

## Statewide Association of Community Colleges (SWACC)

### MEMORANDUM OF COVERAGE

MEMORANDUM #:

#### DECLARATIONS

**COVERED AGENCY(IES) NAME AND ADDRESS**

**COVERAGE PERIOD:** 12:01 A.M. July 1, 2021 to July 1, 2022

Coverage (Per Loss Occurrence)	Limit of Coverage	Member Retained Limit
<b><u>Coverage A - Liability</u></b>		
Maximum Single Limit for all Members Per Occurrence	\$50,000,000	
Coverage (Per Loss Occurrence)	Limit of Coverage per Member	Member Retained Limit
<b><u>Coverage A - Liability</u></b>		
Combined Single Limit (includes MRL)	\$50,000,000	\$
<b>Sublimits:</b>		
Employee Benefit Program Claims	\$10,000,000	\$5,000
Securities or Savings Program Claims	\$10,000,000	\$5,000
Mismanagement of Funds Claims	\$10,000,000	\$5,000
Breach Of Contract Claims	\$50,000	\$10,000
Student Professional Liability	Included	\$5,000
Injunctive/Non-Monetary Claims	\$100,000	\$0
Physicians, Allied Professionals and Mental Health Counselors	\$10,000,000	\$5,000
Uninsured/Underinsured Motor Vehicle (Combined Single Limit)	\$500,000	\$5,000
Asbestos Claims	\$50,000	\$5,000
Wage Claim/Loss Adjustment Expense Only	Included	\$5,000
Auxiliary/Foundation Claims	\$10,000,000	\$5,000
Communicable Disease Claims	\$25,000	\$5,000

Coverage (Per Loss Occurrence)	Limit of Coverage	Member Retained Limit
<b>Coverage B - Property</b>		
Maximum Single Limit for all Members Per Occurrence	\$500,250,000	
Coverage (Per Loss Occurrence)	Limit of Coverage per Member	Member Retained Limit
<b>Coverage B - Property</b>		
Combined Single Limit (includes MRL)	\$500,250,000	\$
<b>Sublimits:</b>		
Sprinkler Leakage caused by Earthquake	\$10,000,000	\$
Newly Acquired Location	\$5,000,000	\$
Personal Property of Others (except as follows)	\$100,000	\$
Any One item on Loan or Exhibition	\$25,000	\$
Any One Elected or Appointed Official or Employee	\$1,000	\$
Any One Student	\$500	\$
Transmission or Distribution Lines	\$5,000,000	\$
Back Up of Sewers or Drains	\$10,000,000	\$
Property in Transit	\$1,000,000	\$
Off-Site Property	\$1,000,000	\$
Rental Payment Interruption	\$10,000,000	\$
Valuable Papers or Records	\$10,000,000	\$
Loss of Revenues and Extra Expense (Combined Single Limit)	\$25,000,000	\$
Plants (\$1,000 per item)	\$50,000	\$
Architect's and Engineer's Fee	15% of the Covered Hard Cost loss	\$
Construction Manager Fee	11% of the Covered Real Property loss	\$
Fine Arts (\$1,000 per item)	\$50,000	\$
Builder's Risk for Covered Projects		
Covered Project up to \$250,000	\$250,000	\$
Covered Project over \$250,000	Per Endorsement	Per Endorsement
Debris Removal	25% of the Covered Real Property loss	\$
Architect's and Engineer's Fee	\$250,000	\$
Construction Manager Fee	11% of the Covered Real Property loss	\$

Coverage (Per Loss Occurrence)	Limit of Coverage	Member Retained Limit
<b>Coverage C - Additional Coverages, if selected</b>		
Maximum Single Limit for all Members Per Occurrence Equipment Breakdown Coverage	\$100,000,000	
<b>Coverage - Additional Coverages, if selected (Per Loss Occurrence)</b>	<b>Limit of Coverage per Member</b>	<b>Member Retained Limit</b>
Equipment Breakdown Coverage	\$100,000,000	\$5,000
Loss of Revenue/Extra Expense	Follows any coverage provided under Coverage B	
Spoilage	\$5,000,000	
Excavation	\$25,000	
Expediting Expenses	\$5,000,000	
Freezing	\$25,000	
Hazardous Substances	\$250,000	
Newly Acquired Locations	\$5,000,000	
Electronic Data Processing Equipment Coverage - MRL Reduction		\$10,000
Each Laptop off premises	Included in Property Limit	NIL
<u>Crime Coverage</u> ( Policy Number <u>1-382-23-27</u> )	\$5,000,000	\$2,500
Impersonation Fraud Coverage	\$100,000	\$25,000
<u>Information/Cyber Security and Privacy Coverage</u> ( Policy Number <u>21U10559/21U10560</u> )	\$15,000,000 SAFER Program Aggregate. See policy for member limits.	\$75,000 Subject to terms and conditions per the policy. See policy for member limit.

**MEMBER ESTIMATED CONTRIBUTION  
FOR THE COVERAGE PERIOD**

**\$142,179**

**THIS MEMORANDUM OF COVERAGE DECLARATIONS IS ATTACHED AND MADE  
AN INTEGRAL PART OF THE MEMORANDUM OF COVERAGE.**

**FOR STATEWIDE ASSOCIATION OF COMMUNITY COLLEGES**

BY



07/01/2021

KEENAN & ASSOCIATES, JPA MANAGER

Issue Date

## ARTICLE I – WHO IS COVERED

Any person, entity or organization included in the definition of Covered Party is covered pursuant to the terms of this Memorandum.

## ARTICLE II – WHAT IS COVERED

In consideration of the payment of the contribution by the Member and the provisions of the Authority's Joint Powers Agreement, Bylaws, policies and procedures, the Authority agrees with each Member, subject to the Declarations and all other terms and conditions of this Memorandum, to provide the following coverage in excess of the applicable Member Retained Limit:

### A. Coverage A – Liability

1. The Authority will pay Liability Damages by reason of liability imposed by law or liability assumed by contract and Loss Adjustment Expenses for each Loss Occurrence, subject to limits and sublimits on the Declarations or as otherwise restricted by this Memorandum.
2. The Authority will pay for damages for Bodily Injury or wrongful death that a Covered Individual is legally entitled to recover from the owner of an Uninsured/Underinsured Motor Vehicle subject to the limitations contained in the Declarations, Limitations and the other terms of this Memorandum.
3. The Authority will pay Liability Damages and Loss Adjustment Expenses for Medical Professional Liability for **Physicians, Allied Professionals and Mental Health Counselors** as set forth in the Declarations. The liability coverage under this section afforded to Covered Individuals as Physicians, Allied Professionals and Mental Health Counselors employed by or contracted by the Covered Agency will be sublimited to ten million dollars (\$10,000,000) per Loss Occurrence.
4. The Authority will pay Liability Damages and Loss Adjustment Expenses for Administration of Employee Benefits Programs Claims, Securities and Savings Programs Claims and Mismanagement of Funds Claims. The liability coverage under this section will be afforded to the Covered Agency, its employees acting in Administration and its past or present elected or appointed directors, officers, trustees or equivalent executives, while acting for or on behalf of the Covered Agency and, as set forth in the Declarations.

### B. Coverage B – Property

The Authority will pay Property Damage, Loss Adjustment Expenses, **Loss of Revenues** and Extra Expense for each Loss Occurrence related to a Covered Agency's Real Property and Personal Property, including the sublimits for the types of Loss Occurrences, property and coverage extensions set forth in the Declarations, except as otherwise restricted in this Memorandum.

## **ARTICLE III – TERMS AND LIMITATIONS OF COVERAGE**

### **A. General**

1. This Memorandum applies to any Loss Occurrence which takes place during the Coverage Period anywhere in the world.
2. The Authority's total obligation to pay for Liability Damages, Property Damage, Loss Adjustment Expenses or Extra Expense resulting from any one Loss Occurrence shall not exceed the Limits of Coverage per Member set forth in the Declarations. Covered Agencies that receive coverage through one Member and that sustain the same Loss Occurrence shall share one Member Retained Limit and Limit of Coverage per Member. The Limits of Coverage are a Combined Single Limit per Loss Occurrence shared among all Members of the Authority and the other Members of SAFER. In the event of a single Loss Occurrence that exceeds the amount payable by SAFER to cover claims, the Combined Single Limit shall be allocated among all SAFER members (including the Authority) sustaining the same Loss Occurrence as determined by the board of directors of SAFER.
3. In the event other coverage for the Loss Occurrence is available to a Covered Party under any insurance contract, bond or other self-insurance, coverage under this Memorandum will be excess pursuant to the Other Coverage condition.
4. All loss or injury arising out of the continuation or repetition of substantially the same or similar harmful conditions or the same efficient proximate cause shall be considered as arising out of a single Loss Occurrence, which will be allocated in its entirety to a single Coverage Period, even though the Loss Occurrence may span multiple Coverage Periods. In no event will more than one Coverage Period apply to the entirety of all loss or injury arising out of any one Loss Occurrence. If loss or injury arising out of a single Loss Occurrence takes place during more than one Coverage Periods, whether or not the Authority is the coverage provider, the Loss Occurrence shall be allocated to the Coverage Period during which the earliest of the following takes place:
  - (1) the date when the loss or injury had indisputably ceased to occur but only if such date can be identified at the time that the Authority first receives notice of the claim;
  - (2) the first date that the party seeking coverage received a claim pursuant to the Government Code regarding such loss or injury;
  - (3) the first date that a party seeking coverage received any other unequivocal notice that a claim was being made; or
  - (4) the initial filing date of any lawsuit alleging such loss or injury in which the party seeking coverage is named as a party or is later added as a party.

5. As respects Claims of Bodily Injury arising from Sexual Abuse/Molestation, regardless of the number of claimants, number of instances of abuse per claimant, and number of locations where abuse occurs, all Sexual Abuse/Molestation by one Covered Party, or multiple Covered Parties acting together will be a single Loss Occurrence. The date of the Loss Occurrence shall be the date of the last act of Sexual Abuse/Molestation occurring during the Authority's Coverage Period(s).
6. In the event more than one Member is liable for Liability Damages from a single Loss Occurrence, this Memorandum shall protect each Member as though a separate Memorandum had been issued to each.
7. The total of Loss Adjustment Expense coverage available for a Claim of Injunctive/Non-Monetary Relief brought against multiple Members shall not exceed two hundred fifty thousand dollars (\$250,000) in the aggregate.
8. The total of Loss Adjustment Expense coverage available for any and all Claims that are Communicable Disease Claims for Communicable Disease brought against a single Member shall not exceed twenty-five thousand dollars (\$25,000) for that Member per coverage year.
9. This Memorandum's coverage for a Covered Party's liability assumed by contract applies only to written contracts made before the occurrence of covered Bodily Injury, Property Damage, Personal Injury, Errors and Omissions, Wrongful Acts, and Medical Professional Liability.

**B. Auxiliary Organizations**

The coverage provided by this Memorandum to Auxiliary Organizations shall only apply with respect to operations within the scope and purpose of the Auxiliary Organization's charter or bylaws and those formed in accordance with Education Code {72670-72682} and Code of Regulations, Title 5 {59255-59272}, and any Auxiliary Organization extended coverage by endorsement issued prior to July 1, 2015.

**C. Covered Individuals**

The coverage afforded by this Memorandum to Covered Individuals shall only apply with respect to activities performed by such individuals within the scope of their duties or approval on behalf of or as part of the curriculum of the Covered Agency.

**D. Additional Covered Parties**

1. The coverage afforded by this Memorandum to Additional Covered Parties shall be no broader and for no higher limit of liability than that which is required by the contract between a Covered Agency and the Additional Covered Party, or that provided under this Memorandum, whichever is less.

2. The coverage provided by this Memorandum to Additional Covered Parties shall only apply with respect to operations performed by or on behalf of the Covered Agency or facilities owned or used by the Covered Agency.

**E. Breach of Contract**

All Breach of Contract claims arising out of the same contract, incident, event or construction project, regardless of the number of claims or lawsuits filed, shall be considered as one loss and subject to one Member Retained Limit and one Limit of Coverage per Member as set forth in the Declarations.

**F. Uninsured/Underinsured Motor Vehicle Coverage Limits and Reductions**

1. The amount payable to a Covered Individual under the Uninsured/Underinsured Motor Vehicle coverage shall be subject to a Combined Single Limit per Loss Occurrence equal to the amount set forth in the Declarations minus the sum of the following:
  - a) all amounts paid or payable by a Covered Agency as part of its Member Retained Limit set forth in the Declarations for the Uninsured/Underinsured Motor Vehicle coverage; and
  - b) all amounts paid or payable under workers' compensation law; and
  - c) all amounts paid or payable as employment disability benefits; and
  - d) all amounts paid or payable pursuant to any other liability coverage provisions in this Memorandum; and
  - e) all amounts paid or payable on behalf of the owner or operator of any involved Uninsured/Underinsured Motor Vehicle; and
  - f) all amounts paid or payable as benefits under any uninsured or underinsured motorist insurance coverage; and
  - g) all amounts paid or payable as medical payments by any insurance coverage; and;
  - h) all amounts paid associated with adjustment, arbitration and resolution of the Uninsured/Underinsured Motor Vehicle claim hereunder; and
  - i) any amounts attributable to the negligence of the Covered Individual.
2. As conditions precedent for Uninsured/Underinsured Motor Vehicle coverage to apply:
  - a) the accident involving an Uninsured/Underinsured Motor Vehicle must involve direct physical contact with the Motor Vehicle occupied by the Covered Individual; and

- b) the Covered Individual has reported the accident to the local law enforcement agency within twenty-four (24) hours of the accident; and
  - c) the Covered Individual has promptly filed with the Authority a statement under oath certifying the facts of the accident with the Uninsured/Underinsured Motor Vehicle.
3. No Uninsured/Underinsured Motor Vehicle coverage is provided if:
- a) the Covered Individual is a student of a Covered Agency while going to or coming from providing services to third parties; or
  - b) the Uninsured/Underinsured Motor Vehicle is owned or operated by an individual residing in the same household as the Covered Individual; or
  - c) the Uninsured/Underinsured Motor Vehicle is owned by the United States of America, Canada, a state or political subdivision of any of those governments or an agency of any of the foregoing; or
  - d) the accident with the Uninsured/Underinsured Motor Vehicle did not occur on a public road or road owned by the Covered Agency.

