

**INTERLOCAL AGREEMENT**

**FOR THE**

**PUBLIC UTILITY RISK MANAGEMENT SERVICES (“PURMS”)**

**JOINT SELF-INSURANCE FUND**

**Amended and Restated as of November 10, 2011**

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#### **JOINT SELF-INSURANCE FUND**

**Amended and Restated as of November 10, 2011**

For and in consideration of the mutual covenants contained herein, the parties to this Interlocal Agreement hereby amend and restate their previously executed Interlocal Agreement and the related Joint Self-Insurance Program Documents (collectively, “Self-Insurance Agreement” or “SIA”) as follows:

#### **1. Predecessor Self-Insurance Agreements.**

This Interlocal Agreement (“ILA”) is based upon and arises out of prior self-insurance agreements among most of the same parties to this ILA. Under the original SIA, made and entered into as of December 30, 1976, by and between fifteen public utility districts, the parties provided themselves with joint self-insurance for liability claims. Since then, the SIA (and specifically, the Interlocal Agreement section thereof) has been amended and restated as of July 21, 1978, October 21, 1982, July 25, 1987, July 28, 1988, March 30, 1995, February 27, 1997, March 16, 2000, and December 7, 2001.

All SIAs prior to the February 27, 1997, amended and restated SIA were executed under the name “Washington Public Utility Districts’ Utilities System Joint Liability Self-Insurance Agreement.” The February 27, 1997 amended and restated SIA established the Property Risk Pool which provided jointly self-insured Property Coverage for its Members and the word “Liability” was deleted from the title. Effective June 17, 1999, the name “Washington Public Utility Districts’ Utilities System” was changed to “Public Utility Risk Management Services”. On March 16, 2000 the SIA was again amended and restated to establish the Health & Welfare Risk Pool, effective as of April 1, 2000.

#### **2. Current [2011] Amendment and Restatement of ILA and Program Documents.**

**2.1. Purposes of 2011 Amendments.** By this ILA, the Members of the Public Utilities Risk Management Services Joint Self-Insurance Fund (“PURMS” or “the Fund”) wish to:

- (a) Redefine their duties and obligations to and among themselves with respect to their participation in the PURMS Risk Pools known as the Liability Pool, the Property Pool and the Health & Welfare Pool (identified in more detail ¶ 4.3 below);
- (b) Ensure compliance with applicable regulations governing local government entity self-insurance programs in Washington (in particular, WAC §82-60 and §82-65 et. seq.); and

- (c) Incorporate previously adopted Board Resolutions and decisions, some of which, by their own terms, have already become effective in governing PURMS and its Risk Pools.

**2.2. 2011 Amendments and Restatement Supersede Predecessor SIAs.** The Members therefore agree that, as of the date hereof, this Interlocal Agreement supersedes the original SIA and all subsequent restatements thereof and amendments thereto. The Members further agree that this ILA, the Program Documents, the Operational Rules and any Procedural Memoranda issued shall hereafter govern the operation of PURMS, the Liability Pool, the Property Pool and the H&W Pool and the rights and obligations of their respective Members. Each Member signing this SIA hereby agrees to be bound by its terms and all amendments hereto adopted by the Members in accordance with the procedures contained in ¶¶ 5.3 – 5.7 of this Agreement, and by the decisions of the Board.

### **3. Definitions.**

The words defined in the Definitions section of the SIA (which is set forth in § II as a separate document but which is incorporated herein fully by this reference) shall have the meanings stated therein when set out in initial caps and used in the ILA and other Program Documents. Unless specifically provided otherwise, for the Liability Coverage, the term “Employee” shall include “Insured Agents” and “Insured Volunteers,” and with respect to the H&W Coverage, “Employee” shall include such Employee’s Dependents, unless otherwise inconsistent in the context.

### **4. Status and Authority of PURMS.**

**4.1. Nature and Organization of PURMS.** PURMS is an unincorporated association of Local Government Entities, and is organized and existing under Chapter 48.62 RCW (“Local Government Insurance Transactions”) and Chapter 39.34 RCW (“Interlocal Cooperation Act”) enacted to permit and facilitate the joint exercise by Local Government Entities of their powers.

**4.2. PURMS’ Authority as Independent Legal Entity.** PURMS shall be deemed an independent legal entity with all of the authority granted or implied by applicable Washington law and by this ILA, including without limitation, the authority to sue or be sued in its own name, the authority to hire attorneys to defend Members and Employees against Liability Claims, and the authority to settle or adjust Claims, defend or prosecute lawsuits, and pay judgments on behalf of Members and Employees. It is the intent of this ILA to permit PURMS and its Board of Directors to exercise powers to the full limit permitted by RCW 48.62, *et seq.*, and any other applicable laws, so long as the exercise of such powers is not inconsistent with this ILA. Without limiting the generality of the foregoing, PURMS shall have the power and authority, exercised through the Board in accordance with this Agreement, specifically, to:

- (a) Acquire, collect, hold and dispose of money and other assets;
- (b) Assess and reassess Members of its Risk Pools for to replenish the Risk Pool Balances and Reserves for Claims and Operational Costs;
- (c) Receive loans or grants and to incur debts and liabilities;
- (d) Enter into contracts;
- (e) Hire and terminate employees, agents and independent contractors;
- (f) Appoint a treasurer, who shall be the Auditor, and to invest PURMS assets;

- (g) Establish and implement rules, policies and procedures governing PURMS' operations and the operations of its Risk Pools;
- (h) Establish and delegate authority to committees and subcommittees;
- (i) Acquire bonds and/or insurance on the Auditor for faithful performance of duties, and on PURMS' Officers, Committees and the Administrator on such terms as the Board finds appropriate and/or lawfully required;
- (j) Decide issues and promulgate Board Decisions binding upon PURMS' Members and to amend the ILA and Program Documents as deemed appropriate (in accordance with the Voting Standards set forth in ¶ 5 of this Agreement);
- (k) Establish and implement Risk-Management Programs, including Loss Control Guidelines, in accordance with ¶ 17;
- (l) Establish and impose penalties upon Members, including withdrawal of PURMS Coverage or expulsion of Members, for violation of this Agreement or the Operational Rules or Board Decisions, as provided in this Agreement; and
- (m) Possess and exercise any other powers and to perform all other functions reasonably necessary to effectuate the purposes of this ILA and the Program Documents, as amended from time to time.

**4.3. PURMS' Risk Pools.** PURMS consists of three Risk Pools, the Liability Pool, the Property Pool and the Health & Welfare Pool, which are governed by a common Board of Directors, subject to ¶¶ 4.4.1(a) and 6.3.1 regarding Board Votes on issues affecting particular Risk Pools.

**4.3.1. Liability Pool.** The Liability Pool has been operating continuously since January 1, 1977, under the Predecessor Self-Insurance Agreements. The purpose of establishing and maintaining the Liability Pool has been and is to allow the Members to achieve greater economy and efficiency in their functions and operations regarding their insurance coverages and risk management by providing Members and their Employees with protection against liability for claims by Third-Parties through joint self-insurance and the joint purchase of insurance or excess insurance.

**4.3.2. Property Pool.** The Property Pool has been operating continuously since it was established on February 27, 1997 by the amended and restated SIA of that date. The purpose of establishing the Property Pool was to provide Members with coverage for direct physical loss or damage to the property of Members or their Employees through joint self-insurance and jointly purchased Excess Insurance.

**4.3.3. Health & Welfare Pool.** The H&W Pool was established by Unanimous Vote of the Board on March 16, 2000, effective April 1, 2000. The purpose of establishing the H&W Pool was to permit each Member to provide its Employees and Dependents with self-insured Health & Welfare Benefits Coverage tailored specifically to each Member's needs, as defined by each Member's respective Coverage Booklet, and to achieve cost savings for all Members through the joint administration of their respective Benefits Plans and the joint purchase of Stop Loss Insurance acquired by the H&W Pool.

**4.3.4. Participation in or Withdrawal from Risk Pools.** Local government entities that are or become signatory to this ILA may choose to become Members in any or all of PURMS' Risk Pools, subject, where applicable, to the terms for New Members contained in ¶ 18 and the terms for Withdrawal contained in ¶ 20.

**4.3.5. Members of PURMS.** A Member of any Risk Pool is deemed to be a Member of PURMS. A Member that ceases being a Member of all Risk Pools shall no longer be a Member of PURMS.

#### **4.4. PURMS' Joint Operation of the Risk Pools.**<sup>1</sup>

##### **4.4.1. Board of Directors – Risk Pool Members' Right to Vote.**

(a) **Jurisdiction of Full PURMS Board.** The Board of Directors for PURMS shall be deemed the Governing Body for all of PURMS' Risk Pools pursuant to the terms of this SIA, subject to ¶ 6.3.1's restriction on the right to Vote on issues affecting only a particular Risk Pool to the Directors representing Members of that Risk Pool. Any issue affecting PURMS generally shall be decided by the Full Board of Directors of PURMS by the Voting Standard applicable to the issue. The full Board, by Majority Vote, shall also decide whether an issue affects PURMS generally and therefore should be decided by a Vote of the Full Board. (*See also* ¶ 6.3.1.)

(b) **Decisions on Issues Affecting only One Risk Pool.** Only Directors representing Members participating in a particular Risk Pool may Vote on Issues affecting only that Risk Pool or on the use or disposition of the Assets of only that Risk Pool.

(c) **Jurisdiction of and Decisions by PURMS' Committees.** Unless the context indicates otherwise, PURMS' Executive, Administrative and Operations Committees shall have authority to decide issues otherwise within their jurisdiction for any and/or all Risk Pools. (*See* ¶ 9. below).

**4.4.2. Separate Assessments and Accountings for Risk Pools.** PURMS shall assess and reassess Members in each of the Risk Pools separately under their respective Assessment Formulas, as provided in ¶ 13A.1 below. The income and expenditures with respect to each Risk Pool shall be accounted for separately and set forth separately on PURMS' financial statements (as provided in ¶ 12.9 below).

#### **4.5. Assets of Risk Pools.**

##### **4.5.1. No Direct Interest in Risk Pool Assets.**

(a) **Members Have No Direct Ownership Interest in PURMS or Risk Pool Assets.** Except as may be provided otherwise in this ILA, no Member or Employee or Former Member of any Risk Pool shall have any claim to, nor any right, title or interest in or to, any Assets held by PURMS, regardless of whether such Assets are held by PURMS on its own behalf or in trust for a particular Risk Pool and its Members.

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<sup>1</sup> Throughout the SIA, "the Fund" and "PURMS", used generally, are interchangeable and shall refer to the legal entity that operates the Risk Pools and shall mean and include all Risk Pools and, where applicable in the context, can refer to the Governing Body of PURMS and its Risk Pools.

**(b) Third Parties have No Claim or Interest in Risk Pool Assets.** No Third-Party, including any creditor of any Member or Employee, shall have any direct claim against, nor any right, title, or interest in or to, any Assets held by PURMS at any time.

**4.5.2. Risk Pools Entitled to Beneficial Use of Their Respective Assets.** PURMS shall be deemed the legal owner of all assets and investments generated by the Risk Pools through Assessments or otherwise, which shall be held by PURMS in trust for the use and benefit of its respective Risk Pools and their respective Members, and any other assets coming into PURMS' possession in connection with PURMS' operations; provided, however, that:

**4.5.3. Beneficial Use of Assets only for Members of the Risk Pool.** Assets generated by a particular Risk Pool through Assessments or otherwise shall be used for the benefit of that Risk Pool and the Members thereof, consistent with the terms of this SIA, and not for the direct benefit of any other Risk Pools; provided, however, that Risk Pool Assets may be used: (a) to make short-term Inter-Pool Loans in accordance with ¶ 13A.13.2; (b) for Program Development in accordance with ¶ 13A.13.3; and (c) for the establishment of a Special Purpose Account in accordance with ¶ 13A.13.4.

**4.5.4. Disposition of Assets upon Dissolution.** Upon the Dissolution of a particular Risk Pool, the assets and investments held by PURMS for the benefit of that Risk Pool shall be used on behalf of or distributed to the Members of that Pool in connection with the Dissolution, all in accordance with ¶ 21 governing Dissolution.

**4.6. There are no Third-Party Beneficiaries (Except Employees with Respect to Defense and Liability Coverage and H&W Coverage).** No person or entity not a Member shall be construed to be a third-party beneficiary of the SIA; provided, however, that Employees shall be third-party beneficiaries but only with respect to those Substantive Rights applicable to Employees arising out of the Liability Coverage, Defense, and to the extent applicable, the Claims Resolution provisions of this Agreement (as set forth in §§ III through VI, and § VII, respectively) with respect to Liability Claims asserted against them, or arising out of the H&W Coverage as set forth in § XIV, with respect to their own H&W Claims; and provided further, that any such third-party beneficiaries shall be bound by the terms of the SIA and the Operational Rules, and all procedures set forth therein, and by the Procedural Memoranda.

**4.7. PURMS May Not Obligate Members Directly.** The amounts payable under PURMS' Coverages (§§ III through VI, §§ X – XI, and § XIV) as well as any other obligations of PURMS to or on behalf of Members or Employees under this SIA, shall be paid only from the Assets available therefore in the respective PURMS Risk Pool, subject to the restriction limiting the use of Assets held on behalf a particular Risk Pool for the benefit of that Risk Pool and its Members, as provided in ¶ 4.5.3. PURMS shall not have authority to obligate any Member to independently pay any amount except pursuant to PURMS' authority to make Assessments and Reassessments of the Members of its Risk Pools in accordance with ¶ 13.

**4.8. Service of Process on PURMS.** PURMS hereby designates the Washington State Risk Manager as its attorney solely for the purpose of receiving service of all legal process issued against PURMS in Washington based on causes of action arising in Washington. PURMS

further designates its Administrator to receive on behalf of PURMS all legal process against PURMS served upon the State Risk Manager.

## **5. Program Documents, Voting Standards and Amendment Procedures.**

**5.1. Self-Insurance Program Documents.** PURMS shall be governed by and operate in accordance with the Program Documents, which shall consist of this Interlocal Agreement; Definitions; Coverages; Assessment Formulas; Claims Resolution Procedures; Financial Procedures; the Operational Rules; and any Procedural Memoranda issued by the Executive or Administrative Committee (sometimes collectively referred to as the “Self-Insurance Agreement” or “SIA”), more specifically described as follows:

**5.1.1 Interlocal Agreement.** The Interlocal Agreement (SIA § I), executed by the Members pursuant to RCW 39.34 *et seq.*, establishes the structure and operations of PURMS and sets forth the Members’ basic rights and obligations with respect to PURMS and its Risk Pools. The Interlocal Agreement constitutes PURMS’ Foundation Agreement and Bylaws as those terms are used in WAC 82-60-020(11), WAC 82-60-02019 and 82-60-02021 (and similar provisions in WAC 82-65 *et seq.*).

**5.1.2. Definitions.** Definitions for words and phrases used in the Program Documents are contained in SIA § II, as may be supplemented by Definitions contained or short-titled in other sections of the SIA. The Definitions are intended to have common meanings throughout the Program Documents, except as otherwise provided. Definitions for words and phrases in the Interlocal Agreement shall be considered a part of and incorporated into the ILA.

**5.1.3 Liability Coverages.** The Insuring Agreements, Conditions and Exclusions for the Liability Coverages for Members of the PURMS Liability Pool are set forth in sections III through VI of the SIA, subject to the Claims Resolution Procedures in SIA § VII, as follows:

- (a) Commercial General Liability Coverage (SIA § III; “CGL Coverage”).
- (b) Public Officials & Entity Liability Coverage (SIA § IV; “PO&E Coverage”).
- (c) Automobile Liability Coverage (SIA § V; “Auto Liability Coverage”).
- (d) Pollution Liability Coverage (SIA § VI; “Pollution Coverage”).

**5.1.4 Claims Resolution Procedures.** The Claims Resolution Procedures in SIA § VII contains provisions governing the determination of Coverage, Members’ duties regarding Claims, Member participation in litigation, selection of Defense Counsel, Defense under Reservation of Rights, and settlement and payment of Claims for both Liability and Property Coverages.

### **5.1.5 Liability Assessment Formulas.**

- (a) **Liability General Assessment Formula.** The Liability General Assessment Formula in SIA § VIII determines the respective amounts Members of

the Liability Pool shall pay for their jointly self-insured Liability Coverages under §§ III-VI.

(b) **Liability Premium Assessment Formula.** The Liability Premium Assessment Formula in SIA § IX determines the respective amounts Members of the Liability Pool shall pay for their jointly purchased Excess Liability Insurance.

**5.1.6 Property Coverages.** The Interest and Property Insured, Conditions and Property and Perils Excluded with respect to PURMS' for the Property Coverages for Members of the PURMS Property Pool are set forth in sections X and XI of the SIA, subject to the Claims Resolution Procedures in SIA § VII, as follows:

(a) **General Property Coverage** (SIA § X; "Property Coverage).

(b) **Auto Physical Damage Coverage** (SIA § XI; "Auto Physical Damage Coverage")

**5.1.7 Property Assessment Formulas.**

(a) **Property General Assessment Formula.** The Property General Assessment Formula in SIA § XII determines the respective amounts Members of the Property Pool shall pay for their jointly self-insured Property Coverages under §§ X-XI.

(b) **Property Premium Assessment Formula.** The Property Premium Assessment Formula in SIA § XIII determines the respective amounts Members of the Property Pool shall pay for their jointly purchased Excess Property Insurance.

**5.1.8 Health & Welfare Coverage.** The Health and Welfare Coverage in § XIV of the SIA ("H&W Coverage") contains the terms and conditions for providing H&W Coverage for the Employees and Dependents of Members of the H&W Pool based on the Benefits set forth in Members' respective Coverage Booklets.

**5.1.9 Health & Welfare General Assessment Formula.** The H&W General Assessment Formula in SIA § XV determines the respective amounts Members of the H&W Pool shall pay as a result of their membership in the H&W Pool for their own Employees' H&W Claims, Shared H&W Claims and Operational Costs, including Stop Loss Insurance.

**5.1.10 Operational Rules.** The Operational Rules contained in § XVI of the SIA provide greater detail for the authority and operation of PURMS in supplement to the ILA.

**5.1.11 Procedural Memoranda.** Procedural Memoranda may be issued from time to time by the Administrative Committee reflecting Administrative Committee decisions on issues and procedures affecting the day-to-day operation of PURMS and decisions regarding interpretation of various Program Documents. Procedural Memoranda are subject to Board modification or reversal by Majority Vote pursuant to ¶ 5.4.1(e).

