



**AGREEMENT AND
DECLARATION OF TRUST**

of the

**TEAMSTERS HEALTH
AND WELFARE FUND**
OF PHILADELPHIA AND VICINITY

**AMENDED AND RESTATED
AS OF JANUARY 1, 2021**

EFFECTIVE January 1, 2021, the Agreement and Declaration of Trust (the “Trust Agreement”) of the TEAMSTERS HEALTH AND WELFARE FUND OF PHILADELPHIA AND VICINITY, first adopted and established on December 13, 1951, and amended and restated as of July 1, 2000, and as amended since that date, is hereby amended and restated.

W I T N E S S E T H:

WHEREAS, on or about the 9th day of October 1950, agreements were entered into between HIGHWAY TRUCK DRIVERS AND HELPERS UNION, LOCAL 107 and MOTOR TRANSPORT LABOR RELATIONS, INC., now known as Transport Employers Association (hereinafter called “TEA”); GENERAL TEAMSTERS, CHAUFFEURS, HELPERS AND YARDMEN, LOCAL UNION NO. 470 and TEA; and TEAMSTERS UNION, LOCAL NO. 929 and TEA, respectively, intending to govern the hours of work, wages and working conditions of members of UNION employed by EMPLOYERS or by any other employer who may become a member of the TEA after the date of said agreements, and a copy of whose approved application for membership in TEA has been filed with the appropriate union by TEA; and

WHEREAS, by agreement originally made on the 13th day of December, 1951, amended and restated as of July 1, 2000, and further amended from time to time and now restated as of January 1, 2021, by and between TEA, acting for and on behalf of the corporations, partnerships and individuals listed on “Exhibit A” attached to the Master Agreement dated October 9, 1950 (hereinafter called “EMPLOYERS”), party of the first part, and HIGHWAY TRUCK DRIVERS AND HELPERS UNION, LOCAL NO. 107; TRUCK DRIVERS AND HELPERS UNION, LOCAL NO. 676; TEAMSTERS UNION, LOCAL NO. 929; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE- HOUSEMEN AND HELPERS OF AMERICA, LOCAL 331; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL NO. 384; all of whom are affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO (hereinafter collectively called “UNION”), party of the second part, originally created a trust fund known as the TEAMSTERS HEALTH AND WELFARE FUND OF PHILADELPHIA AND VICINITY (hereinafter “Trust Fund”); and

WHEREAS, the collective bargaining agreements aforesaid contain a clause relating to a Welfare Plan; and

WHEREAS, the other Unions to this Agreement have existing collective bargaining agreements with employers which contain a clause relating to a Welfare Plan; and

WHEREAS, the parties hereto have established and desire to continue a Welfare Plan within the meaning of the agreements, as aforesaid, subject to whatever conditions may be necessary to conform with the requirements of any and all applicable laws and legal limitations; and

WHEREAS, the parties hereto agree that under the circumstances and in the manner herein provided, any employer having a collective bargaining agreement with any of the Unions party to this Agreement may, by agreement in writing, become a party to and be bound by the

terms of this Agreement, such employer thereafter to be included in the term “Employers” whenever used in this Agreement; and

WHEREAS, the parties to the original Agreement and Declaration of Trust and the Trustees of the Trust Fund do hereby wish to further amend and restate the Trust Agreement.

NOW THEREFORE, in consideration of the premises and of thereof mutual covenants, the parties hereto agree as follows:

1. The parties have created, established, and maintained the Trust Fund, and the Trustees agree to receive, hold, and administer the Trust Fund, for the purpose of providing health and welfare benefits to eligible Employees and Beneficiaries who are eligible to receive such benefits in accordance with the terms of a Benefit Plan. The Trust Fund shall not be used to provide any pension or retirement benefits. It is intended that each Benefit Plan be offered under a multiemployer plan as that term is defined in ERISA Section 3(37).

2. The Trust Fund is and shall constitute an irrevocable trust created pursuant to the provisions of Section 302(c) of the Labor Management Relations Act, 1947, as amended, for the benefit of Employees and Beneficiaries to provide death benefits, accidental death and dismemberment benefits, accident and health insurance, hospital benefits, and such other health and welfare benefits as the Trustees shall determine in their discretion, subject to the provisions of applicable law, to Employees and Beneficiaries who meet the requirements to receive such benefits as the Trustees may establish.

The Trust Fund may provide benefits to eligible Employees and Beneficiaries through policies or certificates of insurance issued by an insurance company or companies, or by self-funding, or a combination thereof. The Trustees may apply for and accept as a part of the Trust Fund the insurance policies issued to them in their names as Trustees or to the Trust Fund and may also accept as part of the Trust Fund any other policy of insurance issued for the purposes of providing health and welfare benefits under a Benefit Plan. The health and welfare benefits shall be in such amounts and types and with such coverages as the Trustees shall determine in their discretion, subject to the provisions of applicable law.

