



## **Agreement and Conditions**

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### **Colorado Special Districts Property and Liability Pool**

### **EQUIPMENT BREAKDOWN / BOILER & MACHINERY COVERAGE DOCUMENT**

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In return for payment of the contribution and subject to all terms of this Coverage Document, Colorado Special Districts Property and Liability Pool (Pool) agrees with the Member District to provide the coverage as stated in this Agreement.

## **GENERAL CONDITIONS**

**The following conditions apply to this Coverage Document, in addition to the Common Terms and Conditions.**

### **I. COMMON COVERAGE CONDITIONS**

#### **A. CHANGES**

**This Coverage Document contains all the agreements between the Member District and the Pool concerning the coverage afforded. The first Member District shown in the Declarations is authorized to make changes in the terms of this Coverage Document with the Pool's consent. This Coverage Document's terms can be amended or waived only by endorsement issued by the Pool and made a part of this Coverage Document.**

#### **B. INSPECTIONS AND SURVEYS**

**The Pool has the right but is not obligated to:**

- 1. Make inspections and surveys at any time;**
- 2. Give the Member District reports on the conditions the Pool finds; and**
- 3. Recommend changes.**

**Any inspections, surveys, reports or recommendations relate only to insurability and the contributions to be charged. The Pool does not make safety inspections. The Pool does not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And the Pool does not warrant that conditions:**

- 1. Are safe or healthful; or**
- 2. Comply with laws, regulations, codes or standards.**

**This condition applies not only to the Pool, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.**

## **II. CALCULATION OF CONTRIBUTION**

**The contribution shown in the Declarations was computed based on rates in effect at the time the Coverage Document was issued. On each renewal, continuation, or anniversary of the effective date of this Coverage Document, the Pool will compute the contribution in accordance with the Pool's rates, rules and practices then in effect.**

## **III. ADJUSTMENT OF CONTRIBUTION**

**The Member District will report insurable values to the Pool at least once a year.**

## **IV. LOSS ADJUSTMENT AGREEMENT**

**A. If there is loss or damage covered under this Coverage Document and also under a Commercial Property policy and there is disagreement between the insurers with respect to:**

- 1. Whether such damage or destruction was caused by an "accident" covered against by this Coverage Document or a Cause of Loss insured against by such Commercial Property policy; or**
- 2. The extent of participation of this Coverage Document and of such Commercial Property policy in a loss which is covered against, partially or wholly, by any or all of said policies,**

**The Pool shall, upon written request from the Member District, pay to the Member District one-half of the amount of the loss which is in disagreement, but in no event more than the Pool would have paid if there had been no Commercial Property policy in effect.**

**B. This agreement is subject to the following conditions:**

- 1. The amount of the loss which is in disagreement, after making provisions for any undisputed claims payable under the policies and after the amount of the loss is agreed upon by the Member District, the Pool and the provider of Commercial Property insurance, is limited to the minimum amount remaining payable under either this Coverage Document or the Commercial Property policy.**

2. **The Commercial Property insurer shall simultaneously pay to the Member District one-half of the amount which is in disagreement.**
3. **The payments by the Pool and the Commercial Property insurer and acceptance of those sums by the Member District signify the agreement of the Pool and the Commercial Property insurer to submit to and proceed with arbitration within 90 days of such payment in accordance with the following arbitration rules: There shall be three arbitrators, one of whom shall be appointed by the Pool, one of whom shall be appointed by the Commercial Property insurer and the third appointed by consent of the other two. The decision by the arbitrators shall be binding on the Pool and the Commercial Property insurer and judgment upon such award may be entered in any court of competent jurisdiction.**
4. **The Member District agrees to cooperate in connection with, but not to intervene in, such arbitration.**
5. **The provisions of this agreement shall not apply unless such Commercial Property policy was materially the same agreement in force at the time of the loss.**
6. **Acceptance by the Member District of any payment under this agreement shall not alter, waive, surrender or in any way affect the rights the Member District has against the Pool or the Commercial Property insurer.**

## **V. ERRORS IN DESCRIPTION**

**The Pool will pay the Member District's loss covered by this Coverage Document if such loss is otherwise not payable solely because of any unintentional error in describing a location covered under this Coverage Document.**

**The Member District agrees to give the Pool prompt notice of any such error when discovered.**

## **EQUIPMENT BREAKDOWN COVERAGE FORM**

Various provisions in this Coverage Document restrict coverage. Read the entire Coverage Document carefully to determine rights, duties, and what is and is not covered.

### **A. COVERAGE**

#### **1. Covered Cause of Loss**

The coverage provided by this Coverage Part applies to the direct result of an “accident” to “covered equipment.”

- a. “Accident” means a fortuitous event that causes direct physical damage to “covered equipment.” The event must be one of the following:
  - (1) Mechanical breakdown, including rupture or bursting caused by centrifugal force;
  - (2) Artificially generated electrical current, including electrical arcing, that disturbs electrical devices, appliances or wires;
  - (3) Explosion of steam boilers, steam piping, steam engines or steam turbines owned or leased by the Member District, or operated under the Member District’s control;
  - (4) Loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
  - (5) Loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.
- b. “Covered Equipment” means, unless specified otherwise in the Declarations, Covered Property:
  - (1) That generates, transmits or utilizes energy, including electronic communications and data processing equipment; or
  - (2) Which during normal usage, operates under vacuum or pressure, other than the weight of its contents.

Such property must be at a location described in the Declarations and must be owned or leased by the Member District or operated under the Member District’s control, except as specifically provided for under Service Interruption coverage and the Service Interruption component of other coverages.

## **2. Coverages Provided**

The following coverages are provided **ONLY** if shown in the Pool's Equipment Breakdown / Boiler and Machinery Certificate.

The "accident" must occur during the coverage period, but expiration of the coverage period does not limit the Pool's liability.

### **a. Property Damage**

The Pool will pay for direct damage to "covered property."

### **b. Business Income**

- (1) The Pool will pay the Member District's actual loss of "business income" that results directly from the necessary total or partial interruption of the Member District's business.**
- (2) The Pool will also pay any necessary expenses the Member District incurs to reduce the amount of loss under this coverage. The Pool will pay for such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.**
- (3) The Pool will consider the actual experience of the Member District's business before the "accident" and the probable experience the Member District would have had without the "accident" in determining the amount of the Pool's payment.**
- (4) This coverage continues until the date the damaged covered property is repaired or replaced, plus is extended for 180 days.**

### **c. Extra Expense**

The Pool will pay the reasonable "extra expense" to operate the Member District's business during a total or partial interruption of business.

### **d. Rental Income**

The Pool will pay the Member District's actual loss of "rental value" that results directly from the necessary untenantability caused by an "accident," but not exceeding the reduction in rental value less charges and expenses which do not necessarily continue during the period of untenantability.

### **e. Off Premises Property Damage**

If the Member District has transportable "covered equipment" that, at the time of the "accident," is within the Coverage Territory, but is not:

(1) At a location indicated in the Equipment Breakdown / Boiler & Machinery Certificate; or

(2) At any other location owned or leased by the Member District,

the Pool will pay for physical damage to such “covered equipment.”

**f. Service Interruption**

(1) Any insurance provided for Business Income, Extra Expense or Perishable Goods is extended to apply to loss as qualified below.

(2) The “covered equipment” is owned by a

(a) Utility,

(b) Landlord, or

(c) Other supplier

who provides the Member District with any of the following services: electrical power, communications, waste disposal, air conditioning, refrigeration, heating, gas, air, water or steam.

(3) Service Interruption coverage will not apply unless the failure or disruption of service exceeds 24 hours immediately following the “accident.”

**g. Perishable Goods**

(1) The Pool will pay for the Member District’s loss of “perishable goods” due to spoilage.

(2) The Pool will also pay for the Member District’s loss of “perishable goods” due to contamination from the release of refrigerant, including but not limited to ammonia.

(3) The Pool will also pay any necessary expenses the Member District incurs to reduce the amount of loss under this coverage. The Pool will pay for such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.

**h. Computer Equipment**

The Pool will pay for direct damage to “computer equipment” that is damaged by an “accident” to such equipment.

**The Pool will also pay for loss as described in Business Income and Extra Expense coverages caused by such damage, if these coverages are indicated in the Equipment Breakdown / Boiler & Machinery Certificate.**

**i. Data Restoration**

**The Pool will pay for the Member District's reasonable and necessary cost to research, replace and restore lost "data."**

**The Pool will also pay for loss as described in Business Income and Extra Expense coverages caused by such damage, if these coverages are indicated in the Equipment Breakdown / Boiler & Machinery Certificate.**

**j. Demolition and ICC (Increased Cost of Construction)**

**If an "accident" to "covered equipment" damages a building that is "covered property"; and the loss is increased by enforcement of any ordinance or law in force at the time of the "accident" that regulates the construction or repair of buildings, or establishes zoning or land use requirements, the Pool will pay for the following additional costs to comply with such ordinance or law:**

- (1) The Member District's actual expenditures for the cost to demolish and clear the site of undamaged parts.**
- (2) The Member District's actual expenditures for increased costs to repair, rebuild or construct the building. If the building is repaired or rebuilt, it must be intended for similar use or occupancy as the current building, unless otherwise required by zoning or land use ordinance or law.**
- (3) The Member District's loss as described in Business Income and Extra Expense coverages caused by loss covered in (1) or (2) above, if these coverages are indicated in the Equipment Breakdown / Boiler & Machinery Certificate.**

**The Pool will not pay for:**

- (4) Any fine;**
- (5) Any liability to a third party;**
- (6) Any increase in loss due to a "hazardous substance"; or**
- (7) Increased construction costs until the building is actually repaired or replaced.**

**k. Expediting Expenses**

**With respect to the Member District's damaged "covered property," the Pool will pay the reasonable extra cost to:**

- (1) Make temporary repairs; and
- (2) Expedite permanent repairs or permanent replacement.

