

# PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM)

## GENERAL LIABILITY 1 PROGRAM MEMORANDUM OF COVERAGE

In consideration of the payment of the premium, if paid, in reliance upon the statements in the Declarations made a part hereof and subject to all of the terms of this General Liability 1 Program Memorandum of Coverage (Memorandum), PRISM agrees with the Member as follows:

### COVERAGE AGREEMENT

PRISM will reimburse the **covered party** for **ultimate net loss** in excess of the self-insured retention hereinafter stated which the **covered party** shall become legally obligated to pay as **damages** by reason of liability imposed by law or liability assumed by contract because of:

Coverage A. **Bodily injury and property damage**

to which this Memorandum applies, caused by an **occurrence**;

Coverage B. **Personal injury**

to which this Memorandum applies, caused by an offense;

Coverage C. **Public officials errors and omissions liability or**

Coverage D. **Employment practices liability**

to which this Memorandum applies, caused by a **wrongful act**.

### DEFENSE AND SETTLEMENT COSTS

After the amount of the **covered party's** self-insured retention has been exhausted by payment of judgments, settlements and/or **defense fees and costs**, PRISM will reimburse the **covered party** for **excess defense fees and costs** the **covered party** incurs on covered losses. A final coverage determination will be made at the conclusion of a claim or **suit**, and if deemed not covered, then the associated defense costs will not be covered. PRISM's liability for **excess defense fees and costs** is subject to, and not in addition to, PRISM's limit of liability.

PRISM has no duty to defend under the Memorandum. PRISM; however, shall have the right, but not the duty, to associate itself, at its own cost, with the **covered party**, in the control, investigation, defense or appeal of any claim or **suit** which, in the opinion of PRISM, is or may be covered by the Memorandum. The **covered party** shall fully cooperate in all matters pertaining to such claim or **suit**.

No claim or **suit** shall be settled for an amount in excess of the **covered party's** self-insured retention without the prior written consent of PRISM.

## **SELF-INSURED RETENTION - PRISM'S LIMIT OF LIABILITY**

Regardless of the number of (1) **covered parties** under this Memorandum, (2) persons or organizations who sustain injury or **damage**, (3) claims made, or (4) **suits** brought on account of **bodily injury, property damage, personal injury, public officials errors and omissions liability, or employment practices liability**, PRISM's liability is limited as follows:

- A. With respect to **bodily injury, property damage, personal injury, public officials errors and omissions liability, and employment practices liability**, or any combination thereof, PRISM's liability shall be only for the **ultimate net loss** in excess of: (1) the self-insured retention as specified in the Declarations as the result of any one **occurrence, offense, or wrongful act**, (2) collectible insurance available to a **covered party** also covering a loss hereunder, whether on a primary, excess or contingent basis; and then for an amount not exceeding PRISM's limit of liability specified in the Declarations as the result of any one **occurrence, offense, or wrongful act**.
- B. For the purpose of determining the limit of PRISM's liability, as respects Coverages A and B, all **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence** under Coverage A or one offense under Coverage B. For the purpose of determining the limit of PRISM's liability, as respects Coverages C and D, all **damages** arising out of a single act, error or omission or a series of related acts, errors or omissions shall be treated as arising from a single **wrongful act**. There is no limit of the number of **occurrences** during the Memorandum Period for which claims may be made, except that the liability of PRISM arising out of the **Completed Operation Hazard** because of all **occurrences** shall not exceed the amount specified in the Declarations for each twelve months, commencing with the first day of the Memorandum Period.
- C. An **occurrence, offense, or wrongful act** taking place over more than one Memorandum Period shall be deemed to have taken place during the last Memorandum Period, but no later than the Memorandum Period in effect at the filing of the claim or **suit**, whichever filing occurs first, and only that limit shall apply.

Notwithstanding the foregoing, if a claim or **suit** names more than one Member, a separate self-insured retention and a separate limit shall apply to each Member.

## **MEMORANDUM PERIOD, TERRITORY**

This Memorandum applies to **bodily injury, property damage, personal injury, public officials errors and omissions liability, or employment practices liability**, which occur anywhere in the world during the Memorandum Period.

## COVERED PARTY, COVERED PERSONS OR ENTITIES

- A. The Member;
- B. Those individuals, including volunteers, who were or are now elected or appointed officials of the Member, whether or not compensated, including members of the Member's governing body or any other committees, boards, commissions or special districts of the Member, while acting for or on behalf of the Member;
- C. All special districts **governed directly** by the Member's governing board and other districts or agencies which are named on the Memorandum;
- D. Past or present employees of the Member, including volunteers, or other covered entities, whether or not compensated, while acting for or on behalf of the Member or other covered entity;
- E. Notwithstanding sub-paragraphs (A) through (D) above, the determination and findings made in good faith by the Member pursuant to California Government Code Section 995.2 or any other similar provision of law shall be conclusive and binding on PRISM and all other persons for the purposes of coverage under the Memorandum; and
- F. 1937 Act Retirement Association of the Member County and the San Luis Obispo County Pension Trust.

## EXCLUSIONS

As respects **ultimate net loss**, this Memorandum does not apply:

- A. To any obligation for which any **covered party** or any carrier as its insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
- B. To **bodily injury** to any employee of any **covered party** arising out of and in the course of his/her employment by such **covered party**; but this exclusion does not apply to **employment practices liability** or liability assumed by the **covered party** under any written contract;
- C. To injury to or destruction of (1) property owned by a **covered party**, or (2) property rented or leased to the **covered party** where the **covered party** has assumed liability for damage to or destruction of such property unless the **covered party** would have been liable in the absence of such assumption of liability, or (3) **aircraft** or **watercraft** in the care, custody or control of any **covered party**;
- D. As respects liability assumed by the **covered party** under any contract:
  1. To any claim, judgment or agreement from any arbitration proceeding wherein PRISM is not entitled to exercise with the **covered party**, the **covered party's** rights in the choice of arbitrators, and in the conduct of such proceedings; or
  2. To any obligation for the rendering or failure to render professional services for the **covered party**, if the indemnitee of the **covered party** is an architect, engineer or surveyor, arising out of:
    - a.) The preparation or approval of contracts, maps, plans, drawings, opinions, reports, tests, surveys, change orders, designs or specifications; or
    - b.) The giving or the failure to give directions or instructions by the indemnitee, the indemnitee's agents or employees, provided such giving or failure to give directions or instructions is the primary cause of **bodily injury** or **property damage**;
- E. To **bodily injury** and **property damage** arising out of any **covered party's** ownership, maintenance, loading or unloading, use or operation of any:
  1. **Aircraft**;
  2. Airfields;
  3. Runways;
  4. Hangars; or
  5. Buildings or other properties in connection with aviation activities.

