

**ALABAMA RESTAURANT & HOSPITALITY ASSOCIATION  
EMPLOYEE BENEFIT TRUST  
PARTICIPATING EMPLOYER AGREEMENT**

THIS PARTICIPATING EMPLOYER AGREEMENT (this “Agreement”) is made and entered into as of \_\_\_\_\_, 2023, and is by and between \_\_\_\_\_ (the “Participating Employer”) and the Alabama Restaurant & Hospitality Association Employee Benefit Trust (the “Trust,” and together with the Participating Employer, the “Parties”).

**RECITALS**

**WHEREAS**, the Trust was established by Alabama Restaurant & Hospitality Association pursuant to an Amended and Restated Employee Benefit Trust Agreement dated February 1, 2022 (the “Trust Agreement”);

**WHEREAS**, the Trust operates as a funding vehicle for a multiple employer welfare arrangement (“MEWA”);

**WHEREAS**, the Trust will provide benefits to several employers throughout Alabama that are members of Alabama Restaurant & Hospitality Association and have elected to participate in the Trust and the ARHA Cares Group Health Plan (the “Plan”) sponsored by the Trustees (collectively, the “Participating Employers”); and

**WHEREAS**, the Participating Employer and the Trust desire to enter into this Agreement to define the obligations of both Parties.

**NOW, THEREFORE**, in consideration of the mutual covenants and Agreement set forth below, it is hereby covenanted and agreed by the Participating Employer and the Trust as follows.

**ARTICLE 1  
PARTICIPATION IN  
THE ALABAMA RESTAURANT & HOSPITALITY ASSOCIATION  
EMPLOYEE BENEFIT TRUST**

- 1.1 The Participating Employer hereby agrees that it shall participate in the Trust and the Plan. The Trustees accept the Participating Employer for participation in the Trust and the Plan, subject to the terms and conditions of this Agreement and the Trust Agreement.
- 1.2 The Participating Employer agrees to be bound by the terms of the Trust Agreement establishing the Trust as currently in effect and as may be amended in the future. The Trust Agreement and the Plan, as each may be amended, shall be deemed to be incorporated into this Agreement and made a part hereto. The Participating Employer will be notified of any material amendment to the Trust Agreement or the Plan. The current Trust Agreement and the current Plan are attached hereto as Exhibit 1 and Exhibit 2, respectively.

- 1.3 The Participating Employer agrees to be bound by the terms and conditions of any participation and/or eligibility rules that may be adopted or required by the Trust and/or the insurance carriers regarding the Plan (the “Participation Rules”). The Participation Rules, as may be amended from time to time, shall be deemed to be incorporated into this Agreement and made a part hereto. The Participating Employer will be notified of any changes to the Participation Rules.
- 1.4 The Participating Employer acknowledges and agrees that the Trust, in its sole discretion, shall select all service vendors and insurance carriers that shall be retained by the Trust and the Plan. The Trust may delegate any of its obligations, as permitted pursuant to the Plan and the Trust Agreement.
- 1.5 The benefits provided or made available under the Plan are limited to those set forth in, and are subject to all terms and conditions of, the applicable Plan, including, without limitation, the terms of such Plan respecting the classes of employees eligible for such benefits, applicable waiting periods, the amount and types of benefits available, and the circumstances under which benefits are not available or may terminate.
- 1.6 In the event and to the extent not insured against by an insurance company pursuant to the provisions of any applicable insurance policy, the Participating Employer agrees that it shall indemnify and hold harmless the Trust and the Trustees from any and all claims, demands, suits or proceedings in connection with the Plan or the Trust that may be brought by any Participating Employees or Beneficiaries, or by the legal representatives of any of the foregoing, or by any other person, corporation, entity, government or agency thereof; provided, however, that such indemnification shall not apply to a Trustee for a breach of such Trustee’s fiduciary duties, negligent acts or willful misconduct in connection with the Plan or the Trust. The provisions of this Section 1.6 shall survive termination of this Agreement for a period of three (3) years from the date of termination of this Agreement, and this indemnification requirement shall be binding on the Parties’ respective successors and assigns.

