

# Memorandum of Workers' Compensation and Employer's Liability Coverage

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Effective July 1, 2011– July 1, 2012

Administered by the California Joint Powers Insurance Authority



INTEGRITY

EXCELLENCE

INNOVATION

TEAMWORK

Effective July 1, 2011– July 1, 2012, as a joint protection program authorized pursuant to  
Article 11(a) of the California JPIA joint powers agreement



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**MEMORANDUM OF WORKERS' COMPENSATION  
AND EMPLOYER'S LIABILITY  
COVERAGE  
for the  
CALIFORNIA JOINT POWERS INSURANCE AUTHORITY**

**1. INTRODUCTION**

This **Memorandum** is a description of the terms and conditions of the **Program** through which certain self-insured risks of workers' compensation and employer's liability are administered by the **Authority** and shared by its **Members** pursuant to the Joint Powers Agreement creating the **Authority** under the provisions of §6500 et seq. of the Government Code.

As provided in §990.8 of the Government Code, pooling of losses in this **Program** is *not insurance*. The sole duty of the **Authority** is to administer the **Program** adopted by the **Members**. The **Authority** will pay on behalf of members the liability only for **Claims** or losses which are pooled under the terms of this **Memorandum** and the Joint Powers Agreement.

The provisions of the **Program** are subject to and subordinated to the Joint Powers Agreement or any action taken by the Executive Committee or the Board of Directors in connection with the **Program**. This **Program** has been adopted pursuant to action taken by the Executive Committee, and is subject to any amendment, modification or extension by the Executive Committee or the Board of Directors at a regular meeting or at a special meeting called for that purpose.

The terms of this **Memorandum** shall be construed in an evenhanded fashion in accordance with the principles of California contract law. If the language of this **Memorandum** is alleged to be ambiguous or unclear, the issue of how the protection should apply shall be resolved in a manner most consistent with the relevant terms of this **Memorandum** without regard to authorship of the language and without any presumption of arbitrary interpretation or construction in favor of either the **Member** or the **Authority**. Any controversy or dispute arising out of or related to an interpretation or breach of this **Memorandum** shall be settled in accordance with the appeals procedures as set forth in this **Memorandum**.

Throughout this **Memorandum**, words and phrases that appear in **bold** print are defined in 3. Definitions.

## 2. COVERAGE

In consideration for **Member's** payment of the required primary deposit for participation in this **Program**, and subject to all terms and conditions set forth in this **Memorandum**, the **Program** agrees to provide the following protection:

### A. Workers' Compensation

The **Program** will pay on behalf of the **Member** workers' compensation benefits for bodily injury by accident or occupational disease, including resulting death, deemed compensable under the laws of the State of California, and sustained by an **Employee**.

The **Program** will provide for the administration and defense of **Claims** for workers' compensation benefits, including investigation, payment of benefits, compliance with reporting requirements for **Claims** administration, and settlement. The **Program**, at its discretion, will choose and manage service providers necessary to fulfill its objectives; including third party **Claims** administrators, medical management providers, defense attorneys, investigators, etc.

Coverage is subject to the following conditions:

1. Bodily injury by accident must arise out of and in the course of employment by the **Member** and must occur during the **Protection Period**.
2. Occupational disease must be caused by or aggravated by the conditions of employment, and the exposure must occur during the **Protection Period**.
3. Bodily injury or occupational disease from presumptive causations contained in Labor Code §3212 et seq. or other California governmental codes must occur during the **Protection Period**.
4. Coverage is limited to amounts the **Member** is legally liable to pay after apportionment to pre-existing, concurrent or subsequent injuries or illnesses as defined by law.
5. The **Program** will pay temporary disability, permanent disability and death benefits at the statutory rates defined in the California Labor Code (Labor Code Division 4, Part 2, Chapter 2, Articles 3, 4, 4.5 and 5). If the **Member** pays the **Employee** for periods of temporary disability per a salary continuation plan under a collective bargaining agreement, memorandum of understanding or other employment agreement, the

**Program** will reimburse the **Member** at the statutory temporary disability benefit rate for those periods paid by the **Member**.

