

**STATE OF CALIFORNIA
BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**FIDUCIARY LIABILITY SELF-INSURANCE PROGRAM
COVERAGE MEMORANDUM**

I. STATEMENT OF COVERAGE

Subject to all of the definitions, exclusions and other terms and conditions of this Coverage Memorandum, the California Public Employees' Retirement System (CalPERS) agrees that

- (1) If a claim or claims are first made against the Covered Parties during the period of coverage for a Wrongful Act, CalPERS will pay on behalf of the Covered Parties all Loss which the Covered Parties shall be legally obligated to pay; and
- (2) CalPERS shall have the sole right and duty to defend any such claim or claims against the Covered Parties for a Wrongful Act even if any of the allegations of the claim or claims are groundless, false or fraudulent and may make such investigation and settlement of any claim as it deems expedient.

II. DEFINITIONS

- (1) **Employee Benefit Plan** means the following plans:

Public Employees' Retirement System
Legislators' Retirement System
Judges' Retirement System
Judges' Retirement System II
Volunteer Fire Fighters' Length of Service Award System
State Peace Officers' and Firefighters' Defined Contribution Plan
Public Agency Deferred Compensation Program
Replacement Benefits Plan
Supplemental Contributions Program
Old Age & Survivors' Insurance Revolving Fund

- (2) **Covered Parties** means:

- (a) The Employee Benefit Plan
- (b) The following persons or organizations, while acting in connection with the Employee Benefit Plans:

- (i) any sponsoring employer,
- (ii) any plan administrator,
- (iii) any officer or member of the Board of Administration of CalPERS,
- (iv) any employee of CalPERS who exercises discretionary authority over any of the Employee Benefit Plans or their assets,
- (v) any specific persons identified as covered in this Coverage Memorandum or any attached endorsement, and
- (vi) any present, additional, replacement or past (including his/her estate or heirs, if deceased or incompetent) partner, officer, director or employee of a Covered Party described in (a) and (b) (i), (ii), (iii), (iv) and (v) above.

(3) **Wrongful Act** means, but only with respect to an Employee Benefit Plan covered by this Memorandum of Coverage:

- (a) A breach of responsibility, obligation or duty imposed upon or imputed to a Covered Party
 - (i) under Article XVI, Section 17 of the California Constitution and any law amendatory thereof, and/or
 - (ii) under statutory of common law of the State of California imposing or imputing comparable responsibilities, obligations or duties upon a Covered Party; and
- (b) Any negligent act, negligent error or negligent omission of a Covered Party, or which is imputed to a Covered Party, taking place in the course of the
 - (i) giving of counsel to participants or beneficiaries of,
 - (ii) interpreting of,
 - (iii) handling of records of, and

- (iv) effecting of the enrollment, termination or cancellation of the participants or beneficiaries of

an Employee Benefit Plan covered by this Memorandum of Coverage.

- (4) **Loss** means any amount which the Covered Party shall be obligated to pay in satisfaction of a claim or claims for Wrongful Acts and shall include but not be limited to damages, judgments, settlements and costs, cost of investigation and defense of legal actions, expenses for claims or proceedings and appeals therefrom, cost of attachment or similar bonds, provided always that Loss shall not include fines or penalties imposed by law, taxes, punitive or exemplary damages, or other damages imposed primarily for the sake of example and by way of punishing the Covered Party.
- (5) **Coverage Period** means the period of time from the date and time of this resolution until the date and time that the CalPERS Board of Administration officially terminates this plan of self-insurance.
- (6) **Dishonesty** means criminal acts under criminal statutes.

III. EXCLUSIONS

This coverage does not apply to any claim

- (1) for libel, slander, wrongful entry or eviction, false arrest, false imprisonment, or malicious prosecution;
- (2) based upon or attributable to the Covered Party gaining in fact any personal profit or advantage to which such Covered Party was not legally entitled;
- (3) for the return by the Covered Parties of any remuneration paid in fact to them if payment of such remuneration shall be held by the courts to be in violation of law;
- (4) brought about or contributed to by the Dishonesty of any Covered Parties; however, notwithstanding the foregoing, the Covered Parties shall be protected under the terms of this Memorandum of Coverage as to any claims upon which suit may be brought against them by reason of any alleged Dishonesty on the part of any Covered Parties, unless a judgment or other final adjudication thereof adverse to such Covered Parties shall establish that acts of

active or deliberate Dishonesty committed by such Covered Parties were material to the cause of action so adjudicated;

- (5) which is insured by any valid insurance policy or policies or covered by any other self-insurance plan except in respect of any excess beyond the amount or amounts of payments under such policy or policies or other self-insurance plan;
- (6) arising out of bodily injury, sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof;
- (7) for discrimination based upon race, religion, nationality, national origin, creed, color, sex or age. This exclusion shall not apply to the fees, costs and expenses attributable to the investigation, defense and appeal of any claim, suit, action or proceeding alleging such discrimination.
- (8) which the Attorney General of the State of California agrees to defend without reservation of rights.

Any fact pertaining to any Covered Party shall not be imputed to any other Covered Party for the purpose of determining the application of Exclusions (2), (3) and (4) in this Memorandum of Coverage.

IV. LIMIT OF SELF-INSURANCE COVERAGE

CalPERS' total obligation to defend and pay under this Coverage Memorandum for all Loss because of claims first made against the Covered Parties during the Coverage Period shall not exceed \$40 million, or such other amount that may be designated from time to time by resolution of the CalPERS Board of Administration, which amount shall be held as a separate line item in the Reserve Against Deficiencies Account.