## **ARTICLE 2 PLAN ADMINISTRATION**

- 2.1 All communications, notices or correspondence by the Participating Employer regarding this Agreement shall be deemed sufficient if directed to the Trustees at the email address set forth on the signature page below (the “Trust’s Email Address”).
- 2.2 All communications, notices or correspondence by the Trustees to the Participating Employer regarding this Agreement shall be deemed sufficient if directed to the Participating Employer at the email address set forth on the signature page below ( the “Participating Employer’s Email Address”).
- 2.3 Unless otherwise provided by the Trust, any payments due from a Participating Employer for the coverage of its Participating Employees and their Beneficiaries under the Plan shall

be made directly to the Trust through an online payment system. An email will be sent to the Participating Employer's Email Address containing the monthly payment information.

2.4 The ARHA Cares Group Health Plan third-party administrator (the "Plan Third-Party Administrator," and as of the date of this Agreement, **COBBS, ALLEN & HALL, INCORPORATED**, an Alabama corporation, "Cobbs Allen"), shall establish the schedule and deadline for payment of the Participating Employer's monthly Plan contribution. The current schedule and deadline is set forth below, but it is subject to change upon reasonable notice to a Participating Employer.

- An email will be sent to the Participating Employer's Email Address containing an invoice and payment instructions for the Participating Employer's monthly contribution payment on or before the fifth (5th) day of the month.
- The Participating Employer's monthly contribution payment is due on the fifteenth (15th) day of the month (the "Due Date"). If the monthly contribution payment is not paid in full by 12:00 AM on the twenty-first (21st) day of the month, a one hundred dollar (\$100) late fee will be charged to the Participating Employer. The first late fee will be waived by the Plan Third-Party Administrator. To make the payment in full and be considered current, the Participating Employer must pay the \$100 late fee in addition to the Participating Employer's monthly contribution payment.
- If the Participating Employer's monthly contribution payment and applicable late fee are not received by 12:00 AM on the twenty-sixth (26th) day of the month, the Trust may cancel the Participating Employer's coverage. The effective date of the cancellation will be 12:00 AM on the first (1st) day of that month.
- Example: For a January 1, 2024 premium payment, the January invoice will be sent to the Participating Employer on or before January 5, 2024. The Participating Employer must make the monthly contribution payment in full by January 15, 2024. If the monthly contribution payment is not received by 12:00 AM on January 21, 2024, the Participating Employer shall owe an additional one hundred dollar (\$100) late fee. If the monthly contribution payment and late fee are not received by 12:00 AM on January 26, 2024, the Trust may cancel the Participating Employer's coverage under the Plan. The effective date of the cancellation will be 12:00 AM on January 1, 2024.

The Participating Employer shall notify the Plan Third-Party Administrator in writing of any dispute with any invoice along with a reasonably detailed description of the dispute within five (5) days from the date of the Participating Employer's receipt of such invoice. Invoices for which no such timely notification is received shall be deemed accepted by the Participating Employer as true and correct, and the Participating Employer shall pay all amounts due under such invoices within the period set forth in this Section 2.4. Notwithstanding anything to the contrary, each Party shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, payment by the Participating Employer of all undisputed amounts and fees due and payable under this Section 2.4.

Notwithstanding the foregoing, the Trust may reinstate the Participating Employer within sixty (60) days of the Due Date if the Participating Employer makes payment in full prior to the sixtieth (60th) day following the Due Date and submits a new application to the Trustees. The Trustees shall also charge and such Participating Employer shall pay the costs of collection of such due and unpaid amounts, including, but not limited to, reasonable attorneys' fees, Plan Third-Party Administrator fees, court costs and other costs of collection. Such reinstatement does not guarantee uninterrupted coverage under any Component Benefit Programs.

- 2.5 It is acknowledged that the Plan Third-Party Administrator is responsible for making available by electronic means evidences of coverage and descriptions of benefits to each Participating Employer, including Plan documents and/or summary plan descriptions, plan forms, and certificates of coverage. However, it is the responsibility of each Participating Employer to timely distribute such documents to its employees eligible for the insurance coverage, and each Participating Employer shall indemnify and hold the Trustees and the Plan Third-Party Administrator harmless for the Participating Employer's failure to timely distribute the documents.
- 2.6 All Plan benefits provided or made available by the Participating Employer to its eligible employees and the eligible dependents of its Participating Employees pursuant to the Plan are considered to be provided under an "employee welfare benefit plan" within the meaning of Section 3(1) of ERISA that is maintained by a "bona fide group or association of employers" within the meaning of Section 3(5) of ERISA. The Trustees shall be responsible for preparing and filing any Form 5500 and Form M-1 required to be filed with respect to the Plan and for complying with any and all other reporting requirements applicable with respect to the Plan.
- 2.7 The Participating Employer understands and agrees that the Trust and the Plan shall be controlled by a Board of Trustees.

### **ARTICLE 3 PARTICIPATING EMPLOYER RESPONSIBILITIES**

- 3.1 The Participating Employer is responsible for coordinating various eligibility and enrollment functions with respect to its employees (including providing necessary information for COBRA administration) and, if applicable, for completing certain required reporting with respect to large employers under the Affordable Care Act. Assistance with these functions is available from the Plan Third-Party Administrator. These Participating Employer responsibilities (and the assistance available) are further detailed in this Article 3 and in Schedule A attached to this Agreement and incorporated herein by reference.
- 3.2 The Participating Employer is responsible for determining which employees are eligible under the terms of the Plan. Only the Participating Employer's employees (and their eligible family members) are eligible to participate in the Plan. The Participating Employer understands and agrees that independent contractors are not eligible to participate in the

Plan as employees of a Participating Employer, even if such independent contractors may perform services for a Participating Employer.

- 3.3 At the time this Agreement is signed and subsequently upon the reasonable request of the Trustees, the Participating Employer agrees to promptly provide the Trust or applicable administrative service providers with a complete and accurate listing of its employees, the Participating Employees and their Beneficiaries, and such additional information as is necessary for the Trust to administer the Plan. The Participating Employer further agrees to timely notify the Plan Third-Party Administrator of any change in the status or identity of employees or other individuals covered for benefits which might affect eligibility for coverage. For clarity, the information the Participating Employer agrees to make available under this Section 3.3 includes, but is not limited to, the Participating Employer's IRS Form 941 Employer's Quarterly Federal Tax Return.
- 3.4 Prior to a Participating Employer changing coverage, the amount or level of benefits, the eligibility of employees or dependents for coverage, or employee classes to be covered with respect to the Plan, the Participating Employer shall first notify the Plan Third-Party Administrator of the anticipated change.
- 3.5 The Participating Employer grants to the Trust, other applicable administrative service providers, the insurance carrier(s) and their authorized agents or representatives the right to examine during regular business hours the payroll lists and employee records of the Participating Employer as may be reasonably necessary for the determination or substantiation of the contribution rates or benefits provided by the Trust. The Participating Employer agrees to provide the Trust or applicable administrative service providers with all information the Trust or such providers may request in connection with the filing of all reports, returns or applications as necessary for the Plan and Trust to remain in compliance with applicable laws and regulations.
- 3.6 If litigation is required to either obtain access to the Participating Employer's records or to collect additional billings that result from the review of the records, all costs incurred by the Trustees in conducting the review shall be paid by the Participating Employer and the Participating Employer shall pay any attorneys' fees and costs incurred by the Trust.
- 3.7 The Participating Employer agrees to timely pay and immediately reimburse the Trust for, as well as to indemnify and hold the Trust and Trustees harmless from, any taxes, penalties, fees or costs that may arise from the Participating Employer's participation in the Plan or due to its failure to transmit timely information or payments to the Trust.
- 3.8 This is a fully assessable contract. In the event the Trust is unable to pay its obligations, the Participating Employer will be required to contribute through an equitable assessment the money necessary to meet any unfulfilled obligations.
- 3.9 The Plan is a multiple employer welfare arrangement. This multiple employer welfare arrangement may not be subject to all of the insurance laws and regulations of Alabama.

State insurance guaranty funds are not available for the multiple employer welfare arrangement.

#### **ARTICLE 4 TERM AND DURATION OF THE AGREEMENT**

- 4.1 This Agreement shall be effective on May 1, 2023 (“Effective Date”). The effective date of the benefits provided by the Plan to the Participating Employer shall be separately specified by the Trust.
- 4.2 This Agreement and the Participating Employer’s participation in the Plan shall commence on the Effective Date and shall continue until April 30, 2024 (the “Initial Participation Term”). Thereafter, this Agreement and the Participating Employer’s participation in the Plan shall automatically renew for successive one (1) year periods until terminated pursuant to Article 8 of the Trust Agreement. A Participating Employer that withdraws from the Plan shall not have any right or interest in any asset of the Trust. Notwithstanding the foregoing, the Participating Employer’s coverage for the periods for which the Participating Employer’s monthly contribution payment has been timely paid shall remain active prior to the date of such withdrawal; provided that the Participating Employer properly withdraws from the Plan in accordance with the terms of the Trust Agreement and the Plan. In the event the Participating Employer withdraws in violation of either the Trust Agreement or the Plan: (i) the Participating Employer’s coverage shall be immediately terminable and the Trustees shall not pay any claims that are reported to the Trust after the date of the withdrawal, (ii) the Participating Employer shall be fully responsible for the payment of such claims, and (iii) the Participating Employer shall defend, indemnify and hold the Trust and Trustees harmless for the payment of such claims. The Trust may terminate this Agreement and the participation of the Participating Employer in the Plan in accordance with the Trust Agreement and the Plan. Notwithstanding the foregoing, in the event the Plan is terminated for any reason, the Trustees shall have the right to terminate this Agreement after fulfillment of all of the Participating Employer’s remaining obligations under this Agreement.
- 4.3 Upon the termination of this Agreement, both Parties agree to take whatever actions are necessary to effect the termination of the Participating Employer’s participation in the Trust and the Plan.

#### **ARTICLE 5 MISCELLANEOUS**

- 5.1 All capitalized terms used herein without definition have the respective meanings ascribed to them in the Trust Agreement.
- 5.2 The Parties hereto agree to: (a) execute and deliver to each other such other documents, and (b) do such other acts and things, all as the other party hereto may reasonably request to carry out the intent of this Agreement.

- 5.3 The terms and conditions of this Agreement may be modified or amended by the Trust upon written notice to the Participating Employer.
- 5.4 No waiver of any breach of this Agreement shall constitute a waiver of any other breach, whether of the same or any other terms of this Agreement, nor shall any delay or omission of either party's exercise of any right arising from any default affect or impair the party's rights as to the same or future default.
- 5.5 In case any provision of this Agreement is invalid or unenforceable, the validity and enforceability of the Agreement's remaining provisions shall not in any way be affected or impaired.
- 5.6 This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their successors and assigns. However, this Agreement shall not be assigned without the other Party's prior written consent.
- 5.7 The Trust does not assert or confirm that payments made by the Participating Employer to the Trust are deductible or that the benefits provided pursuant to the Plan will not be taxable to the Participating Employer or any of its employees or their dependents. By entering into this Agreement, the Trust is not providing any tax advice, nor has the Trust otherwise provided any tax advice to the Participating Employer, its employees or their dependents with respect to the current or future tax laws' application to the Plan and their participation therein. The Participating Employer has had the opportunity to seek its own independent tax advice concerning its participation in the Plan, and the Participating Employer has decided to enter into this Agreement with full knowledge of the benefits and consequences.
- 5.8 Each Party agrees to abide by all applicable federal and state laws and regulations, including, but not limited to, the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code of 1986, as amended (the "Code"). Except to the extent preempted by federal law, this Agreement shall be governed by and construed under the laws of the State of Alabama, without regards to principles of conflicts of laws. Both Parties to this Agreement hereby irrevocably submit to the jurisdiction of the courts of the state of Alabama (state or federal), with venue in Montgomery County, over any dispute arising out of this Agreement and agree that all claims in respect of such dispute shall be determined in such court.
- 5.9 This Agreement contains the entire understanding between the Parties with respect to the subject matter herein and supersedes any prior or contemporaneous written or oral agreement between them related to the subject matter hereof. There are no representations, agreements, health and welfare plan(s) or understandings, oral or written, between the Parties relating to the subject matter of this Agreement, which are not fully expressed herein or in the Trust Agreement or Plan.
- 5.10 This Agreement and the availability of the benefits under the Plan, and claims or causes of action based upon this Agreement or the benefits under the Plan, are exclusively between the Trust and the Participating Employer. If the Participating Employer so chooses, it may

separately contract with the Plan Third-Party Administrator for additional services and/or broker agency services in connection with supplemental lines of coverage. The Trust is not a plan sponsor or otherwise involved with such supplemental lines of coverage. Any agreements and costs regarding such supplemental lines of coverage are exclusively between the Participating Employer and the Plan Third-Party Administrator.

- 5.11 The headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions. All pronouns used in this Agreement shall be deemed to refer to the masculine, feminine or neuter gender as the context requires.
- 5.12 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that this Agreement may be electronically signed. The Parties agree the electronic signatures on this Agreement and, unless specifically provided otherwise, in other agreement(s) between the Parties shall have the same force and effect as handwritten signatures.

*[Signature Page Follows]*



IN WITNESS THEREOF, the Parties have executed this Participating Employer Agreement.

PARTICIPATING EMPLOYER

ALABAMA RESTAURANT &  
HOSPITALITY ASSOCIATION  
EMPLOYEE BENEFIT TRUST

By: \_\_\_\_\_

By: \_\_\_\_\_

For the Trust

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Participating Employer's Email Address

\_\_\_\_\_  
Trust's Email Address

\_\_\_\_\_  
Participating Employer's  
Employer Identification Number (EIN)

\_\_\_\_\_  
Participating Employer's  
Entity Type (e.g., corporation, LLC, partnership, etc.)

## SCHEDULE A

### **FURTHER EXPLANATION OF PARTICIPATING EMPLOYER RESPONSIBILITIES**

This Schedule A provides further information about the Participating Employer's responsibilities with regard to matters related to the Plan. Cobbs Allen, the ARHA Cares Group Health Plan Third-Party Administrator, may be able to assist you with regard to these responsibilities. You are responsible for any additional costs associated with such assistance (these costs will be explained to you by Cobbs Allen). For clarity, the Trustees and Alabama Restaurant & Hospitality Association have no responsibility for (a) any of the following items and (b) any services or supplemental lines of coverage purchased by the Participating Employer from Cobbs Allen or any of its affiliates.

1. **Eligibility Determinations.** The Participating Employer is responsible for determining which employees are eligible under the terms of the Plan. Only employees (and their eligible family members) determined to be full-time in accordance with the provisions of the Patient Protection and Affordable Care Act ("ACA") are eligible. Independent contractors are not considered your employees and are not eligible to participate in the Plan.
2. **Enrollment Using Online Portal.** The Participating Employer is responsible for providing the necessary enrollment information for employees through the online enrollment portal.
3. **COBRA.** The Participating Employer is responsible for providing accurate and updated information necessary for COBRA administration, including information about employee terminations and losses of coverage due to COBRA qualifying events.
4. **Employee Premium Collection.** The Participating Employer is responsible for submitting the full amount of its required monthly contribution payment to the Trust. To the extent the employees of the Participating Employer will contribute to the costs of premiums, the Participating Employer is responsible for collecting premiums from its covered employees (including through payroll and/or other means). If employees contribute premiums on a pre-tax basis, the Participating Employer is responsible for implementing a cafeteria plan under Section 125 of the Code for such pre-tax contributions.
5. **Benefits Disclosures.** The Participating Employer is responsible for ensuring that benefits disclosures are properly distributed to the proper employees and participants.
6. **Affordable Care Act Compliance for Applicable Large Employers.** Certain employers with fifty (50) or more full-time employees (including full-time equivalents) in the preceding calendar year ("Applicable Large Employers") are subject to the Employer Shared Responsibility provisions under the ACA. In short, Applicable Large Employers may face tax penalties if they fail to offer coverage to full-time employees. Applicable Large Employers are also required to complete certain reporting obligations under the ACA (discussed below). The Participating Employer is responsible for determining if it is an Applicable Large Employer subject to the Employer Shared Responsibility provisions and related reporting requirements.
7. **ACA Reporting.** If the Participating Employer is an Applicable Large Employer, it is required to complete certain reporting obligations under the ACA (Forms 1094-C and 1095-C). For an additional fee agreement directly with Cobbs Allen, Cobbs Allen is available to provide assistance with your ACA reporting.

**EXHIBIT 1**

**ALABAMA RESTAURANT & HOSPITALITY ASSOCIATION  
AMENDED AND RESTATED EMPLOYEE BENEFIT TRUST AGREEMENT**

**EXHIBIT 2**

**ARHA CARES GROUP HEALTH PLAN**