



PUBLIC RISK, INNOVATION, SOLUTIONS, AND MANAGEMENT (PRISM)
CONTROLLED UNAFFILIATED BUSINESS AGREEMENT
EXCESS WORKERS' COMPENSATION PROGRAM

This Agreement is entered into by and between Public Risk, Innovation, Solutions, and Management (hereinafter referred to as PRISM) and _____ (hereinafter referred to as Participant). This Agreement constitutes the full and complete agreement between PRISM and 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 PRISM 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.** For PRISM's purposes, Participant will be considered a participant in PRISM's EWC Program for the period of time evidenced by the PRISM ARC insurance policy or other related policy or reinsurance agreement, including subsequent renewals.
5. **Responsibilities of Participant.** Participant shall have the following responsibilities under this Agreement:
 - (a) Appoint an officer or employee of Participant to serve as a liaison and primary contact with PRISM for all matters relating to risk management;
 - (b) Maintain an active risk management program, and consider recommendations of PRISM concerning the reduction of unsafe practices;
 - (c) Be ultimately responsible for the investigation, settlement, defense and appeal of any claim made, suit brought, or proceeding instituted against Participant or its member.
 - i. Participant shall use only qualified personnel to administer its workers' compensation claims.
 - ii. Qualified defense counsel experienced in workers' compensation law and practice shall handle litigated claims.
 - iii. Participant shall review PRISM's National Workers' Compensation Claims Administration Standards (Exhibit A). It is recommended that Participant's claims administrator utilize these standards since they will be utilized in PRISM's workers' compensation claims audits.

- (d) Provide written notice of any potential excess workers' compensation claim pursuant to the claims reporting requirements set forth in the policy or reinsurance agreement issued for the applicable coverage period.
- (e) Maintain claims data for workers' compensation claims and provide such records to PRISM or PRISM ARC as requested. Participant shall maintain records of claims in each category of coverage (i.e. indemnity, medical, expense) or as defined by PRISM or PRISM ARC. Claim records shall include open and closed claims, allocated expenses, and shall be shown at full value (not limited to the layer of coverage provided by PRISM ARC, not capped by Participant's self-insured retention, etc.).
- (f) Claims audits are provided as a service to Participant and to confirm for PRISM that appropriate claims practices are in place. Participant agrees to allow for and cooperate with PRISM or PRISM ARC for the auditing of Participant's claims and claims practices. Recommendations, if any, made in the claims audit provided by PRISM shall be considered by Participant and Participant shall provide a written response within 60 days of receipt of the audit report outlining either a plan to address the recommendation or an explanation of why Participant has decided not to do anything further with respect to the recommendation.
- (g) Participant's fiscal health and ability to pay claims within its self-insured retention are important to PRISM and PRISM ARC. Participant is required to obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society (FCAS) at least once every three (3) years. A financial subsidy from PRISM of up to \$2,000 per fiscal year is available to Participant to assist in paying for the actuarial study. Based upon the actuarial recommendations, Participant should maintain reserves and make funding contributions equal to or exceeding the present value of expected losses and a reasonable margin for contingencies.

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

- (a) Conduct a risk assessment survey of Participant prior to Participant binding coverage, 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) Communicate availability of PRISM services and make all applicable risk management and risk control services available to Participant.
- (d) Subsidize Participant's risk management costs by providing a \$1,000 subsidy per year for unspecified risk management services, and as noted above, up to \$2,000 per year for actuarial services.
- (e) Invite Participant to attend the PRISM annual public entity meeting hosted by PRISM.

(f) Conduct a claims administration audit utilizing the National Workers' Compensation Claims Administration Standards (Exhibit A) once every two (2) years. The claims audit shall be performed by a firm selected by PRISM, unless an exception is approved. In addition, an audit shall be performed within twelve (12) months of any of the following events:

- i. Initial binding of excess workers' compensation coverage with PRISM ARC;
- ii. There is an unusual fluctuation in the Participant's claim experience or number of large claims; or
- iii. Participant changes its workers' compensation claims administration firm.

7. **Termination.** At the end of a coverage period, Participant may decide not to renew. If Participant does not renew, then this Agreement shall terminate when the most recent policy or reinsurance agreement issued to Participant concludes. If Participant terminates the policy or reinsurance agreement at any point during the operation of the policy or reinsurance agreement, then this Agreement shall terminate as of the effective date of the termination. Should Participant decide not to renew or terminate the policy or reinsurance agreement issued, then Participant may not reapply for excess workers' compensation coverage for a period of three (3) years from the effective date of the policy termination or, in the event of withdrawal, from the date the most recent policy or reinsurance agreement issued to Participant concludes.

8. **Dispute Resolution.** Disputes regarding the provisions of this Agreement shall be addressed between Participant and PRISM pursuant to the following procedures:

- (a) **Request for Reconsideration.** Participant shall make a written request to the appropriate PRISM committee for reconsideration of their position, citing the arguments in favor of Participant and any applicable case law that applies. Participant can also request a personal presentation to that PRISM committee, if it so desires.
- (b) **Committee Appeal.** The PRISM committee responsible for or having jurisdiction over the decision in question shall review the matter including, but not limited to, the information provided by Participant and PRISM 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 Participant is not satisfied with the outcome of the committee appeal and wishes to continue the appeal process, 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 Participant and PRISM 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. If the parties are unable to reach an agreement on the nature of the arbitration, then the arbitration shall be non-binding. 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 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.

9. **Amendment.** This Agreement may be amended by a subsequent agreement of the PRISM Executive Committee and signature on that Agreement by Participant's designated representative who shall have authority to execute the Agreement. Should Participant fail to execute any amendment to this Agreement within the time provided by the PRISM Executive Committee, Participant shall be deemed to have withdrawn as of the end of the coverage period.

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

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

12. **Survival of Terms.** All obligations set forth above in Paragraph 5, subsections (c), (d), and (e), and Paragraphs 8, 10, and 13 shall survive the termination of this Agreement until all obligations between the parties have been finally settled.

13. **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, the laws of the state of Utah shall govern the terms and conditions of this Agreement involving PRISM ARC; 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.

14. **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: January 1, 2022

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

Dated: _____

Signed By:
Entity Name:
Effective Date: