



INDEPENDENT CITIES
RISK MANAGEMENT
AUTHORITY

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Workers' Compensation Program 2023-2024 Memorandum of Coverage



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**INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY
(ICRMA)**

WORKERS' COMPENSATION PROGRAM

MEMORANDUM NO. ICRMA 2023-2024-1WC

Declarations

1. COVERED MEMBERS: Members of the ICRMA workers' compensation program, per Schedule A
2. MEMORANDUM PERIOD: From 07/01/2023 to 07/01/2024
12:01 a.m. Pacific Standard Time
3. LIMIT OF COVERAGE: Workers' Compensation Coverage
\$1,000,000 any one occurrence¹
Employer's Liability Coverage
\$1,000,000 any one occurrence²
- DOCUMENTS ATTACHED AT ISSUANCE: Schedule A

ON BEHALF OF THE INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY


Authorized Signature

¹ Inclusive of each Covered Member's Retained Limit as stated in Schedule A

² Inclusive of each Covered Member's Retained Limit as stated in Schedule A

**INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY
WORKERS' COMPENSATION COVERAGE**

Schedule A

Schedule of COVERED MEMBERS and Retained Limits

Member	Retained Limit
Adelanto	\$350,000
El Segundo	\$500,000
Glendora	\$500,000
Huntington Park	\$500,000
Inglewood	\$1,000,000
Lynwood	\$500,000
San Fernando	\$500,000
Santa Ana	\$2,000,000

INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY

MEMORANDUM OF COVERAGE FOR SELF-INSURANCE OF WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

The Independent Cities Risk Management Authority (“ICRMA”) in consideration for the payment of the contribution, agrees to provide coverage to the COVERED MEMBERS subject to the terms, conditions, and limitations set forth in this Memorandum of Coverage (“Memorandum”).

Throughout this Memorandum, words and phrases that appear capitalized have special meanings and are defined in **Definitions** below.

Definitions

1. **BODILY INJURY** means bodily injury by accident or disease, including death resulting therefrom, but shall not include **OCCUPATIONAL DISEASE**.
2. **COVERED MEMBER(S)** means a member of ICRMA named in Schedule A that has sustained a **LOSS** covered under this Memorandum.
3. **EMPLOYEE(S)** means any person performing work which renders the **COVERED MEMBER** liable as an employer under the **WORKERS' COMPENSATION LAW**.
4. **LOSS(ES)** means only such amounts as are actually paid by the **COVERED MEMBER** in payment or benefits under the **WORKERS' COMPENSATION LAW**, in settlement of claims submitted under the **WORKERS' COMPENSATION LAW**, or in satisfaction of awards or judgments for liabilities imposed by the **WORKERS' COMPENSATION LAW**, or in satisfaction of awards or judgments for liabilities imposed by the **WORKERS' COMPENSATION LAW** for **BODILY INJURY** or **OCCUPATIONAL DISEASE** to an **EMPLOYEE**.
5. **OCCUPATIONAL DISEASE** shall include (1) death resulting therefrom and (2) cumulative injuries.
6. **OCCURRENCE** means (1) **BODILY INJURY** sustained an **EMPLOYEE** as a result of a single accident or event arising out of or in the course of employment that is compensable under the **WORKERS' COMPENSATION LAW**; or (2) **OCCUPATIONAL DISEASE** sustained by an **EMPLOYEE** arising out of or in the course of employment and is compensable under the **WORKERS' COMPENSATION LAW**. **BODILY INJURY** sustained by one or more **EMPLOYEES** as a result of a single accident or event shall be deemed to arise from a single **OCCURRENCE**. **OCCUPATIONAL DISEASE** sustained by each **EMPLOYEE** shall be deemed to arise from a separate **OCCURRENCE**, and the **OCCURRENCE** shall be deemed to take place on the earlier of (a) the last day of the last exposure, in the employment of the **COVERED MEMBER**, to conditions causing or

aggravating the OCCUPATIONAL DISEASE, or (b) the date on which the EMPLOYEE first suffered disability and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by employment with the COVERED MEMBER. All OCCUPATIONAL DISEASE sustained by one or more EMPLOYEES as a result of an outbreak of the same communicable disease shall be deemed to arise from a single OCCURRENCE. An outbreak of the same communicable disease that spans more than one coverage period shall be deemed to take place during the first such coverage period.

