

ASSOCIATED SCHOOL BOARDS  
PROTECTIVE TRUST  
PROPERTY AND LIABILITY FUND  
PARTICIPATION AGREEMENT

WHEREAS, the Meade School District (hereinafter "DISTRICT," "MEMBER," or "EMPLOYER") has, by resolution of its duly-elected school board, adopted the ASB PROTECTIVE TRUST JOINT POWERS AGREEMENT AND BYLAWS;

WHEREAS, the DISTRICT is desirous of receiving property and liability coverage as provided in this Agreement and the benefit of coverage under contracts of reinsurance secured by the ASB Protective Trust (hereinafter "TRUST") for all MEMBER DISTRICTS, their officers and employees; and

WHEREAS, the ASB PROTECTIVE TRUST PROPERTY AND LIABILITY FUND exists for the purpose of providing property and liability coverage for MEMBER DISTRICTS, their officers and employees;

NOW THEREFORE BE IT AGREED AS FOLLOWS:

SECTION I  
DEFINITIONS

- 1.1. ASBSD -- Associated School Boards of South Dakota.
- 1.2. ASB Protective Trust -- An unincorporated assessable association operating under the laws of the State of South Dakota to provide health, property and liability, and worker's compensation coverage for school districts and their officers and employees in South Dakota.
- 1.3. Covered Party -- The DISTRICT identified herein, its officers, its school board, its elected school board members, and its employees while acting within the scope of their employment.
- 1.4. Employee -- Any full-time, part-time, or temporary individual, whether compensated or not, who provides or provided services authorized by the DISTRICT at the direction and control of the DISTRICT or its authorized agent. The term does not include independent contractors or an independent contractor's officers, employees, and agents.
- 1.5. Excess Coverage -- Additional coverage limits, also known as "umbrella coverage," providing identified amounts of liability coverage as specified in a written endorsement signed by both parties to this Agreement.
- 1.6. Claims Administrator -- Claims Associates Inc., P.O. Box 1898, Sioux Falls, SD 57101, Telephone (605) 333-9810, FAX (605) 333-9835.
- 1.7. Trust Administrator -- Associated School Boards of South Dakota, P.O. Box 1059, Pierre, South Dakota 57501, Telephone (605) 773-2500, FAX (605) 773-2501.

1.8. Master Contract -- Any "stop loss," "reinsurance," "insurance contract," "excess coverage contract," "endorsement," or other indemnification agreement approved by the ASB Protective Trust Board of Trustees (hereinafter "Trust Board") providing coverage for all or part of the liability identified herein.

1.9. Occurrence -- Occurrence shall bear the same meaning as the word carries under the applicable Master Contract, depending upon whether the claim arises under property coverage, liability coverage, or errors and omissions coverage.

1.10. Settlement Amount -- An amount expressed in dollars for which a claimant is willing to settle a claim.

## SECTION II COVERAGE

In consideration of timely payment of the MEMBER'S contribution, as described in this Participation Agreement, the TRUST agrees:

2.1. The TRUST will pay promptly, when due, those sums that the MEMBER becomes legally obligated to pay as damages, **other than punitive or exemplary damages**, because of personal injuries or property damage caused by an occurrence **as defined and limited by the applicable Master Contract** which defines coverage and this Participation Agreement. Copies of the applicable Master Contracts are available to all participating MEMBERS at the office of the Trust Administrator.

2.2. The TRUST will defend any proceeding against the MEMBER seeking damages on account of personal injuries, property damage, or errors and omissions, and will defend any such suit against the MEMBER alleging damages or injuries, within the scope of coverage of the Master Contract, even though such proceeding or suit is determined to be groundless, false, or fraudulent. The TRUST may make such investigation, negotiation, and settlement of any claim or suit as it deems appropriate and expedient. Should the MEMBER'S governing board refuse to approve such settlement, such MEMBER will be solely and individually liable for any amount ultimately awarded, including defense costs in excess of the settlement amount, as a result of such claim, and such MEMBER shall indemnify and hold the TRUST harmless for any such amount in excess of the Settlement Amount.

2.3. The TRUST will pay all expenses incurred by the TRUST, all costs taxed against a MEMBER in a proceeding or suit, and all interest accruing after entry of judgment, until the TRUST has paid, tendered payment, or deposited in the court all or part of such judgment that does not exceed the limits of liability established herein. This obligation is subject to the limitation of Section 2.1 and 2.2, and 2.4.a.

2.4.a. Benefits payable by the TRUST pursuant to this Participation Agreement apply only to property losses and liability arising under automobile and personal injury liability, including errors and omissions, within the scope of coverage as defined in the applicable Master Contract.

2.4.b. **Errors and omissions coverage is on a claims made basis.** Suits filed and losses reported within the scope of errors and omissions coverage to the TRUST during the coverage period by a notice of injury served upon a MEMBER pursuant to SDCL ch. 3-21 and received

from the MEMBER by the TRUST, prior to expiration of coverage under this Agreement, constitutes a claim made under this Agreement.

2.5. Any change in classification, rates, or rating plans that is or becomes applicable to any coverage under this Participation Agreement as a result of a change in any law regulating such coverage or because of any amendment affecting the benefits provided by the Participation Agreement shall commence upon the effective date thereof. Each MEMBER shall maintain records of all information necessary for contribution computation and shall provide such information to the TRUST at any time during or after the benefit period as the TRUST may direct.

### **SECTION III EXCLUSIONS**

**3.1.a. Exclusions from coverage shall be as provided in this Participation Agreement and the applicable Master Contracts. Generally, exclusions from coverage are intended as warranties.**

**3.1.b. In order to determine the extent of any exclusion, you must review the current Master Contract.**

**3.2. No coverage is provided under this Participation Agreement or any Master Contract for any use of the school grounds, buildings, facilities, vehicles, or busses granted by a school board pursuant to SDCL 13-24-20 or as may be amended.**

**3.3. In the event a court of competent jurisdiction were to finally conclude that SDCL 13-24-20 is unconstitutional and void, Section 3.2 shall be without effect and, in that event, coverage, if any, shall be as provided in the applicable Master Contract.**

**3.4. No underinsured motorist or uninsured motorist coverage is provided for the benefit of any employee of a MEMBER.**

### **SECTION IV TRUST OBLIGATIONS**

The Trust shall manage and administer the TRUST. The management and administration of the Trust shall be performed by the Trust or its designee upon the direction and advice of the Trust Board and shall include the following authority and obligations, including but not limited to:

4.1. Evaluation and establishment of reserves for claims.

4.2. Investigation and adjusting of claims.

4.3. Auditing claim losses and expenses incurred prior to making final payment.

4.4. Making payment of compensable property or liability benefits as required under the Master Contract, the Bylaws, and this Participation Agreement.

- 4.5. Negotiating settlements with claimants as authorized or approved pursuant to policies of the Trust Board and securing appropriate releases upon settlement of claim.
- 4.6. Selecting and monitoring attorneys employed to defend claims or suits against the MEMBER or the TRUST.
- 4.7. Monitoring claims for subrogation and undertaking recovery efforts when economically feasible and advisable.
- 4.8. Maintaining reports identifying MEMBERS' claims by category, payments made, and reserves of claims. Such reports shall be available to MEMBERS and each Trustee as required by policies adopted by the Trust Board.
- 4.9. Providing such reports and documentation as required by any Master Contract.
- 4.10. Preparing and filing reports required by the state or federal government or agencies thereof.
- 4.11. Providing or contracting for loss control and developing and disseminating loss control programs to reduce losses to the MEMBERS.
- 4.12. Monitoring frequency and severity of claims' performance of MEMBERS.
- 4.13. Establishing rating structures to determine MEMBER contributions, providing billing to MEMBERS for contributions and notices regarding contribution changes and assessments.
- 4.14. Securing insurance coverage, excess insurance coverage, reinsurance, stop loss agreements, endorsements, and other indemnification agreements, both as to specific individual claims and aggregate claims as determined by the Trust Board, and determining the amount of retention for claims, if any, in each area of coverage by the TRUST.
- 4.15. Developing programs for TRUST expansion.
- 4.16. Determining proposed distributions to MEMBERS of excess reserves, if any, based upon the Fund's performance or such criteria as may be established subject to approval and adoption by the TRUST.
- 4.17. Providing billing, collection, and auditing of contributions to the TRUST by MEMBERS.
- 4.18. Retaining and authorizing outside legal and financial assistance.
- 4.19. Costs for administrative services provided to MEMBER DISTRICTS will be in an amount not to exceed ten percent (10%) of annualized contribution earned and to include local agent fees if any.

4.20. Entering into an Administrative Services Agreement with a third party delegating the responsibilities and authorities of management of the Trust Obligations upon the approval and advice of the Trust Board.

## SECTION V MISCELLANEOUS

5.1. Coverage Cost. The coverage year shall run from July 1 through June 30 of each year. At least sixty (60) days prior to the end of the coverage year, the Trust Administrator shall calculate and determine each MEMBER'S contribution for the ensuing year and shall notify each MEMBER of said amount. General rating policies may be established by the Trust Board to determine contributions for new MEMBERS. Thereafter, each MEMBER'S loss/claim experience, any other cost associated with coverage's or services to that MEMBER, as well as the total TRUST experience, will be used to establish each MEMBER'S individual contribution.

5.2. Contribution. Each MEMBER'S contribution to the TRUST for a coverage year shall be the amount established by the Trust Administrator and provided to the MEMBER upon invoice. This contribution is subject to assessment in the manner provided in the Trust Bylaws. Membership shall be for one (1) year on an annual basis, provided however, that a new MEMBER may join on a prorated basis for any coverage year at a contribution level established by the Trust Administrator.

5.3. Membership. Membership in the TRUST is subject to approval by the Trust Board and is subject to the provisions of the Trust Bylaws.

## SECTION VI WITHDRAWAL AND TERMINATION

6.1.a. A MEMBER may **withdraw** from membership **at any time** during the coverage year by giving notice in writing not less than sixty (60) days prior to the effective date of termination of coverage. In the event of early withdrawal by providing the sixty (60) day notice established in this section, the MEMBER shall be entitled to the return and refund of seventy-five percent (75%) of its current contribution prorated to the date of withdrawal. Early termination of coverage shall constitute abandonment of the MEMBER'S right to any future distribution of excess reserves.

6.1.b. **Failure of a MEMBER to provide written notice of its intention not to renew coverage for a subsequent coverage year no later than May 31 of any coverage year shall constitute a binding commitment on the part of the MEMBER to renew membership for another year at the contribution rate established by the Trust Administrator prior to the renewal date.**

6.2. A MEMBER may be terminated from membership as set forth in the Trust Bylaws. In addition, failure or refusal of a MEMBER to cooperate, participate, and assist in the defense of a claim or proceeding against the MEMBER shall constitute grounds for termination of membership, subject to review by the Trust Board. Failure to cooperate, participate, and assist in the defense of any claim shall also void coverage if such failure to cooperate is not rectified upon written notice.

SECTION VII  
ENTIRE AGREEMENT

7.1. This Participation Agreement, together with the Trust Bylaws and the applicable Master Contracts, constitute the entire agreement between the parties and may not be changed or altered, except in writing approved by the MEMBER and the Trust.

7.2. This Participation Agreement shall be construed under the laws of the State of South Dakota, notwithstanding the conflict of law's provisions as enunciated by the South Dakota Supreme Court or enacted by the Legislature.

SECTION VIII  
MEMBERS' OBLIGATIONS

Each MEMBER agrees to be bound by all of the terms of the Trust Bylaws, as amended from time to time, and to abide by the rules, regulations, and policies promulgated by the Trust Board for administration of the TRUST. In addition, each MEMBER shall:

8.1. Each MEMBER remains solely and individually responsible for all decisions concerning its safety programs and practices, and may not rely upon the evaluation of TRUST agents, if any, in making final decisions concerning the MEMBER'S safety programs and risk management practices.

8.2. If any claim or suit is made or other proceeding is brought against the MEMBER, the MEMBER shall IMMEDIATELY transmit to the Trust Administrator **and** the Claims Administrator any demand, notice of injury, summons, or other process received, and prepare such claim forms as may be required by the Trust Administrator or the Claims Administrator to process such proceeding, claim, or suit. **Failure of the MEMBER to provide a copy of any summons and complaint received by the MEMBER within fifteen (15) days of service thereof, or within fifteen (15) days of admitting service thereto, shall void coverage under this Participation Agreement and any Master Contract.**

8.3. The MEMBERS shall cooperate with the TRUST and the assigned attorneys and, upon request, shall attend hearings and trials and shall assist in effectuating and implementing settlements, securing and giving evidence, providing documents, gaining the attendance of witnesses, and otherwise fully cooperate in the conduct of suits, hearings, or proceedings. The MEMBER shall not, except at its own cost which shall not be reimbursed by the TRUST, voluntarily make any payment, assume any obligation, or incur any expense other than for immediate emergency first aid, unless such expenditures shall have been preapproved by the TRUST, the assigned attorney, or the Claims Administrator.

8.4. Each MEMBER shall make prompt payment of all contributions and assessments as required by this Participation Agreement and the Trust Bylaws. **Failure to make timely payment of a contribution voids coverage under this Participation Agreement.**

8.5. The MEMBER does hereby appoint the TRUST as agent to act on the MEMBER'S behalf to file reports, confess judgment, or to arrange for payment of claims, medical expenses, and other costs, and to do all things required or necessary insofar as they affect the MEMBER'S liability, subject to Section 2.2 herein. The MEMBER hereby appoints the attorney designated by the Executive Director of the ASBSD or his designee to represent the MEMBER in any proceeding for which a defense is afforded.

8.6. The MEMBER agrees that upon payment of any loss or the incurring of any expense by the TRUST under this Participation Agreement, the TRUST is fully subrogated to the extent of all such payment to all rights of the MEMBER against any person or other entity which is or may be legally responsible for such damages or losses. The MEMBER agrees to execute a specific subrogation agreement as necessary, and to render all reasonable assistance, other than pecuniary assistance, to affect recovery under the rights of subrogation transferred herein and shall refrain from any act or omission which will likely impair such right of subrogation.

8.7. The Trust Board, its designee, the Claims Administrator, or the Trust Administrator, and any of their agents, servants, employees, or attorneys are permitted at all reasonable times to inspect the MEMBER'S workplaces, plants, works, machinery, buildings, records, and appliances relating in any manner to the subject of this Participation Agreement, and shall be permitted, within three (3) years following any claim, to inspect any contract, document, or other record which shows or would tend to show or verify contributions which are payable or were paid to the TRUST. So long as a claim is pending against a MEMBER and being defended by the Trust, the obligation to cooperate and assist in the defense shall remain in force regardless of whether membership continues.

## SECTION IX MAXIMUM COVERAGE LIMITATIONS

9.1 As to any PROPERTY LOSS, as that term is defined in the current applicable Master Contract, the maximum liability undertaken by the TRUST for any single occurrence is replacement cost of the property, \$250,000,000 limit.

9.2 BOILER AND MACHINERY coverage, as defined in the current applicable Master Contract, is Fifty Million Dollars (\$50,000,000).

9.3 As to any AUTOMOBILE and SCHOOL BUS COVERAGE, the maximum liability undertaken by the TRUST is Two Million Dollars (\$2,000,000) per vehicle per accident in a single occurrence/no annual aggregate, as defined in the current applicable Master Contract subject to the exclusion of Section 3.4. of this Agreement.

9.4 For any PERSONAL, BODILY INJURY AND PROPERTY DAMAGE, the maximum liability coverage under this Participation Agreement is Two Million Dollars (\$2,000,000) per occurrence, and unlimited aggregate in any one year, as defined in the current applicable Master Contract.

9.5 BLANKET SURETY BOND and CRIME LOSS, as defined in the current applicable Master Contract, is Two Hundred Thousand Dollars (\$200,000).

9.6 SCHOOL BOARD LEGAL LIABILITY, as defined in the current applicable Master Contract, is Two Million Dollars (\$2,000,000), each occurrence/no annual aggregate.

SECTION X  
CONTRIBUTION AND TERM OF COVERAGE

The contribution payable for coverage under this Participation Agreement is as set forth in the Adoption and Renewal Motion, attached hereto, and incorporated herein by this reference, if duly executed by an authorized representative of the TRUST and approved by the MEMBER'S governing board. Coverage is on an annual basis or such shorter period of time as specifically identified in said Adoption and Renewal Motion. Coverage shall be deemed continuing unless terminated as provided herein.

IN WITNESS WHEREOF, the Superintendent hereby acknowledges participation in the Property Liability Fund as indicated below.

Meade School District

\_\_\_\_\_  
School Superintendent

\_\_\_\_\_  
Date

I HEREBY CERTIFY that the School Board has, by motion duly passed in open session, authorized the execution of this Participation Agreement on behalf of the District.

\_\_\_\_\_  
Business Manager

\_\_\_\_\_  
Date



**ASSOCIATED SCHOOL BOARDS  
PROTECTIVE TRUST  
PROPERTY & LIABILITY  
ADOPTION AND RENEWAL MOTION**

BE IT HEREBY MOVED AND RESOLVED by the Meade School Board of the Meade School District, acting pursuant to SDCL ch. 1-24 and SDCL 13-10-3, 13-8-39, and the general authority of SDCL title 13, and hereby adopts, approves, and ratifies the ASB Property and Liability Trust Fund Participation Agreement, effective as of the time of adoption of this Motion.

BE IT FURTHER MOVED AND RESOLVED that the Protective Trust Joint Powers Agreement and Bylaws are hereby adopted, and further that actions taken under prior versions of the Protective Trust Joint Powers Agreement and Bylaws and the ASB Property and Liability Trust Fund Participation Agreement since the time and date the District initially joined said Trust are hereby ratified and approved to the same extent and effect as if each amendment thereto had been separately submitted and approved at the time of its adoption.

BE IT FURTHER MOVED AND RESOLVED that the Superintendent and Business Manager are hereby authorized to execute, on behalf of the District, the present ASB Property and Liability Fund Participation Agreement as it presently exists and may from time to time be amended and approved pursuant to the Bylaws herein adopted. Each succeeding Participation Agreement changing the obligations arising under the Property and Liability Fund shall be submitted to the Board for approval prior to execution by the Superintendent and Business Manager.

IT IS FURTHER MOVED AND RESOLVED that coverage provided in the ASB Property and Liability Fund Participation Agreement shall extend from 12:01 a.m. CST, July 1, 2016, to 12 midnight CST, June 30, 2017. The contribution required for such coverage is:

1. For PROPERTY LOSS, replacement cost coverage, \$250,000,000.
2. For BOILER and MACHINERY coverage, \$50,000,000.
3. For AUTOMOBILE and SCHOOL BUS coverage, \$2,000,000 per occurrence/No annual aggregate.
4. For PERSONAL, BODILY INJURY, and PROPERTY DAMAGE, \$2,000,000 per occurrence/No annual aggregate.
5. For BLANKET SURETY BOND and CRIME LOSS, \$200,000.
6. For SCHOOL BOARD LEGAL LIABILITY coverage, \$2,000,000 per occurrence/No annual aggregate.

TOTAL CONTRIBUTION FOR ALL COVERAGES, INCLUDING LOSS FUND, ADMINISTRATIVE FEES, LOSS CONTROL, AND LOCAL AGENT COMMISSIONS, IF APPLICABLE, UNDER THE PROPERTY AND LIABILITY FUND PARTICIPATION AGREEMENT IS \$203,063.00.

There is hereby delegated to the Superintendent the authority to carry out, or to further delegate subject to his supervision and responsibility, the obligations of the District identified in the Bylaws approved herein, the Participation Agreement, and the Master Contracts provided by the Trust Administrator. Finally, the Board hereby agrees to indemnify the Trust and its members, pursuant to the process established in the Bylaws approved herein, the full amount of any assessment levied by the Trust Board pursuant to the Bylaws and the full amount of any contribution agreed to in the current or subsequent Participation Agreements approved by the Board as submitted upon proper vouchers.

Done this \_\_\_\_ day of \_\_\_\_\_, 2016, at \_\_\_\_\_, South Dakota.

\_\_\_\_\_  
School Board President

I hereby certify that the foregoing Motion was adopted by the Meade School Board in open session at a regularly-called meeting on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Business Manager