**5.1.12 Financial Procedures.** The Financial Procedures for PURMS shall include, among other things, the Investment Policy, the Investment Procedures and the Disbursement Procedures, as provided in more detail in ¶¶ 12.1 and 12.3 – 12.4 below.

**5.1.13. Inter-Relation of Program Documents.** Although the Self-Insurance Agreement is set forth in separate Sections, all Sections shall be deemed part of the same transaction and shall be construed together, where reasonable. In the event of conflicting terms between or among the Program Documents, such Documents shall govern in the following descending order of authority: (a) Interlocal Agreement; (b) Financial Procedures; (c) the Operational Rules; and (d) Procedural Memoranda.

## **5.2. Adoption of Interlocal Agreement, Operational Rules and Program Documents.**

**5.2.1. Member’s Warrant of Authority to Execute Interlocal Agreement.** Each Member of PURMS hereby agrees, represents and warrants that such Member’s approval and execution of the Interlocal Agreement section of the Self-Insurance Agreement, amended, restated and effective as of November 10, 2011, and adoption of the Operational Rules incorporated therein, amended and restated as of \_\_\_\_\_, is pursuant to specific authority granted by an Authorizing Resolution duly enacted by such Member’s governing body.

**5.2.2. Adoption of Program Documents.** Each Member of PURMS executing the Interlocal Agreement hereby adopts the Self-Insurance Agreement, consisting of all of the Program Documents identified in ¶ 5.1 above, which are set forth as separate documents and incorporated herein by this reference.

## **5.3. Amendment Voting Standards and Procedures.**

**5.3.1. Statement of Intent.** It is the intent of the Members of PURMS to establish Voting Standards and Amendment Procedures for amending all Program Documents that facilitate decision-making accomplishment of PURMS’ business by permitting the Board and Members to amend most (but not all) of the provisions of the Program Documents by a Voting Standard less stringent than a Unanimous Vote. Any such Amendments shall become effective by their own terms without the necessity of all Members executing a revised Interlocal Agreement and all Members shall be bound by decisions duly made by the applicable Voting Standard; provided that Amendment of the Interlocal Agreement shall require all Members to execute an Authorizing Resolution and to sign the Amendments, as provided in ¶ 5.4.3 below, regardless of the applicable Voting Standard.

**5.3.2. Unanimous, Super-Majority Vote and Two-Thirds Votes.** Amendments requiring a Unanimous, Super-Majority or Two-Thirds Vote may be adopted or rejected by a combination of Votes by Directors at a Board meeting for which such vote is scheduled, together with any Votes by Authorizing Resolution executed and submitted by Members at or after the meeting. Such Issue shall be deemed decided when the votes of Members at the Board meeting, together with votes subsequently submitted by Authorizing Resolutions, are sufficient either to approve the Amendment by the applicable Voting Standard, or enough Members reject the Amendment such that the required Voting Standard to pass the Amendment cannot be attained. Members shall be

bound by the affirmative Votes of their Directors and Employee Designees at a Board meeting.

#### **5.4. Amendment of Program Documents – Standards and Procedures.**

**5.4.1. Voting Standards for Amending [Other] Program Documents.** Each Member agrees, represents and warrants that such Member shall be bound by the authority and Vote of the Board and/or Members, in accordance with the procedures provided in ¶¶ 5.3 – 5.7 herein, to amend the Program Documents, and bind such Member and its Employees thereby, pursuant to the following Voting Standards:

(a) **Interlocal Agreement.** The Interlocal Agreement may be amended by Super-Majority Vote of the Board and/or Members, except where a Unanimous Vote is required, together with an Authorizing Resolution approving such Amendments executed by each Member, as provided in ¶ 5.4.3;

(b) **Operational Rules.** The Operational Rules may be amended by a Two-Thirds Vote, except for those provisions in the Operational Rules dealing with subjects for which the SIA mandates amendment by a Super-Majority Vote or Unanimous Vote;

(c) **Assessment Formulas.** The Assessment Formulas for any of the three Risk Pools may be amended by a [Super-Majority] [Two-Thirds Vote];

(d) **Financial Procedures.** The Financial Procedures may be amended by a [Super-Majority] [Two-Thirds Vote];

(e) **Coverages and Claims Resolution Procedures.**

(1) The Liability and Property Coverages and related Claims Resolution Procedures may be amended by a [Super-Majority] Two-Thirds Vote;

(2) The H&W Coverage each Member of the H&W Pool provides for its Employees and Dependents may be amended by the Member [at any time], as provided in H&W Coverage in SIA § XIV, ¶ 2.2.3.

(e) **Procedural Memoranda.** The Procedural Memoranda may be amended or reversed by a Majority Vote of the Board;

Provided, however, that any more specific provision in a Program Document that provides for amendment on a particular subject by a different Voting Standard shall supersede the general Voting Standards in sub-¶¶ (a) through (e) above; and

Provided further, that the Voting Standards for amending the Program Documents contained in sub-¶¶ (a) through (e) above shall be subject to the restrictions contained in ¶¶ 5.4.2 through 5.4.5 below.

**5.4.2. Provisions of the Interlocal Agreement Subject to Amendment Only by Unanimous Vote.** (See ¶ 5.5) The following paragraphs of the ILA shall be amended

only by Unanimous Vote: ¶¶ 4.2 through 4.7 (re basic PURMS structure and authority); ¶¶ 5.3 through 5.7 (re Amendment Procedures and Voting Standards); ¶¶ 6.1- 6.3 (re the Board of Directors); ¶ 7.6 (re Decisions on Issues not on Agenda); ¶ 13 (re Assessments); ¶ 14 (re PURMS' Excess Insurance); ¶ 19 (re Appeal Procedures); ¶ 20 (re Withdrawal from a Risk Pool or PURMS); ¶ 21 (re Dissolution of a Risk Pool or PURMS) and ¶ 24.4 (re Arbitration and Venue); provided, any other provisions of the Program Documents shall be subject to the Unanimous Voting Procedures where specified.

**5.4.3. Amendment of ILA by Authorizing Resolution Regardless of Voting Standard.** All amendments of the Interlocal Agreement shall be approved either by Unanimous Vote or by Super-Majority Vote, as provided in ¶ 5.4.1(a) above, and all amendments of the ILA passed by either Voting Standard shall require each Member's governing body to enact an Authorizing Resolution expressly adopting the ILA or Amendments thereto and to sign a copy of the Amendments attached to such Authorizing Resolution.

**5.4.4. Requirements of Authorizing Resolutions.** All Authorizing Resolutions shall expressly authorize the Member (or New Member) to execute the Interlocal Agreement or Amendments thereto, or shall ratify the prior execution thereof by the Member's (or New Member's) Director, and shall provide that the Member will be bound by any amendments to the ILA and all other Program Documents approved in accordance with the Amendment Procedures and Voting Standards contained in this ¶ 5. Each Member shall deliver the duly enacted and executed Authorizing Resolution and signed Amendments to the Administrator within the time period required by the applicable Resolution of the PURMS Board or as provided in this ILA.

**5.4.5. Amendment of ILA – Notice and Procedure.** PURMS shall provide Members of all Risk Pools with notification of any proposed Amendments to the ILA thirty (30) days in advance of the Board meeting at which such proposed Amendments are to be considered and voted upon, along with a copy of the proposed Amendments; provided, however:

(a) **Written Waiver of Thirty Day Notice.** Notice of amendment of the ILA less than thirty (30) days from the Board meeting may be waived by a Member's Director in writing at the Board Meeting with the same effect as the thirty (30) day notice would have had.

(b) **Non-Material Changes.** Non-material, conforming, explaining or clarifying changes may be made in the proposed Amendments to be voted on by the Board (or Members) prior to the Board meeting, so long as the Executive Committee has approved such changes and recommended approval of the same by the Board.

(c) **Subsequent Approval by Authorizing Resolutions.** Any material changes from the proposed Amendments that are approved by Resolution at the Board meeting, shall be effective and binding on all Members so long as Members are provided a copy of the Board Resolution and the governing bodies of the Members subsequently approve such changes by execution of an Authorizing Resolution (as provided in ¶ 5.3.2) pursuant to the applicable Voting Standard.

## **5.5. Documenting Amendments.**

**5.5.1. Amendments requiring Unanimous Vote.** Amendments requiring a Unanimous Vote, if adopted, shall be signed by the Director (or other person specified in the Member's Authorizing Resolution), in accordance with ¶¶ 5.4.3 and 5.4.4 above. Each Member shall deliver its fully executed Authorizing Resolution to the Administrator within the time period specified in the Resolution passed by the PURMS Board. A copy of the fully executed Amendment shall be distributed to each Member.

**5.5.2. Amendments by Voting Standard less than Unanimous Vote.** Amendments to any section of the SIA (other than the Interlocal Agreement) that are governed by a Voting Standard less than Unanimous Vote, according to the Voting Standards provided in ¶ 5.4 above, shall be signed and dated by at least two (2) PURMS Officers which shall be deemed to establish the authenticity of the Amendment and the original thereof shall be retained by the Administrator. A copy of the Amendment signed by PURMS' Officers, and a revised version of the SIA section reflecting the Amendment, shall be provided to each Member and/or posted on PURMS Website with notice thereof provided to the Member.

**5.6. Effective Dates of Amendments.** Once the applicable Voting Standard has been satisfied, the effective date for adoption of the amended and restated Interlocal Agreement and for any Amendments thereto, and any Amendments to the other Program Documents, shall be the effective date stated therefore in the Resolution passed by the PURMS Board, regardless of whether such Authorizing Resolution approves prospective execution or ratifies prior execution by the Member's Director. In the event the PURMS Resolution or the Amendment does not specify an effective date, the effective date shall be date the Resolution is passed by the applicable Voting Standard.

## **5.7. Prospective and Retroactive Amendments.**

**5.7.1. Prospective Amendments.** All provisions of the Program Documents, whether dealing with Procedural or Substantive Rights, may be amended by the applicable Voting Standard for prospective application with respect to all PURMS matters addressed by the Program Documents and all Loss Events (and related Claim Resolution issues) that take place after the effective date of the amendment. Unless otherwise provided in the language of the Prospective Amendment, the effective date thereof shall be the date the Board voted to approve the amendment.

### **5.7.2. Rules Regarding Amendments Having Retroactive Effect.**

(a) **Amendments Effecting Procedural Rights.** Any Amendment affecting a Member's or Employee's Procedural Rights under the SIA shall, unless otherwise provided in the Amendment, automatically be given "retroactive" application in the sense that, from its effective date, such Procedural Amendment shall govern the resolution of all pending Claims and all Loss Events, known or unknown, even if they happened prior to the effective date of the Procedural Amendment, and regardless of the Procedural Rights that were in effect in the applicable SIA at the time of the Loss Event.

(b) **Retroactive Grants of Coverage.**

(1) **Liability and Property Pools – Grants of Retroactive Coverage.** By Super-Majority Vote, the Board may amend the SIA to provide additional, expanded or different Liability or Property Coverages retroactively, to a date certain specified in the Amendment, which shall apply to all unresolved known and unknown Loss Events that happened after such Amendment’s retroactive effective date; provided, however, that Former Members on the date the Amendment is approved by the Board shall not be entitled to the benefit of such Retroactive Coverage. The cost of providing such Retroactive Coverage shall be paid from the Assets constituting the Actual Risk Pool Balance of the Risk Pool receiving the Retroactive Coverage, which shall be replenished through normal General Assessments of the Risk Pool’s Members; provided, however, any Risk Pool Member that voted against the Retroactive Coverage that gives notice of its intent to withdraw under ¶ 20.1 within thirty (30) days of the Board Vote to adopt the Retroactive Coverage shall not be entitled to such Coverage and shall be exempt through the end of the calendar year of its Withdrawal from paying its Assessment Share of the portion of any General Assessment relating to Coverage Payments and Defense Costs or Property Claim Costs PURMS pays for Covered Claims arising from the Retroactive Coverage, and shall remain exempt therefrom as a Former Member. A Member or Employee involved in a Covered Liability Claim arising out of the Retroactive Coverage shall have the rights and obligations relating to Defense under the SIA currently in effect.

(2) **H&W Pool – Grants of Retroactive Coverage.** Each Member of the H&W Pool may provide for retroactive grants of H&W Coverage for their respective Employees and their Dependents as provided for in the H&W Coverage § XIV ¶ 2.2.3, with respect to providing a Benefit to Employees generally, and in § XV ¶ 5.2, with respect to a specific H&W Claim which has been denied.

(c) **No Amendment Shall be Applied Retroactively to Deprive Members or Employees of “Vested” Substantive Rights for Covered Claims.** No amendment of the SIA or Operational Rules shall be applied to the extent that the effect would be to deprive a Member or Former Member (or their Employees to the extent such Rights are applicable hereunder, without such Member’s or Former Member’s written consent), of a Vested Substantive Right with respect to Coverage for any Covered Claim arising from any Loss Event that has taken place as of the date of the Board’s adoption of the amendment. The Substantive Rights of a Member (or Employee of a Member) of the Liability or Property Pools, whether under the current Program Documents or under Predecessor SIAs, shall be deemed Vested as of the date of the Loss Event. Except for the right of Appeal pursuant to ¶ 19.2.3 herein with respect to the denial of Coverage for an H&W Claim, any “Substantive Rights” of Employees and Dependents of Members of the H&W Pool, shall be determined in accordance with such Members applicable Coverage Booklets, and are a matter between such Member and its Employees.

## **6. Board of Directors.**

### **6.1 Composition of Board.**

**6.1.1. Designation of Director.** The business and affairs of PURMS and its respective Risk Pools shall be governed by a Board of Directors, which shall be the policy-making and ultimate decision-making body of PURMS. Each Entity that is a Member of a Risk Pool shall be entitled and required to appoint one Designated Director to the Board, and in addition, to identify a First and Second Alternate Director, in accordance with the Operational Rules. With respect to each Member that is a public utility district, its Designated Director shall be one of its Commissioners. With respect to each Member that is not a public utility district, it may appoint any Officer or member of its board to act as its Director. Alternative Directors and Employee Designees may be Employees. The specific procedures and timing for identifying Designated Directors, First and Second Alternate Directors, and Employee Designees, and their relative voting rights on behalf of the Member, are set forth in ¶ 6.1.1 of the Operational Rules.

**6.1.2. Employee Designees.** In addition to the Director designation required pursuant to ¶ 6.1.1, each Member shall, on an annual basis, in writing, notify the Administrator of the identity of any of its Employees who are entitled to vote on behalf of the Member at Board Meetings in the event the Director or an Alternate Director is unable to attend, as more specifically provided for in the Operational Rules.

**6.1.3. Authority of Employee Designees.** Unless the context of the ILA or Operational Rules clearly indicates otherwise, Employee Designees shall be included within the meaning of “Director” and shall have all of the same rights, authority and obligations for purposes of that meeting as the Directors for whom they are substituting.

**6.2 Specific Authority and Duties of Board.** In addition to managing and governing the overall affairs and business of PURMS, the Board’s authority, obligations, duties and responsibilities under this ILA shall specifically include, but shall not be limited to:

**6.2.1. Amending Interlocal Agreement and Program Documents.** Amending the ILA and other Program Documents by the applicable Voting Standards, as provided in ¶ 5 above.

**6.2.2. Maintain Funding required by Program Funding Amendments.**

(a) **Liability and Property Pools.** Setting the amounts of the Designated Risk Pool Balances (*see* ¶ 13A.2.4), the Coverage Limits (*e.g.*, § III, ¶ 2.2 and § X, ¶ 4), and the Deductibles for the Liability and Property Coverages (*e.g.*, § III, ¶ 2.3 and § X, ¶ 7), by Super-Majority Vote, and deciding issues relating to ensuring the Risk Pools’ compliance with the Program Funding Amendments contained in ¶ 13A., in accordance with the requirements and Voting Standards stated therein.

(b) **H&W Pool.** Deciding issues relating to ensuring the H&W Pool’s compliance with the Program Funding Amendments contained in ¶ 13B., in accordance with the requirements and Voting Standards stated therein.

**6.2.3. Electing PURMS Officers.** By Majority Vote, nominating and electing Directors to serve as the Officers of PURMS, in accordance with ¶ 8 below and of the Operational Rules.

**6.2.4. Determining Members and Authority of Standing Committees.** By Majority Vote, appointing and removing members of the Administrative Committee and Chairperson of the Operations Committee, and delegating to or withdrawing from such Committees and/or the Executive Committee such authority, duties and jurisdiction as the Board deems appropriate, regardless of the authority, duties and jurisdiction established for such Committees in the SIA or Operational Rules; provided, however, that, except for the provisions specifically addressing such Committees' duties, authority and jurisdiction, the Board may not, under the power of this sub-¶¶, effectuate in fact an amendment to the SIA on a related subject requiring amendment by more than a Majority Vote unless the Board vote also satisfies the highest Voting Standard applicable to all SIA provisions affected.

**6.2.5. Determining Excess and Stop-Loss Coverages.** By Majority Vote, reviewing and approving any material changes in or additions to Primary and Supplemental Excess Coverages and/or Stop Loss Coverage PURMS shall acquire from insurance carriers on behalf of the Members of its Risk Pools pursuant to ¶¶ 14.1 and 14.2.

**6.2.6. Reviewing Third-Party Contracts.** Upon request of the Executive Committee or the Directors of any two (2) Members, by Majority Vote, reviewing and approving, rejecting or modifying the contracts negotiated and approved by the Administrative Committee with the Administrator, the Broker and General Counsel, and with any Third-Parties on behalf of PURMS or any of its Risk Pools, except as provided otherwise with respect to the ASA with the Administrator as reflected in ¶ 10.1.2 below.

**6.2.7. Deciding Member Appeals under Paragraph 19.** By Majority Vote, reviewing and deciding, in accordance with the Appeal Procedures contained in ¶ 19, any Appeal by a Member or Employee of any decision made or action taken by the Administrative Committee as reviewed and decided by the Executive Committee upon appeal, except as otherwise provided in ¶ 19.1(a) and (b), and subject to the Board's authority in ¶ 6.2.4 above.

**6.2.8. Deciding Coverage Issues.**

(a) **Liability and Property Pools.** By Majority Vote (except where otherwise specifically provided), ultimately deciding issues that reach the Board regarding Defense and/or settlement of Covered Liability or Property Claims.

(b) **H&W Pool.** Members of the H&W Pool decide the Coverages for their own Health Plans (§ XIV, 2.1.1) and each Member determines whether to provide Coverage for the H&W Claims of their own Employees for which Coverage is not clearly provided by the Member's Coverage Booklet (*see* § XV, ¶¶ 5.2.2.2 and 5.2), subject to appeal thereof within each H&W Pool Member's Health Plan.

**6.2.9. Overseeing Coverage Litigation.** By Majority Vote, deciding issues that reach the Board regarding prosecution and settlement of Coverage Litigation or other suits involving PURMS, including establishing by Majority Vote any parameters on the Executive or Administrative Committees' authority with respect thereto. (*See also* Op. Rules, § I, ¶¶ 9.4.3(e) and (f)).

**6.2.10. Approving New Members.** By Super-Majority Vote, determining whether any Local Government Entity applying for membership in PURMS pursuant to ¶ 18 shall become a New Member and, if so, upon what terms and conditions.

**6.2.11. Maintaining and Enforcing Risk Management Program.** Except as otherwise required in ¶ 17, by Majority Vote, reviewing and approving recommendations by the Administrative Committee regarding PURMS' Risk Management Programs, and making decisions regarding Board Remedies for violation of the same.

**6.2.12. Establishing Special Purpose Committees.** By Majority Vote, establishing Special Purpose Committees composed of Directors and/or Members' staff and, except for matters requiring decision by a Voting Standard more stringent than a Majority Vote, delegating such authority thereto as the Board deems appropriate (*see* ¶ 9.4).

**6.2.13. Deciding All Issues Properly before the Board.** By Majority Vote, deciding any issue properly brought before the Board by any Member, pursuant to the procedures for placing Decision Issues on the Agenda in ¶ 7.4, or as otherwise provided for by the SIA (*see* ¶¶ 7.4 and 7.6; *see also* ¶ 19.1(a) and (b) and ¶ 6.2.13)).

### **6.3. Board Meetings – One Member/One Vote – Majority Vote and Quorum – Other Voting Standards.**

**6.3.1. Each Director has One (1) Vote.** Each Director of the full Board representing all Members of PURMS shall be entitled to one Vote on each Issue affecting PURMS generally or all Risk Pools, and on each Issue that relates solely to a Risk Pool in which the Member that employs the Director participates. Issues that affect both the Liability and Property Pools, but not the H&W Pool, shall be voted upon only by Directors of Members of the Liability and Property Pools, and vice-versa. (*See also* ¶ 4.4.1(a).)

**6.3.1. Decisions by Majority Vote – Quorum.** Unless the SIA expressly provides for decision by some other Voting Standard, all Board Decisions shall be made by a Majority Vote of the Directors present or otherwise Participating in the Board Meeting via telephone or video conference. "Majority Vote" means the affirmative vote of [more than] [at least] half of the total number of Directors of all Members of PURMS (or of all Members of the Risk Pool, as applicable), which shall be the act of the Board and shall bind all Members; provided that there is a Quorum of Directors entitled to vote on the Issue.

**6.3.3. Failure to Participate Waives Right to Vote on Majority Vote.** Provided there is Quorum of Directors participating, all Issues subject to Majority Vote of the Board shall be voted upon and decided at the Board meeting, unless the vote thereon is rescheduled to another Board meeting by Majority Vote. Failure of the Director or Member to attend the meeting in person shall be deemed a waiver of the Member's right to vote on any Majority Vote issue that properly comes before the Board and is voted upon at the meeting, provided such Member received proper notice of the meeting.

**6.3.4. Alternate Vote by Authorizing Resolution on Issues Subject to Higher Voting Standards.** Members that do not attend or participate the meeting by one of the

methods provided above, or whose Director chooses to defer the Member's vote for decision by the Member's governing body, may nevertheless vote on issues that require a Two-Thirds, Super-Majority or Unanimous Vote by subsequent execution of an Authorizing Resolution, unless the issue was passed or rejected at the meeting by the requisite Voting Standard. (*See also* ¶ 5.3.2 above).

## **7. Board Meetings.**

### **7.1. General Meetings.**

**7.1.1. Time, Place and Notice.** The Board shall conduct a semi-annual and an annual General Meeting each calendar year. The specific procedures for scheduling and providing notice of the General Meetings are set forth in ¶ 7 of the Operational Rules. Notice of each General Meeting shall be provided to each Member of PURMS thirty (30) days prior to the date set for the General Meeting, stating the date, time and location of the Meeting. Such notice shall also be published on PURMS Website. In addition to such other business as may properly come before the Board, the Board shall hear and consider reports from the Administrator, the Administrative Committee and the Auditor. The Notice of the General Meeting shall also be provided to the State Risk Manager at the same time in the same manner as for Members.

#### **7.1.2. Agenda, Issues and Permitted Action.**

(a) **Meeting Agendas.** Each Member of PURMS shall be provided an Agenda by electronic mail and by posting on PURMS' Website accessible to the public at least ten (10) days before the General Meeting. A copy of the Agenda shall also be provided to the State Risk Manager.

(b) **Issues and Permitted Action.** The Board may decide or take action on any issue properly raised at a General Meeting, whether or not the issue was included in the Agenda; provided, however, the Board shall not decide or take action at such meeting:

- (1) On any issue requiring approval by a Voting Standard more stringent than a Majority Vote if the issue was not included in the Agenda, except as otherwise permitted in ¶ 7.6; nor
- (2) On any Appeal Issue that is subject to the mandatory Appeal Procedures set forth in ¶ 19.2, except as otherwise permitted in ¶ 19.1(a) or (b), unless and until such Issue has been submitted to the Appeal Procedures and the Appeal Procedures have been fully exhausted through the Executive Committee level.

### **7.2. Special Meetings.**

**7.2.1. Notice of Special Meeting.** Special Meetings of the Board shall be held at such times and places as designated by the Administrator within thirty (30) days after receipt by the Administrator of a written request therefore from any PURMS Officer, any two non-Officer Directors, the Administrative Committee or the Administrator; provided

that Members shall receive at least fourteen (14) days' Notice thereof. The specific procedures for Notice to Directors and other interested parties of Special Meetings are set forth in ¶ 7.2 of the Operational Rules. Notice of the Special Meeting and the Agenda described below shall also be provided to the State Risk Manager.

**7.2.2. Purpose of Meeting and Agenda.** The Notice shall state the purpose(s) for the Special Meeting and shall be accompanied by an Agenda identifying the Decision Issues, including those for which the Special Meeting has been called and those which otherwise have been timely submitted to the Administrator in accordance with ¶ 7.4. The Board shall not decide any issue at the Special Meeting not specified in the Notice of Special Meeting or in the accompanying Agenda.

**7.2.3. Issues Subject to Appeals Procedure.** A Special Meeting may be called in whole or in part for the purpose of deciding an Appeal Issue that has been submitted to the Appeal Procedures, even though such Procedures have not been fully exhausted through the Executive Committee level, so long as the requirements of ¶ 19.1(b) are satisfied.

**7.3. Emergency Meetings.** Emergency Meetings of the Board shall be held at such times and places as designated by the Administrator upon the request of any two PURMS Officers, any three non-Officer Directors of Members, any three members of the Administrative Committee or the Administrator. The Emergency Meeting shall be held as soon as reasonably practicable following the Administrator's receipt of the request. The specific procedures for notifying the Directors and other interested parties of Emergency Meetings are set forth in ¶ 7.3 of the Operational Rules. The Board shall not decide any issues other than those specified in the Notice of Emergency Meeting. The purpose of the Emergency Meeting may be in whole or in part to decide an Appeal Issue that is subject to the mandatory Appeal Procedures of ¶ 19 and which would otherwise be required to proceed through exhaustion of those Procedures before Board review and decision, so long as the requirements of ¶ 19.1.(b) are satisfied.

**7.4. Member Submission of Issues for Decision by Board.** The Administrator shall include all issues on the Agenda for the next General Meeting, or Special Meeting, for which written requests have been received by the Administrator from any Director, any PURMS Officer, or any member of the Administrative Committee, in accordance with the Operational Rules. All issues submitted to the Administrator at least fourteen (14) days prior to the date set for the Meeting shall be deemed to be Discussion Issues which shall at least be discussed at such Meeting. All written requests to include Decision Issues on the Agenda to be voted upon by the Board must be delivered to the Administrator at least thirty (30) days prior to the date set for the General or Special Meeting. No issue for which a vote is requested shall be included as a Decision Issue on the Agenda if the issue is subject to the Primary Jurisdiction of the Administrative Committee established in ¶ 9.4.4, or assigned for decision to the Executive Committee by the Program Documents, and the Appeal Procedures have not been exhausted, except as otherwise provided in ¶ 19.1(a) or (b). The Board may defer action on any Decision Issue properly on the Agenda by Majority Vote.

**7.5. Waiver of Defects in Agenda or Notice of Meeting.** Defects in the Agenda or Notice of Meeting for any Board meeting, including defects as to content, timeliness or other defects, may be waived in writing by any Director at any time, either before or after such meeting. Any such defects shall be deemed waived by the presence of a Member's Director at

the meeting unless such Director shall, prior to or at the commencement of such meeting, or, with respect to an Agenda defect, prior to or at the commencement of consideration of the issue or item of business omitted, deliver an oral or written objection to the President, or any other person chairing the meeting, and to the Administrator.

**7.6. Decisions on Issues Not on Agenda of General Meeting.** So long as a Super-Majority of the Directors of all Members are present at or are otherwise Participating in any General Meeting, the Board may, by Majority Vote, raise and decide any issue, including any Appeal Issue otherwise subject to the Appeal Procedures in ¶ 19, by the Voting Standard applicable to such issue, regardless of whether such issue was included in the Agenda or the Notice of the General Meeting; provided, however, that this ¶ 7.6 shall not apply to any issues requiring a Board decision by Unanimous Vote, Super-Majority Vote or Two-Thirds Vote. This ¶ 7.6 also shall not apply to Special or Emergency Meetings of the Board.

**7.7. Pre-Vote Analysis.** The Administrator or Administrative Committee shall conduct a Pre-Vote Analysis of Decision Issues as set forth in the Operational Rules.

**7.8. Rules of Conduct for Meetings.** Meetings of the Board and any Committees of PURMS shall be governed by Roberts Rules of Order.

**7.9. Open Meetings, Executive Sessions and Maintenance of Confidentiality and Privileges.** It shall be the Board's policy to conduct its meetings openly, in compliance with the Open Public Meetings Act (RCW 42.30 *et. seq.*). The Board, however, shall have the authority to meet confidentially in Executive Session, on its own initiative or at the request of any PURMS Officer, as permitted by the Open Public Meetings Act and other applicable Washington law. The Board shall attempt to conduct its meetings so as to preserve the attorney-client and attorney work-product privileges where appropriate and reasonably possible.

**7.10. Recessed and Rescheduled Meetings.** So long as there is a Quorum, a recess of any Board Meeting may be taken until such time and place as those present may determine by Majority Vote, without new Notice being given or new Agendas being sent; provided, the rescheduled Meeting shall be limited to Decision Issues encompassed in the original Notice and Agenda, except as provided in ¶ 7.6 above.

**7.11. Members Involved in Pending or Potential Litigation with PURMS.** All Employees and representatives of a Member, including its Director, by Majority Vote, may be excused from the portions of the discussions at a Board Meeting that relate to the subject of the pending or potential litigation between PURMS and that Member or that Member's Employee. Further, the Minutes for the confidential Board Meeting that would reflect any discussions and or decisions under these circumstances may be prepared as Confidential Minutes, and not disseminated to the Members generally with the Published Minutes of such Meeting.

## **8. PURMS Officers.**

**8.1. Enumeration and Qualifications.** PURMS' Officers shall be a President, a Vice-President, and a Secretary. No person shall be eligible to serve as an Officer of PURMS unless he or she is also a Commissioner or a member of the governing body of a Member of one of the Risk Pools, and a Designated Director of PURMS. PURMS Officers shall be nominated and

elected by the Board at its year-end General Meeting by Majority Vote conducted openly at the Meeting. [WAC 82-60-02023]

**8.2. Term of Office, Vacancies and Removal.** Except as provided in ¶ 21.2, PURMS Officers shall hold office for a period of one year commencing on January 1 and until their successor or successors are elected and assume office on January 1 of the following year. The protocol for the succession of officers and the filling of vacancies is set forth in ¶ 8.2 of the Operational Rules. Any PURMS Officer may be removed from office for any reason by a Two-Thirds Vote of the Board.

**8.3. President.** The President shall be the chief executive officer of PURMS and, subject to the authority of the Board and the Executive Committee, shall have and be responsible for general supervision of the business and affairs of PURMS. The President shall preside over all Board Meetings and Executive Committee Meetings and perform such other duties as are assigned to the President in the SIA and the Operational Rules and from time to time by the Board. Unless the ILA expressly delegates approval of a contract between PURMS and a third-party to the Board or Executive Committee, with the written approval of the other two PURMS Officers, and/or as directed or authorized by the Board or by Resolution, the President may sign contracts on behalf of and binding PURMS. In the absence of the President, the Vice-President shall have such authority.

**8.4. Vice-President.** In the event of the absence or disability of the President, the Vice-President shall have and may exercise the authority and perform the duties of the President. In addition, the Vice-President shall perform such other duties as the Board or President may from time to time assign.

**8.5. Secretary.** In addition to the duties assigned to the Secretary in the SIA and the Operational Rules, the Secretary shall perform such other duties as the Board or President may from time to time assign.

## **9. Committees.**

### **9.1. Executive Committee.**

**9.1.1. Composition.** PURMS shall have an Executive Committee whose members shall be composed of the three PURMS Officers and the full Administrative Committee (*i.e.* Standing and Annual Committee Members). Each member of the Executive Committee shall have one vote on matters addressed by the Executive Committee. The chairperson of the Operations Committee and a representative of the Administrator shall be non-voting, *ex-officio* members of the Executive Committee; provided, however, in the event of a tie-vote, the chairperson of the Operations Committee shall provide the tie-breaking vote.

#### **9.1.2. Authority.**

(a) **In General.** Unless the Interlocal Agreement or Operational Rules specifically assign a subject, in the first instance, to decision by the Board by Majority Vote, the Executive Committee shall have authority, on its own motion, to consider and decide issues that arise in connection with or that are appropriate or

necessary to conducting PURMS' business; provided, to the extent practicable, such decisions shall be subject to modification or reversal by the Board by Majority Vote.

**(b) Delegation of Majority Vote Issues.** In addition, by a [Two-Thirds Vote] [Majority Vote], the Board may delegate to the Executive Committee any issue specified for decision by the Board by Majority Vote. [In such instances, the Executive Committee will be deemed to be acting on behalf of the Board for purposes of complying with the Open Public Meetings Act.] Decisions by the Executive Committee pursuant to authority and discretion delegated by the Board in a Board Resolution shall be binding on PURMS vis-a-vis Third Parties and on the Members of PURMS. Notwithstanding such authority, the Executive Committee may decline to decide any issue and refer such issue to the Board for decision. The President shall decide if a Special Meeting of the Board is needed for this purpose. The Executive Committee shall not have authority to decide issues subject to a Voting Standard higher than a Majority Vote.

**9.1.3. Duties.** Except as the Board may otherwise establish from time to time by Majority Vote pursuant to ¶ 6.2.4, and in addition to the duties assigned to the Executive Committee elsewhere in the ILA and Operational Rules, the duties and authority of the Executive Committee shall include:

**(a) Check Activity Reports.** Review and approve all of PURMS' Check Activity Reports when the Executive Committee meets.

**(b) Program Funding Amendments.** Maintain awareness of each Risk Pool's compliance with the Program Funding Amendments in ¶¶ 13A. and 13B. below, and take such measures authorized therein [as reasonably] necessary to maintain each Risk Pool's solvency [according to applicable regulations].

**(c) PURMS' Financial Activities and Procedures.** Along with the Auditor, at its discretion, to review PURMS' Financial Activities and Procedures, to receive periodic reports from the Auditor and/or the Administrator regarding the same, and

**(d) Coverage Issues.** Subject to the Board's authority in ¶ 6.2.4, decide issues with respect to potential or pending Covered Claims transferred to the jurisdiction of the Executive Committee in accordance with ¶ 6.2.8. (*See also*, Op. Rules, § I, ¶ 9.4.3(e)).

**(e) Appeal Issues.** Hear and decide all Appeal Issues in accordance with the procedures in ILA ¶ 19;

**(f) Litigation involving PURMS or Excess/Stop-Loss Coverage.** Provide consultation and advice to the Administrative Committee in connection with Coverage Litigation or the defense or prosecution of any other lawsuit in which PURMS is a party or is acting on behalf of the interest of a particular Risk Pool or Member as provided in the SIA, and make all decisions regarding settlement of same; provided, however, pursuant to ¶ 6.2.4 and by Majority Vote, the Board may modify or restrict the authority of the Executive Committee with respect thereto, including

establishing the conditions of prosecution or settlement of any such lawsuit. (*See also* ¶ 6.2.4 and Op Rules, § I, ¶ 9.4.3(f)).

**(g) Emergency Decisions.** Make Emergency Decisions on any issues submitted by the Administrative Committee or Administrator on all matters that can be decided by the Board by Majority Vote, subject, to the extent practicable, to modification or reversal by Majority Vote of the Board.

**(h) Third-Party Contracts.** Review and approve contracts between PURMS and third-parties for services provided to PURMS or one or more of its Risk Pools; provided, the Executive Committee, or the President on its behalf, may delegate approval and execution of the contract to the Administrator unless the ILA expressly provides for approval of such contract by the Board.

**(i) Other Duties Assigned by the Board.** The Executive Committee also shall perform such other duties and have such other authority as the Board may from time to time assign by Majority Vote.

**9.1.4. Executive Committee Meetings.** The Executive Committee shall meet as required in the Operational Rules. The Executive Committee may also meet at any other times acceptable to the Committee to conduct Executive Committee business, and shall meet when requested in writing by the President, Administrative Committee or Administrator. The President shall preside, or if unavailable, the Vice-President followed by Secretary shall preside.

## **9.2. Administrative Committee.**

**9.2.1. Composition – Appointment and Removal.** PURMS shall have an Administrative Committee consisting of four (4) Standing AC Members, and from time-to-time, up to two (2) additional Annual AC Members. All such Administrative Committee members shall be appointed by the Board by Majority Vote from members having at least two (2) years' experience with the Operations Committee. One of the four Standing AC Members shall be PURMS' Auditor, with the qualifications required by ¶ 12.2. The Standing AC Members and any Annual AC Members shall be the Voting AC Members. Pursuant to ¶ 6.2.4, members of the Administrative Committee may be removed at any time by a Majority Vote of the Board, except for the person serving as Auditor [or Deputy Auditor] at the time.

**9.2.2. Term.** The term for each Standing AC Member shall be four calendar years and shall be staggered for the purpose of ensuring continuity of experience within the membership of the Committee. The term for any Annual AC Member shall be one (1) calendar year.

**9.2.3. Vacancies.** In the event of a vacancy caused by a member of the Administrative Committee resigning, becoming disabled or otherwise becoming incapable of performing his or her duties, the President may appoint an interim member to the Administrative Committee, who shall serve until such time as the disability, other incapacity or reason for vacancy is removed, or a permanent successor is duly appointed by the Board.

**9.2.4. Chairperson and Administrative Committee Votes.** The chairperson for the Administrative Committee shall be a Standing AC Member, and shall be chosen by the Committee at the first Administrative Committee meeting of each new calendar year. The chairperson of the Operations Committee and a representative of the Administrator shall be non-voting, ex-officio members of the Administrative Committee; provided, however, in the event of a tie-vote, the chairperson of the Operations Committee shall provide the tie-breaking vote.

**9.2.5. Appointment of Member's Representative.** Additional persons may from time to time be appointed as a Member's Representative to the Administrative Committee for specific purposes in accordance with the provisions of ¶¶ 15.3 or 19.2.6, or § VII, ¶¶ 3.1 and 3.2, and shall be subject to any limitations contained therein and in the Operational Rules.

**9.2.6. Meetings.** The Administrative Committee shall meet upon the request of the Auditor or Administrator, at such times as are convenient for a Majority of the Voting AC Members, as reasonably necessary to carry out its duties under the SIA. Notice of such meetings shall be provided to all Administrative Committee members, each PURMS Officer and each member of the Operations Committee.

**9.2.7. Authority and Responsibilities.** Subject to ¶ 6.2.4, the Administrative Committee shall have such duties and authority as may be assigned in the ILA, the Operational Rules and the other Program Documents and as may be designated by the Board from time to time. (*See Op. Rules, § I, ¶ 9.4.3.*)

**9.2.8. Primary Jurisdiction and Delegation and Removal of Authority.** The authority and duties identified in Op. Rules, § I, ¶ 9.4.3 shall be deemed within the Administrative Committee's "Primary Jurisdiction" and issues relating to the subjects of such authority and duties shall be addressed by Members and Employees in the first instance to the Administrative Committee (*see ¶ 19.1*); provided however, that:

(a) Appeal Issues may at any time be addressed directly to the Board in the first instance as permitted in ¶ 19.1(a) or (b); and

(b) Issues otherwise subject to the Administrative Committee's Primary Jurisdiction shall always be subject to assignment to the Executive Committee by Majority Vote of the Board or to removal to the Board for decision as provided in ¶ 6.2.4. The Administrative Committee has the authority to delegate any portions of its duties not involving the exercise of judgment specifically committed to the Committee, including those contained in the Operational Rules, to the Administrator, and any such delegations shall be specifically set forth in the Administrator Service Agreement; provided however, that the Administrative Committee shall always be accountable to PURMS for the performance of all its responsibilities.

**9.2.9. Members' Right to Attend Meetings.** Except to the extent that the Administrative Committee shall be considering legal advice or issues regarding potential litigation or dispute with a Member, any Member shall be entitled to have a representative attend and participate in discussions of the Administrative Committee;

provided however, such representative shall not have the right to vote. The Member should provide the Administrator with reasonable written notice identifying such representative.

### **9.3. Operations Committee.**

**9.3.1. Composition and Duties of Committee Members.** PURMS shall have an Operations Committee composed of one Employee from each Member who has knowledge regarding the Member's insurance and risk management issues.

**9.3.2. Duties of Operations Committee.** The Operations Committee shall have such duties and authority as may be assigned in the SIA and the Operational Rules, subject to ¶ 6.2.4, and as may be designated by the Board from time to time.

**9.4. Special Purpose Committees.** The Board, by resolution duly adopted by Majority Vote, may designate from among its members or the members of the Operations or Administrative Committees, one or more Special Purpose Committees, each of which shall have such duration and shall exercise such authority as designated by the Board in such resolution; provided, however, that no such Committee shall be delegated the authority to make a Board Decision with respect to matters which require approval by a Voting Standard higher than a Majority Vote. (*See also* ¶ 6.2.12).

## **10. Administration of PURMS and its Risk Pools.**

### **10.1. PURMS Administrator.**

**10.1.1. Administrator's Duties – Administrator Service Agreement.** PURMS shall retain an Administrator for the operation and administration of PURMS and its Risk Pools. The Administrator shall have such duties and authority as provided in the SIA and the Operational Rules, as well as such other duties and authority as the Board and/or the Administrative Committee and the Administrator may agree upon, including those set forth in the Administrator Service Agreement ("ASA"), and the Administrator's Operational Duties described in Exhibit 1 to the ASA, as amended or re-executed from time to time. The ASA currently in effect was approved by the Board by [Unanimous Vote] [Super-Majority Vote]. Material modifications or additions to the current or any future ASA shall be approved by Majority Vote of the Board.

**10.1.2. Term of ASA – Selection of New Administrator.** The ASA shall be terminable at any time upon a Two-Thirds Vote of the Board and shall be terminable for cause by a Majority Vote, subject to a right to Cure. Any decision regarding selection of a [new] Administrator after termination of the current ASA shall be subject to Competitive Solicitation and shall be made by Majority Vote. In making this decision, the Board shall be guided by the applicable standards for selecting an Administrator set forth in the Operational Rules and by applicable law.

**10.1.3. Separation of Administrator and Broker.** The person or entity serving as the Administrator shall not also serve as Broker for PURMS or any of its Risk Pools.

**10.1.4. Bond on the Administrator.** To the extent available and economically feasible, as may be determined by the Board by Majority Vote, PURMS shall obtain a bond covering all persons in the Administrator's office having access to PURMS' money or involved in any way with the Investment Policy or Procedures or the Disbursement Procedures for its Risk Pools, as may be requested and approved by the Administrative Committee, in an amount established by the Administrative Committee ("Discretionary Bond"); provided, however, that PURMS shall always provide such bonds on the Administrator in such amounts as may be required by law, regardless of whether requested by the Administrative Committee ("Law-Required Bond"). PURMS shall purchase any such Discretionary or Law-Required bonds at its own expense. PURMS shall indemnify the Administrator for the loss of any security the Administrator may have pledged to secure any such bond, and against claims by the bonding company, under a transfer of right clause or otherwise, in accordance with and limited by the terms of ¶ 23.2.

## **10.2. PURMS' Broker.**

**10.2.1. Broker's Duties – Client Services Agreement.** PURMS shall retain a Broker to provide insurance brokerage services to PURMS and its Risk Pools. The Broker shall have such duties and authority as provided in the SIA and the Operational Rules, as well as such other duties and authority as the Board and/or the Administrative Committee and Broker may agree upon, including those set forth in the Client Services Agreement with the Broker ("CSA"), as amended or re-executed from time to time. The term of the CSA shall not be greater than one year unless a longer term is approved by Super-Majority Vote; provided however, that the Executive Committee may agree to a longer term for the Broker's Contract, up to three (3) years, provided there are no significant changes to the substance of the Contract. Any decision to remove or replace the Broker during the term of the Broker's Contract, however, shall require a Two-Thirds Vote.

**10.2.2. Term of CSA – Selection of New Broker.** The CSA shall be terminable at any time upon a Two-Thirds Vote of the Board and shall be terminable for cause by a Majority Vote. Any decision regarding selection of a new Broker after termination of the CSA with the current Broker shall be subject to Competitive Solicitation and shall be made by Majority Vote. In making this decision, the Board shall be guided by the applicable standards for selecting a Broker set forth in the Operational Rules and by applicable law.

**10.2.3. Separation of Broker and Administrator.** The person or entity serving as the Broker shall not also serve as Administrator for PURMS. Decisions regarding the initial execution or the renewal of a Broker's Contract shall be by Majority Vote.

**10.2.4. Other Services by Broker.** PURMS, on behalf of one or more of its Risk Pools, may from time to time purchase or obtain other services from or through the Broker, or affiliates of the Broker, which may be added to the Services provided under CSA with the Broker, subject to a negotiated additional fee.

**10.3. General Counsel.** PURMS shall retain an attorney or law firm to act as PURMS' General Counsel to provide general legal advice to PURMS and to handle such lawsuits,

including subrogation claims and Coverage Litigation, as may be assigned. General Counsel shall take its day-to-day directions regarding PURMS legal work from the Administrator, subject to superseding instructions from the Administrative Committee, Executive Committee or the Board. General Counsel may also represent Members individually, or their Employees, provided that there is no actual or reasonably probable conflict of interest with PURMS inherent in such representation.

## **11. PURMS Records and Board and Committee Meeting Minutes.**

**11.1. Official PURMS Records.** PURMS shall maintain complete and accurate records of its activities, including records of all business brought before the Board and its disposition. Without limiting the generality of the foregoing, the PURMS' Official Records shall include those records set forth in ¶ 11.1 of the Operational Rules, and any other Official PURMS Records the Board may establish from time to time by Majority Vote.

**11.2. Administrator shall be Custodian of PURMS' Records.** The Administrator shall be the custodian of all PURMS' Official Records of, including without limitation, records relating to decisions by the Board and those reflecting recommendations and decisions of the Executive, Operations and Administrative Committees. The records relating to PURMS business that must be maintained shall be identified in the ASA.

### **11.3. Right to Inspect Records.**

**11.3.1. Members' Right to Inspect and Copy Records.** Directors and members of the Administrative and Operations Committees shall have the right, upon reasonable written notice to the Administrator, to inspect and copy any and all Official Records of PURMS at the Administrator's office upon payment of a reasonable copying fee. Members may designate an Employee or professional representative for this purpose. Alternatively, the Administrator may make such records available electronically. The Administrator shall be required to permit and facilitate access to PURMS' records as required in the ILA or Operational Rules and as required by state or federal regulation.

**11.3.2. Records available to Public.** PURMS' Records shall be made available to the public in accordance with applicable law. Copies of PURMS' Official Records will be made available to the public in accordance with applicable law and posted on PURMS Website. Specific procedures for public access to such Records shall be set forth in the Operational Rules.

**11.3.3. Records of H&W Pool Health Plans.** Records generated or maintained by the Administrator relating to the Health Plans of the Members of the H&W Pool, and any protected health information relating thereto, shall be held by the Administrator and disclosed only in compliance with HIPAA and any other laws applying to the confidentiality thereof.

**11.4. Minutes of Board and Committee Meetings.** The Administrator shall ensure that all motions, their disposition and all the substance of other proceedings and discussions of the Board, and the Executive, Administrative and Operations Committees, are memorialized and converted into proposed Minutes, subject to the Confidentiality Considerations in ¶ 11.5 below and provisions regarding public access to records, as referenced in ¶ 11.3.2 above. The proposed

Minutes of Board and Committee Meetings shall be distributed, reviewed, approved and provided to the Members in accordance with ¶ 11.4 of the Operational Rules. Copies of approved Minutes shall be posted on PURMS' Website accessible to Members and the public and provided to the SRM.

**11.5. Confidentiality Considerations.** Discussions before the Board and PURMS Committees regarding subjects permitted by applicable Public Disclosure Laws to be held confidential shall be conducted in Executive Session and shall not be reflected in the published version of the Minutes. (*See* § I, ¶ 7.9). The confidentiality of such discussions and of any documents reflecting such discussions, and any privileges relating thereto, including the attorney-client and work product privileges, shall be maintained to the maximum extent permitted by law and circumstances.

## **12. PURMS' Financial Procedures, Auditor, Accounting and Financial Reporting Requirements.**

**12.1. Financial Procedures.** PURMS shall establish and maintain a Financial Procedures Manual which shall contain such documents relating to investment and disbursement of the monies held for the benefit of its Risk Pools as the Board shall designate by Majority Vote, or as directed by the Executive Committee, as applicable, but at minimum shall include:

- (a) Investment Policy;
- (b) Investment Procedures;
- (c) Disbursement Procedures;
- (d) Travel Policy;
- (e) Standing Letters of Authorization;
- (f) Funds Transfer Agreements and Transfer Profiles;
- (g) Bank signature and authorization documents; and
- (h) Facsimile signature documentation.

The Investment Policy, Investment Procedures and Disbursement Procedures may be amended by Majority Vote of the Board. All other documents relating to Financial Procedures may be modified by the Executive Committee, unless the Board provides otherwise by Majority Vote.

**12.2. Program Auditor.** PURMS shall have an Auditor who must be both a Standing Administrative Committee ("AC") Member, elected from the members of the Operations Committee, and a Financial Officer of a Member. The Auditor shall be approved and may be removed by the Board by Majority Vote.

**12.2.1. Auditor's Authority, Responsibilities and Duties.** The Auditor shall have primary responsibility for supervising the investment, management, transfer and disbursement of the Assets of PURMS and its Risk Pools. The Auditor has the authority to delegate any portion of the Auditor's duties to the Administrator, as provided in ¶ 12.2.3 below. The Auditor shall report directly to the Board, but shall be subject to interim direction by the Executive Committee. The Auditor shall have such other duties as set forth in the ILA or Operational Rules or assigned by the Board.

(a) **Investments and Depositary Institutions.** Subject to the authority of the Board, the Auditor shall be responsible for the deposit or investment in PURMS'

name of all monies held by PURMS in such financial institutions or other investments as are in accordance with PURMS' Investment Policy and applicable laws. The Auditor shall have authority to perform all acts necessary to permit PURMS' Assets to be invested at the highest return consistent with prudence and the terms of PURMS' Investment Policy and PURMS' Investment Procedures.

**(b) Financial Procedures.** The Auditor shall be responsible for and shall supervise implementation and maintenance of PURMS' Financial Procedures, as reflected in the Financial Procedures Manual.

**(c) Responsibility for Faithful Performance.** The Auditor shall faithfully perform his or her duties hereunder, and under applicable law, and shall faithfully account for all monies of PURMS and its Risk Pools, subject to the indemnification of the Auditor in ILA ¶ 23.1.

**12.2.2. Deputy Auditor.** PURMS shall also designate [and maintain] a Deputy Auditor, who shall have had experience of at least two years' service on the Operations Committee. The Deputy Auditor shall have all of the same authority and duties as the Auditor when acting in lieu of the Auditor or on the occasions and during any time periods that the Auditor is unavailable. The Deputy Auditor need not be a Standing AC Member (as required of the Auditor under ILA ¶ 12.2). The Deputy Auditor shall be appointed by Majority Vote of the Board.

**12.2.3. Delegation of Specified Financial Duties to Administrator – Auditor's Continuing Responsibility.** Except as provided otherwise in the ILA or Operational Rules, the Auditor has the authority to delegate any portion of the Auditors duties to the Administrator, provided such delegations shall be specifically set forth in the Administrator Service Agreement. Notwithstanding any such delegation under the foregoing sentence, the Auditor shall always be and remain accountable to PURMS for the faithful performance of all of the Auditor's financial duties and responsibilities hereunder and for accounting for the Assets of PURMS held for the benefit of its Risk Pools.

**12.2.4. Reporting to Board and Members.** At the request of the Executive Committee or Board, the Auditor shall provide a report of his or her actions as Auditor. To the extent such actions have been assigned to or otherwise performed by the Administrator, such reporting shall be made by the Administrator.

**12.2.5. Bond on Auditor's Faithful Performance.** PURMS shall obtain a bond on the Auditor, consistent with RCW 48.62.111, covering as much as reasonably practicable risks associated with the Auditor's discharge of its duties and responsibilities in connection with Financial Activities for PURMS and its Risk Pools under the terms of this Interlocal Agreement and Operational Rules, and covering the faithful performance of the Auditor's duties ("Auditor's Bond"). PURMS shall purchase any such bond at its own expense. PURMS shall indemnify the Auditor for the loss of any security the Auditor may have pledged to secure any such bond, and against claims by the bonding company, under a transfer of rights clause or otherwise, in accordance with and limited by the terms of ¶ 23.1. The Executive Committee shall have the authority to approve renewals of the bond; provided that the Board shall approve any significant changes to the scope of any such bond. A single bond may cover the Auditor, PURMS Officers,

Committees and/or Administrator, provided the terms meet the bond provisions of this ILA.

### **12.3. PURMS' Investment Policy and Procedures.**

**12.3.1. Investment Policy.** PURMS shall have an Investment Policy, which shall be established, and may be amended from time-to-time, by a Two-Thirds Vote of the Board; provided, however, that such Investment Policy shall be consistent with the requirements of Washington law. (*See also* Op. Rules, § I, ¶ 12.2)

**12.3.2. Investment Procedures.** PURMS shall also maintain written Investment Procedures which shall govern investment, management and transfer of the Assets held on behalf of the Risk Pools. The Investment Procedures shall require and ensure, among other things, that:

- (a) Only two (2) designated management persons at the Administrator's office may initiate a wire transfer or funds transfer request to PURMS' Depository Bank;
- (b) [One (1)] [two (2)] Standing AC Member(s) shall receive a "call back" from the Bank and shall be required to approve the transfer in writing, including by email; and
- (c) These and any other instructions approved by the Executive Committee shall be included in a Standing Letter of Authorization maintained by PURMS with the Depository Bank.

### **12.4. PURMS' Disbursement Procedures.**

**12.4.1. Generally.** All payments issued by PURMS for or on behalf of any of the Risk Pools shall be in accordance with the requirements of the Disbursement Procedures, adopted by the Board by [Super-Majority] [Two-Thirds] Vote (*see* ¶ 5.4.1(d) above). PURMS Disbursement Procedures may be augmented or amended by Majority-Vote, provided such amendments are consistent with the terms of this ¶ 12.4.

**12.4.2. Disbursements for Liability and Property Pools.** The ASA shall require the Administrator to adhere to the requirements of the Disbursement Procedures for paying Liability and Property Pool Operational Costs, including obtaining the advance documented approval of any two (2) Standing Administrative Committee Members, one (1) of which may be the Auditor, by email or through procedures available on PURMS' Website, before issuing checks on funds of the Liability and Property Pools for any purpose.

**12.4.3. Disbursements for H&W Pool and Members' Health Plans.** The ASA shall also require the Administrator to adhere to the requirements of the Disbursement Procedures requiring two (2) Administrative Committee members' written pre-approval before issuing checks on funds of the H&W Pool for any purpose except payment of H&W Claims. Because of the volume of payments issued by the Administrator on a daily basis to pay for H&W Claims, it is not practical to require this pre-approval procedure for such payments. In lieu thereof, the ASA shall require the Administrator to establish and maintain a system of internal and system controls, computer security and separations of

financial duties, satisfactory to the Auditor, which maximizes security and provides for the proper and accurate disbursement of H&W Pool funds for payment of H&W Claims.

**12.4.4. Executive Committee Review of Financial Procedures.** It shall be the responsibility of the Executive Committee to review and make whatever adjustments it deems appropriate in the procedures relating to the Financial Activities of PURMS to effectuate the terms of PURMS' Financial Procedures; provided, any significant changes in the Disbursement Procedures shall be subject to approval by the Board by \_\_\_\_ Vote.

**12.5. Bond for PURMS' Committees.** PURMS may obtain a bond on the Executive and Administrative Committees covering any Financial Activities in which they may engage, and shall obtain such bond as required by law. PURMS shall purchase any such bond at its own expense and shall indemnify the Committee members for the loss of any security pledged or claims by the bonding company, in accordance with and limited by the terms of ¶ 23.1.

**12.6. Accounting Guidelines, Financial Statements and Fiscal Year.** The Auditor shall be responsible for establishing and implementing accounting procedures that accurately record the Fund's financial activities in accordance with applicable law and generally accepted accounting principles for preparing the Fund's Financial Statements in compliance with same. The Auditor may delegate some or all of the ministerial aspects of such accounting procedures to the Administrator, but the Auditor shall remain ultimately accountable for the accuracy and regulatory compliance of the Fund's accounting records. The Fund's fiscal year and the fiscal year of each of its Risk Pools shall be the calendar year, except as may otherwise be provided for the H&W Pool pursuant to § XIV, ¶ 5. (See Op. Rules, § I, ¶ 12.6)

**12.7. PURMS' Check Activity Reports.** (See Op. Rules, § I, ¶ 12.7)

**12.8. Financial Reporting Requirements.** (See Op. Rules, § I, ¶ 12.8)

**12.9. Separate Accountings of Risk Pools' Income and Expenses.** PURMS shall separately account for the income and expenses of PURMS and each of PURMS' Risk Pools, although such information may be presented on a single financial statement prepared at PURMS' direction, or as otherwise may be required by the State Auditor.

**13. PURMS and Risk Pool Financing and Assessment Methodology.**

**NOTE:** The Program Funding Amendments prepared to establish PURMS compliance with funding requirements in WAC 82-60-03001 and WAC82-65-040 required the rewrite of paragraph 13 of the previous Interlocal Agreement. The Program Funding Amendments for the Liability/Property Pools and the H&W Pool, including still relevant portions of previous ILA ¶ 13 are set forth separately, along with their own separate Definitions, for purposes of easier review and consideration.

**14. PURMS' Excess and Stop-Loss Coverages.**

**14.1. Mandatory Primary Excess and Other Excess Coverages for Liability and Property Pools.**

#### **14.1.1. Minimum Excess Coverage.**

(a) **Liability Pool.** On behalf of the Liability Pool and its Members, PURMS shall purchase Primary Liability Excess Coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000.00), with an Attachment Point at PURMS' Liability Coverage Limit, from whatever Excess Carriers the Board shall determine.

(b) **Property Pool.** On behalf of the Property Pool and its Members, PURMS shall purchase Primary Property Excess Coverage in an amount determined by the Board, in its discretion, with an Attachment Point at PURMS' Property Coverage Limit, from whatever Excess Carriers the Board shall determine; provided, however, in determining the amount of Primary Excess Property Coverage to acquire, the Board shall give consideration to, but shall not be bound by, the total Insured Value of the largest Member of the Property Pool based on the total value of its Insured Property.

**14.1.2. Mandatory Member Participation and Payment of Premium Assessments.** All Members of the Liability and Property Pools shall participate in the Excess Insurance the Board has designated as PURMS' Primary Excess Coverage for their respective Risk Pools and shall pay their Assessment Shares of any Premium Assessments levied to pay the premiums for such Excess Coverage, as provided in ¶ 13.5.2; provided, however, that a Member of the Property Pool whose Insured Property listed in the Schedule of Values has a total Insured Value of less than the amount of the Property Coverage Limit shall not be required to participate in any Excess Property Coverage or to pay its Assessment Share of any Property Premium Assessments.

**14.1.3. Scope of Excess Coverage – Minimizing Coverage Differences.** In acquiring PURMS' Primary Excess Coverages, the Board shall make a reasonable attempt, given the coverages available and the costs thereof, to minimize the differences in the scope and nature of the coverage provided by the Primary Excess Coverage as compared to the Coverage provided under the SIA; provided, however, the Board shall have the reasonable discretion to omit Excess Coverage for any risks, including risks for which Coverage is provided under the SIA, or to acquire Excess Coverage that is broader for particular risks than the Coverage provided by the SIA.

**14.1.4. Multiple-Layer Primary Excess Coverage.** Subject to the requirements of ¶ 14.1.1 above, the Board may, by Two-Thirds Vote, acquire Primary Excess Coverage consisting of one or more Layers of Coverage having different coverage limits, from either the same or different Excess Carriers; provided, however, that every Member of the Risk Pool acquiring multiple-layer Primary Excess Coverage shall participate in and pay its Assessment Share of the premium for at least the first Layer of Coverage excess of PURMS' applicable Coverage Limit. The Members participating in each Layer of Coverage above the first Layer shall be treated as a separate Subgroup for purposes of determining Members' Assessment Shares of the Excess Premium attributable to their Layer, as provided in Op. Rules, § I, ¶ 16.1(E). Members that fail to timely notify the Administrator which Layer of Coverage they wish to participate in shall be deemed to have elected to participate only in the first Layer of Coverage excess of PURMS' Coverage Limit. By Majority Vote, the Board may apply any of the provisions in ¶ 16

and Op. Rules, § I, ¶ 16.1 governing Subgroups to the acquisition of Primary Excess Coverage in layers under this ¶ 14.1.2.

**14.1.5. Establishment of Different Coverage Limits for Specific Types of PURMS Coverages.** By Majority Vote, the Board may decrease prospectively the amount of any Coverage Limit otherwise applicable for specific types of Liability or Property Coverage offered by PURMS; provided that comparable Excess Coverage is acquired that attaches and becomes effective at the lower Coverage Limit for such specific types of coverage. By Super-Majority Vote, the Board may increase prospectively the amount of any Coverage Limit otherwise applicable for specific types of Liability or Property Coverage, provided that comparable Excess Coverage is acquired that attaches and becomes effective at such higher Coverage Limit for such specific types of coverage.

**14.2. Supplemental Excess Coverage for Liability and Property Pools.**

**14.2.1. Stop-Loss Insurance.** PURMS may by Majority Vote purchase Liability and/or Property Stop-Loss Insurance in whatever amount and from whatever Excess Carrier the Board decides, unless the Board determines that the cost of such insurance is unreasonably high and substantially exceeds its value to PURMS. All Members of the Risk Pool(s) benefiting therefrom shall be required to pay their Assessment Shares of the premium for such Stop-Loss Insurance which shall be calculated under the applicable Premium Assessment Formula.

**14.2.2. Compulsory Participation in Other Excess Insurance.** By Super-Majority Vote, the Board may direct PURMS to purchase any other Supplemental Excess Coverage which the Board determines to be reasonably necessary for the protection of the Members of the Liability and/or Property Pool and/or their Employees. All Members of the Risk Pool(s) benefiting therefrom shall be required to pay their Assessment Shares of the Premium Assessments levied to pay the premiums for such Excess Insurance which shall be calculated under the applicable Premium Assessment Formula.

**14.3. Mandatory Stop-Loss Insurance for H&W Pool.** On behalf of the H&W Pool and its Members, PURMS shall purchase Stop-Loss Insurance with H&W Pool Aggregate and Individual Stop Loss Points acceptable to the Board. In acquiring such Stop Loss Insurance, the Board shall make a reasonable attempt, given the coverages available and the costs thereof, to ensure such Stop Loss Insurance is following form as much as reasonably possible to the H&W Coverage set forth in each and all H&W Pool Members' Coverage Booklets as of the effective date of such Stop Loss Policy. Members of the H&W Pool shall pay the Stop-Loss Insurance Premium therefore as a Shared H&W Cost as a part of their respective Monthly H&W Assessments, as provided in § XV, ¶ 2.

**14.4. Allocation of Expenses Relating to PURMS Excess Insurance and Stop Loss Insurance.** PURMS shall pay and allocate to the appropriate Risk Pool all Administrative Expenses arising from or incurred in connection with any Excess or Stop-Loss Insurance purchased by PURMS under ¶¶ 14.1, 14.2, and 14.3. PURMS shall similarly pay all expenses and legal fees incurred in connection with Coverage Litigation with any Excess or Stop-Loss Carrier, as provided in ¶ 15.7 below, and allocate such costs and fees to the Risk Pool benefiting therefrom.

**14.5. Board Authority to Provide Coverage for Gaps Relating to Primary Excess Insurance.** By Super-Majority Vote, the Board may authorize the Liability or Property Pool to provide Coverage, either prospectively, or retroactively with respect to Loss Events that have already taken place, for all or a portion of any gap between the Risk Pool's Coverage Limit and the Attachment Point of the coverage provided by a Primary Excess Policy, or any "gap" resulting from a Primary Excess Policy providing the same type of coverage but narrower in scope than that provided under the SIA; provided, however, that this authority shall not be used to provide Coverage through PURMS for a Claim that is in excess of the applicable Coverage Limit to the extent it is for a type of Claim that is excluded under the applicable Primary Excess Policy; and provided further, that any Member that voted against providing the additional Coverage and that gives notice of its intent to withdraw from the Risk Pool under ¶ 20.1 within 30 days of the Board's vote to adopt the Coverage shall not be entitled to such Coverage and shall be exempt through the end of the calendar year of its withdrawal from paying its Assessment Share of the portion of any General Assessment relating to Coverage Payments, Defense Costs or Property Claim Costs PURMS pays for Covered Claims arising from the additional Coverage, and shall remain exempt therefrom as a Former Member.

**14.6. Individual Member Insurance.** Nothing contained herein shall be construed to limit the right of any Member, individually or in conjunction with any other entity, including other Members of PURMS, to purchase insurance for the benefit of itself or its own Employees; provided, however, that PURMS and its Administrator shall have no responsibilities whatsoever with respect to such insurance including procuring such insurance, submitting claims to the insurer, or otherwise administering such insurance policy, and PURMS specifically shall have no obligations with respect to any attorneys' fees and costs incurred in connection with any disputes regarding such insurance.

**15. Coverage Litigation with Excess or Stop Loss Carriers.**

**15.1. Right to Invoke PURMS' Coverage Litigation Obligations.** A Member of any Risk Pool may request PURMS to pursue Coverage Litigation against one or more Excess or Stop Loss Carriers if the Incurred Liability for a Covered Liability Claim, or the Property Loss Amount for a Covered Property Claim, is likely, or proven, to be in excess of the applicable Coverage Limit or Coverage otherwise provided by PURMS, or where there is a Colorable Dispute, as determined by the Administrative Committee; provided, however, that the Board for the Risk Pool involved must approve the institution of the Coverage Litigation by a Majority Vote. An Employee may request PURMS to pursue Coverage Litigation under the circumstances described in the foregoing sentence, but only with respect to Liability Claims asserted solely against such Employee, or with respect to an H&W Claim of such Employee or his/her Dependent, and then, only through the Member and through a Representative appointed by the Member; provided, however, that the Board for H&W Pool must approve the institution of the Coverage Litigation by a Majority Vote. Insured Agents and Insured Volunteers that have been named as Additional Insureds under an Excess Liability Policy shall have no rights under this ¶ 15. Former Members shall have only such rights under this ¶ 15 as are provided in ¶ 20.5.

**15.2. Authority of Board and Committees.** The Administrative Committee shall initially decide any issues relating to Coverage Litigation (see Op. Rules, § I, ¶ 9.4.3(f)), subject to the involvement of the Executive Committee and the Board pursuant to ¶¶ 9.2(b) and 6.2.12, respectively.

**15.3. Member Representative.** The Member or Members whose Claims are involved in the Coverage Litigation shall have the right to appoint a Representative to the Administrative Committee with the rights and restrictions as provided in § VII, ¶¶ 3.1 and 3.2.

**15.4. Legal Counsel.** The Administrative Committee shall select legal counsel, which may be PURMS' General Counsel or other attorneys, and shall determine generally what actions counsel shall take. Counsel shall represent PURMS' interests and the interests of the Members that have claims involved in the Coverage Litigation.

**15.5. Prosecution of Lawsuit.** Any Members and/or Employees (and Former Members, when applicable under ¶ 20.5) with claims involved in the Coverage Litigation shall be deemed to have assigned to PURMS whatever interests they might have under the Excess or Stop Loss Policy for coverage for the Covered Claim. PURMS, through the Administrative Committee, shall prosecute any Coverage Litigation on behalf of such Members and/or Employees and distribute the Recovery Proceeds resulting from the Coverage Litigation to the Members and/or Employees involved according to ¶ 15.9 below. Notwithstanding the foregoing, if its claim is independent and severable from those of any other Members involved in the Coverage Litigation, as determined in the discretion of the Administrative Committee, any Member, or Member and its Employee, may prosecute its own suit against the Excess or Stop Loss Carrier to recover any shortfall after exhaustion of Coverage provided under the SIA by assuming its own legal expenses and waiving any rights to representation or payment of legal costs by PURMS hereunder.

**15.6. Joint Prosecution of Coverage Litigation Under Reservation of Rights.**

[RESERVED]

**15.7. Legal Expenses.** The Risk Pool involved shall pay for all Coverage Litigation Costs PURMS incurs in connection with any Coverage Litigation regarding a Colorable Dispute that the Board determines to pursue against any of PURMS' Excess or Stop Loss Carriers, including, but not limited to, all attorneys' fees and expenses arising from such Coverage Litigation; provided, however, after initiating Coverage Litigation, the Board, by Two-Thirds Vote, may determine that a Member's Coverage dispute with an Excess Carrier has ceased to be reasonable, in which event the Member seeking coverage shall be responsible for any costs and legal fees thereafter incurred in connection with any Coverage Litigation; and provided further, that the Risk Pool involved shall reimburse such Member's reasonable costs and attorney's fees thereafter incurred in the Coverage Litigation only as follows: if the Member obtains a judgment or settles for an amount greater than 50% of the amount of its Claim (which Claim amount shall be determined by the Administrative Committee after consultation with the Member at the time the Risk Pool ceased financing the Coverage Litigation), then the Risk Pool will reimburse at 100%; if the Member does not substantially prevail at trial or settles for less than 50% of the amount of such Claim, then the Risk Pool shall have no reimbursement obligation.

**15.8. Settlement of Coverage Litigation.** Subject to ¶¶ 6.2.11 and 6.2.12, the Administrative Committee shall have the authority provided and follow the procedures set forth in § VII, ¶ 6.1 in connection with settlement of any and all claims involved in the Coverage Litigation.

**15.9. Payment of Recovery Proceeds.** The Recovery Proceeds received by PURMS on behalf of the Members and/or Employees involved in the Coverage Litigation shall be paid to or on behalf of such Members and/or Employees to the extent of each Member's or Employee's uncompensated Loss Amount; provided, however, that PURMS may retain any Recovery Proceeds in excess of the total of all such Members' and/or Employees' uncompensated Loss Amounts as reimbursement toward its Coverage Litigation Costs. If the Net Recovery is not sufficient to pay fully the uncompensated Loss Amounts of all the Members and Employees with claims involved in the Coverage Litigation, it shall be paid to each Member and/or Employee in the ratio of each's Loss Amount divided by the total Loss Amounts of all Members and/or Employees. With respect to Coverage Litigation relating to Liability Claims, the amounts PURMS incurred in costs and legal fees in pursuing the Coverage Litigation, to the extent they are not reimbursed to PURMS out of the Coverage Litigation, shall be allocated to the Historical Claims Experience of the Members involved in accordance with § VIII, ¶ 4.2.1.

**16. Subgroups and the Purchase of Additional Excess or Stop-Loss Insurance or Different Liability Insurance.** In addition to the Primary Excess and Stop Loss Coverages PURMS purchases on behalf of the Members of its various Risk Pools as required by ¶ 14.1 and ¶ 14.3, and any Supplemental Excess Coverages the Board determines are reasonably necessary for PURMS to purchase on behalf of such Members as permitted by ¶ 14.2, any two or more Members of a Risk Pool may invoke these "Subgroup Procedures," in accordance with the Operational Rules, by which less than all Members of a Risk Pool may jointly purchase insurance through PURMS with coverages in addition to those acquired by PURMS under ¶¶ 14.1 and 14.3. (The procedures and rules governing the formation and operation of Subgroups are set forth in detail in Op. Rules, § I, ¶ 16.)

**17. Risk Management Program.** This paragraph applies to all of PURMS' Risk Pools.

**17.1. Authority and Adoption of Programs.** PURMS Board shall establish and maintain a written Risk Management Program for the Liability Pool and the Property Pool. Subject to the Board's authority under ¶ 6.2.11, the Administrative Committee shall have the primary responsibility for implementation of the Programs. The Liability Risk Management Program shall be designed to reduce the risks of losses from claims against Members (and/or their Employees) and the legal exposure of PURMS through a program that may include Member and Employee education, inspections of Members' operations and correction of risk problems discovered, review and supplementation of Members' policies and procedures regarding subjects appropriately the focus of risk management by PURMS, review and consultation with Members regarding individual Member's claims experience and remedying the causes of patterns of claims, institution of more effective claims handling practices, and the implementation of certain Loss Control Guidelines, among other things. The Property Risk Management Program shall be designed to minimize the risks of Property Losses. Any risk management programs relating to the H&W Pool shall be the responsibility of the respective Members viv-a-vis their own Employees. The written Liability and Property Risk Management Programs formulated by the Administrative Committee shall be adopted by the Board by a Two-Thirds Vote. Any Risk Management Program duly adopted by the Board pursuant to this paragraph by Two-Thirds Vote shall be binding upon all Members and Employees, and Members who violate any of the mandates of such Program shall be subject to the procedures and Board Remedies set forth in ¶ 17.4 herein.

**17.2. Formulation and Adoption of Loss Control Guidelines.** In connection with the initial preparation of PURMS' Risk Management Programs, and thereafter, upon request of the Board or the Executive Committee, or from time to time upon its own initiative, the Administrative Committee may formulate Loss Control Guidelines which, if duly adopted by the Board by Two-Thirds Vote, shall be binding upon all Members. The Loss Control Guidelines adopted by the Board shall be deemed to establish the standards for certain aspects of Members' plant and/or business operations and shall be designed to reduce the risks that particular types of losses will occur, or to reduce the severity of such losses, or to increase the likelihood of successful Defense of Claims arising from such losses. In formulating and adopting Loss Control Guidelines, the Administrative Committee and Board shall be guided by the following principles:

- (a) Complying with PURMS' obligations regarding its Risk Management Program under State law;
- (b) Balancing fairly the competing interests of requiring fairness to all Risk Pool Members by ensuring that no Member's operations poses an unreasonable risk to PURMS in comparison to the operations of other Members of the Risk Pool, versus ensuring that PURMS does not unduly intrude on its Members' prerogatives to control their own business affairs; and
- (c) Ensuring that any standards set are reasonable to apply to all Members of the Risk Pool and that all such Members can comply with reasonable effort and without unreasonable expense, given the potential magnitude of the exposure presented by the Risk which is the subject of the Guideline.

**17.3. Members' Actions Constituting Violation of Risk Management Program.** Members of any Risk Pool shall be subject to the Board Remedies that may be imposed by a Two-Thirds Vote as set forth in ¶ 17.4 for engaging in the following actions or failures to act which cause or fail to remedy Unreasonable Risks:

- (a) Unreasonably failing to remedy any Unreasonable Risk identified in a Member's plant and/or operations as result of a loss control review by PURMS, an agent of PURMS or PURMS' Excess Carriers before expiration of the Compliance Date identified in the Remediation Letter sent to the Member by the Executive Committee;
- (b) Unreasonably failing to correct any violation by a Member of any Loss Control Guideline before expiration of the Compliance Date identified in the Remediation Letter sent to the Member by the Executive Committee;
- (c) Unreasonably failing to correct any pattern of acts or omissions that a Member has engaged in that has previously caused at least one similar Loss Event before expiration of the Compliance Date identified in the Remediation Letter sent to the Member by the Executive Committee; or
- (d) For any other reason recommended by the Administrative Committee or Executive Committee and approved by the Board by Super-Majority Vote.

#### **17.4. Compliance Procedures and Board Remedies for Violation of Risk Management Program.**

**17.4.1. Consultation with Member/Issuance of Remediation Letter.** Any time the Administrative Committee determines that some aspect of a Member's plant or operations presents an Unreasonable Risk, the Committee shall so advise the Member in writing, stating the date by which such Unreasonable Risk should be corrected or remedied. If, after such written notice from the Administrative Committee, the Member fails to correct or remedy the Unreasonable Risk within the time stated, the Administrative Committee shall meet with the Member to determine why such Unreasonable Risk continues to exist and to jointly explore with the Member methods for resolving the same. After such meeting, if the Administrative Committee has not reached agreement with the Member satisfactory to the Committee regarding resolution of the Unreasonable Risk, the Committee may apply to the Executive Committee to authorize a Remediation Letter to be prepared and sent by or on behalf of the Executive Committee to the Member. At minimum, the Remediation Letter shall: identify the nature of the violation, describe the correction or remedy sought by PURMS, and state the Compliance Date by which such correction or remedy should occur for the Member to avoid possible imposition of Board Remedies under ¶ 17.4.2 herein.

**17.4.2. Effect of Issuance of Remediation Letter and Board Remedies for Violation.** The Executive Committee's issuance of a Remediation Letter and the Member's failure to correct or remedy the Unreasonable Risk identified in the Remediation Letter by the Compliance Date shall be preconditions to application of the Board Remedies provided for hereunder. At any time after a Member has received a Remediation Letter and the Compliance Date has expired without correction or remediation of the Unreasonable Risk, the Board, in its sole discretion, and at its own initiative or upon application by the Administrative Committee or Executive Committee, may by Two-Thirds Vote:

(a) Deny Coverage from PURMS for any Claim based on a Loss Event that arises out of the circumstances constituting the Member's violation any time on or after the date the Board votes to impose this Board Remedy, as determined by the Board; or

(b) Terminate such Member's membership in the Risk Pool, or in PURMS, effective at the end of the calendar year in which the Board votes to impose this Board Remedy, in which event the terminated Member thereafter shall have only such rights and duties as are provided for a Former Member in ¶ 20.

Notwithstanding any other provisions in this ¶ 17, each Member shall retain ultimate control of its own loss control efforts.

#### **18. New Members.**

**18.1. Admission.** Any Local Governmental Entity may be admitted as a New Member of one or more of PURMS' Risk Pools under the provisions set forth in the Operational Rules upon approval by the full Board by Super-Majority Vote. And each New Member shall become a

signatory to the Interlocal Agreement and all subsequent amendments to the ILA and other Program Documents.

## **18.2. Conditions to be Satisfied by New Member.**

**18.2.1. Conditions Applicable to All Risk Pools.** Each New Member shall provide the Administrator with an Authorizing Resolution, shall become a signatory to the Interlocal Agreement, shall be bound by the provisions of the SIA and the Operational Rules, and shall abide by any written conditions for the New Member's admission imposed by the Board. The terms of the Board's written approval of the New Member shall be deemed accepted, effective and binding upon the New Member by such Member's act of joining the H&W Pool and participating in and accepting the benefits thereunder. Furthermore, such terms are binding on the New Member even if otherwise contrary to certain provisions of the SIA.

### **18.2.2. Additional Conditions to Become New Member of H&W Pool.**

(a) **Information To Be Provided By New Member Applicant.** In connection with its application for admission, the proposed New Member of the H&W Pool shall be required to provide to the Administrative Committee information sufficient for the Committee to calculate the amount of the Initial Deposit, in accordance with ¶¶ 18.2.2.2, herein, that must be made by the New Member to become a Member of the H&W Pool, together with any other information requested by the Administrative Committee, including the information necessary to preliminarily determine the results of application of the H&W General Assessment Formula and Member Stop Loss Points to the New Member in connection with the Committee's review of the New Member's application.

(b) **New Member's Initial Deposit.** As a condition of Membership in the H&W Pool, the proposed New Member shall pay to the H&W Pool the amount of its Initial Deposit, as determined by the Administrative Committee, prior to the date H&W Coverage is first provided to the New Member. In determining the amount of the Initial Deposit for a New Member, the Administrative Committee shall be guided by the definition of "Initial Deposit" in § II, herein, but the Committee shall have the discretion to increase or reduce the amount derived therefrom, subject to Board approval, based on the Committee's evaluation of the H&W Claims Experience likely to arise from the New Member in the first three (3) months after the date the New Member proposes to join the H&W Pool. The New Member's Initial Deposit shall be treated the same as Initial Members' Initial Deposits for all purposes, including the Withdrawal of the New Member from the H&W Pool and upon Dissolution of the H&W Pool.

(c) **Effect of Admission of New Member, if any, Re Stop-Loss Insurance and Detrimental Impact on Existing Members.** If the proposed effective date for the New Member joining the H&W Pool is any time other than concurrent with commencement of the Stop Loss Policy Year, in determining appropriate conditions to propose to the Board for the New Member to join the H&W Pool, the Administrative Committee shall consider what effect, if any, admission of the New Member at that time would have on the Stop Loss Insurance in place, and whether

and to what extent such admission would likely otherwise have a detrimental (or beneficial) financial impact on the existing Members of the H&W Pool. In considering such issues, the Administrative Committee shall be guided by the general policy that, if reasonable under the circumstances, the New Member should bear some or all of any increased costs arising from the Stop Loss Insurance as a result of the New Member joining the H&W Pool. To the extent there is any increase in the Stop Loss Rates for extending coverage to the New Member, or other adverse financial impact on existing H&W Pool Members, and to the extent such increase as it effects all existing Members is not offset by conditions set by the Board for admission of the New Member, all existing Members, including the New Member, shall share such increase based on the number of their respective Eligible Employees if it is a Per Capita Cost increase, and if otherwise, it shall be deemed a Shared H&W Cost under the H&W General Assessment Formula. The respective Members, and not the H&W Pool, shall be responsible for resolving any Stop Loss Rate increase issues that may arise with their respective Eligible Employees as a result of such increase.

**(d) Recalculation of Member Stop Loss Points if Stop Loss Carrier Increases H&W Pool's Stop Loss Points.** If, as a result of admitting the New Member, the Stop Loss Carrier imposes an increase in one or both of the H&W Pool's Stop Loss Points for extending coverage to the New Member, Members' corresponding Stop Loss Points shall be recalculated and the new Stop Loss Points shall become effective on the same date as the increases in the H&W Pools Stop Loss Points imposed by the Stop Loss Carrier become effective. Thereafter, Members' H&W Claims payments accrued toward their respective Stop Loss Points shall be accounted for and applied as if the increased Member Stop Loss Points were in effect at the beginning of the Coverage Year; provided, however, that no retrospective recalculations shall be made with respect to how H&W Claims already paid prior to the effective date of the increased Stop Loss Points would have been accounted for (i.e., whether they would have been paid as Direct H&W Claims Cost vs. Shared H&W Costs) under the higher Stop Loss Points; provided further, that if a Member has already previously reached a Stop Loss Point in the Coverage Year, but has not accrued a sufficient amount of H&W Claims Costs to satisfy the new, higher Stop Loss Point, such Member must pay the additional H&W Claims Costs necessary to reach the higher Stop Loss Point before its H&W Claims will again be treated as Shared H&W Costs; and provided further, any resulting decrease in Member Stop Loss Points shall be effective when the corresponding decreases in the H&W Pools' Stop Loss Points become effective, but there shall be no retrospective recalculations regarding how Members' H&W Claims would have been treated if the lower Stop Loss Points had been effective since the beginning of the Coverage Year.

**(e) Operation of Stop Loss Points for New Member Joining During Coverage Year.** A new H&W Member shall start with zero H&W Claims Costs accrued toward its Stop Loss Points on its Date of Membership.

**18.3. New Member Trial Period.** Because it is not possible at the time of admission of a New Member to anticipate all of the ramifications admission of the New Member may have on the existing Members of the Risk Pool or on the fairness of applying the Assessment Formulas provided for herein, each Risk Pool shall have the

right, by Unanimous Vote of its Board, excluding the vote of the New Member, to terminate the New Member's Membership in the Risk Pool without cause, effective at the end of the Coverage Year in which the notice thereof was given; provided that such written notice of termination shall be given at least eleven (11) months prior to the end of the Coverage Year in which the termination is to be effective; and provided further, that such termination shall not be permitted after the end of the sixth (6<sup>th</sup>) year from the New Member's Date of Membership. After the effective date of the termination, the New Member shall have all of the rights and obligations of a Former Member under ¶ 18 herein.

**18.4. Assessments.** Upon admission to one or more of PURMS' Risk Pools, each New Member shall be responsible for its Assessment Share of all Assessments levied subsequent to the effective date of the New Member's admission to the Risk Pool; provided, however, that for a period of six (6) years following a New Member's admission to the Liability Pool, the New Member's Assessment Share of any Liability General Assessment to replenish the Actual Risk Pool Balance shall not exceed its Assessment Share of all amounts paid by PURMS for Coverage Payments, Defense Costs and Administrative Expenses attributable to Post-Admission Loss Events; and provided, further, that all New Members of any Risk Pool shall pay their Assessment Shares of any Special Purpose Assessments levied in their Risk Pool subsequent to the effective date of their admission.

**18.5. Readmission of Former Member.** Any Former Member which applies for re-admission to a Risk Pool shall be treated as a New Member to that Risk Pool and subject to this ¶ 18.

**19. Appeal Procedures and Administrative Committee's Primary Jurisdiction.**

**19.1. Primary Jurisdiction of Administrative Committee and Exceptions Thereto.** Subject to ¶ 6.2.11, the Administrative Committee shall have Primary Jurisdiction over all issues relating to the subjects identified as constituting the Administrative Committee's authority and responsibilities in Op. Rules, § I, ¶ 9.4.3, regardless of whether the Administrative Committee has affirmatively made any decision or taken any action with respect thereto. (See also, ¶ 9.4.4). Any Members wishing to raise any issues for decision with respect to such subjects shall address them in the first instance to the Administrative Committee by submitting them in writing to the Administrator; provided, however, that issues otherwise subject to the Administrative Committee's Primary Jurisdiction may be addressed directly to the Board for decision in the first instance:

- (a) As permitted by ¶ 7.6 in connection with General Meetings; or
- (b) As one of the stated purposes for calling a Special Meeting under ¶ 7.2 or an Emergency Meeting under ¶ 7.3; provided, however, that the Administrator determines from a telephone or other poll of the Directors that, out of a Super-Majority of Directors contacted, there is a Majority Vote to consider and decide the issue;

or, the Committee's authority with respect to such issue may be withdrawn by Majority Vote of the Board at any time pursuant to ¶ 6.2.11.

## **19.2. Appeal Procedures.**

**19.2.1. Issues Subject to Mandatory Appeal Procedures.** These Appeal Procedures shall apply to all Appeal Issues which are defined as:

- (a) All issues relating to any Coverage Determination;
- (b) All issues relating to subjects within the Administrative Committee's Primary Jurisdiction, regardless of whether the Administrative Committee has made any decision or taken any action with respect thereto; and
- (c) All complaints, objections and grievances by any Member with respect to any decisions made or action taken by the Administrative Committee on any subject, regardless of whether the subject falls within the Administrative Committee's Primary Jurisdiction, or by the Executive Committee.

**19.2.2. Exception to Appeal Procedures.** Members that desire a hearing or a decision by PURMS on any Appeal Issue shall comply with these Appeal Procedures; provided, however, that Appeal Issues otherwise subject to these Appeal Procedures may be addressed directly to the Board for decision by the methods identified in the proviso contained in ¶ 19.1(a) or (b).

**19.2.3. Standing to Appeal.** Any Member may appeal any Appeal Issue from any level of the Appeal Procedures, regardless of whether the Member previously has been involved in the appeal or will be directly affected by the decision or action under consideration. An Employee may only appeal Appeal Issues relating to his/her own Coverage Determination.

**19.2.4. Modification of Requirements.** The notice and other procedural requirements contained in this ¶ 19.2 may be modified in accordance with Op. Rules, § I, ¶ 19.2.4.

**19.2.5. Time Limits for Appeal.** The time limits which Members or Employees must adhere to in order to appeal an Appeal Issue are set forth in Op. Rules, § I, ¶ 19.2.5.

**19.2.6. Appeal Representation and Legal Counsel.** Any Member properly invoking these Appeal Procedures shall, for itself, or in the case of a Request by an Employee, on behalf of its Employee, appoint a Representative to be the spokesperson for the Member or Employee at all stages of the Appeal Procedures. Subject to the restrictions in § VII., ¶ 3.1.3, the Representative shall have the right to participate in all non-privileged discussions and the right to vote in the decisions of the Administrative and Executive Committees in connection with the Appeal. Any tie vote shall be broken by the chairperson of the Operations Committee. In addition, Members and Employees shall be entitled, at their own expense, to representation by legal counsel.

**19.2.7. Processing of the Appeal.** The procedures for processing an Appeal are set forth in § I, ¶ 19.2.7 of the Operational Rules. Whether the full Board decides the

Appeal Issue or only the Directors of Members participating in the Risk Pool involved shall be decided according to the principles set forth in ¶ 4.2.2. A Majority Vote shall decide the Appeal Issue, unless a higher Voting Standard specifically applies to such Issue.

**19.2.8. Exhaustion of Appeal Procedures as Prerequisite to Arbitration.** No Member or Employee may seek arbitration of any issue under ¶ 24.4, or court resolution of any issue under ¶ 24.4.7 (except for subparagraphs (b) and (e) thereof), without first exhausting all levels of the Appeal Procedures, or by other procedures in this Agreement properly first addressing the issue to be arbitrated to the Board, and providing a reasonable opportunity for the Board to decide the same. Any Member or Employee directly affected by the Board Decision on the Appeal Issue may submit the Appeal Issue to binding arbitration under ¶ 24.4, or to court resolution, as permitted by ¶ 24.4.7.

## **20. Withdrawal From a Risk Pool.**

### **20.1. Notice of Intent to Withdraw.**

**20.1.1. Notice with Respect to Liability and Property Pools.** Except under the special circumstances provided in ¶¶ 5.4.2.2 and 14.4, a Member may withdraw from a Risk Pool and cease to be a Member of that Risk Pool, effective as of December 31 of any year, only by delivering written notice of its intent to withdraw to the Administrator on or before October 1 of the calendar year of withdrawal. If such notice of intent to withdraw is not given in accordance with this ¶ 20.1, the notice shall be ineffective and the Member giving such notice shall remain a Member of the Risk Pool and subject to the SIA and all other Program Documents, unless permitted to withdraw upon such terms and conditions as may be imposed by the Board by Super-Majority Vote.

**20.1.2. Notice with Respect to H&W Pool.** A Member's notice of intent to withdraw from the H&W Pool shall be given in the manner provided in ¶ 20.1.1; provided, however, that if the H&W Pool's Coverage Year and Fiscal Year are on a basis other than a calendar year (in order to conform to the period covered by the Stop Loss Policy Year, see § XIV, ¶ 5), a Member can only withdraw effective at the end of a Coverage Year, and a Member's written notice of intent to withdraw shall be given to the Administrator on or before the 90<sup>th</sup> day preceding the end of such Coverage Year.

**20.1.3. Withdrawing Member's Right to Vote during Withdrawal Period.** A Member that has submitted its Notice of Intent to Withdraw shall, from the date of the Notice until the effective Date of Withdrawal ("Withdrawal Period"), have a right to vote only on issues that affect the Withdrawing Member's Substantive Rights.

### **20.2. Obligations of Former Member to PURMS.**

#### **20.2.1. Obligations to Former Member with Respect to Liability and Property Pools.**

**(a) Pre-Withdrawal General Assessments and Replenishment of Actual Risk Pool Balance For Liability and Property Pools.** A Former Member of the Liability or Property Risk Pools shall be liable to PURMS for its Assessment Share of all General Assessments issued for that Risk Pool prior to the Withdrawal Date.

Interest shall accrue on any amounts not paid when due as provided in ¶¶ 13.4. In addition, a Former Member shall pay to PURMS its full Assessment Share of the first Annual Automatic General Assessment in the year following Withdrawal which shall include all Member's Claims Experience from the previous year; an amount measured by what would be its Assessment Share of an Interim Automatic General Assessment (but without applying the Annual Assessment Limit) levied for the Risk Pool as of the Withdrawal Date; provided that, with respect to the Property Pool, a Former Member's Assessment Share shall be based on the highest total Insured Value of the Former Member's Insured Property listed in the Schedule of Values at any time in the (30) days after the withdrawing Member receives written notice of the amount thereof, and shall bear interest at the rate provided in ¶ 13.4 if not paid when due. A Former Member shall have no obligation to pay any share of any Special Purpose Assessments levied for the Risk Pool after the Notice Date, except to the extent such assessments are for funding a Special Purpose Account at a level established by the Board by Super-Majority Vote prior to the Notice Date.

**(b) Premium Assessments.** A Member which has given its notice of intent to withdraw from a Risk Pool shall be liable for its Assessment Share of all Premium Assessments levied for that Risk Pool for the purpose of paying the premium for any Excess Insurance, Stop-Loss Insurance or Subgroup Policy under which the Member or any of its Employees are or will be a beneficiary; provided, however, that the Member may waive coverage, effective at any time after the Notice Date, under any Excess Policy purchased by PURMS for the Risk Pool. In Such event, the Member shall be entitled to a credit against amounts which, as a Former Member, it becomes obligated to pay pursuant to ¶¶ 20.2.1 and 20.2.3 equal to the amount of premium saved by the Risk Pool as a result of the Member's waiver of coverage, if any. In no event shall a Member which has given notice of its intent to withdraw be required to pay its Assessment Share for any Premium Assessment levied for the Risk Pool for the purpose of acquiring insurance for which neither the Member nor its Employees will ever be a beneficiary.

**(c) Post-Withdrawal Expenses.** A Former Member shall reimburse PURMS for its Assessment Share of the costs PURMS ultimately incurs in resolving the Incurred Liability Exposure of the Former Member's Risk Pool as of its Withdrawal Date, and all Administrative Expenses directly related thereto, including but not limited to, legal fees incurred by PURMS in connection with any legal action regarding Coverage for the Former Member by PURMS if PURMS is the prevailing party, arising from Pre-Withdrawal Loss Events. Such Assessment Share shall be calculated according to the applicable Formula for General Assessments based on the Formula Component values in effect for the Former Member as of the Withdrawal Date; provided, however, that the Annual Assessment Limit shall not apply and, provided further that, with respect to the Property Pool, a Former Member's Assessment Share under the Property General Assessment Formula shall be based on the highest total Insured Value of the Former Member's Insured Property listed in the Schedule of Values at any time in the calendar year of withdrawal for all General Assessments levied after the Notice Date. The amount owed by a Former Member pursuant to this paragraph shall be determined quarterly based upon the amount paid by PURMS in such quarter for resolving the Incurred Liability Exposure of the Former Member's Risk Pool as of the Withdrawal Date, and shall be paid within 30

days after the Former Member receives written notice of the amount thereof. If the Former Member fails to make any payment when due, interest shall accrue on the unpaid balance at the rate set forth in ¶ 13.4. A Former Member's obligation to make payments to PURMS pursuant to this paragraph shall continue despite the Dissolution of the Risk Pool or PURMS pursuant to ¶ 21.

**20.2.2. Obligations of Former H&W Member With Respect to the H&W Risk Pool.**

(a) **Pre-Withdrawal H&W Assessments.** A Member that has given its notice of intent to withdraw from the H&W Pool shall continue to be liable to PURMS for all of its Monthly H&W Assessments for H&W Pool Operational Costs incurred by the H&W Pool through the end of the Coverage Year/Stop Loss Policy Year as if such Member had not given such notice.

(b) **Former H&W Member's Assessment Obligations During Mandatory H&W Claims Runout Period.** A Former Member shall remain responsible for paying its Assessment Share of each of the three (3) Monthly H&W Assessments levied in the first three (3) months following the Former Member's Withdrawal Date (i.e., during the Mandatory H&W Claims Runout Period), and for complying with any and all related obligations under the SIA as if such Former Member continued to be a Member of the H&W Pool during that time period; provided that such Former Member's Monthly H&W Assessments for the Mandatory Claims Runout Period shall be based on the amount of its Incurred H&W Claims and its Extended Coverage H&W Claims paid in the preceding month, and its Assessment Share of the total of all Members' (including the Former Members') Shared H&W Costs incurred in the preceding month, calculated under the H&W General Assessment Formula, after deducting the portion of the Stop-Loss Insurance Premium and Administrative Expenses allocable to the ongoing operations of the H&W Pool in the preceding month.

(c) **Former H&W Member's Assessment Obligations After Expiration of Mandatory H&W Claims Runout Period and Prior to H&W Claims Cutoff Date.** Except as otherwise provided in ¶ 20.4.2.1(b) regarding a Former Member establishing an earlier H&W Claims Cutoff Date, for the time period after expiration of the Mandatory H&W Claims Runout Period and before the H&W Claims Cutoff Date, a Former Member shall be responsible for reimbursing the H&W Pool for the amount the H&W Pool paid in the preceding month for such Member's remaining unpaid Incurred H&W Claims and Extended Coverage H&W Claims, together with all related H&W Claims Handling Fees, and for paying its Assessment Share of the amount the H&W Pool paid in the preceding month for any remaining unpaid Incurred Shared H&W Claims.

(d) **Terms Governing Payment of Assessment by Former H&W Member.** With respect to Assessments levied for a Former Member under ¶'s 20.2.2.1, 20.2.2.2 and 20.2.2.3, the amounts of such Assessments shall be paid within twenty (20) days after the withdrawing Member receives written notice thereof, interest shall accrue on any amounts not paid when due as provided in ¶ 13.5, and the delinquent Member shall be subject to the H&W Pool remedies in ¶ 13.6.

### **20.3. Former Member's Rights in PURMS Assets.**

**20.3.1. Former Member's Rights with Respect to Liability and Property Pool Assets.** A Former Member shall have no claim to, nor any right, title or interest in, any money or assets owned by PURMS or held by PURMS on behalf of the Former Member's Risk Pool, including any money or assets attributable to the Former Member's contributions or Assessments paid to PURMS pursuant to this Agreement; provided, however, that if the Actual Risk Pool Balance on the Withdrawal Date, after deducting the amount of PURMS' incurred but unpaid Administrative Expenses allocable to the Risk Pool as of that date and the amount of any Recovery Proceeds constituting part of the Actual Risk Pool Balance, is greater than the amount of the Designated Risk Pool Balance in effect as of the Notice Date, the Former Member shall be entitled to a setoff of that portion of such excess monies, calculated according to the applicable Formula For General Assessments in effect on the Withdrawal Date, against any amounts the Former Member becomes obligated to pay pursuant to ¶ 20.2.1 or ¶ 20.2.3. Similarly, the Former Member shall have no right, title or interest in or to any money or assets allocated to any Special Purpose Accounts.

**20.3.2. Former H&W Member's Rights With Respect to H&W Pool Assets – Return of Balance of Former Member's Initial Deposit.** As specified in ¶¶ 13.2.3.1 and 13.3.5 above, the Former Member's Initial Deposit (or Adjusted Initial Deposit, as determined per ¶ 13.2.2) shall continue to be replenished by Monthly H&W Assessments to be paid by the Former Member during the Mandatory H&W Claims Runout Period. Within forty five (45) days after the end of the Mandatory Claims Runout Period, and provided the Former Member is current on all payments owed to the H&W Pool, the H&W Pool shall pay fifty percent (50%) of the value of the Former Member's Initial Deposit (or Adjusted Initial Deposit) to the Former Member, and shall retain the remaining fifty percent (50%) until the H&W Claims Cutoff Date. Within forty five (45) days after the H&W Claims Cutoff Date, and provided the Former Member is current on all payments owed to the H&W Pool, any remaining balance of the remaining 50% of the Initial Deposit (or Adjusted Initial Deposit) shall be paid to the Former Member; and provided further, that the Former Member shall continue to remain responsible to pay its Assessment Share of Incurred Shared H&W Claims paid in the preceding month, which shall be assessed to the Former Member and paid in accordance with ¶ 20.2.2.4. Notwithstanding the provisions above for return to the Former Member of the balance of its Initial Deposit, prior to the date such balance is to be paid to the Former Member, the Former Member shall have no right, title, or interest in or to any of the monies of the H&W Pool, including the portion thereof otherwise attributable to the Former Member's Initial Deposit. Furthermore, at no time shall any Former Member be entitled to interest on the amount of its Initial Deposit or Adjusted Initial Deposit retained by the H&W Pool, either during the time it is a Member of the H&W Pool, or thereafter while such money is held by the H&W Pool pending expiration of the H&W Claims Cutoff Date; provided, however, a Former Member shall be entitled to interest from the H&W Pool at the rate provided for in ¶ 13.5 regarding delinquent Assessments for any balance of its Initial Deposit not paid when due under this paragraph.

## **20.4. Claims Relating to Former Members.**

### **20.4.1. Claims Involving Former Member of Liability or Property Pools.**

PURMS shall continue to provide Coverage, Defense, and services related to those rights to a Former Member and its Employees for Covered Claims based upon Pre-Withdrawal Loss Events; provided, however, that PURMS shall not be obligated to make such payments or provide such services for the Former Member or its Employees if the Former Member is in default under the SIA; and provided, further, that a Former Member shall not be entitled to Coverage by PURMS for any period of time during which the Former Member's Coverage was suspended under ¶ 13.7(b) for default in paying Assessments. For purposes of making Coverage Determinations for Liability Claims made against a Former Member or any Employee of a Former Member, or for Property Claims made by a Former Member, the term "Member," as used in the Exclusions contained in the Coverages sections, shall include Former Members, and "Employee" shall include Employees of a Former Member. The Former Member shall be bound by the Claims Resolution Rules and Procedures in effect at the time the Claim is asserted against, or the Property Claim is filed by, the Former Member, as may be amended from time to time thereafter.

### **20.4.2. Claims Involving Former Member of H&W Pool.**

#### **(a) H&W Claims Cutoff Date and Termination of H&W Pool's Obligations to Former H&W Member.**

(1) **Determination and Effect of H&W Claims Cutoff Date.** After expiration of the H&W Claims Cutoff Date applicable to a Former Member, the H&W Pool shall cease having any financial responsibility or obligations under the SIA to provide H&W Coverage for or to pay any unpaid Incurred H&W Claims or Extended Coverage H&W Claims with respect to the Former Member's Employees and Dependents. The H&W Claims Cutoff Date shall be: (a) the date the Stop-Loss Carrier ceases coverage and making payment for Incurred H&W Claims in accordance with the terms of the Stop-Loss Insurance in effect for Members of the H&W Pool on the Former Member's Withdrawal Date; or (b) the date the last known Incurred H&W Claim or Extended Coverage H&W Claim involving the Former Member's Employees or Dependents is resolved, as determined by the Administrative Committee, whichever date is later.

(2) **Former H&W Member's Discretion to Establish Earlier H&W Claims Cutoff Date.** A Former Member of the H&W Pool may establish an H&W Claims Cutoff Date earlier than the Date that would otherwise be applicable under ¶ 20.4.2.1(a) above, by including in its notice of intent to withdraw a statement that, after the Withdrawal Date, such Member agrees to assume all financial and related responsibility with respect to any and all unpaid Incurred H&W Claims and Extended Coverage H&W Claims relating to its Employees and their Dependents as of the date specified in the notice. As of such date, the H&W Pool shall have no further responsibility for or obligations with respect to such unpaid Incurred H&W Claims or Extended Coverage H&W Claims; provided that in no event shall such earlier H&W Claims Cutoff Date take effect prior to the expiration of the Mandatory H&W Claims Runout Period;

provided further, that in giving such notice to PURMS, such Former Member thereby agrees without more to indemnify PURMS, the H&W Pool, the Administrative Committee and the Administrator, and to hold them harmless, from any and all liability arising out of or related in any way to such unpaid Incurred H&W Claims and Extended Coverage H&W Claims; and provided further, that the establishment of an earlier H&W Claims Cutoff Date hereunder shall not operate to terminate a Former Member's obligation to continue to pay its Assessment Share of any remaining unpaid Incurred Shared H&W Claims. Notwithstanding any earlier H&W Claims Cutoff Date established by the Former Member's original notice of intent to withdraw, such Former Member may extend or shorten such Cutoff Date by written notice thereof to PURMS; provided such notice is given at least thirty (30) days prior to the new Cutoff Date. In no event shall this Cutoff Date be extended beyond the Date that would otherwise be applicable under ¶ 20.4.2.1(a) above.

**(3) H&W Coverage for Former Member Limited to Incurred H&W Claims and Extended Coverage H&W Claims.** After the effective date of a Former Member's withdrawal from the H&W Pool, the Former Member shall only be entitled to H&W Coverage for Incurred H&W Claims and Extended Coverage H&W Claims, and with respect to such Claims, the Former Member shall remain bound by the applicable provisions of the SIA.

**20.5. Former Members' Rights Regarding Coverage Litigation.** A Former Member, with respect to a Covered Liability Claim asserted solely against it or one or more of its Employees, or with respect to a Property Claim filed by the Former Member, or with respect to an H&W Claim of its Employee and/or Dependent, may elect whether to invoke PURMS' Coverage Litigation obligations in ¶ 15.1, and be bound by the rights and obligations set forth therein for Members and Employees, or whether to waive the rights under ¶ 15 and seek coverage under the applicable Excess or Stop Loss Policy on its own and bearing its own legal expenses. If the Former Member is involved in a Multi-Member Claim where Coverage Litigation is anticipated, in its discretion, the Administrative Committee may determine that it is in the best interests of PURMS for any claim the Former Member wishes to make against the Excess or Stop Loss Coverage to be prosecuted by PURMS along with similar claims of the Members. In such event, the Former Member and/or its Employee or Dependent shall be bound by the provisions of ¶ 15 as a "Member," provided, however, that if there is an actual conflict of interest between the Former Member and the Members with respect to any material issues involved in the Coverage Litigation preventing representation by common Defense Counsel, the Former Member shall not be bound by nor have any rights under ¶ 15.

**20.6. Indemnity of PURMS.** A Former Member shall indemnify, defend, and hold PURMS harmless from any and all damages, loss, costs, or expenses of every kind and nature, including attorneys' fees, as to any and all causes, claims, demands, actions, or suits asserted against PURMS or any of its Members or their Employees related in any way to any Claim against the Former Member or its Employees for which PURMS does not provide Coverage pursuant to ¶ 20.4.

## **21. Dissolution of a Risk Pool or PURMS.**

**21.1. Procedures.** The full Board may dissolve PURMS by Super-Majority Vote, effective at the end of the calendar year in which the Vote to dissolve occurred. Even without a Super-Majority Vote of the full Board, PURMS will be deemed to be dissolved at the end of the calendar year in which PURMS' last Risk Pool is dissolved. Any Risk Pool may be dissolved by a Super-Majority Vote of the Directors representing Members participating in that Risk Pool, also effective at the end of the calendar year in which the Vote to dissolve occurred; provided however, if the H& W Pool Coverage Year and Fiscal Year are on a basis other than the calendar year (in order to conform to the period covered by the Stop Loss Policy Year, see § XIV, ¶ 5), Dissolution of the H&W Pool shall only be effective at the end of the Coverage Year/Stop Loss Policy Year in which the Vote to dissolve occurred; provided however, that the H&W Pool shall be dissolved the effective date PURMS is dissolved.

**21.2. Post-Dissolution Administration.**

**21.2.1. Provisions Applicable to All Risk Pools.** In the event a Risk Pool is dissolved, the Directors representing Members participating in that Risk Pool shall remain Directors for that Risk Pool and shall wind up the affairs of the Risk Pool. In the event the full Board dissolves PURMS, the Directors for the Board on the date of the Dissolution Vote shall remain Directors and shall wind up the affairs of PURMS. All Members of the Risk Pool being dissolved, or PURMS, as of the Dissolution Date, and all Former Members to the extent they remain responsible for a portion of PURMS' Incurred Liability Exposure with respect to a Risk Pool as of their Withdrawal Dates, shall continue to be bound by the terms of the SIA and the Operational Rules in effect on the date of the Dissolution Vote. A Member whose Director as of the Dissolution Date resigns or becomes unable to serve shall appoint a successor Director. In the event PURMS is dissolved, PURMS Officers and members of the Administrative Committee as of the date of the Dissolution Vote also shall continue to serve in such capacities until wind up of all of the affairs of PURMS has been completed. The Board shall appoint a successor for any PURMS Officer or member of the Administrative Committee who shall resign or become unable to serve.

**21.2.2. Additional Administrative Provisions with Respect to H&W Pool.** In addition, in connection with the Board's decision to Dissolve the H&W Pool, by Majority Vote the Board shall determine the H&W Claims Cutoff Date applicable to the H&W Pool and its Members; provided that if such a date is not established by Majority Vote, the applicable H&W Claims Cutoff Date shall be when last known H&W Claim is resolved, as determined by the Administrative Committee, and at the latest, conclusively established when no H&W Claim is received by the Administrator for 4 consecutive months; and provided further, an Extended Coverage H&W Claim shall not qualify as a "last known claim" in the preceding clause, and any such Extended Coverage H&W Claim shall not prevent establishment of the H&W Pool's Claims Cutoff Date.

**21.3. Coverage.** Following dissolution of a Risk Pool, PURMS shall continue to provide Coverage, and to pay Defense Costs, Property Claim Costs and H&W Claim Costs, as applicable, in connection with all Covered Claims resulting from Loss Events which took place prior to the Risk Pool's Dissolution Date; provided, however, that PURMS' obligations with respect to the H&W Pool herein are subject to the terms of and decisions made by the Board pursuant to ¶21.2.2 above.

## **21.4. Post-Dissolution Assessments.**

**21.4.1. Post-Dissolution Assessments for Liability and Property Pools.** As soon as practical following the Dissolution Vote for a Risk Pool, the Board shall levy a Discretionary General Assessment in such amount as the Board shall determine is necessary to provide PURMS with sufficient assets to pay PURMS' estimate of the Incurred Liability Exposure of the Risk Pool(s) as of the Dissolution Date, together with related Administrative Expenses. Thereafter, the Board shall levy one or more additional Discretionary General Assessments in whatever amounts the Board shall determine are necessary to pay PURMS' liabilities and obligations under the SIA and the costs of winding up the Risk Pool's affairs as they become due. Any Assessments levied pursuant to this paragraph shall be based on the applicable General Assessment Formula in effect as of the Dissolution Date, and shall be paid in accordance with the terms of ¶¶ 13.4 through 13.6; provided, however, that the Annual Assessment Limit shall not apply. The applicable Actual Risk Pool Balance may be raised in excess of the Designated Risk Pool Balance by any Discretionary General Assessment levied pursuant to this paragraph with only a Two-Thirds Vote.

**21.4.2. Post-Dissolution Assessment for H&W Pool.** Subject to ¶ 21.2.2 above, after the Dissolution Date for the H&W Pool, Members shall continue to pay Monthly H&W Assessments determined and calculated and paid in the same manner as if the H&W Pool was not Dissolved; provided, that the Formula Components for the H&W General Assessment Formula and the underlying information of each Member with respect thereto in effect in the last month preceding the Dissolution Date shall thereafter be used to calculate all Monthly H&W Assessments; provided further, that the H&W Pool and the Members shall retain their respective Stop Loss Points in effect on the Dissolution Date, but, subject to the Board's Majority Vote otherwise, each Member's H&W Claims payments accrued toward its respective Stop Loss Points on the Dissolution Date shall be reset to zero for H&W Assessments levied after the Dissolution Date; and provided further, the Board for the H&W Pool shall have authority to levy one or more Discretionary General Assessments and deemed necessary in accordance with ¶ 13.4.3.2.

## **21.5. Distribution of Assets.**

**21.5.1. Distribution of Assets of Liability and/or Property Pools.** If any assets generated by a dissolved Risk Pool remain in PURMS after payment of all of PURMS' Incurred Liability Exposure for such Risk Pool as of the Dissolution Date and all Administrative Expenses and professional fees incurred in winding up the Risk Pool's affairs, the remaining assets shall be distributed to the Members of the dissolved Risk Pool as of the Dissolution Date; provided, however, with respect to Dissolution of the Property Pool, all Members thereof on the Date of Dissolution shall be entitled to receive the total amount of their Property Pool Investments, if any, before all Property Pool Members share in the distribution of any remaining assets. Each Member's share of the distribution shall be calculated according to the applicable Formula for General Assessments in effect as of the Dissolution Date; provided, however, that the Annual Assessment Limit shall not be applied to limit the distributive share of any Member. PURMS' Incurred Liability Exposure for the Risk Pool shall be considered to have been paid at such time as the Administrative Committee determines and the Board agrees by

Super-Majority Vote that: (a) there are no known Covered Claims pending against or by any Member or Employee; (b) no Member is aware of any Loss Event which took place prior to the Dissolution Date for which there is a reasonable possibility that a Covered Claim will be asserted; and (c) a sufficient time has passed since the Risk Pool's dissolution that there is no reasonable possibility that a Covered Claim will be made arising out of an unknown Loss Event which took place prior to the Dissolution Date.

**21.5.2. Distribution of Assets of H&W Pool.** After expiration of the H&W Claims Cutoff Period established for the H&W Pool pursuant to ¶ 21.2.2 above, the remaining assets of the H&W Pool shall be distributed to the Members of the H&W Pool on the Dissolution Date based on the proportion that the amount of each Member's Initial Deposit or Adjusted Initial Deposit on the Dissolution Date is to the total amount of all Members' Initial Deposits or Adjusted Initial Deposits.

**21.6. Post-Distribution Claims.** After distribution of a Risk Pool's assets as provided in ¶ 21.5, PURMS shall have no further liability to any Member or Employee under the Coverages previously provided by the Risk Pool, and thereafter each Member or Employee shall have sole responsibility for any claims that, but for the dissolution, would have been Covered Claims.

**21.7. Court Supervision of Dissolution of PURMS.** At any time following the Dissolution Vote for PURMS, a majority of Members may petition the King County Superior Court to supervise the winding up of PURMS' affairs. In any such proceedings, the Court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the Court, from time to time, may direct, and to take such other measures as may be necessary to preserve PURMS' assets wherever situated, and carry on the business of PURMS until a full hearing can be had. After a hearing had upon such notice as the Court may direct to be given to all Members, the Court may appoint a receiver or receivers with authority to collect all Assessments levied against the Members; to handle Defense of Covered Claims asserted against Members or their Employees pursuant to § VII., ¶ 5, or to appoint, at PURMS' expense, professional adjusters to handle such Defense; to pay the amount of any judgment entered or settlement made with respect to any Covered Liability Claim; to adjust and pay for any outstanding Covered Property Claims to pay for any H&W Claim; and to distribute any assets remaining in PURMS to the Members after all of PURMS' Incurred Liability Exposure and all Administrative Expenses and professional fees incurred in winding up PURMS' affairs have been paid. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

## **22. Prohibited Remuneration and Conflicts of Interest.**

**22.1. Member's Officers and Employees Serving PURMS.** No Employee of a Member may directly or indirectly receive anything of value from PURMS for services rendered in connection with the operation or management of PURMS other than the salary and benefits otherwise normally provided by his or her Member employer; provided, however, that such persons may be reimbursed for the expenses reasonably incurred in furtherance of the operation or management of PURMS. No Director of PURMS, nor any member of the Executive, Administrative or Operations Committees, may accept or solicit anything of value for personal benefit or for the benefit of others under circumstances from which it can be reasonably inferred

that such person's independent judgment is impaired with respect to operation and management of PURMS.

**22.2. Prohibited Interests in Transactions.** No Director of PURMS, nor any member of the Executive, Administrative or Operations Committees, nor the Auditor, Administrator, Broker or General Counsel, shall;

- (a) Receive directly or individually or be pecuniarily interested in any fee, commission, compensation, or endorsement arising out of any transaction to which PURMS is or is expected to be a party; provided, however, that the Administrator, Broker and General Counsel may receive such compensation as agreed upon with PURMS for professional services regularly rendered to PURMS;
- (b) Receive compensation as a consultant to PURMS while at the same time acting as a Director, member of the Executive or Administrative Committees, or as Administrator;
- (c) Have any direct or indirect pecuniary interest in any loan or investment of PURMS; or
- (d) Directly or indirectly receive or be pecuniarily interested in any commission or other compensation arising out of any contract or transaction between PURMS and any insurer.

Notwithstanding subsections (a) through (d) above, the Broker may receive commissions for insurance transactions performed within the scope of its license, provided such commissions are first disclosed to and approved by the Administrative Committee.

**23. PURMS Indemnifications.** No indemnifications by PURMS pursuant to ¶¶ 23.1 through 23.4 below shall exceed the amount of \$1,000,000 per indemnitee without approval by a Super-Majority Vote.

**23.1. Indemnification of Members' Employees providing Services to PURMS.** PURMS shall indemnify and hold harmless its Directors, the PURMS Officers, members of Standing Committees and Committees appointed by the Board, and PURMS' Employees, if any (collectively, "Indemnitees"), for all Claims asserted against one or more of them arising out of their performance or failure of performance of duties for PURMS; provided, however, that no indemnification under this paragraph shall apply with respect to any Claim where the Board determines the Indemnitee was not acting in good faith or was not acting within the scope of his/her duties for PURMS.

**23.2. Indemnification of the Administrator – Exceptions.** PURMS shall indemnify and hold its Administrator harmless for all Claims asserted against the Administrator, or one or more of its employees, arising out of the Administrator's performance or failure of performance of duties for PURMS; provided, however, that no indemnification under this paragraph shall apply with respect to any Claim: (a) by PURMS against the Administrator for breach of the ASA; and (b) where the Board determines the Administrator was not acting in good faith or within the scope of its duties for PURMS.

**23.3. Discretionary Indemnification of the Broker and General Counsel.** PURMS may, upon request at any time, and by Majority Vote, indemnify and hold harmless the Broker and/or General Counsel for all Claims based on culpability standards of negligence or less, including strict liability, asserted against them arising out of their respective performance or failure of performance of duties for PURMS; provided, however, that such indemnification shall not apply (a) with respect to any Claim brought by PURMS arising from a breach of the Broker's or General Counsel's contracts with PURMS or duties owed to PURMS; and (b) with respect to any Claim where the Board determines that the Broker or General Counsel was not acting in good faith or was not acting within the scope of its duties to or for PURMS.

**23.4. Discretionary Indemnification of Agents and Volunteers.** PURMS may also, upon request at any time, by Majority Vote, agree to indemnify and hold harmless one or more specified Agents of PURMS for any Claims made against one or more of them arising out of their performance or failure of performance of duties for PURMS; provided, however, that such indemnifications shall not apply unless the same conditions set forth in ¶ 23.3 above for indemnification of the Broker and General Counsel are satisfied.

## **24. Miscellaneous Provisions.**

**24.1. Other Insurance and Third Party Indemnifications.** The Coverage provided by PURMS under the SIA shall interface with any Other Insurance and Third Party Indemnifications available to the Insured involved in a Covered Claim as provided in § III, ¶ 2.7; § IV, ¶ 2.5; § V, ¶ 2.5; § VI, ¶ 2.1; § X, ¶ 18; and § XI, ¶ 16; and §XIV, ¶2.7.

**24.2. Agreement Not a Substitute for Bonds.** The Coverage provided to the Members and Employees pursuant to this Agreement is not a substitute for and shall not be construed to supplement the protection provided by any bond required to be obtained by the Members by the laws of the State of Washington, including, but not limited to, any bond required by RCW 54.24.010.

**24.3. Entire Agreement.** The SIA, Sections I through XIV, and the Operational Rules as now appearing or as amended by the Board from time to time, constitute the entire agreement among the Members, and each Member hereby acknowledges and agrees that it is not relying on any promises or representations other than as set forth in these Program Documents.

### **24.4. Mandatory Binding Arbitration and Venue.**

**24.4.1. Disputes Subject to Mandatory Binding Arbitration.** Except as otherwise provided in ¶ 24.4.7 below, any Disputes among the parties to this Interlocal Agreement, or between one or more such parties and PURMS, arising out of or relating to the SIA, the Operational Rules or other Program Documents, or breach thereof, or arising out of any action or inaction by the Board or Executive, Operations or Administrative Committees, shall be subject to this ¶ 24.4. Venue for the arbitration proceedings and hearing shall be in Seattle, Washington.

**24.4.2. Required Exhaustion of Appeal Procedures.** No party to the SIA, including PURMS, shall have the right to submit any Dispute to arbitration hereunder until all Appeal Procedures have been exhausted through the Board level, or the Board

has otherwise considered and voted a decision on the Dispute; provided, however that resort to proceedings in a court may occur as permitted in ¶ 24.4.7(b) and (e).

**24.4.3. Demand for Arbitration and Establishment of Arbitrator(s).** Any parties to the Dispute, PURMS, and any Members affected by the Board Decision, may invoke arbitration of the Dispute under this ¶ 24.4 by filing a written Demand for Arbitration with the other parties involved and with the American Arbitration Association. The Demand for Arbitration shall be made within a reasonable time after the Dispute arose, but, no Demand shall be filed prior to Board consideration of and vote upon such Dispute, except as permitted by ¶ 24.4.2, and in no event shall the Demand for Arbitration be recognized after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statutes of limitations of repose. Resolution of the Dispute shall be in accordance with the rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. The Arbitration shall take place before a single arbitrator if the aggregate value of claims and counter-claims is less than \$250,000, exclusive of costs and attorneys' fees. For claims and counterclaims having an aggregate value of \$250,000 or more, the American Arbitration Association shall appoint a panel of three (3) arbitrators, one of whom shall be designated as the chairman and shall be a lawyer. The other two members of the Arbitration Panel shall, to the extent reasonably possible, have knowledge regarding matters of insurance and Washington law governing public entities.

**24.4.4. Discovery.** Following the filing of a Demand for Arbitration, the parties involved shall cooperate in the exchange of information relating to the Dispute being guided by the scope of the applicable rules of discovery under the Federal Rules of Civil Procedure. Discovery shall not include interrogatories or requests for admission. The parties shall freely exchange documents relevant to the Dispute and depositions shall be limited to those reasonably necessary for each party to prepare for, or defend against, such Dispute. Subpoenas for the production of documents and depositions of persons or entities not parties to the Dispute should be authorized by the Arbitrator or Arbitration Panel where reasonably necessary for a party to prepare its case. Disagreements regarding discovery shall be resolved by the Arbitrator or, where there is an arbitration panel of three Arbitrators, by the chairman of the Arbitration Panel.

**24.4.5. Mandatory Mediation.** Mediation is an express condition precedent to the hearing of any Arbitration demanded hereunder. Mediation shall be conducted pursuant to the Mediation Rules of the American Arbitration Association. Such mediation shall take place no later than thirty (30) days prior to the date scheduled for the Arbitration hearing. Representatives of all parties involved in the Dispute shall attend the mediation and each party's representative shall have full, unrestricted authority to enter into a binding settlement agreement on behalf of that party. The mediation proceedings shall be confidential and privileged to the extent permitted by law.

**24.4.6. Hearing Standards/Arbitration Award/Costs and Attorneys' Fees.** The arbitration hearing shall be de novo on all issues except issues relating to the number of occurrences involved in a Covered Claim, which shall be governed by the standards set forth in § III, ¶ 2.9; § IV, ¶ 2.7; § V, ¶ 2.7; § VI, ¶ 2.1; § X, ¶ 16; and § XI, ¶ 15. In addition to the powers of the Arbitrator(s) as set forth in the Rules of the American Arbitration Association, the Arbitrator(s) shall also have the power to award the

prevailing party its reasonable attorneys' fees and costs (including the costs of arbitration and fees of the Arbitrator(s)). The award rendered by the Arbitrator(s) shall be final, and judgment may be entered upon it in the Superior Court for the State of Washington in King County.

**24.4.7. Resort to Proceedings in Court/Costs and Attorneys' Fees.** Any Disputes otherwise subject to submission for decision to the mandatory binding arbitration provisions of this ¶ 24.4, instead may be submitted, by any party having a legal interest therein, to the jurisdiction of either the Superior Court for King County, State of Washington, or United States District Court for the Western District of Washington at Seattle, as follows:

- (a) As necessary to secure the value of or to enforce any arbitration award rendered under ¶ 24.4;
- (b) If, and only to the extent necessary, to secure injunctive relief reasonably necessary under the circumstances;
- (c) For Disputes relating to Coverage by PURMS or to a Member's Assessment obligations, so long as the amount in controversy is greater than \$250,000;
- (d) For Disputes relating to the termination of a Member's membership in a Risk Pool or in PURMS, or a Member's withdrawal from PURMS, regardless of the amount in controversy;
- (e) In connection with Dissolution of PURMS as provided in ¶ 21.7; and
- (f) As permitted by the Board by Super-Majority Vote;

provided, however, that no party to any Dispute may submit the Dispute to resolution by a court under subparagraphs (c) and (d) above without first completing mandatory mediation as provided in ¶ 24.4.5. The prevailing party in any Dispute submitted to a court under this ¶ 24.4.7 shall be awarded its costs and reasonable attorney's fees incurred in connection with the judicial resolution of such Dispute, including any appeals thereof and any prior arbitration proceedings.

**24.5. Notices.** Any notice required to be given under this Agreement may be delivered in person, or sent by mail or by facsimile. Any notice sent by mail shall be deemed received on the third day after it is mailed. Unless otherwise provided in the SIA or in the Operational Rules, any notice given to PURMS shall be delivered to the Administrator, and any notice to a Member shall be delivered to a Director or the Manager for the Member.

**24.6. Construction.** The SIA shall be construed pursuant to the laws of the State of Washington. Any controversy over the construction of this Agreement shall be decided neutrally and without regard to which party drafted the Agreement.

**24.7. Paragraph Headings.** The paragraph headings in the SIA are provided for the convenience of the parties and shall not modify or alter the substance of this Agreement.

DATED effective as of the 10<sup>th</sup> day of November, 2011

<b>ASOTIN COUNTY PUD</b> By: _____ Its: _____ Date: _____	<b>BENTON COUNTY PUD</b> By: _____ Its: _____ Date: _____
<b>CLALLAM COUNTY PUD</b> By: _____ Its: _____ Date: _____	<b>GRAYS HARBOR COUNTY PUD</b> By: _____ Its: _____ Date: _____
<b>JEFFERSON COUNTY PUD</b> By: _____ Its: _____ Date: _____	<b>KITSAP COUNTY PUD</b> By: _____ Its: _____ Date: _____
<b>KLICKITAT COUNTY PUD</b> By: _____ Its: _____ Date: _____	<b>LEWIS COUNTY PUD</b> By: _____ Its: _____ Date: _____
<b>MASON COUNTY PUD NO. 3</b> By: _____ Its: _____ Date: _____	<b>NOANET</b> By: _____ Its: _____ Date: _____
<b>OKANOGAN COUNTY PUD</b> By: _____ Its: _____ Date: _____	<b>PACIFIC COUNTY PUD NO. 2</b> By: _____ Its: _____ Date: _____
<b>PEND OREILLE COUNTY PUD</b> By: _____ Its: _____ Date: _____	<b>SKAGIT COUNTY PUD</b> By: _____ Its: _____ Date: _____
<b>SKAMANIA COUNTY PUD</b> By: _____ Its: _____ Date: _____	<b>STEVENS COUNTY PUD</b> By: _____ Its: _____ Date: _____
<b>WAHKIAKUM COUNTY PUD</b> By: _____ Its: _____ Date: _____	<b>WHATCOM COUNTY PUD</b> By: _____ Its: _____ Date: _____

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1 Citations to paragraph numbers only (*e.g.*, “¶ 5.2”) shall mean a cross-reference to that paragraph within the same SIA section. If the cross-reference is to a different section of the SIA, the section reference (*e.g.*, “§ III”) will be included along with the paragraph reference. Any Operational Rules on a subject addressed in a section of the SIA are set forth in the same section and under the same paragraph number in the Operational Rules, for purposes of cross-reference.

2 The Voting Standards governing Board Decisions (on subjects other than amendment of the Program Documents) are set forth in ¶ 6.3.