

# CENTRAL CALIFORNIA TRIBAL CHAIRPERSONS' ASSOCIATION

## INDEMNITY POLICY

### **Section 1. Purpose**

The Indemnity Policy of the Central California Tribal Chairpersons' Association ("Association" or "CCTCA"), an inter-tribal organization consisting of participating tribes in the Central California Region ("Member Tribes"), is intended to set forth the guiding rules and principles governing the defense and indemnity of Member Tribes, their representatives and officials elected to the Governing Board. The overall goal is to ensure consistency and fairness, protect the integrity and reputation of the Association, and minimize risks of liability of the CCTCA and its Member Tribes, officials and representatives, while protecting the CCTCA's resources and assets from undue risk of loss.

The Association's Indemnity Policy shall be in accordance with its Bylaws, and all other applicable laws and approved policies and procedures. To the extent there is any conflict between the Bylaws and this Indemnity Policy, the Bylaws shall control.

### **Section 2. Limitation of Liability.**

A Member Tribe, a Member Tribe's representatives appointed to the CCTCA, and any official elected to the CCTCA's Governing Board, shall not be personally liable for monetary damages for any action taken, or any failure to take any action, as an agent or representative of the CCTCA, unless applicable law otherwise precludes the limitation of liability for monetary damages.

This Section is not intended to restrict the ability of the CCTCA to secure appropriate injunctive relief from any Member Tribe, representatives appointed to the CCTCA by Member Tribes, and any official elected to the CCTCA's Governing Board, in a court or other forum with competent jurisdiction.

### **Section 3. Discretionary Right to Indemnification.**

The Association shall conduct an investigation associated with any claim against, and any request for defense and indemnity by, a Member Tribe, its representative(s) and/or an official elected to the Governing Board under this Indemnity Policy. In that regard, the Association shall use legal counsel as appropriate in order to protect the privileged status of evidence collected in the course of such investigation.

Based on that due diligence and confidential investigation, the Association may, in its discretion, decide to defend and indemnify any Member Tribe, representative of a Member Tribe, and/or official elected to its Governing Board, who is or was a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that the person is or was an agent of the CCTCA, is or was acting at the request of the CCTCA, as an officer, employee, agent, fiduciary or other representative of a Member Tribe, against expenses (including attorneys' fees), judgments, fines, excise taxes, and amounts paid in settlement actually and reasonably incurred

by the person in connection with such action, suit, or proceeding. The Association may seek reimbursement of any defense and indemnification, or decline to provide indemnity, if it determines the individual Member Tribe's or person's act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct.

The right to defense and indemnity is not mandatory. The existence of resources, whether through a defense trust fund established collectively by Member Tribes, the existence of coverage under a liability insurance policy, or otherwise, may be considered by the Association and Governing Board when deciding whether to cover the cost of defense and indemnity in a particular case. When the Association or Governing Board has agreed to provide defense and indemnity in a particular matter, it shall provide a defense and indemnity for all CCTCA defendants, treating all equally absent a compelling reasons to differentiate among them.

#### **Section 4. Advance of Expenses.**

In the event the CCTCA has decided to provide a defense and indemnification in any particular context, expenses (including attorneys' fees) incurred by a Member Tribe, Member Tribe's representative and elected Governing Board member in defending any action, suit or proceeding referred to above shall be paid by the Association (or insurer) in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the CCTCA.

#### **Section 5. Authority to Approve Defense and Indemnity**

The Association shall have the authority to determine the right to defense and indemnification in any case. The Governing Board shall have such approval authority in the event there exists an established trust fund designed to cover the expenses of such defense and indemnity, or alternatively, there exists an insurance policy that would provide coverage for such defense and indemnity. Appropriate conditions may be placed on the provision of a defense and indemnity in any particular case, and said conditions will be memorialized in a document that, if the Association or Governing Board requires, is judicially enforceable.

#### **Section 6. Recusal Required Where Member Tribal/Individual Seeking Defense Is Conflicted.**

Notwithstanding the foregoing Section 5, in no instance may a Member Tribe, representative of a Member Tribe, or elected member of the Governing Board determine its or his/her right to a defense and indemnity in a particular matter. In the event a conflict of interest exists, such Member Tribe, and any such person, shall recuse itself/himself/herself from the decision as to whether the CCTCA shall provide it/him/her a defense and indemnity. Furthermore, in the event the entire Governing Board seeks defense or indemnification in any particular case or against any particular claim, the Association itself shall determine the matter.

**Section 7. Indemnification Not Exclusive; Survives Termination of CCTCA Relationship.**

The indemnification and advancement of expenses provided by or pursuant to this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the CCTCA's Bylaws, any insurance or other agreement, both as to actions in their official capacity and as to actions in another capacity while holding an office. To the extent the CCTCA agreed to provide a defense and indemnification in any particular matter, said defense and indemnity shall continue as to a person who has ceased to be a representative or officer of the CCTCA and shall inure to the benefit of the heirs, executors and administrators of such person.

**Section 8. Creation of Defense Trust Fund/Procurement of Insurance Coverage.**

By resolution of the Governing Board, the Association may create and fund a defense fund, trust fund or fund of any nature, for general use, or for use in a particular case or proceeding.

By resolution of the Governing Board or Association, the CCTCA also may enter into agreements with its Member Tribes, representatives, officers, employees and agents for the purpose of securing or insuring in any manner an agreement to indemnify or advance expenses provided for or authorized in this Article or by law.

The Governing Board shall secure, in the name of the CCTCA, appropriate liability insurance coverage designed to protect the Association and its assets from undue risks of loss and liability.

**Section 9. Sovereign Immunity.**

Nothing in this Indemnity Policy may be construed to be a consent or submission by the Member Tribe to the power, jurisdiction or regulatory authority of any other entity, including the Association itself, and each Member Tribe's sovereign immunity shall remain intact. This explicit preservation of each Member Tribe's sovereign authority and immunity extends to every representative Tribal official, employee, entity, or other agent, all of whom participate in this inter-tribal entity in the course and scope of their official capacities for, and on behalf of, their respective participating Member Tribes.