

MASTERS, MATES & PILOTS

ADJUSTABLE PENSION PLAN FIRST RESTATED REGULATIONS

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(THROUGH AMENDMENT #6)

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MASTERS, MATES & PILOTS  
ADJUSTABLE PENSION PLAN FIRST RESTATED REGULATIONS

Effective January 1, 2013, the Board of Trustees of the Masters, Mates & Pilots Adjustable Pension Plan Fund (the "Fund") established the Fund, administered pursuant to an Agreement and Declaration of Trust, to provide pension and related benefits. The Board of Trustees of the Fund hereby adopts these Regulations of the Masters, Mates & Pilots Adjustable Pension Plan (the "Plan"), a variable annuity plan, to govern the benefits to be provided under the Fund, effective January 1, 2013.

This Plan is effective January 1, 2013, and applies to Employees who satisfy the eligibility conditions of Section 2.01.

**ARTICLE I**  
**DEFINITIONS**

In this Plan, the following terms shall have the meanings specified below:

1.01. **ACCRUED BENEFIT.** "Accrued Benefit" means the monthly pension benefit payable to a Participant in the form of a Single Life Annuity with 60 Monthly Payments Guaranteed (as defined in Section 6.02) commencing at Normal Retirement Age determined in accordance with this Plan.

1.02. **ACTUARIAL EQUIVALENT.** The "Actuarial Equivalent" means a benefit of equivalent value determined using the applicable interest rate and the applicable mortality table, as defined in Section 1.03 unless different factors are specified in the applicable Plan provision.

1.03. **ACTUARIAL PRESENT VALUE.** Unless otherwise specified in the Plan, "Actuarial Present Value" means a benefit determined by using the applicable mortality table, the applicable interest rate, and the stability period, where:

- A. the applicable mortality table is the mortality table prescribed by the Secretary of the Treasury under Code § 417(e)(3)(B) in effect on the first day of the applicable stability period;
- B. the applicable interest rate is the interest rate pursuant to Code § 417(e)(3)(C) for the "lookback month", defined as the month in which the applicable interest rate during the five month period of August through December of the Plan Year immediately preceding the Plan Year containing the Annuity Starting Date that produces the largest value; and
- C. the stability period is the Plan Year in which the Annuity Starting Date for the distribution occurs.

1.04. **ANNUITY STARTING DATE.** "Annuity Starting Date" means the first day of the first full month for which an amount is payable as an annuity or in any other form after the Participant has fulfilled all of the conditions for entitlement to commencement of benefits.

1.05 BENEFICIARY. "Beneficiary" means a person designated by a Participant, or by the terms of the Regulations or applicable federal law, who is or may be entitled to a benefit hereunder.

1.06. BREAK-IN-SERVICE. A "Break-in-Service" means a Plan Year during which the Participant fails to complete at least 44 Days of Service, or for Participants in Non-Maritime Employment at least 350 Hours of Service.

1.07. CODE. "Code" means the Internal Revenue Code of 1986, as amended from time to time.

1.08. COLLECTIVE BARGAINING AGREEMENT. "Collective Bargaining Agreement" means an agreement between the Organization and an Employer that requires contributions to the Fund on behalf of Employees of the Employer.

1.09. COMMENCEMENT OF PARTICIPATION. "Commencement of Participation" for any Participant, means the date upon which the Employee becomes a Participant in this Plan in accordance with Article II.

1.10. CONTRIBUTION PERIOD. "Contribution Period" means, with respect to a category of employment, the period during which the Employer is obligated by its agreement to contribute to the Fund with respect to such category of employment.

1.11. COVERED EMPLOYMENT. "Covered Employment" means employment of the type for which contributions to the Fund are required by the terms of a Collective Bargaining Agreement or a Participation Agreement between an Employer and the Organization or between an Employer and the Trustees. "Covered Employment" includes service as an Employee of the Organization, this Fund, and any other trust fund accepted by the Trustees for participation, provided that such employment is covered by a Participation Agreement and is employment with respect to which the Organization, this Fund, or other trust fund is obligated to make contributions to the Fund. The term "Covered Employment" may also include periods of time when an Employer is on a "contribution holiday" and is not obligated to contribute to the Fund for a period of time pursuant to the agreement of the Organization and the Employer. A day of pension credit for each day of attendance, up to 30 days of pension service credit per year, shall be granted for successful completion of courses at, or sponsored or approved by, M.I.T.A.G.S.

1.12. DAY OF SERVICE. "Day of Service" means

- A. a day for which a Participant is directly or indirectly paid, or is entitled to such payment by the Employer for the performance of duties during days of actual employment, including days of vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence;
- B. a day for which back pay is paid, irrespective of whether mitigation of damages has been either awarded or agreed to by the Employer. These days shall be credited to the Participant for the Plan Year to which the award or agreement pertains; or

- C. if a Participant works for a contributing Employer in a job not covered by this Plan and such work immediately precedes or follows his employment with the Employer in Covered Employment, his days of employment in such non-covered job during the Contribution Period and while he continues as an Employee of the Employer shall be counted as Days of Service toward a year of Vesting Service;
- D. Days of Service shall be credited as required by 29 C.F.R. § 2530.200(b)-7.
- E. For the purposes of this Section, the term “Employer” shall include any organization which, with an Employer, is a member of a controlled group of businesses within the meaning of Code § 414 (b), (c), (m) or (o).

1.13. EMPLOYEE. “Employee” means an individual who is employed in Covered Employment under the provisions of a Collective Bargaining Agreement or whose Employer has executed a Participation Agreement with the Organization. The term “Employee” shall also include any employee of the Organization, this Fund, an M.M.& P. Fund, Plan or Committee, or any other Employer or individual for whom the Trustees and the Employer mutually agree that contributions may be accepted, who are not covered by a Collective Bargaining Agreement and who have not voluntarily waived participation in the Plan at the time of hire. The term “Employee” includes a leased employee of an Employer, within the meaning of Code § 414(n), who otherwise meets the conditions for participation, vesting and/or benefit accruals under the Plan. A “leased employee” is defined as any person (other than an Employee) who pursuant to an agreement between the Employer and any other person (“leasing organization”) has performed services for the Employer (or for the Employer and related persons determined in accordance with Code § 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under the primary direction or control of the Employer. The term “Employee” specifically excludes a person whom the Employer considers to be a “contract employee” or “independent contractor” for the period that the person is considered by the Employer to be a “contract employee” or “independent contractor,” even if the person is later reclassified as an employee by the Internal Revenue Service or a court of law, or is otherwise reclassified.

1.14. EMPLOYER. “Employer” means an employer that is required to pay contributions to the Fund for the purposes of this Plan as the result of a Collective Bargaining Agreement, and an employer that has executed a Participation Agreement with the Organization requiring that contributions be made on behalf of Participants. The term “Employer” shall also include an M.M.& P. Fund, Plan or Committee, or the Organization and any other employer from which the Trustees mutually agree that contributions may be accepted by the Fund, that are not pursuant to a Collective Bargaining Agreement.

1.15. ERISA. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

1.16. FUND. “Fund” means the Masters, Mates & Pilots Adjustable Pension Plan Fund and includes the money or other things of value that are under the control or custody of the Trustees for the operation and administration of the Plan.



1.17. **HIGHLY COMPENSATED EMPLOYEE.** “Highly Compensated Employee” means any Employee who performs service for the Employer during the determination year and who during the look-back year received compensation from the Employer in excess of \$115,000 (as adjusted pursuant to Code § 414(q)(1)). Compensation for purposes of this Section means compensation as defined under Code § 415(c)(3), including amounts not includible in the gross income of the Employee by reason of Code §§ 125, 132(f)(4), 402(g) or 457. The term Highly Compensated Employee also includes Employees who are 5% owners at any time during the look-back year or determination year. For this purpose, the determination year shall be the Plan Year. The look-back year shall be the 12-month period immediately preceding the determination year.

1.18. **HOUR OF SERVICE.** “Hour of Service” means an hour of employment with an Employer on or after the effective date of the Employer’s participation in the Plan:

- A. for which the employee is paid, or entitled to payment, for the performance of duties for the Employer;
- B. for which the employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed by the employee (irrespective of whether the employment relationship has terminated), except if no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty (in the U.S. armed forces) or leave of absence, provided such non-work period of time immediately succeeds the employee’s employment in a position described in subsection A, or in Section 1.11. Notwithstanding the preceding sentence, no more than 501 Hours of Service shall be credited under this subsection to an employee on account of any single continuous period during which the employee performs no duties for the Employer; or
- C. for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. Such hour shall be credited to the employee as if it had been worked on the date for which the award is made. The same Hours of Service shall not be credited both under subsection A or B, and this subsection C.

With respect to an Employee who is subject to an Hours of Service requirement under the Plan, in lieu of maintaining hourly payroll records, an Employee may be credited with 10 Hours of Service for each day in which the Employee would be credited with an Hour of Service under this Section, in accordance with 29 C.F.R. § 2530.200b-3(e)(i).

The number of hours to be credited hereunder for reasons other than the performance of duties shall be determined pursuant 29 C.F.R. § 2530.200b-2(b) and (c).

An hour for which the employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed by the employee shall not be credited to the employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable worker’s compensation, or unemployment compensation, or disability insurance laws. Hours shall not be credited for a payment that solely reimburses an employee for medical or medically related expenses incurred by the employee.

For purposes of this Section, a payment shall be deemed to be made by, or due from, the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of a particular employee or are on behalf of a group of employees in the aggregate.

For the purposes of this Section, the term "Employer" shall include any organization that, with an Employer, is a member of a controlled group of businesses within the meaning of Code § 414(b), (c), (m) or (o).

1.19 NON-MARITIME EMPLOYMENT. "Non-Maritime Employment" means shoreside employment, including employment by the Fund or the Organization. Regardless, an Employee who is a dock master or safety consultant shall not be treated as being in Non-Maritime Employment.

1.20. NORMAL RETIREMENT AGE. "Normal Retirement Age" means the date the Participant has reached age 65 and his fifth anniversary of Plan participation. For purposes of this Section, a Participant's years of participation credited under the Masters, Mates & Pilots Pension Plan shall be taken into account.

1.21. ORGANIZATION. "Organization" means the International Organization of Masters, Mates and Pilots, AFL-CIO.

1.22. PARTICIPANT. "Participant" means an Employee who meets the requirements for participation in the Plan as set forth in Article II.

1.23. PARTICIPATION AGREEMENT. "Participation Agreement" means an agreement in form and content acceptable to the Board of Trustees that evidences the obligation of the signatory thereto to be bound by the Trust Agreement, the Plan, and the actions of the Board of Trustees.

1.24. PAY. Unless otherwise provided in the Collective Bargaining Agreement of the Employee's Employer, "Pay" means base wages paid to an individual for any Plan Year for services rendered as an Employee of the Employer that he receives during the Plan Year. The following rules apply to the determination of Pay:

- A. Pay for shoreside Participants and Pilots shall not exceed the base wages of a Master, Class A or Dry Cargo individual, unless otherwise provided for in the Collective Bargaining Agreement or Participation Agreement of the Participant's Employer.
- B. Base wages shall include the non-watchstanding allowance equivalent (28%) for employment below the rank of Master, unless otherwise provided for in the Collective Bargaining Agreement or Participation Agreement of the Participant's Employer.
- C. For Participants who are Masters working aboard the *Sulphur Enterprise* and *Energy Enterprise*, base wages include overtime wages to the extent provided for in the applicable collective bargaining agreement, subject to any limitations herein.
- D. Pay includes vacation wages earned aboard Military Sealift Command and/or MARAD vessels in FOS, in addition to the wages earned aboard such vessels in Reduced Operating

Status; provided, however, that such combined wages may not exceed the pension wages for a Master aboard a MSP APL Maritime vessel.

- E. Pay includes Code § 125 compensation as described in Revenue Ruling 2002-27, and compensation that is not currently includible in the Employee's gross income by reason of the application of Code § 125, 132(f)(4), 402(g), 403(b), or 457(b).
- F. Pay excludes amounts paid after severance from employment, except for such amounts that would have been paid prior to a severance from employment if the Employee had continued in employment with the Employer, if such amounts are paid by the later of (i) 2 ½ months after, or (ii) the end of the Plan Year that includes, the date of the Employee's severance from employment with the Employer, and such amounts would have been included in the definition of Pay if paid prior to the Employee's severance from employment. An Employee has a "severance from employment" when the Employee ceases to be an employee of the Employer. An Employee does not have a "severance from employment" if, in connection with a change of employment, the individual's new employer maintains the Plan with respect to the individual. The determination of whether an Employee ceases to be an employee of the Employer maintaining the Plan is based on all of the relevant facts and circumstances.
- G. Back pay, within the meaning Treasury Regulation § 1.415(c)-2(g)(8) shall be treated as Pay for the Plan Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in the definition of Pay.
- H. Pay shall include differential wage payments (as defined in Code § 3401(h)(2)) a Participant is paid by the Employer while the Participant is performing qualified military service under Code § 414(u)(5) of the Code and is in active duty for a period of more than 30 days.
- I. Pay excludes payments from the M.M.& P. Health and Benefit Plan for a period of disability or for which hospital benefits are paid.
- J. Pay of each Participant taken into account for any Plan Year shall not exceed \$120,000. Regardless, Pay shall not exceed the dollar limit under Code § 401(a)(17), as adjusted from time to time for cost-of-living adjustments.

1.25. PENSION CREDIT. "Pension Credit" means the years and partial years (if applicable) of Covered Employment that are credited toward pension benefits under this Plan. A Participant must be employed in Covered Employment for at least 3 months before being credited with his first Pension Credit. A Participant shall be credited with one year of Pension Credit if the Participant is credited with at least 260 Days of Service in Covered Employment in a Plan Year. If a Participant is credited with at least 65 but less than 260 Days of Service in Covered Employment, the Participant shall be credited with a partial year of Pension Credit in the same proportion that the credited Days of Service in Covered Employment bears to 260. A Participant in Non-Maritime Employment shall be credited with one year of Pension Credit if the Participant is credited with at least 2,080 Hours of Service in a Plan Year. If a Participant in Non-Maritime Employment is credited with at least 520 Hours of Service in a Plan Year, the Participant shall be credited with a partial year of Pension Credit in the same proportion that the credited Hours of Service bears to 2,080. Only Hours of Service described in Section 1.18 shall be taken into account to in determining Pension Credit. Regardless, a Participant in Non-Maritime Employment who is an Employee of the Plan's administrative office, or

an Official, Representative, or Employee of the Organization or employed in shoreside employment, such as Port Captain, shall be given 1/10<sup>th</sup> of one year of Pension Credit for each month or part of a month of such Covered Employment, provided that no such Participant shall receive more than one year of Pension Credit for any one calendar year.

