

Memorandum of Coverage

No. SAP 7122 23

School Business Auto Liability And Physical Damage Program

This memorandum refers to Self-Insured Schools of California (SISC II) as the **authority** and the party named in Item A of the declarations as the **member**. The **authority** is a public joint powers authority formed pursuant to California Government Code sections 990.4, 990.8, and 6500 et seq. In consideration of the contribution paid by the **member** and the liability coverage provided by the **authority** below, they agree as follows:

I. Auto Liability Coverage

A. Terms of Coverage

1. The **authority** will pay all sums the **covered party** legally must pay as damages because of **bodily injury** or **property damage** to which this memorandum of coverage applies, up to the limit of liability stated in the declarations, caused by an **accident** which results from the ownership, operation, maintenance, or use of a covered **auto**.
2. The **authority** has the right and duty to select defense counsel and defend any **suit** against the **covered party** asking for damages arising out of an **auto accident**; however, there is no duty to defend **suits** for **bodily injury** or **property damage** not covered by this memorandum of coverage. The **authority's** duty to defend or settle ends when the **auto** liability coverage limit has been exhausted by payment of judgments or settlements.

B. Who Is Covered

1. The **covered party** named in the declaration
2. Other **covered parties** are:
 - a) Anyone else while using, with the permission of the **covered party**, any **owned auto, hired auto, borrowed auto** or **non-owned auto**, except:
 - (1) Anyone using a covered **auto** while engaged in the business of selling, repairing or parking autos, unless such business is owned by the **covered party**;
 - (2) Anyone using a **hired, borrowed** or **non-owned auto** not in the business of the **covered party**;
 - (3) Anyone other than an employee of the **covered party** while using a **borrowed or non-owned auto**;

(4) Any **auto** not owned by the **covered party** while used, with the permission of the owner, as a temporary substitute **auto** for an **owned auto** which is out of service because of:

- (a) Breakdown
- (b) Servicing
- (c) Repair
- (d) Loss or destruction

b) Anyone else who is not otherwise excluded under paragraph I.B.2 above and is liable for the conduct of the **covered party**, but only to the extent of that liability.

C. Exclusions

This memorandum of coverage does not apply to:

1. Any obligation for which the **covered party** may be held liable under any workers' compensation or disability law or under any similar law.
2. Any obligation of the **covered party** to indemnify another for damages resulting from **bodily injury** to any employee of the **covered party**.
3. **Bodily injury** to any employee or resident relative of the **covered party** arising out of and in the course of his or her employment.
4. **Property damage** to property:
 - a) Owned, used or transported by any **covered party**.
 - b) Rented, leased to, or in the charge, care, custody or control of any **covered party**.
5. Any **bodily injury** or **property damage** resulting from handling of property before it is moved into or onto the covered **auto** or after it is moved from the covered **auto** to its place of delivery.
6. **Bodily injury** or **property damage** arising out of the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants**:
 - a) Being transported, towed, or handled for movement, into, on or from a covered **auto**;
 - b) Otherwise in the course of transit by a **covered party**;
 - c) Being stored, disposed of, treated or processed in or on the covered **auto**;
 - d) Before they are moved by a covered **auto** from the place they are stored, during any movement by a covered **auto**, or after they are delivered, disposed of, or abandoned by the **covered party**.
7. Any **loss** cost or expense arising out of any governmental direction or request to monitor, clean up, remove, contain, treat, detoxify, or neutralize **pollutants**.
8. **Bodily injury** or **property damage** resulting from the hazardous properties of nuclear material, however manifested, and including, but not limited to, nuclear explosion, reaction, radiation, or radioactive contamination.

9. **Bodily injury** or **property damage** expected or intended from the standpoint of the **covered party**.
10. **Bodily injury** or **property damage** arising out of the use of any automobile used in or while in practice or preparation for pre-arranged racing, speed, demolition, stunting activity, auto rally or exhibition.
11. This coverage does not apply to any obligation of any **covered party** under any Uninsured Motorist or Underinsured Motorist law and to any sums you may be legally entitled to recover as damages from the owner or operator of an uninsured or underinsured **auto** because of **bodily injury** or **property damage** sustained by any **covered party**, caused by an occurrence and arising out of the ownership, maintenance or use of such **auto**. Use includes operation and loading and unloading.

D. Limit of Coverage – Liability

Regardless of the number of covered **autos**, **covered parties**, premiums paid or claims made or vehicles involved in the accident, the most the **authority** will pay for all damages resulting from one accident involving one **covered party** is the limit of coverage outlined in the declarations. All **bodily injury** or **property damage** resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one accident.

