

**AMENDED AND RESTATED
OPERATING AGREEMENT**

of

**KANSAS EDUCATIONAL RISK
MANAGEMENT POOL, LLC**

THE INTERESTS IN THIS LIMITED LIABILITY COMPANY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS REGISTERED UNDER THAT ACT AND THE APPLICABLE STATE SECURITIES LAWS, OR THE POOL WILL HAVE RECEIVED AN OPINION OF COUNSEL (WHICH COUNSEL AND OPINION WILL BE SATISFACTORY TO THE POOL'S COUNSEL) THAT REGISTRATION OF SUCH SECURITIES UNDER THAT ACT AND UNDER THE APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED.

THE INTERESTS IN THIS LIMITED LIABILITY COMPANY ARE SUBJECT TO THE RESTRICTIONS AND PROVISIONS OF THIS OPERATING AGREEMENT AND MAY ONLY BE DISPOSED OF OR ENCUMBERED IN COMPLIANCE HEREWITH.

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**AMENDED AND RESTATED
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OF
KANSAS EDUCATIONAL RISK MANAGEMENT POOL, LLC**

This Amended and Restated Operating Agreement, hereinafter referred to as this “Agreement,” is dated as of February ___, 2016 and is by and among Kansas Educational Risk Management Pool, LLC, a Kansas limited liability company (the “Pool”), the Boards of Education, Governing Boards or Controlling Authorities of the school districts and state agencies listed on Appendix A, attached hereto, as the members of the Pool each of which may be referred to hereinafter as a “Member” and which, collectively, may be referred to hereinafter as the “Members,” and the Board (as defined herein).

WITNESSETH:

WHEREAS, K.S.A. 12-2617 authorizes five or more municipalities, including school districts, to enter into agreements to pool their liabilities in group-funded pools for certain lines of coverage;

WHEREAS, the Members listed on Appendix A, hereto, formed the Pool for the purposes of administering a group-funded pool pursuant to this Agreement by and among the Members for the acquisition of the Mandated Coverages described in Exhibit A and any Optional Coverages as that term is hereinafter defined;

WHEREAS, the intent and purpose of the Pool is to effectively manage and contain costs for coverage of certain losses by pooling the Members’ liabilities as permitted in accordance with the provisions of the Kansas Municipal Group-Funded Pool Act at K.S.A. 12-2616 et seq;

WHEREAS, the operation of the Pool shall not be to assume insurance risk or grant policies of insurance and the creation and operation of the Pool and of an Account (as defined below) is not deemed to be or constitute the transaction of insurance business within the State of Kansas;

WHEREAS, the Members adopted that certain Amendment No. 1 Interlocal Governmental Agreement and Bylaws (“Interlocal Agreement”) in July 2015 as the “operating agreement” of the Pool under the Kansas Revised Limited Liability Company Act at K.S.A. 17-668 (the “Operating Agreement”) to set forth the rules, regulations and provisions regarding the management and business of the Pool, the governance of the Pool, the conduct of its business, and the rights and privileges of its Members and the Board; and

WHEREAS, the Board hereby adopts this Agreement (i) as the amended Operating Agreement of the Pool (ii) to amend and restate the Operating Agreement to more accurately reflect this Agreement as the originally intended “operating agreement” contemplated by K.S.A. 17-668 of the Pool and clarify certain governance procedures of the Pool; and (iii) as the bylaws for purposes of the Kansas Municipal Group Funded Pool Act in accordance with K.S.A. 12-2618.

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Members as set forth on **Appendix A** agree as follows:

ARTICLE I
Definitions

The following terms shall have the meaning set forth below:

1.1 ACCOUNT means the Pool's general monetary fund, funded by each Member's Member Contribution which may be segregated into the Loss Fund and one or more administrative accounts.

1.2 ADMINISTRATOR means the individual designated by the Board to carry out the day-to-day functions of the Pool and delegated duties of the Board, at the direction of the Board.

1.3 BOARD OF TRUSTEES or BOARD means the collective group of Trustees responsible for the operation and oversight of the Pool.

1.4 CHAIRPERSON means a Trustee elected by the Board to lead the business of the Board.

1.5 EXECUTIVE COMMITTEE means a committee of the Board of Trustees, which shall consist of the Chairperson, the Vice-Chairperson/Secretary, and the Treasurer, as voting members, and the Administrator as an ex officio.

1.6 FISCAL YEAR means the twelve (12) month period commencing each July 1 and ending the following June 30.

1.7

(a) MANDATORY COVERAGE means all related property, casualty, automobile and boiler/machiner coverages as further described in **Exhibit A**, the mandatory provisions that must be maintained by each Member, including the insurance protections and programs approved by the Board for the benefit of the Members.

(b) OPTIONAL COVERAGE means coverage offered by the Pool to the Members in addition to the Mandatory Coverage.

1.8 MEMBER means a Member that is an admitted participant of the Pool, as listed on **Appendix A**.

1.9 MEMBER CONTRIBUTION means the aggregate amount of money contributed by each Member, as specified by the Board, that is required to fund the Loss Fund, to purchase excess insurance and to fund all other fixed costs of the Pool that are due annually from each Member to fund that Member's share of the Account.

1.10 LOSS FUND means a monetary fund established from Member Contributions made each Fiscal Year and maintained by the Pool to pay loss claims arising in the year of contribution.

1.11 OFFICER means each of the Chairperson, Vice-Chairperson/Secretary and Treasurer as elected by the Board.

1.12 REPRESENTATIVE means a Member's treasurer, business manager or other management personnel authorized by the Board of Education, Governing Board or Controlling Authority of the respective Member to be such Member's authorized representative for purposes of the Pool to act on behalf of the Member's interests in the Pool.

1.13 TREASURER means the Officer elected by the Board to carry out the fiscal and financial business of the Pool as directed by the Board.

1.14 TRUSTEE means a resident of the State of Kansas who is elected by the Representatives at the annual meeting of the Pool to serve as a member of the Board, whom is not an owner, officer or employee of any service agent or service representative.

1.15 VICE-CHAIRPERSON/SECRETARY means the person elected by the Board to carry out all the duties of the Chairperson in the event that the Chairperson is absent, unable to act, or refuses to perform the duties of that office and who also shall perform such duties as are incident to the office of Secretary.

ARTICLE II **The Board**

2.1 Composition.

The Pool will be governed by a Board of Trustees. The Board shall consist of a minimum of five (5) and not more than twelve (12) members elected by the Members each to serve as a Trustee on the Board of Trustees for the Pool. Individuals must be current members of a board of education of a Member to be eligible to serve as a Trustee. Trustees to serve on the Board shall be elected by the Members at the annual meeting of Members. If, however, a Trustee resigns, is removed, becomes unable to serve, or otherwise vacates his/her position on the Board, then the remaining Trustees shall appoint a replacement from among the Representatives at large within thirty (30) days from the date of the vacancy to fill the vacancy for the remainder of the unexpired term. If the departing member was also an Officer, the Board shall elect from the remaining Trustees a replacement for such Officer position to serve until the next annual meeting of the Board. Any Trustee that resigns or is terminated from his/her employment with a Member shall be deemed to have resigned from his/her position on the Board, effective as of the date of such resignation or termination.

2.2 Terms of office.

The term of office Trustees shall expire on the earlier of (a) a date that is three (3) years from the effective date of election as Trustee or (b) the date that the Trustee's term expires as a member of the board of education of a Member. There shall be no limit to the number of

consecutive terms that a Trustee may serve on the Board. All terms commence on July 1 following the Fiscal Year in which the member was elected.

The Trustees serve staggered terms as shown on Appendix C. All Trustees serving as of the date of this Agreement shall continue to serve in their positions for their remaining terms of office. The terms of office are staggered such that the terms of groups of three (3) of the Trustees shall expire each Fiscal Year.

2.3 Oversight of the Pool.

The Board shall provide oversight and supervision of the Administrator's management of day-to-day operations of the Pool pursuant to direction from the Board, and pursuant to the terms of this Agreement.

2.4 Duties of the Board.

The Board shall have the following authority and the duties:

(a) To select agents, employees, independent contractors, insurance consultants, insurance brokers, claims administrators, attorneys, auditors and such other persons as may be necessary to administer and accomplish the purposes of and to conduct the business affairs of the Pool, including enforcement of the provisions of this Agreement and all procedures and protocols adopted for the Pool, but neither the Pool, the Board, nor any committee of the Board shall have the authority to enter into any collective bargaining agreement;

(b) To carry out educational and other programs relating to safety, accident or other claims reduction efforts;

(c) To direct the collection of premiums from the Members;

(d) To direct the payment of funds necessary to conduct the business of the Pool;

(e) To cause to be purchased property, liability, automobile coverage as recommended to the Board by the Administrator, or as the Board may determine are appropriate and within the purposes of this Agreement;

(f) To recommend changes in Pool policies, procedures or agreements;

(g) To determine the compensation for all Pool agents, employees and independent contractors;

(h) To admit new Members to the Pool;

(i) To recommend the expulsion of a Member in accordance with the provisions herein;

(j) To prepare and submit to the Board for approval an annual budget for the Pool;

(k) To prepare and submit periodically to each Member a loss summary for each insurance program in which the Member participates;

(l) To obtain and furnish annually to each Member an audited report of the financial affairs of the Pool, made by a certified public accountant at the end of each Fiscal Year in accordance with generally accepted auditing principles;

(m) To procure fidelity bonds for employees or other persons, as permitted by this Agreement or by law;

(n) To remove Officers or Trustees from the Board where such Officers or Trustees have engaged in fraud, criminal activity or other conduct clearly detrimental to the interests of the Pool as determined by the Board in its sole discretion;

(o) To elect Officers and, when necessary, to fill vacancies on the Board.

(p) To carry out all other activities as are necessary to effectuate the purposes of the Pool specified in the Preamble and consistent with this Agreement, in accordance with applicable law.

2.5 Regular Meetings.

The Board shall meet as often as it deems necessary to conduct the business and to carry out the obligations of the Pool, but shall hold regular meetings at least twice per Fiscal Year, ordinarily once in December and once in May. The meeting ordinarily occurring in December shall be the annual meeting of the Board for purposes of electing the Officers.

2.6 Special Meetings.

Special meetings of the Board may be called in any of the following ways: 1) by the Chairperson or 2) by not less than twenty percent (20%) of the Trustees. Business conducted at a special meeting shall be limited to those items specified in the agenda that must be attached to notice of the special meeting, unless two-thirds (2/3) of the Trustees present at the meeting agree to consider a matter not on the agenda.

2.7 Notice

The Vice-Chairperson/Secretary shall give the Trustees three (3) day prior written notice of regular or special Board meetings. Notice of any special meeting shall include an agenda specifying the purpose of and business matters to be addressed at the special meeting.

2.8 Quorum.

In order to carry on the business affairs and management of the Pool, including conducting Board meetings, a quorum must be present and shall consist of a majority of the then-sitting Trustees.

2.9 Voting.

Two thirds (2/3) vote of a quorum of the Trustees shall be sufficient to pass upon all matters properly before the Board. Each Trustee shall be entitled to one vote on all matters coming before the Board. A Trustee may vote by proxy on all matters coming before the Board provided that a written proxy is submitted to the Chairperson in advance of the meeting and specifying the extent of the proxy given.

All votes shall be recorded by the Vice-Chairperson/Secretary. Voting shall be by voice vote or in any other manner established by the Board prior to voting on any matter, unless a Trustee requests a roll call vote. Any vote of the Board that requires a greater than majority vote for passage shall be by roll call vote, and in the event that there are any negative votes or abstentions relating to the authorization of an expenditure of funds, the names of the Trustees so voting shall be specifically noted in the minutes. All Members present and not voting in the negative or abstaining shall be listed as having joined the affirmative voice vote on the proposition.

2.10 Minutes.

The Vice-Chairperson/Secretary shall cause to be recorded the minutes of all Board meetings. To the extent required by law, the minutes shall be available to each Representative and a copy provided to each Member upon request.

2.11 Action by Written Consent.

Unless otherwise restricted by this Agreement, any action required to be taken at a meeting of the Board or any other action which may be taken at a meeting of the Board may be taken without a meeting if a consent in writing setting forth the action so taken will be signed by the Trustees having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Trustees entitled to vote thereon were present and voted, and the consent in writing is filed with the minutes of the proceedings of the Board. A copy of such written consent to action will be given to each Trustee.

2.12 Procedural rules.

The Board may establish rules to govern the procedures for conducting business and taking votes at Board meetings. All meetings shall be conducted in accordance with this Agreement and with all applicable law. In the event of a conflict between this Agreement and any applicable law, this Agreement shall be deemed modified to the extent necessary to comply with such law.

2.13 Matters requiring Board approval.

The following shall require approval of the Board:

- (a) The annual budget of the Pool and any supplements or amendments thereto;
- (b) The insurance program for the Pool;
- (c) Election of the Officers;
- (d) Other matters requiring approval of the Board as set forth in this Agreement, or as may be determined by the Board from time to time, consistent with the terms of this Agreement and all applicable law.

ARTICLE III **Officers**

3.1 Officers.

The Officers of the Pool shall be the Chairperson, the Vice-Chairperson/Secretary, the Treasurer and such other Officer positions as the Board may create from time to time. The Officers shall be elected by the Board at the Board's annual meeting. Nominations for an Officer position must be delivered to the then-sitting Chairperson at least thirty (30) days prior to the meeting. Each Officer shall serve for a three (3) year term. There shall be no limit to the number of consecutive terms that an Officer may serve.

If an Officer resigns, then the Board shall select a replacement Officer from among the remaining Trustees or, if no Trustee wishes to replace the Officer, then from among the Representatives at large, for the remainder of the term vacated.

3.2 Chairperson.

The Chairperson shall carry out the purposes of the Pool as directed by the Board. No Member of the Board shall be eligible for election to the position of Chairperson unless the Member is able to serve as Chairperson for at least two (2) years of the first three-year term.

The Chairperson shall have the duty and the authority:

- (a) To preside over all meetings of the Board at which the Chairperson is present;
- (b) To sign on behalf of the Pool any instrument which the Board has authorized to be executed;
- (c) To make recommendations regarding policy decisions, the creation of other Pool offices and the employment of agents, employees, independent contractors and others necessary to the operation of the Pool;
- (d) To authorize the preparation of a proposed annual administrative budget for the Pool;

(e) To direct the Treasurer, within the constraints of the approved budget, to make distributions from the Account for payment of premiums, claims and expenses and any other administrative expenses of the Pool;

(f) To present a full report of the fiscal condition of the Pool at each regular meeting of the Board, and at such other times as requested to do so by the Board;

(g) To perform all other duties incidental to the office of Chairperson as such duties may be prescribed by the Board from time to time consistent with this Agreement and any applicable law.

3.3 Vice-Chairperson/Secretary.

The Vice-Chairperson/Secretary shall carry out all the duties of the Chairperson during the absence, inability, or refusal of the Chairperson to perform such duties, and shall carry out such other functions as are assigned from time to time by the Chairperson or the Board. The Vice-Chairperson/Secretary shall also have the authority and duty:

(a) To cause minutes to be recorded and to record all votes at the meetings of the Board;

(b) To furnish all notices and copies of meeting minutes as required by this Agreement or by applicable law;

(c) To serve as the custodian of the Pool's records; and

(d) To perform all other duties incidental to the office of Secretary as such duties may be prescribed by the Board from time to time consistent with this Agreement and any applicable law.

3.4 Treasurer.

The Treasurer of the Pool shall carry out the fiscal and financial business of the Pool as directed by the Board.

The Treasurer shall have the authority and the duty:

(a) To sign on behalf of the Pool any instrument which the Board has authorized to be executed;

(b) To prepare a proposed annual administrative budget, with the assistance of the Chairperson and Administrator;

(c) To present a full report of his/her activities and the fiscal condition of the Pool at each regular meeting of the Board, and at such other times as requested by the Board;

(d) To have charge and custody of and be responsible for all funds and securities of the Pool;

(e) To receive and give all receipts for monies due and payable to the Pool from any source whatsoever;

(f) To deposit all such monies in the name of the Pool in such banks, savings and loan associations or other depositories as shall be selected by the Board;

(g) To establish accounts and letters of credit at such banks or other depositories;

(h) To invest the Pool's funds that are not immediately required in such accounts, deposits or securities as the Board shall specifically or generally select from time to time;

(i) To maintain the financial books and records of the Pool;

(j) To disburse Pool funds pursuant to this Agreement, with a full report made to the Board;

(k) To invest the funds of the Pool, from time to time, in accounts and with institutions regularly permitted for school districts in the State of Kansas;

(l) To perform all duties incident to the Office of Treasurer and such other duties as may be prescribed by the Board from time to time consistent with this Agreement and any applicable law.

3.5 Acting as Treasurer.

During the absence, inability or refusal of the Treasurer to act, the Chairperson or an individual appointed by the Chairperson and approved by the Board may perform the duties of the Treasurer and, when so acting, shall have all of the powers of and be subject to all of the restrictions upon the Treasurer.

3.6 Administrator.

The Board shall engage an Administrator, which may be an individual or an entity, but which may not be a Representative. The Administrator shall sit on the Executive Committee, or, if it is an entity, the Administrator shall designate a representative to sit on the Executive Committee each in an ex officio capacity. The Administrator, or its representative if it is an entity, shall have no voting rights on any matter coming before the Board or Executive Committee.

The Board shall enter into a written contract with the Administrator requiring the Administrator to perform the duties incident to that office, as delegated by the Board, which shall include the duty:

- (a) To report monthly to each Member all claims filed and pay-outs made for or on behalf of that Member;
- (b) To propose and submit to the Board an annual insurance cost budget for the Pool;
- (c) To make recommendations to the Board regarding policy matters, the creation of other Pool offices, and changes in procedures of the Pool;
- (d) To present a full report of the activities of the Administrator at each regular meeting of the Board, and at such other times as requested to do so by the Board;
- (e) To make recommendations to the Board regarding insurance coverages, risk administration, allocations/charges to Members and other fiscal matters affecting or affected by the operations of the Pool;
- (f) To perform such other activities as may from time to time be prescribed by the Board.

3.7 Bond requirement.

The Administrator shall, before commencing his/her respective duties, execute a bond with a surety company authorized to do business in the State of Kansas, as surety, payable to the Pool and conditional upon the faithful discharge of his/her duties. The bond shall be in such an amount as is determined by the Board to be sufficient to protect the Pool against the misappropriation or misuse of any moneys or securities

ARTICLE IV **Committees**

4.1 Standing and Special Committees.

The Pool shall have an Executive Committee and a Finance Committee and such other committees as the Board shall establish as standing committees of the Board. The Chairperson may appoint Trustees to serve on special committees of the Board from time to time as necessary to address matters requiring such initiative. Each committee shall have a separate charter, approved by the Board, which sets forth the duties and responsibilities of the respective committee as delegated by the Board.

4.2 Composition of the Executive Committee.

The Executive Committee shall be comprised of the Chairperson, the Vice-Chairperson/Secretary and the Treasurer, as voting members, and the Administrator shall serve as ex officio participant on the Executive Committee. The Executive Committee may establish other ex officio positions on the Executive Committee and may select a Representative or retain an individual unaffiliated with the Pool to serve in any such additional positions. No ex officio participant on the Executive Committee shall be entitled to vote on any issue before the Board or Executive Committee unless that person is also a Representative. The Treasurer, Administrator

and any other ex officio participants shall serve on the Executive Committee for such time as may be designated by the Executive Committee.

4.3 Composition of the Finance Committee.

The Finance Committee shall be comprised of the Chairperson, the Treasurer and at least one other Trustee as appointed by the Chairperson to serve annual terms or until replaced by the Chairperson. The primary responsibilities of the Finance Committee shall be to oversee the accounting, investments and books and records of the Pool.

ARTICLE V **Compensation and Liability**

5.1 Compensation.

No Trustee shall receive any salary or other compensation from the Pool in exchange for their duties in serving the Pool.

5.2 Expenses.

Subject to review by the Chairperson and Vice-Chairperson/Secretary, Trustees may be reimbursed for reasonable expenses incurred on behalf of the Pool. Reimbursement for such expenses may include amounts advanced on behalf of the Pool either by the Trustee himself/herself or by a Member, and shall be carried out in accordance with procedures and policies established by the Board and consistent with the terms of this Agreement.

5.3 Liability.

The Trustees shall use ordinary care and reasonable diligence in the exercise of their authority and in the performance of their duties. They shall not be liable for any mistake or judgment or other action made, taken or omitted by them in good faith; nor for any action made, taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of Pool funds or a failure to invest. No Representative, Trustee, Officer or ex officio participant of the Board and of any committee shall be personally liable for any action taken or omitted in the good faith performance of his/her duties or activities on behalf of the Pool. No Trustee shall be required to give a bond or other security to guarantee the faithful performance of his/her duties hereunder except as required by this Agreement or by law. The Pool shall defend and hold harmless any Trustee where the Trustee was acting within the scope of his/her authority when the claim against the Trustee arose, but shall not be required to indemnify any Trustee for such claims. In lieu of the obligations set forth in this Paragraph, the Pool may purchase insurance providing similar coverage for any such claims.

ARTICLE VI **Insurance Coverage**

6.1 Purchase.

The Pool will cause to be purchased insurance, from companies licensed and/or approved by the Kansas Insurance Department to conduct insurance business in Kansas, in amounts required to meet the obligations and purposes of the Pool as established by this Agreement or as approved by the Board from time to time.

6.2 Mandatory Coverage.

Every Member must purchase and participate in the entire offering of the Pool's Mandatory Coverage as set forth on Exhibit A. Exhibit A may be amended from time to time upon the prior approval of the Executive Committee to include additional coverage on a collective basis as the Pool may require for all Members from time to time consistent with this Agreement. No Member may purchase or participate only in an Optional Coverage program without purchasing the Mandatory Coverages.

6.3 Optional Coverage.

On an annual basis, and subject to other limitations in this Agreement, any Member participating in the Pool may adopt Optional Coverages, cancel or change one or more of the Optional Coverages provided by the Pool with the prior written approval of the Executive Committee. The Administrator shall be notified in writing of any such change in Optional Coverages not less than six (6) months prior to the last day of each Fiscal Year.

6.4 Conditions upon Optional Coverage.

If a Member decides to participate in an Optional Coverage program offered by the Pool, the Member shall participate in the Optional Coverage program for a minimum of three (3) consecutive years commencing on the effective date of such coverage. No Member may request or participate in any Optional Coverage program unless the Member first participates in the Property/Casualty and any other Mandatory Coverage program.

6.5 Notice to withdraw from Optional Coverage.

A Member shall comply with the provisions of Article X if the Member wishes to withdraw from any Optional Coverage program.

6.6 Additional coverage.

Membership in the Pool shall not preclude any Member from purchasing any insurance coverage independent of and in addition to that provided by the Pool. The Pool shall, where requested, make its resources available to advise Members of the types of additional or different insurance coverage available to Kansas school districts.

ARTICLE VII **The Account and Loss Funds**

7.1 Under Treasurer's control.

The Account shall be held and invested by the Treasurer in compliance with all laws, statutes, ordinances and regulations applicable to the Pool and Kansas school districts.

7.2 Administrative expenses of the Pool.

The costs of administering the Pool, including but not limited to costs to fund Loss Funds and operating costs, shall be paid out of the Account. It is contemplated that the Account will contain a sufficient amount of funds at all times to pay the administrative expenses of the Pool.

7.3 Funding and administering the Account.

It is contemplated that each Member's Member Contribution payment into the Account will be set in direct proportion to the pro rata share of insurance costs for coverages administered by the Pool for that Member, or on such other reasonable bases as may be determined appropriate by the Board and consistent with this Agreement, including necessary and reasonable costs to operate the Pool. Member Contribution payments will be determined, and the Account will be administered, in the following manner:

(a) At least 60 days prior to the start of each Fiscal Year, the Administrator or designated agent of the Pool will determine the amount of total premium payments from all of the Members necessary to fund anticipated expenses of the Pool. The factors to be considered in determining a Member's Member Contribution payment shall include the following: 1) property values; 2) number of vehicles owned or covered; 3) size of the student body; 4) size and scope of extracurricular activities; 5) Member budget; 6) claim or loss experience of the Member; 7) payroll of the Member; 8) a property appraisal provided by the Member not more than five (5) years old from the beginning of the policy period and then updated each five years thereafter; 9) premiums paid by the Pool, professional fees and expenses to operate the Pool and miscellaneous expenses determined by the Executive Committee to be necessary and reasonable to operate the Pool; 10) such other information as may be reasonably needed and customarily used in the insurance industry for the purpose of evaluating the liability and loss protections for the Pool and operations of the Pool, on a form to be provided by the Administrator.

(b) The Administrator shall recommend and the Board shall determine how the administrative expenses shall be allocated among the Members consistent with the pro rata sharing of expenses as set forth herein.

(c) The Board, at least 30 days prior to the start of each Fiscal Year, may approve the recommendations of the Executive Committee regarding the determination of administrative expenses and the manner in which such expenses shall be allocated among the Members.

(d) The Account will be administered during the Fiscal Year as a single fund without regard to the level of expense for a particular Member.

7.4 Supplementary payments.

If, during any Fiscal Year, subsequent to the initial Fiscal Year, the funds on hand in the Account are insufficient to pay expenses of administration of the Pool, the Board may require supplementary payment from all Members. Such payment shall be made in the same proportion as any prior payment made by the Member during that year in which the deficiency occurred and shall be due from each Member upon its receipt of notification of the supplementary payment amount by the Administrator as approved by the Board.

7.5 Establishment of Fiscal Year Loss Funds.

The Pool shall establish a Loss Fund for each Fiscal Year of operation, out of which to pay loss claims that arose in that year. The size of each Loss Fund shall be recommended by the Administrator or an insurer and may be adjusted by the Board at such times as it deems necessary to protect the best interests of the Pool.

7.6 Close-out of Loss Funds.

The Pool shall continue to maintain each Loss Fund until such time as claims arising in that Fiscal Year can no longer be brought against the Members, at which point the Pool shall close out the Loss Fund for that Fiscal Year. To the extent that any funds remain in a Loss Fund after close-out, the Pool shall return such surplus to the Members based upon a pro rata calculation of each Member's Member Contribution to the Loss Fund for that Fiscal Year.

ARTICLE VIII **Obligations of the Members**

8.1 Obligations.

In addition to the other responsibilities of a Member as set forth in this Agreement, each Member shall have the obligation:

- (a) To pay promptly all payments to the Pool for the Account at such times and in such amounts as are established within the scope of this Agreement;
- (b) To select promptly a Representative to act on behalf of the Member, including voting for Trustees at the annual meeting of the Pool Members and approving any amendments to this Agreement;
- (c) To submit promptly to the Pool all claims by or against the Member in such manner as may be prescribed from time to time by the Board;
- (d) To cooperate fully with the Administrator, any insurance consultant-claims administrator, the attorneys selected by or engaged by the Board, auditors and any agent, employee, Officer or independent contractor of the Pool in any matter relating to the purpose and powers of the Pool;
- (e) To act promptly on all matters requiring approval by the Board and not to withhold such approval unreasonably or arbitrarily;

(f) If applying to join the Pool, to make a good faith effort to provide a physical property appraisal report not more than five (5) years old.

(g) If already participating in the Pool, to make a good faith effort to provide a physical property report not more than five years old and to provide an updated physical property within five years after the expiration of the last report.

(h) To assure that its Representative reviews and oversees the Member's compliance with the Pool Risk Management Protocols as adopted from time to time and with all obligations of a Member as set forth in this Agreement.

8.2 Continuation of and consideration for obligations.

The obligations and responsibilities of the Members as set forth in this Agreement, including the obligation to take no action inconsistent with this Agreement as originally written or validly amended, shall remain a continuing obligation and responsibility of each Member.

The consideration for the duties imposed upon the Members by this Agreement is based upon the mutual promises and agreements of the Members set forth herein and the advantages gained by the Members through reduced administrative costs for the procurement of casualty, property, and auto coverage and other protections the Pool may choose to adopt from time to time.

8.3 No responsibility for the obligations of other Members.

Except to the extent of the financial contributions to the Pool which each Member has agreed to make, no Member agrees by this Agreement to be responsible for any claims of any kind against any other Member. The Members intend by the creation of the Pool to establish an organization for joint administration of casualty, liability and employee claims protection within the scope set forth in this Agreement only and do not intend to create between the Members any relationship of partnership, surety, indemnification or liability for the debts of or claims against another Member.

8.4 Meetings of Members; Place of Meetings.

If required by the Act, an annual meeting of the Members will be held on the second Tuesday in April of each year or on such other date as the Members may determine. Regular monthly, quarterly or other periodic meetings may be held upon the determination of the Board or a majority of the Members to hold such meetings. Special meetings may be called at any time by the Board or by any three (3) Members. Meetings (whether annual, regular or special meetings) of the Members may be held for any purpose or purposes, unless otherwise prohibited by statute. All meetings of the Members will be held at such place within the Greater Topeka area as will be stated in the notice of the meeting or at any other location agreed upon by the Manager and all of the Members. The Members of the Pool may participate in a meeting by means of conference telephone or similar communication equipment whereby all of the Members participating in the meeting can hear each other, and participation in a meeting in this manner will constitute presence in person at the meeting.

8.5 Quorum; Voting Requirement.

The presence, in person or by valid proxy, of a majority of the Members will constitute a quorum for the transaction of business by the Members. Each Member shall be entitled to one vote on all matters coming before the Members. The affirmative vote of a majority of the Members will constitute a valid decision of the Members, except where a greater vote is required by the Act, the Articles of Organization of the Pool or this Agreement.

8.6 Designated Representatives.

Each Member will designate in writing to the Pool the name of a Representative who is to serve as the “Designated Representative” of the Member at all meetings and in all votes, consents and approvals of the Members, as provided below. The designated individual will be the official Designated Representative of the designating Member. A Member may change its Designated Representative at any time by giving written notice thereof to the Pool and the other Members. No compensation will be paid by the Pool to any Designated Representative for his or her services in such capacity.

8.7 Notice.

Written notice stating the place, day and hour of each meeting and, in the case of a special meeting, the purpose for which the meeting is called will be delivered not less than ten days nor more than sixty (60) days before the date of the meeting, either personally, by mail or by electronic mail, by or at the direction of the person calling the meeting, to each Member entitled to vote at such meeting. Notice to Members, (i) if mailed, will be deemed delivered as to any Member when deposited in the United States mail, addressed to the Member at its usual place of business or last known address, with postage prepaid, and (ii) if sent by electronic mail, will be deemed delivered as to any Member when sent to the electronic mail address last provided to the Pool by such Member with affirmative confirmation of receipt from such Member.

8.8 Waiver of Notice.

When any notice is required to be given to any Member, a waiver thereof in writing signed by the Member, whether before, at, or after the time stated therein, or any attendance of the Member at the meeting (other than at the beginning of the meeting to object to the holding of the meeting), will be equivalent to the giving of such notice.

8.9 Action Without Meeting.

A meeting of the Members will not be required for the Members to make any decision or to take any action to be made or taken by the Members by a majority, unanimously or otherwise. Any decision or action required or permitted to be taken by the Members may be taken without a meeting if the action is evidenced by one or more written consents or documents constituting or describing the action to be taken, signed by the Members having the requisite aggregate vote. A copy of such written consent to action will be given to each Member.

ARTICLE IX
Admission of a Member

9.1 Application and admission.

A school district wishing to join the Pool must apply on a form prescribed by the Pool, and it must make a good faith effort under Paragraph 8.1(f) of this Agreement to provide a physical property appraisal report not more than five (5) years old. If its application is approved by a majority vote of the Board or Executive Committee, the school district shall be admitted into the Pool, effective as of the first day of the following Fiscal Year. The admitted Member shall ratify this Agreement by completing and signing a Joinder of Agreement in the form of **Appendix B**.

9.2 Mandatory two-year participation in Pool.

Upon admission, a new Member shall be required to maintain Mandatory Coverage in the Pool for a minimum period of two (2) consecutive years, unless the Pool is terminated prior to the expiration of such period. Said two (2) year commitment is required regardless of the term of any coverage plan provided through the Pool.

Nothing in this Paragraph shall be construed to limit the power of the Pool, under Article XI, to expel a Member that has not yet participated for two (2) years in the Pool.

ARTICLE X
Withdrawal of a Member

10.1 Process of withdrawal.

Subject to the limitations of Paragraphs 10.2 & 10.3 below, a Member may withdraw from the Pool only upon the following terms:

- (a) The Member must provide written notice of the Member's decision to withdraw ("Notice of Withdrawal") to the Administrator or Chairperson of the Pool;
- (b) The Notice of Withdrawal must be delivered to the Administrator or Chairperson not less than six (6) months prior to the last day of the then current Fiscal Year, or else the Notice of Withdrawal shall have no effect;
- (c) The Member must attach to the Notice of Withdrawal a true and correct copy of the written resolution or written motion adopted by the governing body of the Member authorizing the Notice of Withdrawal;
- (d) The Member must have been a member of the Pool for the minimum period required by the provisions in this Agreement;

(e) The Notice of Withdrawal must be accepted by the Administrator or the Chairperson.

10.2 Limit on Member's ability to withdraw.

In accordance with Paragraph 9.2, a Member shall have no right to withdraw from the Pool for a period of twenty-four (24) consecutive months following admission to the Pool. Moreover, in no event may Notice of Withdrawal be submitted during a Member's first eighteen (18) months of participation in the Pool.

Nothing in this Paragraph shall be construed to limit the power of the Pool, under Article XI, to expel a Member that has not yet participated for two (2) years in the Pool.

10.3 Effective date of withdrawal.

No withdrawal shall be effective prior to June 30 of any Fiscal Year regardless of the date that the Member joined the Pool, except that the Board, excluding the vote of any Member from the withdrawing Member, may shorten the period of time in which the withdrawal shall become effective.

10.4 Rights and duties of Pool and withdrawing district.

The rights and duties of the Pool and the withdrawing Member shall be the same as those with respect to an expelled Member, under Article XI, on and after the effective date of the withdrawal.

10.5 Revocation of Notice of Withdrawal.

A Member's Notice of Withdrawal, once submitted and accepted in accordance with the provisions of this Agreement, may not then be revoked, unless each of the following occurs:

(a) The Member must submit to the Pool a request, in writing, to revoke its Notice of Withdrawal;

(b) The Member's request must be submitted prior to February 1 of the Fiscal Year identified by the Notice of Withdrawal as the Member's last year of participation in the Pool; and

(c) The Board must approve the Member's request in writing.

The Board may consider a Member's request to revoke its Notice of Withdrawal only if approving the request would not affect the operations of the Pool. Under no circumstances shall the Board consider any such request that is submitted on or after February 1 of the Fiscal Year identified in the Notice of Withdrawal as the Member's last year of participation in the Pool. If a Member's request is submitted on or after this deadline or is otherwise rejected by the Board, the Notice of Withdrawal shall not be revoked, and the Member cannot avoid withdrawing from the Pool. At that point, should the withdrawing Member desire to continue participating in the Pool, it must re-apply to the Pool as a new member, subject to all of the provisions of this Agreement.

ARTICLE XI
Expulsion of a Member

11.1 Grounds for expulsion.

A Member may be expelled from the Pool whenever the Member:

- (a) Fails or refuses to perform any obligation under this Agreement;
- (b) Fails or refuses to make premium payments and supplemental payments when due to the Pool within forty-five (45) days of joining the Pool or receiving written notice of any payment; or,
- (c) Carries on activities found by the Board to be detrimental to the purpose or operations of the Pool.

11.2 Right to notice, opportunity to cure and hearing.

No Member may be expelled from the Pool until the Member has received each of the following:

- (a) Written notice from the Pool identifying the alleged basis for expulsion;
- (b) An opportunity to cure that basis for expulsion within fifteen (15) days from delivery of the notice; and,
- (c) In the event of a failure to cure, the opportunity to be heard before the Board or its appointee under Paragraph 11.3 below.

If the conduct of a Member is found by the Board to be a continuing threat or detrimental to the continued operation of the Pool, the Board may suspend the Member from all rights and privileges under this Agreement except for the limited right to continue its then current insurance coverages for which it has timely paid all premiums due.

11.3 Hearing.

If a Member fails to cure the alleged basis for expulsion within the fifteen (15) day notice period, the Board shall set a date for an expulsion hearing, which shall occur not less than ten (10) days after expiration of the time to cure. The Board may conduct the hearing or appoint an individual to conduct the hearing who shall make a recommendation to the Board based upon his/her findings of fact.

11.4 Vote to expel.

Following the expulsion hearing, the Board shall vote whether to expel the Member. A Member may be expelled from the Pool by a two-thirds (2/3) vote of the Board.

11.5 Appeal of expulsion.

The expulsion of a Member becomes final thirty (30) days after the Board votes to expel the Member, unless the Member appeals the decision within that time, by submitting a written request to the Chairperson appealing its expulsion to the Board as a whole.

If the expulsion is properly appealed, the Board shall constitute a special committee for the review of the Board's decision at the next regular meeting following the Member's request for an appeal, or at a special meeting called to address the expulsion. The special committee may limit its review to the submissions, findings and recommendations from the expulsion hearing, or it may consider supplemental materials as it may determine in its sole discretion.

The decision to expel a Member may be reversed by a two-thirds (2/3) vote of the Board. If the Board votes to uphold the Executive Committee's decision to expel, the expulsion becomes final immediately upon such vote.

11.6 Continuing obligations of Pool and expelled Member.

If a Member is expelled in accordance with this Article XI, it will no longer have any rights or privileges under this Agreement, except for the limited right to continue its then current insurance coverages as provided in this Paragraph 11.6. Provided that the expelled Member has timely paid all premiums due, such Member will continue to be insured under any Mandatory Coverage and Optional Coverage plans that it previously purchased, until the end of the then current Fiscal Year, and the Pool shall continue to process claims by or against an expelled Member for that insurance policy period.

An expelled Member shall continue to be fully liable for any payment due to the Account and for any other unfulfilled obligation as if it were still participating in the Pool.

Within sixty (60) days after the date when a Member's expulsion becomes final pursuant to Paragraph 11.5 above, the Pool shall take an accounting of the fixed funds and expenses owed by or owing to said Member as of the date on which the expulsion became final. The expelled Member shall immediately pay into the Account any amount found to be owed by it. Any amount found to be owed to the Member by the Pool, and all funds upon which a claim could be made against the expelled Member, shall be held by the Pool until all such claims or potential claims are terminated. The Board shall provide a written statement to the expelled Member through the Administrator, outlining any potential liability for possible future deficits that may occur for the years in which the Member participated in the Pool prior to expulsion.

ARTICLE XII **Termination of the Pool**

12.1 Termination events.

The Pool shall terminate upon the occurrence of any of the following events:

(a) A final determination by a Court of competent jurisdiction, after all appeals have been exhausted or time for appeal has expired, that the Pool is invalid or contrary to law;

(b) The number of Members is not sufficient to support an insurance Loss Fund at the self-insured retention level established for the Pool in the amount as recommended by the Administrator and approved by the Board for the Pool;

(c) The Board approves, by a two-thirds (2/3) vote, a motion to dissolve and terminate the Pool.

(d) The Pool is ordered to dissolve by the Kansas Insurance Department for failing to comply with state law regarding the operation of a pool.

12.2 Rights and duties upon termination.

Upon termination of the Pool, the rights and duties of the Pool to each Member and the rights and duties of each Member to the Pool and to each other shall be the same as those with respect to an expelled Member.

12.3 Disposition of Pool property upon termination.

Upon termination, the Pool may be dissolved by the Members and the assets of the Pool not used or needed for the purposes of the Pool, as determined by the Board, shall be distributed exclusively to the Members that are Members of the Pool immediately prior to dissolution of the Pool, such assets distributed to be used for one or more public purposes.

ARTICLE XIII **Effect of Agreement**

13.1 Adoption of this Agreement.

This Agreement shall be presented to the Board for approval at a regular or special meeting of the Board. The Agreement shall become effective and binding on the Board and each of the respective Members upon approval by the Board.

13.2 Continuation of Pool.

The duration of the Pool shall be five (5) years and shall automatically renew for additional consecutive five (5) year terms, unless otherwise terminated in accordance with Article XII. Neither discussion, approval, nor rejection of any amendment to this Agreement shall dissolve or terminate the Pool. If an amendment to this Agreement is approved, the Pool shall operate in accordance with the amended Agreement. If an amendment to this Agreement is not approved, the Pool shall operate in accordance with the prior version of this agreement.

13.3 Enforcement of Agreement and applicable law.

This Agreement may be enforced in law or equity either by the Pool itself or by any Member. This Agreement shall be enforceable by or against a Member or the Pool solely in the courts in Kansas having proper jurisdiction and venue of the parties. This Agreement shall be construed solely under the applicable law of the State of Kansas.

13.4 Severability.

In the event that any provision of this Agreement is declared by a final judgment of a court of competent jurisdiction to be unlawful or unconstitutional or invalid as applied to any Member, the lawfulness, constitutionality or validity of the remainder of this Agreement shall not be deemed affected thereby.

13.5 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of separate counterparts, which taken together shall constitute a single instrument.

13.6 Applicability of Agreement.

This Agreement shall be binding on each Member and any successor Member thereof.

13.7 Amendments to this Agreement.

This Agreement may only be amended or modified by the affirmative vote of two-thirds (2/3) of the Members.

ARTICLE XIV **Miscellaneous**

14.1 Notice and delivery.

Any notice required by this Agreement shall be in writing and shall be deemed to have been delivered when: 1) it is sent to the intended recipient by fax, email, or any other form of electronic communication; 2) it is delivered personally to the intended recipient or its agent designated for receipt of such notice; 3) any other delivery method has been used that is approved by the Board; or, 4) it is deposited in a United States Post Office and sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

(a) If to the Pool, addressed to the Chairperson of the Board at the address of the Member where the Chairperson is employed.

(b) If to a Member, addressed to the Representative for that Member at the address provided to the Pool; or to the principal office of the Member's administration/superintendent.

14.2 Paragraph headings.

The paragraph headings inserted in this Agreement are for convenience only and are not intended to, and shall not be construed to limit, enlarge or affect the scope or intent of this Agreement or the meaning of any provision hereof.

14.3 Updating list of participating Members in Appendix A.

The Board annually shall prepare and distribute to the Representatives an updated **Appendix A** listing the Members that are then participating in the Pool.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the undersigned acknowledges and represents that he or she has the full authority as granted by the Board of Education of the below Member to enter into this Agreement on the Member's behalf.

CHAPARRAL SCHOOLS USD 361

By: _____
Printed Name: Josh Swartz
Title: Superintendent, Authorized Representative

BALDWIN CITY USD 348

By: _____
Printed Name: Cynde Frick
Title: Authorized Representative

BLUESTEM USD 205

By: _____
Printed Name: Joel R. Lovesee
Title: Authorized Representative

ELL SALINE USD 307

By: _____
Printed Name: Jerry L. Minneman
Title: Authorized Representative

HAYS USD 489

By: _____
Printed Name: Tracy Kaiser
Title: Authorized Representative

HAYSVILLE USD 261

By: _____
Printed Name: Dr. Clint Schutte
Title: Authorized Representative

[Signature Page 1 of 2 to Amended and Restated Operating Agreement]

ROSE HILL USD 394

By: _____

Printed Name: Roger Miller

Title: Authorized Representative

SE OF SALINE USD 306

By: _____

Printed Name: Stephanie Hettenbach

Title: Authorized Representative

EUDORA USD 491

By: _____

Printed Name: Steve Splichal

Title: Authorized Representative

DEERFIELD USD 216

By: _____

Printed Name: Dr. Daniel Slack

Title: Authorized Representative

EXHIBIT A

MANDATORY COVERAGE

(a) Blanket Property Liability Coverage

(1) Buildings, contents, mobile equipment, EDP equipment, EDP media, EDP extra expense including mechanical breakdown, AV equipment, valuable papers, fine arts, accounts receivable, musical instruments, builders risk, business interruption, extra expense, auto physical damage, miscellaneous property, artificial turf & fiber optics, crime.

(b) General Liability Coverage

(1) Automobile Liability

(2) School Board, Employment Practices and Employee Benefit Liability

(c) Law Enforcement Liability Coverage

(d) Professional Liability Coverage

INDEX TO APPENDICES

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APPENDIX B — Form of Joinder Agreement

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APPENDIX A

List of Members participating in the Pool

(To be updated annually by the Board)

Member Name:

BALDWIN CITY USD 348

BLUESTEM USD 205

DEERFIELD USD 216

ELL SALINE USD 307

EUDORA USD 491

HAYS USD 489

HAYSVILLE USD 261

ROSE HILL USD 394

SE OF SALINE USD 306

DERBY USD 260

MULVANE USD 263

RENWICK USD 267

FORT SCOTT USD 234

FOWLER USD 225

CLEARWATER USD 264

SALINA USD 305

BUHLER USD 313

EDUCATIONAL SERVICES AND STAFF DEVELOPMENT ASSOCIATION OF CENTRAL
KANSAS (ESSDACK)

TOPEKA USD 501

ANDOVER USD 385

SMOKY HILL EDUCATION CENTER

HAVEN USD 312

APPENDIX B

Form of Joinder Agreement

(For substitute and additional school districts becoming Members pursuant to Article X)

**KANSAS EDUCATIONAL RISK MANAGEMENT POOL, LLC
JOINDER AGREEMENT**

This JOINDER AGREEMENT is made as of [date] by and between the undersigned Kansas Educational Risk Management Pool, LLC (“Pool”) and [Name of School District], (“School District”) and supplements the signature page of the Pool’s Amended and Restated Operating Agreement (“KERMIP Agreement”). Capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Agreement.

RECITALS

WHEREAS, the School District has been admitted as a Member of the Pool, and the parties desire that the School District become a party to the KERMIP Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member hereby agrees as follows:

1. Agreement to be Bound. The School District hereby agrees that upon execution of this Joinder Agreement, such School District shall become a party to the KERMIP Agreement and shall be fully bound by, and subject to, all of the covenants, terms and conditions of the KERMIP Agreement as though such School District were an original party thereto.
2. Successors and Assigns. This Joinder Agreement shall bind and be enforceable by the Pool and the School District and their respective successors and assigns.
3. Effective Date. This Joinder Agreement shall be effective as of the date that the School District was admitted as a Member in the Pool.
4. Counterparts. This Joinder Agreement may be executed in separate counterparts each of which shall be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement as of the date first above written.

Kansas Educational Risk Management Pool, LLC

By: _____
[Name of Chairperson]

Chairperson

[Name of School District]

By: _____

[Printed Name]

[Title]

APPENDIX C

Schedule of Staggered Terms for Board Members¹

| Trustee | Staggered 3 Year Terms for 5 Trustees ² | | | | | |
|---------|--|----------------|----------------|----------------|------|------|
| | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
| A | A | A | A | | | |
| B | B | B | B | | | |
| C | C | C | C | | | |
| D | D | D ³ | | | | |
| E | E | E | | | | |
| F | | | F ⁴ | F | F | |
| G | | | G | G | G | |
| H | | | | H ⁵ | H | H |
| I | | | | I | I | I |
| J | | | | J | J | J |

¹ This schedule contemplates the staggered terms of five Trustees. As additional Trustees are added to the Board, their respective terms of three years would continue for re-election on the same staggered basis unless the Board is reduced, eliminating additional Trustee slots.

² For purposes of this example the terms do not reflect re-election of Trustees, but in accordance with Paragraph 2.2, each Trustee may be re-elected without limitation to serve additional three year terms.

³ Only certain of the initial Trustees will serve less than three year terms to accomplish the initial staggering of annual elections.

⁴ F and G represent the elected Trustees replacing (or the re-election of) Trustees D and E.

⁵ H, I and J represent the elected Trustees replacing (or the re-election of) Trustees A, B and C.