

This Interlocal Agreement ("Agreement") is entered into by and between the Property Casualty Alliance of Texas ("PCAT"), an administrative agency created by the participating Local Government Members (hereinafter defined), and the undersigned Member (hereinafter defined) (collectively "the parties") pursuant to the Interlocal Cooperation Act, Chapter 791, Title 7, Texas Government Code (the "Act"). The parties enter into this Agreement in accordance with the terms and conditions hereof to collectively and cooperatively provide a plan to efficiently and effectively administer a property/casualty program (hereinafter the "Program").

### **Witnesseth**

WHEREAS the undersigned Member is a political subdivision of the State of Texas and a local government under the Act and PCAT is an administrative agency created pursuant to the Act to administer the Program;

WHEREAS the Program provides a governmental function or service that the Member is authorized and/or required to perform individually;

WHEREAS the Member and PCAT are authorized to enter into this Agreement pursuant to the Act;

WHEREAS the Board of Trustees of Member has agreed to the terms and conditions of the Agreement and authorized Member to enter into this Agreement;

WHEREAS the Member desires to enter into the Agreement in order to provide a more efficient and effective way to acquire certain insurance coverage, including property and casualty insurance, and the reinsurance of such coverages, and the Member does hereby become a party to the Agreement; and

WHEREAS the Member, by entering into this Agreement, has satisfied requirements of the Member to seek competitive bids for the purchase of goods and services, including, but not limited to Chapter 44 of the Texas Education Code.

BE IT RESOLVED that the undersigned Member, in exchange for the promises and agreements contained herein agrees to the following:

The undersigned local government of the State of Texas (the "Member") in consideration for the promise of PCAT, subject to the terms and conditions herein, to provide property, boiler & machinery, auto physical damage, inland marine, electronic data processing equipment, crime, general liability, auto liability, educator's legal liability, employment-practices liability, storage tank liability and similar and related property and casualty lines of insurance and/or self-insurance funding; reinsurance; claims administration; loss prevention/control services; and other risk management services as needed for the Member, and in further consideration of other local government members participating in the Program (hereinafter Local Government Members) executing this Agreement, does hereby adopt and execute the Agreement and become a Member in the Program, which includes the payment of contributions to the Program as described herein. As such, the Member agrees to the following terms and conditions:

## Terms and Conditions

1. **Contribution and Coverage Summary.** The Member agrees that the Participation Period (hereinafter defined as the period of time the Member is responsible for the payment of Contributions), Contributions and coverages provided hereunder shall be as specified in the Contribution and Coverage Summary provided by the Program to the Member. The title of the document referred to herein may also be referred to as the Coverage Summary.
2. **Coverage Documents.** For each coverage period identified in a Coverage Summary, the member agrees that its self-insurance coverages or “Coverage Part” provided as part of the Program will be defined by the terms of the Coverage Documents issued to the Member in connection with that Coverage Summary.
3. **Term.** Pursuant to the Act, so long as two or more Members remain in the Program, this Agreement shall renew annually, unless terminated sooner in accordance with the Termination provisions of this Agreement.
4. **Termination.**
  - a. **By Either Party with 60 Days Notice before Renewal.** Either party may terminate this Agreement prior to the end of any Participation Period by giving a sixty (60) day written notice. The member may not effect termination of this Agreement in between the beginning and end of any Participation Period, except as provided in this Termination provision.
  - b. **By Member Upon Payment of Late Notice Fee.** If Member fails to terminate as provided in 3.a., it may still terminate participation prior to the renewal date by paying a late notice fee of 20% of the annual contribution for the expiring Participation Period. Member expressly acknowledges that the late notice fee is not a penalty, but a reasonable approximation of the Program’s damages for the Member’s untimely withdrawal from the Program. However, once the renewal term begins, the Member can no longer terminate by paying a late notice fee: the Member shall renew per the terms and conditions identified in the renewal Contribution and Coverage Summary.
  - c. **By the Program upon Breach by Member.** The Program may terminate this Agreement at any time based on breach of any of the following obligations, by giving 10 days’ written notice to Member of the breach; and Member’s failure to cure the breach within said 10 days (or other time period approved by the Program):
    - i. Member fails or refuses to make the payments or contributions as required by this Agreement;
    - ii. Member fails to cooperate and comply with any reasonable requests for information and/or records made by the Program;
    - iii. Member fails or refuses to follow loss prevention recommendations made by the Program or its designee; or
    - iv. Member fails or refuses to comply with any agreement or undertaking on its part set forth in this Agreement, or otherwise breaches this Agreement.