V. NOTIFICATION

- (1) If during the Coverage Period any claim is made against any Covered Parties, the Covered Parties shall, as a condition precedent to their right to be defended and indemnified under this Coverage Memorandum, give immediate written notice of any such claim to the CalPERS Executive Officer, who will then notify the State Insurance Officer.

- (2) If during the Coverage Period:
- (a) the Covered Parties shall receive written or oral notice from any party this it is the intention of such party to hold the Covered Parties, or any of them, responsible for a Wrongful Act; or
 - (b) the Covered Parties shall become aware of any fact, circumstance or situation which may subsequently give rise to a claim made against them, or any of them, for a Wrongful Act;

and shall in either case during the Coverage Period give written notice to the CalPERS Executive Officer of the receipt of such written or oral notice under clause (a) or of such fact, circumstance or situation under clause (b), then any claim which may subsequently be made against CalPERS arising out of such Wrongful Act shall for the purposes of this Coverage Memorandum be treated as a claim made during the Coverage Period.

- (3) If suit is brought against any Covered Party, the Covered Party shall immediately forward to the CalPERS Executive Officer every demand, notice, summons or other process received by him/her or his/her representative. The Covered Party shall not, except at his or her own cost, voluntarily make any payment, incur any obligation or incur any expense.
- (4) All notices of claims or any other notices required to be given to the CalPERS Executive Officer under this Coverage Memorandum shall be addressed to

Executive Officer
Public Employees' Retirement System
400 P Street
Sacramento, CA 94229-2702

- (5) The CalPERS Executive Officer shall send to the State Insurance Officer copies of all notices of claims or other notices required under this Coverage Memorandum.

VI. SUBROGATION AND WAIVER OF RECOURSE

In the event of any payment under this Coverage Memorandum, CalPERS shall be subrogated to all of the Covered Party's rights of recovery against any person or organization, and the Covered Party shall execute and deliver all instruments and papers required and shall do whatever else that is necessary to secure such

rights including the execution of such documents necessary to enable CalPERS effectively to bring suit in the name of the Covered Party.

CalPERS shall not subrogate against the Employee Benefit Plan described in paragraph II(1)(a) of this Coverage Memorandum or any person or organization who is a Covered Party hereunder, unless such other person or organization is guilty of conduct described in Exclusions (2), (3) or (4) of this Coverage Memorandum.

In accordance with the provisions of Government Code section 7511, CalPERS shall have the right of recourse against any Covered Party for all payments made under this Coverage Memorandum by reason of any Wrongful Act committed by such Covered Party; however there shall be no such right of recourse against an individual officer or member of the Board of Administration of CalPERS or employee of CalPERS who exercises discretionary authority over any of the Employee Benefit Plans or their assets if CalPERS has waived its right to recourse against that individual by an endorsement to this Coverage Memorandum.

A Waiver of Right of Recourse Endorsement to this Coverage Memorandum shall be issued annually in September identifying and waiving the right of recourse against any individual officer or member of the Board of Administration of CalPERS or employee of CalPERS who has paid a separate premium to the self-insurance fund from and for his or her own account. The waiver of recourse premium shall be \$25 per individual, or such other amount that may be designated from time to time by resolution of the CalPERS Board of Administration, collected annually in September.

VII. COOPERATION OF COVERED PARTY

The Covered Party shall reasonably cooperate with CalPERS and, upon CalPERS' request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization which may be liable to the Covered Party because of Wrongful Act covered by this Coverage Memorandum.

VIII. ACTION AGAINST CALPERS

No action shall lie against CalPERS unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Coverage Memorandum, nor until the amount of the Covered Party's obligation to pay 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 CalPERS.

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 Coverage Memorandum to the extent of the coverage afforded by this Coverage Memorandum. No person or organization shall have any right under this Coverage Memorandum to join CalPERS as a party to any action against the Covered Party to determine the Covered Party's liability, nor shall CalPERS be impleaded by the Covered Party or his or her legal representative. Bankruptcy or insolvency of the Covered Party or the Covered Party's estate shall not relieve CalPERS of any of its obligations hereunder.

Any disputes concerning coverage under this Coverage Memorandum or any of the procedures of the CalPERS self-insurance plan may be appealed only to the CalPERS Board of Administration in the manner and form that it may from time to time determine.

IX. TERMINATION OR AMENDMENT

This Coverage Memorandum may be terminated or amended at any time by resolution of the CalPERS Board of Administration.

X. ASSIGNMENT

Assignment of interest under this Coverage Memorandum shall not bind CalPERS unless and until written consent is obtained from the CalPERS Board of Administration. However, if the Covered Party shall become incompetent or die, such coverage as is afforded by this Coverage Memorandum shall apply to the Covered Party's legal representative as a Covered Party, but only while acting within the scope of his or her duties as such.

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PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**FIDUCIARY LIABILITY SELF-INSURANCE PROGRAM
WAIVER OF RIGHT OF RECOURSE ENDORSEMENT**

In consideration of the separate premium of \$25 per individual, it is hereby understood and agreed that CalPERS' right to recourse is hereby waived with respect to the following individual officers and members of the Board of Administration of CalPERS and employees of CalPERS who exercise discretionary authority over any of the Employee Benefit Plans or their assets:

[INSERT NAMES]

It is warranted that the separate premiums shown above have not been paid out of Employee Benefit Plan assets.

Dated: _____

FRED BUENROSTRO
Chief Executive Officer