3. The Trustees shall establish one or more Benefit Plans to provide such health and welfare benefits. Each Benefit Plan shall set forth the detailed basis on which payments are to be made, subject to amendment or termination by the Trustees, in their discretion. All amendments to a Benefit Plan shall be set forth in writing and shall be communicated to Employees and other interested parties as required by law. The Trustees, within their discretion, shall provide the maximum amount of benefits that can be provided by the Trust Fund, taking into consideration reserves and actuarial methods and assumptions that, in the aggregate are reasonable, and taking into account the experience of each Benefit Plan and reasonable expected experience.

It is expressly understood and agreed that the Union, Employers, and Trustees have no liability for the furnishing of any specific type or amount of benefit, except as otherwise expressly provided in any applicable Collective Bargaining Agreement or by applicable law.

4. Each Employer shall contribute to the Trust Fund in the amounts and at the times required under the applicable Collective Bargaining Agreement and Participation Agreement.

Employer contributions constitute an absolute obligation to the Trust Fund, and the obligation is not subject to set off or counterclaim for any liability of the Union, Employee, or Beneficiary. An Employer's obligation to contribute to the Trust shall be at the rate for each Benefit Plan (plus any applicable interest and liquidated damages) that the Trustees may establish from time to time until the Employer and the Union each notify the Trustees in writing, that the Employer no longer has a legal duty to contribute to the Trust Fund, and the Trustees acknowledge and agree to the termination in writing. Such Employer shall set forth in the written notice the specific basis upon which its legal duty to contribute to the Trust Fund has terminated.

Employers shall pay their contributions or to the depository that the Trustees may designate from time to time by check, bank draft, money order, or other negotiable, written, and recognized method of transmitting money. Each Employer shall submit contributions along with such forms and documents that the Trustees may approve from time to time, and make such contributions at such times and through such means as the Trustees shall specify by rules and regulations.

The Trustees may adopt a delinquency policy with respect to untimely or otherwise improper contributions and each Employer shall be bound thereto. The Trustees may add to the amount of any Employer contribution due a reasonable late charge (including liquidated damages and/or interest), to be set by rules and regulations, for failure to make prompt payments to the Trust Fund, and the Trustees have the power to collect such late charges. Failure by an Employer to pay the amounts when due to the Trust Fund shall be deemed a breach of this Trust Agreement. An Employer's nonpayment of any payment due to the Trust Fund shall not relieve any other Employer of its obligations under this Trust Agreement or a relevant Participation Agreement.

Any agreement or understanding that in any way alters or affects or purports to alter or affect an Employer's contribution obligation as set forth in this Trust Agreement or an applicable Collective Bargaining Agreement or Participation Agreement shall be submitted promptly to the Trust Fund in the same manner and subject to the same right of rejection as contributions under a Collective Bargaining Agreement set forth in Subsection 24(j); any such agreement or understanding between the parties that has not been disclosed to the Trust Fund as required by this Paragraph shall not be binding on the Trustees and shall not affect the Employer's obligation to contribute to the Trust Fund as set forth in the applicable Collective Bargaining Agreement or Participation Agreement.

The Trust Fund shall apply all payments that it receives first to any interest or liquidated damages due, and then to the oldest unpaid balance due. Nothing herein shall give any Employer the right to designate how any contribution payment shall be applied.

The obligation to make Contributions, as well as all other obligations of each Employer under this Trust Agreement, a Collective Bargaining Agreement or a Participation Agreement, shall be binding upon the successors and assigns of each corporate Employer, and upon the heirs, executors, administrators, and assigns of each unincorporated Employer.

5. The following provisions shall apply to the property of the Trust Fund:

(a) Title to all of the amounts paid into the Trust Fund and all of the property of the Trust Fund shall be vested in and remain exclusively in the Trustees. No Employer, Employee or Beneficiary, Union, or employer association shall have any right, title, or interest in any of the moneys or property of the Trust Fund. The Trust Fund shall constitute an irrevocable trust for the sole and exclusive benefit of Employees and Beneficiaries entitled to benefits under this Trust Agreement. Notwithstanding any other provision of this Trust Agreement to the contrary, no part of the principal or income of the Trust Fund shall be used for or diverted to purposes other than for the exclusive benefit of Employees and Beneficiaries, except for the return of a bona fide erroneous payments or overpayments of contributions, and only to the extent permitted under ERISA or any other applicable law or any applicable policy as the Trustees may adopt with respect to excess contributions, nor shall an Employer directly or indirectly participate in the disposition of Trust Fund.

(b) Contributions paid or to be paid to the Trust Fund shall not constitute or be deemed wages due to Employees and such contributions shall not in any manner be subject to the debts, contracts, or liabilities of any Employer, Employee, Beneficiary, Union, or employer association. Contributions or other moneys received or due and owing from an Employer required to make contributions to the Trust Fund, however, shall be deemed Trust Fund assets.

(c) No Employee or Beneficiary shall at any time have the right to receive any part of contributions paid to the Trust Fund in lieu of benefits under a Benefit Plan or to receive cash consideration in lieu of benefits under a Benefit Plan.

