

Indemnity Agreement

of the NY Transportation Workers' Compensation Trust

THIS AGREEMENT is made as of the 1st day of December 2000, by and between the NY Transportation Workers Compensation Trust (the "Trust") and the undersigned employer located in the state of New York (the "Member").

WHEREAS, the Trust has applied to the Workers' Compensation Board (the "Board") for a certificate of approval to operate as a workers' compensation trust under Section 50, subd. 3-a, of the New York Workers' Compensation Law (the "Statute"); and

WHEREAS, the Member desires to become a member of the Trust to obtain coverage for workers' compensation benefits and employer's liability.

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the Trust and the Member agree as follows:

1. **Definitions.** For the purposes of this Agreement, the following terms shall have the following meanings:

Administrative Expense Fund Surplus means the allocated administrative expense fund including interest earned thereon which shall accrue to the benefit of the Trust in a Fund Year in excess of the amount necessary to fund all Administrative Expenses of the Trust.

Administrative Expenses means all payments to a management company made pursuant to an Administration Agreement between the Trust and the management company as in effect during the Fund Year as well as payments for reinsurance, security deposits, taxes, accounting and actuarial reviews, non-claims-related legal work, investment management, outside consultants, or any other related expenses for the Fund Year.

Aggregate Surplus means the aggregated Member's Surplus for all Members of the Trust plus other unearned income of the Trust.

Application and Indemnity Agreement means each Application and Indemnity Agreement entered into between the Trust and a Member and, collectively, all such Application and Indemnity Agreements as from time to time in effect, whether before or after the date of adoption of the bylaws of the Trust.

Charter Member means one of the original Members of the Trust, as defined in the Trust Document of the Trust.

Claims Fund Surplus means the allocated claims fund including interest earned thereon which shall accrue to the benefit of the Trust in a Fund Year in excess of the amount necessary to fund all claims of the Trust, including but not limited to adequate contingency reserves, for such Fund Year.

Contribution means a payment to the Fund made by a Member in response to an invoice in accordance with the Trust's Bylaws, the Application and Indemnity Agreement, or any other rules, regulations, policies, and procedures pursuant to incident thereto. Without limiting the generality of the foregoing, Contributions shall consist in part of required premium payments and other payments made by Members to cover the costs of purchasing excess insurance, establishing and maintaining a claims fund account, and establishing and maintaining an administrative fund account.

Deficit Amount means the amount by which the sum of the Member's Incurred Claims plus the Member's pro rata share (based upon the Member's share of aggregate Net Premium paid by all Members of the Trust) of the Administrative Expenses exceeds the Member's Net Premium.

Final Contributions means the aggregate Contributions owed by all Members in each Fund Year to the Trust after adjustments to Contributions due to payroll audits.

Fund means the sum of all Contributions made by Members pursuant to the Trust Bylaws, the Application and Indemnity Agreement, and any rules, regulations, policies, and procedures pursuant or incident thereto; all monies, contracts, policies, or properties received by the Board of Trustees of the Trust from the Members for the uses and purposes set forth in the Trust's Bylaws, the Application and Indemnity Agreements, and any rules, regulations, policies, and procedures pursuant or incident thereto; and all income, gains, and all other increments of any nature whatsoever therefrom.

Fund Year means a period of twelve (12) consecutive months identified by the Board of Trustees of the Trust. The initial Fund Year shall commence on December 1, 2000, and end on December 31, 2001, and each subsequent Fund Year shall commence on January 1 and end on December 31 unless otherwise provided by the Board of Trustees of the Trust. A Fund Year may be a period of greater or fewer than twelve (12) months if it is the first or last such year of the Fund or a year involving a change in the commencement or termination date of the Fund Year. The Fund Year and the Fiscal Year shall be the same.

Incurred Claims means all medical, indemnity, legal, investigative, and other related expenses on all reported claims and all incurred but not reported claims as determined by the actuary for the Fund Year.

Net Contributions means actual Contributions paid in each Fund Year by each Member to the Trust modified by the experience modification factor (as calculated according to the NCCI experience modification formula) less the Discount Amount. Final Contributions may be greater than the aggregate Net Contributions of all of the Members.

