**Trust Agreement for the Benefit of Insurance Producers and Contractors Entitled to**

**Relief under ORS 737.602**

Arising from an [Contractor] [Owner] Controlled Insurance Plan for [complete project name]

This Trust Agreement for the Benefit of Insurance Producers and Contractors Entitled to Relief under ORS 737.602 (this “Agreement”) is entered into effective as of (the “Effective Date”) between the following parties (collectively, the “Parties”):

[Insurer] (the underwriting “Insurer”)

[Insurer address]

and

The State of Oregon, acting by and through Director of the Department of Consumer and Business Services (the “Director”)

350 Winter Street, NE

Salem, Oregon 97301

**Recitals**

Under ORS 737.602, Insurer must establish and maintain with Director’s custodian bank, U.S. Bank, National Association (the “Custodian”) a fund for the benefit of any insurance producer (as defined in ORS 731.104) and referred to herein as a “Producer”, or contractor or subcontractor (each a “Contractor”) who suffers a loss that threatens continuation of the business or insurance coverage of such Contractor or Producer, as the result of Insurer writing [this grouping of [workers’ compensation insurance including employers’ liability insurance] [and] [commercial general liability insurance] ([together, ]“Insurance”) for [Project name], which is further described in attached **Exhibit A** (the “Project”). [Owner’s or Contractor’s name]’s construction of the Project began on [date], and Insurer began providing Insurance for the Project on [date]. The Project has a current “construction project value” under ORS 737.602(4)(i) of $[project value]. This value may change over the life of the Project.

**Agreement**

The Parties agree as follows:

1. Upon Director’s approval of the Insurance for this Project under ORS 737.602(4), the Insurer shall deliver $[xx,xxx], (the “Funds”) to the Custodian (as required under ORS 737.602(4)(i)). The Director shall control how the Funds will be held by the Custodian according to the current agreement between the Oregon Department of Consumer and Business Services and the Custodian.

2. Custodian must hold the Funds in the name of the “Director of the Oregon Department of Consumer and Business Services, in trust for the benefit of Producers and Contractors entitled to relief under ORS 737.602 (4)(d) and (e),” in case of the loss of insurance business or insurance coverage. The effective date of the Insurance coverage is [date], and the terms of this Agreement apply to any claims made under Section 6 arising after that date.

3. Custodian must hold the Funds in an investment type that constitutes an “eligible deposit” under ORS 731.640. If Insurer desires to change the type of investment used for the Funds, Insurer must so notify Director. If Director approves the desired investment change in writing, Insurer may so notify Custodian to make the approved change.

4. Insurer may obtain any income earned by the Fund deposit if Insurer is in compliance with the Insurance Code. (The Insurance Code is defined in ORS 731.004.) Upon Insurer’s request, Director may, but is not required, direct Custodian to disburse such income to Insurer as it is earned and credited.

5. Insurer must immediately notify Director of any change in the scope or nature of the Project. If Director determines that the market value of the Funds is less than the amount stated in Section 1, or if Director determines that the scope of the Project has enlarged and that additional amounts are necessary to cover potential Producer and Contractor claims, Insurer must deliver additional funds to Custodian within thirty (30) days after receiving Director’s written demand.

6. (a) **Claims by Producers**. If a Producer submits a claim for relief under ORS 737.602(4)(d) as the result of the loss of insurance business, Director will adjudicate the claim in a contested case proceeding under ORS Chapter 183 and in accordance with applicable administrative rules, to which Insurer will be a party. A Producer is entitled to relief only if (1) the loss a Producer suffers is a direct result of Insurer writing group insurance for the Project, and (2) the loss constitutes a threat to the continuation of the Producer’s business. (For purposes of Sections 6(a) (1) and (2), such losses are collectively referred to as “lost insurance business.”) The Producer is entitled to only such amount as Director determines is reasonably adequate to enable a Producer to continue in business. If a loss suffered by a Producer is only partly attributable to the lost insurance business, a Producer is only entitled to an amount determined by Director as reasonably adequate to enable the Producer to continue in business multiplied by a percentage representing the proportion which the Producer’s lost insurance business bears to the total amount of insurance business lost by the Producer in all insurance classes.

(b) **Claims by Contractors**. If a Contractor submits a claim for relief under ORS 737.602(4)(e) as the result of the loss of insurance coverage, Director will adjudicate the claim in a contested case proceeding pursuant to ORS Chapter 183 and in accordance with applicable administrative rules, to which Insurer will be a party. A Contractor is entitled to relief only if (1) the loss a Contractor suffers is a direct result of Insurer writing group insurance for the Project; and (2) the loss constitutes a threat to the continuation of a Contractor’s normal insurance coverage. (For purposes of Sections 6(b) (1) and (2), such losses are collectively referred to as “lost insurance coverage.”) Contractor is only entitled to such amount as Director determines is reasonably adequate to enable Contractor to continue its coverage. If a loss suffered by a Contractor is only partly attributable to the lost insurance coverage, Contractor is only entitled to an amount determined by Director as reasonably adequate to enable Contractor to continue its normal coverage multiplied by a percentage representing the proportion which Contractor’s lost insurance coverage bears to the total amount of insurance coverage lost by the Contractor in all insurance classes.

7. If Insurer fails to pay a claim decided under Section 6 within ten (10) days after Director enters a final order in a contested case, Director will direct Custodian in writing to (a) liquidate Funds sufficient to pay the amount specified, and (b) pay such amounts to the claimant.

8. If Custodian’s payment of claims under Section 7 exhausts the Funds prior to termination of this Agreement, Insurer must deliver additional funds to Custodian within ten (10) days after receiving a written demand from Director specifying the amount determined by Director as a reasonable estimate of the amount necessary to satisfy additional claims under Section 6.

9. Insurer’s obligations under this Agreement will continue for twelve (12) months after the substantial completion by every Contractor of its work on the Project, and Director will not direct Custodian to return the Funds to Insurer until that period has expired. If no Producer or Contractor submits a claim under Section 6 prior to the end of the 12 month period referenced herein, Director will at the request of the insurer, direct Custodian to return any remaining Funds to Insurer. If any Producer or Contractor files a claim under Section 6 prior to the end of the twelve month period, Custodian will continue to hold the Funds until all claims have been finally adjudicated.

10. Insurer represents and warrants that it is the sole owner of the Funds and that they are, and will remain, free and clear of any liens or encumbrances.

11. Insurer acknowledges that it is solely responsible for all fees due to Custodian under ORS 731.642, and that Insurer may not charge any fees charged by Custodian against the Funds.

12. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its interpretation, construction, performance, and enforcement.

13. Any Party bringing a legal action or proceeding against arising out of or relating to this Agreement must bring the legal action or proceeding in the Circuit Court of the State of Oregon sitting in Salem, Oregon. However, if a claim must be brought in a federal court, then it must be brought and adjudicated exclusively within the United States District Court for the District of Oregon. This Agreement should not be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such courts, waives any objection to venue, and waives any claim that such court is an inconvenient forum.

14. Insurer may not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of Director. This Agreement is binding upon and inures to the benefit of each of the Parties, and, except as otherwise provided, their permitted legal successors and assigns.

15. This Agreement contains the entire agreement of the Parties, regarding its subject matter, and supersedes all prior negotiations, agreements, and understandings.

16. This Agreement cannot be waived, altered or amended in any manner without the express written approval of the Parties. If any term of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement is to be construed in all respects as if the invalid or unenforceable term were omitted.

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| --- | --- | --- |
| Insurer: [name] | By: | |
|  | [Name and title of authorized signer)] |  |
|  | Date: | |
| The State of Oregon, acting by and through Director of the Oregon Department of Consumer and Business Services | By: | |
|  | Director/Administrator |  |
|  | Date: |  |

Approved for legal sufficiency under ORS 291.047 and OAR 137-045-0015:

[AAG Name] by email dated [Date].

**Exhibit A**

to

Trust Agreement for the Benefit of Insurance Producers and Contractors Entitled to

Relief under ORS 737.602

***Description of [Project Name]***

**Exhibit B**

to

Trust Agreement for the Benefit of Insurance Producers and Contractors Entitled to

Relief under ORS 737.602

***[Project Name]***

**Agreement between the Oregon Department of Consumer & Business Services, and the Custodian.**