



Service Agreement

between the

OSBA Property and Casualty for Education Trust

and the

Special Districts Association of Oregon

The parties to this Service Agreement are the OSBA Property and Casualty Coverage for Education Trust (hereafter “the Trust” or “PACE”), a public educational entity self-insurance pool formed under the laws of the State of Oregon and the Special Districts Association of Oregon (hereafter “SDAO”).

RECITALS

- A. SDAO is a non-profit association of Oregon local governments engaged in, among other things, providing certain management, administrative, and other services related to the management of self-insured public entity property and liability programs;
- B. The Trust is an insurance pool for public educational entities; and
- C. The Trust and SDAO are parties to a service agreement that will expire June 30, 2024; and
- D. The Trust and SDAO wish to continue their contractual relationship in which SDAO provides the Trust with certain management, administrative, brokerage and other services related to insurance underwriting on the terms and conditions set out in this Service Agreement.

NOW, THEREFORE, in consideration of the mutual promises and the good and sufficient consideration set forth below, the Trust and SDAO agree as follows:



1. SERVICES PROVIDED BY SDAO

- A. SDAO will provide underwriting and rating services related to the Trust's insurance pool program. The Trust will approve target member contribution levels each year as part of the annual budget process. SDAO will have the responsibility and authority to determine the contributions for each participating entity within the Trust's guidelines.
- B. SDAO will provide claims administration services, including but not limited to payment of claims, setting claim reserves, managing claims litigation, maintaining claims data and providing claims reports to participants of the Trust. SDAO will manage claims in accordance with the Claims Operations manual as adopted by the Trust. SDAO will have authority to settle claims within the guidelines specified in the Claims Operations Manual. SDAO will promptly provide the Trust with detailed claims reports and a checking account register of all payments if requested by the Trust.
- C. SDAO's Director of Claims Administration, in consultation with OSBA's Chief Legal Officer or designee, will be responsible for assigning qualified attorneys, which may be an attorney in the OSBA litigation department, to represent Trust members in claims litigation. Any disagreements about claims assignments or case management will be referred to the OSBA Executive Director or their designee and the SDAO Executive Director or their designee for resolution.
- D. SDAO will provide policy administration services. All participants' files will be maintained by SDAO. Trust coverage documents and supporting documentation will be maintained by SDAO and delivered by SDAO to participants and/or their insurance agents. The Trust will approve any changes to the coverage documents.



E. SDAO shall maintain a complete, accurate, and systematic set of records for all financial transactions. SDAO will provide accounting services including but not limited to accounts payable, accounts receivable, and maintenance of checking accounts. All accounts will be under the ownership of the Trust. SDAO shall have the authority to disburse money out of the Trust accounts, including investments accounts, within the parameters of the annual budget and spending authorizations as established by the Trust. SDAO will provide the Trust with information necessary for conducting their annual reviews. These duties shall include:

1. Coordinate the development of an annual budget for the Trust.
2. Facilitate the annual financial audit in cooperation with the Trust's appointed auditor.
3. Annually assist in the allocation of an amount to be distributed to qualified participants through any grant or subsidized programs established by the Trust.
4. Annually arrange for an independent actuarial study of the Trust. PACE Trustees shall be responsible for final selection of the auditor to perform the required study. The results of the actuarial study will be used by the Trust's financial auditor for the Trust's annual financial statement and by SDAO to set future rates.

F. SDAO will provide loss control and risk management services. SDAO risk management consultants will work with PACE participants to identify hazards and design programs to reduce losses. In addition, SDAO may contract with third-party vendors, including OSBA, to provide specialized risk management services.



- G. SDAO will contract with a third-party insurance broker to purchase insurance coverage that is in addition to the Trust's self-insured retention. SDAO will be responsible for negotiating the contract and directing the work of the insurance broker. The Trust will be responsible for approving the insurance broker's compensation as part of the annual budgeting process and the amount will be outside of the compensation provided to SDAO under this Service Agreement.
- H. SDAO will provide underwriting, claims, litigation, financial, and risk management reports to the Trust at the Trust's meetings. SDAO shall provide regular reports as requested by the Trust or their designee(s) in the performance of duties and services specified in this Service Agreement. This would include, but is not limited to, underwriting, claims, litigation, financial, risk management and corrective action reports. The SDAO Executive Director or designee(s) and OSBA Executive Director or designee(s) will meet regularly and shall coordinate service delivery. SDAO shall be accountable for the services and performance standards specified in this Service Agreement commensurate with the business plan(s) and policies established by the Trust.
- I. SDAO will be responsible for providing the computer hardware and software necessary for its administrative duties to the Trust. This shall include but not be limited to claims administration software, underwriting software and accounting software. The Trust will financially contribute to the maintenance and license costs of such systems as part of the compensation to be paid pursuant to Section 3. All computer software and hardware used by SDAO will be the property of SDAO.
- J. SDAO will administer any programs that provide safety-related grant funds to participants. The Trust will set the amount to be distributed each year and the



projects to receive priority. The grant funds will be outside of the compensation provided to SDAO under this Service Agreement.

- K. SDAO will assist the Trust and the OSBA Communications Department in developing and implementing communications and marketing plans to promote the Trust's insurance programs. SDAO will assist the OSBA Communications Department in soliciting prospective members and provide quotations to such prospective members.
- L. SDAO shall direct and encourage PACE members to utilize the services of OSBA's Litigation Services Department for pre-loss legal services.
- M. SDAO will provide risk management and safety-related information to OSBA to be included in OSBA's website, newsletter, and other communications.
- N. All obligations under this Service Agreement will be managed by SDAO.

2. OBLIGATIONS OF THE TRUST

The Trust will adopt and maintain a Trust Board priorities and goals plan to assist with guiding the administrative services provided by SDAO. The Trust will be responsible for the following activities outside of this Service Agreement and at its expense, including providing funding for these activities in its annual budget:

- A. Annually, the Trust will conduct an independent financial audit of program accounts. The results of the audit will be distributed to the participants.
- B. Annually, the Trust will conduct an independent actuarial study. The results of the actuarial study will be used by the Trust's financial auditor for the Trust's annual financial statement and by SDAO to set rates for contributions.



- C. Once every three years, the Trust will conduct an independent claims audit to review adequacy of claims reserves and claims adjusting practices.
- D. The Trust is responsible for investment of Trust funds in accordance with the Trust's investment policy.

3. COMPENSATION

- A. SDAO will charge an annual service fee as provided in the Trust's adopted budget beginning July 1st of each fiscal year. The service fee will be based upon the estimated actual incurred cost to SDAO in providing services to the Trust as outlined in this Service Agreement. Prior to the end of each contract year, the service fee shall be reviewed and revised by agreement of the parties for each subsequent year thereafter. In the absence of such agreement, the cost may increase each year based on the preceding year's annualized average of the Portland, Oregon CPI-U with a maximum increase of 5%. The service fee will be billed to the Trust quarterly.
- B. Either party may, at any time, request to renegotiate the service fee then currently applicable based on a material change in the services provided (for example, a permanent increase or decrease in FTE).

4. APPOINTMENT AND RATIFICATION OF CONTRACTS

- A. The Trust hereby delegates and authorizes SDAO to perform for and on its behalf all the duties set forth herein.

5. INDEMNIFICATION

- A. SDAO agrees to indemnify and hold the Trust harmless for any loss, cost, damage, or expense (including reasonable attorney's fees) arising from the negligent acts or omissions of SDAO. SDAO also agrees to hold harmless the individual officers, directors, trustees, and employees of the Trust from any claims under this Service Agreement, but rather to seek remedies for such claims only against the Trust.



- B. The Trust agrees to indemnify and hold SDAO harmless from any loss, cost, damage, or expense (including reasonable attorney's fees) arising from the negligent acts or omissions of the Trust. The Trust also agrees to hold harmless the individual officers, directors, trustees, and employees of SDAO from any claims under this Service Agreement, but rather to seek remedies for such claims only against SDAO.

6. SUBCONTRACTING

- A. SDAO may subcontract for services to be provided under this Service Agreement. It is understood, however, that SDAO will be responsible for the performance of all services to be provided to the Trust hereunder in accordance with this Service Agreement.
- B. SDAO shall not be liable solely for the act or failure to act of any independent investigator, appraiser, medical or other experts, insurance agent, insurance broker, or attorney retained by SDAO on behalf of the Trust in connection with any qualified claim.

7. OWNERSHIP OF RECORDS

- A. The Trust owns all records and files created, obtained, or maintained by SDAO in the performance of SDAO's duties under this Service Agreement. Upon termination of this Service Agreement, all records and files owned by the Trust will be returned to the Trust or its designated representative.

8. EVALUATION

- A. The PACE Administrator and/or his designee(s) shall evaluate the services provided under this Service Agreement on at least an annual basis. The Trustees shall review the annual evaluation and approve it before it is finalized.
- B. Evaluation of services provided pursuant to this Service Agreement will be based on criteria established by the Trustees. Notification of the criteria and process to be used in evaluating service performance shall be provided to SDAO no later than October 1st of each year.



- C. After receiving notice from the Trustees of deficient performance, the SDAO Executive Director shall initiate immediate corrective actions.

