



SOUTH DAKOTA PUBLIC ASSURANCE ALLIANCE

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Ft. Pierre, SD 57532

SATELLITE OFFICE
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December 22, 2021

Dear SDPAA Members:

Thank you for your membership in the South Dakota Public Assurance Alliance (SDPAA) and for your public service. It is the SDPAA's privilege to assist you with your public service mission.

Enclosed you will find a revised Intergovernmental Contract (IGC) which reflects the changes adopted by the SDPAA Board of Directors at its October 5, 2021 meeting. These changes will take effect on January 1, 2022. **At your earliest convenience, please have the appropriate authorized person sign the signature page of the revised IGC on behalf of your entity, then scan and email it to the SDPAA at sdpaa@sdmunicipalleague.org.** The entire copy is for your file. We encourage you to review the document with your legal counsel and to contact us with any questions. The current version of the IGC with tracked changes and comments on the year 2022 changes is enclosed your reference.

These changes to the IGC reflect the main goal of public entity pooling, which is to ensure that all Members are actively engaging in loss control measures to benefit themselves and the public they serve. To encourage long-standing commitment to these measures, the IGC will no longer allow a Member to depart then immediately return to the SDPAA. Instead, a departed Member must await the expiration of two years to reapply for SDPAA membership, unless that departed Member demonstrates to the Board that it has made a substantial commitment to engage in loss control efforts. For further explanation, please see the enclosed SDPAA Policy on Member Departures.

The revised IGC also eliminates the partial refund of contribution to a departing Member who assumed any of their claims when they left the SDPAA. The partial refund of contribution was intended to pay for claims handling expenses and to pay any reported claims that the Member took with them upon their departure from the SDPAA. Under the revised IGC, the SDPAA will now retain any reported claims of a departing Member so the partial refund is no longer necessary. **Please be aware that we are working with the South Dakota Department of Legislative Audit on the financial reporting requirements for this change on the partial refund of contribution. Their guidance will be relayed to you in the coming weeks.**

We look forward to working with you to continue providing broad coverages and great services at stable, competitive rates.

Best Regards,

David A. Pfeifle, Executive Director
South Dakota Public Assurance Alliance

Enclosures

**INTERGOVERNMENTAL CONTRACT
FOR THE
SOUTH DAKOTA PUBLIC ASSURANCE ALLIANCE**

This Contract is made and entered into by the undersigned who, upon execution of the Contract, will become contractually bound with all other signatories.

Whereas, the Acts of the State of South Dakota authorize and/or permit various Governmental Authorities to contract, and;

Whereas, the undersigned desires, along with other such entities, to form or join or reaffirm their membership in a local government risk pool to be known as the South Dakota Public Assurance Alliance, and;

Whereas, pursuant to the authority granted by SDCL ch. 1-24 and any acts amendatory thereto, the undersigned executes this document for purposes of joining or reaffirming membership, by virtue of an intergovernmental contract, the local government risk pool known as the South Dakota Public Assurance Alliance;

Now, therefore, the undersigned executes this Agreement in consideration for other Governmental Authorities executing this Agreement for the purpose of joining or reaffirming their membership in a local government risk pool known as the South Dakota Public Assurance Alliance. The undersigned agrees to abide by the terms and conditions of this Contract and all actions taken pursuant to this Contract. In consideration of the mutual covenants of all signatories to this Intergovernmental Contract it is agreed as follows:

ARTICLE I – NAME

The Pool created by this Contract shall be known as the South Dakota Public Assurance Alliance, hereinafter referred to as the "Alliance."

ARTICLE II – PURPOSE

The signatories hereto, together with future signatories, establish a contractual local government risk pool for the purpose of effectuating this Agreement; which Pool shall have a perpetual duration and shall continue until terminated pursuant to the terms and conditions of the Agreement. The purpose of this Agreement is to enter into an Intergovernmental Contract to form a local government risk pool, to provide for joint or cooperative action by Members relative to their financial and administrative resources for the purpose of providing risk management services and risk sharing facilities to the Members and to the Member's employees, and to defend and protect, in accordance with this Agreement, any Member of the Alliance against liability as defined under Pool Retention and in the Member's Risk Sharing Certificate. This Contract and the activities hereunder shall not constitute doing an insurance business. This Agreement is intended to create a contractual relationship and agreement between the signatories.

This Agreement shall constitute a contract among those Governmental Authorities which shall now or at any time enter into this Agreement and become Members of the Alliance.

The liability of each Member is limited to the amount of financial contributions required to be made to the Alliance pursuant to the Agreement except in the event of termination of the Alliance as described in Article XI or in the event of a deficit in the Operating Fund as provided in Article VIII.

This Agreement shall not inure to the benefit of third parties nor does any party hereto waive such sovereign or governmental immunity as may be available to it individually.

In no event shall a Member be responsible, jointly or severally, for the liabilities of any other Member except in the event of termination of the Alliance by the Alliance membership as described in Article XI or in the event of a deficit in the Operating Fund as provided in Article VIII when all Alliance Members would be responsible for a joint liability of the Alliance. In no event will an individual Member be responsible for any liabilities of any other Member.

ARTICLE III – DEFINITIONS

In the interpretation of this Agreement the following definitions shall apply unless the context requires another interpretation:

1. Acts --“Acts” shall mean such Acts of the State of South Dakota, pursuant to which this Contract is executed, as the same may be amended from time to time.
2. Administrator -- “Administrator” shall mean the South Dakota Public Assurance Alliance.
3. Agreement --“Agreement” shall mean this Intergovernmental Contract for the South Dakota Public Assurance Alliance and all of the counterparts subsequently executed
4. Alliance --“Alliance” shall be the sum of all the contracts or contractual obligations of the Members.
5. Annual Operating Contribution --“Annual Operating Contribution” shall mean those amounts necessary to fund the expenses of the Alliance.
6. Basis Rate --“Basis Rate” shall mean that amount annually promulgated by the Administrator deemed necessary to provide the Scope of Coverage afforded to a Member for the period of one year corresponding to the Risk Sharing Certificate effective date with due consideration to the Member’s individual characteristics.
7. Board --“Board” shall mean the Board of Directors of the South Dakota Public Assurance Alliance.
8. Casualty Coverage --“Casualty Coverage” shall mean the coverage afforded a Member for Casualty Risk, pursuant to the Member’s Risk Sharing Certificate and subsequent amendments and/or endorsements thereto.
9. Casualty Risk --“Casualty Risk” shall mean General Liability, Government Officials Liability, Law Enforcement Liability, Automobile Liability and other similar coverages usual to a Governmental Authority.
10. Claims Administrator --“Claims Administrator” shall mean any entity with whom the Administrator enters a contract for claims services.
11. Contract(s) --“Contract(s)” shall mean this Agreement and all of its counterparts.
12. Governmental Authority --“Governmental Authority” shall mean a public agency or any joint power agreement or separate entities consisting entirely of public agencies as defined in the Act.
13. Limits of Coverage --“Limits of Coverage” shall mean the limits of coverage established by any applicable coverage document, the Risk Sharing Certificate, and any other document or agreement that establishes and controls limits of various coverages provided to the Member.
14. Member --“Member” shall mean a Governmental Authority participating in the South Dakota Public Assurance Alliance by executing this Agreement.
15. Member’s Contribution --“Member’s Contribution” shall mean all amounts paid by Members and allocated to the Operating Fund.

16. Operating Fund --“Operating Fund” shall mean those amounts allocated to and designated as “Net Assets-Unrestricted” in the Alliance’s financial statements, as a result of increasing such amounts by the Annual Operating Contribution and investment income, and subtracting the expenses of the Alliance.
17. Pool --“Pool” shall mean the cumulative funds collected under this Contract and the contractual activities conducted hereunder, also sometimes referred to as the Alliance. The Pool is the sum of all Members’ funds and contractual duties, benefits and obligations.
18. Pool Retention --“Pool Retention” shall mean the amount that the Board may determine to retain as a designated retention from time-to-time.
19. Property Coverage --“Property Coverage” shall mean the coverage afforded a Member for Property Risk, pursuant to the Member’s Risk Sharing Certificate and subsequent amendments and/or endorsements thereto.
20. Property Risk --“Property Risk” shall mean Property, Vehicle Physical Damage, Inland Marine, Crime, Boiler and Machinery, and other similar coverages usual to a Governmental Authority.
21. Risk Sharing Certificate --“Risk Sharing Certificate” shall mean that document provided a Member evidencing the scope, nature, term, and limits of participation in the Alliance.
22. Scope of Coverage --“Scope of Coverage” shall mean the coverage, limits, and deductibles as established and defined in this agreement, any applicable separate coverage document, the Risk Sharing Certificate, and any other applicable document defining or establishing such terms, and subsequent amendments thereto.

