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## **SUMMARY PLAN DESCRIPTION**

**International Union of Operating Engineers Local  
399 Participating Employers Deferred  
Compensation Employee Savings Plan**

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**Prepared September 2018**

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## Introduction

### Type of Plan

Effective January 1, 2016, International Union of Operating Engineers Local 399 amended its 401(k) plan. The plan is named the International Union of Operating Engineers Local 399 Participating Employers Deferred Compensation Employee Savings Plan, but it will be referred to in this summary as the *Plan*. The plan is a multiemployer Plan established between the Union and Participating Employers based on a collective bargaining agreement. It covers Eligible Employees of Employers, who are signatory to the collective bargaining agreement between the Union and such Employer. The Plan contains a cash or deferred arrangement, and once you're eligible to participate, you can contribute to the Plan on either a tax deferred or post-tax basis through payroll deductions.

### Plan Sponsor

International Union of Operating Engineers Local 399 is the Sponsor of the Plan, and will sometimes be referred to in this summary as the "Sponsoring Employer," "Sponsor" the "Union," "we," "us" or "our". Our address is 2260 South Grove Street, Chicago, IL 60616-1823; our telephone number is (312) 372-9870; and our employer identification number is 36-4026691.

### Purpose of This Summary

This booklet is called a Summary Plan Description (the "SPD") and it is meant to describe highlights of the Plan in understandable language. It is not, however, meant to be a complete description of the Plan, nor is it meant to interpret, extend or change the provisions of the Plan in any way. If there is a conflict between this SPD and the Plan, the provisions of the Plan control your right to benefits. A copy of the Plan and related documents are on file with the Plan Administrator (see below) and you can read them at any reasonable time. Also, no provision of the Plan or this SPD is intended to give you the right to continued employment or to prohibit changes in the terms or conditions of your employment. If you have any questions that are not addressed in this SPD, you can contact the Plan Administrator (who is described in the next section) during normal business hours.

## Plan Administration

### Plan Trustees

The Plan is administered under a written plan and trust agreement, with Thomas Keaty, Jack O'Rourke, James Kata, Matthew McManus, Thomas J. Laughlin and Sallie A. Fulwiler as the trustees. The trustees can be contacted at our 2260 South Grove Street, Chicago, IL 60616-1823 address.

### Plan Administrator

All matters other than investments that concern the operation of the Plan are the responsibility of the Administrator. The Administrator is International Union of Operating Engineers Local 399, whose address is 2260 South Grove Street, Chicago, IL 60616-1823, and whose telephone number is (312) 372-9870. The Administrator has the power and discretionary authority to interpret the terms of the Plan based on the Plan document and existing laws and regulations, as well as the power to determine all questions that arise under the Plan. Such power and authority include, for example, the administrative discretion necessary to resolve issues with respect to an Employee's eligibility for benefits, credited service, disability, and retirement, or to interpret any other term contained in the Plan and related documents. The Plan Administrator's interpretations and determinations are binding on all Participants, former Participants and their beneficiaries.

### Plan Number

For identification purposes, we have assigned number 001 to the Plan.

### Plan Year

The Plan Year is the 12-month accounting year of the Plan, and it begins each January 1st and ends the following December 31st.

### **Service of Legal Process**

If you have to bring legal action against the Plan for any reason, legal process can be served on the International Union of Operating Engineers Local 399 at 2260 South Grove Street, Chicago, IL 60616-1823. You must exhaust the Plan's claims procedure (see the Section titled *Claims Procedure*) before you can bring legal action against the Plan.

## **Service Crediting**

Your Service refers to the portion of your employment with a Participating Employer that is used to determine your eligibility to participate in the Plan and to determine whether you are entitled to a contribution allocation for an Allocation Period, as described in more detail below. Participating Employers are those Employers, who are signatory to the collective bargaining agreement with the Sponsor.

### **Hour of Service**

You are credited with a Period of Service during each continuous period of employment with a Participating Employer.

### **Break in Eligibility Service**

You will incur a Break in Eligibility Service if you are not credited with at least one Hour of Service during any 1-year Period of Service. However, in certain circumstances, such as taking time off to give birth to a child or to adopt a child, or taking time off to care for a child following the birth or adoption, you will be credited with 501 Hours of Service even though you did not actually work 501 hours in order to prevent you from incurring a Break in Eligibility Service (but this type of special credit will not be used to determine your entitlement to a contribution for any Allocation Period).

