



## **JOINT POWERS AUTHORITY AGREEMENT**

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**BETA HEALTHCARE GROUP  
JOINT POWERS AUTHORITY AGREEMENT**

THIS AGREEMENT is entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500, et seq.) of the California Government Code, relating to joint exercise of powers, between the local health care districts, counties, other governmental entities and qualified nonprofits which operate hospitals, clinics and other health-related facilities, and which have signed this Agreement, and those that may sign hereafter, for the purpose of operating programs of group self-insurance and/or group insurance purchasing programs for professional liability and other coverages for those health care districts and those counties, other governmental entities and qualified nonprofits which own and operate hospitals, clinics and other health-related facilities.

WITNESSETH:

WHEREAS, it is to the mutual benefit and in the best public interest of the parties to this Agreement to join together to establish this Joint Powers Authority Agreement for the purposes hereinafter set forth; and

WHEREAS, the development, organization and implementation of such a group self-insurance program is of such magnitude that it is necessary for the parties to join together with this Joint Powers Authority Agreement in order to accomplish the purposes herein set forth; and

WHEREAS, the parties hereto have determined that there is a need by district hospitals, county hospitals, qualified nonprofits and other government-owned hospitals, clinics and other health related facilities for a group self-insurance program and/or group insurance purchasing program for professional liability and other coverages; and

WHEREAS, it has been determined by the parties that group self-insurance and/or group insurance purchasing for professional liability and other coverages is of value on a mutual basis; and

WHEREAS, a group self-insurance and/or group insurance purchasing program can adequately serve the needs of all the parties; and

WHEREAS, Title 1, Division 7, Chapter 5 of the Government Code of the State of California authorizes joint exercise by two or more public agencies of any power common to them; and

WHEREAS, it is the desire of the parties signing this Agreement to jointly provide for a group self-insurance and/or group insurance purchasing program for professional liability and other coverages for their mutual advantage;

WHEREAS, Government Code Section 990.8 provides that two or more local entities may, by a joint powers agreement, provide insurance for any purpose by any one or more of the methods specified in Government Code Section 990.4; and

WHEREAS, each of the parties to this Agreement desires to join together with the other parties for the purpose of pooling certain self-insured claims and losses and transferring risk between and among the parties, as permitted under Article XVI, section 6 of the California Constitution, and as provided in Government Code Section 990.8, and/or jointly purchasing excess insurance, reinsurance and/or administrative services in connection with self-insurance and/or insurance programs for said parties;

NOW, THEREFORE, for and in consideration of the mutual advantages to be derived, and in consideration of the execution of this Agreement by health care districts, counties, other governmental entities, and qualified nonprofits which operate hospitals, clinics, and other health-related facilities, each of the parties hereto does hereby agree that BETA Healthcare Group Risk Management Authority be created as follows:

I.

DEFINITIONS AND GENERAL PROVISIONS

1. “Administrator” shall mean the contractor or consultant retained, or staff employed by the BETA Council to administer the group self-insurance program.
2. “Authority” shall mean BETA Healthcare Group Risk Management Authority (“BHG”).
3. “BETA Council” shall mean the board of directors of BETA Healthcare Group Risk Management Authority, consisting of representatives of members, who are charged with the responsibility of governing BHG and its programs.
4. “Certificate of Coverage” shall mean the document issued to each member evidencing its participation in a group self-insurance program.
5. “Chief Executive Officer” shall mean the manager of the day-to-day affairs of BHG, appointed by the BETA Council.
6. “County” shall mean any local governmental agency denoted as such by law.
7. “Coverage Contract” shall mean a contract of group self-insurance through risk sharing risk transfer and risk management, which defines the extent of BHG's coverage of a member 's liability.
8. “Fiscal Year” shall mean that period of time commencing January 1 of each year and ending on the following December 31.
9. “Funds” shall mean, unless the context otherwise specifies, all monies paid into BHG or any of its group self-insurance programs, including any earnings thereon, or any other sums coming to BHG from any source.
10. “Governmental Entity” shall mean any political subdivision or nonprofit corporation affiliate owning a health facility, or nonprofit corporation which is considered a local government agency for

the purposes of self-insurance, and empowered to execute this Agreement under the laws of the State of California.

11. “Group Self-Insurance Program” shall mean the self-insuring plan of group risk sharing, risk transfer and risk management created for the benefit of the members that provides for the defense and payment of claims, risk management and program administration by risk sharing and the maintenance of reserve funds, and which ordinarily provides for the transfer of risks from a member to BHG.

12. “Member” shall mean any county or governmental entity which is a signatory member of BHG; provided, however, that this definition shall not be construed to prevent BHG from extending coverage to any subsidiary, or wholly owned or affiliated entity, upon terms and conditions approved by the BETA Council. BHG is also a member of BHG with all the rights and obligations of other members except that, while it is entitled to vote as a member, it may not have an elected representative on the BETA Council.

13. “Occupied Beds” shall mean the daily average number of beds, cribs, and bassinets used for patients during the coverage period.

14. “Reserves” shall mean funds not yet committed to the payment of a covered claim but held for the payment of claims.”

15. “Risk Management” shall mean the process of identifying, evaluating, reducing, transferring, sharing, financing, and eliminating risk. Risk management includes various elements of insurance, law, administration, technology, accounting, and general business to effectively manage hazards and losses to which members may be exposed.

16. “Risk Sharing” shall mean any common fund or pool of monies: (1) which is composed of cash, investments permitted by Government Code Section 53601 et seq., or other assets; (2) to which two or more members have agreed to contribute in accordance with the terms of a Certificate of Coverage and a Coverage Contract in which participation is voluntary; (3) from which claim and defense expenses of any contributor to that common fund shall be paid; (4) from which administrative costs to operate and manage the fund and activities related to the purpose of the fund shall be paid and (5) which operates in accordance with this joint powers agreement.

## II.

### PURPOSES AND TERM

1. Purposes. The purposes of BHG are to provide group self-insurance programs to members; to secure appropriate excess insurance and/or reinsurance on a group purchasing basis, to provide members with the mechanisms to accumulate, administer and invest funds to self-insure or insure as a group various exposures up to specified, predetermined limits of coverage; and to effect cost savings to members in the administration of such group self-insurance and/or group insurance purchasing programs as may be established by BHG in order to reduce the cost of health care to the patient-consumer.

2. Term. This Agreement shall become effective as of the date hereof, and shall continue in full force and effect until it is terminated and BHG is dissolved, as provided herein. It is the intent of the parties hereto that the separate public agency created under this Agreement have an indefinite life, and shall continue to exist so long as necessary to carry out the purposes of this Agreement, including the orderly wind-up of the affairs of BHG. It is the further intent of the parties that the withdrawal or termination of any member from any pool or other program of BHG, or from BHG itself, shall not terminate such program or this Agreement as to the remaining members therein, nor relieve any member or former member from any obligations it may have under this Agreement, except as expressly provided in article XXI.

### III.

#### CREATION OF AUTHORITY

Pursuant to Section 6500 et seq. of the Government Code, there is hereby created a public entity, separate and apart from the parties hereto, to be known as BETA Healthcare Group Risk Management Authority. Pursuant to Government Code Section 6508.1, the debts, liabilities, and obligations of BHG shall not constitute debts, liabilities, or obligations of any party to this Agreement. No party to this Agreement shall have any right, title or interest in the assets of BHG, or in any contributions, consideration or property paid or donated by a party to BHG, or any of its programs, except as expressly provided in this Agreement.

### IV.

#### ORGANIZATION & ADMINISTRATION

1. Responsibility. The overall responsibility for administration of a group self-insurance, group insurance purchasing or any other BHG program or activity of BHG shall be vested in the BETA Council.

2. Agents. Each member hereby appoints the BETA Council and its delegates or designees to act as its agents in executing all contracts, reports, waivers, agreements and service contracts and to make and arrange for the defense, settlement, and payment of claims and all other things required for the proper and orderly operation of BHG.

3. Bylaws. BHG shall be governed pursuant to this Agreement and to the Bylaws. Amendment of the Bylaws may be proposed by any member or BETA Council member. A copy of the proposed amendment and the reasons therefore shall be presented to the BETA Council, if not proposed by the BETA Council. All proposed amendments shall be approved by a two-thirds vote of the BETA Council. Upon its approval, the amendment shall be disseminated to all members. The effective date of any amendment shall be the July 1st following adoption, unless otherwise stated in the amendment. Each party to this Agreement agrees to comply with and be bound by the provisions of the said Bylaws and further agrees that all group self-insurance and group insurance purchasing programs and BHG shall be operated pursuant to this Agreement and the said Bylaws. In the event of any conflict between the Bylaws and this Agreement, this Agreement shall prevail.

4. BETA Council. The governing body of BHG shall be known as the “BETA Council.” Upon approval by the members of this amended Agreement, the Council shall continue in office and shall be responsible for overseeing the organization and operation of BHG and all of its programs, as provided herein. The BETA Council shall establish such policies and guidelines as may be necessary to carry out any BHG program. The organization and structure of the BETA Council shall be established in the Bylaws, as they may be amended as provided therein.

V.

POWERS OF AUTHORITY

1. BHG shall have the following common powers and is hereby authorized to perform all acts necessary for the exercise of said common powers:

A. To make and enter into contracts, including contracts of insurance and self-insurance for its members providing for risk pooling or sharing, whether or not subject to regulation under the Insurance Code, to the extent and in the manner permitted under Government Code Sections 990, 990.4, 990.8, and 6508, or any other provision of law;

B. To hire employees, and contract with consultants and legal counsel;

C. To invest and reinvest money in the treasury of BHG pursuant to Government Code Section 53601, et seq.;

D. To incur debts, liabilities, or obligations;

E. To acquire, hold, lease, or dispose of real or personal property;

F. To sue and be sued in its own name;

G. To establish and operate other programs of group self-insurance and insurance, and/or joint purchasing programs designed to reduce the operating costs and/or improve patient safety for the members;

H. To purchase excess insurance and/or reinsurance on behalf of members and/or BHG;

I. To exercise all powers necessary and proper to carry out the terms and provisions of this Agreement, or otherwise authorized by law;

2. Said powers shall be exercised pursuant to the terms hereof, subject to the restrictions upon the manner of exercising the powers set forth in the Local Health Care District Law. (Division 23 of the Health & Safety Code.)

VI.

BETA COUNCIL

1. Number. BHG shall be governed by the BETA Council which is hereby established and which shall be composed of not less than seven, nor more than 21 representatives of the members, who shall be elected by the members, in accordance with the Bylaws of BHG. In addition to the representatives elected by the members, the BETA Council may elect a Director Emeritus to be selected by a majority vote of the BETA Council from among the past Chairs of the group self-insurance program. The person selected to the Director Emeritus position will have full voting rights on the BETA Council and all committees to which he or she is appointed, and will be counted toward a quorum.
2. Term. Each member of the BETA Council shall serve for a term of four years and until a successor is elected or appointed. Each Council member shall have one vote.
3. Members' Meetings. There shall be an annual meeting of members for the purpose of electing members of the BETA Council and to transact any other BHG business. The annual meeting, and any additional meetings, shall be held at the call of the Chair. Twenty percent of the members may also call a meeting of members. A majority of the members shall constitute a quorum to transact business at the meeting. Each member shall be represented at meetings by its chief executive officer or his or her designee. If a designee is to represent the member, written notice from the member's Board of Directors shall be provided to BHG.

VII.

POWERS OF THE BETA COUNCIL

The BETA Council shall have the following powers and functions:

- A. The BETA Council may review all acts of the Executive Committee and shall have the power to modify and/or override any decision or action of the Executive Committee upon a majority vote of the entire BETA Council.
- B. The Council shall review, modify, if necessary, and approve the annual operating budget of BHG prepared by the Executive Committee.
- C. The BETA Council shall receive and review periodic accountings of all funds under this Agreement.
- D. The BETA Council shall have the power to conduct, on behalf of BHG, all business of BHG, including that assigned to the Executive Committee, which BHG may conduct under the provisions hereof and pursuant to law.
- E. The BETA Council shall have such other powers and shall perform other functions as provided for in this Agreement.

VIII.

MEETINGS OF THE BETA COUNCIL

1. Meetings. The BETA Council shall provide for its regular, adjourned regular, and special meetings upon call of the Chair, Vice Chair, or Chief Executive Officer of BHG; provided, however, that it shall hold at least four regular meetings annually, as set forth in the Bylaws.
2. Minutes. The Secretary of BHG shall cause minutes of regular, adjourned regular, and special meetings to be maintained upon approval by the BETA Council.
3. Quorum. A majority of the voting members of the Council shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. A vote of the majority of a quorum present at a meeting shall be sufficient to constitute action by the Council, except as otherwise specifically set forth in this Agreement or in the Bylaws.

IX.

EXECUTIVE COMMITTEE

1. There shall be an Executive Committee of the BETA Council, which shall consist of at least six members of the Council, as provided in the Bylaws.
2. Vacancies on the Executive Committee shall be filled as provided in the Bylaws.

X.

POWERS OF THE EXECUTIVE COMMITTEE

The BETA Council may delegate to the Executive Committee such powers as the BETA Council deems appropriate.

XI.

MEETINGS OF THE EXECUTIVE COMMITTEE

The meetings of the Executive Committee shall be held and conducted as provided in the Bylaws. The Committee shall make periodic reports to the BETA Council, advising the Council of its decisions and activities.

XII.

OFFICERS OF BHG

1. Chair, Vice Chair, Secretary and Treasurer-Auditor. The BETA Council shall elect from the Council a Chair, Vice Chair, Secretary and Treasurer-Auditor of BHG for terms of not less than one nor more than four years, as provided in the Bylaws, each to hold office until a successor is elected.

In the event an officer so elected ceases to be a member of the Council, the resulting vacancy in the office shall be filled at the next regular meeting of the Council held after such vacancy occurs. The Executive Committee may appoint an interim officer pending action by the Council. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair. The Chair, or in his or her absence the Vice Chair, shall preside at and conduct all meetings of the Council and shall chair the Executive Committee.

2. Other Officers. The BETA Council shall have the power to appoint such other officers as may be necessary to carry out the purposes of this Agreement.

### XIII.

#### CONTRIBUTIONS AND OPERATIONS

1. Contributions. The parties agree that each member in the group self-insurance program shall make payment of contributions for coverage under the group self-insurance program and the operations of BHG. The amount of such contribution for each member in the group self-insurance program shall be determined as provided in the Coverage Contracts entered into by such member, and any rating amendments that are made a part of such Coverage Contracts. It is agreed that there must be a timely and orderly method of determining and paying such contributions. The BETA Council is therefore authorized and directed to establish the rate of contribution for each member, and the time schedule for payment of such contribution. Members acknowledge that the rates established by the BETA Council for coverage under the group self-insurance program may reflect changes in coverage, exposures, excess insurance and/or reinsurance premiums, and administrative costs as well as the past or projected experience of the members, as a group, and the judgment of the Actuary. Such rates will not necessarily reflect the experience of an individual member during any specific period of participation. Consequently, there can be no assurance that current or former members will benefit equally from changes in the group self-insurance program (including, but not limited to, changes in eligibility for credits, dividends, or enlargements of coverage grants), nor that the burdens will be equally shared. The timely payment of all contributions to the group self-insurance program shall be a condition precedent to the continuation of participation by each member in the group self-insurance program and BHG. A member has no title or interest in the member's or other members' contributions, whether equitable or otherwise, except as expressly provided in this Agreement.

2. Annual Nature of Contributions. Participation in the group self-insurance program, except initial participation which may be less than one year, shall be for one year at a time commencing July 1 and ending June 30 (the contract period), subject to termination at any time upon either the group self-insurance program or member giving 30 days' notice in writing to the other, unless otherwise provided in the Coverage Contract accepted by a member. Participation may be renewed for additional contract periods by submitting to BHG, such information as the Administrator may require or may specify in the Coverage Contract, and by remitting to BHG upon such payment schedule as BHG shall specify, the member's contribution for the following year.

3. Computation and Notice of Rates. The rates to be used in calculating monthly contributions for each member for participation in the group self-insurance program shall be determined by the

BETA Council not less than 30 days prior to the commencement of the coverage year and communicated to all current members as soon as practicable thereafter.

The Administrator, in consultation with the Actuary, shall determine the rates to be submitted to the BETA Council for review and approval. Rate computations may take into account factors including, but not limited to, the total number of beds, outpatient visits, inpatient visits, and physicians on the medical staff, surgeries, reinsurance premiums, administrative costs, and loss experience of the individual member and of all members. The Administrator and/or the BETA Council may also consider industry trends and other factors and methods commonly used by insurers in rate setting.

4. Loss Control and Risk Management. Members agree to follow the loss prevention and risk management recommendations of the Administrator, and to abide by all conditions, requirements, rules and regulations regarding loss control and risk management which may be promulgated by the BETA Council.

5. Right to Inspect. As provided in the Coverage Contracts, each member agrees that the BETA Council, Administrator, or any of their respective agents, servants, employees or attorneys shall be permitted at any reasonable time to inspect member's property and operations and to examine member's books, documents and records as necessary in the proper operation of the group self-insurance program or BHG.

6. Audit. The BETA Council shall obtain an annual audit of the financial affairs of the group self-insurance program and BHG by a certified public accountant at the end of each fiscal year in accordance with generally accepted auditing principles. A copy of the annual audit report shall be delivered to each member. The costs of such audit shall be paid from the funds of the group self-insurance program and BHG, as appropriate.

7. Management Audits. The BETA Council shall arrange for triennial audits of the group self-insurance program by a qualified consultant. Such audit may consider one or more of the following areas: underwriting, claims and/or investment management, administrative procedures and practices, claims reserving, and such other activities as may be determined by the BETA Council. The BETA Council is also empowered to retain an independent actuary in connection with such audits.

8. Binding Nature. Any County or Governmental Entity which makes application for participation in the group self-insurance program or any other BHG program and is accepted as a member and signs this Agreement, shall thereupon become a party to this Agreement and shall be bound by all the terms and conditions hereof; provided, however, that any County or Governmental Entity may be refused admission to BHG or any of its programs in the sole absolute and unreviewable discretion of the BETA Council.

9. Deposit of Funds. Members shall pay contributions into the group self-insurance program and other BHG programs. The contributions and income there from shall be accumulated to pay the administrative costs of BHG and claims against members together with allocated costs, up to a specified amount to be determined from time to time by the BETA Council. Members may also pay contributions for participation in group insurance purchasing and/or other programs to BHG, which shall be administered by the BETA Council pursuant to the provisions of those programs, this

Agreement and the Bylaws. Funds received by BHG shall be deposited and invested in accordance with the laws of the State of California pertaining to the investment of excess funds of Healthcare Districts.

10. Contributions by Members. Without in any way limiting the powers otherwise provided for in this Agreement, the Bylaws, or by statute, BHG shall have the power and authority to receive, accept and utilize the services of personnel offered by any member or its representatives or agents; to receive, accept, and utilize property, real or personal, from any member or its agents or representatives; and to receive, accept, expend and disburse funds by contract or otherwise, for purposes consistent with the provisions of this Agreement, which funds may be provided by any member, its agents, or representatives.

11. Excess Insurance and Reinsurance. BHG shall obtain or cause to be obtained such excess insurance or reinsurance as may be necessary and prudent in the judgment of the BETA Council. The expense of such excess insurance or reinsurance shall be paid from the Funds of BHG.

#### XIV.

#### CLAIMS ADMINISTRATION & PAYMENT OF EXPENSES OF THE GROUP SELF-INSURANCE PROGRAM

1. General. The principal purpose for the establishment of the group self-insurance program is to provide for the orderly presentment, examination, investigation, defense and/or settlement of certain identified claims made against the members. It is agreed and understood that BHG shall use the sums contributed by all the members in connection with the group self-insurance program to pay such claims and related expenses for all the members, and BHG's administrative costs.

2. Presentment of Claims. The services and benefits to be provided under the group self-insurance program shall be paid by or furnished to or for the benefit of a member with respect to a particular incident or claim only if BHG is notified as required by the Coverage Contract.

Upon presentation of a claim to BHG under the group self-insurance program, the following accounting procedures shall be followed in connection with such claim:

- (a) The claim shall be evaluated as to probable loss exposure and defense cost.
- (b) The sum so determined shall be established as a reserve. Such reserved sum shall be held for the administration and payment of such claim, and for no other purpose.
- (c) A reserve shall be established in order of the presentation of the claims.
- (d) The reserves shall be adjusted from time to time based upon the most recently available information related to such claims.

At each regularly scheduled BETA Council meeting, the Administrator shall advise the BETA Council regarding the current status of major claims against members.

3. Investigation and Defense. The Administrator will investigate, or cause to be investigated, all such claims referred to in the foregoing paragraphs and will attempt to adjust or settle such claims, in accordance with the authority delegated to the Administrator by the BETA Council and the member involved. Each party to this Agreement hereby delegates such authority, subject only to the terms and conditions of the group self-insurance program in which the member participates. As required, and subject to the provisions of the Coverage Contracts, BHG, through designated defense counsel, will provide legal defense of claims against members. The member agrees to cooperate fully with BHG in such matters and to provide and make available all information and personnel as may be reasonably required in the opinion of Administrator to fully investigate and defend the claim.

4. Payment of Benefits. For claim payments in excess of the authority delegated to the Administrator, the Administrator shall pay claims as directed by the BETA Council at regularly scheduled or special meetings.

It is understood that the BETA Council and Administrator shall use their discretion in making judgments and assumptions as to the actual value of any claim and setting such reserves based on such judgments.

5. Installment Payment of Judgments. The Administrator is authorized to seek authority for periodic payment of judgments, pursuant to provisions of California law.