ARTICLE IV – MEMBERSHIP

Contractual membership of the Alliance shall consist of Governmental Authorities who have entered into this Agreement or its counterpart by and through an individual duly authorized to execute this Agreement, and who have agreed to make the Member’s Contribution pursuant to the further provisions hereof. Members agree to the admission of future Members and acknowledge that they shall have no right to object to the addition of such Members provided they are admitted in accordance with the terms hereof. This Agreement shall be automatically renewed unless the provisions for withdrawal or termination are applied.

Each Member shall appoint an individual and an alternate to represent the Member with the Alliance. That individual or alternate shall act as a liaison between the Member and the Alliance for purposes of relating risk reduction and loss control information, and any other information or instructions concerning the obligations of the Member imposed by this Agreement and the rules and regulations established hereunder. The individual or alternate shall cast, on behalf of the Member, any vote which the Member is required or permitted to cast.

The obligations of Members of the Alliance shall include, but not necessarily be limited to, the following:

1. To promptly report to the Administrator or designated Claims Administrator any incident which could result in a claim being made by or against the Member within the Scope of Coverage.
2. To cooperate with and institute to the degree possible all loss prevention procedures established by the Administrator.
3. To provide to the Administrator such information as needed for rating purposes, including but not limited to, a completed renewal packet and any supplement questionnaires, as requested, and a budget approved by

Member's governing body of all revenues and expenditures for any fiscal year of the Member requested by the Administrator.

4. To provide representatives of the Administrator access to all records, including financial records and/or properties of the Member, provided the Administrator determines the information or access is necessary.
5. To cooperate with the Administrator and any employee, officer or independent contractor relating to the purpose and powers of the Alliance.
6. To allow attorneys and others employed by the Administrator to represent the Member in investigation, settlement, and all levels of litigation arising out of any claim made against the Member within the Scope of Coverage furnished by the Alliance.
7. To pay when due all annual contributions or other contributions, due or required, pursuant to this Agreement.

ARTICLE V – BOARD OF DIRECTORS

1. Administration of the Contract(s). The administration of this Contract(s) and management of the Alliance shall be governed by a Board of Directors of eleven (11) members comprised of six (6) municipal representatives, three (3) county representatives and the Executive Directors of the South Dakota Municipal League and the South Dakota Association of County Commissioners.
2. Qualifications of Members of the Board. Members of the Board shall be either:
 - a. Elected officials of an Alliance Member provided the governing board of the Member in question has supported their appointment or candidacy by Resolution; or
 - b. Representatives, employees or appointed officials of an Alliance Member provided the governing board of the Member in question has supported their appointment or candidacy by Resolution; or
 - c. No Member may support the appointment or candidacy of more than one person to the Board in any given year. If such person is later unable to assume office as a member of the Board for any reason, then this prohibition shall not apply.
 - d. The Executive Directors of the South Dakota Municipal League and the South Dakota Association of County Commissioners are qualified by the nature of their respective positions and shall remain standing members of the Board.
3. If a Board member initially appointed or elected to the Board based on their status as an elected or appointed official, or employee of a Member leaves office or employment with that Member during their term, they may continue to serve and complete their current term unless and until they resign, are removed pursuant to the terms and conditions of this Article, or until such time as the Member which initially sponsored their appointment or candidacy revokes their resolution of support in writing. Such revocation must be in writing or by electronic communication and in the form of a resolution of revocation. It must be provided to the Chair and Vice-Chair by the sponsoring Member. Such revocation shall create a vacancy to be filled pursuant to the provisions of Article V, Paragraph 5.
4. A Board member initially appointed or elected to the Board based on their status as a representative of a Member may serve unless and until they resign, are removed pursuant to the terms and conditions of this Article, or until such time as the Member which initially sponsored their appointment or candidacy revokes their resolution of support in writing. Such revocation must be in writing or by electronic communication by and in the form of a resolution of revocation. It must be provided to the Chair and Vice-Chair by the sponsoring Member. Such written revocation shall create a vacancy to be filled pursuant to the provisions of Article V, Paragraph 5.
5. Eligibility and Vacancies. The Board shall be the judge of the election and qualifications of its members and of the grounds for their forfeiture of office. The Board may remove any Board member for cause as determined by a 2/3 vote of the entire Board. "For cause" shall include but not be limited to a Board member having excessive absences from the meetings of the full Board or any other instance where a Board member's continued service has become untenable by the sole determination of a 2/3 vote of the Board. Such removal for cause of a Board member shall

then be deemed a vacancy as described by this Article. Should the number of members of the Board become reduced due to disqualification, death, incompetence, resignation or other cause, the remaining members of the Board may appoint a person or persons to fill such a vacancy or vacancies until the time of the next annual meeting of the South Dakota Public Assurance Alliance so that the Board shall be maintained numerically during that time. At the next annual meeting of the South Dakota Public Assurance Alliance, the Nominating Committee of the Board of Directors shall recommend one candidate to fill each vacant position on the Board for the remainder of the term left open and Member entities of the South Dakota Public Assurance Alliance present at that annual meeting shall vote on the candidate recommended by the Nominating Committee in the manner described in paragraph 6 below. Any member of the Board may resign by sending notice of his/her resignation to the Chair of the Board and the Administrator.

6. Election and Term of Members of the Board. An election shall be held at the annual meeting of the South Dakota Public Assurance Alliance to fill any Board position that is open, or will become open as the result of an expiring term or vacancy as described in this Article. Applications for all open positions to be filled at such an election shall be submitted in writing to the Nominating Committee of the Board of Directors at least thirty (30) days prior to the date of the South Dakota Public Assurance Alliance annual meeting in question. The Nominating Committee will consider all applications received and recommend one candidate to fill each open Board position. The election held at the annual meeting of the South Dakota Public Assurance Alliance shall be determined by a majority of those Alliance Member entities present and voting at the annual meeting with each Member entity having one vote. A candidate recommended by the Nominating Committee and nominated at the annual meeting shall be deemed elected if he/she receives more than 50% of the votes cast by those Member entities present and voting at the election. If the candidate nominated fails to receive a majority of votes cast at the election then the Nominating Committee shall recommend a second person to stand at election at the same annual meeting. Board members elected at such an election shall take office on the following January 1. All Board members shall be elected to a three (3) year term. A Board member may be removed for just cause by a majority vote of the Board of Directors. There shall be no prohibition on election to successive terms.
7. Meetings of the Board. The Board of Directors shall hold its annual meeting in conjunction with the annual meeting of the South Dakota Municipal League. The Board shall meet a minimum of four (4) times per year and at such other times as called by the Chair. Any item of Alliance business may be considered at such meetings. Special meetings may be called by the Chair or by a majority of the Board of Directors. Meetings may be held by teleconference through any audio or video medium.
8. Executive Committee. The Executive Committee shall be comprised of five (5) members including the three officers elected by the Board, one at-large Board member selected by a majority vote of the Board and the Executive Director of the South Dakota Municipal League. The Committee shall be chaired by the Chair of the Board. The Committee shall inform and direct the Executive Director of the South Dakota Public Assurance Alliance on Board policy and shall make recommendations to the Board as it deems necessary for the prudent operation and management of the Alliance.
9. Officers. By majority vote, the Board of Directors, at its December Board meeting or at a Special Meeting held for the purpose of such election, shall select from the members of the Board, a Chair, Vice-Chair, and Secretary/Treasurer.

ARTICLE VI – POWERS AND DUTIES

The Board of Directors shall be permitted and the undersigned authorizes it to perform and carry out, or delegate to others to perform and carry out, on behalf of the undersigned, each and every act necessary, convenient or desirable to, and for carrying out the purpose of this Contract and the Alliance, including but not limited to:

1. Administer the Alliance, receive Member's Contributions (contracted obligations) to the Alliance, and settle and pay claims and losses on behalf of its Members;
2. Make and enter into contracts to conduct and operate the Alliance;

3. Employ employees and agents on behalf of the undersigned;
4. Incur liabilities and charges against the common funds of the Alliance, but no charge, liability or obligation so incurred shall be the charge, liability or obligation of any individual party to this Agreement;
5. Sue or be sued in the Member's name or collective names, and defend such claims;
6. Acquire, or dispose of real and/or personal property;
7. Advise Members on loss control guidelines and procedures, and provide Members with risk management services, loss control, and risk reduction information;
8. Purchase for the Members reinsurance and/or excess insurance and/or enter into such excess risk sharing pools as may be available and deemed desirable for the protection of the Members and/or the Alliance itself;
9. Invest, on behalf of the Members, Alliance funds in securities and investments in a prudent and lawful manner;
10. Promulgate procedures and regulations for the general administration of this Contract(s);
11. Take such action as is necessary to terminate the participation/contract of any Member that fails to comply with the reasonable requirements of the Administrator concerning contractual obligations;
12. Provide surety and/or fidelity bonds, as may be available, for members of the Board, and all persons charged with the custody or investment of Alliance monies.