6. If the **Employee** is eligible to receive salary continuation in lieu of temporary disability under Labor Code §4850 et seq., the **Program** will reimburse the **Member** at the statutory rate for temporary disability benefits that the **Member** would be obligated to pay if Labor Code §4850 et seq. did not apply.
7. **Employees** on temporary assignment or traveling for **Member** business outside the State of California who sustain an injury or occupational disease are covered for benefits under this **Program**. Benefits will be paid on behalf of the **Member** up to the amount payable under the workers' compensation laws of the State of California, regardless of the jurisdiction selected by the **Employee**.

## **B. Employer's Liability**

The **Program** will indemnify the **Member**, where permitted by law, for **Loss** arising from bodily injury or occupational disease, including resulting death.

1. Coverage is subject to the following conditions:
  - (a). Bodily injury by accident must arise out of and in the course of employment by the **Member**. Occupational disease must be caused by or aggravated by the conditions of employment. The accident or period of exposure must occur during the **Protection Period**. Bodily injury does not include emotional distress, anxiety, discomfort, inconvenience, depression, dissatisfaction or shock to the nervous system, unless caused by either a manifest physical injury or a disease with physical dysfunction or condition resulting in treatment by a licensed physician or surgeon.
  - (b). Bodily injury or occupational disease suffered by **Employee** is not covered by workers' compensation law.
  - (c). The **Employee's** duties are necessary or incidental to work conducted by the **Member**.
  - (d). The **Member** timely and fully pursues all available remedies for contribution or indemnification from any and all other available sources.

(e). The original **Claim** or **Suit** and related legal actions for damages are brought in the State of California or under the laws of the State of California.

2. Subject to the foregoing provision of B. Employer's Liability, the **Program** shall:

(a). Indemnify the **Member** for all sums legally payable as damages under this section. Damages include:

i. Amounts for which the **Member** is liable to a third party by reason of a **Claim, Suit** or proceeding against the **Member** to recover damages suffered by the third party; or

ii. Damages for care and loss of services of an injured employee of the Member; or

iii. Damages for consequential bodily injury to a spouse, child, parent, or sibling of the **Employee**, provided that such damages are the direct consequence of injury or disease arising out of and in the course of the **Employee's** employment by **Member**.

iv. Injury or disease to an **Employee** arising out of and in the course of employment, claimed against the **Member** in a capacity other than as **Employer**.

(b). Defend, at the **Program's** expense, any **Claim**, proceeding or **Suit** against the **Member** for damages payable under this section. The **Program** has the right to investigate and settle these **Claims**, proceedings and **Suits**. The **Program** has no duty to defend any **Claim**, proceeding or **Suit** that is not covered by this **Program**. The **Program** has no duty to defend or continue defending after the **Program** has paid its maximum amount of coverage.

(c). Pay the following costs, in addition to the other amounts payable under this section, as part of any **Claim**, proceeding or **Suit** the **Program** defends:

i. Reasonable expenses incurred at the **Program's** expense, but not loss of earnings;

ii. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to twice the maximum amount of coverage under this **Program**;

- iii. Litigation costs taxed against the **Member**;
  - iv. Interest on a judgment as required by law; and
  - v. Other expenses incurred by the **Program** in discharging the obligation of the **Program** or its members under this section.
3. The following are excluded from coverage under this section:
- (a). **Damages** arising out of the actual or alleged discharge; coercion; criticism; demotion; evaluation; reassignment; discipline; defamation; harassment; humiliation; discrimination against; termination of; wrongful dismissal or discharge; breach of any oral or written employment contract or quasi-employment contract; misrepresentation; violation of employment discrimination laws; workplace sexual or other harassment; wrongful failure to employ or promote; wrongful discipline; negligent evaluation; wrongful demotion; wrongful deprivation of a career opportunity; employment-related invasion of privacy, defamation or wrongful infliction of emotional distress; or any other personnel practices, policies, acts or omissions, of any **Employee**, including **Claims** brought under Americans with Disabilities Act, Family Medical Leave Act, Pregnancy Disability Leave Act, Equal Opportunities Act, Fair Employment and Housing Act, Fair Labor Standards Act; or any other such State or Federal act;
  - (b). Any obligation of any type that is imposed by a workers' compensation, occupational disease, unemployment compensation, occupational health and safety law, or disability benefits law, or any similar law;
  - (c). Damages for any injury or disease for any **Employee** engaged in work subject to the Longshore and Harbor Workers' Compensation Act, the Outer Continental Shelf Lands Act, the Defense Base Act, the Jones Act, the Federal Employers Liability Act, or any other Federal workers' compensation or occupational disease law, or any international workers' compensation law;
  - (d). Punitive or exemplary damages, however characterized, or damages, fines or penalties imposed under the Migrant and Seasonal Agricultural Worker Protection Act, or for violation of any other Federal, state, county or other law, regulation or ordinance;

**C. Other Coverages**

1. Defense of Serious & Willful Misconduct Allegation (Labor Code §4553) or Alleged Discrimination Prohibited by Labor Code §132a.

The **Authority** may, at its own discretion, elect to defend a **Member** against **Claims** alleging Serious & Willful Misconduct or a violation of §132a. Such defense will be provided by an attorney assigned by the **Authority**. Any penalties awarded for Serious & Willful Misconduct or violation of §132a will be the responsibility of the **Member**. The **Member** may elect to defend itself with counsel of its own choosing, at its own expense.

**3. DEFINITIONS**

- A. **Authority** means the California Joint Powers Insurance Authority.
- B. **Bodily Injury** means bodily injury, sickness, or disease sustained by any person, including death resulting from any of these at any time.
- C. **Claim** means a notice, demand, or **Suit** against a **Member** to recover **Damages**. **Claim** does not include an administrative claim filed with the Equal Opportunity Employment Commission or the California Department of Fair Employment and Housing or any other administrative or regulatory agency.
- D. **Damages** means compensation in money recovered by a party for loss or detriment it has suffered. **Damages** does not include defense of **Claims** or any punitive, exemplary or multiplied damages or non-monetary relief or redress or injunctive relief.
- E. **Defense Costs** means all fees and expenses incurred in connection with the administration, investigation, defense, and appeal of a **Claim** covered hereunder, including attorney fees, court costs, premiums for appeal bonds, and interest on judgments accruing after the entry of judgment, and also shall include the costs of any **Claims** administrator or defense counsel assigned by the **Authority** to respond to any **Claim** on behalf of the **Authority**. **Defense Costs** shall not include the office expenses of the **Member**, nor the salaries of employees or officials of the **Member**, nor expenses of any **Claims** administrator engaged by the **Member**. **Defense Costs** also do not include any fee or expense relating to coverage issues between the **Authority** and any **Member**.
- F. **Discrimination** means injury caused by or arising out of:

1. Unlawful discrimination because of race, sex, color, age, religion, or national origin, or membership in any similarly legally protected class; or
  2. Violation of the discrimination prohibitions of the Americans with Disabilities Act of 1990, any rules or regulations promulgated thereunder and amendments thereto or similar provisions of any Federal, state, or local statutory law or common law.
- G. **Employee** includes any person falling within the definition of “employee” under Labor Code Division 4, Chapter 2, Article 2, beginning with §3351. **Volunteers** are considered employees under this Memorandum only if the **Member** has a resolution in effect, and passed prior to the date of injury or illness at issue, providing workers’ compensation coverage to volunteers under Labor Code §3363.5, and while performing specific functions in the course and scope of authorized activities under the direction and control of the **Member**.
- H. **Loss** means amounts actually paid by the **Program** for statutory workers’ compensation benefits, employer’s liability **Claims** and allocated costs for investigation, administration and defense of **Claims** under this Memorandum of Coverage.
- I. **Member** means the entity, including all of its departments and constituent agencies, which has adopted a resolution to participate in the **Program** and become a signatory to the Joint Powers Agreement creating the **Authority** as may be amended from time to time, whose name appears on the Cover Page of this **Memorandum**. **Member** includes any other agency for which the **Member’s** governing board or council acts as the governing board, and also includes any commissions, agencies, districts, authorities, redevelopment agencies, boards, or similar entities coming under the **Member’s** direction and control. **Member** shall include any other agency authorized by the **Authority’s** Board of Directors. The **Member** must be approved for self-insurance by the Office of Self Insurance Plans and maintain its qualification for self-insurance during the **Protection Period**.
- J. **Memorandum** means this Memorandum of Workers’ Compensation and Employer’s Liability Coverage authorized by the Joint Powers Agreement of the **Authority** specifying the terms and conditions of the **Program**.
- K. **Occurrence** means a single accident or event causing bodily injury to one or more employees; or occupational disease sustained by one or more employees as a result of an outbreak of the same communicable disease, or sudden and accidental exposure to the same environmental hazard.
- L. **Program** means the California Joint Powers Insurance Authority’s Workers’ Compensation and Employer’s Liability Program described by this **Memorandum** and the Agreement of the **Members** creating the **Authority**. The

**Program** is a fund created by the **Members** for the purpose of pooling self-insured losses.

- M. **Protection Period** means the time period shown on the Cover Page of this **Memorandum**.
- N. **Suit** means a civil proceeding in which a **Member** is named as a defendant or cross-defendant, or an arbitration proceeding or alternative-dispute resolution proceeding to which a **Member** submits with the **Authority's** written consent.

#### 4. **EXCLUSIONS**

This **Memorandum**, including any obligation to indemnify, defend or pay **Defense Costs**, does not apply to:

- A. The **Member's** obligation to pay salary in lieu of temporary disability benefits under Labor Code §4850, except to the extent that the **Member** would be obligated to pay temporary disability benefits in the absence of the mandate of §4850.
- B. The **Member's** obligations under Labor Code §4856 to provide health benefits.
- C. Injury or disease to an **Employee** while knowingly employed in violation of law;
- D. Injury or disease intentionally caused or aggravated by or at the direction of the **Member**;
- E. Penalties or fines imposed for violation of Labor Code 132a or Labor Code §4553 (Serious & Willful Misconduct);
- F. Penalties or self-imposed benefit increases for violations of Labor Code §5814 et seq. attributable to the **Member's** actions;
- G. Damages arising out of, or in any way related to, operations with respect to which the **Member**:
  - 1. has violated or failed to comply with any workers' compensation law, or any provision thereof, or
  - 2. has rejected any workers' compensation law.
- H. Any **Claim, Suit**, liability, or alleged liability for punitive or exemplary damages or fines or other damages imposed primarily for the sake of example and by way of punishing the **Member**, including liability of a **Member** to defend or pay

damages where the governing body thereof has elected to provide a defense or pay damages for a **Claim**, action or judgment for punitive or exemplary damages.

- I. Any liability for which the **Member** is obligated to pay damages by reason of liability assumed in a contract or agreement.

## 5. **CONDITIONS AND RESPONSIBILITIES**

### A. **General Obligations**

The **Member** agrees to abide by all employment, equal opportunity, anti-discrimination, health and safety laws, statutes and regulations. It understands that, among other obligations, it has a non-delegable duty to provide employees with a safe place to work, and training in safe work practices. The **Member** agrees to abide by all applicable wage and hour laws, collective bargaining agreements, memoranda of understanding, and other statutes and regulations regarding working conditions.

The **Member** agrees to immediately report every occupational injury or illness which results in medical treatment, or any claim by an **Employee** for workers' compensation benefits, to the **Authority** or the **Authority's** designated administrator, but in no instance to cause the delay of such report of injury, illness or claim more than five days after date of knowledge or as otherwise required by Labor Code §6409.1. The **Member** agrees to give every employee a claim form pursuant to Labor Code 5401 within one working day of receiving notice or knowledge of a claim or potential claim. In the event of an injury or illness, the **Member** agrees to provide first aid or arrange for appropriate immediate medical care. The **Member** agrees to provide suitable temporary modified or alternate duty whenever possible for employees with workers' compensation injuries, and agrees to conduct interactive accommodation meetings as required by AB 2222.

### B. **Inspection and Audit**

The **Authority** shall be permitted but not obligated to inspect the **Member's** records, property and operations at any time. Neither the **Authority's** right to make inspections, nor the making thereof, nor any report hereon shall constitute an undertaking, on behalf of or for the benefit of the **Member** or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulations. The **Authority** may examine and audit the **Member's** books and records at any time during the **Protection Period** and extensions thereof, and within three years after the final termination of this **Program**, as far as they relate to the subject matter of this **Memorandum**.

C. **Member's Duties in the Event of Occurrence, Claim or Suit**

1. In the event of any **Occurrence**, written notice containing particulars sufficient to identify the **Member** 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 **Member** to the **Authority's** claims administrator as soon as practicable, but no later than required by statute or regulation.
2. If a **Claim** is made against a **Member**, the **Member** shall immediately forward to the **Authority's** claims Administrator every demand, notice, summons or other process received by the **Member** or the **Member's** representative.
3. The **Authority's** claims Administrator will review the **Claim**, and under the direction of the **Authority**, undertake the administration of the **Claim**, including investigation, defense and settlement, as appropriate.
4. The **Member** shall cooperate with the **Authority** and, upon the **Authority's** request, assist as appropriate in the resolution of the **Claim**, including enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Member** because of injury or damage to an **Employee** or **Member** property. The **Member** shall not voluntarily make any payment, assume any obligation or incur any expense.

D. **Privacy and Confidentiality of Claim Records**

All **Claim** records, including **Claim** files, examiners notes, medical reports, subpoenaed records, correspondence, tapes and films, and whether electronic or hard files, are the property of the **Authority**. Because these records may contain confidential or private medical and/or psychological information related to workers' compensation **Claims** administered by or on behalf of the **Authority**, access to **Claim** files and the information contained therein is restricted to the **Authority** and its agents and assignees, with the exception that the **Member** is entitled to medical information limited to the diagnosis of the mental or physical condition for which workers' compensation is being claimed and the treatment provided for this condition, or what is necessary for the **Member** to have in order to provide temporary or permanent modification or accommodation of the employee's work duties.

E. **Change in conditions**

If a **Member** experiences a significant change in operations or conditions, the **Member** shall notify the **Authority** as soon as practicable, and the **Authority** has

the right to an underwriting review and to collect additional primary deposits as may be appropriate to reflect the added exposure to the **Program**. The additional primary deposit must be paid within ninety days of notice.

F. **Other Protection**

If collectible insurance or any other coverage or protection with any insurer, self-insured employer, joint powers authority or any other source, is available to the **Member** covering a loss also protected hereunder (whether on a primary, excess or contingent basis), the protection hereunder (including any Defense obligation) shall be in excess of, and shall not contribute with, such insurance or other coverage or protection, provided that this clause does not apply with respect to any insurance purchased by a **Member** specifically to be in excess of this **Memorandum**. Under no circumstances shall the protection afforded by this **Program** be considered primary, pro rata, concurrent or co-existent with such insurance, coverage, or other protection.

G. **Termination or Amendment**

This **Memorandum** may be terminated or amended at any time in accordance with the Joint Powers Agreement and Bylaws of the **Authority**.

H. **Changes to Memorandum**

Notice to any agent or knowledge possessed by any agent of the **Authority** or by any other person shall not effect a waiver of or a change in any part of this Memorandum, nor shall the terms of this Memorandum be waived or changed, except by a written addendum issued by the **Authority** to form a part of this Memorandum.

I. **Subrogation and Recovery**

The **Authority** shall be subrogated to the extent of any payment hereunder to all the **Member's** rights of recovery thereof. This section applies to all recoveries from third parties or governmental agencies, including recoveries for state mandate reimbursements pursuant to SB 90 or other statute or regulation.

The **Member** shall do nothing after loss to prejudice such rights and shall do everything necessary to secure such rights. The **Authority** shall have standing to seek subrogation recovery in its own name or in the name of the **Member**, and the **Member** shall cooperate with and assist the **Authority** in pursuing such recovery, including assigning its right to recover subrogated amounts, and if necessary, executing a written agreement to effect such assignment. Any amount so recovered shall be credited to the workers' compensation file.

J. **Assignment**

There is no assignment of interest permitted under this **Memorandum**.

K. **Joint Powers Agreement**

The provisions of this **Memorandum** are subject to and subordinate to the terms and provisions of the **Agreement** creating the **Authority**, and in the event of any conflict between the terms and provisions of said **Agreement** and this **Memorandum**, the terms and provisions of the **Agreement** shall control.

L. **Appeal of Disputes**

Should a dispute arise between the **Member** and the **Program**, the following conditions will apply:

1. No party is entitled to appeal or arbitrate **Claims** under this Memorandum other than the **Member**.
2. Any disputes concerning coverage, protection, Defense obligations, or procedures of the Program, as interpreted by the **Authority's** staff, shall be appealed to the **Authority's** Executive Committee in accordance with the following procedures.
3. A **Member** may request any determination of a lack of coverage made by the **Authority** to be reviewed by the Chief Executive Officer. Such a request shall be in writing and must be made within 90 days of the date of notice from the Claims Administrator.
4. Upon request, the Chief Executive Officer shall review a determination of a lack of coverage made by the Claims Administrator or **Authority** staff and shall send to the **Member** a written determination of coverage.
5. If a **Member** disagrees with the coverage determination by the Chief Executive Officer, the **Member** may appeal the decision to the Appeals Committee. The Appeals Committee consists of the Executive Committee and the chairs of the Managers and Finance Officers Committees. Appeals must be in writing within 90 days of the date of the Executive Director's written decision. The appeal request must state why the **Member** disagrees with the denial, and the **Member** should present any information that may have a bearing on the ultimate determination of coverage.
6. The appeal request shall be presented by **Authority** staff to the Appeals Committee, on a regularly scheduled Executive Committee meeting day, allowing time for sufficient review and agenda deadlines. Staff shall

notify the **Member** in advance of the meeting at which its appeal will be presented.

7. If the **Member** would like to personally address the Appeals Committee, the **Member** or the **Member's** representative may attend the meeting and speak to the issue.
8. The Appeals Committee may refer the appeal to the Coverage Committee and consider the recommendation of the Coverage Committee during its deliberation on the appeal. The Appeals Committee's decision is final. **Authority** staff will notify the **Member** of the Appeals Committee's decision in writing.
9. Following a final determination regarding a **Claim**, consideration of the decision may be reopened at the request of the **Member** if circumstances change as follows: (1) a new and distinct **Claim** arising out of the prior occurrence is presented to the **Member**, or (2) new and distinct causes of action are added to the **Claim**. If the new **Claim** or causes of action are reasonably thought by the **Member** to be covered, the Appeals Committee will reconsider the issue, in accordance with the procedure in section, upon request. Any request for such reconsideration must be in writing within 90 days of the notice to the **Member** of the new **Claim** or cause of action.
10. If a **Member** disputes a coverage issue, then, during the course of the administrative and arbitration proceedings provided herein, the **Authority** shall defend the **Claim** against the **Member** and have the right to control any settlement of that **Claim**, subject to the right of the **Authority** to recover from the **Member** any amounts paid out by the **Authority** for such defense or settlement which are finally determined by the Appeals Committee, or as a result of the Binding Arbitration Process, not to be owed by the **Authority** under the Program.

#### M. **Arbitration**

If the **Member** has followed the coverage Appeals Procedure outlined in 5. L. Appeal of Disputes and disagrees with the final determination of the Appeals Committee, the **Member** may request consideration of the coverage issue through the **Authority's** binding arbitration process.