7. RETAINED LIMIT shall mean the amount stated in the Declarations and all documents listed on the Declarations, that must be paid by the COVERED MEMBER before ICRMA is obligated to make payments from pooled funds.
8. WORKERS' COMPENSATION LAW shall mean the workers' compensation law of the State of California, including California Labor Code Division 4; however, it shall not include any non-occupational disability benefit provisions of any such law. It includes any amendments to such laws that are in effect during the term of this Memorandum. It does not include any federal workers' or workmen's compensation law, any federal occupational disease law, or the provisions of any law that provide non-occupational disability benefits. It does not include the workers' compensation laws of any state other than the State of California.

The Memorandum

This Memorandum includes at its effective date the Declarations and all documents listed on the Declarations. This Memorandum is the coverage document between the COVERED MEMBER and ICRMA. As provided in Section 990.8 of the Government Code, pooling of losses in this Workers' Compensation Program (Program) is not insurance. The sole duty of ICRMA is to administer the Program adopted by the COVERED MEMBERS. ICRMA will not pay on behalf of a COVERED MEMBER, but will only reimburse the COVERED MEMBER for LOSSES which are pooled under the terms of this Memorandum and the Joint Powers Agreement. The provisions of the Program are subject to and subordinated to the Joint Powers Agreement or an action taken by the Governing Board in connection with the Program. This Program has been adopted pursuant to action taken by the Governing Board, and is subject to any amendment, modification, or extension by the Governing Board at a regular meeting or at a special meeting called for that purpose. The terms of this Memorandum may not be changed except by endorsement issued by ICRMA as part of this Memorandum.

Coverage Period

This Memorandum applies to LOSSES resulting from an OCCURRENCE during the Memorandum Period set forth in the Declarations.

Who is Covered

The COVERED MEMBERS are named in Schedule A and are Members of ICRMA. If a

COVERED MEMBER loses its status as an active member of ICRMA, the coverage under this Memorandum shall terminate immediately upon such change in status.

This Memorandum applies to workers' compensation benefits for covered injuries sustained by volunteer workers performing duties for or on behalf of the COVERED MEMBER while acting within the scope of their duties on behalf of the COVERED MEMBER providing that the COVERED MEMBER's City Council has first adopted a resolution as provided in Section 3363.5 of the California Labor Code declaring such volunteer workers to be employees of the COVERED MEMBER for purposes of WORKERS' COMPENSATION LAW.

Qualified Self-Insurer

The COVERED MEMBER represents and shall provide evidence that it is a duly qualified self-insured under the WORKERS' COMPENSATION LAW and will continue to maintain such qualifications during the term this Memorandum is in effect. If a COVERED MEMBER fails to qualify or fails to maintain such qualifications, the coverage provided under this Memorandum shall automatically terminate on the first date of such failure.

Workers' Compensation Coverage

ICRMA will provide coverage for workers' compensation LOSSES resulting from an OCCURRENCE during the Coverage Period and for salary benefits listed in Labor Code Section 4850, up to ICRMA's Limit of Coverage stated in the Declarations, less the COVERED MEMBER's RETAINED LIMIT. EMPLOYEES on temporary assignment or traveling for COVERED MEMBER business outside the State of California who sustain BODILY INJURY or OCCUPATIONAL DISEASE are covered for benefits under this program if the work is incidental to the EMPLOYEE's regular employment in the State of California, such LOSSES are compensable under the WORKERS' COMPENSATION LAW, the EMPLOYEE claims benefits under the WORKERS' COMPENSATION LAW, and benefits under the WORKERS' COMPENSATION LAW are administered. In no event will COVERED MEMBERS be reimbursed in any amount greater than the amount payable under the WORKERS' COMPENSATION LAW.

This coverage applies to BODILY INJURY, provided that:

1. BODILY INJURY by accident must occur during the coverage period.
2. BODILY INJURY by disease must be caused or aggravated by the conditions of employment by the COVERED MEMBER. The EMPLOYEE's employment period and exposure to the conditions causing or aggravating such BODILY INJURY by disease must occur during the Coverage Period.

If ICRMA, through inadvertence, mistake, or otherwise, makes any payment or issues any reimbursement in excess of the benefits due under this Memorandum, the COVERED MEMBER will promptly reimburse ICRMA.

Employer Liability Coverage

ICRMA will provide coverage for employer's liability losses in the same manner as the excess insurance carrier.

This coverage applies to BODILY INJURY. This coverage will apply to damages awarded against the COVERED MEMBER, over the amount of the COVERED MEMBER's RETAINED LIMIT and subject to the Limit of Coverage stated in the Declarations (which is inclusive of the COVERED MEMBER's RETAINED LIMIT), provided those damages are the direct consequence of BODILY INJURY that arises out of and in the course of the injured EMPLOYEE's employment by the COVERED MEMBER, and are claimed against the COVERED MEMBER in a capacity other than as employer and further provided that:

1. The BODILY INJURY by accident must arise out of and in the course of the injured EMPLOYEE's employment by the COVERED MEMBER and occur during the Coverage Period.
2. BODILY INJURY by disease must be caused or aggravated by the conditions of employment by the COVERED MEMBER. The EMPLOYEE's employment period and exposure to the conditions causing or aggravating such BODILY INJURY by disease must occur during the Coverage Period.

Exclusions

This Memorandum shall not apply to:

- A. Liability imposed by the WORKERS' COMPENSATION LAW because of BODILY INJURY to prisoners or inmates, including participants in a work release program, who receive compensation from an entity, other than the COVERED MEMBER, for the work performed. This exclusion shall not apply to liability imposed by the WORKERS' COMPENSATION LAW because of BODILY INJURY to participants of a work release program or other community service program established by a county of the State of California.
- B. Employer's Liability Coverage herein does not apply to any obligation imposed by a workers' compensation, OCCUPATIONAL DISEASE, unemployment compensation, or disability benefits law, or any similar law.
- C. BODILY INJURY intentionally caused or intentionally aggravated by the conduct of the COVERED MEMBER.
- D. BODILY INJURY to an EMPLOYEE while employed in violation of law with the actual knowledge of the COVERED MEMBER.
- E. Liability for additional compensation imposed on the COVERED MEMBER under Labor Code Section 4557 by reason of injury to an EMPLOYEE under sixteen years of age and illegally employed at the time of the injury.

- F. Liability imposed under Labor Code Section 4856.
- G. Any obligation to reimburse a COVERED MEMBER for payments made or benefits conferred by a COVERED MEMBER which the COVERED MEMBER was not obligated to pay or confer under WORKERS' COMPENSATION LAW as defined herein.
- H. Any liability for which the COVERED MEMBER is obligated to pay damages solely by reason of liability assumed in a contract or agreement.
- I. Any payments in excess of benefits regularly provided by the WORKERS' COMPENSATION LAW, including those based on the following conduct by the COVERED MEMBER:
 - 1. Penalties or fines imposed for violation of the Labor Code, including but not limited to Section 4650, Section 132a, or Labor Code Section 4553 (Serious and Willful Misconduct);
 - 2. Knowing failure to comply with a health or safety law or regulation;
 - 3. Discharge, coercion or discrimination against any EMPLOYEE in violation of the WORKERS' COMPENSATION LAW;
 - 4. Violation or failure to comply with any WORKERS' COMPENSATION LAW.
- J. Benefits paid or filed in accordance with any workers' compensation or OCCUPATIONAL DISEASE law other than the WORKERS' COMPENSATION LAW.
- K. BODILY INJURY or OCCUPATIONAL DISEASE sustained by a peace officer, as defined in Section 50920 of the California Government Code, when he or she was off-duty, not acting under the immediate direction of his or her employer, and outside the state of California. However, this exclusion shall not apply to BODILY INJURY or OCCUPATIONAL DISEASE sustained by a peace officer under such circumstances if:
 - 1. the peace officer was at the time engaging in the apprehension or attempted apprehension of law violators or suspected law violators, the protection or preservation of life or property, or the preservation of the peace; and
 - 2. prior to the OCCURRENCE, the governing board of the COVERED MEMBER adopted a resolution, as provided for in California Labor Code Section 3600.2, subdivision (b)(4), accepting liability for such BODILY INJURY or OCCUPATIONAL DISEASE under the WORKERS' COMPENSATION LAW.

The Covered Member's Retained Limit and ICRMA's Limit of Coverage

A. The COVERED MEMBER's RETAINED LIMIT

The COVERED MEMBER shall pay from its own account any LOSS up to the amount stated in Schedule A as the COVERED MEMBER's RETAINED LIMIT.

B. ICRMA's Limit of Coverage

ICRMA will indemnify the COVERED MEMBER for LOSS under WORKERS' COMPENSATION LAW, but will not exceed the Limit of Coverage stated in the Declarations, less the COVERED MEMBER's RETAINED LIMIT, on any one LOSS. Coverage will include all benefits required under WORKERS' COMPENSATION LAW, including full salary benefits listed in Labor Code Section 4850, but not including any benefits or LOSSES excluded herein. ICRMA will pay on behalf of the COVERED MEMBER for Employer's Liability LOSSES but will not exceed the Limit of Coverage stated in the Declarations (which is inclusive of the COVERED MEMBER's RETAINED LIMIT) on any one LOSS.

C. Attachment and Limit of Coverage.

The coverage provided by this Memorandum shall not apply until the amount paid by or on behalf of the COVERED MEMBER shall have equaled or exceeded the COVERED MEMBER's RETAINED LIMIT. ICRMA shall then only be liable for the amount actually incurred that is in excess of the COVERED MEMBER's RETAINED LIMIT, regardless of whether the COVERED MEMBER has other insurance, has other pooled coverage, or pays the COVERED MEMBER's RETAINED LIMIT itself, up to the Limit of Coverage stated in the Declarations (which is inclusive of the COVERED MEMBER's RETAINED LIMIT). Amounts to be reimbursed on a claim otherwise covered under this Memorandum shall not be reimbursed until such time that the COVERED MEMBER's RETAINED LIMIT has been paid by the COVERED MEMBER.

ICRMA's Limit of Coverage stated in the Declarations (which is inclusive of the COVERED MEMBER's RETAINED LIMIT) applies to claims covered under the Workers' Compensation Coverage or Employer's Liability Coverage as follows:

1. to one or more EMPLOYEES for BODILY INJURY or death in any one accident; and
2. to any one EMPLOYEE for BODILY INJURY or death by disease.

D. Labor Code Section 4850

This coverage applies to the cost of salary benefits listed in Labor Code Section 4850; however, for any claim that exceeds the Limit of Coverage stated in the Declarations (which is inclusive of the COVERED MEMBER's RETAINED LIMIT), any costs not

covered by any excess coverage obtained by ICRMA shall be paid exclusively by the COVERED MEMBER. In no event will ICRMA pay any amount in excess of the Limit of Coverage stated in the Declarations (which is inclusive of the COVERED MEMBER's RETAINED LIMIT).

Nothing contained herein shall operate to increase ICRMA's Limit of Coverage (which is inclusive of the COVERED MEMBER's RETAINED LIMIT) under this Memorandum.

Premium

A. Deposit Premium

1. At the beginning of each Program Year, the COVERED MEMBER must pay ICRMA the Deposit Premium subject to the provisions in the ICRMA Bylaws.
2. The Deposit Premium will be based on the payroll as defined in the ICRMA Bylaws, and all other remuneration payable during the Program Year for the services of:
 - a. all the COVERED MEMBER's officers and EMPLOYEES engaged in work covered by this Memorandum;
 - b. all volunteers declared or otherwise required to be covered. The value of the volunteers' service shall be based upon a flat rate per volunteer; and
 - c. all other persons engaged in work that could make ICRMA liable under the Workers' Compensation Coverage of this Memorandum. If the COVERED MEMBER does not have payroll records for these persons, the contract price remuneration for their services and materials may be used as the premium basis. This paragraph will not apply if the COVERED MEMBER gives ICRMA proof that the employers of these persons lawfully secured their workers' compensation obligations.

If ICRMA cancels this Memorandum, the final premium will be prorated based on the period of time this Memorandum was in force.

Conditions

Acceptance

By acceptance of this Memorandum, the COVERED MEMBER agrees that the statements made on the Declaration Page are the COVERED MEMBER's agreements and representations, that this Memorandum is issued in reliance upon the truth of such representations, and that this Memorandum embodies all agreements existing between the COVERED MEMBER and ICRMA or any of ICRMA's agents relating to this coverage.

Notice

The COVERED MEMBER shall give written notice to ICRMA, within five (5) working days of the day on which it is known the criterion is met, of:

1. any claim or action commenced against the COVERED MEMBER with a total incurred amount which exceeds, or is likely to exceed, fifty percent (50%) of the COVERED MEMBER's RETAINED LIMIT, or
2. the reopening of any claim in which a further award might involve liability of ICRMA under this Memorandum, or
3. any injury involving the following types of accidents:
 - a. fatality;
 - b. paraplegics and quadriplegics;
 - c. amputation of a major extremity;
 - d. any serious head injury (including skull fracture or loss of sight of either or both eyes);
 - e. any injury to the spinal cord;
 - f. any second or third degree burn of 25% or more of the body;
 - g. any claim likely to result in a permanent disability of 70% or more
 - h. any accident which causes serious injury to two or more EMPLOYEES; or
 - i. any disability of more than one year or when it appears reasonably likely there will be a disability of more than one year.

The notice given to ICRMA shall contain complete details on the injury, disease, or death. If a suit, claim, or other proceeding is commenced which appears to involve coverage by ICRMA, the COVERED MEMBER shall, if requested, provide to ICRMA:

All notices and legal papers related to the claim, proceeding, or suit, or copies of these notices and legal papers; and

Copies of reports on investigations made by the COVERED MEMBER on such claims, proceedings, or suits.

If written notice is not provided by the COVERED MEMBER to ICRMA as required above, coverage will not be provided under this Memorandum. This requirement is a condition precedent to coverage under this Memorandum.

Settlement

Claims with total incurred amounts in excess of the COVERED MEMBER's RETAINED LIMIT shall not be settled without the prior written consent of ICRMA. If a claim is settled without the

prior written consent of ICRMA, ICRMA may, but is not obligated to, approve the settlement; if ICRMA elects not to do so, ICRMA shall not be obligated to pay any portion of the settlement. ICRMA has the right to participate with the COVERED MEMBER in the settlement, reserving, defense, or appeal of any claim, suit or proceeding that might involve a LOSS to ICRMA. Additionally, ICRMA shall have the right to assume control of the negotiation, investigation, defense, settlement or appeal of any claim which ICRMA determines, in its sole discretion, to have a reasonable probability of resulting in a LOSS in excess of the COVERED MEMBER's RETAINED LIMIT. Settlement authority above the COVERED MEMBER's RETAINED LIMIT will be as described in the ICRMA Bylaws.

Duty to Cooperate

The COVERED MEMBER shall fully cooperate in all matters pertaining to the investigation, defense, negotiation, or settlement of claims or LOSSES covered by this Memorandum. The duty to fully cooperate includes timely initial reporting of claims, timely and appropriate status reports, and the COVERED MEMBER placing on the COVERED MEMBER's legislative agenda all matters necessary or appropriate for approval of settlements as soon as reasonably practicable under the circumstances. If the Governing Board determines that a COVERED MEMBER has not fully cooperated in one or more matters pertaining to the claim or LOSS, then the Governing Board in its sole discretion may deny coverage for said claim or LOSS under this Memorandum. If the Governing Board chooses not to deny coverage, the Governing Board in its sole discretion shall determine whether monetary detriment to ICRMA caused by the COVERED MEMBER's refusal to cooperate can be reasonably estimated or calculated, and if so shall increase the COVERED MEMBER's RETAINED LIMIT by that amount for purposes of the claim or LOSS in question. If the Governing Board in its sole discretion determines that monetary detriment to ICRMA cannot be reasonably estimated or calculated, then the Governing Board shall increase the COVERED MEMBER's RETAINED LIMIT for the claim or LOSS in question by an amount determined by the Governing Board in its sole discretion, provided that the amount of the increase shall be a minimum of 1% and a maximum of 25%.

Subrogation – Recovery from Others

ICRMA has the COVERED MEMBER's rights, and the rights of persons entitled to compensation benefits from the COVERED MEMBER, to recover ICRMA's loss from any third party liable for the injury. The COVERED MEMBER will do everything necessary to protect those rights for ICRMA and to assist in enforcing them. Any recovery, after deducting ICRMA's recovery expenses, will first be used to reduce ICRMA's loss. The balance, if any, will be returned to the COVERED MEMBER.

If the COVERED MEMBER waives its rights to subrogation on a claim covered under, or that may be covered under, this Memorandum, and if the total incurred amount of the claim exceeds the COVERED MEMBER's RETAINED LIMIT (and therefore comes within ICRMA's layer), then ICRMA's coverage shall not apply to the claim and ICRMA shall not be liable for any indemnity, reimbursement, payment, or costs on the claim exceeding the COVERED MEMBER's RETAINED LIMIT, unless the ICRMA Executive Director approves the waiver of subrogation in writing.

The exclusion of coverage for waiver of subrogation shall apply only to a waiver of subrogation made or approved by a COVERED MEMBER after the date of the injury or illness that resulted in the claim. This exclusion shall not apply to a waiver of subrogation contained in an agreement or contract that was approved by the COVERED MEMBER prior to the date of the injury or illness that resulted in the claim.

Memorandum Conforms to Law

If any provision of this Memorandum is in conflict with any laws applicable to this Memorandum, ICRMA's Joint Powers Agreement, ICRMA Bylaws, or any other of ICRMA's governing documents, then this Memorandum is amended to conform to such law or document.

Cancellation

The COVERED MEMBER may not withdraw from this Memorandum during the Program Year. Notice to withdraw will be as described in the Bylaws.

Inspection

ICRMA has the right, but is not obligated, to inspect the COVERED MEMBER's workplaces at any time. ICRMA's inspections are not safety inspections, but relate to the deposit premiums to be charged. ICRMA may give the COVERED MEMBER reports on the conditions ICRMA finds and may recommend changes. However, ICRMA does not have nor does it undertake to perform any duty of any person to provide for the health or safety of the COVERED MEMBER's EMPLOYEES or the public. ICRMA does not warrant that the COVERED MEMBER's workplaces are safe or healthful or that they comply with law, regulations, codes, or standards.

Records

The COVERED MEMBER will keep records of information needed to compute premium. The COVERED MEMBER will provide ICRMA with copies of those records upon ICRMA's request.

Transfer of the Covered Member's Rights and Duties

The COVERED MEMBER's rights and duties under this Memorandum may not be transferred without ICRMA's written consent.

Financial Audit

The COVERED MEMBER agrees that ICRMA may examine and audit all of the COVERED MEMBER's records that relate to this Memorandum. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and computer programs for storing and retrieving data. ICRMA may conduct the audits during regular business hours during the Program Year and within three years after the Program Year ends. Information developed by audit may be used to determine final amounts owed by the COVERED MEMBER for coverage under this Memorandum.

Alternative Dispute Resolution

THE PARTIES TO THIS MEMORANDUM UNDERSTAND THAT BY AGREEING TO THIS MEMORANDUM OF COVERAGE THEY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY AND TO CERTAIN TYPES OF DAMAGES FOR THE PURPOSE OF ADJUDICATING ANY DISPUTE OR DISAGREEMENT AS TO COVERAGE UNDER THIS MEMORANDUM.