### **Period of Service**

A Period of Service, in general, is a period of time that begins on your date of hire as an Eligible Employee and ends on the date you terminate employment as an Eligible Employee or incur a Break in Eligibility Service. The rules for determining your Period of Service are more complex than the explanation described in this section, especially the rules that apply if you terminate employment and are then rehired.

## **Salary Deferral Contributions**

### **How the Contribution Is Determined**

Once you become a Participant, you can begin making Salary Deferral Contributions. Salary Deferral Contributions are amounts that you elect to contribute to the Plan through payroll withholding, and they are made on a pre-tax basis (that is, they are deducted from your Compensation free of current income taxes but are fully taxable when they are subsequently distributed from the Plan) or on an after-tax basis (that is, as Roth contributions, which are deducted from your Compensation on an after-tax basis but may be distributed on a tax-free basis if certain requirements are met). You can designate up to 100% of your Salary Deferral Contributions as Roth contributions. Salary Deferral Contributions are allocated to your Salary Deferral Contributions Account.

If you have not attained age 50, your Salary Deferral Contributions (pre and post-tax combined) for any calendar year can't exceed the lesser of 100% of your Compensation or the dollar limit on Salary Deferral Contributions (which is announced annually by the IRS and for 2016 is \$18,000). For any calendar year in which you have attained (or will attain) at least age 50 by the end of that year, your Elective Deferrals for the calendar year can't exceed the lesser of 100% of your Compensation or \$24,000 in 2016 (or such higher limit as announced annually by the IRS).

### **How You Become a Participant**

To become a Participant in this part of the Plan, you must satisfy the following criteria (described in more detail below): (a) you must be an Eligible Employee; and (b) you must be employed by a Participating Employer on an applicable entry date.

- **Eligible Employees.** All collectively bargained employees of Participating Employers are Eligible Employees for this part of the Plan.

- **Entry Date.** You will enter this part of the Plan as a Participant on the first day of the month that coincides with or next follows the date that you are hired as an Eligible Employee.

### **Salary Deferral Agreements**

You must file a Salary Deferral Agreement with the Administrator via your Participating Employer before you can begin making Salary Deferral Contributions to the Plan. Your Salary Deferral Agreement is where you indicate the amount that you want us to withhold from your Compensation and contribute to the Plan on your behalf. This is also where you indicate if you want all or any part of the amount withheld to be treated as a Roth Elective Deferral. You can elect to contribute either a percentage of your Compensation or a flat dollar amount subject to IRS limitations..

After your initial election, the Salary Deferral Agreement can be changed by filing a new agreement with the Administrator on such date or dates (but at least once annually) as permitted under the Plan's administrative policy. Renewal of such agreement will be at a time specified by the Plan's administrative policy. Your Salary Deferral Agreement will only expire if you file a superseding agreement or cancel it.

You can cancel your Salary Deferral agreement at any time by giving reasonable written notice to the Administrator. Your cancellation will be implemented as soon as administratively possible after your notice is received. If you do cancel your Agreement, you will not be permitted to make a new election until the first available date that you would otherwise be entitled to change an existing agreement. as described in the preceding paragraph.

The Administrator from time to time may establish additional administrative procedures (or change existing procedures) concerning deferral elections, in which case you will be appropriately notified. The Administrator can also temporarily suspend your deferral agreement if you reach the maximum deferral amount as permitted by law, or if the Administrator believes the Plan may fail certain required non-discrimination tests. You will be notified if your deferral agreement is temporarily suspended.

### **How Your Compensation Is Determined**

In general, you can make Salary Deferral Contributions from your straight rate of pay, including any elective deferrals and any other pre-tax deferrals not included in gross pay during the calendar year that ends with the Plan Year. Compensation excludes any Compensation received (a) as a bonus; (b) as a commission; (c) as overtime pay; (d) any amount received as premium pay and (e) any amount received in excess of the IRS annual limitation for qualified plans (currently \$265,000).

### **How Your Vested Interest Is Determined**

Your Vested Interest in your Salary Reduction Contribution Account is 100% at all times.

## **Non-Elective Contributions**

### **How the Contribution Is Determined**

Employers may also make Non-Elective Contributions to the Plan, as determined by the collective bargaining agreement between the Employer and the Union. Such contributions will be allocated as an equal percentage of Compensation as described below. These contributions are not required, and whether or not Employers choose to make them is entirely subject to the terms of the collective bargaining agreement.

### **How You Become a Participant**

To become a Participant in this part of the Plan, you must satisfy the following criteria (described in more detail below): (a) you must be an Eligible Employee; and (b) you must be employed by a Participating Employer on the applicable entry date.

- **Eligible Employees.** All collectively bargained employees of Participating Employers are Eligible Employees for this part of the Plan.
- **Entry Date.** You will enter this part of the Plan as a Participant on the first day of the month that coincides with or next follows the date that you are employed as an Eligible Employee.

### **How Your Compensation Is Determined**

In general, you the allocation of any Non-Elective Contributions will be based on your straight rate of pay, including any elective salary deferrals and any other pre-tax deferrals not included in gross pay during the calendar year that ends with the Plan Year. Compensation excludes any compensation received (a) as a bonus; (b) as a commission; (c) as overtime pay; (d) any amount received as premium pay and (e) any amount received in excess of the IRS annual limitation for qualified plans (currently \$265,000 for 2016).

### **How Your Vested Interest Is Determined**

Your Vested Interest in your Non-Elective Contribution Account is 100% at all times.

## **Maximum Allocation Limitations**

The amount of contributions and forfeitures that can be allocated to your Account for any Plan Year is limited by law to the lesser of 100% of your Compensation or the annual dollar limit (which is announced annually by the IRS and is currently \$53,000). However, this dollar limit does not apply to the amount of earnings that can be allocated to your Account, to the amount of any Rollover Contributions you make to the Plan, or to any other funds transferred to this Plan on your behalf from another qualified plan.

## **Rollover Contributions**

If you participated in another retirement plan and you have become a Participant in this Plan, you may be permitted to rollover any distribution you received from the other plan to this Plan, if all legal requirements (and any requirements imposed by the Administrator) on such rollovers are satisfied. Do not withdraw funds from any other plan or account, which you intend to rollover into this Plan, until you have received written approval from the Administrator. If you do decide to make a rollover contribution and it is accepted by the Administrator, it will be kept in your Rollover Account. Your Vested Interest in your Rollover Account will be 100% at all times.

## **Distribution of Benefits**

### **Distributions for Reasons Other Than Death**

If your employment is terminated for any reason other than death, your Vested Interest will be distributed within an administratively feasible time after you terminate. Your Vested Interest will be distributed in either a lump sum which can be paid to you or, subject to your election, can be rolled over to another qualified retirement plan or to an individual retirement account (IRA) or as a series of Systematic Installments over either: (1) a select number of years; or (2) as a fixed dollar amount.

In addition to the payments described above, there are rules which require that certain minimum distributions be made from the Plan. Generally, these minimum distributions must begin no later than (a) the April 1st following the end of the calendar year in which you reach age 70½ or (b) the April 1st following the end of the calendar year in which you retire. The Systematic Installment option is available for this purpose for Accounts in excess of \$5,000.00.

### **Distributions Upon Death**

Your Vested Interest will be distributed to your beneficiary as soon as administratively feasible after your death. If you are not married, you can name anyone to be your beneficiary. If you are married, your spouse by law is your beneficiary unless he or she waives the death benefit in writing. Your Vested Interest will be distributed to your beneficiary in a lump sum.

If your death occurs *before* the date minimum distributions must begin (as described in the preceding section), the distribution to your beneficiary must be made within certain legal time frames that are dependent upon several factors, including (a) whether you have a designated beneficiary, (b) your relationship to the beneficiary (spousal or non-spousal beneficiary), and (c) certain elections that your beneficiary may make after your death. However, if your death occurs *after* the date that minimum distributions must begin, the minimum death benefit that must be paid to your beneficiary each year after your death is based on the longer of your remaining life expectancy (had you

survived) or the remaining life expectancy of your beneficiary. Your beneficiary may also choose to accelerate the payment rate. Contact the Administrator for more information regarding payments to beneficiaries.

Any death benefit received by your spouse can be rolled over to an IRA. A non-spouse beneficiary may establish a special IRA (an "Inherited IRA") that can receive a direct rollover of all (except for any required minimum distributions) or a portion of the death benefit distributed upon your death to that non-spouse beneficiary.

Certain portions of a death benefit may not be eligible to be rolled over into an Inherited IRA. If you (a deceased Participant) needed to take a required minimum distribution in the year of your death (but you have not yet taken that required minimum distribution), then that required minimum distribution cannot be rolled over from the Plan into an Inherited IRA. Similarly, if the non-spouse beneficiary needs to take any required minimum distribution from the Plan for the year in which the direct rollover occurs (or any prior year), then the non-spouse beneficiary cannot roll over that required minimum distribution into an Inherited IRA. However, if the death benefit includes Roth Elective Deferrals, those amounts can be rolled over to the Inherited IRA.

If the non-spouse beneficiary elects to roll over the death benefit to an Inherited IRA, then the inherited IRA will be subject to complicated required minimum distribution rules. You should inform your non-spouse beneficiary that (a) he or she is designated to receive your death benefit, and (b) your death benefit can be rolled over to an Inherited IRA. The non-spouse beneficiary should discuss any planning issues and tax consequences with their professional tax advisor with respect to a direct rollover of your death benefit into an Inherited IRA.

#### **Cash-Outs of Small Accounts**

If your employment is terminated for any reason and your Vested Interest is \$5,000 or less (including your Rollover Account balance) it will be distributed in a lump sum, or, at your election, may be rolled over to another qualified retirement plan or to an individual retirement account (IRA) of your choosing. However, if you do not make an election, then the distribution (a) will be made in a lump sum if your Vested Interest is \$1,000 or less; or (b) if your Vested Interest is more than \$1,000, it will be rolled over to an individual retirement account (IRA) that the Union establishes for you at a qualified financial institution of our choosing. The IRA provider will charge your IRA for any expenses associated with the establishment and maintenance of the IRA and with the investments of the IRA. You will be given more information at the time of distribution regarding the IRA provider and any associated fees or expenses.

#### **In-Service Distributions**

As long as you are still an active Participant, you can elect to take at any time a lump sum distribution or Systematic Installments based on up to 100% of the following accounts:

**Participant Account.** You can request a distribution of up to 100% of your Participant Account provided you have either reached Normal Retirement Age or reached age 59 ½ and are 100% Vested. Systematic Installments will be based on the fully Vested value of your Account.

**Rollover Contribution Account.** You can request a distribution from your Rollover Account at any time.

#### **Hardship Distributions**

You may be eligible to take a distribution from the Plan to pay for certain Participant documented financial hardships. All hardship distributions must comply with the terms of the Administrative Policy regarding financial hardship distributions, established by the Administrator. If a copy of the financial hardship distribution policy is not attached to this summary, you can obtain one from the Administrator. Before requesting a hardship distribution, you must apply for any Participant loan available under this Plan (see the following paragraph).



## Loans to Participants

You are permitted to borrow from the Plan with the approval of the Administrator. Subject to the requirements of any loan policy, including written spousal consent, if you are married, established by the Administrator. The maximum amount you can borrow is 50% of your Vested Interest or \$50,000, whichever is less. If a loan is approved, your Account must be pledged as security. Loans must generally be repaid within 5 years by equal payments made at least quarterly (or more frequently if required by the Loan Policy). Participants may sign a written deduction authorization agreement requiring the Participant's Employer to deduct such repayments from payroll. If a copy of the Plan's loan policy is not attached to this summary, you can obtain one from the Administrator.

## Investment of Accounts

Subject to an investment policy established by the Administrator, you can direct how your Account will be invested. You can choose from any investment options offered by the Plan. You can switch between investments as often as is permitted under the investment options you choose. All earnings and losses on your directed investments will be credited directly to your Account. Investment results will reflect any fees and investment expenses for the investments you select. You may request more information on fees associated with an investment option from the Administrator. At the appropriate time, we will provide you with more detailed information about the investment options offered by the Plan.

We intend to comply with Section 404(c) of the Employee Retirement Income Security Act of 1974. This means that if you are permitted to exercise independent control over the investment of your Account and you are offered a reasonably diverse selection of well managed investment options, then the Trustees of the Plan, including the Administrator, may be relieved of certain fiduciary liabilities for any losses, which occur because you exercised such control.

## Tax Withholding on Distributions

Due to the complexity and frequency of changes in the Federal laws that govern benefit distributions, penalties and taxes, the following is only a brief explanation of the law and IRS rules and regulations as of the date this summary is issued. You will receive additional information from the Administrator at the time of any benefit distribution, and you should consult your tax advisor to determine your personal tax situation before taking the distribution.

### Direct Rollovers Not Subject to Tax

Any eligible distribution that is directly rolled over to another eligible retirement account (either another qualified retirement plan or an individual retirement account) is not subject to income tax withholding. Generally, any part of a distribution from this Plan can be directly rolled over to another eligible retirement account unless the distribution: (1) is part of a series of equal periodic payments made over your lifetime, or over the lifetime of you and your beneficiary, or over a period of 10 years or more; or (2) is a minimum benefit payment which must be paid to you by law. There are other distributions that are not eligible for direct rollover treatment, and you should contact the Administrator if you have questions about a particular distribution.

### 20% Withholding on Taxable Distributions

If you have your benefit paid to you and it's eligible to be rolled over, you only receive 80% of the benefit payment. The Administrator is required to withhold 20% of the benefit payment and remit it to the Internal Revenue Service as income tax withholding to be credited against your taxes. If you receive the distribution before you reach age 59½, you may also have to pay an additional 10% tax. You can still rollover all or a part of the 80% distribution that is paid to you by putting it into an IRA or into another qualified retirement plan within 60 days of receiving it. If you want to rollover 100% of the eligible distribution to an IRA or to another qualified retirement plan, you must find other money to replace the 20% that was withheld. You cannot elect out of the 20% withholding (1) unless you are permitted (and elect) to leave your benefit in this Plan, or (2) unless you have 100% of an eligible distribution transferred directly to an IRA or to another qualified retirement plan that accepts rollover contributions.

## Claims Procedure

If you feel that you are entitled to a benefit that you are not receiving from the Plan, you can make a written request to the Administrator (or its delegate) for that benefit. Plan Benefits fall into two categories – Disability related benefits and non-Disability related benefits. A Disability-related benefit means a benefit that is available under the Plan and that becomes payable upon a determination of a Participant's Disability as determined by the Administrator. A Disability-related benefit does not include a benefit that, under the terms of this Plan, becomes payable upon a determination of a Participant's Disability by the Social Security Administration or under a long term Disability plan sponsored by any Participating Employer. The claims procedure for each Disability-related benefits and non-Disability benefits are similar, but there are differences. While the claims procedure for each benefit is described below, this is just a summary, and the Administrator can supply you with a more detailed claims procedure.

### Written Claims

Any claim for benefits must be filed in writing with the Administrator, but the Administrator may permit the filing of a claim for benefits electronically as the Administrator complies with certain Department of Labor requirements.

### Review of Non-Disability Benefit Claims

If your claim is for a non-Disability related benefit, it will be reviewed under the following procedure:

- **Initial Denial.** Whenever the Administrator decides for any reason to deny a claim in whole in part, the Administrator will give you a written or electronic notice of its decision within 90 days of the date the claim was filed, unless an extension of time is necessary. If special circumstances require an extension, the Administrator will notify you before the end of the initial 90-day review period that additional review time is necessary. The notice for an extension (a) will specify the circumstances requiring a delay and the date that a decision is expected to be made; and (b) will describe any additional information needed to resolve any unresolved issues. Unless the Administrator requires additional information from you to process the claim, the review period cannot be extended beyond an additional 90 days. If the Administrator requires additional information from you to process the claim and a timely notice requesting the additional information is transmitted to you, it must be provided within 90 days of the date that the notice is provided by the Administrator.
- **Notice of Denial.** If your claim is denied, the notice will contain the following information: (a) the specific reasons for the denial; (b) reference to the specific Plan provisions on which the denial is based; (c) a description of any additional material or information necessary for you to perfect your claim and an explanation of why such material or information is necessary; (d) a statement that you are entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to your claim; (e) a description of the Plan's review (i.e., appeal) procedures, the time limits applicable to such procedures, and in the event of an adverse review decision, a statement describing any voluntary review procedures and your right to obtain copies of such procedures; and (f) a statement that if you request a review of the Administrator's decision and the reviewing fiduciary's decision on review is adverse to you, there is no further administrative review following the initial review, and that you then have a right to bring a civil action under ERISA §502(a). The notice will also include a statement advising you that, within 60 days of the date on which you receive such notice, you may obtain review of the decision as explained in the next paragraph.
- **Right to Appeal.** Within the 60-day period beginning on the date you receive notice regarding disposition of your claim, you may request that the claim denial be reviewed by filing with the Administrator a written request for such review. The written request must contain the following information: (a) the date on which your request was received by the Administrator; (b) the specific portions of the denial of your claim which you request be reviewed; (c) a statement setting forth the basis upon which you believe the Administrator's denial of your claim should be reversed and your claim should be accepted; and (d) any other written information (offered as exhibits) which you want to be considered to explain your position, without regard to whether such information was submitted or considered in the initial benefit determination.
- **Review on Appeal.** In general, your appeal will be reviewed within 60 days of the date it is received by the Administrator (unless special circumstances require an extension to 120 days and you are so notified before the end of the 60-day review period). The review will take into account all comments, documents, records, and other

information submitted by you relating to the claim, without regard to whether such information was submitted or considered in the initial determination. The decision on review will contain the following: (a) the specific reasons for the denial on review; (b) reference to specific Plan provisions on which the denial is based; (c) a statement that you are entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claim; (d) a statement describing any voluntary review procedures and your right to obtain copies of them; and (e) a statement that there is no further administrative review of decision and that you have a right to bring a civil action under ERISA §502(a).

### **Review of Disability Benefit Claims**

If your claim is for a Disability related benefit, it will be reviewed under the following procedure:

- **Initial Denial.** Whenever the Administrator decides for any reason to deny a claim for a Disability benefit in whole or in part, the Administrator will transmit to you a written or electronic notice of its decision within 45 days of the date the claim was filed, unless an extension of time is necessary. If, prior to the expiration of the initial 45-day period, the Administrator determines that a decision cannot be made within that initial 45-day period due to matters beyond the control of the Plan, the Administrator will provide you a notice before the end of the 45-day review period that a 30-day extension of time is necessary. If, prior to the end of the first 30-day extension period, the Administrator determines that a decision cannot be made within that first 30-day extension period due to matters beyond the control of the Plan, the Administrator will provide you a notice before the end of the first 30-day extension period that an additional 30-day extension of time is necessary. Any notice of an extension of time will (a) specify the circumstances requiring the extension of time and the date a decision is expected to be rendered; (b) explain the standards on which entitlement to a Disability Benefit is based; (c) state the unresolved issues that prevent a decision on the claim; and (d) describe any additional information needed to resolve those issues. If the Administrator requires additional information from you to process the Disability Benefit claim and a timely notice requesting the additional information is transmitted to you, you must provide the additional information within 45 days of the date the notice is provided.
- **Notice of Denial.** If your claim is denied, the notice will contain the following information: (a) the specific reasons for the denial; (b) reference to the specific Plan provisions on which the denial is based; (c) a description of any additional material or information necessary for you to perfect your claim and an explanation of why such material or information is necessary; (d) a statement that you are entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to your claim; (e) if the claim denial is based on an internal rule, guideline, protocol, or other similar provision, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy thereof is available upon request, free of charge; (f) if the claim denial is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the Claimant's medical circumstances, or a statement that such explanation is available upon request, free of charge; (g) a description of the review (i.e., appeal) procedures, the time limits applicable to such procedures, and in the event of an adverse review decision, a statement describing any voluntary review procedures and your right to obtain copies of such procedures; and (h) a statement that if you request a review of the Administrator's decision and the review is adverse to you, that there is no further administrative review following such initial review, and that you have a right to bring a civil action under ERISA §502(a). The notice will also include a statement advising you that, within 180 days of the date you receive the notice, you may obtain review of the decision as explained in the next paragraph.
- **Right to Appeal.** Within the 180-day period beginning on the date you receive notice regarding disposition of your claim, you may request that the claim denial be reviewed by filing with the Administrator a written request for such review. The written request for such review must contain the following information: (a) the date on which your request was received by the Administrator; (b) the specific portions of the denial of your claim which you request be reviewed; (c) a statement setting forth the basis upon which you believe the Administrator's denial of your claim should be reversed and your claim should be accepted; and (d) any other written information (offered as exhibits) which you want to be considered to explain your position, without regard to whether such information was submitted or considered in the initial benefit determination.

- **Review by Alternate Reviewer.** Review of a Disability Benefit claim that has been denied under the procedures described in the preceding two paragraphs will be conducted by a reviewer who is neither the individual who made the adverse benefit determination that is the subject of the appeal, nor the subordinate of such individual. The review will not afford deference to the initial adverse benefit determination, but will take into account all comments, documents, records, and other information submitted by you relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. If the adverse benefit determination was based on a medical judgment, the reviewer will consult with an appropriate health care professional who (a) was not consulted on the original adverse benefit determination, (b) is not subordinate to someone who was consulted on the original adverse benefit determination, and (c) has appropriate training and experience in the field of medicine involved in the medical judgment. Any experts whose advice was obtained on the original adverse determination must be identified during the review, without regard to whether the advice was relied upon in making the determination. You may request, in writing, a list of such experts.
- **Review on Appeal.** In general, your appeal will be reviewed within 45 days of the date it is received by the Administrator (unless special circumstances require an extension to 90 days and you are so notified before the end of the 45-day review period). The reviewer will take into account all comments, documents, records, and other information submitted by you relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. The reviewer's decision will contain the following: (a) the specific reasons for the denial; (b) reference to specific Plan provisions on which the denial is based; (c) a statement that you are entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claim; (d) if the claim denial is based on an internal rule, guideline, protocol, or other similar criterion, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of the rule, guideline, protocol, or other similar criterion is available upon request, free of charge; (e) if the claim denial is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to your medical circumstances, or a statement that such explanation is available upon request, free of charge; (f) a statement describing any voluntary review procedures and your right to obtain copies of such procedures; (g) a statement that there is no further administrative review of the reviewer's decision and that you have a right to bring a civil action under ERISA §502(a); and (h) the following statement: "You and your Plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency."

## Participants Absent Because of Military Duty

### Participants Who Die During Military Absence

If you are absent from employment because of military service and you die on or after January 1, 2007 while you are performing "qualified" military service (as defined under the Internal Revenue Code), you will be treated as having returned to eligible employment on the day before your death for Vesting purposes. However, you will not be entitled to any additional benefits or contributions with respect to your period of military leave.

### Qualified Reservist Distributions

A Qualified Reservist Distribution may be made to a Participant who is a Qualified Reservist under any circumstance and/or for any reason. A Qualified Reservist Distribution is any distribution of Salary Deferral Contributions to a Qualified Reservist that is made during the period beginning on the date the Qualified Reservist is ordered or called to active duty and ending on the last day of active duty. A Qualified Reservist is an individual who is a member of a reserve component and is called to active duty after September 11, 2001 either for a period in excess of 179 days or for an indefinite period.

A Participant who is a Qualified Reservist may request a Qualified Reservist Distribution on or after the date of the order or call to active duty and before the last day of the Plan Year during which the order or call to active duty occurred. The Administrator must receive a copy of the order or call to active duty prior to any amounts being distributed. The Administrator may rely on the order to determine the period that the Qualified Reservist has been ordered or called to active duty. The Qualified Reservist is eligible for a Qualified Reservist Distribution if the order

specifies a period of 180 or more days. It does not matter if the actual period of active duty is less or otherwise changed. A Qualified Reservist will be eligible for a Qualified Reservist Distribution if the original order or call is less than 180 days and subsequent calls or orders increase the total period of active duty to 180 or more days.

Qualified Reservist Distributions are not subject to the 10% early withdrawal penalty tax. In addition, at any time during the two-year period beginning on the day after the last day of the Qualified Reservist's active duty, a Qualified Reservist who has received one or more such distributions may make one or more repayment contributions to an IRA, up to the total amount of the Qualified Reservist Distributions, and the dollar or compensation limitations that apply to contributions to an IRA do not apply to these repayments. However, you will not receive any tax deduction for repayment of Qualified Reservist Distributions to an IRA.

#### **Active Duty Severance Distributions**

If you are absent from employment while you are on active military duty for a period of more than 30 days, you are considered to have terminated employment and you can therefore elect to take a distribution of some or all of your Salary Deferral Contribution Account (including any portion of the account which is attributable to Roth Salary Deferral Contributions). Some restrictions apply (for example, you cannot make additional Salary Deferral Contributions for a period of 6 months after the distribution), and you should consult the Plan Administrator in the event you are interested in taking such a distribution.

### **Other Information**

#### **Attachment of Your Account**

Your creditors cannot garnish or levy upon your Account except in the case of a proper IRS tax levy, and you cannot assign or pledge your Account except as collateral for a loan from the Plan or as directed through a Qualified Domestic Relations Order as part of a divorce, child support or similar proceeding in which a court orders that all or part of your Account be transferred to another person (such as your ex-spouse or your children). The Plan has a procedure for processing QDROs, which you can obtain free of charge from the Administrator.

#### **Amendment or Termination of the Plan**

Although the Union intends for the Plan to be permanent, we can amend or terminate it at any time. If we do terminate the Plan, all Accounts will be available for distribution at the same time and in the same manner as would have been permissible had the Plan not been terminated.

#### **Accounts Are Not Insured**

Your Account is not insured by the Pension Benefit Guaranty Corporation (PBGC) because the insurance provisions of ERISA do not apply to 401(k) plans.

#### **Payment of Plan Expenses**

The Plan routinely incurs expenses for the services of lawyers, actuaries, accountants, third party administrators, and other advisors. These expenses are paid from the assets of the Plan as a cost of operating it. They are routinely reported to and reviewed by the Federal agencies with Plan oversight on an annual basis.

### **Statement of ERISA Rights**

#### **Your Right To Receive Information**

You are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Participants are entitled to (a) examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites and union halls, all documents governing the Plan, including insurance contracts and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration; (b) obtain copies of documents governing the operation of the Plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated summary plan description upon written request to the Administrator. The Administrator may make a reasonable charge for the copies; (c) receive a summary of the Plan's annual financial report. The Administrator is required by law to furnish each Participant with a copy of this summary annual report; and (d) obtain a statement

telling you whether you have a right to receive a pension at Normal Retirement Age (which is defined elsewhere in this summary plan description) and if so, what your benefits would be at Normal Retirement Age if you stop working under the Plan now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to get a right to a pension. This statement must be requested in writing and is not required to be given more than once every 12 months. The Plan must provide the statement free of charge.

### **Duties of Plan Fiduciaries**

In addition to creating rights for Plan Participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate your Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan Participants and beneficiaries. No one, including your Employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit or exercising your rights under ERISA.

### **Enforcement of Rights**

If your claim for a benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules. Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court. In addition, if you disagree with the Plan's decision or lack thereof concerning the qualified status of a domestic relations order, you may file suit in Federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

### **Assistance With Your Questions**

If you have any questions about your Plan, you should contact the Administrator. If you have questions about this statement or about your ERISA rights, or if you need assistance in obtaining documents from the Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory; or contact them at [http://www.dol.gov/ebsa/aboutebsa/org\\_chart.html](http://www.dol.gov/ebsa/aboutebsa/org_chart.html) or at the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

You can call the Employee Benefits Security Administration (the EBSA) at (866) 444-3272; TTY/TDD users: (877) 889-5627. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the EBSA. You may also obtain additional pension-related information at the Department of Labor's website at <http://www.dol.gov/ebsa/publications/wyskapr.html> where you can review a publication called "*What You Should Know About Your Retirement Plan*."

## **Glossary**

Many definitions are used in this summary and most are defined in the section where they appear, but the following terms have broader application and are used throughout the summary:

**Account.** Your Account represents the aggregate value of the contributions made to the Plan by you or on your behalf, as well as the net earnings/losses on those contributions. Your Account may include (but is not limited to) the following sub-accounts: the Salary Deferral Contribution Account and the Non-Elective Contribution Account.

**Allocation Period.** The Allocation Period is the period of time for which a contribution to the Plan is allocated. The Allocation Period is generally the Plan Year but can be a shorter period of time.

**Disability.** Disability is a physical or mental impairment you suffer after you become a Participant in the Plan (and while you are still an employee) (a) which, in the opinion of a physician acceptable to the Administrator, totally and permanently prevents you from engaging in any occupation for pay or profit. If a difference of opinion arises between you and the Administrator as to whether you have suffered a Disability, it will be settled by a majority decision of three physicians, one to be appointed by the Administrator, one to be appointed by you, and the third to be appointed by the first two physicians; or (b) which, in the opinion of the Social Security Administration, qualifies you for disability benefits under the Social Security Act in effect on the date that you suffer the mental or physical impairment.

**Normal Retirement Age.** Normal Retirement Age is the date you reach age 59½.

**Vested Interest.** Your Vested Interest is the percentage of your Account to which you are entitled at any point in time. This percentage, in turn, is the aggregate of your Vested Interest in your various sub-accounts. You will always have a 100% Vested Interest in your Account at all times.