

**INTERNATIONAL UNION OF OPERATING ENGINEERS**  
**LOCAL 501**  
**INDIVIDUAL ACCOUNT PLAN**

**Plan Document**

**January 1, 2017**

**INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501**  
**INDIVIDUAL ACCOUNT PLAN TRUST FUND**  
**PLAN DOCUMENT**  
**(January 1, 2017)**

**PURPOSE OF THE PLAN**

The International Union of Operating Engineers Local 501 Individual Account Plan Trust Fund (“Local 501 Plan”) is made available for the exclusive benefit of Employees of the Employer who qualify as Participants under the terms and conditions herein, and their Beneficiaries. The purpose of the Local 501 Plan is to provide retirement and other related benefits for Participants and Beneficiaries under the terms and conditions set forth herein. At no time may any part of the corpus or income of the Trust be used for, or diverted to, any other purpose, although the Trustees may provide for the reasonable expenses of administering the Plan.

**ARTICLE I**  
**DEFINITIONS**

**Section 1: General.** Unless the context or subject matter otherwise requires, as determined by the Board of Trustees, the words and terms used in this Plan shall have the same meaning as in the Agreement and Declaration of Trust. Any conflicts between the provisions of this Plan and the Trust Agreement shall be resolved in favor of the provisions of the Trust Agreement.

**Section 2: Accumulated Share.** The term “Accumulated Share” as used herein shall mean the amount payable from an Individual Account as defined and described in Article III.

**Section 3: Annuitant.** The term “Annuitant” as used herein shall mean a Participant who retired and who receives a benefit from the Fund.

**Section 4: Beneficiary.** The term “Beneficiary” as used herein shall mean a person, other than an Employee, who is receiving or entitled to receive benefits from the Plan because of designation for such benefits by a Participant or Annuitant or because of the provisions of the Plan.

**Section 5: Collective Bargaining Agreement.** The term Collective Bargaining Agreement means: Any agreement between the Union and any Employer which provides for the making of Contributions to the Trust Fund, including any extensions, amendments, modifications, renewals, substitute or successor agreement or agreements.

**Section 6: Contributions.** The term “Contributions” as used herein shall mean the payments made or required to be made to the Fund by an Employer pursuant to its Collective Bargaining Agreement or Participation Agreement. Contributions by Employees shall not be permitted.

**Section 7: Covered Employment.** The term “Covered Employment” means work as an Employee for which Employer Contributions are made or required to be made to the Fund pursuant to a Collective Bargaining Agreement or a Subscriber Agreement.

**Section 8: Designated Beneficiary.** The term “Designated Beneficiary” shall mean the individual to whom benefits become payable in accordance with Article VII, Section 4.

**Section 9: Effective Date.** The Plan is to be effective on and after January 1, 2017.

**Section 10: Employee.** The term “Employee” means any employee of an Employer who performs work covered by a Collective Bargaining Agreement, Subscriber Agreement or Participation Agreement that requires Contributions to the Fund. The term “Employee” shall also include employees of the Union, or other local Unions, and employees of labor organizations with which the Union is affiliated, with respect to whose work Contributions are made to the Fund pursuant to Participation Agreements approved by the Board of Trustees.

**Section 11: Employer.** The term “Employer” means any employer who is required by a Collective Bargaining Agreement to make Contributions to the Fund. It shall also include the Union, any local union, labor council or other labor organization with which the Union is affiliated, which makes Contributions to the Fund with respect to the work of its employees pursuant to Subscriber Agreements approved by the Board of Trustees.

**Section 12: Fund.** The term “Fund” means the International Union of Operating Engineers Local 501 Individual Account Plan Trust Fund and its trust estate.

**Section 13: A Highly Compensated Employee** is a highly compensated active Employee or a highly compensated former Employee of an Employer. Whether an individual is a highly compensated Employee is determined separately with respect to each Employer, based solely on that individual's compensation from or status with respect to that Employer.

- (a) A highly compensated active Employee is an Employee of the Employer who performs service for the Employer during the determination year and who:
  - (1) received compensation from the Employer in excess of \$80,000 during the look-back year (as adjusted under Section 414(q) of the Internal Revenue Code) and, if the Employer elects, was a member of the top-paid group of Employees (those whose compensation was among the highest 20% of all Employees of that employer); or
  - (2) is a 5% owner of the Employer at any time during the look-back year or the determination year.
- (b) A highly compensated former Employee is an Employee who separated from service (or was deemed to have separated) before the determination year, and was a highly compensated active Employee either for the separation year or for any determination year ending on or after the individual's 55<sup>th</sup> birthday.
- (c) For the purposes of this Section,
  - (1) The “determination year” is the plan year for which the test is being applied.

- (2) The “look-back year” is the 12-month period immediately preceding the “determination year”.
- (3) An Employer may elect to make the look-back year calculation for a determination year on the basis of the calendar year ending with or within the applicable determination year, in accordance with Treasury Regulation Section 1.414(q)-1T.

**Section 14: Individual Account.** The term “Individual Account” as used herein shall mean the account established for each Participant, pursuant to Article III of the Plan.

**Section 15: Market Value.** The term “Market Value” as used herein shall mean the value of the assets which takes into account fair market value.

**Section 16: Normal Retirement Age.** The term “Normal Retirement Age” shall mean the later of age 62 or the 5th anniversary of participation.

**Section 17: Participant.** The term “Participant” shall mean any Employee who has had contributions made to the Fund on his or her behalf in any Plan Year.

**Section 18: Plan.** The term “Plan” as used herein shall mean the rules and regulations set forth herein, as they may be amended from time to time.

**Section 19: Plan Year.** The term “Plan Year” as used herein shall mean the twelve month period from January 1, through December 31.

**Section 20: Spouse.** The phrase “Spouse” shall mean the individual to whom the Participant is lawfully married at the time benefits become payable under the Plan. This term includes any Spouse to whom the Participant was lawfully married at the time of death.

**Section 21: Subscriber Agreement or Participation Agreement.** The terms “Subscriber Agreement” or “Participation Agreement” shall mean:

- (a) Any other agreement between the Union and any one or more Employer(s), which provides for the making of Contributions to the Trust Fund.
- (b) Any extensions, amendments, modifications, or renewals of any of the above-described agreements, or any substitute or successor agreement or agreements, which provide for the making of Contributions to the Trust Fund.

**Section 22: Qualified Joint and Survivor Annuity.** A Qualified Joint and Survivor Annuity shall be an annuity payable for the life of the Participant with a survivor annuity continuing for the life of the legal Spouse which shall be 50% of the amount of the annuity payable during the joint lives of the Participant and his/her Spouse, and which is the amount of benefit which can be purchased with the Participant's Accumulated Share.

**Section 23: Valuation Date.** The term “Valuation Date” as used herein means March 31, June 30, September 30 or December 31, each of which is the last business day of each three-month fiscal quarter within the Fund’s January 1 through December 31 Plan Year.

**Section 24: Union.** The term Union means International Union of Operating Engineers Local 501 and any other Local Union which is now or shall hereafter become a signatory to the Trust Agreement and participate in the Trust Fund.

## **ARTICLE II PARTICIPATION IN PLAN**

**Section 1: Eligibility for Participation.** An Employee shall become eligible at the time s/he becomes a Participant.

**Section 2: Termination of Participation.** A Participant who receives payment of his/her Accumulated Share or has an annuity purchased for him/her shall cease to be a Participant as of the date on which the Accumulated Share is paid or an annuity is purchased in accordance with the provisions of Article V.

**Section 3: Reinstatement of Participation.** An Employee who has ceased to be a Participant in accordance with Section 2 above shall again become a Participant at such time as s/he again satisfies the requirements of Section 1.

**Section 4: Military Service.** Notwithstanding any other provision of the Plan to the contrary, Contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u). Any Contributions required to be made in accordance with this Article II, Section 4 shall be contributed to the Plan within the time period prescribed under applicable regulations or other guidance. The Trust Fund Office shall notify the Board of Trustees of any Participant with respect to whom additional Contributions are made because of qualified military service.

The beneficiaries of a Participant who dies while performing qualified military service (as defined in Code Section 414(u)) shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Participant resumed and then terminated employment on account of death.

## **ARTICLE III INDIVIDUAL ACCOUNTS**

**Section 1: Establishment of Accounts.** An Individual Account shall be established for each Participant for whom any contribution to this Plan is received. The Individual Account is maintained only for accounting purposes, and a segregation of the assets of the Fund to each Individual Account shall not be required.

**Section 2: Valuation of Accounts.** The amount in each Participant's Individual Account shall be determined as of each Valuation Date, and the determination shall be made as soon as practicable after such date. A determination shall be made of the amount in any Participant's

Individual Account as of any date other than a Valuation Date when such amount is needed for benefit determination or other administrative reasons.

- (a) The Market Value shall be determined as follows:
  - (1) The amount in the Individual Account as of the previous Valuation Date, plus
  - (2) Any Contributions for the Participant since the previous Valuation Date, plus
  - (3) An allocation of the Plan's investment yield, less expenses paid or accrued since the previous Valuation Date, prorated on the basis of Individual Account balances determined as of the previous Valuation Date.
- (b) The Plan's investment yield less expenses shall be determined by subtracting from the Market Value of assets on the Valuation Date, the sum of all Contributions made for each Participant through said date. That difference is the Plan's investment yield less expenses.
- (c) Where the total of an Individual Account is to be paid in a lump sum on a date other than a Valuation Date, the payment shall equal the balance on the prior Valuation Date, plus any Contributions received since the last Valuation Date on behalf of that Participant. If, at the time the total of an Individual Account is to be paid in a lump sum, the value of the Individual Account on the Valuation Date coinciding with or immediately preceding the payment date has not yet been determined, the Plan may pay immediately 85% of the value of the Individual Account as of the Valuation Date immediately preceding the above Valuation Date, and pay the remainder of the amount payable under the previous sentence once this total has been calculated.

**Section 3: Termination of Account.** An Individual Account shall be considered terminated in the month in which payment of the Accumulated Share is made, or commenced if on a monthly basis, as determined under Article V.

**Section 4: Limitation of Accounts.** In no event and at no time shall the total amounts in all Individual Accounts at any Valuation Date, plus amounts previously established for expenses and reserves at the time, exceed the total net assets of the Fund. Should such an event occur, then all existing Individual Accounts shall automatically be proportionately reduced so that the total of all Individual Accounts plus amounts established for expenses and reserves is not more than the Fund's total net assets.

**Section 5: No Interest in Fund Assets.** The fact that Individual Accounts are established and valued as of each Valuation Date shall not give any Participant, or others, any right, title or interest in the Fund, or its assets, or in the Individual Account, except upon the terms and conditions herein provided for benefits under this Plan.

**Section 6: Vesting.** The Individual Account of a Participant under this Plan shall be 100% vested immediately. No person shall be deemed vested unless they become an eligible Participant in accordance with Article II, Section 1, of this Plan.

**Section 7: Failure to Apply for Individual Account.** If a Vested Participant has no credited hours for a period of six years and no other communication is made to the Plan during that period, the Plan shall make all reasonable attempts to communicate with the Participant, and if unable to do so the Plan shall apply the amount in the Individual Account as forfeiture for the purpose of reducing administrative expenses of the Plan. In the event a Participant whose Individual Account has been forfeited in this manner later makes application or is later discovered by the Plan, the value of the Individual Account at the time of forfeiture shall be reinstated, and that Individual Account shall be accumulated at interest and expense rates prevailing during the appropriate years to reinstate the Participant's Individual Account to what it would have been had the forfeiture not occurred, and such reallocation shall be treated as a Plan expense in the Plan Year of reinstatement.

## **ARTICLE IV EMPLOYER CONTRIBUTIONS**

**Section 1: Employer Contributions.** Pursuant to the terms of the Collective Bargaining Agreement or Subscriber Agreement, the Employer shall make a contribution for each hour worked by or paid to an Employee. The rate of the Employer Contributions shall be as set forth in the Collective Bargaining Agreements, or Subscriber Agreements. The Individual Account of a Participant under this Plan shall be 100% vested immediately. No person shall be deemed vested unless they qualify as an eligible Participant in accordance with Article II, Section 1, of this Plan.

## **ARTICLE V PAYMENT OF INDIVIDUAL ACCOUNTS**

**Section 1: Purpose.** The International Union of Operating Engineers Local 501 Individual Account Plan Trust Fund is a Profit Sharing Plan. The purpose of the Plan is to accumulate retirement income. Therefore, Participants shall not be allowed to borrow against or receive amounts in the Individual Account except according to the rules in this Article V.

### **Section 2: Amount of Payment.**

- (a) Upon the termination, death or retirement of Participant, the amount to be paid, subject to the following sections, shall be the Participant's Accumulated Share determined as of the date of the termination, death or retirement, in accordance with Article III, Section 2.
- (b) For the purpose of determining the Accumulated Share pursuant to this Section, the happening of the event calling for a payment shall be deemed to be the month in which the application for payment is received by the Plan.

### **Section 3: Benefit Payments Generally.**

- (a) If an Accumulated Share is payable which amounts to less than \$5,000, then such Accumulated Share shall be paid only on the lump sum basis.
- (b) Notwithstanding the foregoing, distribution of Plan benefits to a Participant must commence no later than April 1 following the Plan Year in which the Participant attains age 70½ even if such Participant continues to work past age 70½.
- (c) The basis of all forms of benefits payable from the Plan is the amount of the Participant's Individual Account.
- (d) If an Accumulated Share is payable to any Participant under 55 years of age, then such Accumulated Share shall either be payable as a lump sum, or as a deferred monthly annuity payable upon attainment of age 55, or any later age (but not later than attainment of age 65) elected by such Participant, subject to any Qualified Domestic Relations Order.

**Section 4: Payment of Accumulated Share.** In the event that a Participant retires, terminates employment prior to retirement, or dies, the amount in his/her Individual Account, if any, shall be paid to the Participant or Beneficiary in accordance with this Article. Payment of benefits shall be subject to the following conditions:

- (a) **Retirement.**
  - (1) Attainment of age 62; provided that no Contributions to the Participant's Individual Account have been made for at least three consecutive calendar months; or
- (b) **Prior to Retirement.**
  - (1) Regardless of age, when a Participant has separated from service and there have been no Contributions to the Participant's Individual Account for twenty four (24) consecutive calendar months.
  - (2) Entitlement to a Social Security Disability Benefit under Title II of the Social Security Act.
  - (3) Receipt of a pension from the Central Pension Fund of the International Union of Operating Engineers and Participating Employers.
- (c) **Death.** In the event that a Participant dies, his/her Accumulated Share shall be paid to his/her Spouse, as defined in Article I, Section 19, or if there is no Spouse, then to his/her Designated Beneficiary. Any payment of the Participant's Accumulated Share to a Spouse or Designated Beneficiary shall be made on the same terms as are set forth in Article V, Section 5.

**Section 5: Form of Distribution of Accumulated Share.**

- (a) A Participant who becomes entitled to receive his/her Accumulated Share may request the Plan to pay his/her Accumulated Share in one of the following forms:
  - (1) A nontransferable single premium annuity contract purchased from a licensed legal reserve life insurance company providing annuity payments payable at least annually in substantially equal installments, over a period of time not longer than the life of the Participant, or over the lives of the Participant and a designated Beneficiary (or over a period not extending beyond the life expectancy of the Participant or the life expectancy of the Participant and a designated Beneficiary); or
  - (2) A lump sum payment; or
  - (3) A combination of (1) and (2); or
  - (4) A qualified rollover distribution.
- (b) The normal form of benefit payable to a married Participant is a Qualified Joint and Survivor Annuity, unless the Participant and his/her Spouse elect (1) a lump sum payment or a series of level installments for a period not to exceed five years; or (2) a 75% Qualified Survivor Annuity in lieu of the Qualified Joint and Survivor Annuity.
- (c) The normal form of benefit payable to an unmarried Participant is a single-life annuity, unless such Participant elects a lump sum payment.

**Section 6: Qualified Pre-retirement Survivor Annuity.** The normal form of benefit payable on behalf of a married Participant who dies before distribution commences is a Qualified Pre-retirement Survivor Annuity, which is a single life annuity payable over the life of the Spouse. The Spouse may elect an immediate lump sum payment or a series of level installments for a period not to exceed five years instead of the Pre-retirement Survivor Annuity.

**Section 7: Election to Waive Survivor Annuity.**

- (a) A waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-retirement Survivor Annuity must be in writing and must be consented to by the Participant's Spouse. The Spouse's consent to a waiver must be witnessed by a Plan representative or notary public. Notwithstanding this consent requirement, if the Participant establishes to the satisfaction of a Plan representative that such written consent may not be obtained because there is no Spouse or the Spouse cannot be located, a waiver will be deemed a qualified election. Any consent necessary under this provision will be valid only with respect to the Spouse who signs. Additionally, a revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits or death, if earlier. The number of revocations shall not be limited.

- (b) If the Participant and Spouse become divorced after submitting a waiver to the Plan, such waiver will automatically be deemed void by the Plan upon receipt of all documents required by the Plan. Thereafter, if the Participant remarries prior to the date upon which benefits become payable under the Plan, a new waiver of the Qualified Joint and Survivor Annuity or Qualified Pre-retirement Survivor Annuity must be submitted to the Plan in accordance with subparagraph (a) of this Article V, Section 7.
- (c) A Participant may reject the Qualified Joint and Survivor form of annuity or revoke a previous rejection at any time before the Retirement starting date. A Participant shall in any event have the right to exercise this choice during the ninety-day period prior to the Retirement starting date.

## **Section 8: Notice Requirements.**

- (a) In the case of a Qualified Joint and Survivor Annuity, the Plan shall provide each Participant at least 30 days before but no more than 180 days before the Annuity Starting Date (or at such other time as provided by law), a written explanation of the terms and conditions of the Qualified Joint and Survivor Annuity and the 75% Qualified Survivor Annuity benefit forms, including an explanation of:
  - (1) The terms and conditions of the Qualified Joint and Survivor Annuity and the 75% Qualified Joint Survivor Annuity,
  - (2) The Participant's right to make, and the effect of, an election to waive the Joint and Survivor Annuity form of benefit,
  - (3) The rights of the Participant's Spouse, regarding his/her consent to such an election,
  - (4) The right to make, and the effect of, a revocation of such an election,
  - (5) The relative values of the various optional forms of benefit under the Plan, and
  - (6) The right to defer any distribution and the consequences of failing to defer distribution of benefits including a description of how much larger benefits will be if the commencement of distributions is deferred.

**Section 9: Individual Accounts After Retirement.** No Individual Account shall be established for an Employee who has retired or who has previously received, or is currently receiving, payment of his/her Accumulated Share from this Plan and for whom Contributions are received at a time when such Employee is 62 years of age or over and, in such case, such Employee shall receive such Contributions in a lump sum as soon as practicable after the Valuation Date of the Plan Year in which such Contributions are made.

**Section 10: Involuntary Distributions.** In the event of an involuntary distribution greater than \$1,000, if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator.

## ARTICLE VI

### CLAIMS REVIEW AND APPEALS PROCEDURE

**Section 1: Disputes.** No Employee, Participant, Annuitant, Beneficiary or other person shall have any right or claim to benefits under this Plan, other than as specified in this Plan. If any person shall have a dispute with the Board of Trustees as to eligibility, type, amount, duration or any other matter pertaining to such benefits, the dispute shall be resolved by the Board of Trustees under and pursuant to this Plan, and its decision of the dispute shall be final and binding upon all parties thereto, subject to applicable federal law.

**Section 2: Claims.** Any person whose application for benefits under the Plan has been denied in whole or in part, or whose claim to benefits or against the Fund is otherwise denied, shall be notified in writing of such denial within ninety days after receipt of such application or claim. An extension of time not exceeding ninety days may be required in special circumstances; if so, notice of such extension, indicating what special circumstances exist therefor and the date by which a final decision is expected to be rendered, shall be furnished the claimant prior to the expiration of the initial ninety day period. The notice of denial shall set forth in a manner calculated to be understood by the claimant:

- (a) The specific reason or reasons for the denial;
- (b) Specific reference to pertinent Plan provisions on which the denial is based;
- (c) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
- (d) Appropriate information as to the steps to be taken if the claimant wishes to submit his/her claim for review.

**Section 3: Claims Review.**

- (a) Any such person may petition the Trustees for a review of the denial. A petition for review shall be in writing, shall state in clear and concise terms the reason or reasons for disputing the denial, shall be accompanied by any pertinent documentary material not already furnished to the Fund, and shall be filed by the petitioner or his/her duly authorized representative with the Trustees within sixty days after the petitioner received notice of the denial. The petitioner or his/her duly authorized representative shall be permitted to review pertinent documents and submit issues and comments in writing.

- (b) Upon good cause shown, the Trustees shall permit the petition to be amended or supplemented and may grant a hearing on the petition before a hearing panel consisting of at least one (1) Employer Trustee, and one (1) Union Trustee to receive and hear any evidence or argument which cannot be presented satisfactorily by correspondence. The failure to file a petition for review within such sixty (60) day period or the failure to appear and participate in any such hearing shall constitute a waiver of the claimant's right to review of the denial.
- (c) A decision by the Trustees specified in subparagraph (b) shall be made promptly and not less than sixty days after the Trustees' receipt of the petition for review, unless special circumstances require an extension of time for processing, in which case notice of such extension shall be furnished to the claimant prior to the expiration of the sixty day period. A decision shall be rendered as soon as possible, but not later than 120 days after receipt of the petition for review. The petitioner shall be advised of the Trustees' decision in writing. The decision shall include specific reasons for the decision, written in a manner calculated to be understood by petitioner, and specific references to the pertinent Plan provisions on which the decision is based.
- (d) The decision of the Trustees specified in subparagraph (b) shall constitute a final and binding decision on behalf of the full Board of Trustees with respect to a claim or petition for reconsideration shall be final and binding upon all parties, including the petitioner and any person claiming under the petitioner. The provisions of this section shall apply to and include any and every claim to benefits from the Fund, and any claim or right asserted under this Plan or against the Fund, regardless of the basis asserted for the claim and regardless of when the act or omission upon which the claim is based occurred.
- (e) No legal action may be commenced or maintained against the Pension Plan, the Board of Trustees or Trust Fund more than one year after a claim's appeal has been denied.

**Section 4: Qualified Domestic Relations Orders.** The Board of Trustees shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under domestic relations orders which are deemed to be qualified orders. Such procedures shall be in writing and shall comply with the provisions of Internal Revenue Code Section 414(p) and regulations issued thereunder.

## **ARTICLE VII** **GENERAL PROVISIONS**

**Section 1: Application for Benefits.** Application for benefits must be made in writing in a form and manner prescribed by the Trustees. No benefits shall be paid prior to receipt of a written determination from the Internal Revenue Service that the Trust is an exempt trust and that this Plan is a qualified plan under the provisions of the Internal Revenue Code, whichever is later.

**Section 2: Proof to be Furnished.** Every Employee, Participant, Annuitant, or Beneficiary shall furnish, at the request of the Trustees, any information or proof reasonably required for the administration of this Plan or for the determination of any matter that the Trustees may legitimately have before them. Failure to furnish such information or proof promptly, accurately and completely shall be grounds for the withholding of benefits to such person until complete and accurate information is furnished. The falsity of any statement material to an application or the furnishing of fraudulent information or proof shall be grounds for suspension or withholding of benefits under this Plan until the true information is provided, and in any such case, the Trustees are entitled to recovery of any erroneous benefit payments made in reliance thereon.

**Section 3: Powers of Trustees.** The Trustees shall be the sole judges of the standard of proof required in any case. The Board of Trustees shall have absolute discretionary authority in the application and interpretation of any of the provisions of this Plan, making factual determinations, and resolving disputes. The decision of the Board of Trustees shall be final and binding on all parties, including Employers, the Union, Employees, Participants and Beneficiaries, subject to applicable federal law.

**Section 4: Designation of Beneficiary.** A Participant may designate a Beneficiary on a form provided by or acceptable to the Trustees and delivered to the Trustees before death. A Participant may change his/her Beneficiary in the same manner. If a Participant is married on the date his/her Accumulated Share becomes payable under the Plan, the Participant's Spouse shall be deemed the Beneficiary unless the Participant and Spouse have previously directed otherwise in writing in accordance with Article V. If no Beneficiary has been designated for either Plan, or no designated Beneficiary has survived the Participant, then distribution of the Participant's Individual Account shall be made to the next of kin in the following order of preference, as determined at the sole discretion of the Trustees:

- (a) The surviving Spouse.
- (b) The surviving children in equal shares.
- (c) The surviving parents in equal shares.
- (d) The surviving brothers and sisters in equal shares.

If the Participant leaves no surviving named Beneficiary, Spouse, child, parent or brother or sister, then his/her benefit is to be distributed to his/her estate. In the event of conflicting claims or unclear instructions, the payment decision of the Trustees shall be final, or the Trustees may discharge their responsibility by payment of the Individual Account to a court of competent jurisdiction, or pursuant to a court's Qualified Domestic Relations Order, as provided in applicable federal law.

**Section 5: Mental Incompetency.** In the event it is determined to the satisfaction of the Trustees that any Participant, Annuitant or Beneficiary is unable to care for his/her personal affairs because of mental or physical incapacity, any benefit due such person, unless claim therefore has been made by a legal guardian or legal representative, may be applied at the

discretion of the Trustees for maintenance and support of such Participant, Annuitant or Beneficiary. Any such payment shall completely discharge the Plan's liability with respect to such payment.

**Section 6: Prohibition Against Assignment.** Subject to the terms of any Qualified Domestic Relations Order meeting the applicable requirements of federal law, no Employee, Annuitant, Participant or Beneficiary hereunder shall have any right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute, or anticipate any payments, and such payments shall not in any way be subject to any legal process, levy of execution, attachment or garnishment proceedings for the payment of any claim against any Employee, Annuitant, Participant or Beneficiary; nor shall such payments be subject to the jurisdiction of any bankruptcy court or insolvency proceedings by operation of law or otherwise, and any such assignment shall be void and of no effect whatsoever, and in any such event the Trustees shall have the right to terminate any payments to such person immediately upon such assignment, alienation or transfer.

**Section 7: Limitations on Annual Allocations under Section 415.**

- (a) In addition to any other limitations set forth in the Plan and notwithstanding any other provisions of the Plan, effective for Limitation Years beginning on and after January 1, 2008, Contributions and other amounts ("annual additions") under the Plan shall be limited in accordance with section 415 of the Code and the Treasury Regulations thereunder, in accordance with this Section. This Section 7 is intended to incorporate the requirements of Section 415 of the Code by reference except as otherwise specified herein.
- (b) Definitions.

For purposes of this Article VII, Section 7 only, the following terms shall have the following meanings:

- (1) Compensation.

For Limitation Years beginning on or after July 1, 2007 for all purposes under the Plan, including this Section 7, "Compensation" means remuneration as defined in Treasury Regulation § 1.415(c)-2(d)(4).

Compensation shall also be subject to the following rules:

- (A) Compensation must be paid within the Limitation Year, and paid or treated as paid before Severance from Employment in accordance with the general timing rule of Treasury Regulation § 1.415(c)-2(e)(1) and in accordance with § 1.415(c)-2(e)(2).
- (B) Compensation must include amounts paid by the later of 2½ months after Severance from Employment or the end of the Limitation Year that includes the Severance from Employment date in accordance with

§1.415(c)-2(e)(3)(i). Such post-severance compensation includes regular pay as defined in §1.415(c)-2(e)(3)(ii), leave cashouts and deferred compensation as defined in §1.415(c)-2(e)(3)(iii), salary continuation payments for military service and disabled participants in accordance with §1.415(c)-2(e)(4), deemed section 125 compensation as defined in §1.415(c)-2(g)(6), deemed compensation for periods of permanent and total disability in accordance with §1.415(c)-2(g)(4), but not other post-severance payments as defined in §1.415(c)-2(e)(3)(iv).

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

- (2) Limitation Year. “Limitation Year” means the calendar year.
- (3) Severance from Employment. “Severance from Employment” has occurred when a Participant is no longer an Employee of any Employer maintaining the Plan.

(c) Limit on Annual Additions.

For Limitation Years beginning on or after January 1, 2008, in no event shall the total annual additions credited with respect to any Participant for a Limitation Year exceed the limits determined in accordance with section 415 of the Code and the Treasury regulations thereunder (the “maximum annual addition”). If a Participant’s total annual additions for a Limitation Year beginning on or after January 1, 2008 would exceed the maximum annual addition for that Limitation Year, annual additions with respect to the Participant shall be frozen or reduced so that the annual additions with respect to the Participant do not exceed the maximum annual addition for that Limitation Year.

(d) Aggregation of Plans.

- (1) For purposes of applying the limits of this Section 7, if a Participant also participates in another tax-qualified defined contribution plan of the Employer that is not a multiemployer plan, only the annual additions under this Plan that are provided by the Employer are aggregated with the annual additions under the other plan.
- (2) In the event that the aggregate annual addition in any Plan Year by a Participant exceeds the limits under section 415 of the Code and the Treasury Regulations

thereunder as a result of the mandatory aggregation of the annual additions under this Plan with the Annual additions under another plan maintained by the Employer, the annual additions under such other plan shall be reduced to the extent necessary to comply with section 415 of the Code and the Treasury Regulations thereunder.

(e) General.

- (1) To the extent that a Participant's annual additions are subject to provisions of section 415 of the Code and the Treasury Regulations thereunder that have not been set forth in the Plan, such provisions are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.
- (2) This Section 7 is intended to satisfy the requirements imposed by section 415 of the Code and the Treasury Regulations thereunder and shall be construed in a manner that will effectuate this intent. This Section 7 shall not be construed in a manner that would impose limitations that are more stringent than those required by section 415 of the Code and the Treasury Regulations thereunder.
- (3) If and to the extent that the rules set forth in this Section 7 are no longer required for qualification of the Plan under section 401(a) and related provisions of the Code and the Treasury Regulations thereunder, they shall cease to apply without the necessity of an amendment to the Plan.

(f) Interpretation or Definition of Other Terms

The terms used in this Section 7 that are not otherwise expressly defined for this Section shall be defined as provided in the Plan, or if not defined in the Plan, shall be defined, interpreted and applied for purposes of this Section 7 as prescribed in section 415 of the Code and the Treasury Regulations thereunder.

**Section 8: Prohibition of Reversion.** Contributions made by the Employer to the Plan shall be made irrevocably and it shall be impossible for the assets of the Plan to inure to the benefit of the Employer or to be used in any manner other than for the exclusive purpose of providing benefits to Participants and Beneficiaries, and for defraying reasonable expenses of administering the Plan; provided, however, subject to any Collective Bargaining Agreement and applicable federal law, that nothing herein shall be construed to prohibit the return to the Employer of all or part of a contribution:

- (a) which is made by the Employer by a mistake of fact, provided the return of such contribution is made within one year after the payment thereof and no later than 6 months after the Trustees determine that the contribution was made by such a mistake; or
- (b) to the extent a deduction thereof under Section 404 of the Internal Revenue Code is disallowed and the return is made within one year after the disallowance; or

- (c) which is conditional upon initial Internal Revenue Service qualification of the Plan under Section 9 hereof, provided the return is made within one year after the denial of qualification of the Plan.

**Section 9: Internal Revenue Service Qualification.** This Plan is adopted by the Trustees upon the condition that it shall qualify initially under the applicable provisions of the Internal Revenue Code. Therefore, if the Plan fails to so qualify, as evidenced by receipt of a letter to such effect from the Internal Revenue Service, then the Trustees, subject to any Collective Bargaining Agreement and applicable federal law, reserve the right to either:

- (a) terminate the Plan hereunder; or
- (b) amend the Plan retroactively to the extent necessary or appropriate to secure a favorable determination that the Plan is so qualified.

## **ARTICLE VIII** **AMENDMENT AND TERMINATION**

**Section 1: Plan Amendment.** The Trustees may amend or modify the Plan at any time in accordance with the Trust Agreement and subject to applicable federal law. Subject to Article VII, Section 9, no such amendment or modification may reduce any accrued or vested benefits.

**Section 2: Plan Merger or Consolidation.** In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, the amount of benefit which a Participant or Beneficiary would receive upon a termination of the Plan immediately after such merger, consolidation or transfer shall be no less than the benefit s/he would have been entitled to receive immediately before the merger, consolidation or transfer if the Plan had then been terminated.

**Section 3: Plan Termination.** In the event of partial or complete termination of this Plan or in the event of complete discontinuance of Contributions, each Participant shall have a nonforfeitable right to his/her Individual Account. In the event of termination of the Plan, the assets then remaining, after providing for the expenses of the Plan and for the payment of any Accumulated Shares theretofore approved, shall be distributed among the Participants as follows:

- (a) Each Participant shall receive that part of the total remaining assets in the same ratio as his/her Accumulated Share bears to the aggregate amount of the Accumulated Shares of all Participants. Except as otherwise provided herein, no part of the assets shall be returned to any Employer or inure to the benefit of any Employer or the Union. In the event that a Participant cannot be located and no claim is made for payment of his/her Accumulated Share within ninety days following notice by registered mail to the Participant's last known address, his/her Accumulated Share shall be forfeited and redistributed on a uniform basis among Participants to whom payments have or can be made.

- (b) In the event the liquidation value of the assets on the date of termination is less than the total of all Accumulated Shares, plus expenses, the Trustees shall have the option of paying all Accumulated Shares to Participants as rapidly as possible over a period not to exceed ten years, to the maximum extent permitted by the assets available under any insurance investment contract procured by the Trustees.

**Section 4: Severability.** If any provision of the Plan, or any step in the administration of the Plan, is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan, unless such illegality or invalidity prevents accomplishment of the purposes and objectives of the Plan. In the event of any such holding, the Trustees will immediately amend the Plan to remedy the defect.

## **ARTICLE IX** **SPECIAL PROVISIONS FOR ELIGIBLE ROLLOVER DISTRIBUTIONS**

**Section 1 Purpose.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the Distributee in a direct rollover.

**Section 2 Definitions.** For purposes of this Article IX only, the following terms shall have the following meanings:

- (a) **Eligible rollover distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; and any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code.
- (b) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, or a qualified trust described in Section 403(a) of the Internal Revenue Code, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the Distributee's eligible rollover distribution. An eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, or a Roth individual retirement account described in Code Section 408A for an eligible Distributee, that accepts the Distributee's Eligible Rollover Distribution. The definition of eligible retirement plan shall also apply in the case of a distribution

to a Spouse, or former spouse who is the alternate payee under a Qualified Domestic Relation Order, as defined in section 414(p) of the Code.

- (c) Distributee: A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Spouse and the Employee's or former Employee's surviving Spouse or former Spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Internal Revenue Code, are Distributees with regard to the interest of the Spouse or former Spouse. A Distributee also includes a Participant's non-spouse beneficiary who is his or her Designated Beneficiary within the meaning of IRC Section 401(a)(9)(E). In the case of a non-spouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in §408(a) or §408(b) ("IRA") that is established on behalf of the Designated Beneficiary and that will be treated as an inherited IRA pursuant to §402(c)(11).
- (d) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the Distributee.

## **ARTICLE X** **MINIMUM DISTRIBUTION REQUIREMENTS.**

### **Section 1. General Rules**

- (a) The provisions of this article will apply for purposes of determining required minimum distributions.
- (b) Except to the extent inconsistent with this Article X, all distributions options provided under the Plan are preserved.
- (c) Precedence. The requirements of this article will take precedence over any inconsistent provisions of the Plan.
- (d) Requirements of Treasury Regulations Incorporated. All distributions required under this article will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Internal Revenue Code.

### **Section 2. Time and Manner of Distribution.**

- (a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (1) If the Participant's Spouse is the Participant's sole Designated Beneficiary, then, except as provided in the adoption agreement, distributions to the Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
- (2) If the Participant's Spouse is not the Participant's sole Designated Beneficiary, then, except as provided in the adoption agreement, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (4) If the Participant's Spouse is the Participant's sole Designated Beneficiary and the Spouse dies after the Participant but before distributions to the Spouse begin, this Section 2, other than Section 2.2, will apply as if the Spouse were the Participant.

For purposes of this Section 2 and Section 4, unless Section 2(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 2(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the Spouse under Section 2(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's Spouse before the date distributions are required to begin to the Spouse under Section 2(b)(1), the date distributions are considered to begin is the date distributions actually commence.

- (c) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 3 and 4 of this Article. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

### **Section 3. Required Minimum Distributions During Participant's Lifetime.**

- (a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
  - (1) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section

1.401(a)(9)-9 of the Treasury regulations using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(2) if the Participant's sole Designated Beneficiary for the distribution calendar year is the Participant's Spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.

(b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

#### **Section 4. Required Minimum Distributions After Participant's Death.**

(a) Death On or After Date Distributions Begin.

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

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

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

(C) If the Participant's Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of

the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year through the year in which distributions commence.

- (b) Death Before Date Distributions Begin.
  - (1) Participant Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in Section 1(a). Such distributions will be made in accordance with Article VII, Section 4.
  - (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's Spouse is the Participant's sole Designated Beneficiary, and the Spouse dies before distributions are required to begin to the Spouse under Section 2(b)(1), then this Section 4(b) will apply as if the Spouse were the Participant.

**Section 5. Definitions.** For purposes of this Article X only, the following terms shall have the following meanings:

- (a) Designated beneficiary. The individual who is Designated Beneficiary, as determined under Article VII, Section 4 of this Plan and the designated beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- (b) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 2(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required

minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

- (c) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (d) Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year), increased by the amount of any Contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (e) Required beginning date. The date specified in Article 5, Section 3(b) of the Plan.

Dated this 9<sup>th</sup> day of June 2017.

**BOARD OF TRUSTEES OF THE INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501 INDIVIDUAL ACCOUNT PLAN TRUST FUND**

EDWARD CURLY

MICHAEL NAREZ

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