These provisions apply to any coverage dispute between ICRMA and any COVERED MEMBER which arises under any Memorandum of Coverage in effect before the effective date of this Memorandum.

Within sixty (60) days of the COVERED MEMBER's receipt of a writing setting forth ICRMA's coverage position which the COVERED MEMBER disputes, the COVERED MEMBER shall submit the dispute in writing to ICRMA's Executive Director. Within twenty (20) days of receipt of such writing, the Executive Director or designee shall acknowledge receipt and place the matter on the agenda of the Claims Committee for consideration at its next scheduled meeting. The COVERED MEMBER and/or ICRMA may, but are not required to, make a written and/or oral presentation to the Claims Committee. Within twenty (20) days following that meeting, the Claims Committee shall render to the COVERED MEMBER its written decision on the dispute or an explanation of why a decision could not be rendered and the timing of the Claims Committee's further consideration of the issue. If not satisfied with the Claims Committee's decision, the COVERED MEMBER or ICRMA Coverage Counsel or General Counsel, within twenty (20) days of receipt of that decision, must submit a written notice of appeal to the Executive Director of ICRMA for consideration by the Board at its next scheduled meeting for which the dispute can be timely placed on the agenda. Within twenty (20) days following the meeting of the Board, the Board shall render to the COVERED MEMBER its written decision on the dispute, or an explanation of why a decision could not be rendered and the timing of any further consideration of the issue by the Board.

The COVERED MEMBER must exhaust the right to appeal, as set forth above, before pursuing any court action or any other relief or action, including arbitration of a dispute if the COVERED MEMBER and ICRMA agree to arbitrate under the Arbitration Option set forth below. The COVERED MEMBER must submit a written notice of intent to file an action for Declaratory Relief, or a written request for arbitration, within ninety (90) days of receipt of the Board's final written decision. If no such written notice or written request is submitted to the Executive Director of ICRMA, the COVERED MEMBER shall be deemed to have waived any and all other forms of relief or appeal as to the coverage dispute. An action for Declaratory Relief seeking to resolve the

coverage dispute must be filed within 90 days of submittal of the written notice of intent to file an action for Declaratory Relief, and any unexpired statute of limitations shall be tolled until expiration of that 90 day period. If an action for Declaratory Relief is not filed in the Superior Court within the time limitations of this paragraph, then notwithstanding any statute of limitations provided in the California Code of Civil Procedure or otherwise, the COVERED MEMBER shall be deemed to have waived and be barred from pursuing any further relief, adjudication, action, arbitration or appeal regarding the coverage dispute.

Unless the parties to this Memorandum agree otherwise, any coverage dispute between ICRMA and a COVERED MEMBER regarding the interpretation of this Memorandum, including a decision of ICRMA to deny a defense and/or deny coverage for all or part of a claim, shall be resolved by an action for Declaratory Relief filed in the appropriate Superior Court in and for the State of California. Either the COVERED MEMBER or ICRMA may initiate the action for Declaratory Relief.

The scope of the action for Declaratory Relief shall be limited to seeking a judicial interpretation of this Memorandum of Coverage, and, as appropriate, determination and declaration of the amount, if any, to be paid by ICRMA for indemnity or defense owed under this Memorandum, plus interest as provided herein. No other legal theories or causes of action relating to or arising out of a coverage disagreement under this Memorandum shall be allowed, and such are expressly waived, including but not limited to causes of action for breach of contract or breach of the covenant of good faith and fair dealing. Neither ICRMA nor the COVERED MEMBER shall be entitled to a trial by jury. Neither ICRMA nor the COVERED MEMBER shall be entitled to any damages or relief other than as provided in this paragraph, plus simple interest at the rate of 1% per year on any amounts adjudicated to be owed. Interest on any amounts adjudicated to be owed shall run from the time any invoices for defense fees and costs are actually submitted to ICRMA (in the event it is adjudicated that ICRMA had a duty to defend the COVERED MEMBER and did not defend the COVERED MEMBER), and/or from the time ICRMA is provided written confirmation of the amount of actual payment by the COVERED MEMBER of any judgment or settlement (in the event it is adjudicated that ICRMA had a duty to pay for any settlement or judgment on behalf of the COVERED MEMBER and did not pay for any settlement or judgment on behalf of the COVERED MEMBER). Notwithstanding anything in this paragraph, any party to the Declaratory Relief action preserves the right to appeal any judicial decision to the appropriate appellate court, as provided by California law.

Regardless of the existence or outcome of a coverage dispute, a Declaratory Relief action or any arbitration proceeding, the maximum amount or Limit of Coverage owed under this Memorandum by ICRMA shall remain unchanged. Further, ICRMA shall owe defense costs only to the extent they are incurred in compliance with the Litigation Management Practices and Procedures (LMPP) and expressly approved by ICRMA.

The provisions of section titled “Settlement” herein apply even if a COVERED MEMBER is disputing and/or appealing a coverage denial or coverage limitation regardless of the stage of the dispute and notwithstanding any agreement between the parties to defer or hold in abeyance the dispute or any portion thereof. Specifically, the COVERED MEMBER shall not settle claims with total incurred amounts in excess of the COVERED MEMBER’s RETAINED LIMIT without the prior written consent of ICRMA at any time while the COVERED MEMBER is proceeding under the Alternative Dispute Resolution herein. If a claim is settled without the prior written consent of

ICRMA, ICRMA may, but is not obligated to, approve the settlement if coverage is determined to apply; if ICRMA elects not to do so, ICRMA shall not be obligated to pay any portion of the settlement.

Arbitration Option: If both the Board and the COVERED MEMBER agree in writing, then the coverage dispute may be resolved by binding arbitration or by any other means mutually agreed between the Board and the COVERED MEMBER. In the event both the Board and the COVERED MEMBER agree to arbitrate, they shall be deemed to waive any rights to pursue any adjudication or relief as to the coverage dispute in any other forum or court, including any rights to appeal.

If both the Board and the COVERED MEMBER agree to arbitrate, arbitration shall be conducted pursuant to the California Code of Civil Procedure, sections 1280 et seq. Arbitration shall be conducted by single arbitrator. The arbitrator shall not be employed by or affiliated with ICRMA or the COVERED MEMBER or any of the ICRMA members.

If both the Board and the COVERED MEMBER agree to arbitrate, the parties shall select the arbitrator within twenty (20) calendar days from the date of the written agreement to arbitrate. If the parties are unable to agree upon an arbitrator within that time period, they may mutually agree to a reasonable extension of time not to exceed thirty (30) days. If the parties are unable to agree upon an arbitrator within that extended time period, the Authority shall file a petition with the superior court in the county in which the COVERED MEMBER is located requesting appointment of a neutral arbitrator, and the procedures set forth in the California Code of Civil Procedure section 1281.6 shall be followed. Unless mutually agreed otherwise, the arbitration hearing shall commence within forty-five (45) calendar days from the date of the selection of the arbitrator.

Each party shall pay one-half the cost of the selected arbitrator. In addition, each party shall be responsible for its own costs and expenses of arbitration regardless of the outcome of the arbitration.

Except for notification of appointment and as provided in the California Code of Civil Procedure sections 1282 et seq. for the scheduling of hearing(s) and matters relating to the hearing, there shall be no communication between the parties and the arbitrator relating to the subject of the arbitration other than at oral hearings. The procedures set forth in California Code of Civil Procedure section 1283.05 relating to depositions and discovery shall apply to any arbitration pursuant to this paragraph. Except as provided otherwise above, arbitration shall be conducted as provided in Title 9 of the Code of Civil Procedure (commencing with Section 1280). The decision of the arbitrator shall be final and binding, and shall not be subject to any appeal. The scope of the arbitration shall be limited to the same scope as described above with respect to an action for Declaratory Relief.