

CONTRACT FOR INDEMNITY, HOLD HARMLESS AND RELEASE

This Contract For Indemnity, Hold Harmless and Release (hereinafter referred to as the "Agreement") is made by and between _____
_____ (hereinafter referred to as the "Fund Member") and/or _____
(hereinafter referred to as "Broker") and the Alabama Trucking Association Workers' Compensation Self Insurance Fund, Inc., an Alabama non-profit trust (hereinafter referred to as the "Fund") (collectively referred to as the "Parties") this the ____ day of _____, 20__.

RECITALS

WHEREAS, the Fund, as a condition of membership in its Participation Agreement and for participation in its program(s), requires all of its Members who utilize the services of owner operators, independent contractors, and/or contract drivers to comply with the following: the owner operators, independent contractors, and/or contract drivers used, leased, or otherwise engaged by the Fund Member must have purchased workers' compensation and/or employer's liability coverage or an occupational accident insurance policy acceptable to the Fund, and the Fund Member must purchase a corresponding contingent liability policy acceptable to the Fund that covers each and every owner operator, independent contractor, and/or contract driver.

WHEREAS, the Fund Member could utilize owner operators, independent contractors, and/or contract drivers used, leased, or otherwise engaged through an affiliated or third-party Broker/Brokerage operation and/or Freight Agent.

WHEREAS, the affiliated or third-party Broker/Brokerage operation and/or Freight Agent is either unable or unwilling to require its owner operators, independent contractors, and/or contract drivers to obtain workers' compensation and/or employers' liability coverage or an occupational accident insurance policy acceptable to the Fund and the Fund Member is unable to purchase a corresponding contingent liability policy for these Broker/Brokerage operation and/or Freight Agent owner operators, independent contractors, and/or contract drivers acceptable to the Fund.

WHEREAS, the Fund Member desires to continue to remain a member of the Fund and the Fund is willing to allow the Fund Member to maintain its membership upon the terms and conditions as contained herein.

IN CONSIDERATION of the mutual promises and covenants made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, the Parties hereto, intending to be legally bound, do hereby agree to the following terms and conditions:

DEFINITIONS

1. **Non-Covered Individual** – A non-covered individual is one who may or may not qualify as an employee under the Alabama Workers' Compensation Law (such as a lease/purchase driver, owner/operator, independent contractor, sub-contractor, broker utilized independent contractor/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 Section 25-5-1(4), Code of Alabama, (1975)), but the Fund Member has elected not to purchase or required the non-covered individual to purchase workers' compensation and/or employer's liability coverage through the Fund Member's membership in the Fund to cover such individual(s).

TERMS AND CONDITIONS

1. **Indemnification** - The Fund Member agrees to defend the Fund or the claim on behalf of the Fund, hold harmless, and unconditionally indemnify and pay on behalf of the Fund, its affiliates, and its respective officers, directors, trustees, agents, employees and members from any and all liability, claims, demands, losses, causes of action, damage, lawsuits, judgments, whatsoever, including attorneys' fees and costs, arising out of, or relating to, any claims made by Non-Covered Individuals for workers' compensation benefits and/or employer's liability. Said claims include but are not limited to, claims for workers' compensation benefits, outrage, breach of contract, fraud, and bad faith. This duty shall only apply to claims in which the accident, injury or acts giving rise to the claim occur during the term of the Fund Member's membership with the Fund. The Fund Member's deductible will not be applicable to any such claim for indemnification by the Fund and will not be applied to the reimbursement of any expenses related to a Non-Covered Individual claim. The intent of this provision is to provide full and complete defense and indemnity to the Fund relating to any claims made by Non-Covered Individuals.

If the Fund seeks indemnification and defense from the Fund Member pursuant to this Agreement, the Fund shall notify the Fund Member as promptly as practicable and give the Fund Member an opportunity to defend the Claim using the services of an Attorney approved by the Fund. The Fund will extend reasonable cooperation in connection with such defense. If the Fund Member fails to timely or sufficiently defend the Claim and/or the Fund, the Fund may assume the defense, which in no way will affect or limit the Fund Member's duty to indemnify the Fund.

2. **Release and Waiver** - The Fund Member agrees to release the Fund from any such claims made by Non-Covered Individuals claiming workers' compensation benefits and/or employer's liability. The Fund Member further waives any right of recovery of Non-Covered Individual claims by anyone claiming through them, by way of subrogation or otherwise, including their respective insurers. This release and waiver remains effective despite the Fund Member's failure to obtain insurance. If the Fund Member fails to obtain insurance, it bears the full risk of its own loss.

3. **Term and Termination** – This Agreement shall remain in effect from the date of execution for the duration of the Fund Member's membership in the Fund unless an earlier date for termination is mutually agreed upon in writing by the Parties. Due to the fact that workers' compensation and/or employer's liability claims can be filed in an appropriate time frame as established under Alabama Workers' Compensation Law that could extend beyond the duration of the Fund Member's membership in the Fund, this Agreement shall remain in effect for any workers' compensation and/or employer's liability claims that arise from an accident(s)/event(s) or cumulative trauma occurring or giving rise to a qualifying claim occurring during the Fund Member's membership in the Fund.

4. **Governing Law and Jurisdiction** - This Agreement shall be governed by and construed in accordance with the Laws of the State of Alabama. The exclusive jurisdiction of any claim arising from or relating to this Agreement shall reside in the appropriate State courts of Montgomery County, Alabama.

5. **Attorney Fees and Expense Associated with Enforcement** – The Fund Member shall be responsible for all costs and expenses, including reasonable Attorney fees, incurred by the Fund in the enforcement of this Agreement.

6. **Entire Agreement** – This Agreement, represents the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous agreements or representations, oral or written, between the Parties. Notwithstanding the foregoing, this Agreement is not meant to conflict with the terms and conditions of the Participation Agreement executed previously by the Parties, but to add additional terms and conditions, with each agreement to be fully enforceable as to each of the Parties.

7. **Severability** – If any provision of this Agreement or its application to any party or circumstances is invalid or unenforceable, then the remainder of this Agreement or the application of such provision to the other parties or circumstances shall not be affected thereby. Further, if any provision or application hereof is invalid or unenforceable, then a suitable and equitable provision shall be substituted therefore in order to carry out so far as may be valid or enforceable the intents and purposes of the invalid and unenforceable provision.

8. **Amendment and Modification** - The terms of this Agreement may be modified or amended, but only by another writing signed and dated by both parties, to be attached hereto and which shall be made a part hereof.

9. **Notice** – All notices with respect to this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes either on the date hand delivered, or date delivered by commercial express carrier or date deposited in the U.S. Postal Service via certified mail, postage prepaid and properly addressed to the Parties principal place of business, or date of confirmed receipt of a legible facsimile transmission or electronic mail communication.

10. **Construction Doctrine** – The Fund Member agrees it has had the opportunity to have an Attorney review this Agreement prior to its execution and no doctrines related to having the document construed in favor of the non-drafting party will apply to this Agreement. This Agreement will be construed to the benefit of the Parties, affiliates, respective officers, directors, trustees, agents, employees, and members.

SIGNATURES TO FOLLOW

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth herein above.

Fund Member

Alabama Trucking Association Workers
Compensation Self-Insurance Fund, Inc.

By: _____
(Signature)

By: _____
(Signature)

Title: _____

Title: _____

Affiliated Broker/Brokerage (if applicable)

By: _____
(Signature)

Title: _____