This exclusion shall not apply; however, (1) to liability arising out of the ownership,

operation, rental, or loan of vehicles licensed for highway use while being operated away from the premises of any airfield owned or operated by the **covered party**; or (2) to **non- owned aircraft** operated by or on behalf of the **covered party**;

This exclusion does not apply to liability arising out of the ownership, operation, use, maintenance or entrustment to others of any **Unmanned Aerial Vehicle (UAV)** that is owned or operated by or on behalf of, or rented to, or loaned by, any **covered party**.

F. To liability arising out of the rendering of or failure to render the following medical professional services:

1. Medical, surgical, dental, x-ray or nursing, service or treatment, to any person, including the furnishing of food or beverages in connection therewith;
2. Service or treatment related to physical or mental health;
3. Furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances;
4. Handling of or performing post-mortem examination on human bodies;
5. Service by any person as a member of a formal accreditation or similar professional board or committee of the **Member** or as a person charged with the duty of executing directives of any such board or committee; or
6. Any cosmetic or tonsorial service or treatment.

This exclusion shall not apply; however, to any professional activities arising out of the performance of occupational physical examinations, paramedics, emergency first aid, or preventative health services related to: alcoholism, drug abuse, well child healthcare, California Children Services, immunizations, sexually transmitted diseases, tuberculosis, and family planning.

Notwithstanding such exceptions to this exclusion as are set forth immediately above; however, if any collectible insurance or other coverage, including but not limited to coverage afforded by any other PRISM program, is available to the **covered party**, for liability for loss, **damage** or injury arising from the operation of any clinic or other established health care facility (whether on a primary, excess or contingent basis), any coverage afforded hereunder shall apply in excess of, and shall not contribute with, such insurance or other coverage; provided that this clause does not apply with respect to excess insurance purchased specifically to be in excess of this Memorandum, or to insurance or reinsurance which is intended to provide the remainder of the limit of liability stated in the Declarations of this Memorandum when the coverage afforded under this Memorandum provides less than 100 percent of the limit set forth in the Declarations;

G. To liability, directly or indirectly, arising out of or in connection with the principles of eminent domain, condemnation proceedings or inverse condemnation, by whatever name called, whether grounded in federal or state law, regardless of whether such claims are made directly against the **covered party** or by virtue of

any agreement entered into by or on behalf of the **covered party**.

This exclusion does not apply to any aspect of inverse condemnation liability directly arising out of physical injury to, or destruction of, tangible property neither expected nor intended from the standpoint of the **covered party**; provided; however, this exception does not apply to any nonphysical consequential **damages** or to expert or attorney fees claimed by or awarded to a claimant or a plaintiff in a **suit**.

- H. To liability arising out of the failure to provide an adequate supply of fuel, water or electricity; however, this exclusion applies only if such failure to provide results from any decision by the Member's governing body with respect to (1) obtaining such fuel, water or electricity, or (2) allocating such fuel, water or electricity among the users thereof;
- I. To **property damage** arising out of **subsidence**;
- J. To liability for **bodily injury** or **property damage** arising out of any transit authority, transit system or public transportation system owned or operated by any **covered party**. This exclusion shall not apply to transit or public transportation systems operating over non-fixed routes such as dial-a-ride, senior citizen transportation, or handicapped person's transportation;
- K. To liability arising out of the hazardous properties of **nuclear material**;
- L. To liability imposed upon a **covered party** (or which is imputed to a **covered party**) under the "Employment Retirement Income Security Act of 1974" and any law amendatory thereof;
- M. To liability arising out of the rupture, bursting, overtopping, accidental discharge, or partial or complete failure of any **dam(s)**;
- N. To any liability for past, present, or future claims or **suits** arising in whole or in part, either directly or indirectly, out of the mining, manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, or exposure to, asbestos or products containing asbestos, whether the asbestos is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion, or found in any form whatsoever;
- O. To liability arising out of the **contamination** of the **environment** by **pollutants** introduced at any time into or upon the **environment**. This exclusion applies whether the **contamination** is introduced into the **environment** intentionally, accidentally, gradually or suddenly, and whether the **covered party** or any other person or organization is responsible for the **contamination**.

Unless caused by any of the **covered party's** property that has been discarded, dumped, abandoned, or thrown away, this exclusion shall not apply with respect to:

1. Violent breaking open or explosion of any plant, equipment or building for which the **covered party** has legal responsibility, either as owner or operator;
2. Fire, lightning or windstorm damage to any plant, equipment or building for which the **covered party** has legal responsibility, either as owner or operator;
3. Collision, overturning or upset of any vehicle, railroad vehicle or mobile equipment; or
4. Unintended fire, lightning or explosion not otherwise specified under 1, 2, or 3 above.

It is further agreed that this exclusion does not apply to the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants** if:

- a.) It was accidental and was neither expected nor intended by the **covered party**; and
- b.) It was instantaneous and was demonstrable as having commenced at a specific time and date during the term of this Memorandum; and
- c.) Its commencement became known to the Member within ten days; and
- d.) Its commencement was reported in writing to PRISM within thirty-one days of becoming known to the Member; and
- e.) Reasonable effort was expended by the Member to terminate the situation as soon as conditions permitted.

Notwithstanding the foregoing this Memorandum shall not apply to any claim or **suit** relating to: any liability to test for, monitor, clean-up, remove, contain, treat, detoxify, or neutralize **pollutants**, whether or not any of the foregoing are, or should be, performed by the **covered party** or by others;

- P. To injunctions, equitable relief, writs of mandate or any other form of relief other than the payment of **damages**.

However, this exclusion shall not apply to writs of mandate where **damages** are recoverable. Where this exception to the exclusion applies, coverage is afforded solely for those causes of action under which **damages** are recoverable.

- Q. Under Coverage C, **public officials errors and omissions liability**, to:

1. **Bodily injury, property damage, personal injury, or employment practices liability** as defined in the Memorandum;

2. Injury to, destruction or disappearance of any tangible property (including money) or the loss of use thereof; or
3. Failure to perform, or breach of, a contractual obligation.

Nothing contained in this exclusion shall limit the **covered party's** rights of recovery, if applicable, under Coverages A, B, and D of this Memorandum;

- R. To the refund of taxes, fees or assessments;
- S. To liability of a **covered party** arising in whole or in part, out of any **covered party** obtaining remuneration or financial gain to which the **covered party** was not legally entitled except that any act for which a **covered party** is responsible shall not be imputed to any other **covered party** for purposes of this exclusion;
- T. To liability arising out of the willful violation of a penal statute, code, or ordinance committed by or with the knowledge or consent of any **covered party** except that any act for which a **covered party** is responsible shall not be imputed to any other **covered party** for purposes of this exclusion;
- U. To liability of any **covered party** arising out of estimates of probable costs or cost estimates being exceeded or for faulty preparation of bid specifications or plans or failure to award contracts in accordance with statute or ordinance which under law must be submitted for bids;
- V. To benefits payable under an employee benefit **plan** (whether the **plan** is voluntarily established by the **covered party** or mandated by statute) because of unlawful discrimination;
- W. To any liability arising out of or in connection with any claim for punitive, exemplary or multiples of **damages/penalties**;
- X. Under Coverage D, **employment practices liability**, to:
1. Strikes and lockouts. This Memorandum does not apply to any claim or **suit** for loss arising out of a lockout, strike, picket line, replacement or similar actions in connection with labor disputes or labor negotiations;
  2. W.A.R.N. Act. This Memorandum does not apply to any claim or **suit** for loss arising out of the Workers Adjustment and Retraining Notification Act, Public Law 100-379 (1988), or any amendment thereto, or any similar federal, state or local law;
  3. Any cost incurred by the **covered party** to modify or purchase any building or property in order to make said building or property more accessible or accommodating to any disabled person; or
  4. **Property damage, personal injury, and public officials errors and omissions liability**;

- Y. To liability arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment or vehicle, including any motorized **watercraft**, while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice in preparation for any such contest or activity, if such contest or activity is sanctioned or permitted by a **covered party**, or (2) the operation or use of any snowmobile or trailer designed for use therewith when used for recreational, stunting or racing activities;

However, this exclusion shall not apply to liability arising out of the ownership, maintenance, operation, use, loading or unloading of any non-motorized **watercraft**.

For the purpose of this exclusion, “non-motorized **watercraft**” shall mean **watercraft** without power motors and **watercraft** with power motors, which are not in use during an event otherwise excluded hereunder;

- Z. Under Coverage A, **bodily injury** and **property damage**, to **personal injury** as defined in the Memorandum.

Nothing contained in this exclusion shall limit the **covered party’s** rights of recovery, if applicable, under Coverage B.

- AA. To liability arising out of any breach of fiduciary duty with respect to a retirement **plan**. As used in this exclusion, breach of fiduciary duty means:

1. Violation of any of the responsibilities, obligations or duties imposed upon fiduciaries by:
  - a.) The Employee Retirement Income Security Act of 1974 (ERISA) or amendments thereto; or
  - b.) The common or statutory law of the United States of America, or of any state or other jurisdiction therein; and
2. Negligent acts, errors or omissions in administration.

Administration as used herein shall mean:

- a.) Giving counsel to participants and beneficiaries with respect to a **plan**;
- b.) Interpreting a **plan**;
- c.) Providing or failing to provide benefits under a **plan**;
- d.) Funding of a **plan**;
- e.) Handling the records connected with a **plan**; and
- f.) Effecting enrollment, termination or cancellation of participants under a plan.

## DEFINITIONS

The following definitions shall govern the meaning of the defined terms for the purposes of this Memorandum. The defined terms are set forth in **bold face** type where used herein.

“**Aircraft**” means a vehicle designed for the transport of persons or property principally in the air.

“**Bodily injury**” means bodily harm, sickness, disability or disease sustained by a person, including death resulting from any of these at any time. **Bodily injury** includes mental injury, mental anguish, humiliation, shock or death if resulting directly from **bodily injury**. **Bodily injury** shall include care, loss of services, loss of consortium, or death resulting at any time from the **bodily injury**.

“**Completed operations hazard**” includes **bodily injury** and **property damage** arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs after such operations have been completed or abandoned and occur away from premises owned by or rented to the **covered party**. “Operations” include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- A. When all operations to be performed by or on behalf of the **covered party** under the contract have been completed;
- B. When all operations to be performed by or on behalf of the **covered party** at the site of the operations have been completed; or
- C. When the portion of the work out of which the injury or **damage** arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project.

Operations, which may require further service or maintenance work or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete shall be deemed completed.

The **completed operations hazard** does not include liability arising out of:

- A. Operations in connection with the transportation of property unless the liability arises out of a condition in or on a vehicle created by the loading or unloading thereof;
- B. The existence of tools, uninstalled equipment or abandoned or unused materials.

“**Contamination**” includes any unclean, unsafe or unhealthful condition either actual or potential, which arises out of the presence in the **environment** of any **pollutant**, whether permanent or transient.

“**Covered party**” means any person or organization qualifying as a **covered party** under the “COVERED PARTY, COVERED PERSONS OR ENTITIES” section of this Memorandum. The coverage afforded applies separately to each **covered party** against whom claim is made or **suit** is brought, except with respect to the limits of PRISM's liability.

“**Dam**” means any artificial barrier together with appurtenant works which:

- A. Is twenty-five feet or more in height from the foot of a natural bed of stream or watercourse; or
- B. Has water impounding capacity of fifty acre feet or more.

Except that no structure specifically exempted from jurisdiction by the State of California Department of Water Resources, Division of Safety of Dams shall be considered a **dam**, unless such structure is under the jurisdiction of any agency of the federal government.

“**Damages**” means monetary compensation resulting from: (a) **bodily injury** or **property damage**, (b) **personal injury**, (c) **public officials errors and omissions liability**, or (d) **employment practices liability**.

“**Defense Fees and Costs**” means

- a) Reasonable fees charged by an attorney, including expenses of a claims servicing organization the **covered party** has engaged, and all other reasonable fees and costs, including expenses attributable to the investigation, defense, administration or appeal of a claim or **suit** within the scope of coverage afforded by this Memorandum; and
- b) Third-party attorney's fees and costs as authorized by law or under a contract, interest of any kind, and any other costs taxed against a **covered party**, attributable to a claim or **suit** within the scope of coverage afforded by this Memorandum.

**Defense Fees and Costs** shall not include any allocated claims expenses, salaries, or overhead incurred by employees of the **covered party**.

**Defense Fees and Costs** shall not include any fees, costs, or expenses incurred in connection with administrative proceedings where a claimant does not seek **damages**.

“**Employment practices liability**” means liability, except as related to **property damage**, **personal injury**, or **public officials errors and omissions liability**, arising out of an actual or alleged **wrongful act** in connection with any person's prospective employment, actual employment or termination of employment by a **covered party**, including but not limited to wrongful termination, discrimination or sexual harassment.

“**Environment**” includes land, bodies of water, underground water or water table or aquifer, the atmosphere and any other natural feature of the earth, whether or not altered, developed or cultivated.

“**Excess defense fees and costs**” means **defense fees and costs** incurred by the **covered party** with the written consent of PRISM after the self-insured retention has been

exhausted by payment of judgments, settlements and **defense fees and costs**.

**“Governed directly”** means the special district is governed by the Member’s governing board.

**“Non-owned aircraft”** means any **aircraft** other than:

- A. **Aircraft** owned in whole or in part by or registered in the name of the **covered party**;
- B. **Aircraft** having a seating capacity in excess of forty-five passenger seats; or
- C. **Aircraft** which are the subject of a lease or service agreement with the **covered party** for a period in excess of thirty days.

