

# Property Casualty

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## Interlocal Participation Agreement



TASB RISK  
MANAGEMENT FUND

**TEXAS ASSOCIATION OF SCHOOL BOARDS  
RISK MANAGEMENT FUND  
Interlocal Participation Agreement — Property/Casualty**

This Interlocal Participation Agreement (“Agreement”) is entered into by and between the Texas Association of School Boards Risk Management Fund (“Fund”), an administrative agency of cooperating local governments, (“Fund Members”), acting on its own behalf and the behalf of all Fund Members, and the undersigned local government of the State of Texas (“Program Participant”). The purpose of this Agreement is to facilitate effective risk management of the property/casualty obligations of Program Participants.

WITNESSETH:

WHEREAS, Program Participants are authorized by Texas Revised Civil Statutes Annotated Article 715c (Vernon’s 1993), and the Texas Interlocal Cooperation Act (Chapter 791, Title 7, Government Code), to self-insure risks of loss for property/casualty exposures; and

WHEREAS, the Fund is an administrative agency of local governments cooperating in the discharge of their governmental functions; and

WHEREAS, the Program Participant desires to have available to it choices in risk financing and management offered by the Fund and does hereby become a member of the Fund.

NOW BE IT RESOLVED, that the undersigned Program Participant in consideration of the agreement of the Fund and the Fund Members to provide services as detailed in this Agreement, subject to the terms, conditions and general provisions of this Agreement, does hereby agree to the following terms, conditions, and general provisions.

In return for the payment of the contributions and subject to all terms of this Agreement, the parties agree as follows:

**TERMS AND CONDITIONS**

1. **Adopts Interlocal Agreement.** The Program Participant, acting by and through its duly authorized representative by this Agreement, hereby approves and adopts the Restatement of Interlocal Agreement in accordance with the terms and conditions set forth in that certain Interlocal Agreement promulgated on July 2, 1974, and Restated on May 20, 1997.
2. **Contribution and Coverage Summary.** The Program Participant agrees that the participation period and coverages provided hereunder shall be as specified in the Contribution and Coverage Summary.
3. **Term.** The term of this Agreement is for one year, and it automatically renews for successive one-year terms thereafter, unless sooner terminated as provided herein. The initial one-year term shall commence at 12:01 a.m. on September 1, 2010, and shall automatically renew upon that anniversary date, unless sooner terminated in accordance with the provisions of this Agreement, or any subsequent renewal thereof. Each subsequent automatic renewal shall be subject to the provisions of this Agreement, and expressly subject to the Fund’s right to recalculate and assign the Program Participant’s contributions for such renewal term.
4. **Termination.**
  - a. **By Either Party.** This Agreement may be terminated by either party on any successive renewal date by giving written notice to the other party no later than thirty (30) days prior to the next anniversary date.
  - b. **By Program Participant.** This Agreement may not be terminated by the Program Participant during any annual participation period. To terminate this Agreement, to be effective at the next anniversary date, prior written notice must be given to the Fund by the Program Participant no later than thirty (30) days prior to the next annual renewal date.



- c. **By Program Participant Upon Adverse Governmental or Judicial Intervention.** This Agreement may be terminated by the Program Participant according to the terms of paragraph 14 of the General Provisions section of this Agreement.
- d. **By Fund.** The Fund may also terminate this Agreement by:
- (1) Giving ten (10) days notice by certified mail to the Program Participant if the Program Participant fails or refuses to make the payments or contributions as herein provided; or the Program Participant shall have the right to remedy the default within the ten (10) days written notice period provided herein; or
  - (2) Giving ten (10) days notice by certified mail to the Program Participant if Program Participant fails to cooperate and comply with any reasonable requests for information and/or records made by the Fund; or
  - (3) Giving thirty (30) days notice by certified mail to the Program Participant if the Program Participant fails or refuses to follow loss control recommendations made by the Fund or its designee; or
  - (4) Giving thirty (30) days notice by certified mail to the Program Participant if the Program Participant fails or refuses to comply with any agreement or undertaking on its part set forth in this Agreement or otherwise breaches this Agreement.
- e. **Additional Termination Provision for Three-Year Rate Guarantee Participants.** Upon termination by the Program Participant prior to the end of the three-year rate guarantee plan, the Program Participant agrees to pay an early withdrawal charge of 4% of the contribution that would have been paid to the Fund for participation periods subsequent to the termination date. The expiring premium will be used to calculate the contribution for the future years. The adjusted contribution and early withdrawal charge will be considered immediately payable to the Fund.
- f. **Financial Responsibilities Upon Termination.** If the Program Participant attempts to terminate its participation during the term of this Agreement or otherwise breaches this Agreement, the Program Participant shall bear the full financial responsibility for any unpaid benefits and expenses related to claims, asserted or unasserted, against the Fund or Program Participant which are made on behalf of the terminated Program Participant's employees or former employees and shall forfeit all contributions already made to the Fund. Further, the Program Participant and the Fund understand and agree that any amount then due and owing upon termination under this provision constitutes liquidated damages and not a penalty (both parties hereto agreeing that damages from such termination during the term are difficult to ascertain), and that the Fund is entitled to such liquidated damages from the terminated Program Participant, including, without limitation, initial estimated and adjusted contributions that are due the Fund. Program Participant further agrees that the Fund is entitled to accrued interest, if any, and attorneys fees in connection with the collection of said liquidated damages. Further, in the event of an attempt to terminate under this provision, it is understood and agreed by the Program Participant that the Fund will have no further responsibility of any kind or nature for any coverage so terminated.
5. a. **Contributions.** Program Participant agrees to pay contributions based on a plan developed by the Fund. Contributions as shown on the Contribution and Coverage Summary are payable upon receipt of an invoice from the Fund. A late charge amounting to the maximum interest allowed by law, but not less than the rate of interest under Section 2251.021, et seq., Texas Government Code, shall begin to accrue daily on the first day following the due date and continue until the contribution and late charges are paid in full. The Fund reserves the right to collect all initial, estimated and adjusted contributions that are due the Fund in the event of termination by the Program Participant or breach of this Agreement by the Program Participant.

The contribution shown on the Contribution and Coverage Summary and endorsements is an estimate. Upon expiration of each participation period, the Program Participant will report any changes to the vehicle log and/or property schedule in the form of a self audit that will be used to determine the final contribution. As a result of this reconciliation, any additional contributions payable to the Fund shall be paid by the Program Participant, and any overpayments of contributions due to the Program Participant shall be returned by the Fund. Upon request of the Program Participant, the Fund may waive the vehicle log audit, at the Fund's discretion. The agreement to waive the vehicle log audit must occur at the beginning of the Participation Period, and the Contribution and Coverage Summary will specify the Automobile Liability and/or Automobile Physical Damage coverages are written on a non-auditable basis. If the Fund agrees to waive the audit, no adjustment to the Automobile coverage contributions will occur as a result of vehicles purchased or sold during the Participation Period. The Fund reserves the right to audit the relevant records of any Program Participant.

- b. **Additional Contribution Provision for Three-Year Rate Guarantee Plan.** If the Fund and the Program Participant agree to a three-year rate guarantee plan, the terms and conditions of the three-year rate guarantee as shown in the Contribution and Coverage Summary will apply.
6. **Loss Control.** Loss control services will be provided by the Fund to the Program Participant. The Program Participant agrees that it will adopt the Fund's standards for loss control and cooperate in implementing any and all reasonable loss control recommendations.
  7. **Property Appraisals.** A Program Participant adopting the property coverage as indicated on the Contributions and Coverage Summary agrees to provide a current appraisal of property values to the Fund. This appraisal may be submitted by the Program Participant through a mutually acceptable commercial appraisal service or the Program Participant may request an appraisal by the Fund appraisal staff subject to the appraisal fees in effect at the time of the appraisal. New Program Participants must complete the appraisal within 60 days of the inception date of the property coverage as stated on the Contribution and Coverage Summary. The newly appraised values and the corresponding additional contribution will be retroactive to the date of the appraisal notification.
  8. **Vehicle Logs.** The Program Participant adopting Automobile Liability coverage or Automobile Physical Damage coverage agrees to submit a vehicle log, maintain the vehicle log during the term of this Agreement and submit a vehicle log upon audit as requested by the Fund. The log shall be in a format approved by the Fund, or its designee.
  9. **Administration of Claims.** The Fund or its designee agrees to administer any and all property/casualty claims after timely notice has been given to the Fund by the Program Participant, and to provide a defense, when appropriate. The Program Participant hereby authorizes the Fund or its designee to act in all matters pertaining to processing and handling of property/casualty claims, and shall cooperate fully in supplying any information needed or helpful in the settlement or defense of those claims. The Program Participant waives none of its immunities and directs the Fund or its designee to plead such immunities on its behalf and on behalf of the Fund or its designee. It is the intent of the parties that the Fund shall have the same rights, responsibilities and benefits, including without limitation, immunities, as the Program Participant. The Fund or its designee shall carry on all negotiations with any third parties or their attorneys and negotiate settlements within authority previously granted by the Fund. The Fund or its designee shall, in its sole discretion, select, retain, and supervise legal counsel on behalf of, and in the name of, the Program Participant and at the expense of the Fund as necessary for the defense of any litigation. All decisions on individual cases shall be made by the Fund, or its designee, which includes the decision to settle, litigate, or appeal or not to appeal a final adjudication at the trial court level.
  10. **Salvage.** The Fund shall have the right, in its discretion, to exercise rights of salvage to any damaged property paid for or replaced under the terms of this Agreement and the Coverage Document.

11. **Online Secured Documents.** The Program Coordinator named in the Contribution and Coverage Summary will be given secured access to an array of online reports, publications, and other related program resources available only to members through the Fund's Web site. The Program Coordinator, and only the Program Coordinator, will have responsibility for granting access to others within the Program Participant's organization, for activating access, and for terminating access.
12. **Misrepresentation, Concealment, Fraud.** All coverage provided by the Fund may be jeopardized if any Program Participant has:
  - a. Failed to provide complete and accurate statements of material facts in any document required by the Fund, including but not limited to applications, worksheets, audit sheets, disclosure statements, loss forms, exhibits, renewal information forms, claim history (including pending or potential claims), and requests for proposals;
  - b. Intentionally concealed or misrepresented any material fact or circumstance;
  - c. Engaged in fraudulent conduct; or
  - d. Made false statements;

relating to any coverage being claimed under any applicable Coverage Document, Interlocal Participation Agreement, Master Plan Document, and/or any other documents as set forth in this Agreement.


#### **GENERAL PROVISIONS**

1. **Appeals.** The Program Participant shall have the right to appeal any decision or recommendation to the Fund, whose determination will be final. Any appeal shall be made in writing to the Chair of the Fund's Board within 30 days of the decision or recommendation.
2. **Audit.** The Fund shall provide for an annual audit of its financial statements by a certified public accounting firm.
3. **Authorization to Participate.** Each Program Participant represents and warrants that its governing body has duly authorized its participation in the Fund.
4. **Bylaws.** The Program Participant agrees to abide by the Bylaws of the Fund, as they may be amended, and any and all reasonable policies and procedures established by the Fund.
5. **Compensation.** The parties agree that the contractual payments under this Agreement and all related exhibits and documents are amounts that fairly compensate the Fund for the services or functions performed under the Agreement.
6. **Contribution Adjustment.** Nothing in this Agreement shall relieve a Fund Member or former Fund Member from its obligations as an employer self-insuring through the Fund. Thus, should the Fund's income from operations for a given fund year be inadequate to pay the ultimate cost of claims incurred in that fund year, the Fund may collect an adjusted contribution from a Fund Member who no longer participates in the Fund if that Fund Member's contribution attributable to that fund year is inadequate to pay its claims incurred during that fund year.
7. **Cooperation and Access.** The Program Participant agrees that it will cooperate and comply with any reasonable requests for information and/or records made by the Fund. The Fund reserves the right to audit the relevant records of any Program Participant.