The Arbitration process shall be as follows:

1. Following a decision by the Appeals Committee, the appealing **Member** shall notify the Chief Executive Officer in writing, within thirty days of the Appeals Committee's final decision, that it wishes to participate in

Binding Arbitration and shall submit a non-refundable \$1,000 arbitration appeal fee. The written notice shall specify the grounds for the arbitration.

2. Following payment of the arbitration appeals fee, the name of each **Member**, other than the appealing **Member** and the **Members** represented on the Appeals Committee, shall be placed in an unmarked envelope. Each envelope shall be placed in a box and eleven envelopes shall be drawn by the Chief Executive Officer. A representative of the appealing **Member** may be present at the drawing.
3. The managers of the eleven **Members** shall be the pool of potential arbitrators. The eleven **Members** and the names of their managers shall be given in writing to the appealing **Member**.
4. The appealing **Member** shall have the right to strike two or less names from the pool for any reason which shall not be disclosed. The **Authority** shall have the right to strike two or less names from the pool for any reason which shall not be disclosed. The appealing **Member** and the **Authority** must strike names within five business days of the drawing. The right of either party to strike names shall lapse at 5:00 PM on the fifth business day following the drawing. Notice of names stricken by either party shall be given in writing to the other party prior to 5:00 PM on the fifth day following the drawing.
5. The remaining managers shall be contacted by the Chief Executive Officer to determine their willingness to serve on the arbitration panel. If more than five are willing to serve, each name shall be placed in an unmarked envelope, put in a box, and the Chief Executive Officer shall draw five envelopes from the box. The individuals whose names are drawn shall be the arbitration panel and they shall be disclosed in writing to the appealing **Member**.
6. If only five are willing to serve, they shall be the arbitration panel.
7. If fewer than five are willing to serve, the name of each **Member** not drawn in the previous selection drawing shall be placed in an unmarked envelope, put in a box, and four envelopes shall be drawn for each arbitration panel position needed to complete a five-**Member** panel. A representative of the appealing **Member** may be present at the drawing. The names drawn shall be disclosed to the appealing **Member** who may reject, for any reason which shall not be disclosed, one name for each four names drawn. The **Authority** may also reject one name for each four names drawn and shall not disclose the reason. Names rejected by the appealing **Member** and the **Authority** must be rejected within 48 hours of the drawing. The right to reject names shall lapse 48 hours following the drawing.

8. The managers or chief executive officers of the **Members** remaining shall be contacted by the Chief Executive Officer to determine their willingness to serve on the arbitration panel. The names of those willing to serve shall be placed in unmarked envelopes, put in a box, and the number necessary to fill out the arbitration panel shall be drawn by the Chief Executive Officer and disclosed in writing to the appealing **Member**. A representative of the appealing **Member** may be present at the drawing.
9. This process shall be repeated until five **Members** are obtained for the arbitration panel.
10. The arbitration panel **Members** shall be compensated at the rate of \$125 per half-day or portion thereof. If a panel **Member** is required to stay away from home overnight, lodging shall be paid by the **Authority**. Necessary meals shall be provided for all panel **Members**. Mileage costs shall be reimbursed by the **Authority** at its standard rate.
11. The cost of the arbitration panel shall be borne by the **Authority**. The cost of presentation by the appealing **Member**, including preparation, exhibits, attorneys, and all other costs of the **Member** shall be paid by the **Member**.
12. The arbitration panel may request legal counsel that shall be selected by the Chief Executive Officer and paid for by the **Authority**. Legal counsel shall not be the counsel for the **Authority** that has advised the staff and Executive Committee. However, counsel for the **Authority** may participate in or make the presentation to the arbitration panel on behalf of the **Authority**, as requested by the Chief Executive Officer.
13. The parties to the arbitration shall not be governed by formal rules of evidence.
14. The arbitration panel's decision shall be final and binding on the **Member** and the **Authority**. Decisions of the arbitration panel shall be by majority vote.
15. The decision of the arbitration panel shall be written and shall govern the issue decided but may be referred to by the **Authority** and future arbitration panels for precedent.