

Fringe Benefits Consortium Agreement

AGREEMENT TO ESTABLISH, OPERATE, AND MAINTAIN FRINGE BENEFIT PROGRAMS

THIS AGREEMENT is entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Sections 6500, et seq.) of the California Government Code, relating to the joint exercise of powers between the public educational agencies signatory hereto, and also those which may hereafter become signatory hereto, for the purposes of operating an agency to be known and designated as "SAN DIEGO COUNTY SCHOOLS FRINGE BENEFITS CONSORTIUM" hereinafter designated as the "CONSORTIUM". WITNESSETH:

WHEREAS, it is to the mutual benefit of the parties herein subscribed and in the best public interest of said parties to join together to establish this CONSORTIUM Agreement to accomplish the purposes hereinafter set forth, and

WHEREAS, the development, organization and implementation of such a CONSORTIUM is of such magnitude that it is desirable for aforesaid parties to join together in this CONSORTIUM Agreement in order to accomplish the purposes hereinafter set forth; and

WHEREAS, the signatories hereto have determined that there is a need by public educational agencies to join together to establish this CONSORTIUM Agreement for fringe benefit programs, or any other risk or plan; and

WHEREAS, it has been determined by such signatories that this CONSORTIUM Agreement for medical, dental, vision programs, or any other risk or plan that is of value on an individual and mutual basis and can adequately serve the needs of all such signatories; and

WHEREAS, Title 1, Division 7, Chapter 5, Article 1 (Sections 6500 et seq.) of the California Government Code authorizes joint exercise by two (2) or more public agencies of any power which is common to each of them; and

WHEREAS, it is the desire of the parties to this Agreement to assume all obligations, assets, claims, responsibilities and authority of the San Diego County Schools Risk Management Authority Joint Powers Agreement dated May 11, 1987, with respect to the provision of fringe benefits, including medical, dental, vision, life, Internal Revenue Code Section 125 Plans, retiree health and retiree dental, pursuant to the terms specified herein, and;

WHEREAS, the San Diego County Superintendent of Schools may be a member of the CONSORTIUM agency created by this Agreement,

NOW, THEREFORE, FOR, AND IN CONSIDERATION OF, THE MUTUAL ADVANTAGES TO BE DERIVED HEREFROM, AND IN CONSIDERATION OF THE EXECUTION OF THIS AGREEMENT BY OTHER PUBLIC EDUCATIONAL AGENCIES, each of the parties hereto does agree as follows:

ARTICLE I

CREATION OF THE CONSORTIUM AGREEMENT

A Consortium Agreement creating the San Diego Schools Fringe Benefits Consortium which is an Agency, separate and apart from the public educational agencies signatory hereto, shall be and is hereby created and shall hereinafter be designated as the SAN DIEGO COUNTY SCHOOLS FRINGE BENEFITS CONSORTIUM, hereinafter referred to as the "CONSORTIUM".

A. PURPOSES OF THE CONSORTIUM

The CONSORTIUM is established for the purposes of administering this Agreement, pursuant to the provisions of the California Government Code, and of providing the services and other items necessary and appropriate for the establishment, operation and maintenance of fringe benefits programs, or any other risk or plan that may be authorized by a majority vote of the Members authorized by law for the Public Educational Agencies who are Members thereof, and to provide a forum for discussion, study, development and implementation of recommendations of mutual interest regarding insurance, self-insurance and other related plans.

B. POWERS OF THE CONSORTIUM

The CONSORTIUM shall have the power and authority to exercise any powers common to the Public Educational Agencies which are parties to this Agreement, as herein set forth. Pursuant to the California Government Code, the exercise of the aforesaid powers of the CONSORTIUM shall be subject to the same restrictions in exercising its powers as a public educational agency except as otherwise provided in this Agreement.

C. FUNCTIONS OF THE CONSORTIUM

1. To provide fringe benefit programs and any other risk or plans on behalf of the Members of the CONSORTIUM and as such, to perform, or contract for the performance of, the financial administration, policy formulation, claim service, legal representation, health education and other services as necessary for the payment and handling of all medical, dental, vision, life, Internal Revenue Code Section 125 Plans, retiree health and retiree dental programs, or any other risk or plan on behalf of Members as required by State law. Said payment and handling for any Member shall be for all fringe benefits programs filed and arising out of facts occurring during the period of membership in the CONSORTIUM. The CONSORTIUM shall not pay or handle for a Member any claims which arise out of facts occurring before membership or after termination of membership in this CONSORTIUM except as otherwise provided in this Agreement.
2. To pursue any Member's right of subrogation against a third party when same is appropriate following generally accepted claims administration policies and procedures. Any and all proceeds in excess of costs and liability resulting from the assertion of such subrogation rights shall accrue to the benefit of the Member District against which the claim is charged.
3. To enter into contracts.
4. To obtain excess coverage insurance over the self-funded portion in an amount to be determined by the CONSORTIUM.
5. To require the Agency to act as employer of approved personnel positions, acquire, hold, and dispose of property, real and personal, employ personnel and operate and maintain a system to handle the plans, all for the purpose of providing the membership with the necessary education, study, development, operation, management, and implementation of fringe benefits programs, and any other risk or plan.
6. To incur debts, liabilities and obligations necessary to accomplish the purposes of the Agreement.
7. To receive gifts, contributions, and donations of property, funds, services or other forms of assistance from Members, persons, firms, corporations, associations and any governmental entity in accordance with existing law.
8. To invest surplus reserve monies in accordance with procedures as approved by the Board of Directors. 9. To provide a forum for discussion, study, development and implementation of recommendations of mutual interest regarding other plans of insurance and self-insurance.

