

**FOURTH AMENDMENT TO MICHIANA AREA ELECTRICAL WORKERS  
MONEY PURCHASE PLAN**

PREAMBLE

- A. The Michiana Area Electrical Workers Money Purchase Plan (“the Plan”) was amended and restated pursuant to Revenue Procedure 2007-44, I.R.B. 2007-28 to continue to maintain the Plan as a qualified plan and trust under Sections 401(a) and 501(a) of the Internal Revenue Code of 1986 (the “Code”) and to continue to comply with the provisions of the Employee Retirement Income Security Act of 1974 (ERISA). The amended and restated Plan was generally effective as of January 1, 2002.
- B. The following amendment is intended to provide for mandatory distribution of Participant Accounts with balances not greater than \$1,000.00 after separation from employment.
- C. This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment. Capitalized terms shall have the same meaning given to them in the Plan unless otherwise indicated.
- D. This amendment was approved by the Trustees on June 3, 2014.

AMENDMENT

- I. Section 4.9. Effective June 3, 2014, Section 4.9 of the Plan is amended to read as follows:

Section 4.9. Small Benefit Cashout

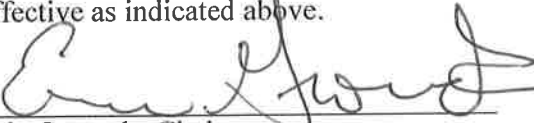
Despite any other provisions of this Plan to the contrary:

- (a) If the Actuarial Present Value of the Preretirement Surviving Spouse Benefit as of the date of the Participant’s death is \$1,000 or less, the Trustees shall pay the benefit to the surviving Spouse in a single-sum, equal to that value.
- (b) The value of any benefits payable to an “alternate payee” under the provisions of a Qualified Domestic Relations Order, as defined in Section 206(d) of ERISA and 414(p) of the Internal Revenue Code, shall be subtracted from benefits otherwise payable under this Article.
- (c) The distribution of the Participant’s Account before the Participant’s Required Beginning Date specified in Section 5.13 shall be made in a lump sum if the value of the Participant’s Account Balance is not greater than \$1,000 and the Participant is eligible for a benefit under Section 4.2 or a Beneficiary is eligible for a benefit due to the Participant’s death. If a Participant or Beneficiary would have received a distribution under the preceding sentence but for the fact that the Participant’s Account Balance exceeded \$1,000 when the Participant or Beneficiary became eligible for a benefit and if at a later time such Account Balance is reduced such that it is not greater than \$1,000, the Participant or Beneficiary will receive a distribution of such Account Balance. The value

of a Participant's Account shall be determined without regard to that portion of the Account Balance that is attributable to rollover contributions (and attributable earnings) within the meaning of Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii) and 457(e)(16) of the Code.

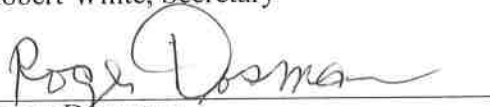
II. Except as hereby amended, the provisions of the Plan are reaffirmed.

The Trustees have amended the Plan by affixing their signatures on June 3, 2014 to be effective as indicated above.


  
Eric Grounds, Chairman

  
Robert White, Secretary

  
Mike Leda

  
Roger Bosmann

  
William C. Haase, III

  
Thomas Cioch

**MICHIANA AREA ELECTRICAL WORKERS  
MONEY PURCHASE PLAN**

**PLAN DOCUMENT**

**(As Generally Amended and Restated Effective January 1, 2014)**

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## **PREAMBLE**

- A. Effective as of January 5, 1993, the Board of Trustees of the I.B.E.W. Local Union #153 Annuity Fund adopted the I.B.E.W. Local #153 Annuity Fund Plan Document (“the Plan”) to provide retirement, death, and disability benefits for member employees and their beneficiaries. The Trustees amended the Plan on several occasions thereafter and, effective as of December 31, 2009, changed the name of the Plan to the Michiana Area Electrical Workers Money Purchase Plan.
- B. The following document is intended to amend and restate the Plan pursuant to Revenue Procedure 2007-44, I.R.B. 2007-28 and is generally effective as of January 1, 2014.
- C. The Plan, as amended and restated, is designed to meet the requirements of the relevant provisions of federal law governing defined contribution retirement plans including, but not limited to, the Internal Revenue Code of 1986 (Code) and the Employee Retirement Security Act of 1974 (ERISA).
- D. Despite anything in this amended and restated Plan to the contrary, the rights and benefits of Participants and Beneficiaries are governed by the Plan provisions in effect at the time they became eligible for benefits.

## **ARTICLE 1**

### **DEFINITIONS**

#### **Section 1.1. Account Balance**

“Account Balance” means the amount of the Participant's Individual Account as of the immediately preceding Valuation Date plus any additional Employer Contributions made on behalf of the Participant since the immediately preceding Valuation Date.

#### **Section 1.2. Actuarial Present Value**

(a) For lump sum payments, unless otherwise specified in the Plan, the “Actuarial Present Value” of a benefit shall be determined using the full set of interest rates prescribed by the Pension Benefit Guaranty Corporation for valuing annuities under single-employer plans that terminate without a Notice of Sufficiency on the first day of the Plan Year in which the date as of which the benefit is valued occurs.

(b) For converting the normal form of benefit to all optional forms, except lump sum payments, unless otherwise specified in the Plan, the “Actuarial Present Value” of a benefit shall be determined using the rate of 7%.

(c) For lump sum payments and converting the form of benefit to all optional forms, except lump sum options, unless otherwise specified in the Plan, the mortality assumption shall be based on the 1971 Group Annuity Mortality Table, weighted as follows:

- (i) for a Participant's benefit, 100% male and 0% female;
- (ii) for the benefit of a Participant's spouse or former spouse, beneficiary, or any other case, 0% male and 100% female.

(d) "Actuarial equivalence" means two benefits of equal Actuarial Present Value based on the actuarial factors and assumptions specified in the provision in which that phase is used or, if not otherwise specified, based on the assumptions described in this section.

### **Section 1.3 Alumni Participation Agreement**

"Alumni Participation Agreement" means a written agreement between an Employer and the Trustees of the Plan requiring the Employer to contribute on behalf of each such Employer's Non-Bargained Employees who during the current Plan Year or any prior Plan Year had at least one-half (1/2) of such Employee's total Hours of Service during such Plan Year with a Contributing Employer in a unit of employees covered by a Collective Bargaining Agreement with the Union.

### **Section 1.4. Annuitant**

"Annuitant" means a Participant who is receiving a benefit from the Fund in a form other than a lump sum distribution.

### **Section 1.5. Annuity Starting Date**

(a) "Annuity Starting Date" subject to Subsections (b) and (c) below, means the first day of the first calendar month starting after the Participant has fulfilled all of the conditions for entitlement to benefits and after the later of:

(i) the first day of the month following the month of submission by the Participant of a completed application for benefits, or

(ii) 30 days after the Plan advises the Participant of the available benefit payment options, unless

(A) the benefit is being paid as a Husband and Wife Annuity at or after the Participant's Normal Retirement Age,

(B) the benefit is being paid out automatically as a lump sum under the provisions of the Plan, or

(C) the Participant and Spouse, if any, consent in writing to the commencement of payments before the end of that 30-day period.

(b) The Annuity Starting Date will not be later than the Participant's Required Beginning Date.

(c) The Annuity Starting Date for a Beneficiary or alternate payee under a Qualified Domestic Relations Order (within the meaning of Section 206(d)(3) of ERISA and Code Section 414(p)) will be determined as stated in Subsections (a) and (b) above, except that reference to the Husband and Wife Annuity and spousal consent do not apply.



## **Section 1.6. Beneficiary**

“Beneficiary” means an individual other than an Employee, who is receiving or entitled to receive benefits from the Plan because of designation for such benefits by a Participant or Annuitant and because of the provision of the Plan.

## **Section 1.7. Code**

“Code” means the Internal Revenue Code of 1986, as amended.

## **Section 1.8. Collective Bargaining Agreement or Agreement**

“Collective Bargaining Agreement” or “Agreement” means a written agreement between the Union and an Employer which requires contributions to the Fund.

## **Section 1.9. Compensation**

(a) The term “Compensation” means all of an Employee's wages, salaries, fees for professional services and other amounts received (in cash or in kind) for personal services actually rendered in the course of employment with an Employer maintaining the Plan to the extent that amounts are includable in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, reimbursements and expense allowances under a nonaccountable plan (as described in Treas. Reg. § 1.62-2(c)). Compensation shall include only that compensation which is actually paid to a Participant during the Plan Year. Compensation shall not include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includible in the gross income of the Employee under Code Sections Code Sections 125, 132(f)(4), 402(a)(8), 402(e)(3), 402(g), 402(h) or 403(b). For any self-employed individual, “Compensation” will mean earned income.

(b) Despite the provisions of Section 1.10(a), for purposes of satisfying any applicable nondiscrimination rules under the Code, an Employer who contributes to the Plan on behalf of Non-Bargained Employees may elect to use any definition of “Compensation” which complies with the provisions of Section 1.414(s)-1 of the Treasury Regulations for purposes of testing the application of such nondiscrimination rules to that portion of this Plan which is required to be tested as a separate plan of such Employer, provided that the definition of “Compensation” so selected by an Employer for use in satisfying an application provision is used consistently to define the Compensation of all employees taken into account for the determination period involved.

(c) The annual compensation of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost of living increases in accordance with Code Section 401(a)(17)(B). Annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a

fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12.

### **Section 1.10. Contract Administrator or Plan Administrator**

“Contract Administrator” or “Plan Administrator” means TIC International Corporation, 6525 Centurion Drive, Lansing, Michigan 48917-9275, or such other person subsequently appointed by the Trustees in accordance with the provisions of the Trust Agreement.

### **Section 1.11. Contributing Employer or Employer**

(a) “Contributing Employer” or “Employer” means:

(i) The members of the Northern Indiana Chapter of the National Electrical Contractors Association, Eastern Division.

(ii) Employers who now or hereafter have Agreements which obligate them to make contributions to the Trust Fund; or

(iii) Employers who have no Collective Bargaining Agreement with the Union but who nevertheless acknowledge in writing the Union as the Collective Bargaining representative of the employees performing Work of the type specified under the Collective Bargaining Agreement between the Union and the Association.

(b) In addition, the following shall be considered “Contributing Employers” with respect to their full-time Employees for whom contributions are made at the same rate as is made by Employers, and who agree to assume the additional obligations and responsibilities as set forth in the Trust Agreement for Employers:

(i) Local Union No. 153, International Brotherhood of Electrical Workers;

(ii) I.B.E.W. Local 153, Joint Apprenticeship and Training Fund.

(c) If the Employer is a member of an affiliated service group (under Section 414(m) of the Internal Revenue Code of 1986 (“Code”)), a controlled group of corporations (under Code Section 414(b)), a group of trades or businesses under common control (under Code Section 414(c)) or any other entity required to be aggregated with the Employer pursuant to Code Section 414(o), Vesting Service will be credited for any employment for any period of time for any other member of such group. Service will also be credited for any individual required under Code Section 414(n) or Code Section 414(o) to be considered an employee of any employer aggregated under Code Section 414(b), (c), or (m).

(d) The Employer shall also include a predecessor Employer to the extent required by Code Section 414(a)(1).

(e) An Employer shall not be deemed a Contributing Employer simply because it is part of a controlled group of corporations within the meaning of Code Section 414(b) or a trade or business under common control within the meaning of Code Section 414(c) with another entity which is a Contributing Employer.

### **Section 1.12. Contributions**

“Contributions” means the payment to the Fund by an Employer pursuant to the Collective Bargaining Agreement or other written agreement, between the Employer and the Union. Reciprocity payments received by the Fund shall be treated as Contributions for purposes of Section 4.2.

### **Section 1.13. Continuous Employment**

“Continuous Employment” means two periods of employment when there is no quit, discharge, or other termination of employment between the periods.

Notwithstanding any other provisions of the Plan, beginning December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

### **Section 1.14. Covered Employment**

“Covered Employment” means the employment of an Employee by an Employer for which a Contributing Employer is obligated to contribute to the Fund during the Contribution period with respect to the particular Employee for periods prior to the Contribution period. Covered Employment means Work at jobs which performed during the Contribution period, would have resulted in contributions being payable to the Fund as a result of such employment with respect to the particular Employee. Reciprocity payments received by the Fund shall also be treated as made for an Employee in Covered Employment for purposes of Section 4.2.

### **Section 1.15. Early Retirement Age**

“Early Retirement Age” means age 55 but prior to age 62. Participants may retire under Early Retirement only one time.

### **Section 1.16. Employee**

(a) “Employee” means an individual covered by a Collective Bargaining Agreement or other similar written agreement between the Union and an Employer. However, unless Section 1.17(b) applies, no sole proprietor, partner of a partnership (regardless of the size of the partnership interest), member of a limited liability company (regardless of the size of the membership interest), or anyone else whose ownership would, in the opinion of the Trustees, jeopardize the tax-exempt status of the Fund or violate provisions of the Employee Retirement Income Security Act of 1974 (ERISA), or who is a member, shareholder, or owner of an organization or association which now or later has a Collective Bargaining Agreement with the Union requiring periodic contributions to the Annuity Fund shall be considered an Employee under the Annuity Plan. The term “Employee” also includes a Leased Employee of an Employer who otherwise meets the conditions for participation, vesting, and benefit accrual under the Plan.

(b) If an individual who would otherwise not be treated as an Employee is employed by an Employer who has entered into an Alumni Participation Agreement with the Trustees, such individual will be treated as an Employee for all purposes of the Plan including Contributions by a Contributing Employer.

### **Section 1.17 ERISA**

The Employee Retirement Income Security Act of 1974, 29 U.S.C § 1001 *et seq.*, as amended.

### **Section 1.18. Fair Market Value or Market Value**

“Fair Market Value” or “Market Value” means the value of the assets which takes into account fair market value as defined by Internal Revenue Service regulations.

### **Section 1.19. Fund**

“Fund” means the Trust Fund created by the Trust Agreement and means generally monies and other things of value which comprise the assets the Trust Fund to be used for the exclusive benefit of Participants and Beneficiaries. Contributions to the Trust Fund shall be made only by Employers on behalf of Employees in whose behalf such contributions are required by an applicable Collective Bargaining Agreement or other written agreements.

### **Section 1.20. Fund Office**

“Fund Office” means the office of the Contract Administrator.

### **Section 1.21. Hour of Service**

“Hour of Service” means:

(a) Each hour for which an Employee is paid or entitled to payment by an Employer for the performance of duties during the applicable computation period. These hours shall be credited to the Employee for the computation period in which the duties were performed.

(b) Each hour for which an Employee is paid, or entitled to payment by an Employer, either directly or indirectly, on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence, but excluding payments under a plan maintained solely for the purpose of complying with workmen's compensation, unemployment compensation, or disability insurance laws and also excluding payments for medical or medically related expenses. No more than 501 Hours of Service shall be credited under this paragraph (b) or paragraph (c) for any single continuous period (whether or not such period occurs in a single computation period). Hours of Service under this Section 1.20 shall be interpreted and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations which is incorporated by this reference.

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by an Employer. The same Hours of Service shall not be credited both under paragraph (a) or paragraph (b), as the case may be, and under this paragraph (c). These Hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

(d) The following provision applies for purposes of determining Hours of Service for participation and vesting purposes in a computation period. An individual who is absent from work for maternity or paternity reasons shall receive credit for the Hours of Service which would

otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, 8 Hours of Service per day of such absence. For purposes of this paragraph (d), an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of a birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement. The Hours of Service credited under this paragraph shall be credited (1) in the computation period in which the absence begins if the crediting is necessary to prevent the Participant from receiving credit for less than 501 Hours of Service, or (2) in all other cases, in the following computation period.

(e) Hours of Service will be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(b)), or a group of trades or businesses under common control (under Code Section 414(c)) of which the Employer is a member, and any other entity required to be aggregated with an Employer pursuant to Code Section 414(o). Hours of Service will also be credited for any individual considered an Employee for purpose of this Plan under Code Section 414(n) or Code Section 414(o).

### **Section 1.22. Inactive Participant**

“Inactive Participant” means:

(a) an Employee for whom an Individual Account has been established but for whom Contributions of less than two hundred forty-one (241) Hours of Service have been made to the Plan within a consecutive six (6) month period., or

(b) an individual who is not eligible to participate in the Plan due to such individual being a sole proprietor, partner of a partnership (regardless of the size of the partnership interest), member of a limited liability company (regardless of the size of the membership interest), or anyone else whose ownership would, in the opinion of the Trustees, jeopardize the tax-exempt status of the Fund or violate provisions of the Employee Retirement Income Security Act of 1974 (ERISA), or being a member, shareholder, or owner of an organization or association which now or later has a Collective Bargaining Agreement with the Union requiring periodic contributions to the Plan.

### **Section 1.23. Individual Account**

“Individual Account” means the account established for each Participant pursuant to Article 3 of the Plan. Amounts properly credited to a Participant’s Individual Account in accordance with the terms of the Plan shall be 100% vested and nonforfeitable.

### **Section 1.24. Leased Employee**

"Leased Employee" means any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under the primary direction and control of the recipient. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

A Leased Employee shall not be considered an Employee of the recipient if: (a) such employee is covered by a money purchase pension plan providing: (1) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined in Code Section 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludible from the employee's gross income tax under Section 125, Section 402(e)(3), Section 402(h)(1)(B) or Section 403(b) of the Code, (2) immediate participation, and (3) full and immediate vesting; and (b) Leased Employees do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

### **Section 1.25. Normal Retirement Age**

“Normal Retirement Age” means age 62, or, if later, the age of the Employee on the fifth anniversary of his participation in the Plan if such occurs after the attainment of age 62. A Participant may retire under Normal Retirement no more often than once a year.