## XV.

### TERMINATION OR WITHDRAWAL OF MEMBER

1. Withdrawal of Member. A member may terminate its participation in the group self-insurance program, or in other BHG programs, or from all programs of BHG and from BHG itself, by giving at least thirty calendar days' written notice of withdrawal, unless otherwise provided in the Coverage Contracts, insurance policies, certificates of coverage, or other contracts issued by or through BHG directly or indirectly. A withdrawing member shall remain liable for any unpaid contribution (including late payment fees) and/or claim deductibles which shall have accrued under any Coverage Contract, insurance policy, certificate of coverage, or other contracts and for any liability it may have to BHG itself, through the effective date of termination. Upon its voluntary withdrawal or its termination as a member in BHG or from BHG's healthcare entity comprehensive liability coverage, a former member becomes ineligible to participate in any other BHG program, except that the rights of a member after termination shall be limited to those benefits, such as the defense and indemnity of claims covered under Coverage Contracts issued by BHG, which have accrued as of the date of termination as determined by the provisions of the Coverage Contracts, or other evidence of coverage and/or insurance issued to the member. A withdrawing or terminating member shall have no other rights in any assets of BHG or any BHG program, whether denominated as fund balance, equity, surplus, dividends, credits, contributions or otherwise, unless the circumstances described in article XXI apply to such withdrawal.

2. Involuntary Termination. A member may be terminated by BHG from any BHG program, or from BHG itself, for:

(i) Failure to comply with any term or condition of the Coverage Contracts, insurance policies, certificates of coverage issued by BHG; or

(ii) With or without cause, upon a two-thirds vote of the members of the BETA Council.

3. Adjustment. Whether termination is voluntary or involuntary, a member shall remain liable for any unpaid contribution, late payment fees and/or deductible amounts which shall have accrued prior to withdrawal or termination of its participation in the group self-insurance program, or any other BHG program, or BHG itself. Adjustment for amounts of contributions due the group self-insurance program upon termination shall be made within 30 calendar days of the time at which cancellation is effective.

4. No Continued Liability. Except as provided in Paragraph XV, Sections 1 and 3, after a member withdraws or terminates, such withdrawing party shall not be subject to assessment to maintain the solvency of any pool or other program of BHG.

#### XVI.

#### PROGRAM ADMINISTRATOR

1. Appointment of Administrator. The BETA Council shall appoint or employ an experienced and qualified Administrator to administer BHG, including the group self-insurance program. Such Administrator may be a person, association, partnership, corporation, contracted or employed staff, or any other form of entity.

2. Duties of Administrator. The Administrator shall have all such duties and authorities as may be delegated to it by the BETA Council. If the Administrator is not the employed staff of BHG, the BETA Council shall enter into a service agreement or establish policies and procedures which shall specify all of the duties and obligations of the Administrator.

#### XVII.

#### DEPOSITORIES

1. Designation of Depositories. The BETA Council shall appoint one or more institutions qualified under the laws of California to act as a depository for the funds of BHG.

2. Duties. In accordance with policy guidelines established by the BETA Council, the BETA Council and its Treasurer-Auditor shall be responsible for depositing and investing all funds of the group self-insurance program and such other funds of BHG as the BETA Council may direct. The BETA Council may appoint one or more investment managers and may delegate investment decisions to such firms, subject to BHG's Investment Policy. Custody of all funds shall be maintained by one or more lawful depositories out of which expenses, claims and settlements on behalf of the group self-insurance program may be paid as directed by the Administrator.

3. Terms and Conditions. Depositories shall be paid such reasonable compensation as shall be agreed upon from time to time by BETA Council, pursuant to a written contract establishing terms and conditions under which services will be provided. Said compensation shall be an expense of the group self-insurance program and BHG.

## XVIII.

### ACCOUNTS AND RECORDS

1. Annual Budget. The BETA Council shall annually adopt an operating budget for BHG.

2. Funds and Accounts. The Treasurer-Auditor of BHG shall establish and maintain, and shall cause each Depository to establish and maintain, such funds and accounts as required by the BETA Council and as required by good accounting practice. Books and records of BHG in the hands of the Treasurer-Auditor shall be open to any inspection at all reasonable times by the BETA Council and as otherwise required by law. The Treasurer-Auditor, with the BETA Council's approval, may delegate the above tasks to the Administrator.

3. Bond. A bond in the amount determined adequate by the BETA Council may be required of any officers and personnel authorized to disburse funds of BHG. Such bond shall be paid for by BHG.

## XIX.

### ACTUARY

1. Appointment. The BETA Council shall retain an Actuary.

2. Duties. Actuary shall have all duties as may be delegated to it by the BETA Council in a written contract between Actuary and the Administrator. It is contemplated that the duties of Actuary shall include but not necessarily be limited to the following:

- A. Recommend contribution rates;
- B. Review rating structure;
- C. Monitor claims and analyze loss reserves;
- D. Monitor participation in all group self-insurance programs;
- E. Assist the BETA Council in financial planning;
- F. Upon request of the Administrator, evaluate reinsurance proposals.