8. **Coordinator.** The Program Participant agrees to designate a program coordinator on the Contribution and Coverage Summary. The program coordinator shall have express authority to represent and bind the Program Participant, and the Fund will not be required to contact any other individual regarding program matters. Any notice to or any agreements with the coordinator shall be binding upon the Program Participant. The Program Participant reserves the right to change the coordinator as needed by giving written notice to the Fund. Such notice is not effective until actually received by the Fund.
9. **Current Revenue.** The Program Participant hereby warrants that all payments, contributions, fees, and disbursements required of it hereunder shall be made from current revenues available to the Program Participant.
10. **Defense and Prosecution of Claims.** The Program Participant authorizes the Fund to regulate the commencement, defense, or other appearance of the Fund and/or any past or current Program Participant in any litigation, claim or dispute, and to engage counsel and appropriate experts, in the Fund's sole discretion, with respect to such litigation.
11. **Excess Coverage.** The Fund may purchase excess coverage to ensure the Fund's fiscal integrity. The Fund may also act on behalf of individual Program Participants to obtain coverage, bill the Program Participant, and remit the amount to the appropriate party. In the event of a substantial change in terms or cost of excess coverage during the term of this Agreement, the Fund reserves the right to make adjustments to the terms of this Agreement, or to terminate this Agreement, with 60 days notice to the Program Participant. The Program Participant will have the right to terminate this Agreement prior to the effective date of the adjustment. The Fund is not responsible for any payment or any obligations to the Program Participant from any reinsurer, stop loss carrier, or excess coverage provider.
12. **Governance.** The Fund shall be governed by a Board of Trustees ("Board") in accordance with the Bylaws.
13. **Insurance Terminology.** Any reference in this Agreement to an insurance term not ordinarily part of self-insurance terminology shall be deemed to apply to self-insurance and is not to be construed as being contrary to the self-insurance concept.
14. **Intervening Legislative or Judicial Action.** If after the execution of this Agreement, the State or Federal governments or the highest courts of either enact any statute, pass any rule or enter any decision that would substantially impact the rights or financial obligation of the Fund as it pertains to this Agreement, the Fund is given the right to recalculate the Program Participant's contributions and corresponding obligations to the Fund to compensate for the impact of the intervening governmental or judicial event. If the Fund exercises that option, it shall give 45 days advance written notice to the Program Participant of the intent to recalculate contribution and obligations and shall also detail the specifics occasioning such intervening governmental or judicial actions precipitating such event. The Program Participant shall then have the right during that 45 day period to give written notice to the Fund that the Program Participant is terminating the Agreement upon the expiration of such 45 day period. If the Program Participant fails to give the Fund timely notice of intent to terminate, then the Program Participant shall be deemed to have consented to the Fund's modifications and agrees to abide by and be bound by the Agreement as amended.
15. **Investments.** The Fund shall invest monies that are on deposit with the Fund in accordance with investment policies adopted by the Fund. The use of investment earnings shall be at the sole discretion of the Fund for the benefit of the Fund and its Program Participants.
16. **Lawsuit.** The Program Participant does hereby agree that any suit brought pursuant to the provisions of the specific program may be defended in the name of the Program Participant by the counsel selected by the Fund, in its sole discretion, or its designee, on behalf of and at the expense of the Fund as necessary for the prosecution of any litigation. Full cooperation by the Program Participant shall be extended to supply any information needed or helpful in such defense.
17. **Membership.** In the interest of providing effective school governance, the Program Participant must be a member of the Texas Association of School Boards and the TASB Risk Management Fund.