II. Auto Physical Damage Coverage

In consideration of the payment of premium, the **authority** agrees with the **covered party** as follows:

A. Coverage – The **authority** will pay for **loss** to a covered **auto** or its equipment under:

1. Comprehensive Coverage: From any cause except the covered auto's collision with another object or its overturn.
2. Collision Coverage: Caused by the covered auto's collision with another object or its overturn.

B. Exclusions

This memorandum of coverage does not apply to:

1. Wear and tear, freezing, mechanical or electrical breakdown;
2. Blowouts, punctures or other road damage to tires;
3. **Loss** caused by declared or undeclared war, insurrection, rebellion or their consequences, or any act or condition incident to war;
4. Loss caused by the explosion of a weapon or its consequences;
5. **Loss** caused by radioactive contamination, nuclear reaction or radiation, however caused;
6. Loss to sound reproducing equipment not permanently installed in a covered auto;

7. **Loss** to tapes or other sound reproducing devices designed for use with sound reproducing equipment;
8. **Loss** to any sound receiving equipment, citizens band radio, two-way mobile radio or telephone, or scanning monitor receiver, including its antennas and other accessories, unless they are permanently installed in the covered auto.

C. Limit of Liability – At its option, the **authority** may:

1. Pay for, repair or replace damaged or stolen property; or
2. Return the stolen property at the **authority's** expense and repair the damage caused by the theft.
3. The limit of liability is the smaller of the following amounts:
 - a) The actual cash value (ACV) of the stolen property at the time of **loss**; or
 - b) The cost of repairing or replacing the damaged or stolen property with other of like kind or quality.

D. Deductible: For each covered **auto**, the obligation to pay to repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown below.

| <u>Coverage</u> | <u>Deductible*</u> |
|------------------------|-------------------------------|
| Comprehensive Coverage | As stated in the Declarations |
| Collision Coverage | As stated in the Declarations |

*Applies per accident or **loss**.

E. Duties of **covered party** in the event of **loss**

To recover for **loss** to a covered **auto** or its equipment, the **covered party** must do the following:

1. Submit written notice of accident or **loss**, including the time, place and circumstance;
2. Permit the **authority** or its authorized representative to appraise the damaged property;
3. Promptly notify the police or appropriate civil authority if the covered **auto** or any of its equipment is stolen or vandalized;
4. Take reasonable steps to protect the covered **auto** from further **loss** following an **accident** or **loss**;
5. Submit a proof of **loss** as required by the **authority**.

F. Appraisal – If the **covered party** and the **authority** fail to agree as to the amount of **loss**, either may demand an appraisal of the **loss**. The **covered party** and the **authority** shall each select a competent appraiser and the appraisers shall select a competent disinterested umpire. The appraisers shall state separately the actual cash value (ACV) and the amount of **loss** and, failing to agree, they shall submit their differences to the umpire for a decision and award. The **covered party** and the **authority** shall each bear the cost of

their own selected, competent appraiser, and shall bear equally the cost of the umpire and other expenses of appraisal and award.

- G. No Benefit to Bailee - The **authority** will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Memorandum of Coverage.

III. Garage Coverage

A. Garage Liability Coverage

1. The **authority** will pay all sums the **covered party** legally must pay as damages because of **bodily injury** or **property damage** to which this coverage applies caused by an **accident** resulting from “garage operations”.
2. The **authority** has the right and duty to defend any **suit** asking for these damages. However, the **authority** has no duty to defend **suits** for **bodily injury** or **property damage** not covered by this memorandum of coverage. The **authority** has the right to investigate and settle any claim or **suit** it deems appropriate. The duty to defend or settle any claim or **suit** ends when the liability limit stated in the declarations has been exhausted by payment of judgments or settlements.

- a) Limits - as stated in the Declarations.
- b) Deductible - as stated in the Declarations.
- c) Covered Auto – Any **non-owned auto** left with the **covered party’s** “garage operations” for service, repair, storage or safekeeping.

3. Limit of Coverage – Liability

Regardless of the number of covered **autos**, **covered parties**, premiums paid or claims made or vehicles involved in the accident, the most the **authority** will pay for all damages resulting from one accident involving one **covered party** is the limit of coverage outlined in the declarations. All **bodily injury** or **property damage** resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one accident.