In calculating the fifth anniversary of participation, participation before a Permanent Break in Service shall not be counted.

A Participant's right to his Individual Account shall be nonforfeitable within the meaning of Code Section 411(a) upon attaining Normal Retirement Age while in Covered Employment.

### **Section 1.26. 100% Husband and Wife Pension/50% Husband and Wife Pension**

(a) “100% Husband and Wife Pension” means an immediate annuity under which the Participant will receive a monthly amount for life and, if the Participant dies before his Spouse, the latter will receive a monthly benefit for her lifetime of 100% of the Participant's monthly benefit. The monthly benefits shall be at the level payable under an annuity that is the Actuarial Equivalent of the Participant's Account Balance as of the date of distribution, determined in accordance with Section 4.7.

(b) “50% Husband and Wife Pension” means an immediate annuity under which the Participant will receive a monthly amount for life and, if the Participant dies before his Spouse, the latter will received a monthly benefit for her lifetime of 50% of the Participant's monthly benefit. The monthly benefits shall be at the level payable under an annuity that is the Actuarial Equivalent of the Participant's Account Balance as of the date of distribution, determined in accordance with Section 4.7.

### **Section 1.27. Participant**

“Participant” means:

- (a) an Annuitant,
- (b) a Beneficiary,
- (c) an Employee who meets the requirements for participation in the Plan as set forth in Article 2, or
- (d) a former Employee who has acquired a right to a benefit under the Plan.

### **Section 1.28. Plan**

“Plan” means the defined contribution plan originally known as the “I.B.E.W. Local #153 Annuity Fund” and, effective December 31, 2009, known as the “Michiana Area Electrical Workers Money Purchase Plan.”

### **Section 1.29. Plan Year or Fiscal Year**

“Plan Year” or “Fiscal Year” means the annual period January 1 through December 31. For purposes of ERISA regulation, the Plan Year is the vesting computation period, the benefit accrual computation period, and after the initial period of employment or of reemployment following a break in service, the computation period for eligibility to participate in the Plan. The Plan Year also means the period for which various governmental reports are required to be filed by the Trustees.

### **Section 1.30. Preretirement Surviving Spouse Benefit**

“Preretirement Surviving Spouse Benefit” means is a monthly annuity for the life of the Spouse that is the Actuarial Equivalent of the Participant's Account Balance as of the date of the Participant's death unless the Surviving Spouse elects to receive the Account Balance in a lump sum.

### **Section 1.31. Required Beginning Date**

“Required Beginning Date” means April 1 of the calendar year following the calendar year in which the Participant attains age 70½.

### **Section 1.32. Spouse**

“Spouse” means a person to whom a Participant is considered married under applicable law and, if and to the extent provided in a Qualified Domestic Relations Order (within the meaning of Section 206(d) of ERISA and Code Section 414(p)), a Participant's former Spouse.

### **Section 1.33. Total and Permanent Disability**

"Total and Permanent Disability" means the Participant is prevented because of a physical or mental condition from engaging in his regular or customary occupation, such condition being found to exist on the basis of medical evidence for the remainder of the Participant's life.

### **Section 1.34. Trust Agreement**

“Trust Agreement” means the Agreement and Declaration of Trust entered into as of January 5, 1993, establishing the I.B.E.W. Local Union #153 Annuity Fund, as amended.

### **Section 1.35. Trustees**

“Trustees” means the Board of Trustees as established and constituted from time to time in accordance with the Trust Agreement.

### **Section 1.36 Union**

“Union” means Local Union No. 153, International Brotherhood of Electrical Workers.

### **Section 1.37. Valuation Date**

“Valuation Date” means the last day of each Plan Year (December 31).

### **Section 1.38. Work**

“Work” means a period in which an Employee performed services in Covered Employment and for which he is paid or entitled to payment.

## **ARTICLE 2**

### **PARTICIPATION AND VESTING**

#### **Section 2.1. Participation**

(a) An Employee who is engaged in Covered Employment shall become a Participant in the Plan immediately upon completion of an Hour of Service for which Contributions are made on his behalf.

(b) Once an Employee has met the requirements for participation in the Plan such Employee shall remain a Participant until such time as his Account Balance has been distributed on his behalf in accordance with all the provisions of the Plan.

#### **Section 2.2. Vesting**

Amounts properly credited to a Participant's Individual Account in accordance with the terms of this Plan shall be 100% vested and nonforfeitable.

## **ARTICLE 3**

### **INDIVIDUAL ACCOUNTS**

#### **Section 3.1. Creation of Accounts**

The Trustees shall establish and maintain an Individual Account for each Employee for whom Contributions are received. The maintenance of Individual Accounts is only for accounting purposes and a segregation of the assets of the Plan to each Individual Account shall not be required. Credits and charges to such Individual Accounts shall be made in accordance with the provisions of this Article 3, such Participant will be considered an Inactive Participant and the Account may be considered terminated as of the second Valuation Date and the Account Balance shall be distributed in accordance with Section 3.2.

#### **Section 3.2. Inactive Participants**

Upon becoming an Inactive Participant, such Inactive Participant has the right, subject to the provisions of Section 5.13, to:



(a) leave the Individual Account and continue to have such Account adjusted for investment gain or losses

(b) have the Individual Account transferred to another retirement fund or account to which transfers or direct rollovers may be made.

(c) receive the Individual Account in a lump sum distribution subject to all applicable taxes, penalties and fees.

The Trustees will be responsible to make good faith efforts to communicate with each Inactive Participant and notify such Inactive Participants of their options concerning their Individual Accounts. Each Inactive Participant will be responsible for notifying the Fund of the option such Inactive Participant selects. If an Inactive Participant fails to elect one of the available options, as described in this Section 3.2, such Inactive Participant's Individual Account may be forfeited as described in Section 3.3.

### **Section 3.3. Failure to Locate Participant**

If no Contributions have been made to an Individual Account for a period of sixty (60) consecutive months and no application for payment of the Account Balance has been made by the end of that period and the Trustees have been unable, with due diligence, to locate the Participant for whom such Individual Account was established, or the Beneficiary if the Participant is known to have died, by the end of such 60-month period, then such Account Balance shall be applied to the expenses of the Fund as specified in Section 3.4 (b). However, if the Participant or the Beneficiary later files an application and is entitled to payment of the Account Balance, such payment shall be made in the amount of the Account Balance at time the Participant's Account Balance was applied to the expenses of the Fund.

### **Section 3.4. Termination of Accounts**

An Individual Account may be considered terminated on the earlier of the following:

(a) The date the Account Balance equals zero.

(b) The Valuation Date of any Plan Year during which the Trustees determine in accordance with Section 3.3 of the Plan that the Account Balance cannot be appropriately distributed to a Participant or Beneficiary. In such case the amount of the Account Balance in the Individual Account prior to its termination shall be added to the existing administrative expense reserve described in the Section 3.5.

### **Section 3.5. Administrative Expense Reserve**

An administrative expense reserve shall be established as of each Valuation Date consisting of the following:

(a) Contributions allocated to the administrative expense reserve resulting from Individual Account terminations subsequent to the immediately preceding Valuation Date in accordance with Section 3.3 and Section 3.4; and

(b) such other amounts as the Trustees shall determine from time to time.

### **Section 3.6. Determination of Account Balances**

As soon as practical after the Valuation Date of each Plan Year, the Trustees shall determine the amount in each Participant's Individual Account in accordance with the provisions of the Plan. The amount in each Individual Account shall be the total of the following:

(a) The amount in the Individual Account, if any, as of the last previous Valuation Date, plus

(b) the Employer contributions made on behalf of the Employee and received by the Plan during the current Plan Year just ended, plus

(c) the sum total of all Employer Contributions transferred via reciprocal agreements on the Participant's behalf, plus

(d) the investment yield for the prior Plan Year determined by the Trustees to be applicable to the Individual Accounts on a uniform basis, in accordance with Section 3.7(b) for those portions of those Individual Accounts over which the Participants did not choose to exercise investment control, plus

(e) the Market Value of those portions of those Individual Accounts over which the Participants did choose to exercise investment control, minus

(f) the prorated cost of administrative expenses of the Plan incurred during the current Plan Year, in accordance with Section 3.7(c).

### **Section 3.7. Annual Revision**

(a) As soon as practical after each Valuation Date, the Trustees shall determine the gross investment yield obtained by the Plan during the prior Plan Year for those portions of Individual Accounts over which Participants did not direct their own investments as follows:

(i) Determine the total Market Value of the Fund as of the last Valuation Date preceding the Valuation Date of the prior Plan Year, less the total of all Individual Accounts in existence as of such last preceding Valuation Date but terminated as of the Valuation Date of the prior Plan year.

