

Participation Agreement

for the

NASB All Lines Interlocal Cooperative Aggregate Pool
(ALICAP)

Agreement between local governmental subdivision and the Pool

NASB All Lines Interlocal Cooperative Aggregate Pool (ALICAP)

1. **Parties.** The parties to this Agreement are the Nebraska public school districts which are signatories hereto.
2. **Recitals.** This Agreement is based upon certain understandings and in furtherance of certain purposes, as follows:
 - 2.1 The Nebraska Intergovernmental Risk Management Act permits two or more public agencies to enter into agreements to form risk-management pools to provide risk-management services and insurance coverage for property, general liability, automobile, crime, dishonesty, school board liability and workers compensation losses.
 - 2.2 The participants have determined that there is a desire to operate a pool to fund some or all of the types of coverages which are identified in Section 2.1 hereof.
 - 2.3 The participant desires to enter into an agreement for the purpose of participating in a risk-management pool.
 - 2.4 The Nebraska Association of School Boards (NASB) is a non-profit corporation formed by Nebraska public school boards to stimulate and contribute to the continuing improvement of public elementary and secondary education including increased efficiency and economy for the ultimate benefit of Nebraska citizens. The NASB shall furnish, provide, or contract for the necessary administrative and management services required by the pool.
3. **Definitions.**
 - 3.1 Pool shall mean the **NASB All Lines Interlocal Cooperative Aggregate Pool** otherwise referred to as **(ALICAP)**.
 - 3.2 Board shall mean the Board of Trustees of the Pool.
 - 3.3 Agreement shall mean this participation agreement between the school district and the Pool.
 - 3.4 Memorandum shall mean each memorandum of coverage stating what coverages are provided, the limits of coverages provided, members deductibles, the Pool's retentions and the Pool's excess carriers.

- 3.5 Members and/or school districts shall mean (a) those public school districts defined in §79-101, (b) those educational service units established under §79-2201, and (c) those technical community colleges established under §79-2636, the governing boards of which are members of NASB which have passed resolutions pursuant to law entering into this agreement.
- 3.6 Director shall mean the State of Nebraska Director of Insurance.
- 3.7 Act shall mean the Intergovernmental Risk Management Act, §44-4301 *et seq.*, and all amendments thereto.
- 3.8 Bylaws shall mean the bylaws governing the operation of the Pool.
- 3.9 NASB shall mean the Nebraska Association of School Boards.
4. **Affiliation of Membership.** The undersigned member hereby jointly and voluntarily agrees to participate in a risk-management pool under the provisions of the Act with all the rights, powers, and privileges vested in and conferred upon such a pool under the laws of the State of Nebraska. The member has read and understands its rights and responsibilities as described in this agreement and as prescribed in state and federal laws and regulations. The name of the pool shall be the NASB All Lines Interlocal Cooperative Aggregate Pool otherwise referred to as (ALICAP).
5. **Purposes.** The purpose of this Agreement is to define a member's participation in ALICAP whereby Nebraska school districts may fund some or all of their property, general liability, automobile, crime, dishonesty, school board liability and workers' compensation losses, as may be agreed to by each such school district and the Pool.
6. **Powers.** In order to carry out these purposes, the Pool shall exercise and enjoy all of the powers, privileges, and authority exercised or capable of being exercised pursuant to the Act, including, but not limited to, the power to issue bonds or other obligations on behalf of a member or to otherwise assist in the issuance by such member of such obligations; provided, however, that nothing herein shall prevent any other parties hereto from separately exercising any such powers, privileges, or authority.
7. **Participation.** The member hereby agrees to participate in the Pool as set forth herein, under the terms and conditions described in this agreement in the Memorandum, the Bylaws, the application for a Certificate of Authority, the Certificate of Authority issued by the Department of Insurance, the Nebraska Workers' Compensation Act and all rules of the Nebraska Workers' Compensation Court.

- 7.1 This Agreement shall become effective only upon receipt by a Pool representative of a signed written execution of this agreement by an authorized representative of the member, and the subsequent issuance of a Coverage Memorandum from the Pool.
- 7.2 A member may not withdraw from participation during the initial thirty-six (36) months after the effective date of this agreement, except that coverage may be suspended or terminated for nonpayment of contribution or other violations by the member of the terms of this Agreement, as set forth in the Intergovernmental Risk Management Act.
- 7.3 A member may withdraw from participation in the pool at any time after the initial thirty-six (36) months, effective as of the anniversary date as stated on the current Coverage Memorandum, by giving written notice of termination to the Pool, the other members in the Pool, and the Director of Insurance at least ninety (90) days prior to such anniversary date. Such termination shall not be effective until approved by the Director as provided by §44-4309(1).
- 7.4 After a member ceases to participate in the Pool, the former member shall remain liable for any costs and obligations incurred by the Pool while the member was a participant, and any contractual obligation the member entered into with the Pool on or before the date of termination, as provided by §44-4309(3).
- 7.5 After a member ceases to participate in the Pool, the member shall not be eligible to receive any future distribution of surplus paid in or accumulated during its period of participation.
- 7.6 The member desiring to either obtain or maintain certain types of coverages from the Pool agrees to adopt any and all necessary policies and procedures as promulgated by the Pool and approved by its board which are deemed necessary for exposures which the member desires coverage from the Pool.
- 7.7 Only those members who are members in good standing with NASB shall be eligible to participate in the Pool.

