



**PUBLIC RISK, INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM)**  
**CONTROLLED UNAFFILIATED BUSINESS AGREEMENT**  
**GENERAL LIABILITY 2 PROGRAM**

This Agreement is entered into by and between the Public Risk, Innovation, Solutions, and Management (hereinafter referred to as PRISM) and the participating agency which is signatory to this Agreement (hereinafter referred to as Participant). This Agreement constitutes the full and complete agreement between PRISM and the Participant.

1. **Public Risk, Innovation, Solutions, and Management.** PRISM is a California Joint Powers Authority which is authorized pursuant to California Government Code § 6500 et seq., to enter into agreements with other public agencies, including out-of-state public agencies, such as Participant.

2. **Participant.** Participant is a public agency which is authorized to enter into agreements with other public agencies, including out-of-state public agencies.

3. **Captive Insurance Company.** PRISM has created the Public Risk Innovation, Solutions, and Management Affiliate Risk Captive (hereinafter referred to as PRISM ARC), a wholly owned pure captive insurance company, domiciled in and regulated by the State of Utah.

4. **Program Participation.** Pursuant to this Agreement, Participant agrees to obtain excess liability insurance in PRISM's General Liability 2 (GL2) Program through an insurance policy issued by PRISM ARC (which policy may include coverage from other policies through which PRISM ARC is insured) and/or by an insurer doing business with PRISM ARC. Participant is an insured party in the PRISM GL2 Program for the period of time evidenced by the insurance policy including subsequent renewal policies.

5. **Annual Premium.** PRISM ARC shall determine the annual premium charge for each Participant in accordance with the standard formula and methodology developed by PRISM. Such premium charge shall include the cost for the Participant's share of retained losses, transferred losses (through reinsurance and/or excess insurance), and program and general administrative expenses.

6. **Membership.** For so long as the Participant is an insured party by PRISM ARC in the PRISM GL2 Program and is current on its annual premium obligations, Participant shall be admitted as a non-voting, non-stock member of PRISM ARC, with all of the rights and privileges of all other non-voting, non-stock members of PRISM ARC.

7. **Responsibilities of Participant.** Participant shall have the following responsibilities under this Agreement:

(a) Appoint an officer or employee of the Participant to serve as a liaison between the Participant and PRISM or PRISM ARC for all matters relating to risk management;

(b) Maintain an active safety program, and consider and act upon all recommendations of PRISM or PRISM ARC concerning the reduction of unsafe practices;

(c) Maintain its own claims and loss records related to liability claims and provide such records to PRISM or PRISM ARC as requested;

(d) Pay all premiums and invoices timely. Penalties for late payment of invoices shall apply pursuant to PRISM's Invoice and Premium Payment Policy, which is attached hereto as Exhibit A. Any costs incurred by PRISM or PRISM ARC as a result of collection of late and/or unpaid premiums or other charges, shall be recoverable by PRISM or PRISM ARC. At the discretion of the PRISM ARC Board of Directors, any Participant that fails to pay an invoice when due may be given a ten (10) day written notice of cancellation.

(e) Be ultimately responsible for the investigation, settlement, defense and appeal of any claim made, suit brought, or proceeding instituted against the Participant or its member.

i. The Participant shall use only qualified personnel to administer its liability claims.

ii. Qualified defense counsel experienced in third party liability law and practice shall handle litigated claims.

iii. The Participant shall use PRISM's National Liability Claims Administration Standards (Exhibit B) and shall advise its claims administrator that these standards are utilized in PRISM's liability claims audits.

(f) The Participant shall provide PRISM immediate written notice of any claim or suit upon learning any of the following:

i. The amount incurred has reached fifty (50) percent or more of the Participant's self-insured retention.

ii. The incident, claim or suit involves an injury of the following type:

a. Death

b. Paralysis, paraplegia, 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

Updates on such claims or suits shall be provided pursuant to the reporting provisions of the National Liability Claims Administration Standards (Exhibit B) or as requested by PRISM, PRISM ARC and/or PRISM or PRISM ARC's excess insurer or reinsurer.

(g) Recommendations made in the claims audit provided by PRISM shall be addressed by the Participant and a written response outlining a program for corrective action shall be provided to PRISM within sixty (60) days of receipt of the audit.

(h) Each Participant shall maintain records of claims in each category of coverage (i.e. bodily injury, property damage, expense) or as defined by PRISM and shall provide such records to PRISM as directed by PRISM or PRISM ARC. Such records shall include both open and closed claims, allocated expenses, and shall not be capped by the Participant's self-insured retention.

(i) The Participant shall obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) at least once every three (3) years. Based upon the actuarial recommendations, the Participant should maintain reserves and make funding contributions equal to or exceeding the present value of expected losses and a reasonable margin for contingencies.

