

PARTICIPATION AGREEMENT

This Participation Agreement is entered into by and between the Alabama Associated General Contractors Workers Compensation Self Insurers Fund (the "Fund") and Company Name (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 Alabama Code §§ 25-5-11 or 25-5-11.1 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. Bylaws - a document approved by the Board which governs the operation of the Fund
- 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. A Claim does not include any claim or demand for benefits or damages of any kind under any other federal or state law, statute, rule, or regulation
- E. Department - State of Alabama Department of Labor
- F. Director - Director of the Department
- G. Fund Year - _____
- H. Initial Enrollment Period - _____
- I. 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 Participation Agreement the Service Organization is Millennium Risk Managers, LLC.
- J. Trustees - the members of the Board

2. Terms of Participation Agreement

This Participation Agreement will commence on _____ and will be automatically renewed each calendar year unless 60 days written notice of cancellation is given by the Employer or 30 days written notice of cancellation (10 days if cancellation is for nonpayment of contribution) is given by the Fund. These notice requirements for both Fund and Employer apply throughout the calendar year.

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 the Alabama Workers' Compensation Law.

4. Contributions

- A. Annual Contributions. Employer agrees to pay to the Fund an annual contribution as established by the Board and approved by the Department, as required. Employer agrees that its annual contribution shall never be less than ten thousand dollars (\$10,000) and that the annual contribution amount shall not be reduced below ten thousand dollars (\$10,000) following any audit, subject to section 4.D. below.

- B. Contribution Payment. Employer agrees that every year Employer maintains his membership in the Fund, (i) 25% of the Employer's annual contribution shall be earned, due and payable on January 10 of the year, and (ii) the remaining 75% shall be earned, due and payable in eleven equal monthly installments on the 10th calendar day of each month during the months of February through December, inclusive. Employer agrees that it will be charged a five percent (5%) service fee for any contribution payment it does not make on or before the due date for that contribution period. Employer agrees that failure to make contribution payments on or before the applicable due dates may, at the option of the Board, 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 Participation Agreement and may terminate the Employer's membership in the Fund by giving ten (10) days written notice. Employer agrees that the Fund has the right to collect any and all contributions and service fees 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.
- C. 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 money to satisfy the liabilities of the Fund.
- D. Contribution or Assessment Special Programs. The Fund may, in its discretion and subject to Board approval, develop and offer to its members certain programs effecting contributions and/or assessments. All terms and conditions of this Participation Agreement, unless specifically superseded in writing by any special program addendum, shall remain controlling on these parties.

5. Contribution Credits

Dividends in the form of (i) cash payments or (ii) credits ("Contributions Credits") to be applied toward member contributions required during the next fiscal year and to be paid out of the surplus of the Fund 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 dividends. At no time will any dividends be paid that would impair the capital of the Fund. All dividends shall be calculated in accordance with the rules adopted by the Department.

All Contribution Credits shall be subject to the following procedures and conditions:

- A. Subject to subsection B below, twenty-five percent (25%) of the Contribution Credit will be applied to the January contribution payment required during the next fiscal year and the remaining seventy-five percent (75%) will be applied on a pro-rata basis to each of the remaining monthly payments for February through December of the next fiscal year.
- B. The maximum Contributions Credit to any member will be limited to no more than seventy-five percent (75%) of the member's total contribution obligation for the next fiscal year.
- C. The Board reserves the right to adjust the Contribution Credit to participating members up to the maximum where special circumstances dictate.
- D. 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 the credit, refund, dividend or Contribution Credit is paid or credited to the Fund's members, 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.
- E. Any unapplied portion of a Contribution Credit or a carryover Contribution Credit that has been assigned to a member who withdraws from the Fund (or whose memberships are terminated) during a fiscal year will be forfeited by the member and retained by the Fund. Such members will receive no credit, refund, or dividend, payment or distribution of any kind from the Fund.

- F. No credits, refunds, dividends or Contribution Credit of any kind shall be payable to, paid to or credited against any debts owed to the Fund by any member who, at the time of the declaration or payment of such credit, refund, dividend or Contribution Credit, is in arrears to the Fund with respect to any contribution payment, additional contribution or assessment under this Participation Agreement.

6. 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 or any Fund member. 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. Employer agrees that it shall pay any assessments owed to the Fund according to the special assessment policy as adopted by the Trustees.

7. Law, Bylaws, Rules and Regulations

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

8. 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 Employer's covered employees during the term of this Participation Agreement for Claims made under the Alabama Workers' Compensation Law. The Fund, in conjunction 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 to defend, indemnify, or otherwise cover claims for retaliatory discharge, intentional acts, co-employee claims, willful misconduct claims, and 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. The Fund has no obligation to defend, indemnify or otherwise cover any claim or demand for benefits or damages of any kind under the laws or rules of any state other than Alabama, or any federal laws, rules or regulations. The Fund has no obligation to defend or indemnify any individual, owner, officer, agent or employee of the Employer. The obligations of the Fund under this Participation 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.

B. Reporting of Claims. Employer agrees to immediately report to the Service Organization all Claims and all bodily injuries, accidents or illnesses, regardless of severity, which may give rise to a Claim within the time prescribed by law and 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 to the Service Organization all legal notices to and lawsuits against Employer relating to Claims or potential Claims and (ii) immediately to send to the Service Organization copies of any and all demands, notices, summaries, legal papers and other correspondences that 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 or prejudice resulting from Employer's failure to promptly notify the Service Organization 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 or otherwise prejudice a Claim by making a written or recorded admission or commitment 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/or the Service Organization in the investigation and settlement of Claims.
- E. Insurance. If Employer maintains Insurance covering any Claim which would be covered pursuant to the terms of this Participation Agreement, the Fund will pay only for the amount of such Claim in excess of the amount due from such Insurance.
- F. 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; only then will the remainder of such recovery, if any, be paid to the Employer.

9. Withdrawal, Termination or Cancellation of Membership

Employer agrees that it may terminate its membership in the Fund at the end of any contract year or period provided it has given at least sixty (60) days prior written notice to the Fund of intent to withdraw. Employer agrees that its membership in the Fund may be terminated or canceled at any time by the Board after thirty (30) days written notice, unless termination is by the Board for nonpayment of contributions, in which case notice shall be ten (10) days, or unless cancellation is by the Board for fraud or misrepresentation by the Employer in the Employer's Participant Application or otherwise, in which case notice shall be one (1) day. 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 accrue prior to such withdrawal, termination or cancellation.

10. Termination Fee if Terminated Without Proper Notice

Employer agrees that if it terminates its membership in the Fund without giving the proper sixty (60) days notice as required by Section 9 and Section 2 of this Agreement, the member shall be required to pay to the Fund the NCCI Short Rate Penalty as established by the National Council on Compensation Insurance.

11. Change in Member's Legal Status

- 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, the 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. 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 Participation Agreement provided such Employer's membership is renewed in accordance with Section 13.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 13.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.
- D. Change in Ownership. For purposes of this Participation 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.

12. 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 needed to establish contribution rates to be used upon initial participation in the Fund. Employer agrees to pay any adjustment to the annual contributions 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. The audits and contribution rates will be conducted and calculated on the basis of the rules, regulations and codes of the National Council on Compensation Insurance.

13. Service Organization

The Fund may 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 if the Fund uses a Service Organization such Service Organization is not an agent of the Fund.

14. 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.

15. Inspections

Employer agrees that the Fund or 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, the Fund and the Service Organization are not 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.

16. Excess Insurance and Priority of the Fund

The Fund agrees, through its Service Organization or otherwise, to 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; provided, however, that such insurance shall only provide coverage for workers compensation benefit claims under the Alabama Workers Compensation Law and covered by this Agreement. If the Employer carries other valid and collectible insurance, self-insurance or self insurer fund, or any other indemnification covering a Claim also covered by this Participation Agreement, such other coverage or self-insurance shall be priority over this Participation Agreement, and this Participation Agreement shall apply in excess of and shall not contribute with such other insurance or self-insurance.

17. Uninsured Subcontractors

Employer agrees, as a condition of participation, that Employer shall be liable for workers' compensation coverage of an uninsured subcontractor, irrespective of whether such subcontractor has regularly in his service less than five (5) employees or would otherwise be exempt from coverage requirements of the Alabama Workers' Compensation Law. Employer agrees that the employees of Employer's uninsured subcontractors shall be counted as employees of Employer for purposes of this Participation Agreement.

18. Out-of-State Employees; Employees Who Make a Claim In Another State

The Fund shall not be liable for workers' compensation defense, indemnity and/or coverage for any employees who are Out-Of-State Employees. "Out-Of-State Employees" shall mean (i) employees who are hired outside the State of Alabama, or (ii) employees who work outside the State of Alabama. However, the Fund shall be liable for Alabama worker's compensation coverage of employees which satisfy both of the following conditions: (i) the employee is hired in the State of Alabama, and (ii) the employee works outside of the State of Alabama for a maximum of 180 consecutive days. Notwithstanding anything in this paragraph to the contrary, the Fund shall not be liable for any claims made by any employee who is injured outside of the State of Alabama and attempts to make a claim for benefits under the worker's compensation laws of any State other than the State of Alabama. Employer agrees that the Fund is not subject to the jurisdiction of any court or administrative board or body outside the State of Alabama, and the Fund owes absolutely no duty to defend or indemnify or otherwise cover the Employer for any claims made under the laws of or in the jurisdiction of any state other than the State of Alabama.

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. Participation Agreement

This Participation 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. This Participation Agreement may not be modified, altered or superseded in any manner except in writing, signed by all parties, and as approved by the Board. If any provisions of this Participation 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 Participation 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 worker's compensation program to provide worker's compensation benefits to its employees under the laws of the State of Alabama. This Participation Agreement is not an insurance contract and the Fund is not an insurer. The Fund is not an insurance agency, and no Fund employee is acting as an insurance agent as to this Participation Agreement or for purposes of any Board approved program that may be offered to Fund members.

21. Notice

Except as otherwise provided herein, any notice required by this Participation 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.

22. Governing Law

This Participation Agreement shall be governed by the laws of the State of Alabama.

23. Binding Arbitration and Waiver of Jury Trial:

All unresolvable disputes or claims relating to or arising out of (i) this Participation Agreement, in any way, (ii) any relationships that result from this Participation Agreement, or (iii) to the scope or enforceability of this Participation Agreement, and whether any such dispute or claim is based in contract, tort or otherwise, shall be resolved by binding arbitration under the expedited procedures of the American Arbitration Association (AAA) and the Federal Arbitration Act in Title 9 of the US Code. Arbitration hearings will be held in Birmingham, Alabama. The demand for arbitration may be made before or after commencement of any litigation. A single arbitrator will be appointed by the AAA and will be an attorney or a retired judge. Any issue considering whether or the extent to which a dispute or claim is subject to arbitration, including but not limited to issues relating to the validity or enforceability of these arbitration provisions, shall be determined by the arbitrator. All statutes of limitations or other defenses relating to the timeliness of the assertion of a dispute or claim that otherwise would be applicable to an action brought in a court of law shall be applicable in any such arbitration, and the commencement of an arbitration under this Participation Agreement shall be deemed the commencement of an action for such purposes. No provision of this paragraph shall restrict the ability of any person to exercise all rights and remedies available under applicable law or this Participation Agreement; provided, however, that the exercise of those rights or remedies is subject to the right of any other person to demand arbitration as provided herein. The commencement of legal action by a person entitled to demand arbitration does not waive the right of that person to demand arbitration with respect to any counterclaim or other claim. No person entitled to demand arbitration hereunder shall be permitted to assert a dispute or claim that is on behalf of any other person. Similarly, an arbitration proceeding under this Participation Agreement may not be consolidated with other arbitration proceedings. Judgment upon the award rendered in arbitration shall be final and may be entered in any court, state or federal, having jurisdiction. IF A DISPUTE OR CLAIM IS NOT SUBJECT TO ARBITRATION FOR ANY REASON, THEN THE DISPUTE OR CLAIM SHALL BE DECIDED IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. EMPLOYER AND THE FUND IRREVOCABLY WAIVE ALL RIGHTS TO A TRIAL BY JURY.

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IN WITNESS WHEREOF, the parties hereto execute this Participation Agreement this _____ day of _____, 2016.

**ALABAMA ASSOCIATED
GENERAL CONTRACTORS
WORKERS' COMPENSATION
SELF INSURER'S FUND**

By _____
Fund Representative

EMPLOYER

By _____
Employer Representative

Print Name

Name of Employer

Address

() _____
Telephone Number