**l. Hazardous Substances**

**The Pool will pay for the additional cost to repair or replace “covered property” because of contamination by a “hazardous substance.” This includes the additional expenses to clean up or dispose of such property.**

**Additional costs mean those beyond what would have been required had no “hazardous substance” been involved.**

**The Pool will also pay for additional loss as described in Business Income, Extra Expense and Perishable Goods coverages caused by such contamination, if these coverages are indicated in the Equipment Breakdown / Boiler & Machinery Certificate.**

**m. CFC Refrigerants**

**The Pool will pay for the additional cost to repair or replace “covered property” because of the use or presence of a refrigerant containing CFC (chlorofluorocarbon) substances. This means the additional expense to do the least expensive of the following:**

- (1) Repair the damaged property and replace any lost CFC refrigerant;
- (2) Repair the damaged property, retrofit the system to accept a non-CFC refrigerant and charge the system with a non-CFC refrigerant;  
or
- (3) Replace the system with one using a non-CFC refrigerant.

**Additional costs mean those beyond what would have been required had no CFC refrigerant been involved.**

**The Pool will also pay for additional loss as described in Business Income, Extra Expense and Perishable Goods coverages caused by such loss, if these coverages are indicated in the Equipment Breakdown / Boiler & Machinery Certificate.**

**n. Newly Acquired Locations**

**All coverages provided by this Coverage Part are extended to a newly acquired location that the Member District has purchased or leased. This automatic coverage begins at the time the Member District acquires the property and is subject to the following conditions:**

- (1) **The Member District agrees to pay an additional contribution as determined by the Pool. Such additional contribution will be computed from the date of acquisition.**
- (2) **The Member District reports the location to the Pool no later than the number of days specified in the Equipment Breakdown / Boiler & Machinery Certificate for this coverage after the date the Member District acquires the location.**
- (3) **Coverage hereunder for each newly acquired location will end when any of the following first occurs:**
  - (a) **This Coverage Document expires;**
  - (b) **The number of days specified in the Equipment Breakdown / Boiler & Machinery Certificate for this coverage expire after the Member District acquires the location; or**
  - (c) **The location is more specifically insured.**
- (4) **If limits or deductibles vary by location, the highest limits and deductibles will apply.**

**o. Defense**

**This coverage is automatically included and does not need to be indicated in the Equipment Breakdown / Boiler & Machinery Certificate.**

- (1) **If a claim or “suit” is brought against the Member District alleging that the Member District is liable for damage to property of another in the Member District’s care, custody or control, that was directly caused by an “accident” to “covered equipment,” the Pool will either:**
  - (a) **Settle the claim or “suit,” or**
  - (b) **Defend the Member District against the claim or “suit” but keep for the Pool the right to settle it at any point.**
- (2) **The Pool will pay, with respect to any claim or “suit” the Pool defends:**
  - (a) **All expenses the Pool incurs;**
  - (b) **The cost of bonds to release attachments. The Pool does not have to furnish these bonds;**
  - (c) **All reasonable expenses incurred by the Member District at the Pool’s request to assist the Pool in the investigation or defense of the claim or “suit,” including actual loss of earnings up to \$250 a day because of time off from work;**

- (d) All costs taxed against the Member District in any “suit” the Pool defends;
- (e) Prejudgment interest awarded against the Member District on that part of the judgment the Pool pays. If the Pool makes an offer to pay the applicable limits, the Pool will not pay any prejudgment interest based on that period of time after the offer; and
- (f) All interest on the full amount of any judgment that accrues after entry of the judgment and before the Pool has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limits.

## **B. EXCLUSIONS**

1. The Pool will not pay for loss, damage or expense caused by or resulting from:
  - a. Depletion, deterioration, corrosion, erosion, wear and tear, or other gradually developing conditions.  
  
But if loss or damage from an “accident” results, the Pool will pay for that resulting loss or damage.
  - b. The enforcement of any ordinance, law, regulation, rule or ruling regulating or restricting repair, replacement, alteration, use, operation, construction or installation, except as provided under the following coverages: Demolition and ICC, Hazardous Substances or CFC Refrigerants.
  - c. Any earth movement, including but not limited to earthquake, subsidence, sinkhole collapse, landslide, mudslide, earth sinking, tsunami or volcanic action.
  - d. Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not.  
  
