



# CSURMA Liability Program

## COVERAGE SUMMARY

**INSURER:**

California State  
University Risk  
Management Authority  
(CSURMA) Self Insured  
Program

**POLICY TERM:**

July 1, 2015 to  
July 1, 2016

**MOC NO:**

CSU-LIAB-1415

**QUESTIONS:****Robert Leong**

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**NAMED COVER ENTITY:**

California State University Risk Management Authority (CSURMA)

**COVER MEMBERS:**

1. California State University, Bakersfield
2. California State University, Chancellor's Office
3. California State University, Channel Islands
4. California State University, Chico
5. California State University, Dominguez Hills
6. California State University, East Bay
7. California State University, Fresno
8. California State University, Fullerton
9. Humboldt State University
10. California State University, Long Beach
11. California State University, Los Angeles
12. California Maritime Academy
13. California State University, Monterey Bay
14. California State University, Northridge
15. California State Polytechnic University, Pomona
16. California State University, Sacramento
17. California State University, San Bernardino
18. San Diego State University
19. San Francisco State University
20. San Jose State University
21. California Polytechnic State University, San Luis Obispo
22. California State University, San Marcos
23. Sonoma State University
24. California State University, Stanislaus

**ADDITIONAL INSURED:**

Any affiliate institution to whom the Named Insured is obligated by written agreement to provide such coverage as is afforded by this policy.

**LIMITS:**

|             |                                                                                                                          |
|-------------|--------------------------------------------------------------------------------------------------------------------------|
| \$5,000,000 | Ultimate Net Loss for Each Member During the Policy Period; including Bodily Injury, Property Damage and Personal Injury |
| \$5,000,000 | Completed Operations Hazard – Each Occurrence                                                                            |
| \$5,000,000 | Unfair Employment Practices Liability – Each Occurrence                                                                  |
| \$5,000,000 | Errors & Omissions, including Directors & Officers Liability – Each Occurrence                                           |
| \$5,000,000 | Employee Benefits Liability                                                                                              |
| \$5,000,000 | Medical Mal Practice                                                                                                     |

While we believe this Summary of Insurance fairly represents the terms, conditions and exclusions found in your insurance policies, in the event of any differences between the policies themselves and this summary, the policy provision will direct any resolution. This summary is not intended to replace or supersede any of your insurance contracts.

# CSURMA Liability Program

## COVERAGE SUMMARY

### SELF-INSURED RETENTION:

|           |                                                                                                                                     |
|-----------|-------------------------------------------------------------------------------------------------------------------------------------|
| \$35,000  | Per Occurrence for Dorm Revenue Fund facilities, Student Health Center, Parking, and Continuing Education operations (All Campuses) |
| \$35,000  | Per Occurrence For Only (CSU Bakersfield, CSU Channel Islands, California Maritime Academy, CSU Monterey Bay, CSU Stanislaus)       |
| \$50,000  | Per Occurrence For Only (Humboldt State University, CSU San Bernardino, CSU San Marcos)                                             |
| \$100,000 | Per Occurrence For Only (CSU Chancellor's Office, CSU Dominguez Hills, Sonoma State University)                                     |
| \$250,000 | Per Occurrence For Only (CSU Chico, CSU Fresno, CSU Fullerton, CSU Long Beach, CSU Los Angeles, CSPU Pomona, CPSU, San Luis Obispo) |
| \$500,000 | Per Occurrence For Only (CSU East Bay, San Francisco State University)                                                              |
| \$750,000 | Per Occurrence For Only (CSU Northridge, San Jose State University)                                                                 |
| \$900,000 | Per Occurrence For Only (CSU Sacramento, San Diego State University)                                                                |

### COVERED PARTIES:

1. Named Member
2. Elected / Appointed Officials; past or present
3. Employees
4. Volunteers (appointed), including students in community service programs for college credit – see Conditions in Memorandum of Coverage
5. Students in nursing training
6. Additional Covered Party (Additional Insured): automatic if required by contract – see conditions in Memorandum of Coverage

### COVERAGES:

1. General Liability
2. Errors & Omissions, including Directors & Officers Liability
3. Employment Practices Liability including “back wages” but no including “forward wages”
4. Discrimination
5. Eminent Domain
6. Inverse Condemnation
7. Mobile Equipment
8. Sexual Harassment
9. Trampolines
10. Watercraft Liability, under 50 feet, or while on shore
11. Management of Construction Projects: covered for projects managed by the Chancellor's Office, campus or both

# CSURMA Liability Program

## COVERAGE SUMMARY

### EXCLUSIONS:

1. Aircraft: excluded, except static aircraft
2. Airfield
3. Asbestos: covered
4. Assault and Battery
5. Automobiles: excluded, except parking operations (NOTE: auto liability covered separately by the state's self-insurance plan)
6. Contractual Obligation; except for liability assumed in a contract or agreement
7. Electronic Communication; if known to be false
8. Employment Benefits (workers' compensation, disability benefits, etc.)
9. Employment Liability (bodily injury to any employee)
10. Fiduciary Liability; excluded, but will defend
11. Intentional Conduct
12. Lack of Occurrence
13. Lead
14. Medical Malpractice; limited coverage for your employees who are nurses, paramedics, EMTs, speech therapists, speech pathologists, nutritionists, psychologists, audiologists, or physical therapists
15. Nuclear Energy & Material: excluded, except use of radioactive materials in an instructional lab or sponsored research activity
16. Pollution: excluded, except "hostile" fire or if "sudden & accidental"
17. Refund of Taxes, Fees or Assessments, excluded but will defend
18. Silica
19. Subsidence
20. War
21. Watercraft, over 50 feet, or not on shore

### HOW TO REPORT A CLAIM:

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Associate Director of Systemwide Risk Management & Public Safety  
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Risk Management Administrative Analyst  
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E-mail: [rskidmore@calstate.edu](mailto:rskidmore@calstate.edu)

### PUBLIC ENTITY EXCESS LIABILITY:

Carrier: Ironshore Specialty Insurance Company  
Policy No: 000541303  
Limits: \$5,000,000 Excess of \$5,000,000

Carrier: Allied World Assurance Company  
Policy No: 03057227  
Limits: \$10,000,000 Excess of \$10,000,000

**CALIFORNIA STATE UNIVERSITY  
RISK MANAGEMENT AUTHORITY  
(CSURMA)**

**MASTER COVERAGE DOCUMENTS**

**GENERAL LIABILITY and  
ERRORS and OMISSIONS**

**Adopted by Board of Directors  
May 9, 2014 – Effective July 1, 2014**

# **GENERAL LIABILITY and ERRORS and OMISSIONS COVERAGE TERMS**

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**CALIFORNIA STATE UNIVERSITY  
RISK MANAGEMENT AUTHORITY**

**COVERAGE TERMS AND CONDITIONS  
FOR  
GENERAL LIABILITY and  
ERRORS and OMISSIONS COVERAGE**

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

California State University Risk Management Authority, hereinafter called the CSURMA, a California public entity formed pursuant to the State of California Government Code Section 6500 *et seq.*, 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 as described in this document.

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

**SECTION I – DEFINITIONS**

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

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**.

- B. **Aircraft** means a vehicle designed for the transport of persons or property principally in the air, but does not include an **unmanned aerial vehicle**.

- C. **Automobile** means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment, but **automobile** does not include mobile equipment.
1. **Owned automobile** - an automobile owned by the **Member**;
  2. **Hired automobile** - an automobile used under contract on behalf of, or loaned to the **Member** provided such automobile is not owned by or registered in the name of the **Member** or **Covered Individuals**;
  3. **Nonowned automobile** - any other **automobile**.
- D. **Bodily Injury** means **bodily injury**, sickness or disease sustained by any person, which occurs during the policy period, including care, loss of service or death at any time resulting therefrom.
- E. **Covered Individuals** means persons who are past or present elected or appointed officials, employees or appointed volunteers of the **Member**, whether or not compensated while acting for or on behalf of the **Member**, including while acting on outside boards at the direction of the **Member**. **Covered Individuals** do not include employees of nonmember organizations, including, but not limited to auxiliary organizations, alumni associations and volunteer university support groups.
- F. **Covered Party** means the entities or individuals named in Section IV – COVERED PARTIES as being covered by this document.
- G. **Deductible** - The amount of each **Ultimate Net Loss** which the **Member** has to pay irrespective of the amount of the **Ultimate Net Loss** as shown on the declaration page of this document.
- H. **Discrimination**, as respects **Employment Practices Liability**, means the actual or alleged failure to employ, failure to promote, or the demotion or transfer of any employee because of race, color, creed, national origin, sex, sexual orientation or preference, religion, age, gender, disability or handicap or pregnancy.
- I. **Employee**, as respects **Employment Practices Liability** and when appearing in boldface type in this Memorandum, means any present or former employee of the named **Covered Party** or any applicant for employment by the named **Covered Party**.
- J. **Employment Practices Liability** means liability for actual or alleged
1. Wrongful Termination by a **Covered Party** of an **Employee**;
  2. Discrimination by any **Covered Party** against an **Employee** of the **Covered Party**;  
or
  3. Sexual harassment by a **Covered Party** or an **Employee** of the named **Covered Party**.

- K. **Errors and Omissions** means any actual or alleged misstatement or misleading statement or act or omission or neglect or breach of duty or lack of ordinary skill in the performance of a professional act including misfeasance, malfeasance or nonfeasance by covered individuals individually or collectively in the discharge of their duties for the **Member**, or any matter claimed against them solely by reason of their being or having been public officials.
- L. **Medical Malpractice** means injury arising out of the rendering of or failure to render, during the coverage term professional services by the **Covered Individual's** profession as a physician, surgeon, or dentist or as a nurse, medical technician, hygienist, etc. acting within the control or supervision of a covered physician, surgeon or dentist.
- M. **Member** means the Member named in the Declarations.
- N. **Occurrence** with respect to **bodily injury** or **property damage** means an accident or event, including continuous or repeated exposure to conditions, which, during the policy 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 **Member**.
1. With respect to **Personal Injury: Occurrence** means any of the following offenses described in the definition of **Personal Injury** in this Section I - Definitions, that is committed during the coverage period.
  2. With respect to **Medical Malpractice: Occurrence** means any of the conduct described in the definition of **Medical Malpractice** in this Section I - Definitions, that is committed during the coverage period.
  3. With respect to **Errors and Omissions: Occurrence** means any of the conduct described in the definition of **Errors and Omissions** in this Section I - Definitions that is committed during the coverage period.
- O. **Personal Injury** means any of the following offenses:
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. **Employment Practices Liability**.
- P. **Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. The term **pollutant** as used herein is not defined to mean potable water or agricultural water or water furnished to commercial users.



Q. **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.

R. **Ultimate Net Loss** as contained in the Declarations of this document means the amount of paid claims and liability for damages for which the **Member** is responsible on a per **occurrence** basis, and which the **Member** actually pays in cash, after making proper deduction for all recoveries and salvages collectible. **Ultimate Net Loss** includes defense attorney fees and costs of the **Member** in defense of the claim and also includes court costs, allocated loss adjustment expenses, and other associated costs and expenses, but does not include any salaries of the **Member's** regular employees. **Ultimate Net Loss** includes retrospective benefits ("back wages"), but does not include prospective benefits ("forward wages"), payable as a part of a claim for **Employment Practices Liability** covered under this document. **Ultimate Net Loss** shall not include any of the above-described expenses for damages against a **Member** or defense expenses incurred because of liability excluded by this document.

S. The following definitions are applicable only to Exclusion L:

1. **Hazardous Properties** include radioactive, toxic or explosive properties;
2. **Nuclear Material** means **source material**, **special nuclear material** or **byproduct material**;
3. **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;
4. **Spent Fuel** means fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
5. **Waste** means any **waste** material, (a) containing a **byproduct material** and (b) resulting from the operation by any person or organization of any **nuclear facility** included within the definition of **nuclear facility** under paragraph a. or b. thereof;
6. **Nuclear Facility** means:
  - a. Any nuclear reactor.
  - b. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing **spent fuel**, or (3) handling, processing or packaging **waste**.
  - c. Any equipment or device used for the processing, fabricating or alloying of special **nuclear material** if at any time the total amount of such material in the custody of the **Covered Party** at the premises where such equipment or device is located consists of or contains more than 25 grams plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.

- d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste** and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.
- 7. **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.
- 8. With respect to injury to or destruction of property, the work injury or destruction includes all forms of radioactive contamination of property.
- T. **Unmanned Aerial Vehicle** (aka: “Drone”) means any vehicle without a human pilot aboard capable of flight principally in the air that is designed for the transport of equipment and weighing no more than 100 lbs. maximum take-off weight (MTOW) for the purpose of aerial surveillance.

## SECTION II – COVERAGES

Subject to the **Member’s Deductible**, CSURMA agrees:

To pay on behalf of the **Member** those sums for **Ultimate Net Loss** which the **Member** shall become obligated to pay as damages by reason of liability imposed by law, or liability for **bodily injury, property damage and personal injury** of others assumed by contract, *or* because of **bodily injury, property damage, errors and omissions, medical malpractice, and personal injury**, arising from operations of the **Member** to which this document applies, caused by an **occurrence**.

## SECTION III – LIMITATIONS UPON CSURMA’S LIABILITY

Regardless of the number of (1) persons or entities covered under this document, or (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought because of injury or damage, the CSURMA’s liability for damages is limited as follows:

The CSURMA’s liability for damages shall be only for the **Ultimate Net Loss** less the amount of the **Member’s** selected **Deductible** not to exceed the limit of coverage shown in the document, as the result of any one **occurrence**. There is no limit to the number of **occurrences** during the document period for which claims may be made.

The **Member’s Deductible** applies to each such **occurrence** without regard to exclusions, limitations or exhaustion of aggregate limits in underlying or contributing coverage, insolvency of any insurance carrier or insurance pool, or any circumstances wherein underlying or contributing coverage is uncollectible.

For the purpose of determining the CSURMA limit of liability and the **Deductible** of the **Member**, all damages arising out of continuous repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

This Memorandum applies to **occurrences**, which take place anywhere during the specified coverage period stated in the Declarations of this Memorandum.

## SECTION IV – COVERED PARTIES

The parties covered by the CSURMA:

- A. The **Member** named in the selected deductible form.
- B. The following individually and collectively, when acting solely within the scope of their duties, office, or employment for the named **Member**:
  - 1. Members of the Board of Trustees.
  - 2. Officers.
  - 3. Employees.
  - 4. Individuals appointed and acting as volunteers. Volunteers include students who are enrolled in community service programs, but only while such students are performing services for credit that are valid for the student to meet the university's requirements for college graduation.
- C. **Additional covered parties** as defined in Section I, A. of this document.
- D. **Covered individuals** as defined in Section I, E of this document.

## SECTION V – EXCLUSIONS

CSURMA shall not be obligated to make any payment or defend any lawsuit in connection with any claim made against the **Member** as follows:

- A. For injuries or damages which do not arise out of an **occurrence** as defined in this document;
- B. For any obligation for which the **Member** may be held liable under any Workers' Compensation, Employer's Liability, health benefits law or disability benefits law or under any similar law, plan or agreement. benefits;
- C. For liability for damages arising out of the ownership, maintenance, operation, use, entrustment to others, loading or unloading of any watercraft owned or operated by or rented or loaned by any **Member**, but this exclusion does not apply to:
  - 1. watercraft while ashore on premises owned or rented by **Member**;
  - 2. watercraft less than fifty (50) feet in length at the waterline.
- D. For any liability arising out of use or entrustment to others of any **automobile** owned or operated by or rented or loaned to any **Member**, but this exclusion does not apply to parking an **automobile** on or on the ways next to premises the **Member** owns or rents, provided the **automobile** is not owned by or rented or loaned to the **Member**.
- E. For any liability for damages to or destruction of any **automobile** owned by, rented to, leased to or in charge of the **Member**;

F. For any liability:

1. based on the **Member's** obtaining of financial gain to which the **Member** was not legally entitled.
2. arising out of the willful violation of a penal code or ordinance committed by or with knowledge of consent of any **Member, Covered Individual or Additional Covered Party**; except that any act pertaining to any one **Member** shall not be imputed to any other **Member** for the purpose of determining the application of this exclusion;

G. For any liability for damages for either the actual or alleged use, misuse, mismanagement or loss of funds, grants, or appropriations nor for the return of such funds, grants, or appropriations for any reason. However, the CSURMA shall defend any action or suits brought against any **Member** for such causes of action.

The CSURMA shall defend a Covered Individual for such causes of action unless their alleged conduct was outside the scope of employment.