ARTICLE VII – LIABILITY OF THE BOARD OF DIRECTORS, ADMINISTRATOR, OR EMPLOYEES

The members of the Board of Directors, the Administrator, its directors, officers, and employees shall:

1. Use reasonable and ordinary care in the exercise of their duties hereunder;
2. Be afforded all of the privileges and immunities that may attach under any applicable law;
3. Not be liable for, and be held harmless and defended by the undersigned and from Alliance funds, for any act of negligence, any mistake of judgment or any other action made, taken or omitted in good faith;
4. Not be liable for any loss incurred through investment of funds or failure to invest such funds.

The Administrator may purchase, subject to availability and cost, insurance providing coverage for the Board of Directors, its officers and members, the Administrator, its directors, officers, and employees.

The undersigned shall and the funds of the Alliance shall be used to hold harmless and defend the Board of Directors, its officers and members, the Administrator, its directors, officers, and employees for any act or omission taken or omitted in good faith by the Board of Directors, its officers and members, the Administrator, its directors, officers, and employees. The hold harmless and indemnity provisions of the undersigned shall be joint and several with all signatories to this Contract; provided, however, this obligation shall be considered an expense of the Alliance and in no event shall any individual signator be liable for more than its pro rata annual contribution herein except in the event of termination of the Alliance as described in Article XI or in the event of a deficit in the Operating Fund as provided in Article VIII. Nothing contained herein shall be construed as to require the undersigned to hold harmless or defend any party from any act done in bad faith or any breach of a fiduciary duty.

No covenant or agreement contained herein shall be deemed to be the covenant or agreement of any member of the Board of Directors or the Administrator nor any of its employees and none of such persons shall be subject to any personal liability or accountability by reason of the acceptance of a position or the undertaking of the performance of any of the

responsibilities, obligations or duties contemplated in the carrying out of this Agreement, whether by virtue of any construction, statute or rule of law.

ARTICLE VIII – ESTABLISHMENT OF OPERATING FUND

1. The Board shall establish a budget which shall consist of Member's Contributions in amounts not less than the Administrator deems sufficient to annually produce the sum of money reasonably necessary to fund the expenses and any deficiencies which may occur in the Alliance's Operating Fund regulatory authority; the sum of which shall be known as the Annual Budget.
2. Thirty (30) days prior to the Alliance's fiscal year end, or at such other time as directed by the Board, the Administrator shall prepare an Annual Budget for the succeeding fiscal year. The Annual Budget shall be used to assist in determining the annual rates for the Alliance. The rates determined by the approval of the Annual Budget by the Board of Directors are used to determine the contributions for each Member, based on their exposures. Members' Annual Operating Contributions will be determined on an individual basis, based on detailed analysis of exposures and for a one (1) year period from their Risk Sharing Certificate effective date of coverage.
3. In the event that the Operating Fund becomes deficient during any Alliance fiscal year, the Alliance shall liquidate any and all assets and continue to pay claims and losses incurred within the Scope of Coverage and pursuant to the Risk Sharing Certificate until all funds of the Alliance are exhausted. After such time, all coverages and payment of valid claims shall be the sole and separate obligation of each individual Member.

ARTICLE IX – MEMBER'S WITHDRAWAL, CANCELLATION, OR TERMINATION

1. Members agree to continue membership for a period of not less than one (1) full year. At the conclusion of such period, or anniversary thereof, a Member who has given sixty (60) days prior written notice to the Alliance may withdraw. A Member who has not given sixty (60) days prior written notice to the Alliance to withdraw may not withdraw for an additional one (1) full year.

Anything contained in this Agreement to the contrary notwithstanding, a Member's election to cease participation in the Alliance for Property Coverage shall not constitute a withdrawal under any other terms and conditions of the Agreement. Property Coverage applies only to losses or claims which occur prior to the termination date. All rights for reimbursement or any right to claims against the Alliance shall terminate for Property losses which occur after the termination date.

Effective 12:01 a.m. on the date of the withdrawal and notwithstanding anything contained to the contrary within this Agreement or attachments hereto or the Risk Sharing Certificate issued pursuant to this Agreement, payments for all unknown Casualty Coverage claims or claims expense shall thereafter become the sole responsibility of the withdrawing Member unless the claim was reported prior to the withdrawal of the Member's participation in the Alliance.

Effective 12:01 a.m. on the date of the withdrawal and notwithstanding anything contained to the contrary within this Agreement or attachments hereto or the Risk Sharing Certificate issued pursuant to this Agreement, payments for all Property claims and claim expense incurred thereafter shall become the sole responsibility of the withdrawing Member. Any Property claim reported in a timely manner not to exceed sixty (60) days after its occurrence shall be covered by the Alliance if the claim occurred during the period the Risk Sharing Certificate was in effect and if coverage is otherwise available under the Risk Sharing Certificate.

The Alliance will continue to service all claims which have been reported to the Alliance during the withdrawing Member's period of participation. Payment of all claims so serviced by the Alliance for the withdrawing Member shall be made by the Alliance.

Anything contained in this Agreement to the contrary notwithstanding, a Member that has given notice of withdrawal may rescind said notice provided written notice of rescission is sent to the Alliance within the sixty (60) day period and provided further all contributions required from said Member are made in a timely fashion.

2. The Alliance may, by a two thirds (2/3) majority of the Board and by providing a Member sixty (60) days prior written notice, cancel that Member's participation in the Alliance and terminate its Intergovernmental Contract effective at the end of any Risk Sharing Certificate year. Thereafter, it shall be the responsibility of the Alliance to defend, settle, and pay claims within the scope and limits set forth in the cancelled Member's Risk Sharing Certificate in effect on the date of the occurrence out of which such claim arose. This provision shall apply solely to claims which occurred during a Member's participation and evidenced by the Member's Risk Sharing Certificate. The cancelled Member shall have the right, prior to the actual date of cancellation, to withdraw from the Alliance by giving notice of such withdrawal. Electing to so withdraw, the Member shall be subject to the provisions of paragraph one (1) of this Article.
3. Any Member failing to make payments when due as required by this Agreement shall be terminated from the Alliance effective on the date the payment was due and upon that effective date of termination all coverages and benefits hereunder shall cease. All known and unknown claims and claims expenses thereafter shall become the sole responsibility of the terminated Member without regard to whether a claim occurred or was reported prior to the termination of the Member's participation in the Alliance. At the request of the terminated Member, the Alliance will continue to service all claims which have been reported to the Alliance during the terminated Member's period of participation so long as the terminated Member shall promptly reimburse the Alliance for all claims the terminated Member and the Alliance shall incur no liability for payment of claims by virtue of servicing claims under the terms of this paragraph. If the Member shall subsequently submit its payment, the Administrator may, in its discretion, reinstate such membership.
4. Any Member who elects to withdraw pursuant to Paragraph 1 of this Article is prohibited from rejoining the Alliance for a period of two years.

ARTICLE X – SCOPE OF RISK SHARING PROTECTION

1. The Alliance provides risk sharing protection to each Member and will make or secure payment on behalf of each Member under criteria and procedures established for the payment of claims as provided in the Member's Risk Sharing Certificate. As long as a Member continues to renew its annual Risk Sharing Certificate, any claim that occurred during the period the Risk Sharing Certificate is in effect shall be considered for payment as provided in the Member's Risk Sharing Certificate.
2. The Alliance may obtain excess insurance, reinsurance, or join in excess risk sharing pools.
3. In the event that a claim or series of claims exceeds the amount of the risk sharing protection provided by the Member's Risk Sharing Certificate, or in the event that a claim or a series of claims should exhaust the Operating Fund and any reinsurance, then payment of valid claims shall be the sole and separate obligation of the individual Member or Members against whom the claim was made and perfected by litigation or settlement.
4. A Member may purchase, in its sole discretion, any insurance coverage in addition to those amounts purchased by the Alliance.
5. The Board may make changes in the Scope of Coverage, the amount of risk sharing protection or risk sharing retention by the Alliance upon consideration of the needs and requirements of Members, loss experience, and/or the kind and amounts of reinsurance or other excess coverage available. Where the Board takes such action, immediate notice after taking of such action shall be sent to all Members or their representatives.

ARTICLE XI – TERMINATION

The Alliance shall terminate at such time as two-thirds (2/3) of the municipal and county Members vote for such termination. After a vote to terminate, the Board shall commence with the orderly liquidation of the Alliance's business and shall complete the same as promptly as possible. During such period of liquidation the Alliance shall continue to pay claims and losses incurred within the Scope of Coverage and pursuant to the Risk Sharing Certificate until all funds of the Alliance are exhausted. After payment of all claims and losses, any remaining funds held by the Alliance shall be paid to all Members of the Alliance at the time of the vote of termination, on a pro rata basis determined by the Board.

