SIXTH AMENDMENT AND RESTATEMENT OF THE
SCHOOLS EXCESS LIABILITY FUND
A JOINT EXERCISE OF POWERS AGREEMENT
Among Specified Public Educational Agencies
for the Management, Operation and Maintenance
of Risk Pooling and Insurance Programs for
Excess Liability, Property, Workers’ Compensation and other Programs

THIS DOCUMENT constitutes the Sixth Amendment and Restatement of the Schools Excess Liability Fund Joint Powers Agreement (hereinafter "Agreement") effective December 7, 2018. This Agreement supersedes that original Agreement dated March 1, 1986 as well as all prior amendments thereto. Pursuant to the provisions of Title I, Division 7, Chapter 5, Article 1 of the Government Code of the State of California (commencing with Section 6500 thereof) relating to the joint exercise of common powers, this Agreement is entered into among those public educational agencies as defined in this Agreement, which are or may hereafter become parties to this Agreement, for the purpose of operating an Authority to be known and designated as “Schools Excess Liability Fund,” hereinafter referred to as SELF.

WITNESSETH

WHEREAS, the public interest requires and it is to the mutual benefit of the parties hereto to join together to establish and operate cooperative programs of risk pooling, insurance and risk management for excess liability, property, workers’ compensation and other programs, and

WHEREAS, the operating of such cooperative programs is of such magnitude that it is necessary for the parties to this Agreement to join together to accomplish the purposes hereinafter set forth, and

WHEREAS, each of the public educational agencies which is a party to this Agreement has the power to establish, manage, operate and maintain programs of excess risk pooling and insurance for liability, property, workers’ compensation and other programs, and

WHEREAS, Title I, Division 7, Chapter 5, of the California Government Code authorizes the joint exercise by two or more public agencies of any power which is common to each of them;

NOW THEREFORE, for and in consideration of the mutual advantages to be derived therefrom and in consideration of the execution of this Agreement by other public educational agencies, each of the parties hereto does agree as follows:

(Throughout this Agreement, words and phrases that appear in bold type have special meanings. They are defined in Section I, below.)
I. DEFINITIONS

Unless otherwise stated herein, for purposes of this Agreement the following words shall have the meanings stated:

A. Agreement means this Joint Powers Agreement executed by parties to SELF.

B. Authority means SELF.

C. Board means the Board of Directors of SELF as established by this Agreement and the Bylaws.

D. Bylaws means the Bylaws by which SELF is to be governed.

E. Claim means that portion of a settlement, judgment, compromise and release, award, claim or other covered loss, which exceeds or is likely to exceed a party’s retained limit as specified in the appropriate Memorandum of Coverage. Claim costs shall include expenses as defined in such Memorandum of Coverage.

F. Contracting party means that Party designated by the Board pursuant to Government Code section 6509.

G. Contribution shall mean money, including, but not limited to, special assessments, paid by a party to SELF in return for the services and coverage outlined in the appropriate Memorandum of Coverage.

H. Fiscal year means the period of time commencing on July 1 and ending the following June 30.

I. Fund means a sum of money established for the purpose of carrying out this Agreement. A separate fund shall be established for each program.

J. Member means a person duly elected or appointed to the Board of Directors as provided for in this Agreement.

K. Memorandum of Coverage means a document specifying terms, conditions, coverages, and limits of liability for a program operated by SELF.

L. Party means a public educational agency which is a party to this Agreement.

M. Program means liability, property, workers’ compensation, or other coverage programs authorized by the Board.

N. Public educational agency/agencies means any public school district, community college district, county board of education/county superintendent of schools, regional occupational programs/centers, The California State University or other public entity
providing educational programs or services to the community, or such joint powers agencies/authorities consisting of one or more of the foregoing and serving the interests of the public entities detailed in this Agreement.

II. PURPOSE

The purpose of this Agreement is to establish, operate, and maintain and/or fund pooling and insured programs for excess liability, property, workers’ compensation and other programs approved by the Board, the function of said programs being within the power common to each of the parties to this Agreement.

III. ADMINISTRATION

SELF shall be governed by a Board of Directors, which shall be established and shall operate as follows:

A. With the exception of the two ex-officio positions, eligibility for membership on the Board shall be limited to employees of public educational agencies that are parties to the SELF Agreement as defined. Only the designated primary Board member or alternate Board member may represent that member’s constituency.

B. Membership: The Board of Directors shall consist of sixteen elected and one appointed voting members and two ex-officio members, as follows:

1. There shall be four elected members from community colleges, two representing the South and two representing the North (See Appendix I);

2. There shall be one elected member from each of the SELF Areas one, two, three and four (See Appendix I);

3. There shall be two elected members from SELF Area five (See Appendix I);

4. There shall be six elected members from SELF Area six (See Appendix I);

5. There shall be one ex-officio member from the State Community College Chancellor’s Office;

6. There shall be one ex-officio member from the Office of the State Superintendents of Public Instruction; and

7. There shall be one member appointed by the Chancellor of The California State University for so long as The California State University is a party to the SELF Agreement.

C. Election: Each party to the Agreement, with the exception of The California State University, shall be entitled to submit one ballot for the election of members within its
SELF Area. Elected Board members shall begin their term of office July 1, following the election.

D. Alternates: The Board shall appoint alternates for each member. The Board may consider recommendations from members when making such appointments. Alternates shall serve at the pleasure of the Board.

E. Term of Office: Elections shall be held every two years. Each member shall serve for a period of four (4) years. The terms of office for the members from the State Community College Chancellor’s Office, the Office of the State Superintendent of Public Instruction, and The California State University shall be determined by the appointing authority.

F. Vacancies of the Board: In the event that a member is unable to fulfill his/her term of office, the Board shall, at its discretion, appoint a replacement to serve the remainder of the member’s term. In the event that a member is an employee or agent of a party giving notice of withdrawal, pursuant to Article XV of these Bylaws, such member shall be deemed to have resigned from the Board as of the date of the notice, even though the effective date of the resignation occurs at the end of the fiscal year.

G. SELF shall comply with the Ralph M. Brown Act (Government Code § 54950 et seq.) to the extent required by law.

H. Quorum: Except as otherwise required by the Agreement and these Bylaws, a quorum of the Board shall consist of a majority of the voting members of the Board or when applicable (e.g., due to Board member(s) absence from a meeting), Board alternates.

I. Attendance at Meetings: All members or their alternates shall attend all meetings of the Board. If a member or alternate fails to attend two consecutive meetings, the Board may declare a vacancy in that office.

J. Voting: With the exception of ex-officio positions, each member or, when applicable, alternate, shall have one vote, which may be cast on any issue before the Board. Except as otherwise permitted by Sections 54950, et seq. of the California Government Code, no proxy or absentee votes shall be permitted. Except as otherwise provided in these Bylaws, a vote of a majority of the primary or alternate Board members in attendance shall be sufficient to constitute action, provided a quorum is established.

K. Board Officers: The officers of the Board shall consist of a chairperson, vice chairperson, secretary and comptroller. The officers shall be elected by the Board from among themselves on a single vote per member basis. The term of office for officers shall be two (2) years.

L. Notice of Meetings: Except for special meetings, notices of meetings shall be sent by mail to each member and alternate no less than thirty (30) days before regularly scheduled meetings.

M. Conduct of Meetings: Unless otherwise determined by the Board, meetings shall be conducted pursuant to the most current edition of “Robert’s Rules of Order.”
N. Minutes: The secretary shall cause to be kept minutes of all open-session meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be provided to each member and alternate.

O. Expense Reimbursement: Members or alternates shall receive reimbursement for travel and per diem expenses incurred in accordance with policy established by the Board. Members or alternates shall not receive any other form of reimbursement.

P. Indemnification: Board members and their alternates are indemnified, by the Agreement, and SELF does hereby agree to indemnify and hold them, and each of them, severally and jointly, harmless against and free from all claims, expenses, demands, penalties, fines, forfeitures, judgments, settlements, attorney fees, and any other amount whatsoever actually and reasonably incurred or threatened by reason of, or as a result of, their official participation and actions in pursuance of the execution and administration of the Agreement and the operation of the Authority created thereunder, including but not limited to amounts arising out of or by any judicial or quasi-judicial action or proceeding, whether civil, criminal, administrative or investigative, on condition that it appear to the satisfaction of the Board that the indemnitee acted in good faith and in a manner reasonably believed by him or her to be in the best interest of SELF, or that such a person had no reasonable cause to believe that his or her conduct under the circumstances was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or plea of nolo contendere or its equivalent shall not for purposes of the Agreement and these Bylaws of itself create any presumption that the indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in the best interest of SELF, nor any presumption that such a person had reasonable cause to believe that his or her conduct under the circumstances was unlawful. This provision of indemnity shall not be construed to obligate SELF to pay any liability, including but not limited to, punitive damages, which by law would be contrary to public policy or itself unlawful. The Board, at its discretion, may self-fund or provide for errors and omissions insurance policy coverage for the directors and officers and employees of SELF, at the expense of SELF.

Q. Meetings: The Board may conduct regular, adjourned regular, special, and adjourned special meetings, provided, however, that it will hold at least two regular meetings each year. The date, time and place for the regular meetings shall be fixed by the Board. Such meetings shall be publicly noticed prior to the meeting by the Board. All meetings of the Board shall be called, held, and conducted in accordance with the terms and provisions of the Ralph M. Brown Act (Sections 54950, et seq. of the California Government Code), and as augmented by rules of the Board not inconsistent therewith. A calendar shall be distributed to all primary and alternate Board members, and to any person who has filed a written request seeking notice of Board meetings, and shall provide notice solely of regular (i.e. not special or adjourned regular or special) meetings. The Board may hold additional meetings as determined by the Board and consistent with the Brown Act. Except as otherwise provided or permitted by law, all meetings of the Board shall be open and public. The Board shall cause to be kept minutes of its meetings, and shall promptly transmit to the primary members of the Board and their alternates, true and correct copies of the minutes of such meetings.
R. The Board shall designate its principal office as the location at which it will receive notices, correspondence, and other communications, and shall designate one of its primary members or employees as an officer for the purpose of receiving service on behalf of the Board. The Board shall comply with the provisions of Sections 6503.5 and 53051 of the Government Code requiring the filing of a statement with the Secretary of State and with the State Controller.

S. The Board may establish rules governing its own conduct and procedure, and have such expressed or implied authority as is not inconsistent with or contrary to the laws of the State of California, this Agreement and the Bylaws.

T. Consistent with Government Code section 6509, SELF hereby designates the Orange County Department of Education as the contracting party whose restrictions upon the manner of exercising powers described in Government Code section 6509 shall also apply to SELF. In the event that the contracting party ceases to be the contracting party, the Board may designate a new contracting party to take the place of the terminating contracting party by formal resolution of the Board with written consent of the new contracting party.

U. Administration: The Board shall, either directly or by contract, perform the following services:

1. Provide for payments of claims in accordance with this Agreement and the Bylaws.

2. Establish yearly contributions and loss reserves for each program and return of contributions/rate credits, if appropriate. Pursuant to the payment of the required contributions by each party to SELF, SELF shall issue to each party a Memorandum of Coverage indicating the coverage provided to the party by SELF and the exchange of services, if any. The coverage provided by such Memorandum of Coverage will begin for each party on the date set forth in the declarations of the Memorandum of Coverage and will expire at the end of the fiscal year.

3. Provide a strict accountability of all funds for each program and a report of all receipts and disbursements.

4. Provide for pooled or insured excess coverage above the retained limit as specified in the respective program Memorandum of Coverage.

5. Provide, when necessary, for legal representation in defense of claims expected to exceed the retained limit.

6. Provide for annual audit of the funds by an independent Certified Public Accountant.

7. Provide for management reports, including but not limited to, actuarial analyses, claims audits and special reports.
8. Prepare and maintain claim files and other records and cause same to be retained.

9. Provide for, when necessary, investigation of claims.

10. Provide information in defense of claims.

11. Authorize the allowance, compromise, settlement or rejection of claims.

12. Prepare all notices and reports and otherwise prepare all matters necessary to comply with the provisions of state law and other legal directives.

13. Prepare a Policy and Procedures Operating Manual to be followed by each of the parties hereto.

14. Except as otherwise provided in this Agreement and the Bylaws, the Board shall have the authority to make and enter into contracts, employ agents and employees, acquire, hold and dispose of real and personal property, incur all debts, liabilities or obligations as is necessary to administer and carry out the purposes of the Authority, file suit, and enter into such settlements as may be beneficial to SELF, as determined by the Board.

15. Appoint a custodian to be the depository and have custody of all the money of SELF pursuant to the California Government Code, Section 6505.5. Such custodian shall perform those functions as required by said Code and other applicable law.

16. Establish bank accounts and/or trust funds as appropriate.

17. Provide procedures for election of the Board of Directors.

18. Provide for other services as necessary.

IV. BYLAWS

SELF shall be governed by this Agreement and the Bylaws which are incorporated herein by reference. Parties to this Agreement are bound by the provisions of the Bylaws. In the event that there is a conflict in the provisions of this Agreement and the Bylaws, this Agreement shall prevail over the Bylaws.

V. TERM OF AGREEMENT

This Agreement shall continue in effect unless and until it is terminated as provided for in Section IX of this Agreement.

VI. MEMBERSHIP
A. Eligibility: Public educational agencies within California may become parties to this Agreement upon application to and approval by the Board. Parties may participate in any one or more programs operated by SELF.

B. Successors: Should a party to this Agreement reorganize in accordance with State law, the successor or successors in interest to such party may be substituted as a party or parties to this Agreement, and such substitution shall become effective upon the filing with the Board of an assignment by such party to its successor or successors in interest of all of said party’s rights and obligations hereunder, provided such assignment is fully executed by the party to this Agreement and its successors.

VII. WITHDRAWAL OF A PARTY

A party to this Agreement may cease to be a party hereto or may discontinue participation in any program, and may withdraw as a party to this Agreement or from any program, in the manner hereinafter provided:

A. Three (3) Fiscal Years’ Participation: No party to this Agreement may withdraw from a program until it has been a party to such program for at least three (3) consecutive, full fiscal years.

B. Resolution of Withdrawal: To effect withdrawal from this Agreement, or from any program (e.g., Liability or Worker's Compensation) in which a party is participating, such party, by its governing body, shall adopt a resolution stating that it is going to withdraw from SELF or from the SELF program, effective July 1 of that year or the following year.

C. Notice of Withdrawal: A party that is going to withdraw shall cause to be sent to the Board a true copy of the resolution of its governing body stating that it is going to withdraw.

D. A party which is going to withdraw shall serve its notice of withdrawal upon the Board in the manner provided in this Agreement (at Section XIV hereof, infra) for the giving of notice. As long as the notice of withdrawal is received in the SELF office by the close of business on December 31, the notice shall be effective on the last day of SELF’s fiscal year during which the notice of withdrawal was given. If the notice of withdrawal is received in the SELF office after the close of business on December 31, the effective date of such withdrawal shall be on the last day of SELF’s fiscal year following the fiscal year in which the notice was given.

E. Continuing Obligations of a Withdrawing Party: A party withdrawing from a program may be entitled to a share of any equity distributions, if any, or be liable for its share of any assessments, if any, declared by the Board. After considering reserves for claims reported and claims incurred but not reported, the Board shall make a determination as to whether to declare any equity distribution or impose any loss assessment, that is based on the overall fiscal impact of the withdrawal on the program pool, and that fosters the
preservation of the fiscal integrity of the program pool. In no event will any equity distribution be made to a withdrawing party until after five (5) years have elapsed from the date the party withdrew from the program. In addition, the withdrawal of a party from a program shall not relieve such party of any obligations that such party otherwise has in connection with claims which arose while said withdrawn party was a participant in such program.

VIII. INVOLUNTARY TERMINATION
OF MEMBERSHIP IN SELF

A. A party may be involuntarily terminated from SELF for failure to pay contributions or assessments to SELF when due; failure to report claims in a timely manner; failure to comply with the provisions of the Memorandum of Coverage, Agreement, or Bylaws; or for other good cause as determined by the Board. In the event of such termination, the terminated party's equity or deficit position while a participant in any SELF program will continue to be reflected in the records and reports required under "Article XIII, Accounts and Records," in the Bylaws, and the provisions of Section VII, Paragraph E of this Agreement, supra, shall also apply to such terminated party.

IX. TERMINATION OF AGREEMENT

The governing bodies of the parties may determine that the public interest will not be served by the continuance of this Agreement. In such event, by a two-thirds (2/3) vote of the total number of parties voting in favor of termination, this Agreement shall be terminated effective at the end of the fiscal year specified by such parties at the time of voting. The Board shall provide for the continued administration of SELF business during the period of up to ten (10) years as referred to in Section X, infra.

X. DISTRIBUTION OF PROPERTY AND
MONIES UPON TERMINATION OF THIS AGREEMENT

A. Reserve Account: Upon any termination of this Agreement, the Board shall provide or cause to be provided, program reserve accounts for a period of up to ten (10) years for the purpose of paying all legal obligations hereunder, and such obligations shall include but not be limited to, all payments required to be established for the purpose of paying claims, and any other legal obligations incurred by the Board pursuant to this Agreement. At the end of such period of up to ten (10) years, the Board or its designee shall make no more payments in connection with claims which arose while the Agreement was in effect and any such liability shall revert to the individual parties to this Agreement. In lieu of liabilities reverting to the individual parties, the Board may, at its discretion, arrange for the transfer of such liabilities through the purchase of commercial insurance.

B. Distribution of Assets: Upon termination of this Agreement, all assets remaining after the establishment of the reserve accounts shall be distributed to the then current parties to
this Agreement in proportion to each party’s cumulative contributions relative to the cumulative contributions of all parties.

XI. LIABILITIES

A. Claims Indemnification and Hold Harmless: Each party to this Agreement shall be liable for its pro rata share of all of the debts and liabilities of the parties hereto for claims. A party’s pro rata share shall be determined by such party’s cumulative contributions and assessments relative to the cumulative contributions and assessments of all parties to this Agreement. To achieve such purpose, each party hereby indemnifies and holds harmless the other parties for any loss, cost, or expense that may be imposed upon such other party in excess of such pro rata liability. The rules for interpreting indemnity agreements as set out in Civil Code Section 2778 are hereby expressly made a part of this Agreement.

B. Other Debts, Liabilities and Obligations: Except as otherwise provided in paragraph A of this Section, the debts, liabilities and obligations incurred in the administration of this Agreement shall not constitute any debt, liability or obligation of any of the individual parties to this Agreement, and the Board as administrator of this Agreement may insure all or any part of any liability incurred by it hereunder. The cost of such insurance shall be an administrative expense of the Board and it shall be expended from the appropriate funds in the same manner as other administrative expenses.

XII. AMENDMENTS TO THIS AGREEMENT

A. Any amendment to this Agreement shall require that once a majority of the parties to the Agreement have voted on a proposed amendment properly approved by the SELF Board, approval by two-thirds (2/3) of the voting parties shall be sufficient to enact the proposal. As to amendments to this Agreement, a party may cast an individual vote or a joint powers agency whose members are parties to this Agreement may cast the votes on behalf of all of its members, so long as the joint powers agency and its members have expressly so agreed, in writing.

B. Proposed Amendments: Any party to this Agreement may at any time propose amendments to this Agreement. Any proposed amendment shall first be submitted to the Board for study and recommendation. The Board shall have a reasonable time within which to make such study and to submit its recommendations to the parties. Recommendation for adoption of an amendment shall occur at a meeting wherein two-thirds (2/3) of the members are present and at least three-fourths (3/4) of such members vote for adoption. A copy of the proposed amendment, together with the Board’s report and recommendation, shall be sent to all parties for action by their governing bodies either approving or rejecting the amendment. If the proposed amendment does not receive approval by vote of the Board, no further action shall be required.
C. Action on a Proposed Amendment: When the Board submits to the parties a proposed amendment for action, the Board shall specify thereon the deadline for action by the party or parties. Within the deadline specified, each party shall consider the proposed amendment and take action, either approving or rejecting it, and a copy of such action shall be filed with the Board. Responses must be post-marked on or before the deadline, in order to be counted. In the event fifty per cent (50%) of the parties have not responded by the deadline, the Board may, at its discretion, extend the deadline.

D. Effective Date of Amendment: Unless otherwise stated in the amendment, the effective date of any amendment shall be on July 1 following its adoption.

XIII. TORT LIABILITY

Section 895.2 of the Government Code imposes certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined in Section 895 of said Code. Therefore, the parties hereto, as between themselves, pursuant to the authorization contained in Sections 895.4 and 895.6 of the Government Code, each assumes the full liability imposed upon it or any of its officers, agents, or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Section 895.2 of the Government Code. To achieve this purpose, each party hereby agrees to indemnify and hold harmless the other parties for any loss, cost or expense that may be imposed upon such other parties solely by virtue of Section 895.2 of the Government Code.

XIV. NOTICE AND SERVICE THEREOF

Any notice given pursuant to this Agreement shall be in writing and shall be dated and signed by the party giving, and duly authorized to give, such notice. Notices to SELF shall be delivered to SELF's principal place of business, which is currently 1531 "I" Street, Suite 300, Sacramento, California 95814.

XV. SEVERABILITY

Should any portion, term, condition, or provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the remaining portions, terms, conditions, and provisions shall not be affected thereby.

XVI. MISCELLANEOUS

A. The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section to which they refer.

B. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.
C. By execution of this Agreement the executing **party** certifies that it has read the currently adopted **Bylaws**, and agrees to comply therewith and with future **Bylaws** as approved by the **Board** in the exercise of its powers under this Agreement.

**XVII. EFFECTIVE DATE**

Notwithstanding Article XII, Paragraph D, this Agreement shall become effective immediately upon its adoption by two-thirds (2/3) of the **parties** voting thereon, as more specifically set forth in Section XII, Paragraph A., *supra*.

**IN WITNESS WHEREOF**, each of the **parties** hereto has caused this **JOINT POWERS AGREEMENT** to be executed as an original counterpart by its duly authorized representative on the date indicated below.

**Date:** ________________

**Name of Public Educational Agency:** ________________________________

**Address:** _________________________________________________________

**City, State:** ____________________ **Zip Code:** __________

**Telephone Number:** ___________ **Facsimile Number:** ________________

**School District Number:** ____________________________

**By:** _______________________________