2. **Representation and Warranty by the Member.** The Member represents and warrants that he/she is Involved in The Transportation Industry that falls in one of the following predominant Classification Codes of Employee and/or one of the following Standard Industrial Classification Codes:

Classification Codes

4000	Sand or Gravel Digging & Drivers
7219	Trucking; NOC All Employees & Drivers
7380	Drivers NOC
7590	Garbage Works
8018	Wholesale NOC-Predominate Driving Exposure
8264	Bottle Dealer - Used & Drivers
8350	Gasoline Dealer & Drivers
8353	Gas Dealer - L.P.G & Drivers
8745	News Agent or Distributor of magazines or Other

- Periodicals – Not Retail
- 8751 Route Salesperson
- 9403 Garbage, Ashes, Refuse Collection & Drivers

Standard Industrial Classification Codes

- 3273 Ready Mix Concrete
- 4212 Local Trucking Without Storage
- 4213 Trucking, Except Local
- 4214 Local Trucking With Storage
- 4215 Courier Services, Except by Air
- 4221 Farm Product Warehousing & Storage
- 4222 Refrigerated Warehousing & Storage
- 4225 General Warehousing & Storage
- 4226 Special Warehousing & Storage, NEC
- 4231 Terminal & Joint Terminal Maintenance Facilities for Motor Freight Transportation
- 4922 Natural Gas Transmission & Distribution
- 4923 Natural Gas Distribution
- 4924 Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution
- 4941 Water Supply
- 4952 Sewerage Systems
- 4953 Refuse Systems
- 4959 Sanitary Services, NEC
- 4961 Steam & Air Conditioning Supply
- 5983 Fuel Oil Dealers
- 5984 Liquefied Petroleum Gas(Bottled Gas) Dealers
- 5989 Fuel Dealers, NEC
- 5000-5199- If they have over 2 vehicles

3. Conditions Precedent to Effectiveness of Agreement.

This Agreement shall not be effective unless and until (a) the Trust receives from the Board, prior to December 1, 2000, a certificate of approval as a workers' compensation self-insurance trust under the Statute, (b) the Trust obtains reinsurance affecting the coverage described in the Trust's certificate of coverage, (c) the Trust determines that it will be financially viable, and (d) the administrator of the Trust (the "Administrator") accepts on behalf of the Trust the Member's application to become a member of the Trust which application must then be approved by the Board of Trustees of the Trust.

4. Bylaws, Rules, Regulations, Policies, and Procedures. The Member shall abide by the Trust Document, Bylaws, and any other rules, regulations, policies, and procedures adopted by the Trust from time to time.

5. Coverages. Upon the later of (i) the date of the Member's application for coverage has been approved by the Administrator and the Board of Trustees of the Trust or (ii) the date upon which all conditions precedent to the effectiveness of this Agreement, as set forth in Section 3, above, have been satisfied, the Trust agrees to provide the Member with the risk management services described in Section 11 of this Agreement and workers' compensation and employers' liability coverage as described in the Trust certificate of coverage. The Member agrees to pay the Contributions, assessments, and entry fee, if any, as provided herein, for such services and coverage and all costs of collection thereof, including attorneys' fees.

6. Payroll Classification. The member shall furnish to the Administrator not less than thirty (30) days before coverage is to be provided an annual estimated payroll by job classification. This estimate shall be adjusted annually by the Administrator at the end of each Fund Year to reflect the actual current payroll on the books of the Member. The Member agrees to pay

promptly any additional Contribution which results from this annual adjustment or any audit of such Member's payroll records upon receipt of an invoice from the Administrator. If following the retirement of any Deficit Amounts there exists a Claims Fund Positive Balance or an Administrative Expense Fund Surplus, the Claims Fund Positive Balance or Administrative Expense Fund Surplus, as the case may be, shall be dealt with in accordance with the provisions of Section 13. The Trust reserves the right to conduct an annual audit, or cause its Administrator or designee to conduct an annual audit, of the payroll records of the Member, and the Member hereby agrees to submit to such annual audit when requested to do so by the Trust.

7. Contributions. a. The Member agrees to pay its Contributions for the initial Fund Year, commencing on December 1, 2000 in accordance with the payment plan approved by the Board of Trustees of the Trust. If the Member becomes a member of the Trust on a date other than at the beginning of a given Fund Year, it agrees to pay its pro rata Contribution for the remainder of the Fund Year on or before its initial date of coverage, with the amount of such Contribution to be specified by the Administrator, with the rates in effect at the time of the coverage.

b. The Trust shall establish a Payment Plan. The Trust, acting through its Board of Trustees, reserves the right to amend the Payment Plan from time to time in its sole discretion, and the Member agrees to adhere, abide by, and conform to the provisions of the Payment Plan as the same may be amended.

c. The Member understands that there may be interim rate adjustments approved by the Trustees and agrees to pay additional Contributions resulting therefrom. The Member also agrees to pay additional Contributions to the Trust as determined by the Board of Trustees of the Trust based upon recommendations of the Administrator in accordance with the bylaws or rules and regulations of the Trust or a vote of the Board of Trustees of the Trust or as otherwise required by law.

d. The Member agrees to execute necessary authorization forms permitting the Trust or its Administrator or designee to obtain information and data required in determining the experience rating modification of the Member and authorizing the Trust, or its Administrator or designee, to file with the appropriate authorities, loss and payroll data pertaining to the Member to be used to develop the Member's experience rating modification.

e. If, following the annual adjustment referenced in Section 7, a Deficit Amount exists for the Members but an Aggregate Surplus exists for the Trust for the Fund Year in question, then the Deficit Amounts for all Members shall be aggregated and the Aggregate Surplus shall be applied to the aggregated Deficit Amounts. If, following the application of the Aggregate Surplus, aggregated Deficit Amounts still exist for the Members, then the Members shall pay an additional premium assessed pursuant to the provisions of Section 8(c) and assessed pro rate based on the Net Contribution of each Member. If the Members fail to make the required payments, then the aggregated Deficit Amounts shall be made up immediately with the Aggregate Surplus from a prior Fund Year or the Members shall be subject to automatic assessment without further action by the Trust. In the event an individual Member fails to pay any premium, assessment, or other contribution to the Trust when due, the Members of the Trust shall be subject to automatic assessment without further action by the Trust. These obligations with respect to the Fund Year in question

shall survive termination of this Agreement and any termination of the Member's membership in the Trust.

f. If, following the annual adjustment described in Section 7 and following the retirement of any Deficit Amount, there exists a Claims Fund Surplus or an Administrative Expense Fund Surplus, this Claims Fund Surplus or Administrative Expense Fund Surplus, as the case may be, shall be dealt with in accordance with the provisions of Section 12.

8. Entry Fee for New Members. The Member agrees to pay the Trust a single entry fee, if any, in an amount determined by the Trust's Board of Trustees.

9. Excess Insurance. The Trust agrees to maintain with qualified underwriters excess insurance coverage as determined by the Board of Trustees of the Trust.

10. Risk Management Programs. The Trust, through its Administrator, will provide risk management programs to the Member designed to assist the Member in following a plan which may result in reduced losses and costs. The Member agrees to cooperate in instituting any and all such risk management programs. Notwithstanding the Trust's and Administrator's responsibility for the risk management programs, the Trust and the Administrator assumes no responsibility for and are in no way ensuring the safety of the workplace of the Member.

11. Claims. The Trust, through its Administrator or designee, agrees (a) to administer, investigate, adjust, settle, and pay all of the workers' compensation claims and such other liabilities as are defined in the certificate of coverage issued to the Member after notice of injury has been given and proof of liability has been established, (b) to prepare all required forms, and (c) to provide a defense if required. The Trust, through its Administrator or designee, shall carry on all negotiations with the injured employee or his/her attorney and negotiate settlements. If a personal appearance by an employee or employees of the Member is necessary in any dispute, the expense of such appearance shall be paid for by the Member. The Trust, through its Administrator or designee, shall retain and supervise legal counsel necessary for the prosecution or defense of any litigation on behalf of and at the expense of the Trust. The Member agrees to cooperate fully by supplying any information needed or helpful to defend such action. The Trust, through its Administrator or designee, shall retain and supervise legal counsel necessary for the prosecution or defense of any litigation on behalf of and at the expense of the Trust. The Member agrees to cooperate fully by supplying any information needed or helpful to defend such action. The Trust, through its Administrator or designee, agrees to provide monthly to the Member a computer printout showing a statement of claims, claims status, and activities report.

12. Refund or Credit Plan. Any Claims Fund Surplus resulting from overall loss experience of the Trust shall be available as a return of Contribution or to be taken into account in establishing the Contribution in subsequent years in accordance with a Refund or Credit Plan as adopted and amended from time to time by the Board of Trustees of the Trust. In addition, any Administrative Expense Fund Surplus will be available as a return of Contribution or will be taken into account in establishing individual policy Contributions in subsequent years in accordance with such Refund or Credit Plan.

13. Notice. All notices hereunder shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by recognized overnight courier to the Trust at the address of the Administrator set forth

below and to the Member at its address shown on the Trust's records.

14. Reapplication. A member which withdraws from the Trust pursuant to the Trust Document and Bylaws of the Trust may not reapply for membership in the Trust for a period of at least one (1) year from the effective date of such withdrawal.

15. Indemnity Agreement. Although recourse for any and all payments of workers' compensation and employers' liability benefits covered by the Trust's certificate of coverage to a member shall first be made to the Trust's assets (but not the individual assets of any member of the Trust), the Member understands, acknowledges, and agrees that the Member is jointly and severally liable for the workers' compensation and employers' liability obligation of the Trust and its members which were incurred during the Member's period of membership in the Trust, irrespective of the subsequent termination of such Member's membership in the Trust, of the insolvency or bankruptcy of another member of the Trust, or of other facts or circumstances. This Section 5 shall survive termination of this Agreement and any termination of the Member's membership in the Trust.

16. Termination of Coverage and Membership. This agreement and member's membership in the Trust and Coverage thereunder may be terminated by the Board of Trustees of the Trust for failure to comply with the terms of this Agreement or the Trust Document, the bylaws, rules, regulations, policies, or procedures of the Trust including, but not limited to, the failure to pay Contributions. The condition of default and termination shall be in accordance with the terms and conditions of the Trust Document and Bylaws of the Trust. The Member may withdraw its membership and coverage at the end of a Fund Year by giving the Administrator prior written notice of its intention to withdraw at least ninety (90) days in advance of the end of a Fund Year. Withdrawal shall be effective at the close of the Fund Year in which notice was received.

17. General. This Agreement shall be construed under and governed by the laws of the state of New York and is being executed as an instrument under seal. This Agreement may not be assigned by the Member without the prior written consent of the Trust. Failure of either party to enforce a right under this Agreement shall not act as a waiver of that right or the ability to late assert that right relative to the particular situation involved or to terminate this Agreement arising out of any subsequent default or breach. Headings included herein are for convenience only and shall not be used to construe this Agreement.

SCHEDULE 1

Assessment Plan

In the event that the Trust incurs a Deficit in any Fund Year, such Deficit shall be made up immediately. If such a deficit exists, the Members shall pay an additional Contribution assessed pursuant to the provisions of Section 7(c) of the Indemnity Agreement and assessed pro rate based on the Net Contribution of each Member. If the Members fail to so act, then the aggregated Deficit Amounts shall be made up immediately with the Aggregate Surplus from a prior Year Fund or the Member shall be subject to automatic assessment without further action by the Trust. In the event an individual Member fails to pay any Contribution, assessment, or other contribution to the Trust when due, the Members of the Trust shall be subject to automatic assessment without further action by the Trust. These obligations with respect to the Fund Year in question shall survive termination of this Agreement and any termination of the Member's membership in the Trust.

ON THE BASIS of the foregoing, the undersigned Member applies for membership in the Trust and agrees to be bound hereby if accepted as a Member of the Trust.

PARTICIPATING MEMBER:

(Print name)

(Signature of authorized official)

Title: _____

This Membership is accepted and the foregoing is agreed to as of this ____ day of _____.

NY Transportation Workers' Compensation Trust

By: _____

Title: _____

Address: c/o First Cardinal Corporation
 10 British American Blvd.
 Latham, NY 12110

▼ Please fold, tear along perforation and return ▼