**“Nuclear material”** means source material, special nuclear material, or byproduct material. “Source material”, “special nuclear material”, and “byproduct material” have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

**“Occurrence”** means an accident, including injurious exposure to conditions, during the Memorandum Period, which results, in **bodily injury** or **property damage**, neither expected nor intended from the standpoint of the **covered party**. All **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

**“Personal injury”** means injury, including consequential **bodily injury** or **property damage**, arising out of one or more of the following offenses: (a) false arrest, detention or imprisonment or malicious prosecution; (b) the publication or utterance of libel or slander, including disparaging statements concerning the condition, value, quality or use of real or personal property, or publication or utterance in violation of rights of privacy; (c) wrongful entry or eviction, or other invasion of the right of private occupancy; (d) assault and battery, not committed by, at the direction of or with the consent of the **covered party**, unless committed or directed for the purpose of protecting persons or property from injury or death; (e) discrimination based upon race, religion, nationality, national origin, color, creed, sex, sexual orientation, age, nature of employment, or disability, but excluding unlawful discrimination intentionally committed by, at the direction of, or with consent of the **covered party**.

**“Plan”** means the written instrument, which sets forth specific benefits and eligibility under a named trust.

**“Pollutants”** include smoke, vapors, soot, fumes, acids, alkalis, chemicals, liquids or gases, thermal **pollutants** and all other irritants or contaminants.

**“Property damage”** means (1) physical injury to, or destruction of, tangible property, which occurs during the Memorandum Period, including the loss of use thereof at any time resulting therefrom; or (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 Memorandum Period.

**“Public officials errors and omissions liability”** means any actual or alleged error or misstatement or act of omission or neglect or breach of duty including misfeasance, malfeasance or nonfeasance by the **covered parties** in the discharge of their duties with the public entity individually or collectively, or any matter claimed against them solely by reason of their being or having been **covered parties**.

**“Subsidence”** means any **property damage** directly or indirectly arising out of, caused by, resulting from, contributed to or aggravated by the settling, sinking, slipping, falling away, caving in, shifting, eroding, mud flow, rising, tilting, or any other movement of land or earth.

**“Suit”** means a civil or administrative proceeding, including arbitration and other alternative dispute resolution procedures, in which **damages**, because of **bodily injury, property damage, personal injury, public officials errors and omissions liability, or employment practices liability** to which this coverage applies, are alleged.

**“Ultimate net loss”** means the total sum, which the **covered party** becomes legally liable to pay as **damages** by reason of judgments or by reason of settlements made with the written consent of the **covered party** and PRISM. **Excess defense fees and costs**, which are paid as a consequence of any **occurrence**, offense, or **wrongful act** covered hereunder are reimbursed by PRISM as part of the **ultimate net loss** as defined herein.

**“Unmanned Aerial Vehicle (UAV)”** or drone means an aircraft (with its aerial system or control device) that is not controlled directly by a person from within or on the aircraft, as defined by the Federal Aviation Administration (FAA) Small Unmanned Aircraft Regulations (Part 107).

**“Watercraft”** means a vehicle designed for the transport of persons or property principally on water.

**“Wrongful act”** means any actual or alleged negligent act, error or omission arising out of conduct or performance of the **covered party** in the performance of his or her or their duties or any actual or alleged act in connection with any person’s prospective employment, actual employment or termination of employment by a **covered party**. All **damages** arising out of a single act, error or omission or a series of related acts, errors or omissions shall be treated as arising from a single **wrongful act**. **Wrongful acts** do not include willful acts committed by a **covered party**. Willful act means a deliberate act committed by a **covered party** with the intent to cause harm or with knowledge that injury is highly probable or substantially certain to result.

## CONDITIONS

### 1. PREMIUM

The premium designated in the Declarations as “risk premium” is a deposit premium only, and shall be adjusted annually in accordance with the provisions for “risk premium adjustments” as adopted by the Board of Directors of PRISM.

### 2. INSPECTION

PRISM shall be permitted, but not obligated to, inspect the **covered party's** property and operations at any time. Neither PRISM'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 **covered party** or others, to determine or warrant that such property or operations are safe. PRISM may examine the **covered party's** books and records at any time during the Memorandum Period and extensions thereof and within three years after the final termination of this Memorandum, as far as they relate to the subject matter of this coverage.

### 3. CLAIM REPORTING REQUIREMENTS

It is agreed that with respect to claim reporting, the **covered party**, in addition to the terms set forth in this Memorandum, must report an **occurrence**, offense, or **wrongful act** in which the amount incurred has reached 50 percent or more of their individual self-insured retention or \$500,000, whichever is lower. The **covered party** must also give PRISM immediate written notice for any claims or **suits** which the **covered party** becomes aware of that include injury of the following types:

- A. Death;
- B. Paralysis, paraplegia, or quadriplegia;
- C. Loss of eye(s) or limbs;
- D. Spinal cord or brain injury;
- E. Dismemberment or amputation;
- F. Sensory organ or nerve injury or neurological deficit;
- G. Serious burns;
- H. Severe scarring;
- I. Sexual assault or battery, including, but not limited to, rape, molestation, or sexual abuse;
- J. Substantial disability or disfigurement;
- K. Any class action;
- L. Any claim or **suit** in which PRISM is named as a defendant; or
- M. Any injury caused by lead.

### 4. COVERED PARTY'S DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, WRONGFUL ACT, CLAIM OR SUIT

- A. In the event of an **occurrence**, offense, or a **wrongful act** reasonably likely to involve PRISM, 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

injured and of available witnesses, shall be given by or for the **covered party** to PRISM or any of its authorized agents as soon as practicable, after the individual responsible for the coverage at the Member, or his/her designee, has knowledge of the **occurrence**, offense, or **wrongful act**.

- B. If claim is made or **suit** is brought against the **covered party** which appears likely to involve PRISM, the **covered party** shall forward to PRISM every demand, notice, summons or other process received by him/her or his/her representative, immediately or within a reasonable amount of time after the individual responsible for coverage at the Member or his/her designee has knowledge of the claim or **suit**. The Member shall be responsible for the investigation, settlement, defense and appeal of any claims made, **suits** brought or proceeding instituted against the **covered party**. The Member shall also be responsible for timely periodic reporting developments in the claim, **suit**, or proceeding to PRISM sufficient to allow PRISM to fairly assess coverage under the Memorandum for the claim, **suit**, or proceeding at its conclusion.
- C. The **covered party** shall cooperate with PRISM and upon its request, assist in making settlements, in the conduct of **suits** and in enforcing any right to contribution, subrogation, or indemnity against any person or organization who may be liable to the **covered party** because of liability 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 costs, 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, arbitration award, or agreement among the **covered party**, the claimant and PRISM, then the **covered party** may pay the amount of **ultimate net loss** to the claimant to effect settlement and, upon submission of due proof thereof, PRISM shall indemnify the **covered party** for that part of such payment which is in excess of the self-insured retention.
- D. PRISM, at its option, shall have the right at its own expense to investigate any claim or **suit** and/or negotiate the settlement thereof, as it deems expedient, but PRISM shall not commit the **covered party** to any settlement without the **covered party's** consent. Should the claimant or plaintiff, as the case might be, tender a bona-fide, good faith settlement demand which when added to the incurred **defense fees and costs** is in excess of the **covered party's** retention, the payment of which would result in the full and final disposition of said claim or **suit**, then if such settlement demand is acceptable to either (1) the **covered party**, or (2) PRISM (but not both), then with regard to that settlement demand:
1. If such settlement demand is not acceptable to PRISM and the **covered party** tenders to PRISM an amount equal to the **covered party's** retention less incurred **defense fees and costs**, if any, PRISM shall then reimburse the **covered party** all sums which the **covered party** shall be legally obligated to pay as **damages**, including without limitation, the **covered party's** retention, plus future investigation, adjustment, appraisal, appeal, post judgment interest and **defense fees and costs**. However, in no event shall PRISM's agreement to reimburse the **covered party** exceed the limit of liability as stated in the

Declarations in addition to such investigation, adjustment, appraisal, appeal, post-judgment interest and **defense fees and costs**. Should the full and final disposition of the claim, including judgments, settlements, investigation, adjustment, appraisal, appeal, post-judgment interest and **defense fees and costs** be less than the amount tendered by the **covered party**, the unused portion of the tendered amount shall be returned to the **covered party** by PRISM.

2. If such settlement demand is not acceptable to the **covered party** and PRISM tenders to the **covered party** an amount equal to the difference between the **covered party's** retention, less incurred **defense fees and costs**, and said settlement demand, or the applicable amount specified in the limits of liability section of the Declarations, whichever is less, then PRISM's agreement to reimburse the **covered party** for the **ultimate net loss** hereunder shall be discharged and terminated and PRISM shall have no further obligations with respect thereto.

E. The Member shall be solely responsible for exhausting all collectible insurance and group coverage through another Joint Powers Authority, interlocal cooperative agreement, self-insurance, or other public entity group coverage available to a **covered party** also covering a loss hereunder, whether on a primary, excess or contingent basis.

## 5. APPEALS

A. When a **suit** has proceeded to trial court judgment, and PRISM elects not to appeal but the **covered party** wishes to appeal, then PRISM may discharge its obligations under this Memorandum by tendering to the Member the amount of **ultimate net loss** in excess of the self-insured retention that is due according to the judgment, including **defense fees and costs** incurred until the judgment is entered. When PRISM invokes this section, the **covered party** may elect to file an appeal at its own expense, including with respect to any adverse award of costs on appeal or remand proceedings.

B. If the **covered party** elects not to appeal a judgment in excess of the self-insured retention, PRISM may elect to do so at its own expense, but in no event shall the liability of PRISM for **ultimate net loss** exceed the applicable amount specified in the limits of liability section of the Declarations inclusive of all **defense fees and costs** necessary and incident to such appeal.

C. Where the **covered party** and PRISM both elect to appeal an adverse award of Plaintiff's attorneys' fees and costs, but PRISM and the **covered party** do not contest the award of **damages**, then as part of the appeal PRISM may require the **covered party** to pay the amount of **damages** that is within the self-insured retention and PRISM will pay any amount of **damages** in excess of the retention.

D. Where the **covered party** and PRISM both elect to appeal a judgment, and PRISM subsequently determines the appeal should be abandoned but the **covered party** disagrees, then PRISM may discharge its obligations under the Memorandum by tendering the amount of **ultimate net loss** in excess of the self-

insured retention that is due at the time it determines the appeal should be abandoned, including **defense fees and costs** up until the time that decision is made. If PRISM invokes this section, the **covered party's** continued appeal will be at its own expense, including with respect to any adverse award of costs on appeal or remand proceedings.

## 6. ACTION AGAINST PRISM

No action shall lie against PRISM with respect to any one **occurrence**, offense, or **wrongful act** unless, as a condition precedent thereto, the **covered party** shall have fully complied with all the terms of this Memorandum, nor until the amount of the **covered party's** obligation to pay an amount of **ultimate net loss** in excess of the self-insured retention shall have been finally determined either by judgment against the **covered party** after actual trial, arbitration award, or by written agreement of the **covered party**, the claimant and PRISM. 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 Memorandum the extent of the coverage afforded by this Memorandum. Nothing contained in this Memorandum shall give any person or organization any right to join PRISM as a co-defendant in any action against the **covered party** to determine the **covered party's** liability.

Bankruptcy or insolvency of the **covered party** shall not relieve PRISM of any of its obligations hereunder.

## 7. OTHER COVERAGE

If collectible insurance with an insurer is available to the **covered party** covering a loss also covered hereunder (whether on a primary, excess or contingent basis), the coverage hereunder shall be in excess of, and shall not contribute with, such insurance; provided that this clause does not apply with respect to excess insurance purchased specifically to be in excess of this Memorandum, or to insurance or reinsurance which is intended to provide the remainder of the limit of liability stated in the Declarations of this Memorandum when the coverage afforded under this Memorandum provides less than 100 percent of the limit set forth in the Declarations.

Notwithstanding the foregoing paragraph, if, because of liability arising out of or in connection with the operation of any clinic or established health care facility, coverage for **damages** is available under this Memorandum and under PRISM's Medical Malpractice Program, it shall be conclusively presumed that the coverage afforded under the Medical Malpractice Program shall be primary and any coverage available under this Memorandum shall be excess only. For claims to which this provision applies, the exhaustion of PRISM's limit of liability under the Medical Malpractice Program will satisfy the **covered party's** self-insured retention under this Memorandum.

## 8. SUBROGATION

PRISM shall be subrogated to the extent of any payment hereunder to all the **covered party's** rights of recovery therefore; and the **covered party** shall do nothing after loss to prejudice such rights and shall do everything necessary to

secure such rights. Any amount so recovered shall be apportioned as follows:

Any interest (including the **covered party's**) having paid an amount in excess of the self-insured retention, plus the limit of liability, hereunder shall be reimbursed first to the extent of actual payment. PRISM shall be reimbursed next to the extent of its actual payment hereunder. If any balance then remains unpaid, it shall be applied to reimburse the **covered party**. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by PRISM, it shall bear the expenses thereof.

## 9. CHANGES

Notice to PRISM or any agent of PRISM or knowledge possessed by PRISM or any agent of PRISM or by any other person shall not effect a waiver or change in any part of this Memorandum or stop PRISM from asserting any right under the terms of this Memorandum, nor shall the terms of this Memorandum be waived or changed, except by endorsement issued to form a part of this Memorandum.

## 10. ASSIGNMENT

Assignment of interest under this Memorandum shall not bind PRISM until its consent is endorsed hereon; if, however, the **covered party** shall die, such coverage as is afforded by this Memorandum shall apply (a) to the **covered party's** legal representative, as the **covered party**, but only while acting within the scope of his/her duties as such, and (b) with respect to the property of the **covered party**, to the person having proper temporary custody thereof, as **covered party**, but only until the appointment and qualification of the legal representative.

## 11. FUNDING OF MEMBER'S SELF-INSURED RETENTION

The Member agrees to maintain a loss fund in an amount to be determined by mutual agreement among the Member, the servicing organization designated in the Memorandum Declarations (if any), and PRISM for the payment of all claims and expenses falling within the Member's self-insured retention.