B. Garage-keepers Legal Liability Coverage

1. The **authority** will pay all sums the **covered party** legally must pay as damages for **loss** to a covered **auto** or **auto** equipment left in the care of the **covered party** for service, repair, storage, or safekeeping under **covered party’s** garage operations for:
 - a) Comprehensive coverage – for any cause except:
 - (1) The covered **auto’s** collision with another object; or
 - (2) The covered **auto’s** overturn.
 - b) Collision coverage caused by:
 - (1) The covered **auto’s** collision with another object; or

(2) The covered **auto's** overturn.

2. Regardless of the number of covered **autos**, claims made, or **suits** brought, the most the **authority** will pay for each **loss** at each location of garage operations subject to the applicable deductible is actual cash value not to exceed the limit of liability stated in the declarations.

C. Who is Covered

1. The **covered party** named in the declarations.

2. Other **covered parties** are:

- a) Anyone else while using, with the permission of the **covered party**, any owned, hired, borrowed or non-owned auto, except:
 - (1) Anyone using a covered **auto** while engaged in the business of selling, repairing or parking **autos** unless such business is owned by the **covered party**;
 - (2) Anyone using a **hired, borrowed or non-owned auto** not in the business of the **covered party**;
 - (3) Anyone other than an employee of the **covered party** while using a **borrowed or non-owned auto**;
 - (4) Any **auto** not owned by the **covered party** while used with the permission of the owner as a temporary substitute **auto** for an **owned auto** which is out of service because of:
 - (a) Breakdown;
 - (b) Servicing;
 - (c) Repair;
 - (d) **Loss** or destruction.

D. Exclusions

The **authority** will not pay for **loss** or damage caused by or resulting from the following:

- 1. **Bodily injury** or **property damage** expected or intended from the standpoint of the **covered party**, but this exclusion does not apply to **bodily injury** resulting from the use of reasonable force to protect persons or property.
- 2. Liability assumed under agreement or contract, but this exclusion does not apply to a covered contract.
- 3. Any obligation for which the **covered party** may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

4. **Bodily injury** to an employee arising out of and in the course of employment by the **covered party** or **bodily injury** to any fellow employee of the **covered party** arising out of and in the course of the fellow employee's employment.
5. Property owned by the **covered party**.
6. Any watercraft or aircraft.
7. **Property damage** to the parts actually worked on, or to the actual work performed by the **covered party**, including materials or equipment used in connection with such work.
8. Damages claimed for any **loss**, cost or expense incurred for the **loss** of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of the products or work performed or other property of which they form a part, if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of known or suspected defect, deficiency, inadequacy or dangerous condition in it.
9. **Bodily injury** or **property damage** due to war, whether declared or not, including civil war, insurrection, rebellion or revolution.
10. Wear, tear, freezing, mechanical or electrical breakdown.
11. Blowouts, punctures or other road damage to tires.
12. **Bodily injury** or **property damage** arising out of the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants**:
 - a) Being transported, towed or handled for movement into, on or from a covered **auto**;
 - b) Otherwise in the course of transit by a **covered party**;
 - c) Being stored, disposed of, treated or processed in or on the covered **auto**;
 - d) Before they are moved by a covered **auto** from the place they are stored, during any movement by a covered **auto**, or after they are delivered, disposed of or abandoned by the **covered party**.
13. Any **loss** cost or expense arising out of any governmental direction or request to monitor, clean up, remove, contain, treat, detoxify or neutralize **pollutants**.
14. Participating in any organized racing event.

E. Special Provisions

1. The most the **authority** will pay for **loss** to a covered **auto** is the lesser of:
 - a) The actual cash value of the damaged or stolen property as of the time of **loss**; or
 - b) The cost to repair or replace the damaged or stolen property with other property of like kind and quality.
2. If there is a disagreement as to the amount of **loss**, either the **authority** or the

covered party may demand an appraisal of **loss**. In this event, each party will select a competent appraiser. The two appraisers will select a competent, impartial umpire. The appraisers will separately determine the actual cash value and **loss**, and if they fail to agree, they will submit their differences to the umpire. The umpire will make a decision binding upon each party. Each party will:

- a) Pay its chosen appraiser's fees; and
 - b) Bear all other expenses of the appraisal and the fees of the umpire equally.
3. No one may bring legal action against the **authority** under this Garage Form until:
- a) There has been full compliance with all of the terms and conditions of this coverage; and
 - b) Under the liability coverage, it is agreed in writing, with the **authority's** consent, that the **covered party** has an obligation to pay, or until that obligation has been finally determined by judgment after trial. No one has the right under this coverage to bring the **authority** into any legal action to determine the **covered party's** liability.
4. If payment is made under this coverage form, the **authority** has the right to recovery and the **covered party** agrees to:
- a) Transfer all rights of recovery to the **authority** following payment of **loss**; and
 - b) Assist the authority in perfecting its right of recovery and do nothing following an accident or **loss** to impair those rights of recovery.