10. To sue and be sued in the name of the CONSORTIUM.

11. To maintain accurate case records for all insured risks and accurate records of all claims paid.

12. To join another consortium or joint powers authority to provide services or coverage to this CONSORTIUM.

13. To perform such other functions as may be necessary or appropriate to carry out this Agreement, so long as such other functions so performed are not prohibited by any provision of law and not otherwise inconsistent with this Agreement.

ARTICLE II

DEFINITIONS

Unless the context requires otherwise, the terms used herein shall have the following meanings:

1. "Agency" shall be the San Diego County Office of Education/San Diego County Superintendent of Schools/Risk Management Department.

2. "Board of Directors" shall mean the governing board of the CONSORTIUM established herein to direct and control the CONSORTIUM.

3. "Broker" shall mean the broker(s) engaged by the CONSORTIUM for the purpose of acquiring an insurance policy.

4. "Claim" means the assertion of an obligation to pay in accordance with employee benefit plan documents.

5. "Claims Administrator" shall mean a service company or Agency staff engaged by the CONSORTIUM for the purpose of determining liabilities and recommending payments.

6. "CONSORTIUM" shall mean the SAN DIEGO COUNTY SCHOOLS FRINGE BENEFITS CONSORTIUM created by this Agreement.

7. "Consultant" shall mean an independent contractor performing duties in an independent capacity and not as an officer, agent or employee.

8. "Contribution" shall mean money, including, but not limited to, deposit premiums and special assessments, paid by a Member to the CONSORTIUM in return for the handling of claims and services (i.e., administration, acquisition of coverages, legal expenses, etc.).

9. "Deductible" shall mean that amount of any loss that is in excess of a specified amount that the insurer will pay. 10. "Depository" shall mean the County Treasurer of the County of San Diego.

11. "Employee" means an eligible employee of a party to this Agreement.

12. "Executive Committee" shall mean the committee established by this Agreement.

13. "Fiscal Year" means the period of time commencing on July 1 and ending June 30.

14. "Fringe Benefits" includes but is not limited to medical, dental, vision, life, Internal Revenue Code Section 125, retiree health, retiree dental, Accidental Death & Dismemberment (AD&D), mental health, and income protection.

15. "Fringe Benefit Programs Agreement" shall mean a formal agreement provided for by law wherein separate entities may exercise jointly any power they have individually.
16. "Insurance Carrier" is a stock, mutual, or non-assessable reciprocal insurance company with a rating or financial status satisfactory to the CONSORTIUM.
17. "Item" means the equity or deficit or assets or liabilities for each plan or program. Any equity or deficit or assets or liabilities calculated during a year shall be adjusted thereafter to conform to the annual audit of the CONSORTIUM.
18. "Loss Reports" shall mean a report showing a Member's claims for each Program in detail including current status, except that "Loss Reports" shall not disclose confidential information.
19. "Medical" shall be the program that provides health coverage (e.g., self-funded indemnity plan, health maintenance organization, point of service plan, etc.).
20. "Member" shall mean a public educational agency which belongs to the SAN DIEGO COUNTY SCHOOLS FRINGE BENEFITS CONSORTIUM.
21. "Obligations" as referred to herein, shall include, but not be limited to, all payments required by law, together with all reserves which have been established for the purpose of paying claims or expected claims and related claims costs together with any other legal obligations incurred by the CONSORTIUM pursuant to this Agreement.
22. "Operating Budget" shall mean the monies established by the CONSORTIUM for the purpose of paying administrative and other costs of management services for the CONSORTIUM for each program.
23. "Plan" shall mean major risk and/or services provided by the CONSORTIUM.
24. "Plan Document" means a document specifying terms, conditions, coverages, and limits of liability issued by the CONSORTIUM which may commence or end on a date other than a fiscal year.
25. "Plan Year" means the 12-month period of time applicable to each Plan or Program in which a Member participates through the Consortium, commencing on the first day after the end of the usual, annual open enrollment period during which the employees of such Member may make fringe benefit changes. A Member's Plan Year may differ from the Plan Years of other Members of the Consortium and may be different than the calendar year of January 1 through December 31 or the Fiscal Year. (For example, if a Member's usual, annual open enrollment period is September 1 through September 30 with an effective date of October 1, such Member's Plan Year will be October 1 through September 30; if a Member arranges for a special open enrollment period for a new or modified Plan or Program at a time different than its usual, annual open enrollment period, the Plan Year for such Member and the Plans and Programs in which it participates will still be October 1 through September 30.)
26. "Program" shall mean a separate and distinct risk and/or service by line of coverage administered by the CONSORTIUM (e.g., medical, dental, vision, and any other employee benefit).
27. "Pro Rata" shall mean each Member's contribution in proportion to the total of all Members' contributions for each program.
28. "Public Educational Agency" shall mean a school district, community college district, county board of education or county superintendent of schools, regional occupational program, or other public school consortiums or public educational agencies.

