



## MICHIGAN FRATERNAL ORDER OF POLICE LEGAL DEFENSE PLAN AND TRUST

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### MICHIGAN FOP LEGAL DEFENSE PLAN AND TRUST AGREEMENT

This Michigan FOP Legal Defense Plan and Trust Agreement (this “Agreement”), is between the Michigan FOP Legal Defense Plan, a Michigan nonprofit corporation (the “Company”), and **Edward R. Fox, Harry Russell Awdey, and Philip Charles Abdo** (collectively, with their successors, the “Trustee”).

#### ARTICLE I INTRODUCTION

1. Effective Date. The Michigan FOP Legal Defense Plan and Trust (the “Plan”) was established by the Company, effective as of **January 29, 2015**.
2. Purpose. The purpose of the Plan is to provide prepaid legal services for active law enforcement, corrections officers, and public safety dispatchers who are represented in collective bargaining by the Michigan Fraternal Order of Police Labor Council, a Michigan nonprofit corporation (the “Labor Council”).
3. Benefits. The Plan provides those covered legal services described in Article IV below.
4. Trust. To implement and carry out the provisions of the Plan, the Company desires to establish a Trust which will form a part of the Plan and which is intended to meet the requirements of a tax exempt organization under Section 501(c)(8) of the Internal Revenue Code of 1986, as amended (the “Code”).
5. Independence. The Company and the Labor Council are separate, unrelated Michigan nonprofit corporations, and neither will be jointly and/or severally liable for the obligations of the other. The Company and the State Lodge of Michigan Fraternal Order of Police are separate, unrelated Michigan nonprofit corporations, and neither will be jointly and/or severally liable for the obligations of the other.

## ARTICLE II DEFINITIONS

1. “Administrative Office” means the administrative office of the Plan:

Michigan FOP Legal Defense Plan  
P.O. Box 71527  
Madison Heights, Michigan 48071  
Phone: 517-679-5090  
Fax: 517-679-5091
2. “Administrator” has the meaning set forth in Article VII.
3. “Board of Directors” or “Directors” means the Board of Directors of the Plan, as elected from time to time in accordance with the Company’s bylaws.
4. “Concerted Labor Activity” means concerted failure to work, to respond to orders to work, or concerted use of sick leave or calling in sick, but not to encompass criminal conduct, including but not limited to vandalism, petty theft, arson and assault.
5. “Employment” means employed by one of the public sector bargaining units in Michigan represented by the Labor Council as a law enforcement officer, corrections officer, or public safety dispatcher.
6. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.
7. “Event” means an act or omission of a Participant which gives rise to civil or criminal action, but “Event” does not refer to the civil or criminal action itself.
8. “Field Representative” means an individual ineligible for active membership in a Member Association and experienced in the representation of employees in administrative disciplinary matters who works under the supervision of a Plan Attorney or has established a relationship with a Plan Attorney satisfactory to the Administrator.
9. “Labor Council” has the meaning set forth in Article I.
10. “Legal Administrator” means a person or legal entity appointed from time to time by the Administrator to supervise the provision of services under the Plan.
11. “Legal Defense Fund” means the Michigan FOP Legal Defense Plan and Trust, which includes all of the assets held by the Trustee for purposes of funding the benefits under the Plan and administered in accordance with the terms of this Agreement.
12. “Member Association” or “Association” means any public sector bargaining unit that has engaged the Labor Council to bargain on its behalf.
13. “Military Service” means full-time, active duty service with the armed forces of the United States, including the Coast Guard, provided that such service occurs (i) during a

war involving the United States as a belligerent, (ii) during a national security emergency, as declared by the President of the United States or by Congress, or (iii) during a domestic civil disturbance or natural disaster, as declared by the appropriate state or federal office. “Military Service” shall also mean the time spent by a Participant on active duty training or on weekend training with a reserve component of the armed forces or of the National Guard.

14. “Participant” means an active law enforcement officer, corrections officer, or public safety dispatcher who qualifies for benefits under the Plan pursuant to Article III hereof.
15. “Plan” means the group prepaid legal services plan as set forth herein and any amendment thereto.
16. “Plan Administrator” has the meaning set forth in Article VII.
17. “Plan Attorney” means an attorney ineligible for active membership in a Member Association and selected from time to time by the Administrator or the Participant to supervise and provide legal services under the Plan.
18. “State Lodge” means the State Lodge of Michigan Fraternal Order of Police, a Michigan nonprofit corporation.

### **ARTICLE III ENTITLEMENT TO BENEFITS**

1. Entitlement to Benefits.

Those employees of Member Associations in good standing, as defined in the Labor Council’s bylaws, who are current in dues payments to the Labor Council and whose normal job description and duties are those of sworn law enforcement officers, corrections officers, and public safety emergency telephone operators/dispatchers, are eligible for benefits under the Plan.

2. Automatic Enrollment

Those employees entitled to benefits under the Plan will be automatically enrolled in the Plan and remain a Participant until benefits are terminated in accordance with Section 4 of this Article III.

3. Required Contributions

- a. *Amount:* Required contributions are a portion of the monthly dues paid on behalf of Participants by Member Associations to the Labor Council, as determined from time to time by the Directors. The initial monthly contribution to the Plan shall not be less than **five dollars (\$5.00)** per month per Participant. All Participants will be required to contribute the same monthly amount to the Plan through their Member Association.

- b. *Time of Payment of Contributions.* Payment of the contributions set forth in Section 3(a) of this Article III, absent compelling circumstances and subject to such conditions as determined by the Directors, shall be made in full on a monthly basis by each Member Association to the Plan on or before the first day of the month for which the payment applies (the “Due Date”) and shall be deemed delinquent if not received by the Plan by the 28<sup>th</sup> day of the month. A Member Association or Participant may join mid-month by payment of a prorated contribution.

Payment shall be deemed to have been made as of the date of postmark on the envelope containing the payment, provided it has been properly addressed to the Plan at its Administrative Office. The foregoing shall not apply, however, where payment is made by a check which is not honored at the bank upon which it was drawn.

Termination of a Participant’s participation in the Plan shall not result in any refund of the contributions.

- c. *Effect of Delinquency.* If monthly dues payments are not made as required in this Section, benefits under the Plan for the Participants of the delinquent Member Association shall cease in accordance with procedures adopted by the Administrator, without necessity of giving notice. Neither the delinquent Member Association nor any of its Participants shall thereafter be entitled to the benefits of the Plan for any period during which the delinquent Association is in default of payment.

- d. *Retroactive Reinstatement.* Notwithstanding the provisions of the immediately preceding paragraph, if all delinquent payments owed are made within two (2) months of the payment Due Date, entitlement to benefits shall be reinstated, effective retroactively to the payment Due Date, on the date of actual payment of all contributions and interest, if any, billed. Any such late payments shall automatically be applied first to the periods of delinquency and then, if sufficient, to the current period.

If the delinquency continues for more than two (2) months after the Due Date, subject to a determination of good cause by the Administrator, entitlement to benefits may be reinstated prospectively.

- e. *Co-payments and Deductibles.* Co-payments or deductibles are applicable only with respect to legal services provided when a guilty verdict is under appeal. If, however, a Participant enters into an agreement for legal services with an attorney whose fees and charges are greater than those fees and expenses approved by the Administrator, as set forth on Addendum A (the “Fee Schedule”), the Participant will be solely responsible for the fees and charges incurred in excess of those approved by the Board of Directors.

4. Termination of Benefits.

A Participant's benefits shall automatically terminate:

- a. When his or her participation in the Plan terminates (for example, through non-payment of contributions, co-payments or deductibles hereunder); or
- b. Subject to Section 5 of this Article III, when the Employment of the Participant terminates for any reason; or
- c. When the participation of the Member Association, or other applicable sponsoring organization, in the Plan terminates, whether voluntarily, by failure to pay Plan contributions, or otherwise; or
- d. When the Participant ceases to be represented by the Member Association, which is the recognized employee organization for the bargaining unit which includes the Participant's position.

5. Extended Coverage.

Notwithstanding Section 4 of this Article III, a Participant shall be entitled to the applicable benefits of subsections (a), (b), (c), (d), and (e) of this section, provided in all cases that the Participant would otherwise be entitled to benefits.

- a. *Involuntarily Terminated Participants.*
  - (1) A Participant who is being involuntarily terminated shall be entitled to benefits for actions arising from Events involving the involuntary termination of Employment.
  - (2) Provision of benefits for one type of action, for example, civil, shall not automatically entitle the Participant to benefits for another type of action, for example, criminal.
  - (3) A Participant who is being or has been involuntarily terminated shall be entitled to benefits for (1) actions for which coverage was granted prior to termination of Employment, and (2) actions involving Events which preceded and are unrelated to the Events involving the termination of Employment, provided that the Participant notifies the Legal Administrator of the action within six (6) months of termination.
  - (4) If coverage has been granted under subsection (a)(1) above and a second or subsequent action involving the Participant is commenced after termination of Employment, the Participant shall be entitled to benefits for the second or subsequent action only if (a) the new action arises from the Events giving rise to the involuntary termination, and (b) the Participant notifies the Legal Administrator of the second or subsequent action within six (6) months of termination of Employment.

(5) A Participant who resigns after the occurrence of any of the following shall be deemed to have been involuntarily terminated for purposes of civil and criminal coverage:

(1) Upon the Administrator's receipt of a formal written notice of intent to terminate a Participant by his or her Member Association; or

(2) The Participant's assigned Plan Attorney or Field Representative has advised the Participant to resign, with the advice being reduced to writing, signed by the Participant, and transmitted within five (5) working days of signing to the Legal Administrator; or

(3) Other good cause as determined by the Administrator.

b. *Retired Participants.*

A former Participant shall be entitled to benefits in accordance with the Plan for any act or omission occurring while he or she was a Participant, if, subsequent to the act or omission, he or she retires pursuant to the retirement rules of his or her collective bargaining agreement.

c. *Laid-Off Participants.*

A Participant who has been involuntarily laid off from Employment due to a reduction in force, a reorganization of operations, the disbanding of a department, or the consolidation or merger of the Participant's department with another department or agency shall be entitled to benefits in accordance with the terms of the Plan in effect on the effective date of the lay-off in any civil or criminal action brought against him or her arising from any act or omission of the Participant within the scope of his or her Employment prior to the lay-off, provided that the Participant notifies the Legal Administrator of the action no later than the end of six (6) calendar months from the effective date of the lay-off.

d. *Promoted, Demoted, or Transferred Participants.*

A Participant, whose coverage has terminated due to a promotion, demotion, or transfer within an agency, shall be entitled to benefits for Events occurring prior to the promotion, demotion, or transfer in accordance with the terms of the Plan applicable to the Participant on the date of the Event.

e. *Leave of Absence for Military Service.*

A Participant while on a voluntary or involuntary leave of absence for Military Service shall be entitled to benefits under the Plan applicable to the Participant immediately prior to the leave of absence for Events occurring prior to the leave

of absence. For Events occurring during the leave of absence, such coverage shall be provided only if each of the following is satisfied:

- (1) the Participant pays dues during the leave of absence for Military Service; and
- (2) the Event occurs within the jurisdiction in which the Participant is legally authorized to exercise his or her duties; and
- (3) the Event does not arise out of or relate to, either directly or indirectly, the Participant's scope of Military Service responsibilities.

The Participant's Association is to notify the Administrator promptly if the Participant does not elect to pay dues during the leave of absence for Military Service.

#### **ARTICLE IV BENEFITS**

Subject to the exclusions and limitations set forth in the Plan, a Participant is entitled to the benefits as described in this Article IV and for which the required contributions have been made.

1. Legal representation in any civil or criminal action (including actions brought under 42 USC §1983 and Title 18 of the United States Code) brought against him or her arising from any act or omission of the Participant within the scope of his or her Employment at the rates established for such matters as set forth in Addendum A.
2. All customary, necessary, and reasonable services related to an action described in section 1 of this Article IV, including where it appears reasonably probable that such an action will be commenced.

#### **ARTICLE V EXCLUSIONS AND LIMITATIONS**

In addition to the exclusions and limitations set forth elsewhere in the Plan, the following exclusions and limitations shall apply:

1. Exclusions

The provision of benefits under the Plan shall be subject to the following exclusions:

- a. *Employment Practices.* No benefits shall be provided under the Plan for any action brought by a Participant arising out of any violation of, or covered by provisions of, the Equal Employment Opportunity Act, 42 U.S.C. Section 2000(3) et seq.; the Age Discrimination in Employment Act, 29 U.S.C. Section 623 et seq.; the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001 et seq.; the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq.; the Labor-

Management Relations Act, 29 U.S.C. Section 141 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301-4333.

- b. *Retirement.* No benefits shall be provided under the Plan to obtain, protect, preserve, or set aside pension or retirement benefits, including disability retirement benefits, under any federal, state, county, city, or city and county pension retirement system.
- c. *Workers' Compensation.* No benefits shall be provided under the Plan for any action within the jurisdiction of the Workers' Compensation Appeals Board; for any action to obtain, protect, preserve, or set aside workers' compensation benefits, industrial or non-industrial disability benefits, social security benefits, disability, health or other insurance benefits of a like or similar nature; or for any action for benefits payable under or because of an industrial injury, illness, disease, or death, whether by contract or otherwise, arising out of any of the provisions of a state Workers' Compensation Act or any similar federal, state, county, city, or city and county ordinance, law, resolution, regulation, or any contract of insurance.
- d. *Civil Service Disputes.* No benefits shall be provided under the Plan for any action to obtain, protect, preserve, or set aside any benefits or position with respect to any civil service, merit system, or personnel eligibility list for appointment or promotion to a position.
- e. *Punitive or Other Damages.* No benefits shall be provided under the Plan to cover any monetary award for damages, including but not limited to punitive or compensatory damages, whether by judgment, settlement or otherwise against a Participant in any action.
- f. *Attorneys' Fees.* No benefits shall be provided under the Plan to cover the attorneys' fees or costs of an opposing party awarded against a Participant in any action.
- g. *Discipline.* Appeals of administrative discipline shall be solely the responsibility of the Labor Council, pursuant to the collective bargaining agreement between the Participant's Member Association and the Labor Council in effect at the time of the discipline.
- h. *Breach of Employment Contract.* No benefits shall be provided under the Plan related to proceedings brought against a Participant for breach of an agreement with his or her employer to remain employed.
- i. *Health Conditions.* No benefits shall be provided under the Plan related to proceedings involving the health condition of a Participant, including physical and psychological conditions.



- j. *Bonds.* No benefits shall be provided under the Plan to pay for a bail bond or an appeal bond.

2. Defense.

- a. *Employer Provides Defense.* If a Participant is a named defendant in a civil action, and the Participant's Employer agrees to represent the Participant, the benefits under the Plan will be secondary to the representation by the Participant's employer.

- b. *No Employer Defense.* In the event the employer or its insurer refuses to defend the civil proceedings, then the Participant shall be entitled to the benefits under the Plan, and the Plan shall be subrogated to the Participant's rights against the employer, its insurer or other party's liability insurance.

- (1) *Third-Party Recovery.* As a condition of receiving benefits under the Plan, the Participant agrees that acceptance of benefits is constructive notice of this provision and agrees that in the event that the Participant recovers from any third party any amounts as damages (other than lost compensation), attorneys' fees, or costs in a case in which the Plan provided benefits, the Plan shall be entitled to reimbursement from such Participant to the full extent of the expenditures made by the Plan on behalf of the Participant. The person receiving the benefits further agrees that any funds received by that person, from any source, shall be held in (constructive) trust until such time as the obligation under this section is fully satisfied. Participants agree to cooperate with the Plan in obtaining reimbursement and, upon request, to execute any and all necessary documents. If a Participant has a cause of action against any third party for damages, attorneys' fees, or costs and does not wish to pursue the action, he or she will, upon request, assign those rights to the Plan to the extent lawfully permissible and assist the Plan in its prosecution of such action.

- (2) *Non-Cooperation or Misrepresentation by Participant.* No benefits shall be provided to a Participant who is untruthful to his or her Plan Attorney or Field Representative or who does not cooperate with his or her Plan Attorney or Field Representative. In such a case, the right of the Participant to benefits under the Plan may be terminated or suspended.

Furthermore, if benefits are provided to a Participant based upon misrepresentations by the Participant to the Legal Administrator or the Administrator, the Plan shall be entitled to terminate or suspend benefits hereunder and to obtain reimbursement from the Participant for the full amount expended by the Legal Defense Fund for services and costs on behalf of the Participant.

- (3) *Non-Interference.* No provision of the Plan shall require the Legal Administrator or its agents, or Plan Attorneys or any attorneys associated

with them, to perform any act in violation of the Michigan Rules of Professional Conduct, including but not limited to any rule which prohibits any organization or group from interfering with or controlling the performance of an attorney's duty to his or her client.

(4) *Settlement Opportunity or Jeopardy.* Benefits may be terminated in the event the Legal Administrator determines that it is in the best interest of a Participant to cease his or her participation in any particular case, including but not limited to cases where continued proceedings may subject the Participant to more severe civil, criminal, or administrative sanctions, damages, or attorneys' fees, or where the Participant has rejected a reasonable settlement proposal to resolve his or her case. A termination of benefits pursuant to this Section 2(b)(4) shall not constitute an impairment of any of the Participant's constitutional, statutory, or procedural rights that are held by any similarly situated criminal or civil defendant.

(5) *Appeal.* No benefits shall be provided to appeal a decision by a court, unless the Legal Administrator determines upon written request from the Participant that there exists a reasonable likelihood of success on the appeal. In addition, no benefits shall be provided pursuant to this subsection unless the participant pays in advance seventy-five percent (75%) of any applicable transcript costs, including transcripts for use by the Legal Administrator in considering a request for benefits under this subsection. Fees and expenses related to an appeal are subject to co-payments, deductibles, and limits as set forth on Addendum A, the Fee Schedule.

(6) *Geographical Scope of Coverage.* If a proceeding occurs outside of the geographical area in which the Legal Defense Fund is operating, which the Board of Directors in the exercise of its sole discretion shall periodically designate, then a participant shall not automatically be entitled to benefits under any benefit plan but shall instead receive only such benefits as the Board of Directors in the exercise of its sole discretion deems appropriate and reasonable.

3. Coordination of Benefits.

Benefits under the Plan shall not be provided to the extent they are furnished to a Participant by the Participant's employer, Member Association, or any other plan, program, or policy which provides group legal services to law enforcement officers, corrections officers or public safety dispatchers.

4. Benefits Paid According to Fee Schedule.

Benefits under the Plan will be provided in accordance with the Fee Schedule for Plan Attorney services adopted by the Board of Directors from time to time. The Plan shall not

be responsible for any charges made by a Plan Attorney, Field Representative, or other person in excess of the maximum benefit amount set forth in the Fee Schedule.

## **ARTICLE VI TRUST AND TRUSTEE**

1. Establishment of Trust. Effective upon the establishment of the Plan, the Company created a Trust for the purpose of funding the benefits under the Plan. Labor Council hereby agrees, subject to the provisions of the Plan and Trust, to transfer, assign, set over and convey unto the Trustee sums of money or other assets as specified herein, but in trust nevertheless, to be held and administered by the Trustee for the purpose of effectuating the Plan and for the purposes and uses and subject to the terms and conditions set forth in the Plan. The Trustee agrees to hold the monies and assets paid and contributed to the Legal Defense Fund, and any earnings upon the assets in the Legal Defense Fund, in trust for the uses and purposes and subject to the terms and conditions set forth herein.
2. Appointment of Trustee. The Trust shall be administered by the Trustee who is appointed by the Board of Directors. The Trustee, if more than one individual or entity, shall act by a majority of them at the time in office either at a meeting, by telephonic, video or electronic conference call, or in writing without a meeting. By such actions, they may authorize one or more of them to act on behalf of the Trustee solely for the execution and delivery of any documents, papers, checks or other instruments. Any document, paper, check or other instrument signed by any such authorized Trustee shall bind the Legal Defense Fund.
3. Receipt of Contributions. The Trustee shall hold all contributions made in accordance with the provisions of the Plan and the earnings thereon in trust. The Trustee may accept any and all payments or other contributions made in accordance with the Plan to the Legal Defense Fund by Member Associations through the Labor Council, and shall be under no duty to make any inquiries concerning the amount required or the sufficiency of any such payments or contributions for the purposes hereof.
4. Investment Authority. Except as provided to the contrary herein, the Trustee shall have full power and authority to manage and to invest and reinvest the assets of the Legal Defense Fund, regardless of whether the investments are expressly authorized by the laws of the state of Michigan for the investment of trust funds, and otherwise to deal with the Legal Defense Fund, and shall have full power to do any and all things incident thereto; provided, however, that the Trustee shall not engage, in the absence of a statutory or administrative exemption, in any transaction prohibited by ERISA Sections 404 or 406 and shall comply with the provisions of all federal laws governing the investment of the funds of tax-qualified pension plans. The Trustee shall have the authority to determine and carry out the funding policy of the Plan, so long as such policy, and the methods used to accomplish it, is consistent with the objectives of the Plan and employee welfare benefit plans, within the meaning of section 3(1) of ERISA, generally. The Trustee, in administering the Legal Defense Fund, is authorized and empowered, subject to the limitations otherwise contained in this Agreement:

- (a) To purchase, subscribe for, sell and trade in any securities or other property, and to retain such securities or other property in trust, but the Trustee may not open, maintain, or engage in any “short” sales for cash or on margin, or open, operate, or maintain any margin account with any broker or other entity, or use the assets of the Legal Defense Fund as security for loans or advances made to the Trustee, except if such loan or advance is made through an institution that is licensed through the Federal Deposit Insurance Agency; the National Credit Union Administration, or the Federal Office of Comptroller of the Currency.
- (b) To purchase, sell, exchange, convey, or transfer at public or private sale, for cash, or upon credit, or otherwise dispose of any property, real or personal;
- (c) To adjust, settle, contest, compromise and arbitrate any claims, debts, or damages due or owing to or from the Legal Defense Fund, and to sue, commence or defend any legal proceedings in reference thereto;
- (d) To exercise any conversion privilege, subscription rights or other options pertaining to or in connection with securities or other property held by the Trustee; to consent to or otherwise participate in any reorganization, consolidation, merger or adjustment pertaining to any corporate reorganization or other changes affecting corporate securities, to deposit any property with any committee or depository, and to pay any assessments or other charges in connection therewith;
- (e) To exercise directly, or by general or limited power of attorney, any right, including the right to vote, and grant proxies, incident to any securities or other property held by the Trustee; provided, however, that the Board of Directors reserves the right to appoint the Administrator, an Investment Manager, or itself to exercise all voting and proxy rights;
- (f) To manage, administer, operate, repair, improve and mortgage or lease for any number of years, or to otherwise deal with any real property or interest therein; to renew or extend or to participate in the renewal or extension of any mortgage or land contract, and to agree to the reduction in the interest on any mortgage or land contract or other modification or change in the terms of any mortgage or land contract or guarantee thereof in any manner and upon such terms as may be deemed advisable; to waive any defaults whether in the performance of any covenant or condition of any mortgage or land contract or in the performance of any guarantee or to enforce any such default in such manner as may be deemed advisable, including the exercise and enforcement of any and all rights of foreclosure;
- (g) To invest in savings accounts and/or certificates of deposit, whether or not provided by or through a bank Trustee, if any, or otherwise, so long as those accounts or certificates bear the prevailing rate of interest. If a Trustee is a bank it may provide ancillary banking services to the Plan and Trust so long as such services are provided at no more than reasonable compensation and so long as the Trustee adopts adequate internal safeguards which assure that the provision of such ancillary

services is consistent with sound banking and financial practice and so long as the extent to which such ancillary service is provided is subject to specific guidelines issued by the Trustee and pursuant to which it does not provide such ancillary service (i) in an excessive or unreasonable manner, or (ii) in a manner inconsistent with the best interests of Participants;

- (h) With the prior written consent of an affirmative vote of two-thirds (2/3) of the Trustees, to engage in securities lending, repurchase or reverse repurchase agreements;
  - (i) To invest in a pooled, common or collective investment fund or trust maintained by a Trustee or otherwise, the governing provisions of such fund or trust being incorporated by reference to the extent required by applicable law;
  - (j) To hold any part or all of the Trust uninvested;
  - (k) To employ suitable agents and counsel, and to pay their reasonable expenses and compensation;
  - (l) To extend the time of payment of any obligation;
  - (m) To make, execute, and deliver as Trustee any and all deeds, leases, mortgages, advances, contracts, waivers, releases or other instruments in writing necessary or proper in the employment of any of the foregoing powers; and
  - (n) To exercise, generally, any of the powers which an individual owner might exercise in connection with property either real, personal or mixed held by the Legal Defense Fund, and to do all other acts that the Trustee may deem necessary or proper to carry out any of the powers set forth in this Agreement or otherwise in the best interests of the Participants in accordance with ERISA Section 404.
5. Direction of Investment. Board of Directors may from time to time specify by written notice to the Trustee whether the investment of the Legal Defense Fund shall be managed by one or more Investment Managers appointed by the Board of Directors, or whether both the Trustee and one or more Investment Managers are to participate in investment management and if so how the investment responsibility is to be divided with respect to assets, classes of assets or separate investment funds specified and defined in such notice. If an investment of the Legal Defense Fund is to be directed in whole or in part by an Investment Manager, the Trustee shall be given copies of the instruments appointing the Investment Manager and evidencing its acceptance of such appointment and acknowledgment that it is a fiduciary of the Plan, and a certificate evidencing the Investment Manager's compliance with the registration requirements of ERISA Section 3(38). The Trustee may continue to rely upon such instruments and certificates until otherwise notified in writing.

The Trustee shall follow the directions of an Investment Manager regarding the investment and reinvestment of the Legal Defense Fund, or such portion as is under management by the

Investment Manager, and shall be under no duty or obligation to review any investment to be acquired, held or disposed of pursuant to such direction nor to make any recommendations with respect to the disposition or continued retention of any such investment. The Trustee shall have no liability or responsibility for acting without question on the direction of, or failing to act in the absence of any direction from, the Investment Manager, unless the Trustee knows that by such action or failure to act it will be participating in a breach of fiduciary duty by the Investment Manager.

The Investment Manager at any time and from time to time may issue orders for the purchase or sale of securities directly to a broker, and in order to facilitate such transaction the Trustee upon request shall execute and deliver appropriate trading authorizations. The Investment Manager shall give written notification of the issuance of each such order promptly to the Trustee, and the broker shall confirm the execution of each such order to the Trustee. Such notification shall be authority for the Trustee to pay for securities purchased against receipt thereof and to deliver securities sold against payments therefor.

In the event that an Investment Manager should resign or be removed, the Trustee shall manage the investment of the Legal Defense Fund unless and until notified of the appointment of another Investment Manager as provided herein.

6. Accounting. The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions hereunder and all such accounts and other records relating thereto shall be open to inspection and audit at all reasonable times by any person designated by the State Lodge or the Labor Council. Within 90 days following the close of the fiscal year of the Legal Defense Fund and within 90 days after the removal or resignation of the Trustee as provided herein, the Trustee shall file with the Labor Council a written account setting forth all investments, receipts, disbursements and other transactions effected by the Trustee during such fiscal year or during the period from the close of the last fiscal year to the date of such removal or resignation. Upon the expiration of 180 days from the filing of such account, the Trustee shall be forever released and discharged from all liability and accountability to anyone with respect to the propriety of the Trustee's accounts and transactions shown in such accounts except with respect to any such account or transactions as to which the State Lodge or the Labor Council shall within such 180 day period file written exceptions and objections.
7. Standard of Exercise of Authority. The Trustee shall discharge its duties under this Agreement solely in the interest of Plan Participants and for the exclusive purpose of providing benefits to such Participants and defraying reasonable expenses of administering the Plan, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, all in accordance with the provisions of this Agreement insofar as they are consistent with the provisions of ERISA and respective regulations, as this Agreement and ERISA may from time to time be amended.

8. Written Authorization. Except as otherwise specifically provided, any action or direction by the Administrator pursuant to this Agreement shall be evidenced in writing. The Trustee may continue to rely upon any such direction filed with the Trustee pursuant to this Article until receipt by the Trustee of subsequent written direction. The Trustee shall be fully protected in acting upon any instrument, certificate or paper believed by the Trustee to be genuine and to be signed or presented by the proper person or persons; the Trustee shall be under no unreasonable 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 contained therein.
9. Removal of Trustee. The Board of Directors may remove a Trustee that they have appointed by written notice of such removal mailed to the Trustee or by delivery of written notice to the Trustee. Such removal shall take effect as of the date of mailing or delivery of such notice. A Trustee may resign upon giving 60 days written notice to the Board of Directors, but the Board of Directors, as the case may be, may waive the writing or the time. Upon such removal or resignation, the Board of Directors agree to pay the removed or resigning Trustee his fee, if any, to the date of the removal or resignation and any and all reasonable expenses incurred by the Trustee in connection with the settlement of the Trustee's accounts. In no event shall such resignation or removal terminate this Trust, but the Board of Directors, shall have the duty of promptly appointing a successor Trustee who will agree to carry out the terms of this Trust. In the case of the resignation or removal of a Trustee, the Trustee or his, her, or its legal representatives shall promptly assign, transfer and deliver to the successor or remaining Trustee(s) all contracts, funds and property in the terminated Trustee's possession under this Agreement, together with such records and data from the terminated Trustee's books of account (or copies thereof) as shall be necessary and proper for the information and records of the successor Trustee. If any corporate Trustee changes its name, consolidates or merges with another corporation, or otherwise reorganizes, any resulting corporation that succeeds to the fiduciary business of such Trustee will become a Trustee hereunder in lieu of such corporate Trustee unless the Board of Directors expressly indicates otherwise.
10. Fees and Expenses. Trustee's and Investment Manager's fees and expenses for their services shall be such as may be agreed upon in writing with the Board of Directors; provided that, no compensation for service as a Trustee or Investment Manager shall be paid to any individual by the Board of Directors if such individual is an employee of the Company. To the extent the Board of Directors elects not to pay such fees and expenses, unpaid fees and expenses of the Trustee or Investment Managers shall be chargeable against, deductible from, and constitute a lien upon the Legal Defense Fund.
11. Exclusive Benefit The Legal Defense Fund shall be held by the Trustee for the benefit of Participants covered under the terms of the Plan and, except as the provisions of the Plan shall otherwise expressly dictate, no part of the corpus or income shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants covered under this Agreement or costs in connection therewith or incidental thereto. No Participant, or any other person, shall have any right or interest in or to any portion of any funds which may hereafter contribute under the Plan, nor any right to, or interest in, any part of the earnings of

the Legal Defense Fund, nor shall any Participant or any other person have any right to any payment whatsoever, except as and to the extent expressly provided under the provisions of the Plan.

12. Provisions Regarding Co-Trustees. During any period of time when the Trustee shall consist of two or more persons, the Trustee shall act by a majority of such persons at the time in office, and such action may be taken either by vote at a meeting or in writing without a meeting. The persons serving as co-Trustees may unanimously designate any one or more co-Trustees to execute any instrument or document on behalf of all, including but not limited to the signing or endorsement of any check and the signing of any applications for contracts, and the action of such designated co-Trustee shall have the same force and effect as if taken by all the co-Trustees. In the event of such authorization, all the co-Trustees shall in writing notify the Board of Directors, and such parties shall be entitled to rely upon such notifications until one or more co-Trustees shall give written notification to the contrary. Except as otherwise provided in the foregoing provisions of this Section, each such co-Trustee shall use reasonable care to prevent another co-Trustee from committing a breach. Such persons shall jointly manage and control the Trust assets, except that this provision shall not preclude any agreement, and the co-Trustees are hereby authorized to agree (in a written document executed by all co-Trustees) to allocate specific responsibilities, obligations or duties among themselves, in which event a co-Trustee to whom certain responsibilities, obligations or duties have not been allocated shall not be liable by reason of this provision, either individually or as a Trustee, for any loss resulting to the Trust arising from the acts or omissions on the part of another co-Trustee to whom such responsibilities, obligations or duties have been allocated. Nothing in this section shall limit any liability that a fiduciary may have under Part 4 of Title I of ERISA.
  
13. Additional Provisions Regarding Trustee. The duties and the indemnification of the Trustee of the Plan will also be governed by the following provisions:
  - (a) The Trustee will have the authority to manage and control the Legal Defense Fund to the extent provided in this Agreement, but does not guarantee the Legal Defense Fund in any manner against investment loss or depreciation in asset value, or guarantee the adequacy of the Legal Defense Fund to meet and discharge all or any liabilities of the Plan. Nothing in this Agreement shall be construed as requiring the Trustee to make any payment in excess of the amounts held in the Legal Defense Fund at the time of such payment or otherwise to risk or expend its own funds.
  
  - (b) The duties and obligations of the Trustee will be limited to those expressly imposed upon it by the Plan and this Agreement or subsequently agreed upon by the parties. The Trustee shall have no responsibility for disclosure to Participants regarding the terms of the Plan, or for the validity thereof. Responsibility for administrative duties required under the Plan or applicable law not expressly imposed upon or agreed to by the Trustee, will rest solely with the Administrator.



- (c) The Trustee shall, as instructed by the Administrator, disburse benefits as herein provided and will not be responsible in any way for the application of any payments it is directed to make.
  - (d) The Trustee shall be under no obligation or liability to anyone with respect to any failure on the part of the Company, the Labor Council, the Company's independent accounting firm, the Administrator, or any Participant to perform any of their respective obligations under the Plan or this Agreement.
  - (e) An individual serving as Trustee will not be prevented from receiving any benefits to which he may be entitled as a Participant in the Plan, so long as the benefits are computed and paid on a basis which is consistent with the terms of the Plan as applied to all other Participants.
  - (f) The Trustee will not deal with the Legal Defense Fund in its own interest or for its own account; act in its individual or in any other capacity in any transaction involving the Legal Defense Fund on behalf of a party, or represent a party, whose interests are adverse to the interests of the Plan or to the interests of its Participants; or receive consideration for its own personal account from any party dealing with the Plan or the Legal Defense Fund in connection with a transaction involving assets of the Legal Defense Fund.
  - (g) Except with respect to an individual's liability for his or her own willful misconduct or fraud, any individual serving as Trustee will be indemnified by the Company against all liability to which the Trustee may be subjected, including all expenses reasonably incurred in its defense, for any action or failure to act resulting from compliance with the Administrator's instructions, or any other fiduciary of the Plan, and for any liability arising from the actions or non-actions of any predecessor Trustee or fiduciary or other fiduciaries of the Plan.
  - (h) Borrow from anyone such sum or sums from time to time as the Trustee considers necessary or desirable and for the best interests of the Legal Defense Fund, and for that purpose, to pledge all or any part of the Legal Defense Fund.
14. State Lodge Liaison. The parent corporation of the State Lodge, through the State Lodge president, shall appoint a liaison to the Plan who is an active member of the State Lodge, and who shall report directly to the State Lodge president. The State Lodge president shall provide the Trustee with the name of this individual in writing. The Trustee shall provide access to all documents and records of the Trustee upon reasonable request of the liaison. The liaison may not simultaneously serve in any other capacity with respect to the Plan or trust.

## **ARTICLE VII ADMINISTRATOR**

1. Appointment. The Plan shall be administered by a committee appointed by and serving at the pleasure of the Board of Directors (the "Plan Administrator") or

“Administrator”) consisting of one or more individuals. A member of the Administrator may resign upon 30 days’ written notice to the Board of Directors, but the Board of Directors may waive the writing or the time, or may be removed at any time upon notice from the Board of Directors. In the event of the death, resignation, or discharge of a member of the Administrator, the Board of Directors may appoint a successor. The Administrator, if more than one individual, shall act by a majority of its members at the time in office either at a meeting, by telephonic, video or electronic conference call, or in writing without a meeting. By such actions, they may authorize one or more of them to act on behalf of the Administrator solely for the execution and delivery of any documents, papers, checks or other instruments. Any document, paper, check or other instrument signed by any such authorized member shall bind the Administrator. A member of the Administrator will not be prevented from receiving any benefits to which he may be entitled as a Participant or Beneficiary in the Plan, so long as the benefits are computed and paid on a basis that is consistent with the terms of the Plan as applied to all other Participants. A member of the Administrator may not decide or determine any matter or question relating solely to his own benefits under the Plan unless he could make such decision under the Plan if he were not a member of the Administrator.

2. General Authority. The Administrator shall administer the Plan in accordance with its terms, and shall have all powers and rights necessary to carry out the provisions of the Plan, including the following powers, rights and duties:
  - (a) To conclusively construe and interpret the Plan, to decide all questions of eligibility or participation and to determine the amount, manner and time of payment of any benefits hereunder and to remedy ambiguities, inconsistencies or omissions.
  - (b) To adopt and enforce such rules of procedure as may be appropriate for the administration of the Plan and as are consistent with its terms.
  - (c) To determine the right or entitlement of any person to a benefit, to afford any person dissatisfied with such determination the right to a hearing thereon and to direct payments in accordance with the provisions of the Plan.
  - (d) To make appropriate adjustments as to amounts mistakenly paid from the Plan and to make appropriate adjustments to ensure that Participants receive the proper amount from the Plan.
  - (e) To enroll Member Associations and Participants in the Plan, to distribute and receive Plan administration forms, to comply with all applicable governmental reporting and disclosure requirements, and to prepare and distribute, in such manner as the Administrator deems appropriate, information explaining the Plan.
  - (f) To employ any advisors, agents, attorneys, accountants or other persons (who may also be employed by the Labor Counsel) and to allocate or delegate to them such powers, rights and duties as the Administrator considers necessary or

advisable to properly carry out the administration of the Plan, provided that, any such allocation or delegation and the acceptance thereof shall be in writing.

- (h) To have full discretionary authority and control over the Plan including, but not limited to, that contemplated by the U.S. Supreme Court's decision in *Firestone Tire and Rubber Company v. Bruch*, 489 U.S. 101 (1989).

Any determination by the Administrator shall be conclusive and binding on all persons. In the exercise of its discretion, the Administrator shall not discriminate either for or against any Participant, or any group or class thereof. All powers necessary to the operation of this Plan, not specifically retained by the Board of Directors or given to the Trustee, are hereby granted to the Administrator. Notwithstanding the above, the Administrator shall have no power to add to, subtract from or modify any of the terms of the Plan, nor to change or add to any benefits provided by the Plan, nor to waive or fail to apply any requirement of eligibility for the receipt of benefits under the Plan; provided that, the Administrator shall have the power to take such actions as it shall consider necessary or appropriate to satisfy the nondiscrimination requirements of the Code.

- 3. Plan Records. Except as otherwise provided herein, all documents and records of the Plan shall be kept and maintained by the Administrator or by such assistant of the Administrator or agent employed by the Administrator to whom such duty is delegated by the Administrator; or the Administrator, in its discretion, may direct the Trustee to maintain such documents and records.

Every person (such as the Trustee, Administrator, or an accountant) who is subject to a requirement to file any description or report or to certify any information therefor under Title I of ERISA (whether or not expressly required to do so by this Plan), or who would be subject to such a requirement but for an exemption or simplified reporting requirement under ERISA Sections 104(a)(2) or (3), shall maintain records on matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based on the information which they contain, or six years after the date on which such documents would have been filed but for the aforesaid exemption or simplified reporting requirement.

- 4. Agent for Service of Process. The Administrator shall be the agent for service of legal process on the Plan, and may be delivered to the Administrator at the Administrative Office.
- 5. Compensation and Indemnification. The Administrator shall be paid such fees and be reimbursed for such expenses incurred for its services hereunder, including costs of its advisors, agents, etc. as shall be agreed to between the Administrator and the Board of Directors; provided that, if a member of the Administrator is an employee of the Company, he or she shall serve without compensation for services as a member. To the extent the

Board of Directors elects not to pay such fees and expenses, the unpaid fees and expenses of the Administrator shall be chargeable against, deductible from and constitute a lien upon the Legal Defense Fund. Except with respect to a member's liability for his or her own willful misconduct or fraud, any individual serving as a member of the Administrator will be indemnified by the Company against all liability to which the Administrator may be subjected, including all expenses reasonably incurred in its defense, for any action or failure to act resulting from compliance with the Board of Director's instructions, the Trustee, or any other fiduciary of the Plan, and for any liability arising from the actions or non-actions of any predecessor Administrator or fiduciary or other fiduciaries of the Plan.

6. Reporting and Disclosure. The Administrator shall exercise such authority and responsibility as it deems appropriate in order to comply with the requirements of ERISA and respective regulations relating to reporting and disclosure to Participants and government agencies.
7. Rights of Administrator. The Administrator may inspect the books and records of the Labor Council whenever such inspection shall be reasonably necessary in order to determine any factor pertinent to the performance of the Administrator's duties under this Agreement, including the duty to determine the amount required or the sufficiency of any such payments or contributions to the Plan. The Administrator, however, shall not be required to make such inspection, but may, in good faith, rely on any statement of the Labor Council or of any of its officials.
8. No Separate Administrator. Notwithstanding the foregoing provisions of this Article VII:

If and while there is no Administrator, either because none is designated or no one or more individuals are at the time in question actively serving as members thereof, the responsibilities, rights, powers, authority, and functions of the Administrator shall be vested in the Board of Directors. In such event, the Board of Directors and Administrator need not furnish information, directions, instructions or notices, or make reports or demands, one to the other.

Whoever performs the functions of the Administrator shall be the "plan administrator" as defined in ERISA.

## **ARTICLE VIII FIDUCIARY RESPONSIBILITY**

1. Named Fiduciaries. The Company, the Administrator and the Trustee are the named fiduciaries of the Plan, within the meaning of ERISA Section 402(a)(1), but solely to the extent of their respective responsibilities specified in this Agreement. The Administrator is the sole named fiduciary with regard to, and shall exercise all, discretionary authority and control which is not specifically granted to the Company or the Trustee with respect to management of the Plan.
2. Protective Provisions for Fiduciaries. To the extent permitted by ERISA:

- (a) No fiduciary shall be liable with respect to a breach of fiduciary duty if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.
  - (b) A fiduciary's responsibility shall be limited to performance of those duties conferred upon such fiduciary by or pursuant to the Plan and, subject to ERISA Sections 405 and 410, no fiduciary shall be responsible for the acts or omissions of any other fiduciaries.
  - (c) Notwithstanding any other provisions of this Agreement,
    - (1) Any fiduciary may, but need not, purchase insurance from and for his own account to cover liability arising under or with respect to the Plan.
    - (2) The Company may, but need not, purchase insurance to cover liability of a person serving in a fiduciary capacity with respect to the Plan.
    - (3) Upon first obtaining the written consent of the Administrator, any Trustee may use assets of the Trust to purchase insurance for itself and/or one of the other fiduciaries and/or the Trust to cover liability or losses occurring by reason of the act or omission of itself and/or one or more other fiduciaries, if such insurance permits recourse by the insurer against such Trustee and/or one or more other fiduciaries in question in the case of its or their breach of a fiduciary obligation.
  - (d) Any fiduciary may, by written instrument, allocate and delegate to others any of such fiduciary's powers, duties or responsibilities (other than the Trustee's responsibilities, as defined in ERISA Section 405(c)(3)), terminable upon such notice as such fiduciary deems prudent. If the fiduciary responsibilities of a fiduciary are allocated or delegated to any other person, the fiduciary shall not be liable for the acts or omissions of such other person, except as otherwise required by ERISA. Any person may serve in more than one fiduciary capacity with respect to the Plan.
  - (e) Any fiduciary may employ one or more persons to render advice with regard to any responsibility that such fiduciary has under this Agreement.
  - (f) Nothing in this Plan shall relieve any person from liability for his own willful misconduct or fraud.
3. Bonding. The Trustee, Administrator and every fiduciary of this Plan and every person who handles funds or other property of this Plan shall be bonded, the amount of the bond to be fixed at the beginning of each Plan Year, in an amount which shall not be less than the greater of \$1,000 or 10% of the amount of the funds handled, nor more than \$500,000; provided, however, no bond need be provided if an exemption is granted under ERISA Section 412(e) or if the person is exempted by reason of ERISA Sections 412(a)(1) or 412(a)(2). For purposes of fixing the amount of such bond, the amount of funds handled shall be equal to the funds handled by each person to be bonded and by their predecessor or

predecessors, if any, during the preceding Plan Year. Such bond shall provide protection to the Plan against loss by reason of acts of fraud or dishonesty on the part of the person bonded, directly or through connivance with others. The form of the bond and surety shall meet the requirements of ERISA Section 412(a).

## **ARTICLE IX CLAIMS PROCEDURES**

1. Participant's Duty to Notify Legal Administrator of Claim.

A Participant shall be obligated to notify the Legal Administrator at the Administrative Office of his or her claim for benefits before he or she is entitled to any benefits under the Plan. Notification to any Trustee, Plan Attorney, Field Representative, Labor Council personnel, the personnel of another sponsoring organization or any party other than the Legal Administrator is ineffective to obtain entitlement to benefits. Failure to notify the Legal Administrator shall relieve the Plan of any obligation to provide benefits.

2. Telephone Hot Line (Emergency).

The Legal Administrator shall maintain a 24-hour-a-day telephone service to respond to Participants' needs for services. The number is 517-979-5090, the facsimile number is 517-679-5091.

3. Acceptance or Denial of Claim by Legal Administrator.

The Legal Administrator shall consider each claim for Plan benefits and determine whether to grant or deny coverage under the Plan. If coverage is granted, the Participant's Member Association shall be notified, provided the Association has requested notification. If the claim is denied, the Participant has the right to appeal a denied claim pursuant to the procedures described in Section 6 of this Article IX.

4. Referral by Legal Administrator to Plan Attorney or Field Representative.

The Legal Administrator shall refer representation of a Participant who is entitled to benefits to a Plan Attorney or Field Representative. In making such a referral, the Legal Administrator shall, where feasible, select a Plan Attorney or Field Representative who meets the approval of such Participant's Member Association. Any dispute concerning the referral of a case to a Plan Attorney or Field Representative may be appealed by the Participant to the Administrator. Alternatively, a Participant may select his own legal counsel, but the Participant will be solely responsible for fees and expenses in excess of those set forth in the Fee Schedule in attached Addendum A.

5. Dissatisfaction or Non-Cooperation with Plan Attorney or Field Representative.

Subject to the appeal rights described in Section 3 above, if a Participant unreasonably refuses representation by the Plan Attorney selected to represent him or her or fails or refuses to accept the advice of the Legal Administrator, a Plan Attorney, or Field

Representative, the Plan shall be free from further obligation to such Participant to provide benefits or otherwise. Such Participant shall be free to employ counsel at his or her own expense to represent him or her.

6. Appeal of Adverse Benefit Determinations.

- a. *Denial.* If a claim for Plan benefits made by a Participant is wholly or partially denied, the Legal Administrator shall give written notification of such denial to the Participant within 90 days after its receipt of the Participant's claim for benefits. Under certain circumstances, the Legal Administrator is allowed an additional period of not more than 90 days (180 days in total) within which to notify the Participant of its decision. If such an extension is required, the Participant will receive a written notice from the Legal Administrator indicating the reason for the delay and the date the Participant may expect a final decision.

The notification shall include the following information:

- (1) The specific reason(s) for such denial;
- (2) Specific reference to the Plan provisions upon which the denial is based;
- (3) A description of any additional material or information which may be needed to clarify or complete the claim and an explanation of why such information is required; and
- (4) An explanation of the Plan's appeal procedure with respect to the denial of benefits.

b. *Appeal Adverse Benefit Determination.*

- (1) Any Participant whose claim has been denied may appeal the determination to the Plan Administrator, provided that he or she requests the appeal in writing within 60 calendar days after being notified of the denial. The Participant may request and examine documents pertinent to the denial and may submit written comments, documents, records and other information relating the to the claim for benefits to the Administrator.
- (2) The Administrator shall notify a Participant of its benefit determination on review within a reasonable period of time not to exceed 60 days after receipt by the Administrator of the Participant's request for review of an adverse benefit determination, unless the Administrator determines that special circumstances require an extension of time for processing the claim. If the Administrator determines that an extension of time for processing is required, written notice of the extension will be furnished to the Participant prior to the termination of the initial 60-day period. The written notice will indicate the special circumstances requiring

an extension of time and the day by which the Administrator expects to render the determination on review.

The Participant may request a hearing to present his or her case as to eligibility for coverage and any evidence in support of his or her position. The Company shall then appoint an *ad hoc* appeal board (the “Appeal Board”), consisting of not less than three (3), or more than five (5) active individuals of Member Associations who participate in the Plan. The Appeal Board may not include an individual from the same Member Association bargaining unit as the Participant who requests a hearing. The hearing will be held at a time and location that gives adequate notice and appropriate consideration to the Participant and the appointed Appeal Board members. All costs and fees of persons appearing at the Participant’s request at a hearing before the Appeal Board will be the sole responsibility of the Participant. The Appeal Board shall conduct a private conference at the conclusion of the hearing and issue a decision by an affirmative vote of a majority of Appeal Board members as soon as possible, but in no event later than five (5) business days following the hearing date. The Appeal Board’s decision shall be in writing, with a true copy delivered to the Participant and the Administrator. The decision of the Appeal Board will be final and binding.

## **ARTICLE X MISCELLANEOUS**

### 1. Limitation of Rights.

Neither the establishment of the Plan or the Legal Defense Fund, nor any modifications thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving any Participant or other person any legal or equitable right of action or recourse against the Company, the Labor Council, or their employees or agents, any other sponsoring organizations or their employees or agents, the Plan or its agents or employees, or the Trustee, except as provided in the Plan and in the Agreement.

### 2. Applicable Laws and Regulations.

References in the Plan to any particular sections of any local, state, or federal statute shall include any regulation pertinent to such sections and any subsequent amendments to such sections or regulations. To the extent not covered by federal law, the Plan and Agreement shall be construed according to the laws of the State of Michigan, and none of the Trustee the Plan Administrator, the Plan or the Legal Defense Fund shall be under any duty or obligation to account to any court other than a court in Michigan.

### 3. Confidentiality.

A provider of services to a Participant pursuant to a Benefit Plan, whether an attorney or a Field Representative, shall not divulge to third parties matters which a Participant



revealed to the provider in confidence. A provider shall, however, be entitled to provide information to the Legal Defense Fund, including to its Trustee, its Legal Administrator, the Plan Administrator, concerning a Participant's case. The Legal Defense Fund, including its Trustee, its Legal Administrator, and Plan Administrator shall not reveal to third parties matters revealed to it in confidence by a Participant in the course of his or her application for benefits or receipt of benefits from the Legal Defense Fund. The Legal Defense Fund, including its Trustee, Legal Administrator, and Plan Administrator shall, however, be permitted to provide (1) to Member Associations general information concerning that Association's usage under a Benefit Plan for the purpose of assisting that Association in its budgetary process or in its selection of Benefit Plans or cost containment options offered in the Plan and (2) to Participants educational materials, including discussion of case examples, to assist them in avoiding discipline or other adverse action or to inform them of legal development of interest to law enforcement.

4. Independent Contractors.

All Plan Attorneys, Field Representatives, and other providers of service are independent contractors and not agents of the Plan.

5. Waivers.

The Board of Directors, for good cause shown as determined by the Board, is authorized to waive any financial assessment or fee imposed upon an Association pursuant to the Plan or to trust policy, including but not limited to a waiver of interest. This authorization does not extend to requests by individual Participants for waivers.

6. Interpretation of the Trust Agreement and the Plan.

The Administrator possesses full authority and power to interpret the terms of the Plan and Agreement. The Administrator also possesses full authority to determine whether any claim for benefits is to be granted or denied.

7. Non-Assignment of Benefits.

An eligible individual shall not have the right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute, or anticipate any benefit payment hereunder. Benefits hereunder shall not be subject to levy or execution or attachment or garnishment.

8. Extent of Liability.

The benefits provided by the Plan are not insured by any contract of insurance, and there is no liability on the Board of Directors or other individual or entity to provide payment over and beyond the amount in the Legal Defense Fund collected and available for such purpose.

9. Standard of Review.

No action of the Administrator, Board of Directors or the Appeal Board may be revised, changed, or modified by any arbitrator, court, or other entity unless the party seeking such action has exhausted all of its administrative remedies under the Plan and is able to show by clear and convincing evidence that a challenged decision was arbitrary and capricious in light of the information actually made available to the Administrator, the Board of Directors, or the Appeal Board at the time of its decision.

**ARTICLE XI  
AMENDMENT AND TERMINATION**

In order that the Labor Council may carry out its obligation to maintain, within the limits of its resources, a program dedicated to providing the maximum possible benefits for all Participants, the Labor Council expressly reserves the right, in its sole discretion, at any time and from time to time, but upon a non-discriminatory basis:

1. To amend or terminate any benefit, even though such amendment or termination affects cases already accepted by the Legal Administrator, provided that the responsibility of the Plan to pay for approved services previously rendered shall not be affected;
  
2. To increase the rate of contributions or alter the method of payment thereof; and,
  
3. To amend or rescind any other provision of the Plan.

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## **ADDENDUM A**

### **FEE SCHEDULE**

The Plan shall offer qualifying payments to an attorney who represents a Plan Participant for purposes of criminal defense in one of three options that are agreed to in writing between the Plan and the Participant's attorney:

1. An hourly rate that is an average of Court-appointed attorney rates for State and Federal Courts in the 4-County area of Metro Detroit, Michigan, designated as Wayne, Macomb, Oakland, and Washtenaw County Circuit Courts; and including the Federal District Court for the Eastern District of Michigan. The hourly rate shall not be less than \$175.00/hour, and shall be revised and adjusted annually, based upon the calendar year; or,
2. A hybrid rate, which supplements but does not supersede the hourly rate charged by an attorney to a Plan Participant for criminal defense, with the balance of all retainer fees owed the attorney to remain the exclusive responsibility of the Participant. The hourly rate shall not be less than \$175.00/hour, and shall be revised and adjusted annually, based upon the calendar year and as determined by the average of the Court-appointed attorney rates for State and Federal Courts in the 4-County area of Metro Detroit, Michigan, designated as Wayne, Macomb, Oakland and Washtenaw County Circuit Courts; and including the Federal District Court for the Eastern District of Michigan; or,
3. A fixed, flat fee as negotiated between the attorney representing a Plan Participant and the Plan's Administrator, which shall be a final and binding sum for any and all future fees and costs incurred in the representation of the Plan Participant, and which shall discharge the Plan from any and all future fees and costs regarding the Event that gave rise to the attorney's representation of the Participant.
4. All attorney requests for expert witnesses; the testing of evidence; interlocutory motions, and costs not included in the hourly rate cited in this Addendum must be submitted in writing and be approved in writing and in advance by the Plan's Legal Administrator, following consultation with the Plan Participant's attorney.

**SIGNATURES OF THE BOARD OF DIRECTORS**

We have reviewed the attached document known as the **MICHIGAN FOP LEGAL DEFENSE PLAN AND TRUST AGREEMENT**, and as the appointed Board of Directors we have approved and memorialized its contents in **Resolution #01** of the Board.

Our acceptance and consent for the use of our electronic signatures pursuant to Michigan law is on file at the business office of the Michigan FOP Legal Defense Plan.

**affirmed-s/John J. Belile**

**January 29, 2015**

Dated

**affirmed-s/Leonard R. Paquette**

**January 29, 2015**

Dated