



PERSONAL GUARANTEE AND INDEMNITY AGREEMENT

This Personal Guarantee and Indemnity Agreement ("Agreement") is entered into between either Timber Creek Casualty Insurance Company Inc., A Risk Retention Group ("TCCI")

And

_____ (the "Insured") and is effective on the date of execution indicated below. In consideration of the obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Insured, intending to be legally bound, hereby agrees as follows:

RECITALS

1. In consideration for the representations contained herein and other good and valuable consideration, TCCI has agreed to issue a policy of commercial auto, general liability and/or auto physical damage and motor truck cargo insurance to the Insured (the "Policy"). The term "Policy" shall also include any subsequent policies of commercial auto general liability and/or auto physical damage and/or motor truck cargo insurance issued by TCCI to the Insured. Coverage may be limited to vehicles, drivers and/or cargo that is specifically scheduled on the Policy. Despite these limitations, TCCI may be obligated to pay certain claims pursuant to federal or state financial responsibility laws, such as an MCS-90 Endorsement, state filings, or other similar regulations (collectively "Financial Responsibility Law(s)"). Even where TCCI is required to make payments for such claims, it is the intent and understanding of the Insured that such claims are considered "Non-Covered Claim(s)" and are subject to this Agreement (if the Policy is limited to vehicles, drivers and/or cargo specifically scheduled on the Policy).

2. The Insured has the responsibility to pay all premiums, self-insured retentions ("SIRs"), and/or deductibles owed under the terms of the Policy.

3. The Insured has the responsibility to reimburse TCCI for any Non-Covered Claim which TCCI must pay as a result of any Financial Responsibility Law.

4. The Insured intends to prevent the occurrence of Non-Covered Claims that would expose TCCI to any obligations under any Financial Responsibility Law. Accordingly, the Insured agrees that it will, when required by the Policy, schedule all vehicles, drivers and/or cargo with TCCI by providing underwriting information required by TCCI and paying all applicable premiums or other fees. If, however, TCCI does not agree to cover the proposed driver, auto or cargo, the Insured must obtain insurance coverage for unscheduled drivers, autos, and/or cargo as set forth below.

AGREEMENT

1. Indemnity

The Insured agrees to indemnify, defend and hold TCCI harmless from any and all losses or claims arising out of a Non-Covered Claim. The Insured acknowledges its obligations to TCCI for a Non-Covered Claim are not limited by the Limits of Liability of the Policy and include attorney's fees and costs incurred in an effort to enforce this Agreement.

2. Insured's obligations to avail itself of other coverage as to losses involving non- scheduled drivers.

The term Non-Scheduled Driver's Insurance shall mean a policy of insurance providing commercial auto and/or motor truck cargo coverage with a primary duty to defend and indemnify the Insured and any non-scheduled driver and any driver, employee or agent of the Insured in regard to losses arising out of the actions of the non-scheduled driver. The Insured shall ensure that it procures Non-Scheduled Driver's Insurance, with limits compliant with applicable federal and state financial responsibility laws for the type of auto and type of cargo to be carried. Such coverage shall cover the Insured and its employees or agents for any theory of negligent entrustment, negligent supervision, or vicarious liability.

The Insured further agrees to promptly give notice of all accidents and tender all claims and lawsuits arising out of the ownership, maintenance or use of a vehicle by a non-scheduled driver to the Non- Scheduled Driver's Insurance carrier. Such notice shall be given in compliance with the terms and conditions of the Non-Scheduled Driver's Insurance. The Insured agrees further to tender all claims and lawsuits arising out of the ownership, maintenance or use of a vehicle by a non-scheduled driver to any insurance other than the Policy that may owe a duty to defend or indemnify the Insured.

3. Insured's obligations to avail itself of other coverage as to losses involving non- scheduled autos and/or motor truck cargo.

The term Non-Scheduled Auto/Cargo Insurance shall mean a policy of insurance providing commercial auto and/or motor truck cargo coverage with a primary duty to defend and indemnify the Insured and any driver, employee or agent of the Insured, with limits compliant with applicable federal and state laws for the type of auto and type of cargo to be carried. Such coverage shall cover the Insured and its employees or agents for any theory of negligent entrustment, negligent supervision, or vicarious liability.

The Insured further agrees to promptly give notice of all accidents and tender all claims and lawsuits arising out of the ownership, maintenance or use of a non-scheduled auto to the Non-Scheduled Auto/Cargo Insurance carrier. Such notice shall be given in compliance with the terms and conditions of the Non- Scheduled Auto/Cargo Insurance. The Insured agrees further to tender all claims and lawsuits arising out of the ownership, maintenance or use of a non-scheduled auto to any insurance other than the Policy that may owe a duty to defend or indemnify the Insured.

4. Insured's obligation to notify TCCI of Non-Covered Claims.

It is the Insured's intent that TCCI shall not have a duty to defend any Non-Covered Claims, nevertheless, the Insured shall give TCCI immediate written notice that it may be called upon to cover a Non-Covered Claim, pursuant to Financial Responsibility Laws.

The Insured shall take all actions necessary to defend any Non-Covered Claim and prevent and avoid any default against the Insured or its agents or employees after service of a claim, unless and until the defense of that claim is undertaken by its Non-Scheduled Driver's Insurance, Non-Scheduled Auto/Cargo Insurance, or other Insurance.

5. TCCI's option to defend, investigate or settle Non-Covered Claims

Subject to applicable Financial Responsibility Laws, the Insured agrees that TCCI does not have any duty to defend or settle any Non-Covered Claim. TCCI shall, however, have the right to become involved in the defense, or to defend or settle any Non-Covered Claim. TCCI's election to assume the defense of a case shall allow TCCI to solely control the investigation and defense, including the selection of counsel. TCCI also may negotiate toward settlement up to the applicable potential exposure to TCCI under the MCS-90 Endorsement or state or federal financial responsibility endorsement, if such a settlement is, in TCCI's judgment, appropriate.

Because the Insured is responsible to reimburse TCCI for Non-Covered Claims, the Insured may elect to directly settle with any claimant without violating this Agreement, so long as the Insured promptly and directly pays the agreed settlement from its own funds, without looking to TCCI for any funding toward such a settlement, and so long as the insured obtains a full and complete release of all claims against all Insureds under the subject Policy.

6. Insured's obligations if TCCI elects to defend, investigate or settle a Non-Covered Claim, or is required to pay a Non-Covered Claim.

If TCCI elects, at its sole option and discretion, to defend, investigate or settle a Non-Covered Claim, the Insured agrees to fully cooperate with TCCI in regard to that defense.

The Insured further agrees to promptly reimburse TCCI for:

- a. All costs and attorneys' fees TCCI incurs to defend any Insured;
- b. Reasonable loss adjustment expenses to cover TCCI's overhead costs to handle and defend such a claim or lawsuit, consisting of all of the costs and attorneys' fees that TCCI incurs to defend any insured in such a claim or lawsuit;
- c. All amounts TCCI pays in settlement or to indemnify any Insured in regard to any Non-Covered Claim;
- d. All costs and attorneys' fees TCCI may incur in its sole discretion to seek a defense or indemnity for any Insured from any other insurer, including any other insurer that may have issued a policy of insurance constituting Non-Scheduled Driver's Insurance or Non-Scheduled Auto/Cargo Insurance;
- e. At TCCI's option, all premiums due, whether retroactively, prospectively or both, including premiums due for unscheduled drivers or for unscheduled vehicles being operated by or on behalf of the Insured.

Such payments will be due to TCCI within ten (10) calendar days after TCCI provides the Insured an invoice for any of the above.

7. Premiums, SIRs, and/or deductibles

The Insured further agrees to pay all premiums (SIRs), and/or deductibles owed under the terms of the Policy, including but not limited to the minimum earned premium due. The Insured further agrees to reimburse and indemnify TCCI for any and all attorney fees and costs incurred in an effort to enforce this Agreement.

8. Additional terms.

This Agreement shall be governed by the law of the State of Utah.

This Agreement and the Policy constitute a general program of risk management entered into between the parties. Accordingly, the risks to be insured will be materially affected if the Insured fails to meet its obligations hereunder, including without limitation, obtaining Non-Scheduled Driver's Insurance and Non-Scheduled Auto/Cargo Insurance, and with respect to claim handling. In that event, TCCI may reasonably take action to cancel or non-renew the Policy.

This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement shall remain in effect following the cancellation or termination of the Policy and shall become inoperative only as provided herein.

This Agreement may not be modified, waived, amended or changed unless the same is in writing and signed by the party against whom the enforcement of such modification, waiver, amendment or change is sought. The failure on any occasion by either party to enforce the terms of this Agreement will not be deemed or construed to be a waiver of the party's right to enforce those or any other terms of this Agreement on any other occasion.

It is the intent of the Insured to comply with all applicable statutes, rules and regulations, both Federal and state. If any provision of this Agreement is adjudged invalid, the remainder of this Agreement shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

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.

In the event the Insured shall fail to perform any of its obligations hereunder, TCCI shall be entitled to recover all of its reasonable costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or otherwise resulting from such breach.

This Agreement has been prepared after discussions between and among the Insured and TCCI. The Insured understands and acknowledges that TCCI has and will continue to rely upon the Insured's representations and promises contained herein in the performance of any obligations under the Policy. The undersigned, individually and on behalf of the Insured, declares and represents that in executing this Agreement, they rely wholly upon their own individual judgment, belief and knowledge, and that they have had the opportunity to review this matter with counsel and insurance professionals of their own choosing.

9. Personal guarantee and authority to sign for the Insured:

The undersigned represents that he or she has full authority on behalf of the Insured to execute this Agreement and to bind the Insured to these terms.

In addition, the undersigned, in his or her individual capacity, personally undertakes the financial obligations set forth in this Agreement in the event the Insured refuses or fails to indemnify and hold TCCI harmless as set forth above. The undersigned agrees and acknowledges that his or her personal guarantee shall continue even if the Insured is sold, transferred or dissolved or if the Insured shall become bankrupt or insolvent.

The undersigned further states that he or she has carefully read the foregoing Agreement and knows the contents thereof.

IN WITNESS WHEREOF, the Parties hereto have signed and executed this Agreement on this _____ day of _____, 2023

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

Signature of Authorized Representative	Printed Name	Title
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(“The Insured”)

Signature of Responsible Party	Printed Name	Title
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