



PARTICIPATION AGREEMENT

**Association of County Commissions of Alabama
Liability Self-Insurance Fund, Inc.**

PARTICIPATION AGREEMENT

This Contract and Participation Agreement entered into by and between the Association of County Commissions of Alabama Liability Self-Insurance Fund, Inc., a non-profit corporation organized under the laws of the State of Alabama (hereinafter referred to as "Fund" or "Liability Fund"), and the undersigned County or County entity of the State of Alabama (hereinafter referred to as "Participant"), for the purposes of providing liability and/or property coverages prescribed by the Fund's Liability Coverage Document and any Endorsements thereto and, if offered, Property Coverage Document and any Endorsements thereto.

WITNESSETH:

The undersigned Participant, in consideration of the creation of the Fund to provide liability and property coverages and in further consideration of the other Participants executing identical Participation Agreements, does hereby agree to become one of the members of the Fund. The conditions of membership agreed upon by and between the parties are as follows:

Definition of terms used in this Participation Agreement:

- A. Board - the Board of Trustees of the Liability Fund.
- B. Fund Year - January 1 through December 31.
- C. Service Company – Any firm, entity or individual retained by the Board to manage the Fund's day-to-day activities, which may include administration, claims management, risk management, education, marketing, etc., as may be directed by the Board.
- D. Coverage Documents - the Liability Coverage Document and the Property Coverage Document of the Association of County Commissions of Alabama Liability Self-Insurance Fund, Inc. and any applicable endorsements that set forth in detail the coverages provided.
- E. Incurred But Not Reported (IBNR) - an incident or occurrence that has taken place but on which no claim has been reported in writing to the Service Company.
- F. Claim - a report of injury, damage or loss involving potential liability arising out of an occurrence, offense, error or omission, or accident that takes place during the coverage period and is reported in writing to the Service Company during the coverage period.
- G. Participant – one of the sixty-seven counties in the State of Alabama, any entity created by the County Commission of a county or a separately incorporated county-related entity when the county or entity is the Participant named on the front of this Agreement. A separately incorporated county-related entity or a public official and his or her department of a county that is not a Participant may become a Participant, but only upon approval of the County and the Board upon such terms and conditions as established by the Board.

1. **Term of Contract**

Unless sooner terminated by the Board, the term of this Contract shall be for a period beginning on the date executed or at 12:01 a.m. on January 1, 2021 (whichever date is later), and ending at 12:01 a.m. January 1, 2024.

2. **First Year Contribution/Premium**

Initial first year contribution/premium of any new Participant will be determined by the Fund. If coverage begins after January 1 of any year, the first-year contribution/premium will be pro-rated.

3. **Subsequent Contribution/Premium Experience Rating**

The Fund reserves the right when applicable to use as a guide for future contributions/premiums an experience rating plan to be prescribed by an actuarial firm and to calculate for each Participant its individual experience rating when earned in accordance with the provisions of such experience rating plan.

4. **Contribution/Premium Payment**

All contributions/premiums are due on or before the inception of coverage and each year thereafter as set by the Board until the termination of the contract period. The Board may from time to time establish a policy for payment of contributions/premiums including a provision for a late payment penalty.

5. **Reporting of Claims**

If a claim or suit is filed against the Participant, or its covered officers, agents or employees, the Participant shall immediately forward the same to the Service Company.

6. **Cooperation with Risk Management Recommendations**

The Participant agrees that it will cooperate in instituting any and all reasonable safety regulations and/or risk management recommendations that may be recommended for the purpose of eliminating or minimizing hazards that would contribute to liability or property losses. In the event that the recommendations submitted by the Service Company on behalf of the Fund seem unreasonable, the Participant has a right to appeal to the Board and the decision of the Board shall then be final.

7. **Liability Coordinator**

The Participant agrees that it will appoint a Liability Coordinator for the Participant and that the Fund and its service company shall not be required to contact any other person. Any notice to the Liability Coordinator shall be considered notice to the Participant. The Participant reserves the right, however, to change the coordinator from time to time by giving written notice to the Fund and to the service company at least ten (10) days prior to the effective date of the change.

8. **Claims and Legal Counsel**

The Fund, through the Service Company employed by the Fund, agrees to handle any and all covered claims after notice has been given, and to provide a defense. It shall carry on all negotiations with the injured claimant or his or her attorney at the onset and negotiate within authority previously granted by the Fund. If a personal appearance by an employee of the Participant is necessary, the expense of this appearance will be paid by the Participant. In a manner directed by the Board, legal counsel will be retained on behalf of and at the expense of the Fund necessary for the defense of any litigation.

9. **Legal Defense and Cooperation**

The Participant hereby agrees that any covered suit brought against the Participant shall be defended in the name of the Participant by the attorney or attorneys selected in a manner directed by the Board. Full cooperation by the Participant shall be extended to supply any information necessary or helpful in such defense. The Participant further agrees to cooperate with the Fund in the investigation and settlement of the claim or defense against the suit. The County Attorney may be requested to provide defense assistance but shall not have the responsibility or authority to settle or otherwise direct any litigation without approval of the Service Company or the Board.

