

**INSERT YOUR  
MEMORANDUM OF CRIME COVERAGE  
DECLARATIONS PAGE HERE**

# MEMORANDUM OF CRIME COVERAGE

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# **CRIME** **COVERAGE PROVISIONS**

Throughout this Coverage Part, the words “you” and “your” refer to the “Member Agency” in the DECLARATIONS. The words “we”, “us”, and “our” refer to the “Authority”. Other words and phrases that appear in quotation marks have a special meaning. Refer to Section V. Definitions; Section VI., Exclusions; Section VII., and General Conditions, to determine where this Coverage Part restricts coverage.

## **SECTION I – CONSIDERATION CLAUSE**

In exchange for the payment of premium and subject to the DECLARATIONS, Coverage Agreements, Exclusions, General Conditions, Definitions and terms of this Coverage Part, we will pay for loss which you sustain resulting directly from acts committed or events occurring at any time and discovered by you during the Coverage Period shown in the DECLARATIONS or during the period of time provided in General Conditions I., Extended Period To Discover Loss.

## **SECTION II – COVERAGE AGREEMENTS**

Coverage is provided under the following Coverage Agreements if either an amount is stated in the Coverage Agreement or for which there is a Limit of Coverage shown in the DECLARATIONS.

### **A. Coverage Agreement 1. – Employee Theft – Per Loss**

We will pay for loss or damage to “money”, “securities” and “other property” in any one “occurrence” which results directly from “theft” by an “employee”, whether or not identifiable, while acting alone or in collusion with other persons. In this Coverage Agreement, “occurrence” means all loss caused by, or involving, one or more “employees” whether the result of a single act or a series of acts.

We will also pay for loss which is caused by the failure of any “employee” to faithfully perform his or her duties as prescribed by law, when such failure has as its direct and immediate result a loss of your “money”, “securities”, and “other property”.

## **B. Coverage Agreement 2. – Depositors Forgery Or Alteration**

1. We will pay for loss resulting directly from “forgery” or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in “money” that are
  - a. made or drawn upon you; or
  - b. made or drawn by one acting as your agent and drawn on your accountor that are purported to have been so made or drawn.
2. We will treat mechanically reproduced signatures the same as handwritten signatures.
3. If you are sued for refusing to pay any instrument in B.1. above, on the basis that it has been forged or altered and you have our written consent to defend against that suit, we will pay for any reasonable legal expenses that you incur and pay in such defense. The amount that we will pay in included in the Limit of Coverage applicable to this Coverage Agreement. If a Deductible Amount applies to this Coverage Agreement, we will also apply it to the amount of legal expenses incurred in this Coverage Agreement.
4. You must include in your proof of loss any instrument involved in that loss, or, if that is not possible, an affidavit setting forth the amount and cause of loss and describing both sides of said instrument.
5. This Coverage Agreement covers loss you sustain anywhere in the world.

## **C. Coverage Agreement 3. – Computer And Funds Transfer Fraud**

We will pay for loss of and loss from damage to “money”, “securities” and “other property” following and directly related to the use of any computer to fraudulently cause a transfer of that property from inside the “premises” or “banking premises”

1. to a person (other than a “messenger”) outside those “premises”; or
2. to a place outside those “premises”.

And, we will pay for loss of “money” or “securities” through “funds transfer fraud” resulting directly from “fraudulent transfer instructions” communicated to a “financial institution” and instructing such institution to pay, deliver, or transfer “money” or “securities” from your “transfer account”.

### **SECTION III – LIMIT OF COVERAGE**

The most we will pay for loss in any one “occurrence” is the applicable Limit of Coverage shown in the DECLARATIONS.

### **SECTION IV – DEDUCTIBLE**

We will not pay for loss in any one “occurrence” unless the amount of the loss exceeds the Deductible Amount shown in the DECLARATIONS. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Coverage. In the event that more than one Deductible Amount could apply to the same loss, only the highest Deductible Amount will be applied.