IV. Definitions Applicable to All Coverage Parts

- A. **Accident** means a fortuitous event, including the continuous or repeated exposure to the same conditions, resulting in **bodily injury** or **property damage** which was neither expected nor intended from the standpoint of the **covered party**.
- B. **Authority** means Self-Insured Schools of California (SISC II).
- C. **Auto** means a land motor vehicle, bus, **trailer** or semi-trailer designed and licensed for travel on public roads, but does not include **mobile equipment** or motorcycles.
- D. **Bodily Injury** means bodily harm, sickness or disease, including death or loss of services resulting from any of these.
- E. **Borrowed autos** means an **auto** borrowed by the **covered party** named in the declarations from someone else, including any employee of the **covered party** with the permission of the owner and while used solely in connection with the business of the **covered party** named in the declarations. A **borrowed auto** does not include an **owned**, leased, **hired**, rented or a temporary substitute **auto**.

- F. **Covered contract** means:
- a) A lease of premises;
 - b) A sidetrack agreement;
 - c) An easement agreement in connection with railroad crossings;
 - d) An indemnification of a municipality as required under ordinance;
 - e) That part of a contract or agreement pertaining to the covered garage business under which the tort liability of another is assumed by the **covered party** to pay damages because of **bodily injury** or **property damage** to a third party or organization if the contract is made prior to such **bodily injury** or **property damage**. Tort liability means liability that would be imposed by law in the absence of any contract or agreement.
- G. **Covered party** means the **covered party** named in the declarations and any party meeting the definition of “other **covered parties**” stated in Section I. B. 2 of this memorandum.
- H. **Garage operations** means the ownership, maintenance or use of locations for garage business and that portion of the roads or other accesses that adjoin these locations. Garage operations include the ownership, maintenance or use of the autos indicated in the declarations as covered **autos**. Garage operations also include all operations or incidental to a garage business.
- I. **Hired auto** means only those **autos** which the **covered party** named in the declarations rents or leases, but does not include **borrowed autos**.
- J. **Loss** means direct and accidental damage or **loss**.
- K. **Mobile equipment** means any of the following land vehicles:
- a) Specialized equipment such as bulldozers, power shovels, rollers, graders, scrapers, cranes, farm machinery, street sweepers, forklifts, pumps, generators, air compressors, drills or other similar equipment designed for use principally off public roads;
 - b) Vehicles designed for use principally off public roads;
 - c) Vehicles not required to be licensed.
- L. **Non-owned auto** means an **auto** which is not owned, leased, hired, rented or borrowed by the **covered party** named in the declarations which is used with the permission of the owner solely in connection with the business of the **covered party** named in the declarations, but does not include temporary substitute **autos**.
- M. **Owned auto** means **auto** legally registered to the **covered party** or **autos** as to which the **covered party** acquires ownership after the inception of the memorandum of coverage.
- N. **Pollutants** mean 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.
- O. **Property damage** means damage to or **loss** of use of tangible property.

P. **Suit** means a civil proceeding in which damages, because of **bodily injury** or **property damage** to which this coverage applies are alleged. **Suit** includes an arbitration proceeding alleging such damages to which the **covered party** must submit by court order or by the **authority's** consent or request.

Q. **Trailer** includes semi-trailers.

V. Conditions Applicable to All Coverage Parts

A. Territory: This memorandum of coverage covers **accidents** or **losses** which occur during the policy period in the United States of America or Canada.

B. Notice and Cooperation: In the event of an accident, claim or **loss**, the **covered party** will give prompt notice to the **authority** and do the following:

1. Advise how, when and where the **loss** or accident occurred;
2. Provide the names and addresses of all involved, including witness;
3. Cooperate with the **authority** or its authorized representative in the investigation, settlement or defense of claim or **suit**;
4. Promptly notify the police or appropriate civil authority of theft or vandalism of an **auto** or its equipment;
5. Assume no obligation, make no payment, incur no expense and make no commitment without prior consent of the **authority**;
6. Take all reasonable steps to protect the covered **auto** from further damage; and
7. Permit the **authority** to inspect the damage or **loss** to the covered **auto** prior to repair or disposition;
8. Cooperate with the **authority** or its designee in the investigation or defense of any claim or **suit**;
9. Immediately send to the **authority** any notices or legal papers received in connection with the accident or **loss**;
10. Provide information on where and how the accident or **loss** happened and assist in obtaining the names and addresses of injured persons and witnesses.