H. For any liability for damages, loss, cost, or expense:

1. Arising out of, or that would not have occurred in whole or in part but for, the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time, however, wherever or whenever occurring and by whomever caused or alleged to have been caused;
2. Arising out of any claim, suit, governmental direction or request, request, demand or order, whether by or on behalf of a governmental authority or not, that any **Covered Party** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to, or assess the effects of pollution or **pollutants**:
  - a. At any premises owned, rented or occupied by the **Covered Party**;
  - b. At or from any site or location used by or for the **Covered Party** or others for the handling, storage, dispersal, processing or treatment of waste;
  - c. Which are at any time transported, handled, stored, treated or disposed of; or processed as waste by or for the **Covered Party** or any person or organization for whom the **Covered Party** may be legally responsible; or
  - d. At or from any site or location on which the **Covered Party** or any contractors or subcontractors working directly or indirectly on the **Covered Party's** behalf are performing operations:
    - 1) If the **pollutants** are brought on or to the site or location in connection with such operation; or
    - 2) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the **pollutants**.

Subparagraph (a) and (d.1.) do not apply to bodily injury of property damage arising out of heat, smoke or fumes from a "hostile fire."

As used in this exclusion, a "hostile fire" means one, which becomes uncontrollable or breaks out from where it was intended to be.

Provided, however, that this exclusion does not apply to:

- 1) Discharge, dispersal, release or escape directly caused by hostile fire, explosion, lightning, windstorm, vandalism or malicious mischief; or
- 2) personal injury or property damage which is within the product hazard or the completed operations hazard; or
- 3) a discharge, dispersal, release or escape of pollutants that meets all of the following conditions:
  - a) It was accidental and was neither expected nor intended by the **Member**.
  - b) It was instantaneous and was demonstrable as having commenced at a specific time and date during the term of this coverage.
  - c) Its commencement became known to the **Member** within seven (7) days.
  - d) Its commencement was reported in writing within twenty (20) days of becoming known to the **Member**.
  - e) Reasonable effort was expended by the **Member** to terminate the situation as soon as conditions permitted.

Nothing contained in this exclusion shall operate to provide any coverage with respect to:

- 1) Any site or location used by others on the **Member's** behalf, principally for the handling, storage, disposal, dumping, processing or treatment of waste material.
  - 2) Any fines, penalties or exemplary damages.
  - 3) Any clean up costs ordered by the Superfund program, or any federal, state or local governmental authority. However, this specific exclusion (3) shall not serve to deny coverage for third party clean up costs otherwise covered by this endorsement simply because of the involvement of a governmental authority;
  - 4) Acid rain;
  - 5) Clean up, removal, containment, treatment, detoxification or neutralization of **pollutants** situated on premises you currently own, rent or occupy at the time of the actual discharge, dispersal, seepage, migration, release or escape of said **pollutants**; or
  - 6) Water **pollution** caused by oil or by its derivatives.
- I. For any liability for damages arising out of the ownership, maintenance, loading or unloading, use or operation of any aircraft capable of flight, airfields, runways, hangars, buildings or other properties in connection with aviation activities. This exclusion does not apply to static aircraft, or to an **unmanned aerial vehicle**.
  - J. For liability for damages arising out of in-flight operations of **aircraft** by or in the interest of the **Covered Party** except with respect to operations performed by scheduled common carriers or operations of **aircraft** owned or operated by the United States government or the State of California. The term in-flight as used in the foregoing means the period from the time the **aircraft** moves forward in taking off or in an attempt to take off until it has completed its landing run.

- K. For any liability for damages assumed by the **Covered Parties** under any construction project contracts managed by the Chancellor's Office of the California State University or managed by a campus of the California State University, or both. However, CSURMA shall defend any action or suits brought against any **Member** for such causes of action.
- L. 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**.
- However, this Exclusion shall not apply liability arising from the use of radioactive materials in instructional laboratories operated by the California State University and/or research activities sponsored by the California State University.
- M. To any liability for damages for or defense of non-tortious causes of action related to breach of contract proceedings.
- N. To any liability for damages arising from any claim, suit or demand arising from allegations related to land use, land planning or land development. However, CSURMA shall defend a **Member** to an amount not exceeding \$1,000,000.00 **Ultimate Net Loss** for such liability.

