

**MASTER AGREEMENT FOR INDEMNITY, COVERAGE,
AND JOINT DEFENSE COST OBLIGATIONS**

This Master Agreement for Indemnity, Coverage and Joint Defense Cost Obligations (“Master Agreement”) is entered into by North Bay Schools Insurance Authority (“NBSIA”) and _____ (“_____”), public agency risk pools formed and operating pursuant to California Government Code Section 6500, et seq. (collectively, the “Coverage Providers”), and the Coverage Providers’ Member Agencies set forth below (all collectively, “the Parties”).

RECITALS

1. The Coverage Providers provide to their Member Agencies risk pooled and/or group purchased indemnity and insurance protection. For purposes of this Master Agreement, the Member Agencies include _____

_____.

2. The Member Agencies have now, or may in the future, enter into agreements regarding facilities use, lease or rental, joint educational or recreational programs, joint arts or enrichment programs, joint construction or facility support programs, joint transportation or maintenance programs, joint safety or security services or programs, or other service or joint interest agreements expected or intended to benefit in some manner the Member Agencies in carrying out their functions or operations in keeping with Government Code Section 895, Education Code Sections 10900, et seq. or 38130, et seq., or other statutory or legal authority as may exist under California law or regulations (the “Contracts”), with the term “Contracts” as used herein given the broadest meaning permitted under law in order to effectuate the Parties’ purposes and intent as set forth herein.

3. To standardize the terms and conditions of such Contracts with respect to the Parties’ rights, obligations, and expectations in response to a claim arising in some manner from, or relating in some manner to, the subject matter of a Contract, and to promote the public interest of reducing disputes and saving financial resources, for good cause existing the Parties now agree as follows.

TERMS OF THE MASTER AGREEMENT

I. GENERAL TERMS AND CONDITIONS

1. This Master Agreement shall, upon its approval or ratification by all Parties’ governing boards or authorized agents, be deemed effective as of _____. The Master Agreement shall remain in full force and continuous effect for the benefit of all Parties until (i) one or more of the Parties gives 90-days written notice of its/their intent to withdraw from this Master Agreement, with the Master Agreement remaining in full force and effect as to all other remaining Parties, (ii) a Member Agency withdraws or is removed from a Coverage Provider’s liability, property, and/or workers’ compensation programs, with the Member Agency then terminated from participation in this Agreement on the effective date of withdrawal or removal, with the Master Agreement remaining in full force and effect as to all other remaining Parties, or (iii) one or both of the Coverage Providers terminate their participation in this Master Agreement, which then nullifies this Agreement in full.

2. Upon the cancellation of this Master Agreement, or a Member Agency’s removal from participation, the rights and obligations contained herein shall continue to apply with respect to any claim arising from an actual or alleged negligent or wrongful act causing damage, injury, or harm on or before the effective cancellation or participation withdrawal date.

3. The Master Agreement shall be deemed retroactively incorporated into all existing Contracts between the Member Agencies, superseding any otherwise existing defense, indemnity, and/or insurance coverage provisions that are inconsistent with this Master Agreement, with this Master Agreement deemed an authorized written modification to all such Contracts.

4. This Master Agreement shall be deemed incorporated into any future Contracts between the Member Agencies, superseding and negating any contrary or different defense, indemnity or insurance coverage provisions that might mistakenly or inadvertently be included in such Contracts. This Master Agreement shall only be inapplicable if the future Contract expressly references this Master Agreement and states that some or all of these provisions shall not apply. To assist in uniformity, the Member Agencies are encouraged to include in their future Contracts the following phrase: “The Parties hereby incorporate by reference the terms and conditions of the Master Agreement for Indemnity, Coverage, and Joint Defense Cost Obligations made effective on _____.” The absence of such a provision, however, shall not negate or limit the effectiveness of this Master Agreement.

5. This Master Agreement is subject to modification or alteration only by a jointly executed amendment, addendum, or replacement Agreement authorized by all Parties. The interpretation and application of this Master Agreement to any existing or future Contracts is not subject to modification or novation based on actual or alleged oral statements or representations by any Party, by course conduct of one or more of the Parties, or by the doctrines of waiver or estoppel.

II. RECIPROCAL INDEMNITY AND RISK TRANSFER PROVISIONS

1. To the fullest extent allowed by law, the Member Agencies each agree to defend, indemnify, and/or hold harmless the other Parties (and their respective directors, officers and employees) from any claim arising from their actual or alleged negligent, reckless, or intentional act, error, or omission in the performance or nonperformance of their express or implied duties or obligations imposed by a Contract or governing law or regulation that has (a) actually or allegedly caused harm, damage or injury to a third party, or (b) actually caused harm, damage or injury to the real, personal, intellectual, or financial property or interests of another Member Agency. Upon the acceptance of a tender of defense under this provision, the indemnifying Member shall have a right to appoint counsel, manage the defense of the claim, and determine the extent to which a claim should be settled, all such decisions to be conducted within the indemnifying Member’s sound discretion.

2. All Parties shall affirmatively undertake reasonable or necessary efforts to transfer the risks encompassed by this Master Agreement, and these indemnity obligations, to third parties, including vendors, agents, contractors, or subcontractors (“Agents”) of a Member Agency who may have direct or vicarious liability for the acts or omissions of its Agents who have actually or allegedly caused an injury producing event or claim. All Member Agencies shall also proactively seek to minimize risks in advance of a claim or loss, and to proactively engage in all reasonable or necessary steps after a claim occurs to minimize or reduce defense and/or indemnity exposures.

III. INSURANCE COVERAGE PROVISIONS

1. To the extent of a Member Agency’s defense and/or indemnity obligations set forth above, each Member Agency shall automatically be deemed an “additional insured,” or “additional covered party” under the other Member Agency’s Coverage Providers’ liability and property coverage agreement(s), subject to all terms, conditions, limitations, and obligations of such liability coverage agreement (or any available excess coverage agreements). If the Contract involves the sharing of individuals on a joint employer basis under governing legal principles, the coverage protections included herein shall extend on an “additional insured,” or “additional covered party” basis to the other Member Agency’s Coverage Providers’ worker’s compensation coverage agreement. These rights to coverage consideration shall exist under all primary and excess coverage agreements or insurance policies available to the Member Agencies, up to the limits of liability, but this Master Agreement shall not otherwise enlarge the scope of coverage rights or benefits available under a Coverage Provider’s governing coverage documents or agreements.

2. The provisions of this Master Agreement are expected and intended to avoid claims of subrogation, contribution, or indemnity, with rights of subrogation deemed waived and released in favor of the allocation and claim management provisions contained herein, although nothing set forth in this Master Agreement is intended to affect any statutory presumptions or limitations imposed by any law or regulation relating to automobile insurance obligations (e.g., Vehicle Code Section 11580.9).

IV. CLAIM MANAGEMENT PROVISIONS

1. Upon notice of a claim or potential claim to a Member Agency, the Member Agency shall promptly give notice (no later than any timeframe imposed by its coverage agreement with its Coverage Provider) of the claim or potential claim to its Coverage Provider and to the chief business official of any other actually or potentially involved Member Agency. The Coverage Providers shall, in keeping with their respective obligations under their coverage agreements, assume claim management responsibilities if coverage actually or potentially exists, and coordinate responses to the claim or potential claim, including determinations of the existence of joint/separate defense obligations, with a coverage decision promptly communicated to the Member Agencies and the other potentially involved Coverage Provider. The Coverage Providers shall determine if one or both of their claim departments shall be involved in further claim management activities. If coverage is determined not to exist under one or both Coverage Providers' agreements, the indemnity provisions above shall control.

2. Should a claimant allege that two or more Member Agencies were at fault for causing harm, damage or injury, the following provisions shall apply:

- a. If coverage would exist under one or both Coverage Providers' coverage agreements, and the Coverage Providers determine that a claim arises from only one Member Agency's act, errors, or omissions, the Coverage Provider for the responsible Member Agency shall extend a joint defense to the Member Agencies (and their respective directors, officers, or employees), and exclusively manage all subsequent defense, settlement, and other claim management decisions, as long as the indemnified Member Agency fully and completely cooperates in all such activities.
- b. If a determination cannot be immediately made as to which Member Agency is responsible for a claim, in the absence of an irreconcilable and non-waivable conflict of interest, the Member Agencies (for themselves and their respective directors, officers, employees) agree to be jointly represented by a single defense counsel, as mutually agreed by the Member Agencies or their respective Coverage Providers, with the Member Agencies or their Coverage Providers sharing equally in the cost of all reasonable and necessary defense. If an irreconcilable and non-waivable conflict of interest exists, each Member Agency shall be responsible for its own attorneys' fees, costs, and expenses incurred by counsel of its own choice.
- c. In the case of joint or several liability for which full indemnity rights do not exist under these provisions, whether through settlement or judgment, each Member Agency and/or their Coverage Providers shall be solely and separately responsible for any apportioned damages arising from the Member Agencies' respective negligent, reckless, or intentional acts.

3. For claims that can potentially be transferred to a third party under indemnity or risk transfer agreements, or operation of law or equity, all Parties shall timely and cooperatively work with one another to tender the claim to such third party and fully pursue and protect such rights. All parties shall also take no action to harm or negate every other Party's actual or potential right of contribution, indemnity, or subrogation from such a third party, or the actual or potential right to coverage or benefits under any other coverage agreement or insurance policy to which one or more of the Member Agencies may be entitled to coverage consideration as an insured, an additional named insured, an insured by definition (i.e., an omnibus insured clause), or other term or condition.

V. DISPUTE RESOLUTION PROCEEDINGS

Should a dispute arise between the Parties as to the formation, operation, interpretation, or application of this Master Agreement to any particular claim or circumstance, the involved Parties shall issue a written request for action to the allegedly noncomplying party within 30 days after the date the dispute has been identified, setting forth the nature of the requested action and the factual and/or legal reasons underlying the request. The allegedly noncomplying Party shall timely respond to the request, no later than 30 days after its receipt, setting forth an agreement to the request or the reasons for non-agreement. In the case of non-agreement, the involved Parties shall schedule an in-person meeting within 15 days after the statement of non-agreement, to determine if a resolution can be reached. If no resolution can then be reached within 10 days after the in-person meeting, either involved Party shall make a request for binding arbitration.

Should arbitration be requested, each side to the dispute (recognizing that a side may include more than one involved Party) shall appoint a representative from an uninvolved Member Agency as its designated arbitrator for a three member arbitration panel. The two appointed arbitrators shall then agree and appoint an uninvolved Member Agency representative as the third panel arbitrator, who shall also serve as the Lead Arbitrator. If the two appointed arbitrators cannot decide on a third panel member, a Court of competent jurisdiction may be called upon to appoint the third panel member, who may or may not be a representative from a Member Agency.

The arbitration panel shall expeditiously and cost-effectively resolve the dispute. Such arbitration shall, in the Lead Arbitrator's discretion, be conducted without discovery, live testimony, or a formal transcript of proceedings unless the Lead Arbitrator determines such actions are necessary to protect one or both of the Parties' right to due process. Each participating side shall bear its own attorneys' fees, costs and expenses unless the arbitration panel finds that one or more positions asserted by a side were frivolous, in which case the arbitration panel shall award and/or apportion reasonable attorneys' fees and costs.

XVII. EXECUTION

This Agreement may be executed in counterparts, with an original, facsimile, or photocopied signature equally as valid as an original signature, with each executing party declaring that he/she is fully authorized and empowered to enter into this binding Agreement.

Name: _____

Name: _____

Title: _____

Title: _____

District/COE: _____

District/COE: _____

Signature: _____

Signature: _____