10. **Fund Experience**

Every year, the Fund or the Service Company will endeavor to supply to each Participant a printout involving a statement of claims, claims status, and activity report cumulative for each Fund year. The disclosure of certain information about claims may be withheld, limited or conditioned to prevent claimants who may work for the Participant from having access to that information.

At least annually, the Board will carefully review, study and consider the actual claims or loss experience (including reserves for future claims payments) of each of the Participants, the pro rata cost to the Fund resulting from overall loss experience attributed to each Participant and the pro rata portion of the cost of reinsurance, if any, as well as the pro rata allocation, as determined by the Board, of the other and necessary administrative expenses of the Fund, in order to reasonably determine that actual pro rata cost, expense, and loss experience of each Participant for the purpose of determining future contributions/premiums and refunds of contributions/premiums, if any. Individual claims against each Participant may be capped at a certain limit for purposes of determining the experience of each Participant with the excess shared among all Participants.

11. **Assessments**

Due to the nature of a self-insurance fund, the Fund reserves the right to assess Participants' amounts, in addition to contributions/premiums, as may be necessary for the protection of its Participants. If, at any time, in the opinion of the Board, the assets of the Fund become insufficient to enable the Fund to discharge its obligations, including but not necessarily limited to, payment of all due damages and losses, maintenance of reserves for claims which have occurred and have been reported, maintenance of reserves for claims which have occurred and not been reported, expenses due and reasonable expenses forthcoming, the

Fund shall have the right to assess each Participant member participating in the plan during any part of a year during which an insufficiency may exist such amount as, in the opinion of the Board, is required to correct the insufficiency.

Each Participant's assessment shall be computed by the Board and may have the same ratio to the total assessment amount as the Participant's earned contribution/premium of the Fund during the twelve months preceding the assessment. A Participant's earned contribution/premium shall be the pro rata portion of contributions/premiums paid by it for the period during which its Agreement with the Fund was in effect.

Any assessment shall be a legal debt and obligation of the Participant and shall be due and payable when written notice of the assessment is received. However, the Board may allow up to twelve months for payment of any assessment in accordance with such guidelines as it may establish.

12. **Assets of the Fund**

All assets in the Fund, including any surplus which the Fund may have accrued since the Fund's inception, shall remain the property of the Fund at all times subject to the decisions of the Board. No Participant has the right to seek distribution or withdrawal of any surplus or investment earnings which the Fund has accrued.

13. **Refunds, Dividends and Other Distributions**

The Fund may, from time to time, at the discretion of and upon such terms and conditions prescribed by the Board, make a refund, dividend or other distribution from part of the Fund's surplus or from investment earnings. Such distributions may be limited to certain years of participation. Consideration may be given to the loss experience and years of participation of Participants. The Participant agrees that the decisions of and procedures adopted by the Board affecting refunds, dividends or any other distribution, and the manner of computing such refund, dividend or other distribution shall govern in all instances for the making of any distribution by the Fund. No Participant shall be entitled to or have the right to receive any refund, dividend or any other distribution that may be approved by the Board from any of the surplus or investment earnings if such Participant is not a member of the Fund at the time such refund, dividend or distribution is approved by the Board or if such Participant is not a member of the Fund as of the effective date of such refund, dividend or distribution.

14. **Withdrawal by Participant from the Fund**

a. **Withdrawal at End of Contract**

Any Participant may withdraw from the Fund at the end of the term of this contract by giving at least sixty (60) days notice in writing to the Board of its desire to so withdraw. Written notice must include a certified copy of the minutes of the meeting where the governing body voted to withdraw from the Fund. If notice is not given as prescribed herein, this Agreement will automatically renew for another three (3) year period of time.

All claims reserves, at all times, are the property of the Fund. At no time may any Participant withdraw the claim reserves. Unless otherwise agreed to in writing by the Participant, all pending or open claims which have been reported to the Fund (or its Service

Company) by the Participant will continue to be obligations of the Fund. The Fund shall not be responsible for any new or incurred but not reported claim(s) after the withdrawal of the Participant.

b. Withdrawal During a Contract Commitment

Each Participant is obligated and commits itself to remain as a member of the Fund for the term of this contract period. All claim reserves are recognized as property of the Fund. At no time may any Participant withdraw the claim reserves. Unless otherwise agreed to in writing by the Fund, if a Participant withdraws from the Fund during this contract commitment, such withdrawal shall be considered a breach of this agreement and all pending or open claims regardless of whether the same have been reported to the Fund (or its Service Company) by the Participant or remain unreported, shall become the obligation of the Participant. The Fund shall cease to process all such claims. The Fund shall cease to defend and/or shall withdraw from any defense of litigation pending regarding such claims, and the defense, settlement and indemnity of such claims or litigation shall become the sole responsibility and obligation of the member Participant so withdrawing. The Fund shall not service any new or incurred but not reported claims after the withdrawal of the Participant. However, all claims on which a prior written agreement to settle shall have been executed by the Fund or on which a prior judgment shall have been entered, shall not be considered pending or open, and the Fund shall honor such agreements and/or judgments.

