any equipment or device used for the processing, fabricating, or alloying of "special nuclear material" if at any time the total amount of such material in the **Protected Party's** custody at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
 - (iv) any structure, basin, excavation, premises or place prepared or used for storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

- (f) "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction to contain a critical mass of fissionable material;
- (g) **Property Damage** includes all forms of radioactive contamination of property.

- (L) (1) To any **Claim** for **Personal Injury, Property Damage, or Public Officials Errors and Omissions** arising out of the discharge, dispersal, release or escape of "pollutants", anywhere in the world;
- (2) To any obligation to defend any suit or **Claim** against the **Protected Party** alleging **Personal Injury, Property Damage, or Public Officials Errors and Omissions** and seeking **Damages**, if such suit or **Claim** arises from **Personal Injury, Property Damage, or Public Officials Errors and Omissions** arising out of the discharge, dispersal, release or escape of "pollutants", anywhere in the world;
- (3) To any loss, cost or expense arising out of any governmental direction or request that the **Protected Party** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize "pollutants";
- (4) To any loss, cost or expense incurred by a governmental unit or other third party, including but not limited to cost of investigation and monitoring and attorneys' fees relating to activities in connection with efforts to test for, monitor, clean up, remove, contain, trace, detoxify or neutralize "pollutants".
- (5) As used in this Limitation:

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and "waste material". "Waste material" includes materials which are intended to be or have been recycled, reconditioned or reclaimed.

“Pollutants” shall not include potable water, water distributed to the consumer intended to be potable water, agricultural water, or water furnished to commercial users.

It is agreed, however, that the following shall be excepted from this Limitation:

- (a) “Hostile fire”.
- (b) Collision, upset, or overturn of any **Automobile** or **Mobile Equipment**.
- (c) Chlorine leaks and pesticide/herbicide applications.

As used in this Limitation, “hostile fire” means a fire which becomes uncontrollable or breaks out from where it was intended to be.

- (M)
 - (1) To any **Claim** for **Personal Injury, Property Damage, or Public Officials Errors and Omissions** arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos products, asbestos fibers, or asbestos dust;
 - (2) To any liability to indemnify any party because of **Damages** arising out of **Personal Injury, Property Damage, or Public Officials Errors and Omissions** due to an **Occurrence** or loss due to a **Wrongful Act** at any time as a result of the manufacture of mining of, use of, sale of, installation of removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust; or
 - (3) To any liability to defend any suit or **Claim** against the **Protected Party** seeking **Damages** arising out of **Personal Injury, Property Damage, or Public Officials Errors and Omissions** due to an **Occurrence** or loss due to a **Wrongful Act**, if such suit or **Claim** results from or contributed to any combination of the following: manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust.
- (N) To any **Claim**, liability or alleged liability for damages arising out of any breach of responsibility, obligation or duty imposed upon or imputed to a **Protected Party**, or any other person or entity for whose acts or omissions the **Protected Party** is legally liable, under the Employee Retirement Income Security Act (ERISA) as now or hereafter amended; Article XVI, Section 17 of the California Constitution; or similar provision of any statutory or common law imputing or imposing comparable responsibilities or duties upon a **Protected Party**.
- (O) To any **Claim**, liability or alleged liability arising out of the rupture, bursting, overtopping, accidental discharge or partial or complete structural failure of any **Dam**.
- (P) To any **Claim**, liability or alleged liability for **Property Damage** arising out of **Subsidence**.
- (Q) To any **Claim**, liability or alleged liability under Protection A **Personal Injury** and Protection B **Property Damage** based upon or arising out of Protection C **Public Officials Errors and Omissions**, Protection D **Employment Practices Liability** or Protection E **Non-Profit Organization Liability** as defined in Attachment B to the Memorandum.
- (R) To any **Claim**, liability or alleged liability under Protection C **Public Officials Errors and Omissions** based upon or arising out of:
 - (1) Protection A **Personal Injury** or Protection B **Property Damage** as defined in the Memorandum;
 - (2) Protection D **Employment Practices Liability** as defined in the Memorandum;
 - (3) Protection E **Non-Profit Organization Liability** as defined in Attachment B to the Memorandum;

- (4) Refund of taxes, fees or assessments;
- (5) (a) Any **Protected Party** obtaining remuneration or financial gain to which the **Protected Party** was not legally entitled or (b) the willful violation of any law committed by or with the knowledge or consent of any **Protected Party**;
- (6) Estimates of probable costs or cost estimates being exceeded, or faulty preparation of bid specifications or plans;
- (7) Failure to award any contract or agreement, including the amendment thereof, in accordance with any law, statute, regulation, procedure or requirement; the validity of any award of a contract or agreement, including the amendment thereof; or the validity of any law, statute, regulation, procedure or requirement used or relied upon in the award of any contract or agreement, or the amendment thereof;
- (8) Loss of, injury to, diminution of value of, destruction or disappearance of any tangible property (including money and securities) or the loss of use thereof;
- (9) Failure to perform, or breach of, a contractual obligation;
- (10) Knowingly violating any statute, law, act, regulation or ordinance, whether federal, state, city, county or district;
- (11) Willful commission of a crime;
- (12) Malfeasance committed by or with the consent of a **Protected Party**;
- (13) Acts of fraud or dishonesty for any loss, damage or injury caused intentionally by or at the direction of or with the consent of any **Protected Party**; or
- (14) **Subsidence.**

It is agreed, however, that any fact pertaining to any **Protected Party** shall not be imputed to any other **Protected Party** for the purpose of determining application of Limitations (R)(5)(a), (R)(5)(b), (R)(10), (R)(11), (R)(12) and (R)(13).