A Participant who works in twelve-hour shifts in Covered Employment in accordance with the Collective Bargaining Agreement shall be credited with Pension Credit in accordance with the following schedule:

2080 + hours	= 1 Pension Credit
1820 – 2079 hours	= 7/8 Pension Credit (.875)
1560 – 1819 hours	= ¾ Pension Credit (.75)
1300 – 1559 hours	= 5/8 Pension Credit (.625)
1040 – 1299 hours	= ½ Pension Credit (.50)
780 – 1039 hours	= 3/8 Pension Credit (.375)
520 – 779 hours	= ¼ Pension Credit (.25)
Less than 520 hours	= 0 Pension Credit

A Participant shall be credited with a Day of Service for certain periods when the Participant is not working or was not actually at work in Covered Employment just as if he were working in Covered Employment if due to:

- A. Military service of the U.S. in the time of war, or armed conflict or pursuant to a national conscription law, provided the Participant makes himself available for Covered Employment within 120 days after discharge or separation, or 120 days after recovery from a disability continuing after his discharge or separation from military service, but excluding military service by reason of voluntary re-enlistment, or continuation of a commission, for more than one year except as required by law in periods which the Trustees have determined to be periods of war or armed conflict. In appropriate cases and in order to accomplish substantial justice, the Trustees shall waive the requirement for returning to Covered Employment within the 120-day period described herein when the Trustees find that the failure to do so was for good cause and the Participant had not actually left the maritime industry. In addition, time associated with a leave of absence due to military service to the extent not provided for above but required by Federal law shall also be credited. Notwithstanding any provision of this Plan to the contrary, Pension Credit with respect to qualified military service shall be credited in accordance with Code § 414(u).
- B. A period of disability or for which hospital benefits are paid under the Regulations of the M.M.& P. Health and Benefit Plan.
- C. A period of license suspension where such suspension by the U.S. Coast Guard is due to the Participant's use of a physician-prescribed drug for the stabilization of a physical or mental condition and such suspension is ultimately overturned by the administrative law judge or courts, but only if the amount of Pension Credit for such suspension period would enable the Participant or his Beneficiary to be eligible for a Normal Pension.

1.26. PENSIONER. "Pensioner" means a former Employee, who is retired under the Plan and who is receiving pension benefits provided for herein.

1.27. PLAN. "Plan" means the Masters, Mates & Pilots Adjustable Pension Plan of benefits contained herein.

1.28. PLAN YEAR. "Plan Year" means the 12 consecutive calendar months, January 1<sup>st</sup> through December 31<sup>st</sup>.

1.29. REGULATIONS. "Regulations" means the plan, program, method and procedures governing the amount and payment of pensions and other benefits, the determination of eligibility and the general administration and operation of the Pension Plan, as the Trustees may, from time to time, promulgate and establish, as embodied herein.

1.30. REQUIRED BEGINNING DATE. For Participants who attain age 70 ½ between January 1, 1999 and December 31, 2019, the "Required Beginning Date" means April 1 of the calendar year following the year such Participant reaches age 70 ½ or the Participant's Retirement. For Participants who attain age 70 ½ on or after January 1, 2020, the "Required Beginning Date" is April 1 of the calendar year following the year such Participant reaches age 72 or the Participant's Retirement. Notwithstanding the foregoing, the Required Beginning Date of a Participant who is 5% owner is April 1 of the calendar year next following the calendar year in which the Participant reaches age 70 ½ (age 72 for Participants who attain age 70 ½ on or after January 1, 2020).

1.31. RETIREMENT. "Retirement" means a severance of employment from all Employers and complete withdrawal from any further employment with an Employer, in any capacity, or aboard any vessel whatsoever. Complete withdrawal is not considered to take place until the Participant's accumulated vacation period has elapsed and his "return-to-work date" has been reached. A Participant who is an Employee of the Organization prior to Retirement shall not be considered to have a severance of employment and complete withdrawal until his accrued vacation period elapses.

1.32. SPOUSE. "Spouse" means the person to whom the Participant is legally married under applicable law. "Spouse" also means a spouse or former spouse treated as a surviving Spouse under the terms of a Qualified Domestic Relations Order, as defined in Code § 414(p).

1.33. TOTALLY AND PERMANENTLY DISABLED. "Totally and Permanently Disabled" means if, on medical evidence that is satisfactory to the Trustees, a Participant is totally and permanently unable as a result of bodily injury or disease to engage in any further employment as a Licensed Officer, and provided further that he does not earn more than \$400 a month in any other employment or gainful pursuit whatsoever. The foregoing earnings limitation shall not apply if the Participant otherwise qualifies for a Regular Pension Benefit, or if the Trustees, in their discretion, waive it. A Participant applying for a Disability Pension under Section 4.07 must submit to an examination by a physician selected by the Trustees, and may be required to submit to re-examination periodically as the Trustees may direct, to determine if the Participant is Totally and Permanently Disabled. The Trustees shall be the sole and final judges of Total and Permanent Disability and entitlement to a Disability Pension.

1.34. TRUST AGREEMENT. "Trust Agreement" means the instrument (including any amendments thereto and modifications and restatements thereof) creating the Fund.

1.35. TRUSTEES. "Trustee" or "Trustees" or "Board of Trustees" means the Employer and Organization Trustees collectively, who at the time, are acting as Trustees under the terms of the Trust Agreement.

1.36. VESTING SERVICE. "Vesting Service" means service as described in Article III.

## ARTICLE II PARTICIPATION

2.01. COMMENCEMENT OF PARTICIPATION. An Employee who is engaged in Covered Employment during the Contribution Period shall become a Participant on the earliest of the January 1 or July 1 following the completion of a 12 consecutive month period during which he completed at least 87 Days of Service in Covered Employment, or for Employees in Non-Maritime Employment 700 Hours of Service in Covered Employment. The required Days of Service may also be completed as any employment with an Employer if that employment is contiguous with the Employee's Covered Employment with that Employer. An Employee's Days of Service credited under the Masters, Mates & Pilots Pension Plan shall be taken into account for purposes of determining an Employee's eligibility to participate in the Plan. An Employee's days worked that were credited under the Atlantic and Gulf Region Pension Plan as of December 31, 2015 shall be taken into account for purposes of determining an Employee's Days of Service under this Plan and eligibility to participate in this Plan, except for any days worked that were disregarded due to a Break-in-Service under that plan. An Employee in Non-Maritime Employment shall be credited with 10 Hours of Service for each Day of Service credited under the Masters, Mates & Pilots Pension Plan. Regardless, Days of Service that have been disregarded under the Masters, Mates & Pilots Pension Plan due to a Break-in-Service under that plan shall also be disregarded under this Plan. Notwithstanding the foregoing, an individual who is a participant in the Masters, Mates & Pilots Pension Plan as of January 1, 2013, shall become a Participant in this Plan as of January 1, 2013 regardless of whether such individual is credited with a Day of Service or Hour of Service on or after January 1, 2013, unless under that plan as of January 1, 2013 he is a pensioner, he terminated Covered Employment with less than 20 years of Pension Credit (as those terms are defined under that plan), or he is a beneficiary or alternate payee under that plan. Notwithstanding any provision in the Plan to the contrary, an Employee may not become a Participant earlier than the effective date of the Collective Bargaining Agreement or Participation Agreement of the Employee's Employer that requires contributions to the Plan on the Employee's behalf.

2.02. TERMINATION OF PARTICIPATION. A Participant's participation in this Plan shall cease on the earliest of:

- A. the death of the Participant;
- B. the date the non-vested Participant incurs a Break-in-Service; or
- C. the date when the vested Participant no longer has any Accrued Benefit or Vesting Service hereunder.

If a Participant incurs a Break-in-Service (as defined in Section 3.03) when the Participant is not vested and the Participant's previously forfeited Accrued Benefit and Vesting Service are not reinstated as a result of the provisions of Section 3.03, the Participant shall be considered to have had no Commencement of Participation. However, should the Participant again satisfy the participation requirements of Article II, the Participant shall be assigned a new Commencement of Participation in accordance with the provisions of this Section, based upon the Participant's reemployment date.

### ARTICLE III VESTING

3.01. VESTING SERVICE. For purposes of determining an Employee's Vesting Service for a Deferred Vesting Pension under Section 4.05 or a Deferred 10-Year Pension under Section 4.06, an Employee shall be granted a year of Vesting Service for each Plan Year in which the Employee has 87 or more Days of Service, or for Employees in Non-Maritime Employment for each Plan Year in which the Employee is credited with 700 or more Hours of Service. An Employee shall be credited under this Plan with his years of Vesting Service under the Masters, Mates & Pilots Pension Plan that have been credited as of the date prior to the date the Employee becomes a Participant in this Plan, except for any such years of Vesting Service under the Masters, Mates & Pilots Pension Plan that have been disregarded due to a Break-in-Service under that plan. An Employee's years of vesting service earned under the Atlantic and Gulf Region Pension Plan as of December 31, 2015 shall be taken into account for purposes of determining an Employee's years of Vesting Service under this Plan, except for any period of vesting service that has been disregarded due to a Break-in-Service under that plan.

3.02. VESTING. An Employee shall be considered vested with a 100% nonforfeitable interest in his Accrued Benefit at the earliest date on which the Employee has fulfilled the age and service requirements for receipt of a nonforfeitable pension under Article IV or has reached Normal Retirement Age.

3.03. BREAK-IN- SERVICE. All of the Participant's Accrued Benefit and Vesting Service earned before a Break-in-Service shall be forfeited upon the occurrence of a one-year Break-in-Service unless the Participant is vested. Solely for the purpose of determining whether a Break-in-Service has occurred, the absence of an employee from Covered Employment for the following reasons shall not be taken into account in determining whether a Break-in-Service has occurred:

- A. Pregnancy, birth of a child of the employee, placement of a child with the employee in connection with his or her adoption of the child, or care for such child for a period beginning immediately after such birth or placement. The Participant shall be credited with Days of Service to the extent that Days of Service would have been credited but for such absence, to a maximum of 44 Days, or for Participants in Non-Maritime Employment up to a maximum of 350 Hours of Service, for each such pregnancy, childbirth, or placement.
- B. Periods of absence for which the employee would receive Pension Credit under Section 1.25.
- C. Leave under the Family and Medical Leave Act.
- D. Total disability for work as a Licensed Officer for up to a period of 6 calendar quarters for which the employee failed to earn Pension Credit because of the total disability, provided the employee does not earn more than \$200 per month in any other employment or gainful pursuit whatsoever. The employee must apply in writing to the Trustees to apply this provision for a period beyond the first 2 calendar quarters. The employee's application must be filed with the Trustees within one year after the applicable quarter.
- E. Employment aboard a vessel operated by M.S.C. or any other governmental agency; as a licensed pilot in any American port or the Panama Canal Zone while remaining available for



employment as a member of the M.M.&P. Pilot Membership Group, or the predecessor M.M.&P. Pilot Division or any former Pilot local of the Organization, or the M.M.&P. Offshore Division; employment covered under an M.M.&P. Pension Plan or that generates contributions from the Employer to any M.M.&P. "Benefit" Plan including, but not limited to, contributions to the M.M.&P. M.A.T.E.S. Program, the M.M.&P. Joint Employment Committee, the M.M.&P. Individual Retirement Account Plan, the M.M.&P. Health & Benefit Plan or the Maritime Institute for Research and Industrial Development.

- F. Shoreside employment (related directly to the operation of deep-sea vessels) by an Employer; provided the Participant earns at least 12 quarters (3 years) of Pension Credit by actual work at sea in Covered Employment after the termination of such shoreside employment.

The Days of Service and Hours of Service credited hereunder shall be applied to the calendar year in which such absence begins, if doing so shall prevent the employee from incurring a Break-in-Service in that calendar year. The Trustees may require, as a condition for granting such credit, that the employee establish in timely fashion and to the satisfaction of the Trustees that the employee is entitled to such credit.

Notwithstanding the foregoing, if a Participant who has experienced a Break-in-Service, and is not vested at the time of such Break-in-Service, works sufficient Covered Employment in a succeeding Plan Year such that the Participant is credited with at least 87 Days of Service for such Plan Year, or for a Participant in Non-Maritime Employment at least 700 Hours of Service, and such Plan Year occurs before the number of consecutive Breaks-in-Service charged to the Participant equals 5, then the Accrued Benefit and Vesting Service forfeited by such Breaks-in-Service shall be reinstated.

3.04. **MILITARY SERVICE.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service with respect to qualified military service shall be provided in accordance with Code § 414(u). To protect his full rights, an Employee who left Covered Employment to enter such military service must apply for re-employment with an Employer within the time prescribed by law, or the time prescribed by Section 1.25(A), whichever is longer. Furthermore, he must call his claim for credit for military service to the attention of the Trustees and supply the evidence that the Trustees shall need in order to determine his rights. A Participant who would otherwise qualify for reemployment rights under applicable federal law but who is not timely reemployed (or does not make himself available for reemployment) within the time limits established by applicable federal law due to the Participant's death while performing qualified military service shall be treated as having been reemployed on the day preceding the date of death and then having terminated Covered Employment on the date of death for granting Vesting Service for such period, to the maximum extent permitted by law. In the event a Participant who would otherwise qualify for reemployment rights under applicable law dies or becomes disabled while performing qualified military service, he shall be treated as having been reemployed on the day preceding the date of death or disability and then having terminated Covered Employment on the date of death or disability for the purpose of benefit accruals for such period, to the maximum extent permitted by law.

3.05. **RECIPROCITY AGREEMENTS.** The Trustees may enter into reciprocity agreements with other pension plans in their sole discretion and Pension Credit, Vesting Service, rules for eligibility for benefits, and other matters shall be recognized as determined under such reciprocity agreements, except for benefit accruals. Regardless, for purposes of this Plan, service under the Masters, Mates & Pilots Pension Plan shall be counted as specified in the applicable Sections of the Plan.

Notwithstanding any provision in either Plan to the contrary, any dispute, controversy or claim arising out of or relating to the application of a reciprocal agreement or any portion thereof, shall be settled by arbitration before an arbitrator designated by the American Arbitration Association in accordance with its then prevailing rules. The award of the arbitrator shall be final, binding and conclusive upon the parties to the dispute and may be enforced in any federal court of competent jurisdiction.

#### ARTICLE IV ELIGIBILITY FOR PENSION BENEFITS

4.01. REGULAR PENSION. A Participant who has at least 20 years of Pension Credit shall be entitled to retire on a Regular Pension, determined in accordance with whichever of Subsection A, B, C, D, or E provides the greatest benefit:

- A. If, as of his Annuity Starting Date, he has attained the minimum age of 55, his Regular Pension shall be determined in accordance with Section 5.01.
- B. If, as of the close of the last year in which he earned Pension Credit, his age plus his years of Pension Credit totaled at least 70, his Regular Pension shall be determined in accordance with Section 5.01.
- C. If, as of his Annuity Starting Date, he has been continuously available for Covered Employment or employment aboard any vessel covered by a collective bargaining agreement with or manned by personnel represented by Membership Groups affiliated with the Organization (or would have been continuously available for Covered Employment or such other employment described here but for the fact that he was unable to sail under his license solely on account of temporary or permanent disability, as determined by the United States Coast Guard) since the last year in which he earned Pension Credit and satisfies the requirement of Subsection B as of his Annuity Starting Date, his Regular Pension shall be determined in accordance with Section 5.01.
- D. If he does not satisfy the conditions of Subsection A, B or C but does satisfy the requirement of Subsection B as of his Annuity Starting Date, his Regular Pension shall be determined under Section 5.01, but without taking into account any years of Pension Credit earned after December 31, 2014.
- E. A Participant who has at least 20 years of Pension Credit, but does not otherwise satisfy the requirement in Subsection A, B, C or D of this Section shall nevertheless be entitled to a Regular Pension, determined in accordance with Section 5.01 but reduced to reflect the period between his Annuity Starting Date and the earliest date on which the Participant would have satisfied the requirement in Subsection A or B of this Section had the Participant continued in Covered Employment and earned one year of Pension Credit in each future Plan Year, but without taking into account any years of Pension Credit earned after December 31, 2014. The Actuarial Equivalent factors used for this reduction shall be based on an interest rate of 7.5% and the RP-2000 Combined Healthy Mortality Table (100% Male) with Blue Collar Adjustment.