9. TERM AND TERMINATION

- A. This Service Agreement is effective July 1, 2024, and terminates June 30, 2028 (the "Initial Term"), unless terminated earlier or extended pursuant to the terms of this Service Agreement.
- B. If SDAO receives an acceptable evaluation on the last annual evaluation by the Trust preceding the termination of the Initial Term, then this Service Agreement will automatically renew for a four-year term effective July 1, 2028, through June 30, 2032 (the "First Renewal Term"). If SDAO receives an acceptable evaluation on the last annual evaluation preceding the termination of the First Renewal Term, then this Service Agreement will automatically renew for a four-year term effective July 1, 2032, through June 30, 2036.
- C. The parties may agree to enter into a new agreement at the conclusion of this Service Agreement. The decision to enter into a subsequent contract will be made no later than March 1 in the last year of this Service Agreement.
- D. This Service Agreement will automatically terminate in the event of the dissolution of the Trust. SDAO's obligation to render services under this Service Agreement will terminate simultaneously with the effective date of termination of this Service Agreement. In the event of early termination of this Service Agreement upon dissolution of the Trust in accordance with this section, SDAO will return to the Trust all fees or other compensation paid by the Trust to SDAO on a pro-rata basis for any amounts that were paid for service beyond the effective date of termination.
- E. This Service Agreement may be terminated by either party upon written notice for cause. For purposes hereof, "Cause" shall mean:
 - 1. Upon the institution or acquiescence with respect to the institution of any bankruptcy, reorganization, or liquidation proceedings instituted against a party and remains un-dismissed for forty-five (45) calendars days; or



2. Fraud, misappropriation of funds or material representation; or
 3. Failure to consistently maintain established standards of performance as established in Section 8; or
 4. Upon the material breach of this Service Agreement, if after having been notified of the same, the breaching party fails to cure within fourteen (14) calendar days of such notice; provided, however, that such breach is incapable of being cured, then the termination shall be effective upon notice; or failure to consistently maintain established standards of performance.
- F. In the event of termination of this Service Agreement, SDAO will assist the Trust in arranging a smooth transition process for services provided by SDAO under this Service Agreement. The Trust will compensate SDAO for its actual incurred costs in providing any transition services after termination of this Service Agreement. In the event of termination prior to the expiration or an anniversary of this Service Agreement, SDAO's annual compensation will be deemed earned on a pro-rata basis. Except as expressly provided in this Service Agreement, SDAO's obligations and the obligations of its affiliates to provide services to the Trust will cease upon the effective date of termination unless otherwise agreed in writing.

10. [INTENTIONALLY LEFT BLANK]

11. COMPLIANCE WITH LAWS

In the performance of this Service Agreement, SDAO shall abide by and conform to any and all applicable laws of the United States, State of Oregon, and coverage documents of the Trust. Oregon law shall govern this Service Agreement and the venue for any litigation based on this contract or torts shall be in Marion County.

12. INDEPENDENT CONTRACTOR

In performing services hereunder, SDAO shall be an independent contractor of the Trust under ORS 670.600. Nothing contained herein shall be construed as creating an employer-employee relationship, partnership, or joint venture between the parties. Pursuant to ORS 670.600, SDAO shall be free from direction and control over the



means and manner of providing labor and services under this Service Agreement, but SDAO shall be subject to the right of the Trust to specify the desired results.

13.INSURANCE

- A. Commercial General Liability. SDAO shall retain in force for the duration of this Service Agreement a Commercial General Liability insurance policy or equivalent self-insurance written on an occurrence basis with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Automobile Liability (owned, non-owned, and hired) insurance with limits not less than \$1,000,000 per occurrence shall be maintained. The Trust, its employees, officials and agents will be named as an additional insured as respects to work or services performed under this Service Agreement to the extent of death or bodily injury to persons or damage to property arises in whole or part out of fault of the SDAO or the fault of the SDAO's agents, representatives or subcontractors. This insurance will be primary over any coverage maintained by the Trust and the terms, conditions and limits must be approved by the Trust.
- B. Professional/Errors & Omissions Liability Insurance. The SDAO shall retain in force for the duration of this Service Agreement a Professional/Errors & Omissions Liability insurance policy or equivalent self-insurance written on an occurrence basis with a retroactive date on or before the inception of this Service Agreement with limits of not less than \$2,000,000 per incident and \$4,000,000 in the aggregate. This insurance will be primary over any coverage maintained by the Trust and the terms, conditions and limits must be approved by the Trust.
- C. Workers' Compensation/Employers Liability. SDAO shall provide and maintain Workers' Compensation coverage for its employees, officers, agents or partners, as required by applicable Workers' Compensation laws. SDAO shall obtain insurance that provides coverage against an employer's common law liability for bodily injury to employees occurring within the scope of their employment when that liability is not covered by Workers' Compensation with limits of \$250,000 per Accident/Disease, \$250,000 per Employee, \$250,000 Disease Policy Limit.
- D. Insurance for Comprehensive Crime. The SDAO shall provide and maintain Comprehensive Crime Insurance, including Employee Dishonesty and Computer Fraud Insurance, covering losses arising out of or in connection with any fraudulent or dishonest acts, in an amount not less than \$5,000,000 per loss and \$5,000,000 in the aggregate per policy year. The coverage under this paragraph must include at



least the following coverages: dishonesty (blanket coverage), forgery, credit card forgery, theft (inside and outside), embezzlement, wire transfer fraud, computer fraud or theft, other dishonest acts of any employee or agent whose duties are to receive, handle, or have custody of checks, securities, electronic funds, or account for merchandize or other property - \$5,000,000.

