

EMPLOYER STILL EXISTS

**LOSS PORTFOLIO TRANSFER
AND ASSUMPTION AGREEMENT (“AGREEMENT”)**

by and among

_____, a duly qualified Self-Insurer of Workers’ Compensation
benefits in the State of Georgia (hereinafter, collectively, **Employer**).

and

_____ duly authorized to transact the business of
workers’ compensation insurance in the State of Georgia, (hereinafter **Insurer**).

and

THE STATE OF GEORGIA
STATE BOARD OF WORKERS’ COMPENSATION

and

THE GEORGIA SELF-INSURERS GUARANTY TRUST FUND

Effective Date: _____

WITNESSETH:

In consideration of the mutual covenants and agreements hereinafter set forth, the parties agree
as follows:

1. **Transfer and Assumption of Liability for Covered Claims**

Subject to this Agreement taking effect, as provided in Paragraph 2 hereof, Employer does
hereby cede and transfer to Insurer, as of _____ (**EFFECTIVE DATE**), and
Insurer does hereby accept and assume, as its continuous direct obligation, liability for all self-
insured workers’ compensation claims and benefits per O.C.G.A. § 34-9-1, et seq., up to all
statutory limits for each claim that Employer is or may become legally liable to pay as a duly
qualified self-insurer of workers’ compensation claims and benefits in the State of Georgia, as
defined in the Georgia Workers’ Compensation Act, for injuries or occupational diseases with

dates of injury occurring during the self-insured period which commenced on _____, and terminated on _____ **(EFFECTIVE DATE OF CANCELLATION OF SELF-INSURANCE)**, (“Covered Claims”). Covered Claims include all outstanding claims reported to Insurer by Employer in writing at the inception of this Agreement and specifically incorporated by reference herein and as Employer may, from time to time thereafter, report to Insurer in writing upon Employer’s receiving notice of a claim or of circumstances which may lead to a claim. Prior to this Agreement becoming effective, the parties hereto must reconcile all covered claims with the records of the State Board of Workers’ Compensation and insurer shall be liable pursuant to this Agreement notwithstanding any failure by Employer to report covered claims to insurer. A list of all known “Covered Claims” is attached as “Exhibit 1 Covered Claims”.

2. **Effective Date of Agreement**

This Loss Portfolio and Assumption Agreement shall become effective upon the full execution hereof by all four (4) parties hereto. When so executed, this Agreement shall be effective as of _____ **(EFFECTIVE DATE OF THIS AGREEMENT)** (“Effective Date”), and will continue in force until all liability ceded by Employer and assumed by Insurer under this Agreement shall be discharged by Insurer. It is intended that both the Georgia State Board of Workers’ Compensation and the Georgia Self-Insurers Guaranty Trust Fund are to be signatories and third party beneficiaries of this Agreement with standing to enforce same.

3. **Insurer Coverage Obligation**

Subject to the exclusions and other conditions and limitations set forth in this Agreement, Insurer agrees to cover and pay the Covered Claims. Insurer and Employer agree to be jointly liable for all “Covered Claims” in the event excess carriers fail to pay said “Covered Claims.” Furthermore, either Employer or Insurer shall be responsible for paying “Covered Claims” in excess of Employer’s self-insured retention and seeking reimbursement or payment directly from the excess carriers.

4. **Exclusions**

The obligations and liabilities assumed hereunder by Insurer do not include, and Insurer’s obligations do not extend to:

- A. any loss insured by available full coverage workers’ compensation or employer’s liability insurance, and providing coverage for any obligations of Employer under the Georgia Workers’ Compensation Act. It is understood and agreed, however, that payments made by the Georgia Self-Insurer’s Guaranty Trust Fund shall not be deemed other insurance within the meaning of this Section 4(A);
- B. any loss payable under the workers’ compensation law of any state other than Georgia;
- C. any punitive or exemplary damages awarded or imposed because of bodily injury sustained by any employee;
- D. any punitive, exemplary or compensatory damages awarded or imposed because of the conduct of Employer or the conduct of anyone acting or purporting to act for Employer outside of the Georgia Workers’ Compensation Act before or after the effective date of this Agreement:
 - (1) in the investigation, trial or settlement of any workers’ compensation claim;
 - (2) in failing to pay or delay in payment of any workers’ compensation claims;
- E. any assessment made upon self-insurers, whether imposed by statute, regulation or otherwise;
- F. any payments in excess of the benefits regularly provided by the workers’ compensation law, including those required because of:

- (1) Employer's serious and willful misconduct;
 - (2) Employer knowingly employed an employee in violation of law;
 - (3) Employer failed to comply with a health or safety law or regulation, or;
 - (4) Employer discharged, coerced or otherwise discriminated against any employee in violation of the workers' compensation law;
- G. any fine, penalty or other charge imposed on Employer for any act or omission of Employer in violation of the Georgia Workers' Compensation Act, either before or after the effective date hereof;
- H. any claim, demand, cost, expense or other liability asserted by any excess insurance carrier and arising from the handling of any Covered Claim before or after the effective date of this Agreement, except for claims arising out of the negligence or intentional acts or omissions of Insurer.

5. **Consideration, Payment Terms**

In consideration of Insurer's assumption and discharge of the obligations herein set forth, Insurer shall be entitled to receive, and Employer agrees to pay Insurer the following consideration ("Compensation")._____

6. **Claims Administration**

The claims administration duties, in connection with the Covered Claims shall be handled by Insurer or a qualified third-party administrator, at Insurer's expense, licensed by the State of Georgia to perform such responsibilities. The parties hereby agree that _____ (Third Party Administrator) is mutually acceptable to both Employer and Insurer as a third-party claims administrator and the parties additionally agree that all compensation payable to the claims administrator shall be paid to such administrator directly by Insurer. Insurer and Employer agree to cooperate fully with Third Party Administrator in the defense and handling of each Covered Claim.

7. **Reports**

Employer shall notify Insurer in writing of any new claim that is reported after the effective date of this Agreement.

8. **Reservation of Liabilities; Exclusion of Consequential, Extracontractual and Punitive Damages**

A. Insurer does not assume any liability for any consequential, extra contractual or punitive damages or for any costs of defending, investigating or settling any such claim (whether or not meritorious) which arises from or is based on a theory of negligence or bad faith of Employer, its employees or agents. The Insurer does not assume any liability for the acts of the Third Party Administrator, in the servicing, processing, administering or defending of any claim (including any Covered Claim) or in any negotiation in connection therewith prior to the effective date of this Agreement. However, Insurer is responsible pursuant to the provisions of the Workers' Compensation Act for the acts of the Third Party Administrator, in the servicing, processing, administering or defending of any claim (including any

Covered Claim) or in negotiation in connection therewith after the effective date of this Agreement.

B. The Employer shall be responsible for any workers' compensation liability for Covered Claims under the Georgia Workers' Compensation Act for which the Insurer wrongfully denies coverage.

9. **Scope of Agreement**

Nothing in this Agreement shall, in any manner, create any obligation or establish any right against Insurer in favor of any person not a party to this Agreement outside of the Georgia Workers' Compensation Act. However, any employee of Employer during the self-insured period shall be a contemplated third party beneficiary of this Agreement.

10. **Inadvertent Errors or Omissions**

It is agreed that error or omissions by Employer shall not invalidate the liability of Insurer under this Agreement, provided that such errors or omissions are corrected as soon as possible after discovery thereof, and Employer agrees to reimburse Insurer for any loss, cost and expense incurred by Insurer as a result of Employer's errors or omissions.

Insurer assumes no liability for any act or omission of Employer or for that of Employer's agents or employees, either before or after the effective date of this Agreement. All such liability outside of the Georgia Workers' Compensation Act is expressly reserved by Insurer.

11. **Inspection**

Employer shall place at the disposal of Insurer, at all reasonable times (and Insurer shall have the right to inspect, through its authorized designated representatives) all books,

records and papers of Employer in connection with the Covered Claims and any transactions contemplated or executed under this Agreement.

12. **Insolvency**

Any insolvency or dissolution of Employer following the effective date of this Agreement shall have no effect upon the liabilities assumed by Insurer hereunder. In the event of Insurer's insolvency, Employer shall be liable for all workers' compensation claims with dates of injury arising during the self-insured period. In the event of insolvency of the Insurer and Employer, then the Georgia Self-Insurers Guaranty Trust Fund shall be liable for the claims referenced herein.

13. **Arbitration**

In the case of any dispute, difference or disagreement between Insurer and Employer under this Agreement relative to any transaction hereunder which Insurer and Employer are unable to resolve between themselves, such dispute, difference or disagreement shall be settled by arbitration through the American Arbitration Association and decided by three (3) arbitrators disinterested in the outcome of any such arbitration proceeding.

14. **Offset**

Insurer and Employer may offset any balance due from one to the other under the terms of this Agreement.

15. **Miscellaneous**

A. Entire Agreement; Severability; Modifications

This Agreement contains all of the terms and conditions as regards the respective rights and obligations and duties of Insurer and Employer thereunder, and as such, constitutes the whole Agreement. Any modifications to this Agreement must be in writing, signed by the duly authorized representative of each party. In the event that any section of this Agreement or portion thereof is held by any governmental authority or court of law to be violative of any applicable law, the validity of the remaining sections shall not be affected and the parties' intent significantly

compromised or defeated, then the parties agree to reform or modify this Agreement, as appropriate, to give effect to their intent.

B. Captions

The captions or headings used in this Agreement are intended solely for convenience and do not constitute a part of the terms and conditions of this Agreement.

C. Waiver

No waiver of any of the provisions contained in this Agreement shall constitute or be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by a duly authorized representative of the waiving party.

D. Communications and Notices

Any matter brought to the attention of one party which concerns the rights or obligations of the other parties shall be brought to the attention of such other parties by first class mail or overnight courier service within three (3) working days. Any notices permitted or allowed under this Agreement shall be delivered by hand or mailed by certified or registered mail, or by overnight courier, addressed as follows:

If to **Insurer**

Address: _____

ATTN: _____

With a copy to:

If to **State of Georgia:**

Attention: Delece Brooks
270 Peachtree St., NW
Atlanta, GA 30303

With a copy to:
Viola Drew

If to **Employer**

Address: _____

ATTN: _____

With a copy to:

If to the **Georgia Self-Insurers
Guaranty Trust Fund:**

Attention: John P. Reale
P.O. Box 57047
Atlanta, GA 30343

With a copy to:
Moshica Wallace

All notices shall be effective upon receipt or upon attempted delivery where delivery is refused or mail is unclaimed.

E. Governing Law

This Agreement shall be construed and interpreted according to the laws of the State of Georgia. It is expressly agreed and affirmed that the rights of any claimant who is or may be affected by this Agreement will be governed by the laws of the State of Georgia.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in four (4) original counterparts by their respective duly authorized representatives, effective as of the date above written.

Insurer

Employer (all entities under Agreement)

By:_____

By:_____

Name/Print:_____

Name/Print:_____

Title:_____

Title:_____

State Board of Workers' Compensation

Georgia Self-Insurers Guaranty Trust Fund

By:_____

By:_____

Name/Print:_____

Name/Print:_____

Title:_____

Title:_____

**APPROVAL OF THE STATE OF GEORGIA STATE
BOARD OF WORKERS' COMPENSATION**

The foregoing Loss Portfolio Transfer and Assumption Agreement between
_____ **(and named entities)** on the one hand, and
_____ on the other hand, is hereby approved in its entirety.

GEORGIA STATE BOARD OF WORKERS' COMPENSATION

By: _____

Name: _____ (Seal)

Title: Executive Director

(last updated 04/06/2018)