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JOINT EXERCISE OF POWERS AGREEMENT

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Workers' Compensation Pool

Protected Insurance Program for  
Schools Joint Powers Authority (P.I.P.S)

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## **JOINT EXERCISE OF POWERS AGREEMENT**

**THIS AGREEMENT** is entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Sections 6500, et seq.) of the California Government Code, relating to the joint exercise of powers, between the public educational agencies signatory hereto, and also those which may hereafter become signatory hereto, for the purpose of operating an agency to be known and designated as The Protected Insurance Program For Schools Joint Powers Authority (hereinafter referred to as "the Authority").

### **WITNESSETH:**

**WHEREAS**, it is to the mutual benefit of the parties herein subscribed and in the best public interest of said parties to join together to establish this Joint Exercise of Powers Agreement to accomplish the purposes hereinafter set forth; and

**WHEREAS**, public education agencies are required by Division 4 of the California Labor Code, commencing with Section 3200, to maintain Workers' Compensation coverage for their employees; and

**WHEREAS**, the signatories hereto have determined that there is a need, by public education agencies, for a Joint Program to provide Workers' Compensation coverage for their employees; and

**WHEREAS**, Title 1, Division 7, Chapter 5, Article 1, of the California Government Code, commencing with Section 6500, authorizes joint exercise by two or more public education agencies of any power common to them; and

**WHEREAS**, the Legislature has authorized public education agencies in Section 3700(c) of the California Labor Code to enter into pooled self-insurance joint exercise of powers agreements as one of the ways in which they may satisfy their Workers' Compensation coverage obligation and California Government Code Sections 990.8(d) and 6512.2 allow joint powers authorities to purchase insurance or reinsurance of pooled Claim Liabilities; and

**WHEREAS**, it is the desire of the signatories hereto to jointly provide for a Joint Program for Workers' Compensation coverage for their mutual advantage and concern.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL ADVANTAGES TO BE DERIVED THEREFROM, AND IN CONSIDERATION OF THE EXECUTION OF THIS AGREEMENT BY OTHER PUBLIC AGENCIES, EACH OF THE PARTIES HERETO DOES AGREE AS FOLLOWS:**

## **1. CREATION OF THE JOINT POWERS ENTITY**

A joint powers entity, separate and apart from the public agencies signatory hereto, shall be and is hereby created and shall hereafter be designated as the Protected Insurance Program for Schools Joint Powers Authority (hereinafter referred to as the "Authority").

## **2. FUNCTIONS OF THE AUTHORITY**

A. The Authority is established for the purposes of administering this Agreement, pursuant to the provisions of the California Government Code, and of providing the services and other items necessary and appropriate for the establishment, operation and maintenance of a Joint Program for Workers' Compensation coverage for the public educational agencies who are Members thereof, and to provide a forum for discussion, study, development and implementation of recommendations of mutual interest regarding such program.

B. The functions of the Authority are:

- (1) To provide each member a Joint Program and system, for Workers' Compensation coverage for Workers' Compensation claims against the Members of the Authority in accordance with the Authority's Memorandum of Coverage and as such, to perform, or contract for the performance of, the financial administration, policy formulation, claim service, legal representation, safety engineering, and other services as necessary for the payment and handling of all Workers' Compensation claims against Members.
- (2) To pursue the Member's right of Subrogation against a third party when in the discretion of the Authority the same is appropriate. Any and all proceeds resulting from the assertion of such Subrogation rights shall accrue to the benefit of the Authority.

## **3. POWERS OF THE AUTHORITY**

The Authority shall have the power and authority to exercise any power common to the public agencies which are parties to this Agreement, provided that the same are in furtherance of the functions and objectives of this Agreement as herein set forth, including but not limited to the following:

- (A) To enter into contracts.
- (B) To establish appropriate levels of Workers' Compensation coverage, through self-insurance pooling or through re-insurance, as determined by the Authority

and to assess premiums/contributions from Members to provide such coverage.

- (C) To acquire, hold, and dispose of property, real and personal, all for the purpose of providing the membership with the necessary education, study, development, and implementation of a Joint Program for Workers' Compensation coverage including, but not limited to, the acquisition of facilities and equipment, the employment of personnel, and the operation and maintenance of a system for the handling of the Joint Program.
- (D) To incur debts, liabilities, and Obligations necessary to accomplish the purposes of this Agreement.
- (E) To receive gifts, contributions, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, associations, and any governmental entity.
- (F) To invest funds as deemed appropriate by the Authority, and as subject to law.
- (G) To provide a forum for discussion, study, development, and implementation of recommendations of mutual interest regarding other Joint Programs.
- (H) To sue and be sued in the name of the Authority.
- (I) To perform such other functions as may be necessary or appropriate to carry out this Agreement, so long as such other functions so performed are not prohibited by any provision of law.
- (J) To join other joint powers authorities to provide services and coverages to the Authority.

Pursuant to Section 6509 of the California Government Code, the exercise of the aforesaid powers of the Authority shall be subject to the restrictions upon the manner of exercising such powers by a public agency having the same status as a member agency or joint powers authority except as otherwise provided in this Agreement.

#### **4. GOVERNANCE**

##### (A) Board of Directors

- (1) The signatories to this Agreement hereby create and do establish a nine (9) person Board of Directors, comprised of representatives selected by Members of the Authority, which shall serve as the Governing Board of the Authority. The Board of Directors shall be empowered to effectuate the powers of the Authority. Directors of the Authority shall be employees of

Authority Members. A nominating committee shall be established to accept nominations for Director positions and to oversee Director elections.

- (2) The process for selecting Directors for the Authority shall be specified in the Authority's Bylaws. Directors shall serve staggered two-year terms, except for the initial term, wherein four (4) initial Directors shall serve one-year terms and five (5) initial Directors shall serve two-year terms. For the purpose of electing Directors only, Authority Members shall be allowed one vote for each full Ten Million Dollars (\$10,000,000.00) in Workers' Compensation payroll (based on the latest available full fiscal year's audited actuals) rounded to the nearest whole number. Votes can be cast cumulatively or split among more than one candidate. Vacancies for the Board of Directors shall be filled using a similar selection process. Four (4) of the Board of Director positions shall be reserved for and held by representatives of Community College District members.
- (3) Individual Directors shall have authority only when convened as a duly constituted Board. Directors shall represent the interests of the Authority as a whole, as well as the interests of the individual members. Each Director may cast a single vote on action items presented to the Board of Directors. Proxy and absentee votes shall not be permitted. A majority vote of the entire Board of Directors shall be required to take action. A quorum shall be necessary for the Authority to conduct business and shall consist of a majority of individual Directors.
- (4) The Board of Directors may conduct regular, adjourned regular, special, and adjourned special meetings as it deems necessary, provided, however, that it shall hold at least one regular meeting each fiscal year. The date, time, and place for each such regular meeting shall be fixed by resolution of the Board of Directors, which shall be provided to each member of the Authority. Special meetings of the Board of Directors may be held as needed, to be determined by the President of the Board. Notices of special meetings shall be sent to all members of the Authority, typically at least 72 hours and in no case less than 24 hours in advance of the beginning of such meetings. All meetings of the Board of Directors shall be called, held, and conducted in accordance with the terms and provisions of the Ralph M. Brown Act, Section 54950 et seq., of the California Government Code, as said Act may be modified by subsequent legislation.
- (5) Except as otherwise provided or permitted by law, all meetings of the Board of Directors shall be open and public. The Board of Directors shall cause minutes of its meetings to be kept, and shall promptly transmit to the Members of the Authority true and correct copies of the minutes of such meetings.

- (6) The Board of Directors shall designate by resolution a specific location at which it will receive notices, correspondence, and other communications, and shall designate the Secretary of the Board as the agent for purposes of receiving service of process on behalf of the Board of Directors. The Board of Directors shall comply with the requirements of Government Code Sections 6503.5 and 53051 as such provisions pertain to the preparation and filing of statements with the Secretary of State and with the County Clerk.
- (7) The Board of Directors may form, appoint, and dissolve ad hoc and standing committees comprised of Directors and representatives of Members, as determined necessary or useful by the Board of Directors.
  - (a) Notwithstanding the foregoing, there shall be irrevocably established a standing committee, referred to as the **Community College District Member Committee**.
    - (i) The composition of the Community College District Member Committee shall include the four (4) designated Directors from community college district members and five (5) non-Director representatives selected from among the community college district members of the Authority. The Community College District Member Committee may add in its discretion additional non-Director representatives to Committee membership. The Community College designated Directors shall select the non-Director community college district member representatives to serve on the Committee.
    - (ii) The Board of Directors shall delegate actual and effective decision-making authority to the Community College District Member Committee concerning all issues that affect only the community college district members of the Authority, including but not limited to review of base contribution rates, experience rating, additional assessments, and pro rata return of contributions, if any.
    - (iii) All meetings of the Community College District Member Committee shall be called, held, and conducted in accordance with the terms and provisions of the Ralph M. Brown Act, Section 54950 et seq., of the California Government Code.

- (b) Notwithstanding the foregoing, there shall be irrevocably established a standing committee, referred to as the **K-12 District Member Committee**.
    - (i) The composition of the K-12 District Member Committee shall include the five (5) designated Directors from K-12 district members and four (4) non-Director representatives selected from among the K-12 district members of the Authority. The K-12 District Member Committee may add in its discretion additional non-Director representatives to Committee membership. The K-12 designated Directors shall select the non-Director K-12 district member representatives to serve on the Committee.
    - (ii) The Board of Directors shall delegate actual and effective decision-making authority to the K-12 District Member Committee concerning all issues that affect only the K-12 district members of the Authority, including but not limited to review of base contribution rates, experience rating, additional assessments, pro rata return of contributions, if any.
    - (iii) All meetings of the K-12 District Member Committee shall be called, held, and conducted in accordance with the terms and provisions of the Ralph M. Brown Act, Section 54950 et seq., of the California Government Code.
  - (c) All Authority governance responsibilities other than those delegated in (a) and (b) above shall be retained by the Board of Directors.
- (8) The Authority shall operate on a July 1 to June 30 fiscal year. The Board of Directors shall adopt preliminary and final budgets showing projected fiscal year expenditures and revenue for the Authority. A copy of the budget shall be promptly transmitted to each of the members of the Authority.
- (9) Directors shall not receive a salary or compensation from the Authority for service on the Board of Directors, although as approved by the Board of Directors as a whole, individual Directors may be reimbursed for expenses incurred in serving on the Board of Directors.

## (B) Officers

- (1) The principal officers of the Authority and of the Board of Directors shall consist of a President, Vice President, Secretary, and Treasurer, who shall each be Directors and who shall be elected by the majority vote of the



Board of Directors to serve one-year renewable terms. Any person elected as an officer may be removed at any time, with or without cause, upon the majority vote of the Board of Directors. Vacancies shall be filled by majority vote of the Board of Directors.

- (2) Officers of the Authority shall have the responsibilities delegated to them as provided in the Bylaws and as prescribed by action of the Board of Directors.

## **5. BYLAWS**

- A. The Authority shall be governed pursuant to certain Bylaws, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, and by such amendments to the Bylaws as may from time to time be adopted. Wherever in this Agreement "Bylaws" are referred to, said Bylaws shall be those set forth in Exhibit "A", as may be amended. Each party to this Agreement agrees to comply with and be bound by the provisions of said Bylaws and further agrees that the Authority shall be operated pursuant to this Agreement and said Bylaws.
- B. Procedures for amending the Bylaws shall be as provided in the Bylaws so long as not inconsistent with this Agreement.

## **6. MEMBERSHIP IN THE AUTHORITY**

- A. Each party to this Agreement must be eligible for membership in the Authority as defined in this Agreement and shall become a Member of the Authority on the effective date of this Agreement, except as provided herein below. Each party which becomes a Member of the Authority shall be entitled to the rights and privileges of, and shall be subject to the obligations of, membership as provided in this Agreement and in the Bylaws.
- B. Upon two-thirds (2/3) vote of the Board of Directors, any Public Educational Agency that is not a party hereto but that desires to join the Authority, may become a Member of the Authority by executing a copy of this Agreement whereby said Public Educational Agency agrees to comply with the terms of this Agreement and of the Bylaws effective as of the date of such execution.

## **7. WITHDRAWAL FROM OR TERMINATION OF MEMBERSHIP**

- A. Any Member of the Authority that has maintained its membership in the Authority for at least three (3) complete fiscal years, as described in the Bylaws, may voluntarily terminate this Agreement as to itself only and withdraw from membership in the Authority. Such termination and withdrawal of membership shall become effective subject and according to the conditions, manner and means set forth in the Bylaws.
- B. A Member may be involuntarily terminated from the Authority upon two-thirds (2/3) vote of the Board of Directors, as provided in the Bylaws. Such removal from membership shall become effective subject and according to the conditions, manner and means set forth in the Bylaws.

## **8. TERMINATION OF AGREEMENT**

This Agreement may be terminated effective at the end of any fiscal year by the affirmative vote of three-fourths (3/4) of all the Members of the Authority, provided, however, that the Authority and this Agreement shall continue to exist for the purpose of disposing of all Obligations, distribution of assets, and all other functions necessary to conclude the affairs of the Authority.

## **9. DISPOSITION OF PROPERTY, FUNDS AND OBLIGATIONS**

- A. In the event of the dissolution of the Authority, the complete rescission, or other final termination of this Agreement by the public agencies then a party hereto, any property interest remaining in the Authority following a discharge of all Obligations shall be disposed of as provided for in the Bylaws.
- B. In the event a Member withdraws from this Agreement, any property interest of that Member remaining in the Authority following discharge of all Obligations shall be disposed of as provided for in the Bylaws.

## **10. AMENDMENTS**

This Agreement may be amended at any time by a subsequent written agreement signed by three-fourths (3/4) of all the Members of the Authority. Any such amendment shall be effective upon the date of final execution thereof by all the parties hereto. The establishment of the K-12 District Member Committee and the Community College District Member Committee shall be considered integral to the organization and creation of the Authority which may not be changed without the unanimous consent of all members.

## **11. SEVERABILITY**

Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or any other applicable law, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

## **12. LIABILITY**

- A. Pursuant to Section 6508.1 of the California Government Code, the debts, liabilities and Obligations of the Authority shall be debts, liabilities or Obligations of the parties to this Agreement.
- B. Pursuant to the provisions of Sections 895, et seq., of the California Government Code, the Members of the Authority are jointly and severally liable for any liability which is otherwise imposed by law upon any one of the Members or upon the Authority for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement. If a Member, or the Authority, is held liable upon any judgment for damages caused by such an act or omission and makes payments in excess of its Pro Rata Share on such judgment, such Member of the Authority is entitled to contribution from each of the other Members that are parties to the Agreement. A Member's Pro Rata Share shall be determined in the same manner as for the disposition of property and funds as provided in the Agreement and the Bylaws.
- C. The Authority may insure/reinsure itself, to the extent deemed necessary or appropriate by the Board of Directors, against loss, liability, and claims arising out of or connected with this Agreement.

## **13. ENFORCEMENT**

The Authority is hereby given authority to enforce this Agreement. In the event suit is brought upon this Agreement by the Authority and judgment is recovered against a Member, the Member shall pay all costs incurred by the Authority, including reasonable attorney's fees as fixed by the court.

## **14. MULTIPLE COUNTERPARTS**

The Agreement may be executed in multiple counterparts, each of which shall be considered an original.

## 15. DEFINITIONS

The terms used herein and in the Bylaws shall have the following meanings:

- A. "Authority" shall mean the public agency created by this Agreement.
- B. "Board of Directors" shall mean the governing board of the Authority established by the Bylaws to direct and control the Authority.
- C. "Claim Liabilities" shall mean those liabilities established by the Authority which represents Worker Compensation liabilities as respects to claims that have been incurred but unpaid and incurred but not reported.
- D. "Contribution" shall mean money paid by a Member to the Authority, or monies assessed a Member of the Authority.
- E. "Joint Program" shall mean the group purchasing of insurance/reinsurance or the setting aside of funds and reserves to pay for a self-insured retention or for losses not covered by insurance/reinsurance.
- F. "Member" shall mean an individual California school public agency/district, county office of education, community college district, regional occupational center or program, county superintendent of schools, or joint powers authority comprised solely of California school public agencies/districts.
- G. "Memorandum of Coverage" shall mean the description of the scope of protection provided to the Members for Worker Compensation claims.
- H. "Obligations" shall mean to include, but not limited to, all payments required by law together with all Claim Liabilities and any other legal obligations incurred by the Authority pursuant to this Agreement and Bylaws.
- I. "Workers' Compensation" shall mean coverage for Workers' Compensation claims filed by employees of Members.
- J. "Program Year" shall mean one year of the Joint Program, separate from each and every other Program Year and shall operate on a fiscal year from July 1st through June 30th, or as otherwise determined by the Board of Directors.
- K. "Pro Rata Share" shall mean each Member's Net Contribution Available For Pool Operations in proportion to the total of all Member's Net Contributions Available For Pool Operations for each Program Year.
- L. "Public educational agencies" means any public school district, community college district, county board of education/county superintendent of schools, regional occupational programs/centers, or other public entity providing

educational programs or services to the community, or such joint powers agencies/authorities consisting of one or more of the foregoing and serving the interests of the public entities detailed in this section.

- M. "Subrogation" shall mean the recovery of payments which the Authority has made on behalf of a Member. Subrogation monies received are the properties of the Authority and for the Basis of Contribution are credited to the account of the Member.

**16. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Authority and the Members, and as such, supersedes all prior agreements, understandings, negotiations and representations.

**17. CONTROLLING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**18. TERM OF THE AGREEMENT**

This Agreement shall be effective and binding on any signatory thereto upon execution. This Agreement shall continue in effect until lawfully terminated as provided herein and in the Bylaws. In the event of a reorganization of one or more of the public agencies participating in this Agreement, the successor or successors in interest to the assets and/or obligations of any such reorganized public agency shall succeed as a party or as parties to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their authorized officers thereunto duly authorized as set forth herein below.

Member: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_