

# AUTOMOBILE LIABILITY & PHYSICAL DAMAGE COVERAGE AGREEMENT

## PART A GENERAL

- 1. Recitals and Acknowledgements.** The TASB Risk Management Fund (the Fund) provides coverage for automobile risk to educational entities in Texas. This coverage relies on information provided by the Fund Member. It is contingent on the Fund Member's full compliance with the Agreements: collectively, this Automobile Liability & Physical Damage Coverage Agreement (Coverage Agreement), the Contribution and Coverage Summary (CCS), and all other agreements between the Fund and the Fund Member with provisions relating to coverage under this Coverage Agreement. This Coverage Agreement is a risk sharing and risk participation agreement and is not a contract of insurance. The Fund is not an insurance company nor is any member an insured. The Fund is a self-insured risk pool through which its members agree to share risk and actively participate in their contractual obligations to lessen risk and cost for all members. The Fund Member and the Fund agree that, as sophisticated entities, any interpretation of the Agreements' coverage provisions will reflect the risk sharing nature of the Fund's purpose and the Fund Member's risk participation obligations contained in the Agreements, and disputes will be decided in favor of the Fund Member sharing risk with the Fund rather than transferring risk to the Fund. This § 1 is incorporated into the terms of this Coverage Agreement.
- 2. General Coverage Grant Terms.** This Coverage Agreement incorporates Automobile Liability Coverage (AL) and Automobile Physical Damage Coverage (APD). Each has a specified grant of coverage, and the following additional provisions apply:

  - 2.1 Effect of the Agreements.** The provisions of the Agreements may further limit or exclude coverage.
  - 2.2 Claim administration.** The Fund has sole authority in all claim decisions, including the extent to which any coverage or limit applies. The **Covered Person** retains all rights afforded by law.
  - 2.3 Territory.** This Coverage Agreement only applies to an **Occurrence** or loss occurring within the United States of America.
- 3. Defined Terms.** The following bolded and first-letter capitalized terms are defined in this § 3 and applicable throughout this Coverage Agreement unless otherwise limited or excluded:

  - 3.1 Automobile** means any of the following that is registered for use on a public road: an automobile or motor vehicle, trailer, semi-trailer, or any self-propelled motor-driven equipment. An **Automobile** does not include self-propelled motor-driven equipment that is not registered for use on a public road, such as a lawnmower, golf cart, all-terrain vehicle, forklift, or tractor.
  - 3.2 Bodily Injury** means bodily injury, sickness, disease, other physical injuries, including related mental anguish, or death sustained by any person.
  - 3.3 Claim Expense** means reasonable and necessary fees charged by an attorney selected by the Fund and all other reasonable expenses approved by the Fund arising from the investigation or defense of any claim. **Claim Expense** will be in addition to the limits of liability shown on the CCS. **Claim Expense** includes payment for premiums on appeal bonds required in any suit and premiums on bonds to release attachments. The Fund has no obligation to apply for or furnish these bonds. Any bond payment may not exceed the applicable limit of liability in the CCS. **Claim Expense** excludes salaries, loss of income, earnings, or benefits, or other consequential losses of any **Covered Person**.

**3.4 Covered Automobile** means an **Automobile** that is:

- (A) owned by the Fund Member;
- (B) commercially leased or rented by the Fund Member for Fund Member-approved activities where coverage is required under the written lease or rental agreement, or borrowed by the Fund Member for Fund Member-approved activities. If the **Automobile** is leased, rented, or borrowed for a period of fewer than 30 days, the **Automobile** will be considered a **Covered Automobile** under the Liability Coverage provisions only. If for 30 days or more, the **Automobile** will be considered a **Covered Automobile** under the Liability Coverage and Auto Physical Damage Coverage provisions;
- (C) owned by a **Covered Person**, other than the Fund Member, student, or other governmental entity or its employees, while used in the course and scope of their employment or duties on behalf of the Fund Member under the Automobile Liability Coverage provisions only; or
- (D) a non-owned **Automobile** while being maintained or operated by a **Covered Person** participating in or teaching a K-12 automotive career or technology program approved by the Fund Member under the Automobile Liability Coverage provisions only.

**3.5 Covered Person** means the Fund Member, and any past, present, or future:

- (A) trustee, school board member, student-teacher, volunteer, or employee of the Fund Member acting within the course and scope of their duties or employment;
- (B) student of the Fund Member:
  - (1) while the student is operating a Fund Member-owned or -leased **Covered Automobile** at the direction of a Fund Member employee acting within the course and scope of their employment; or
  - (2) if a K-12 student, while participating in an automotive career or technology program approved by the Fund Member but only up to a \$50,000 liability sublimit; or
- (C) governmental entity and its employees while these employees are using a **Covered Automobile**, provided this use is with permission of the Fund Member, is for a Fund Member-approved activity, and a requirement for the Fund's Automobile Liability coverage exists by a written contract between the Fund Member and this governmental entity.

**3.6 Damages** means any amount, within the coverage limits, that a **Covered Person** is legally obligated to pay unless otherwise excluded in this Coverage Agreement. **Damages** include settlements, judgments, related court costs, and interest on any judgment. **Damages** do not include punitive or exemplary damages or costs or interest attributed to them or multiple or additional damages intended as a penalty.

**3.7 Occurrence** means any event or series of events arising out of an **Automobile** accident resulting in **Damages** from **Bodily Injury** or **Property Damage** that is not expected or intended by the **Covered Person**. It includes continuous or repeated exposure to the same conditions resulting in **Damages** from **Bodily Injury** or **Property Damage**.

**3.8 Participation Period** means the effective dates of coverage under this Coverage Agreement, as stated in the CCS.

**3.9 Property Damage** means the physical injury to or destruction of tangible property belonging to others, including loss of use of the property. As to **Automobiles** under §§ 3.4 (B) and (D) only, **Property Damage** also means physical injury to or destruction of those non-owned **Automobiles**.

PART B  
AUTOMOBILE LIABILITY (AL) COVERAGE

4. **Automobile Liability Grant of Coverage.** The Fund will pay for **Damages** arising out of an **Occurrence** that takes place during the **Participation Period** resulting in **Bodily Injury** or **Property Damage** and related to the ownership, maintenance, or use of any **Covered Automobile**, including its loading and unloading, by a **Covered Person**. Additionally, this liability coverage extends for **Property Damage** to non-owned **Automobiles** described in paragraphs 3.4 (B) and (D). If the Fund Member leases or loans a Fund Member-owned **Covered Automobile** to a Texas public school district or community college, this coverage will extend to the receiving entity and its employees for the **Covered Automobile's** use in the receiving entity's school-approved activities.
5. **AL Limit of Liability.** The Fund will pay for **Damages** above the deductible amount and within the limit of liability stated in the CCS or the Coverage Agreement. The limit of liability stated is the maximum amount the Fund will pay for **Damages** for any single **Occurrence** regardless of the number of **Covered Persons** who are sued or made subject to a claim, the number of persons or organizations making a claim arising out of the **Occurrence**, or the number of claims or suits arising out of an **Occurrence**. The amount of **Claim Expense** will not reduce the limit of liability. When the limit of liability is exhausted through payment or tendering of **Damages**, the Fund will have no further liability or obligation to any **Covered Person** to pay further **Damages**, defend any suit, or pay any **Claim Expense** or other expense or cost. For any **Occurrence** taking place outside of Texas and within the United States of America, the limit of liability will be a combined single limit per **Occurrence** of \$1,000,000.
6. **AL Deductible.** Only one deductible will apply for each **Occurrence**. The Fund Member will, on notice from the Fund, pay the deductible amount stated in the CCS. The deductible applies to judgments, settlements, and **Claim Expense** regardless of the disposition of the claim.
7. **AL Duty to Defend.** The Fund has the right and duty to defend any claim or suit seeking **Damages** even if any of the allegations are groundless, false, or fraudulent. In no event will the Fund be obligated to pay **Damages** or continue to defend any matter after the applicable limit of liability has been exhausted. The Fund will have no duty to defend the **Covered Person** against a claim or suit to which this Coverage Agreement does not apply.
8. **AL Exclusions.** The Fund will not provide coverage under this liability coverage for the following:
  - 8.1 **Aircraft.** Any **Damages** or **Claim Expense** arising out of the ownership, maintenance, operation, use, loading, or unloading of any aircraft, including drones or Unmanned Aerial Vehicles.
  - 8.2 **Safety law violation.** Any **Damages** or **Claim Expense** arising out of the ownership, maintenance, operation, use, loading, or unloading of any **Automobile** in violation of any state or federal law or regulation specifically addressing safety in the transportation of students.
  - 8.3 **Criminal charges.** Any **Damages** or **Claim Expense** for any **Covered Person** once a filing or obtaining of a criminal charge, information, or indictment against the **Covered Person** has occurred. The Fund is entitled to rely on extrinsic evidence to determine whether coverage applies under these circumstances.
  - 8.4 **Intentional acts.** Any **Damages** or **Claim Expense** for any **Covered Person** once it has been established by admission or adjudication that the **Covered Person** engaged in malicious or intentional acts.
  - 8.5 **Employee injury.** Any **Bodily Injury** to any employee of the Fund Member arising out of and in the course and scope of his or her employment by the Fund Member or to any obligation of the Fund Member to



indemnify another because of **Damages** arising out of this injury.

**8.6 Garage liability.** Any **Damages** or **Claim Expense** for any entity or person operating a **Covered Automobile** who is in the business or occupation of selling, repairing, servicing, storing, or parking **Automobiles**, other than the Fund Member.

PART C  
AUTOMOBILE PHYSICAL DAMAGE (APD) COVERAGE

**9. Automobile Physical Damage Grant of Coverage.** The Fund will pay for direct and accidental loss to a **Covered Automobile** occurring during the **Participation Period**. Coverage is provided under:

**9.1 Collision coverage.** Collision provides coverage for damage to a **Covered Automobile** caused by a collision with an object (except an animal) or another vehicle.

**9.2 Comprehensive coverage.** Comprehensive provides coverage for damage to a **Covered Automobile** resulting from a loss by a cause other than Collision, including hail, flood, and fire.

**9.3 Supplemental coverage.** Supplemental provides coverage for reasonable accident-related costs, including towing and storage. Additionally, for the theft of a private passenger **Covered Automobile**, the Fund will reimburse rental expense for a private passenger **Automobile** commencing 48 hours after the theft has been reported to the Fund and the police. This rental period terminates when the **Covered Automobile** is returned to the Fund Member or when the Fund pays for the loss. Reimbursement for the rental will not exceed \$35 for any single day or \$1,050 in total.

**10. APD Limit of Liability.** The Fund will pay for loss to a **Covered Automobile** that is above the deductible amount and within the APD limit of liability. This limit will be separately applied to each **Covered Automobile**.

**11. APD Loss Payment.** For loss to any single **Covered Automobile**, the Fund will pay the smaller of:

**11.1 Actual cash value (ACV).** The actual cash value of the **Covered Automobile** at the time of loss; or

**11.2 Cost of repair.** The actual and necessary cost to repair the **Covered Automobile** with materials of like kind and quality. The Fund Member is required to repair the **Covered Automobile** within 365 days of the loss.

**12. APD Deductibles.** The following provisions apply to APD deductibles:

**12.1 Per vehicle deductible.** The deductible stated in the CCS will be separately applied to each **Covered Automobile** for both Collision and Comprehensive loss unless otherwise indicated below.

**12.2 Multiple vehicles—Collision.** If more than one Fund Member-owned or -leased **Covered Automobile** suffers a Collision loss in an event, only one Collision deductible applies.

**12.3 Multiple vehicles—Comprehensive.** If in a single event more than 30 percent of the Fund Member-owned (or leased or rented for more than 30 days) **Covered Automobiles**—or five **Covered Automobiles**, whichever number of **Covered Automobiles** is higher—suffer a Comprehensive loss in a single event, the catastrophic (CAT) deductible stated in the CCS will apply only, with no per vehicle deductible applicable. If no CAT deductible is stated in the CCS, the Comprehensive deductible will apply as per § 12.1.

**13. APD Stolen Vehicles.** In the event of a recovery of a stolen **Covered Automobile**, the Fund Member must notify the Fund as soon as practicable. The Fund at its sole discretion will:



**13.1 No ACV payment.** Return the stolen **Covered Automobile** to the Fund Member with payment for any damage sustained during the theft if no ACV payment has occurred; or

**13.2 ACV payment.** Take possession of the damaged or stolen **Covered Automobile** if ACV payment has occurred.

**14. APD Exclusions.** The Fund will not provide coverage under this physical damage coverage for:

**14.1 Non-fortuity.** Loss that is a result of freezing, wear and tear, rust, inherent defect, faulty repair, or mechanical or electrical breakdown unless the damage is the direct result of a covered loss.

**14.2 Tires.** Loss to the tires of a **Covered Automobile** unless the loss is a direct result of a covered loss.

#### PART D

#### AUTOMOBILE LIABILITY & PHYSICAL DAMAGE COVERAGE General Exclusions, Duties, Conditions and Requirements

**15. General Provisions.** §§ 16–21 of this Coverage Agreement describe the general provisions, exclusions, duties, conditions, terms, and other requirements that apply to all coverage provided in this Coverage Agreement, unless the context requires otherwise, and are in addition to the provisions described above.

**16. General Exclusions.** The Fund will not provide coverage for the following:

**16.1 Violation of law.** Any loss, **Damages**, or **Claim Expense** arising out of a **Covered Person** operating a **Covered Automobile** in a manner or under a condition that is legally prohibited.

**16.2 Motor-driven equipment.** Any loss, **Damages**, or **Claim Expense** arising out of the ownership, maintenance, operation, use, loading, or unloading of self-propelled motor-driven equipment that is not registered for use on public roads, such as lawnmowers, golf carts, all-terrain vehicles, forklifts, or tractors.

**16.3 Government action, nuclear event, or hostile act.** Any loss, **Damages**, or **Claim Expense** arising out of:

(A) use, seizure, or destruction of **Covered Automobile** by order of governmental authority;

(B) nuclear reaction or radiation, or radioactive contamination, regardless of cause;

(C) war, undeclared or civil war, warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents; or

(D) insurrection, rebellion, revolution, usurped power, or action taken by a governmental authority in hindering or defending against any of these.

**16.4 Terrorism.** Any loss, **Damages**, or **Claim Expense** arising out of any acts of terrorism or actions taken by any government branch or agency in response. This exclusion applies whether or not any acts of terrorism are committed in concert with or on behalf of any organization or government.

**16.5 Breach of contract.** Any **Damages** or **Claim Expense** arising out of any assumption of liability in a contract or agreement or arising out of breach of any contract or agreement (including any unwritten or implied agreement, or quantum meruit claim), or arising out of a claim sounding in tort that is based directly or

indirectly on a contractual obligation. This exclusion does not apply to liability that the **Covered Person** would have in the absence of a contract or agreement. This exclusion does not apply to contracts regarding the lease or rental of **Automobiles** by the Fund Member.

**17. Other Coverage or Insurance.** The following provisions apply to the availability of other coverage, including insurance:

**17.1 Multiple lines.** If a claim is covered under more than one line of coverage offered by the Fund, the Fund will determine which coverage, limit, and deductible apply. This provision intends that there will be no accumulation or stacking of coverage.

**17.2 Excess coverage.** This coverage is excess over any other coverage that applies to a claim or loss whether the other coverage applies on a primary, excess, or contingent coverage basis. If all coverages apply on an excess basis, the Fund will not pay for a greater proportion of the claim or loss than that stated in the applicable contribution provision below:

(A) **Contribution by equal shares.** If all other coverage provides for contribution by equal shares, the Fund will not pay for a greater proportion than its equal share until the share of the other coverage or the Fund Member's limits equals the lowest applicable limit of liability under any of the coverage, or the full amount of the claim or loss is paid. Any remaining amount of claim or loss will be paid by any remaining Fund Member's limit of liability, until exhaustion, by continuing to contribute equal shares to the remaining amount of claim or loss.

(B) **Contribution by limits.** If the remaining coverage does not provide for contribution by equal shares, the Fund will pay the Fund Member's applicable limit of liability in proportion to the total limit of liability of all other coverage.

**18. Representation and Warranties.** The Fund Member represents and warrants that an accurate record of the **Covered Automobiles** owned by the Fund Member has been maintained and is available on request from the Fund.

**19. Duties of a Covered Person.** In the event of a loss, **Occurrence**, claim, or suit, the **Covered Person** must:

**19.1 Notice.** Give the Fund notice of the loss, **Occurrence**, claim, or suit to the Fund as soon as practicable, but not more than 30 days from the **Covered Person's** knowledge. This notice must include the time, date, place, persons, or witnesses involved, and the circumstances of the loss, **Occurrence**, claim, or suit. The **Covered Person** must also give notice to the proper police authority if the loss or **Occurrence** involves a violation of law. There is no liability coverage under this Coverage Agreement if the failure to provide notice prejudices the Fund's defense.

**19.2 Copies.** Immediately provide the Fund with copies and date of any demands, notices, summonses, or legal papers received in connection with the claim or suit and authorize the Fund to obtain records and other information related to the claim or suit.

**19.3 Cooperation.** Cooperate with the Fund as reasonably necessary, including assistance in the investigation, valuation, defense, and settlement of claims and suits, and in enforcing any right of contribution, indemnity, or subrogation against any person or organization.

**19.4 Payments.** Not voluntarily make any payment, assume any obligation, or incur any expenses, except at their own cost, and a **Covered Person** may not waive any rights of recovery of any party.



**20. Conditions of Coverage.** The following conditions apply:

- 20.1 Compliance.** A denial of a claim or loss of coverage may occur if the **Covered Person** fails to comply with any of the provisions of this Coverage Agreement, misrepresents of any material fact, engages in fraudulent acts, makes false statements, or fails to comply with reasonable Fund requests.
- 20.2 Abandonment.** The Fund Member may not abandon to the Fund any **Covered Automobile** or other vehicles or property.
- 20.3 Agent.** The Fund Member agrees will act on behalf of all **Covered Persons** concerning the giving and receiving of notice of any claim.

**21. Miscellaneous Terms.** The following miscellaneous terms apply:

- 21.1 Assignments.** Any assignment by the Fund Member under this Coverage Agreement will not bind the Fund.
- 21.2 Insolvency.** In the event of the Fund Member's insolvency, the Fund will not be relieved of the payment for any claim under this Coverage Agreement.
- 21.3 Action against the Fund.** The Fund Member may not act against the Fund unless, as a condition precedent, the Fund Member has fully complied with all provisions of the Agreements. No person has a right under this Coverage Agreement to join the Fund as a party or otherwise bring it into a suit filed against the Fund Member.
- 21.4 "Including."** Unless the context requires otherwise, the term "including," and its variants, mean "including but not limited to."
- 21.5 Singular usage.** Unless the context requires otherwise, any use of the singular form of a word will include its plural.
- 21.6 "Coverage Agreement."** Unless the context requires otherwise, any use of the term "Coverage Agreement" will include its endorsements and the Fund Member's CCS.
- 21.7 Fund designee.** Unless the context requires otherwise, any use of the term "Fund" includes its designees.
- 21.8 Severability.** If a court for any reason holds a provision of this Coverage Agreement unenforceable, the rest remains fully enforceable.
- 21.9 Headings.** Unless the context requires otherwise, such as with the defined terms, headings are only for convenience and do not affect the interpretation of this Coverage Agreement.