## SECTION VI – CONDITIONS

### A. Notice of Accident or Occurrence, Claim or Suit:

1. In the event of any **occurrence**, written notice containing particulars sufficient to identify the **Covered Party** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the **Covered Party** and of available witnesses, shall be given by or for the **Covered Party** to the CSURMA or any of its authorized agents as soon as practicable.
2. If claim is made or suit is brought against the **Covered Party**, the **Covered Party** shall be obligated to forward to the CSURMA every demand, notice summons or other process received by it or its representatives.
3. The **Covered Party** shall cooperate with the CSURMA and upon its request, assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Covered Party** because of all damages with respect to which coverage is afforded under this Memorandum; and the **Covered Party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Covered Party** shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense; however, in the event that the amount of **Ultimate Net Loss** becomes certain either through trial court judgment or through agreement among the **Covered Party**, the claimant and the CSURMA, then the **Covered Party** may pay the amount of judgment or compromise to the claimant or affect the settlement and, upon such submission of due proof thereof, the CSURMA shall reimburse the **Covered Party** for that part of such payment which is in excess of the **Deductible**, or will, upon request of the **Covered Party** make such payment to the claimant on behalf of the **Covered Party**.
4. The CSURMA shall be entitled to complete access to the **Covered Party's** claim file, the defense attorney's complete file, and all investigation material and reports, including all evaluations and information on negotiations. The **Covered Party** shall be responsible to report on the progress of the litigation and any significant developments at least quarterly to the CSURMA, and to provide the CSURMA with simultaneous copies of all correspondence provided to the **Covered Party** in which a demand for an amount that is within the CSURMA's layer of coverage is made.

B. Statutory Provisions: Terms of this document which are in conflict with the statutes of the State of California are amended to conform to such statutes.

C. Other Coverages: It being recognized that similar coverage contracts contain Other Insurance Clauses, it is therefore intended, understood and agreed that:

1. Notwithstanding the terms and conditions of any Other Insurance Clause or Clauses in any policy or policies where other coverage is available to the **Covered Party** (whether such policy is issued to the **Covered Party** or extends to it as employer, employee, or agent in any other capacity), the coverage afforded hereunder is intended to be, and shall be, excess coverage; and under no circumstances shall the coverage afforded hereunder be considered pro rata, concurring or co-existent.
  2. If any other coverage is available to the **Covered Party**, whether such coverage is called excess over, or pro rata with other valid and collectible 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 document.
- D. Severability of Interests: The term **Covered Party** is used severally and not collectively. The limit of liability and **Deductible** as stated in the Declarations apply separately to each **Covered Party**.
- E. Cumulation of Limits: An **occurrence** with a duration of more than one coverage period shall be treated as a single **occurrence** arising during the coverage period when the **occurrence** ends (which shall be in no event deemed later than the date on which the claimant files suit), and under no circumstances shall the fact that said **occurrence** has a duration of more than one coverage period entitle a **Covered Period** to more than one limit of coverage.
- F. Changes: This document may not be amended or changed in any respect, nor shall any provision of this document be deemed to have been waived by the CSURMA, unless and until a written endorsement which expressly so amends this document or waives a provision thereof has been duly issued by the CSURMA and made a part of this document.
- G. Subrogation: In the event of any payment under this document, the CSURMA shall be subrogated and otherwise entitled to all rights of recovery therefore against any person or organization, and, the **Covered Party** shall execute and deliver all instruments and papers and do whatever else is necessary to transfer and secure such rights to the CSURMA. The **Covered Party** shall do nothing at any time to prejudice such rights.
- H. Arbitration:
1. In the event that a question or dispute arises between CSURMA and a **Covered Party** concerning the applicability of the coverage provided by this document to an occurrence or claim against the **Covered Party**, either the **Covered Party** or CSURMA may make a written request for arbitration. Where such a request is made, arbitration 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. If the **Covered Party** and CSURMA fail to agree upon an arbitrator, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request selection by a judge of a court having jurisdiction. Each party will bear the expense it incurs, and the two parties 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 of the arbitrators will constitute a determination of the matter in question or dispute.
3. Except as otherwise provided above, arbitration hereunder shall be conducted as provided in Title 9 of the California Code of Civil Procedure (Code of Civil Procedure Section 1280, *et seq.*).
- I. Action Against CSURMA: No action shall lie against CSURMA unless, as a condition precedent thereto, the **Covered Party** shall have fully complied with all the terms of this document nor until the amount of the **Covered Party's** obligation to pay shall have been finally determined whether by judgment against the Covered Party after actual trial or by written agreement of the **Covered Party**, the claimant and CSURMA. Said judgment shall not be deemed final, if an appeal be prosecuted therefrom, until the suit shall have been finally determined on appeal. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this document to the extent of the coverage afforded by this document. Nothing contained in this document shall give any person or organization any right to join CSURMA as a co-defendant in any action against the **Covered Party** to determine such **Covered Party's** liability.

## SECTION VII – DEFENSE AND SETTLEMENT

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