

## **PARTICIPATION AGREEMENT**

This Participation Agreement (“Agreement”) is made and entered into by and between the Alabama Trucking Association Workers’ Compensation Self-Insurance Fund (hereinafter “the Fund”), and: \_\_\_\_\_ (“the Employer”), on the terms and conditions hereinafter set forth on the \_\_\_\_\_ Day of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”).

### **1. DEFINITIONS:**

A. Alabama Workers’ Compensation Law - The Alabama Workers’ Compensation Act (Title 25, Chapter 5 of the Alabama Code, 1975)(or any amendments or successor provisions thereto) but not including §25-5-11, or §25-5-11.1, 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 document approved by the Board which governs 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 the Alabama Workers’ Compensation Law.

E. Covered Employee - A covered employee is one meeting the requirements and definitions of the Alabama Workers’ Compensation Law, and whose employment status and wages have been reported to the Fund at the time of the inception of the agreement, and each successive quarter as listed on Form 941 and/or any unemployment compensation forms, or other reporting methods as may be required by the Fund.

F. Covered Individual - A covered individual is one who does not qualify as an employee under the Alabama Workers’ Compensation Law (such as a lease/purchase driver, owner/operator, a fleet owner of one or more tractors not above the minimum number of employees required to carry workers’ compensation coverage, or driver of leased equipment, as defined under §25-5-1(4), Code of Alabama, (1975), but has elected to purchase workers’ compensation coverage through the Employer’s membership in the Fund.

G. Department - State of Alabama Department of Industrial Relations.

H. Director - Director of the Department.

I. Initial Enrollment - Initial calendar year, or any remaining part thereof.

J. Owner/Operator - This term is intended to include an owner/operator who leases his or her equipment to the Employer, a “leased operator” who is employed by the owner of equipment leased to the Employer, and/or “lease/purchase” drivers, who are leasing or purchasing the equipment from the Employer or from a third party. The term “owner/operator” shall include those drivers who are

responsible for expenses of operating the equipment, including purchase price of the equipment, maintenance, repairs, fuel, and any other “production expense.” The term owner/operator shall be distinguished from “company drivers” who are paid a wage by the Employer, but do not pay the cost of obtaining, maintaining, or repairing the equipment, and are not responsible for the cost of fuel or other “production expenses.”

K. 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 Attenta, Inc.

L. Trustees - The members of the Board.

**2. TERMS OF THIS AGREEMENT:**

This Agreement will commence on the date of execution of this Agreement and terminate on the last day of the same year as of the commencement, and will be automatically renewed on January 1 of each subsequent Fund year, unless within thirty (30) days of the end of the Fund year, written notice of cancellation or non-renewal is given by the Employer, or the Fund, unless such notice is for non-payment, which said cancellation is governed by Section 4-E of this Agreement.

**3. APPOINTMENT OF AGENCY:**

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

**4. CONTRIBUTIONS:**

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

B. Contribution Payment: Except as provided in Section 4-C herein, Employer agrees that the annual contribution shall be payable in monthly installments by the 15<sup>th</sup> 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 herein.

C. Initial Contribution Payment: Employer agrees to make an initial contribution payment as of January of each year equal to a minimum of fifteen percent (15%) of the estimated annual contribution due for such year, or as required by the Board.

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. Employer agrees that the Fund has the right to treat any such non-payment as a material breach of this Agreement and that the Board may terminate or cancel the Employers

membership in the Fund by means of written notice as provided in Sections 9 and 10 of this Agreement. Even if the Employer pays any amounts owed during the notice period or subsequent to, 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 termination. Employer agrees that it will pay all costs of collection of any sums due, and unpaid, including reasonable attorney fees, court costs, litigation expenses, and the maximum rate of interest allowed by law on any past due contributions.

F. Re-Admission to the Fund: In the event that Employer's membership and coverage is terminated pursuant to Section 4-E herein, the Board, at its sole and exclusive discretion, may allow Employer re-admission to the Fund, effective from the date of the Board's decision, or retroactively to the date of cancellation, at the Board's discretion. In either event, the Fund shall not be liable for defense, indemnity or payment of any claim which occurred, arose or accrued during the period from date of cancellation of coverage and the date of re-admission. The Fund may require an updated Participation Application, Motor Carrier Application and/or additional underwriting information or documentation from the Employer prior to re-admission to the Fund.

