

I.U.P.A.T. DISTRICT COUNCIL NO. 51 HEALTH AND WELFARE FUND

PARTICIPATION AGREEMENT FOR NON-COLLECTIVELY BARGAINED EMPLOYEES

The undersigned Employer and the Trustees of the IUPAT District Council No. 51 Health & Welfare Fund ["the Fund"] agree that the Employer's Non-Collectively Bargained employees may participate in the Fund on the following terms. Such participation shall be in accordance with the terms and conditions stated in this Participation Agreement and, to the extent so provided herein, in accordance with the Collective Bargaining Agreement between the Employer and the IUPAT District Council No. 51 ["the Union"].

1. At the time of signing of this Participation Agreement, the Employer shall have the opportunity to obtain health coverage on behalf of its full-time Non-Collectively Bargained Employees ["NCB coverage"], defined as those NCB employees who perform work for at least 30 hours per week ["NCB employees"]. At that time, the Employer shall list by name on Exhibit A all NCB employees for whom it chooses to obtain coverage, and who shall be known as the **Opt In Employees**. All NCB employees whom the Employer chooses not to cover under this Participation Agreement (because those employees have existing health coverage or otherwise) shall be listed by the Employer on Exhibit B, and shall be known as the **Opt Out Employees**. No **Opt Out Employee** may thereafter be designated as an **Opt In Employee**, due to change in personal circumstances (e.g., later loss of coverage through a spouse) or otherwise. Rather, only NCB employees who are newly hired after the date of signing of this Participation Agreement shall thereafter be eligible to obtain NCB coverage as an **Opt In Employee**, and only then in accordance with the Open Season terms set forth at Paragraph 5 below. .
2. The Employer may first begin contributing on behalf of its NCB **Opt In Employees**, and such employees shall first become eligible to receive coverage under the Fund, only on the first day of the month that immediately follows the Employer's signing of both: a collective bargaining agreement with the Union covering Union-represented employees ["CBA"]; and the Employer's signing of this Participation Agreement, with Exhibits A and B attached. Should the Employer decline to become a contributing employer on behalf of any of its NCB employees at the time of signing its first CBA with the Union, the Employer thereafter shall be permitted to become a contributing employer on behalf of its NCB employees, and its NCB employees shall be permitted to commence participation in the Fund, only upon the first day of the month that immediately follows the Employer's signing of both a successor CBA with the Union and this Participation Agreement, with Exhibits A and B attached, designating the **Opt In Employee** and **Opt Out Employee** lists.
3. For the Employer's NCB **Opt In Employees** to remain eligible for Fund benefits, the

Employer must continue to employ at least two bargaining unit employees represented by the Union and covered by the terms of a CBA, absent which the Trustees shall immediately terminate the agreement in accordance with paragraph 15 below.

4. The Employer acknowledges and agrees that an NCB employee who is newly hired after the effective date of this Participation Agreement shall be eligible to begin participation in the Fund and to receive NCB coverage only at the next NCB "Open Season" commencing the **January 1** that first succeeds that NCB employee's initial hiring, further conditioned on the Employer's prior written notification to the Fund by no later than December 15 of such newly hired NCB employee's designation as an **Opt In Employee**. The Employer's list of **Opt In Employees** attached to this Participation Agreement as Exhibit A shall be considered updated annually to reflect any such additions.
5. The Employer must make timely monthly contributions on behalf of its **Opt In Employees** as a condition of their NCB health care coverage. The current NCB contribution rate is \$ _____ per month for each NCB **Opt In Employee**. The Employer acknowledges and agrees that the Trustees of the Fund may, in their discretion and without the Employer's consent, change the governing contribution rate, and the continued eligibility of the Employer's **Opt In Employees** to receive NCB coverage shall be conditioned upon the Employer's payment of timely, monthly contributions on their behalf at the newly governing contribution rate.
6. The Employer acknowledges and agrees that its NCB **Opt In Employees** shall be eligible to receive benefits from the Fund solely pursuant to the terms of this Participation Agreement and based on its timely and complete monthly contributions on their behalf. No NCB employees shall be permitted to continue their eligibility by making personal contributions to the Fund; nor shall any NCB employees become eligible to receive retiree coverage from the Fund, notwithstanding any governing plan provision to the contrary.
7. The Employer agrees to keep adequate payroll and administrative records of each NCB employee's date of hire and hours of service, to document each **Opt In Employees'** initial and continued eligibility to receive NCB coverage. These records will be provided to the Trustees upon request.
8. Contributions made on behalf of all NCB **Opt In Employees** must be received by the Fund Office no later than the twenty-fifth (25th) day of the month preceding the month for which benefits are to be extended. (For example, contributions for May must be received by April 25th.) Contributions must be made in the manner established by the Trustees or other designated representative of the Fund. The Trustees shall have the authority to audit the records of the Employer, through the services of a certified public accountant or otherwise, in accordance with the Fund's delinquency and audit procedures to determine whether timely and complete contributions have been made.
9. By signing this Participation Agreement, the Employer agrees to be bound to the terms