- (S) Any **Claim**, liability or alleged liability, including **Tort Liability**, arising out of, as a consequence of, directly or indirectly resulting from, or in any way involving:
- (1) an actual or alleged breach of any contract or agreement;
 - (2) interference with an existing or prospective economic advantage, contract, or agreement;
 - (3) failure or delay by a **Protected Party** or anyone acting on behalf of a **Protected Party** to fully perform any duties or obligation under any contract or agreement;
 - (4) any amount actually or allegedly due under the terms of any contract or agreement;
 - (5) failure, refusal or inability of a **Protected Party** or anyone acting on behalf of a **Protected Party** to award, enter into, extend, or renew any contract or agreement; or
 - (6) the validity of any award of a contract or agreement, including the amendment thereof, or the validity of any law, statute, regulation, procedure or requirement used or relied upon in the award of any contract or agreement, or the amendment thereof.

As used in this Limitation, the term "contract or agreement" shall include but not be limited to a **Protected Contract**.

It is agreed, however, that this Limitation does not apply to **Employment Practices Liability**.

- (T) To any **Claim**, liability or alleged liability under Protection D **Employment Practices Liability** based upon or arising out of:
- (1) A lockout, collective bargaining, strike, picket line, replacement or similar actions in connection with labor disputes or labor negotiations;
 - (2) Workers Adjustment and Retraining Notification (WARN) Act, Public Law 100-379 (1988), or any amendment thereto, or any similar federal, state or local law;
 - (3) Protection A **Personal Injury** or Protection B **Property Damage** as defined in the Memorandum;
 - (4) Protection C **Public Officials Errors and Omissions** as defined in the Memorandum; or
 - (5) Protection E **Non-Profit Organization Liability** as defined in Attachment B to the Memorandum;
 - (6) A knowing violation of any statute, law, act, regulation or ordinance, whether federal, state, city, county or district;
 - (7) Malfeasance committed by or with the consent of a Protected Party; or
 - (8) Illegal actions against a whistleblower, except it is agreed that a **Defense** only will be provided against such **Claim**, liability or alleged liability.
- (U) Any **Claim**, liability or alleged liability for damages of any kind arising out of any actual or alleged error or misstatement or misleading statement or act or omission or neglect or breach of duty including misfeasance or nonfeasance in the handling or processing of pari-mutual wagers including but not limited to failure or delay in placing such wagers, or erroneously placing such wagers by a **Protected Party**.
- (V) Any **Claim**, liability or alleged liability for punitive or exemplary damages, by whatever name called, regardless of whether the **Participating Entity** has taken any action or passed any resolution to pay such damages.
- (W) To **Claims**, injuries or damages arising from any non-fair operations of a county **Member Entity**.
- (X) To any **Claim**, liability or alleged liability for **Damages** of any kind arising out of or by reason of:
- (1) The purchase, or sale, or offer to sale, or solicitation of any security, debt, bank deposit or financial interest or instrument;
 - (2) Any representations made at any time in relation to the price or value of any security, debt, bank deposit or financial interest or instrument; or
 - (3) Any depreciation or decline in price or value of any security, debt, bank deposit or financial interest or instrument.

This Limitation applies to any obligation to defend or to pay for the defense of any **Claim** that may allege any of the foregoing.

- (Y) To any **Claim**, liability or alleged liability for any costs or expense incurred by the **Protected Party** to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person.

SECTION 9 CONDITIONS

- (A) **Protected Parties** shall, at all times, comply with the terms, conditions and obligations which are contained in the **JEPA** creating the **Authority**, the bylaws, resolutions and **Operating Memoranda** of the **Authority**, and any emergency order of the Executive Director of the **Authority** or its designee.

The protection and **Defense** obligations afforded by this **Program** are conditioned upon the **Member Entity's** compliance with **Operating Memoranda** issued by the Board of Directors of the **Authority**.

This Memorandum is subject to and subordinate to the **JEPA**. In the event of any conflict between the terms of the **JEPA** and this **Program**, the terms of the **JEPA** shall control.

