

Montana Department of Labor & Industry  
Employment Relations Division  
Workers' Compensation Regulation Bureau  
P.O. Box 8011  
Helena, MT 59604-8011

## PLAN 2 TRUST AGREEMENT

This agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
by and among ("the  
Insurer") \_\_\_\_\_ of ("Address")

\_\_\_\_\_  
(hereinafter called the Insurer), the Montana Department of Labor & Industry, Employment  
Relations Division (hereinafter called the Department, of the address listed above), and the  
Department's agent, ("the Trustee")

\_\_\_\_\_, of ("Address")

Whereas, the Insurer is required under the Montana Workers' Compensation and  
Occupational Disease Acts to make certain security deposits with the Department. Any such  
deposits must be held in trust by the Department as security for payment for the Insurer's  
liabilities.

The Department desires to appoint the Trustee as its agent to hold the deposits in trust as set  
forth in the Agreement.

NOW, THEREFORE, in consideration of their mutual covenants and promises, the parties  
hereto agree as follows:

1. **Deposit.** The Insurer agrees to deposit with the Trustee such U.S. Treasury securities,  
Montana State, county, municipal, or school district bonds, required by the Montana  
Workers' Compensation and Occupational Disease Acts, in an amount the  
Department shall determine. The Trustee agrees to accept the deposit and to hold the  
same in trust in accordance with § 39-71-2215, MCA, and this Agreement.
2. **Assignment of Securities.** The Insurer shall, at the time of execution of this Agreement,  
execute an assignment of all right, title, and interest in the bonds and securities to the  
Department, to be held in trust under this Agreement.
3. **Trustee's Receipt.** Upon deposit of the securities under the terms of this agreement, the  
Trustee shall issue a receipt in triplicate listing the securities by name, number,  
amount, series, coupon rate and maturity date or other identifying description and  
deliver one copy to the Insurer, one to the Department, and retain one for its own  
records.
4. **Safekeeping of Securities.** The Trustee, upon receipt of the securities and issuing of its  
receipt, assumes full responsibility for the safekeeping of the securities while in the

actual possession of the Trustee, its officers or employees. The Trustee shall give such securities the same physical care and safeguards as are afforded similar property owned by the Trustee. The Trustee shall not be liable for depreciation in the value of the securities. Losses due to negligence, error, or dishonesty on the part of any of the officers or employees of the Trustee shall not be deemed to be causes beyond the Trustee's control.

5. **Replacement of Securities by Insurer.** The Insurer may change or renew the deposit from time to time by substituting other equivalent securities upon approval by the Department. The Insurer shall replace canceling, terminating, or maturing securities with a replacement security acceptable to the Department. If the Insurer fails to replace a canceling, terminating, or maturing securities, the securities will be maintained until an acceptable replacement security is deposited. Unless the Department instructs otherwise, release of the par value of the securities shall be permitted only after receiving written approval from the Department.
6. **Proceeds of Interest Payments.** The Trustee shall deposit the proceeds of all payments of interest to the entity designated by the Insurer. The Insurer shall furnish to the Trustee the name and address of the entity and the account number, if applicable. The Trustee shall notify the Insurer by sending written evidence of all the credits specifying the source of funds.
7. **Proceeds of Redemption.** The Trustee shall deposit the proceeds of all securities submitted for redemption and electronic redemption, for which prior approval for release has been given by the Department, to the entity designated by the Insurer. The Insurer shall furnish to the Trustee the name and address of the entity and the account number, if applicable. The Trustee shall notify the Insurer by sending written evidence of all the credits specifying the source of funds.
8. **Insurer's Authorized Personnel.** The Board of Directors of the Insurer will file with the Trustee and the Department certified copies of a resolution from the Board of Directors setting forth the names of the personnel of the Insurer authorized to act on behalf of the Insurer. The Board of Directors of the Insurer may, from time to time, pass resolutions changing the personnel authorized to act on behalf of the Insurer. Certified copies of such resolution will be filed with the Trustee and the Department. Until such certified copies have been filed, the Trustee shall not be held responsible for actions taken in accordance with the last certified copy on file.
9. **Department's instructions to Supersede Insurer's.** The Department may instruct the Trustee to disregard the instructions of the Insurer. Upon receipt of written instructions of the Department, the Trustee shall deposit the proceeds of all electronic payments and securities submitted for payment to a bank and account as designated by the Department. The Department's instructions shall supersede any and all instructions of the Insurer. The Trustee will notify the Insurer when it has received superseding instructions from the Department.

10. **Liquidation of Deposits/Additional Deposits.** If the Department determines that the Insurer has failed to discharge any liability within the time limited by the Department, the Trustee shall submit securities for sale or for withdrawal upon written order of the Department. The Trustee shall not sell, assign, transfer, encumber or otherwise dispose of any of the securities delivered to it except as directed by the Department. Upon direction of the Department, the Trustee shall distribute cash proceeds of liquidated deposits to the Department to satisfy the liability of the Insurer for which the deposit was held. The Insurer shall make additional deposits as necessary to satisfy any deficiency, as determined by the Department. Upon proof of final payment of any liability for which the deposit was made, any deposit remaining must be returned to the Insurer. The Department and the Trustee are liable for the value and safekeeping of the deposit and shall at any time, upon demand by the Insurer, account for the same and the earnings thereon.
11. **Department's Authorized Personnel.** The Department will file with the Trustee a letter signed by the Administrator, setting forth the names of the individuals authorized to approve or initiate liquidations, redemption's and release of securities or deposits of proceeds, or to give the Trustee such other directions as may be required to carry out the provisions of this Agreement.
12. **Administrative Provisions.** a. **Audit Requests.** The Trustee shall respond directly to all audit verifications initiated by the Insurer or its Certified Public Accountants with regard to securities on deposit with the Trustee. b. **Trustee's Compensation.** The Trustee shall receive as compensation for its services a reasonable fee to be agreed upon between the Insurer and the Trustee. The Insurer shall be solely responsible for and shall remit all fees directly to the Trustee. c. **Trustee's Reliance on Department.** The Trustee shall have no duties, obligations or liabilities except as specifically set forth herein. The Trustee and the Insurer recognize the Trustee is the agent for the Department and the Trustee is legally obligated to and shall execute the directives of the Department. The Trustee shall be entitled to rely solely upon the directions of the Department with respect to all provisions of this Agreement.
13. **Insurer's Insolvency.** The Insurer's bankruptcy, insolvency, disputes or other difficulties of whatsoever kind shall not affect the Trustee's obligation to the Department under this Agreement. Those events shall in no way hinder, delay, prevent or excuse the prompt execution of the Department's directives. Those events or disputes involving the securities shall be resolved between the Insurer and the Department without the Trustee's involvement or intervention. In the event of the Insurer's insolvency, the Department may, in its discretion, release all or a part of the Insurer's deposit to the Montana insurance guaranty association as provided in to § 39-71-2215, MCA.
14. **Litigation.** Any dispute arising out of this Agreement will be interpreted according to the laws of the State of Montana. The venue of any mediation or litigation instituted or undertaken by the parties shall lie in Lewis & Clark County, Montana. Any costs, including attorneys' fees, incurred by Trustee arising out of the interpretation, negotiation and/or litigation of the duties and obligations of the parties shall be paid by the Insurer

or the Department, whichever party does not prevail, as may be determined in the Court's discretion, unless the Trustee is determined to have breached its obligations under this Agreement.

15. **Termination.** The Trustee or Insurer may terminate this Agreement by giving written notice to the Department of intent to terminate at least sixty (60) days prior to date of termination.

16. **Notices.** All notices required under the terms and provisions hereof shall be in writing and any notice shall become effective when date stamped in either the U.S. mail or another parcel carrier (with the equivalence of first class mailing service) addressed to the Trustee, to the Insurer, and to the Department attention Chief, WC Regulation Bureau.

17. **Headings.** The headings used in this Agreement are for convenience only. They shall not be interpreted as a part of this Agreement, or as a limitation on the scope of the particular paragraphs to which they refer.

In witness whereof, the parties hereto have set their hand and seals the day and year first above written.

\_\_\_\_\_  
Name of Insurer

By:

\_\_\_\_\_  
Signature for Insurer

\_\_\_\_\_  
(Type Name and Title)

Attest:  
(Seal)

\_\_\_\_\_  
Signature of Insurer Secretary

\_\_\_\_\_  
Typed Name of Secretary

