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# *Department of Administrative Services*
# *Risk Management Services*

STATE TORT CLAIMS POLICY

JULY 1, 2008 – JUNE 30, 2009

# STATE TORT CLAIMS POLICY
# Policy Number TCP-401-14-09

This is a contract issued by the Georgia Department of Administrative Services (DOAS) pursuant to the authority granted by the Official Code of Georgia Annotated 50-21-20 to provide insurance coverage to the following:

## NAMED INSUREDS:

1) All State of Georgia Government Entities which includes State Offices, Agencies, Authorities, Departments, Commissions, Boards, Divisions, Instrumentalities, or Institutions;
2) The Department of Administrative Services may provide endorsements for contractual liability.
3) The Department of Administrative Services may, where necessary to the public purposes of the State entity, provide for additional insureds.

## TERRITORY:

This policy covers occurrences anywhere in the world but only if the claim or suit is filed in the Courts of the State of Georgia.

## PART I – INSURING AGREEMENT

This insuring agreement will pay from the Georgia Tort Claims Trust Fund (hereinafter known as the Fund) all sums the insureds become legally obligated to pay as damages, court costs and litigation expenses because of negligence of State officers and employees performing their official duties or employment causing bodily injury, property damage, loss of wages, economic loss, disease, pain and suffering, death, and any other element of actual damages recoverable in actions for their negligence.

## LIABILITY COVERAGE

The Georgia General Assembly has elected to waive the State's Sovereign Immunity for the torts of State officers and employees, while the officers and employees are acting within the scope of their official duties or employment. The General Assembly directed the Georgia Department of Administrative Services to formulate a sound program to pay claims against the State. This insuring agreement is intended to comply and in all respects be consistent with the General Assembly of Georgia's public policy that the State will be liable in Tort actions only as provided for in the "Georgia Tort Claims Act" O.C.G.A. 50-21-20, et. seq..

The General Assembly recognizes that the proper functioning of State Government requires that State officers and employees be free to act and to make decisions, in good faith, without fear of exposing themselves to law suits and loss of their personal assets. Consequently, it is declared to be the public policy of the State that State officers and employees shall not be subject to lawsuit or liability arising from the performance or nonperformance of their official duties or functions. Therefore, the State waives its Sovereign Immunity for the torts of State officers and employees while the officers and employees are acting within the scope of their official duties or employment; provided, however, the State waives its Sovereign Immunity only to the extent provided in the "Georgia Tort Claims Act" and only with respect to actions brought in the Courts of the State of Georgia and does not waive any immunity with respect to actions brought in the Courts of the United States or courts in other states. This policy constitutes the exclusive source of recovery for any tort committed by a State officer or employee while acting within the scope of their official duties or employment and only if the claim is brought in the courts of the State of Georgia.

## INCURRED EXPENSES

When a State Agency is requested by the Georgia Department of Administrative Services to provide services or to incur expenses in connection with any claim insured by the Fund, DOAS may provide payment from the Fund for such services and expenses.

## PART II – LIMITS OF LIABILITY

The limitation on the Fund's liability shall be as stated on the Declarations page attached hereto and made a part of this policy. Provided, however, where losses are incurred as a combination of bodily injury, property damage, or personal injury to one person, all such damages shall be combined in calculating the total liability per person which shall not exceed the per person liability limit of $1,000,000. Where losses are incurred to multiple persons for bodily injury, property damage, or personal injury, all such losses shall be combined and shall not exceed $3,000,000 per occurrence nor exceed $1,000,000 per person. All loss(es) arising out of the same act, or acts, of the State government entity or entities shall be considered as arising out of a single occurrence. If multiple lawsuits are filed as a result of the same occurrence, the limits of liability against the Fund is the amount specified on the Declarations Page. However, in any action or claim for damages brought under the provisions of the Georgia Tort Claims Act pursuant to Article 8 of Chapter 8 of Title 31, any caps specified under Code Section 51-13-1, notwithstanding any applicability limitations specified in such Code section, shall serve as a total cap of all damages, regardless of the type of damages claimed; provided, however, that in no event shall the state's liability exceed the limits stated in this paragraph. The total aggregate Fund limit of liability for the State Tort Claims Trust Fund shall never exceed the amount of funds available from the State Tort Claims Trust Fund. Any judgments obtained in excess of this aggregate fund limit shall not be payable unless and until the Georgia General Assembly appropriates funds for the payment.