3. Payment. The professional fee and reimbursement of reasonable expenses paid to the Actuary for its services shall be an expense of the group self-insurance program, except as to any

actuarial services provided for insurance programs of BHG. The professional fee may be based on a flat sum, an hourly rate, or another method as the parties may specify. Unless otherwise specified in the contract, the professional fee shall be full payment by BHG for discharge of Actuary's duties.

4. Termination. The contract between BHG and Actuary may be terminated by either party on 30 days' written notice to the other party of such termination, in which event Actuary shall be paid for all services rendered by it up until the effective date of such termination, but shall not be paid for any work it may do thereafter except as otherwise specifically agreed. Upon termination, Actuary shall return all books, records, files and other items pertaining to the group self-insurance program and any other program of BHG, its members and their claims to BHG or its designee, promptly upon request by the BETA Council or the Administrator.

## XX.

### LEGAL COUNSEL

1. Appointment. The BETA Council shall appoint an attorney for BHG to serve as General Counsel, whose services may be made available to the group self-insurance program upon request by the BETA Council or Administrator. The BETA Council may retain Special Counsel as needed.

2. Payment. The professional fees of General and any Special Counsel for services rendered to BHG shall be based on a retainer, an hourly rate, or other method as the parties may specify. The professional fees shall include all normal overhead expenses of General and Special Counsel except items such as duplication of copies, long-distance telephone calls, hotels, motels, travel or other items not incidental to normal office overhead.

3. Termination. The contract between BHG and General Counsel may be terminated by either party on 30 days' written notice to the other party of such termination, in which event General Counsel shall be paid for all services rendered by it up until the effective date of such termination, but shall not be paid for any work it may do thereafter except as otherwise specifically agreed. Upon termination, General Counsel shall return all books, records, files and other items pertaining to the group self-insurance program and any other program of BHG, its members and their claims to BHG or its designee, promptly upon request by the BETA Council or the Administrator.

## XXI.

### AMENDMENT AND TERMINATION

1. Amendment. Members may amend this Agreement at any time by an instrument in writing approved by a majority vote of the BETA Council and executed by a majority of the members, provided, however, that:

No amendment shall retroactively reduce the benefits which any member is entitled to receive under any Coverage Contract for any coverage year in which a member was a fully qualified member in the group self-insurance program, without the member's written consent.

Upon approval, as above, by the BETA Council, and upon execution of any amendment by a majority of the members, the said amendment shall immediately be effective and binding upon all members. Any member that has failed to sign the amendment shall have the option of withdrawing from BHG on the first day of the month following the month in which a majority of the members have completed approval of the amendment, or remaining in BHG and being bound by such amendment.

2. Termination by Agreement. Members may terminate the group self-insurance program, or any insurance program of BHG, or BHG without a successor program or entity effective as of the end of the then-current coverage year, by an instrument in writing approved by a majority vote of the BETA Council, executed by a majority of the members; provided, however, if the group self-insurance program or any insurance program of BHG or BHG shall be so terminated, such termination shall not reduce or terminate the rights, benefits, and obligations of any member as to any claim theretofore presented.

3. Termination by Withdrawals. If, at any time, by reason of withdrawals or terminations of members, the Actuary shall advise and the BETA Council concurs that the group self-insurance program or any insurance program of BHG is no longer economically feasible or actuarially sound, then such program or programs shall be terminated and dissolved by the BETA Council.

4. Disposition of Funds Upon Termination. Upon termination of the group self-insurance program or any other program of BHG, BHG shall retain in a liquidation fund such sums up to the entire amount held by BHG for the benefit of the members in such program as the BETA Council deems sufficient to pay the remaining obligations of the group self-insurance program or other program. In the alternative, BHG may insure or reinsure all outstanding liabilities of members in such program. Any funds remaining after termination of the group self-insurance program or other program of BHG, after adequate provision for all liabilities and claims hereunder, shall be distributed to members and former members in the same proportion as each member's (or former member's) total contributions paid by that member, reduced by the amount of losses and allocated claims expenses paid on behalf of that member, bear to all contributions paid by all members, reduced by the total losses and allocated claims expenses paid on behalf of all members from the inception of the group self-insurance program or other program of BHG to its termination. If BHG insures or reinsures all outstanding liabilities of members, any funds remaining in excess of amounts necessary to pay the cost of such insurance or reinsurance shall be distributed to members in accordance with this Section, not later than 12 months after payment of the final insurance or reinsurance premium. If BHG elects to liquidate the liabilities by means of a liquidation fund, any excess funds shall be distributed not later than 25 years following the date of termination of the group self-insurance program or any other program of BHG. The BETA Council shall determine such distribution within six months after disposal of the last pending claim or loss covered by the program being terminated.