- d. **Financial Responsibilities Upon Termination.** If the Member breaches this Agreement, or if the Program terminates participation of the Member under any provision of this Article, the Member agrees that the Program will have no responsibility of any kind or nature to provide coverage post-termination. Further, the Member shall bear the full financial responsibility for any unpaid open claims and expense related to any claim, asserted or unasserted and reported or unreported, against the Program or Member, or incurred by the agents or representatives of Member.

In addition to the foregoing, if termination is due to Member's failure to make required payments or contributions, Member agrees that it shall pay the Program liquidated damages in the amount of 50% of the annual contribution for the expiring Participation Period contributions and shall forfeit all contributions already made to the Program, including without limitation, initial, estimated and adjusted contributions.

## 5. Contributions.

- a. **Agreement to Pay.** Member agrees to pay contributions based upon a risk-funding plan developed by the Program. Contributions as shown on the Contribution and Coverage Summary are payable upon receipt of an invoice from the Program, or its authorized representative, and shall be made from Current Revenues available to the Member. All Contribution invoices are deemed late if not paid within forty-five (45) days of the invoice date, and the Program shall have the right to terminate the Member in accordance with 3.c. of the Termination provisions.
- b. **Estimated Contribution.** The Program reserves the right to collect all initial, estimated and adjusted contributions that are due the Program. The contribution shown on the Contribution and Coverage Summary and endorsements is an estimate. The Program reserves the right to audit the records of any Member, as those records pertain to participation in the Program.
- c. **Contribution Adjustment.** Should the Program's income from operations for any given fund year be inadequate to pay the ultimate cost of claims incurred in that fund year, the Program may collect an adjusted contribution from any current or former Member.
6. **Amendments.** This Agreement, including the Contribution and Coverage Summary and Coverage Documents, may be amended by the Fund, in writing, by providing the Member with written notice before the earlier of (i) the effective date of the amendment, or (ii) the date by which the Member can terminate without payment of late notice fees. An amendment shall only apply prospectively and the Member shall have the right to terminate this Agreement before the Amendment becomes effective, as provided in this Agreement. If the Member fails to provide timely written notice of termination, the Member shall be deemed to have consented to the Program's amendment and agrees to abide by and be bound by the amendment, without necessity of obtaining Member's signature.

The Program may also amend this Agreement or any Contribution and Coverage Summary, effective during the middle of a Participation Period, for any reason including but not limited to the following:

- a. State or federal governments, including any court, regulatory body or agency thereof, adopt a statute, rule, decision, or take any action that would substantially impact the rights or financial obligations of the Program.
  - b. The terms of the Program's reinsurance, stop-loss or excess insurance change substantially.
7. **Appeals.** Member shall have the right to appeal any written decision or recommendation to the Program's Board of Trustees, and the Board's determination will be final. Any appeal shall be made in writing to the Board Chair within 30 days of the decision or recommendation. Any judicial review of the Board of Trustees' determination of an appeal shall be under the substantial evidence standard.
8. **Bylaws, Policies and Procedures.** The Member agrees to abide by the Bylaws of the Program, as they may be amended from time to time, and any and all written policies and procedures established by the Program. If a change is made to the Fund's Bylaws, written policies or procedures which conflicts with or impairs the Member, such change will not apply to the Member until the next renewal Participation Period.
9. **Claims Administration.** The Program or its designee agrees to administer all claims for which Member has coverage after notice of loss has been given (notice of loss is defined in the Member's Coverage Documents received from the Program). The Member authorizes the Program or its designee to act in all matters pertaining to handling of claims for which the Member has coverage pursuant to this Agreement. Member expressly agrees that the Program has sole authority in all matters pertaining to the administration of claims and grants the Program or its designee full decision-making authority in all matters, including without limitation, discussions with claimants and their attorneys or other duly authorized representatives. Member further agrees to be fully cooperative in supplying any information reasonably requested by the Program in the handling of claims. All decisions on individual claims shall be made by the Program or its designee, including, without limitation, decisions concerning claim values, payment due on the claim, settlement, subrogation, litigation, or appeals.
10. **Claims Reporting.** Notice of any claim must be provided to the Program no more than 30 days after the Member knows or should have known of the claim or circumstances leading to the claim, unless a different reporting requirement is required by law or provided for in the Coverage Documents provided to the Member by the Program. Failure by the Member to timely report a claim may result in denial of coverage or payment of fines or penalties imposed by law or regulatory agencies. If the Program advances payment of any fine or penalty arising from the Member's late claim reporting, the Member will reimburse the Program for all such costs.
11. **Complete Understanding.** This Agreement, together with any in-force Interlocal Addendums, Bylaws Coverage Documents and Contribution and Coverage Summaries, represent and contain the complete understanding and agreement of the Program and the Member, and supersedes all prior written and oral agreements.
12. **Cooperation and Access.** The Member will furnish annually to PCAT the total number of enrolled students and employees; as well as property, auto, inland marine, electronic data processing equipment schedules, and other underwriting information deemed reasonably

- necessary by PCAT within the time period specified by the Program. PCAT reserves the right to audit the records of the Member. Member agrees to annually release and/or authorize the release of current-valued claims information to PCAT for the previous five (5) years to allow PCAT to determine the Member's participation in the Program.
13. **Current Revenues.** Contributions due pursuant to this Agreement shall be made from Current Revenues available to the Member, and said amount determined in the annual Contribution and Coverage Summary provided to the Member by PCAT.
  14. **Defense and Prosecution of Claims.** The Member authorizes the Program to engage counsel and/or relevant experts, in the Program's sole discretion, with respect to any claim, dispute, defense or litigation involving any past or current Member.
  15. **Excess Coverage.** The Program, in its sole discretion, may purchase excess coverage or reinsurance for all Program coverages. The Program may also act on behalf of individual Members to obtain coverage, invoice the Member, and remit the payment to the appropriate party. If any reinsurer, stop loss carrier, and/or excess coverage provider fails to meet its obligations to the Program or any Member, the Program is not responsible for any payment or any obligations to the Member from any reinsurer, stop loss carrier, or excess coverage provider.
  16. **Governance.** The PCAT will be governed by a Board of Trustees of PCAT ("Board") in accordance with the Bylaws created and adopted by the Board (hereinafter "Bylaws").
  17. **Independent Actuarial Study.** PCAT shall provide for an annual independent actuarial study of the Program.
  18. **Independent Financial Audit.** PCAT shall provide for an annual independent financial audit of the Program.
  19. **Insurance Terminology.** The Program is not 'insurance', but is rather a mechanism through which eligible entities join together to collectively self-insure and administer certain risk exposures. Any reference in this Agreement or any Program documents, to an insurance term or concept is coincidental, and is not intended to characterize the Program as 'insurance' as defined by law. PCAT is not an insurance company. The Member is not an insured. This agreement is not a contract of insurance. This Agreement is drafted on behalf of all PCAT.
  20. **Investments.** PCAT may invest Member contributions, or any portion thereof, in accordance with guidelines approved by the Board.
  21. **Lawsuit.** The Member does hereby agree that any suit brought against the Member pursuant to any of the provisions of the Program may be defended in the name of the Member by counsel selected in the sole discretion of the Program, or its designee, on behalf of and at the expense of the Program as necessary for the defense and/or prosecution of any legal action. Full cooperation by the Member shall be extended to supply any information reasonably needed or required in such defense.
  22. **Loss Prevention.** The Member shall have a loss prevention plan, which will be coordinated with the Program to make all reasonable efforts to eliminate and minimize hazards that would contribute to property/casualty losses.



23. **Member Equity.** The Program Board of Trustees, in its sole discretion, may declare a dividend distribution of the Program's fund balance to current Members who are in good standing. Former Members forfeit all rights to any potential dividend distribution for the years in which a former Member participated in the Program. Program fund balance belongs to the Program. No individual Member is entitled to an individual allocation or portion of fund balance.
24. **Member Representative.** The Member agrees to designate a Member Representative who shall have authority from the Member's Board of Trustees to represent and bind the Member, and the Program will not be required to contact any other individual regarding Program matters for the Member. Any notice to or any agreements with the Member Representative shall be binding upon the Member. The Member reserves the right to change the Member Representative as needed by providing written notice to the Program. Such notice is not effective until actually received by the Program.
25. **No Waiver of Subrogation Rights.** Member shall do nothing to prejudice or waive the Program's existing or prospective subrogation rights under this Agreement. If Member has waived any subrogation right without first obtaining the Program's written consent, the Program shall be entitled to recover from Member any and all sums that the Program would have recovered without such waiver. Recoveries include attorney's fees, costs and expenses.
26. **Notice.** Any written notice to the Program shall be made by first class mail, postage prepaid, and delivered to the Chairperson, Property Casualty Alliance of Texas, 12300 Dundee Court, Suite 112, Cypress, Texas 77429.
27. **Optional Policies.** From time to time, PCAT may seek to obtain access for Members to optional insurance policies that provide coverage from losses not otherwise addressed by the Property Casualty Alliance of Texas (for example, wind damage). These policies shall create a direct insurer-insured relationship between the offering company and any participating Member, and shall not otherwise be governed by this Agreement. PCAT shall not provide claims administration services for these optional lines of coverage, and shall bear no risk with respect to these policies.
28. **Property Valuations.** A Member participating in the property coverage as indicated on the Contributions and Coverage Summary agrees to cooperate with a valuation of property values performed by the Program. New Members must cooperate with the Program to complete the property valuation within ninety (90) days of the inception date of the property coverage as stated on the Contribution and Coverage Summary. The newly valued property and the corresponding additional contribution will be retroactive to the date of the property coverage inception date.
29. **Security of Documents.** The Program may grant the Member access to confidential or proprietary information. Member agrees to assume the responsibility for taking all reasonable steps to avoid unauthorized disclosure of this information.
30. **Severability.** If any portion of this Interlocal Agreement shall be declared illegal or held unenforceable for any reason, the remaining portions hereof shall continue in full force and effect.
31. **Signatures/Executed Documents.** The Program and Member may rely upon a facsimile or imaged signature as if it were the original. The failure of either party to provide an original,

manually executed signature shall not affect the validity or enforceability of this Agreement or any Program document.

32. **Subrogation and Assignment of Rights.** The Member assigns all subrogation rights to the Program. The Program has the right, in its sole discretion, without notice to the Member, to bring all claims and lawsuits in the name of the Member or the Program. Member agrees that all subrogation rights and recoveries belong first to the Program, up to the amount of benefits, expenses, and legal fees incurred by the Program.

33. **Forum and Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas. The parties agree that venue is proper and that the exclusive forum for any legal action arising out of or relating to this Agreement shall lie in the state courts of Harris County, Texas.

34. **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 and conditions of this Agreement.

IN WITNESS WHEREOF, the undersigned shall become a Member of the Program and this Agreement.

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**PCAT MEMBER**

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Signature of Member Representative

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Printed Name of Member Representative

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Date

**PROPERTY CASUALTY ALLIANCE of TEXAS**

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Signature of PCAT Chairperson

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Printed Name of PCAT Chairperson

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Date