4.02. SUPPLEMENTAL MONTHLY PENSION. A Participant who retires on a Regular Pension under the Masters, Mates & Pilots Pension Plan may be entitled to a Supplemental Monthly Pension benefit under this Plan, commencing on the same Annuity Starting Date as his Regular Pension and determined in accordance with Section 5.02.

4.03. REDUCED PENSION. A Participant shall be entitled to retire on a Reduced Pension, if he has at least 15 years of Pension Credit and has attained age 65. The amount of a Participant's Reduced Pension shall be determined in accordance with Section 5.03.

4.04. EARLY RETIREMENT PENSION. A Participant shall be entitled to retire on an Early Retirement Pension if he has at least 15 years of Pension Credit and has attained age 60. The amount of a Participant's Early Retirement Pension shall be determined in accordance with Section 5.04.

4.05. DEFERRED VESTING PENSION. A Participant shall be entitled to retire on a Deferred Vesting Pension if he is not eligible for any other pension under the Plan and has at least 5 years of Vesting Service or has attained Normal Retirement Age. A Deferred Vesting Pension shall be payable upon retirement after attainment of Normal Retirement Age. The amount of a Participant's Deferred Vesting Pension shall be determined in accordance with Section 5.05.

4.06. DEFERRED 10-YEAR PENSION. A Participant shall be entitled to retire on a Deferred 10-Year Pension if he has at least 10 years of Pension Credit and is not eligible for any other pension under the Plan. A Deferred 10-Year Pension shall be payable upon retirement after attainment of Normal Retirement Age. The amount of a Participant's Deferred 10-Year Pension shall be determined in accordance with Section 5.06.

4.07. DISABILITY PENSION. A Participant shall be entitled to retire on a Disability Pension no earlier than the first day of the month coinciding with or next following the date the Trustees determine that the Participant is Totally and Permanently Disabled and the Participant has at least 10 years of Pension Credit at the time the Participant became Totally and Permanently Disabled. The amount of a Participant's Disability Pension shall be determined in accordance with Section 5.07.

4.08. PENSION CREDIT UNDER ANOTHER PLAN.

A. M.M.&P. PENSION PLAN. A Participant's years of Pension Credit earned under the Masters, Mates & Pilots Pension Plan as of the date prior to the date the Participant became a Participant in this Plan under Section 2.01. shall be taken into account for purposes of this Article IV, except for any such years of Pension Credit that have been disregarded due to a Break-in-Service under that plan.

B. ATLANTIC & GULF REGION PENSION PLAN. A Participant's years of vesting service earned under the Atlantic & Gulf Region Pension Plan as of December 31, 2015 shall count as years of Pension Credit and years of Vesting Service for purposes of this Article IV (but not for purposes of Article V), except for any such years of vesting service that have been disregarded due to a Break-in-Service under that plan.

4.09. CONDITIONS TO COMMENCE PENSION. In order to commence any pension under this Article IV, a Participant must be determined to be in Retirement, as defined in Section 1.31. Additionally, no benefits shall be payable until the Participant completes and submits a proper

application for a pension to the Trustees. Furthermore, a Participant must have the same Annuity Starting Date for his pension under the Masters, Mates & Pilots Pension Plan and his pension under this Plan.

## ARTICLE V PENSION BENEFITS

5.01. **REGULAR PENSION BENEFIT.** The monthly amount of a Participant's Regular Pension benefit shall be the greater of (i) the Base Benefit or (ii) the Variable Benefit, both described below, divided by 12.

**A. Base Benefit.**

1. The Base Benefit earned during a Plan Year is equal to 1.2% of Pay for the Plan Year, or, if the Participant's years and partial years of Pension Credit are greater than or equal to 20, 1.6% of Pay for that Plan Year. A Participant's years of Pension Credit as of January 1 of the Plan Year in question shall be used to determine the rate of Pay that applies under this subsection to a Participant. A Participant's years of Pension Credit for this purpose shall include years of Pension Credit earned under this Plan, plus the Participant's years of Pension Credit earned under the Masters, Mates & Pilots Pension Plan as of the date prior to the date the Participant became a Participant in this Plan under Section 2.01, but excluding any years of Pension Credit that have been disregarded due a Break-in-Service under that plan.
2. A Participant's total Base Benefit is equal to the sum of the Base Benefit earned during each Plan Year.

**B. Variable Benefit.** The Variable Benefit equals the total number of Units earned by the Participant times the dollar value of a Unit as of the last day of the Plan Year immediately preceding the Plan Year during which the Participant's Annuity Starting Date occurs. The rules for determining the number of Units earned by a Participant and the value of a Unit are as follows:

1. For each Plan Year, a Participant earns a specified number of Units equal to the Participant's Base Benefit earned during that Plan Year divided by the Unit value at the beginning of the Plan Year during which the Pension Credit is earned. A Participant's total number of Units is equal to the sum of the number of Units earned during each Plan Year.
2. The value of a Unit as of January 1, 2013 is \$10, and for each Plan Year thereafter, the value of a Unit at the beginning of the Plan Year shall be equal to the value of a Unit as of the end of the prior Plan Year.
3. The value of a Unit as of the end of a Plan Year is the value of the Unit as of the beginning of that Plan Year multiplied by a factor equal to one plus the difference between the Actual Investment Rate of Return on Plan Assets for the Plan Year and 5%. The Actual Investment Rate of Return for this purpose may not exceed 10%. Notwithstanding the foregoing, (i) for the Plan Year beginning January 1, 2013, an

Actual Investment Rate of Return that is less than 5% or greater than 6% shall be taken into account to determine the factor, otherwise the factor shall be deemed to be one; and (ii) for the Plan Year beginning January 1, 2014, an Actual Investment Rate of Return that is less than 5% or greater than 5.5% shall be taken into account to determine the factor, otherwise the factor shall be deemed to be one.

4. The Actual Investment Rate of Return on Plan Assets for a Plan Year is a percentage, rounded down to the nearest 1/100<sup>th</sup> of 1%, equal to the Investment Return divided by the Return Base, where:
  - a. Plan Assets means the fair market value of assets in the Fund, as reflected in the Fund's audited financial statements;
  - b. Investment Return is equal to Plan Assets as of the end of the Plan Year (i) reduced by Plan Assets as of the beginning of the Plan Year and contributions received during the Plan Year, and (ii) increased by administrative expenses and distributions paid during the Plan Year; and
  - c. Return Base is equal to Plan Assets as of the beginning of the Plan Year (i) reduced by the adjusted administrative expenses paid during the Plan Year, the adjusted distributions paid during the Plan Year, and (ii) increased by the adjusted contributions received during the Plan Year. The disbursements in (i) and the contributions in (ii) shall be adjusted by multiplying by a factor of 0.5 to take into account that such disbursements and contributions were made throughout the Plan Year.
5. If a Participant is entitled to commence his pension under this Plan as of an Annuity Starting Date when the Fund's audited financial statements are not yet available for purposes of calculating his Variable Benefit, the Participant shall receive his monthly pension benefit based on his Base Benefit until his Variable Benefit is determined based on information in the Fund's audited financial statements. If the Participant's Variable Benefit is greater than his Base Benefit as of his Annuity Starting Date, the Participant's benefit shall be adjusted accordingly as of a prospective date, and the Participant shall receive a lump sum payment representing the difference between the amount of the monthly pension benefit he is entitled to receive and the amount of the monthly pension benefit he has been receiving, multiplied by the number of monthly pension benefit payments he has received, plus interest on such payments that shall be calculated using the Plan's interest rate under Section 1.03.

**5.02 SUPPLEMENTAL MONTHLY PENSION BENEFIT.** A Participant's Supplemental Monthly Pension benefit shall equal the difference between the unreduced monthly amount of the Participant's Regular Pension under the Masters, Mates & Pilots Pension Plan reduced in accordance with Section 4.01, and the monthly amount of the Participant's Regular Pension under the Masters, Mates & Pilots Pension Plan, with both amounts expressed in the form of a Single Life Annuity with 60 Monthly Payments Guaranteed. A Participant's Supplemental Monthly Pension benefit shall be actuarially adjusted for the form of benefit chosen by the Participant for his Regular Pension, as described in Article VI.

5.03. REDUCED PENSION BENEFIT. A Participant's Reduced Pension benefit shall be determined under Section 5.01.

5.04. EARLY RETIREMENT PENSION BENEFIT. A Participant's Early Retirement Pension benefit shall be the amount of his Reduced Pension in Section 5.03, reduced by one-half of 1% for each month by which the Participant's age as of the Annuity Starting Date is younger than 65. The amount of a Participant's Early Retirement Pension shall be rounded to the next higher multiple of 50 cents.

5.05. DEFERRED VESTING PENSION. A Participant's Deferred Vesting Pension shall be determined under Section 5.01.

5.06. DEFERRED 10-YEAR PENSION. A Participant's Deferred 10-Year Pension shall be determined under Section 5.01.

5.07. DISABILITY RETIREMENT PENSION BENEFIT. The amount of a Participant's Disability Retirement Pension benefit shall be the greater of:

- A. the Actuarial Equivalent of the amount of his Regular Pension determined under Section 5.01, payable at Normal Retirement Age; or
- B. the amount of the Regular, Reduced or Early Retirement Pension benefit the Participant may otherwise be eligible to receive upon retirement due to Total and Permanent Disability.

For purposes of this Section, the Actuarial Equivalent shall be determined using the factors in Appendix A.

5.08. DELAYED RETIREMENT. If a Participant elects to commence his monthly benefits after his Normal Retirement Age, the Participant's monthly benefits shall be payable as follows:

- A. The Participant's monthly benefit shall be an amount equal to the Participant's Accrued Benefit at his Normal Retirement Age, actuarially increased at a rate of 1% per complete month after the Participant's Normal Retirement Age, up to and including the month in which the Participant attains age 70, at a rate of 1.5% per complete month for the next 60 months. Any actuarial increases applicable after age 75 shall be based on the actuarial assumptions set forth in Section 4.01.B. The actuarial increase shall apply only for a complete calendar month in which the Participant's benefit is not suspended under Article VIII between the Participant's Normal Retirement Age and his Annuity Starting Date. Regardless, the Participant shall be entitled to receive his Variable Benefit under Section 5.01.B., determined as of his Annuity Starting Date, if greater than his Accrued Benefit actuarially increased from his Normal Retirement Age to his Annuity Starting Date.
- B. In no event may a Participant elect to postpone commencement of his benefit to a date later than his Required Beginning Date, as defined in Section 1.30 and explained in Section 5.09.

5.09. MANDATORY DISTRIBUTIONS. Any contrary provisions of this Plan notwithstanding, payment of benefits to which a Participant or former Participant is entitled must begin no later than the Participant's Required Beginning Date.

- A. Notwithstanding any other provisions of the Plan, mandatory distributions under this Section shall be made in accordance with Code § 401(a)(9) and Treasury Regulation §§ 1.401(a)-1 through 1.401(a)-9, including the minimum distribution incidental benefit requirements described in Code § 401(a)(9)(G) and Treasury Regulation § 1.409(a)(9)-6, Q&A 2, and any guidance issued by the IRS.

Except in the case of a Participant who is a 5% owner, a Participant's Accrued Benefit is actuarially increased (using the factors in Section 5.08.A) to take into account the period after 70 ½ (age 72 for Participants who attain age 70 ½ on or after January 1, 2020) in which the Participant does not receive any benefits under the Plan. The actuarial increase under this Section is generally the same as, and not in addition to, the actuarial increase required for that same period for purposes of satisfying Section 411 of the Code to reflect the delay in payments after Normal Retirement Date, except that the actuarial increase required under Code § 401(a)(9)(C) must be provided even during the period during which a Participant is in ERISA Section 203(a)(3)(B) service, as described in Section 8.02. The actuarial increase begins on the April 1 of the calendar year after the calendar year in which the Participant attains age 70½ (age 72 for Participants who attain age 70 ½ on or after January 1, 2020) and ends on the date on which benefits commence after retirement in an amount sufficient to satisfy Code § 401(a)(9). At the close of each Plan Year prior to such a Participant's actual retirement, the Participant shall be entitled to receive a retirement benefit equal to the greater of (i) the monthly retirement benefit such Participant was entitled to receive at the close of the prior Plan Year actuarially increased to the end of the Plan Year, or (ii) the Participant's Accrued Benefit determined at the end of the Plan Year. The monthly retirement benefit calculated hereunder shall be offset by the actuarial value of the total benefit distributions made to the Participant by the end of the Plan Year.

- B. Notwithstanding any other provision of this Plan, distribution of the entire interest of each Participant shall be made over a period not exceeding the life of such Participant, the lives of such Participant and his Beneficiary, the life expectancy of such Participant, or the life expectancies of such Participant and his Beneficiary.

5.10. **COMMENCEMENT OF PENSION BENEFIT.** Notwithstanding any other provision in this Plan to the contrary, unless a Participant elects otherwise in writing to the Trustees, payment of a Participant's pension benefit shall commence no later than 60 days after the close of the Plan Year in which the latest of the following occurs:

- A. the date the Participant attains Normal Retirement Age,
- B. the date the Participant is in Retirement, or
- C. the date the Participant properly applies for a pension.

5.11. **INCOMPETENCE OF PENSIONER.** In the event it is determined that a Pensioner is unable to care for the Pensioner's affairs because of illness, accident, or incapacity, either mental or physical, any payments due may be made to any appointed guardian, committee, or other legal representative, as the Board of Trustees shall determine in its sole discretion.

5.12. **REPORTS AND PROOF.** Each Participant shall furnish to the Trustees all such information in writing as may be reasonably requested by them for the purpose of establishing, maintaining, and administering the Plan. The failure on the part of the Participant to comply with such requests promptly and in good faith shall be sufficient grounds for delaying commencement of benefits hereunder. The Trustees shall be sole judges of the standard of proof required in all cases, and they may from time to time adopt such formulae, methods, and procedures as they consider advisable.

## **ARTICLE VI FORMS OF BENEFIT**

6.01. **PARTICIPANT-SPOUSE PENSION.** A married Participant's pension benefit shall be paid as a 50% Participant-Spouse Pension, unless the Participant and the Participant's Spouse have properly elected to forego receiving the 50% Participant-Spouse Pension in favor of an optional form of benefit described in Section 6.03, or the pension benefit is paid in a single lump sum under Section 6.06. To be eligible to receive the survivor benefit under a Participant-Spouse Pension, the Spouse must be a Qualified Spouse. A Spouse is a Qualified Spouse if the Participant and Spouse were married on the date of the Participant's death and had been married throughout the one-year period ending with the date the Participant's pension payments began or, if earlier, the date of death. A Spouse is also a Qualified Spouse if the Participant and Spouse became married within the year immediately preceding the date the Participant's pension payments start and they were married for at least one year before the date of death.

Under the 50% Participant-Spouse Pension, a monthly benefit is payable to the Pensioner so long as the Pensioner lives. After the Pensioner's death, a monthly pension shall be paid to such Qualified Spouse beginning on the first day of the month following the month in which the Pensioner dies and terminating with the last such monthly payment due for the month of such Spouse's death.

