



# Claims Fund Agreement

*This Timber Creek Casualty Insurance Company Inc., A Risk Retention Group CLAIMS FUND AGREEMENT (hereinafter the "Agreement") is entered into by and between:*

\_\_\_\_\_ (hereinafter either individually or collectively referred to as the "Funding Company")

and

*Timber Creek Casualty Insurance Company Inc., A Risk Retention Group (hereinafter "TCCI") (collectively the Funding Company and TCCI are referred to as the "Parties")*

## RECITALS:

**WHEREAS**, the Funding Company owns, operates, and maintains operations in the State of \_\_\_\_\_ and has need of insurance coverage for those operations; and

**WHEREAS**, TCCI provides insurance coverage in the State of \_\_\_\_\_; and

**WHEREAS**, the Parties have negotiated an insurance policy which includes a self-insured retention, liability deductible, or deductible; and

**WHEREAS**, the Parties desire to enter into an agreement to establish how the self-insured retention, liability deductible, or deductible will be funded and how claims made under the insurance coverage will be paid;

**NOW THEREFORE**, in consideration of the obligations and provisions contained herein, and for good and valuable consideration, the Parties, intending to be legally bound, hereby agree as follows:

### 1. Duration of this Agreement

This Agreement is effective from the date it is executed until the date it is terminated in accordance with Paragraph 3 of this Agreement. The date of termination will be referred to hereinafter as the "Expiration Date."

### 2. Representations and Warranties.

2.1 Within thirty (30) days of the execution of this Agreement, and at subsequent thirty (30) day intervals prior to the Expiration Date, TCCI will review both the open and closed claims files to determine the amounts owed or reasonably expected to be owed by the Funding Company for self-insured retentions, liability deductibles, or deductibles. Claim file items to be

reviewed include but are not limited to: claims frequency; total paid; average paid per claim; claim development; and reserves. The \$2,500, a non-working fund, in pre-funded self-insured retentions, liability deductibles, or deductibles and all subsequent reimbursements or accretions required will be hereinafter referred to as the "Claim Fund."

- 22 TCCI may require the Funding Company to make additional payments into the Claim Fund based on its review. The Claim Fund may exceed, but cannot be less than 120% of the associated claims reserves, consisting of the adjuster claim value estimate, plus an estimate for incurred but not reported claims and case reserve deficits on reported claims;
- 23 The Funding Company agrees to allow TCCI to withhold the return of premiums and any other funds allegedly owed by TCCI to the Funding Company until the balance in the Claim Fund has been increased to the amount determined by TCCI as the result of the review as outlined above. If the additional Claim Fund amount required is not received within fifteen (15) days of the original request, any return premium amounts or any other amounts allegedly owed by TCCI to the Funding Company will be transferred to the Claim Fund;
- 24 The Claim Fund will be held and utilized by TCCI for the purpose of:
  - 24.1 funding self-insured retentions, liability deductibles, or deductibles arising as a result of claims made against the Funding Company which are:
    - 24.1.1 covered under an insurance coverage policy; or
    - 24.1.2 defended by TCCI even if it is eventually determined that there was no coverage for the claim; or
  - 24.2 funding any other claim or related expense up to the limit of the self-insured retention, liability deductible, or deductible, including but not limited to uninsured/underinsured motorist claims, personal injury protection (PIP) claims, legal defense expenses, and outside claims adjusting expenses, which deductibles or expenses arise as a result of claims made against the Funding Company which are:
    - 24.2.1 covered under an insurance coverage policy; or
    - 24.2.2 defended by TCCI, even if it is eventually determined that there was no coverage for the claim; or
  - 24.3 funding of additional or past due premium payable to TCCI by the Funding Company pursuant to the terms of any insurance coverage policy issued by TCCI to the Funding Company.
- 25 TCCI will hold the Claim Fund issued by the Funding Company in TCCI's bank account at all times and no interest will be paid by TCCI to the Funding Company on the Claim Fund.

- 26 After issuing any payment made on the Funding Company's behalf for a purpose or purposes set forth in 2.4 above, TCCI shall be immediately reimbursed from the Claim Fund.
- 27 The Funding Company shall, within fifteen (15) days of the mailing of a demand by TCCI, make such additional payment as demanded by TCCI to maintain or otherwise fund the Claim Fund.
- 28 If at any time the Funding Company shall fail to make additional payments as required by paragraph 2.7 above, the Parties agree that the failure will constitute a substantial change in the risk that TCCI assumed in insuring the Funding Company and that TCCI may cancel any or all insurance coverage policies with the Funding Company. Such cancellation shall be done in accordance with the cancellation provisions of the policy.
- 29 Prior to utilizing the Claim Fund to issue payment under a self-insured retention, liability deductible, or deductible, TCCI may request that the Funding Company issue that payment directly from the Funding Company's own funds. The Funding Company represents that it will:
- 29.1 immediately issue such payment as directed by TCCI; and
- 29.2 immediately provide to TCCI proof of such payment.
- 2.10 Closing the Claim Fund
- 2.10.1 If all insurance policies are not renewed, or are cancelled by either TCCI or the Funding Company; and
- 2.10.2 it has been the greater of ninety (90) days since nonrenewal or cancellation of all insurance policies or sixty (60) days from the date the last insurance claim has been closed has elapsed; and
- 2.10.3 the Funding Company or TCCI has requested that this Agreement be Terminated in accordance with Paragraph 3; then
- 2.10.4 TCCI will review the Funding Company's loss history, claim frequency, and the Funding Company's financial strength, and determine if it is reasonable to maintain the Claim Fund.
- 2.10.5 If TCCI determines that it is unreasonable to maintain the Claim Fund, then TCCI will:
- 2.10.5.1 calculate the amount of any additional premium payable to TCCI by the Funding Company pursuant to the terms of any insurance policy and pay such amount from the Claim Fund; and
- 2.10.5.2 calculate any self-insured retention, liability deductible, or deductible amounts owed by the Funding Company and pay such amounts, or reimburse TCCI for the payment of such amounts, from the Claim Fund; and

3.1.1.1 remit to the Funding Company the balance of the Claim Fund, if any, after deducting the amounts specified above.

### **3. Termination**

32 In the event that either TCCI or the Funding Company has reason to believe that the other party has materially breached any obligations under this Agreement, such party shall provide written notice of the alleged breach to the other party. The other party shall have ten (10) days from the receipt of notice to cure the alleged breach and to provide written notice to the other party of the cure. If the breach is not cured within the ten (10) days, the non-breaching party shall have the right to unilaterally terminate this Agreement without further notice.

32.1 In the event of termination as permitted in this section, TCCI shall retain all compensation as has been paid, or which should have been paid by the Funding Company prior to the early termination and then proceed with the steps outlined in paragraph 2.10 above.

33 TCCI may unilaterally terminate this Agreement by providing the Funding Company fifteen (15) days written notice of the termination and thereafter closing the Claim Fund in accordance with 2.10 above.

34 The Parties may agree to collectively terminate this Agreement at any time for any reason.

34.1 In the event of termination as permitted in this section, the Parties must each agree to the terms of termination in writing.

### **4. Miscellaneous Terms and Provisions.**

4.1 The Parties agree that this Agreement is entered into in the State of Utah and the Agreement, and any rights, remedies, or obligations provided for in this Agreement, shall be construed and enforced in accordance with the laws of Utah. The Parties also agree to the exclusive jurisdiction of the courts of the State of Utah.

4.2 The Parties agree that if any portion of this Agreement is found to be void or unenforceable, the remaining portions shall remain in full force and effect.

4.3 The Parties acknowledge and agree that they received sufficient time and opportunity to read this entire Agreement, and that each understands its content, that it is legally binding and is executing it freely and without duress of any kind and agrees to be bound by its terms.

4.4 This Agreement contains the entire agreement between the Parties, and the terms of this Agreement are contractual and not a mere recital. This Agreement supersedes all prior and contemporaneous agreements,

representations, and understandings of the Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. This Agreement may not be modified, waived, or amended unless the same is in writing and signed by the party against whom the enforcement of such modification, waiver, or amendment is sought.

- 45 For purposes of construction, this Agreement shall be deemed to have been drafted by both Parties to this Agreement and shall not, therefore, be construed against any party for that reason in any subsequent dispute.
- 46 In the event any party to this Agreement shall fail to perform any of its obligations hereunder, the non-defaulting party shall be entitled to recover all of its reasonable costs and expenses, including reasonable attorneys fees, incurred in enforcing this Agreement or otherwise resulting from such breach.
- 47 This Agreement may be executed in any number of copies, each of which shall be an original, but all of which shall constitute one in the same instrument. Counterparts and signatures transmitted by facsimile shall be valid and effective as originals.

***IN WITNESS WHEREOF***, the Parties hereto have signed and executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2022

***Timber Creek Casualty Insurance Company Inc., A Risk Retention Group***

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Signature of Authorized Representative	Printed Name	Title
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***Funding Company***

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Signature of Authorized Representative	Printed Name	Title
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