## **5. RETROSPECTIVE RETURNS:**

A. Retrospective Rating Plan: The 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 any 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. Retrospective returns are determined by an established pre-determined formula approved by the Department, and are computed and reviewed by the Fund's independent auditor at year end. In order to be eligible for any retrospective returns, the Employer agrees and acknowledges that it must have had membership in the Fund during the fiscal year to which the return applies and must also have membership in the Fund at the time of the declaration and distribution of the retrospective return. The Employer agrees that it will have no right to any retrospective returns for any fiscal year made after withdrawal, termination or cancellation (whether voluntary or involuntary), or non-renewal of membership in the Fund.

B. Form of Retrospective Returns: Retrospective returns in the form of (1) cash payments, or (2) 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 and authority 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 and distributed, 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 the 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 in accordance with the provisions of this Agreement) after the effective date of the contribution date of the 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 to 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 withdrawal, termination or cancellation of their membership.**

## 6. ANNUAL AUDIT/PAYROLL INFORMATION:

Employer agrees to submit to an annual audit of its payroll and other pay and wage 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 the Employer is a member of the Fund. Employer agrees to pay such additional amounts due as described herein within thirty (30) days of any statement sent to the Employer regarding same. Employer further agrees to submit to the Fund, within thirty (30) days of the completion of each quarter, all pages of the Employer's Form 941 (Employer's Quarterly Federal Tax Return), Quarterly State Unemployment Tax Returns, disbursement registers for 1099 payments and/or other related disbursements. Employer agrees to submit in writing to the Fund any material (ten (10%) or more of current remuneration in their coverage contract) changes in operations (such as the purchase or sale of equipment, or changes in the use of owner/operators, drivers of leased equipment, contract drivers, small fleet owners of less than five employees and/or lease/purchase drivers, as more fully described in Section 1-J herein) that would increase or decrease current existing remuneration in their coverage contract.

## 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 the Employer's covered employees or covered individuals, during the term of this Agreement in accordance with the Alabama Workers' Compensation Law. The Fund, in conjunction with its Service Organization, has absolute discretion to determine whether to pay, defend, settle, commute, dispute, 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: (1) Alabama Code, §25-5-11; (2) Alabama Code, §25-5-11.1; (3) The United States Longshoreman and Harbor Workers Act; (4) The Jones Act; (5) The Federal Employers Liability Act; (6) The Alabama Employers Liability Act, §25-6-1, et seq., or any amendments or successor provisions to any of (1)-(6) 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 occurring or accruing 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 or emergency treatment, committed or incurred by Employer without the 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 5 days after Employer has received notice from the covered employee or individual, whether such notice is written or oral) to the Service Organization of 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 to immediately report in writing (in no event later than five (5) days after the Employer has received notice) to the Service Organization all legal notices to the Employer, and all lawsuits against the Employer relating to claims and potential claims, and further, to immediately send in writing (in no event later than five (5) days after Employer has received notice) to the Service Organization, copies of any and all demands, notices, summons, legal papers, letter of representation from an attorney, or any other correspondence 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 the Employer following the Employer's failure to promptly notify the Service Organization in writing of a claim, or to provide the Service Organization with the aforementioned documents within the time prescribed herein. The Employer also recognizes and agrees that the Fund will not be liable for defense or indemnity of any claims by or judgments against the Employer if the Employer makes any written misrepresentations to the Fund in its Participation Application, Motor Carrier Application, underwriting information and/or documentation, or otherwise.

C. Settlement of Claims by Employer: Employer agrees that it will not settle, commute, pay, agree to accept or dispute, or in any other 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 voluntary settlement, commutation or payment, or other assumption of liability, by the 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, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of necessary witnesses, and in the conduct and defense of lawsuits. 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 or emergency treatment immediately following a reported claim, without the express consent of the Fund and the Service Organization. The Employer agrees 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 Employer, covered employee/individual and/or the Fund 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 or defense 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. The Employer agrees that it may sue the Fund and/or Service Organization only on an agreed upon 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 upon 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 the Employer maintains other or any insurance covering any claim which would be covered pursuant to the terms of this Agreement, the Fund will pay only 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 circumstances also creating a legal liability for damages on the part of any party other than the Employer, the Fund shall have the right to subrogation provided to the Employer under §25-5-11 of the Code of Alabama, (1975). That right to subrogation shall include everything that has been paid by the Fund including any deductible amounts paid by the Employer, amounts paid by the Fund in excess of such deductible, as well as any benefits or money for which the Fund may become liable to pay on the Employer's behalf in the future. The Employer agrees to do everything necessary to protect those rights for the Fund and to help enforce them. If there is any recovery by the covered employee or covered individual 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.

F. Breach: If the Fund becomes obligated, by way of Order or Judgment of a Court of competent jurisdiction, to pay, satisfy or settle a claim as a result of the Employer's breach of its agreement not to voluntarily pay, settle or commute any claim, as more fully described in Section 7-A, 7-B, 7-C and/or 7-D above, the Employer agrees to fully reimburse the Fund for any benefits (indemnity, medical or otherwise) or judgment paid, whether paid in the past, or due to be paid in the future, plus any attorney's fees, court costs, litigation expenses, claim administration expenses and interest incurred, paid or due to be paid in the future, in connection with handling and defense of the claim. In the event that the Employer refuses or fails to voluntarily reimburse the Fund for all such expenses listed within in thirty (30) days after proper notice, the Employer shall additionally pay all costs of collection, including reasonable attorney's fees, court costs, litigation expenses and the maximum rate of interest allowed by law on any amounts due as a consequence of said breach.

## **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, drug test results 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 any time provided it has given at least thirty (30) days prior written notice to the Fund of intent to withdraw. The Employer agrees that its membership in the fund may be terminated or cancelled at any time by the Fund upon the Fund providing the Employer thirty (30) days written notice of its intent to cancel. With respect to cancellation or termination of membership due to non-payment, late payment, or the Employer otherwise failing to make full and timely payments when due of any contributions or any other payment obligations, the Employer and the Fund agree that the Fund may terminate or cancel the Employer's membership in the Fund fifteen (15) days following the issuance, mailing, facsimile transmission, electronic transmission, hand delivery or other methods of delivery, of any notice of intent to cancel for non-payment. 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: (1) accrue prior to such withdrawal, termination or cancellation; and (2) shall be calculated according to the results of the annual audit under Section 6 of this Agreement, or resulting interim cancellation audit. For purposes of calculating the 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 or interim cancellation audit shall continue beyond withdrawal, termination or cancellation of Employer's membership in the Fund.

**10. WRITTEN NOTICE OF TERMINATION OR CANCELLATION FOR NON-PAYMENT:**

Written notice of the Board's termination or cancellation of coverage for any reason under Sections 4-E or Section 9 of this Agreement may be mailed, to the Employer's last known mailing or physical address known to the fund, or to Employer's last known facsimile number or email address, via United States Certified Mail, sent via regular United States Mail, by facsimile transmission, by electronic mail, by an overnight package delivery service, hand delivery or other methods of delivery. Any such written notice of such termination or cancellation will state the effective date of termination or cancellation and that the coverage will end on that date. If written notice of termination or cancellation is mailed, proof of mailing such notice by United States Post Office Certified Mail, or by any overnight package delivery service with proof of delivery, will be sufficient proof of notice, so long as said notice is sent to the Employer's last known mailing or physical address.

**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 the 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 any 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 successor owner(s) are required to complete new Participation Application(s) and/or Motor Carrier 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 the purposes of this Agreement, any "change in ownership" shall mean the acquisition of the power to direct, or cause the direction of, the management and policies of the Employer by any 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, or, by the acquisition directly or indirectly of the power to vote more than 50% of the outstanding stock of the Employer by any person or entity or by two or more persons or entities acting together, or upon a sale, purchase, other transfer, merger, consolidation, dissolution, reorganization, formation of a new entity or any change involving the Employer or its assets, other than in the ordinary course of Employer's business involving all or substantially all of the assets of the 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 the Employer named in this Agreement, provided such Employer's membership is renewed in accordance with Section 11-B herein. In the event of such 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, 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. The 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 paid on behalf of the Employer 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 relating to the Employer, together with a report of the general financial condition of the Fund.