The amount of the pension under the 50% Participant-Spouse Pension is a reduced monthly benefit for the Pensioner's lifetime, calculated as an Actuarially Equivalent benefit to the Single Life Annuity with 60 Monthly Payments Guaranteed otherwise payable, using the age of the Participant and the Spouse. Upon the Pensioner's death, the Pensioner's surviving Spouse shall be entitled to a monthly pension for the remainder of the Spouse's lifetime in the amount of 50% of the monthly pension payable to the Participant on the Participant's Annuity Starting Date.

Under the 50% Pension, a monthly benefit is payable to the Pensioner's surviving Spouse after the Pensioner's death only if the person who was the Pensioner's Spouse on the Pensioner's Annuity Starting Date is living on the date of death of the Pensioner. If a Pensioner and his Spouse have been married continuously for at least one year prior to the Pensioner's death but are not married at the time of the Pensioner's death, no survivor benefit is payable to the former Spouse unless a qualified domestic relations order provides otherwise.

If the 50% Participant-Spouse Pension would be payable except for the fact that the Spouse is not a Qualified Spouse on the date the Participant's pension payments start because the Participant and Spouse have not been married for at least one year at that time, pension payments to the Participant shall be made in the amount adjusted for the 50% Participant-Spouse Pension and if the Participant and Spouse have not been married to each other for at least one year as of the date of death of the Participant, the difference between the amounts that had been paid and the amounts that would have



been paid if the monthly amount had not been adjusted shall be paid to the Spouse, if then alive, and otherwise to the Participant's Beneficiary.

6.02. SINGLE LIFE ANNUITY WITH 60 MONTHLY PAYMENTS GUARANTEED. If a Participant is not married as of his Annuity Starting Date, the pension benefit shall be payable as a Single Life Annuity with 60 Monthly Payments Guaranteed. Under the Single Life Annuity with 60 Monthly Payments Guaranteed, a monthly benefit based on the Participant's Accrued Benefit is payable to the Participant for the Participant's lifetime and, if the Participant has not received at least 60 monthly payments, the balance of such payments shall be paid in monthly installments to the Participant's Beneficiary. A married Participant may elect a Single Life Annuity with 60 monthly payments only if the Participant and the Participant's Spouse have properly elected to waive the 50% Participant-Spouse Pension.

If the Pensioner dies before 60 monthly payments have been paid, payment of the monthly pension amount shall continue to be made up to a maximum of 60 payments, including those payments made to the Pensioner prior to death. These payments shall be made to the designated Beneficiary only if the designated Beneficiary is the Pensioner's Spouse, children/child, or parent, provided the individual satisfies the definition of "Dependent" under the M.M.&P. Health and Benefit Plan Rules & Regulations. If the designated Beneficiary dies before the aggregate 60 monthly pension payments have been paid, or if the Pensioner died without designating a Beneficiary, or if the Pensioner designated a Beneficiary who does not satisfy the requirements of this paragraph, payment of the remaining monthly payments shall be made to the person or persons listed above in the order named and in equal shares where necessary.

6.03. OPTIONAL FORMS OF BENEFIT. A married Participant may elect an optional form of benefit described in this Section, provided the Participant's Spouse consents to the waiver of the 50% Participant-Spouse Pension. An optional form of benefit shall be the Actuarial Equivalent of the pension to which the Participant is entitled under Section 6.02.

- A. Single Life Annuity with 60 Monthly Payments Guaranteed, as described in Section 6.02;
- B. 75% Participant-Spouse Pension, which is the same as the 50% Participant-Spouse Pension, except that the continuation percentage to the surviving Spouse is 75%;
- C. 100% Participant-Spouse Pension, which is the same as the 50% Participant-Spouse Pension, except that the continuation percentage to the surviving Spouse is 100%;
- D. 50% Pop-up Option, which is the same as the 50% Participant-Spouse Pension, except that, if the Spouse predeceases the Pensioner, the Pensioner's benefit shall be increased prospectively to the amount that would have been paid if he had elected the Single Life Annuity with 60 Monthly Payments Guaranteed;
- E. 75% Pop-up Option, which is the same as the 75% Participant-Spouse Pension, except that, if the Spouse predeceases the Pensioner, the Pensioner's benefit is increased prospectively to the benefit that would have been paid if he had elected the Single Life Annuity with 60 Monthly Payments Guaranteed; or

- G. 100% Pop-up Option, which is the same as the 100% Participant-Spouse Pension, except that, if the Spouse predeceases the Pensioner, the Pensioner's benefit is increased prospectively to the benefit that would have been paid if he had elected the Single Life Annuity with 60 Monthly Payments Guaranteed.

The 50%, 75% and 100% Participant-Spouse Pensions and the Pop-up Options shall be a percentage of the full amount payable under the Single Life Annuity with 60 Monthly Payments Guaranteed (after adjustment, if any, for early retirement or a lump sum payment) based on an interest rate assumption equal to the greater of (i) the PBGC close-out rate for immediate annuities and terminated single employer plans in effect on the January 1 preceding the Annuity Starting Date or (ii) 8 ¼%, and the 1971 Group Annuity Table.

6.04. ELECTION. In order for a married Participant to elect to forego receiving the pension benefit in the form of a 50% Participant-Spouse Pension, the Participant and the Participant's Spouse must, on forms prescribed by the Trustees, make such election within the 180 days immediately preceding the Participant's Annuity Starting Date. The Participant and the Participant's Spouse may also change, on forms prescribed by the Trustees, their election any time within such period. However, no consent of the Participant's Spouse shall be required if it has been demonstrated to the satisfaction of the Trustees: (i) that there is no Spouse, (ii) that the Spouse cannot be located, (iii) that the Participant and Spouse are legally separated, or (iv) that the Participant has been abandoned by the Spouse as confirmed by court order.

6.05. ELECTION INFORMATION. So that the Participant and the Participant's Spouse may be properly informed regarding the ramifications of an election to forego (or revoke such an election) receiving the Participant's pension benefit as the 50% Participant-Spouse Pension, the Trustees shall provide the Participant and the Participant's Spouse with an explanation of the provisions of this Section, including notification that an election is available and a general description of the terms of the methods of payment. The written notice shall include an explanation of the material terms of the available forms of payment, including the relative value of the optional payment forms. The written notice shall also include a description of the Participant's right to defer a distribution, including a description of the consequences of failing to defer receipt of a distribution. The pension benefit shall not be effective nor commence until the Participant has had at least 30 days following the receipt of such explanation to consider it, unless the Participant and Spouse waive the requirement that the explanation required hereunder be given at least 30 days before the Annuity Starting Date, provided the explanation is given at least 7 days prior to the date payment of benefits commence. The rejection must include the acknowledgment by the Participant's Spouse of any non-Spouse Beneficiary designation. No rejection shall be effective unless the Spouse of the Participant has consented in writing to such rejection and such rejection is witnessed by a Notary Public or a Plan representative.

6.06. SMALL PENSION CASH-OUTS. If the Actuarial Present Value as of the Annuity Starting Date of a Participant's pension benefit or a Qualified Pre-Retirement Survivor Annuity Pension, or surviving Spouse's benefit under a Participant-Spouse Pension, or the Actuarial Present Value of the benefit payable to an Alternate Payee under a Qualified Domestic Relations Order is \$1,000 or less, such Actuarial Present Value shall be distributed in a lump sum as full payment of such pension. Notwithstanding the foregoing, no such distribution shall be made unless the Participant, the surviving Spouse, or the Alternate Payee applies for a benefit in writing.

**ARTICLE VII**  
**DEATH BENEFITS**

**7.01. QUALIFIED PRE-RETIREMENT SURVIVOR ANNUITY PENSION**

**A. Pre-retirement Surviving Spouse Pension – Before Age 55.**

1. If a Participant who has a Qualified Spouse dies prior to attaining age 55 and before his pension payments start but at a time when he has earned a vested right to a pension, a 50% Pre-retirement Surviving Spouse Pension shall be paid to his surviving Qualified Spouse unless rejected pursuant to subparagraphs A.5. or A.6. of this Section for another form of payment.
2. A Spouse is a Qualified Spouse for the purpose of this subsection if the Participant and Spouse have been married to each other throughout the one-year period immediately before his death, or if the couple were divorced after being married for at least one year and the former spouse is required to be treated as a Spouse or Surviving Spouse under a Qualified Domestic Relations Order.
3. If the Participant described in subsection A.1. above died at a time when he had at least 20 years of Pension Credit, the surviving Qualified Spouse shall be entitled to a lifetime Surviving Spouse Pension determined in accordance with the provisions of Section 6.01 as if the Participant had retired with a Regular Pension under Section 5.01 the day before he died.
4. If the Participant described in subsection A.1. above died before he would have been eligible to begin receiving pension payments had he retired (other than a Disability Pension if he died before its effective date), the surviving Qualified Spouse shall be entitled to a 50% Pre-retirement Surviving Spouse Pension determined as if the Participant had separated from service under the Plan on the earlier of the date he last worked in Covered Employment or the date of his death, had survived to the earliest age at which a pension (other than a Disability Pension) would be payable to him under the Plan, retired at that age with an immediate 50% Participant-Spouse Pension, and died the next day.

In other words, the 50% Pre-retirement Surviving Spouse Pension begins when the Participant would have attained the earliest retirement age for which he would have qualified and the amount is 50% of what the Participant's pension amount would have been, after adjustment, if any, for the early retirement and for the 50% Participant-Spouse Pension form. The amount shall be determined under the terms of the Plan in effect when the Participant last worked in Covered Employment unless otherwise expressly specified.

Notwithstanding the above, the Surviving Spouse may elect, in writing filed with the Trustees on whatever form they may prescribe, to defer the commencement of the Pre-Retirement Surviving Spouse Pension to a later date but no later than the date the Participant would have reached Normal Retirement Age. If for some reason payments have not already begun as prescribed in this subsection, payment of the

Pre-Retirement Surviving Spouse Benefit must start no later than December 1 of the calendar year in which the Participant would have reached 70 ½ (age 72 for Participants who attain 70 ½ on or after January 1, 2020) or if later, December 1, of the calendar year following the year of the Participant's death. If the Trustees confirm the identity and whereabouts of a Surviving Spouse who has not applied for benefits by that time, payments to that Surviving Spouse in the form of a Single Life Annuity (subject to the provisions of subsection 7.1. of this Section on small benefit cash-outs) will begin automatically as of that date. If the Annuity Starting Date for the Pre-Retirement Surviving Spouse Benefit is deferred to after the Participant's earliest retirement date pursuant to the above paragraph, the benefit shall be determined as if the Participant had died on the Surviving Spouse's Annuity Starting Date after retiring with a Participant-Spouse Pension the day before, taking into account any actuarial adjustments to the Participant's accrued benefit that would have applied as of that date.

5. An under age 55 Participant may reject the 50% Pre-retirement Surviving Spouse Pension coverage and elect instead the 100% Pre-retirement Surviving Spouse Pension to be effective in the event of the Participant's death at a time when he was eligible for a Regular or Disability Pension under this Plan but before the attainment of age 55.
  - a. The Trustees shall have the sole discretion to determine from the records submitted whether or not the said Participant would have been otherwise fully entitled to a Disability Pension as of the date of his death.
  - b. For purposes of this survivor's benefit only, a Participant who dies prior to the age of 55, and satisfied all the other requirements for a Disability Pension under this Plan, shall not be deemed to have been eligible to retire on a Disability Pension unless he had been Permanently and Totally Disabled for at least the 150 days prior to his date of death.
  - c. A Participant may make this choice (or revocation of a previous choice) by written election provided the Spouse has properly consented in writing to such written election pursuant to the terms of this Article VII. The written election may be filed with the Trustees at any time, but this choice is not to be effective until 24 months after it is filed with the Trustees, except if the Participant dies as the result of an accident occurring after his election and application of the 24-month period of ineffectiveness would deny the pension to his Spouse.
  - d. If, in accordance with this subsection, the Spouse was protected for any part of a calendar year prior to the Participant's 55th birth date, in the sense that a pension would have been payable to the Spouse if the Participant had died in that year, there shall be a charge against the future pension otherwise payable to the Participant or the Spouse. The charge shall be a reduction for each of such calendar years of eligibility of 1 cent for each \$10 of monthly benefits to which the Participant would otherwise be entitled. This reduction shall be made before any adjustment for any Participant-Spouse Pension.

- e. The benefit amount for the surviving Spouse shall be determined as if the Participant had retired on the day before he died.
6. An under age 55 Participant may reject the 50% Pre-retirement Surviving Spouse Pension coverage and elect instead the Life Annuity with 60 Monthly Payments Guaranteed, as provided for in Section 6.02, to be payable in the event of the Participant's death. Such rejection and election shall be valid only if the Participant files in writing in such form as the Trustees may prescribe, and the Participant's Spouse acknowledges the effect of the alternate benefit form, and specific Beneficiary (if applicable), and consents to it in writing, witnessed by a notary public.
7. Notwithstanding any other provision of this Article, if the Actuarial Present Value of the Spouse's benefit is not more than \$1,000, the Trustees shall make a single sum payment to the Spouse in an amount equal to that Actuarial Present Value, in full discharge of the Pre-retirement Surviving Spouse Pension.

B. Pre-retirement Surviving Spouse Pension – After Age 55

1. If a Participant who has a Qualified Spouse (as defined in subsection A.1. above) and has attained age 55 dies before his pension payments start, but at a time when he had earned a vested right to a pension, a Pre-retirement Surviving Spouse Pension shall be paid to his surviving Qualified Spouse, unless rejected pursuant to subparagraph 4. of this section for another form of payment.
2. If the Participant described in subsection A. above dies at a time when he would have been eligible to begin receiving payment of a pension had he retired, the surviving Qualified Spouse shall be entitled to a lifetime Surviving Spouse Pension determined in accordance with the provisions of Section 6.01 as if the Participant had retired with a 100% Participant-Spouse Pension the day before he died. If the Participant had at least 20 years of Pension Credit, the Surviving Spouse Pension shall be determined as if the Participant had been eligible for a Regular Pension, whether or not the conditions of Section 4.01 were satisfied.
3. If the Participant described in subsection A. above died before he would have been eligible to begin receiving pension payments had he retired, the surviving Qualified Spouse shall be entitled to a 50% Pre-retirement Surviving Spouse Pension determined as if the Participant had separated from service under the Plan on the earlier of the date he last worked in Covered Employment or the date of his death, had survived to the earliest age at which a pension (other than a Disability Pension) would be payable to him under the Plan, retired at that age with an immediate 50% Participant-Spouse Pension, and died the next day. In other words, the 50% Pre-retirement Surviving Spouse Pension begins when the Participant would have attained the earliest retirement age for which he would have qualified and the amount is 50% of what the Participant's pension amount would have been, after adjustment, if any, for the early retirement and for the 50% Participant-Spouse Pension form.

The amount shall be determined under the terms of the Plan in effect when the Participant last worked in Covered Employment, unless otherwise expressly specified.

Notwithstanding the above, the Surviving Spouse may elect, in writing filed with the Trustees on whatever form they may prescribe, to defer the commencement of the Pre-Retirement Surviving Spouse Pension to a later date but no later than the date the Participant would have reached Normal Retirement Age. If for some reason payments have not already begun as prescribed in this subsection, payment of the Pre-Retirement Surviving Spouse Benefit must start no later than December 1 of the calendar year in which the Participant would have reached 70½ (age 72 for Participants who attain age 70 ½ on or after January 1, 2020) or if later, December 1, of the calendar year following the year of the Participant's death. If the Trustees confirm the identity and whereabouts of a Surviving Spouse who has not applied for benefits by that time, payments to that Surviving Spouse in the form of a Single Life Annuity (subject to the provisions of Section 7.01.A.7(i) of this Article on small benefit cash-outs) will begin automatically as of that date.

If the Annuity Starting Date for the Pre-Retirement Surviving Spouse Benefit is deferred to after the Participant's earliest retirement date pursuant to the above paragraph, the benefit shall be determined as if the Participant had died on the Surviving Spouse's Annuity Starting Date after retiring with a Participant-Spouse Pension the day before, taking into account any actuarial adjustments to the Participant's accrued benefit that would have applied as of that date.

4. An age 55 or older Participant may reject the 100% or 50% Pre-retirement Surviving Spouse Pension coverage and elect instead the Life Annuity With 60 Monthly Payments Guaranteed, as provided for in Section 6.02, to be payable in the event of the Participant's death. Such rejection and election shall be valid only if the Participant files in writing in such form as the Trustees may prescribe, and the Participant's Spouse acknowledges the effect of the waiver and consents to it in writing, witnessed by a notary public or such representative of the Plan as the Trustees may designate for that purpose.
5. Notwithstanding any other provision of this Article, if the Actuarial Present Value of the Spouse's benefit is not more than \$1,000, the Trustees shall make a single sum payment to the Spouse in an amount equal to that Actuarial Present Value, in full discharge of the Pre-retirement Surviving Spouse Pension.

## 7.02. PRE-RETIREMENT 60-MONTH GUARANTEE.

- A. If a Participant dies at a time when he would have been fully eligible to begin receiving payment of a Regular, Reduced, Early Retirement, Deferred Vesting, Deferred Ten-Year or Disability Pension, but prior to the filing or the approval of his pension application, monthly pension payments up to a maximum of 60 monthly payments shall be paid to the person or persons and under the same conditions contained in Section 6.02. However, no benefits under this subsection shall be payable (i) unless the total of the 60 monthly payments shall be in excess of total payment under the Death and Accidental Death provision of the M.M.& P.

Health & Benefit Plan, or (ii) if a Pre-Retirement Survivor Annuity is payable to the surviving spouse. The Trustees shall have the sole discretion to determine from records submitted whether or not the Participant would have been otherwise fully entitled to a Disability Pension. Similarly, in the case of a Participant who dies prior to the filing or approval of his pension, the Trustees shall have the sole discretion to determine whether or not the Participant was fully eligible for a pension.

B. In the event the monthly payments described in paragraph A. above are payable to a Spouse, she may accept a lump sum, in place thereof, on the following conditions:

- (i) the lump sum shall be the Actuarial Present Value of the sum then payable at the effective date of the option, determined in accordance with Section 1.03; and
- (ii) the option to accept a lump sum payment may be exercised only between six and ten months after the death of the Participant.

7.03 LUMP SUM DEATH BENEFIT. Upon receipt of notice of the death of a Pensioner who (i) first became an Employee on or after January 1, 2013, (ii) was never eligible for the lump sum death benefit at any time under the Masters, Mates & Pilots Pension Plan, and (iii) was eligible for benefits under the Co-Pay Program of the M.M.& P. Health and Benefit Plan at the time of death, the Trustees shall pay the following lump sum benefit to the Participant's designated Beneficiary:

Pensioners under age 55 at time of death	- \$ 1,000
Pensioners age 55 through 59 at time of death	- \$10,000
Pensioners age 60 through 64 at time of death	- \$ 5,000
Pensioners age 65 or over at time of death	- \$ 1,500

The Pensioner, upon the death of his Spouse, may elect to then receive \$500, and, thereupon, the amount payable upon his death shall be reduced accordingly.

#### 7.04 BENEFICIARIES.

- A. The term "Beneficiary" means a person designated by a Participant, or by the terms of the Plan or applicable federal law, who is entitled to a benefit hereunder. Each Pensioner shall have the right to designate a Beneficiary or Beneficiaries to receive benefits under the Plan payable by reason of death, but such designation shall not be valid unless it is in writing, on forms supplied for that purpose by the Trustees or satisfactory to the Trustees, and is on file with the Trustees. The Beneficiary or Beneficiaries so designated shall be known as the Beneficiary or Beneficiaries of records and shall remain in effect unless and until such designation is effectively revoked or changed.
- B. In the event of an effective revocation which is not accompanied or followed by a new valid designation of Beneficiary, such benefits shall be payable, as set forth below, as though no Beneficiary had been designated.
- C. In the event of a valid change of Beneficiary or Beneficiaries of record, the new Beneficiary or Beneficiaries shall be considered the Beneficiary or Beneficiaries of record, and such designation shall continue until validly revoked or changed.
- D. Such written notice of revocation or change or by designation of a new Beneficiary shall not be deemed valid or operative unless it is received at the Plan Office prior to the earliest date that any payment is made by the Trustees of all or any portion of the benefits payable with respect to said Pensioner. Upon the receipt of such valid and operative written notice at the Plan Office, the revocation or change shall relate back to take effect as of the date the Pensioner signed said written notice of revocation or change, whether or not the Pensioner is living at the time of receipt of said notice.
- E. If more than one Beneficiary is validly designated and in such designation the Pensioner has failed to specify their respective interests, the Beneficiaries shall share equally. In the event that any Beneficiary of record does not survive the Pensioner, the interest of such Beneficiary shall terminate and his share shall be payable equally to such of the Beneficiaries as survive the Pensioner unless the Pensioner has made written request to the contrary.
- F. The amount of any benefit for which there is no Beneficiary at the death of the Pensioner because no Beneficiary of record survives or no Beneficiary shall have been designated, shall be paid to the executors or administrators of the deceased, except that the Trustees may, in their sole discretion, pay the entire amount of such benefits to the spouse if then living or if there is no spouse then alive, to any other person who is an object of the natural bounty of the Pensioner.
- G. If any Beneficiary of record is a minor or is otherwise incapable of giving a valid release for any payment due, the Trustees may, at their discretion and until claim is made by the duly-appointed guardian or custodian of such Beneficiary, make payment of the amount of the death benefit in Section 8.03 to such Beneficiary, at a rate not exceeding \$200.00 per month, to any relative by blood or connection by marriage of such Beneficiary, or to any other person or institution appearing to them to have assumed custody and principal support of such Beneficiary. Such payment shall constitute a full discharge of obligations of the Trustees to the extent thereof.



- H. A Beneficiary hereunder shall not include any of the Trustees of the Plan or any employee thereof, or the Organization or any of its subordinate bodies or any Officer, or Employee thereof, or any Employer, unless such Trustee or employee has a relationship with the Pensioner.
- I. The Trustees may, in their sole discretion, deduct from the sum payable under Section 8.03 at the time of the death of a Pensioner, an amount not exceeding the amount of the Death Benefit payable to be paid to any person or persons, other than the Trustees of the M.M. & P. Plans, appearing to the Trustees to be equitably entitled to the payment by reason of having incurred expenses on behalf of the Pensioner for his burial. The liability of the Trustees shall thereby be completely discharged to the extent of the amount so paid.

## ARTICLE VIII

### SUSPENSION OF PENSION BENEFITS

#### 8.01. SUSPENSION OF BENEFITS.

- A. Before Normal Retirement Age. A Pensioner's monthly benefit shall be suspended for any month in which the Participant is employed in Disqualifying Employment before he has attained Normal Retirement Age.
- B. On or After Normal Retirement Age. If the Pensioner has attained Normal Retirement Age, his monthly benefit shall be suspended for any month in which he worked or was paid for at least 5 days in Disqualifying Employment.
- C. Additional Suspension Period. If a Pensioner's monthly benefit is suspended under Subsection A., his monthly benefit shall be suspended for an additional period equal to the greater of 6 months or 2 times the period of Disqualifying Employment (including earned vacation time), provided that such period shall not extend beyond Normal Retirement Age.
- D. Definition of Suspension. "Suspension of Benefits" for a month means non-entitlement to benefits for the month. If benefits were paid for a month for which benefits were later determined to be suspendible, the overpayment shall be recoverable in accordance with Section 8.06.

8.02. DISQUALIFYING EMPLOYMENT. For the purposes of this Article VIII, Disqualifying Employment means any employment aboard any vessel whatsoever. Regardless, Pensioners shall be authorized, without penalty, to accept employment aboard the following vessels or ships, other than Covered Employment (except as otherwise specified in this Section), provided that such Pensioner must obtain prior written authorization for each such job assignment through the Organization, with written notice of such employment being furnished to the Board of Trustees:

- A. any vessels covered by collective bargaining agreements with or manned by personnel represented by Membership Groups affiliated with the Organization (other than the Offshore Group);
- B. any mercy ships;

- C. any vessels 300 feet or less in length;
- D. any vessels engaged in offshore drilling, exploration or research, or on any vessels whose operations are ancillary to such offshore oil operation, including, but not limited to, supply boats, oil drilling vessels or oil drilling rigs;
- E. any vessel, provided the Pensioner worked as a licensed engineer before Retirement retired and who retired because of the inability work in Covered Employment because of due to the limited number of billets available for such rating;
- F. any maritime academy education or training vessel, but only when the Pensioner is sailing as a Master aboard such vessels;
- G. any military vessels manned pursuant to a federal government contract and covered by collective bargaining agreements with or manned by Membership Groups affiliated with the Organization, including Covered Employment; or
- H. between the ages of 55 and Normal Retirement Age, any vessel, including Covered Employment, but only as a port relief officer for 5 days or 40 hours per month, whichever is less; provided, however, effective October 1, 2015, any vessel, including Covered Employment, but only as a port relief officer for no more than 10 days per month;
- I. effective January 1, 2014, any maritime academy education or training vessel, when Pensioners are sailing other than as Masters aboard such vessels.

8.03. NOTIFICATION. Upon commencement of pension payments, or upon a Participant's attainment of Normal Retirement Age, the Trustees shall notify the Participant of the Plan's rules governing suspension of benefits, including identity of the types of work that are considered Disqualifying Employment. Upon resumption of pension payments following suspension, new notification shall be given to the Participant if there has been any material change in the suspension rules.

A Pensioner shall verify to the Trustees on forms provided by the Plan Office that he is not working in Disqualifying Employment. Such verification shall be required at reasonable intervals to be determined by the Trustees. Failure to provide such verification may result in the withholding of benefits until such verification is received.

A Pensioner shall notify the Plan in writing within 15 days after starting any work of a type that is or may be Disqualifying Employment and without regard to the number of days of such work (that is, whether or not less than 5 days in a month). If a Pensioner has worked in such employment in any month and has failed to give timely notice to the Plan of such employment, the Trustees shall presume that he worked for at least 5 days in such month any subsequent month before the Pensioner gives notice that he has ceased the employment. The Pensioner shall have the right to overcome such presumption by establishing that his work was not in fact an appropriate basis under the Plan for suspension of his benefits.

A Pensioner whose pension has been suspended shall notify the Trustees when Disqualifying Employment has ended. The Trustees shall have the right to hold back benefit payments until such notice is filed with the Plan and the Pensioner has demonstrated to the Trustees' satisfaction that he is not working in Disqualifying Employment. A Participant may ask the Trustees whether a particular employment will be Disqualifying Employment. The Plan shall provide the Participant with its determination which shall be subject to review.

The Trustees shall inform a Participant of any suspension of his benefits by notice given by personal delivery or first class mail during the first calendar month in which his benefits are withheld. Such notice shall include a description of the specific reasons for the suspension, a description and a copy of the relevant plan provisions, reference to the applicable regulations of the U.S. Department of Labor, a statement of the suspension and a description of the procedures with any necessary forms that must be filed before benefits can be resumed.

A Participant shall be entitled, pursuant to Section 9.05, to a review of a suspension determination by written request filed with the Trustees within 60 days of the notice of suspension of benefits. The same right of review shall apply, under the same terms, to a determination by or on behalf of the Trustees that contemplated employment will be disqualifying.

#### 8.04. RESUMPTION OF PENSION PAYMENTS.

- A. Requirements. In order that the payment of monthly pension benefits be commenced or resumed under this Plan after a suspension described in Section 8.01 has taken place, the Pensioner must notify the Trustees in writing that the Pensioner has ceased working in Disqualifying Employment.
- B. Resumed Amount. The monthly amount of pension when resumed after suspension shall be determined under this paragraph and adjusted for the Participant-Spouse Pension if the Pensioner had so previously elected. Nothing in this section shall be understood to extend any benefit increase or adjustment effective after the Participant's initial retirement to the amount of pension upon resumption of payment, except to the extent that it may be expressly directed by other provisions of the Plan. If the pension was payable after Normal Retirement Age, resumption shall be at the same monthly amount as was paid prior to the suspension. Otherwise, the amount shall be determined as if it were then being determined for the first time, but on the basis of an adjusted age. The adjusted age shall be the age of the Participant at the beginning of the first month for which payment is resumed, reduced by (i) the months for which he had received benefits to which he was entitled and (ii) the months for which his benefits were suspended because of Disqualifying Employment, as defined in Section 8.02. This amount shall be determined before adjustment, if any, for pension accrual based on re-employment, for changes in the Plan adopted after the participant first retired and for any offset because of prior overpayments.
- C. Additional Pension Credits. A Pensioner who returns to work in Covered Employment and who earns one Year of Vesting Service during such re-employment may continue to earn additional Pension Credits in accordance with the rules of this Plan. Upon subsequent retirement an additional benefit based on Pension Credits earned during re-employment, the Pensioner's age upon subsequent retirement and any adjustments to Pay will be calculated and will be added to the resumed amount determined under Section 8.05.B., subject to offset

because of prior receipt of benefits or prior overpayment. The total amount shall be the Pensioner's new pension benefit.

- D. Participant-Spouse Pension. A Participant-Spouse Option in effect prior to suspension of benefits shall remain effective if the Pensioner's death occurs while his benefits are in suspension. The Trustees shall commence or resume the pension payments to the Participant's surviving Spouse in a monthly amount, adjusted annually to the extent required by law, to reflect any additional benefit earned.

8.05. RECOVERY OF OVERPAYMENTS. There shall be deducted from retirement benefits payable under the Plan any payments previously made to a Participant or Pensioner during those calendar months in which the Participant or Pensioner worked in Disqualifying Employment, provided that such deduction shall not exceed, in any one month, 25% of that month's total retirement benefits which would have been due but for the deduction, excluding the initial payment, which may be subject to deduction without limitation. If a Pensioner dies before recoupment of the overpayment has been completed, deductions may be made from the benefits payable to his Beneficiary or Spouse, subject to the 25% limitation on the rate of deduction.

## ARTICLE IX CLAIM AND APPEAL PROCEDURES

9.01. ADVANCE WRITTEN APPLICATIONS REQUIRED. Application for pensions in a form and manner prescribed by the Trustees shall be made in writing in advance of the first month for which benefits are payable. A pension benefit shall not be payable until the Participant is in Retirement. In addition, a Participant shall apply for his pension benefit under the Plan and the Masters, Mates & Pilots Pension Plan at the same time and as of the same Annuity Starting Date.

9.02. INFORMATION REQUIRED.

- A. Each and every Participant, Pensioner, Qualified Spouse, Alternate Payee and Beneficiary (i.e., a "Claimant" or collectively "Claimants") shall furnish to the Trustees any information or proof requested by them and reasonably required to administer these Regulations. Failure on the part of any Claimant to comply with such a request promptly and in good faith shall be sufficient grounds for delaying the commencement of benefit payments until such time as all such information required is received. If a Claimant makes a false statement material to his claim for benefits, he may be denied any or all benefits, and the Trustees shall have the right to recover any payments made in reliance on such false statement.
- B. Upon the receipt of an application for benefits, the Trustees shall provide to the applicant a general description of the material features of, and an explanation of the relative values of, the optional forms of benefit available under the Plan in a manner that satisfies the requirements of Code § 417(a)(3) and Treasury Regulation § 1.417(a)(3)-1.