However, if electrical “covered equipment” requires drying out because of the above, the Pool will pay for the direct expenses of such drying out, subject to the applicable Property Damage limit and Direct Coverage deductible.
  - e. Nuclear reaction or radiation, or radioactive contamination, however caused.
  - f. War, including undeclared or civil war; warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

**Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.**

- g. Fire or combustion explosion, whether or not caused by or resulting from an “accident.”**
- h. Any of the following tests:**
  - (1) A hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel; or**
  - (2) An insulation breakdown test of any type of electrical equipment.**
- i. Water or other means used to extinguish a fire, even when such an attempt is unsuccessful.**
- j. Breakage of glass, falling objects, weight of snow, ice or sleet or water damage (including water damage that is the result of an “accident”); or**
- k. Freezing (caused by cold weather); collapse or molten material.**
- l. Collision or any physical contact caused by a "vehicle." This includes damage by objects falling from aircraft. However, this exclusion does not apply to any unlicensed "vehicles" which the Member District owns or which are operated in the course of the Member District’s business.**
- m. Lightning; windstorm or hail; explosion (except as specifically provided in A.1.a.(3) above) for steam or centrifugal explosion); smoke, aircraft, riot or civil commotion, vandalism; sprinkler leakage or elevator collision.**
- n. Exclusion 1.m. does not apply if all of the following are true:**
  - (1) The excluded peril occurs away from any location described in the Declarations and causes an electrical surge or other electrical disturbance;**
  - (2) Such surge or disturbance is transmitted through utility service transmission lines to a described location;**
  - (3) At the described location, the surge or disturbance results in an “accident” to “covered equipment” that is owned or operated under the control of the Member District or the Member District’s landlord; and**
  - (4) The loss, damage or expense caused by such surge or disturbance is not a covered cause of loss under another coverage part or policy of insurance the Member District has, whether collectible or not, and without regard to whether or not the other coverage part or policy of**

insurance provides the same coverage or scope of coverage as this policy.

2. **With respect to Business Income, Extra Expense and Service Interruption coverages, the Pool will also not pay for:**
  - a. **Loss caused by the Member District's failure to use due diligence and dispatch and all reasonable means to resume business at the described location;**
  - b. **That part of any loss that is due solely to the suspension, lapse or cancellation of a contract following an "accident" extending beyond the time Business Income is applicable; or**
  - c. **Delay in resuming operations due to the need to reconstruct or reinput "data" or programs on "media."**
3. **With respect to Perishable Goods coverage, the Pool will also not pay for loss, damage or expense as a result of the Member District's failure to use all reasonable means to protect the perishable goods from damage following an "accident."**
4. **The Pool will also not pay for loss, damage or expense caused by or resulting from any defect, programming error, programming limitation, computer virus, malicious code, loss of "data", loss of access, loss of use, loss of functionality or other condition within or involving "data" or "media" of any kind. But if an "accident" results, the Pool will pay for that resulting loss, damage or expense.**
5. **The Pool will not pay for loss, damage or expense caused directly or indirectly by the following, whether or not caused by or resulting from an "accident": Any mold, fungus, mildew or yeast, including any spores or toxins produced by or emanating from such mold, fungus, mildew or yeast. This includes, but is not limited to, costs arising from clean up, removal, or abatement of such mold, fungus, mildew or yeast, spores or toxins. However, this exclusion does not apply to spoilage of personal property that is "perishable goods," to the extent that spoilage is covered under Perishable Goods coverage.**
6. **None of the following is "covered equipment":**
  - a. **Structure, foundation, cabinet, compartment, or air supported structure or building;**
  - b. **Insulating or refractory material;**
  - c. **Sewer piping, buried vessels or piping, any piping forming a part of a sprinkler system or water piping other than:**
    - (1) **Boiler feed water piping;**
    - (2) **Boiler condensate return piping; or**

- (3) Water piping forming a part of refrigerating or air conditioning system;
  - d. “Vehicle” or any equipment mounted on a “vehicle,” except “Portable Equipment” which can be mounted on a “vehicle”;
  - e. Satellite, spacecraft or any equipment mounted on a satellite or spacecraft;
  - f. Dragline, excavation or construction equipment except “Portable Equipment”; or
  - g. Equipment manufactured by the Member District for sale.
7. “Covered property” does not include animals.

## C. LIMITS OF INSURANCE

Any payment made under this Coverage Part will not be increased if more than one Member District is shown in the Equipment Breakdown / Boiler & Machinery Certificate.

If two or more limits apply to the same portion of a loss, the Pool will only pay the smaller limit for that portion of the loss.

### 1. Equipment Breakdown Limit

The most the Pool will pay for loss or damage arising from any “one accident” is the amount shown as the Equipment Breakdown Limit in the Equipment Breakdown / Boiler & Machinery Certificate. This total limit applies to all coverages under this Coverage Part except Defense. The costs the Pool incurs under the Defense coverage shall not reduce the available Equipment Breakdown Limit.

### 2. Coverage Limits

The limit of the Member District’s coverage under each of the coverages from loss or damage arising from any “one accident” is the amount shown in the Equipment Breakdown / Boiler & Machinery Certificate for that coverage. These limits are a part of, and not in addition to, the Equipment Breakdown Limit. If an amount of time is shown, coverage will continue for no more than that amount of time immediately following the “accident.”

#### **EXAMPLE 1** (Coverages that Do Not Overlap)

If there is “one accident” that results in loss under Property Damage and Business Income coverages, the limits for those coverages will both be available, up to a combined amount not to exceed the Equipment Breakdown Limit.

#### **EXAMPLE 2** (Coverages that Overlap)

If there is “one accident” that results in loss under Property Damage coverage and that is covered because of Newly Acquired Locations coverage, the overlapping portion of the loss, which in this case is the entire loss amount, will be subject to the smaller limit.

## **D. DEDUCTIBLE**

If deductibles vary by type of “covered equipment” and more than one type of “covered equipment” is involved in any “one accident,” the highest deductibles will apply.

### **1. Direct and Indirect Coverages**

Unless otherwise shown in the Equipment Breakdown / Boiler & Machinery Certificate, the Direct Coverages Deductibles apply to all loss or damage covered by this Coverage Part, with the exception of those coverages subject to the Indirect Coverages Deductibles as noted below.

Unless more specifically indicated in the Equipment Breakdown / Boiler & Machinery Certificate, the Indirect Coverages Deductibles apply to Business Income, Extra Expense, Service Interruption, and the extensions of those Coverages included in other Coverages.

Defense Coverage is not subject to a deductible.

### **2. Application of Deductibles**

#### **a. Dollar Deductibles**

The Pool will not pay for loss or damage resulting from any “one accident” until the amount of loss or damage exceeds the applicable deductible or deductibles shown in the Equipment Breakdown / Boiler & Machinery Certificate. The Pool will then pay the amount of loss or damage in excess of the applicable deductible or deductibles, subject to the applicable limits shown in the Equipment Breakdown / Boiler & Machinery Certificate.

#### **b. Time Deductibles**

If a time deductible is shown in the Equipment Breakdown / Boiler & Machinery Certificate, the Pool will not be liable for any loss occurring during the specified number of hours or days immediately following the “accident.” If a time deductible is expressed in days, each day shall mean twenty-four consecutive hours.

## **E. LOSS CONDITIONS**

The following conditions apply in addition to the Common Coverage Document Conditions:

**1. Abandonment**

There can be no abandonment of any property to the Pool.

**2. Appraisal**

If the Pool admits liability for a loss and the Pool and the Member District disagrees on the value of the property or “business income”, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If the two appraisers, cannot agree on the selection of an umpire, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property or “business income.” If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

**3. Brands and Labels**

If branded or labeled merchandise that is “covered property” is damaged by an “accident” to “covered equipment”, but retains a salvage value, the Member District may, at the Member District’s expense:

- a. Stamp the word SALVAGE on the merchandise or its containers if the stamp will not physically damage the merchandise; or
- b. Remove the brands or labels, if doing so will not physically damage the merchandise. The Member District must re-label the merchandise or its containers to comply with the law.

The Pool will pay for any reduction in value of the salvage merchandise resulting from either of these two actions.

If a Brands and Labels Limit is shown on the Equipment Breakdown / Boiler & Machinery Certificate, the Pool will not pay more than the indicated amount for coverage under this Condition.

**5. Duties In the Event of Loss or Damage**

The Member District must see that the following are done in the event of loss or damage:

- a. **Give the Pool prompt notice of the loss or damage. Include a description of the property involved;**
- b. **As soon as possible, give the Pool a description of how, when and where the loss or damage occurred;**
- c. **Allow the Pool a reasonable time and opportunity to examine the property and premises before repairs are undertaken or physical evidence of the “accident” is removed. But the Member District must take whatever measures are necessary for protection from further damage;**
- d. **Permit the Pool to inspect the property, premises and records. Also permit the Pool to take samples of damaged and undamaged property for inspection, testing and analysis;**
- e. **If requested, permit the Pool to question the Member District under oath, at such times as may be reasonably required about any matter relating to this insurance or the Member District’s claim including the Member District’s books and records. In such event, the Member District’s answers must be signed;**
- f. **Send the Pool a signed, sworn proof of loss containing the information the Pool requests to settle the claim. The Member District must do this within 60 days after the Pool’s request;**
- g. **Cooperate with the Pool in the investigation and settlement of the claim;**
- h. **Promptly send the Pool any legal papers or notices received concerning the loss or damage; and**
- i. **Make no statement that will assume any obligation or admit any liability, for any loss or damage for which the Pool may be liable, without the Pool’s consent.**

**The Pool may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.**

## **6. Reducing The Member District’s Loss**

**The Member District must reduce the Member District’s loss, if possible, by:**

- a. **Resuming business, partially or completely;**
- b. **Making up lost business within a reasonable amount of time. This includes working extra time or overtime at the location of loss or at another location. The reasonable amount of time does not necessarily end when the operations are resumed;**
- c. **Using merchandise or other property available to you;**

- d. Using the property or services of others; or
- e. Salvaging the damaged property.

## **7. Salvage and Recoveries**

When, in connection with any loss under this Coverage Part, any salvage or recovery is received subsequent to the payment of such loss, the loss shall be refigured on the basis on which it would have been settled had the amount of salvage or recovery been known at the time the loss was originally determined. Any amounts thus found to be due either party from the other shall be paid promptly.

## **8. Valuation**

- a. The Pool's payment for damaged "covered property" will be the smallest of:
  - (1) The cost to repair the damaged property;
  - (2) The cost to replace the damaged property on the same site; or
  - (3) The amount the Member District actually spends that is necessary to repair or replace the damaged property.
- b. The Member District must pay the extra cost of replacing damaged property with property of a better kind or quality or of a different size or capacity.
- c. If the Member District does not repair or replace the damaged property within 24 months after the date of the "accident," then the Pool will pay only the smaller of the:
  - (1) Cost it would have taken to repair at the time of the "accident"; or
  - (2) Actual cash value, at the time of the "accident."
- d. If any of the following conditions are met, property held by the Member District for sale will be valued at the sales price as if no loss or damage had occurred, less any discounts and expenses the Member District otherwise would have had:
  - (1) The property was manufactured by the Member District;
  - (2) The sales price of the property is less than the replacement cost of the property; or
  - (3) The Member District is unable to replace the property before its anticipated sale.

- e. “Media” will be valued on the following basis:
  - (1) For “media” that are mass-produced and commercially available, at the replacement cost.
  - (2) For all other “media,” at the cost of blank material for reproducing the records.

## **F. ADDITIONAL CONDITIONS**

The following conditions apply in addition to the Common Coverage Document Conditions:

### **1. Additional Covered Member**

If a person or organization is designated in this Coverage Part as an additional insured, the Pool will consider them to be an insured under this Coverage Part only to the extent of their interest.

### **2. Bankruptcy**

The bankruptcy or insolvency of the Member District or the Member District’s estate will not relieve the Pool of any obligation under this Coverage Part.

### **3. Concealment, Misrepresentation or Fraud**

The Pool will not pay for any loss if the Member District or any other Named Member at any time intentionally conceal or misrepresent a material fact concerning:

- a. This Coverage Part;
- b. The “covered property”;
- c. The Member District’s interest in the “covered property”; or
- d. A claim under this Coverage Part.

### **4. Legal Action Against Us**

No one may bring a legal action against the Pool under this Coverage Document unless:

- a. There has been full compliance with all the terms of this Coverage Document; and
- b. The action is brought within two years after the date of the “accident”; or

- c. **The Pool agrees in writing that the Member District has an obligation to pay for damage to “covered property” of others or until the amount of that obligation has been determined by final judgment or arbitration award. No one has the right under this Coverage Document to bring the Pool into an action to determine the Member District’s liability.**

## **5. Liberalization**

**If the Pool adopts any revision that would broaden the coverage under this Coverage Part without additional contribution within 45 days prior to or during the Coverage Document period, the broadened coverage will immediately apply to this Coverage Part.**

## **6. Loss Payable**

- a. **The Pool will pay the Member District and the loss payee shown in the Equipment Breakdown / Boiler & Machinery Certificate for loss covered by this Coverage Part, as interests may appear. The coverage of this Coverage Part covers the interest of the loss payee unless the loss results from conversion, secretion or embezzlement on the Member District’s part.**
- b. **The Pool may cancel the Coverage Document as allowed by the Cancellation Condition. Cancellation ends this agreement as to the loss payee’s interest. If the Pool cancels, the Pool will mail the Member District and the loss payee the same advance notice.**
- c. **If the Pool makes any payment to the loss payee, the Pool will obtain their rights against any other party.**

## **7. Mortgage Holders**

- a. **The term mortgage holder includes trustee.**
- b. **The Pool will pay for direct damage to “covered property” due to an “accident” to “covered equipment” to the Member District and each mortgage holder shown in the Equipment Breakdown / Boiler & Machinery Certificate in their order of precedence, as interests may appear.**
- c. **The mortgage holder has the right to receive loss payment even if the mortgage holder has started foreclosure or similar action on the “covered property.”**
- d. **If the Pool denies the Member District’s claim because of the Member District’s acts or because the Member District has failed to comply with the terms of this Coverage Part, the mortgage holder will still have the right to receive loss payment if the mortgage holder:**

- (1) Pays any contribution due under this Coverage Part at the Pool's request if the Member District has failed to do so;**
- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from the Pool of the Member District's failure to do so; and**
- (3) Has notified the Pool of any change in ownership or material change in risk known to the mortgage holder.**

**All of the terms of this Coverage Part will then apply directly to the mortgage holder.**

**e. If the Pool pays the mortgage holder for any loss and deny payment to the Member District because of the Member District's acts or because the Member District has failed to comply with the terms of this Coverage Part:**

- (1) The mortgage holder's right under the mortgage will be transferred to the Pool to the extent of the amount the Pool pays; and**
- (2) The mortgage holder's right to recover the full amount of the mortgage holder's claim will not be impaired.**

**At the Pool's option, the Pool may pay to the mortgage holder the whole principal on the mortgage plus any accrued interest. In this event, the Member District's mortgage and note will be transferred to the Pool and the Member District will pay the Member District's remaining mortgage debt to us.**

**f. If the Pool cancels this Coverage Document, the Pool will give written notice to the mortgage holder at least:**

- (1) 10 days before the effective date of cancellation if the Pool cancels for the Member District's nonpayment of any contribution; or**
- (2) not less than ninety (90) days before the effective date of cancellation if the Pool cancels for any other reason.**

**g. If the Pool elects not to renew this Coverage Document, the Pool will give written notice to the mortgage holder at least 10 days before the expiration date of this Coverage Document.**

**h. If the Pool suspends coverage, it will also be suspended as respects the mortgage holder. The Pool will give written notice of the suspension to the mortgage holder.**

## **8. Other Insurance**

**a. The Member District may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If the Member District does, the Pool will pay the Pool's share of the**

covered loss or damage. The Pool's share is the proportion that the applicable limits under this Coverage Part bear to the Limits of Insurance of all insurance covering on the same basis.

- b. If there is other insurance covering the same loss or damage, other than that described in (a) above, the Pool will pay only the amount of covered loss or damaged in excess of the amount due from that other insurance, whether the Member District can collect on it or not.

In no case will the Pool pay more than the applicable limits.

## **9. Coverage Period, Coverage Territory**

Under this Coverage Part:

- a. The "accident" must occur:
  - (1) During the Coverage Period shown in the Equipment Breakdown / Boiler & Machinery Certificate; and
  - (2) Within the Coverage Territory.
- b. The Coverage Territory is:
  - (1) The United States of America (including its territories and possessions);
  - (2) Puerto Rico; and
  - (3) Canada.

## **10. Environmental, Safety and Efficiency Improvements**

If "covered equipment" requires replacement due to an "accident," the Pool will pay the Member District's additional cost to replace with equipment that is better for the environment, safer or more efficient than the equipment being replaced.

However, the Pool will not pay more than 125% of what the cost would have been to repair or replace with like kind and quality. This coverage does not increase any of the applicable limits. This coverage does not apply to any property indicated as being valued on an Actual Cash Value basis.

## **11. Jurisdictional Inspections**

If any property that is "covered equipment" under this coverage part requires inspection to comply with state or municipal boiler and pressure vessel regulations, the Pool agrees to perform such inspection on the Member District's behalf. The Pool does not warrant that conditions are safe or healthful.

## **12. Privilege to Adjust with Owner**

**In the event of loss or damage involving property of others in the Member District's care, custody or control, the Pool has the right to settle the loss or damage with respect to such property with the owner of the property. A receipt for payment from the owners of that property will satisfy any claim of the Member District.**

## **13. Suspension**

**Whenever "covered equipment" is found to be in, or exposed to, a dangerous condition, any of the Pool's representatives may immediately suspend the insurance against loss from an "accident" to that "covered equipment." This can be done by delivering or mailing a written notice of suspension to:**

- a. The Member District's last known address; or**
- b. The address where the "covered equipment" is located.**

**Once suspended in this way, the Member District's insurance can be reinstated only by an endorsement for that "covered equipment."**

**If the Pool suspends the Member District's insurance, the Member District will get a pro rata refund of contribution for that "covered equipment." But the suspension will be effective even if the Pool has not yet made or offered a refund.**

## **14. Transfer of Rights of Recovery Against Others to Us**

**If any person or organization to or for whom the Pool makes payment under this Coverage Part has rights to recover damages from another, those rights are transferred to the Pool to the extent of the Pool's payment. That person or organization must do everything necessary to secure the Pool's rights and must do nothing after loss to impair them. But the Member District may waive the Member District's rights against another party in writing:**

- a. Prior to a loss to the Member District's "covered property."**
- b. After a loss to the Member District's "covered property" only if, at time of loss, that party is one of the following:**
  - (1) Someone insured by this insurance; or**
  - (2) A business firm:**
    - (a) Owned or controlled by you; or**
    - (b) That owns or controls you.**

## **G. DEFINITIONS**

1. **“Accident” is defined in A.1.a., COVERAGE - Covered Cause of Loss.**
2. **“Boilers and Vessels” means:**
  - a. **Any boiler, including attached steam, condensate and feedwater piping; and**
  - b. **Any fired or unfired pressure vessel subject to vacuum or internal pressure other than the static pressure of its contents.**

**This term does not appear elsewhere in this coverage form, but may appear in the Equipment Breakdown / Boiler & Machinery Certificate.**

3. **“Business Income” means the sum of:**
  - a. **The Net Income (net profit or loss before income taxes) that would have been earned or incurred; and**
  - b. **Continuing normal operating expenses incurred, including employee payroll.**
4. **“Business Income Actual Annual Value” means the “business income” for the current fiscal year that would have been earned had no “accident” occurred. In calculating the “business income actual annual value,” the Pool will take into account the actual experience of the Member District’s business before the “accident” and the probable experience the Member District would have had without the “accident.”**
5. **“Business Income Estimated Annual Value” means the anticipated “business income” reported to the Pool and shown in the Equipment Breakdown / Boiler & Machinery Certificate. If no value is shown in the Declarations, the “business income estimated annual value” will be the most recent report of anticipated “business income” values on file with the Pool.**
6. **“Computer Equipment” means “covered property” that is electronic computer or other electronic data processing equipment, including “media” and peripherals used in conjunction with such equipment.**
7. **“Covered Equipment” is defined in A.1.b., COVERAGE - Covered Cause of Loss.**
8. **“Covered Property” means property that:**
  - a. **The Member District owns; or**
  - b. **Is in the Member District’s care, custody or control and for which the Member District is legally liable while at a location described in the Equipment Breakdown / Boiler & Machinery Certificate.**

9. **“Data” means information or instructions stored in digital code capable of being processed by machinery.**
10. **“Extra Expense” means the additional cost the Member District incurs to operate the Member District’s business during the interruption over and above the cost that normally would have been incurred to operate the business during the same period had no “accident” occurred.**
11. **“Hazardous Substance” means any substance other than ammonia that has been declared to be hazardous to health by a governmental agency.**
12. **“Media” means all forms of electronic, magnetic and optical tapes and discs for use in any electronic computer or electronic data processing equipment.**
13. **“One Accident” means:**

**If an initial “accident” causes other “accidents,” all will be considered “one accident.” All “accidents” that are the result of the same event will be considered “one accident.”**
14. **“Perishable Goods” means any “covered property” subject to deterioration or impairment as a result of a change of conditions, including but not limited to temperature, humidity or pressure.**
15. **“Portable Equipment” means:**

**Portable emergency response equipment: generators, fans, air tanks, air compressors and pumps, including while mounted on a “vehicle.”**
16. **“Production Machinery” means:**

**Any machine or apparatus that processes or produces a product intended for eventual sale. However, “production machinery” does not mean any fired or unfired pressure vessel other than a cylinder containing a movable plunger or piston.**

**This term does not appear elsewhere in this coverage form, but may appear in the Equipment Breakdown / Boiler & Machinery Certificate.**
17. **“Rental value” is defined as the sum of:**
  - a. **The total anticipated gross rental income from tenant occupancy of the described property as furnished and equipped by the Member District, and**
  - b. **The amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be obligations of the Member District, and**
  - c. **The fair rental value of any portion of said property which is occupied by the Member District.**

- 18. "Suit" means a civil proceeding to which this insurance applies and includes:**
- a. An arbitration proceeding in which damages are claimed and to which the Member District must submit or does submit with the Pool's consent; or**
  - b. Any other alternative dispute resolution proceeding in which damages are claimed and to which the Member District submits with the Pool's consent.**
- 19. "Vehicle" means any machine or apparatus that is used for transportation or moves under its own power. "Vehicle" includes, but is not limited to, car, truck, bus, trailer, train, aircraft, watercraft, forklift, bulldozer, tractor or harvester. However, any property that is stationary, permanently installed at a covered location and that receives electrical power from an external power source will not be considered a "vehicle."**