15. Limitation or Cancellation of Coverage by the Fund

a. Non-payment of Contribution/Premium

In the event that the Participant fails or refuses to make the payments of contributions/premiums, the Fund reserves the right to treat such non-payment as a breach of the agreement and terminate the membership of such Participant by giving ten (10) days written notice. The Fund further reserves the right to collect any and all contributions/premiums that are earned on a short rate basis for the period preceding such contract termination. Any Participant whose membership is terminated hereunder shall be considered to have withdrawn during the three-year contract commitment and shall be subject to the provisions of paragraph 14.b. above.

b. Any Other Reason

The Fund reserves the right to condition, limit, modify or cancel coverage afforded in the Coverage Documents, in whole or in part, as to any member Participant if, in the opinion of the Board, such is in the best interests of the Fund as a whole. Grounds for conditioning, limiting, modifying or canceling coverage include the violation by any member of any duty or obligation under the Coverage Documents or this Participation Agreement. Written notice of such change in coverage will be mailed or delivered at least thirty (30) days before the effective date of such change.

16. Inspections and Surveys

The Fund, at its option, may inspect and survey the Participant's records, property and operations at any time. It is understood and agreed that these inspections and surveys are for

the Fund's benefit only, and shall not constitute an undertaking by the Fund to determine or warrant that the Participant's property or operations are safe or healthful, or comply with any law, rule, regulation, code or standard. Any and all reports which may be issued following an inspection or survey are issued for the Fund's benefit. Such reports are not warranties but they could affect the Participant's coverage. Failure to respond or follow these reports may be considered by the Fund in calculating contributions and determining whether to condition, limit, modify or cancel coverage afforded in the Coverage Documents.

17. **Waiver of Uninsured Motorist Coverage**

As a self-insurance fund, the Fund is not subject to the provisions relating to uninsured motorist coverage under Alabama law. By participating in the Fund, the Participant is expressing its desire not to receive uninsured motorist coverage and to waive such coverage.

18. **Agreement to Abide by the Bylaws**

The Participant agrees to abide by the Bylaws of the Fund as adopted by the Board of Trustees of the Liability Fund.

19. **Audit**

The Fund agrees that all Fund transactions will be annually audited by a certified professional accounting firm

20. **Actuarial Valuation**

The Fund will have an actuarial valuation of reserves performed each year to audit the adequacy of reserves and contributions/premiums.

21. **Nonwaiver of Rights, Immunities and Defenses**

No Participant, by participating in this agreement and contributing thereto, shall by its actions be deemed to have waived any rights, immunities or defenses granted it by laws of the State of Alabama, nor shall any officer, agent or employee of such Participant or sheriff or employee of the sheriff by virtue of his/her being covered be deemed to have waived any rights, immunities or defenses available to him/her by the laws of the State of Alabama. The Fund, however, by defending such Participant or any official or employee, shall be entitled to use any and all such rights, immunities and defenses on behalf of such entity/person defended.

22. **No Independent Interest in the Fund**

All monies, assets, interest and property held by the Fund pursuant to this Participation Agreement shall not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration, levy or other legal process, either voluntary, involuntary or by operation of law, by, on behalf of, or in respect of the Participant and shall not be subject or applied to the debts, obligations or liabilities of the Participant, including, without limitation, any direct action or seizure by any creditor or claimant under any writ or proceeding at law or in equity. Furthermore, the Participant shall have no independent interest in, or right to, the assets held by the Fund, and it is the intention of the parties to this Participation Agreement that the

Participant's entry into and participation in the Fund shall extinguish and remove all of the Participant's interest in the Fund under the Bankruptcy Code or similar laws.

23. **Nature of Fund**

Each Participant agrees that by executing this Participation Agreement, it understands and agrees that the Fund is simply a legal vehicle by which each member Participant has joined together in providing self-insurance liability and property programs under the provisions of Ala. Code § 11-30-1, *et seq.*, as amended by Act 2015-53, and as may be further amended. Under no circumstances shall said Fund be deemed to be an insurance company.

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

FUND: ASSOCIATION OF COUNTY COMMISSIONS
OF ALABAMA LIABILITY SELF-INSURANCE
FUND, INC.

By _____
ACCA LSIF Representative

PARTICIPANT: _____

By _____
Chairman of the County Commission or
Director of the County Entity

The Participant's Liability Coordinator, as noted in Item 7 - Page 2, is as follows:

NAME: _____
(Please Print)

TITLE: _____

ADDRESS: _____

CITY: _____ ZIP: _____

TELEPHONE: _____

EMAIL: _____

NOTE: Please return this signed Participation Agreement in its entirety to the **ACCA LSIF, P.O. Box 5040, Montgomery, AL 36103-5040**. An executed copy will be sent to the Liability Coordinator named above.