

PARTICIPATION AGREEMENT

This Participation Agreement (this "Agreement") is made and entered into by and between the Alabama Self-Insured Worker's Compensation Fund (the "Fund") and

(the "Employer") on the terms and conditions hereinafter set forth.

1. Definitions.

A. Alabama Workers' Compensation Law - The Alabama Workers' Compensation Act (Title 25, Chapter 5 of the Alabama Code, but not including 25-5-11 or 25-11-11.1 or any amendments or successor provisions thereto) and any and all rules and regulations thereunder, including the rules and regulations of the Department, as in effect from time to time.

B. Board - The Board of Trustees of the Fund.

C. By-Laws - The By-Laws which govern the operation and administration of the Fund as amended from time to time.

D. Claim - A report of injury or illness which may give rise to payment of workers' compensation benefits pursuant to Alabama Workers' Compensation Law.

E. Department - State of Alabama Department of Workforce.

F. Director - Director of the Department.

G. Initial Enrollment Period -

H. Service Organization - A service organization approved by the Department and serving as the Fund's service organization pursuant to a contract between the Fund and such service organization. As of the date of this Agreement, the Service Organization is Employer's Claim Management, Inc.

I. Trustees - The members of the Board.

2. Terms of Agreement.

This Agreement will commence on and will be automatically renewed on each subsequent anniversary date unless thirty (30) days written notice of cancellation is given by the Employer or the Fund, except as otherwise provided herein.

3. Appointment of Agency.

Employer agrees to appoint the Trustees or their authorized designees to act as Employer's agent(s)-in-fact in all matters relating to Alabama Workers' Compensation Law.

4. Contribution.

A. Annual Contribution. Employer agrees to pay to the Fund an annual contribution as established by the Board and approved by the Department.

B. Contribution Payment. Except as provided in Section 4. C. hereof, Employer agrees that the annual contribution shall be payable in monthly installments by the 15th of each month based upon an estimated annual contribution, with a final adjusted contribution payment payable based upon the final audit provided for in Section 6 hereof.

C. Initial Contribution Payment. Employer agrees to make an initial contribution payment in January of each year equal to twenty-five percent (25%) of the estimated annual contribution due for such year.

D. Additional Contributions or Assessments. Employer agrees that in addition to the payment of the annual contribution, it will pay any additional contributions or assessments which may from time to time be required by the Fund in order to ensure that the Fund has sufficient funds to satisfy the liabilities of the Fund.

E. Non-Payment of Contributions. Employer agrees that failure or refusal to make contribution payments on or before the applicable due dates, may, in the Fund's sole discretion, result in cancellation of coverage. In addition, Employer agrees that the Fund has the right to treat any such non-payment as a breach of this Agreement and that the Board may terminate or cancel the Employer's membership in the Fund after fifteen (15) days written notice as provided in Section 10 of this Agreement. Even if Employer pays amounts owed during the 15-day period, the Fund shall have no obligation to continue the Employer's membership in the Fund past the effective date of the termination or cancellation notice. Employer agrees that the Fund has the right to collect any and all contributions that have been earned preceding such terminations. Employer agrees that it will pay all costs of collection thereof, including reasonable attorney fees and the maximum rate of interest allowed by law on any past due contribution.

5. Retrospective Returns.

A. Retrospective Rating Plan. Employer consents and agrees to the terms and conditions of the Retrospective Rating Plan and consents to the Board's authority to amend or modify the terms of such plan as the Board deems necessary. Employer agrees that retrospective returns on earned contributions to members of the Fund shall be based solely upon the terms and conditions of the Retrospective Rating Plan and the rules and regulations of the Department. In order to be eligible for any retrospective return, Employer agrees and acknowledges it must have had membership in the Fund during the fiscal year to which the return applies and must have membership in the Fund at the time of receipt of the return. Employer agrees that it will have no rights to any retrospective returns for any fiscal year made after withdrawal, termination or cancellation of membership in the Fund.

B. Form of Retrospective Returns. Retrospective returns in the form of (i) cash payments or (ii) credits (collectively "Contribution Credits") to be applied toward member contributions required during the next fiscal year may, in the total discretion of the Board, be declared from time to time by resolution of the Board.

The Board shall have full and final discretion to determine the form of the Contribution Credits. At no time will any Contribution

Credits be paid that would impair the capital of the Fund. All Contribution Credits shall be approved, calculated and applied based solely on the terms and conditions of the Retrospective Rating Plan.

C. Eligibility on Effective Date. No credits, refunds, dividends or Contribution Credits of any kind shall be payable to, paid to or credited against any debts owed to the Fund by any person or entity who is not a member of the Fund on the date established by the Trustees as of the date the credit, refund, dividend or Contribution Credit becomes effective (the "Effective Date"), even if the person or entity was a member of the Fund during the period to which the credit, refund, dividend or Contribution Credit relates.

D. Effect of Withdrawal from Fund. Any unapplied portion of a Contribution Credit that has been assigned to a member who withdraws from the Fund (or whose membership in the Fund is terminated) after the Effective Date of the Contribution Credit shall be, in the sole discretion of the Fund (to be exercised and/or changed at any time), credited back to the Fund (in which case the former member shall lose all rights in the Contribution Credit). ***Members who withdraw from the Fund (or whose memberships are terminated) will receive no credit, refund, or dividend, payment or distribution of any kind from the Fund after their withdrawals, terminations, or cancellations of their memberships.***

6. Annual Audits/Payroll Information.

Employer agrees to submit to an annual audit of its payroll and other related records. Employer will cooperate with Fund auditors and make available to the Fund all information necessary to conduct such audits. Employer also agrees to make available to the Fund all payroll information necessary to establish contribution rates, including information necessary to establish such rates upon initial participation in the Fund. Employer agrees to pay any adjustment to the annual contribution and any additional contribution or assessment that such payroll audits or other audits determine are due with respect to any period in which Employer is a member of the Fund.

7. Claims.

A. Administration of Claims. The Fund, through the Service Organization or otherwise, will administer, process, investigate and pay valid and appropriate Claims made by Employers' covered employees during the term of this Agreement in accordance with Alabama Workers' Compensation Law. The Fund, in connection with its Service Organization, has absolute discretion to determine whether to pay, defend, settle, commute or in any other way dispose of such Claims. The Fund has absolutely no obligation whatsoever respecting claims for retaliatory discharge, intentional acts, or claims under (i) Alabama Code ' 25-5-11; (ii) Alabama Code ' 25-5-11.1; (iii) the United States Longshoremen and Harbor Workers Act; (iv) the Jones Act; (v) the Federal Employer's Liability Act; or any amendments or successor provisions to any of (i)-(v) above; or any other local, state or federal statute, regulation, rule, program, common law, or any other claim of any kind other than the Alabama Workers' Compensation Law whether such claims are asserted independently or as part of a suit involving claims under the Alabama Workers' Compensation Law. The obligations of the Fund under this Agreement only extend to Claims arising from injuries or illnesses occurring during the Employer's membership in the Fund and not to Claims arising from injuries or illnesses arising either before or after the Employer's membership in the Fund. The obligations of the Fund under this Agreement are limited to obligations imposed by the Alabama Workers' Compensation Law and do not include payment of punitive or exemplary damages (or any other damages not imposed by the Alabama Workers' Compensation Law) arising from injuries or illnesses occurring during the Employer's membership in the Fund. Under no circumstances will the Fund be responsible for any voluntary payment, assumption of obligation, admission of liability or expense, other than first aid, committed or incurred by Employer without the express consent of the Fund and the Service Organization.

B. Reporting of Claims by Employer. Employer agrees to immediately report in writing (in no event later than 15 days after Employer has received notice) to the Service Organization all Claims and all bodily injuries, accidents or illness, regardless of severity, which may give rise to a Claim in such manner and on such forms as may be prescribed by the Fund or the Service Organization. In addition, Employer agrees (i) immediately to report in writing (in no event later than 5 days after Employer has received notice) to the Service Organization all legal notices to and lawsuits against Employer relating to Claims and potential Claims and (ii) immediately to send in writing (in no event later than 5 days after Employer has received notice) to the Service Organization copies of any and all demands, notices, summonses, legal papers and other correspondences which relate or may relate to Claims. Employer agrees that the Fund will not be liable for defense or indemnity from any default or other judgment rendered against Employer following the Employer's failure to notify the Service Organization in writing of a Claim or to provide the Service Organization with the aforementioned documents in a timely manner. Employer also recognizes and agrees that the Fund will not be liable for defense or indemnity for any Claims by or judgments against the Employer if the Employer makes any written misrepresentations to the Fund in its Participant Application or otherwise.

C. Settlement of Claims by Employer. Employer agrees that it will not settle, commute, pay or in any way dispose of a Claim incurred while it participates in the Fund without the express consent of the Fund and the Service Organization. Employer agrees that the Fund shall not be liable for any Claim for which the Employer is obligated to pay damages as a result of any such settlement, commutation or payment or other assumption of liability by Employer with regard to such Claim.

D. Cooperation. Employer agrees to cooperate fully with the Fund and the Service Organization in the investigation, settlement and defense of Claims and, upon the Fund's or the Service Organization's request, shall attend hearings and trials and shall assist in affecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The Employer agrees that it will not, except at the Employer's own expense, voluntarily make a payment, assume an obligation, admit liability or any element of liability or incur any expense, other than for first aid, without the express consent of the Fund and the Service Organization. Employer agrees that it will assist the Fund, upon the Fund's request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this Agreement may also apply. Cooperation or acquiescence on the part of the Employer with any person or organization or representatives of such which diminishes or tends to diminish the rights of or defenses available to the Fund shall be deemed non-cooperation.

E. Legal Action Against the Fund and/or Service Organization. Employer agrees that it does not have a right under this Agreement to join the Fund and/or Service Organization as a party or otherwise to bring the Fund and/or the Service Organization into a lawsuit asking for damages from the Employer. Employer agrees that it may sue the Fund and/or Service Organization only on an agreed settlement or on a final judgment against the Employer obtained after an actual trial, but the Fund and/or Service Organization will not be liable for damages that are not payable under the terms of this Agreement or that are in excess of the applicable limit of coverage. An agreed settlement means a settlement and release of liability signed by the Fund, the Employer and the claimant or the claimant's legal representative.

F. Other Insurance. If Employer maintains insurance covering any Claim which would be covered pursuant to the terms of this Agreement, the Fund will pay only for the amount of such Claim in excess of the amount due from such insurance.

G. Subrogation. Where a Claim for which benefits are payable was caused under the circumstances also creating a legal liability for damages on the part of any party other than Employer, the Fund shall have the right to subrogation provided to the Employer under Section 25-5-11 of the Code of

Alabama. That right to subrogation shall include everything which has been paid by the Fund, including any deductible amounts. Employer will do everything necessary to protect those rights for the Fund and to help enforce them. If there is any recovery from third parties, the amount recovered will first be applied to any payments made by the Fund in excess of any deductible amounts; only then will the remainder of such recovery, if any, be applied to reduce any deductible amount (including allocated loss adjustment expense) paid, reimbursed or reimbursable by the Employer.

8. Confidential Nature of Fund and Service Organization Records. Employer agrees that the records of the Fund and the Service Organization, including, but not limited to claims files, medical records and attorney communications, may contain sensitive and confidential information and will be regarded as confidential and will neither be provided to, nor the contents discussed with, any third party without the prior written consent of the Fund and the Service Organization except as necessary to defend or determine any specific claim or if subject to legal process provided that Employer has given notice of any such claim or legal process as required under Section 7. B. of this Agreement.

9. Withdrawal, Termination or Cancellation of Membership.

Employer agrees that it may withdraw its membership in the Fund at the end of any contract year or period provided it has given at least thirty (30) days prior written notice to the Fund of intent to withdraw. Employer agrees that its membership in the Fund may be terminated or cancelled at any time by the Fund after thirty (30) days written notice (fifteen (15) days prior written notice if termination is for failure to make full and timely payment when due of any contributions or any other payment obligations) as provided in Section 10 of this Agreement. Upon any such withdrawal, termination or cancellation of membership in the Fund, Employer agrees that it shall remain liable for all obligations, outstanding contribution balances, additional contributions or assessments and any other obligations of Employer with respect to the Fund which: (i) accrue prior to such withdrawal, termination or cancellation and; (ii) shall be calculated according to the results of the annual audit under Section 6 of this Agreement. For purposes of calculating Employer's obligations, outstanding contribution balances, additional contributions or assessments and any other obligations under this Section 9, Employer agrees that its obligation to submit to the annual audit under Section 6 of this Agreement shall continue beyond withdrawal, termination or cancellation of Employer's membership in the Fund.

10. Written Notice of Termination or Cancellation for Nonpayment. Written notice of the Board's termination or cancellation of coverage for any reason under Sections 4. E. or 9 of this Agreement will be mailed via United States certified mail or delivered to Employer's last mailing address known to the Fund. Any written notice of such termination or cancellation will state the effective date of termination or cancellation and the coverage will end on that date. If written notice of termination or cancellation is mailed, proof of mailing such notice by United States certified mail will be sufficient proof of notice.

11. Change in Employer's Ownership.

A. Notification Required. Employer agrees that coverage is provided by the Fund to the legal entity described herein as the Employer. With respect to any change in ownership of the Employer, Employer will provide the Fund with thirty (30) days prior written notice of such change or, if Employer is not aware of such change within the prescribed notice period, Employer will provide such notice within ten (10) days after Employer is first aware of such change.

B. Renewal or Termination. Upon any change in ownership, the Board will have complete and absolute discretion to determine whether to renew or terminate membership in the Fund with respect to any such Employer and/or successor owner(s). Employer and/or any successor owner(s) are required to complete new Participation Application(s) prior to any such determination by the Board. Any such renewal may, in the Board's discretion, be expressly conditioned upon assumption of any and all obligations, liabilities, outstanding

contribution balances, additional contributions or assessments and any other obligations of Employer with respect to the Fund which accrue prior to the change in ownership.

C. Change in Ownership. For purposes of this Agreement, a "change in ownership" shall mean (i) the acquisition of the power to direct, or cause the direction of, the management and policies of the Employer by a person or entity (not previously possessing such power), acting alone or in conjunction with others, whether through the ownership of stock, by contract or otherwise, (ii) the acquisition, directly or indirectly, of the power to vote more than fifty percent (50%) of the outstanding stock of the Employer by any person or entity or by two or more persons or entities acting together, or (iii) a sale, purchase, other transfer, merger, consolidation, dissolution, reorganization, formation of a new entity or any other change involving Employer or its assets other than in the ordinary course of Employer's business involving all or substantially all of the assets of Employer.

D. Contribution Credits. Any rights to Contribution Credits accruing after a change in ownership with respect to periods prior to such change in ownership shall remain with Employer named in this Agreement provided such Employer's membership is renewed in accordance with Section 11. B. hereof. In the event of a change in ownership in which Employer's membership in the Fund is not renewed, but membership is renewed with respect to a successor owner in accordance with Section 11. B. hereof, then any rights to Contribution Credits shall be with such successor owner. Notwithstanding the foregoing, Employer and any new owner or successor may independently agree to allocate any such payment among themselves as they see fit. If the Fund does not renew membership with respect to Employer or any successor owner, then no party will be eligible for Contribution Credits.

12. Service Organization.

The Fund agrees to enter into a contract with an approved Service Organization to service its members with respect to Claims adjusting and any other services which may be agreed to between the Service Organization and the Fund including the provision of loss control services and underwriting. Employer agrees that the Service Organization is not an agent of the Fund.

13. Reports.

The Fund agrees, through its Service Organization or otherwise, to develop and maintain reports relating to coverage, accident experience, compensation and medical payments and such other reports that may be required by the Director or deemed relevant by the Fund or the Service Organization. In addition, the Fund will, at least annually, furnish to Employer a report with respect to such information, together with a report of the general financial condition of the Fund.

14. Inspections.

Employer agrees that the Service Organization may, but is not obligated to, at any time and from time to time enter Employer's premises and job site(s) for purposes of conducting safety, loss control or other related inspections and Employer agrees to cooperate fully with any such inspections. Employer agrees that, while the Fund or the Service Organization may provide reports on conditions and recommend changes with respect to such inspections, neither the Fund nor the Service Organization are undertaking to perform any duty to provide for the health or safety of Employer's employees or the public and that the Fund and Service Organization are not warranting that Employer's workplace is safe or healthful or complies with laws, regulations, codes or standards by conducting such inspections.

15. Excess Insurance.

The Fund, through its Service Organization or otherwise, may, in its sole discretion, obtain a contract

or contracts of excess insurance to cover liabilities of members and/or the Fund with such coverages and limits as may be approved by the Director.

16. Security.

The Fund agrees to deposit with the Director acceptable surety and that such surety shall be transferred to or made payable to the Director for his use in the event the Fund cannot meet its liabilities to pay a Claim or Claims.

17. Uninsured Subcontractors

Employer agrees that if Employer does not provide written notice to the Fund of Employer's retention of any subcontractors, then the Fund has no obligation whatsoever respecting the payment of any Claim brought against Employer by such subcontractors or their employees. In the event that the Fund is held liable for the payment of any Claim brought by any subcontractors or the employees of such subcontractors for whom Employer has not provided written notice of retention to the Fund, then Employer agrees to reimburse the Fund for all damages, losses, costs and expenses, including attorneys' fees, expert fees and court costs, incurred as a result of the imposition of such liability. Under no circumstances will the Fund be under any obligation to investigate, pay, settle or defend any Claim made by any subcontractors or their employees for whom Employer has not provided written notice of retention to the Fund.

18. Representations and Warranties.

To induce the Fund to enter into this Agreement, Employer represents and warrants to the Fund, and promises to and agrees with the Fund that all representations and warranties made to the Fund or the Service Organization, whether related to a Claim or otherwise, shall be true and correct as of the date of execution of this Agreement and shall survive the execution and delivery of this Agreement and shall be deemed to be expressly republished and restated by Employer at the time of the Employer's performance of any duties and obligations under this Agreement. Each and every representation and warranty shall continue to be kept, honored and maintained at all times until Employer's withdrawal, cancellation or termination from membership in the Fund.

19. Consent to Board's Authority.

Except as otherwise provided in the By-Laws or the Alabama Workers' Compensation Law, Employer agrees that the Board shall have complete and absolute authority and discretion in governing the administration and operation of the Fund.

20. Joint and Several Liability.

Employer agrees that it, other participating employers and the Fund are jointly and severally liable to assume and discharge, by payment, any Claim due to be paid, any settlement approved by the Fund and any judgment under the Alabama Workers' Compensation Law against the Fund, the Employer or any Fund member. Employer further agrees that it could be required to contribute funds in excess of its annual contribution if the Fund incurs substantial unforeseen liabilities under the Alabama Workers' Compensation Law. After withdrawal, termination or cancellation of membership in the Fund, Employer agrees that it will remain jointly and severally liable for Fund obligations which have accrued or may accrue for any period during which Employer participates in the Fund.

21. Limitation of Fund's Liability.

If, notwithstanding the limitations on liability in other provisions of this Agreement, liability is imposed

on the Fund or Service Organization arising from or relating to allegations of the Fund's or Service Organization's performance, failure of performance or negligent performance of any express or implied duties or obligations under this Agreement, or allegations of violations of any express or implied legal or equitable right under this Agreement, then Employer agrees that the Fund's and the Service Organization's total liability for any or all of Employer's losses or injuries shall not exceed the then-current year's annual contribution. Employer agrees that it will not sue the Fund or Service Organization for any amount greater than permitted by this Agreement.

22. Waiver of Class Action Lawsuit.

Employer, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of counsel, waives, relinquishes and forever foregoes hereby the right to bring a class action lawsuit in any federal or state court in any action or proceeding, including, without limitation, any contract or tort action, brought by Employer against the Fund and/or Service Organization based upon, arising out of, or in any way relating to or in connection with this Agreement, or any course of conduct, act, omission, course of dealing, statements (whether verbal or written) or actions of any person, in connection with the Agreement, including, without limitation, in any counterclaim which Employer may be permitted to assert hereunder, whether sounding in contract, tort or otherwise. This waiver by Employer of its right to bring a class action lawsuit in any federal or state court is a material inducement for the Fund to enter into this Agreement with Employer.

23. Law, By-Laws, Rules and Regulations.

Employer agrees to comply with the Alabama Workers' Compensation Law and any other applicable provisions of law, the provisions of the By-Laws and any and all other agreements or contracts entered into between Employer and the Fund.

24. Notice.

Except as otherwise provided herein, any notice required by this Agreement shall be in writing and addressed to the Fund or the Employer. Notice shall be effective when delivered by hand, or when placed in the United States mail, postage prepaid, to the address of the Fund or the Employer as it may appear on the books of the Fund from time to time.

25. Governing Law and Venue.

This Agreement shall be governed by the laws of the State of Alabama. Employer agrees that it is foreseeable that Employer shall be subject to and Employer hereby consents to jurisdiction in the State of Alabama for any cause of action related to this Agreement and agrees that sole and exclusive venue for such action shall be in Jefferson County, Alabama. Employer waives any and all rights under the laws of any state or jurisdiction to object to venue or jurisdiction within Jefferson County, Alabama.

26. Modification.

This Agreement may be modified or amended only by a writing signed by the Fund and Employer. Notwithstanding the foregoing sentence, any provision of this Agreement which now or at any time hereafter conflicts with Alabama Workers' Compensation Law or other relevant law shall be automatically changed by this Section 23 to conform with such law without necessity for any action by the Fund or Employer.

27. Entire Agreement.

This Agreement, together with the Bylaws as amended from time to time, represents the entire agreement of the parties with respect to Employer's membership in the Fund and supersedes any prior

agreement, arrangement or understanding, whether oral or written, between the Fund and Employer concerning the obligations of the Fund and Employer. If any provisions of this Agreement are found to conflict with any provisions of the Bylaws as amended, the Bylaws as amended shall control. Employer agrees that by executing this Agreement it understands and agrees that the Fund is simply a legal vehicle by which each member has joined together in providing a self-funded workers' compensation program to provide workers' compensation benefits to its employees under the laws of the State of Alabama. This Agreement is not an insurance contract and the Fund is not an insurer.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of

**ALABAMA SELF-INSURED
WORKER'S COMPENSATION FUND**

Signed By

Fund Representative

EMPLOYER:

Signed By

Name:

Title:

Note: Must be signed by an owner or authorized officer.