- E. Certificate of Insurance. Evidence of the above insurance coverage issued by a company satisfactory to the Trust shall be provided to the Trust by way of certificate of insurance or endorsements.

14.FORCE MAJEURE

- A. Neither party shall be in breach of this Service Agreement if there is total or partial failure by it in its duties and obligations occasioned by any act of God, fire, act of foreign federal, state or local government, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labor disputes of whatever nature, or any other reason beyond its reasonable control. In the event of delay in performance due to any such cause, the date of the delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

15. ATTORNEY FEES

If any action or arbitration is brought by any party to this Service Agreement to enforce or interpret its terms or provisions, the prevailing party shall be entitled to reasonable attorney fees and costs incurred in connection with such action prior to and at trial and any appeal.

16.MEDIATION

Except as expressly provided otherwise in this Service Agreement, should any dispute arise between the parties to this Service Agreement, it is agreed that such dispute will be submitted to a mediator agreed to by both parties as soon as the dispute arises, but in any event prior to commencement of litigation or arbitration. If the parties cannot agree on a mediator or the process of mediation within 30 calendar days after receipt of a written request for mediation, either party may seek



any remedy available under this Service Agreement to resolve the dispute. The parties agree to exercise their best efforts in good faith to resolve all disputes in mediation.

17. ARBITRATION

Subject to Section 16 Mediation, and except as otherwise expressly provided in this Service Agreement, the parties agree to submit to binding arbitration such disagreement or dispute and any and all controversies that may arise out of or in connection with this Service Agreement. The arbitration shall be conducted in accordance with the laws of the State of Oregon. If the parties cannot mutually agree on an arbitrator, an arbitrator shall be selected by the presiding judge of the Marion County Circuit Court. Each party accepts jurisdiction of the courts of the State of Oregon for purposes of commencing, conducting, and enforcing arbitration proceedings and agrees to accept notice in writing on an intention to proceed with arbitration, and of any other step in connection with arbitration, including enforcement, with the same effect as though personally served in the State of Oregon. The decision of the arbitrator shall be final and binding on both parties. The parties shall share equally the arbitrator's fee and except as provided in Section 15 herein, each shall pay its own costs of arbitration.

18. MISCELLANEOUS

- A. If any provision of this Service Agreement is declared void or otherwise unenforceable, such provision shall be deemed to have been severed from this Service Agreement, which shall otherwise remain in full force and effect.
- B. This Service Agreement shall not be assigned without the prior written consent of the other party, provided, however, that it is agreed that SDAO may subcontract all or part of its services to qualified parties.
- C. The headings of the sections herein are intended for convenience of reference only and shall not be used to interpret the meaning of each section.
- D. This Service Agreement contains the entire agreement between the parties, and supersedes all other agreements either oral or written.
- E. No amendment, modification or addendum to this Service Agreement shall have any force or effect unless it is made in writing, dated and signed by the parties hereto.



- F. This Service Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
- G. No failure of SDAO or the Trust to insist on strict compliance with this Service Agreement or to exercise any right under it shall be a waiver of such right.
- H. All notices under this Service Agreement shall be delivered personally, or pre-paid certified or registered mail or sent by courier service, addressed as follows:

(1) If to SDAO, to:
Special Districts Association of Oregon (SDAO)
PO Box 12613
Salem, OR 97301

(2) If to PACE, to:
Property & Casualty Coverage for Education Trust
c/o PACE Administrator
1201 Court Street NE, Suite 400
Salem, OR 97301

- I. The parties and signatories below covenant that this Service Agreement has been duly authorized by their boards of directors and that the signatories hereto have authority to execute this Service Agreement.

IN WITNESS WHEREOF, the parties have hereto executed this Service Agreement as of the day and year set forth below.

SPECIAL DISTRICTS ASSOCIATION OF OREGON

By: Frank Stratton

A handwritten signature in black ink, appearing to be "Frank Stratton", written over a horizontal line.

Title: SDAO Executive Director

Date: 2/13/2024

OSBA PROPERTY AND CASUALTY COVERAGE FOR EDUCATION TRUST

By: Tim Belanger

A handwritten signature in blue ink, appearing to be "Tim Belanger", written over a horizontal line.

Title: PACE Board Chair

Date: 2-5-2024