In all cases where judgment is obtained against an insured on a claim covered by the Fund, the judgment shall bear interest from the date judgment is entered at the rate of 7% per annum. Judgments against the State, under this policy, shall be promptly paid by the Commissioner of Administrative Services within 60 days after judgment becomes final if funds are available from the State Tort Claims Trust Fund or from other policies of insurance or contracts of indemnity established or purchased by the Fund and which provide coverage for the claim for which payment is being made.

## PART III – DEFINITIONS

The following definitions shall apply to words used in this policy unless the context of the word demands another definition.

D-1 **'Claim'** means any demand against the State of Georgia for money only on account of loss caused by the tort of any State officer or employee committed while acting within the scope of his or her official duties or employment.

D-2 **'Discretionary function or duty'** means a function or duty requiring a State officer or employee to exercise his or her policy judgment in choosing among alternate courses of action based upon a consideration of social, political, or economic factors.

D-3 **'Loss'** means personal injury; disease; death; damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death; pain and suffering; mental anguish; and any other element of actual damages recoverable in actions for negligence.

D-4 **'Occurrence'** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

D-5 **'Person'** means a natural person, corporation, firm, partnership, association, or other such entity.

D-6 **'State'** means the State of Georgia and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, and institutions, but does not include counties, municipalities, school districts, other units of local government, hospital authorities, or housing and other local authorities.

D-7 **'State government entity'** means a State office, agency, authority, department, commission, board, division, instrumentality, or institution.

D-8 **'State officer or employee'** means an officer or employee of the State, elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of the State in any official capacity, whether with or without compensation, but the term does not include an independent contractor doing business with the State. The term state officer or employee also includes any natural person who is a member of a board, commission, committee, task force, or similar body established to perform specific tasks or advisory functions, with or without compensation, for the state or a state government entity, and any natural person who is a volunteer participating as a volunteer, with or without compensation, in a structured volunteer program organized, controlled, and directed by a state government entity for the purposes of carrying out the functions of the state entity. This shall include any health care provider and any volunteer when providing services

pursuant to Article 8 of Chapter 8 of Title 31. An employee shall also include foster parents and foster children. Except as otherwise provided for in this paragraph, the term shall not include a corporation whether for profit or not for profit, or any private firm, business proprietorship, company, trust, partnership, association or other such private entity.

## PART IV – CONDITIONS OF COVERAGE

C-1 **Notice of Claim**

The notice provisions of O.C.G.A. 50-21-26 are specifically a condition of coverage in this policy.

(a) No person, firm or corporation having a tort claim against the State under this policy shall bring any action against the State upon such claim without first giving notice of the claim as follows:

(1) Notice of a claim shall be given in writing within 12 months of the date the loss was discovered or should have been discovered.

(2) Notice of a claim shall be given in writing and shall be mailed by certified mail or statutory overnight delivery, return receipt requested, or delivered personally to and a receipt obtained from the Risk Management Division of the Department of Administrative Services. In addition, a copy shall be delivered personally to or mailed by first-class mail to the State government entity, the act or omissions of which are asserted as the basis of the claim. Each State government entity may designate an office or officer within that State government entity to whom a notice of claim is to be delivered or mailed.

(3) No action against the State under this policy shall be commenced and the courts shall have no jurisdiction thereof unless and until a written notice of claim has been timely presented to the state as provided in this policy.

(4) A notice of claim under this policy shall state, to the extent of the claimant's knowledge and belief and as may be practicable under the circumstances, the following:

(A) The name of the State government entity, the acts or omissions of which are asserted as the basis of the claim;

(B) The time of the transaction or occurrence out of which the loss arose;

(C) The place of the transaction or occurrence;

(D) The nature of the loss suffered;

(E) The amount of the loss claimed; and

(F) The acts or omissions which caused the loss.