To the extent of the existence of funds in the Operating Fund, no Member shall be responsible for any claim, claims, judgment or judgments against any other Member or Members. If upon termination of the Alliance the remaining assets of the Alliance are insufficient to satisfy indebtedness of the Alliance (excluding claims or judgments against the Members), such deficiency shall be made up by assessments against Members of the Alliance on a pro rata basis determined by the Board

ARTICLE XII – MISCELLANEOUS PROVISIONS

1. The provisions of this Agreement shall be interpreted pursuant to the laws of the State of South Dakota.
2. The parties hereto consent that courts in the State of South Dakota shall have jurisdiction over any dispute arising under this Agreement. The terms of this Agreement may be enforced in a court of law in the State of South Dakota either by the Alliance or by any Member.
3. The consideration for the obligations imposed upon Members pursuant to and under this Agreement shall be based upon the mutual promises and agreements of all Members who now execute or who hereinafter execute this Agreement.
4. This Agreement may be executed in duplicate originals or counterparts now or at any time in the future. The individual executing this Agreement on behalf of the participating Member hereby represents and certifies that he/she is duly empowered to so execute this document.
5. No waiver of any breach of this Agreement or any provisions herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any of the other provisions herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligations or acts.
6. This Agreement shall be binding and shall inure to the benefit of all Members who shall have executed this Agreement and complied with the financial requirements hereunder and provided that the Members shall have been duly approved in accordance with the terms and provisions of this Agreement.
7. The provisions of this Agreement shall be deemed severable and if any provision or part thereof is held illegal, void or invalid under applicable law, such provision or part may be changed to the extent reasonably necessary to make the provision or part, as so changed, legal, valid or binding. If any provision of this Agreement is held illegal, void or invalid in its entirety, the remaining provisions of this Agreement shall not in any way be affected or impaired but shall remain binding in accordance with their terms and this Agreement shall be so interpreted.
8. This Agreement and the Risk Sharing Certificate contain the complete Agreement between the parties and no representations or oral statements made or heretofore given shall constitute a part of this Agreement. In the event that any provision of this Agreement is in conflict with or is incompatible with such, the terms and conditions of this Agreement shall prevail and take precedence.
9. This Agreement may be altered or amended only by amendments duly adopted in accordance with the terms and conditions of this Agreement; provided, however, that the Risk Sharing Certificate may be amended from time to time to reflect the exposures of each Member and such changes shall be exempted from the preceding terms of this paragraph.
10. The caption headings used in this Agreement are used merely for identification purposes and shall not be deemed a part of this Agreement.
11. Whenever in this Agreement words, including pronouns, are used in the singular or plural, or masculine or feminine, they may be read and construed in the plural or singular, or feminine or masculine, respectively, wherever they so apply.
12. This Agreement may be amended by the Board with the approval of two-thirds (2/3) of the members of the Board. All Members agree to properly execute and adopt amendments so approved. The payment of the Member's

Contribution to the SDPAA for the upcoming year shall be deemed consent of that Member to the terms and conditions of this Agreement and any Amendments thereto.

13. The Board may, with the approval of two-thirds (2/3) of the members of the Board, elect to reform or reconstitute the Alliance to a stock, mutual, or reciprocal insurance company operating as a captive, Risk Retention Group, or other risk sharing entity.

14. The Alliance shall maintain a fiscal year ending December 31.

ARTICLE XIII – AGENT AND OFFICE

The agent of the Alliance for service of notice shall be the Administrator, South Dakota Public Assurance Alliance, 208 Island Drive, Ft. Pierre, SD 57532.

ARTICLE XIV – NOTICE

All notices required to be given under this Agreement pursuant to Article IX shall be in writing and sent by certified mail, return receipt requested, with postage prepaid. Notices by a Member to the Alliance under Article IX shall be sent to the address in Article XIII to the attention of the Administrator. Notices to any Member under Article IX shall be sent to the representative of the Member at the Member's last known address.

Notices to be given under this Agreement pursuant to Article X, 5. shall be sent to all Members or their representatives following Board action at their last known address or their last known electronic address.

In the event that any party to this Agreement desires to change its address, notice of change of address shall be sent to the other party in accordance with the terms and provisions in this Article.

In Witness whereof, this Agreement was executed on the _____ day of _____, in the year _____, by the undersigned duly authorized officer of the Governmental Authority indicated below:

GOVERNMENTAL AUTHORITY

SOUTH DAKOTA PUBLIC ASSURANCE ALLIANCE

Name of Entity: _____



By: _____

By: _____

PRINT NAME: _____

TITLE: Executive Director
ADMINISTRATOR ON BEHALF OF ALL OTHER
CURRENT AND FUTURE SIGNATORIES

TITLE: _____

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Whereas, the Acts of the State of South Dakota authorize and/or permit various Governmental Authorities to contract, and;

Whereas, the undersigned desires, along with other such entities, to form or join or reaffirm their membership in a local government risk pool to be known as the South Dakota Public Assurance Alliance, and;

Whereas, pursuant to the authority granted by SDCL ch. 1-24 and any acts amendatory thereto, the undersigned executes this document for purposes of joining or reaffirming membership, by virtue of an intergovernmental contract, the local government risk pool known as the South Dakota Public Assurance Alliance;

Now, therefore, the undersigned executes this Agreement in consideration for other Governmental Authorities executing this Agreement for the purpose of joining or reaffirming their membership in a local government risk pool known as the South Dakota Public Assurance Alliance. The undersigned agrees to abide by the terms and conditions of this Contract and all actions taken pursuant to this Contract. In consideration of the mutual covenants of all signatories to this Intergovernmental Contract it is agreed as follows:

ARTICLE I – NAME

The Pool created by this Contract shall be known as the South Dakota Public Assurance Alliance, hereinafter referred to as the "Alliance".

Commented [D1]: Common drafting practice to make it clear throughout that "Alliance" means SDPAA.

~~The signatories hereto, together with future signatories, establish a contractual local government risk pool for the purpose of effectuating this Agreement; which Pool shall have a perpetual duration and shall continue until terminated pursuant to the terms and conditions of the Agreement.~~

Commented [D2]: Moved to Purpose article directly below as it belongs in that section, not here.

ARTICLE II – PURPOSE

The signatories hereto, together with future signatories, establish a contractual local government risk pool for the purpose of effectuating this Agreement; which Pool shall have a perpetual duration and shall continue until terminated pursuant to the terms and conditions of the Agreement. The purpose of this Agreement is to enter into an Intergovernmental Contract to form a local government risk pool, to provide for joint or cooperative action by Members relative to their financial and administrative resources for the purpose of providing risk management services and risk sharing facilities to the Members and to the Member's employees, and to defend and protect, in accordance with this Agreement, any Member of the Alliance against liability as defined under Pool Retention and in the Member's Risk Sharing Certificate. This Contract and the activities hereunder shall not constitute doing an insurance business. This Agreement is intended to create a contractual relationship and agreement between the signatories.

This Agreement shall constitute a contract among those Governmental Authorities which shall now or at any time enter into this Agreement and become Members of the Alliance.

The liability of each Member is limited to the amount of financial contributions required to be made to the Alliance pursuant to the Agreement except in the event of termination of the Alliance as described in Article XI or in the event of a deficit in the Operating Fund as provided in Article VIII.

This Agreement shall not inure to the benefit of third parties nor does any party hereto waive such sovereign or governmental immunity as may be available to it individually.

In no event shall a Member be responsible, jointly or severally, for the liabilities of any other Member except in the event of termination of the Alliance by the Alliance membership as described in Article XI or in the event of a deficit in the Operating Fund as provided in Article VIII when all Alliance Members would be responsible for a joint liability of the Alliance. In no event will an individual Member be responsible for any liabilities of any other Member.

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Commented [D3]: Clarifies that an individual Member is not responsible for the liabilities of any other individual Member.

ARTICLE III – DEFINITIONS

In the interpretation of this Agreement the following definitions shall apply unless the context requires another interpretation:

1. Acts --“Acts” shall mean such Acts of the State of South Dakota, pursuant to which this Contract is executed, as the same may be amended from time to time.
2. Administrator -- “Administrator” shall mean the South Dakota Public Assurance Alliance.
3. Agreement --“Agreement” shall mean this Intergovernmental Contract for the South Dakota Public Assurance Alliance and all of the counterparts subsequently executed.
4. Alliance --“Alliance” shall be the sum of all the contracts or contractual obligations of the Members.
5. Annual Operating Contribution --“Annual Operating Contribution” shall mean those amounts necessary to fund the expenses of the Alliance.
6. Basis Rate --“Basis Rate” shall mean that amount annually promulgated by the Administrator deemed necessary to provide the Scope of Coverage afforded to a Member for the period of one year corresponding to the Risk Sharing Certificate effective date with due consideration to the Member’s individual characteristics.
7. Board --“Board” shall mean the Board of Directors of the South Dakota Public Assurance Alliance.
8. Casualty Coverage --“Casualty Coverage” shall mean the coverage afforded a Member for Casualty Risk, pursuant to the Member’s Risk Sharing Certificate and subsequent amendments and/or endorsements thereto.
9. Casualty Risk --“Casualty Risk” shall mean General Liability, Government Officials Liability, Law Enforcement Liability, Automobile Liability and other similar coverages usual to a Governmental Authority.
10. Claims Administrator --“Claims Administrator” shall mean any entity with whom the Administrator enters a contract for claims services.
11. Contract(s) --“Contract(s)” shall mean this Agreement and all of its counterparts.
12. Governmental Authority --“Governmental Authority” shall mean a public agency or any joint power agreement or separate entities consisting entirely of public agencies as defined in the Act.
13. Limits of Coverage --“Limits of Coverage” shall mean the limits of coverage established by any applicable coverage document, the Risk Sharing Certificate, and any other document or agreement that establishes and controls limits of various coverages provided to the Member.

14. Member --"Member" shall mean a Governmental Authority participating in the South Dakota Public Assurance Alliance by executing this Agreement.
15. Member's Contribution --"Member's Contribution" shall mean all amounts paid by Members and allocated to the Operating Fund.
16. Operating Fund --"Operating Fund" shall mean those amounts allocated to and designated as "Net Assets-Unrestricted" in the Alliance's financial statements, as a result of increasing such amounts by the Annual Operating Contribution and investment income, and subtracting the expenses of the Alliance.
17. Pool --"Pool" shall mean the cumulative funds collected under this Contract and the contractual activities conducted hereunder, also sometimes referred to as the Alliance. The Pool is the sum of all Members' funds and contractual duties, benefits and obligations.
18. Pool Retention --"Pool Retention" shall mean the amount that the Board may determine to retain as a designated retention from time-to-time.
19. Property Coverage --"Property Coverage" shall mean the coverage afforded a Member for Property Risk, pursuant to the Member's Risk Sharing Certificate and subsequent amendments and/or endorsements thereto.
20. Property Risk --"Property Risk" shall mean Property, Vehicle Physical Damage, Inland Marine, Crime, Boiler and Machinery, and other similar coverages usual to a Governmental Authority.
21. Risk Sharing Certificate --"Risk Sharing Certificate" shall mean that document provided a Member evidencing the scope, nature, term, and limits of participation in the Alliance.
22. Scope of Coverage --"Scope of Coverage" shall mean the coverage, limits, and deductibles as established and defined in this agreement, any applicable separate coverage document, the Risk Sharing Certificate, and any other applicable document defining or establishing such terms, and subsequent amendments thereto.

ARTICLE IV – MEMBERSHIP

Contractual membership of the Alliance shall consist of Governmental Authorities who have entered into this Agreement or its counterpart by and through an individual duly authorized to execute this Agreement, and who have agreed to make the Member's Contribution pursuant to the further provisions hereof. Members agree to the admission of future Members and acknowledge that they shall have no right to object to the addition of such Members provided they are admitted in accordance with the terms hereof. This Agreement shall be automatically renewed unless the provisions for withdrawal or termination are applied.

Each Member shall appoint an individual and an alternate to represent the Member with the Alliance. That individual or alternate shall act as a liaison between the Member and the Alliance for purposes of relating risk reduction and loss control information, and any other information or instructions concerning the obligations of the Member imposed by this Agreement and the rules and regulations established hereunder. The individual or alternate shall cast, on behalf of the Member, any vote which the Member is required or permitted to cast.

The obligations of Members of the Alliance shall include, but not necessarily be limited to, the following:

1. To promptly report to the Administrator or designated Claims Administrator any incident which could result in a claim being made by or against the Member within the Scope of Coverage.

2. To cooperate with and institute to the degree possible all loss prevention procedures established by the Administrator.
3. To provide to the Administrator such information as needed for rating purposes, including but not limited to, a completed renewal packet and any supplement questionnaires, as requested, and a budget approved by Member's governing body of all revenues and expenditures for any fiscal year of the Member requested by the Administrator.
4. To provide representatives of the Administrator access to all records, including financial records and/or properties of the Member, provided the Administrator determines the information or access is necessary.
5. To cooperate with the Administrator and any employee, officer or independent contractor relating to the purpose and powers of the Alliance.
6. To allow attorneys and others employed by the Administrator to represent the Member in investigation, settlement, and all levels of litigation arising out of any claim made against the Member within the Scope of Coverage furnished by the Alliance.
7. To pay when due all annual contributions or other contributions, due or required, pursuant to this Agreement.

ARTICLE V – BOARD OF DIRECTORS

1. Administration of the Contract(s). The administration of this Contract(s) and management of the Alliance shall be governed by a Board of Directors of eleven (11) members comprised of six (6) municipal representatives, three (3) county representatives and the Executive Directors of the South Dakota Municipal League and the South Dakota Association of County Commissioners.
2. Qualifications of Members of the Board. Members of the Board shall be either:
 - a. Elected officials of an Alliance Member provided the governing board of the Member in question has supported their appointment or candidacy by Resolution; or
 - b. Representatives, employees or appointed officials of an Alliance Member provided the governing board of the Member in question has supported their appointment or candidacy by Resolution; or
 - c. No Member may support the appointment or candidacy of more than one person to the Board in any given year. If such person is later unable to assume office as a member of the Board for any reason, then this prohibition shall not apply.
 - d. The Executive Directors of the South Dakota Municipal League and the South Dakota Association of County Commissioners are qualified by the nature of their respective positions and shall remain standing members of the Board.
3. If a Board member initially appointed or elected to the Board based on their status as an elected or appointed official, or employee of a Member leaves office or employment with that Member during their term, they may continue to serve and complete their current term unless and until they resign, are removed pursuant to the terms and conditions of this Article, or until such time as the Member which initially sponsored their appointment or candidacy revokes their resolution of support in writing. Such revocation must be in writing or by electronic communication and in the form of a resolution of revocation. It must be provided to the Chair and Vice-Chair by the sponsoring Member. Such revocation shall create a vacancy to be filled pursuant to the provisions of Article V, Paragraph 5.
4. A Board member initially appointed or elected to the Board based on their status as a representative of a Member may serve unless and until they resign, are removed pursuant to the terms and conditions of this Article, or until such time as the Member which initially sponsored their appointment or candidacy revokes their resolution of support in writing. Such revocation must be in writing or by electronic communication by and in the form of a resolution of revocation. It must be provided to the Chair and Vice-Chair by the sponsoring Member. Such written revocation shall create a vacancy to be filled pursuant to the provisions of Article V, Paragraph 5.

5. Eligibility and Vacancies. The Board shall be the judge of the election and qualifications of its members and of the grounds for their forfeiture of office. The Board may remove any Board member for cause as determined by a 2/3 vote of the entire Board. "For cause" shall include but not be limited to a Board member having excessive absences from the meetings of the full Board or any other instance where a Board member's continued service has become untenable by the sole determination of a 2/3 vote of the Board. Such removal for cause of a Board member shall then be deemed a vacancy as described by this Article. Should the number of members of the Board become reduced due to disqualification, death, incompetence, resignation or other cause, the remaining members of the Board may appoint a person or persons to fill such a vacancy or vacancies until the time of the next annual meeting of the South Dakota Public Assurance Alliance so that the Board shall be maintained numerically during that time. At the next annual meeting of the South Dakota Public Assurance Alliance, the Nominating Committee of the Board of Directors shall recommend one candidate to fill each vacant position on the Board for the remainder of the term left open and Member entities of the South Dakota Public Assurance Alliance present at that annual meeting shall vote on the candidate recommended by the Nominating Committee in the manner described in paragraph 64 below. Any member of the Board may resign by sending notice of his/her resignation to the Chair of the Board and the Administrator.

Commented [D4]: The absences issue below is placed in this paragraph. The Board's authority to remove a Board member is expanded to when a Board member's continued service on the Board becomes untenable for any reason. The Board takes its fiduciary duties seriously and should be able to remove a Board member whose continued service may call into question their ability to maintain those fiduciary duties, such as someone who is charged with or convicted of a felony, a crime of dishonesty, or a heinous act.

6. Election and Term of Members of the Board. An election shall be held at the annual meeting of the South Dakota Public Assurance Alliance to fill any Board position that is open, or will become open as the result of an expiring term or vacancy as described in this Article, paragraph 3 above. Applications for all open positions to be filled at such an election shall be submitted in writing to the Nominating Committee of the Board of Directors at least thirty (30) days prior to the date of the South Dakota Public Assurance Alliance annual meeting in question. The Nominating Committee will consider all applications received and recommend one candidate to fill each open Board position. The election held at the annual meeting of the South Dakota Public Assurance Alliance shall be determined by a majority of those Alliance Member entities present and voting at the annual meeting with each Member entity having one vote. A candidate recommended by the Nominating Committee and nominated at the annual meeting shall be deemed elected if he/she receives more than 50% of the votes cast by those Member entities present and voting at the election. If the candidate nominated fails to receive a majority of votes cast at the election then the Nominating Committee shall recommend a second person to stand at election at the same annual meeting. Board members elected at such an election shall take office on the following January 1. All Board members shall be elected to a three (3) year term. A Board member may be removed for just cause by a majority vote of the Board of Directors. There shall be no prohibition on election to successive terms.

7. Meetings of the Board. The Board of Directors shall hold its annual meeting in conjunction with the annual meeting of the South Dakota Municipal League. The Board shall meet a minimum of four (4) times per year and at such other times as called by the Chair. Any item of Alliance business may be considered at such meetings. Special meetings may be called by the Chair or by a majority of the Board of Directors. Meetings may be held by teleconference through any audio or video medium, phone or by written executed document.

Commented [D5]: Makes it consistent with last sentence which allows the Chair to call a meeting "at such other times. . ."

Commented [D6]: Adopted the language from SDCL on "telephonic" meetings.

Any member of the Board who has two (2) absences from the meetings of the full Board that have not been excused by the Chair in any one (1) calendar year may be replaced by the Board.

8. Executive Committee. The Executive Committee shall be comprised of five (5) members including the three officers elected by the Board, one at-large Board member selected by a majority vote of the Board and the Executive Director of the South Dakota Municipal League. The Committee shall be chaired by the Chair of the Board. The Committee shall inform and direct the Executive Director of the South Dakota Public Assurance Alliance on Board policy and shall make recommendations to the Board as it deems necessary for the prudent operation and management of the Alliance.

9. Officers. By majority vote, the Board of Directors, at its December Board meeting or at a Special Meeting held for the purpose of such election shall select from the members of the Board, a Chair, Vice-Chair, and Secretary/Treasurer.

Commented [D7]: In the rare event that the December meeting cannot be held for some reason, this allows an election of officers at another convenient time. I have seen organizations with this specific meeting restriction for elections go another year with the same officers.

ARTICLE VI – POWERS AND DUTIES

The Board of Directors shall be permitted and the undersigned authorizes it to perform and carry out, or delegate to others to perform and carry out, on behalf of the undersigned, each and every act necessary, convenient or desirable to, and for carrying out the purpose of this Contract and the Alliance, including but not limited to:

1. Administer the Alliance, receive Member's Contributions (contracted obligations) to the Alliance, and settle and pay claims and losses on behalf of its Members;
2. Make and enter into contracts to conduct and operate the Alliance;
3. Employ employees and agents on behalf of the undersigned;
4. Incur liabilities and charges against the common funds of the Alliance, but no charge, liability or obligation so incurred shall be the charge, liability or obligation of any individual party to this Agreement;
5. Sue or be sued in the Member's name or collective names, and defend such claims;
6. Acquire, or dispose of real and/or personal property;
7. Advise Members on loss control guidelines and procedures, and provide Members with risk management services, loss control, and risk reduction information;
8. Purchase for the Members reinsurance and/or excess insurance and/or enter into such excess risk sharing pools as may be available and deemed desirable for the protection of the Members and/or the Alliance itself;
9. Invest, on behalf of the Members, Alliance funds in securities and investments in a prudent and lawful manner;
10. Promulgate procedures and regulations for the general administration of this Contract(s);
11. Take such action as is necessary to terminate the participation/contract of any Member that fails to comply with the reasonable requirements of the Administrator concerning contractual obligations;
12. Provide surety and/or fidelity bonds, as may be available, for members of the Board, and all persons charged with the custody or investment of Alliance monies.

ARTICLE VII – LIABILITY OF THE BOARD OF DIRECTORS, ADMINISTRATOR, OR EMPLOYEES

The members of the Board of Directors, the Administrator, its directors, officers, and employees shall:

1. Use reasonable and ordinary care in the exercise of their duties hereunder;
2. Be afforded all of the privileges and immunities that may attach under any applicable law;
3. Not be liable for, and be held harmless and defended by the undersigned and from Alliance funds, for any act of negligence, any mistake of judgment or any other action made, taken or omitted in good faith;
4. Not be liable for any loss incurred through investment of funds or failure to invest such funds.

The Administrator may purchase, subject to availability and cost, insurance providing coverage for the Board of Directors, its officers and members, the Administrator, its directors, officers, and employees.

The undersigned shall and the funds of the Alliance shall be used to hold harmless and defend the Board of Directors, its officers and members, the Administrator, its directors, officers, and employees for any act or omission taken or omitted in good faith by the Board of Directors, its officers and members, the Administrator, its directors, officers, and employees. The hold harmless and indemnity provisions of the undersigned shall be joint and several with all signatories to this Contract; provided, however, this obligation shall be considered an expense of the Alliance and in no event shall any individual signator

be liable for more than its pro rata annual contribution herein except in the event of termination of the Alliance as described in Article XI or in the event of a deficit in the Operating Fund as provided in Article VIII. Nothing contained herein shall be construed as to require the undersigned to hold harmless or defend any party from any act done in bad faith or any breach of a fiduciary duty.

No covenant or agreement contained herein shall be deemed to be the covenant or agreement of any member of the Board of Directors or the Administrator nor any of its employees and none of such persons shall be subject to any personal liability or accountability by reason of the acceptance of a position or the undertaking of the performance of any of the responsibilities, obligations or duties contemplated in the carrying out of this Agreement, whether by virtue of any construction, statute or rule of law.

ARTICLE VIII – ESTABLISHMENT OF OPERATING FUND

1. The Board shall establish a budget which shall consist of Member's Contributions in amounts not less than the Administrator deems sufficient to annually produce the sum of money reasonably necessary to fund the expenses and any deficiencies which may occur in the Alliance's Operating Fund regulatory authority; the sum of which shall be known as the Annual Budget.
2. Thirty (30) days prior to the Alliance's fiscal year end, or at such other time as directed by the Board, the Administrator shall prepare an Annual Budget for the succeeding fiscal year. The Annual Budget shall be used to assist in determining the annual rates for the Alliance. The rates determined by the approval of the Annual Budget by the Board of Directors are used to determine the contributions for each Member, based on their exposures. Members' Annual Operating Contributions will be determined on an individual basis, based on detailed analysis of exposures and for a one (1) year period from their Risk Sharing Certificate effective date of coverage.
3. In the event that the Operating Fund becomes deficient during any Alliance fiscal year, the Alliance shall liquidate any and all assets and continue to pay claims and losses incurred within the Scope of Coverage and pursuant to the Risk Sharing Certificate until all funds of the Alliance are exhausted. After such time, all coverages and payment of valid claims shall be the sole and separate obligation of each individual Member.

ARTICLE IX – MEMBER'S WITHDRAWAL, CANCELLATION, OR TERMINATION

1. Members agree to continue membership for a period of not less than one (1) full year. At the conclusion of such period, or anniversary thereof, a Member who has given sixty (60) days prior written notice to the Alliance may withdraw. A Member who has not given sixty (60) days prior written notice to the Alliance to withdraw may not withdraw for an additional one (1) full year. Within 120 days following withdrawal, or as soon thereafter as the next Annual Budget is completed, the Alliance will advise the withdrawing Member their total calculated portion of contributions made to the Alliance that shall be refunded.

Refunds shall be calculated based on the pool's total contributions, along with the Member's total contributions, current losses, unpaid losses, and loss expenses, the Member's loss ratio, and number of membership years.

Members who withdraw from the pool shall receive a calculated portion of their contributions refunded for unpaid casualty losses, based on the following schedule:

Years	Percentage
1	55%
50%	
2	40%
2	35%
2	30%
6+	20%

All refunds shall be paid to the withdrawing Member over a five-year term.

Commented [D8]: Eliminates the partial refund for withdrawing Members. An informal poll of almost 40 public entity pools discovered that the SDPAA is the only public pool doing such a partial refund. The grounds for such elimination are contained within the proposed SDPAA Policy on Departing Members.

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Anything contained in this Agreement to the contrary notwithstanding, a Member's election to cease participation in the Alliance for Property Coverage shall not constitute a withdrawal under any other terms and conditions of the Agreement. Property Coverage applies only to losses or claims which occur prior to the termination date. All rights for reimbursement or any right to claims against the Alliance shall terminate for Property losses which occur after the termination date.

Effective 12:01 a.m. on the date of the withdrawal and notwithstanding anything contained to the contrary within this Agreement or attachments hereto or the Risk Sharing Certificate issued pursuant to this Agreement, payments for all ~~known and unknown~~ Casualty Coverage claims or claims expense shall thereafter become the sole responsibility of the withdrawing Member ~~unless the without regard to whether a claim occurred or was reported~~ prior to the withdrawal of the Member's participation in the Alliance.

Commented [D9]: The SDPAA retains any reported claims. Withdrawing Members assume the risk of any unreported claims once their withdrawal is official. The partial refund was originally intended to provide the withdrawing Member with funds to handle their reported claims that they took with them, but the partial refund has been eliminated under this proposal.

Effective 12:01 a.m. on the date of the withdrawal and notwithstanding anything contained to the contrary within this Agreement or attachments hereto or the Risk Sharing Certificate issued pursuant to this Agreement, payments for all Property claim reported in a timely manner not to exceed sixty (60) days after its occurrence shall be covered by the Alliance if the claim occurred during the period the Risk Sharing Certificate was in effect and if coverage is otherwise available under the Risk Sharing Certificate.

~~At the request of the withdrawing Member, the Alliance will continue to service all claims which have been reported to the Alliance during the withdrawing Member's period of participation so long as the withdrawing Member shall promptly reimburse the Alliance for all claims expenses incurred.~~ Payment of all claims so serviced by the Alliance for the withdrawing Member shall be ~~made by the sole responsibility of the withdrawing Member and the Alliance shall incur no liability for payment of claims by virtue of servicing claims under the terms of this paragraph.~~

Anything contained in this Agreement to the contrary notwithstanding, a Member that has given notice of withdrawal may rescind said notice provided written notice of rescission is sent to the Alliance within the sixty (60) day period and provided further all contributions required from said Member are made in a timely fashion.

2. The Alliance may, by a two thirds (2/3) majority of the Board and by providing a Member sixty (60) days prior written notice, cancel that Member's participation in the Alliance and terminate its Intergovernmental Contract effective at the end of any Risk Sharing Certificate year. Thereafter, it shall be the responsibility of the Alliance to defend, settle, and pay claims within the scope and limits set forth in the cancelled Member's Risk Sharing Certificate in effect on the date of the occurrence out of which such claim arose. This provision shall apply solely to claims which occurred during a Member's participation and evidenced by the Member's Risk Sharing Certificate. The cancelled Member shall have the right, prior to the actual date of cancellation, to withdraw from the Alliance by giving notice of such withdrawal. Electing to so withdraw, the Member shall be subject to the provisions of paragraph one (1) of this Article. ~~Failing to elect to give notice of withdrawal, the cancelled Member forfeits all rights to a refund of any contributions made to the Alliance by said cancelled Member.~~

3. Any Member failing to make payments when due as required by this Agreement shall be terminated from the Alliance effective on the date the payment was due and upon that effective date of termination all coverages and benefits hereunder shall cease. All known and unknown claims and claims expenses thereafter shall become the sole responsibility of the terminated Member without regard to whether a claim occurred or was reported prior to the termination of the Member's participation in the Alliance. At the request of the terminated Member, the Alliance will continue to service all claims which have been reported to the Alliance during the terminated Member's period of participation so long as the terminated Member shall promptly reimburse the Alliance for all claims the terminated Member and the Alliance shall incur no liability for payment of claims by virtue of servicing claims under the terms of this paragraph. ~~The terminated Member shall also forfeit all rights to any return of contributions and the Alliance shall apply any or all of the terminated Member's forfeited funds to the Operating Fund.~~ If the Member shall subsequently submit its payment, the Administrator may, in its discretion, reinstate such membership.

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Commented [D10]: A common provision for public pools to discourage price shopping departures as the pool's joint success depends on Members taking the loss control measures seriously. If they leave for another coverage provider, then they won't receive loss control services and they are no longer incentivized to effect those loss control recommendations from the SDPAA. See proposed SDPAA Policy on Member Departures.

4. Any Member who elects to withdraw pursuant to Paragraph 1 of this Article is prohibited from rejoining the Alliance for a period of two years.

ARTICLE X – SCOPE OF RISK SHARING PROTECTION

1. The Alliance provides risk sharing protection to each Member and will make or secure payment on behalf of each Member under criteria and procedures established for the payment of claims as provided in the Member's Risk Sharing Certificate. As long as a Member continues to renew its annual Risk Sharing Certificate, any claim that occurred during the period the Risk Sharing Certificate is in effect shall be considered for payment as provided in the Member's Risk Sharing Certificate.
2. The Alliance may obtain excess insurance, reinsurance, or join in excess risk sharing pools.
3. In the event that a claim or series of claims exceeds the amount of the risk sharing protection provided by the Member's Risk Sharing Certificate, or in the event that a claim or a series of claims should exhaust the Operating Fund and any reinsurance, then payment of valid claims shall be the sole and separate obligation of the individual Member or Members against whom the claim was made and perfected by litigation or settlement.
4. A Member may purchase, in its sole discretion, any insurance coverage in addition to those amounts purchased by the Alliance.
5. The Board may make changes in the Scope of Coverage, the amount of risk sharing protection or risk sharing retention by the Alliance upon consideration of the needs and requirements of Members, loss experience, and/or the kind and amounts of reinsurance or other excess coverage available. Where the Board takes such action, immediate notice after taking of such action shall be sent to all Members or their representatives.

ARTICLE XI – TERMINATION

The Alliance shall terminate at such time as two-thirds (2/3) of the municipal and county Members vote for such termination. After a vote to terminate, the Board shall commence with the orderly liquidation of the Alliance's business and shall complete the same as promptly as possible. During such period of liquidation the Alliance shall continue to pay claims and losses incurred within the Scope of Coverage and pursuant to the Risk Sharing Certificate until all funds of the Alliance are exhausted. After payment of all claims and losses, any remaining funds held by the Alliance shall be paid to all Members of the Alliance at the time of the vote of termination, on a pro rata basis determined by the Board.

To the extent of the existence of funds in the Operating Fund, no Member shall be responsible for any claim, claims, judgment or judgments against any other Member or Members. If upon termination of the Alliance the remaining assets of the Alliance are insufficient to satisfy indebtedness of the Alliance (excluding claims or judgments against the Members), such deficiency shall be made up by assessments against Members of the Alliance on a pro rata basis determined by the Board.

ARTICLE XII – MISCELLANEOUS PROVISIONS

1. The provisions of this Agreement shall be interpreted pursuant to the laws of the State of South Dakota.
2. The parties hereto consent that courts in the State of South Dakota shall have jurisdiction over any dispute arising under this Agreement. The terms of this Agreement may be enforced in a court of law in the State of South Dakota either by the Alliance or by any Member.
3. The consideration for the obligations imposed upon Members pursuant to and under this Agreement shall be based upon the mutual promises and agreements of all Members who now execute or who hereinafter execute this Agreement.
4. This Agreement may be executed in duplicate originals or counterparts now or at any time in the future. The individual executing this Agreement on behalf of the participating Member hereby represents and certifies that he/she is duly empowered to so execute this document.
5. No waiver of any breach of this Agreement or any provisions herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any of the other provisions herein contained. No extension of time for

Commented [D11]: If the membership terminates the SDPAA, then an assessment could occur if the SDPAA's joint obligations cannot be satisfied from the operating fund. Very few joint obligations could exist at the time of a termination by the membership. Each individual Member retains the responsibility for their own claims and judgments even after termination by the membership per this Article.

performance of any obligation or act shall be deemed an extension of time for performance of any other obligations or acts.

6. This Agreement shall be binding and shall inure to the benefit of all Members who shall have executed this Agreement and complied with the financial requirements hereunder and provided that the Members shall have been duly approved in accordance with the terms and provisions of this Agreement.
7. The provisions of this Agreement shall be deemed severable and if any provision or part thereof is held illegal, void or invalid under applicable law, such provision or part may be changed to the extent reasonably necessary to make the provision or part, as so changed, legal, valid or binding. If any provision of this Agreement is held illegal, void or invalid in its entirety, the remaining provisions of this Agreement shall not in any way be affected or impaired but shall remain binding in accordance with their terms and this Agreement shall be so interpreted.
8. This Agreement and the Risk Sharing Certificate contain the complete Agreement between the parties and no representations or oral statements made or heretofore given shall constitute a part of this Agreement. In the event that any provision of this Agreement is in conflict with or is incompatible with such, the terms and conditions of this Agreement shall prevail and take precedence.
9. This Agreement may be altered or amended only by amendments duly adopted in accordance with the terms and conditions of this Agreement; provided, however, that the Risk Sharing Certificate may be amended from time to time to reflect the exposures of each Member and such changes shall be exempted from the preceding terms of this paragraph.
10. The caption headings used in this Agreement are used merely for identification purposes and shall not be deemed a part of this Agreement.
11. Whenever in this Agreement words, including pronouns, are used in the singular or plural, or masculine or feminine, they may be read and construed in the plural or singular, or feminine or masculine, respectively, wherever they so apply.