(ii) Determine the total Market Value of the Fund as of the Valuation Date of the prior Plan Year, less the total of all Employer Contributions and reciprocal transfers received during the prior Plan Year for all non-terminated Individual Accounts and less the Market Value of those portions of Individual Accounts over which Participants directed their own investments.

(iii) Determine the total administrative expense allocable to the Individual Accounts in existence as of the current Valuation Date. This shall be the total expenses paid by the Plan during the current Plan Year, less the amount of the administrative expenses reserve as of the Valuation Date.

(iv) Add amounts in (ii) and (iii).

(v) Subtract amount in (i) from amount in (iv). The resulting figure shall be the gross investment yield of the Fund.

(b) The gross investment yield, as determined in Subsection (a) above, shall be divided by the total amount in all of the Individual Accounts as of the last previous Valuation Date, excluding Individual Accounts terminated on or before the current Valuation Date and further excluding those portions of Individual Accounts over which Participants directed their own investments.

As of each Valuation Date, the fraction so obtained shall be multiplied by the amount as of the last preceding Valuation Date in each Individual Account not terminated as of the current Valuation Date and not invested pursuant to the direction of the Participants. The product of this multiplication shall be the investment yield to be added to each Individual Account for those portions of such Account over which the Participant did not direct the investment.

(c) The Trustees shall then deduct from each previously established Individual Account such expenses for the administration of the Plan and other amounts for reserves or other purposes. The expenses or other amounts so deducted shall be on a per Individual Account basis uniformly applied regardless of the Account Balance of the Individual Account.

If the charges for expenses and other deductions against the Individual Account exceed the Account Balance of any Individual Account, the excess expenses and charges shall be divided among, and uniformly charged to, all other existing Individual Accounts.

Expenses allocable to each Individual Account shall be determined as follows:

(i) The amount of any administrative expense reserve as of the Valuation Date shall be subtracted from actual Plan expenses for the Plan Year.

(ii) The Trustees may from time to time determine an account charge applicable to each Individual Account established for a Participant during the Plan Year which ends on the Valuation Date. This account charge shall be multiplied by the number of Individual Accounts established for Participants during the Plan Year and the resulting amount shall be subtracted from item (i).

(iii) The amount in item (ii) shall be divided by the number of Individual Accounts in existence as of the Valuation Date. This shall be the expense allocable to each Individual Account including Individual Accounts established for Participants during the Plan Year.

(d) Within five (5) months of the close of a Plan Year, Participants who have Individual Accounts shall receive a statement showing the Account Balance of their Individual Accounts as of the most recent Valuation Date.

### **Section 3.8. Reduction of Accounts**

The Trustees may at any time, uniformly reduce the amount in each Individual Account. In no event on any Valuation Date shall the total amount in all Individual Accounts plus administrative expenses exceed the Market Value of the total net assets of the Fund. If such an event occurs, then all existing Individual Accounts shall automatically be proportionately

reduced so that the total of all Individual Accounts plus the amount previously established for expenses is not more than the total net assets of the Fund.

### **Section 3.9. Limited Vesting**

The establishment and maintenance of Individual Accounts and their valuation as of each Valuation Date shall not vest in any Employee or other person, any right, title or interest in the Fund or its assets or in the Individual Accounts, except upon the terms and conditions provided in this Plan.

## **ARTICLE 4**

### **BENEFITS AND ELIGIBILITY**

#### **Section 4.1. Amount of Account Balance**

When eligibility for the distribution of any benefit from the Fund has been established, the amount of the Participant's Account Balance shall be used to pay the benefit.

#### **Section 4.2. Eligibility for Benefit Payment**

- (a) Eligibility for a benefit payment shall be established, subject to the applicable provisions of the Plan, when:
  - (i) the Participant retires as defined in Subsection (b) below, or
  - (ii) the Participant dies prior to becoming an Annuitant. or
  - (iii) the Participant attains the Required Beginning Date, or
  - (iv) the Participant becomes Totally and Permanently Disabled, or
  - (v) the Participant has not worked in Covered Employment within a consecutive six (6) month period requiring Employer Contributions of at least two hundred forty-one (241) Hours of Service on his behalf to the Fund.
- (b) A Participant shall be considered to be retired when:
  - (i) he has attained age 62, has applied for Normal Retirement. and has received a full or partial distribution of his Account Balance whether or not he is separated from employment at the time of such distribution. A Participant may retire under Normal Retirement only once each Plan Year unless the Trustees, by resolution, authorize more frequent distributions.
  - (ii) he has attained age 55, has applied for Early Retirement, has not received Early Retirement Benefits previously, and has separated from employment at the time he receives distribution of his Account Balance.

### **Section 4.3. Benefit for a Married Participant at Retirement or Separation from Covered Employment, or upon becoming Disabled**

(a) A distribution payable to a married Participant is automatically payable as a 100% Husband and Wife Pension unless:

(i) the Participant and Spouse elect otherwise and file a valid waiver of the 100% Husband and Wife Pension in accordance with Section 4.8, or

(ii) the benefit is payable only in a single-sum under Section 4.9.

(b) To be eligible to receive the survivor's pension in accordance with a 100% Husband and Wife Pension or a Preretirement Surviving Spouse Benefit, the Spouse must be a "Qualified Spouse." A Spouse is a Qualified Spouse if the Participant and Spouse were married on the date of the Participant's death and had been married throughout the year ending on the Annuity Starting Date or, if earlier, the date of death, or if divorced after being married for at least one year and the former Spouse is required to be treated as a Spouse or surviving Spouse under a Qualified Domestic Relations Order within the meaning of Section 206(d) of ERISA and Code Section 414(p). A Spouse is also a Qualified Spouse if the Participant and Spouse become married within the year immediately preceding the date the Participant's pension payments start and they were married for at least a year before the Participant's death.

(c) A 100% Husband and Wife Pension, once payments commence, may not be revoked, nor the Participant's monthly annuity benefit increased by reason of subsequent divorce or death of the Spouse before that of the Participant (unless the ex-spouse consents or a Qualified Domestic Relations Order otherwise provides) and no one may be substituted as the Participant's Beneficiary in lieu of the Spouse.

(d) A Participant who applies for a distribution from his account shall be advised by the Trustees of the estimated effect of payment on the basis of the 100% Husband and Wife Pension, including a comparison between the estimated monthly annuity benefit and the amounts that would be payable under the optional form of payment provided in Section 4.11.

(e) If there is a valid waiver of the 100% Husband and Wife Pension, the amount in the Participant's Individual Account will be paid out in accordance with Section 4.11.

### **Section 4.4 Preretirement Surviving Spouse Benefit**

(a) If a Participant who has a Qualified Spouse as defined in Subsection 4.3(b) dies before a distribution of his Account Balances begins, a Preretirement Surviving Spouse benefit shall be paid to his surviving Spouse.

(b) If there is no Surviving Spouse, the Participant's Account Balance will be paid in a lump sum to his Beneficiary.

### **Section 4.5. Benefits for an Unmarried Participant at Retirement or Separation from Covered Employment or upon becoming Disabled**

(a) If a Participant does not have a Spouse on the scheduled distribution date of his Account Balance and such Account Balance is more than \$1,000, the distribution shall be paid

as a single-life annuity, unless the Participant consents in writing to payment in an optional form under Section 4.11.

(b) The single-life annuity shall be a level monthly annuity commencing within 90 days after the scheduled date of distribution and continuing for the Participant's lifetime, which is the Actuarial Equivalent of the Participant's Account Balance as of the scheduled date of distribution. For this purpose, "Actuarial Equivalent" shall be determined in accordance with Section 4.7 and the annuity shall be provided through the purchase of an insurance contract in accordance with Section 4.10.

(c) A Participant shall be informed by the Trustees of the estimated effect of payment in the form of a single-life annuity.

#### **Section 4.6. Preretirement Death Benefit for an Unmarried Participant**

In the event that an unmarried Participant dies before distribution of his Account Balance has commenced, his Account Balance shall be paid to his Beneficiary in monthly payments until exhaustion of the Account Balance or as a lump sum on the terms and conditions provided under Section 4.11 for an optional form of payment.

#### **Section 4.7. Actuarial Equivalent of Individual Account Balance**

For purposes of this Article, the following principles shall apply in determining the Actuarial Equivalent of a Participant's account:

(a) The value of a Participant's Individual Account shall be deemed to be the value of the balance credited to the account as of the most recent Valuation Date preceding the date as of which the value is to be determined, increased by any amounts allocated to the account after that Valuation Date and reduced by any amounts withdrawn from the account after the Valuation Date. The value of the Account shall be adjusted in accordance with Article 3 as of each subsequent Valuation Date, until the amount in the Account is distributed by purchase of an annuity or otherwise.

(b) The conversion of an Account Balance, or part of it, to an Actuarial Equivalent annuity shall be based on the actuarial assumptions and other terms prescribed by the insurance company selected by the Trustees to issue the annuity. These need not be the same factors (or the same insurance company) used to estimate the annuity benefits for purposes of informing the Participant and Spouse about the effect of receiving the benefit in annuity form.

(c) Fees, commissions and other costs directly incurred in connection with the purchase of an annuity will be deducted from the Account Balance immediately before the purchase.

#### **Section 4.8. Waiver of 100% Husband and Wife Pension**

The 100% Husband and Wife Pension may be waived in favor of another form of distribution only as follows:

(a) The Participant files the waiver with the Trustees, in writing, in such form as the Trustees may prescribe, and the Participant's Spouse acknowledges the effect of the waiver and consents to it, in writing, witnessed by a notary public or such representative of the Plan as

the Trustees may designate for that purpose. Thereafter, the Participant shall not elect a different form of benefit (other than the 100% Husband and Wife Pension) without the written consent of his Spouse.

(b) The Participant establishes to the satisfaction of the Trustees that a waiver is not required because:

- (i) there is no Spouse,
- (ii) the Spouse cannot be located,
- (iii) the Participant and Spouse are legally separated, or
- (iv) that the Participant has been abandoned by the Spouse as confirmed by a court order.

(c) If the Spouse is legally incompetent, consent under Section 4.8 may be given by his or her legal guardian including the Participant if authorized to act as the Spouse's legal guardian.

(d) A waiver is valid only if a written explanation of the effect of the 100% Husband and Wife Pension and the effect of the 50% Husband and Wife Pension has been provided to the Participant no earlier than 180 days before the Annuity Starting Date and no later than 30 days before the Annuity Stating Date. The Participant may file a new waiver or revoke a previous waiver at any time during the 180 day period prior to the Annuity Stating Date. The required written explanation shall include (without limitation) the following: (1) The terms and conditions of the 100% Husband and Wife Pension and the 50% Husband and Wife Pension; (2) The Participant's right to make, and the effect of, an election to waive the 100% Husband and Wife Pension form of benefit; (3) The rights of the Participant's Spouse; and (4) The right to make, and the effect of, a revocation of a previous election to waive the 100% Husband and Wife Pension.

The Annuity Starting Date for a distribution in a form other than a 100% Husband and Wife Pension may be less than thirty (30) days after receipt of the written explanation described in the preceding paragraph, provided (i) the Participant has been given information that clearly indicates that the Participant has at least thirty (30) days to consider whether to waive the 100% Husband and Wife Pension and elect (with spousal consent) a form of distribution other than a 100% Husband and Wife Pension; (ii) the Participant is permitted to revoke any affirmative distribution election at least until the annuity starting date or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the 100% Husband and Wife Pension is provided to the Participant; and (iii) the Annuity Starting Date is a date after the date that the written explanation was provided to the Participant.

(e) A Spouse's consent to a waiver of the 100% Husband and Wife Annuity shall be effective only with respect to that Spouse, and shall be irrevocable unless the Participant validly revokes the waiver to which it relates.

(f) A waiver of the 100% Husband and Wife Pension shall be void if:

(i) Someone other than the Participant's Qualified Spouse is named as Beneficiary under the Plan for any share of the Participant's benefit that would otherwise be payable as a death benefit under the 100% Husband and Wife Pension, unless

(ii) The Spouse has acknowledged the designation of the non-spouse Beneficiary in connection with her consent to the Participant's waiver of the 100% Husband and Wife Pension in writing, witnessed by a notary public or such representative of the Plan as the Trustees may designate for that purpose. Thereafter, any changes of Beneficiary shall be void if the Participant has a Qualified spouse at the date of death.

(g) A Participant must file with the Trustees, before his Annuity Starting Date, a written representation on which the Trustees are entitled to rely concerning that Participant's marital status which, if false, gives the Trustees the right to adjust the dollar amount of the annuity payments made to the alleged surviving Spouse so as to recover any benefits which may have been erroneously paid.

#### **Section 4.9. Small Benefit Cashout**

Despite any other provisions of this Plan to the contrary:

(a) If the Actuarial Present Value of the Preretirement Surviving Spouse Benefit as of the date of the Participant's death is \$1,000 or less, the Trustees shall pay the benefit to the surviving Spouse in a single-sum, equal to that value.

(b) The value of any benefits payable to an "alternate payee" under the provisions of a Qualified Domestic Relations Order, as defined in Section 206(d) of ERISA and 414(p) of the Internal Revenue Code, shall be subtracted from benefits otherwise payable under this Article.

(c) The distribution of the Participant's Account before the Participant's Required Beginning Date specified in Section 5.13 shall be made in a lump sum if the value of the Participant's Account Balance is not greater than \$1,000 and the Participant is eligible for a benefit under Section 4.2 or a Beneficiary is eligible for a benefit due to the Participant's death. If a Participant or Beneficiary would have received a distribution under the preceding sentence but for the fact that the Participant's Account Balance exceeded \$1,000 when the Participant or Beneficiary became eligible for a benefit and if at a later time such Account Balance is reduced such that it is not greater than \$1,000, the Participant or Beneficiary will receive a distribution of such Account Balance. The value of a Participant's Account shall be determined without regard to that portion of the Account Balance that is attributable to rollover contributions (and attributable earnings) within the meaning of Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii) and 457(e)(16) of the Code.

#### **Section 4.10. Insurance Contracts**

Unless the Trustees determine otherwise, any annuities payable under Section 4.3, 4.4, or 4.5 shall be provided by the purchase of an irrevocable annuity from an insurance company. The purchase of the annuity shall discharge the Trustees' obligations to the Participant and/or Spouse and thereafter the payment of benefits under the annuity, and any other matters relating to the administration of the benefit shall be the sole responsibility of the insurance company.



#### **Section 4.11. Optional Forms of Payment**

(a) A married Participant who has filed a valid waiver of the 100% Husband and Wife Pension shall receive his retirement benefits in a 50% Husband and Wife Pension, a full or partial lump sum payment or a direct rollover in accordance with the provisions of Section 4.13.

(b) An unmarried Participant who has rejected the single-life annuity shall receive his retirement benefits in a full or partial lump sum payment or a direct rollover in accordance with the provisions of Section 4.13.

(c) A partial lump sum payment shall be either twenty-five percent (25%), fifty percent (50%), or seventy-five percent (75%) of the Participant's Account Balance. Only one partial lump sum distribution per Plan Year shall be permitted unless the Trustees, by resolution, authorize more frequent distributions.

#### **Section 4.12. Trustees' Reliance**

The Trustees shall be entitled to rely on written representations, consents, and revocations submitted by Participants, spouses or other parties in making determinations under this Article and, unless such reliance is arbitrary or capricious, the Trustees determination shall be final and binding, and shall discharge the Fund and the Trustees from liability to the extent of the payments made. This means that, unless the Plan is administered in a manner determined to be inconsistent with the fiduciary standards of Part 4 of Title I of ERISA, the Fund shall not be liable under this Article for duplicate benefits with respect to the same Participant, or for any combination of surviving Spouse and other death benefits with respect to the Participant in excess of the value of the Participant's account determined as of the date scheduled for the start of payments to the Participant or, if earlier, the date of the Participant's death.

#### **Section 4.13. Direct Rollover**

(a) Despite any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section 4.13, a distributee may elect, at the time and in the manner prescribed by the Contract Administrator, to have any portion of an eligible rollover distribution that is equal to at least \$500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) For purposes of this Section, the following definitions shall apply:

(1) Eligible Rollover Distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; any hardship distribution, the portion of any other distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution that is reasonably expected to total less than Two Hundred Dollars (\$200.00) during a Plan Year.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or Code Section 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is not so includible.

(2) Eligible Retirement Plan. An eligible retirement plan is an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of Code, an annuity contract described in Code Section 403(b) or a qualified plan described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account, an eligible retirement plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual.

(3) Distributee. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Effective January 1, 2010, a non-spouse Beneficiary may elect a direct rollover into an inherited IRA.

(4) Direct Rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

#### **Section 4.14 Benefit Payments**

Unless the Participant elects otherwise, distribution of benefits will begin no later than the 60th day after the latest of the close of the Plan Year in which:

- (a) the Participant attains age 65;
- (b) occurs the 10th anniversary of the year in which the participant commenced participation in the Plan; or
- (c) the Participant terminates service with an Employer.

Despite the foregoing, the failure of a Participant and Spouse to consent to a distribution while a benefit is immediately distributable shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

#### **Section 4.15 Death and Disability Benefits Under USERRA-Qualified Active Military Service**

(a) An individual who dies or incurs a Total and Permanent Disability while performing qualified military service with respect to an Employer required to contribute to the Plan will be treated as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or incurring such Total and Permanent Disability (as the case may be) and terminated employment on the actual date of death or incurring such Total and Permanent Disability. In the case of any such treatment, and subject to the following paragraph (b), any full or partial compliance by the Plan with respect to the benefit accrual requirements with respect to such individual shall be treated as if such compliance were required under USERRA.

(b) With respect to the Employer, all individuals performing qualified military service who died or incurred a Total and Permanent Disability as a result of performing qualified military service, prior to reemployment by the Employer, are to be credited with service and benefits on reasonably equivalent terms.

### **ARTICLE 5**

#### **GENERAL PROVISIONS**

##### **Section 5.1. Applications**

Benefits under the Plan will be paid only if the Trustees decide in their discretion that the applicant is entitled to them. As a condition to payment of any benefit, an application for such benefit must be made in writing in a form and manner prescribed by the Trustees. No benefits shall be paid prior to the establishment and crediting of Individual Accounts.

##### **Section 5.2. Information and Proof**

Each Participant and Annuitant shall furnish, at the request of the Trustees, any information or proof reasonably required to determine his benefit rights. If the claimant makes a willfully false statement material to his application or furnishes fraudulent information or proof, material to his claim, benefits may be denied, suspended or discontinued. The Trustees shall have the right to recover any benefit payments made in reliance on any willfully false or fraudulent statement, information or proof submitted by a Participant or Annuitant.

##### **Section 5.3. Action of Trustees**

Wherever in the Plan the Trustees are given discretionary powers, they shall exercise such powers in a uniform and nondiscriminatory manner. The Trustees shall, subject to the requirements of the law, be the sole judges of the standard of proof required in any case, and the application and interpretation of any of the provisions of the Plan, and the decisions of the Trustees shall be final and binding.

All questions or controversies of whatsoever character arising in any matter or between any parties or persons in connection with this Plan or its operations, whether as to any claim for benefits, as to the construction of the language of this Plan or any rules and regulations adopted by the Trustees, or as to any writing, decision, instrument or account in connection with the operation of the Plan or otherwise, shall be submitted to the Trustees for decision. In

the event a claim for benefits has been denied, no lawsuit or other action against the Fund or its Trustees may be filed until the matter has been submitted for appeal under the ERISA mandated appeal procedure set forth in Article 6. The decision on review shall be binding upon all persons dealing with the Plan or claiming any benefit hereunder, except to the extent that such decision may be determined to be arbitrary or capricious by a court or arbitrator having jurisdiction over such matters.

#### **Section 5.4. Designation of Beneficiary**

A Participant or Annuitant may designate a Beneficiary or Beneficiaries to receive a death benefit by forwarding such designation to the Fund Office in a form acceptable to the Trustees. However, if a married Participant designates someone other than his Spouse as Beneficiary, the Participant's Spouse must consent in writing to the designation of the beneficiary, or beneficiaries and such consent must be witnessed by a notary public or representative designated by the Trustees for that program; Subject to Section 4.8, a Participant or Annuitant shall have the right to change his designation of Beneficiary without the consent of the Beneficiary, but no change shall be effective or binding on the Trustees unless it is received by the Fund Office prior to the time any payments are made to the Beneficiary whose designation is on file with the Fund Office.

#### **Section 5.5. No Designated Living Beneficiary; Effect of Divorce**

(a) If there is no designated Beneficiary alive at the death of a Participant or Annuitant, any death benefit provided shall be payable to the Participant's or Annuitant's surviving Spouse, or if none, equally to his children who survive him or, if none, to his estate. If no estate is opened within three (3) months after the decedent's date of death and no other steps have been taken to claim the benefit, the payment shall be made to the persons specified under the laws of intestacy of the State of Indiana irrespective of the decedent's actual domicile.

(b) If the Beneficiary of a deceased Participant or Annuitant does not have a designated Beneficiary and such Beneficiary dies with an undistributed Account Balance, such Account Balance shall be paid to his estate. If no estate is opened within three (3) months after the decedent's date of death and no other steps have been taken to claim the benefit, the payment shall be made to the persons specified under the laws of intestacy of the State of Indiana irrespective of the deceased Beneficiary's actual domicile.

(c) For purposes of determining the existence of a designated Beneficiary in the event of a Participant's divorce, annulment, or other marital dissolution after the Participant initially designated such Participant's then Spouse as the Participant's Beneficiary, the Participant shall be deemed to have revoked the designation of the Participant's former Spouse as the Participant's Beneficiary effective as of the date of such divorce, annulment, or other marital dissolution. Nothing in this Section 5.5 shall prohibit the Participant from naming such former Spouse as the Participant's Beneficiary by forwarding to the Fund Office a new designation of Beneficiary after the Participant's divorce, annulment, or other marital dissolution.

#### **Section 5.6. Incompetence or Incapacity of an Annuitant or Beneficiary**

In the event it is determined to the satisfaction of the Trustees that an Annuitant or Beneficiary is unable to care for his affairs because of mental or physical incapacity, any payment due may be applied to the maintenance and support of such Annuitant or Beneficiary or to such person as the Trustees find to be an object of the natural bounty of the Annuitant or

Beneficiary in the manner decided by the Trustees, unless, prior to such payment, claim shall have been made for such payment by a legally appointed guardian, committee or other legal representative appropriate to receive such payments on behalf of the Annuitant or Beneficiary.

#### **Section 5.7. Non-Assignment of Benefits**

(a) No Participant, Pensioner, Annuitant or Beneficiary entitled to any benefits under this Plan shall have the right to assign, alienate, transfer, encumber, pledge, mortgage, hypothecate, anticipate, or impair in any manner his legal or beneficial interest, or any interest in assets of the Fund, or benefits of this Plan. Neither the Annuity Fund nor any of the assets thereof, shall be liable for the debts of any Participant, Annuitant, or Beneficiary entitled to any benefits under this Plan, nor be subject to attachment or execution or process in any court action or proceeding.

(b) Despite Subsection 5.7(a) or any other provision of the Plan,

(1) benefits shall be paid in accordance with a Qualified Domestic Relations Order (QDRO) as defined in Sections 206(d)(3) of ERISA and 414(p) of the Internal Revenue Code, and with written procedures adopted by the Trustees for compliance with such QDROs, which shall be binding on all Participants, Beneficiaries and other parties. In no event shall the existence or enforcement of a Qualified Domestic Relations Order cause the Fund to pay benefits with respect to a Participant in excess of the Actuarial Present Value of the Participant's benefits without regard to the QDRO, and benefits otherwise payable under the Plan shall be reduced by the Actuarial Present Value of any payment required pursuant to a Qualified Domestic Relations Order. An alternate payee who is assigned a benefit by a Qualified Domestic Relations Order may receive the assigned benefit in a form payable for the Participant's life or for the life of the alternate payee. If the Plan receives a qualified domestic relations order, the Trustee shall distribute to the alternate payee the portion of the Participant's Individual Account which is subject to such qualified domestic relations order before the Participant's attainment of his earliest retirement age as defined in Code Section 414(p) or such Participant's becoming eligible for a distribution under Section 4.2 of the Plan. Such distribution shall be made in the form of a cash lump sum distribution to the alternate payee if the present value of the benefit to be paid does not exceed \$1,000 on the date distribution commences. If the present value of the benefit to be paid exceeds \$1,000 on the date distribution commences, the alternate payee must consent in writing to such earlier distribution in the form of a cash lump sum distribution.;

(2) an offset to a Participant's Individual Account against an amount that the Participant is ordered or required to pay the Plan with respect to a judgment, order or decree issued, or a settlement entered into, on or after August 5, 1997, shall be permitted in accordance with Code Sections 401(a)(13)(C) and (D); and

(3) the Trustees may recover any payments made to a Participant, Beneficiary or other payee under circumstances whereby it is determined that such payments exceeded the amount of benefits payable under the terms of the Plan.

#### **Section 5.8. No Right to Assets**

No person other-than the Trustees shall have any right, title or interest in any of the income or property of any funds received or held by or for the account of the Fund, and no person shall have any right to benefits provided by the Plan except as expressly provided by

the Plan. Despite anything in the Plan to the contrary, no benefits shall be payable except those which can be provided under the Plan and no person shall have any claim for benefits against the Union, any Employer, or the Trustees.

### **Section 5.9. Maximum Limitation**

The following rules shall apply concerning the maximum amount which may be allocated to a Participant under the Plan:

(a) If the Participant does not participate in, and has never participated in another qualified plan maintained by the Trustees or a welfare benefit fund, as defined in Code Section 419(e) maintained by the Trustees, or an individual medical account, as defined in Section 415(l)(2) of the Code, maintained by the Trustees or a simplified employee pension, as defined in Code Section 408(k), maintained by the Trustees, which provides an annual addition as defined in Section 5.9(d), the amount of annual additions which may be credited to the Participant's Individual Account for any Limitation Year will not exceed the lesser of the maximum permissible amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's account would cause the annual additions for the Limitation Year to exceed the maximum permissible amount, the amount contributed or allocated will be reduced so that the annual additions for the Limitation Year will equal the maximum permissible amount.

(b) This Section 5.9(b) applies if, in addition to this Plan, the Participant is covered under another qualified master or prototype defined contribution plan maintained by the Trustees, a welfare benefit fund, as defined in Code Section 419(e) maintained by the Trustees, an individual medical account maintained by the Trustees, or a simplified employee pension maintained by the Trustees, that provides an annual addition as defined in Section 5.9(d), during any Limitation Year. The annual additions which may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the maximum permissible amount reduced by the annual additions credited to a Participant's account under the other qualified master and prototype defined contributions plans, welfare benefit funds, individual medical accounts, and simplified employee pensions for the same Limitation Year. If the annual additions with respect to the Participant under other qualified master and prototype defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions maintained by the Trustees are less than the maximum permissible amount and the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the annual additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the annual additions under all such plans and funds for the Limitation Year will equal the maximum permissible amount. If the annual additions with respect to the Participant under such other qualified master and prototype defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

(c) If the Participant is covered under another qualified defined contribution plan maintained by the Trustees which is not a master or prototype plan, annual additions which may be credited to the Participant's Individual Account under this Plan for any Limitation Year will be limited in accordance with Section 5.9(b) as though the other plan were a master or prototype plan.

(d) Definitions. The following definitions shall apply for purposes of this Section 5.9:

(1) Annual Additions: The sum of the following amounts credited to a Participant's Account for the Limitation Year:

- (A) Employer Contributions,
- (B) Employee contributions,
- (C) forfeitures,
- (D) amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Trustees are treated as annual additions to a defined contribution plan. Also amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Section 419(e) of the Code, maintained by the Trustees are treated as annual additions to a defined contribution plan, and
- (E) allocations under a simplified employee pension.

(2) Compensation:

- (A) For purposes of this Section 5.9, Compensation is defined as wages, salaries, differential wage payments under Code Section 3401(h), fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan, to the extent that the amounts are includible in gross income [or to the extent amounts would have been received and includible in gross income but for an election under Code Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)]. These amounts include but are not limited to commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a non-accountable plan as described in Regulations § 1.62-2(c).
- (B) For purposes of this Section 5.9, Compensation does not include:
  - (I) Contributions [other than elective contributions described in Code Sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)] made by an Employer to a plan of deferred compensation [including a simplified employee pension plan described in Code Section 408(k) or a simple retirement account described in Code Section 408(p), and

whether or not qualified] to the extent that the contributions are not includible in the Employee's gross income for the taxable year in which contributed, and, any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified).

- (II) Amounts realized from the exercise of a nonstatutory option [that is, an option other than a statutory stock option as defined in Regulations Section 1.421-1(b)], or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture.
  - (III) Amounts realized from the sale, exchange, or other disposition of stock acquired under a statutory stock option.
  - (IV) Other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts that are described in Code Section 125).
  - (V) Other items of remuneration that are similar to any of the items listed in paragraph (I) through (IV) of this section.
- (C) For purposes of applying the limitations of this Section 5.9, the following shall apply:
- (I) Compensation for a Limitation Year is the compensation actually paid or made available during such Limitation Year.
  - (II) Compensation paid or made available during a Limitation Year shall include amounts that would otherwise be included in compensation but for an election under Code Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).
  - (III) Compensation for a Limitation Year shall also include compensation paid by the later of 2½ months after an Employee's severance from employment with an Employer or the end of the Limitation Year that includes the date of the Employee's severance from employment with such Employer if,
    - (aa) the payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar



payments, and, absent a severance from employment, the payments would have been made to the Employee while the Employee continued in employment with the Employer;

- (bb) the payment is for unused accrued bona fide sick, vacation, or other leave that the Employee would have been able to use if employment had continued.; or
- (cc) the payment is received by the Employee pursuant to a nonqualified deferred compensation plan and would have been paid at the same time if employment had continued, but only the extent includible in gross income.

Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid within the later of 2½ months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment.,

- (D) Back pay, within the meaning of Regulations § 1.415(c)-2(g)(8), shall be treated as compensation for the Limitation Year in which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(3) Employer: For purposes of this Section 5.9, Employer shall mean an Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Section 414(b) of the Code as modified by Section 415 (h), all commonly controlled trades or businesses (as defined in Section 414(c) as modified by Section 415(h)) or affiliated service groups (as defined in Section 414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under Section 414(o) of the Code.

(4) Limitation Year: The calendar year. If the Limitation Year is amended to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

(6) Maximum Annual Addition: The annual addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:

- (A) \$40,000, as adjusted for increases in the cost-of-living under Code Section 415(d), or

- (B) 100 percent of the Participant's Compensation for the Limitation Year.

The compensation limit referred to in (B) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code Section 401(h) or Code Section 419A(f)(2)) which is otherwise treated as an annual addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12-consecutive month period, the maximum annual addition amount will not exceed the dollar limitation in (A) multiplied by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

### **Section 5.10. Amendment**

This Plan may be amended at any time by the Trustees, consistent with the provisions of the Trust Agreement. However, no amendment or modification may reduce any benefits which have been approved for payment prior to amendment, so long as funds are available for payment of such benefits, nor may any amendment or modification reduce the Participant's Individual Account other than for losses in the Trust.

### **Section 5.11. Termination**

In the event of termination of the Plan, or in the event of complete discontinuance of contributions, each Participant shall have nonforfeitable rights and the assets then remaining after providing for the expenses of the Plan and for the payment of any Account Balance previously approved, shall be distributed among the Participants. Each Participant shall receive that part of the total remaining assets in the same ratio as his Account Balance bears to the aggregate amount of the Account Balances of all Participants. No part of the assets shall be returned to any Employer or inure to the benefit of any Employer or the Union. In the event that a Participant cannot be located and no claim is made for payment of his Account Balance within six (6) months following the sending of notice by registered mail to the Participant's last known address, his Account Balance shall be forfeited and redistributed on a uniform basis among the Participants to whom payments are being or can be made.

### **Section 5.12. Merger, Consolidation or Transfer**

In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, the amount of benefit which a Participant would receive upon a termination of the Plan immediately after such merger, consolidation, or transfer shall be no less than the benefit he would be entitled to receive immediately before the merger, consolidation, or transfer if the Plan had then terminated.

### **Section 5.13. Minimum Distribution Requirements**

- (a) Precedence. Subject to Section 4.3, the requirements of this Section will take precedence over any inconsistent provisions of this Plan.

- (b) Requirements of Treasury Regulations Incorporated. All distributions required under this Section shall be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9) and the minimum incidental benefit requirements of Code Section 401(a)(9)(G).
- (c) Limits on Distribution Periods. As of the first distribution calendar year, distributions to a Participant, if not made in a single sum, may only be made over one of the following periods:
- (1) the life of the Participant,
  - (2) the joint lives of the Participant and a Designated Beneficiary,
  - (3) a period certain not extending beyond the life expectancy of the Participant, or
  - (4) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a Designated Beneficiary.
- (d) Time and Manner of Distribution
- (1) Required Beginning Date. The entire interest of the Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date.
  - (2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
    - (A) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
    - (B) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
    - (C) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
    - (D) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin,

this Section 5.13(d), other than Section 5.13(d)(2)(A), will apply as if the surviving spouse were the Participant.

For purposes of this Section 5.13(d) and Section 5.13(g) unless Section 5.13(d)(2)(D) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 5.13(d)(2)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 5.13(d)(2)(A). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 5.13(d)(2)(A), the date distributions are considered to begin is the date distributions actually commence.

- (3) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Sections 5.13(e) or (f). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury regulations.

(e) Required Minimum Distributions During Participant's Lifetime.

- (1) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

- (a) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in § 1.401(a)(9)-9, Q&A-2 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- (b) if the Participant's sole Designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in § 1.401(a)(9)-9, Q&A-3 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

- (2) Lifetime Required Distributions. Required minimum distributions will be determined under this Section 5.13 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(f) Required Minimum Distributions After Participant's Death.

(1) Death On or After Date Distributions Begin.

(A) Participant Survived By Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:

(I) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(II) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(III) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the designated Beneficiary's life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) Death Before Date Distributions Begin.

(A) Participant Survived By Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance

by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 5.13(f)(1).

- (b) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (c) Death of Surviving Spouse Before Distributions To Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 5.13(d)(1), this Section 5.13(f)(2) will apply as if the surviving spouse were the Participant.

(g) Definitions.

- (1) Designated Beneficiary. The individual who is designated as the beneficiary under the Plan and is the designated Beneficiary under Code Section 401(a)(9) and Treasury Regulation § 1.401(a)(9)-1, Q&A-4..
- (2) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 5.13(d). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.
- (3) Life Expectancy. Life expectancy as computed by use of the Single Life Tables in §1.401(a)(9)-9 of the Treasury regulations.
- (4) Participant's Account Balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated to the account balance as of dates in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

#### **Section 5.14. Reciprocal Arrangements**

The Trustees have adopted and will continue to be bound by the provisions of the Electrical Industry Pension Reciprocal Agreement.

#### **Section 5.15. Gender**

Except as the context may specifically require otherwise, use of the masculine (feminine) gender shall be understood to include both masculine and feminine genders.

### **ARTICLE 6**

#### **APPEAL PROCEDURE**

##### **Section 6.1 Denied Claims/Time Limit For Filing Suit/Exclusive Venue**

In accordance with regulations of the Secretary of Labor issued under Section 503 of ERISA, the Trustees shall provide adequate notice in writing to any Participant or Beneficiary whose claim for benefits under the Plan has been denied, setting forth the specific reasons for denial, written in a manner calculated to be understood by the Participant or Beneficiary, and afford a reasonable opportunity to any Participant or Beneficiary whose claim for benefits had been denied for a full and fair review by the Plan Administrator of the decisions denying the claim as provided in Section 6.2. No action may be commenced with respect to a denied claim more than one (1) year after the claimant is notified of an adverse decision on review. Venue for any action shall be limited to the United States District Court for the Northern District of Indiana.

##### **Section 6.2. Appeal Procedure**

Any dispute or disagreement between an applicant or Beneficiary and the Trustees as to the proper interpretation or application of the terms and conditions of the Plan shall be subject to the following appeal procedure:

(a) The applicant shall file a written appeal with the Trustees within sixty (60) days after the date of the initial decision of the Trustees. The appeal shall set forth the grounds relied upon by the applicant, as well as any facts which have not been considered by the Trustees.

(b) The Trustees shall consider the applicant's appeal as soon as practicable, and may refer the matter for advice to legal counsel, and/or the Contract Administrator, and/or a consultant, and/or to such other parties as they deem appropriate. The Trustees shall promptly notify the applicant of their final decision in writing by mailing a copy to the applicant's last known address.

## ARTICLE 7

### TOP-HEAVY PROVISIONS

#### **Section 7.1. Effect On Other Provisions**

The provisions of this Article will supersede any conflicting provision in the Plan.

#### **Section 7.2. Determination of Top-Heavy Status**

This Plan is top-heavy if any of the following conditions exist:

(a) If the Top-heavy Ratio exceeds sixty percent (60%) and the Plan is not part of any Required Aggregation Group or Permissive Aggregation Group of plans.

(b) If this Plan is part of a Required Aggregation Group of plans but not part of a Permissive Aggregation Group and the Top-heavy Ratio for the group of plans exceeds sixty percent (60%).

(c) If this Plan is part of a Required Aggregation Group and part of a Permissive Aggregation Group of plans and the Top-heavy Ratio for the Permissive Aggregation Group exceeds sixty percent (60%).

#### **Section 7.3. Definitions**

The following definitions apply for purposes of this Article:

(a) "Determination Date": For any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, the last day of that Year.

(b) "Key Employee": Any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the Determination Date is:

- (1) an officer of the Employer having annual Compensation greater than \$130,000 (as adjusted under Code Section 416(i)(1) for Plan Years beginning after December 31, 2002);
- (2) a 5-percent owner of the Employer; or
- (3) a 1-percent owner of the Employer who has annual Compensation of more than \$150,000.

The determination of who is a Key Employee in accordance with Code Section 416(i)(1) and the applicable regulations and other guidance of general applicability issued under that Code Section.

(c) "Permissive Aggregation Group": the Required Aggregation Group plus any other qualified plan maintained by the Employer, but only if such Group would satisfy in the aggregate, the requirements of Code Section 401(a)(4) and Code Section 410.

(d) "Required Aggregation Group":



- (1) Each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the Plan Year containing the Determination Date or any of the four preceding Plan Years (regardless of whether the Plan has terminated); and
- (2) Any other qualified Plan of the Employer which enables a plan described in (1) to meet the requirements of Code Section 401(a)(4) or Code Section 410.

(e) "Top-heavy Ratio": Because the Trustees do not maintain any other defined contribution plans (including any Simplified Employee Pension Plan) and the Trustees have never maintained any defined benefit plan, the top-heavy ratio for this Plan alone or for the Required or Permissive Aggregation Group as appropriate, a fraction, the numerator of which is the sum of the Account balances of all Key-Employees as of the Determination Date(s) (including any part of any Account balance distributed in the one (1) year period ending on the Determination Date(s) or the five (5) year period ending on the Determination Date(s) in the case of a distribution made for a reason other than severance from employment, death, or disability), and the denominator of which is the sum of all Account balances (including any part of any Account balance distributed in the one (1) year period ending on the Determination Date(s) or the five (5) year period ending on the Determination Date(s) in the case of a distribution made for a reason other than severance from employment, death, or disability), both computed in accordance with Code Section 416 and the applicable regulations. Both the numerator and the denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the Determination Date, but which is required to be taken into account on that date under Code Section 416 and the applicable regulations.

The value of Account balances will be determined as of the most recent Valuation Date that falls within or ends with the twelve month period ending on the Determination Date. The Account balances of a Participant (1) who is not a Key Employee but who was a Key Employee in a prior year, or (2) who has not been credited with at least one (1) Hour of Service with any Employer maintaining the Plan at any time during the one (1) year period ending on the Determination Date will be disregarded. The calculation of the Top-heavy Ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code Section 416 and the applicable regulations. Deductible employee contributions will not be taken into account for purposes of computing the Top-heavy Ratio. When aggregating plans the value of Account balances will be calculated with reference to the Determination Dates that fall within the same calendar year.

- (f) "Valuation Date" December 31 of each Plan Year.

#### **Section 7.4. Effect of Top-Heavy Status.**

If the Plan is determined to be top-heavy as of a Determination Date, the following rules shall apply:

- (a) The maximum accrued benefit derived from Employer contributions to be provided under this Section 7.4 for each Non-Key Employee who is a Participant and is not separated from service at the end of the Plan Year shall equal three percent (3%) of compensation for the Top-Heavy year.

(b) For purposes of providing the minimum benefit under Code Section 416, a Non-Key Employee who is not a Participant solely because:

- (1) His Annual Compensation is below a stated amount, or
- (2) He declined to make mandatory contributions to the Plan

will be considered to be a Participant.

## **ARTICLE 8**

### **NON-BARGAINED EMPLOYEES**

#### **Section 8.1. Employer**

For purposes of identifying Highly Compensated Employees and applying the rules on participation, vesting and statutory limits on benefits under the Fund for such Highly Compensated Employees, but not for determining Covered Service, the term “Employer” includes all members of an affiliated service group with the Employer within the meaning of Code Section 414(m) and all other businesses aggregated with the Employer under Code Section 414(c).

For all other purposes, the term “Employer” shall have the meaning stated at Section 1.12.

#### **Section 8.2. Non-Bargained Employee**

“Non-Bargained Employee” means a person who is employed by an Employer and who is not covered by a Collective Bargaining Agreement, but is covered by another written agreement requiring Employer contributions on his or her behalf.

#### **Section 8.3. Self-Employed Person**

A “Self-Employed Person” means:

- (a) a sole proprietor who is a Contributing Employer;
- (b) a partner who is a Contributing employer, regardless of the size of the partnership interest;
- (c) anyone else whose ownership would, in the opinion of the Trustees, jeopardize the tax exempt status of the Fund or violate provisions of ERISA.

#### **Section 8.4. Highly Compensated Employee**

Any Employee who (1) was a 5-percent owner at any time during the Plan Year or the preceding Plan Year, or (2) for the preceding Plan Year had compensation from the Employer in excess of \$80,000. The \$80,000 amount is adjusted at the same time and in the same manner as under Code Section 415(d), except that the base period is the calendar quarter ending September 30, 1996. For this purpose the applicable Plan Year for which a determination is being made is

called a determination year and the preceding 12-month period is called a lookback year. A highly compensated former Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for that determination year, in accordance with § 1.414(q)-1T, A-4 of the temporary Income Tax Regulations and IRS Notice 97-45, 1997-33 I.R.B. 7.

**Section 8.5. Vesting for Non-Bargained Employees**

Effective June 1, 1992, for each Non-Bargained Employee with at least one Hour of Service after that date, amounts properly credited to a Non-Bargained Employee's Individual Account in accordance with the terms of this Plan shall be 100% vested and nonforfeitable.

**Section 8.6. Nondiscrimination, Coverage and Participation**


(a) Participation in the Plan by Non-Bargained Employees shall be in compliance with Code Sections 401(a)(4) (nondiscrimination rules) and 410(b) (coverage rules).

(b) A Non-Bargained, Highly Compensated Employee shall not receive any benefit for any Plan Year in which the Employer fails to meet the requirements of Code Section 410(b) with respect to coverage of Non-Bargained Employees.

**Section 8.7. Alumni Participation**

Non-Bargained Employees covered by an Alumni Participation Agreement shall be deemed to be collective bargaining employees within the meaning of Treas. Reg. § 1.410(b)-6(d)(2). Hours of Service shall be credited in accordance with the special rules for certain employees in multiemployer plans contained in Treas. Reg. § 1.410(b)-6(d)(2)(ii).

The authorized officers of the Trustees have amended and restated this Plan document for the Michiana Area Electrical Workers Money Purchase Plan by affixing their signatures as of this 22<sup>nd</sup> day of January, 2015.



Eric Grounds, Chairman



Robert White, Secretary