(5) The Department of Administrative Services shall have the authority to examine and copy any records of any state government entity to facilitate the investigation of a claim. Each state government entity shall make available to the Department of Administrative Services, incidental to any investigation of a claim, all such records notwithstanding any other provision of law which designates such records as confidential or which prohibits disclosure of such records; provided, however, that the Department of Administrative Services shall be bound by such provision of law and shall not make further disclosure of such records except as permitted by such provision of law. The Department of Administrative Services may enforce the authority granted under this subsection by subpoena which may be enforced,

upon application by the department, by the Superior Court of Fulton County, Georgia, in the same manner as subpoenas issued under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' may be enforced.

(6) Any document or information gathered or prepared by the Department of Administrative Services in connection with the investigation undertaken as a result of the notice of claim shall be considered privileged and confidential and shall not be subject to discovery by any claimant in any proceeding except as otherwise provided by law.

(b) No action may be commenced against this policy following presentation of a notice of claim until either the Department of Administrative Services has denied the claim or more than 90 days have elapsed after the presentation of the notice of claim without action by the Department of Administrative Services, whichever occurs first.

**C-2** **Notice of Suit**

In all civil actions brought against the state under this article, to perfect service of process the plaintiff must both: (1) cause process to be served upon the chief executive officer of the state government entity involved at his or her usual office address; and (2) cause process to be served upon the director of the Risk Management Division of the Department of Administrative Services at his or her usual office address. The time for the state to file an answer shall not begin to run until process has been served upon all required persons. A copy of the complaint, showing the date of filing, shall also be mailed to the Attorney General at his or her usual office address, by certified mail or statutory overnight delivery, return receipt requested and there shall be attached to the complaint a certificate that this requirement has been met.

Any complaint filed pursuant to this policy must have a copy of the notice of claim presented to the Department of Administrative Services together with the certified mail or statutory overnight delivery receipt or receipt for other delivery attached as exhibits. If failure to attach such exhibits to the complaint is not cured within 30 days after the State raises such issue by motion, then the complaint shall be dismissed without prejudice.

## PART V – EXCLUSIONS

This policy does not apply to the following:

E-1 To any claim filed in any Courts operated by the United States or any State Government other than Georgia.

E-2 This policy does not apply to losses resulting from conduct on the part of State officers or employees which was not within the scope of their official duties or employment.

E-3 This policy provides no coverage with respect to actions brought in the courts of the United States against the State government entities insured herein.

E-4 No award for damages under this policy shall include punitive or exemplary damages or interest prior to judgment.

E-5 Nothing in this policy shall impose or create any obligation upon other insurance funds to the State.

E-6 No claim or judgment against the State under this policy shall be payable except from the State Tort Claims Trust Fund or from any policies of insurance or contracts of indemnity provided under the Fund and which provide coverage for the claim being paid.

E-7 Nothing in this policy shall be construed to authorize any execution or levy against any State property or funds. Execution or levy against State property or funds is expressly prohibited.

E-8 No claim for past due wages or other types of fringe benefits are covered under this policy in claims brought by State employees and former State employees for damages arising out of a work related occurrence.

E-9 Nothing in this policy shall be construed to authorize the waiver of the Workers' Compensation exclusive remedy when State employees are injured on the job.

E-10 The first $500 of each property damage claim, involving property of others in the care, custody or control of a state agency or authority. However, DOAS may pay any part or the entire loss amount to effect settlement of the claim or "suit" and, upon notification of the action taken, the state agency or authority shall promptly reimburse DOAS for such part of the first $500 as had been paid by DOAS.

## PART VI – IMMUNITIES

I-1 An act or omission by a State officer or employee exercising due care in the execution of a statute, regulation, rule, or ordinance, whether or not such statute, regulation, rule, or ordinance is valid.

I-2 The exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a State officer or employee, whether or not the discretion involved is abused.

I-3 The assessment or collection of any tax or the detention of any goods or merchandise by any law enforcement officer.

I-4 Legislative, judicial, quasi-judicial, or prosecutorial action or inaction.