and conditions of the Restated Agreement and Declaration of Trust establishing the Fund and any future amendments to the Trust Agreement; the terms of the CBA; the Summary Plan Description ["SPD"] adopted by the Trustees or other designated representative and any rules and regulations governing the participation of NCB Employees; and the decisions of the Trustees or other designated representatives of the Fund in administering the Fund in accordance with the governing documents. The Trust Agreement, Fund SPD and the CBA are incorporated into this Participation Agreement by reference.

10. Failure by the Employer to remit timely and complete contributions on behalf of all NCB **Opt In Employees** shall be grounds for the immediate termination of such NCB employees' eligibility and participation in the Fund in accordance with paragraph 15 below. Moreover, failure by the Employer to remit timely and complete contributions to the Fund on behalf of its Union-represented employees pursuant to the terms of a CBA, or its failure to cooperate in any payroll audit, or its violation of any provision of this Participation Agreement, the CBA, the SPD or the Trust Agreement governing the Fund, shall be grounds for the immediate termination of all NCB employees' eligibility and participation in the Fund in accordance with paragraph 15 below. The Employer acknowledges and agrees that, should NCB coverage be terminated based on a contribution delinquency or any other basis stated herein, such termination shall not be considered a COBRA "qualifying event" and its NCB employees shall be not be entitled to COBRA continuation coverage under the Fund.
11. The Employer acknowledges that the Trustees or other designated representatives of the Fund have full discretion and authority to adopt rules governing the participation of NCB Employees in the Fund which may be included in the SPD, the Trust Agreement, and/or other Plan Documents and have the discretionary authority to amend and interpret these rules and documents. Such rules and documents may be amended by the Trustees without the consent of the Employer.
12. The Fund will at all times conform to the requirements of the Internal Revenue Code and all other governing law. The Employer understands and agrees that the Trustees are authorized to take any and all actions which they deem necessary to protect the Plan's tax qualified status and/or to ensure compliance with governing law.
13. The Employer understands that its contributions to the Fund on behalf of its NCB **Opt In Employees**, and their participation in the Fund are conditioned on the Employer's compliance with the requirements of the Fund and the requirements of law, including the Internal Revenue Code, for that Plan Year. The Employer agrees to provide the information or certifications deemed necessary by the Trustees or other designated representatives.
14. If the Employer fails to provide information or certifications requested by the Trustees or other designated representatives or fails to comply with the requirements of the Fund or with applicable law, the Employer agrees to immediately take appropriate and necessary remedial action as the Trustees or other representative determine. Such action may

include the termination of the Employer's NCB Employees from participation in the Fund, or such other action to cure the defect as the Trustees or other representatives and the law prescribe.

15. This Agreement may be terminated by the Trustees for any reason upon fifteen (15) days' written notice to the Employer. This Agreement shall otherwise be co-extensive in duration with the terms of each CBA between the Employer and the Union and shall automatically be terminated upon the termination and non-renewal of the CBA between the Employer and the Union, or upon the Employer's failure to sign a successor CBA with the Union.
16. The Employer agrees to pay the Fund's attorneys' fees and costs, including any audit costs, expended in enforcing this agreement.

This Agreement is effective commencing the ____ day of _____, _____.

**IUPAT District Council No. 51
Health & Welfare Fund**

Employer

BY:

PRINT EMPLOYER NAME

DATE:

BY:

DATE: