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Harrisburg, PA 17101
(800) 848-2040

MEMBER PARTICIPATION AGREEMENT

This Member Participation Agreement (“Participation Agreement”) is entered into by and between local agencies of this Commonwealth (“Members”) to form a risk coverage pool to be named the Penn PRIME Trust (the “Trust”) for the purpose of providing coverages against certain liability risks which are inherent in the operation of local agencies.

WITNESSETH:

(Name of Municipal Entity), the undersigned Member, in accordance with the Political Subdivision Tort Claims Act, 42 P.S.C.A. Section 8541, et seq., and in consideration of other Members executing like agreements, does hereby agree to become one of the Members of this Trust. The conditions of membership agreed upon by and between the parties are as follows:

1. **Definitions.** Definition of terms used in this Participation Agreement.
 - (a) **Administrator.** The Pennsylvania Municipal League and any successor(s) thereof selected in accordance with the provisions of the Trust Agreement and By-Laws. The Administrator will provide administrative and management services in connection with the operation of the Trust.
 - (b) **Adjustments.** Refers to any offsets to manual contributions that may result from the Member's election of deductibles, loss experience, or similar items which reflect the savings to the Member by entering into this Agreement.
 - (c) **Agreement Period.** The continuous period since the Member first became a participant of the Trust excluding, however, any period or periods of time therein that the Member did not participate as a member of the Trust.
 - (d) **Board.** Refers to the Board of Trustees of the Penn PRIME Trust.
 - (e) **By-Laws.** The rules and regulations govern the internal administration and management of the Trust as the same may be amended from time to time. In addition to the By-Laws, the Board, the Administrator, and their respective designees may promulgate from time to time additional rules and regulations with respect to the participation of the Members in the Trust and the joint liability coverage pool implemented thereby.

- (f) **Declarations of Coverage.** The specific indication of the coverages, limits, deductibles, contributions, and special provisions elected by each individual Member. The Coverage Document may be modified by Endorsement.
 - (g) **Manual Rates.** Basic rates applicable to each liability classification promulgated by the Board and/or the Administrator.
 - (h) **Penn PRIME Liability Coverage Plan.** The liability Coverage Documents that set forth in detail the coverages provided as part of the overall risk coverage pool.
 - (i) **Contributions.** Refers to the financial contributions of Members of the Trust.
 - (j) **Trust.** The Penn PRIME Trust.
 - (k) **Trust Agreement.** The Agreement of Trust of Penn PRIME Trust as the same may be amended from time to time.
 - (l) **Trust Year.** January 1 through December 31.
2. **Statement of Policy.** As a condition of membership in the Trust, the Member subscribes to the following statement of policy:
- (a) **Purpose.** The policy of the Member with respect to its exposure to the property and liability risks covered by the Trust shall be to minimize the financial impact upon the Member resulting from the occurrences covered by the Trust. This will be accomplished by means of (i) loss prevention and safety programs to minimize or eliminate risks of such accidents, (ii) risk pooling to share with other local agencies the financial impact of such losses, and (iii) the establishment of a mechanism through the Trust to provide risk coverage for catastrophic losses through reinsurance, a line of credit or bond funding mechanism, or other means deemed appropriate by the Board.
 - (b) **Loss Prevention.** The policy of the Member shall be to emphasize the reduction, modification, or elimination of conditions and practices which may cause losses covered through the Trust. Safety to the Member's personnel and public shall have the highest priority. Each Member shall be responsible to see that its operations conform to all applicable Federal, State, and Local safety standards and such additional rules and regulations with respect thereto as may be promulgated from time to time by the Board, the Administrator, and their respective designees.
 - (c) **Reporting of Losses.** The Member shall report the occurrence of all losses covered through the Trust, to the Administrator, no matter how insignificant such losses may appear.
3. **Administration.** The Board, acting through its agents and the Administrator's staff, is responsible for the administration of all Trust business on behalf of the Members.

4. **Coverage Grant.** In consideration of the execution of this Participation Agreement by and between the Member and the Trust and of the contributions of the Member, the coverages elected by the Member are afforded according to the terms of the Penn PRIME Coverage Documents. Each Member agrees to accept the coverages, provisions, terms, conditions, exclusions, and limitations as contained in the Penn PRIME Coverage Documents and/or amendments thereto. This Participation Agreement shall be construed to incorporate the Penn PRIME Coverage Documents and Endorsements and addenda whether or not physically attached hereto. Any conflict or incongruity between this Agreement and the Penn PRIME Coverage Documents is resolved in favor of the latter documents.
5. **Governmental Immunities.** It is understood that by participating in the Trust, the member does not intend to waive any of the immunities, it or its officials, officers or employees now possess. The Member recognizes the Political Subdivision Tort Claims Act and its limitations to certain governmental functions, as well as its monetary limitations, and that by executing this Agreement does not agree to waive those limitations.
6. **Term and Termination.** The initial term of this Agreement shall commence on **(Complete Appropriate Date)**, and shall continue in force from that date until terminated as provided below. Although the coverage provided for in this Agreement shall be continuous until terminated.

Except as otherwise provided for hereinafter, this Agreement may be terminated by the Member by giving the Trust sixty (60) days prior written notice of intent to terminate, provided that the Member agrees to and shall pay all currently-due interest, late fees, and applicable contributions, including without limitation any additional contributions required pursuant to Section II hereof, for those coverages being terminated until the effective date of the notice of termination, irrespective of whether the termination is pursuant to this paragraph or another provision of this Agreement. Notwithstanding the foregoing, upon any termination initiated by the Member pursuant to this paragraph, such Member shall also be subject to an additional charge for a short rate adjustment, as determined by the Board and/or the Administrator, in the event the effective date of such termination is prior to the end of the initial term or any annual renewal term hereof.

The Trust shall provide the Member with Coverage Documents and any Endorsements that determine the applicability of the coverages provided by Penn PRIME annually at such time(s) as are determined by the Board. Such Coverage Documents shall include, but not be limited to, the coverage period, limits, deductibles, contributions, special Provisions and limitations. Changes made during the Trust Year, whether requested by the Member or required by the Trust, will be handled by Endorsement.

It is the intention of the parties that the Member's coverages under Participation Agreement shall remain in full force and effect from Trust Year to Trust Year, subject to the limits of liability that the Trust can provide each Trust Year and the terms, conditions, and limitations that the Trust may require to protect its solvency and to comply with any applicable reinsurance or other excess coverage requirements, until notice of termination

is given as herein provided. Realizing that the Member needs the earliest possible information concerning the Trust coverages, limits, and exclusions and the Member's contribution that will be required for any new Trust Year, the Trust will endeavor to provide this information as soon as possible before the beginning of each new Trust Year. The parties recognize, however, that conditions in the reinsurance (or other excess coverage mechanism) industry are such that the Trust may not be able to provide this information to the member before the beginning of a Trust Year for various reasons including the failure of the Member to timely submit the appropriate application or delays on the part of reinsurers or others in getting information to the Trust, and so, to protect the Member from gaps in its coverage and to protect the solvency of the Trust, the parties agree as follows:

If for any reason the Trust has not been able to provide the Member with information concerning available coverages for a new Trust Year or advise the Member of the amount of its contribution for the new Trust Year by the beginning of the Trust Year, the Trust shall nevertheless continue the Member's coverages at the same limits of liability (if still available and, if not, then at the highest limit of liability available for the new Trust Year) so that the Member shall at all times remain covered as herein provided and the Member's initial contributions for the new Trust Year shall be determined by a "tentative contribution" as determined by the Board and/or the Administrator with the Member's actual annual contribution to be credited by the amount paid in accordance with the tentative contribution and adjusted during the Trust Year. In the event the Member's annual contribution has not been determined at the beginning of a Trust Year due to the Member not having timely provided the application required, then the tentative contribution shall be calculated as follows:

The Member's prior Trust Year's exposure base shall be increased by the percentage determined by the underwriter and the resulting exposure base shall be applied to the rates applicable to the new Trust Year and the Member shall make its contribution payments based upon this rate with its annual contributions adjusted thereafter to reflect the correct annual contribution. In the event the Member does not wish to have its coverages extended or renewed at the end of any Trust Year, the burden shall be upon the Member to give written notice to the Trust as provided herein above and the Member agrees to pay as hereinabove stated all contributions or pro rata contributions, in addition to all currently-due interest and late fees, until the date such written notice is received in the offices of the Trust or the date of termination of this Agreement, whichever is later.

Notwithstanding anything in the foregoing to the contrary, in the event the Member fails or refused to make payments of interest, late fees, or contributions, as provided for herein, including without limitation, both annual contributions and any additional contributions levied thereupon by the Trust in accordance with the provisions of Section II hereof, the Trust reserves the right to terminate such Member by giving ten (10) days written notice. In addition, the Member will be subject to immediate termination by the Trust for (i) failure to comply with such rules and regulations pertaining to loss control measures as may be promulgated by the Board, the Administrator, or their respective designees from time to time; (ii) failure to cooperate with any loss control service and fiscal agents of the Trust or with any attorney representing that Member in the defense of any covered claim; (iii)

failure to provide any information requested by the Administrator, Board of Trustees or any agent or representative of the Trust as required for the handling, settlement or defense of any covered claims or for renewal of coverage; (iv) knowing and willful failure to observe and perform any covenants, conditions or agreements on its part required to be observed or performed by this Agreement or any related document; (v) knowingly taking any action detrimental to the fiscal and/or actuarial soundness of the Trust and failing to take action where necessary to avoid a detriment to the fiscal and actuarial soundness of the Trust; (vi) failure to execute and/or submit any documents required for membership in the Trust. Termination shall become effective after (60) days' written notice to the Member, or after ten (10) days' written notice for non-payment of contributions or assessment. Upon any such termination, Member agrees to pay any and all interest, late fees, and contributions that are owed, pro rata, for the period preceding termination of this Agreement. It is understood and agreed that any Member that is terminated under this paragraph or Sections 7 or 14 hereof shall not be entitled to any part of any distribution of surplus revenues which has not been declared prior to the effective date of such termination. The Trust shall continue to service, defend and otherwise be responsible for any claim which occurred prior to termination or withdrawal of a Member, but shall not be responsible for claims which arise out of an injury which occurs after the effective date of the Member's withdrawal or termination.

7. **Applications.** Commensurate with the execution of this Agreement and annually thereafter, the Member shall complete the appropriate application and deliver it or cause it to be delivered to the Trust, or, if so instructed, to a designated contractor, on or prior to such deadline(s) as may be set for such purpose by the Board from time to time, and new annual contributions shall be calculated using manual rates times exposure, less any adjustments. Intentional or reckless misstatements on the application shall be grounds for immediate cancellation.

At the end of each and every Trust Year, the Trust may require the Member to submit the actual data requested on the application as reflected by the books and records of the Member. The Trust reserves the right to audit the records of any Member and adjust contributions accordingly.

8. **Payment of Contributions.** The Member agrees to pay the annual and any additional contributions to the Trust in such installments and at such times as are specified by the Board and/or the Administrator. In the event this Agreement is terminated as herein provided, the Trust shall promptly repay to the Member any unearned annual and/or additional contributions, subject to reduction for any short rate adjustment imposed under Section 6 hereof, and prorated as of the date of termination and the Member agrees to promptly pay the Trust any unpaid annual and additional contributions prorated as of the date of actual termination. In addition, the Member agrees during the term of this Agreement to promptly pay all reimbursable deductibles upon receipt of statement.
9. **Late Fee.** If the Member fails to pay any contribution, additional contribution or reimbursable deductible within thirty (30) days of the date such amount is due, the Member shall be assessed a one-time late fee of \$50.00.

10. **Interest.** If the Member fails to pay any contribution, additional contribution or reimbursable deductible within thirty (30) days of the date such amount is due, in addition to the remedies the Trust may have in Section 6 hereof, the Member shall be charged interest on the delinquent amount at an annual rate of six percent (6%) simple interest, which shall be assessed monthly until the Member pays the full delinquent amount.
11. **Premium Adjustment.** If, during the period of this Agreement, changes in law applicable to Pennsylvania local agencies, including, but not limited to, the Provisions of 42 Pa. C.S.A. Section 8501, et seq., are made by legislative revision or judicial interpretation which affect this Agreement, the Trust reserves the right to make contribution adjustments during the period of this Agreement.
12. **Coverage Adjustments.** Notwithstanding any other Provisions herein to the contrary, it is agreed that the Board shall have the right to adjust the financial protection outlined herein and/or amend coverages as it finds available or deems necessary to maintain the fiscal soundness of the Trust at the beginning of any renewal annual term of the Member.
13. **Additional Contributions.** The Trust shall endeavor to maintain adequate protection from losses covered through the Trust, including, without limitation, catastrophic losses, in order to protect its financial integrity through Member contributions and/or combination of reinsurance, and/or funding available through lines of credit, proceeds of governmental bond issuance, or other means, as determined by the Board. The Board will endeavor to maintain adequate protection in order to minimize the prospect that the Member will at any time be subject to additional contributions. Notwithstanding the foregoing, it is agreed that if the assets of the Trust are at any time insufficient, in the opinion of the Board, to enable it to discharge the obligations of the Trust, including, but not necessarily limited to, those listed in Subsections (a) through (e) of Section 14 below, then the Trust shall have the right to require additional contributions of all Members which have participated in the Trust during any Trust Years when the liabilities were incurred, such total amount as is, in the opinion of the Board, required to end the insufficiency and each Member shall have the duty to pay its proportionate amount of the total.

Each Member's additional contribution shall be computed by the Board and/or the Administrator and shall have the same ratio to the total additional contribution amount as the Member's annual contribution to the Trust during the years for which the Trust has a deficit. A Member's annual contribution shall be the pro rata portion of contributions paid by it for the periods during which its Agreement with the Trust was in effect. Any additional contributions required shall be a legal obligation of the member and shall be due and payable when written notice of the additional contribution is received. Additional Contributions shall be based on each Member's percentage of total "At Risk Contribution" during the Trust Year(s) with a deficit. "At Risk Contribution" shall be determined by a formula to be approved by the Board of Trustees. As respects fulling insured coverages, Members shall have no assessment obligation for insured losses.

Notwithstanding the foregoing, the Board may allow up to twelve (12) months for payment

of any additional contribution in accordance with such guidelines as it may establish from time to time.

14. **Refunds.** The Trust shall, within a reasonable amount of time after the end of the Trust Year, annually refund surplus revenue, if any, to participating Members. Surplus revenues shall be those Trust funds remaining after:
- (a) Payment has been made of all due damages and losses;
 - (b) Reserves have been established which are, in the opinion of the Board, reasonable for claims previously occurring and reported;
 - (c) Reserves have been established which are, in the opinion of the Board, reasonable for claims occurring, but not yet reported;
 - (d) Payment has been made of all expenses due and payable, including, but not limited to, claims administration, loss prevention, reinsurance, debt service, and general management expenses; and
 - (e) Reserves have been established which are, in the opinion of the Board, reasonable for payment of expense in succeeding Trust Years.

Surplus revenues, if any, shall be refunded to participating Members in accordance with the formula adopted for that Trust Year by the Board. The formula shall be structured so as to support and foster the purposes and objectives for which the Trust was created. The formula may include any factors which, in the opinion of the Board, reflect those purposes and objectives, including, but not limited to, any of the following factors: individual loss experience; individual contribution; the duration of Trust participation; and the overall experience of the Trust. The formula may provide that a failure to comply with safety recommendations, or that the experience of a specified loss-to-contribution ratio may disqualify a Trust Member from receiving all or a portion of the refund of surplus revenues.

Any Member may choose to have its surplus revenues refund applied as a credit to future contributions.

15. **Outside Services.** The Board and/or the Administrator may, from time to time, enter into contracts, agreements, and arrangements on behalf of the Trust, with outside firms and/or professionals for the provision of services and/or products as are deemed necessary or desirable by the Board in its sole discretion for the fulfillment of the Trust's obligations pursuant to this Agreement.
16. **Contractor.** The Administrator provides loss control services to the Member to assist them in following a plan of loss control that may result in reduced losses. The Member agrees that it will cooperate in instituting any and all reasonable loss control recommendations. In the event that the recommendations submitted by or on behalf of the Trust seem unreasonable, the Member has a right to appeal to the Board. The Board shall

hear the objections of the Member at its next regularly scheduled meeting and the Board's decision will be final and binding on all parties. Any Member who does not agree to follow the decision of the Board shall be subject to immediate withdrawal from the Trust.

17. **Coordinator.** The Member agrees that it will appoint a coordinator of department head rank, and that the Trust shall not be required to contact any other individual except this one person. Any notice to or any agreements with the coordinator shall be binding upon the Member. The Member reserves the right to change the coordinator from time to time by giving written notice to the Trust.
18. **Claims.** The Trust agrees to handle all claims encompassed by the then applicable Coverage Documents, and provide a defense for liability claims covered under this Agreement after prompt notice has been given. The Member hereby appoints the Board, the Administrator, and their respective personnel and designees as its agents to act in all matters pertaining to processing and handling of claims covered under this Agreement and shall cooperate fully in supplying any information needed or helpful in settlement or defense of such claims. Regarding liability claims, the staff of the Administrator or its designees and/or agents shall carry on all negotiations with the claimant and his/her/it's attorney and negotiate within authority previously granted by the Trust. If a personal appearance by an employee of a Member is necessary, the expense of this appearance will not be the responsibility of the Trust. With the advice and consent of the Board, the staff of the Administrator or its designees and/or agents will retain and supervise legal counsel for the prosecution and defense of any litigation. All decisions on individual cases shall be made by the Trust through the staff of the Administrator and/or its designees or agents, which includes the decision to appeal or not to appeal. However, any Member shall have the right in any case to consult with the Trust on any decision made by the staff of the Administrator and/or its designees or agents. The Board shall hear the objections of the Member at its next regularly scheduled meeting and its decision will be final and binding on all parties. Any suit brought or defended by the Trust shall be brought or defended only in the name of the Member and/or its officers or employees.
19. **By-Laws, Etc.** The Member acknowledges that it has received a copy of the By-Laws and Trust Agreement of the Trust and agrees to abide by the Provisions thereof, and such rules and regulations as may be promulgated by the Board, the Administrator, and their respective designees from time to time with respect to the Trust, including amendments to any of the foregoing, all of which are hereby incorporated into and made a part of this Participation Agreement by this reference, whether or not they are physically attached hereto or in existence at the present time.
20. **Audit.** The Trust agrees that all Trust transactions will be annually audited by a nationally recognized certified public accounting firm.
21. **Tax Returns.** If legally required, the Trust shall cause to be filed the necessary tax forms with the Internal Revenue Service.

22. **Amendments.** Amendments may be made to this Agreement with respect to Members through the consent of a majority of the Trustees of the Board.

23. **Miscellaneous.** The masculine pronoun includes the feminine and neuter. The terms of this Agreement shall be binding upon and inure to the benefit of and shall be enforceable by the parties hereto and their respective successors and assigns. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania. If any term of this Agreement shall be found invalid, illegal, or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of any other term of this Agreement shall in any way be affected thereby.

IN WITNESS WHEREOF, the parties hereto have caused this Member Participation Agreement to be executed and to be effective as of the date set forth below for that purpose.

Effective Date of This Agreement: _____

Signature of Authorized Official

Witness

Title

Date

Signature of Trust Official

Witness

Title

Date

Revision 09/13/2017