

**MONTEREY BAY AREA SELF INSURANCE AUTHORITY (MBASIA)
WORKERS' COMPENSATION PROGRAM
MEMORANDUM OF COVERAGE**

The Monterey Bay Area Self Insurance Authority (hereinafter called MBASIA) is an intergovernmental agency, risk sharing, joint powers authority, duly formed pursuant to California Government Code Sections 6500-6512, and other provisions of law.

This Memorandum of Coverage is a contract between the MBASIA and its Members that sets forth certain duties, responsibilities and obligations of each party. This Memorandum of Coverage is not an insurance policy or document, and is not necessarily subject to the particular rules of law that apply to an insurance policy or to interpretation of insurance policies or insurance related documents.

MBASIA (hereinafter Authority) agrees with the **Member** named in the Declarations made a part hereof, in consideration of the payment of the premium and subject to all of the terms of this Memorandum, as follows:

COVERAGE AGREEMENTS

I. APPLICATION OF MEMORANDUM: This Memorandum applies to **loss** sustained by the **Member** because of liability imposed upon the **Member** by:

A. The **Workers' Compensation Act** of California or the **Workers' Compensation Act** of any state other than California, provided that California is the injured **employee's** normal state of employment or residence, or

B. "**Employers' Liability**"

on account of **bodily injury or occupational disease** sustained by **employees** of the **Member**, while engaged in operations of the **Member**, as a result of **occurrences** taking place during the coverage period and while this Memorandum is in force.

The indemnity afforded by this Memorandum under Coverage Agreement I.B. for **loss** because of liability imposed by "Employers' Liability" applies only as respects such operations in California including **employees** who are regularly engaged in such operations in California but who may be temporarily outside California in connection with such operations. As respects liability imposed by "Employers' Liability", the Authority shall have no obligation to indemnify the **Member** for damages imposed in any lawsuit brought in, or any judgment rendered by, any court outside of the United States of America, its territories or possession, or Canada, or to any action on such judgment wherever brought.

The Authority's liability under Coverage Agreement I.B. includes **bodily injury or occupational disease** to the master and members of the crew of a vessel, subject to the following:

- A. The **bodily injury** or **occupational disease** must occur in the territorial limits of, or the operation of a vessel sailing directly between the ports of the Continental United States of America, Alaska, Hawaii, or Canada.
- B. This coverage does not apply to:
 - 1. **bodily injury** or **occupational disease** covered by a protection and indemnity coverage or similar policy issued to or on behalf of the **Member**
 - 2. The duty to provide transportation, wages, and maintenance.

WORKERS' COMPENSATION LAW

Workers' compensation law means the Workers' Compensation Laws of the State of California (which include injury by both accident and disease). It includes any amendments to that law that are in effect during the coverage period. It does not include the provisions of any law that provide non-occupational disability benefits. The term "Workers' Compensation Law" shall also include the United States' Longshore and Harbor Workers Compensation Act, also known as LHWCA (33 USC Sections 901-950).

DEFINITIONS

Wherever used in this Memorandum, the following definition of terms shall apply:

- I. **Authority** means the Monterey Bay Area Self Insurance **Authority**.
- II. **BODILY INJURY:** The term **bodily injury** shall include death resulting there from but shall not include **occupational disease**.
- III. **COMMUNICABLE DISEASE** shall mean a disease caused by an infectious organism, which is transmissible from one source to another, directly or indirectly.
- IV. **EMPLOYEE:** The term **employee** shall mean, as respects liability imposed upon the **Member** by the **Workers' Compensation Act** of any applicable state, any person performing work which renders the **Member** liable under any **Workers' Compensation Act**, provided such person's normal employment or residence is located in California, for **bodily injury** or **occupational disease** sustained by such person.

- V. **LOSS:** The term **loss** shall mean only such amounts as are actually paid by the **Member** as benefits under the applicable **Workers' Compensation Act**, or in payment of amounts imposed upon the **Member** by "Employers' Liability", in settlement of claims for such benefits or damages, or satisfaction of awards or judgments for such benefits and damages, including court costs, interest upon awards or judgments, and allocated investigation, and legal expenses, but the term **loss** shall not include as expenses, salaries paid to **employees** of the **Member**, nor fees and retainers paid to any service organization.
- VI. **MEMBER** shall include all entities named in the Declarations and any related "employer" as defined by any applicable **Workers' Compensation Act**.
- VII. **OCCUPATIONAL DISEASE:** The term **occupational disease** shall include death resulting there from and cumulative injuries.
- VIII. **OCCURRENCE:** (A) All **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**. (B) **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 last day of the last exposure, in the employment of the **Member**, to conditions causing or aggravating the disease. (C) 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.
- IX. **WORKERS' COMPENSATION ACT:** The term **Workers' Compensation Act** shall include any separate occupational disease act, but shall not include the non-occupational disability benefit provisions of any such act. The term **Workers' Compensation Act** includes the United States Longshore and Harbor Workers Compensation Act (33 USC Sections 901-950). Coverage for **loss** shall be limited, by amount and time of payment, to the benefits which would be available under the **Workers' Compensation Act** of the state where the injured employee is normally employed, if that law applied.

EXCLUSIONS

Liability under Coverage Agreement I.A. does not apply to:

- I. The **Member's** obligation to pay salary in lieu of temporary disability benefits as required by Labor Code Section 4850 or the **Member's** obligation to pay wages or salary as required by Education Code Sections 44984 and 45192, except to the extent that the **Member** would be obligated to pay temporary disability benefits if Labor Code Section 4850 or Education Code Sections 44984 and 45192 did not apply;
- II. The **Member's** obligations pursuant to Labor Code Section 4856;
- III. Punitive or Exemplary Damages, fines or penalties assessed against or imposed upon the **Member**:

- A. On account of **bodily injury** or **occupational disease** sustained by any **employee**; or
- B. On account of the conduct of the **Member** or any of its agents (i) in the investigation, trial or settlement of any claim for benefits under the applicable **Workers' Compensation Act** or for damages at law, or (ii) in failing to pay or delaying the payment of any such benefits or damages; or
- C. On account of violation of any statute or regulation; or
- D. On account of **bodily injury** or **occupational disease** intentionally caused or aggravated by the **Member**; or
- E. On account of **bodily injury** arising out of termination of employment; or
- F. On account of **bodily injury** arising out of the coercion, demotion, reassignment, discipline, defamation, harassment or humiliation of, or discrimination against any **employee**.

Liability under Coverage Agreement I.B. does not apply to:

- I. Liability assumed by the **Member** under any contractual agreement;
- II. **Bodily injury** or **occupational disease** to an employee while employed in violation of law with the actual knowledge of the **Member**;
- III. Any obligation imposed by a workers' compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
- IV. **Bodily injury** or **occupational disease** intentionally caused or aggravated by the **Member**;
- V. Loss arising out of the coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any **employee** or any personnel practices, policies, acts or omissions;
- VI. Fines or penalties assessed against or imposed upon the **Member** on account of violation of any statute or regulation;
- VII. Loss arising out of operations for which the **Member** has violated or failed to comply with any Workers' Compensation Law;
- VIII. Loss arising out of operations for which the **Member** has rejected any Workers' Compensation Law;
- IX. Punitive or Exemplary Damages, fines or penalties assessed against or imposed upon the **Member**;

- A. On account of **bodily injury** or **occupational disease** sustained by any **employee**; or
- B. On account of the conduct of the **Member** or any of its agents (i) in the investigation, trial or settlement of any claim for benefits under the applicable **Workers' Compensation Act** or for damages at law, or (ii) in failing to pay or delaying the payment of any such benefits or damages; or
- C. On account of violation of any statute or regulation; or
- D. On account of **bodily injury** or **occupational disease** intentionally caused or aggravated by the **Member**; or
- E. On account of **bodily injury** arising out of termination of employment; or
- F. On account of **bodily injury** arising out of the coercion, demotion, reassignment, discipline, defamation, harassment or humiliation of, or discrimination against any **employee**.

CONDITIONS

- I. VOLUNTEERS: This Memorandum shall apply to **loss** on account of **bodily injury** or **occupational disease** sustained by volunteer workers while acting within the scope of their duties for or on behalf of the **Member**, provided that, prior to the **occurrence**, the Governing Board of the **Member** has adopted a resolution as provided in Division 4, Part 1, Chapter 2, Article 2, of the California Labor Code, declaring such volunteer workers to be **employees** of the **Member** for purposes of the **Workers' Compensation Act**; or provided that such volunteer workers are statutorily deemed by the **Workers' Compensation Act** to be **employees** for the purposes of workers' compensation.
- II. NOTICE OF ACCIDENT OR CLAIM:
 - A. The **Member** shall give written notice within five days of the **Member's** knowledge to the **Authority** if a claim for a **bodily injury** or disease occurs which appears to involve coverage by the **Authority**.
 - B. Notice of accident given to the **Authority** shall contain complete details on the **bodily injury**, disease, or death. If a suit, claim, or other proceeding is commenced which appears to involve coverage by the **Authority**, the **Member** shall give the **Authority**:
 - i. All notices and legal papers related to the claim, proceeding, or suit, or copies of these notices and legal papers; and

- ii. Copies of reports on investigations made by the **Member** on such claims, proceedings, or suits.
 - C. If written notice is not provided by the **Member** to the **Authority** within thirty (30) days of knowledge of such claim, coverage may not be provided under this MOC. This requirement is a condition precedent to coverage under this MOC.
- III. **SERVICE ORGANIZATION:** As a condition precedent to recovery hereunder, it is agreed that the **Member** will engage one or more service organizations and/or in-house staff acceptable to the Authority to perform on behalf of the **Member**, and without charge to the Authority, such services as may be acceptable to the Authority during the currency of this Memorandum and until the final settlement of all claims arising out of **occurrences** which take place while this Memorandum is in force. The performance of such services shall not constitute any undertaking on behalf of the Authority, nor relieve the **Member** of any of its obligations under the terms of this Memorandum.
- IV. **ASSISTANCE AND COOPERATION:** In the event the Authority elects to participate with the **Member** in, or to assume in the name of the **Member**, control over the investigation, defense, or appeal of any claim, suit, or proceeding, the **Member** shall cooperate to the fullest extent with the Authority and its representatives.
- Upon the Authority's request, the **Member** shall direct its service organization and/or other representatives to cooperate with and assist the Authority in all matters relative to such investigation, settlement, defense, or appeal.
- If the Authority elects to assume control as described above, the Authority shall give written notice of such election to the **Member**. Upon receipt of such written notice, the **Member** shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense other than such immediate medical or other services at the time of injury as are required by the **Workers' Compensation Act** or such immediate medical and surgical relief as may become imperative at the time of an **occurrence**.
- V. **RECOVERY FROM OTHERS:** We may enforce your rights to recover our payment from anyone liable for an injury covered by this coverage. You will do everything necessary to protect those rights for us and to help us enforce them.
- VI. **LOSS PAYABLE:** We will pay promptly when due to those eligible under this agreement the benefits required of you by the workers' compensation law, in excess of any **Member** Retention. As respects the United States and Longshore and Harbor Workers Compensation Act (33 USC Sections 901-950), coverage for loss shall be limited, by amount and time of payment, to the benefits which would be available under the Workers' Compensation Act of the state where the injured employee is normally employed, if that law applied.
- VII. **LIMIT OF LIABILITY:** Our liability to pay for damages is limited. Our limit of liability is shown on the Declarations page. It is the most we will pay for all damages covered by this

coverage because of bodily injury to one or more employees in any one accident or occurrence, or series of accidents or occurrences, arising out of any one event.

We will not pay any claims for damages after we have paid the limit of our liability under this coverage as explained above.

VIII. **PAYMENTS THE MEMBER MUST MAKE:** The **Member** shall be responsible for any payments in excess of the benefits regularly provided by the **Workers' Compensation Act**, including but not limited to those required because:

- A. of serious and willful misconduct on the part of the **Member**;
- B. the **Member** knowingly employs an employee in violation of the law;
- C. the **Member** fails to comply with a health or safety law or regulation; however, this does not apply to recommendations promulgated by the Joint Commission for Accreditation of Health;
- D. of discharge, coercion, or discrimination against any employee in violation of the **Workers' Compensation Act**;
- E. of claims relating to or in any way arising out of California Labor Code Section 132(a);
- F. of the unreasonable delay or failure to make payments of compensation by or on behalf of the **Member**, including the legal fees associated with defending resulting claims or suits;
- G. the **Member** violates or fails to comply with the **Workers' Compensation Act**.

If the Authority makes any payments on behalf of the Member in excess of the benefits regularly provided by the Workers' Compensation Act, the Member will reimburse the Authority promptly.

IX. **SUBROGATION:** In the event of any payment under this Memorandum, the Authority shall be subrogated, to the extent of such payment, to all the **Member's** rights of recovery therefore, and the **Member** shall execute all papers required and shall do everything that may be necessary to secure such rights. Any amount recovered as a result of such proceedings, together with all expenses necessary to the recovery of any such amount shall be apportioned as follows: The Authority shall first be reimbursed to the extent of its actual payment hereunder. If any balance then remains, said balance shall be applied to reimburse the **Member**. The expenses of all proceedings necessary to the recovery of such amount shall be apportioned between the **Member** and the Authority in the ratio of their respective recoveries as finally settled. If there should be no recovery in proceedings instituted solely on the initiative of the Authority, the expenses thereof shall be borne by the Authority.

- X. PREMIUM PAYMENTS: You will pay all premium when due.
- XI. INSPECTION AND AUDIT: The Authority shall be permitted but not obligated to inspect the **Member's** operations at any time. Neither the Authority's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the **Member** or others to determine or warrant that such operations are safe or harmful, or are in compliance with any law, rule or regulation. The Authority may examine and audit the **Member's** books and records at any time during the currency hereof and until three (3) years after the final settlement of all claims or payments made on account of accident or disease occurring during the term of this Memorandum as far as such books and records relate to the subject matter of this Memorandum.
- XII. OTHER COVERAGE: If the **Member** has other coverage against a **loss** covered by this Memorandum, the Authority's coverage shall apply in excess of any other coverage.
- XIII. BANKRUPTCY AND INSOLVENCY: In the event of the bankruptcy or insolvency of the **Member** or any entity comprising the **Member**, the Authority shall not be relieved thereby of the payment of any claims under this Memorandum because of such bankruptcy or insolvency.
- XIV. ASSIGNMENT: No assignment of the **Member's** interest hereunder shall be binding upon the Authority unless its consent is endorsed hereon.
- XV. NOTICE OR PAYMENT: If more than one entity qualifies as a **Member** under the definition of **Member** or by endorsement to this Memorandum, all notices, stipulations and payments to or by the entity first named in the Declarations shall be binding upon all other **Members**.
- XVI. CHANGE OR WAIVER: The terms of this Memorandum shall not be waived or changed except by endorsement issued to form a part hereof, signed by a duly authorized representative of the Authority.
- XVII. ACCEPTANCE: By acceptance of this Memorandum, the **Member** agrees that each of the persons, firms or organizations named in the Declarations as the **Member** is, or upon learning of the necessity therefore will become, qualified to operate with the permission of the proper authorities as a self-insurer under the **Workers' Compensation Act** of California; that the statements in the application for this Memorandum are the **Member's** agreements and representations; that this Memorandum embodies all agreements existing between the **Member** and the Authority or any of its agents relating to this coverage; and that full compliance by the **Member** with all the terms of this Memorandum is a condition precedent to the Authority's liability hereunder.
- XVIII. CANCELLATION AND WITHDRAWAL: You may withdraw as a party to this agreement and as a participant in the coverage; provided you meet the requirements, as specified in the Joint Exercise of Power Agreement and Bylaws

- XV. CONFORMANCE WITH **WORKERS' COMPENSATION ACT**: Any term of this Memorandum which conflicts with any provision of the California **Workers' Compensation Act** is changed by this provision to conform to said law.
- XVI. COVERAGE DISPUTES: The Coverage and Claims Committee shall make the initial determination whether to deny coverage on all or part of a claim, or to reserve the **Authority's** right to deny coverage on all or part & a claim, if a loss subsequently exceeds the retained limit.

A decision by the Coverage and Claims Committee to deny coverage can be appealed to the Board of Directors. Notice of such appeal shall be submitted in writing within thirty (30) calendar days of the date of the Coverage and Claims Committees written notice of decision.

The appeal than be considered by the Board of Directors at the next regular or special meeting following receipt of the written appeal; lithe appeal is received too late for inclusion in the agenda packet, it can be postponed to the next following Board meeting. The Coverage and Claims Committee and the **Member** will have the right to submit written materials and present oral argument to the Board; subject to reasonable time constraints.

Within sixty (60) days following any denial of coverage by the Board, the Member or **Member** may request, in writing, that the **Authority** initiate a declaratory relief action in Superior Court for a determination of the coverage matter. The declaratory relief action shall he initiated in Santa Cruz County, California, unless the **Authority** and **Member** agree on a different venue.

Any determination by the Executive Committee, and by the Board of Directors if the matter is appealed to the Board of Directors, whether a **Member** has breached the Conditions concerning notice of a claim, and any determination whether the **Authority** has been prejudiced by that breach, so that this coverage does not apply, comes within the sole discretion of the Board of Directors, Such determinations shall be conclusive, final and binding and shall not be the subject of any further review, whether by declaratory relief action or otherwise.