



SCHOOLS EXCESS LIABILITY FUND

MEMORANDUM OF COVERAGE FOR PUBLIC EDUCATIONAL AGENCIES EXCESS LIABILITY COVERAGE



TABLE OF CONTENTS

Section I- Coverages	Page 3
Section II-Defense and Settlement	Page 4
Section III-Limitations Upon the Authority's Liability	Page 4
Section IV-Covered Parties	Page 5
Section V-Exclusions	Page 6
Section VI-Definitions	Page 13
Section VII-Conditions	Page 17
Endorsement No. 3	Page 23



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 have a right 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. Laws and statutes specifically applicable to regulated insurance activities are not applicable to the interpretation of this contract.

The Authority has the right to deny coverage at any time should a condition of coverage not be met or an exclusion applies negating coverage. The Authority has no obligation to provide notice of such right to deny coverage or the potential of such a denial and no conduct or lack thereof by the Authority shall create a waiver of such right to deny coverage.

The Authority does not provide insurance and is not obligated to provide independent legal counsel to a **Covered Party** under California Civil Code 2860.

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 Section 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 **Named Covered Party's Retained Limit**, the Authority agrees:

- A. To reimburse the **Named 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, for each covered loss to which this Memorandum applies, caused by an **Occurrence** during the **Coverage Period**.
- B. To reimburse the **Named 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 **Named 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** during the **Coverage Period**.
- C. To reimburse the **Named Covered Party** those sums for **Ultimate Net Loss** which the **Covered Party** shall become legally obligated to pay as **Damages** for which the **Named 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** during the **Coverage Period**.

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**.
- B. At the sole discretion of the Authority, the Authority shall have the right, but not the duty, to assume defense at any time of any **Claim** for **Damages**. See also SECTION VII – CONDITIONS.
- C. Upon the finding of the Authority that a **Claim**, if not settled, may create indemnification obligations on the Authority, the Authority may have the right to settle such **Claim**. If the **Covered Party** refuses to, or prevents, settlement of the **Claim** for the amount the Authority is willing to pay and the claimant will accept, and such refusal or prevention increases the **Covered Party's** potential liability for **Damages** and continued defense costs, the **Named Covered Party** shall pay for or shall reimburse the Authority for (1) defense costs and any other claims expenses incurred after the **Claim** could have been settled; and (2) for any **Damages** awarded or settlement agreed upon in excess of the amount for which the **Claim** could have been previously settled.
- D. 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 **Named Covered Party's 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 **Named 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 **Coverage Period** for which **Claims** may be made. For the purpose of determining the Limit of Liability, all **Damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **Occurrence**.

The **Named 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, insurance, self-insurance pool, or any other circumstances wherein underlying or contributing coverage is uncollectible.
 - 2. For each **Occurrence**, there shall be only one **Ultimate Net Loss** and one **Retained Limit** regardless of the number of claimants or **Covered Parties** against whom or which a **Claim** is made or **Suit** is brought. 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 **Named 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, 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

Those covered by this Memorandum are:

- A. The **Named Covered Party**.
- B. The **Individual**, when acting solely within the scope of their duties, office, or employment for the **Named Covered Party**:
- 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 on behalf of the **Named Covered Party** an **Owned Automobile**, **Non-owned Automobile**, or a **Hired Automobile**, and any person or organization legally responsible for the use thereof. provided the actual use of the **Automobile** is by or with permission of the **Named Covered Party**.
1. Coverage provided by this Memorandum with respect to any person or organization other than the **Named Covered Party** does not apply:
- a. 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**;
 - b. To the owner, lessee, lender, any agent or employee of same of any **Non-owned Automobile** or **Hired Automobile**.
- E. **Additional Covered Parties** as defined in Section VI., A. of this Memorandum.
- F. Students while participating in activities required to complete nurse training and similar Allied Health courses, but only while completing course work required by the **Named 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**, 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**. This exclusion does not apply to liability assumed under contract or to **Employment Practices Liability**;
- C. To any liability for **Damages** arising out of any act that is expected or intended from the standpoint of the **Covered Party**, including but not limited to assaults and batteries.
- This exclusion does not apply to intentional acts, including assaults and batteries, committed or directed for the purpose of protecting persons or property;
- 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. Any **Bodily Injury**, **Personal Injury**, or **Property Damage** arising out of the ownership, operation, maintenance, use, loading, unloading, supervision, training, monitoring or entrustment to others of any **Aircraft** owned, operated, leased, rented or loaned to, or borrowed by any **Covered Party**.