- (B) All **Protected Parties'** duties in the event of an **Occurrence, Wrongful Act, Claim** or suit are as follows:
- (1) Immediately following an **Occurrence** or **Wrongful Act**, submit written notice to California Fair Services Authority, Attention: Liability Claims Administrator, 1776 Tribute Road, Suite 100, Sacramento, CA 95815, on the form or forms prescribed by the **Authority** containing:
 - (a) particulars sufficient to identify the **Participating Entity** and any **Protected Party**;
 - (b) information as to the time, place and circumstances of the **Occurrence** or **Wrongful Act**; and
 - (c) the names and addresses of the injured parties and available witnesses.
 - (2) If a **Claim** or suit is brought against a **Protected Party**, the **Protected Party** shall immediately forward to the **Authority** every **Claim**, suit, demand, notice, summons or other process or correspondence received by the **Protected Party** or its representative.
 - (3) The **Protected Party** shall cooperate with the **Authority**, its claims representatives and investigators, and shall assist with conduct of suits, attend hearings and trials and assist in securing and obtaining evidence, and obtaining the attendance of witnesses. Upon request of the **Authority**, the **Protected Party** shall assist in making settlements and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Protected Party** with respect to protection afforded under this Memorandum.
 - (4) The **Protected Party** shall not admit to any liability, assume any obligation, voluntarily make any payment or incur any expense other than for first aid to others at the time of the accident or incident.
- (C) This **Program** and protection and **Defense** obligations afforded under this **Program** may be terminated or amended at any time by the Board of Directors of the **Authority** pursuant to the terms of the **JEPA**. In the event of such termination, a refund of **Participation Fees** shall be made to the **Participating Entity** in the amount the **Authority** deems to be fair and reasonable, as set forth in the **JEPA**.
- (D) Terms of this Memorandum, if any, which are in conflict with the statutes and laws of the State of California are amended to conform to such statutes and laws.
- (E) If collectable insurance or any other coverage or protection with any other insurer, self-insurer, joint powers authority or other source of funds is available to the **Protected Party** covering a loss also protected under the **Program** (whether on a primary, excess or contingent basis), the protection and **Defense** obligations under this **Program** shall be in excess of, and shall not contribute with, such insurance or coverage or protection, and under no circumstances shall the protection and **Defense** obligations afforded under this **Program** be considered primary, pro-rate, concurrent or co-existent.
- (F) Except with respect to Maximum Limits of Protection, the protection of this Memorandum applies:
- (1) As if each **Protected Party** were the only **Protected Party**; and
 - (2) Separately to each **Protected Party** against whom a **Claim** or suit is brought.

- (G) In the event of any payment under this **Program**, the **Authority** shall be subrogated and otherwise entitled to all rights of recovery against any person or organization. The **Protected Party** shall execute and deliver all documents and papers and do whatever else is necessary to transfer and secure such rights to the **Authority**. The **Protected Party** shall do nothing after knowledge of a loss to prejudice such rights.
- (H) The **Authority's** Executive Director is hereby authorized to approve non-substantive modifications to the **Program**, including but not limited to non-substantive modifications to this Memorandum.

SECTION 10 DEFINITIONS

When used in this Memorandum (including any Attachments forming a part thereof):

- (A) **Aircraft** means a vehicle designed for the transport of persons or property principally in the air.
- (B) **Annual Period** means a period that begins on the date shown on the Cover Page and continues for a period of 12 months. Any unused portion of the Aggregate Limit remaining at the end of each **Annual Period** is no longer available. The Aggregate Limit shown on the Cover Page is reinstated at the beginning of each **Annual Period** if the **Participating Entity** continues to participate in the **Program** and pays the **Participation Fee** for the next **Annual Period**.
- (C) **Authority** means the California Fair Services Authority formed by the Joint Powers Agreement dated April 1, 1986 and subsequently amended and restated.
- (D) **Automobile** means a self-propelled land motor vehicle, trailer or semi-trailer subject to motor vehicle registration, but does not mean **Mobile Equipment**.
- (E) **Bodily Injury** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- (F) **Claim** means:
 - (1) a written demand for monetary or non-monetary relief; or
 - (2) a civil, criminal, or administrative proceeding for monetary or non-monetary relief which is commenced by:
 - (a) service of a complaint or similar pleading; or
 - (b) return of an indictment (in the case of a criminal proceeding); or
 - (c) receipt or filing of a notice of charges.
- (G) **Completed Operations Hazard** includes **Personal Injury** and **Property Damage** arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **Personal Injury** or **Property Damage** occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the **Protected Party**. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:
 - (1) When all operations to be performed by or on behalf of the **Protected Party** at the site of the operations have been completed; or
 - (2) When the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project.

"Operations" which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete shall be deemed completed.

The **Completed Operations Hazard** does not include **Personal Injury** or **Property Damage** arising out of:

- (1) Operations in connection with the transportation of property unless the **Personal Injury** or **Property Damage** arises out of a condition in or on a vehicle created by the loading or unloading thereof;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- (H) **Contract Employee** means:
- (1) An **Employee** who is under contract to the **Participating Entity** one hundred (100) per cent of the time; or
 - (2) An **Employee** whose only contract of employment is with the **Participating Entity**.
- (I) **Dam** means any artificial barrier together with appurtenant works, which does or may impound or divert water, and which either:
- (1) Is twenty five (25) feet or more in height from the natural bed of the stream or water course at the downstream toe of the barrier or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum possible water storage elevation; or
 - (2) Has an impounding capacity of fifty (50) acre-feet or more.
- Except that no structure specifically exempted from jurisdiction by the applicable State agency responsible for safety of Dams shall be considered a Dam, unless such structure is under the jurisdiction of any agency of the federal government.
- (J) **Damages** means monetary compensation: (1) for **Personal Injury**; (2) for **Property Damage**; and (3) for losses for **Wrongful Acts** as defined in this Memorandum.
- Damages** as respects **Employment Practices Liability** only means a monetary judgement, monetary award, or a monetary settlement, including **Defense** costs, which the **Protected Party** is obligated to pay, but shall not include past employee benefits (whether such benefits are voluntarily established by the **Participating Entity** or mandated by statute), past salary, or past compensation.
- Damages** as respects **Employment Practices Liability** shall not include amounts awarded under a labor or grievance arbitration pursuant to a collective bargaining agreement, nor sums paid pursuant to any judgment or agreement, whether injunctive or otherwise, to undertake actions to correct past discriminatory or unlawful conduct or to establish practices or procedures designed to eliminate or prevent future discriminatory or other unlawful conduct.
- (K) **Deductible** means the amount shown in Attachment A that shall be deducted from the amount of any loss, including any **Damages** or **Defense** costs, as a result of each **Occurrence** or **Wrongful Act** reported under this Memorandum. The **Deductible** amount shall be repaid by the **Participating Entity** to the **Authority**. The expenses incurred by the **Authority** arising out of the duty to defend regardless of liability shall be subject to the **Deductible**.
- (L) **Defense** means all costs, fees and expenses incurred in connection with the adjustment, investigation, defense and appeal of a **Claim**, including, but not limited to attorney fees, court costs and interest on judgements accruing after entry of the judgement and also shall include the costs of any adjuster, administrator or defense attorney assigned by the **Authority** to respond to any individual **Claim**.
- (M) **Employee** means any employee, agent, servant, or volunteer while performing services for and with the consent of the **Participating Entity**.
- (N) **Employment Practices Liability** means any **Claim** made against a **Protected Party** relating to a past, present or prospective employee of the **Protected Party** (and the spouse, child, parent, brother or sister of that person as a consequence of the Employment Practices that person at whom any of the Employment Practices described below is directed) arising out of: (1) any actual or alleged wrongful dismissal, discharge or termination (either actual or constructive) of employment; (2) employment related misrepresentation; (3) wrongful failure to employ or promote; (4) wrongful deprivation of career opportunity; (5) wrongful discipline; (6) failure to grant

tenure or negligent employee evaluation; (7) failure to provide adequate employee policies and procedures; (8) sexual or workplace harassment of any kind, (including the alleged creation of a harassing workplace environment); or (9) unlawful discrimination, (including sexual or workplace harassment or creation of a harassing workplace environment) whether direct, indirect, intentional or unintentional.

Employment Practices Liability shall include **Claims** brought under state, local, or federal law, whether common or statutory, and shall include, but is not limited to allegations of violations of the following federal laws, as amended, including regulations promulgated thereunder:

- (1) Americans with Disabilities Act of 1992 (ADA);
- (2) Civil Rights Act of 1991;
- (3) Age Discrimination in Employment Act of 1967 (ADEA), including the Older Workers Benefit Protection Act of 1990;
- (4) Title VII of the Civil Rights Law of 1964, as amended (1983), including the Pregnancy Discrimination Act of 1978;
- (5) Civil Rights Act of 1866, Section 1981; and
- (6) Fifth and Fourteenth amendments of the U.S. Constitution.

(O) **Joint Exercise of Powers Agreement (JEPA)** means the current joint powers agreement governing the **Authority**.

(P) **Member Entity(ies)** means a Member Entity as defined in the **JEPA**.

(Q) **Mobile Equipment** means a land vehicle (including any machinery or apparatus attached thereto) whether or not self-propelled which is:

- (1) Not subject to motor vehicle registration;
- (2) Maintained for use exclusively in premises owned by or rented to the **Participating Entity**, including the ways immediately adjoining; and
- (3) Designed for use principally off public roads.

Mobile Equipment also means an animal drawn vehicle or equipment while operating on a public street or highway.

(R) **Non-Profit Organization Liability** means liability arising out of "Wrongful Acts" by a "Covered Party" as those terms are defined in SECTION B9 of Attachment B to this Memorandum.

(S) **Occurrence** means:

- (1) An accident or event, including injurious exposure to conditions, which results in **Bodily Injury** or **Property Damage**, which is neither expected nor intended from the **Protected Party's** conduct;
- (2) With respect to **Personal Injury** (except **Bodily Injury**), one or more offenses committed during the **Annual Period**.

All **Damages** involving the same **Occurrence** or a series of continuous or interrelated **Occurrences** will be considered as arising out of one **Occurrence**. The date of the first such accident, event or offense will be deemed to be the date of the **Occurrence**.

(T) **Operating Memoranda** means memoranda issued by the Board of Directors of the **Authority** establishing policies and procedures for **Member Entity** or **Participating Entity** operations which affect risks of liability administered by the **Authority**. **Operating Memoranda** shall become effective thirty (30) days after issuance.

(U) **Participating Entity(ies)** means the entity designated in the Cover Page of this Memorandum and as defined in the **JEPA**.

(V) **Participation Fee(s)** means the amount designated from time to time by the **Authority** as the fee or fees for a **Participating Entity** to participate in the **Program** described by this Memorandum.

- (W) **Personal Injury** means:
- (1) **Bodily Injury**, disability, shock, mental anguish, emotional distress, mental injury, or death resulting from any of the foregoing;
 - (2) False arrest, false imprisonment, wrongful detention, or malicious prosecution;
 - (3) Wrongful entry into, or eviction of any person from, a room, dwelling or premises that a person occupies, or other invasion of the right of private occupancy;
 - (4) A publication or utterance that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, or reputation;
 - (5) A publication or utterance that violates a person's right of privacy;
 - (6) Violation of civil rights or claims of discrimination brought by third parties other than employment related discrimination and based upon race, religion, nationality, national origin, color, creed, sex, age, sexual orientation or disabilities, but excluding unlawful discrimination intentionally committed by, at the direction of, or with consent of the **Protected Party**; or
 - (7) Assault and battery, not committed by at the direction of, or with the consent of the **Protected Party**. However, this does not apply if assault and battery is committed or directed for the purpose of protecting persons from injury or death, or property from damage.
- (X) **Products Hazard** means **Bodily Injury** and **Property Damage** arising out of the **Protected Party's** products or reliance upon a representation or warranty with respect thereto, but only if the **Bodily Injury** or **Property Damage** occurs away from premises owned by or rented to the **Protected Party** and after physical possession has been relinquished to others.
- (Y) **Program** means the General Liability Risk Sharing Program described by this Memorandum, including all attachments thereto, and the **JEPA**.
- (Z) **Property Damage** means (1) physical injury to or destruction of tangible property which occurs during the **Annual Period**, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **Occurrence** during the **Annual Period**.
- (AA) **Protected Contract** means that part of any contract or agreement pertaining to the **Participating Entity's** business under which a **Participating Entity** assumes the **Tort Liability** of another to pay for **Bodily Injury** or **Property Damage** to a third person or organization, if the contract or the agreement is made prior to the **Bodily Injury** or **Property Damage**.
- (BB) **Protected Party(ies)** means the Entity or Person described in SECTION 6 of this Memorandum.
- (CC) **Public Officials Errors and Omissions** means liability arising out of **Wrongful Acts** by a **Protected Party**.
- (DD) **Retroactive Date** means the retroactive date found in the claims-made insurance policy that provided coverage to the **Protected Party** immediately prior to coverage being provided by this **Program**.
- (EE) **Subsidence** shall mean any **Property Damage** directly or indirectly arising out of, caused by, resulting from, contributed to or aggravated by the settling, sinking, slipping, falling away, caving in, shifting, eroding, mud flow, rising, tilting, or any other movement of land or earth.
- (FF) **Tort Liability** means a liability that would be imposed by law in the absence of any contract or agreement.
- (GG) **Ultimate Net Loss** means the sums for which the **Protected Party** is legally liable as **Damages** or **Tort Liability** of others for **Bodily Injury** or **Property Damage** assumed under a **Protected Contract**, by reason of a judgment or settlement, and shall include all costs, including **Defense** costs, arising out of an **Occurrence**

or **Wrongful Act**; however, **Ultimate Net Loss** shall not include civil or criminal fines or penalties imposed by law, punitive or exemplary **Damages**, the multiplied portion of multiplied **Damages**, taxes and any amount for which the **Protected Parties** are not financially liable or which are without legal recourse to the **Protected Parties**, or matters which may be deemed uninsurable under the law pursuant to which this Memorandum shall be construed.

(HH) **Watercraft** means a vessel more than twenty five (25) feet in length designed to transport persons or property in, on or through water.

(II) **Wrongful Act** means any actual or alleged negligent act, error or omission arising from negligent action or inaction, misfeasance or nonfeasance, mistake, misstatement, error, neglect, inadvertence, breach of duty or omission by the **Protected Party** in the discharge of official duties on behalf of a **Participating Entity**, including but not limited to **Claims**, arising from **Employment Practices Liability**.

All **Damages** involving the same **Wrongful Act** or a series of continuous or interrelated **Wrongful Acts** will be considered as arising out of one **Wrongful Act**. The date of the first such **Wrongful Act** will be deemed to be the date of the **Wrongful Act**.

ATTACHMENT “A” TO MEMORANDUM OF COVERAGE
GENERAL LIABILITY RISK SHARING PROGRAM

The Protection Schedule, attached hereto, specifies the following as respects to each **Participating Entity** covered under this **Program**:

- (A) Name of **Participating Entity**
- (B) Effective Date of Protection
- (C) **Deductible** for each protection, if any
- (D) **Retroactive Date** for each protection, if any.

As respects Protection Schedule, the abbreviations used therein mean the following:

- (A) “GL” means **Personal Injury and Property Damage**
- (B) “E & O” means **Public Officials Errors and Omissions**
- (C) “NOL” means **Non-Profit Organization Liability**
- (D) “EPL” means **Employment Practices Liability**.

Protection only applies to each **Participating Entity** of the **Program** where an “X” is placed next to the abbreviated Protection symbol.

The Maximum Limits of Protection specified in the Cover Page and Section 4 of this Memorandum apply separately to each **Participating Entity** in this **Program** as specified in the Protection Schedule.

ATTACHMENT “B” TO MEMORANDUM OF COVERAGE

GENERAL LIABILITY RISK SHARING PROGRAM

PROTECTION ‘E’ NON-PROFIT ORGANIZATION LIABILITY

SECTION B1 INTRODUCTION

This Attachment modifies the Memorandum Stating the Terms and Conditions of the General Liability Risk Sharing Program administered by the California Fair Services Authority. Throughout this Attachment, words and phrases in quotation marks have special meanings. You must refer to SECTION B9 of this Attachment and carefully review the definition of these words and phrases to determine their meaning and effect. In addition, words and phrases in bold type have special meanings. You must refer to SECTION 10 of the Memorandum and carefully review the definition of these words and phrases to determine their meaning and effect.

SECTION B2 PROTECTION

Subject to the Maximum Limits of Protection set forth in the Cover Page of the Memorandum and SECTION B4 of this Attachment, the **Authority** shall cause this **Program** to pay on behalf of a "Covered Party" all "Ultimate Net Loss" for which the "Covered Party" shall be legally obligated to pay as “Damages” caused by a "Wrongful Act" during the **Annual Period**.

SECTION B3 DEFENSE AND SETTLEMENT

The **Authority**, as the shared expense of the **Participating Entities**, shall have the right and duty to defend any **Claim** against a "Covered Party" arising out of a "Wrongful Act" which, in the opinion of the **Authority** is or may be encompassed by this Attachment; however

- (A) The **Authority**'s right and duty to defend is terminated when the applicable Maximum Limit of Protection is exhausted due to any payment or payments by the **Authority** of "Ultimate Net Loss";
- (B) The **Authority** may investigate, negotiate and settle any **Claim** or suit at its sole discretion;
- (C) Such defense shall be provided even if such suit is groundless, false or fraudulent; and
- (D) "Costs of Defense" incurred by the **Authority** in connection with the right and duty to defend under this Section of the Attachment shall be included within the Maximum Limits of Protection.
- (E) Notwithstanding (B) above, the **Authority** may seek from a “Covered Party” the reimbursement of funds expended on a **Claim** or suit, including but not limited to “Costs of Defense”, settlement, or judgment, if it is later judicially determined that the **Authority** had no right and duty to defend or provide protection for the **Claim** or suit against the “Covered Party” under the terms of this Attachment.

SECTION B4 MAXIMUM LIMITS OF PROTECTION

- (A) The **Program** shall be liable to pay one hundred percent (100%) of the “Ultimate Net Loss” in excess of the applicable **Deductible** per “Wrongful Act” in the amount as stated in the Cover Page of the Memorandum up to the Maximum Limits of Protection per “Wrongful Act” as stated in the Cover Page. All “Ultimate Net Loss” paid by this **Program** under this Attachment shall serve to reduce the Aggregate Limit of Protection for **Non-Profit Organization Liability** as stated in the Cover Page of the Memorandum.

- (B) The same “Wrongful Act” or “Related Wrongful Acts” of one or more “Covered Party ” shall be considered a single “Wrongful Act”, and one **Deductible** shall be applicable to such single “Wrongful Act”.
- (C) “Costs of Defense” shall be part of and not in addition to the Maximum Limits of Protection stated in Paragraph (A) above, and such “Costs of Defense” shall reduce the Maximum Limits of Protection stated in Paragraph (A) above, and shall also be applied against the **Deductible**.
- (D) In the event the Maximum Limits of Protection stated in Paragraph (A) above are exhausted by payment of “Ultimate Net Loss”, any and all obligations of the **Program** hereunder shall be deemed to be completely fulfilled and extinguished, and the **Program** shall have no further obligations hereunder of any kind or nature.

SECTION B5 ANNUAL PERIOD - TERRITORY

This Attachment applies to **Non-Profit Organization Liability** occurring anywhere in the world during the **Annual Period**.

SECTION B6 LIMITED PROTECTION FOR PRIOR UNREPORTED CLAIMS

The **Authority** shall, subject to the Maximum Limits of Protection set forth in the Cover Page of the Memorandum and SECTION B4 of this Attachment, cause this **Program** to pay on behalf of the “Covered Party” the “Ultimate Net Loss” which the “Covered Party” becomes legally obligated to pay resulting from any **Claim** or **Claims** first made against the “Covered Party” during the **Annual Period** and reported to the **Authority** during the **Annual Period** for a “Wrongful Act” arising from **Non-Profit Organization Liability**, but only if such “Wrongful Act” occurs after the **Retroactive Date** but prior to the end of the **Annual Period**, subject always to the terms and conditions of this Memorandum and this Attachment and subject to the following:

- (A) Any **Claim** or **Claims** that have been made, or notice of a potential claim given, under a prior claims made insurance policy which was purchased by or on the behalf of the **Participating Entity** shall not be covered by this Memorandum and this Attachment; or
- (B) Any **Claim** or **Claims** made which are covered under an extended reporting period, discovery period, or similar clause of a prior claims made insurance policy which was purchased by or on the behalf of the **Participating Entity** shall not be covered by this Memorandum and this Attachment.

SECTION B7 LIMITATIONS

This **Program** shall not be liable to make any payment for “Ultimate Net Loss” in connection with any **Claim**, liability or alleged liability, including **Tort Liability**:

- (A) To the extent it is insured under any other valid insurance policy or policies, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, and regardless of whether or not any “Ultimate Net Loss” in connection with such **Claim** is recoverable under such other policy or policies; provided, however, this Limitation shall not apply to the amount of “Ultimate Net Loss” which is in excess of the amount of any deductible or retention amounts and the limit of liability of such other policy or policies where such **Claim** is otherwise covered by the terms and conditions of this Attachment and the Memorandum;
- (B) Based upon, arising out of, or relating to, directly or indirectly resulting from or in consequence of or in any way involving:
 - (1) Any “Wrongful Act” or any fact, circumstance, situation, transaction, casualty, event, or decision which has been or is the subject of any notice given by the “Covered Parties” during the policy period or any extension thereof of any prior insurance policy providing protection for any “Covered Party”, or which has been the subject of any **Claim** made prior to the effective date of the Memorandum; or
 - (2) Any other “Wrongful Act” whenever occurring which, together with a “Wrongful Act” which has been the subject of such notice or such **Claim**, would constitute a “Related Wrongful Act”;
- (C) For any **Personal Injury, Property Damage, Employment Practices Liability** or **Public Officials Errors**

and Omissions, all as defined in the Memorandum;

- (D) Based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA) as now or hereafter amended; Article XVI, Section 17 of the California Constitution; or similar provision of any statutory or common law imputing or imposing comparable responsibilities upon a "Covered Party";
- (E) Based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, actual or alleged;
- (1) Discharge, dispersal, release or escape of "pollutants", anywhere in the world;
 - (2) Based upon any obligation to defend any suit or claim arising out of the discharge, dispersal, release or escape of "pollutants", anywhere in the world;
 - (3) To any loss, cost or expense arising out of any governmental direction or request that the "Covered Party" test for, monitor, clean up, remove, contain, treat, detoxify or neutralize "pollutants";
 - (4) To any loss, cost or expense incurred by a governmental unit or other third party, including but not limited to cost of investigation and monitoring and attorneys' fees relating to activities in connection with efforts to test for, monitor, clean up, remove, contain, trace, detoxify or neutralize "pollutants".
 - (5) As used in this Limitation:

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and "waste material". "Waste material" includes materials which are intended to be or have been recycled, reconditioned or reclaimed.

"Pollutants" shall not include potable water, water distributed to the consumer intended to be potable water, agricultural water, or water furnished to commercial users.
- (F) By, at the behest of, or on behalf of the "Non-Profit Organization" or any of the "Directors, Trustees and Officers" or any person or entity which controls, is controlled by, or is under common control with the "Non-Profit Organization" or any of the "Directors, Trustees and Officers": provided, however, this Limitation shall not apply to any derivative action brought totally independently of, and without the solicitation, assistance, participation or intervention of, any of the "Covered Parties";
- (G) By any security holder of the "Non-Profit Organization" whether directly or derivatively unless such security holder bringing such **Claim** is acting totally independent of, and totally without the solicitation of, or assistance of, or participation of, or intervention of, any of the "Directors, Trustees and Officers" or the "Non-Profit Organization" or any person or entity which controls, is controlled by, or is under common control with the "Non-Profit Organization" or any of the "Directors, Trustees and Officers";
- (H) Based upon or attributable to any pending or prior litigation as of the effective date of this Attachment, or derived from the same or essentially the same facts as alleged in such pending or prior litigation;
- (I)
- (1) Based on, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any of a "Covered Party's" actual or alleged rendering of or failure to render any architectural or engineering service;
 - (2) Based upon or arising out of probable costs or cost estimates being exceeded or faulty preparation of bid specifications or plans; or
 - (3) Based upon or arising out of failure to award any contract or agreement, including the amendment thereof, in accordance with any law, statute, regulation, procedure or requirement;
- (J) Based upon, arising out of, as a consequence of, directly or indirectly resulting from, or in any way involving:
- (1) An actual or alleged breach of any contract or agreement;
 - (2) Interference with an existing contract or prospective economic advantage, contract or agreement;

- (3) Failure or delay by a “Covered Party” or anyone acting on behalf of a “Covered Party” to fully perform any duties or obligations under any contract or agreement;
- (4) Any amount actually or allegedly due under the terms of any contract or agreement; or
- (5) Failure, refusal or inability of a “Covered Party” or anyone acting on behalf of a “Covered Party” to award, enter into, extend, or renew any contract or agreement.

As used in this Limitation, the term "contract or agreement" shall include but not be limited to a **Protected Contract**.

It is agreed, however, that this Limitation does not apply to **Employment Practices Liability**.

- (K) (1) With respect to which the “Covered Parties” are also an insured under a nuclear energy policy issued by the Nuclear Liability-Property Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the hazardous properties of nuclear material and with respect to which (i) any person or any “Non-Profit Organization” is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, (ii) the insured is, or had this policy not been available would, be, entitled to indemnity from the United States of America or any agency thereof.

Under any liability from the “hazardous properties” of “nuclear material”.

As used in this Limitation:

- (1) “hazardous properties” includes radioactive, toxic or explosive properties;
 - (2) “nuclear material” means “source material”, “special nuclear material” or “byproduct material”; "source material", "special nuclear material" and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or any law amendatory thereof.
- (L) (1) Based upon or arising out of any refund of fees or assessments;
 - (2) Based upon or arising out of (a) any “Covered Party” obtaining remuneration or financial gain to which the “Covered Party” was not legally entitled or (b) the willful violation of any law committed by or with the knowledge or consent of any “Covered Party”;
 - (3) For loss of, injury to, diminution of value of, destruction or disappearance of any tangible property (including money and securities) or the loss of use thereof;
 - (4) Based upon or arising out of the knowing violation of any statute, law, act, regulation or ordinance, whether federal, state, city, county or district;
 - (5) Willful commission of a crime;
 - (6) Malfeasance committed by or with the consent of a “Covered Party”;
 - (7) Based upon or arising out of acts of fraud or dishonesty for any loss, damage or injury caused intentionally by or at the direction of or with the consent of any “Covered Party”; or
 - (8) Based upon or arising out of **Subsidence**.

It is agreed, however, that any fact pertaining to any “Covered Party” shall not be imputed to any other “Covered Party” for the purpose of determining application of Section B7 Limitations (N)(2)(a), (N)(2)(b), (N)(4), (N)(5), (N)(6), and (N)(7).

SECTION B8 CONDITIONS

- (A) All “Covered Parties” duties in the event of a “Wrongful Act”, **Claim** or suit are as follows:
- (1) Immediately following a “Wrongful Act”, submit written notice to California Fair Services Authority, Attention: Liability Claims Administrator, 1776 Tribute Road, Suite 100, Sacramento, CA 95815, on the form or forms prescribed by the **Authority** containing:
 - (a) particulars sufficient to identify the **Participating Entity** and any “Covered Party”;
 - (b) information as to the time, place and circumstances of the “Wrongful Act”; and
 - (c) the names and addresses of any injured parties and available witnesses.
 - (2) The “Covered Party” shall immediately forward to the **Authority** every **Claim**, suit, demand, notice, summons or other process or correspondence received by the “Covered Party” or its representative.
 - (3) The “Covered Party” shall cooperate with the **Authority**, its claims representatives and investigators, and shall assist with conduct of suits, attend hearings and trials and assist in securing and obtaining evidence, and obtaining the attendance of witnesses. Upon request of the **Authority**, the “Covered Party” shall assist in making settlements and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the “Covered Party” with respect to protection afforded under this Memorandum.
 - (4) The “Covered Party” shall not admit to any liability, assume any obligation, voluntarily make any payment or incur any expense other than for any necessary first aid.
- (B) No person or “Non-Profit Organization” shall have any right under this Attachment B to the Memorandum to join the **Authority** as a party to any **Claim** against the "Directors, Trustees and Officers" nor shall the **Authority** be impleaded by the “Directors, Trustees and Officers” or their legal representative in any such **Claim**.
- (C) If prior to the effective date of the cancellation of this Memorandum, or if prior to the termination date of the Protection Period shown on the Cover Page, (i) another entity acquires substantially all of the “Non-Profit Organization”, or (ii) the “Non-Profit Organization” merges into another entity such that the “Non-Profit Organization” is not the surviving entity, or (iii) the “Non-Profit Organization” consolidates with another entity, or (iv) the “Non-Profit Organization” ceases to qualify as a not-for-profit “Non-Profit Organization” under state or federal law, (parts (i), (ii), (iii), and (iv) above shall hereinafter be referred to as “Transaction”), then:
- (1) The “Non-Profit Organization” must give written notice of such Transaction to the **Authority** within thirty (30) days after the effective date of such Transaction, and provide the **Authority** with such information in connection therewith as the **Authority** may deem necessary;
 - (2) This Attachment shall only apply, subject to its terms, with respect to any “Wrongful Act” actually or allegedly committed prior to the effective date of such Transaction described hereinabove; and
- (D) In the event of any payment under this Attachment, the **Authority** shall be subrogated to all of the rights to recovery thereof of the “Covered Parties” and the “Covered Parties” shall execute all papers required as may be necessary to enable the **Authority** to effectively bring suit in the name of any “Covered Party”.
- (E) Any terms of this Attachment which are in conflict with the laws of the State of California are amended to conform to such laws.
- (F) By acceptance of this Attachment, the **Participating Entity** named on the Cover Page of the Memorandum shall act on behalf of the “Non-Profit Organization” and all of the “Directors, Trustees and Officers” for all purposes including, but not limited to, giving and receiving of all notices and correspondence, the cancellation or termination of this Attachment, the payment of **Participation Fees**, and the receipt of any returned **Participation Fees** that may be due under this Attachment.

SECTION B9 DEFINITIONS

- (A) “Costs of Defense” shall mean any reasonable and necessary legal fees, costs and expenses incurred in defense of any **Claim** and appeals therefrom, and cost of attachment or similar bonds; provided, however, “Costs of Defense” shall not include: (1) salaries, wages, overhead or benefit expenses associated with any of the “Directors, Trustees and Officers”; and (2) any amounts incurred in defense of a **Claim** which any other insurer has a duty to defend, regardless of whether or not such insurer undertakes such duty.
- (B) “Covered Parties” shall mean the “Non-Profit Organization” and the “Directors, Trustees and Officers”.
- (C) “Covered Party” shall mean an individual “Director, Trustee or Officer” or the “Non-Profit Organization”.
- (D) “Damages” shall mean monetary compensation for losses for “Wrongful Acts” as defined in this Attachment.
- (E) “Directors, Trustees and Officers” shall mean all persons who were, now are, or shall be directors, trustees, officers, employees, volunteers or staff members of the “Non-Profit Organization” but only while acting within the scope of their duties as such, including any executive board members and committee members acting within the scope of their duties, whether salaried or not, and including the estates, heirs, legal representatives or assigns of all such persons in the event of their death, incapacity or bankruptcy. Further, “Directors, Trustees and Officers” shall also mean any lawful spouse (whether such status is derived by reason of statutory or common law as recognized by the applicable jurisdiction) of any director, trustee, officer, employee, volunteer, committee member or staff member of the “Non-Profit Organization” acting within the scope of their duties as such, but only in respect to a **Claim** arising solely out of his or her capacity as such a spouse where such **Claim** seeks damages from the marital property, community property, jointly held property, or property transferred from such director, trustee, officer, employee, volunteer, committee member or staff member to his or her spouse; provided, however, no protection shall be afforded under this Attachment for any “Wrongful Act” of any spouse of any director, trustee, officer, employee, volunteer, committee member or staff member of the “Non-Profit Organization”.
- (F) “Non-Profit Organization” shall mean the **Participating Entity** named in the Cover Page of the Memorandum.
- (G) “Related Wrongful Acts” shall mean “Wrongful Acts” which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.
- (H) “Wrongful Act” shall mean any actual or alleged error, misstatement, misleading statement, misfeasance or nonfeasance, act or omission, or neglect or breach of duty by the “Non-Profit Organization” or by the “Directors, Trustees and Officers”, individually or collectively, in the discharge of official duties solely in their capacity as “Directors, Trustees and Officers”. The date of the first such “Wrongful Act” shall be deemed to be the date of the “Wrongful Act”.
- (I) “Ultimate Net Loss” shall mean damages, settlement, and “Costs of Defense”, provided always, however, “Ultimate Net Loss” shall not include criminal or civil fines or penalties imposed by law, punitive or exemplary damages, taxes, or the amount of any multiplied damage award which is in excess of the damage award which was so multiplied or any matter which may be deemed uninsurable under the law pursuant to which this Attachment is being construed.