C. Voluntary Payments: No **covered party** shall, except at their own cost, voluntarily make any payment, assume any obligation or incur any expense without the consent of the **authority**.

D. Other Insurance: When this coverage form and any other coverage form or policy covers an accident, the **authority's** coverage shall be excess over any other such insurance or coverage, whether primary, excess, contingent, or on any other basis; provided such other insurance or coverage is not written specifically to apply as excess over the coverage provided by this memorandum.

When this coverage is excess, the **authority** shall have no duty to defend the **covered party** against any **claim** or **suit** if any other coverage or insurer has a duty to defend the **covered party** against that **claim** or **suit**.

When the coverage provided by this memorandum is excess, the **authority** shall pay only its share of the loss, if any, that exceeds the sum of the total amount that all such other insurance or coverage forms would pay for the loss in the absence of the coverage provided by this memorandum.

E. Right to recover: If the **authority** makes any payment on behalf of the **covered party** and is entitled to recover what was paid from other responsible parties, the **covered party** must transfer to the **authority** all such rights of recovery, assist the authority in perfecting such rights and do nothing to jeopardize those rights.

F. Arbitration:

1. In the event that a question or dispute arises between the **authority** and a **covered party** concerning the applicability of the coverage provided by this memorandum to a **loss** by or **claim** or **suit** against against the **covered party**, the **covered party** or the **authority** may make a written request for arbitration. When such a request is made, arbitration, as provided herein, shall be a condition precedent to the filing of any civil action concerning or in any way arising out of such question or dispute;
2. Upon written request of any party, each party shall choose an arbitrator and the two chosen shall select a third arbitrator (judge). If either party refuses or neglects to appoint an arbitrator within thirty (30) days after receipt of the written request for arbitration, the requesting party may appoint a second arbitrator. All arbitrators appointed by any party shall be disinterested persons experienced and knowledgeable in the field of insurance or Joint Powers Authorities and in all cases shall be disinterested in the outcome of the arbitration. If the two arbitrators fail to agree on the selection of a third arbitrator (judge) within thirty (30) days of their appointment, the covered party shall petition JAMS, Sacramento, California to appoint the third arbitrator (judge). If the JAMS, Sacramento office fails to appoint the third arbitrator (judge) within thirty (30) days after it has been requested to do so, either party may request the Superior Court of the State of California, County of Sacramento, to appoint the third arbitrator pursuant to California Code of Civil Procedure § 1281.6. The third arbitrator (judge) shall be a retired justice or judge of the California Supreme Court, the California Court of Appeal, the California Superior Court, the United States District Court, Northern, Eastern, Central or Southern Districts of the California or of the Ninth Circuit Court of Appeal, who is experienced and knowledgeable in the field of insurance or Joint Power's Authorities. Each party will bear the expenses it incurs, and the covered party and the authority will bear the expense of the third arbitrator equally.

Local rules of law as to procedure and evidence will apply. A decision agreed to by two (2) of the arbitrators will constitute a determination of the matter in question or dispute.

3. No action shall lie against the **authority** 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 the claim of a third party shall have been finally determined either by judgment against the **covered party**, after actual trial, or by written agreement of the **covered party**, the claimant, and the **authority**. Said judgment shall not be deemed final, if an appeal is filed 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 bring an action against the **authority** or to join the **authority** as a co-defendant in any action against the **covered party** to determine such **covered party's** liability.

- G. Legal action against the **authority**: No legal action may be brought against the **authority** until it agrees in writing that there is an obligation to pay or until the amount of that obligation has been finally determined by a judgment after trial. No person or organization has any right under this memorandum of coverage to bring the **authority** into any action to determine the liability of the **covered party**.
- H. Statutory provision: Terms of this memorandum of coverage which are in conflict with the statutes of the State of California are amended to conform to such statutes.
- I. Bankruptcy: Bankruptcy or insolvency of the **covered party** will not relieve the **authority** of any obligations under this coverage form
- J. Right to modify: The authority reserves the right to revise, update and/or modify the terms and conditions of this memorandum from time to time and throughout the term of the **coverage period** as may seem necessary and reasonable to the authority due to an amendment to or repeal of any of the provisions of law referred to herein or for any other reason. When it shall do so, the authority shall provide appropriate notification to members through appropriate bulletins and/or memoranda outlining the changes.

VI. Supplemental Coverages

The **authority** will pay for the personal property of the **covered party** up to a maximum amount of \$1,000 valued at actual cash value. In this instance personal property refers to property that is owned, borrowed or leased by the **covered party**. This coverage part does not apply to the personal property of any employee of the **covered party**.

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