

**RESTATED AGREEMENT  
AND DECLARATION OF TRUST**

**OF THE**

**NECA-IBEW WELFARE TRUST FUND**



**2022**

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**PREAMBLE**

WHEREAS, there has heretofore been entered into an Agreement and Declaration of Trust, effective November 21, 1955, by and between the DECATUR DIVISION, the SPRINGFIELD DIVISION, the PEORIA DIVISION, the CHAMPAIGN DIVISION and the DANVILLE DIVISION of the ILLINOIS CHAPTER of the NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION; and Independent Employers who are or may become a party hereto, hereinafter referred to as the "Employers", and DECATUR LOCAL 146, SPRINGFIELD LOCAL 193, PEORIA LOCAL 34, CHAMPAIGN LOCAL 601 and DANVILLE LOCAL 538, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, hereinafter referred to as the "Union", which Agreement creates a welfare trust fund as therein provided; and

WHEREAS, since the creation of the Fund, numerous other Local Unions affiliated with the International Brotherhood of Electrical Workers and various chapters National Electrical Contractors Associations have agreed to be bound by this Agreement and Declaration of Trust and have decided to participate in the Fund; and

WHEREAS, said Agreement and Declaration of Trust has heretofore been restated and amended; and

WHEREAS, under Article XVII, Section 17.9 of said Agreement and Declaration of Trust, the Trustees have the power and authority to amend such Agreement and Declaration of Trust from time to time as therein provided; and

WHEREAS, it is determined to be desirable to amend said Agreement and Declaration of Trust to include terms and provisions deemed advisable by the Board of Trustees and to further restate the Agreement and Declaration of Trust so as to incorporate herein all of the amendments adopted heretofore or as part of this restatement; and

NOW, THEREFORE, the Trustees, designated and in office, as such, hereby amend this Restated Agreement and Declaration of Trust effective on the date of execution (unless otherwise specified herein) and, as amended, restate it as follows:

## ARTICLE I - DEFINITIONS

Section 1.1 Act. The term "Act" as used herein shall mean the Employee Retirement Income Security Act of 1974, any amendments as may from time to time be made and any regulations promulgated pursuant to the provisions of the said Act.

Section 1.2 Association. The term "Association" shall mean any Association of Electrical Contractors and/or Chapter of the National Electrical Contractors Association, Inc., who becomes party to or bound by this Agreement.

Section 1.3 Beneficiary. The term "Beneficiary" as used herein shall mean a person designated by a Participant or by the terms of the plan of benefits established pursuant to this Trust Agreement (such as a dependent or member of the family of a Participant) who is or may become entitled to a benefit thereunder.

Section 1.4 Collective Bargaining Agreement The term "Collective Bargaining Agreement" shall mean an agreement relating to the terms and conditions of employment of Electricians and any amendments, renewals or modifications thereof between the Local Unions affiliated with the International Brotherhood of Electrical Workers and the Association or individual Employers of Electricians within the jurisdiction of the International Brotherhood of Electrical Workers.

Section 1.5 Electrician. The term "Electrician" shall mean any employee engaged in doing work of the character falling within the jurisdiction of the Local Unions affiliated with the International Brotherhood of Electrical Workers.

Section 1.6 Employee. The term "Employee" as used herein shall mean any employee working for an Employer as defined herein, and with respect to whose employment an Employer is required to make contributions to the Fund. Employees, if any, of this Fund who are not employed by an Employer as defined in Section 1.6, but as shall be proposed and accepted for such benefits by the Trustees. As to such personnel as are Employees of the Fund, the Trustees shall be deemed to be an Employer within the meaning of the Trust Agreement and shall provide benefits for said Employees out of said Fund, on the same basis as for other Employees.

Section 1.7 Employer. The term "Employer" as used herein shall mean:

(a) An Employer who has duly executed or is bound by a Collective Bargaining Agreement with the Union, either by individually executing a Collective Bargaining Agreement, or by executing an assent to such an Agreement which is also executed by the Local Union representing its employees and also executed by the Division of the Association to which it is a member (or, if the Employer is not a member of the Association, the execution of such an assent by any other multi-employer group representing it which negotiates with the Union), so as to provide for the making of payments to the Fund with respect to Employees represented by the Union.

(b) The Union, which, for the purposes of making the required contributions into the Fund, shall be considered as the Employer of the Employees of the Union for whom the Union contributes to the Fund, as well as the Association comprised of Employers, which, for the purposes of making the required contributions into the Fund, shall be considered as the Employer of the Employees of the Association for whom the Association contributes into the Fund.

(c) The Benefit Corporation which oversees the Trust Fund shall be considered as an Employer for the purposes of making contributions solely for those of its full-time employees who are employed by the Benefit Corporation.

(d) An Employer who, while not generally recognizing the Union as the representative of its Employees, is bound to make contributions on behalf of its Employees.

(e) Employers as described in this Section shall, by the making of payments to the Fund pursuant to such collective bargaining or other written agreements, be deemed to have accepted and be bound by this Trust Agreement. In addition, those employees of any local, state, regional, national or international labor organization of which the Union is an affiliate on whose behalf contributions had been made to the Trust Fund while they were employed as Electricians, provided that a participation agreement has been entered into between such labor organization has been entered into between such labor organization and the Trustees as provided in Article IV, Section 4.1(e) hereof (this provision shall include, but not be limited to, employees approved by the Trustees of such entities as Union affiliated Apprenticeship Committees, Credit Unions, etc.).

(f) Generally, pursuant to the strictures of the Employee Retirement Income Security Act, unless otherwise permitted by law, individual owners, sole proprietors and partners shall not be considered Employees.

Section 1.8 Local Union or Union. The term "Local Union" or "Union", as used herein, shall mean any local union affiliated with the International Brotherhood of Electrical Workers who have or will become bound to this Agreement or any successor affiliated with the International Brotherhood of Electrical Workers.

Section 1.9 Participant. The term "Participant" as used herein shall mean any Employee or former Employee of an Employer who is or may become eligible to receive a benefit of any type from this Fund or whose Beneficiaries may be eligible to receive any such benefit.

Section 1.10 Trustees. The term "Trustees" as used herein shall mean the Trustees designated in this Trust Agreement, together with their successors designated and appointed in accordance with the terms of this Trust Agreement. The Trustees, collectively, shall be the "Administrator" and "Plan Sponsor" of this Fund as that term is used in the Act.

Section 1.11 Trust Fund. "Trust", "Trust Fund" and "Fund" as used herein shall mean the NECA-IBEW WELFARE TRUST FUND.

Section 1.12 Trust Agreement. The terms "Agreement and Declaration of Trust," "Agreement," or "Trust Agreement" as used herein shall mean this instrument, including all amendments and modifications as may from time to time be made.

Section 1.13 Wage Area. The term "Wage Area" shall be synonymous with the authorized jurisdiction of a Local Union of the International Brotherhood of Electrical Workers encompassed by this Trust.

**ARTICLE II - CREATION AND PURPOSES OF FUND**

Section 2.1 The Trust Fund is created, established and maintained, and the Trustees agree to receive, hold and administer the Trust Fund, for the purpose of providing health and welfare benefits as now are, or hereafter may be, authorized or permitted by law for Participants and their Beneficiaries and in accordance with the provisions herein set forth or as described in the Trust Fund's governing plan documents.

### **ARTICLE III - BOARD OF TRUSTEES**

Section 3.1 Number, Appointment, Term. The Fund shall be administered by a Board of Trustees, the number of which shall be determined by the Board, the members of which shall be designated as "Union Trustees" and "Employer Trustees." The Union Trustees shall be appointed and may be removed by the Local Union in the Wage Area. The Employer Trustees shall be appointed and may be removed by the Association or other multi-employer group representing the Participating Employers in the Wage Area. The number of Trustees may be increased or decreased from time to time by the Trustees in a manner and in a way as determined by them; provided however, that the total membership of the Board of Trustees will always be equalized so as to reflect an even number of Trustees, divided equally between Union and Employer Trustees (said equalizing method described below). In no event shall any Trustee who is appointed as an Employer or Union Trustee from one Wage Area be permitted to be appointed or act on behalf of any other Wage Area, except in circumstances where action is not taken by the respective appointing body to appoint the appropriate number of Trustees, thereby resulting in a Trustee or Trustees representing more than one Wage Area, but such exception shall only be permitted after such is specifically ratified by the remaining Trustees.

The respective Trustees shall serve without compensation, unless permitted by law, and at the will of the Local Union in the Wage Area or the Association or other multi-employer group representing the Participating Employers in the Wage Area, respectively, appointing them, but they shall be reimbursed for all reasonable and necessary expenses properly and actually incurred by them in connection with the performance of their official duties as such. The Local Union in the Wage Area or the Association or other multi-employer group representing the Participating Employers in the Wage Area shall select successor Trustees whenever vacancies occur among their respective appointees. A vacancy shall occur whenever a Trustee resigns or when a Trustee is removed by the party which appointed him, or by reason of death or incapacity.

Section 3.2 Acceptance of Trusteeship. The Trustees shall meet and sign this Restated Agreement and Declaration of Trust immediately and any successor Trustee(s) or additional Trustee(s) shall sign a written acceptance thereof, and they shall by so doing thereby agree to accept the Trusteeship and to act in their fiduciary capacities strictly in accordance with the provisions thereof.

Section 3.3 Resignation and Removal. A Trustee may resign and become and remain fully discharged from all further prospect duty or responsibility hereunder upon giving thirty (30) days' notice in writing to the remaining Trustees and to the party by whom he was appointed, or such shorter notice as the remaining Trustees may accept as sufficient, in which notice there shall be stated a date on which such resignation shall take effect (such resignation shall not relieve such Trustee from fiduciary responsibilities that exists because of the Trustee's position as to this Trust); and such resignation shall take effect on the date specified in the notice unless a successor Trustee shall have been appointed at an earlier date, in which event such resignation shall take effect immediately upon the appointment of such successor Trustee. An Employer Trustee may be removed from office at any time by action of the Association or other multi-employer group representing the Participating Employers in the Wage Area Employers, written notice of such action to be delivered to the Chairman and Secretary of the Trustees serving at that time. A Union Trustee may be removed from office at any time by action of the Local Union in the Wage Area, written notice of such action to be delivered to the Chairman and Secretary of the Trustees serving at that time.

Section 3.4 Successor Trustees, Appointment. If any Employer Trustee shall die, become incapable of acting hereunder, resign, or be removed, a Successor Employer Trustee shall be immediately appointed by the Employers, such appointment to be in writing and to be delivered to the Chairman and Secretary of the Trustees serving at that time. If any Union Trustee shall die, become incapable of acting hereunder, resign, or be removed, a Successor Union Trustee shall immediately be appointed by the Local Union in the Wage Area, such appointment to be in writing and be delivered to the Chairman and Secretary of the Trustees serving at that time. It is the intention hereof that the Fund shall at all times be administered by an equal number of Employer Trustees and Union Trustees; in the absence of such, equal, weighted voting shall apply as provided herein. The written appointment shall state the term, if any, during which the Trustee is to serve, consistent with Section 3.1.

Section 3.5 Successor Trustee, Assumption of Office. Any Successor Trustee shall immediately upon his appointment as a Successor Trustee and his acceptance of the Trusteeship in writing, as provided in Section 3.4, become vested with all the property rights, powers and duties of a Trustee hereunder with like effect as if originally named a Trustee without the necessity of any formal conveyance or other instrument of title.

Section 3.6 Acceptance of the Trust by Trustees. A Trustee, in order to comport with the requirements of Sections 3.2 and 3.6 of this Article III, shall execute a written acceptance in a form satisfactory to the Trustees and consistent with the Act and thereby shall be deemed to have accepted the Trust created and established by this Trust Agreement and to have consented to act as Trustee and to have agreed to administer the Trust Fund as provided herein. Such written acceptance shall be filed with the Fund's Administrator who shall notify the remaining Trustees of the receipt of such acceptance on or before the Board of Trustees meeting following the Trustee's appointment. Each trustee appointment and acceptance of the trust shall also be recorded in the minutes of the Board of Trustees.

Section 3.7 Limitation of Liability of Trustees. No Trustee shall be liable or responsible for his own acts or for any acts or defaults of any other fiduciary or party in interest or any other person except in accordance with applicable federal law.

Section 3.8 Office of the Fund. The principal office of the Trust Fund shall, so long as such location is feasible, be located and maintained in Decatur, Illinois, or if such is impractical, within any town or city within the jurisdiction of the International Brotherhood of Electrical Workers which is a party to this Agreement, or where the third party administrator of the Fund is domiciled. The location of the principal office shall be made known to the parties interested in the Trust Fund. At such office, and at such other places as may be required by law, there shall be maintained the books and records pertaining to the Trust Fund and its administration.

Section 3.9 Officers. At the first meeting of calendar year 2023 (*i.e., the Spring Board of Trustees meeting*), a Chairman and a Secretary of the Board of Trustees shall be elected as set forth herein for a term of two (2) years.

For the 2023 election of officers, the officers of Chairman and Secretary must alternate being held by Employer Trustees and/or Union Trustees (*i.e., if the Chairman was an Employer Trustee at the time of the 2023 election, then the Chairman must be a Union Trustee and if the Secretary was a Union Trustee, then the Secretary must be an Employer Trustee*). The office of Chairman and Secretary shall alternate being held by Employer Trustees and/or Union Trustees

at the end of each successive two (2) year term thereafter.

To appoint officers, Union Trustees and Employer Trustees shall each convene a separate caucus for purposes of appointing the respective officers at the first meeting of each calendar year. Fifty-one percent (51%) of the Union Trustees appointed to serve on the Board of Trustees and fifty-one percent (51%) of the Employer Trustees appointed to serve on the Board of Trustees must be present during the caucus to constitute a quorum for appointing an officer. All Union Trustees and Employer Trustees shall be given notice of the caucus and the right to participate in the caucus. Notice may be given by adding the appointment of officers to the Board of Trustees meeting agenda. The nomination and election procedure for each officer in each caucus shall follow the procedure in Robert's Rules of Order, as amended and updated from time to time, applicable to "Nominations from the Floor" and the "Viva Voce" method of election. A record of the action taken in each caucus shall be recorded in the minutes of the Board of Trustees, including a record of all Union Trustees and/or Employer Trustees, as applicable, who were in attendance.

The respective officers shall continue to serve in their respective capacities until the first meeting of the calendar year during which the officer's two (2) year term has expired (*e.g., the Chairman and Secretary that are elected at the Spring 2023 meeting shall serve until the first meeting of calendar year 2025*).

A vacancy in either position shall be appointed by Union Trustees or Employer Trustees, as applicable, as soon as administratively possible. If the vacancy occurs before a meeting of the Board of Trustees, then the Union Trustees and/or Employer Trustees, as applicable, shall convene a caucus for the purpose of nominating a successor officer to fill term of his/her predecessor. The caucus shall be held by telephone or by other electronic platform that permits the caucus to discuss the appointment of officers. A record of any action taken outside a meeting of the Board of Trustees shall be recorded in the minutes of the next Board of Trustees following the filling of the vacancy.

If the Chairman and Secretary are both absent from a meeting of the Board of Trustees, then the Employer Trustees and Union Trustees, as applicable, shall convene a caucus to name a pro tem Chairman and pro tem Secretary to serve in the respective capacities for the duration of the meeting. The pro tem Chairman and pro tem Secretary shall be selected from the same respective appointing authorities that hold the office of Chairman and Secretary.

### Section 3.10 Authority of the Officers.

(a) Chairman. The Chairman of the Board of Trustees shall have the following authorities and limitations:

- (i) The Chairman shall preside at meetings of the Board of Trustees;
- (ii) The Chairman shall appoint members to committees who are appointed by the same appointing authority as the Chairman (*e.g., a Chairman who is a Union Trustee shall appoint Union Trustees to vacancies on committees*);
- (iii) The Chairman shall not make motions;
- (iv) The Chairman may vote on motions when permitted by Robert's Rules of

Order, as amended from time to time; and

- (v) The Chairman shall have such other duties as customarily exercised by the Chairman position and title according to Robert's Rules of Order, as amended from time to time (unless otherwise specified herein).

(b) Secretary. The Secretary of the Board of Trustees shall have the following authorities and limitations:

- (i) The Secretary shall preside at meetings of the Board of Trustees in the absence of the Chairman. When serving as Chairman, the Secretary shall be subject to the same limitations set forth above in subsection (a);
- (ii) The Secretary, or such other person as the Secretary or Trustees may designate, shall keep minutes and records of all meetings, proceedings and acts of the Trustees and shall, with reasonable promptness, send copies of such minutes and records to all Trustees; and
- (iii) The Secretary shall appoint members to committees who are appointed by the same appointing authority as the Secretary (*e.g., a Secretary who is a Union Trustee shall appoint Union Trustees to vacancies on committees*).

Section 3.11 Power to Act in Case of Vacancy. No vacancy or vacancies on the Board of Trustees shall impair the power of the remaining Trustees, acting in the manner provided by this Trust Agreement, to administer the affairs of the Trust Fund notwithstanding the existence of such vacancy or vacancies.

Section 3.12 Meetings; Notices. The Chairman or Secretary may call meetings or the Trustees by resolution may provide for regular meetings not to exceed one meeting per month. Meetings shall take place only in the continental United States.

Section 3.13 Attendance at Meetings; Minutes. All official meetings of the Trustees shall be attended only by the Trustees and shall not be open to the public, except that there may attend such other persons as may be designated by the Trustees or when invited to do so, and as may be otherwise required by law. Written minutes, a copy of which shall be furnished with reasonable promptness to each Trustee, shall be kept of all business transacted and of all matters upon which voting shall have occurred and the vote of each Trustee shall be recorded. Such minutes shall be approved by the signature of an Employer Trustee and of a Union Trustee.

Section 3.14 Quorum; Voting; Action without Meeting.

(a) Fifty-one percent (51%) of the Union Trustees appointed to serve on this Fund, together with Fifty-one percent (51%) of the Employer Trustees appointed to serve on this Fund, when present in person at a meeting of the Board of Trustees shall constitute a quorum for the transaction of business.

(b) Any action taken by the Trustees, except as herein otherwise provided, shall be by affirmative vote of a majority of the votes cast at a meeting. The Trustees must cast their votes in person, except as provided in subsection (c) of this Section.

(c) Action by the Trustees on any proposition may also be taken without a meeting if at least two-thirds of employer Trustees and two-thirds of Union Trustees agree affirmatively in writing on any such proposition proposed.

(d) Any action taken by the Trustees pursuant to this Agreement and Trust shall be by a majority vote of the Trustees present at any meeting at which a quorum is present. If at any meeting of the Trustees the representation of the Employer and Union groups is unequal, each Trustee in the smaller group shall be allowed an additional fractional vote so that the smaller group of Trustees shall have the same voting power as that of the larger group.

Section 3.15 Manner of Action in the Event of Deadlock.

(a) A deadlock shall be deemed to exist whenever a proposal, nomination, motion or resolution made or proposed by any one of the Trustees is not adopted or rejected by a majority vote and the maker of the proposal, nomination, motion or resolution notifies the remaining Trustees in writing that a deadlock exists.

(b) In the event of such deadlock arising, the Trustees shall meet for the purpose of agreeing upon an impartial umpire to break such deadlock by deciding the dispute in question. In the event of the inability of the Trustees to agree upon the selection of such impartial umpire within a reasonable time, then, on the petition of either group of Trustees, the senior judge on duty of the District Court of the United States for the District of Illinois where the Trust Fund has its principal office shall appoint such impartial umpire. Such impartial umpire shall immediately proceed to hear the dispute between the Trustees and decide such dispute, and the decision and award of such umpire shall be final and binding upon the parties. The reasonable compensation of such umpire and the costs and expenses (including, without limitation, attorneys' and reporter fees) incidental to any proceedings instituted to break a deadlock shall be paid by the Trust Fund.

(c) Any impartial umpire selected or designated to break a deadlock shall be required to enter his decision within a reasonable time fixed by the Trustees. The scope of any such proceeding before such impartial umpire shall be limited to the provisions of this Trust Agreement and to the provisions of the rules, regulations and by-laws adopted by the Trustees and to the plan of benefits established by them. The impartial umpire shall have no jurisdiction or authority to change or modify the provisions of this Trust Agreement or to decide any issue arising under or involving the interpretation of any collective bargaining agreements between the Union and the Employers, and such impartial umpire shall have no power or authority to change or modify any provisions of any such collective bargaining agreements.

Section 3.16 Removal of Trustee. The Board of Trustees has the sole discretion to remove a Trustee if the Board of Trustees determines, in its sole discretion, that an appointed Trustee has interfered, or whose conduct demonstrates a threat of interference, with the beneficial administration of the Trust or if the Trustee's service would be a violation of the Act. The decision to remove an appointed Trustee must be supported by a two-thirds vote of the entire Board of Trustees; except that the Trustee who is the subject of the removal inquiry shall be ineligible to vote on matter.

A Trustee may be removed for cause only after reasonable notice and opportunity to be heard by the Board of Trustees.

The vacancy or vacancies caused by such a removal shall be filled in accordance with Section 3.4 of this Article (except that the removed Trustee shall not be eligible to serve as a Trustee).

Section 3.17 Transaction of Business by Electronic Means

(a) Committee meetings of the Board of Trustees may be conducted by telephone conference call, video conference or other electronic means or by a combination of in person and electronic means which permits discussion amongst the Committee members. All Committee members participating electronically shall be deemed present for purposes of determining whether a quorum exists.

(b) Subject to the conditions and limitations stated in this section, a full Board of Trustees meeting may be conducted by telephone conference call, video conference or other electronic means or by a combination of in person and electronic means which permits discussion amongst the Trustees. The determination to hold a meeting either through electronic means or by a combination of in person and electronic means shall be made by the Executive Committee.

In the event the Executive Committee is unable to reach an agreement regarding whether to hold a meeting through electronic means or by a combination of means, then the matter shall be presented to the full Board of Trustees in accordance with Section 12.10 of this Agreement.

Notwithstanding the foregoing, the Board of Trustees may hold a meeting either through electronic means or by a combination of in person and electronic means until the end of the Covid-19 National Emergency.

(c) A quorum for taking action during a meeting either through electronic means or by a combination of in person and electronic means shall be as stated in Section 3.14 of the Trust Agreement. All Trustees participating electronically shall be deemed present for quorum purposes.

(d) Action taken during a meeting conducted by electronic means shall be by a majority vote of the Trustees present at a meeting at which a quorum is present.

(e) All meetings conducted by electronic means shall be governed by and subject to the Rules of Order adopted by the Board of Trustees.

Section 3.18 Contribution Rate. Motions related to establishing, increasing and/or decreasing the contribution rate(s) may be made at any Board of Trustees meeting. The Steering Committee may, but is not required to, make recommendations regarding the necessary and appropriate rate for the Fund's plan of benefits.

Section 3.19 Rules of Order. All meetings of the Trustees shall be governed by Robert's Rules of Order (RROR), as amended from time to time, to the extent that RROR does not conflict with this Agreement or any requirements mandated by applicable law.

## **ARTICLE IV - CONTRIBUTIONS AND COLLECTIONS**

### **Section 4.1 Employer Contributions.**

(a) Each Employer shall make prompt contributions or payments to the Trust Fund in such amount and under the terms as are provided for in the applicable collective bargaining agreement in effect from time to time between the Employer or his bargaining representative and the Union. An Employer may also be required to make contributions in such amount and under such terms as such Employer may be obligated, in writing, to make, provided that such contributions shall be subject to acceptance by the Trustees. The Employer agrees that such contributions shall constitute an absolute obligation to the Trust Fund, and such obligation shall not be subject to set-off or counterclaim which the Employer may have for any liability of the Union or of an Employee.

(b) Contributions to the Fund shall be paid to the Trustees or to such depository as the Trustees shall designate, only by check, bank draft, money order or other recognized written method of transmitting money or its equivalent, made payable to the order of the Trustees of the NECA-IBEW Welfare Trust Fund. The payment of contributions shall be made periodically at such times as the Trustees shall specify by rules and regulations or as may be provided in the applicable collective bargaining agreement.

(c) Each Employer shall be responsible only for the contributions payable by him on account of Employees covered by him, except as may be otherwise provided by law.

(d) In the event an Employee employed by an Employer, as defined herein, shall perform work outside of the geographical jurisdiction of the Union, the Employer may continue to make payments to the Trust Fund and the Trustees may accept such payments.

(e) Employers shall make contributions on behalf of each of its employees employed by the Employer in a management, supervisory, or other non-bargaining capacity as required by the Fund's various participation agreements and subject to the Fund's Administrative Rules governing employer participation. Each such Employer shall execute a Participation Agreement with the Trustees of the NECA-IBEW Welfare Trust Fund to cover the above-specified types of employees.

**Section 4.2 Employee Contributions.** Participants (i) who cease to perform work for an Employer for which work Employer contributions were required to be paid to this Fund as provided in Section 4.1 of this Article, and (ii) who, at the time they last performed such work, had been eligible and qualified to receive benefits under the plan of benefits established by the Trustees under this Fund, and (iii) who are members of such a class of such Participants as to whom the Trustees, consistent with applicable law, have in their sole discretion determined to provide continued eligibility for benefits of such type and amount and for such period of time and on such terms as the Trustees in their discretion may wish to make available to such class, shall make periodic contributions or payments to the Trust Fund in such amounts and at such times and subject to such conditions, requirements, limitations and rules as the Trustees in their sole discretion may establish and impose with respect to such class of such Participants. Nothing herein shall be construed to abridge the rights of those eligible to receive benefits pursuant to exercise of rights under Consolidated Omnibus Budget Reduction Act and, when in conflict, the most favorable determination to the participant or beneficiary shall apply.

Section 4.3 Receipt of Payment and Other Property of Trust. The Trustees or such other person or entity designated or appointed by the Trustees are hereby designated as the persons to receive the payments heretofore or hereafter made to the Trust Fund by the Employers and Employees. The Trustees are hereby vested with all right, title and interest in and to such moneys and all interest which may be accrued thereon, and are authorized to receive and be paid the same.

Section 4.4 Late Payments. The Trustees shall require the payment by Employers of liquidated damages and interest in the following amounts:

- (a) liquidated damages of 10% of the contributions not paid timely; and
- (b) interest shall be charged at the rate of one and a half percent (1.5%) compounded monthly on the unpaid balance due to the Fund.

The Employer is liable for audit costs and reasonable attorney fees for the collection of delinquent contributions, liquidated damages, interest and other collection costs as described in Section 4.5 of this Article.

Section 4.5 Collection and Enforcement of Payments. The Trustees, or such committee of the Trustees as the Board of Trustees shall appoint, or the Administrator if one has been appointed and when directed by such committee or by the Board of Trustees, shall have the power to demand, collect and receive Employer payments and all other money and property to which the Trustees may be entitled, and shall hold the same until applied to the purposes provided in this Trust Agreement. They shall take such steps, including the institution and prosecution of, or the intervention in, such legal or administrative proceedings as the Trustees in their sole discretion determine to be in the best interest of the Trust Fund for the purpose of collecting such payments, money and property, without prejudice, however, to the rights of the Union to take whatever steps it deems necessary and wishes to undertake for such purpose.

The Trustees may employ attorneys, accountants and other professionals to conduct audits of the pertinent employment and payroll records of each employer, and the employer shall be liable to pay the professional fees and costs of suit and audit and all other costs incurred by the Trustees in pursuing delinquent contributions. Such other costs may include, but are not limited to, filing fees and service of process. Non-payment by any employer of any contribution or other monies owed to the Fund shall not relieve any other employer from his or its obligation to make required payments to the Trust Fund.

Section 4.6 Production of Records. Each Employer shall promptly furnish to the Trustees, on demand, the records specified in Section 4.9 of this Article. The Trustees may, by their respective representatives, examine the pertinent employment and payroll records of each Employer at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust Fund and of the contracts or policies of insurance. The Union shall, upon the request of the Trustees, promptly furnish information with respect to an Employee's employment status. If such examination discloses that the employer has not been making its full payment as agreed, the costs of such examination shall be paid by such employer (subject to the discretion of the Delinquency Committee to waive all or part of said costs in light of the application of objective criteria mitigating such failure to pay obligations). (See also Section 4.4).

Section 4.7 Contribution Forms. Statements accompanying monthly contributions shall be made on a form or forms previously approved by the Trustees, and shall contain such information as the Trustees, in their sole collective discretion, may deem reasonable and necessary to compute the amount of the contribution due from each Participating Employer and the eligibility of employees for benefits.

Section 4.8 Conduct of Trust Business. The Trustees shall have general supervision of the operation of this Trust Fund and shall conduct the business and activities of the Trust Fund in accordance with the Trust Agreement and applicable law. The Trustees shall hold, manage and protect the Trust Fund and collect the income therefrom and contributions thereto.

Section 4.9 Duty to Cooperate/Payroll Records. All Trustees, all directors, officers, employers, employees/participants or other representatives of any Employer or Union party to this Trust Agreement shall be required to assist and cooperate with authorized representatives of the Fund, its attorneys, auditors, and other authorized representatives in the prosecution of claims for or against the Fund.

Specifically, an Employer shall provide to the Trustees on request in the course of any audit deemed necessary or advisable by the Trustees the following information:

(a) Payroll journals and/ or registers which include or identify employee's social security numbers, hourly rates of pay, hours worked and the time period in which the work was performed;

(b) Individual earnings records for all employees of the employer not shown on payroll journals or registers, including social security number and work classification (or code or clock or ID number) and the type of work being performed, hourly rates of pay, hours worked and the time period in which the work was performed;

(c) Job Cost records and/or certified payroll records which clearly identify the location of the job and all individuals who performed work on the job, as well as each employee's job occupation;

(d) Quarterly and annual payroll tax returns, including but not limited to, federal quarterly Form 941's, federal annual form W-2's, W-3's, 940's and state quarterly unemployment forms (e.g., Form UC - 3);

(e) Copies of all contribution reports and proof of payments (canceled checks or records of canceled checks and/or proof of electronic payments, if applicable) to all trade union fringe benefit funds to which the employer contributed;

(f) Employee listing which indicates employees' job classifications and/ or status as an apprentice, journeyman, foreman, superintendent, or supervisor;

(g) All cash disbursements journals, general ledgers, or other documents, including check registers or canceled checks if necessary, showing cash disbursements;

(h) Records showing all amounts paid to all persons or entities that performed work for this employer as an independent contractor or a subcontractor, if any, including copies of any federal form 1099's issued by the employer;

- (i) Most recent collective bargaining agreement and applicable participation agreement with the Fund;
- (j) Federal tax returns; and
- (k) All other relevant records which would tend to show the Employer's compliance with the terms of the Trust.

Further, in the event no time records or records of hours worked are available which indicate whether such hours are straight time or overtime, all hours paid shall be deemed to have been paid at straight time for the purpose of computing contributions owed.

Section 4.10 Failure to Maintain Records. It is the Employer's obligation to maintain adequate, reliable, and contemporaneous records sufficient to determine the benefits due or which may become due to its employees, which shall include, but not be limited to, the records referenced in Section 4.9 of Article IV.

In the event that an Employer fails to maintain adequate, reliable, and contemporaneous records establishing the amount of hours worked by employees who are paid on an hourly basis, then the Employer hereby agrees that all hours worked which the employee received pay or was entitled to receive pay from the employer, including but not limited to sick time, vacation, personal leave, leave of absence or any other compensatory time, shall be considered hours worked for which contributions are due to the Fund. At the Fund's discretion, the Fund may calculate the hours worked by an hourly employee by dividing the total pay received by the employee during the applicable audit period by the journeyman wage rate set forth in the applicable collective bargaining agreement. The Fund's calculation of amounts due under the above-described methodology shall be deemed conclusive and binding on the Employer.

Notwithstanding the foregoing, an Employer shall not be required to maintain records of actual hours worked by its employees who are paid a salary and are exempt from overtime under applicable federal and state laws; provided that, each such salaried exempt employee shall be deemed to work forty (40) hours per week and the Employer shall be obligated to pay the hourly contribution rate required by the Fund at the rate of forty (40) hours per week (or, if less, the amount specified in the written agreement between the Employer and the Fund).

## ARTICLE V - USE OF FUND

Section 5.1 The Trustees shall have the power and authority to use and apply the Trust Fund for the following purposes:

(a) To pay or provide for the payment of all reasonable and necessary expenses (i) of collecting the Employer contributions and payments and other moneys and property to which they may be entitled and (ii) of administering the affairs of this Trust, including the employment of such administrative, legal, expert and clerical assistance, the purchase or lease of such premises, materials, supplies and equipment and the performance of such other acts, as the Trustees, in their sole discretion, find necessary or appropriate in the performance of their duties. In order to effectuate the clear purposes of the Trust, with respect to the employment of any professional, including others outlined above, but in addition thereto, consultants, actuaries, investment managers, and investment advisors, the Trustees shall, as a matter of Fund policy, have such services bid not less than one (1) time every six (6) years.

(b) To provide health and welfare and related benefits to eligible Participants and Beneficiaries in accordance with a plan of benefits provided through policies of insurance or other health programs and facilities in accordance with Section 5.2 of this Article or established and administered as provided in subsection (e) of this Section. Such health and welfare and related benefits shall be limited to those which can be financed from the Trust Fund after payment of authorized and accrued expenses.

(c) To establish and accumulate such reserve funds as the Trustees, in their sole discretion, deem necessary and desirable for the proper execution of the Trust herein created.

(d) To pay all other proper and necessary expenses incurred by any Trustee not specified above, including the cost of defense in litigation arising out of the Trusteeship of this Trust Fund, to the extent permitted by law.

(e) To pay or provide for the payment of premiums on the contracts or policies of insurance mentioned in Section 5.2 hereof, which contracts or policies of insurance may be contracted for in the name of and issued to the Trustees, or to the Trust Fund, as they may determine.

Section 5.2 Procurement of Insurance. The Trustees are expressly authorized to negotiate for, obtain and maintain policies of group life, group accident, group health and group disability insurance (including group hospital, medical and surgical insurance), or such other insurance coverage as may be determined by the Trustees, for the payment to eligible Participants and Beneficiaries, by an insurance company or companies licensed to transact business in the State of Illinois of such benefits as now or hereafter may be authorized or permitted by law and as the Trustees may, from time to time, determine. Such policies of insurance shall be in such forms and in such amounts and may contain such provisions and be subject to such limitations and conditions as the Trustees, in their sole discretion, may from time to time determine and shall cover such Participants and Beneficiaries as the Trustees, pursuant to the provisions hereof, shall from time to time determine eligibility for benefits as herein provided. The Trustees may exercise all rights and privileges granted to the policyholder by the provisions of each contract or policy of insurance, and may agree with the insurance carrier to any alteration, modification or amendment of such contract or policy, and may take any action respecting each such contract or policy, and the insurance provided thereunder, which they, in

their sole discretion, may deem necessary or advisable and such insurance carrier shall not be required to inquire into the authority of the Trustees with regard to any dealings in connection with such contract or policy. The Trustees are expressly authorized, by unanimous vote, to establish and maintain a plan or plans to provide any and all of the health and welfare benefits, as the Trustees in their sole discretion may determine, directly out of the Trust Fund in accordance and upon compliance with Section 5.1(e) of this Article, in lieu of, or in combination with, coverage provided by an insurance carrier or carriers.

### Section 5.3 Investments

(a) The Trustees shall have the power and authority, in their sole discretion, to invest and reinvest such funds as are not necessary for current expenditures or liquid reserves, as they may from time to time determine, in such investments as are legal investments under applicable State and Federal law relating to the investments of the employee welfare trust funds, not limited, however, by any limitation restricting investments in common stocks to a percentage of the Fund or to a percentage of the total market value of the Fund. The Trustees may sell, exchange or otherwise dispose of such investments at any time and, from time to time, as provided in Section 5.9(f). The Trustees shall also have power and authority (in addition to, and not in limitation of, common law and statutory authority) to invest in any stocks, bonds or other property, real or personal, commingled or separate account investment funds, including improved or unimproved real estate and equity interests in real estate, where such an investment appears to the Trustees, in their discretion and consistent with their fiduciary obligations, to be in the best interest of the Trust Fund and its Participants and Beneficiaries, judged by then prevailing business conditions and standards. The Trustees shall have the authority, in respect to any stocks, bonds or other property, real or personal, held by them as Trustees, to exercise all such rights, power and privileges as might be lawfully exercised by any person owning similar stocks, bonds or other property in his own right.

### (b) Delegation and Allocation of Investment Functions.

(1) The Trustees are authorized, in their discretion, by this Trust Agreement or by resolution, to allocate to the Investment Committee such duties and responsibilities to invest and reinvest such Fund assets as they shall specify in such allocation in accordance with Sections 5.5 and 5.3(a).

(2) The Trustees shall have the power and authority to appoint one or more investment managers (as defined in Section 3(38) of the Act) who shall be responsible for the management, acquisition, disposition, investing and reinvesting of such of the assets of the Trust Fund as the Trustees shall specify. The Trustees may also engage investment managers that do not meet the definition of “investment manager” or “fiduciary” under the Act as long as the investment terms are prudent and reasonable given the type of investment or asset class. The fees of such investment manager, and its expenses to the extent permitted by law, shall be paid out of the Trust Fund.

(3) In connection with any allocation or delegation of investment functions under paragraphs (1) and (2) of this subsection (b), the Trustees shall, from time to time, adopt appropriate investment policies or guidelines.

Section 5.4 Deposits and Disbursements. All Trust Funds not invested shall be deposited by the Trustees in such depository or depositories as the Trustees shall from time to

time select, and any such deposit or deposits, or disbursements therefrom, shall be made in the name of the Trust in the manner designated by the Trustees and upon the signature(s) of persons designated and authorized by the Trustees or by the Investment Manager(s) appointed in accordance with Section 5.3(b)(2) of this Article.

Section 5.5 Allocation and Delegation of Fiduciary Responsibilities. The Trustees may, by resolution or by-law or by provisions of this Trust Agreement, allocate fiduciary responsibilities and various administrative duties to committees or subcommittees of the Board of Trustees, and they may delegate such responsibilities and duties to other individuals as they may deem appropriate or necessary in their sole discretion and consistent with the Act.

Section 5.6 Administrator. The Trustees may employ or contract for the services of an individual, firm or corporation, to be known as "Administrator", who shall, under the direction of any appropriate committee of the Trustees, administer the office or offices of the Trust Fund and of the Trustees, coordinate and administer the accounting, bookkeeping and clerical services, provide for the coordination of actuarial services furnished by the consulting actuary, prepare (in cooperation where appropriate with the consulting actuary and independent auditor) all reports and other documents to be prepared, filed or disseminated by or on behalf of the Trust in accordance with law, assist in the collection of contributions required to be paid to the Trust Fund by Employers and perform such other duties and furnish such other services as may be assigned, delegated or directed or as may be contracted by or on behalf of the Trustees. The Administrator shall be the custodian on behalf of the Trustees of all documents and other records of the Trustees and of the Trust Fund.

Section 5.7 Rules and Regulations.

(a) The Trustees are hereby empowered and authorized to adopt and promulgate any and all necessary rules and regulations which they deem necessary or desirable to facilitate the proper administration of the Trust Fund, provided the same are not inconsistent with the terms of this Trust Agreement. All rules and regulations adopted by action of the Trustees shall be binding upon all parties hereto, all parties dealing with the Trust Fund and all persons claiming any benefits hereunder.

(b) No regulation, rule, action or determination made or adopted by the Trustees, nor any decision or determination made by any impartial umpire appointed pursuant to Section 3.15 of this Agreement, shall in any manner conflict or be inconsistent (1) with any provision of the applicable current collective bargaining agreement in effect, or which may be made, between the Union and the Employers, (2) with this Trust Agreement and (3) with any applicable Federal, State or local law.

Section 5.8 Additional Authority. The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law,

(a) to enter into any and all contracts and agreements for carrying out the terms of this Trust Agreement and for the administration of the Trust Fund, and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the Participants involved;

(b) to keep property and securities registered in names of the Trustees or of the

Fund or in the name of any other individual or entity duly designated by the Trustees;

(c) to establish and accumulate as part of the Trust Fund such reasonable reserve funds as the Trustees, in their sole discretion, deem necessary or desirable to carry out the purposes of such Trust Fund;

(d) to pay out of the Trust Fund all real and personal property taxes, income taxes, and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Fund, or any money, property, or securities forming a part thereof;

(e) to do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder; and

(f) to sell, exchange, lease, convey, mortgage or dispose of any property, whether real or personal, at any time forming a part of the Trust Fund upon such terms as they may deem proper, and to execute and deliver any and all instruments of conveyance, lease, mortgage and transfer in connection therewith.

Section 5.9 Bonds. The Trustees shall obtain from an authorized surety company such bonds as may be required by law, covering such persons and in such amounts (but not less than required by law) as the Trustees, in their discretion, may determine. The cost of premiums for such bonds shall be paid out of the Trust Fund.

Section 5.10 Insurance. The Trustees may in their discretion obtain and maintain policies of insurance, to the extent permitted by law, to insure themselves, the Trust Fund as such, as well as employees or agents of the Trustees and of the Trust Fund, while engaged in business and related activities for and on behalf of the Trust Fund (1) with respect to liability to others as a result of acts, errors or omissions of such Trustee or Trustees, employees or agents, respectively, provided such insurance policy shall provide recourse by the insurer against Trustees as may be required by law, (2) with respect to injuries received or property damage suffered by them, and (3) with respect to other potential liability that may arise in the administration of the Fund, including cyber-liability insurance. The cost of the premiums for such policies of insurance shall be paid out of the Trust Fund.

Section 5.11 Information to Participants and Beneficiaries. The Trustees shall provide Participants and Beneficiaries such information as may be required by law.

Section 5.12 Accountants and Actuaries. The Trustees shall engage one or more independent qualified public accountants and one or more enrolled actuaries to perform all services as may be required by applicable law and such other services and the Trustees may deem necessary.

Section 5.13 Trustees to Act without Compensation. The Trustees shall act in such capacity without compensation, unless permitted by law, but they shall be entitled to reimbursement for the expenses properly and actually incurred in the performance of their duties with the Trust Fund, including, without limitation, attendance at meetings and other functions of the Board of Trustees or its committees or while on business of the Board of Trustees, attendance at institutes, seminars, conferences or workshops for or on behalf of the Trust Fund. Trustees shall adopt written expense reimbursement guidelines which shall govern the reimbursement of

expenses.

Section 5.14 Reports. All reports required by law to be signed by one or more Trustees shall be signed in compliance with all applicable laws. However, the Board of Trustees may authorize the Fund's Administrator to execute appropriate and necessary documents on behalf of the Fund.

Section 5.15 Records of Trustee Transactions. The Trustees shall keep true and accurate books of account and a record of all of their transactions and meetings (including actions taken at such meetings and by informal action of the Trustees), which records and books shall be audited at least annually by a certified public accountant. A copy of each audit report shall be furnished both to the Employers and the Union and shall be available for inspection by interested persons at the principal office of the Trustees and the respective offices of the Employers and the Union.

Section 5.16 Construction and Determination by Trustees. Subject to the stated purposes of the Fund and the provisions of this Agreement, the Trustees shall have full and exclusive authority to determine all questions of coverage and eligibility, methods of providing or arranging for benefits and all other related matters. They shall have full power to construe the provisions of this Agreement, the terms used herein and the procedures, policies and regulations issued thereunder. Any such determination and any such construction adopted by the Trustees in good faith shall be binding upon all of the parties hereto and the Beneficiaries hereof. No matter respecting the foregoing or any difference arising thereunder or any matter involved in or arising under this Trust Agreement shall be subject to the grievance or arbitration procedure established in any collective bargaining agreement between the Employers and the Union, provided, however, that this clause shall not affect the rights and liabilities of any of the parties under any of such collective bargaining agreements.

It is the intent of the drafters of this Trust document that the Trustees possess the discretion to determine eligibility for benefits and to construe the terms of the Trust and/or plan governing benefits to the maximum extent allowed by law. It is also the intent of the drafters of this Trust, by adopting the discretionary power specified above, that the decisions of the Trustees as to the granting or denial of benefits and the construing of terms of the Trust and benefit plan, are reviewed pursuant to an "arbitrary and capricious" standard by a reviewing court, as enunciated by the United States Supreme Court in *Firestone Tire and Rubber Company v. Bruch*, 489 U.S. 101 (1989) and shall receive the maximum deference permitted by law.

Section 5.17 Liability. The Trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person.

Section 5.18 Reliance on Written Instruments. Any Trustee to the extent permitted by applicable law, may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument.

Section 5.19 Reliance by Others. No party dealing with the Trustees shall be obligated to:

- (a) to see the application to the stated Trust purposes, of any funds or property of

the Trust Fund; or

(b) to see that the terms of this Trust Agreement have been complied with; or

(c) to inquire into the necessity or expediency of any act of the Trustees.

Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon:

(a) that at the time of the execution of said instrument, the Trust was in full force and effect;

(b) that the instrument was executed in accordance with the terms and conditions of this Trust Agreement; and

(c) that the Trustees were duly authorized and empowered to execute the instrument.

Section 5.20 Discharge of Liability. The receipt by the Trustees for any money or property or checks (after such checks are honored at the bank and paid to the Trust Fund) shall discharge the person or persons paying or transferring the same.

Section 5.21 Multiple Benefit Schedules/Plans. The Trustees shall be authorized to accept contributions at more than one rate and they may provide different schedules of benefits/plans appropriate for each such rate of contribution. However, it is the intention of the parties hereto that contributing Employers hereto shall, to the extent feasible, negotiate identical hourly contribution rates. Further, the Trustees shall be authorized to establish more than one schedule of benefits for the same hourly contribution rate. The Trustees, further, may accept contributions at the rates negotiated by the Union with any Employer, or with any additional Association for a particular bargaining unit, and the Employees represented by the Union or additional Union(s) and such bargaining unit may be provided with a schedule of benefits and/or plan appropriate for the rate of contribution so negotiated and paid into the Fund on their behalf.

Section 5.22 Retiree Benefits. Retiree benefits have been made available by the Trustees as a privilege, not a right. No person acquires a vested right to such benefits either before or after his or her retirement. The Trustees may expand, reduce or cancel coverage for retirees; change eligibility requirements or the amount of contributions; and otherwise exercise their prudent discretion at any time without legal right or recourse by a retiree or any other person.

## **ARTICLE VI - CONTROVERSIES AND DISPUTES**

**Section 6.1 Reliance on Records.** In any controversy, claim, demand, suit at law or other proceeding between any Participant, Beneficiary or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, with the Union or with the Employers, any facts certified to the Trustees by the Union or the Employers, any facts which are of public record and any other evidence pertinent to the issue involved.

**Section 6.2 Submission to Trustees.** All questions or controversies of whatsoever character, arising in any manner or between any parties or persons in connection with the Trust Fund or the operation thereof, whether as to any claim for any benefits preferred by any Participant, Beneficiary or any other person, or whether as to the construction of the language or meaning of the by-laws, rules and regulations adopted by the Trustees or this instrument, or as to any writing, decision, instrument or accounts in connection with the operation of the Trust Fund or otherwise, shall be submitted to the Trustees or, in the case of questions related to claims for benefits, to an Appeals or Review Committee, if one has been appointed, and the decision of the Trustees or Appeals or Review Committee shall be binding upon all persons dealing with the Trust Fund or claiming benefits thereunder.

**Section 6.3 Settling Disputes.** The Trustees may in their sole discretion compromise or settle any claim or controversy in such manner as they think best, and any majority decision made by the Trustees in settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding on all parties interested in this Trust.

## **ARTICLE VII - BENEFICIAL RIGHTS**

**Section 7.1 No Rights, Title or Interest of Employers and Union.** No Employer or Union, or Employees, or Participants and their Beneficiaries shall have any right, title or interest in or to the Trust Fund or any part thereof.

**Section 7.2 Limitations upon Beneficial Rights of Employees.** No Employee, Participant or any Beneficiary of a Participant shall have any right, title or interest in or to the Trust Fund or any part thereof, provided however, that any Participant who shall be covered by an insurance plan, or his Beneficiaries under such plan, shall be entitled to the benefits in the forms and amounts and subject to the terms and conditions of such insurance plan and of this Trust; provided, further, however, that the benefits shall be free from the interference and control of any creditor, and no benefits shall be subject to any assignment or other anticipation, nor subject to seizure or sale under any legal, equitable or any other process, and in the event that any claim or benefit shall, because of any debt incurred by or resulting from any other claim or liability against any Participant or Beneficiary, or by reason of any seizure or sale or attempted sale under any legal, equitable or other process, or in any suit or proceeding, become payable, or be liable to become payable, to any person other than the Participant or Beneficiary for whom the same is intended, as provided herein, pursuant hereto, the Trustees shall have power to withhold payment of such benefit to such Participant or Beneficiary until such assignment, transfer, encumbrance, anticipation or other disposition, writ or legal process is cancelled or withdrawn in such manner as shall be satisfactory to the Trustees. Until so cancelled or withdrawn, the Trustees shall have the right to use and apply the benefits, as the Trustees may deem best, directly for the support and maintenance of such Participant or Beneficiary. Notwithstanding any provisions contained in this section to the contrary, any Further, neither Participants nor Beneficiaries may assign, hospital, surgical and medical benefits to any third party, hospital or physician rendering services to the Participant or Beneficiary.

**Section 7.3 Optional Benefits Prohibited.** No Employee or Participant shall have the right, privilege or option to receive, instead of the benefits provided hereunder:

- (a) any part of the contributions payable by Employers under this Trust Agreement;
- (b) a cash consideration either upon termination of the plan of benefits provided hereunder or upon such Employee's or Participant's withdrawal from coverage under this Fund, either voluntarily or through severance of employment with any particular Employer; or
- (c) the cash surrender value of any policy of insurance in lieu of the benefits provided in said policy.

## ARTICLE VIII - TERMINATION OF TRUST

Section 8.1 Conditions of Termination. This Trust Agreement shall cease and terminate upon the happening of any one of the following events.

- (a) In the event the Trust Fund shall, in the opinion of the Trustees, be inadequate to carry out the intent and purpose of this Trust Agreement, or be inadequate to meet the payments due or to become due under this Trust Agreement and under the plan of benefits to Participants and Beneficiaries already drawing benefits;
- (b) In the event there are no individuals living who can qualify as Employees hereunder;
- (c) In the event of termination by action of the Union and the Employers;
- (d) In the event of termination as may be otherwise provide by law.

Section 8.2 Procedures in Event of Termination. In the event of termination, the Trustees shall:

- (a) make provision out of the Trust Fund for the payment of expenses incurred up to the date of termination of the Trust and the expenses incidental to such termination;
- (b) arrange for a final audit and report of their transactions and accounts, for the purpose of termination of their Trusteeship;
- (c) apply the Trust Fund to pay any and all obligations of the Trust and distribute and apply any remaining surplus in such manner as will, in their opinion, best effectuate the purposes of the Trust and the requirements of law;
- (d) give any notices and prepare and file any reports which may be required by law.

## ARTICLE IX - AD HOC COMMITTEES

Section 9.1 Creation of Ad Hoc Committees. By resolution, the Board of Trustees may create and assign duties to Ad Hoc Committees as needed to fulfill their fiduciary responsibilities. The resolution creating the Ad Hoc Committee shall specify the number of Trustees to serve on the Committee, if applicable, the names of the specific Trustees that will serve on the Committee, the duties and authorities of the Ad Hoc Committee and such other terms and conditions deemed appropriate by the Board of Trustees (including which members shall serve as officers). Unless specified in the resolution creating the Ad Hoc Committee, the Chairman and Secretary of the Board of Trustees, as specified in Article III, Section 3.10, shall have the discretion to appoint from among the membership of the Board of Trustees, the members of the Ad Hoc Committee.

Section 9.2 Selection of Chairman and Secretary. Unless specified in the resolution creating the Ad Hoc Committee, each Ad Hoc Committee shall elect from among their membership a Chairman and Secretary, each of whom shall be from different groups, (*i.e., the Employer Trustee Group and the Union Trustee Group*).

The officers shall serve for a period of two (2) years. The respective officers shall continue to serve in their respective capacities until the first meeting of the calendar year during which the officer's two (2) year term has expired (*e.g., the Chairman and Secretary that are elected at the Spring 2023 meeting shall serve until the first meeting of calendar year 2025*).

Section 9.3 Duties of the Officers. The Chairman shall preside at all meetings of an Ad Hoc Committee.

The Secretary (or his/her designee) shall keep accurate minutes of the proceedings and cause to be prepared such documents and correspondence as may be required from time to time and shall preside in the absence of the Chairman.

If the Chairman and Secretary are both absent from a Committee meeting, then the Employer Trustees and Union Trustees, as applicable, shall elect a pro tem Chairman and pro tem Secretary to serve in the respective capacities for the duration of the Committee meeting. The pro tem Chairman and pro tem Secretary shall be from the same respective appointing authorities that hold the office of Chairman and Secretary.

Section 9.4 Majority Vote, Quorum. Unless otherwise specified in the resolution creating the specific Ad Hoc Committee, decisions of an Ad Hoc Committee shall be by a majority of the votes cast at any meeting at which a quorum is present.

Unless otherwise specified, a quorum of an Ad Hoc Committee shall consist of one-half of the total number of Trustees that serve on the Ad Hoc Committee as specified in the resolution of the Board of Trustees provided that one (1) of whom is an Employer Trustee and one (1) of whom is a Union Trustee.

If at any meeting of an Ad Hoc Committee the representation of the Employer and Union Trustees is unequal, each Trustee of the smaller group of Trustees shall be allowed an additional fractional vote so that the smaller group of Trustees shall have the same voting power as that of the larger group.

Section 9.5. Meetings. An Ad Hoc Committee shall meet at such times and places as needed to perform their duties and responsibilities. A meeting of an Ad Hoc Committee may be called by the Chairman or Secretary of the Committee. No meeting of the Committee shall take place except upon ten (10) day's notice, unless all Committee members otherwise agree.

Section 9.6. Removal of Committee Member. For good cause, the Board of Trustees, by majority vote, may remove a member of a Committee.

Section 9.7 Expense Reimbursement. The members of any Ad Hoc Committee shall be reimbursed for expenses properly and actually incurred in the performance of their duties as members of an Ad Hoc Committee in accordance with Section 5.13 of this Agreement.

## ARTICLE X - APPEALS COMMITTEE

Section 10.1 Appointment. The Chairman and Secretary of the Board of Trustees, as specified in Article III, Section 3.10, shall have the discretion to appoint from among the membership of the Board of Trustees, the members of the Appeals Committee. Due consideration shall be given to the importance of Committee tenure in so far as appointment or reappointment to the Appeals Committee.

Section 10.2 Number of Members. The Appeals Committee shall consist of ten (10) members, five (5) chosen from among the Employer Trustees and five (5) chosen from among the Union Trustees.

Section 10.3 Selection of Chairman and Secretary. The Appeals Committee shall elect from among their membership a Chairman and Secretary, each of whom shall be from different groups, *i.e., the Employer Trustee Group and the Union Trustee Group*, it being the intent of the Trustees that at no time shall both offices be held by members of the same group.

The officers shall serve for a period of two (2) years. The respective officers shall continue to serve in their respective capacities until the first meeting of the calendar year during which the officer's two (2) year term has expired (*e.g., the Chairman and Secretary that are elected at the Spring 2023 meeting shall serve until the first meeting of calendar year 2025*).

Section 10.4. Duties of the Officers. The Chairman shall preside at all meetings of the Appeals Committee.

The Secretary (or his/her designee) shall keep accurate minutes of the proceedings and cause to be prepared such documents and correspondence as may be required from time to time and shall preside in the absence of the Chairman. All Trustees shall assure compliance with all applicable (Health Insurance Portability and Accountability Act) (HIPAA) regulations and requirements, including those related to privacy and procedures.

If the Chairman and Secretary are both absent from a Committee meeting, then the Employer Trustees and Union Trustees, as applicable, shall elect a pro tem Chairman and pro tem Secretary to serve in the respective capacities for the duration of the Committee meeting. The pro tem Chairman and pro tem Secretary shall be from the same respective appointing authorities that hold the office of Chairman and Secretary.

Section 10.5 Binding Decisions. The Appeals Committee shall review all appeals of benefit denials and make such a determination as in their sole discretion they deem proper. Their decision shall be final and binding upon the Board of Trustees of NECA-IBEW Welfare Trust Fund.

Section 10.6 Meetings. The Appeals Committee shall meet quarterly. The Appeals Committee may also meet for a special meeting upon the call of the Chairman or Secretary of the Appeals Committee. No meeting of the Committee shall take place except upon ten (10) day's notice, unless all Committee members otherwise agree.

Section 10.7 Majority Vote, Quorum. Decisions of the Appeals Committee shall be by a majority of the votes cast at any meeting at which a quorum is present. A quorum of the Appeals Committee shall consist of four (4) Trustees in attendance at a meeting two (2) of whom

are Employer Trustees and two (2) of whom are Union Trustees.

If at any meeting of the Appeals Committee the representation of the Employer and Union Trustees is unequal, each Trustee of the smaller group of Trustees shall be allowed an additional fractional vote so that the smaller group of Trustees shall have the same voting power as that of the larger group.

Section 10.8 Effect of No Majority Vote to Reverse. In the event that there is no majority on a vote to reverse an appealed decision of benefit denial, that decision shall be affirmed and be the final decision of the Appeals Committee.

Section 10.9 Appointing a Successor Member. In the event that any member of the Appeals Committee shall resign or be unable to serve by reason of death or incapacity, the Chairman and/or Secretary of the NECA-IBEW Welfare Trust Fund, as applicable, shall appoint his successor.

Section 10.10 Removal of Committee Member. For good cause, the Board of Trustees, by majority vote, may remove a member of a Committee.

Section 10.11 Expense Reimbursement. The members of the Appeals Committee shall be reimbursed for expenses properly and actually incurred in the performance of their duties as members of the Appeals Committee in accordance with Section 5.13 of this Agreement.

## ARTICLE XI - DELINQUENCY COMMITTEE

Section 11.1 Appointment. The Chairman and Secretary of the Board of Trustees, as specified in Article III, Section 3.10, shall appoint from among the membership of the Board of Trustees, the members of the Delinquency Committee.

Section 11.2 Number of Members. The Delinquency Committee shall consist of six (6) members, three (3) chosen from among the Employer Trustees and three (3) chosen from among the Union Trustees.

Section 11.3 Selection of Chairman and Secretary. The Delinquency Committee shall elect from among their membership a Chairman and Secretary, each of whom shall be from different groups, *i.e., the Employer Trustee Group and the Union Trustee Group*, it being the intent of the Trustees that at no time shall both offices be held by members of the same group.

The officers shall serve for a period of two (2) years. The respective officers shall continue to serve in their respective capacities until the first meeting of the calendar year during which the officer's two (2) year term has expired (*e.g., the Chairman and Secretary that are elected at the Spring 2023 meeting shall serve until the first meeting of calendar year 2025*).

Section 11.4 Duties of the Officers. The Chairman shall preside at all meetings of the Delinquency Committee.

The Secretary (or his/her designee) shall keep accurate minutes of the proceedings and cause to be prepared such documents and correspondence as may be required from time to time and shall preside in the absence of the Chairman.

If the Chairman and Secretary are both absent from a Committee meeting, then the Employer Trustees and Union Trustees, as applicable, shall elect a pro tem Chairman and pro tem Secretary to serve in the respective capacities for the duration of the Committee meeting.

Section 11.5 Scope of Authority and Binding Decisions. The Delinquency Committee shall have the authority to review each delinquency, subrogation and overpayment case in which sums, contributions, costs, liquidated damages or fees are assessed or owed pursuant to the provisions of this Article, the terms of any applicable written agreement, the terms of the Plan, or based upon applicable law. The Committee is empowered in their discretion to administer and enforce the Fund's audit policies and procedures and collect, settle or compromise any such matter and, if applicable, waive all or part of such costs, liquidated damages or fees for good cause shown. The Committee's decision shall be final and binding on the Board of Trustees of the NECA-IBEW Welfare Trust Fund. Notwithstanding the above stated empowerment, the Board of Trustees shall continue to either approve or disapprove the minutes of the meetings of the Delinquency Committee, but shall have no power to alter the decision of the Delinquency Committee as to the exercise of discretion described herein.

Section 11.6 Meetings. The Delinquency Committee shall meet at the regular meetings of the Board of Trustees or as needed upon the call of the Chairman or Secretary of the Committee. No meeting of the Committee shall take place except upon ten (10) days' notice, unless all Committee members otherwise agree.

Section 11.7 Majority Vote, Quorum. Decisions of the Delinquency Committee shall

be by a majority of the votes cast at any meeting at which a quorum is present. A quorum of the Delinquency Committee shall consist of three (3) Trustees in attendance at a meeting one (1) of whom are Employer Trustees and one (1) of whom are Union Trustees.

If at any meeting of the Delinquency Committee the representation of the Employer and Union Trustees is unequal, each Trustee of the smaller group of Trustees shall be allowed an additional fractional vote so that the smaller group of Trustees shall have the same voting power as that of the larger group.

Section 11.8 Waiver of Costs, Liquidated Damages or Fees. Unless a motion to waive all or a part of the costs, liquidated damages or fees assessed pursuant to this Article receives a majority of the votes cast then such costs, liquidated damages or fees shall not be waived.

Section 11.9 Appointing a Successor Member. In the event that any member of the Delinquency Committee shall resign or be unable to serve by reason of death or incapacity, the Chairman and/or Secretary of the NECA-IBEW Welfare Trust Fund, as applicable, shall appoint his successor.

Section 11.10 Removal of Committee Member. For good cause, the Board of Trustees, by majority vote, may remove a member of a Committee.

Section 11.11 Expense Reimbursement. The members of the Delinquency Committee shall be reimbursed for expenses properly and actually incurred in the performance of their duties as members of the Delinquency Committee in accordance with Section 5.13 of this Agreement.

## ARTICLE XII - EXECUTIVE COMMITTEE

Section 12.1 Appointment. The Chairman and Secretary of the Board of Trustees, as specified in Article III, Section 3.10, shall appoint from among the membership of the Board of Trustees, the members of the Executive Committee as described below.

Section 12.2 Number of Members. The Executive Committee shall consist of six (6) members. The Chairman and Secretary of the Board of Trustees shall be *ex officio* members of the Executive Committee. The four (4) other members of the Executive Committee shall be appointed as follows: two (2) Trustees shall be appointed from the Employer Trustees and two (2) Trustees shall be appointed from the Union Trustees.

Section 12.3 Selection of Chairman and Secretary. The Chairman of the Board of Trustees and Secretary of the Board of Trustees shall automatically serve as the Chairman and Secretary of the Executive Committee.

Section 12.4 Duties of the Officers. The Chairman shall preside at all meetings of the Executive Committee.

The Secretary (or his/her designee) shall keep accurate minutes of the proceedings and cause to be prepared such documents and correspondence as may be required from time to time and shall preside in the absence of the Chairman.

If the Chairman and Secretary are both absent from a Committee meeting, then the Employer Trustees and Union Trustees, as applicable, shall elect a pro tem Chairman and pro tem Secretary to serve in the respective capacities for the duration of the Committee meeting.

Section 12.5 Scope of Authority and Binding Decisions. The Executive Committee has been delegated the authority to make final and binding decisions regarding the following matters:

- (a) The times and locations of the Board of Trustees meetings;
- (b) Whether a full Board of Trustees meeting shall be conducted through electronic means or a combination of in person and electronic means; and
- (c) Such other matters assigned to the Executive Committee by the Board of Trustees.

Section 12.6 Meetings. The Executive Committee shall meet at such times and places as needed to perform their duties and responsibilities. A meeting of the Executive Committee may be called by the Chairman or Secretary of the Executive Committee.

No meeting of the Committee shall take place except upon five (5) days' notice, unless all Committee members agree.

Section 12.7 Majority Vote, Quorum. Decisions of the Executive Committee shall be by a majority of the votes cast at any meeting at which a quorum is present. A quorum of the Executive Committee shall consist of three (3) Trustees in attendance at a meeting including both the Chairman and Secretary of the Board of Trustees.

If at any meeting of the Executive Committee the representation of the Employer and Union Trustees is unequal, each Trustee of the smaller group of Trustees shall be allowed an additional fractional vote so that the smaller group of Trustees shall have the same voting power as that of the larger group.

Section 12.8 Appointing a Successor Member. In the event that any member of the Executive Committee shall resign or be unable to serve by reason of death or incapacity, the Chairman and/or Secretary of the NECA-IBEW Welfare Trust Fund, as applicable, shall appoint his successor.

Section 12.9 Removal of Committee Member. For good cause, the Board of Trustees, by majority vote, may remove a member of a Committee.

Section 12.10 Expense Reimbursement. The members of the Executive Committee shall be reimbursed for expenses properly and actually incurred in the performance of their duties as members of the Executive Committee in accordance with Section 5.13 of this Agreement.

Section 12.11 Deadlocks. In the event that a deadlock within the meaning of Section 3.15 of this Agreement occurs related to any matter under consideration by the Executive Committee, then the deadlocked matter shall be presented to and considered by the full Board of Trustees without the Board of Trustees convening a meeting. However, a member of the Executive Committee must request that a deadlocked matter be presented to the full Board of Trustees. Once requested by an Executive Committee member, the matter shall be presented to the full Board of Trustees as soon as possible but no later than five (5) business days following the date that the request to present the matter to the Trustees was made. Any such matter considered by the full Board of Trustees shall require a majority vote of all Trustees. Trustees shall be given five (5) calendar days to cast a vote. In the event that a Trustee does not submit a vote within the time prescribed for casting a vote, then the Trustee will be considered to be absent and the fractional voting rule set forth in Section 3.14(d) of Article III shall apply.

### **ARTICLE XIII - INVESTMENT COMMITTEE**

**Section 13.1 Appointment.** The Chairman and Secretary of the Board of Trustees, as specified in Article III, Section 3.10, shall appoint from among the membership of the Board of Trustees, the members of the Investment Committee.

**Section 13.2 Number of Members.** The Investment Committee shall consist of six (6) members, three (3) appointed from among the Employer Trustees and three (3) appointed from among the Union Trustees.

**Section 13.3 Selection of Chairman and Secretary.** The Investment Committee shall elect from among their membership a Chairman and Secretary, each of whom shall be from different groups, *i.e., the Employer Trustee Group and the Union Trustee Group*, it being the intent of the Trustees that at no time shall both offices be held by members of the same group.

The officers shall serve for a period of two (2) years. The respective officers shall continue to serve in their respective capacities until the first meeting of the calendar year during which the officer's two (2) year term has expired (*e.g., the Chairman and Secretary that are elected at the Spring 2023 meeting shall serve until the first meeting of calendar year 2025*).

**Section 13.4 Duties of the Officers.** The Chairman shall preside at all meetings of the Investment Committee.

The Secretary (or his/her designee) shall keep accurate minutes of the proceedings and cause to be prepared such documents and correspondence as may be required from time to time and shall preside in the absence of the Chairman.

If the Chairman and Secretary are both absent from a Committee meeting, then the Employer Trustees and Union Trustees, as applicable, shall elect a pro tem Chairman and pro tem Secretary to serve in the respective capacities for the duration of the Committee meeting.

**Section 13.5 Scope of Authority and Binding Decisions.** Unless otherwise delegated specific authority to act by the Board of Trustees, the Investment Committee shall have the authority to make recommendations regarding the Fund's investments and investment objectives, which shall, include, but not be limited to, working and collaborating with the Fund's investment consultant, monitoring, hiring, and terminating investment managers, monitoring compliance with the Fund's investment policy statement, updating the Fund's investment policy statement, as needed, periodically reviewing the Fund's asset allocation, and such other investment-related duties.

**Section 13.6 Meetings.** The Investment Committee shall meet at the regular meetings of the Board of Trustees or as needed upon the call of the Chairman or Secretary of the Committee. No meeting of the Committee shall take place except upon ten (10) days' notice, unless the Committee members otherwise agree.

**Section 13.7 Majority Vote, Quorum.** Decisions of the Investment Committee shall be by a majority of the votes cast at any meeting at which a quorum is present. A quorum of the Investment Committee shall consist of three (3) Trustees in attendance at a meeting one (1) of whom are Employer Trustees and one (1) of whom are Union Trustees.

If at any meeting of the Investment Committee the representation of the Employer and Union Trustees is unequal, each Trustee of the smaller group of Trustees shall be allowed an additional fractional vote so that the smaller group of Trustees shall have the same voting power as that of the larger group.

Section 13.8 Appointing a Successor Member. In the event that any member of the Investment Committee shall resign or be unable to serve by reason of death or incapacity, the Chairman and/or Secretary of the NECA-IBEW Welfare Trust Fund, as applicable, shall appoint his successor.

Section 13.9 Removal of Committee Member. For good cause, the Board of Trustees, by majority vote, may remove a member of a Committee.

Section 13.10 Expense Reimbursement. The members of the Investment Committee shall be reimbursed for expenses properly and actually incurred in the performance of their duties as members of the Investment Committee in accordance with Section 5.13 of this Agreement.

## **ARTICLE XIV - PROFESSIONAL REVIEW COMMITTEE**

**Section 14.1 Appointment.** The Chairman and Secretary of the Board of Trustees, as specified in Article III, Section 3.10, shall appoint from among the membership of the Board of Trustees, the members of the Professional Review Committee.

**Section 14.2 Number of Members.** The Professional Review Committee shall consist of six (6) members, three (3) appointed from among the Employer Trustees and three (3) appointed from among the Union Trustees.

**Section 14.3 Selection of Chairman and Secretary.** The Professional Review Committee shall elect from among their membership a Chairman and Secretary, each of whom shall be from different groups, *i.e., the Employer Trustee Group and the Union Trustee Group*, it being the intent of the Trustees that at no time shall both offices be held by members of the same group.

The officers shall serve for a period of two (2) years. The respective officers shall continue to serve in their respective capacities until the first meeting of the calendar year during which the officer's two (2) year term has expired (*e.g., the Chairman and Secretary that are elected at the Spring 2023 meeting shall serve until the first meeting of calendar year 2025*).

**Section 14. Duties of the Officers.** The Chairman shall preside at all meetings of the Professional Review Committee.

The Secretary (or his/her designee) shall keep accurate minutes of the proceedings and cause to be prepared such documents and correspondence as may be required from time to time and shall preside in the absence of the Chairman.

If the Chairman and Secretary are both absent from a Committee meeting, then the Employer Trustees and Union Trustees, as applicable, shall elect a pro tem Chairman and pro tem Secretary to serve in the respective capacities for the duration of the Committee meeting.

**Section 14.5 Scope of Authority and Binding Decisions.** Unless otherwise delegated specific authority to act by the Board of Trustees, the Professional Review Committee shall have the authority to manage the process to engage, solicit proposals, and review service providers and vendors of the Fund and make recommendations to the Board of Trustees regarding the selection of service providers and vendors.

**Section 14.6 Meetings.** The Professional Review Committee shall meet at such times and places as needed to perform their duties and responsibilities. A meeting of the Professional Review Committee may be called by the Chairman or Secretary of the Committee.

No meeting of the Committee shall take place except upon ten (10) days' notice, unless the Committee members otherwise agree.

**Section 14.7 Majority Vote, Quorum.** Decisions of the Professional Review Committee shall be by a majority of the votes cast at any meeting at which a quorum is present. A quorum of the Professional Review Committee shall consist of three (3) Trustees in attendance at a meeting one (1) of whom are Employer Trustees and one (1) of whom are Union Trustees. If at any meeting of the Professional Review Committee the representation of the Employer and

Union Trustees is unequal, each Trustee of the smaller group of Trustees shall be allowed an additional fractional vote so that the smaller group of Trustees shall have the same voting power as that of the larger group.

Section 14.8 Appointing a Successor Member. In the event that any member of the Professional Review Committee shall resign or be unable to serve by reason of death or incapacity, the Chairman and/or Secretary of the NECA-IBEW Welfare Trust Fund, as applicable, shall appoint his successor.

Section 14.9 Removal of Committee Member. For good cause, the Board of Trustees, by majority vote, may remove a member of a Committee.

Section 14.10 Expense Reimbursement. The members of the Professional Review Committee shall be reimbursed for expenses properly and actually incurred in the performance of their duties as members of the Professional Review Committee in accordance with Section 5.13 of this Agreement.

## ARTICLE XV - STEERING COMMITTEE

Section 15.1 Appointment. The Chairman and Secretary of the Board of Trustees, as specified in Article III, Section 3.10, shall appoint from among the membership of the Board of Trustees, the members of the Steering Committee.

Section 15.2 Number of Members. The Steering Committee shall consist of twelve (12) members, six (6) chosen from among the Employer Trustees and six (6) chosen from among the Union Trustees.

Section 15.3 Selection of Chairman and Secretary. The Steering Committee shall elect from among their membership a Chairman and Secretary, each of whom shall be from different groups, *i.e., the Employer Trustee Group and the Union Trustee Group*, it being the intent of the Trustees that at no time shall both offices be held by members of the same group.

The officers shall serve for a period of two (2) years. The respective officers shall continue to serve in their respective capacities until the first meeting of the calendar year during which the officer's two (2) year term has expired (*e.g., the Chairman and Secretary that are elected at the Spring 2023 meeting shall serve until the first meeting of calendar year 2025*).

Section 15.4 Duties of the Officers. The Chairman shall preside at all meetings of the Steering Committee.

The Secretary (or his/her designee) shall keep accurate minutes of the proceedings and cause to be prepared such documents and correspondence as may be required from time to time and shall preside in the absence of the Chairman.

If the Chairman and Secretary are both absent from a Committee meeting, then the Employer Trustees and Union Trustees, as applicable, shall select a pro tem Chairman and pro tem Secretary to serve in the respective capacities for the duration of the Committee meeting.

Section 15.5 Meetings. The Steering Committee shall meet at the regular meetings of the Board of Trustees or as needed upon the call of the Chairman or Secretary of the Committee. No meeting of the Committee shall take place except upon ten (10) days' notice, unless the Committee members otherwise agree.

Section 15.6 Authority of the Committee. Unless delegated specific authority by the Board of Trustees, the Steering Committee shall have authority to review, consider, and make recommendations regarding plan design, vendors, benefit networks, and related benefit matters historically reviewed by the Steering Committee.

Any action that will result in a material cost to the Fund, including benefit plan improvements that are not cost neutral, must first be reviewed and considered by the Steering Committee before such matter is considered by the Board of Trustees. After a material cost proposition/benefit improvement has been duly considered by the Steering Committee, any Trustee may propose an action to the full Board of Trustees irrespective of the recommendation or rejection of the proposal by the Steering Committee, and further, the Board of Trustees may override a recommendation or rejection by the Steering Committee. This rule of order shall not apply to expenditures of the IBEW-NECA Benefits Administration Association (which shall be included within the budget of said Association).

Section 15.7 Majority Vote, Quorum. Decisions of the Steering Committee shall be by a majority of the votes cast at any meeting at which a quorum is present. A quorum of the Steering Committee shall consist of six (6) Trustees in attendance at a meeting three (3) of whom are Employer Trustees and three (3) of whom are Union Trustees.

If at any meeting of the Steering Committee the representation of the Employer and Union Trustees is unequal, each Trustee of the smaller group of Trustees shall be allowed an additional fractional vote so that the smaller group of Trustees shall have the same voting power as that of the larger group.

Section 15.8 Appointing a Successor Member. In the event that any member of the Steering Committee shall resign or be unable to serve by reason of death or incapacity, the Chairman and/or Secretary of the NECA-IBEW Welfare Trust Fund, as applicable, shall appoint his successor.

Section 15.9 Removal of Committee Member. For good cause, the Board of Trustees, by majority vote, may remove a member of a Committee.

Section 15.10 Expense Reimbursement. The members of the Steering Committee shall be reimbursed for expenses properly and actually incurred in the performance of their duties as members of the Steering Committee in accordance with Section 5.13 of this Agreement.

## **ARTICLE XVI - INDEMNIFICATION AND PROTECTION OF TRUSTEES**

**Section 16.1 Limited Personal Liability.** Except in accordance with applicable federal law, no Trustee shall be personally liable for the payment, performance or discharge of any obligation, debt, contract, or liability of the Trust Fund. All contracts, debts, obligations and liabilities contracted or incurred by the Trustees in the proper discharge of their duties shall be paid and discharged out of the Trust Fund; provided, however, that nothing contained herein shall exempt any Trustee from liability arising out of his own willful misconduct, bad faith or gross negligence, or entitle such Trustee to indemnification for any amounts paid or incurred as a result thereof.

**Section 16.2 Good Faith Performance; No Vicarious Liability.** To the extent permitted by law, the Trustees shall not be liable for any error of judgment or for any loss arising out of any act or omission in the execution of the Trust, so long as they act in good faith and without gross negligence; nor shall any Trustee, in the absence of his own willful misconduct, bad faith or gross negligence, be personally liable for the acts or omissions (whether performed at the request of the Trustees or not) of any other Trustee, or of any Employee, agent or attorney elected or appointed by or acting for the Trustees.

**Section 16.3 Reliance on Writings.** The Trustees shall be fully protected in acting upon any instrument in writing believed by them to be genuine and signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

**Section 16.4 Judicial Determination.** The Trustees may seek judicial protection by any action or proceeding they may deem necessary to settle their accounts, or to obtain a judicial determination or declaratory judgment as to any question or construction of the Trust Agreement or instruction as to any action thereunder.

**Section 16.5 Retention of Legal Counsel.** To the extent permitted by law, the costs and expenses of engaging or retaining legal counsel, or of any action, suit or proceeding brought by or against the Trustees or any of them, shall be paid from the Trust Fund, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Trustee was acting in bad faith or was grossly negligent in the performance of his duties hereunder.

## ARTICLE XVII - MISCELLANEOUS

Section 17.1 Law Applicable. This Trust is created and accepted in the State of Illinois and all questions pertaining to the validity or construction of this Trust Agreement and of the acts and transactions of the parties hereto shall be determined in accordance with the laws of the State of Illinois, except as to matters governed by Federal law. Unless waived by the Board of Trustees, jurisdiction and venue for all litigation shall be in the United States District Court for the Central District of Illinois or the Circuit Court in Macon County, Illinois.

Section 17.2 Savings Clause. Should any provision of this Agreement and Declaration of Trust be held to be unlawful, or unlawful as to any person or instance, such fact shall not adversely affect the other provisions herein contained or the application of said provisions to any other person or instance, unless such illegality shall make impossible the functioning of this Fund.

Section 17.3 Reciprocity Agreements. The Trustees may, in their sole discretion, enter into such reciprocity agreement or agreements with other welfare funds as they determine to be in the best interest of the Trust Fund, provided that any such reciprocity agreement or agreements shall not be inconsistent with the terms of this Trust Agreement or the collective bargaining agreements under which this Trust Agreement is maintained.

Section 17.4 Merger. The Trustees shall have the power to merge with any other fund established for similar purposes as this Trust Fund under the terms and conditions mutually agreeable to the respective Board of Trustees, subject to the approval of the Union and the Employers.

Section 17.5 Refund of Contributions. In no event shall any Employer, directly or indirectly, receive any refund on contributions made by them to the Trust except in case of a bona fide erroneous payment or overpayment of contributions, (to the extent permitted by law). No erroneous payment or overpayment of contributions shall be refunded beyond one year from the date of discovery of such erroneous payment or overpayment of contributions, unless specifically approved by the Trustees and premised upon circumstances warranting such.

Section 17.6 Accounting and Judicial Settlements.

(a) Accounting. The Union or an Employer may, at any time demand of the Trustees an accounting with respect to any and all accounts, provided that the party demanding such accounting agrees to pay the necessary expenses thereof.

(b) Judicial Settlements and Action by Trustees. The Trustees shall be entitled, at any time, to have a judicial settlement of their accounts and to seek judicial protection by any action or proceeding they determine necessary and, further, to obtain a judicial determination or declaratory judgment as to any question of construction of this Trust Agreement or for instructions as to any action thereunder and, further, as to any question relating to the discharge of their duties and obligations under, or in connection with the administration of, this Trust and as to the distribution of assets belonging to the Trust. Any such determination, decision or judgment shall be binding upon all parties to, or claiming under, this Trust Agreement.

Section 17.7 Withholding Payment. In the event any question or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may withhold such payment until there shall have been made an adjudication of such question or dispute which, in the Trustees' sole judgment, is satisfactory to them, or until the Trustees shall have been fully protected against loss by means of such indemnification agreement or bond as they, in their sole judgment, determine to be adequate.

Section 17.8 Gender. Whenever any words are used in this Trust Agreement in the masculine gender, they shall also be construed to include the feminine or neuter gender in all situations where they would so apply; and whenever any words are used in the singular, they shall also be construed to include the plural in all situations where they would so apply; and wherever any words are used in the plural, they shall also be construed to include the singular.

Section 17.9 Amendment of Trust Agreement. The provisions of this Trust Agreement may be amended at any time by an instrument in writing executed by the Trustees, provided that no amendment shall divert or provide for the use of the Trust Fund then in the hands of the Trustees from the purpose of this Trust Fund to provide group insurance in the event of death, illness or accident to the Employees, Participants or to their Beneficiaries as hereinabove set forth, or for the payment of such benefits as may be authorized under Sections 5.1 or 5.2 of Article V hereof. It is further provided that no amendment (i) shall provide for the use or application of the Trust Fund for any purpose other than those set forth in Sections 2.1 and 5.1 hereof; or (ii) permit the return to, or payment of the Trust Fund, or any part thereof, to any Employer except a contribution or other payment made by mistake of fact to the extent permitted by law; or (iii) so amend this Trust Agreement that there shall not be an equal number of Employer Trustees and of Union Trustees to administer the Trust. Any amendment to the specific language of this Trust Document shall be identified as such prior to taking a vote thereon, so that any amendment will be voted upon by the Trustees as an amendment (that is, such proposition shall not be proposed and approved without reference to the effect of the amendatory purpose as to the language contained herein).

Section 17.10 Article and Section Titles. The Article and Section titles are included solely for convenience and shall, in no event, be construed to affect or modify any part of the provisions of this Trust Agreement or be construed as part thereof.

Section 17.11 Withdrawal of Union. Any local union affiliated with the International Brotherhood of Electrical Workers may withdraw from this Trust Agreement and the Trust therein created, provided that the Local Union serves written notice of such withdrawal upon each of the Trustees of said Trust, as well as upon the Employers' Association, at least forty-five (45) days prior to the effective date of withdrawal. In the event that withdrawal of participants takes place pursuant to this Article, benefits shall be paid to or on behalf of former Employees and their dependents in accordance with the Welfare Plan for all claims incurred on or before the thirty -first day following the date on which the obligation to make the required contributions terminated but the individual employee, participant or dependent from the withdrawing wage area shall not either individually or collectively have the right to receive any other benefits and in particular shall not be entitled to receive an aliquot share of the assets of the Trust *res*, nor shall any withdrawing union or trust fund associated with any withdrawing union have any such right.

It is further specifically agreed that the drafters of this Trust Agreement declare that the

obligation and duty of the Trustees is to ensure that neither the participants of the NECA-IBEW Welfare Trust Fund nor the corpus of such Trust shall be substantially adversely affected, financially, by a withdrawal. Further, and to that end, the Trustees do hereby declare that any reasonable expenses incurred by any party including, but not limited to, a successor fund, the withdrawing local union, and the NECA-IBEW Welfare Trust Fund itself shall be borne exclusively by the withdrawing local union or successor fund and shall not be the responsibility or obligation of the NECA-IBEW Welfare Trust Fund. In addition thereto, the withdrawing local union shall take with it and assume all obligation and liability for its retired and disabled participants (and COBRA eligibles), as well as those currently undergoing treatment for illnesses or injuries, *i.e. the new and/or successor Fund shall assume liability and payments therefor.*

Section 17.12 Electronic Signature. Unless otherwise required by law or other third party, any Trustee signature required by the Fund, including, but not limited to, minutes, policies, and this Agreement, may be an original signature, a fax copy of an original signature, a scanned Portable Document Format (PDF) or similar format of an original signature, or an electronically transmitted text signature (*e.g., DocuSign or similar signature platform*).

[Signature Page]

IN WITNESS WHEREOF, the Trustees have caused this Restated Agreement and Declaration of Trust to be approved on this 29<sup>th</sup> day of September, 2022.

DocuSigned by:  
*Billy Serbousek*  
4EA8074485D3497...  
Chairman

DocuSigned by:  
*Jessett Chen*  
9E0DD8DECA00453...  
Secretary