9.03. STANDARD OF PROOF. The Trustees shall be the sole judges of the standard of proof required in any case. In the application and interpretation of these Regulations, the decision of the Trustees shall be final and binding on all parties including Participants, Employers, the Organization, Pensioners, Qualified Spouses, Alternate Payees and Beneficiaries. The Trustees may adopt

procedures for the determination of Pension Credits in advance of the filing of pension applications, and may make such determination conclusive.

9.04. NOTICE OF DENIAL AND RIGHT OF APPEAL FOR NON-DISABILITY PENSIONS.

- A. A Claimant whose application or claim for benefits under the Plan has been denied, in whole or in part, shall be provided with adequate notice in writing thereof by the Trustees. Such notice shall include the reasons for denial and references, when appropriate, to specific Plan provisions on which the denial is based; a description of any additional material or information necessary to perfect the claim, if applicable, and an explanation of why such material or information is necessary; appropriate information concerning the steps to be taken to submit the claim for review (including applicable time limits) pursuant to the review procedure set forth in this section; and a statement of a claimant's right to bring a civil action under Section 502(a) of ERISA following a denial on review. Such notice shall be provided to the Claimant no later than 90 days after the Trustees' receipt of his claim or application for benefits, unless special circumstances require an extension of time for processing the claim or application. If such special circumstances exist, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial 90-day period, which notice shall indicate the circumstances requiring an extension as well as the date by which the Trustees expect to render a decision. In no case shall an extension of time exceed a period of 90 days from the end of the initial period.
- B. A Claimant (or a duly authorized representative thereof) may seek review of any such decision by the Trustees denying his application or claim for benefits, in whole or in part. In order to do so, the claimant (or his duly authorized representative) must file a written appeal requesting such a review to the Trustees within 60 days after his receipt of the written notice denying his application or claim for benefits in whole or in part. Such written appeal must be addressed to the Trustees and must state the Claimant's name, address, the fact that he is appealing the initial decision (giving the date of the decision appealed from), and the basis of his appeal. If a Claimant (or his duly authorized representative) files such an appeal, the Trustees shall provide him with an opportunity to receive or to review pertinent documents at the Plan office. In addition, a Claimant (or his duly authorized representative) may submit written comments, documents, records or other information relating to the claim. The Trustees or their designated committee shall conduct a review that takes into account all comments, documents, records and other information submitted by the Claimant (or his duly authorized representative) without regard to whether such information was submitted by the claimant (or his duly authorized representative) in the initial benefit determination.
- C. Unless special circumstances require an extension of time, the Trustees or their designated committee shall render a final decision on any written appeal by the date of their next regularly scheduled quarterly meeting following receipt of the written appeal or, in cases where the written appeal is received within 30 days of the date of such meeting, by the date of their second regularly scheduled quarterly meeting following receipt of the written appeal. If special circumstances require an extension of time, the Trustees or their designated committee shall provide the claimant with written notice of the extension prior to the commencement of the extension. Such notice shall describe the special circumstances and the date as of which the benefit determination shall be made. In no case shall the period for rendering a decision be extended beyond the date of the third regularly scheduled quarterly

meeting of the Trustees or their designated committee following receipt of the written appeal. Notification of the determination shall be made to the claimant as soon as possible, but not later than 5 days after the benefit determination is made.

- D. The decision of the Trustees or their designated committee on such written appeal shall be written in clear and understandable language and shall include specific reasons for the decision as well as specific references to the pertinent Plan provisions on which the decision is based, a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the claims, a statement of a claimant's right to bring a civil action under Section 502(a) of ERISA. Such written decision shall be furnished to the claimant within the time frames for rendering a decision specified above.

#### 9.05. NOTICE OF DENIAL AND RIGHT OF APPEAL FOR DISABILITY PENSIONS.

- A. If a claim is for a Disability Pension, then the Trustees shall notify the claimant within a reasonable period of time, not later than 45 days after receipt of the claim by the Trustees. If the Trustees decide that special circumstances require an extension of time for processing the Disability Pension claim, the Trustees shall provide the claimant with written notice of the extension, before the end of the initial 45-day period, explaining the reason for the extension and the date the Trustees expect to make a decision. This extension shall not exceed 30 days, unless the Trustees determine that the decision cannot be made within the extension period. The Trustees may then begin a second 30-day extension, as long as the Trustees provide the claimant with written notice, by the end of the first 30-day extension, of the reason(s) for the second extension and the date it expects to render a decision. Both notices for extension shall include: (1) the standards on which entitlement to a Disability Pension is based; (2) any unresolved issues that prevent a decision on the claim; and (3) the additional information needed to resolve the issues. The claimant shall have 45 days to provide any specific information needed by the Trustees.
- B. If the claim for a Disability Pension is denied, the following information (in addition to the information listed in Section 9.04) shall be provided in the notice to the claimant denying the claim: (1) a copy of any rule, guideline or criterion that was relied upon in making the adverse determination, or a statement that such is available, free of charge, to the claimant upon request; or (2) an explanation of the medical judgment for the determination, if the adverse determination is based on medical necessity, experimental treatment or another limitation or a statement that such is available free of charge to the claimant upon request.
- C. In the case of an appeal of a claim for a Disability Pension, the claimant has at least 180 days following notification of the adverse determination in which to appeal to the Trustees or a claims review committee appointed by the Trustees. The subsequent review shall not be based on the initial determination and shall be conducted by a fiduciary who was not involved in, nor the subordinate of a fiduciary involved in, the initial determination. The Trustees or a claims review committee shall consult with an experienced health care professional regarding the appeal of a determination that was based upon a medical judgment. The health care professional must then be identified, whether or not the advice given was relied upon in the benefit determination, and must not be an individual who was

consulted for, or the subordinate of an individual consulted for, the original adverse benefit determination.

- D. In the case of an appeal of a claim for a Disability Pension, the determination upon review shall be provided to the claimant no later than the date of the meeting of the Trustees or any appointed committee that immediately follows the receipt of a request for review, unless the request is filed within 30 days preceding the date of such meeting, in which case a decision shall be rendered by the date of the second regularly scheduled meeting following receipt of the written appeal. If special circumstances require an extension of time, the Trustees or claims review committee shall provide the claimant with written notice of the extension prior to the commencement of the extension. Such notice shall describe the special circumstances and the date as of which the benefit determination shall be made. Notification of the determination shall be made to the claimant as soon as possible, but not later than 5 days after the benefit determination is made. In no case shall the period for rendering a decision be extended beyond the date of the third regularly scheduled meeting of the Trustees or claims review committee following receipt of the written appeal.
- E. If the claim for a Disability Pension is denied on appeal, the following information (in addition to the information identified in Section 9.04) shall be included in the notice to the claimant denying the claim: (1) a copy of any rule, guideline or criterion that was relied upon in making the determination, or a statement that such is available free of charge to the claimant upon request; (2) an explanation of the medical judgment for the determination if the adverse determination is based on medical necessity, experimental treatment or another limitation or a statement that such is available free of charge to the claimant upon request; and (3) 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."
- F. If a claim for a Disability Pension, including a claim related to a rescission of a Disability Pension, is filed on or after April 1, 2018, the provisions of Section 9.05.B shall not apply. Instead, if such a claim is denied, the following information (in addition to the information listed in Section 9.04) shall be provided in the notice to the claimant denying the claim: (1) an explanation of the medical judgment for the determination, if the adverse determination is based on medical necessity, experimental treatment or another limitation or a statement that such is available free of charge to the claimant upon request; (2) a discussion of the decision, including an explanation of the basis for disagreeing with or not following the views presented by the claimant to the Plan of health care professionals treating the claimant and vocational professionals who evaluated the claimant, the views of medical or vocational experts whose advice was obtained on behalf of the Plan in connection with a claimant's claim, without regard to whether the advice was relied upon in making the benefit determination, and/or a disability determination regarding the claimant presented by the claimant to the Plan made by the Social Security Administration; (3) either the specific internal rules, guidelines, protocols, standards or other similar criteria of the Regulations relied upon in making the adverse determination or, alternatively, a statement that such rules, guidelines, protocols, standards or other similar criteria of the Regulations do not exist; (4) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits

(as described in Section 9.04.D); and (5) a statement prominently displayed in any applicable non-English language, as defined in guidance published by the Secretary of Labor pursuant to 29 C.F.R. § 2560.503-1(o), clearly indicating how to access the language services provided by the Plan.

In the case of an appeal of a claim for a Disability Pension, including a claim related to a rescission of a Disability Pension, filed on or after April 1, 2018, the provisions of Sections 9.05.C, 9.05.D, and 9.05.E shall apply, with the addition of the following requirements: (1) before the Plan can issue an adverse benefit determination on a claim for a Disability Pension, the claimant will be provided, free of charge, with any new or additional evidence considered, relied upon, or generated by the Trustees, a claims review committee appointed by the Trustees, or other person making the benefit determination (or at the direction of the Trustees, a claims review committee appointed by the Trustees or such other person) in connection with the claim; such evidence will be provided as soon as possible and sufficiently in advance of the date on which the notice of adverse benefit determination on review is to be provided to give the claimant (or his duly authorized representative) a reasonable opportunity to respond prior to that date; (2) before the Plan can issue an adverse benefit determination on review on a claim for a Disability Pension based on a new or additional rationale, the claimant will be provided, free of charge, with the rationale; the rationale will be provided as soon as possible and sufficiently in advance of the date on which the notice of adverse benefit determination on review is to be provided to give the claimant (or his duly authorized representative) a reasonable opportunity to respond prior to that date; (3) any notification of benefit determination on appeal shall include the information described in Sections 9.04.D and 9.05.E, and shall include a statement indicating that the claimant's right to bring a Section 502 claim is subject to the limitations period set forth in Section 9.06, including the calendar date on which the contractual limitations period expires for the claim.

#### 9.06. CIVIL ACTIONS.

No person whose application for pension benefits under the Plan has been denied, in whole or in part, may bring any action in any court or file any charge, complaint or action with any state, or federal or local government agency prior to exhausting his available appeals within the time limits as provided in this Article. A claimant whose claim for benefits and appeal has been denied and who wishes to bring suit must do so within 3 years from the date on which the Board of Trustees makes its final decision on the claimant's appeal. For all other actions, the claimant must commence that litigation within 3 years of the date on which the violation of Plan terms is alleged to have occurred. For any action to enforce the terms of the Plan, including but not limited to benefit claims denied on appeal, if a claimant wishes to file suit, the claimant must bring that litigation in the United States District Court for the District of Maryland. A claimant includes, but is not limited to, a Participant and his Spouse, dependent or Beneficiary, and any third party suing with respect to payment alleged to be owed by the Plan for services rendered to a Participant, Spouse or other dependent. This Section applies to all litigation against the Plan, including litigation in which the Plan is named as a third party defendant.



#### 9.07. BENEFIT PAYMENTS GENERALLY.

- A. An eligible Participant who makes application in accordance with these Regulations, shall be entitled upon Retirement to receive the specified monthly benefit subject to all of the provisions of these Regulations. Benefits shall be payable commencing with the first full month when the Participant has fulfilled all of the conditions for entitlement to benefits and ending with the payment for the month in which the death of the Pensioner occurs, or in the case of a Disability Pension, so long as the Total and Permanent Disability continues. Benefits may continue, however, except as otherwise provided in the Plan.
- B. A Participant who makes application for a pension shall be required (1) to execute an appropriate form authorizing the Trustees to obtain his sea-service records from the U.S. Coast Guard or any other source; and (2) to provide such other documents and information and to execute such other forms as prescribed by the Trustees.
- C. A Participant who is receiving a pension from the Plan may voluntarily elect in writing to have deductions made from his pension payments for the following purposes:
  - (i) for the payment of the amount of the Participant's co-pay under the Masters, Mates & Pilots Health & Benefit Plan;
  - (ii) for the payment of Organization dues, charges and assessments not in excess of 10% of each pension payment (or from time to time from such payments, as agreed) in such amounts as may be due under the Organization's Constitution and/or the Work Rules and/or Shipping Rules;
  - (iii) to make contributions in a sum not in excess of 3% of each payment to a fund as designated by the Organization to be used for purposes such as political contributions, educational campaigns and such associated expenditures to benefit the Organization, its members present, future, and those retired.
  - (iv) to make loan payments if partial or full satisfaction of the Participant's obligation under a loan agreement between the Participant and the Masters, Mates & Pilots Federal Credit Union.

The total monthly deductions made in accordance with subsections (i) through (iii) from each pension payment shall not be in excess of 10% of the Pensioner's monthly benefit.

- D. Notwithstanding anything herein to the contrary and in addition to the other requirements described herein, in order to ensure the proper payment of benefits hereunder and thereby provide adequate protection to the Fund, the Trustees may require Pensioners, Qualified Spouses, Alternate Payees and Beneficiaries to certify on a periodic basis, including annually, the receipt of benefit payments on such forms and in such manner as prescribed by the Trustees. If a Pensioner, Qualified Spouse, Alternate Payee or Beneficiary fails to return the executed certification to the Plan Office within the time frame prescribed by the Trustees, the Plan Office may temporarily withhold the payment of benefits until such certification is received by the Plan Office. Upon receipt of such certification, the Plan Office shall pay to

the Pensioner, Qualified Spouse, Alternate Payee or Beneficiary any benefit payments temporarily withheld.

#### 9.08 RECOVERY OF OTHER OVERPAYMENTS

The Plan has the right, exercisable by the Trustees alone and at their sole discretion, to recover any overpayment to any Pensioner or Beneficiary. The procedures for recovering overpayments are set forth in this Section 9.08, provided, however, that overpayments described in Section 8.05 must be recovered in accordance with the procedures described therein. For the purposes of this Section 9.08, an “overpayment” is any payment to a Pensioner or Beneficiary that exceeds the amount of the benefit to which he is entitled under the terms of the Plan at the time of the payment.

##### A. Equitable Lien on Overpayments

The Plan has a constructive trust, lien, and/or equitable lien by agreement in favor of the Plan on any overpaid benefits received by a Participant or Beneficiary or a representative of a Participant or Beneficiary (including an attorney) that is due to the Plan under this Section, and any such amount is deemed to be held in trust by a Participant or Beneficiary for the benefit of the Plan until paid to the Plan. By accepting benefits from the Plan, each Pensioner or Beneficiary consents and agrees that a constructive trust, lien, and/or equitable lien by agreement arises in favor of the Plan upon any overpayment of benefits and agrees to cooperate with the Plan in reimbursing it for all of its costs and expenses related to the recoupment of the overpayment.

Any refusal by a Pensioner or Beneficiary to reimburse the Plan for an overpaid amount will be considered a breach of the agreement with the Plan that the Plan will provide the benefits available under the Plan and a Participant or Beneficiary will comply with the rules of the Plan. Further, by accepting benefits from the Plan, a Participant or Beneficiary affirmatively waives any defenses he may have in any action by the Plan to recover overpaid amounts or amounts due under any other rule of the Plan, including but not limited to a statute of limitations defense or a preemption defense, to the extent permissible under applicable law.