## **14. INSPECTIONS:**

Employer agrees that the Fund, or Service Organization, may, but is not obligated to, at any time during the pendency of this Agreement; enter the Employer's premises, job sites, and/or



equipment for the purposes of conducting safety, loss control, or other related inspections. The Employer agrees to cooperate fully with 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, is 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 otherwise complies with any 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 or secure liabilities of members and/or the Fund with such coverage's 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 or her use in the event the Fund cannot meet its liabilities to pay a claim or claims.

**17. UNINSURED SUB-CONTRACTORS OR OWNER/OPERATORS:**

Employer agrees that if the Employer does not provide written notice to the Fund of Employer retention, hiring, or use, of any sub-contractors or owner/operators (as defined in Section 1-J), then the Fund has no obligation whatsoever respecting the defense or payment of any claim brought against the Employer by such sub-contractor, owner/operator, or their employees. In the event the Fund is held liable for payment of any claim brought by any sub-contractors, owner/operators or the employees of such, for whom the Employer has not provided written notice of retention, hiring, or use of services to the Fund, then the Employer agrees to reimburse the Fund for all damages, benefits awarded, losses, costs, expenses, attorney's fees, expert witness fees, court costs, litigation expense of other description, and any other benefits payable or incurred as a result of the imposition of such liability. Under no circumstance will the Fund be under any obligation to investigate, pay, settle or defend any claim made by any sub-contractors, owner/operators, or their employees, for whom the Employer has not provided written notice of retention to the Fund.

**18. OWNER/OPERATORS/UNINSURED RISKS:**

If the Employer utilizes, uses, employs, hires, or otherwise obtains the services of owner/operators, drivers of leased equipment, contract drivers, small fleet owners of less than five employees and/or lease/purchase drivers, as more fully described in Section 1-J herein, and payment for such services rendered to the Employee is reported on Form 1099, or any form other than a Form W-2, the Employer agrees that it shall provide written notification to such owner/operator that: (1) the owner/operator and motor carrier must purchase ; (a) Occupational Accident and Contingent Liability coverages through an approved insurer that are deemed acceptable at the sole discretion of the Fund; or, (b) the owner operator must purchase workers compensation coverage independently, with sufficient proof of said coverage being in place; or, (c) the owner operator must obtain workers' compensation coverage through the Employer's membership in the Fund. In the event that the owner/operator and motor carrier elects to purchase Occupational Accident and Contingent Liability

coverages, he or she shall be notified in writing that the coverage purchased is in lieu of workers' compensation benefits, and that he or she shall not be entitled to benefits under the Alabama Workers' Compensation Law, through the Employer's membership in the Fund. Additionally, the Employer agrees to require the owner/operator to provide a valid Certificate of Coverage for Occupational Accident coverage and the employer agrees to provide a valid certificate of Contingent Liability coverage. The Employer shall submit a copy of said Certificate of Coverages to the Fund, and shall also maintain a copy of said certificate in the owner/operator's personnel file. In the event that the owner/operator elects workers' compensation coverage through the Employer's membership in the Fund, the Employer shall immediately, and in no event later than five (5) days following entering into any lease agreement or qualification of any driver, submit the name, social security number, home address and date of birth for each such owner/operator or driver to the Fund. The contribution for such each covered individual is to be calculated in accordance with the policies governing owner/operators as set by the Board, and membership/underwriting guidelines established for the Fund. Upon termination of any owner/operator or covered individual, the Employer agrees to immediately give notification, and in no event not later than five (5) days following the date of said termination, of such event to the Fund. In the event that the Employer fails to notify the Fund of inclusion of each owner/operator or driver as discussed herein, within the time frame provided, and if such owner/operator or individual driver asserts a claim for benefits under the Alabama Workers' Compensation Law, or otherwise, and further, in the event the Fund is held liable for payment of such claim, the Employer agrees to reimburse the Fund for all damages, losses, costs, expenses, attorney's fees, expert witness fees, court costs, and other litigation expenses 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 owner/operator or driver, as defined in this Section, for whom the Employer has not provided notice as required in this Section.