8. **Financial Plan.**

- 8.1 **Coverages.** Each Memorandum of Coverage shall be adopted by the Board and incorporated as an integral part of the Agreement. Each such Memorandum of Coverage shall include a financial plan setting forth the following:

- a) that property, general liability, automobile, crime, dishonesty, school board liability and workers' compensation coverage is to be offered by the Pool, applicable deductible levels, and maximum levels of claims which the Pool will purchase aggregate insurance coverage;
- b) amount of cash reserves to be set aside for the payment of claims;
- c) amount of standard insurance to be purchased by the Pool to provide coverage over and above the claims which are not to be satisfied directly from the Pool's resources;
- d) amount of aggregate excess insurance coverage and specific excess insurance coverage to be purchased in a given fiscal period; and
- e) the identification of funds and reserves by exposure area.

The terms of the Memorandum of Coverage may be amended for subsequent fiscal periods by a majority vote of the Board, provided that the member shall be given at least thirty (30) days prior written notice thereof.

Additional lines of coverages may be offered through a separate and distinct Memorandum of Coverage. Such additional Memorandum of Coverage is not binding on members until such time as adopted by the individual member and shall be filed with the Director thirty (30) days in advance of the effective date of the change, as stated in §44-4308.

8.2 Pool Funding. The Pool shall be funded as follows:

- a) **Deposit Contribution.** As of the effective date of this agreement, and as of the first day of each fiscal year of the Pool thereafter, the anticipated liabilities and expenses of the Pool for the fiscal year shall be calculated by the administrator of the Pool. Such liabilities and expenses shall include expected losses to be covered by the Memorandum, the cost of excess insurance and reinsurance, debt service owed or an obligation of the Pool, and other costs deemed appropriate by the Board. Such liabilities and expenses shall be paid from monies held by the Pool and monies collected from the participant by allocating such liabilities and expenses among the Pool's participants based on rating plans adopted by the Board, uniformly applied to all participants.

The member agrees to furnish all information requested by the Pool to determine the contribution of the member. The member shall pay its deposit contribution for the whole year to the Pool in cash within thirty (30) days of such notification, or by such later date as shall be specified in the notice.

b) **Retrospective Contribution Adjustment.** Nine months following the close of the fiscal year and at annual intervals thereafter, the Pool may calculate each member's retrospective contribution or contribution adjustment for the year. Any retrospective contribution adjustment shall be charged only to cover losses and exposures of the fiscal year requiring a contribution adjustment. The retrospective contribution adjustment for any fiscal year shall be charged to each member in the same proportion as its share of the total contributions collected for that year. If it is determined that the Deposit Contribution paid is in excess of the contributions needed, such excess shall be applied as a credit towards the next annual Deposit Contribution. If it is determined that the Deposit Contribution paid into the Pool is less than the required amounts needed, such additional funds may be requested and included in the next annual contribution billing. Retrospective contribution adjustments for each fiscal year shall continue until all claims are closed or until the Board determines that sufficient facts are known to make a final adjustment for the year.

c) **Assessment.** If the Pool becomes insolvent or is otherwise unable to discharge its legal liabilities and other obligations, the member may be assessed by the Board for an additional contribution for any and/or all years deemed attributable to the insolvency. Such assessment would be based on each member's contribution for such fiscal year divided by the contribution of all participants for such year, times the amount of such deficiency. Any such assessment, and the manner of calculating the same, shall be given to each member in writing, and each member shall thereafter have sixty (60) days in which to pay the amount of such assessment. Each member shall remain liable for such assessment, regardless of a member's withdrawal from participation or the termination of this Agreement. Such an assessment would only be for any liabilities incurred by the Pool during that member's participation period in the pool, as provided by §44-4309 and §44-4312.

8.3 **Loss Reserves.** The Pool shall maintain funds adequate to pay case reserves and claims that have been incurred but not reported. The Pool shall also maintain a surplus deemed appropriate by the Board, and which meets the regulations of the Department.

- 8.4 **Director's Approval of Dividends.** No dividends shall be distributed without prior approval of the Director, as set forth in §44-4308(2).
- 8.5 **Banking Relationships.** The Pool shall establish bank accounts necessary to carry out the terms of this Agreement. Controls shall be established and funds shall be invested so that the Pool is managed in a conservative, prudent manner.
- 8.6 **Distribution of Surplus.** At the termination of the Pool's existence, any surplus funds in the Pool, over and above those necessary to pay or reserve against the expenses and liabilities of the Pool, shall be distributed among the existing participants in the Pool. Such distribution shall be allocated among such participants in proportion to the contributions made by each participant, as required by §44-4306(2)(b).
- 8.7 **Financial Records.** The Board shall maintain complete financial records for each type of coverage provided by the Pool, including the amount of reserves and surplus for each type of coverage as required by §44-4306(2)(d).

9. **Plan of Management.**

- 9.1 **Board of Trustees.** The Pool shall be operated by a Board of Trustees consisting of two ex officio members and nine (9) persons, who are elected officials or appointed officials of school districts, which are signatories hereto. The two ex officio members of the Board of Directors shall be the President and the Executive Director of NASB. The other nine members shall be elected by a vote of the Board of Directors of NASB. A vacancy on the Board shall be filled by a vote of the Board of Directors of NASB. The person appointed to fill a vacancy shall serve for the remainder of the term of the vacating director.

All board members, whether ex officio, elected or appointed shall be entitled to one vote each in all matters that come before the Board.

- 9.2 **Powers of the Board.** The Board shall have the power to:
- a) establish a Memorandum of Coverage, as stated in §44-4306(1);
 - b) ensure that all claims covered by the Memorandum are paid promptly, as stated in §44-4306(2)(e);

- c) take all necessary precautions to safeguard the assets of the Pool;
- d) maintain minutes of meetings;
- e) establish reasonable reimbursement to the NASB for the day-to-day administration and management of the Pool;
- f) interview, select, and contract with claims administration firms, brokerage firms and insurance consulting firms as deemed necessary by the Board;
- g) notify the Director of the existence of the Pool and file all documents required by the Intergovernmental Risk Management Act;
- h) establish the rating plan to be used by the Pool;
- i) authority to sue and be sued, make contracts, hold and dispose of real and personal property, borrow money, contract debt, and pledge Pool assets in the name of the Pool;
- j) establish a system or program of loss control; and,
- k) such other powers as may be necessary to carry out the terms of this agreement.

9.3 **Election of the Board.**

- a) Elections of members to the board shall be made by the nominating committee. The nominating committee shall consist of three persons: the chairperson of the Board, an individual from a member school district selected by the Board, and the Executive Director of NASB. Nominations shall be requested from the floor of the annual meeting of the participants.
- b) Each of the nine elected trustees on the board shall serve for a three-year term of office, with members terms staggered so as to create three open seats each year.

The term of office for each board member shall commence January 1st.

9.4 **New Members.** All school districts, as members of NASB, are eligible to make application to the Pool in the following manner:

- a) the applicant school districts must provide such loss and exposure information as is required by the Board.

- b) The school district must enter this Agreement by resolution passed by its governing board.
- c) The Board, in its sole discretion, shall accept or reject each application. Each such school district shall become a member of the Pool only after both of the following requirements are met: (1) approval of the application of such school district by the Board and (2) due execution of this Agreement.

9.5 **Termination of a Member.** A member may be involuntarily terminated as a member of the Pool if, after due notice and hearing, the Director of Insurance finds one of the following: 1) the member has failed to pay its contribution or assessment to the Pool, 2) has failed to discharge any other obligation it owes to the Pool, 3) violated the laws of the state, rules of the Department of Insurance or Bylaws of the Pool, 4) has failed to meet the terms of participation as provided in paragraph 7. Such hearing may be initiated by the Director of Insurance or at the request of the Pool's Board of Directors, as provided in §44-4309(2).

9.6 **Inspection and Audit.** The Pool and its representatives shall be permitted, but shall not be obligated, to inspect the member's properties and operations at any time. Neither the Pool's right to make inspections nor the making thereof shall constitute an undertaking on behalf of, or for the benefit of, such member or others to determine or warrant that such property or operations are safe or are in compliance with any law, rule, or regulation.

a) The Pool may examine and audit the member's records at any time during the period that this Agreement is in effect, and during any extensions hereof, and within three years after such school district is no longer a member of the Pool, insofar as said records may relate to the subject matter of this Agreement.

b) The Pool shall be audited annually at the expense of the Pool by a certified public accountant. A copy of the report shall be submitted to the governing board of each member.

9.7 **Bylaws and Rules of Operation.** The board has bylaws and rules pertaining to the exercise of its purpose and powers. The Board may revise the Bylaws from time-to-time, by a majority vote. Any revision of the Bylaws shall become effective only after approved by the NASB Board of Directors. The Board may also from time-to-time adopt policies, rules, and procedures by majority vote for the administration and operation of the Pool so long as such policies, rules, and procedures are consistent with this Agreement, the Bylaws or applicable law. No provisions of the Bylaws, policies, rules, or

procedures shall be inconsistent with the terms of the Agreement or be contrary to applicable law.

- 9.8 **Place of Business.** The Principal place of business for the Pool shall be 1301 Stockwell Street, Lincoln, Nebraska. The Board may employ necessary staff and may purchase, lease, or rent real and personal property in order to carry out the business and purpose of the Pool.
- 9.9 **Professional Services.** The Board may retain the services of such legal counsel, actuaries, auditors, engineers, consultants, and other advisors as it deems necessary to carry out the business and purpose of the Pool.
- 9.10 **No Private Benefit.** No part of the net earnings or assets of the Pool shall inure to the benefit of any private person, as stated in §44-4306(2)(f).

10. **Dissolution of the Pool.**

- 10.1 **Event of Dissolution.** The Pool shall be dissolved upon the first to occur of the following:
- a) when all participants in the Pool have ceased to participate; or
 - b) at such time as the Board shall determine that the number of participants and/or the size of the Pool is too small to adequately indemnify against the risks specified in the Memorandum.
- 10.2 **Required Approval.** The Board shall submit a written application to the Director of Insurance for approval of the plan to terminate the Pool as provided by §44-4311. Said application shall comply with applicable statutes and rules and regulations, including, without limitations, provisions for all pending and anticipated claims.
- 10.3 **Approval of Participants.** Any dissolution pursuant to this Section 10 shall not be effective until approval is obtained from the participants in the Pool upon a vote of at least two-thirds majority of all such participants granting approval. Such vote shall occur within thirty (30) days after approval by the Director of Insurance.
- 10.4 **Termination of the Agreement.** This Agreement shall terminate upon the occurrence of all of the following events: (1) the Pool has terminated pursuant to Section 10 herein; (2) all amounts owed by the Public Agency have been paid in full, and (3) all amounts owed for claims and other expenses have been paid in full.

- 10.5 **Distribution of Assets.** At the termination of the Pool's existence, any surplus funds in the Pool over and above those necessary to pay or reserve against the expenses and liabilities of the Pool shall be distributed among the existing participants in the Pool. Such distribution shall be allocated among such participants in proportion to the contributions made by each participant, as stated in §44-4306(2)(b).
11. **Conformity with Law.** In the event any term or provision of this Agreement shall be in conflict with the statutes, laws, rules, and regulations of the State of Nebraska as they now exist or are hereafter amended, this Agreement shall automatically be deemed amended to conform to such statutes, laws, rules, and regulations.
12. **Fiscal Year.** The Pool's fiscal year shall begin on September 1 of each year and end on August 31 of each year.
13. **Liability.** No participant in the Pool shall by reason of this Agreement, have any liability for claims brought by third parties against any other participant other than the obligation to contribute certain funds to the Pool as expressly provided herein. The liability for any claim against the member shall remain the sole and exclusive liability of the member; the obligation of the Pool is to indemnify the member against such loss as provided in the Memorandum to the extent and under the conditions contained therein.
14. **Execution in Counterpart.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

The parties hereto have entered this Agreement on the dates set forth in the attached Resolutions.

**RESOLUTION
COMMITMENT TO ENTER INTO
ALICAP
INTERLOCAL AGREEMENT**

HEREBY, the participant is entering into an interlocal agreement with other public entities to participate in the NASB All Lines Interlocal Cooperative Aggregate Pool (otherwise referred to as ALICAP) as authorized by the Intergovernmental Risk Management Act, Neb Stat. §44-4301 and

WHEREAS, participant is allowed to participate in said cooperative undertakings; and

NOW THEREFORE, BE IT RESOLVED that the governing board hereby:

1. Declares that the board commits to participate in NASB ALICAP for an initial three-year agreement, all as set forth in the Participation Agreement which is attached to this resolution.

After motion duly made by _____ and seconded by _____, the following members voted by roll call vote in favor of passage and adoption of the said Resolution:

The following members voted against the same:

The following members voted absent or not voting:

PASSED AND APPROVED this _____ day of _____, 20__.

Participant Name (*School, ESU or college*) _____

Signature from an Official of the Participant _____

Please print name and title _____