I-5 Administrative action or inaction of a legislative, quasi-legislative, judicial, or quasi-judicial nature.

I-6 Civil disturbance, riot, insurrection, or rebellion or the failure to provide, or the method of providing, law enforcement, police, or fire protection.

I-7 Assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, or interference with contractual rights.

I-8 Inspection powers or functions, including failure to make an inspection or making an inadequate or negligent inspection of any property other than property owned by the State to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety.

I-9 Licensing powers or functions, including, but not limited to, the issuance, denial, suspension, or revocation of or the failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization.

I-10 The plan or design for construction of or improvement to highways, roads, streets, bridges, or other public works where such plan or design is prepared in substantial compliance with generally accepted engineering or design standards in effect at the time of preparation of the plan or design.

I-11 Financing regulatory activities, including, but not limited to, examinations, inspections, audits, or other financial oversight activities.

I-12 Activities of the Georgia National Guard when engaged in state or federal training or duty, but this exception does not apply to vehicular accidents; or

I-13 Any failure or malfunction occurring before December 31, 2005, which is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times, if the failure or malfunction causing the loss was unforeseeable or if the failure or malfunction causing the loss was foreseeable but the plan or design or both for identifying and preventing the failure or malfunction was prepared in substantial compliance with generally

accepted computer and information system design standards in effect at the time of the preparation of the plan or design.

## PART VII – Settlements

The Commissioner of the Department of Administrative Services, or his or her delegate, shall have sole authority, within the limits provided in this policy, to make settlement of claims, causes of action, and actions under this policy. Such settlement shall be made after consultation with the State Law Department with respect to claims in litigation.

## PART VIII – Premiums

The Department of Administrative Services shall establish and charge to State government entities such premiums, deductibles, and other charges after taking into account any direct appropriations as shall be necessary to maintain the soundness of the insurance or self-insurance programs established for the Georgia Tort Claims Trust Fund. The premiums and deductibles charged to each State government entity may be established on such basis as the Department of Administrative Services shall deem appropriate and such basis may include the number of employees, the aggregate annual budget of the State government entity, and unique exposures, loss history, or claims pending against such State government entity. The department is further authorized to establish incentive programs including but not limited to differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the State Tort Claims Trust Fund.

When requested State agencies must provide the Georgia Department of Administration, Risk Management Services, a list of each structured volunteer program, task force, committee, or similar body so that these groups may be included in the total loss exposure for the state vendor to assess an appropriate premium.

Each State government entity shall promptly remit from General Appropriations or other funds available to the Department to pay the premium.

Any state agency or Authority who requires contractors or service providers to indemnify and hold the State and its employees harmless in all of the Agency's or Authority's contracts may be eligible for a discount on the annual premium paid to the Fund once a risk analysis audit has been performed by DOAS Risk Management.

## IX – Other Insurance/Contractual Agreements

With respect to any occurrence covered by this policy, no duplicate or overlapping coverage shall be available under more than one insurance policy issued or purchased by the Fund. In addition, the Tort Fund may subrogate against other valid and collectible insurance available to the named insured as a result of the insureds being named as an additional insured under any policy or being held harmless as a result of any contractual agreement made by the insured.

Each State agency and Authority should make it a requirement, when possible, that all contractors and service providers agree to indemnify and hold the State and the State's employees harmless in all contractual agreements between the State agency and the contractor or service provider. The State agency and Authority should require the contractor or service provider to provide an insurance certificate from the contractor/service provider's insurance agent to document that the contractor or service provider has purchased a Commercial General Liability Insurance policy that will provide liability coverage for actions arising out of the contractual agreement.

If a state government entity enters into or is beneficiary of any agreement under which a third party agrees to hold a state government entity or the State Tort Claims Trust Fund harmless or to indemnify a state government entity or the State Tort Claims Trust Fund, or to provide insurance for those purposes, then the third party or the insurer, as the case may

be, shall be liable to the State Tort Claims Trust Fund in accordance with such agreement or contract of insurance, for reimbursement of the amount of any disbursements from the State Tort Claims Trust Fund in satisfaction of any liability, whether established by judgment or settlement in accordance with this article, to the extent of the hold harmless obligation or requirement to procure insurance undertaken under such agreement or contract of insurance obtained pursuant to such agreement. The liability limits shall not be increased by the existence of hold harmless or indemnity obligations in such contractual agreements or by the obligation to procure insurance for such purposes or by the limits set forth in any such contractual agreement or contract of insurance procured pursuant thereto.

No policy of insurance shall be delivered in this state which negates the provisions of the Georgia Torts Claims Act or which provides that the limits of the policy are excess over amounts payable from the State Tort Claims Trust Fund.

## PART X – Legal Representation

Legal representation for all insureds under this policy shall be by the Attorney General of the State of Georgia or by any designee properly appointed by the Attorney General. In the event the Attorney General decides not to defend an insured for any reason, the Attorney General will first advise the Fund of such decision so as to enable the Fund to select a defense attorney in each such case.

## PART XI – Additional Insured

The Georgia Department of Administrative Services may endorse this policy to provide coverage for additional insureds. If an agency has a unique loss exposure that may require the Department of Administrative Service to endorse this policy, the agency must send a letter requesting an endorsement along with copies of all supporting contracts, purchase orders, and other correspondence to justify an endorsement to the policy. The Department of Administrative Services will review the documentation, and if in the opinion of the Department of Administrative Services, the endorsement is necessary in the interest of the State, the Department of Administrative Services may endorse the policy. The coverage will not be effective until the endorsement is signed by the Commissioner of Administrative Services and the insured agency agrees to pay any premium assessed for the coverage on the endorsement.

DEPARTMENT OF ADMINSTRATIVE SERVICES
An Agency of the State of Georgia

Brad Douglas
Commissioner

Endorsement #1

State Tort Claims Policy
Policy Number: TCP-401-14-09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

In interest to the public purposes of the State of Georgia, the following provision becomes part of the Georgia Tort Claims Policy:

ADDITIONAL INSURED: An authorized driver of a state owned or leased vehicle who is enrolled as a student in a Drivers Training Program at a state agency, but only while operating the vehicle under the direct supervision of a state employee instructor in conjunction with a Drivers Training Program administered by a state agency.

For the purposes of this endorsement, **PART II – LIMITS OF LIABILITY** in the State Tort Claims Policy TCP-401-14-09 is hereby amended to read:

The limitation on the Fund's liability shall be as stated on the Declarations page attached hereto and made a part of this policy. Provided, however, where losses are incurred as a combination of bodily injury, property damage, or personal injury to one person, all such damages shall be combined in calculating the total liability per person which shall not exceed the per person liability limit of $1,000,000. Where losses are incurred to multiple persons for bodily injury, property damage, or personal injury, all such losses shall be combined and shall not exceed $3,000,000 per occurrence nor exceed $1,000,000 per person. All loss(es) arising out of the same act, or acts, of the State government entity or entities and an additional insured or additional insureds shall be considered as arising out of a single occurrence. If multiple lawsuits are filed as a result of the same occurrence, the limits of liability against the Fund is the amount specified on the Declarations Page. The total aggregate Fund limit of liability for the State Tort Claims Trust Fund shall never exceed the amount of funds available from the State Tort Claims Trust Fund. Any Judgments obtained in excess of this aggregate fund limit shall not be payable unless and until the Georgia General Assembly appropriates funds for the payment.

In all cases where judgment is obtained against an insured on a claim covered by the Fund, the judgment shall bear interest from the date judgment is entered at the rate of 7% per annum. Judgments against the State, under this policy, shall be promptly paid by the Commissioner of Administrative Services within 60 days after judgment becomes final if funds are available from the State Tort Claims Trust Fund or from other policies of insurance or contracts of indemnity established or purchased by the Fund and which provide coverage for the claim for which payment is being made.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED

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| This endorsement effective: | July 1, 2008 |
| Attached to and made part of Policy No. | TCP-401-14-09 |

Issued to: State Agency described on the Declarations Page

Issued by: _____

Brad Douglas, Commissioner
Georgia Department of Administrative Services