##### B. Notice to Recipient of Overpayment and Voluntary Repayment

As soon as practicable after their discovery of any overpayment, the Trustees will notify the recipient of the amount of the overpayment and request repayment to the Plan. A Pensioner or Beneficiary who disputes the fact or the amount of the overpayment must contest the Trustees’ determination in accordance with the claims procedure set forth in Section 9.04. The Trustees may agree to repayment in installments, to a waiver or reduction of repayments on account of hardship, or to any other mutually agreeable resolution that is consistent with the best interests of the Plan. The Plan will not seek to recover interest on overpayments that are voluntarily repaid.

C. Method of Recoupment of Overpayment

If a Pensioner or Beneficiary fails to reimburse the Plan for any overpayment and is entitled to future periodic benefits under the Plan, the Plan may recoup the overpayment through a reduction in benefit payments during the recipient's lifetime that is the Actuarial Equivalent, determined in accordance with Section 1.02, of the overpayment or by any other reasonable and equitable method that fully reimburses the Plan for its loss.

If the Pensioner or Beneficiary is not entitled to future benefits or if an actuarial reduction in future benefit payments will not reimburse the Plan's loss, the Plan may recover the overpayment by bringing an action in any court of competent jurisdiction against the party to whom the overpayment was made or who has in its possession any fund created by the overpayment. In this event, the defendant shall be liable for all costs and expenses, including attorneys' fees and costs, incurred by the Plan in connection with the enforcement of the Plan's rights under this Section 9.08 and the collection of any settlement or judgment. In the event of legal action, the defendant shall also be required to pay interest at the rate determined by the Trustees from time to time from the date the defendant became obligated to repay the Plan through the date that the Plan is paid the full amount owed.

**ARTICLE X**  
**DIRECT ROLLOVER**

10.01. **DIRECT ROLLOVER.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article X, a Distributee may elect, at the time and in the manner prescribed by the Trustees, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

10.02. **DEFINITIONS.** For purposes of this Article X, the following terms shall have the meanings indicated:

- A. **DIRECT ROLLOVER.** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.
- B. **DISTRIBUTEES.** 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 Spouse or former Spouse who is an alternate payee under a Qualified Domestic Relations Order (with regard to this Plan) as defined in Code § 414(p), are Distributees with regard to the interest of the Spouse or former Spouse. A Distributee also includes a non-Spouse Beneficiary.
- C. **ELIGIBLE RETIREMENT PLAN.** An Eligible Retirement Plan is an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), or a qualified trust described in Code § 401(a), that accepts the Distributee's Eligible Rollover Distribution. An Eligible Retirement Plan also shall mean an annuity contract described in Code § 403(b) and an eligible plan under Code § 457 that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into such plan from this Plan. An Eligible Retirement Plan shall also include an inherited IRA as defined in Code § 408(d)(3)(C)(ii) or a Roth individual retirement account under Code § 408A, provided such transfer is made subject to Code § 408A.
- D. **ELIGIBLE ROLLOVER DISTRIBUTION.** An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee under the Plan, 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; any distribution to the extent such distribution is required under Code § 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

**ARTICLE XI**  
**MAXIMUM BENEFITS**

11.01. **MAXIMUM BENEFITS.** Benefits under the Plan shall be limited in accordance with Code § 415 and the Treasury Regulations thereunder, which are incorporated herein by reference.

- A. In no event shall the annual amount of benefits accrued, distributed or otherwise payable under the Plan in a Plan Year exceed the annual limit determined in accordance with Code § 415 and the Treasury Regulations thereunder. If the benefit accrued, distributed or otherwise payable in a Limitation Year would exceed such limitation, the benefit payable shall be limited, or the rate of accrual shall be reduced, to comply with the maximum permissible annual amount.
- B. The maximum annual benefit that may be paid to any Participant under the Plan shall be \$205,000 or such increased amount permitted by law, actuarially adjusted as required under Code § 415(b)(2)(B), (C), and (D) using the interest rates and mortality tables defined in Section 1.03 and specified in Code § 415(b)(2)(E), as applicable.
- C. If the Participant has less than 10 years of participation, the \$205,000 limitation (or higher as permitted by law) is reduced by 1/10<sup>th</sup> for each year of participation (or part thereof) less than 10.
- D. If the Accrued Benefit of a Participant is payable in any form other than a Single Life Annuity with no ancillary benefits, the determination of whether the limitations of Code § 415 have been exceeded shall be determined by adjusting the benefit in accordance with Code § 415(b)(2)(B) so it is actuarially equivalent to a Single Life Annuity with no ancillary benefits. However, any portion of an annuity that constitutes a joint and survivor annuity shall not be taken into account. For the purposes of applying the limitations of Code § 415(b) to any benefit subject to Code § 417(e)(3), the interest rate shall be the greatest of (i) 5.5%; (ii) the rate that provides a benefit of not more than 105% of the benefit that would be provided if the Code § 417(e)(3) interest rate were used; or (iii) the rate in Section 1.03 and the mortality table shall be the applicable mortality table within the meaning of Code § 417(e)(3)(B). For any adjustments made where benefits begin before the Participant attains age 62 or after the Participant attains age 65, adjustments shall be made in accordance with Code § 415(b)(2)(C) and (D).
- E. Benefits accrued, distributed or otherwise payable that are limited by this Article XI shall be increased annually pursuant to Code § 415(d) and the Treasury Regulations thereunder to the maximum extent permitted by the law, including with respect to any Participant after such Participant's severance from Covered Employment or after the Participant's Normal Retirement Age.
- F. Benefits under this Plan are not aggregated with any other multiemployer plan but shall be aggregated with benefits provided under a non-multiemployer plan of any Employer, to the extent required by law. In aggregating the benefits under this Plan with any plan that is not a multiemployer plan maintained by any Employer, only the benefits under this Plan that are provided by such Employer shall be treated as benefits provided under a plan maintained by the Employer, to the maximum extent permitted by law. In the event that the benefits

accrued in any Plan Year by a Participant exceed the limits under Code § 415 as a result of the mandatory aggregation of this Plan with the benefits under another plan(s) maintained by an Employer, the benefits of such other plan(s) shall be reduced to the extent necessary to comply with Code § 415.

- G. For purposes of this Section, Limitation Year shall mean a calendar year.

## **ARTICLE XII TOP HEAVY PROVISIONS**

12.01. TOP-HEAVY PLAN REQUIREMENTS. Notwithstanding any other provisions of the Plan, if for any Plan Year the Plan is a Top-Heavy Plan (as defined in Section 12.04) the Plan shall comply with the top heavy minimum benefit in Section 12.05 and the vesting rules in Section 12.06. The provisions of this Article XII do not apply to any Employees covered by a Collective Bargaining Agreement. Otherwise, they are applied to each Employer separately.

12.02. DEFINITIONS. For purposes of this Article XII, the following terms shall have the respective meanings set forth below:

- A. "Aggregation Group" means either a Required Aggregation Group (as defined in Section 12.02.(I)) or a Permissive Aggregation Group (as defined in Section 12.02.(H)).
- B. "Benefit Plan" means any defined benefit plan or defined contribution plan of Employer, whether terminated or not.
- C. "Compensation" means the Participant's wages, salaries, fees for professional services and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the Plan (including, but not limited to, commission paid salesmen, compensation for services on this basis of a percentage of profits, commissions or insurance premiums, tips and bonuses).
- D. "Determination Date" means, with respect to any Plan Year, (i) the last day of the immediately preceding Plan Year, or (ii) in the case of the first Plan Year of the Plan, the last day of such Plan Year.
- E. "Employer" means, except where otherwise specifically provided, for purposes of this Article XII, an employer under this Plan and any corporation or unincorporated business which is controlled by, or under common control with, an employer under this Plan as described by Code § 414(b) and (c) or a member of the same affiliated service group as an employer under this Plan as described in Code § 414(m) or any entity required to be aggregated with an employer under Code § 415(o) and the Treasury Regulations thereunder.
- F. "Key Employee" means, for any Plan Year, any employee or former employee (including any deceased employee) of an Employer who, at any time during the Plan Year that includes the Determination Date, was an officer of an Employer having annual Compensation greater than \$160,000 (as adjusted under Code § 416(i)(1), a 5% owner of the Employer, or a 1% owner of the Employer having annual Compensation of more than \$150,000. The determination of

who is a Key Employee shall be made in accordance with Code § 416(i)(1) and the applicable Treasury Regulations and other guidance of general applicability issued thereunder.

- G. “Non-Key Employee” means any employee of an Employer or Beneficiary of such employee who is not a Key Employee, within the meaning of section Code § 416(i)(2) and the Treasury Regulations thereunder.
- H. “Permissive Aggregation Group” means a Required Aggregation Group (as defined in Section 12.02.I) plus any or all other Benefit Plan or Plans of the Employer which is or are not required to be included in the Required Aggregation Group, provided that such Required Aggregation Group would continue to meet the requirements of Code §§ 401(a)(4) and 410 with such Benefit Plan or Plans being taken into account.
- I. “Required Aggregation Group” means each plan of the Employer in which a Key Employee participates (in the Plan Year containing the Determination Date or any of the 4 preceding Plan Years) and each other plan, which enables any plan in which a Key Employee participates during the period tested to meet the requirements of Code § 401(a)(4) or 410(b), that are required to be aggregated for Top-Heavy testing purposes, and are considered the Required Aggregation Group.
- J. “Top-Heavy Group” means, with respect to any Plan Year, an Aggregation Group if, as of the Determination Date with respect to such Plan Year, (i) the sum of (1) the present value (determined in accordance with Section 1.03) of the cumulative accrued benefits (determined, in accordance with Code § 416(g) and the Treasury Regulations thereunder, as of the most recent date which is within a 12 consecutive month period ending on such Determination Date that is used for computing Defined Benefit Plan costs for minimum funding) for Key Employees under all Defined Benefit Plans included in such Aggregation Group, and (2) the aggregate of the accounts determined, in accordance with Code § 416(g) and the Treasury Regulations thereunder, as of the Valuation Date coincident with or immediately preceding such Determination Date of Key Employees under all defined contribution plans included in such Aggregation Group exceeds (ii) 60% of a similar sum determined for Key Employees and Non-Key Employees; provided, however, that if any Employee is a Non-Key Employee with respect to any Benefit Plan for any Plan Year, but such Employee was a Key Employee with respect to such Benefit Plan for any prior Plan Year, any accrued benefit for such Employee and any account of such Employee shall not be taken into account for purposes of the foregoing determination. If any individual has not received any compensation from the Employer (other than benefits under the Plan) at any time during the one-year period ending on the Determination Date, any accrued benefit for such individual shall not be taken into account.

12.03. EXCLUSION OF COLLECTIVELY BARGAINED EMPLOYEES. A part of a Plan that covers collectively bargained Employees and includes a Key Employee of the Employer must be included in the Required Aggregation Group. A part of a Plan that covers collectively bargained Employees that does not include a Key Employee of the Employer may be included in a Permissive Aggregation Group.

12.04. DETERMINATION OF TOP HEAVY PLAN. The Plan shall be a Top-Heavy Plan for any Plan Year in which the Plan is included in a Required Aggregation Group (as defined in Section 12.02.I) and is part of the Top-Heavy Group (as defined in Section 12.02.J).

12.05. MINIMUM BENEFIT. For any Plan Year in which the Plan is found to be a Top-Heavy Plan, each Participant who is a Non-Key Employee and who has completed at least 125 Days of Service in Covered Employment (or 1,000 Hours of Service in Non-Maritime Employment that constitutes Covered Employment) shall accrue a benefit, expressed as an annual retirement benefit, that is not less than 2% of the Participant's average annual Compensation from the Employer during the testing period, multiplied by the Participant's years of Pension Credit with the Employer. The maximum benefit shall not exceed 20% of the Participant's average annual compensation. "Testing Period" for the purposes of this Section shall be the period of consecutive years (not exceeding 5) during which the Participant had the greatest aggregate compensation from the Employer.

The provisions in the preceding paragraph shall not apply to any employee included in a unit of employees covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employees if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such Employer or Employers.

12.06. VESTING. For the Plan Year in which the Plan is found to be a Top-Heavy Plan, a Participant shall have a nonforfeitable right to a percentage of his Accrued Benefit determined under the following schedule:

<u>Years of Vesting Service</u>	<u>The Nonforfeitable Percentage is:</u>
0-2	20%
2-3	40%
3-4	60%
4-5	80%
6 or more	100%.

Participants with not less than 3 years of Vesting Service shall be permitted to elect, within a reasonable time after the application of the schedule above, to have nonforfeitable percentages calculated under the Plan without regard to the schedule above. If the Plan becomes a Top-Heavy Plan and then ceases to be a Top-Heavy Plan, each Participant with not less than 3 years of Vesting Service shall be permitted to elect, within a reasonable time after the schedule above reverts to the vesting schedule otherwise applicable, to have his nonforfeitable percentage computed under the schedule above.

### ARTICLE XIII AMENDMENT, TERMINATION AND MERGER

13.01. AMENDMENT. The Trustees may amend this Plan at any time in accordance with the procedures for voting contained in the Trust Agreement, except that no amendment may reduce any benefit accrued by a Participant unless such reduction is required to qualify this Plan (or continue such qualification) under the Code, or is required for compliance with ERISA, or is permissible



under Code § 432, or, if the amendment meets the requirements of ERISA § 302(c)(8) and Code § 412(c)(2). No amendment shall cause any of the assets of the Fund to revert to any Employer or the Organization.

13.02. **TERMINATION.** The parties to the Collective Bargaining Agreement shall have the right to discontinue or terminate this Plan in whole or in part. The rights of all affected Participants to benefits accrued to the date of termination, partial termination or discontinuance to the extent funded as of such date shall be nonforfeitable.

13.03 **MERGER.** If the Plan is merged into or consolidated with any other plan, or if the Plan's assets or liabilities are transferred to any other plan, each Participant shall be entitled to an Accrued Benefit under the Plan immediately after the merger, consolidation or transfer equal to or greater than the Accrued Benefit he would have had immediately before the merger, consolidation or transfer.

13.04 **EXCLUSIVE BENEFIT.** No amendment or termination of this Plan shall cause any assets of the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of the Participants and beneficiaries as provided by the Plan, or for the administrative expenses of the Fund, or for other payments or expenses in accordance with the provisions of the Trust Agreement.

#### **ARTICLE XIV MISCELLANEOUS**

14.01. **LIMIT ON TYPES OF BENEFITS.** No Participant or surviving Spouse shall be entitled to more than one type of pension or benefit from this Plan at any one time, except that a Pensioner may receive a benefit earned by employment as an Employee. In addition, a surviving Spouse or an Alternate Payee may be entitled to a different type of pension.

14.02. **PROTECTION AGAINST CREDITORS.** No Participant hereunder has the right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute, or anticipate any pension payments, and such payments shall not in any way be subject to any legal processes to levy execution upon or attachment or garnishment proceedings against the same for the payments of any claim against any Employee or Pensioner nor shall such payments be subject to the jurisdiction of any bankruptcy court or insolvency proceedings by operation of law or otherwise, except to the extent provided by federal law, such as pursuant to a Qualified Domestic Relations Order, as defined in Code § 414(p), and for those purposes described in Article V, Section 5(a) of the Agreement and Declaration of Trust establishing the Plan.

14.03. **QUALIFIED DOMESTIC RELATIONS ORDER.** The creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a Qualified Domestic Relations Order, as defined in Code § 414(p), shall not be treated as an assignment or alienation prohibited by ERISA, as set forth in Section 14.02.