18. **Members' Equity.** The Fund at its sole discretion may declare and distribute a refund of the Fund Members' equity.
19. **Merger.** This Interlocal Participation Agreement, Terms and Conditions, and General Provisions, together with the Bylaws, Restated Interlocal Agreement, Contribution and Coverage Summaries, Contribution Worksheets, Service Fee Summaries, Schedules of Benefits, Master Plan Documents, Declaration Pages, Excess or Stop Loss Coverage Documents, Audit Worksheets, Exhibits, Applications, Disclosure Statements, and Coverage Documents, represent the complete understanding of the Fund, and Program Participant electing specific coverages through the Fund.
20. **Notice.** Any written notice to the Fund shall be made by first class mail, postage prepaid, and delivered to the Associate Executive Director for Risk Management Services, Texas Association of School Boards, Inc., P. O. Box 400, Austin, Texas 78767-400.
21. **Rating.** The Fund reserves the right to recalculate contributions and contribution rates in response to changes in the law, state or federal, by legislation or decisions by courts or regulatory agencies.
22. **Severability.** If any portion of this Agreement shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect.
23. **Standards of Performance.** Time shall be of the essence in the reporting of claims to the Fund, payment of any contributions or monies due and delivery of any written notices under this Agreement.
24. **Subrogation and Assignment of Rights.**
  - a. The Program Participant, on its own behalf and on behalf of any person entitled to benefits under this Agreement, assigns all subrogation rights to the Fund, and all rights to any suit, claim, demand, or cause of action against any third party who may bear any liability for injuries upon which any claim of coverage may be predicated under this Agreement, including the full right and power to maintain an action against any third party, to settle, compromise, or reassign any cause of action, and to give a full release in full discharge of any liability. The Fund has the right, in its sole discretion, without notice to the Program Participant, to bring all claims and lawsuits in the name of the Program Participant or the Fund, and the Program Participant acknowledges and understands that all subrogation rights and recoveries belong to the Fund, up to the amount of benefits, expenses, and attorney fees incurred by the Fund, with the balance, if any, being paid to the Program Participant. Award of funds to any person entitled to coverage hereunder, whether by judgment or settlement, shall be conclusive proof that the injured party has been made whole.
  - b. **No Waiver of Subrogation Rights.** The Program Participant shall do nothing either before or after a loss, or before, during, or after the term of this Agreement to prejudice the Fund's existing or prospective subrogation rights under this Agreement. If the Program Participant has at any time waived or attempted to waive any subrogation right without first obtaining the Fund's express written approval, then the Fund shall be entitled to immediately and directly recover from the Program Participant any and all sums that absent such waiver it would have been able to recover from the third party or entity, plus attorneys fees and expenses necessary for such recovery.
  - c. **Disclosure of Prior Waivers.** If prior to the execution of this Agreement or of a loss covered by this Agreement, Program Participant has executed any agreement with a third party or entity that waives or purports to waive any rights that would potentially affect the Fund's subrogation rights under this Agreement, the Program Participant shall upon the execution of this Agreement (or upon later discovery of such third party waiver) immediately in writing disclose all of the details of such transactions to the Fund. If such disclosure occurs before a loss that gives rise to potential subrogation rights under this Agreement, the Fund shall have the exclusive right and option to:
    - 1) redetermine the amount of the Program Participant's increased contributions, if any, occasioned by this previously undisclosed transaction, which Program Participant shall pay immediately; or
    - 2) to cancel Program Participant's future coverage under this Agreement.

- d. **Disclosure or Discovery of Subrogation Rights Waived After Loss.** If after a loss covered by this Agreement that would have given the Fund subrogation rights against third parties (absent a nondisclosed waiver by Program Participant), the Fund becomes aware of or discovers that the Program Participant has done any action that would adversely affect the Fund's rights to recover damages, and/or expense and/or attorney fees from another, then the Fund shall have the right to recover from the Program Participant any and all monies, expenses and attorneys fees that the Fund could have recovered from the third party or entity, and its reasonable expenses of collection.
- e. The Program Participant's right to be made whole is expressly superceded by the Fund's subrogation rights and the Fund has a priority as to all funds recovered and a prior right to any full or partial recovery, up to the amount of benefits and expenses incurred by the Fund, and the remaining balance paid to the Program Participant for the benefit of the person or entity that suffered the covered loss. The Program Participant expressly waives any and all rights to be made whole that would conflict with the Fund's subrogation rights priority.
25. **Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue shall lie in Travis County, Texas, unless otherwise mandated by law.
26. **Warranty.** By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

Signature page on reverse side 



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**TO BE COMPLETED BY THE FUND:**

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, sign this Agreement as of the term specified in Article 3.

**TEXAS ASSOCIATION OF SCHOOL BOARDS RISK MANAGEMENT FUND**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chair, Board of Trustees  
Texas Association of School Boards Risk Management Fund,  
acting on behalf of all other participating Fund Members

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**TO BE COMPLETED BY FUND MEMBER:**

\_\_\_\_\_ Name of Program Participant (ISD, CAD, ESC)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of authorized representative of Program Participant

\_\_\_\_\_  
Printed Name of Authorized Representative