**19. REPRESENTATIONS AND WARRANTIES:**

To induce the Fund to enter into this Agreement, Employer represents and warrants to the Fund, and promises and agrees with the Fund, that all representations and warranties made to the Fund, or the Service Organization, whether related to the information contained in the Participation Application, the Motor Carrier Application, any documentation or information provided during the underwriting process, or whether related to a claim or otherwise, shall be true and correct as of the date of the execution of this Agreement. The Employer further understands and agrees that any such representations and warranties shall survive the execution and the delivery of this Agreement, and shall be deemed to be expressly republished and restated by the 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.

**20. CONSENT TO BOARD'S AUTHORITY:**

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

**21. JOINT AND SEVERAL LIABILITY:**

Employer agrees that it, other participating employers/members of the Fund, 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. The Employer further understands and 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 which accrued or may accrue for any period during which the Employer participates in the Fund.

**22. LIMITATION OF FUND'S LIABILITY:**

If, notwithstanding the limitations on liability in other provisions of this Agreement, liabilities imposed on the Fund or Service Organization arising from or relating to allegations of the Fund's or Service Organizations 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 Organizations total liability for any or all of the 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.

**23. WAIVER OF CLASS ACTION LAWSUIT:**

Employer, to the full extent permitted by law, hereby knowingly, intentionally, and voluntarily, after the opportunity to obtain the advice of counsel, waives, relinquishes and forever foregoes the right to bring a class-action lawsuit in a 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, or 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 counter-claim which the Employer may be permitted to assert hereunder, whether grounded in contract, tort, or otherwise. This waiver by the Employer of its right to bring a class-action lawsuit, or to participate as a class member in any class-action lawsuit, in any Federal or State Court, is a material inducement for the Fund to enter into this Agreement with the Employer.

**24. LAW, BY-LAWS, RULES AND REGULATIONS:**

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

**25. NOTICE:**

Except as otherwise provided herein, any notice required by this Agreement shall be in writing and addressed to the Fund, or to the Employer, at the address listed below, or the most

current address on file. Notice shall be effective when delivered by hand, when placed in the United States Mail, postage pre-paid, or by delivery through any overnight package delivery service with proof of delivery, to the address of the Fund or the Employer as it may appear on the books of the Fund from time to time.

**26. GOVERNING LAW AND VENUE:**

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

**27. MODIFICATION:**

This Agreement may be modified or amended only by a writing signed by the Fund, and the Employer. Notwithstanding the foregoing sentence, and provisions of this Agreement which now or at anytime hereafter conflict with Alabama Workers' Compensation Law, or other relevant law shall be automatically changed by Section 24 herein to conform to such law without the necessity for any further action by the Fund or the Employer.

**28. COMPLIANCE WITH POLICIES:**

The Employer agrees to fully comply with, and conform to, the Fund's policies, procedures, programs and By-Laws, as may be established by the Board or the Fund Administrator. The Employer further agrees to comply with any requirements for claim notification, information gathering, post-accident drug testing, and to promptly submit any required paperwork in connection therewith.

**29. ENTIRE AGREEMENT:**

This Agreement, together with the By-Laws as amended from time to time, and Fund documents recognized herein, represents the entire agreement of the parties with respect to the Employer's membership in the Fund, and supersedes any prior Agreement, arrangement or understanding, whether oral or written, between the Fund and the Employer concerning the obligations of the Fund and the Employer. If any provisions of this Agreement are found to conflict with any provisions of the By-Laws as amended, the By-Laws as amended shall control. The 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 and/or covered individuals 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 on this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Alabama Trucking Association  
Workers' Compensation  
Self-Insurance Fund**

**Employer:**

\_\_\_\_\_  
Fund Representative (Signature)

\_\_\_\_\_  
Signature

By: Kimble E. Coaker  
(Print or Type Name)

By: \_\_\_\_\_  
(Print or Type Name)

Title: CEO/ Fund Administrator

Title: \_\_\_\_\_

**\*Note : Must be signed by an owner or  
authorized officer**

Mailing Address:

Mailing Address:

P. O. Box 241605

\_\_\_\_\_

Montgomery, Alabama 36124-1605

\_\_\_\_\_

Physical Address:  
(If different from Mailing Address)

\_\_\_\_\_

\_\_\_\_\_