You must give us notice as soon as possible of any loss of the type insured under this Coverage Part if, in your best estimation, such loss will, or will appear to exceed 25% of the current Deductible Amount for the Coverage Agreement under which the loss has occurred.

### **SECTION V – DEFINITIONS**

- A.** “Authority” means the Association of California Water Agencies Joint Powers Insurance Authority.
- B.** “Banking premises” means the interior portion of that part of any building occupied by a banking institution or similar safe depository.
- C.** “Employee” means
  - 1. any natural person
    - a. while in your service or for 60 days after termination of service; and
    - b. whom you compensate directly by salary, wages, commissions; and

- c. whom you have the right to direct and control while performing services for you; including one
  - i. who is performing services for you as the chairman, or a member of any committee and whether compensated or not; or
  - ii. who is a compensated officer; or
  - iii. who is a volunteer who is not compensated, other than one who is a fund solicitor, while performing services for you that are usual to the duties of an “employee”; or
  - iv. who is a former “employee”, director or trustee retained as a consultant while performing services for you; or
  - v. who is a student intern or guest student pursuing studies or duties in any of your offices or “premises”.
  
- 2. a natural person who is a trustee, officer, “employee”, administrator or manager, except an administrator or a manager who is an independent contractor, of any “employee benefit Plan(s)” insured under this Coverage Part; and your director or trustee while that person is handling funds or “other property” of “employee benefit Plan(s)” insured under this Coverage Part.
  
- 3. a natural person who is furnished temporarily to you to substitute for a permanent “employee” to meet seasonal or short term work load conditions and while that temporary person is subject to your direction and control and performing services for you. However, such persons are excluded while having care and custody of property outside the “premises”; and
  - a. “employee” does NOT mean
    - (1) any agent, broker, person leased to you by a labor leasing firm, factor, commission merchant, consignee, independent contractor or representative of the same general character; or

(2) any manager, director or trustee except while performing acts coming within the scope of the usual duties of an “employee”.

- D.** “Employee Benefit Plan(s)” means any welfare or pension Plan listed in the DECLARATIONS, on an attached schedule or for which automatic coverage is afforded that is subject to the Employee Retirement Income Security Act (ERISA) of 1974, as amended.
- E.** “Financial institution” means a bank, savings bank, savings and loan association or similar thrift institution, a stockbroker, mutual fund, liquid assets fund, or similar investment institution in which you maintain a “transfer account”.
- F.** “Forgery” means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one’s own name signed with or without authority, in any capacity, for any reason.
- G.** “Fraudulent transfer instructions” means
1. fraudulent electronic, telegraphic, facsimile, cable, teletype or telephone instructions to a “financial institution” to debit a “transfer account” and to pay, transfer or deliver “money” or “securities” from such account and which instructions purport to have been authorized by you but which have been fraudulently transmitted by another; or
  2. fraudulent written instructions to a “financial institution” to debit a “transfer account” and to pay, transfer or deliver “money” or “securities” from such account through an electronic funds transfer system at specified times or under specified conditions and which instructions purport to have been duly authorized by you but which have been fraudulently issued, forged or altered by another.
- H.** “Funds transfer fraud” means “theft” of “money” or “securities” from any of your “transfer accounts” at a “financial institution” and occurring through “fraudulent transfer instructions” communicated to such “financial institution”.
- I.** “Member Agency” means the local public agency, designated in the DECLARATIONS, which is a party signatory to the Joint Powers Agreement creating the Association of California Water Agencies Joint Powers Insurance Authority and is a participant in its Property Program.

- J.** “Messenger” means you or any “employee” while having care and custody of property outside the “premises”.
- K.** “Money” means currency, coins and bank notes in current use and having a face value; and travelers checks, register checks and money orders held for sale to the general public.
- L.** “Occurrence” means
1. as respects the Employee Theft Coverage Agreement, all loss caused by, or involving, one or more “employees”, whether the result of a single act or a series of acts.
  2. as respects the Forgery or Alteration Coverage Agreement, all loss caused by any person or in which that person is involved, whether the loss involves one or more instruments.
  3. as respects all other Coverage Agreements, an act or series of related acts involving one or more persons; or an act or event or a series of related acts or events not involving any person.
- M.** “Other property” or property means any tangible property other than “money” or “securities” that has intrinsic value but does not include any property excluded under this Coverage Part. “Other property” does not include trade secrets, proprietary information, confidential information or any copyrights, patents, trademarks, proprietary manufacturing or processing procedures, or secret or confidential information, including but not limited to credit card numbers, bank account numbers or any similar information.
- N.** “Premises” means the interior of that portion of any building which you occupy in conducting your business.
- O.** “Securities” means negotiable or non-negotiable instruments or contracts representing either “money” or property and includes tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and, evidences of debt issued in connection with credit or charge cards, which cards are not issued by you; but does not include “money”.
- P.** “Theft” means the unlawful taking of “money”, “securities” or “other property” to the deprivation of the Covered Party.



- Q.** “Transfer account” means an account maintained by you at a “financial institution” from which you or your authorized representative may cause the payment, transfer or delivery of “money” or “securities” by any means described in the “fraudulent transfer instructions” definition.

## **SECTION VI - EXCLUSIONS**

***(Applies To All Coverage Agreements Unless Otherwise Specified)***

This Coverage Part Does Not Apply To And We Will Not Pay For:

**A. Accounting or Arithmetical Errors or Omissions**

Loss resulting from accounting or arithmetical errors or omissions.

**B. Acts of Employees, Managers, Directors, Trustees or Representatives**

Loss resulting directly from “theft” or any other dishonest or criminal act committed by any of your “employees”, managers, directors, trustees or representatives whether acting alone or in collusion with other persons or while performing services for you or otherwise except when covered under Coverage Agreement 1.

**C. Damages**

Damages for which you are legally liable as a result of:

1. the deprivation or violation of the civil rights of any person by an “employee”; or
2. the tortious conduct of an “employee” except conversion of property of other parties held by you in any capacity.

**D. Depository Failure**

Loss resulting from the failure of any entity acting as a depository for your property or property for which you are responsible.

**E. Employee Cancelled Under Prior Insurance or Coverage**

Loss caused by any “employee” of yours or predecessor in interest of yours, for whom similar prior insurance or coverage has been cancelled and not reinstated since the last cancellation.

**F. Exchanges or Purchases**

Loss resulting from the giving or surrendering of property in any exchange or purchase.

**G. Fire**

Loss from damage to the premises resulting from fire however caused.

**H. Governmental Action**

Loss resulting from seizure or destruction of property by order of governmental authority.

**I. Indirect Loss**

Loss that is an indirect result of any act or "occurrence" covered by this Coverage Part including but not limited to loss resulting from

1. your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property".
2. payment or damages of any type for which you are legally liable. But we will pay compensatory damages arising directly from a loss covered under this Coverage Part.
3. payment of costs, fees or other expenses you incur in establishing either the existence of or the amount of loss under this Coverage Part.

**J. Inventory Shortages**

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon

1. an inventory computation; or
2. a profit and loss computation.

However, where you establish wholly apart from such inventory computations that you have sustained a loss covered under this Coverage Part, then you may offer your inventory records and

actual physical count of inventory in support of the amount of loss claimed.

**K. Legal Expenses**

Expenses related to any legal action except when covered under Coverage Agreement 2.

**L. Money Operated Devices**

Loss of property contained in any money operated device unless the amount of any "money" deposited in it is recorded by a continuous recording instrument in the device.

**M. Licensed Vehicles or Equipment and Accessories**

Loss of or damage to licensed vehicles, trailers, or semi-trailers or equipment or accessories attached to them.

**N. Nuclear**

Loss resulting from nuclear reaction, nuclear radiation, or radioactive contamination, or any related act or incident.

**O. Trading Losses**

Loss resulting directly or indirectly from trading, whether in your name or in a genuine or fictitious account.

**P. Transfer or Surrender of Property**

Loss of or damage to property of any kind after it has been transferred or surrendered to a person or place outside the "premises" or "banking premises"

1. on the basis of unauthorized instructions; or
2. as a result of a threat to do bodily harm to any person; or
3. as a result of a threat to do damage to any property.

**Q. Vandalism**

Loss from damages to the “premises” or to the exterior of any safe, vault, cash box, cash drawer or cash register by vandalism or mischief.

**R. Voluntary Parting of Title To or Possession of Property**

Loss resulting from your, or anyone acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title or possession of any property.

**S. War and Similar Actions**

Loss resulting from war, whether or not declared, warlike action, insurrection, rebellion, or revolution, or any related act or incident.

**SECTION VII – GENERAL CONDITIONS**

**A. Cancellation As To Any Employee**

Coverage Agreement 1. is cancelled as to any “employee”

1. immediately upon discovery by you or any official or “employee” authorized to manage, govern, or control your “employees” of any act on the part of an “employee” whether before or after becoming employed by you which would constitute a loss covered under the terms of the Coverage Agreement.
2. on the date specified in a notice mailed to you. The date will be at least 30 days after the date of the mailing. And, the mailing of notice to you at the last mailing address known to us will be sufficient proof of notice. Delivery of notice is the same as mailing.

**B. Changes**

This Coverage Part contains all of the agreements between you and us concerning the coverage afforded. The “Member Agency” shown in the DECLARATIONS is authorized to make changes in the terms of the Coverage Part with our consent. This Coverage Part’s terms can be amended or waived only by addendum issued by us and made a part of this Coverage Part.

### **C. Concealment, Misrepresentation Or Fraud**

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other Covered Party, at any time, intentionally conceal or misrepresent a material fact concerning

1. this Coverage Part;
2. the property covered under this Coverage Part;
3. your interest in the property covered under this Coverage Part; or
4. a claim under this Coverage Part.

### **D. Consolidation Or Merger**

If through consolidation or merger with, or purchase or acquisition of assets or liabilities of, some other entity, any additional persons become “employees” or you acquire the use and control of any additional “premises”

1. you must give us written notice and obtain our written consent to extend this coverage to such additional “employees” or “premises”. We may condition our consent upon payment of an additional premium; but there shall only be a premium charge if such merger or acquisition results in a 15%, or greater, increase in the number of “employees”, assets or revenues acquired through the merger or acquisition.
2. for the first 60 days after the effective date of such a consolidation, merger, acquisition of assets or liabilities, any coverage afforded for “employees” or “premises” also applies to these additional “employees” or “premises” for acts committed within this 60 day period.

### **E. Discovery**

1. We will pay for loss which you sustain through acts or events committed or occurring at any time and which are discovered by you during the Coverage Period or during the period provided in General Condition I., Extended Period To Discover Loss.

2. Discovery of loss occurs when you first become aware of facts which would cause a reasonable person to assume that a loss covered by this Coverage Part has been, or may be incurred even though the exact amount or the details of the loss may not then be known.
3. Discovery also occurs when you receive notice of an actual or potential claim against you alleging facts, which if true, would constitute a covered loss under this Coverage Part.

#### **F. Duties In The Event Of A Loss**

After you discover a loss or a situation which may result in a loss of, or damage to, "money", "securities" or "other property", you must

1. notify us as soon as possible but no later than 60 days after discovery of loss.
2. submit to examination under oath at our request and give us a signed statement of your answers.
3. give us a detailed, sworn proof of loss within 120 days.
4. cooperate with us in the investigation and settlement of any claim.
5. notify the police if you have reason to believe that your loss involves a violation of law.

#### **G. Employee Benefit Plans**

1. If any one or more "Employee Benefit Plans" are insured jointly with any other entity under this Coverage Part, you or the plan administrator must select a Limit of Coverage for Coverage Agreement 1. that is sufficient to provide a Limit of Coverage for each Plan which is at least equal to that required if each Plan were separately covered.
2. Any payments we make to the "Member Agency" for loss sustained by any Plan will be held by the "Member Agency" for the use and benefit of the Plan(s) sustaining the loss.
3. If two or more Plans are covered under this Coverage Part, any payment which we make for loss sustained by two or more Plans, or of commingled funds or "other property" of two or more Plans,

which arises out of one “occurrence”, is to be shared by each Plan sustaining loss in the proportion that the Limit of Coverage required for each Plan bears to the total of those limits.

4. This Coverage Part covers those Plans for loss through fraud or dishonesty as defined in Section 2580.412-9 of the Employee Retirement Income Security Act (ERISA) as amended. For any Plans not specifically named as Covered Parties, this Coverage Part is deemed to be in compliance with, and satisfy the bonding requirements of Section 2580.412-11 of the act. This coverage provides a Limit of Coverage which is equal to 10% of the amount of the funds handled or \$100,000, whichever is less, for each Plan bonded and the minimum Limit of Coverage for any Plan shall be \$1,000. The Limit of Coverage available for any Plan loss will be determined by the amount of funds handled on the date when any covered loss occurs subject to the foregoing limitations.
5. The Deductible provision which applies to the Employee Theft Coverage Agreement shall not apply to loss which is sustained by any Plan subject to ERISA and which Plan is covered under this Coverage Part.

#### **H. Examination Of Your Books And Records**

1. We may examine and audit your books and records as they relate to this Coverage Part at any time during the Coverage Period and up to three years afterwards.
2. We may also examine and audit books and records of any organization which you newly acquire and that is deemed to be a Covered Party under this Coverage Part.

#### **I. Extended Period To Discover Loss**

1. We will pay for loss which you sustained prior to the effective date of termination or cancellation of this coverage, which is discovered by you
  - a. no later than 60 days from the date of the termination, cancellation or non-renewal; and
  - b. as respects any “employee benefit Plan(s)”, no later than 1 year from the date of that termination, cancellation or non-renewal.

2. However, this extended period to discover loss terminates immediately upon the effective date of any other insurance or coverage obtained by you to replace, in whole or in part, the coverage afforded by this Coverage Part, whether or not such other insurance or coverage provides coverage for loss sustained prior to its effective date.

**J. Facsimile Signatures**

We will treat mechanically reproduced facsimile signatures the same as handwritten signatures.

**K. Indemnification**

We will indemnify any of your officials who are required by law to give bonds for the faithful performance of their service against loss through the failure of any “employee” under the supervision of that official to faithfully perform his or her duties as prescribed by law, when such failure has as its direct and immediate result a loss of your “money”, “securities” and “other property”, subject to the Limit of Coverage.

**L. Joint Covered Parties**

1. If more than one Covered Party is named in the DECLARATIONS, the first named Covered Party will act for itself and for every other Covered Party for all purposes of this Coverage Part. If the first named Covered Party ceases to be covered, then the next named Covered Party will become the first named Covered Party.
2. If any Covered Party or officer of a “Member Agency” has knowledge of any information relevant to this Coverage Part, that knowledge is considered to be knowledge of every Covered Party.
3. An “employee” of any Covered Party is considered to be an “employee” of every Covered Party.
4. If this Coverage Part or any of its Coverage Agreements is cancelled, terminated or non-renewed as to any Covered Party, loss sustained by that Covered Party is covered only if discovered by you during the period of time provided in General Condition I., Extended Period To Discover Loss. And, this extended period to discover loss also terminates in accordance with paragraph 2 of that condition.



5. We will not pay a greater amount for loss sustained by more than one Covered Party than we would pay if all of the loss had been sustained by one Covered Party.

**M. Loss Covered Under More Than One Coverage Agreement Of This Coverage Part**

If two or more Coverage Agreements of this Coverage Part apply to the same loss, we will pay the lesser of

1. the actual amount of loss; or
2. the sum of the Limits of Coverage applicable to those Coverage Agreements.

**N. Non Accumulation Of Limit Of Coverage**

Regardless of the number of years this Coverage Part remains in force or the number of premiums paid, no Limit of Coverage cumulates from year to year or Coverage Period to Coverage Period.

**O. Other Insurance**

1. This Coverage Part does not apply to loss recoverable or recovered under other insurance or indemnity. If the limit of the other insurance or indemnity is insufficient to cover the entire amount of the loss, this Coverage Part will apply to that part of the loss, other than that falling within any Deductible Amount, not recoverable or recovered under the other insurance or indemnity.
2. However, this Coverage Part will not apply to the amount of loss that is more than the applicable Limit of Coverage shown in the DECLARATIONS.
3. If a loss is discovered within the period provided by prior insurance to discover losses, we will not pay for such loss unless the amount exceeds the limit of insurance under your prior policy. We will then only pay you for any excess loss subject to the Coverage Agreements, Exclusions and General Conditions of this Coverage Part.
4. Any payment that we make to you under this Coverage Part shall not exceed the difference between the amount of insurance under

your prior policy and the Limit of Coverage shown in the DECLARATIONS and we will not apply our Deductible Amount to any excess loss payment.

**P. Records**

You must keep records of all property covered under this Coverage Part so we can verify the amount of any loss.

**Q. Recoveries**

1. Any recoveries, less the cost of obtaining them, made after the settlement of loss covered by this Coverage Part will be distributed
  - a. to you, until you are reimbursed for any loss that you sustain that exceeds the Limit of Coverage and the Deductible Amount, if any;
  - b. then to us, until we are reimbursed for the settlement made; and
  - c. then to you, until you are reimbursed for that part of the loss equal to the Deductible Amount, if any.
2. Recoveries do not include any recovery
  - a. from insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
  - b. of original "securities" after duplicates of them have been issued.

**R. Sole Benefit**

This coverage is for your sole benefit. No legal proceeding of any kind to recover on account of loss under this Coverage Part may be brought by anyone but you.

**S. Transfer Of Your Rights Of Recovery Against Others To Us**

You must transfer to us all your rights of recovery against any person or organization for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.

## T. Valuation

1. Subject to the applicable Limit of Coverage, we will pay for
  - a. loss of “money” but only up to and including its face value. We may, at our option, pay for a loss of “money” issued by any country other than the United States of America in either the face value in the “money” issued in that country, or, in the United States of America dollar equivalent determined by the rate of exchange on the day that the loss occurred.
  - b. loss of “securities” but only up to and including their value at the close of business on the day that the loss was discovered. But, we may, at our option, 1) pay the value of such “securities”, 2) replace them in kind in which event you must assign to us all your rights, title and interest in and to those “securities” or 3) pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the “securities”. However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of
    - (1) the value of the “securities” at the close of business on the day the loss was discovered; or
    - (2) the Limit of Coverage.
  - c. loss or damage to “other property” or loss from damage to the “premises” or its exterior for the replacement cost of the property without deduction for depreciation, subject to 2. below. However, we will not pay for more than the lesser of
    - (1) the Limit of Coverage applicable to the lost or damaged property; or
    - (2) the cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose; or
    - (3) the amount that you actually spend that is necessary to repair or replace the lost or damaged property.

2. We will not pay on a replacement cost basis for any loss or damage
  - a. until the lost or damaged property is actually repaired or replaced; and
  - b. unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

If the lost or damaged property is not repaired or replaced, we will pay based on actual cash value.

3. We may, at our option, pay for loss of or damage to property other than “money” in the “money” of the country in which the loss occurred; or in the United States of America dollar equivalent of the “money” of the country where the loss occurred determined by the rate of exchange on the day the loss was discovered. Any property that we pay for or replace becomes our property.
4. Loss of or loss from damage to any books or records of account or other records, tapes, disks, or electronic media used by you in the business but only if such books, records, tapes or disks are actually reproduced and then only for not more than the blank books, pages, tapes and disks or other materials plus the cost of labor for the actual transcription or copying of data which you shall furnish to reproduce such books, records, tapes or disks.
5. Actual cash value is calculated as the amount it would cost to repair or replace “other property”, at the time of loss or damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence. Actual cash value applies to valuation of “other property” regardless of whether that property has sustained partial or total loss or damage.

The actual cash value of the lost or damaged property may be significantly less than its replacement cost.