**8. Responsibilities of PRISM.** PRISM shall have the following responsibilities under this Agreement:

(a) Conduct a risk assessment survey of the Participant prior to Participant joining the GL2 Program, which shall evaluate the current state of Participant's risk management program, including recommendations for improvements.

(b) Provide claims oversight and act as liaison between Participant and any insurers and/or reinsurers.

(c) Review and pay covered claims in a timely fashion. Participant can generally expect payment issuance within thirty (30) days of receipt of all necessary information.

(d) Communicate availability of PRISM services and make all applicable risk management and risk control services available to Participant.

(e) Subsidize Participant's risk management costs by providing a \$1,000 subsidy per year for unspecified risk management services, and \$2,000 per year for actuarial services.

(f) Invite Participant to attend the PRISM annual public entity meeting hosted by PRISM.

(g) Conduct a claims administration audit utilizing the National Liability Claims Administration Standards (Exhibit B) once every two (2) years. In addition, an audit shall be performed within twelve (12) months of any of the following events:

i. There is an unusual fluctuation in the Participant's claim experience or number of large claims, or

ii. There is a change of liability claims administration firms, or

iii. The Participant becomes a new member of the GL2 Program. The claims audit shall be performed by a firm selected by PRISM, unless an exception is approved.

**9. Withdrawal.** A Participant may withdraw from the GL2 Program only at the end of a policy year, and only if it gives PRISM at least sixty (60) days advance written notice of such action. If Participant withdraws or is cancelled from the GL2 Program, Participant may not reenter the program for a period of three (3) years from the effective date of withdrawal or cancellation.

**10. Dispute Resolution.** Disputes regarding the provisions of this Agreement, the insurance policy, or any other dispute between the Participant and PRISM or PRISM ARC shall be addressed between the Participant and PRISM/ PRISM ARC pursuant to the following procedures:

(a) Request for Reconsideration. The Participant shall make a written request to the PRISM GL2 Committee for reconsideration of their position, citing the arguments in favor of the Participant and any applicable case law that applies. The Participant can also request a personal presentation to the PRISM GL2 Committee, if it so desires.

(b) Committee Appeal. The PRISM GL2 Committee shall review the matter including, but not limited to, the information provided by the Participant and PRISM/ PRISM ARC and render a decision. This committee appeal process is an opportunity for both sides to discuss and substantiate their positions based upon legal arguments and the most complete information available.

(c) PRISM Executive Committee Appeal. If the Participant is not satisfied with the outcome of the committee appeal and wishes to continue the appeal process, the Participant must make a written request to the PRISM Executive Committee for reconsideration. The Executive Committee shall review the matter including, but not limited to, the information provided by the Participant and PRISM/ PRISM ARC and render a decision.

(d) Arbitration. If Participant is not satisfied with the outcome of the PRISM Executive Committee appeal, the next step in the appeal process is arbitration. The nature of the arbitration, whether binding or non-binding, shall be mutually agreed upon by the parties. The matter shall be submitted for a determination to a mutually agreed upon arbitrator or panel of arbitrators. If Binding Arbitration is selected, then the decision of the arbitrator shall be final and both sides agree to abide by the decision of the arbitrator, with no right of appeal. The cost of the arbitrator(s) shall be shared equally by the involved Participant and PRISM. Each party shall bear their own attorneys' fees and costs for the arbitration including any attorneys' fees and costs incurred through the committee and Executive Committee appeal process.

(e) Litigation. If, after exhausting the dispute resolution procedures set forth in paragraphs (a)-(d), either party is not satisfied with the outcome of the non-binding arbitration process, either party may initiate litigation to remedy the dispute.

**11. Amendment.** This Agreement may be amended by a subsequent agreement of the PRISM GL2 Committee and signature on that Agreement by the Participant's designated

representative who shall have authority to execute the Agreement. Should a Participant of the Program fail to execute any amendment to this Agreement within the time provided by the PRISM GL2 Committee, the Participant shall be deemed to have withdrawn as of the end of the policy period.

12. **Severability.** Should any provision of this Agreement be judicially determined to be void or unenforceable, such determination shall not affect any remaining provision.

13. **Effective Date.** This Agreement shall become effective on the effective date of insurance coverage for the Participant.

14. **Venue and Governing Law.** The laws of the State of California shall govern the terms and conditions of this Agreement with venue in the Superior Court for the State of California, County of Sacramento, or, if filed in federal court, the Eastern District of California. Provided, however, that with respect to any issues involving PRISM ARC, the laws of the State of Utah shall apply; and venue with respect to any lawsuit with PRISM ARC as a party shall be in the Third Judicial District in Salt Lake County, State of Utah, or, if filed in federal court, the Central Division of the District of Utah.

15. **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth below.

Dated: July 1, 2020



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Gina Dean, CEO  
Public Risk, Innovation, Solutions, and Management

Dated: \_\_\_\_\_

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Name of Participating Agency:  
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