## ARTICLE IV – EXCLUSIONS

### A. Under Coverage A - Liability, this Memorandum excludes:

1. any Liability Damages or Loss Adjustment Expenses related to Employee Benefit Programs, Breach of Contract, Injunctive/Non-Monetary Relief, Special Education Program Rights, Wage Claim/Loss Adjustment Expense only, and Communicable Disease; except to the extent provided by the sublimits in the Declarations.
2. any Liability Damages or Loss Adjustment Expenses related to Asbestos Claims, except to the extent provided for in the Declarations.
3. Employee wages and benefits, past or future, whether described as back pay, front pay, wage loss, wage premiums, future earnings, loss of income, severance pay, overtime, retirement contribution, or otherwise, and related restitution forms of relief, nominal damages or a claimant's attorney's fee and costs; however, claims alleging Wage Claim/Loss Adjustment Expense only as a result of a Loss Occurrence will receive Loss Adjustment Expense funding pursuant to Coverage A – Liability, Paragraph 2.d.
4. Bodily Injury sustained by any Employee arising out of and in the course of such Employee's employment by the Covered Agency, or to the spouse, child, parent, brother or sister of an Employee as a consequence thereof or to any obligation to share or contribute to Liability Damages with (or to repay) someone else because of such Bodily Injury. As respects this paragraph, Bodily Injury does not include mental anguish or emotional distress.
5. any obligation for which a Covered Party may be held liable under any workers' compensation, unemployment insurance, social security or disability benefits law or under any similar law, plan or agreement.
6. In-Flight operations of Aircraft with the exception of Unmanned Aerial Systems (UAS) when operated within the curriculum or authorized district operations, and consistent with applicable FAA guidelines. This exclusion includes any loss, liability or obligation arising out of In-Flight transportation by emergency civil personnel, U.S. Military, or common carrier. This exclusion does not apply to Aircraft used for instructional purposes while located on property the Covered Agency owns, leases, rents or occupies.
7. the ownership, maintenance, operation, use, loading or unloading of:
  - a) any Watercraft owned or operated by or rented or loaned to any Covered Party, or operated by any person. This exclusion shall not apply to manually powered Watercraft, sailboats under twenty-five (25) feet in length, powerboats of less than twenty-five (25) horsepower, charter operators or common carriers, Watercraft owned or operated by the United States Military, houseboats, or Watercraft used by the Covered Agency within its curriculum and specifically endorsed to this Memorandum, or
  - b) any Motor Vehicle or Watercraft, whether licensed or unlicensed, while participating in any speed contest or off-road recreational activity. This exclusion shall not apply to fire and/or police driving programs.

8. the ownership, maintenance, supervision, use or misuse of any trampoline, except for small rebound devices such as those known as “mini-tramps”, “springers” or “gym tramps”.
9. the portion of any loss, claim or suit that represents a multiple of compensatory awards, any civil fines, penalties, or punitive/exemplary damages.
10. Restitution forms of relief or disgorgement based upon or attributable to a Covered Party gaining any profit, advantage or remuneration to which a Covered Party is not entitled.
11. any loss, cost, civil fine or penalty, or expense against or incurred by any Covered Party arising from any complaint investigation, enforcement action, regulatory or administrative proceeding by any federal, state, local or other governmental regulatory agency.
12. loss, claim or suit:
  - a) for refund of taxes, fees or assessments or failure to collect and/or to assess taxes, fees or assessments;
  - b) arising out of estimates of probable costs or cost estimates being exceeded or faulty preparation of bid specifications or plans, including architectural plans;
13. the use, sale or distribution of any Explosives, Fireworks or Pyrotechnic Devices, but this exclusion shall not apply to a covered Loss Occurrence arising out of, or resulting from the use of Explosives, Fireworks or Pyrotechnic Devices during the regular curriculum, or for special occasions approved and authorized by the Covered Agency subject to the Covered Agency taking all prudent risk management precautions and with the responsible Covered Agency’s Board approval.
14. any Rodeo activities, except this exclusion shall not apply to activities conducted within the curriculum of the Covered Agency. In no event will coverage be extended to any Rodeo competitions.
15. the failure of performance of contract by any insurer or bond issuer.
16. The return of compensation paid to a Covered Party if a court determines that the payment was illegal.
17. any time element, indirect or consequential loss, claim, or suit of any nature resulting from the ownership, maintenance, use or design of any power and/or energy generation or co-generation facility, whether actively or inactively engaged in the generation of energy and/power. This exclusion does not apply to solar energy panels.
18. Injunctive/Non-Monetary Claims:
  - a) any Liability Damages or Property Damage; and/or

- b) any legal fees or costs awarded to the complaining party or paid as part of a settlement; and/or
  - c) any other fees, costs or expenses payable by a Covered Party or Covered Individual other than Loss Adjustment Expenses.
19. Communicable Disease Claims:
- a) any Liability Damages or Property Damage; and/or
  - b) any legal fees or costs awarded to the complaining party or paid as part of a settlement; and/or
  - c) any other fees, costs or expenses payable by a Covered Party or Covered Individual other than Loss Adjustment Expenses
20. Loss Adjustment Expenses not associated with a covered Loss Occurrence for Liability Damages, except as respects the categories of sub-limited Loss Adjustment Expense funding as outlined in the Declarations.
21. Claims for Bodily Injury under the coverage provided for Errors and Omissions.
22. Bodily Injury arising out of acts of Sexual Abuse/Molestation committed outside this Coverage Period.

**D. This Memorandum does not apply to and no coverage is provided under Coverage A – Liability or Coverage B – Property for any Loss Occurrence related to or resulting from any of the following:**

1. fraudulent conduct; knowing and intentional breach of duty; or willful acts which are expected or intended to cause damage to property or injury to another.
2. Real Property that has not been reported to the Authority.
3. a Loss Occurrence where (and to the extent) the Authority's (a) rights to subrogation have been limited or waived by a Covered Party at any time, unless approval is received from the Authority or its Manager or (b) other rights of recovery against third parties have been limited by the actions or agreements made by a Covered Party after such Loss Occurrence.
4. claims brought by the members, owners, partners or joint ventures of a government agency (including Members) related to the formation, governance, or operation of such agency.
5. any voluntary parting with title or possession of any property by the Covered Party or others to whom the property may be entrusted if induced to do so by any fraudulent scheme, trick, device or false pretense.
6. intentional violation of a penal statute or ordinance committed by or with the knowledge or consent of any Covered Party.
7. faulty, inadequate or defective:
  - a) planning, zoning, development, surveying, siting, or
  - b) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction, or
  - c) materials, whether installed or not, used in repair, construction, renovation or remodeling; on or off the Covered Party's premise, except for construction projects within the Covered Agency's curriculum.
8. actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of Pollutants into or upon land, air, or water, whether indoor or outdoor. This exclusion also applies to any liability or proceedings arising out of any governmental or quasi-governmental or any other person or organizations directions or request that the Covered Party test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of Pollutants. This exclusion shall not apply:

- a) if the discharge, disbursal, seepage, migration, release or escape of Pollutants is both sudden and accidental, or
  - b) to injury, damage, or any other liability caused by heat, smoke or fumes from a Hostile Fire.
9. Losses arising from an Act of Terrorism as defined under the Terrorism Risk Insurance Act of 2002 as amended by the Terrorism Risk Insurance Extension Act of 2005 and as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 and any amendments thereto (“TRIA”), including Acts of Terrorism resulting directly or indirectly from:
- a) the intentional use, release or escape of nuclear materials that directly results in nuclear reaction or nuclear radiation or radioactive contamination at a level sufficient to cause harm to human life, property, or infrastructure; or
  - b) the intentional dispersal or application of pathogenic biological materials or poisonous chemical materials in a quantity sufficient to cause harm to human life, property, or infrastructure; or
  - c) the release of pathogenic biological materials or poisonous chemical materials in a quantity sufficient to cause harm to human life, property, or infrastructure, where one purpose of the Act of Terrorism was the intentional release of such materials.

All other forms of “Terrorism” shall be covered herein.

In the event of any change to (including expiration of) TRIA, the definition of “Act of Terrorism” hereunder shall continue to be applied as if no such change had occurred. In the event of the expiration of TRIA, an Act of Terrorism that otherwise meets the definition within Section 102 of TRIA will be deemed certified for purposes of this Memorandum, if adjudged to have been an act of terrorism by the appropriate federal or national law enforcement authority where the act occurred.

10. any guarantee, warranty, or other expressed or implied obligation of any manufacturer or supplier. This exclusion applies whether or not such contractor, manufacturer or supplier is a Covered Party.