This fund shall be reimbursed as necessary to maintain a balance in accordance with the terms of the servicing agreement between the Member and the servicing organization (if any).

In the event of cancellation, expiration or revision of the contract between the Member and the servicing organization, the Member shall notify PRISM thereof within thirty days of the effective date of such cancellation, expiration or revision; but failure to notify PRISM shall not invalidate the coverage.

## 12. CANCELLATION AND NON-RENEWAL

This Memorandum may be canceled by the **covered party** only at the end of the Memorandum Period and pursuant to the provisions of Article 20(b) of the Joint Powers Agreement. PRISM may cancel this agreement pursuant to the provisions of Article 21(a)(1) and (a)(2) of the Joint Powers Agreement or PRISM's Invoicing

and Payment Policy established by the Board of Directors. This Memorandum does not apply to any **occurrence**, offense, or **wrongful act** taking place at or after the effective date of any such cancellation.

### 13. MEMBER

The Member named in the Declarations is authorized to act on behalf of all **covered parties** with respect to the giving and receiving of notice of cancellation and receiving any return premium that may become payable under this Memorandum. The Member named in the Declarations is responsible for the payment of all premiums but the other **covered parties** jointly and severally agree to make such premium payments in full if the Member fails to pay the amount due within thirty days after PRISM gives a written demand for payment to the Member.

### 14. SEVERABILITY OF INTERESTS

The term **covered party** is used severally and not collectively, but the inclusion herein of more than one **covered party** shall not operate to increase the limits of PRISM's liability.

**ENDORSEMENT NO. U-1**

**PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM)  
GENERAL LIABILITY 1**

**ADDITIONAL COVERED PARTY AMENDATORY ENDORSEMENT**

It is agreed that the "COVERED PARTY, COVERED PERSONS OR ENTITIES" section of the Memorandum is amended to include the person or organization named on the Certificate of Coverage, but only with respect to liability arising out of premises owned by or rented to the Member, or operations performed by or on behalf of the Member or such person or organization so designated.

Coverage provided under this endorsement is limited to the lesser of the limits stated on the Certificate of Coverage or the minimum limits required by contract.

**Additional Covered Party:**

NAME OF PERSON OR ORGANIZATION SCHEDULED PER ATTACHED CERTIFICATE OF COVERAGE

**As Respects:**

PER ATTACHED CERTIFICATE OF COVERAGE

It is further agreed that nothing herein shall act to increase PRISM's limit of liability.

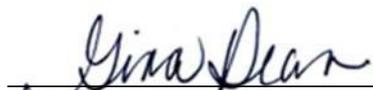
This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

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**Memorandum No.:**

**Issued to:** ALL MEMBERS

**Issue Date:**



Authorized Representative  
Public Risk Innovation, Solutions, and Management

**ENDORSEMENT NO. U-2**

**PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM)  
GENERAL LIABILITY 1**

**VIOLATION OF COMMUNICATIONS OR INFORMATION LAW EXCLUSION**

As respects **ultimate net loss**, this Memorandum does not apply:

To any liability arising out of any act that violates any statute, ordinance or regulation of any federal, state, or local government, including any amendment or addition to such laws, which prohibits or limits the sending, transmitting or communicating of material or information by unsolicited sending of faxes, emails or other means of electronic transmission.

It is understood that to the extent any coverage may otherwise be available under this Memorandum or any of its endorsements, the provisions of this exclusion will supersede.

It is further agreed that nothing herein shall act to increase PRISM's limit of liability.

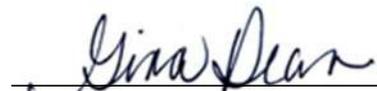
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Authorized Representative  
Public Risk Innovation, Solutions, and Management

**ENDORSEMENT NO. U-3**

**PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM)  
GENERAL LIABILITY 1**

**STRIP SEARCH EXCLUSION**

As respects **ultimate net loss**, this Memorandum does not apply:

To liability arising out of or in connection with a strip search or body cavity search of a detained person or persons. As used in this exclusion, strip search means a search, which includes a physical or visual inspection of the underclothing, breasts, buttocks, or genitalia of the searched person. As used in this exclusion, body cavity search means a visual or physical inspection of the stomach, rectal cavity and/or vagina.

This exclusion shall apply only to strip search or body cavity search activity that is alleged in a class action. As used in this exclusion, "class action" means a certified class action or a **suit** that includes class action allegations; provided however, "class action" does not include any **suit** in which class certification has been denied or withdrawn.

It is further agreed that nothing herein shall act to increase PRISM's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

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Authorized Representative  
Public Risk Innovation, Solutions, and Management

**ENDORSEMENT NO. U-4**

**PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM)  
GENERAL LIABILITY 1**

**ECONOMIC OR TRADE SANCTIONS**

If coverage for a claim or **suit** under this Memorandum is in violation of any United States of America economic or trade sanctions, including but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), then coverage for that claim or **suit** will be null and void.

It is further agreed that nothing herein shall act to increase PRISM's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

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Authorized Representative  
Public Risk Innovation, Solutions, and Management

**ENDORSEMENT NO. U-5**

**PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM)  
GENERAL LIABILITY 1**

**FAIR LABOR STANDARDS EXCLUSION**

As respects **ultimate net loss**, this Memorandum does not apply:

To any liability arising from the failure to pay wages earned by an employee of a **covered party**, or to payment of expenses incurred by an employee of a **covered party**, including but not limited to any claim or **suit** brought under the overtime compensation or minimum wage provisions of the Fair Labor Standards Act, 29 U.S.C. 201 et seq., or any state or local law governing the payment of overtime compensation, minimum wage, or payment of expenses. However, this exclusion does not apply to any claim or **suit** brought pursuant to the Equal Pay Act, 29 U.S.C.S. 206 (d).

It is further agreed that nothing herein shall act to increase PRISM's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

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**Issue Date:**



Authorized Representative  
Public Risk Innovation, Solutions, and Management

## ENDORSEMENT NO. U-6

### PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM) GENERAL LIABILITY 1

#### INVESTMENT RISK AMENDATORY ENDORSEMENT

As respects **ultimate net loss**, this Memorandum does not apply:

To liability arising, in any way, from any act, error, omission or breach of duty, whether in a **covered party's** capacity as a trustee or fiduciary or otherwise, in connection with any investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing any public funds.

However, subject to the special limits of liability set forth in subparagraphs A and B below, this exclusion shall not apply:

1. To liability for the loss of funds belonging to or held for the benefit of individuals or entities who are not **covered parties** hereunder, provided that PRISM's liability shall be limited as set forth in the special limits of liability, sub-paragraph (A) below.
2. To excess **defense fees and costs** incurred on account of the actual or alleged loss of public funds belonging to, or held for the benefit of, any **covered party**, provided that such claim or **suit** is not brought by or on behalf of a **covered party** hereunder, and further provided that PRISM's liability for such **excess defense fees and costs** shall be limited as set forth in the special limits of liability, sub-paragraph (B) below.

#### Special Limits of Liability

Regardless of the number of (A) **covered parties** under this Memorandum, (B) persons or organizations who sustain injury or damage, or (C) claims made or **suits** brought within the meaning of subparagraphs (1) and (2) above, PRISM's liability under this endorsement shall be limited as follows:

- A. As respects liability arising under subparagraph (1) above, PRISM's liability, as a result of any one **wrongful act**, and in the aggregate, shall be only for **ultimate net loss** not exceeding \$1,000,000, less the self-insured retention, as specified on the Declarations.
- B. As respects liability arising under subparagraph (2) above, PRISM's liability, as a result of any one **wrongful act**, and in the aggregate, shall be limited to **excess defense costs**, not exceeding \$1,000,000, less the self-insured retention as specified on the Declarations.
- C. There is no limit to the number of **wrongful acts** during the Memorandum Period for which claims hereunder may be made, except that the liability of PRISM because of all **wrongful acts** during each Memorandum Period shall not exceed the difference between \$1,000,000 and the self-insured retention, as specified on the Declarations.

- D. For the purpose of determining the limit of PRISM's liability, all **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **wrongful act**.
- E. **Wrongful acts** taking place over more than one Memorandum Period shall be deemed to have taken place during the last Memorandum Period, and only that limit shall apply.

It is further agreed that nothing herein shall act to increase PRISM's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

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Authorized Representative  
Public Risk Innovation, Solutions, and Management

**ENDORSEMENT NO. U-7**

**PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM)  
GENERAL LIABILITY 1**

**LEAD EXCLUSION-FIRST PARTY EXPENSES ENDORSEMENT**

Any costs associated with the removal, remediation, encapsulation, abatement, monitoring, assessment or testing for the presence of lead or any materials containing lead, including but not limited to lead based paint, on, at, under or within any property owned, leased, rented or occupied by any **covered party**.

It is further agreed that nothing herein shall act to increase PRISM's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

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Authorized Representative  
Public Risk Innovation, Solutions, and Management

**ENDORSEMENT NO. U-8**

**PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM)  
GENERAL LIABILITY 1**

**AMENDATORY ENDORSEMENT - WAIVER OF SUBROGATION**

It is understood and agreed that Condition 8. SUBROGATION, of the Memorandum to which it is attached, is deleted in its entirety and replaced by the following:

**8. SUBROGATION**

PRISM shall be subrogated to the extent of any payment hereunder to all the **covered party's** rights of recovery therefore; and the **covered party** shall do nothing after loss to prejudice such rights and shall do everything necessary to secure such rights. Any amount so recovered shall be apportioned as follows:

Any interest (including the **covered party's**) having paid an amount in excess of the self-insured retention, plus the limit of liability, hereunder shall be reimbursed first to the extent of actual payment. PRISM shall be reimbursed next to the extent of its actual payment hereunder. If any balance then remains unpaid, it shall be applied to reimburse the **covered party**. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by PRISM, it shall bear the expenses thereof.

Notwithstanding the above, PRISM waives its rights of subrogation against any person or organization with whom the **covered party** has entered into a written agreement that includes a waiver of subrogation, but only if the agreement is in effect before the injury, damage or liability occurs.

It is further agreed that nothing herein shall act to increase PRISM's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

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Authorized Representative  
Public Risk Innovation, Solutions, and Management

## ENDORSEMENT NO. U-9

### PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM) GENERAL LIABILITY 1

#### AMENDATORY ENDORSEMENT-PRIMARY/NON-CONTRIBUTORY

It is understood and agreed that Condition 7. OTHER COVERAGE of the Memorandum to which it is attached, is deleted in its entirety and replaced by the following:

#### 7. OTHER COVERAGE

If collectible insurance with an insurer, or collectible group coverage through another joint powers authority, interlocal cooperative agreement, self-insurance or other public entity group coverage is available to the **covered party** covering a loss also covered hereunder (whether on a primary, excess or contingent basis), the coverage hereunder shall be: (a) in excess of, and shall not contribute with, such insurance; and (b) shall contribute only with any excess group coverage available through another joint powers authority according to a pro-rata, time on the risk basis. However, this clause does not apply with respect to excess insurance purchased specifically to be in excess of this Memorandum, or to insurance or reinsurance which is intended to provide the remainder of the limit of liability stated in the Declarations of this Memorandum when the coverage afforded under this Memorandum provides less than 100 percent of the limit set forth in the Declarations. However, if the **covered party** has entered into a written agreement, prior to any loss event, in which it is agreed that this coverage shall be primary and/or non-contributory with respect to an additional **covered party** as specified in Endorsement U-1 of this Memorandum, then this coverage shall respond as primary and/or non-contributory, but shall be limited to the lesser of the limits stated on the Certificate of Coverage or the minimum limits required by the written agreement.

Notwithstanding the foregoing paragraph, if coverage for a claim or **suit** is available under this Memorandum and a memorandum of coverage issued in connection with PRISM's Medical Malpractice Program, this Memorandum shall afford primary coverage only where the gravamen of the claim or **suit** involves liability covered hereunder. PRISM staff will preliminarily assess the gravamen of the claim or **suit** and refer it to the committee responsible for the coverage believed to be applicable under this paragraph. Where that committee disputes PRISM's assessment of the gravamen of the claim or **suit** and rejects primary coverage, PRISM will thereafter refer the claim or **suit** to the committee responsible for the other applicable coverage. If that committee also rejects the primary coverage responsibility, the Executive Committee will determine which of PRISM's coverages is primary under this paragraph.

If the Member disputes the acceptance of primary coverage by a committee of PRISM responsible for the coverage, the Member may appeal that decision to the Executive Committee. Appeal must be requested within 60 days of the coverage acceptance by PRISM.

If the Member is not satisfied with the outcome of the Executive Committee appeal or the determination by the Executive Committee as to which of PRISM's coverages is primary where no committee agreed to accept primary responsibility, the Member may invoke Section (d) and (e) of Article 31 of PRISM's Joint Powers Agreement and proceed to arbitration and, if necessary, litigation. For purposes of this paragraph, the Member must request to invoke Article 31 dispute resolution process within 60 days of the Executive Committee's determination as to which of PRISM's coverages is primary.

Where a memorandum of coverage issued in connection with PRISM's Medical Malpractice Program is determined to afford primary coverage pursuant to this section, the exhaustion of PRISM's limit of liability under the Medical Malpractice Program will satisfy the **covered party's** self-insured retention under this Memorandum.

Coverage for the additional **covered party** under this endorsement is limited to the written contract or agreement as specified on the Certificate of Coverage and Endorsement U-1 of this Memorandum.

It is further agreed that nothing herein shall act to increase PRISM's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

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Authorized Representative  
Public Risk Innovation, Solutions, and Management

**ENDORSEMENT NO. U-10**

**PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM)  
GENERAL LIABILITY 1**

**WRONGFUL INCARCERATION ENDORSEMENT**

It is agreed this endorsement addresses the scope of coverage afforded, if any, for **wrongful incarceration claims**, as defined below, notwithstanding any provisions of the Memorandum to the contrary.

As respects **ultimate net loss**, this Memorandum does not apply to **wrongful incarceration claims** where the arrest and conviction occurred while the member was not a participant in one of PRISM's General Liability Programs.

For a **wrongful incarceration claim** that is afforded coverage, only the memorandum in effect at the time the claimant is found factually innocent or his or her conviction is set aside, whichever occurs earlier, shall be deemed to have been triggered and only that limit shall apply. Where the member is not participating in one of PRISM's General Liability Programs at the time the claimant is found factually innocent or his or her conviction is set aside, then only the last memorandum in effect prior thereto shall be deemed to have been triggered and only that limit shall apply.

As used herein, **wrongful incarceration claim** means a claim or suit against a **covered party** alleging **personal injury** arising out of the claimant being arrested and incarcerated for a crime of which he or she was later found factually innocent or which his or her conviction was later set aside.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

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**Issue Date:**



Authorized Representative  
Public Risk Innovation, Solutions, and Management

## ENDORSEMENT NO. U-11

### PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM) GENERAL LIABILITY 1

#### CYBER EXCLUSION

As respects ultimate net loss, this Memorandum does not apply:

To liability arising out of, or related to, either directly or indirectly, in whole or in part, by:

1. The unauthorized access, theft, alteration, corruption or disclosure of confidential, intellectual, proprietary or personal information and data, including but not limited to patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.
2. The following non-exhaustive list of events regardless of any other cause or other event contributing concurrently or in any other sequence to the loss, liability, cost, damage, expense, fine or penalty:
  - a) Damage to or loss of data occurring on computer systems;
  - b) An unauthorized access of computer systems;
  - c) Computer malware on computer systems;
  - d) Human error affecting computer systems;
  - e) System failure occurring on computer systems;
  - f) A defect of computer systems;
  - g) Social engineering; or
  - h) Cyber extortion.

This exclusion applies even if loss, damages or expenses are claimed for notification costs, credit monitoring and repair expenses, forensic expenses, public relation expenses or any other loss, damage or expense incurred arising out of any access to or disclosure of any person's or organization's confidential, intellectual, proprietary or personal information and data.

However, this exclusion shall not apply to any liability for **bodily injury** or **property damage**.

It is further agreed that nothing herein shall act to increase PRISM's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

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**Issue Date:**



Authorized Representative  
Public Risk Innovation, Solutions, and Management

**ENDORSEMENT NO. U-12**

**PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM)  
GENERAL LIABILITY 1**

**ORGANIC PATHOGEN EXCLUSION**

As respects **ultimate net loss**, this Memorandum does not apply to Liability arising out of:

- a. any actual, alleged or threatened infectious, pathogenic, toxic or other harmful properties of any "organic pathogen."
- b. claim, suit, request, demand, order or statutory or regulatory requirement for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of any "organic pathogen."

**"Organic pathogen"** means any:

- a. Any infectious and/or contagious disease or condition including, but not limited to any pandemic, epidemic or other spread of pathogen, howsoever styled and whether or not declared or acknowledged as such by any government or competent authority
- b. viruses or other pathogens (whether or not a microorganism); or
- c. colony or group of any of the foregoing

It is further agreed that nothing herein shall act to increase PRISM's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:**

**Issued to:** ALL MEMBERS

**Issue Date:**



Authorized Representative  
Public Risk Innovation, Solutions, and Management

## ENDORSEMENT NO. U-13

### PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM) GENERAL LIABILITY 1

#### PFAS EXCLUSION

This Memorandum does not apply to:

1. **Ultimate net loss** arising out of, resulting from, or in any way caused by or related to any actual, alleged or threatened discharge, disposal, escape, seepage, migration, release, or existence, ingestion, inhalation, absorption, exposure to, contact with, consumption or absorption of “perfluoroalkyl or polyfluoroalkyl substances (PFAS)” or materials containing “perfluoroalkyl or polyfluoroalkyl substances (PFAS)”.
2. any loss, cost, expense, liability or other type of obligation arising out of or resulting from, or in any way related to, any:
  - a. claim, suit, request, demand, directive, statutory or regulatory requirement, or order by or on behalf of any person, entity, or governmental authority that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to or assess the effects of “perfluoroalkyl or polyfluoroalkyl substances (PFAS)” or materials containing “perfluoroalkyl or polyfluoroalkyl substances (PFAS)”;
  - b. claim or suit by or on behalf of any person, entity, or governmental authority for damages or any other relief or remedy because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to or assessing the effects of “perfluoroalkyl or polyfluoroalkyl substances (PFAS)” or materials containing “perfluoroalkyl or polyfluoroalkyl substances (PFAS)”.

**“Perfluoroalkyl or polyfluoroalkyl substances (PFAS)”** means any of the following:

1. Perfluorooctanoic acid (PFOA), a chemical compound described as
  - a. C<sub>8</sub>HF<sub>15</sub>O<sub>2</sub>
  - b. F-CF<sub>2</sub>-CF<sub>2</sub>-CF<sub>2</sub>-CF<sub>2</sub>-CF<sub>2</sub>-CF<sub>2</sub>-CF<sub>2</sub>-C(=O(O))-H, or
  - c. 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluorooctanoic acid-PFOA;
2. Perfluorooctane sulfonic acid (PFOS), a chemical compound described as
  - a. C<sub>8</sub>HF<sub>17</sub>O<sub>3</sub>S
  - b. F-CF<sub>2</sub>-CF<sub>2</sub>-CF<sub>2</sub>-CF<sub>2</sub>-CF<sub>2</sub>-CF<sub>2</sub>-CF<sub>2</sub>-S(=O(=O)(O))-H, or
  - c. 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluorooctanesulfonic acid-PFOS
3. Any PFAS replacement related materials, including but not limited to Gen-X, a chemical compound described as
  - a. C<sub>6</sub>H<sub>4</sub>F<sub>11</sub>NO<sub>3</sub>
  - b. Ammonium perfluoro (2-methyl-3-oxahexanoate),
  - c. C<sub>3</sub> Dimer Acid,
  - d. Hexafluoropropylene oxide dimer acid, or
  - e. HFPO Dimer Acid;
4. PFOA or PFOS salts, PFAS-related compounds, or any substances which degrade to PFOA or PFOS; or

5. Any PFAS, PFOA, or PFOS identified at any time as a Persistent Organic Pollutant (POP) in Annex A (Elimination), Annex B (Restriction), or Annex C (Unintentional production) in the Stockholm Convention on Persistent Organic Pollutants as ratified by the United States of America and administered by the United States Environmental Protection Agency (USEPA) by whatever name manufactured, formulated, sold, or distributed.

It is further agreed that nothing herein shall act to increase PRISM's limit of liability.

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