29. "Reserves" shall mean that part of the Member's contribution for each program held by the CONSORTIUM to make future payments as respects claims and expenses that have been incurred but are unpaid.

30. "Risk" shall mean an exposure to possible loss.

31. "Self-Insurance" is that portion of a loss assumed by a Member. ARTICLE III

ASSUMPTION OF RESPONSIBILITY

The CONSORTIUM shall assume all obligations, assets, claims, responsibilities and authority of the San Diego County Schools Risk Management Joint Powers Authority, Self-Insurance Program for Fringe Benefits, dated July 1, 1987. Said assumption for each entity shall occur on the date this Agreement becomes effective.

ARTICLE IV

TERM OF AGREEMENT

The Agreement shall become effective at 12:01 a.m. on the day following the day on which three-fourths (3/4) of the existing Members of:

San Diego County Schools Risk Management Joint Powers Authority, Self-Insurance Program for Fringe Benefits

have adopted a resolution approving the Agreement, but not earlier than 12:01 a.m., July 1, 1994.

This Agreement shall continue in effect until lawfully terminated as provided herein.

ARTICLE V

MEMBERSHIP

Each party to this Agreement must be eligible for membership in the CONSORTIUM as defined herein and shall become a Member of the CONSORTIUM on the effective date of this Agreement, except as provided hereinbelow. Each party which becomes a Member of the CONSORTIUM shall be entitled to the rights and privileges of, and shall be subject to the obligations of, Membership as provided in this Agreement.

A. All public educational agencies located within the State of California with statutory authority to provide medical, dental and vision programs or any other risk or plan authorized by law may apply for membership in the CONSORTIUM.

B. Should any Member or Members reorganize in accordance with State statutes, the successor-in-interest or successors-in-interest to the obligations of any such reorganized public educational agency shall be substituted as a party or as parties to the Agreement.

C. Public Educational Agencies who do not transfer from the San Diego County Schools Risk Management Joint Powers Authority, Self-Insurance Program for Fringe Benefits, applying for membership in the CONSORTIUM to commence on or after July 1, 1994, shall be subject to the conditions as described in the Bylaws.

D. Upon admission to the Membership of the CONSORTIUM, each Member agency shall become eligible to appoint two representatives and two alternates to membership on the Board of Directors according to the procedures outlined in this Agreement.

E. Members are responsible to have their designated representatives:

1. Attend Board meetings and, if elected, attend Executive Committee meetings.
2. Disseminate information within Member District.
3. Review agendas and minutes.
4. Provide copies of the annual independent auditor's report to their chief administrative officer.

ARTICLE VI

AGENCY

The San Diego County Superintendent of Schools through its Risk Management Department is hereby designated as the "Agency" to administer this Agreement, pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500, et seq.) of the Government Code of the State of California.

A. The Agency shall provide day to day administration of the CONSORTIUM consistent with this Agreement.

B. The Agency, while acting in conformity with the directions of the Executive Committee and/or the Board of Directors of the CONSORTIUM, shall have authority, subject to budgetary and other limitations set forth herein, to carry out all functions authorized, including, but not limited to, making and entering into contracts, employing agents and employees, acquiring, holding, and disposing of personal property, and incurring debts, liabilities or obligations. The Agency may accept gifts on behalf of the CONSORTIUM with the approval of the CONSORTIUM. The Agency may receive, accept, and utilize the services of personnel offered by any Member and may accept and utilize property, real or personal, from any Member or its agents or representatives, and each Member is authorized to provide such services and property upon such terms as are agreed upon by the Member and the Agency.

The Agency through the Director of the Risk Management Department is hereby designated as the person who shall have charge of, handle, and have access to any property held pursuant to this Agreement and his official bond shall satisfy the requirements of government Code Section 6505.1.

C. The Agency shall implement directions given by the Executive Committee and the Board of Directors where said directions are legal and within budgetary limitations.

D. The Agency may decline to act as Administrator effective at the conclusion of any fiscal year, provided Agency has given at least one year prior notice. Such notice shall be in writing to the Board of Directors of the CONSORTIUM.

E. The Agency shall be accountable for expenditures made from all funds and shall have authority within major objects of the funds to make any intra-budget transfers. All other transfers shall be approved in advance by the Executive Committee and reported to the Board of Directors for ratification.

F. The Agency shall process or cause to be processed claims in the manner provided in the bylaws, consistent with applicable laws, statutes and court judgments.

G. The Agency shall supervise all personnel who are employed by it for purposes of this agreement in accordance with Agency practices and policies.

H. The CONSORTIUM shall defend and hold harmless the Agency from all liability and damages resulting from actions by or at the direction of the Board of Directors, the Executive Committee, or representatives of any participating Members acting on behalf of the CONSORTIUM.

I. The Agency shall be the Fiscal Agent for the CONSORTIUM.

J. The Agency shall defend and hold harmless the CONSORTIUM for all liability and damages resulting from actions by the Agency undertaken without the Authority of the CONSORTIUM.

K. The Agency shall be fully reimbursed for all costs of operation of the CONSORTIUM including, but not limited to, the employment of personnel, contracted services, operational expenses, audit expenses, supervision, data processing services, and other related expenses. All agency reimbursements shall be provided for in the adopted or revised budget.

L. The Agency shall contract, with a Certified Public Accountant for an annual audit of the accounts, records, and financial affairs of the CONSORTIUM and deliver such to the Executive Committee and Board of Directors of the CONSORTIUM. In each case, the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the California Government Code and shall conform to generally accepted auditing standards and accounting principles. When such an audit of accounts and reports is made by a Certified Public Accountant, a report thereof shall be filed as a public record with each of the Members of the CONSORTIUM and also with the Auditor-Controller of each county within which Members of the CONSORTIUM are domiciled. Any costs of the audit, including contracts with, or employment of, Certified Public Accountants in making the audit(s) provided for herein, shall be borne by the CONSORTIUM.

M. The Agency shall be the custodian of all property of the CONSORTIUM.

ARTICLE VII

BOARD OF DIRECTORS

A. A Board of Directors is hereby established to direct and control the CONSORTIUM.

B. Each Member of the CONSORTIUM shall be entitled to appoint to the Board of Directors two representatives and two alternates who shall be designated in writing. Said representatives and said alternates must be employees of the Member and shall serve at the pleasure of the appointing Member. Each Member representative shall have a separate and equal vote. Only the designated representatives or designated alternates may represent a Member, and each shall be invited to attend all meetings of the Board of Directors. The designated representatives and designated alternates may invite members of their agency's staff or consultants to attend meetings of the Board of Directors in an advisory capacity only.

C. Each Member shall have two votes, one vote per representative, which may be cast only by the designated representatives who are in physical attendance or by the designated alternates who are in physical attendance if the designated representatives are absent. Except as otherwise provided in the Agreement, a vote of the majority of those Members constituting the Board of Directors present at a meeting shall be sufficient to constitute action, provided that a quorum is present. D. A quorum for the transaction of business by the Board of Directors shall consist of a majority of the Members of the CONSORTIUM then in current status.

E. The Board of Directors may conduct regular, adjourned regular, special, and adjourned special meetings, provided, however, that it will hold at least two regular meetings each year, one in June

and the other determined by the Executive Committee. The date, time, and place for the meetings shall be fixed by resolution of the Executive Committee and filed with each Member of the CONSORTIUM. The Board of Directors may hold additional meetings as called by the Executive Committee. All meetings of the Board of Directors shall be called, held, and conducted in accordance with the terms and provisions of the Ralph M. Brown Act (Section 54950, et seq.) of the California Government Code, as said Act may be modified by subsequent legislation and by applicable sections of the California Education Code, and as augmented by rules of the Board of Directors not inconsistent therewith. Except as otherwise provided or permitted by law, all meetings of the Board of Directors shall be open and public. The Board of Directors shall cause to be kept minutes of its meetings, and shall promptly transmit to the Members of the CONSORTIUM true and correct copies of the minutes of such meetings.

F. The Board of Directors shall comply with the provisions of the Government Code requiring the filing of a statement with the Secretary of State and with the County Clerk of each county within which Members of the CONSORTIUM are domiciled.

G. The Board of Directors 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, the bylaws, or this Agreement.

H. No one serving on the Board of Directors shall receive any salary or compensation from the CONSORTIUM.

ARTICLE VIII

FUNCTIONS OF THE BOARD OF DIRECTORS

A. The Board of Directors shall govern the CONSORTIUM and shall have the authority to carry out those functions of the CONSORTIUM specified in this Agreement.

B. The Board of Directors shall have the power and authority to receive, accept, and utilize the services of personnel offered by any of the parties of this Agreement, or their representatives or agents; to receive, accept, and utilize property, real or personal, from any of the parties to this Agreement, or their agents or representatives (and each Member is authorized to provide such services and property upon such terms as are agreed upon by the Member and the Agency); and to receive, accept, and expend and disburse funds by contract or otherwise, for purposes consistent with the provisions of this Agreement, which funds may be provided by any of the parties to this Agreement, or their agents or representatives.

C. The Board of Directors shall provide, or cause to be provided, each Member with an annual independent auditor's report of the financial condition of the CONSORTIUM and each program, including the fund balance of each Member District by program.

D. The Board of Directors shall annually, on or before June 30, adopt a budget showing each of the purposes for which the CONSORTIUM will need money and the estimated amount of money that will be needed for each such purpose for the ensuing fiscal year. A copy of the budget shall be transmitted to each of the participating Members. The budget process shall include approval of new Agency employee positions to be funded by the CONSORTIUM.

E. The Board of Directors may appoint and dissolve working committees from its active Membership and direct Agency with respect to its responsibilities hereunder.

F. The Board of Directors shall determine the formulas and methods by which contributions and premiums will be paid to the CONSORTIUM. The Board of Directors shall also provide for additional assessments, rebates, and plan changes during the year.

G. The Board of Directors shall elect an Executive Committee of seven (7) Members from the membership of the Board of Directors.

1. Three (3) of the Members shall be representatives of Members selected at-large by the Board of Directors; and

2. Four (4) of the Members shall be representatives of Members of the Medical Program.

H. The Board of Directors shall elect its President and Vice President from its Members, and said persons shall also serve as the President and Vice President of the Executive Committee.

I. A Member can have no more than one (1) representative on the executive committee at any one time.

J. The Board of Directors shall provide general direction to the Agency and to the Executive Committee.

ARTICLE IX

EXECUTIVE COMMITTEE

A. The Executive Committee shall be elected by a majority vote of the Board of Directors to serve terms of office as may be established by the Board of Directors in its rules or bylaws.

B. A Member of the Executive Committee may be removed by the Board of Directors after missing three consecutive meetings. All vacancies, however arising, may be filled at any time by the affirmative vote of a majority of the Board of Directors. Interim appointments may be made by the Executive Committee until the next Board of Directors meeting.

C. The Executive Committee shall be responsible for assisting the Agency in the ongoing operations of the CONSORTIUM, and shall carry out such other responsibilities as are delegated to it by the Board of Directors. The Executive Committee shall study and recommend to the Board of Directors changes in procedures, plans, and programs as appropriate.

D. The Executive Committee shall hold at least one regular meeting quarterly. The date, time, and place upon which such regular meetings shall be held, shall be fixed by resolution of the Executive Committee, which resolution shall be filed with each Member of the CONSORTIUM.

E. The presence of a majority of four (4) of the Members of the Executive Committee shall constitute a quorum, except that less than a quorum may adjourn from time to time. An affirmative vote of three (3) Members of the Executive Committee shall be necessary to constitute action and to transact business.

ARTICLE X

DUTIES OF THE EXECUTIVE COMMITTEE

The Executive Committee shall exercise its powers in the manner set forth in Article IX, Section C. In addition, the Executive Committee is specifically empowered to:

A. Recommend to the Board of Directors for approval the formulas and methods for determining premium or contribution rates, additional assessments during the year, changes to plans, the method by which new Members shall be allowed into Programs, and the method for computing financial arrangements for withdrawing Members.

B. Insure that the Agency maintains a complete and accurate system of accounting of all funds at all times as set forth in Article XIV;

C. Give direction to the Agency as to entering into contracts consistent with the terms of this Agreement and the Bylaws;

D. Make appropriate periodic reports to the membership on the status of the CONSORTIUM and its plans;

E. Develop or cause to be developed and recommend to the Board of Directors for approval an annual budget for the CONSORTIUM;

F. The Executive Committee shall recommend policies to the Board of Directors for processing claims for medical, dental, and vision and/or any other risk or plan that may be authorized by a majority vote of the Members and related costs. Such claims processing shall conform to all applicable provisions of law. All Members shall, upon request, provide all required claims information on a timely basis to the Agency.

ARTICLE XI

SUB-COMMITTEES

A. As needed, the Executive Committee of the CONSORTIUM will establish sub-committees that will serve under the direction of the Executive Committee. The sub-committees will investigate, study and make recommendations to the Executive Committee or Board of Directors, as appropriate.

ARTICLE XII

OFFICERS

A. The officers of the CONSORTIUM shall be elected by and from the Board of Directors. The principal officers shall be a President and Vice President, and shall each serve a term of office of one (1) year. Any person elected or appointed as an officer may be removed at any time by the Board of Directors, with or without cause, and all vacancies, however arising, may be filled by the affirmative vote of a majority of the Board of Directors.

B. The CONSORTIUM shall furnish a Faithful Performance Bond covering all officers and employees, the amount to be determined by the Executive Committee.

C. The President shall see that all orders and resolutions of the Board of Directors are carried into effect, and the President may, at the President's option, be a Member of all committees appointed by the Executive Committee. The President shall have such other powers and perform such other duties as may be prescribed from time to time by the Board of Directors.

D. The Vice President shall have such powers and perform such duties as may be prescribed from time to time by the Board of Directors or the President. In the absence or disability of the President, the Vice President shall be vested with all the powers and authorized to perform all the duties of the President.

E. The Agency's Director, Risk Management shall act as the Secretary of the Board of Directors and of the Executive Committee and insure the recording of all votes and minutes of all proceedings; shall give, or cause to be given, notice of all meetings of the Board of Directors and of the Executive Committee, when notice is required; and shall have such other powers and

perform such other duties as may be prescribed from time to time by the Board of Directors or the Executive Committee.

F. The Agency's Director, Risk Management, serving as Secretary, shall serve as a non-voting Member of the Executive Committee.

ARTICLE XIII

FINANCE

A. The CONSORTIUM shall operate on a fiscal year from July 1 through June 30.

B. During the times established by the Board of Directors in each fiscal year, each Member shall pay to the CONSORTIUM the annual contributions and any special assessment calculated by the Board of Directors. Each Member of the CONSORTIUM hereby agrees to authorize the Agency to transfer from its general fund any required contribution or assessment. Members shall only pay contributions or assessments for the programs which they have joined.

C. A separate fund shall be kept for each program administered by the CONSORTIUM and for the Operating Budget. A separate system of records shall be maintained for each program of the CONSORTIUM and for its Operating Budget.

D. All Members' contributions shall be credited to the proper Member program of the CONSORTIUM and all Member claims shall be paid from the appropriate Member program.

E. No claim shall be paid from one program to meet the obligation of another program.

F. All expenditures and disbursements of monies from each Program shall be authorized in accordance with rules and procedures, established by the Board of Directors.

G. Members within a program shall share any rebates or deficits, if any, within a program, on an individual basis as stated in the Bylaws.

H. Equity and deficit for each program shall be calculated and maintained for each separate operational year in accordance with rules and procedures established by the Executive Committee with approval of the Board of Directors.

I. A Member may transfer funds between programs in accordance with provision of the bylaws, provided any such transfer is approved by a majority vote of the Members of the Executive Committee.

ARTICLE XIV

ACCOUNTS AND RECORDS

A. The Treasurer for the County of San Diego shall act as Treasurer to the CONSORTIUM, and the Auditor shall be an independent Certified Public Accountant appointed by the Agency to act as the auditor for the CONSORTIUM. Said designation shall be pursuant to Government Code Section 6505.5.

B. The Executive Committee with approval of the Board of Directors shall have the same authority to invest funds as exists for California Public School Districts.

C. The CONSORTIUM is strictly accountable to its Members for all monies received and disbursed by it and, to that end, the CONSORTIUM shall cause to be established and maintained such funds and accounts as may be required by good accounting practice or by any provision of law or any resolution of the Board of Directors.

D. Books and records of the CONSORTIUM shall be open to inspection at all reasonable times by representatives of the Members.

E. As soon as practical after the close of each fiscal year, a complete written report of all financial activities for such fiscal year for each plan shall be given to each Member of the Board of Directors.

F. The Treasurer of the San Diego County shall draw warrants to pay demands against the CONSORTIUM when such demands have been duly approved in accordance with rules and procedures, established by the CONSORTIUM.

ARTICLE XV

SETTLEMENT OF CLAIMS

The Executive Committee shall establish claims settlement procedures in accordance with any provisions of law, the bylaws, or good settlement practices.

ARTICLE XVI

LIMITATION ON COVERAGE

Except as expressly agreed to by an individual Member and the Board, the CONSORTIUM'S payment and handling of claims against Members shall only be for claims or insurable risks and programs arising out of facts occurring during the period of membership in the CONSORTIUM, and only for those programs joined by the Member. Further, except as otherwise agreed to, the CONSORTIUM shall not pay for or handle any claim arising out of facts occurring before membership or after termination of membership in the CONSORTIUM.

ARTICLE XVII

WITHDRAWAL FROM, TRANSFER OR TERMINATION OF MEMBERSHIP FROM PLAN(S)

A. Any Member may withdraw from its status as a Member party to this Agreement in any Program, with written notice before the end of any contract year by notifying the Board of Directors of the CONSORTIUM in writing, as specified in the Bylaws.

B. Involuntary termination from the CONSORTIUM shall have the effect of eliminating the Member as a signatory of this Agreement and as a Member of the CONSORTIUM, effective A Member may be involuntarily terminated from the CONSORTIUM or from any program at any time upon recommendation of the Executive Committee and vote of a majority of the Members of the Board of Directors. at the end of the contract or fiscal year in which the action is taken or upon such other date as the Board of Directors may specify. Should a Member be involuntarily terminated from the CONSORTIUM or from any program, reserve accounts shall be established in the Bylaws as though the Member were voluntarily withdrawing and the Member shall continue to be liable and responsible for the amount of any costs, liabilities, assessments, or contingencies which exceed the amount set aside in the reserve accounts established in the Bylaws. Grounds for involuntarily termination include, but are not limited to, the following:

1. Failure or refusal of a Member to abide by this Agreement or any amendment hereto.

2. Failure or refusal to pay contributions or assessments to the CONSORTIUM as provided in this Agreement.

A. Any Member may voluntarily withdraw from its status as a Member party to this Agreement in any Plan or Program upon giving written notice to the Executive Committee at least 60 days before the end of the Plan Year for such Plan or Program. Conditioned upon timely 60-days advance notice, withdrawal shall be effective at the end of the Member's Plan Year for the Plan or Program specified in the withdrawal notice. No Member shall withdraw from any Plan or program before the end of the Plan Year, or at the end of the Plan Year without giving proper 60-days advance notice. Any member who withdraws from any Plan or Program before the end of its Plan Year, or at the end of its Plan Year but without giving proper 60 days advance notice, shall be in breach of this Agreement. Actual damages for such breach may depend upon future premium ratings or risk calculations affecting the Consortium and its other Members and would therefore be difficult to presently quantify with precision. Accordingly, each Member to this Agreement stipulates and agrees that, in the event of breach by any Member due to unauthorized withdrawal from any Plan or Program, such Member shall pay to the Consortium, as liquidated damages, a sum equal to the premiums that would have otherwise been due and payable by such Member for such Plan or Program through the end of its Plan Year.

B. A Member may be involuntarily terminated from the CONSORTIUM or from any Plan or Program at any time upon recommendation of the Executive Committee and vote of a majority of the Members of the Board of Directors. Involuntary termination from the CONSORTIUM shall have the effect of eliminating the Member of the CONSORTIUM, effective at the end of the Plan Year in which the action is taken or such other date as the Board of Directors may specify. Should a Member be involuntarily terminated from the CONSORTIUM generally or from any Plan or Program therein, such Member shall be liable for liquidated damages as though it were withdrawing voluntarily but without the proper 60-days advance notice, pursuant to the provisions set forth above in paragraph A of Article XVII. In the case of a Member who is involuntarily terminated, reserve accounts shall be established pursuant to the Bylaws as though the Member were voluntarily withdrawing and the Member shall continue to be liable and responsible for the amount of any costs, liabilities, assessments, or contingencies which exceed the amount set aside in the reserve accounts established pursuant to the Bylaws. Grounds for involuntary termination include, but are not limited to, the following:

1. Failure or refusal of a Member to abide by this Agreement or any Amendment hereto.
2. Failure or refusal to pay contributions or assessments to the CONSORTIUM as provided in this Agreement.

ARTICLE XVIII

DISPOSITION OF PROPERTY AND FUNDS

A. In the event of the dissolution of the CONSORTIUM, the complete rescission, or other final termination of this Agreement by all Members, any property interests, surplus monies or other assets remaining in the CONSORTIUM following a discharge of all obligations shall be disposed of by returning to each Member at the date of termination an individual Pro Rata share of said assets which shall be determined in the same manner as for withdrawing Member as provided in this Agreement and the Bylaws.

B. The current fair value of properties shall be determined by the CONSORTIUM. If the withdrawing or terminating Member disagrees with the current fair value of the CONSORTIUM properties as determined by the CONSORTIUM, the current fair value of said properties shall be determined by independent consultant selected by the CONSORTIUM and paid for by the withdrawing or terminating Member.

ARTICLE XIX

INVESTMENT OF SURPLUS FUNDS

A. The Executive Committee shall have the power to invest or cause to be invested, in compliance with the California Government Code, the Education Code, and other appropriate codes and regulations, funds and such reserve surplus monies as are not necessary for the immediate operations of the CONSORTIUM and its Programs.

B. The level of cash to be retained for the actual operation of the CONSORTIUM and its Programs shall be determined by the Executive Committee.

ARTICLE XX

AMENDMENTS

This Agreement may be amended at any time by written agreement signed by a majority of the Members to this Agreement. Such amendments shall be binding upon all Members of the CONSORTIUM. The effective date of any amendment will be on July 1 following adoption, unless otherwise stated.

ARTICLE XXI

SEVERABILITY

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

ARTICLE XXII

LIABILITY AND INDEMNIFICATION

A. Except as provided in this Agreement, pursuant to the provisions of California Government Code Section 895.4, each Member hereto agrees to defend, indemnify and hold harmless each other Member from any liability, claim or judgment for injury or damages caused by a negligent or wrongful act or omission of an agent, officer, and/or employee of the indemnifying Member which occurs or arises out of performance of this Agreement.

B. The Members of the Board of Directors and their alternates are indemnified, by this Agreement, and the CONSORTIUM does hereby agree to defend, indemnify and hold them, and each of them, free from all claims expenses, demands, penalties, fines, forfeitures, judgments, settlements, attorney fees, and any other amounts whatsoever actually and reasonably incurred or threatened by reason of or as a result of their official participation and action in pursuance of the execution and administration of this Agreement and the operation of the CONSORTIUM created hereunder, including but not limited to amounts arising out of or by reason of any judicial or quasi-judicial action or proceeding, whether civil, criminal, administrative or investigative, provided that it appears to the satisfaction of the Board of Directors that the indemnitee acted in good faith and in a manner reasonably believed by him or her to be in the best interest of the CONSORTIUM and that there is no reasonable cause to believe that the indemnitee knew the conduct was civilly or criminally unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or plea of nolo contendere or its equivalent shall not for purposes of this Agreement in and 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 the CONSORTIUM or that such 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 the fund 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 of Directors in its discretion may provide for errors and omissions insurance policy coverage for the directors and officers of the CONSORTIUM at the administrative expense of the CONSORTIUM.

C. The debts, liabilities and obligations of the CONSORTIUM do not constitute the debts, liabilities and/or obligations of any Member.

ARTICLE XXIII

NOTICE AND SERVICE THEREOF

Any notice given to the parties to this Agreement shall be in writing and shall be dated and signed.

ARTICLE XXIV

BYLAWS

A. Bylaws shall be established by recommendation of the Executive Committee and approved by a majority of the Members of the Board of Directors.

B. The CONSORTIUM shall be governed pursuant to certain bylaws, and by such amendments to the bylaws as may from time to time be adopted. Each party to this Agreement agrees to comply with and be bound by the provisions of said bylaws and further agrees that the CONSORTIUM shall be operated pursuant to this Agreement and said bylaws.

C. Procedures for amending the bylaws shall be as provided in the bylaws so long as not inconsistent with this Agreement. All amendments to the bylaws must be approved by a majority of the Members of the Board of Directors before the amendment shall become effective. Such amendments shall be binding upon all Members of the CONSORTIUM. The effective date of any amendment will be on July 1 following adoption, unless otherwise stated.

ARTICLE XXV

MISCELLANEOUS

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

ARTICLE XXVI

TERMINATION OF AGREEMENT

The Board of Directors may determine that the public interest will not be served by the continuance of this Agreement. In such event, by a majority vote of the total number of remaining members voting in favor of termination, the Agreement shall be terminated effective at the end of the fiscal year specified by such parties at the time of the voting.

Should all parties to this Agreement terminate their membership or be removed from membership in the CONSORTIUM, the CONSORTIUM and this Agreement shall continue to exist only for the limited purpose of disposing of all pending claims, distribution of assets, and all other functions

necessary to conclude the affairs of the CONSORTIUM after which time the CONSORTIUM shall be deemed terminated .

ARTICLE XXVII

ENFORCEMENT

The CONSORTIUM is hereby given authority to enforce this Agreement. In the event suit is brought upon this Agreement by the CONSORTIUM and judgment is recovered against a Member, the Member shall pay all costs incurred by the CONSORTIUM, including reasonable attorney's fees as fixed by the court.

ARTICLE XXVIII

BINDING ARBITRATION

In the event of any dispute or controversy concerning the construction, interpretation, performance or breach of this Agreement, arising between SAN DIEGO COUNTY SCHOOLS FRINGE BENEFITS CONSORTIUM and a Member, such dispute or controversy shall be submitted to arbitration under the appropriate rules of the American Arbitration Association. The findings of the arbitrator and the Award of Arbitrator on issues thereon shall be governed by applicable state and federal statutory and case law.

Arbitration can be initiated by filing a Demand for Arbitration with the American Arbitration Association. A Demand for Arbitration form may be obtained from the American Arbitration Association.

In all arbitration matters submitted to the American Arbitration Association, the party initiating the Demand for Arbitration shall advance all administrative fees connected therewith. If the Member prevails in arbitration, the Member may be entitled to reimbursement of costs, including reasonable attorney fees, incurred in connection with the arbitration proceedings. Any such award of costs will be made at the discretion of the arbitrator.

The parties agree that the arbitrator(s) shall issue a written opinion, and the Award of Arbitrator shall be binding and may be enforced in any court having jurisdiction thereof by filing a petition for enforcement of said award, or that the court may vacate, modify, or correct the award in accordance with the prevailing provisions of the California Arbitration Act.

ARTICLE XXIX

REPLACEMENT OF AGREEMENT

Upon the effective date of this Agreement for all parties, the current Agreements for: San Diego County Schools Risk Management Joint Powers Authority, Self-Insurance Program for Fringe Benefits

Shall be terminated and replaced in their entirety with this Agreement.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative on the respective dates indicated below: