



**SAFETY • SERVICE • SAVINGS**  
**A TRUST BUILT FOR STUDENTS**

Working together to keep Oregon students safe, reduce risks and conserve member resources.

DATE: January 2, 2019  
 TO: PACE Members  
 FROM: Debbie Laszlo, PACE Board Chair

**2018-2019 PACE  
 BOARD OF TRUSTEES**

**Chair**  
**Debbie Laszlo**  
 Reg. Risk/Benefits Mgr.  
 Redmond 2J

**Vice Chair**  
**Sharla Andresen**  
 Dir., Contracts & Risk  
 Central Oregon CC

**Tim Belanger**  
 Business Services Director  
 Oregon Trail 46

**Marie Knight**  
 Business Manager  
 Vernonia 47J

**Craig Prewitt**  
 Board Chair  
 Phoenix-Talent 4

**Michael Schofield**  
 Chief Financial Officer  
 Gresham-Barlow 10

**Adam Stewart**  
 Capital Projects Officer  
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**Tenneal Wetherell**  
 Superintendent  
 South Coast ESD 7

**Brett Yancey**  
 Chief Operations Office  
 Springfield 19

**Trustee Emeritus**  
**John Rexford**  
 Ldrshp. Support Specialist  
 High Desert ESD

**PACE ADMINISTRATOR**  
**Dave Harvey**

SUBJECT: New PACE Trust Agreement Requiring Board Action

Oregon law requires that self-insured public entity programs be formed through an intergovernmental agreement between the participating entities. PACE’s original Trust Agreement was adopted in 2006, updated in 2016 and the Trustees just completed a review and update of the Trust Agreement. The changes to the Trust Agreement were formally approved by the OSBA Board of Directors at their November 11, 2018 Board of Directors Meeting. Highlights of the Trust Agreement changes are:

- Updating language to remove the term “OSBA membership” and replacing the term with “participants” throughout the agreement. This enables charter schools continued participation with PACE.
- Adding the term Crime Coverage to the agreement. PACE offers this coverage to all participants.
- Correcting the composition of the PACE Trust Board to include employees of OSBA members on the Trust Board. Previously, the Trust Board composition wording limited the PACE Trust Board to only OSBA Board of Directors members.
- Moved operational and rule language from the Trust Agreement and placing it in the PACE Bylaws. Example of topics that were moved are Quorum, Telephone/Video Participation and Meetings of the Board of Trustees.

Now that the new PACE Declaration of Trust has been approved by the OSBA Board of Directors, it is necessary to have all the Trust Members have their boards, or their designee, adopt the Joinder of Trust Agreement. The Joinder of Trust Agreement is located on the last page of the enclosed Declaration of Trust. By signing the Joinder of Trust Agreement your

Oregon School Boards Association in cooperation with Special Districts Association of Oregon

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**CLAIMS OFFICE** PO Box 23879, Tigard, OR 97281 | 503-670-7066 / 800-305-1736 | Fax: 503-620-9817

**PACE.OSBA.ORG**

organization will continue to have an intergovernmental agreement with PACE.

Before renewing in the PACE self-insured, property, liability and automobile coverage program, your organization will need to adopt the enclosed Joinder of Trust Agreement and return a signed copy to PACE. We understand that this is not an easy task for PACE's many members to accomplish, but we assure you we would not be taking this action if the Trustees did not feel it was absolutely necessary to be in continued compliance with Oregon law.

**For K-12, ESDs & charter school members: The deadline** for sending back the signed resolution to PACE is:

- March 15, 2019
- Please have your board designee sign the resolution
- Please return the signed resolution to [pace@osba.org](mailto:pace@osba.org) or FAX to (503) 588-2813

**For Community College members: The deadline** for sending back the signed resolution to PACE is:

- March 15, 2019
- Please have the CCs board designated representative sign the resolution
- Please return the signed resolution to [pace@osba.org](mailto:pace@osba.org) or FAX to (503) 588-2813

I am sure you and your board members will have questions about the new Trust Agreement. In anticipation of your questions, following are some frequently asked questions and answers for your reference.

#### **FREQUENTLY ASKED QUESTIONS:**

#### **Didn't we sign a Joinder Agreement three years ago? Why do we need to do this again?**

**The PACE Trust Agreement has been substantially amended, along with an update of the PACE Bylaws. When the Trust Agreement is changed in substantial form, then the Trust Members must approve the changes by signing a new Joinder Agreement.**

#### **Why is the Trust Agreement an intergovernmental agreement?**

Oregon law requires that for local governments to form their own self-insured programs they must do so by entering into an intergovernmental agreement. Intergovernmental agreements require each participating organization to have a resolution adopted by its Board of Directors. The enclosed Joinder of Trust Agreement can be considered a suggested board resolution.

#### **Does my Board of Directors need to sign the Trust Agreement?**

In most instances, yes. However, some organizations have board adopted policies allowing staff to enter into intergovernmental agreements. You should review your internal policies or consult with your legal counsel, to determine who is required to sign the Trust Agreement at your organization.

**What is my district's financial risk as part of a self-insured program?**

The revised Declaration of Trust does not increase your district's financial liability any more than you currently have under the existing Trust Agreement. The PACE Trust is a non-assessable trust. This means that your district can never be asked to contribute additional funds, other than your annual contributions, to cover your claims or the claims of any other member. It also means, though, that you are ultimately responsible for your own claim's liabilities in the event the trust is not able to pay your claims. The PACE Trustees are dedicated to making sure this never happens by being extremely conservative with the amount of funds the trust retains to pay claims. Based on a certified actuary's estimates, PACE has over \$50 million in net assets, which is over and above what our actuary estimates is needed to satisfy all claims liabilities. When not used in the day-to-day business operations, these funds are invested, which allows for reinvestment of PACE resources into programs that reduce members' risks and keep rates low. In addition, the Trust purchases reinsurance that puts a cap on the trust's and members' claims liability.

**What happens if my district does not adopt the resolution?**

Unfortunately, if your district does not adopt the Joinder of Trust Agreement, your district will no longer be able to participate in the property or liability program. Your district will not be able to renew its coverage in these programs when your current policy term expires.

**Whom should I contact if I have questions about the enclosed materials?**

PACE Administrator  
Dave Harvey  
[dharvey@pace.osba.org](mailto:dharvey@pace.osba.org)

PACE Administration Assistant  
Pamela Mullen  
[pace@osba.org](mailto:pace@osba.org)  
(503) 588-2800 or (800) 578-6722



**FORM OF  
JOINDER TO TRUST AGREEMENT  
FOR MEMBERS**

By execution of this Joinder, the undersigned public body hereby agrees to become a party to, and is bound by, the Second Restatement of Declaration of Trust of the Property and Casualty Coverage for Education (PACE) effective as of July 1, 2019 (and as the same may be amended, supplemented or otherwise modified from time to time, the "Agreement"), by and among the Trustees and the Members, in the same manner as if the undersigned were an original signatory to such Agreement.

The undersigned represents and warrants that (i) the undersigned has received a copy of, and has reviewed the terms of, the Agreement and all related or relevant documents and agreements, (ii) undertakes to become a Member of the Property and Casualty Coverage for Education (PACE) with all the rights and obligations thereof, and (iii) such undertaking has been duly authorized as an intergovernmental agreement to create a program of self-insurance pursuant to ORS 30.282. Capitalized terms used but not defined in this Joinder shall have the meanings set forth in the Agreement.

**IN WITNESS WHEREOF**, the undersigned has executed this Joinder as of this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
[Name of District]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## RESTATED TRUST AGREEMENT

### Property and Casualty Coverage for Education

This Agreement is between the OREGON SCHOOL BOARDS ASSOCIATION, acting by and through its Board of Directors, and the Trustees named below who consent to act as trustees.

#### **BACKGROUND:**

- A. The Oregon School Boards Association, hereinafter referred to as “OSBA,” is an Oregon nonprofit public benefit corporation established to promote the common interests of its Members, as defined in the OSBA Bylaws and to institute programs to assist those Members in performing their governmental functions in a cost-effective way. The Members of the OSBA are political subdivisions including local school districts, education service districts, community college districts and the state board of education in the State of Oregon; and
- B. OSBA has agreed to establish a trust for Participants which desire to procure and maintain group insurance coverages or participate in group self-insurance for the benefit of such Members; and
- C. The purpose of this trust agreement is to establish a trust which will protect and manage insurance premiums, contributions and other collections related to the program; oversee the management and administration of the program; and approve the necessary contracts, insurance policies, premium and fee schedules, and other arrangements necessary to implement the program for the benefit of Participants that choose to participate; and

**NOW**, in consideration of the benefits to be derived for the participating Participants and the mutual promises and agreements set forth below, the parties agree as follows:

1. **Creation of Trust:** The name of the Trust is the “OSBA Property and Casualty Coverage for Education Trust” (the “Trust”) which shall be governed by the laws of the State of Oregon. The Trust shall be administered as provided in this agreement.
2. **Purposes of Trust:** The express purposes and primary objectives of the Trust are limited to performing essential governmental functions and all of the Trust’s income must accrue to the State of Oregon or its political subdivisions as required under IRC Section 115. The purposes of the Trust include the following:

- (a) To ensure that there is available to Participants a market for liability, property, crime and/or workers' compensation insurance coverage appropriate to the risks to which such Participants are exposed.
- (b) To aggregate the collective buying power of the Participants, and the economic advantages of individual and pooled risk retention where lawful and actuarially sound, and to reduce and stabilize the cost of funding insurance for those risks.
- (c) To provide Participants with expertise in the management of risk through loss prevention and loss control program, claims management and consulting, data gathering, information sharing and related services.
- (d) To act as an information resource to Participants in presenting to appropriate legislative bodies and committee's data related to the cost of public body risk in Oregon.
- (e) To create and act as a pooled self-insured retention fund for Participants, and to establish actuarially sound contribution schedules for Participants in such a pool at appropriate retention levels.
- (f) To receive, account for, invest and disburse as lawfully due and payable money collected from Participants as premiums, fees and other contributions to the Trust.
- (g) To promote the common interests of Participants and to institute programs to assist those Participants in performing their governmental functions in a cost-effective way.
- (h) To perform other activities as reasonable to achieve the list above, so long as such activity is allowable for an intergovernmental association under Oregon law.

### 3. Trustees:

- (a) **Number.** The Trust shall be managed by a board of nine trustees (the "Trustees") elected a by majority vote of the Board of Directors of OSBA.
- (b) **Composition.** All Trustees must be employed by a district, community college or ESD that is a member of OSBA, or serve on a board of a district, community college or ESD. No Trustee shall serve, and no appointment shall be effective, until such appointee acknowledges in writing full and, unconditional acceptance of the terms of this Trust.
- (c) **Term:** The term of office of a Trustee shall be for three years, except that the initial term of any Trustee may be one year, two years, or three years, to the end that in no year will the terms of more than one-third plus one of the Trustees expire.
- (d) **Appointment.** The Trustees shall nominate Trustee candidate(s) to OSBA. The nominees shall be elected by OSBA. If the list of candidates is not acceptable by OSBA, the Trustees will continue to nominate alternative candidate(s) for consideration until the list of candidates is accepted by OSBA. Vacancies in the office of a Trustee shall be filled by

a majority vote of Directors of OSBA from the nominations submitted by the Trustees.

- (e) **Ex Officio Trustee.** The Executive Director of OSBA or his/her designee shall be designated as the Program Administrator. The Program Administrator, or his/her designee, shall serve as an ex-officio nonvoting Trustee. The Trustees shall require the Program Administrator to keep and preserve minutes of the meetings of the Trustees and possess such powers and perform such duties as the holder of such an office usually has and performs.

4. **Powers of Board of Trustees:** In furtherance of the purposes set forth in this Trust, the Trustees shall have such powers as may be necessary or prudent to discharge their responsibilities in managing and controlling the Trust, including but not limited to the following powers:

- (a) To provide programs whereby Participants may obtain or participate in the coverage afforded by policies of insurance or participate in pooled self-insurance programs. To accept, determine and make reasonable arrangements for the payment by or on behalf of each Participant of all contributions and premiums due. To manage the assets of the Trust and adjust and pay authorized losses on behalf of its Participants.
- (b) To engage and oversee administrative services and other staff and to engage the services of competent professionals to provide services to the Trust and to purchase reinsurance or excess insurance as necessary to protect the interest of the Participants, to provide risk management and insurance related services to the Trust and its Participants, including such claims reporting and adjusting, auditing and record keeping, information sharing, underwriting, claims administration services, legal defense and settlement of claims, communications and marketing, loss control and prevention procedures and consulting, risk reduction and related administrative and consulting services as the Trustees deem appropriate. The Trustees may pay for such services out of Trust funds.
- (c) To review and approve policy forms, service contract forms, and other documents appropriate to the operation of the Trust and to establish the limits of authority of the persons engaged under Section (b) above.
- (d) To establish funding requirements for insurance coverages offered by the Trust; to establish procedures for the collection, investment and disbursement of moneys owed to and by the Trust; and to establish actions to be taken with respect to delinquent accounts receivable.
- (e) To establish standing committees and advisory committees to assist in policy and operations of the Trust and to appoint qualified persons to such committees.
- (f) To receive, hold, and manage premiums for such programs authorized by the Trustees, to invest, reinvest, and manage funds received for such purposes and to transmit to the proper recipient premiums received. To employ such agents, advisors and counsel as may be reasonably necessary in collecting, managing, administering, investing and

distributing the assets of the fund and to charge the expense thereof to the Trust.

- (g) The Trustees shall not be entitled to any remuneration for their services, but they may be reimbursed for reasonable expenses incurred by them in connection with the performance of their duties as Trustees. To the extent that such Trustee is reimbursed by a Participant or other entity for expenses as Trustee, such Trustee shall not be so reimbursed, but such reimbursement may be paid to the Participant or other entity, as the case may be, with respect to which such Trustee is an employee.
- (h) The Trustees may delegate any of their non-discretionary powers to the Program Administrator, service administrator or other staff retained by the Trustees as the Trustees deem it appropriate.
- (i) The Trustees shall require all persons performing services to the Trust to be bonded or insured in a form and amount set by the Trustees, the costs may, at the discretion of the Trustees, be paid out of Trust funds.
- (j) The Trustees may maintain bank accounts in such depositories as the Trustees may select and may empower any person or persons selected by them to draw and sign checks against any funds deposited therein and establish such accounts with financial and investment institutions and brokerages as may be necessary and prudent for the proper management of Trust funds. The Trustees may hold cash, uninvested, for such length of time as the Trustees may determine without liability for interest thereon.
- (k) To determine the general policy for operation of the Trust that shall be followed by all committees, officers, employees, agents, and independent contractors employed by the Trust.
- (l) To ensure the chair or vice-chair of the Trustees shall execute on behalf of the Trust all contracts, documents and pleadings as may be approved by the Trustees, provided that the Trustees may delegate to any person or firm engaged pursuant to Section 5(b) or (j) a limited agency authority to bind the Trust in certain cases or kinds of transactions to be specified by the Trustees.
- (m) To sue and be sued, or to prosecute and defend any and all actions affecting the Trust or its property, either in the name of the Trust or in their own names; to compromise or settle any suit, claims or demands, or waive or release any rights relating to the Trust or its property.
- (n) To have a judicial settlement of their accounts and judicial determination of any questions in connection with their duties and obligations hereunder, or in connection with the administration or distribution thereof. The costs and expenses, including accounting and legal fees, for such judicial settlement of accounts or other judicial determination shall be paid by the Trust as a general administrative expense to the extent permitted by applicable law.

- (o) To borrow or raise money for the purpose of the Trust in such amount, and upon such terms and conditions as the Trustees shall deem advisable; and for any sum so borrowed to issue the promissory note of the Trust, and to secure the repayment thereof by creating a security interest in all or any part of the property of the Trust; and no person lending such money shall be obligated to see that the money lent is applied to Trust purposes or to inquire into the validity, expedience or propriety of such borrowing. No such debt incurred by the Trust shall be deemed a debt of any Participant.
- (p) To continue to have and to execute, after the termination of the Trust and until final distribution, all of the titles, powers, discretions, rights and duties conferred or imposed upon the Trustees hereunder, or by law.
- (q) To acquire, hold, own, rent or lease, alone or in conjunction with any other party or parties and for the use in connection with the purposes of the Trust, any property, real or personal, and to pay the appropriate pro rata part of the mortgage payments, property taxes, assessments, insurance, maintenance and ordinary repairs on all such property.
- (r) To purchase as a general administrative expense of the Trust general liability insurance fidelity bonds and other insurance for the benefit of the Trust or the protection of the Trustees, Trust employees or agents against any losses by reason of errors or omissions, breach of fiduciary duty or negligence.
- (s) To construe and interpret this Trust Agreement.
- (t) Engage an independent and qualified actuary to perform actuarial calculations and provide advice regarding the sufficiency of the loss funds as frequently as is required for prudent management.
- (u) Hold meetings as specified in the Bylaws and maintain minutes of all meetings of the Trustees and Participants and distribute such minutes in a timely manner to all Trustees.

5. **Use of Trust Funds:**

- (a) Without further specific action of the Trustees, but subject to any limitations or conditions set by the Trustees in its bylaws or regulations, the administrators designated by the Trustees shall disburse or authorize disbursement of moneys from funds of the Trust for any of the following purposes:
  - (1) Payment of moneys due and certain under or by virtue of any contract, bond, or policy of insurance made or obtained by or on behalf of the Trust, including the costs of audits;
  - (2) Investment and reinvestment of Trust funds under such standards and limitations as may be approved by the Trustees;
  - (3) Payment of premiums due on fidelity, performance, errors and omissions, or other bonds and insurance which the Trustees may require in its bylaws to protect the Trust and the Trustees;

- (4) Reasonable and necessary expenses incurred by Trustees for such items as travel, meals, lodging, telephone calls and other out-of-pocket expenses incurred in performing their duties as Trustees, provided that the personal services and time devoted by Trustees shall not be compensated by Trust funds.
  - (5) Payments authorized by the Trust's annually approved budget.
  - (6) Payment of Participants claims, and defense costs will be paid from Trust loss funds
- (b) Except as provided in Section (a) above Trust funds shall not be disbursed, expended or indebted without express approval of the Trustees
  - (c) Surplus funds, including the income from investments of the Trust, in excess of obligations payable under this Section may, at the direction of the Trustees, be distributed in whole or in part, from time to time, to Participants in the program, either directly or by way of reduction of premiums, contributions or other fees assessed to Participants. Such distributions shall be based upon such formula as the Trustees shall approve. Except as provided in this section, investment income shall remain with the Trust for reinvestment or satisfaction of the obligations of the Trust as provided in Section (a).

#### 6. Participants:

- (a) Participants must be either a Member of OSBA or a Charter School per SB 100 (1999 Oregon Laws Charter 200) that is sponsored by a participating Member of OSBA.
- (b) **Term of Participation.** Status as a Participant will be continuous unless terminated by the Participant, the Trust or by operation of law.
- (c) **Termination of Participation.** A Participant shall be suspended or expelled from the Trust in accordance with the provisions set forth below:
  - (1) Failure to pay any Contribution or Premium required by the Trustees when due and owing. Any Participant failing to pay a required Contribution or Premium may be suspended from membership by proper notice from the Program Administrator and thereafter shall have no right to coverage from the Trust for any occurrence or loss occurring after the date of the payment was due. If the Participant shall subsequently submit its payment within 30 days, the Program Administrator may reinstate such membership. The Program Administrator will notify the Trustees of any such termination or suspension.
  - (2) A material Breach of Trust Agreement or Bylaws.
  - (3) Failure to continue to meet the criteria required by any Insurer or the Trust including, without limitation, underwriting criteria.

- (4) Failure to comply in good faith with Loss Prevention Programs instituted by the Trust or noncooperation with staff of the Trust regarding loss prevention procedures including, without limitation, training programs.
- (5) Failure to maintain membership in the OSBA or, in the case of a Public Charter School, a revoking of the sponsorship by the Local Board that sponsored it. Such termination shall be effective as of the due date of such Participant's next Contribution to the Trust's policy expiration.

A Participant's suspension or expulsion shall be preceded by a 60-day written notice to the Participant from the Trustees or Administrator except that 10 days' notice shall be sufficient for nonpayment of all or any part of a Contribution or Premium as provided herein.

(d) **Obligations of Participants.** The obligations of Participants of the Trust shall be as follows:

- (1) To pay all Contributions and Premiums to the Trust at such times and in such amounts as shall be established by the Trustees within the scope of the Trust Agreement and Bylaws. To allow the Trust and its agents reasonable access to all facilities of the Participants and all records, including but not limited to financial records, which relate to the purposes or powers of the Trust.
- (2) To allow attorneys selected by the Trust or Program Administrator to represent the Participant in investigation, settlement discussions and any litigation arising out of any claim made against the Participant within the scope of coverage furnished by the Trust.
- (3) To furnish full cooperation with the claims adjusters, attorneys selected by the Trust any agent, employee, officer or independent contractor of the Trust, relating to the purposes and powers of the Trust.
- (4) To follow loss reduction and prevention procedures as reasonably required by the Trust
- (5) To report as promptly as possible all incidents which could result in a claim against the Trust.

7. **Participant Duties:**

- (a) **Participant Bound by Terms.** Each entity, on becoming a Participant, agrees to be bound by all provisions and terms of the Trust Agreement, Bylaws, Coverage Documents and other agreements entered into with the Trust or any of its Insurers.

8. **Accrual of Net Surplus:**

- (a) Net Surplus, if any, shall accrue to the Loss Funds as it is earned. No Participant shall have a legally enforceable right to any specific share thereof except as herein provided or as provided by law. Net Surplus

may, at the Trust's discretion, be distributed to the Participants as provided herein. Such distribution may be paid directly or by means of reduction in Contributions for similar coverage due in the next Fund Year.

(b) No distribution of Net Surplus, if any, shall be made in any manner to any Participant who withdraws prior to the computation and distribution of the net surplus.

(c) **Net Surplus Distribution.** The Trustees shall adopt and maintain a surplus distribution policy and shall make such a policy available to Participants upon request.

9. **Loss Funds Protection.**

(a) The Trust must maintain adequate reserves and adequate reinsurance in accordance with ORS 30.382

(b) **Excessive Losses - Non-Assessable Pool.** In the event that a single loss or series of losses by one Participant should exceed the amount of protection afforded by both the Loss Fund and other insurance carried by the Trust, then payment of valid losses shall be the obligation of the individual Participant or Participants against whom the claim(s) were made and perfected by judgment or settlement.

(c) **Transfers Among Loss Funds.** The Trustees may, in their sole discretion, transfer monies among Loss Funds in the event of excessive losses in any one Loss Fund.

(d) **Additional Insurance.** Membership in the Trust shall not preclude any Participant from purchasing insurance in addition to any coverage provided by the Trust.

10. **General Provisions:**

(a) **Title to Trust Assets.** Title to the funds and property of the Trust, including without limitation Loss Funds, shall be vested in and remain exclusively in the Trust and no Participant shall have any right, title or interest in the Loss Funds except as set forth in the Coverage documents nor any right to Contributions made or to be made thereto, nor any claim against any other Participant on account thereof, except as provided by law or by amendment to this Agreement.

(b) **Nonalienation of Benefits.** The funds and property of the Trust, including without limitation Loss Funds, shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge by any person other than the Trustees and their duly authorized representative to the extent and for the purposes as herein specifically provided.

(c) **Examination of Participant's Books and Records.** The Trustees their agents, employees and attorneys shall be permitted at all reasonable times prior to the expiration of two years after the termination of a Participant's participation in the Trust to examine the Participant's books, vouchers, contracts, documents and records of any and every

kind which show or tend to show or verify the amount which is payable from the Fund to such Participant or any of its employees.

- (d) **Examination of Trust Books and Records.** The Trustees shall arrange for an annual independent audit of the Trust's books, contracts, documents and records and shall make the audited financial statement available to all Participants.

11. **Termination of Trust:**

- (a) The Trust shall terminate upon the date on which Trust has no Participants or as required by law. In addition, OSBA may terminate the Trust by providing written notice of the intent to terminate. Such notice shall be delivered to all Trustees and Participants at least 90 days prior to such termination. In the event that OSBA terminates the Trust, the Trust shall begin to wind up its affairs but shall continue to exist until every policy, contract or other agreement under which any Participant participates in the services offered by, or is indemnified or insured by, or through the Trust is exhausted by payment of claims or is deemed unnecessary as a result of the passage of time.

- (1) Upon the dissolution, adjudication of bankruptcy or appointment of a receiver for OSBA.

(b) **Winding Up:**

- (2) Upon termination of the Trust, any excess funds held in the Trust after payment of all Premiums, just claims and expenses shall be first distributed to Participants for the payment of all liabilities incurred prior to such termination and for liquidation of all assets of the trust. Upon satisfaction of all obligations of the Trust, all remaining assets of the Trust shall be returned to current Participants based on a formula of historic contributions and losses established by the Trustees.

- (3) Automatic termination as provided in Sections (1), (2) and (4) shall not affect the rights of any Participants under any "policy" of "insurance" underwritten by an "insurer" other than the Trust, as the terms "policy", "insurance" and "insurer" are defined in the Oregon Insurance Code.

- (4) No Participant shall be responsible for any claim or judgment against any other Participant or the Trust except to the extent of the assets of the loss fund, any insurance carried by the Trust and future contributions as provided herein.

- (5) The Trustees shall continue to serve in office until all obligations of the Trust have been fully and finally discharged or adequately provided for. Thirty days prior to the termination of the Trust, the Trustees shall notify Participant of such termination.

12. **Withdrawal:** Upon the termination of all participation in the programs of the Trust, including but not limited to coverage under all Coverage Documents with respect to a Participant, a Participant's membership shall cease.

### 13. Dispute Resolution Process:

- (a) **Appeal to Board of Trustees:** In the event of any dispute arising from the operation of the Trust, the affected Participant shall first appeal to the Trustees. In a matter relating to a claim under a pooled insurance fund coverage document, the appeal must be made within 30 days of the trust's proposed resolution of the disputed claim unless otherwise provided in the contract of coverage. To institute an appeal, the Participant must give written notice to the Chair or Vice-Chair of the Trust providing a written summary of the dispute, detailing in reasonable detail the facts and circumstances of the issues and the requested remedies. At the next scheduled Trust meeting or at such other time as determined by the Chair, the Trustees will review the matter, using procedures as promulgated by the Trust. The Trustees' decision will be communicated to the Participant within 90 days of the Trustees' hearing the appeal.
- (b) **Mandatory Mediation:** If a dispute is not resolved by appeal to the Trustees, it must be submitted to the Arbitration Services of Portland ("ASP"), or its successor, for mediation. The Trust or any Participant may commence mediation by providing ASP and the other affected parties a written request for mediation, setting forth the subject of the dispute and the relief requested. The Trust and each affected Participant shall cooperate with ASP and with one another in selecting a mediator from the ASP panel of neutrals and in scheduling the mediation proceedings. They agree that they will participate in the mediation in good faith and that they will share equally in the costs (the Trust will pay one half of the costs and the other half will be paid by the affected Participant, or if more than one Participant, each shall contribute equally to that half or otherwise as they may agree). All of the offers, promises and conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any ASP employees, are confidential and privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, providing that evidence that is otherwise admissible and discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
- (c) **Mandatory Arbitration:** If the matter is not resolved through mediation, then it shall be submitted to ASP, or its successor, for final and binding arbitration pursuant to the rules for commercial arbitration for ASP. The Trust or a Participant may initiate the arbitration with respect to the matter submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following 45 days from the date of filing the written request for mediation, whichever occurs first ("Earliest Initiation Date"). The mediation may continue after the commencement of arbitration if the parties agree. At no time prior to the Earliest Initiation Date will either side initiate an arbitration or litigation related to this Agreement, except as provided by the rules of commercial arbitration for ASP or by

agreement of the parties. All applicable statutes of limitations and defenses based upon the passage of time shall be tolled until 15 days after the Earliest Initiation Date. The parties will take such action, if any is required, to effectuate such tolling. The dispute will be settled by a single arbitrator. The parties will cooperate with ASP and with one another in selecting an arbitrator and in scheduling arbitration proceedings. Arbitration will occur in Salem, Oregon unless the parties otherwise agree. The parties will be entitled to conduct discovery in accordance with the Federal Rules of Civil Procedure, subject to limitation by the arbitrator to secure the just and efficient resolution of the dispute. If the amount in controversy exceeds \$250,000, the arbitrator's decision shall include a statement specifying in reasonable detail the basis for and computation of the amount of the award, if any. In any arbitration arising out of or related to this Agreement, the arbitrator may not award any incidental, indirect or consequential damages, including damages for lost profits. The decision of the arbitrator will be final and binding. The party prevailing in the arbitration will also be entitled to recover any amount for his/her costs and attorney fees incurred in connection with the arbitration as determined by the arbitrator. Judgment upon the arbitration award may be entered in any court having jurisdiction.

(d) **Coverage Agreement Dispute Resolution:** The dispute resolution provision in any coverage agreement issued by the Trust shall apply for the matters to which such provisions are made applicable in the coverage agreement and shall supersede the dispute resolution provisions of this Section 13. If a coverage agreement is silent, or the dispute resolution contained within it do not apply to a particular dispute, the dispute resolution provision of this Section 13 shall apply.

14. **Amendment:** OSBA reserves the right to alter, amend or terminate this Trust and the terms under which it exists at any time by a memorandum in writing delivered to the Trustees, provided any such change or termination shall not prejudice the rights of any Participant with respect to any accrued right or claim. In order to advise OSBA on any proposed material change to the provisions of this Trust Agreement, the Trustees shall prepare an impact statement to determine the financial impact, if any, on Trust operations and fiscal stability of the proposed changes to the Trust Agreement. The Trustees will provide a 30-day notice to Participants by sending a written copy of the impact statement to the participating Participants.
15. **Severability:** If any provision of this Agreement is adjudicated to be invalid, unenforceable or unconstitutional, the remainder of the provisions not subject to such adjudication shall not be affected and shall continue in full force and effect.
16. **Joinders:** Any joinder to this Agreement executed by a Participant will be deemed to be that Participant's assent to the entirety of this Agreement, as if such had executed an original of this Agreement.

17. **Indemnification:** Trustees, officers and employees of the Trust shall use ordinary care and diligence in the exercise of their powers and in the performance of their duties. They shall not be liable for any mistakes of judgment or other action made, taken or omitted by them in good faith, nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of funds or failure to invest. No Trustee shall be liable for any action taken or omitted by any other Trustee. No Trustee shall be required to give a bond or other security to guarantee the faithful performance of their duties hereunder. The Trust shall defend, hold harmless and indemnify the individual Trustees, officers and employees of the Trust from any and all demands, claims, suits, actions and legal proceedings brought against them in their official capacity as agents of the Trust. The incident must have occurred while the Trustee, officer or employee of the Trust, was acting within the scope of official duties. This indemnification excludes any duty to indemnify and individual from and criminal investigation or prosecution/litigation, however the Trust may procure such insurance coverage for criminal matters which is within the authority of the Trust to provide under state law.

IN WITNESS WHEREOF, by action of OSBA, this Trust Agreement is approved and OSBA by and through its authorized officers, has caused this Agreement to be executed in its name and on its behalf as of this 11<sup>th</sup> day of November 2018.

**OREGON SCHOOL BOARDS ASSOCIATION**

By:  \_\_\_\_\_

OSBA President, LeeAnn Larsen

By:  \_\_\_\_\_

OSBA Secretary-Treasurer, Maureen Wolf

**PROPERTY & CASUALTY COVERAGE FOR EDUCATION**

We, the undersigned Trustees, having been duly appointed to carry out the provisions of the above Trust Agreement, do hereby approve, affirm and accept such Trust.

Date: November 16 ,2018  
  
\_\_\_\_\_  
Debbie Laszlo, Chair

Date: November 16 ,2018  
  
\_\_\_\_\_  
Sharla Andresen, Vice Chair

Date: November 16 ,2018  
  
\_\_\_\_\_  
Adam Stewart, Trustee

Date: November 16 ,2018  
  
\_\_\_\_\_  
Brett Yancey, Trustee

Date: November 16 ,2018  
  
\_\_\_\_\_  
Craig Prewitt, Trustee

Date: November 16 ,2018  
\_\_\_\_\_  
Tenneal Wetherell, Trustee

Date: November 16 ,2018  
  
\_\_\_\_\_  
Marie Knight, Trustee

Date: November 16 ,2018  
  
\_\_\_\_\_  
Mike Schofield, Trustee

Date: November 16 ,2018  
\_\_\_\_\_  
Tim Belanger, Trustee