5. Termination of BHG. BHG itself may be terminated and dissolved in the same manner and subject to the same conditions as any pool or other program may be terminated; provided that, in addition, the Treasurer-Auditor shall disburse any funds in the treasury not held by a Depository as directed by the BETA Council. The BETA Council is vested with all powers of BHG for the purpose of winding up and dissolving the business affairs of BHG.

XXII.

CLAIMS, LITIGATION, OR JUDGMENTS AGAINST BHG

1. Defense of Claims. As to any claim or action against BHG which is based on or arises out of an occurrence involving a BETA Council member, officer or employee of BHG during the course and in the scope of such duties, who is also a director, officer or employee of a member, such claim or action against BHG will be defended by BHG to the extent authorized by law. Such claims or actions shall not be considered claims or actions against such member solely as a result of employment by BHG.
2. Claims and Judgment Against BHG. Claims and judgments against BHG, its agents, the BETA Council members, officers or employees, shall be paid from, or charged to, the appropriate coverages or self-insured funds BHG has established and/or purchased against such claims, judgments or losses.
3. Arbitration. All disputes concerning, arising out of or relating to this Agreement shall be submitted to binding arbitration, unless both parties agree in writing to a different procedure than outlined in this section.

The arbitration will be governed by the California Arbitration Act, Section 1280, et seq. of the Code of Civil Procedure. BHG and each member waives the right to court remedies, including a jury trial. In all such arbitrations, this Agreement shall be considered a contract arrived at by mutual negotiation and consent and not a contract of adhesion, and therefore shall not be construed liberally in favor of or strictly against any party. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing an instrument or any portion of it to be drafted, or in favor of any party.

Before resorting to arbitration, any member shall first exhaust any internal dispute resolution procedures and/or administrative remedies, including but not limited to requesting a hearing before the BETA Council.

In any arbitration, one Arbitrator will be chosen by all member(s) collectively, the other by BHG. A neutral Arbitrator will be chosen by the mutual agreement of the two Arbitrators before they enter into arbitration. If any party should fail to choose an Arbitrator within 30 days following a written request by the other party to do so, the requesting party may choose two Arbitrators.

Each party will present its case to the Arbitrators within 30 days and following the date of appointment of the Neutral Arbitrator. The Neutral Arbitrator shall be the judge of the relevance of the evidence offered and is not required to follow the strict rules of evidence. The decision of the Arbitrators chosen by the parties shall be final and binding on both parties, but, if these Arbitrators fail to agree, the decision of the majority of the Arbitrators shall be final and binding upon both parties. The Arbitrators shall be limited to the remedies that could be awarded by the Superior Court of the State of California. Judgment upon the final decision of the Arbitrators may be entered in any court of competent jurisdiction.

Each party shall bear the expense of its own Arbitrator, and shall jointly and equally bear with the other the expense of the Neutral Arbitrator and of the arbitration. In the event that the two Arbitrators are chosen by one party, as provided above, the expense of the Arbitrators, the Neutral Arbitrator and the arbitration shall be equally divided between the two parties.

Any arbitration proceedings shall take place in Walnut Creek, California, or a mutually agreed upon location in California.

### XXIII.

#### MISCELLANEOUS

1. Binding Nature. This Agreement contains the entire agreement of the parties and supersedes all discussions, negotiations or promises made prior to the execution of this Agreement. This Agreement shall be binding upon and inure to the benefit of the original parties hereto and any substitute or additional parties who are bound hereby in accordance with the provisions hereof, their successors and assigns.
2. Notices. Any notices required by law or this Agreement shall be sufficient if given in writing and deposited in the United States mail, postage prepaid, addressed to the member at the last address on file with BHG. Notices to be given to BHG shall be directed to such address as BHG shall designate for such purpose.
3. Partial Invalidity. If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement shall to any extent be judged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.
4. Successors. This Agreement shall be binding upon and shall inure to the benefit of successors of the parties.

5. Counterparts. This Agreement may be executed in one or more counterparts, and shall be deemed effective as to all signatories as though signed in one document.

6. Inspection of Records. BHG shall make all of its documents, books and records related to the operations of the group self-insurance program accessible and available to the Secretary of Health and Human Services, to the Comptroller General or their duly authorized representative as required by Section 952 of Public Law 96-499. Said access shall be limited to four years after the rendering of services costing \$10,000 or more over a 12 month period. This shall include all said services rendered after December 5, 1980.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers thereunto duly authorized, and their official seals to be affixed as of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name of Healthcare Entity/Named Member

By: \_\_\_\_\_

Title: \_\_\_\_\_