

SCHOOLS EXCESS LIABILITY FUND

MEMORANDUM OF COVERAGE

FOR

SPECIFIED PUBLIC EDUCATIONAL AGENCIES

EXCESS LIABILITY COVERAGE

Throughout this Memorandum, words and phrases that appear in **boldface** type have special meanings. They are defined in SECTION VI, **DEFINITIONS**.

Schools Excess Liability Fund, Joint Powers Authority, a California public entity formed pursuant to the State of California Government Code Sections 990.4, 990.8, 6500 *et seq.*, and other, relevant provisions of California law, hereinafter called the Authority, does hereby agree with the named **Covered Party**, in consideration of payment of the contribution and subject to the Limit of Liability set forth in the Declarations and other terms of this Memorandum, as follows:

SECTION I - COVERAGES

Subject to the **Covered Party's Retained Limit**, the Authority agrees:

- A. To pay on behalf of the **Covered Party** those sums for **Ultimate Net Loss** which the **Covered Party** shall become obligated to pay as **damages**, by reason of liability imposed by law, because of **bodily injury, property damage, errors and omissions, and personal injury**, to which this Memorandum applies, caused by an **occurrence**.

- B. To pay on behalf of the **Covered Party** those sums for **Ultimate Net Loss** which the **Covered Party** shall become legally obligated to pay as **damages** for which the governing board of the **Covered Party** is required to provide coverage in compliance with the provisions of Section 35208 or Section 72506 of the Education Code of the State of California, to which this Memorandum applies, caused by an **occurrence**.

- C. To pay on behalf of the **Covered Party** those sums for **Ultimate Net Loss** which the **Covered Party** shall become legally obligated to pay as **damages** for which the **Covered Party** is authorized to obtain coverage under Part 6, of Division 3.6 of Title 1 of the Government Code Section 989 *et seq.*, to which this Memorandum applies, caused by an **occurrence**.

This Memorandum of Coverage does not provide insurance, but instead provides for pooled self-insurance. This Memorandum is a negotiated agreement among the members

of the Authority, and none of the parties to the Memorandum is entitled to rely on any contract interpretation principles which require interpretation of ambiguous language against the drafter of such agreement. This Memorandum shall be applied according to the principles of contract law, giving full effect to the intent of the members of the Authority, acting through the Board of Directors in adopting this Memorandum. As the Authority is not an insurer, it has no obligation to issue reservation of rights letters, nor does it have an obligation to provide "*Cumis*" counsel to a **Covered Party** in disputed coverage situations under Civil Code section 2860. Finally, failure to provide notice to a **Covered Party** of any coverage dispute shall not operate to waive any of the provisions of this Memorandum.

SECTION II - DEFENSE AND SETTLEMENT

- A. The Authority shall not be obligated to investigate or to defend any claim for **damages**, or to pay for or to take charge of the investigation or defense of any claim for **damages** against any **Covered Party**. However, the Authority, at its own expense, shall have the right, but not the duty, to associate itself with any **Covered Party** in the control, negotiation, investigation, defense or appeal of any claim or proceeding which, in the opinion of the Authority or the **Covered Party**, is or may be covered by this Memorandum, and for which the **Ultimate Net Loss** therefrom may exceed the **Retained Limit**. The **Covered Party** shall fully cooperate with the Authority in all matters pertaining to such claim or proceeding. The Authority shall have the right to settle any claim that in the Authority's sole opinion may create indemnification obligations for the Authority under this memorandum.
- B. No claim shall be settled, whether by out of court settlement, stipulated judgment or otherwise, by a **Covered Party** wherein the **Ultimate Net Loss** exceeds the **Retained Limit**, without the prior written consent of the Authority.

SECTION III - LIMITATIONS UPON THE AUTHORITY'S LIABILITY

- A. Regardless of the number of (1) persons or entities covered under this Memorandum, or (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought because of injury or damage, the Authority's liability for **damages** is limited as follows:
1. Subject to the provisions of subparagraph 2, set forth below, the Authority's liability for **damages** shall be only for the **Ultimate Net Loss** in excess of the **Covered Party's Retained Limit** not to exceed the limit of coverage in the Declarations of this Memorandum, as the result of any one **occurrence**. There is no limit to the number of **occurrences** during the Memorandum period for which claims may be made.

The **Covered Party's Retained Limit** applies to each such **occurrence** without regard to exclusions, limitations or exhaustion of aggregate limits in underlying

or contributing coverage, insolvency of any insurance carrier or insurance or self-insurance pool, or any other circumstances wherein underlying or contributing coverage is uncollectible.

2. In the event of an **occurrence** which involves more than one SELF member school district, only one **Retained Limit** shall apply to such **occurrence**, irrespective of the number of SELF members involved in that **occurrence**. The **Retained Limit** applicable to such **occurrence** shall be determined by averaging all of the involved member school districts' **Retained Limits**, combined. Liability for the **Retained Limit** thus determined shall be apportioned among all of the involved member school districts proportionally according to the amounts of their respective **Retained Limits** under this Memorandum. This subparagraph 2 does not apply in the event that commercial insurance is available to cover the entire amount specified by the **Retained Limit**.
- B. This Memorandum applies to **occurrences** which take place anywhere in the world during the specified **coverage period** stated in the Declarations of this Memorandum.
 - C. With respect to liability for **damages** of the **Covered Party** arising from the conduct or activities of a third party, as between the **Covered Party** and the Authority, the amount of the **Covered Party's Retained Limit** as set forth in the Declarations of this Memorandum shall be satisfied in whole or in part (as applicable, depending on how much other coverage is available) by any insurance coverage of said third party/parties which is available and applicable to the liability for **damages** of the **Covered Party**. If such third-party insurance coverage exceeds the **Covered Party's Retained Limit**, all of such third-party insurance coverage (whether written on a primary or an excess basis, or written as reinsurance) shall apply to the loss before the Authority's limits hereunder shall attach.
 - D. An **occurrence** with a duration of more than one **coverage period** shall be treated as a single **occurrence** arising during the **coverage period** when the **occurrence** ends (which shall in no event be deemed later than the date on which the claimant files suit), and under no circumstances shall the fact that said **occurrence** has a duration of more than one **coverage period** entitle a **Covered Party** to more than one limit of coverage.

SECTION IV - COVERED PARTIES

The parties covered by this Memorandum are:

- A. The **Covered Party** named in the Declarations.
- B. The following individually and collectively, when acting solely within the scope of their duties, office, or employment for the named **Covered Party**:

1. Members of the governing board.
 2. Officers.
 3. Employees.
 4. Authorized Individuals acting as volunteers.
- C. Student body organizations or auxiliary organizations:
1. Student body organizations which are formed and governed pursuant to Education Code Sections 48930 and 76060;
 2. Auxiliary organizations for community college districts which are formed and governed pursuant to Education Code Section 72670; and
 3. Auxiliary organizations for K-12 school districts, which are formed and governed under the same general rules and guidelines applicable to auxiliary organizations for community college districts under Education Code Section 72670, and which have been approved by their school district's school boards or other governing bodies.
- D. Any person while using an **owned automobile**, or **non-owned automobile**, or a **hired automobile** and any person or organization legally responsible for the use thereof, including garage operations, provided the actual use of the **automobile** is by or with permission of the named **Covered Party**. Coverage provided by this Memorandum with respect to any person or organization other than the named **Covered Party** does not apply under this paragraph:
1. To any person or organization, or to any agent or employee thereof, engaged in selling, repairing, servicing, delivering, testing, road testing, parking or storing **automobiles**, with respect to any **occurrence** arising out of any such occupation, if there is other valid and collectible insurance available to such person as a named insured or as an agent or employee of the named insured under such insurance policy with limits at least equal to the requirements of the applicable Financial Responsibility Laws;
 2. With respect to any **hired automobile**, to the owner, or a lessee thereof other than the **Covered Party**, or to any agent or employee of such owner or lessee.
- E. **Additional covered parties** as defined in Section VI., A. of this Memorandum.
- F. **Covered individuals** as defined in Section VI., F. of this Memorandum.

- G. Students while participating in activities required to complete nurse training and similar Allied Health courses, but only while completing course work required by the **Covered Party** named in the Declarations.

SECTION V - EXCLUSIONS

The coverage provided by this Memorandum does not apply to any of the following:

- A. To injuries or **damages** which do not arise out of an **occurrence** as defined in this Memorandum;
- B. To **bodily injury**, sickness, disease or death of any employee, or to any other liability of the **Covered Party** to such employee, or to the spouse, parent, child, brother or sister of that employee, arising out of employment by the **Covered Party**, however with respect to this paragraph, **bodily injury** does not include mental anguish or distress. This exclusion applies whether the **Covered Party** may be liable as an employer or in any other capacity, except with respect to liability of others assumed under a contract or agreement with a party other than any employee or association of employees;
- C. To any liability for **damages** arising out of assaults and batteries, except for assaults and batteries committed or directed for the purpose of protecting persons or property or where same are not committed by or at the direction of the **Covered Party**;
- D. To any obligation for which the **Covered Party** may be held liable under any Workers' Compensation or disability benefits law or under any similar law, plan or agreement;
- E. To liability for **damages** arising out of in-flight operations of **aircraft** by or in the interest of the **Covered Party** except with respect to operations performed by scheduled common carriers or operations of **aircraft** owned or operated by the United States government or the State of California. The term in-flight as used in the foregoing means the period from the time the **aircraft** moves forward in taking off or in attempt to take off until it has completed its landing run;
- F. To liability for **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 a **Covered Party**, or
 - 2. any other watercraft operated by any person in the course of employment by any **Covered Party**, but this exclusion does not apply to manually powered boats, or sailboats under 26 feet in length, or powerboats with 25 horse power or less, or to watercraft owned or operated by the United States Military;

- G. To any liability for **damages** arising out of the ownership, maintenance, operations, use, loading or unloading of any motorized vehicle or watercraft, licensed or unlicensed, while participating in any speed contest or practice sessions, but this exclusion shall not apply to fire and police department training programs;
- H. To any liability for **damages** arising out of the ownership, use or maintenance of any trampoline. This exclusion does not apply to exercisers, mini trampolines, or similar rebounding devices when used in conjunction with an Individual Education Program;
- I. To any liability for **damages**, including claims for future medical surveillance, caused by or arising out of:
 - 1. asbestos, asbestos fibers or asbestos products, or out of any obligation to indemnify another or contribute with another for **damages** caused by or arising directly or indirectly out of asbestos, asbestos fibers, or asbestos products, or
 - 2. any supervision, instructions, recommendations, notices, warnings or advice given or which should have been given in connection with asbestos, asbestos fibers or asbestos product, or the presence, removal or abatement thereof;
- J. To any liability for **damages** to or destruction of any **automobile** owned by, rented to, leased to or in charge of the **Covered Party**;
- K. To any liability for **damages** arising out of injury, sickness, disease, death or destruction:
 - 1. with respect to which a **Covered Party** is insured under a nuclear energy liability policy issued by the Nuclear Energy Liability 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:
 - a. any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
 - b. the **Covered Party** is, or had such policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization; or
 - 3. resulting from the **hazardous properties of nuclear material**, if:

- a. the **nuclear material** is at any **nuclear facility** owned by, or operated by or on behalf of a **Covered Party**, or has been discharged or dispersed 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 or on behalf of a **Covered Party**; or
 - c. the injury, sickness, disease, death or destruction arises out of the furnishing by a **Covered Party** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operations or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this part c. applies only to injury to or destruction of property at such **nuclear facility**;
- L. To any liability for **damages**, loss, cost, or expense:
1. Arising out of, or that would not have occurred in whole or in part but for, the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time, however, wherever or whenever occurring and by whomever caused or alleged to have been caused;
 2. Arising out of any claim, suit, governmental direction or request, request, demand or order, whether by or on behalf of a governmental authority or not, that any **Covered Party** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to, or assess the effects of pollution or **pollutants**:
 - a. At any premises owned, rented or occupied by the **Covered Party**;
 - b. At or from any site or location used by or for the **Covered Party** or others for the handling, storage, dispersal, processing or treatment of waste;
 - c. Which are at any time transported, handled, stored, treated or disposed of; or processed as waste by or for the **Covered Party** or any person or organization for whom the **Covered Party** may be legally responsible; or
 - d. At or from any site or location on which the **Covered Party** or any contractors or subcontractors working directly or indirectly on the **Covered Party's** behalf are performing operations:
 1. If the **pollutants** are brought on or to the site or location in connection with such operation; or

2. If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the **pollutants**;

This exclusion does not apply to **Bodily Injury** or **Property Damage** caused directly and immediately by heat, smoke or fumes from a "hostile fire" in a building (or contents thereof) owned, rented or occupied by the **Covered Party**. As used in this exclusion, a "hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be;

- M. To any liability for punitive or exemplary **damages**, by whatever name called, regardless of whether the **Covered Party's** governing board has taken any action or passed any resolution electing to pay such **damages**;
- N. To any liability for statutory multiples of **damages**; civil fines; injunctive relief or cost to comply with injunctive relief; attorneys fees, unless the attorneys fees are awarded in addition to money **damages** covered by this memorandum; or any other liability over and above actual **damages**, by whatever name called;
- O. To any liability based on the **Covered Party's** obtaining of financial gain to which the **Covered Party** was not legally entitled;
- P. To any liability for **damages** for either the actual or alleged use, misuse, mismanagement or loss of funds, grants, or appropriations, nor for the return of such funds, grants, or appropriations for any reason; however, the Authority will defend any action or suits brought against any **Covered Party** for such causes of action;
- Q. To any liability for **damages** for or defense of non-tortious causes of action related to breach of contract proceedings;
- R. To any liability for **Employment Practices Liability** for which a **Covered Party** has assumed another's liability pursuant to a contract or agreement;
- S. To any liability for **Employment Practices Liability** committed by the **Covered Party** or at the **Covered Party's** direction intentionally for the purpose of causing harm or with dishonest, fraudulent, criminal or malicious purpose or intent. However, the Authority will afford defense expenses for such **Covered Party** until such conduct on the part of the **Covered Party** is established in fact pursuant to a civil or criminal suit. The applicability of this Exclusion to any **Covered Party** shall not be imputed to any other **Covered Party**;
- T. To any liability for any **Employment Practices Liability** claim seeking **damages** or other relief, direct or consequential, for or arising out of bodily injury, sickness, loss of consortium, disease, or death of any person; but this exclusion does not apply to emotional distress, mental anguish, or humiliation as part of a claim for **Employment Practices Liability**;

- U. To any liability for any **Employment Practices Liability** claim seeking **damages** or other relief, direct or consequential, arising from physical injury to or destruction of any tangible property, including loss of use thereof;
- V. To any liability arising out of a lock-out, picket line, replacement or other similar actions in connection with labor disputes or labor negotiations;
- W. To any liability arising out of the Workers' Adjustment and Retraining Act or any similar federal, state, or local law;
- X. To any liability for any **Employment Practices Liability** claim seeking insurance benefits which the claimant may have been entitled to receive pursuant to any federal or state law or regulation regarding the continuation of insurance after termination of employment;
- Y. To any suit in which the relief sought by the **Employee** is other than for **damages**, including but not limited to, proceedings seeking declaratory relief, disgorgement, job reinstatement, non-monetary equitable relief, punitive **damages** or exemplary **damages**, civil or criminal fines or penalties or multiple amounts of compensation, unless such relief is sought as part of a claim in which the **Employee** also seeks **damages** for an **Employment Practices Liability** claim; or
- Z. To Liability, other than **Employment Practices Liability**, arising out of, or in any way related to, the actual or alleged existence, performance, failure to perform, or breach, of a contract.

SECTION VI - DEFINITIONS

- A. **Additional Covered Party** means any person, organization, trustee or estate who is specifically endorsed to this Memorandum of Coverage by written endorsement or to whom or to which the **Covered Party** is obligated by virtue of a written contract to provide coverage as is afforded by this Memorandum, but only with respect to operations performed by or on behalf of the **Covered Party** or facilities owned or used by the **Covered Party**, and only for an **occurrence** taking place during the **coverage period** identified in the written endorsement. The limit and scope of coverage afforded by endorsement to this Memorandum shall be no broader than that which is required by such contract and shall in no event be broader than the coverage afforded by the written endorsement under this Memorandum.

This coverage does not extend, either with respect to defense or indemnity, to the sole negligence, or to the willful misconduct of any **Additional Covered Party** who is an **Additional Covered Party** by reason of a contract or agreement with the **Covered Party**.

- B. **Aircraft** means a vehicle designed for the transport of persons or property principally in the air.
- C. **Automobile** shall mean a land motor vehicle, trailer, or semi-trailer, subject to motor vehicle registration.
- D. **Bodily Injury** means **bodily injury**, sickness or disease sustained by any person which occurs during the **coverage period**, including death at any time resulting therefrom.
- E. **Coverage period** means the period beginning with the Effective Date shown in the Declarations and ending on the Expiration Date shown in the Declarations, unless terminated as provided in Section VII. B. of this Memorandum.
- F. **Covered Individuals** means persons who are past or present elected or appointed officials, employees or volunteers of the **Covered Party**, whether or not compensated while acting for or on behalf of the **Covered Party**, including while acting on outside boards at the direction of the **Covered Party**.
- G. **Covered Party** means the **Covered Party** named in the Declarations.
- H. **Damages** means compensation in money which a **Covered Party** is legally obligated to pay as a result of a claim. **Damages** include: (1) attorney fees not based on contract awarded against the **Covered Party**, (2) interest on judgments, or (3) costs, for which the **Covered Party** is liable either by adjudication or by compromise with the prior, written consent of the Authority, if the fees, interest or costs arise from an **occurrence** to which this coverage applies.

Damages shall not include those sums determined to be owed by a **Covered Party** as contract **damages**, including, but not limited to retroactive or prospective benefits, or any **damages** determined to be owing for breach of an express contract of employment or under an express obligation to make payments in the event of termination of employment.

Damages also shall not include 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, or any non-monetary relief.

- I. **Discrimination**, as respects **Employment Practices Liability**, means the actual or alleged failure to employ, failure to promote, or transfer, or the suspension, demotion or termination of, any **employee** because of race, color, creed, national origin, sex, sexual orientation or preference, religion, age, gender, disability or handicap or pregnancy.

- J. **Disgorgement** means the involuntary surrender or relinquishment of something that was unlawfully obtained.
- K. **Employee**, as respects **Employment Practices Liability** and when appearing in boldface type in this Memorandum, means any present or former employee of the named **Covered Party** or any applicant for employment by the named **Covered Party**.
- L. **Employment Practices Liability** means liability for actual or alleged
1. Wrongful Termination by a **Covered Party** of an **Employee**;
 2. Discrimination by any **Covered Party** against an **Employee** of the **Covered Party**; or
 3. Sexual harassment by a **Covered Party**.
- M. **Errors and Omissions** means any actual or alleged misstatement or misleading statement or act or omission or neglect or breach of duty including misfeasance, malfeasance or nonfeasance by **covered individuals** individually or collectively in the discharge of their duties with the **Covered Party**, or any matter claimed against them solely by reason of their being or having been public officials.
- N. **Hired Automobile** shall mean an **automobile** used under contract on behalf of the **Covered Party** provided such **automobile** is not owned in full or in part by or registered in the name of (1) the **Covered Party**, or (2) any **additional covered party** or covered individual who is granted an operating allowance of any sort for the use of such **automobile**.
- O. **Non-Owned Automobile** shall mean an **Automobile** not owned by or furnished for the regular use of the **Covered Party**.
- P. **Occurrence** means an accident or event, including continuous or repeated exposure to conditions, which, during the **coverage period**, results in injury or damage to which this coverage applies; provided, such injury or damage is neither expected nor intended from the standpoint of the **Covered Party**.

With respect to **Personal Injury**: "Occurrence" means an offense described in the definition of that term in this "Section VI - Definitions," that is committed during the **coverage period**.

With respect to **Errors & Omissions**: "Occurrence" means an offense described in the definition of that term in this "Section - VI Definitions" that is committed during the **coverage period**, provided that the injury is neither expected nor intended from the standpoint of the **Covered Party**.

- Q. **Owned Automobile** shall mean an **automobile** owned in full or in part by or registered in the name of the **Covered Party**. **Automobiles** furnished the **Covered Party** for driver education purposes shall be considered **owned automobiles**.
- R. **Personal Injury** means:
1. False arrest, detention, or imprisonment or malicious prosecution;
 2. Publication or utterance of a libel or slander or of other defamatory or derogatory material, or a publication or utterance in violation of an individual's right of privacy;
 3. Wrongful entry or eviction or other invasion of the right of private occupancy;
 4. Discrimination or violation of civil rights other than **Employment Practices Liability**, not intentionally committed by or at the direction of the **Covered Party**;
 5. Sexual harassment not intentionally committed by or at the direction of the **Covered Party**; or
 6. **Employment Practices Liability**.
- S. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and **waste**. **Waste** includes materials to be recycled, reconditioned or reclaimed. The term **pollutants** as used herein is not defined to mean potable water or agricultural water or water furnished to commercial users.
- T. **Property Damage** means:
1. Physical injury to or destruction of tangible property which occurs during the **coverage period**, including the loss of use thereof at any time resulting therefrom;
 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 **coverage period**.
- U. **Retained Limit**, as contained in the Declarations of this Memorandum, means the amount of paid claim liability for **damages** covered by this Memorandum, for which the **Covered Party** is responsible on a per **occurrence** basis, and which the **Covered Party** actually pays in cash, after making proper deduction for all recoveries and salvages collectible. The **Covered Party's Retained Limit** also includes defense attorney fees and costs expended by the **Covered Party** in defense of the claim to the extent that the claim is potentially covered under this Memorandum, and also

includes court costs, allocated loss adjustment expenses, and other associated costs and expenses, but does not include any salaries of the **Covered Party's** regular employees, nor any defense attorney fees or costs incurred in the defense of claims for which there was never any potential for coverage under this Memorandum.

V. **Ultimate Net Loss** as contained in the Declarations of this Memorandum, means the amount of paid claims liability for **damages** for which the **Covered Party** is liable, on a per **occurrence** basis, either by (1) adjudication, or (2) compromise with the prior written consent of the Authority, and which the **Covered Party** actually pays in cash, after making proper deduction for all recoveries and salvages collectible. The **Ultimate Net Loss** also includes defense attorney fees and costs of the **Covered Party** in defense of the claim and also includes court costs, allocated loss adjustment expenses, and other associated costs and expenses, but does not include any salaries of the **Covered Party's** regular employees. **Ultimate Net Loss** shall not include any **damages** recovered against a **Covered Party**, or defense expenses incurred, because of liability that is not covered by this Memorandum.

W. The following definitions are applicable only to Exclusion K:

Hazardous Properties include radioactive, toxic or explosive properties;

Nuclear Material means **source material, special nuclear material or byproduct material**;

Source Material, Special Nuclear Material and Byproduct Material have the meanings given the in the Atomic Energy Act of 1954 or in any law amendatory thereof;

Spent Fuel means fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

Waste means any **waste** material, (a) containing a **byproduct material** and (b) resulting from the operation by any person or organization of any **nuclear facility** included within the definition of **nuclear facility** under paragraph a. or b. thereof:

Nuclear Facility means:

- a. Any **nuclear reactor**.
- b. 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 **waste**.
- c. 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 custody of the **Covered Party** at the premises where such equipment or device is located consists of or contains more than 25 grams plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.

- d. Any structure, basin, excavation, premises or place prepared or used for the 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.

Nuclear Reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

With respect to injury to or destruction of property, the word injury or destruction includes all forms of radioactive contamination of property.

SECTION VII - CONDITIONS

- A. Contribution Payment: The annual contribution payment shall be due and payable upon inception of coverage and each renewal thereafter. The amount of annual contribution will be based on rates in effect at the inception of this Memorandum and on each subsequent anniversary. Contributions shall include any assessment required by the Authority, in accordance with the bylaws. The Authority shall not be required to perform any obligations under this Memorandum if all contributions and assessments are not paid in accordance with the bylaws.
- B. Termination: This Memorandum, and all coverage provided thereby, may be terminated at any time in accordance with the bylaws of the Authority.
- C. Statutory Provisions: Terms of the Memorandum which are in conflict with the statutes of the State of California are amended to conform to such statutes.
- D. Claims Information: As a condition precedent to coverage hereunder, the **Covered Party** will submit accurate loss data regarding all claims to which coverage could apply made against the **Covered Party** within the preceding seven (7) years or within such longer time period as sound underwriting principles require and the Authority's underwriters require, to the Authority at the Authority's request. Such data shall be furnished promptly, and in no event later than thirty (30) calendar days after the Authority requests it.
- E. Other Coverages: It being recognized that similar coverage contracts contain Other Coverages Clauses or Other Insurance Clauses, it is therefore intended, understood and agreed that:

1. Notwithstanding the terms and conditions of any Other Coverage, or Other Insurance, Clause or Clauses in any coverage memorandum, or insurance policy or policies, where other coverage is available to the **Covered Party** (whether such policy is issued to the **Covered Party** or extends to it as employer, employee, or agent or in any other capacity), the coverage afforded hereunder is intended to be, and shall be, excess coverage; and under no circumstances shall the coverage afforded hereunder be considered pro rata, concurring or co-existent.
 2. If any other coverage is available to the **Covered Party**, whether such coverage is called excess over, or pro rata with, other valid and collectible self-insurance, indemnity funds, risk-pool coverage, or insurance, or not, the coverage afforded hereunder shall not apply until such other coverage has been exhausted, provided that this clause does not apply with respect to excess insurance purchased specifically to be in excess of this Memorandum.
- F. Notice of Accident or Occurrence, Claim or Suit: The following provisions are conditions precedent to coverage under this Memorandum. The **Covered Party's** failure to comply with any of these provisions shall void the coverage provided herein, unless the SELF Board of Directors finds, by a majority vote, that the Authority has not been prejudiced by the delay and that the claims should therefore be covered.
1. The **Covered Party** shall notify the Authority within 60 days upon receipt of notice of a claim, or the setting of a reserve on any claim or suit including multiple claims or suits arising out of one **occurrence**, such claim or reserve amounting to twenty-five percent (25%) or more of the **Covered Party's Retained Limit**. Written notice containing particulars sufficient to identify the **Covered Party** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the **Covered Party** and of available witnesses, shall be given by or for the **Covered Party** to the Authority or any of its authorized agents as soon as possible.
 2. If claim is made or suit is brought against the **Covered Party**, and such claim or suit falls within the description in paragraph 1 above, the **Covered Party** shall be obligated to forward to the Authority every demand, notice, summons or other process received by it or its representative.
 3. Irrespective of the amount of **damages** sought or the probable dollar value of the claim, all lawsuits served upon the **Covered Party** shall be reported to SELF no later than sixty (60) days after their receipt by the **Covered Party**, or, if the **Covered Party** is a member of a joint powers agency which provides risk-pool coverage below SELF's point of attachment, no later than sixty (60) days after their receipt by said joint powers agency, if they involve any of the following:

- a. permanent brain or neurological damage/trauma;
 - b. head or brain injuries resulting in permanent disorientation, behavior disorders, personality changes, seizures, aphasia or coma;
 - c. death;
 - d. paraplegia, quadriplegia, or paralysis;
 - e. spine or back injuries;
 - f. major cosmetic disfigurement;
 - g. second- or third-degree burns over more than 25% of the body;
 - h. loss of limb, sight, speech, hearing, or other sense;
 - i. libel, slander, or defamation of character;
 - j. molestation, sexual assault, or rape;
 - k. AIDS;
 - l. multiple-injury occurrences, including those involving students;
 - m. class action by staff or teachers;
 - n. reductions in the employed numbers of staff or teachers;
 - o. Title 42, United States Code Section 1983 cases in which a complaint has been served and the plaintiff is represented by legal counsel;
 - p. Title VII (Title 42, United States Code Section 2000e, *et seq.*) cases in which a complaint has been served and the plaintiff is represented by legal counsel;
 - q. claims of **Employment Practices Liability**; or
 - r. any medical services furnished at a facility maintained by the Covered Party principally for the benefit or convenience and use by the **Covered Party's** employees and/or students.
4. The **Covered Party** shall cooperate with the Authority and, upon its request, assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Covered Party** because of all **damages** with respect to which coverage is

- afforded under this Memorandum; and the **Covered Party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Covered Party** shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense; however, in the event that timely notice of the claim has been given to the Authority and the amount of **ultimate net loss** thereafter becomes certain either through trial court judgment or through agreement among the **Covered Party**, the claimant and the Authority, then the **Covered Party** may pay the amount of judgment or compromise to the claimant to effect the settlement and, upon such submission of due proof thereof, the Authority shall reimburse the **Covered Party** for that part of such payment which is in excess of the **Retained Limit**, or will, upon request of the **Covered Party**, make such payment to the claimant on behalf of the **Covered Party**.
5. The Authority shall be entitled to complete access to the **Covered Party's** claim file, the defense attorney's complete file, and all investigation material and reports, including all evaluations and information on negotiations. The **Covered Party** shall be responsible to report on the progress of the litigation and any significant developments at least quarterly to the Authority, and to provide the Authority with simultaneous copies of all correspondence provided to the **Covered Party** in which a demand for an amount that is within the Authority's layer of coverage is made.
- G. No Voluntary Payments: The **Covered Party** must obtain the prior, written consent of the Authority before the **Covered Party** may make any payments, assume any obligation, or incur any defense attorneys' fees or costs or any other expense with respect to a claim that is covered by this Memorandum and within the Authority's layer of coverage, and that the **Covered Party** therefore expects to be paid by the Authority. The Authority's consent shall not be unreasonably withheld. Except in the circumstances described in Condition F.4., above, any such expenses that are incurred on a claim without the Authority's prior consent, shall remain the obligation of the **Covered Party**.
- H. Bankruptcy or Insolvency: Bankruptcy or insolvency of the **Covered Party** shall not relieve the Authority of any of its obligations hereunder.
- I. Severability of Interests: The term **Covered Party** is used severally and not collectively. The limit of liability and **Retained Limit** as stated in the Declarations apply separately to each **Covered Party**, except as provided in Section III.A.2. above.
- J. Limit of Liability: As provided in the Declarations.
- K. Assignment: No purported assignment of rights or interests under this Memorandum shall bind the Authority without its written consent.

- L. Changes: This Memorandum may not be amended or changed in any respect, nor shall any provision of this Memorandum be deemed to have been waived by the Authority, unless and until a written endorsement which expressly so amends this Memorandum or waives a provision thereof has been duly issued by the Authority and made a part of the Memorandum.
- M. Subrogation: Inasmuch as the coverage provided hereunder is excess coverage, the **Covered Party's** right of recovery against any person or other entity cannot be exclusively subrogated to the Authority. It is therefore agreed that in the event of any payment under this Memorandum, the Authority shall act in concert with all other interests (including the **Covered Party**) concerned, in the exercise of such rights of recovery. Any amounts so recovered shall first be applied to reimburse any interests, if any, that have paid an amount over and above any payment that is made hereunder by the Authority, up to the amount paid by such interest; the Authority will then be reimbursed, out of any balance then remaining, up to the amount paid hereunder; and all interests (including the **Covered Party**) as to which the coverage provided hereunder is excess, will be entitled to the remaining amount, if any. The costs of pursuing such recovery shall be apportioned between those who recover payment, in proportion to their respective recoveries. The **Covered Party** shall execute and deliver all instruments and papers and do whatever else is necessary to transfer and secure all of its rights of recovery against any person or organization to the Authority and all other interests concerned. The **Covered Party** shall do nothing at any time to prejudice such rights.
- N. Arbitration: In the event that a question or dispute arises between SELF and a **Covered Party** concerning the applicability of the coverage provided by this Memorandum to an **occurrence** or claim against the **Covered Party**, the following procedures shall be followed:
1. Request for Reconsideration. The **Covered Party** shall make a written request to the Authority or the appropriate committee to reconsider its position, citing the arguments in favor of the **Covered Party** and any applicable case law that applies. The **Covered Party** may also request the opportunity to make a personal presentation to that committee.
 2. Committee Appeal. The committee responsible for the program or having jurisdiction over the decision in question will review the matter and reconsider the Authority's position. If the **Covered Party** requesting reconsideration is represented on the committee having jurisdiction, that committee member shall be deemed to have a conflict and shall be excluded from any vote.
 3. Board of Directors Appeal. If the **Covered Party** is not satisfied with the outcome of the committee appeal, the matter will be brought to the Board of

Directors for reconsideration, upon request of the **Covered Party**. If the **Covered Party** requesting reconsideration is represented on the Board, that Board member shall be deemed to have a conflict and shall be excluded from any vote.

4. Arbitration. If the **Covered Party** is not satisfied with the outcome of the Board of Directors appeal, the next step in the appeal process shall be arbitration. The arbitration may be binding or non-binding, as mutually agreed upon by the parties. The matter will be submitted to a mutually-agreed-upon arbitrator, or to a panel of arbitrators, as the parties may agree, for a determination. If binding arbitration is selected, the decision of the arbitrator or panel of arbitrators will be final and conclusive and the **Covered Party** and the Authority will abide by the decision of the arbitrator. The cost of arbitration will be shared equally by the involved **Covered Party** and the Authority.
 5. Litigation. If, after following the dispute resolution procedure set forth in paragraphs 1. through 4., above, either party is not satisfied with the outcome of the non-binding arbitration process, either party may consider litigation as a possible remedy to the dispute.
- O. Action Against SELF: No action shall lie against SELF unless, as a condition precedent thereto, the **Covered Party** shall have fully complied with all the terms of this Memorandum nor until the amount of the **Covered Party's** obligation to pay shall have been finally determined whether by judgment against the **Covered Party** after actual trial or by written agreement of the **Covered Party**, the claimant and SELF. Said judgment shall not be deemed final, if an appeal be prosecuted therefrom, until the suit shall have been finally determined on appeal. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Memorandum to the extent of the coverage afforded by this Memorandum. Nothing contained in this Memorandum shall give any person or organization any right to join SELF as a co-defendant in any action against the **Covered Party** to determine such **Covered Party's** liability.