12. This Agreement may be amended by the Board with the approval of two-thirds (2/3) of the members of the Board. All Members agree to properly execute and adopt amendments so approved. The payment of the Member's Contribution to the SDPAA for the upcoming year shall be deemed consent of that Member to the terms and conditions of this Agreement and any Amendments hereto.

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Commented [D12]: Their consent is implied by law upon the payment of their contribution, so this provision makes everyone aware that the payment is deemed consent.

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14.13. The Board may, with the approval of two-thirds (2/3) of the members of the Board, elect to reform or reconstitute the Alliance to a stock, mutual, or reciprocal insurance company operating as a captive, Risk Retention Group, or other risk sharing entity.

15.14. The Alliance shall maintain a fiscal year ending December 31.

ARTICLE XIII – AGENT AND OFFICE

The agent of the Alliance for service of notice shall be the Administrator, South Dakota Public Assurance Alliance, 208 Island Drive, Ft. Pierre, SD 57532.

ARTICLE XIV – NOTICE

All notices required to be given under this Agreement pursuant to Article IX shall be in writing and sent by certified mail, return receipt requested, with postage prepaid. Notices by a Member to the Alliance under Article IX shall be sent to

SDPAA (01.01.20202
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the address in Article XIII to the attention of the Administrator. Notices to any Member under Article IX shall be sent to the representative of the Member at the Member's last known address.

Notices to be given under this Agreement pursuant to Article X, S. shall be sent to all Members or their representatives following Board action at their last known address or their last known electronic address

In the event that any party to this Agreement desires to change its address, notice of change of address shall be sent to the other party in accordance with the terms and provisions in this Article.

Commented [D13]: A nod to the 21st Century method of communication.

In Witness whereof, this Agreement was executed on the _____ day of _____ in the year _____ by the undersigned duly authorized officer of the Governmental Authority indicated below:

GOVERNMENTAL
AUTHORITY:

Name of Entity

ACCEPTED FOR THE
SOUTH DAKOTA PUBLIC ASSURANCE ALLIANCE



By: _____

By: _____

PRINT NAME: _____

TITLE: Executive Director
ADMINISTRATOR ON BEHALF OF ALL OTHER
CURRENT AND FUTURE SIGNATORIES

TITLE: _____



South Dakota Public Assurance Alliance Policy on Member Departures

Effective October 5, 2021

Background

The South Dakota Public Assurance Alliance (SDPAA) was established by local governments in South Dakota in 1987 to provide unique solutions for property and liability coverages and services for themselves at a time when private coverage was too costly or simply unavailable. Since that time, the SDPAA has extended significant resources in providing services to its Members that would not be offered by any private coverage provider, including the following:

1. Loss control surveys are provided every three years and on an as-needed basis. To encourage Members to follow-through with the recommendations stemming from these loss control surveys, the SDPAA devotes most of its investment income each year to provide loss control credits to Members to incentivize them to effect these recommended changes.
2. Property valuation services are provided every four years and on an as-needed basis. The SDPAA devotes considerable resources to ensure that Members' covered properties are valued accurately so that Members are not contributing too much for an over-valued property but have valued the property appropriately so the needed coverage amount is available.
3. An Employment Practices Hotline (EPH) for Members to consult with an expert employment lawyer on any potential employment claim, with up to one hour of free consultation. Sixty-eight Members made 199 calls to the EPH in 2020 alone.
4. A Government Practices Hotline (GPH) for Members is provided to consult with an expert local government lawyer on any civil issue related to government services, with up to one hour of free consultation. Forty-one Members made 49 calls to the GPH in 2020 alone.
5. The SDPAA provides expert legal drafting of Model Employment policies, Model Zoning ordinances, Facilities-Use Agreement templates, Law Enforcement Agency Procedures, and other materials. Members are then able to contact the EPH or GPH for further guidance in building upon those templates to fashion their own unique policies or ordinances.
6. Each year the SDPAA provides through its loss control vendor thousands of hours of training opportunities. This past year, 1,725 Member employees attended 69 in-person trainings, even during a roll-back due to the pandemic. Sixty Members completed 3,756 on-line courses, with multiple

attendees for every Member. Forty-eight Members viewed 1,059 training videos, with multiple attendees. Forty-nine Member law enforcement agencies completed 3,697 training courses. The SDPAA has committed additional resources so that in-person law enforcement trainings will be available on-site to each of the Member local jails on a regular basis. Each year the SDPAA co-sponsors a Safety and Loss Control Conference attended by hundreds of Members' employees. The SDPAA trainings are so extensive and comprehensive that most Members rely solely on the SDPAA training opportunities to satisfy all their training needs every year. The training budget savings can then be devoted to other public projects that benefit their communities.

7. Each year the SDPAA sponsors speakers and trainings for thousands of Members' employees on a wide variety of topics at events throughout the year.
8. The SDPAA is now offering free cybersecurity assessments for each Member through a partnership with Dakota State University. The SDPAA's cyber liability coverage is included with membership in the SDPAA Liability program. This coverage offers the assistance of national expert "breach coaches" for any suspected breach.

Policy

Upon consideration of the extensive resources devoted to these loss control efforts, the SDPAA Board of Directors hereby adopts the following policies related to Member departures from the SDPAA:

1. Members who leave the SDPAA are prohibited from re-entering any SDPAA property or liability program for a period of two years without the specific approval from the SDPAA Board of Directors. The departed Member must show a substantial commitment to engage in loss control efforts if they are allowed to re-join the SDPAA prior to the two-year period. The SDPAA intends to discourage public entities from repeatedly entering and leaving SDPAA programs based solely on the current year price.
2. Departing Members will no longer be eligible for any partial refund of the calculated portion of their contributions which was previously allowed

under Article IX of the Intergovernmental Contract (IGC). The prior IGC provided the departing Member with such a partial refund because the departing Member took sole responsibility for all claims and claims expenses whether reported or unreported at the time of their departure from the SDPAA. With such partial refund being no longer available, the SDPAA will now assume responsibility for all reported claims of a departing Member pursuant to the revised IGC.

Policy Rationale

The SDPAA intends to discourage public entities from repeatedly entering and leaving SDPAA programs based solely on the current year price. This price-shopping practice is problematic for the following primary reasons:

1. The SDPAA devotes substantial resources to loss control efforts for its Members, as noted in the Background section above. These collective Member resources are directed at new Members when they first join the SDPAA and continue with all Members on a consistent basis. This commitment of collective resources is not well spent on Members who are not likewise committed to loss control efforts. Any other coverage provider will not provide such loss control services to that departed Member and will not provide any incentives for that departed Member to engage in loss control measures. If those departed Members return, then there is no guarantee that they have engaged in any loss control during their absence from the SDPAA. A lapse in such efforts can be harmful to the public that all Members serve and can drive up the costs of potential claims if a departed Member rejoins the SDPAA at a later date.
2. As the SDPAA is a cooperative quasi-governmental entity formed by joint powers agreements among its local government Members in South Dakota, each Member has a right to expect other Members to make a serious effort to control losses for their collective benefit and for the benefit of the public that they serve. A Member that is willing to leave if another coverage provider offers a lower immediate cost has not made the long-term commitment that is needed for the pooling concept to succeed.

The partial refund paid over a five-year period as contained in Article IX of the IGC for a departing Member was intended to provide funds for a departing Member to pay the claims and claims expenses for any reported claims that the Member was required to take with them if they left the SDPAA. Experience has shown that a few departing Members have been opportunistic with this situation and have waited until a moment when they have no reported claims to then quickly depart from the SDPAA for their own short-term gain from receiving such a partial refund. The departed Member then returns to the SDPAA in the near future while the partial refund payments continue as provided by the IGC. This maneuver leaves the SDPAA Members' collective resources vulnerable to these opportunistic departures. It is not in the best interests of the Members as a whole or in the best interest of the public that the Members serve. The SDPAA will eliminate this provision to preserve Members' collective resources for loss control efforts and other efforts that benefit all the Members and the public. In recognition of the elimination of this partial refund that was intended for the payment of such claims and expenses that the departing Member retained, the SDPAA will now retain any reported claims of a departing Member. The departing Member continues to assume all responsibility for any unreported claims as provided in the IGC.

This policy is intended to encourage Members to consider the long-term advantages of SDPAA membership before terminating their membership. The SDPAA's Board of Directors considers this policy to represent a reasonable balance between the mission of meeting SDPAA Members' risk management and collective needs and, at the same time, protecting long-term Members from being taken advantage of by Members that take an opportunistic price-shopping approach.

Implementation

The SDPAA Board of Directors will amend the IGC to reflect these changes in accordance with this Policy.

Adopted by the South Dakota Public Assurance Alliance Board of Directors on October 5, 2021.

Source: October 5, 2021 Board of Directors meeting Minutes.