14.04. **MAILING ADDRESS OF PENSIONER.** If a Pensioner fails to inform the Trustees in writing of a change of address and the Trustees are unable to communicate with the Pensioner at the address last recorded by the Trustees and a letter mailed to such Pensioner is returned, any payments due on the Pensioner's account shall be held without interest until claim is made therefore.

14.05. **OVERPAYMENTS.** If the Plan pays benefits to which an individual is not entitled or pays benefits in an amount greater than the benefits to which an individual is entitled (all such benefits hereinafter, "Overpayments"), the Plan has the right to recover such Overpayments. The Plan may recover Overpayments by offsetting future benefits otherwise payable by the Plan to a Participant or to any person who is entitled to benefits with respect to that Participant. The Plan may offset any benefit payable under the Plan, including but not limited to uninsured death benefits and joint and survivor benefits.

If the Plan offsets monthly benefits payable to an individual, the Plan shall offset 100% of the first benefit payment, and 25% of all benefit payments thereafter, until the overpayment has been recovered in full. Notwithstanding the foregoing, with respect to benefits paid during periods for which the provisions of Article VIII apply, the Plan shall recoup Overpayments pursuant to the provisions of Article VIII of this Plan. In the event the individual dies before the Plan recoups the full amount of the Overpayment, then the Plan shall deduct the remaining amount of the Overpayment from any uninsured death benefit, joint and survivor benefit, or any other benefit otherwise payable with respect to the individual. For death benefits paid other than in a lump sum, such as a joint and survivor annuity, the Plan shall deduct 25% of the benefit payment.

The Plan shall have a constructive trust, lien, or an equitable lien by agreement in favor of the Plan on any Overpayment, including amounts held by a third party, such as an attorney. Any such amount shall be deemed to be held in trust by the individual or third party for the benefit of the Plan until paid to the Plan. By accepting benefits from the Plan, the individual agrees that a constructive trust, lien, or equitable lien by agreement in favor of the Plan exists with regard to any Overpayment. The individual agrees to cooperate with the Plan by reimbursing all amounts due and agrees to be liable to the Plan for all of its costs and expenses, including attorneys' fees and costs, related to the collection of any Overpayment and agrees to pay interest at the rate determined by the Trustees from time to time from the date of the Overpayment through the date that the Plan is paid the full amount owed.

In addition to the right to recover Overpayments by offset, the Plan also has the right to recover Overpayments by pursuing legal action against the individual to whom the benefits were paid or the individual on whose behalf they were paid. In that event, the individual to whom benefits were paid or the individual on whose behalf they were paid shall pay all costs and expenses, including attorneys' fees and costs, incurred by the Plan in connection with the collection of any Overpayment or the enforcement of any of the Plan's rights to repayment. By accepting benefits from the Plan, the individual agrees to waive any applicable statute of limitations defense available to any of them regarding the enforcement of any of the Plans' rights to recoup Overpayments.

14.06. **LEGAL JURISDICTION.** Except to the extent preempted by federal law, the Plan shall be construed, administered and enforced in accordance with the laws of Maryland.

14.07. **SAVINGS PROVISION.** Should any provision contained in the Plan be held unlawful, such provision shall be of no force and effect, and this Plan shall be treated as if such portion had not been contained herein.

14.08. **NO LIABILITY TO TRUSTEES OR ORGANIZATION.** There shall be no liability upon the Trustees individually or collectively, or the Organization or employees, to provide the benefits established by the Plan if the Fund does not have assets to make such payments.

14.09. NUMBER AND GENDER. Wherever appropriate, words used in this Plan in the singular may mean the plural, the plural the singular, the masculine the feminine, and the feminine the masculine.

14.10. PREVENTION OF ESCHEAT. If the Trustees cannot ascertain the whereabouts of any person to whom a payment is due under the Plan, and if, after 3 years from the date such payment is due, a notice of such payment due is mailed to the last known address of such person, as shown on the records of the Trustees and within 3 months after such mailing such person has not made written claim therefore, the Trustees, if they so elect, may direct that such payment and all remaining payments otherwise due to such person be canceled on the records of the Plan and upon such cancellation, the Plan shall have no further liability therefore, except that, in the event such person later notifies the Trustees of his whereabouts at any time before termination and liquidation of the Plan and requests the payment or payments due to him under the Plan, the amount so applied shall be paid to him as provided in Article VI (including past due payments without interest).

14.11. PLAN INTERPRETATIONS AND DETERMINATIONS. Notwithstanding any other provision of the Plan, the Trustees shall have exclusive authority and discretion to:

- A. determine whether an individual is eligible for any benefits under the Plan;
- B. determine the amount of benefits, if any, an individual is entitled to under the Plan;
- C. interpret all of the provisions of the Plan and make factual determinations regarding its construction, interpretation and application; and
- D. interpret all of the terms used in the Plan, including ambiguous terms.

All determinations and interpretations made by the Trustees, or their designee, pursuant to this Section shall be binding upon any individual claiming benefits under this Plan, be given deference in all courts of law, to the greatest extent allowed by applicable law, and not be overturned or set aside by any court of law unless such court determines that the Trustees have abused their discretion in rendering such determination or interpretation.

14.12. INCORPORATION. All rules, regulations, provisions and requirements established or promulgated by the Trustees pursuant to the terms of the Trust Agreement shall be deemed incorporated in and made a part of this Plan and shall be binding upon the parties hereto with the same force and effect as if herein originally contained.

IN WITNESS WHEREOF, the undersigned Trustees, on behalf of the Board of Trustees of the Masters, Mates & Pilots Adjustable Pension Plan, hereby adopt this Plan.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**MASTERS, MATES & PILOTS ADJUSTABLE PENSION PLAN**  
**Appendix A**

**DISABILITY FACTOR**

<b>AGE</b>	<b>FACTOR</b>
30	.14
31	.15
32	.16
33	.16
34	.17
35	.18
36	.19
37	.20
38	.21
39	.22
40	.23
41	.25
42	.26
43	.27
44	.29
45	.30
46	.32
47	.34
48	.35
49	.37
50	.40
51	.42
52	.44
53	.47
54	.50
55	.53
56	.56
57	.59
58	.63
59	.67
60	.71
61	.76
62	.81
63	.87
64	.93

**APPENDIX PR**  
**SPECIAL PROVISIONS RELATED TO**  
**PUERTO RICO PARTICIPANTS**

**PR-1. Purpose and Effect.** The purpose of this Appendix PR is to comply with the requirements for qualification and tax-exemption under Sections 1081.01(a) and 1081.01(d) of the Puerto Rico Internal Revenue Code of 2011, as amended (the “2011 PR Code” or the “PR Code”), and any subsequent legislation that modifies or supersedes the foregoing. With respect to any Participant who (i) is a bona-fide resident of the Commonwealth of Puerto Rico, or (ii) performs labor or services primarily within the Commonwealth of Puerto Rico, regardless of residence for other purposes (“Puerto Rico Participant(s)” or “Puerto Rico Employees(s)”), the following provisions shall also apply and, to the extent that these provisions conflict with other provisions of the Masters, Mates & Pilots Adjustable Pension Plan (the “Plan”), the rules in this Appendix PR shall control solely for purposes of complying with the PR Code for such Puerto Rico Participants. The only provisions included in this Appendix PR are those that differ from provisions otherwise contained in the Plan. To the extent not otherwise provided in this Appendix PR, the general provisions of the Plan shall govern. Any capitalized terms utilized, but not defined, in this Appendix PR shall have the same meaning as set forth under the Plan.

**PR-2. Puerto Rico Highly-Compensated Employee.** For purposes of this Appendix PR, the term “Puerto Rico Highly Compensated Employee” means any Puerto Rico Employee who: (i) is an officer of an Employer; or (ii) received compensation during the prior Plan Year from the Employer in excess of \$115,000 or such other amount in effect under Section 414(q)(1)(B) of the Code and 2011 PR Code Section 1081.01(d)(3)(E)(iii), as such may be amended or substituted from time to time; or (iii) meets such other additional or substitute definition required or permitted under the PR Code to be deemed an Highly Compensated Employee. Effective for Plan Years beginning on or after January 1, 2017, a Puerto Rico Participant shall be considered a Highly Compensated Employee if he is (a) a shareholder owning more than 5% of the voting shares or total value of all classes of stock of the Employer or owns more than 5% of the capital interest or the profits of the Employer, if such Employer is not a corporation, as defined in the PR Code and its regulations, or (b) for the preceding Plan Year received compensation from the Employer in excess of \$150,000. Effective for Plan Years beginning on or after January 1, 2019, a Puerto Rico Participants shall be considered a Highly Compensated Employee if he is (i) a shareholder owning more than 5% of the voting shares or total value of all classes of stock of the Employer or owns more than 5% of the capital interest or the profits of the Employer, if such Employer is not a corporation, as defined in the PR Code and its regulations, or (ii) for the preceding Plan Year received compensation from the Employer in excess of \$125,000 or such other amount in effect pursuant to Section 414(q)(1)(B) of the Code or as otherwise in effect under PR Code Section 1081.01(d)(3)(E)(iii).

**PR-3. Limitation of Annual Contributions.** The total contributions by an Employer to the Plan in any Plan Year with respect to a Puerto Rico Participant shall not exceed the limitations contained in Section 1033.09 of the 2011 PR Code, as applicable, or as otherwise provided or permitted under the PR Code.

**PR-4. Limitation of Annual Benefits.** In addition to any other limits set forth in the Plan, and notwithstanding any other provisions of the Plan to the contrary, the amount of annual benefits with respect to a Puerto Rico Participant, when expressed as a straight life annuity with no ancillary benefits under the Plan shall not exceed the lesser of: (i) 100% of the Puerto Rico Participant's average annual pay for the period of consecutive calendar years (not more than three) during which the Pay paid by the Employer was highest; or (ii) the limit established under Section 415(b) of the Code, as specified under 2011 PR Code Section 1081.01(a)(11)(A), as adjusted from time to time. In order to comply with this limitation, all applicable benefits under other qualified defined benefit plans maintained by an Employer shall be aggregated and shall be considered as a single plan. To the extent permitted under regulations to be issued under the PR Code, this limitation shall be administered similarly to the limitation under Section 415 of the Code, as described in Article XII, Section 12.01 of the Plan.

**PR-5. Pay.** For purposes of determining the Pay of a Puerto Rico Participant's, Pay shall include, to the extent not otherwise included, Pay reduction amounts under any cash or deferred arrangement under 2011 PR Code Section 1081.01(d).

For purposes of determining contributions or benefits under the Plan, nondiscrimination testing and limits on benefits and contributions, if any, and as applicable, Pay for any Puerto Rico Participants for any Plan Year shall not exceed the applicable limitation under Section 401(a)(17) of the Code, as described in Article I, Section 1.24 of the Plan and specified in Section 1081.01(a)(12) of the 2011 PR Code.

**PR-6. Affiliate with respect to Puerto Rico Participants:** Means any corporation, partnership or other person: (i) that is a member of a "controlled group of corporations" as described in Section 1010.04 of the 2011 PR Code; (ii) that is a member of a "group of related entities" as described in Section 1010.05 of the 2011 PR Code; (iii) that is a member of an "affiliated service group" as described under Section 1081.01(a)(14)(B) of the 2011 PR Code; or (iv) that is under "common control" as defined by the Puerto Rico Secretary of Treasury; and that has Employees that are bona fide residents of Puerto Rico, as this may be further defined by regulations promulgated under the 2011 PR Code. For purposes of the Plan with respect to Puerto Rico Participants, all references to an Employer shall include any Affiliates as described herein.

**PR-7. Rollovers.** A Puerto Rico Participant may transfer from the Plan his interest in the Plan in whole or in part to another tax qualified plan or individual retirement account, subject to the following rules, and subject to the direct rollover distribution rules under the Plan. If all or a portion of a Puerto Rico Participant's benefit is to be distributed in the form of a direct rollover distribution, such direct rollover distribution may only be made for an amount equal to Actuarial Present Value of the Puerto Rico Participant's Accrued Benefit to a Puerto Rico Eligible Retirement Plan that is also qualified under Code Section 401(a), and, effective for Plan Years beginning on or after January 1, 2011, in compliance with 2011 PR Code Section 1081.01(b)(2)(A). For purposes of this paragraph, the term 'Puerto Rico Eligible Retirement Plan shall mean a qualified plan and trust as described in 2011 PR Code Section 1081.01(a).

**PR-8. Return of Contributions.** To the extent permitted by ERISA and the Code, if the Puerto Rico Department of Treasury, on timely application made after the establishment of the Plan, determines that the Plan is not qualified under Sections 1081.01(a) and 1081.01(d) of the 2011 PR Code, or refuses, in writing, to issue a determination as to whether the Plan is so qualified, the Employer's contributions made on or after the date on which that determination or refusal is applicable may be returned to the Employer within one year after the denial of qualification. The provisions of this paragraph shall apply only if the application for the determination is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan was adopted, or such later date as the Secretary of the Treasury may prescribe.

To the extent permitted by ERISA and the Code, each contribution made by an Employer to the Plan to satisfy the funding requirements for benefits of Puerto Rico Participants is intended to be deductible under the PR Code for the taxable year for which contributed. If the Puerto Rico Department of Treasury disallows the deduction or if the contribution was made by a mistake of fact, to the extent permissible under ERISA and the Code, such contribution may be returned to the Employer within one year after the disallowance of the deduction or after the mistaken contribution, respectively.

**PR-9. Payment of Contributions.** Contributions made by an Employer to the Plan with respect to a Puerto Rico Participants shall be paid to the Plan by the date due under the collective bargaining agreement, but in no event later than the due date for filing the Employer's Puerto Rico income tax return for the taxable year in which such payroll period falls, including any extension thereof.

**PR-10. Merger or Consolidation of the Plan.** Solely with respect to the Puerto Rico Participants, any merger or consolidation of the Plan with, or transfer in whole or in part of the assets and liabilities of the Plan to another trust, will be limited to the extent such other plan and trust are qualified under 2011 PR Code Section 1081.01(a) and 1081.01(b).

**PR-11. Special Taxation of Single Sum Distributions.** In the case of a single sum distribution, if (i) the Plan's trust is organized under the laws of the Commonwealth of Puerto Rico, or has a trustee that is a resident of Puerto Rico and uses said trustee as paying agent; and (ii) the Plan complies with a certain Puerto Rico investment rule under 2011 PR Code Section 1081.01(b)(1)(B), then the amount of such lump-sum distribution in excess of amounts contributed by the Participant that have already been subject to taxation shall be subject to the special income tax rate and the reduced income tax withholding rate of 10% as provided in Sections 1081.01(b)(1)(B) and 1081.01(b)(3)(A). A lump-sum distribution due to a separation of employment or plan termination is considered as a long-term capital gain, except if the Participant elects to treat such a distribution as ordinary income, and is subject to a 20% income tax withholding rate (10% for distributions in 2018) as provided in Sections 1081.01(b)(1)(B) and 1081.01(b)(3)(A).

**PR-12. Applicable Law.** Except as otherwise required by ERISA or the Code, the provisions of this Appendix PR shall be construed, enforced and administered according to the laws of the Commonwealth of Puerto Rico.

**PR-13. Right to Amend.** In addition to the provisions under Article XIV, Section 14.01, the Trustees reserve the right to amend the Plan, including this Appendix PR, to ensure the continued qualification of the Plan under the 2011 PR Code.