

**NBSIA MASTER AGREEMENT FOR INDEMNITY, COVERAGE,
AND JOINT DEFENSE COST OBLIGATIONS**

This NBSIA Master Agreement for Indemnity, Coverage and Joint Defense Cost Obligations (“Master Agreement”) is entered into by North Bay Schools Insurance Authority (“NBSIA”) and each of its Members which participate in NBSIA’s liability, property, and workers’ compensation coverage programs.

RECITALS

1. The Members have now, or may in the future, enter into agreements regarding facilities use, lease or rental, joint educational or recreational programs, joint arts or enrichment programs, joint construction or facility support programs, joint transportation or maintenance programs, joint safety or security services or programs, or other service or joint interest agreements expected or intended to benefit in some manner the Member Agencies in carrying out their functions or operations in keeping with Government Code Section 895, Education Code Sections 10900, et seq. or 38130, et seq., or other statutory or legal authority as may exist under California law or regulations (the “Contracts”), with the term “Contracts” as used herein given the broadest meaning permitted under law in order to effectuate the Parties’ purposes and intent as set forth herein.

2. To standardize the terms and conditions of such Contracts with respect to the Parties’ rights, obligations, and expectations in response to a claim arising in some manner from, or relating in some manner to, the subject matter of a Contract, and to promote the public interest of reducing disputes and saving financial resources, for good cause existing the Parties now agree as follows.

TERMS OF THE MASTER AGREEMENT

I. GENERAL TERMS AND CONDITIONS

1. This Master Agreement shall, upon its approval or ratification by NBSIA’s and its Members’ governing boards, be deemed effective as of _____. The Master Agreement shall remain in full force and continuous effect for the benefit of all Members until (i) one or more of the Members gives 90-days written notice of its/their intent to withdraw from this Master Agreement, with the Master Agreement remaining in full force and effect as to all other remaining Members, or (ii) a Member withdraws or is removed from one or more of NBSIA’s liability, property, and/or workers’ compensation programs, with the Member Agency then terminated from participation in this Agreement on the effective date of withdrawal or removal, with the Master Agreement remaining in full force and effect as to all remaining Members. Upon the cancellation of this Master Agreement, or a Member Agency’s removal from participation, the rights and obligations contained herein shall continue to apply with respect to any claim arising from an actual or alleged negligent or wrongful act causing damage, injury, or harm on or before the effective cancellation or participation withdrawal date.

2. The Master Agreement shall be deemed retroactively incorporated into all existing Contracts between the Members, superseding any otherwise existing defense, indemnity, and/or insurance coverage provisions that are inconsistent with this Master Agreement, with this Master Agreement deemed an authorized written modification to all such Contracts.

3. This Master Agreement shall be deemed incorporated into any future Contracts between the Members, superseding and negating any contrary or different defense, indemnity or insurance coverage provisions that might mistakenly or inadvertently included in such Contracts. This Master Agreement shall only be inapplicable if the future Contract expressly references this Master Agreement and states that some or all of these provisions shall not apply. To assist in uniformity, the Members are encouraged to include in their future Contracts the following phrase: “The Parties hereby incorporate by reference the terms and conditions of the Master Agreement for Indemnity, Coverage, and Joint Defense Cost Obligations made effective on _____.” The absence of such a provision, however, shall not negate or limit the effectiveness of this Master Agreement.

4. This Master Agreement is subject to modification or alteration only by a jointly executed amendment, addendum, or replacement Agreement authorized by NBSIA and the participating Members. The interpretation and application of this Master Agreement to any existing or future Contracts is not subject to modification or novation based on actual or alleged oral statements representations by any Member, by course conduct of one or more of the Members, or by the doctrines of waiver or estoppel.

II. SUBSTANTIVE TERMS AND CONDITIONS

1. To the fullest extent allowed by law, the Members each agree to defend, indemnify, and/or hold harmless the other Members (and their respective directors, officers and employees) from any claim arising from their actual or alleged negligent, reckless, or intentional act, error, or omission in the performance or nonperformance of their express or implied duties or obligations imposed by a Contract or governing law or regulation that has (a) actually or allegedly caused harm, damage or injury to a third party, or (b) actually caused harm, damage or injury to the real, personal, intellectual, or financial property or interests of another Member. Upon the acceptance of a tender of defense under this provision, the indemnifying Member shall have a right to appoint counsel, manage the defense of the claim, and determine the extent to which a claim should be settled, all such decisions to be conducted within the indemnifying Member's sound discretion.

2. Each Member shall affirmatively undertake reasonable or necessary efforts to transfer the risks encompassed by this Master Agreement, and these indemnity obligations, to third parties, including vendors, agents, contractors, or subcontractors ("Agents") of a Member who may have direct or vicarious liability for the acts or omissions of its Agents who have actually or allegedly caused an injury producing event or claim. All Members shall also proactively seek to minimize risks in advance of a claim or loss, and to proactively engage in all reasonable or necessary steps after a claim occurs to minimize or reduce defense and/or indemnity exposures.

3. Should a claimant allege that two or more Members were at fault for causing harm, damage or injury included within the defense and indemnity provisions above, in the absence of an irreconcilable and non-waivable conflict of interest, the Members (for themselves and their respective directors, officers, and employees) agree to be jointly represented by a single defense counsel, with all defense fees and costs equally allocated between the Members. If an irreconcilable and non-waivable conflict of interest exists, each Member Agency shall be responsible for its own attorneys' fees, costs, and expenses. Whether through settlement or judgment, each Member shall be solely and separately responsible for any apportioned damages arising from its negligent, reckless, or intentional act.

4. If one or more Members named in a claim are covered by a relevant NBSIA coverage program, NBSIA shall extend coverage to both Members (and their respective directors, officers and employees) subject to the terms and conditions of the then-existing coverage agreement, at which time NBSIA shall appoint counsel, manage the defense of the claim in keeping with the standards set forth above, and, in the case of settlement, determine the apportioned share of liability or responsibility of each Member. Each Member shall be responsible for any applicable deductible unless NBSIA determines that the sole cause of the claim is the actual or alleged acts of a single Member, with a deductible then owed by the Member whose fault is at issue in the claim. If the Contract involves the sharing of individuals on a joint employer basis under governing legal principles, both Members' workers' compensation coverage benefits shall be deemed implicated other Member's compensation coverage agreement.

5. If one or more Members are not covered by the same NBSIA coverage program, to the extent of a Member's defense and/or indemnity obligations set forth above, each Member shall be deemed an "additional insured," or "additional covered party" under the other Member Agency's Coverage Providers' liability and property coverage agreement(s), subject to all terms, conditions, limitations, and obligations of such liability coverage agreement (or any available excess coverage agreements), with the Member not participating in the NBSIA coverage program in question required to obtain an "additional insured," or "additional covered party" endorsement or agreement from its separate coverage provider in order to ensure reciprocity. If such an endorsement is not issued, for any reason, the nonparticipating Member shall be financially obligated to provide the financial benefits that would have been due and owing under the other coverage program if such an endorsement would have been issued. These rights to coverage consideration shall exist under all primary and excess coverage agreements or insurance policies available to the Member Agencies, up to the limits of liability, but this Master

Agreement shall not otherwise enlarge the scope of coverage rights or benefits available under a Coverage Provider's governing coverage documents or agreements.

6. The provisions of this Master Agreement are expected and intended to avoid claims of subrogation, contribution, or indemnity, with rights of subrogation deemed waived and released in favor of the allocation and claim management provisions contained herein, although nothing set forth in this Master Agreement is intended to affect any statutory presumptions or limitations imposed by any law or regulation relating to automobile insurance obligations (e.g., Vehicle Code Section 11580.9).

7. Upon notice of a claim or potential claim to a Member Agency, the Member Agency shall promptly give notice (no later than any timeframe imposed by NBSIA's then-existing coverage agreement) of the claim or potential claim to NBSIA and to the chief business official of any other actually or potentially involved Member. NBSIA shall, in keeping with its obligations under its coverage agreements, assume claim management responsibilities if coverage actually or potentially exists, and coordinate responses to the claim or potential claim, including determinations of the existence of joint/separate defense obligations.

III. DISPUTE RESOLUTION PROCEEDINGS

Should a dispute arise between the Members, or between any Member and NBSIA, regarding the formation, operation, interpretation, or application of this Master Agreement to any particular claim or circumstance, the parties involved in the dispute shall issue a written request for action to the allegedly noncomplying party within 30 days after the date the dispute has been identified, setting forth the nature of the requested action and the factual and/or legal reasons underlying the request. The allegedly noncomplying Party shall timely respond to the request, no later than 30 days after its receipt, setting forth an agreement to the request or the reasons for disagreement. In the case of disagreement, the involved parties shall schedule an in-person meeting within 15 days after the statement of disagreement, to determine if a resolution can be reached. If no resolution can then be reached within 10 days after the in-person meeting, either involved Party shall make a request for binding arbitration.

The arbitration shall be heard and determined by the uninvolved Members of the NBSIA Executive Committee, sitting as a separate arbitration hearing panel, who shall expeditiously and cost-effectively resolve the dispute, with the NBSIA Board Chairperson, or the most senior serving Member of the Executive Committee if the Board Chairperson's Member agency is involved in the dispute, serving as the lead arbitrator. Such arbitration shall, in the lead arbitrator's sole and separate discretion, be conducted without discovery, live testimony, or a formal transcript of proceedings unless the lead arbitrator determines such actions are necessary to protect one or both parties' right to due process. Each participating side shall bear its own attorneys' fees, costs and expenses unless the arbitration panel finds that one or more positions asserted by a side were frivolous, in which case the arbitration panel shall award and/or apportion reasonable attorneys' fees and costs.

XVII. EXECUTION

This Agreement may be executed in counterparts, with an original, facsimile, or photocopied signature equally as valid as an original signature, with each executing party declaring that he/she is fully authorized and empowered to enter into this binding Agreement.

Name: _____

Name: _____

Title: _____

Title: _____

District/COE: _____

District/COE: _____

Signature: _____

Signature: _____