**AGC HEALTH BENEFIT TRUST –**

**Oregon-Columbia Chapter**

**BROKER AGREEMENT**

The Board of Trustees of the Associated General Contractors (Oregon-Columbia Chapter) Health Benefit Trust (“Trust”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Broker”) (jointly the “Parties”) entered into this Broker Agreement (“Agreement”) for the purpose of providing quotes and coverage purchased through the Trust’s benefit plan(s). This Agreement shall be effective as of this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_.

1. **Relationship of the Parties**

The Parties, in performing their obligations under this Agreement, expressly agree and acknowledge that they are acting as third party contractors and are not agents of each other. Nothing in this Agreement shall be construed to constitute the Parties as agents, partners, or joint venturers. The Parties shall make no express or implied representations to any third party or individual that they are agents or employees of each other.

1. **Broker Obligations**
   1. The Broker warrants to the Trust that Broker is licensed as an employee benefits insurance broker in each state in which the Broker transacts or intends to transact business. Broker shall continue to be so licensed during the duration of the Agreement and for a period corresponding to any applicable statute of limitations after termination of the Agreement with respect to all insurance business offered by the Trust that Broker shall submit to the Trust. A copy of the Broker’s license(s) shall be attached to the Agreement and Broker shall agree to provide the Trust with a copy of any new and/or replacement licenses within thirty (30) business days of their issuance. Upon the Trust’s request, Broker shall provide to Trust evidence that such licenses remain in place.
   2. Broker further warrants that Broker maintains and shall continue to maintain in force during the term of the Agreement, and for a period corresponding to any applicable statute of limitations after the termination of this Agreement, Insurance Brokers/Agents Errors and Omission Insurance at limits of no less than $1,000,000 each occurrence/$2,000,000 annual aggregate. A certificate of insurance evidencing said policy shall be provided by Broker to Trust prior to or simultaneous with the signing of the Agreement and Broker shall provide the Trust with a certificate of insurance for any new and/or replacement policies within thirty (30) business days of their issuance. Such policy shall be subject to the Trust’s approval, but any insurer rated “A” by A. M. Best shall in all events be deemed acceptable. Upon the Trust’s request Broker shall provide to the Trust evidence that such insurance coverage remains in place.
   3. Broker shall comply with the laws of the governmental jurisdiction(s) within which it operates pursuant to the Agreement and with the rules and regulations of the insurance regulatory authorities thereof.
   4. Broker shall ensure that all new groups enrolled in the Trust meet and strictly comply with the Trust’s underwriting guidelines, are properly educated about the Trust’s plans and underwriting guidelines, and employment enrollment meetings, as requested.
   5. Broker shall do everything reasonably possible to safeguard the interest of the Trust and shall promptly report full details of any fact, occurrence, or incident that may result in a claim or loss or increased risk of loss to the Trust. Broker agrees to report any subsequent information regarding such claim or loss or increased risk of loss to the Trust. Broker has no authority to handle claims other than to notify the Trust of the occurrence of a claim, which Broker undertakes to do immediately upon knowledge or notification of same.
   6. Broker shall indemnify and hold the Trust harmless from all claims, actions, liabilities, suits, and expenses, including reasonable attorneys’ fees and costs, in any manner arising or resulting from any breach by Broker of any provision of the Agreement, from any error or omission committed by Broker, from any warranty or representation by Broker being false in any material respect, and from any violation by Broker’s officers, directors, employees, or sub-producers of any contractual obligations to third parties which any of them may have, including, but not limited to, restrictive covenants to which they might be subject.
   7. The Trust or its duly authorized representatives shall have the right at any time or times, during normal business hours, to audit any insurance policy placed under the Agreement and to inspect Broker’s books and records in connection therewith, to the extent such audit or inspection is deemed necessary by the Trust to verify Broker’s compliance with its obligations under the Agreement. Broker shall promptly report and pay to the Trust any additional or return premiums which may become due as a result of any adjustments.
   8. Broker shall not assign or transfer any of its rights, whether by agreement, merger, or otherwise, or delegate any of its obligations, under the Agreement without the prior written consent of the Trust. The Trust may assign its rights and obligations under the Agreement, in full or in part, to any of its sister, parent, or affiliated corporations without the consent of the Broker. Subject to the prohibition against assignment or delegation by Broker, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors, and assigns.
   9. Broker shall not waive, alter, modify, or change any of the terms, rates, or conditions of any policy of insurance issued by or on behalf of Trust. Broker has no authority to accept or bind risks on behalf of the Trust.
   10. Broker shall not appoint other agents or subagents for purposes of this Agreement.
   11. Broker shall not place any advertisement respecting Trust in any publication or on any web page, nor issue or distribute any document, paper, or letter referring to Trust without the prior written consent of the Trust. Also, Broker shall not use the Trust’s or Trust sponsor’s logo without the express written consent from the Trust; provided that this restriction shall not apply to the use or distribution of such logo on materials provided by the Trust.
   12. Broker shall own all insurance business of the employer/insured subject to this Agreement and the use and control of all expirations with respect to insurance offered by the Trust, except that if Broker shall at any time default in any of its obligations hereunder, the Trust or its duly authorized representative shall have the right, so long as such default shall continue, to the exclusive use and control of any such expirations and to apply any proceeds thereof to the fulfillment of such obligations of Broker. Minor accounting discrepancies shall not be deemed to constitute a default for purposes of this provision.
2. **Trust Obligations**
   1. The Parties acknowledges that the Trust will directly bill the employer/insured for any and all premiums due from the employer/insured. Invoices will be sent by the Trust directly to the employer/insured. The employer/insured shall remit payment directly to the Trust.
   2. The Trust agrees to remit from the employer/insured to the Broker a commission, at a rate set forth on the commission schedule attached hereto as Attachment 1, which is equal to a percentage of the premium on each policy written for the employer/insured, within 45 days of receipt of payment by the Trust. Broker may request to receive direct payment from the employer/insured or an alternative payment arrangement. Any such alternative payment arrangement shall be subject to approval by the Trust. In no event will the Trust remit a commission to the Broker in excess of the amount set forth in Attachment 1.
   3. The Trust will mail or email Broker copies of cancellation and non-renewal notices. All insurance contracts, endorsements, and other Trust documents may be provided to the Broker upon request and subject to Trust approval.
   4. Nothing contained herein shall be construed to limit or restrict any rights of cancellation of the Trust or any insurer contained in any binder, cover note, policy, or contract of insurance or by law, including the right of the insurer, within its discretion, to cancel or rescind the policy for underwriting or other reasons permitted by law. Cancellation or rescission of a policy by the insurer shall terminate the Broker’s right to any future commissions. Broker shall not be entitled to any flat cancellation, unless authorized or agreed to in advance in writing by the Trust. In the event of cancellation, Broker shall be liable to the Trust for any earned premium and taxes (if any) thereon, whether or not Broker has collected such premium and taxes (if any) from the employer/insured. Broker shall also be obligated to pay return commission to the Trust, at the same rate as the commission paid to Broker for the employer/insured in question, on any return premiums or adjustments, including, but not limited to, return premiums on cancellations or reductions ordered and return premiums payable as a result of amended policy terms, within 45 days of receipt of notice of return premium.
   5. If any employer/insured shall default in the payment of any premium and/or tax as and when due, the Trust shall have the right (but not the obligation) to take all necessary action, including legal action, to collect the premium and tax directly from the employer/insured. The taking of such action by the Trust, however, shall not relieve Broker of its obligation to pay any premium and tax to the Trust. Broker shall not receive commissions on any uncollected premium. Furthermore, Broker will not receive commissions on any premiums ultimately collected by the Trust or the insurer where the Trust or the insurer had to engage in collections of the premium.
   6. Agent-of-record changes are not allowed absent the express written permission of the Trust. At the sole discretion of the Trust, a change in an agent-of-record may result in downward adjustment of the commission due to Broker. The Trust will inform the Broker in the event a change in an agent-of-record results in such an adjustment.
3. **Miscellaneous Provisions**
   1. This Agreement shall govern the relationship between the Parties with respect to all policies of insurance offered by the Trust insuring the employer/insured heretofore and hereafter obtained at the request of Broker. Nothing in the Agreement shall be construed to require the Broker or employer to obtain insurance through the Trust nor to require the Trust to provide requests for insurance quotes from the Trust to the Broker. Nothing contained in the Agreement shall be construed to appoint Broker as agent for Trust in any respect, and Broker shall have no authority to, and agrees that it will not, make representations on behalf of Trust or obligate the Trust to any employer, to employer or individuals represented by Trust, or to any other third parties. Broker has no authority to accept or bind risks on behalf of the Trust.
   2. The section headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement. This Agreement shall be interpreted according to its plain meaning and shall not be construed against any Party by reason of its having drafted any or all of this Agreement.
   3. If, in any judicial or arbitration proceeding, a court or arbitrator refuses to enforce any provision of this Agreement, such unenforceable provision shall be deemed eliminated from the Agreement and the remainder of the Agreement shall be enforced.
   4. This Agreement, any attachments, and any written policies, procedures, or documentation of the Trust that are referenced in this Agreement constitute the entire agreement between the Parties, and supersede all prior and contemporaneous agreements, representations, and understandings, either oral or written, of the Parties. No supplement, modification, or amendment of this Agreement shall be binding unless in writing and executed by all Parties.
   5. This Agreement may not be assigned by either Party unless expressly permitted under the terms of this Agreement or the non-assigning Party consents in writing.
   6. Any notices given under this Agreement shall be deemed delivered if done in writing and personally delivered or sent to the Party by certified mail, return receipt requested, to the current address then on file of the other Party, and such notice shall be deemed to have been given on the date deposited in the mail.
   7. No failure by either Party to require performance by the other Party of any provisions hereof shall be a waiver of such provisions and no waiver or amendment of any provisions hereof shall be effective unless in writing.
   8. The Agreement shall be governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing the Agreement. The venue for enforcement of this Agreement will be in the applicable state or federal court within Multnomah County, Oregon.
   9. The Parties acknowledge that the Trust has assigned authority to its designated agent to execute this Agreement, and the signature by such agent shall be valid and binding on the Trust.
   10. The Agreement shall continue in effect until terminated pursuant to the terms of this provision. The Agreement may be terminated in the following circumstances:
       1. Either Party may terminate the Agreement without cause by providing the other Party with at least thirty (30) days prior written notice with termination effective upon the date stated in such written notice.
       2. The Trust may also terminate the Agreement immediately upon written notice to Broker if Broker has violated any provision of the Agreement, including, without limitation, Broker’s obligation to provide the Trust with a copy of licenses or certificates of insurance pursuant to Section 2 of this Agreement. Such termination shall be effective upon delivery of notice.
       3. If Broker has no active accounts on the Trust’s books, and no production for 90 days, this Agreement will automatically terminate without further notice required to Broker. If Broker has only one account on the Trust’s books, and no production for 90 days, the Broker shall be permitted to maintain its remaining account with the Trust, but the Trust may decline to provide additional quotes.
       4. If Broker’s business is sold to, transferred to, assigned to, experiences a change of control involving, or merged into, in whole or in significant part, a third party, this Agreement will automatically terminate unless the Trust gives its prior written consent that this Agreement continue following such sale, transfer, assignment, or change of control.
   11. Notwithstanding any such termination, this Agreement shall continue to apply to all policies offered by the Trust ordered by Broker prior to the effective date of termination. Furthermore, within thirty (30) days of the effective date of termination of this Agreement, unless otherwise stipulated at the option of the Trust, Broker shall complete the collection and account to the Trust for all premiums, contributions, commissions, and other transactions unaccounted for on the date of termination or arising thereafter with respect to outstanding insurances for the employer/insured. In the event that the Trust finds it necessary to perform any duty otherwise required of Broker under this Agreement, Broker shall be liable to the Trust for all costs incident thereto.
   12. Execution of this Agreement constitutes full agreement and understanding between the Parties with respect to each of the provisions herein. Proper execution requires that if Broker is doing business as an individual, Broker must personally and in his or her individual capacity sign the Agreement in his or her own name and not in Broker’s name as an agent. If Broker is a partnership or co-partnership, this Agreement must be executed by the firm and by each member thereof personally in his or her individual capacity. If Broker is a corporation, this Agreement must be executed by a duly authorized corporate officer. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument. Facsimiles (including facsimiles of the signature pages of this Agreement) will have the same legal effect hereunder as originals.

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| **FOR ASSOCIATED GENERAL CONTRACTORS –**  **OREGON-COLUMBIA CHAPTER**  By:  Its:  Dated: | **FOR BROKER**  By:  Its:  Dated: |

**ATTACHMENT 1 –**

**COMMISSION SCHEDULE**

For new and renewing sales in Oregon, effective November 1, 2015 and later, Broker will receive compensation in the form of commission per the following:

Line of Coverage First Year Commission Renewal Commission

Medical/Rx 4% \* 3% \*

Dental 4% \* 3% \*

Vision 4% \* 3% \*

Group Life/AD&D 4% \* 3% \*

Voluntary Life/Accident 4% \* 3% \*

Life Balance 4% \* 3% \*

Additional products offered by the Trust and not listed above are assumed to be non-commissionable.

\*Commission percentages are calculated on “commissionable premium” which does not include fees assessed for late payments, NSF payments, or non-electronic (check) payments.