This exclusion does not apply to claims arising out of an **Aircraft** that is not subject to FAA licensing requirements while on the ground at any property that is owned by, leased to, rented by, or occupied by the **Named Covered Party** and that is used or operated solely for instructional purposes and which instruction is authorized by, sponsored and supervised by at all times by the **Named Covered Party**.

- 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 **Named 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 charter operators or common carriers, or to watercraft owned or operated by the United States Military; or watercraft used by the **Named Covered Party** within its curriculum and specifically endorsed to this Memorandum.
- 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 physical damage to, destruction of, or diminution in value of any **Automobile** owned by, rented to, leased to, borrowed by, being used for, or in the care, custody, control, or 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**;

Hazardous Properties include radioactive, toxic or explosive properties;

Nuclear Facility means:

1. Any **Nuclear Reactor**;
2. 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**;
3. 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;
4. 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 Material means **Source Material**, **Special Nuclear Material**, or **Byproduct Material**.

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.

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**.

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

- 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 any **Covered Party**;
 - b. At or from any site or location used by or for any **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 any **Covered Party** or any person or organization for whom any **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 **Named 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. Punitive damages, exemplary damages, treble or multiples of damages, statutory multiples damages, or by whatever name called, including fines or penalties imposed upon any **Covered Party**. This exclusion applies regardless of the **Covered Party's** agreement to pay such **Damages**;
- N. To liability for civil fines or injunctive relief, including attorney's fees awarded with these liabilities;
- 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.

This exclusion does not apply to defense expenses arising out of these actions;

- Q. To any liability for **Employment Practices Liability** for which a **Covered Party** has assumed another's liability pursuant to a contract or agreement;
- R. 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;
- S. 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**;
- T. 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;
- U. To any liability arising out of a lock-out, picket line, replacement or other similar actions in connection with labor disputes or labor negotiations;
- V. To any liability arising out of the Workers' Adjustment and Retraining Act, the Fair Labor Standards Act, or any similar federal, state, or local law;
- W. 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;

- X. 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
- Y. To liability arising out of breach of any written, oral, express, implied, actual, or constructive contract, agreement, warranty, guarantee or promise or the failure to enter into or renew because of any of these.

This exclusion does not apply to any liability or obligation that is covered by this Memorandum that the **Named Covered Party** would have in the absence of such contract or agreement.

- Z. To liability caused by, based upon, or arising out of alleged or actual infringement, theft of, or violation of, any intellectual property rights of others, including, but not limited to, patent rights or misappropriation, trademark, service mark, collective mark, certification mark, trade dress, or trade secrets.
- AA. To liability arising out of any unauthorized access to, or disclosure of, personally identifiable information, as defined by the United States Code of Federal Regulations or by any similar or related state laws or regulations.

This exclusion also applies to any unauthorized access to, or disclosure of, any organization's trade secrets or any confidential information, including but not limited to, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion also applies to notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by any **Covered Party**.

- BB. To liability arising out of the loss of, loss of use of, damage to, corruption of, inability to access or inability to manipulate information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- CC. To liability arising out of violation of The Telephone Consumer Protection Act, the CAN-SPAM Act of 2003, the Fair Credit Report Act, The Fair and Accurate Credit Transactions Act, any other similar California statute or regulation or any amendment of any of these statutes or regulations that prohibits or limits printing, distribution, dissemination, disposal, collecting, recording, sending, transmitting, communication in any fashion.
- DD. To liability caused by or arising out of any violation of state or federal antitrust, unfair competition, trade practices or restraint-of-trade laws.

- EE. To liability for any **Bodily Injury, Personal Injury, or Property Damage, Employment Practices Liability, or Errors and Omissions Claim or Suit**, arising out of or related, in whole or in part, to a **Communicable Disease**, the fear or threat of a **Communicable Disease**, whether actual or perceived, any order, guideline, requirement or recommendation of any governmental authority regarding a **Communicable Disease**, the actual or alleged transmission, spread or failure to prevent, suppress, or remove a **Communicable Disease**, or the reporting of, monitoring of, disclosure of, testing for, or failure to report, monitor, or disclose a **Communicable Disease**.

This exclusion also applies to any loss, cost, or expense arising out of any:

1. Request, demand, order, or statutory or regulatory requirement 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, any **Communicable Disease**; or
2. Any **Claim or Suit** by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or the failure to perform any of the foregoing, or in any way respond to or assessing the effects of any **Communicable Disease**

This exclusion applies regardless of whether any other cause, event, material, product or incident of whatever kind or nature contributed, concurrently or in any sequence, to the actual or alleged liability, injury, loss, damage, claim, cost, expense or any other payment of any kind.

- FF. Any **Claim or Suit** by a **Covered Party** against another **Covered Party**.
- GG. Liability assumed by a **Covered Party** under any contract or agreement where the party for whom or for which liability is assumed is solely negligent or engaged in wrongful actions or omissions of actions.
- HH. This Memorandum does not apply to any **Claim or Suit** that arises out of or is in any way related to **Childhood Sexual Assault**.
- II. Any **Claim or Suit** caused by or resulting from, in whole or in part, a criminal act, or any fraudulent or malicious act, error, or omission committed by or with the knowledge or consent of the **Covered Party**.

This exclusion does not apply to a **Claim or Suit** until it is determined by the Authority, in its sole discretion, that the **Claim or Suit** arose out of the **Covered Party's** criminal act, or any fraudulent or malicious act, error, or omission, or was committed by or with the knowledge or consent of a **Covered Party**, which shall not be imputed to any other **Covered Party**.

- JJ. Any liability of a **Covered Party** which is a self-insurance pool because of any coverage obligation assumed by the **Covered Party** or the failure to discharge, or the improper discharge of, any obligation or duty, contractual or otherwise, with respect to coverage provided by that **Covered Party**; including any liability arising out of investigating,



defending or settling any claim, or reporting or failure to report any claim to any other coverage provider, insurer, or reinsurer.

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 **Named 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 **Named Covered Party** or facilities owned or used by the **Named 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 **Named Covered Party**.

- B. **Aircraft** means: A vehicle designed to operate principally in the air. This does not include **Unmanned Aerial Systems** or rockets that are operated within FAA regulations, orders or other guidelines.
- C. **Automobile** shall mean a land motor vehicle, trailer, or semi-trailer, subject to motor vehicle registration. An **Automobile** shall be classified as:
1. **Owned Automobile** shall mean an **Automobile** owned, in whole or in part, by the **Named Covered Party** or registered in the name of the **Named Covered Party**;
 2. **Hired Automobile** shall mean an **Automobile** that is not an **Owned Automobile** used under contract by a **Named Covered Party**; and
 3. **Non-owned Automobile** shall mean an **Automobile** that is neither an **Owned Automobile** nor a **Hired Automobile**.
- 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. **Childhood Sexual Assault** means: Any actual, attempted, or alleged act or threat, by one or more persons, of wrongful conduct or wrongful act(s) involving sexual or obscene conduct against, to, or with a minor. Wrongful conduct and acts, whether actual or simulated, include but are not limited to, sexual conduct or misconduct as defined in the California Code of Civil Procedure 340.1(d) or any amendments thereto, including any future amendments enforced retroactively.
- F. **Claim** means an allegation of **Bodily Injury, Personal Injury, Property Damage, Employment Practices Liability, Errors and Omissions, or Childhood Sexual Assault**

for which a **Covered Party** seeks coverage under this Memorandum and a demand for **Damages**, including the filing of a government claim, including DFEH claim or EEOC claim, or **Suit**, or initiation of arbitration against a **Covered Party**.

- G. **Communicable Disease** means one or more of any pathogen(s), including but not limited to, bacteria, viruses, markers, microbial agents, microorganisms, microbial matter, biological organisms, parasites, insects, protozoa, or any other source, combination, variant or mutation thereof, capable of transmission or spreading by any means from any source.
- H. **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.
- I. **Covered Party** means one defined as such in Section IV – Covered Parties.
- J. **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, any wages, salary, or benefit owed for work performed, or (whether prospective or retrospective) resulting from promotion or reinstatement, or any damages owing under an express contract of employment or an express obligation to make severance payments in the event of termination of employment.

Damages with respect to employment practices liability also shall not include amounts awarded under a labor grievance or 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, or any nonmonetary relief.

- K. **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.
- L. **Employee** means any present or former employee of the **Named Covered Party** or any applicant for employment by the named **Covered Party** named in the Declarations.
- M. **Employment Practices Liability** means liability for actual or alleged:
 - 1. Wrongful Termination by a **Named Covered Party** of an **Employee**;
 - 2. **Discrimination** by any **Covered Party** against an **Employee** of the **Named**

Covered Party; or

3. Sexual harassment, which does not include sexual assault, by a **Covered Party**.

- N. **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 **Individuals** individually or collectively in the discharge of their duties with the **Named Covered Party**, or any matter claimed against them solely by reason of their being or having been public officials.
- O. **Individual** means a person who is a past or present elected or appointed official, employee or volunteer 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**.
- P. **Named Covered Party** means the public agency named in the Declarations. This includes any members of the public agency that have been duly authorized and approved by said public agency.
- Q. **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**: Event means an offense or series of continuous or repeated, related offenses described in the definition of that term in this "Section VI - Definitions," that is committed during the **Coverage Period**.

With respect to **Errors & Omissions**: Event means an offense or series of continuous or repeated, related offenses 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**.

- 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, which does not include sexual assault, 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, mold, radiation, waste and any other irritant or contaminant. **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** means the amount of **Claim** liability for **Damages** covered by this Memorandum, for which the **Named Covered Party** is responsible on a per **Occurrence** basis, after making proper deduction for all recoveries and salvages collectible. The member must incur or become liable for the full amount of the **Retained Limit** before the Authority is obligated, in its sole discretion, to reimburse the member for any covered **Damages** under this Memorandum. The **Named Covered Party's Retained Limit** also includes defense attorney fees and costs incurred by the **Named 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 **Named Covered Party's** regular employees, nor any defense attorney fees or costs incurred in the defense of **Claims** for which there was no potential for coverage under this Memorandum.
- V. **Suit** means a civil proceeding in which the recovery of **Damages** is sought. A **Suit** includes a civil action in court; an arbitration proceeding to which a **Covered Party** must submit, or does submit with the Authority's prior written consent, and any other alternative dispute resolution proceeding in which **Damages** are claimed and to which a **Covered Party** submits with the Authority's prior written consent.
- W. **Ultimate Net Loss** as contained in the Declarations of this Memorandum, means the amount of **Claims** liability for **Damages** for which the **Covered Party** is liable, on a per **Occurrence** basis, either by (1) adjudication, or (2) settlement, both requiring prior written consent of the Authority, 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, but does not include any salaries of the **Named 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.
- X. **Unmanned Aerial System** means: An unmanned aircraft, including all of the associated support equipment, control station, data links, telemetry, communications and navigation equipment, etc., necessary to operate the unmanned aircraft.

SECTION VII - CONDITIONS

- A. Arbitration: In the event that a question or dispute arises between the Authority and a **Named 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. No party is entitled to appeal or arbitrate claims under this Memorandum other than the **Named Covered Party**, student body organization or auxiliary organization under Section IV – Covered Parties. Specifically, employees and officials are not intended to be third party beneficiaries of this agreement and shall have no right to bring an action against the Authority for a declaration of rights to protection under this Memorandum. The sole remedy of any such **Employee** or official shall be the **Employee's** or official's right to defense or indemnity against the employing **Named Covered Party**, student body organization or auxiliary organization under the provisions of the California Government Code.
 2. Request for Reconsideration. The **Named 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 **Named Covered Party** and any applicable case law that applies. The **Named Covered Party** may also request the opportunity to make a personal presentation to that committee.
 3. 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 **Named 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.
 4. Board of Directors Appeal. If the **Named 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 **Named Covered Party**. If the **Named 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.
 5. If the **Named 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 **Named Covered Party** and the Authority will abide by the decision of the arbitrator. The **Named Covered Party** and Authority shall bear the costs of their own representation. The cost of arbitrator(s) and facilities will be shared equally by the involved **Named Covered Party** and the Authority.

- B. Assignment: No purported assignment of rights or interests under this Memorandum shall bind the Authority without its written consent.
- C. Bankruptcy or Insolvency: Bankruptcy or insolvency of the **Covered Party** shall not relieve the Authority of any of its obligations hereunder.
- D. 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.
- E. Claims Information: As a condition precedent to coverage hereunder, the **Named Covered Party** will submit accurate loss data regarding all **Claims** to which coverage could apply made against any **Covered Party** within the preceding ten (10) 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.
- F. 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.
- G. Limit of Liability: As provided in the Declarations, if a sub-limit is specified in any other coverage available to the **Covered Party**, this Memorandum has no obligation to provide any benefits for the **Covered Party** unless and until the **Claim** or **Suit** that is subject to that sub-limit exhausts the **Retained Limit** as shown in the Declarations.
- H. Litigation. If, after following the dispute resolution procedure set forth in paragraphs L. 1. through 5., 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. Such litigation shall be brought in the Superior Court of California in the County of Sacramento.

Under no circumstances shall the Authority be liable for consequential damages, "bad faith" damages, or any sums beyond the amounts due under Section I – Coverages.

- I. 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.
1. The **Named Covered Party** shall notify the Authority in writing within 90 days upon receipt of notice of a **Claim** reportable under Section 3 below, or the setting of a reserve on any **Claim** or **Suit**, including multiple **Claims** or **Suits** arising out of one **Occurrence**, such that the paid plus total reserved amounts (including both indemnity and expense) exceed ten percent (10%) of the **Named 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 **Named 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 **Named 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 **Claims** or **Suits** served upon the **Covered Party** shall be reported to the Authority no later than ninety (90) days after their receipt by the **Named Covered Party**, if they involve any of the following:
 - a. Permanent brain or neurological damage/trauma;
 - b. Head, brain, spine or back injuries;
 - c. Death;
 - d. Paraplegia, quadriplegia, or paralysis;
 - e. Major cosmetic disfigurement;
 - f. 2nd or 3rd degree burns over more than 25% of the body;
 - g. Loss of limb, sight, speech, hearing, or other sense;
 - h. Libel, slander, or defamation of character;
 - i. Molestation, sexual assault, or sexual harassment;
 - j. Multiple-claimant injury occurrences, including those involving students;
 - k. Any class action **Suit**;
 - l. 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. Irrespective of the amount of **Damages** sought or the probable dollar value of the **Claim**, all **Claims** or **Suits** served upon the **Covered Party** shall be reported to the Authority no later than four (4) months prior to the date upon which trial is scheduled to commence if the **Claim** or **Suit** is one which carries an exposure of an award of plaintiff's attorney fees;
5. Where any **Claim** or **Suit** described in Article VII.I.3 is reported after the time period required by these reporting provisions, all defense costs incurred prior to that date of late reporting will not constitute covered ultimate net loss eroding the self-insured retention.
6. The **Covered Party** shall cooperate fully 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.
7. 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 **Named 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 **Named Covered Party** for that part of such payment which is in excess of the **Retained Limit**, or will, upon request of the **Named Covered Party**, and at the sole discretion of the Authority, make such payment to the claimant on behalf of the **Covered Party**.
8. The Authority shall be provided with complete "read only" access to the **Covered Party's** electronic claim file, the defense attorney's complete file, and all investigation material and reports, including all evaluations and information on negotiations. This does not include attorney client or attorney work product communications arising out of a coverage dispute. The **Named 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.
- J. No Voluntary Payments: The **Named Covered Party** must obtain the prior, written consent of the Authority before any **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 **Named 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 **Named Covered Party**.

- K. 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 pooled coverage memorandum, or insurance policy or policies, where other coverage is available to the **Covered Party** (whether such policy is issued to the **Named 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 primary, excess, 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.
 3. This Memorandum shall follow the terms, conditions, agreements, definitions, and exclusions that are contained in any other coverage within the **Named Covered Party's Retained Limit** that is available to the **Covered Party**, except with respect to any provisions to the contrary contained in this Memorandum, but in no event shall this Memorandum grant broader coverage to the **Covered Party** than is provided in that other coverage.
 4. If any other coverage is reformed after any **Occurrence, Claim** or **Suit** is filed against or known by any **Covered Party** to retroactively provide coverage, the terms of that reformation shall not apply to this Memorandum.
- L. Right to Assign Counsel: The Authority has the right to appoint and assign legal counsel at its sole discretion.
- M. Right to Associate: The Authority has the right, but not the duty, to be associated with any **Named Covered Party**, or any underlying coverage, in the control, negotiation, investigation, defense, or appeal of any **Claim, Suit**, or proceeding at the sole discretion of the Authority. Costs incurred for such association are covered Ultimate Net Loss and are the responsibility of the Authority, up to the **Retained Limit**.
- N. Right to Audit: The **Named Covered Party** will keep records needed to compute the contribution in accordance with SECTION VII A., and will send copies of those records when the Authority asks for such records. The Authority has the right to examine and audit all records of the **Named Covered Party** which relate to this program, including claim files, ledgers, journals, registers, vouchers, contracts, disbursement records, and programs for storing and retrieving data. Information developed by the audit will be used to determine contributions. The Authority has the right to conduct audits during regular business hours

while this Memorandum is in force and within three years after the date of the final settlement of all **Claims. Suits** or any payments made under this Memorandum throughout the term of this Memorandum. The **Named Covered Party** shall reimburse the Authority for all expenses that the Authority reasonably and necessarily incurs in performing a field audit of any liability **Claims** or **Suits** against the **Named Covered Party**.

- O. Severability of Interests: The term **Covered Party** is used severally and not collectively, except when preceded by “a” or “any”. The limit of liability and **Retained Limit** as stated in the Declarations apply separately to each **Named Covered Party**, except as provided in Section III.A.2. above.
- P. 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.
- Q. 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.
- R. Termination: This Memorandum, and all coverage provided thereby, may be terminated at any time in accordance with the Bylaws of the Authority.



AMENDMENT TO SCHOOLS EXCESS LIABILITY FUND MEMORANDUM OF COVERAGE

EXCESS CHILDHOOD SEXUAL ASSAULT LIABILITY COVERAGE

ENDORSEMENT No. 3

All terms, conditions, exclusions and other limitations as set forth in the SELF Memorandum of Coverage for Public Educational Agencies Excess Liability Coverage apply, unless specifically changed herein by this Endorsement. This endorsement changes the SELF Memorandum. Please read it carefully.

The Memorandum is hereby amended:

SECTION I - COVERAGES

Section I, paragraph D. is hereby added:

- D. Subject to the **Retained Limit**, the Authority agrees to reimburse the **Named Covered Party** those sums for **Ultimate Net Loss** in excess of the **Retained Limit** which the **Named Covered Party** shall become legally obligated to pay as **Damages**, by reason of liability imposed by law because of negligent hiring, retention, or supervision of an **Employee** resulting in **Childhood Sexual Assault**, or failure to comply with any statute requiring the mandatory reporting of any known or suspected **Childhood Sexual Assault** by the **Employee** provided that the **Claim** or **Suit**, if no prior **Claim** or **Suit** has been tendered to the Authority, is first received by the **Named Covered Party** during the **Coverage Period** and reported to the Authority in compliance with SECTION VII, Conditions, paragraph I., subsection 3, below. For purposes of this Coverage, acts of **Childhood Sexual Assault** by an **Employee**, or **Employees**, that commenced while the victim(s) were minors but continue with sexual molestation or assault after the victim(s) reached the age of majority shall be considered part of the same **Childhood Sexual Assault**.



SECTION III - LIMITATIONS UPON THE AUTHORITY'S LIABILITY

Section III, paragraph E. is hereby added:

- E. The **Ultimate Net Loss** is the most the Authority will pay regardless of the number of **Named Covered Parties, Covered Parties, Claims, and Suits** arising out of the same or related **Childhood Sexual Assault**. All **Damages** arising out of **Childhood Sexual Assault** acts by the same person, or two or more persons acting together, during any period of coverage provided by the Authority to the **Named Covered Party** shall be considered one **Claim** or **Suit** and subject to one **Retained Limit** and Limit of Coverage, regardless of the number of **Childhood Sexual Assault** acts, the number of claimants, civil actions, claims, or persons acted upon, or the period of time over which such acts occur. If such **Claim** or **Suit** relating to the same **Employee(s)** involves more than one Member district, the provisions of Section III, paragraph A., 2. shall apply.

SECTION V - EXCLUSIONS

Section V, paragraph C.

- C. To any liability for **Damages** arising out of any act that is expected or intended from the standpoint of the **Covered Party**, including but not limited to assaults and batteries.

Subsection 2. Is hereby added:

2. This exclusion does not apply to **Childhood Sexual Assault**. See Exclusion KK.

Exclusion HH. does not apply to this endorsement.

Exclusion KK. is hereby added:

- KK. The following exclusions apply to **Claims** or **Suits** arising out of or in any way related to **Childhood Sexual Assault** or related series of **Childhood Sexual Assault** as described in Section III.E:

1. Any **Childhood Sexual Assault** that ended prior to the **Retroactive Date** shown in the Liability Declarations Page;
2. Any **Claim** or **Suit** which is made or **Child Sexual Assault** that takes place after expiration of the **Coverage Period** except as provided in Section VII., paragraph I.3.m.1 in this Endorsement, related to later **Claims** or **Suits** involving the same **Employee(s)** involved in a prior timely reported **Claim** or **Suit**;
3. Any **Claim** or **Suit**, notice of which was previously provided to the Authority prior to the **Retroactive Date** shown in the Liability Declarations Page;

4. Any **Claim** or **Suit**, notice of which was previously provided to the Authority after the **Retroactive Date** but prior to the **Coverage Period**;
5. Any **Childhood Sexual Assault** that is expected or intended by the **Covered Party**.

This exclusion does not apply to a **Claim** or **Suit** until it is determined by the Authority, in its sole discretion, that the **Claim** or **Suit** arose out of the **Covered Party's** intended or expected **Childhood Sexual Assault** act, which shall not be imputed to any other **Covered Party**.

6. Any **Claim** or **Suit** caused by or resulting from, in whole or in part, a failure to comply with any statute requiring the mandatory reporting of any known or suspected **Childhood Sexual Assault**.

This exclusion does not apply until it is determined by the Authority, in its sole discretion, that the **Claim** or **Suit** arose out of the **Covered Party's** intentional, knowing, or willful failure to comply with the statute, or a conscious disregard of the statutory reporting requirements, which shall not be imputed to any other **Covered Party**.

SECTION VI - DEFINITIONS

Definition Y. is hereby added:

- Y. **Retroactive Date** means: The date shown in the Declarations for **Childhood Sexual Assault**.

SECTION VII - CONDITIONS

SECTION VII, paragraph I. Notice of Accident or Occurrence, Claim, or Suit, subsection 3.:

3. Irrespective of the amount of **Damages** sought or the probable dollar value of the **Claim**, all **Claims** or **Suits** alleging **Childhood Sexual Assault** that are served upon the **Covered Party** shall be reported to the Authority no later than ninety (90) days after their receipt by the **Named Covered Party**, if they involve any of the following:

Subsection m. is hereby added:

m. **Childhood Sexual Assault.**

1. Any other **Claim** or **Suit** that later arises out of **Childhood Sexual Assault** by the same **Employee(s)** that was involved in the timely reported **Claim** or **Suit** shall also be reported in compliance with this paragraph, and will be deemed arising out of the same **Childhood Sexual Assault**.

SECTION VII, paragraph S. is hereby added:

- S. If either the **Named Covered Party** or the Authority cancels or does not renew this Memorandum for a reason other than non-payment of premium or non-compliance with the terms and conditions of this Memorandum the **Named Covered Party** may purchase, subject to the Authority's board approval, an extended period of time to report a **Claim** or **Suit** that is first made to the Authority after the expiration of the **Coverage Period** and arising out of an **Occurrence** involving **Childhood Sexual Assault** that first began after the **Retroactive Date** and ended prior to the expiration of this **Coverage Period** subject to the following conditions:
1. The **Named Covered Party** must make a written request for this extended time to report to the Authority within 30 days after the end of the **Coverage Period**.
 2. Coverage under this extended period of time to report shall not apply to any **Claim**, or **Suit** that has been previously reported to the Authority.
 3. If the Authority's board approves of and authorizes the issuance of any extended time to report, the additional premium for this extended period of time to report must be paid in full within thirty (30) days of the date the board authorizes the issuance notice to the **Named Covered Party**. Such premium is fully earned as of the date of issuance and no portion of this additional premium shall be returned for any reason to the **Named Covered Party**.
 4. Coverage under this extended period of time to report does not apply to any **Occurrence** that first began after the end of this **Coverage Period**, nor does coverage apply to any **Occurrence** that continues after the end of this **Coverage Period**.
 5. The coverage provided under this extended period of time to report is part of, and not in addition to, the **Ultimate Net Loss**, or any remainder thereof, as of the end of the **Coverage Period**.
 6. If any other coverage is available to the **Named Covered Party**, whether such coverage is called primary, excess, or pro rata with, other valid and collectible self-insurance, indemnity funds, risk-pool coverage, or insurance, or not, the coverage afforded by this extended period of time to report shall not apply.