(d) No money, property, equity, or interest of any nature whatsoever in the Trust Fund or in any benefits or moneys payable under a Benefit Plan shall be subject in any manner by any Employee or Beneficiary or person claiming through any of them to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, lien, or charge, and any attempt to so subject the same shall be null and void.

6. The Board shall administer the Trust Fund and each Benefit Plan. Unless and until the parties otherwise agree, the Board shall consist of three Trustees that the TEA shall designate and three Trustees that the Union shall designate; provided however, that the Executive Board of Local 107 shall appoint one Union Trustee, the Executive Board of Local 929 shall appoint one Union Trustee, and the Executive Board of Local 676 shall appoint one Union Trustee. Each Trustee shall serve at the pleasure of the respective groups by which he is elected or appointed.

The Trust Fund and each Benefit Plan shall not be deemed an Employer or Employee representative nor shall any or all of the Trustees, when acting in the capacity of a Trustee, be deemed an Employer or Employee representative.

7. Each Trustee shall serve as Trustee until he or she shall die, become incapable of acting hereunder, resign, become disqualified for the position under applicable law, be removed by the applicable Executive Board of the local union that appointed such Trustee (in the case of a Union Trustee), or by the TEA (in the case of a TEA Trustee), as applicable, or be replaced as herein provided, whichever occurs first.

8. The death of any Trustee shall not operate to terminate the Trust Fund nor shall the legal representatives of such Trustee be entitled to any accounting or to take any action in the courts or otherwise, and the appointment of such Trustee shall be deemed purely personal and not a right that can descend to heirs at law or legal representatives.

9. Each Trustee serving as such shall execute a written Acceptance of Trust in a form satisfactory to the Trustees and in conformity with ERISA and thereby shall be deemed to have accepted the Trust Fund created, established, and maintained by this Trust Agreement, to have consented to act as a Trustee and to have agreed to administer the Trust Fund and each Benefit Plan as provided in this Trust Agreement.

No individual or person may act as agent for the Trust Fund or a Benefit Plan unless the Trustees specifically so authorized in writing. No Employer or Union, nor any representative of any Employer or Union, in such capacity, is authorized to interpret any Benefit Plan, the Trust Agreement, or any document or instrument governing the Trust Fund or a Benefit Plan, nor can any such person act as agent of the Trustees. Only the Trustees, within the scope of their discretionary authority, are authorized to interpret a Benefit Plan, the Trust Agreement, and the documents and instruments governing the Trust Fund or the Benefit Plans.

10. Trustees may resign or be replaced as follows:

(a) Any Trustee may resign by providing written notice to the other Trustees at least 30 days prior to the effective date of the resignation.

(b) In cases of vacancies on the Board, the Executive Board of the Local that appointed the trustee whose seat is now vacant shall appoint a successor Trustee to fill a Union Trustee vacancy and the TEA shall appoint successor Trustees to fill any Employer Trustee vacancy, as applicable. A Trustee appointed to fill a vacancy under this Subsection 10(b), who has signed an Acceptance of Trust in accordance with Section 9 shall, without further act, become vested with all of the estate, rights, powers, discretion, and duties of the predecessor Trustee as if originally designated a Trustee, and the Trust Fund shall vest in the successor Trustee, together with the continuing Trustees, without any further act or conveyance.

(c) An individual who ceases to be a Trustee shall forthwith turn over to the remaining Trustees at the office of the Board all records, books, documents, moneys, and other property in his or her possession owned by the Trust Fund or incident to the fulfillment of the Trust Agreement and administration of the Trust Fund.

11. The regular meetings of the Board shall be held at such places and at such times as the Trustees, by vote, from time to time may determine; and if so determined, no notice thereof need be given. Any two Trustees may call a special meeting of the Board at any time by advising the Administrator, who shall give at least 10 days' written notice of the time and place of the meeting to each Trustee. With the consent of all of the Trustees, meetings of the Board also may be held at any time without notice. The Trustees may take action on any proposition without a meeting upon unanimous agreement in writing upon such proposition. The Trustees may cast votes in person or telephonically or electronically at a meeting or by written instruments executed by them.

12. 50% of the Trustees present at any meeting shall constitute a quorum for the transaction of any Board business, provided that one Employer Trustee and one Union Trustee shall be represented, but less than a quorum may adjourn any meeting from time to time, and such meeting may be held as adjourned without further notice. So long as the requirements for a quorum are met, no vacancy or vacancies in the Board shall impair the power of the remaining Trustees, acting in the manner provided by this Trust Agreement, to administer the affairs of the Trust Fund notwithstanding the existence of such vacancy or vacancies.

13. When a quorum is present at any meeting, a majority of the Trustees present and voting shall decide any questions brought before such meeting, and the action of a quorum of the Trustees as defined above shall be valid and binding as the action of the Trustees, except as otherwise provided in this Trust Agreement. All business shall be transacted by a vote on a motion duly made, seconded, and opened to discussion. At any time any vote is taken by the Trustees, the number of Union Trustees and Employer Trustees qualified to vote shall always be equal. If, at any time a vote is taken, the number of Union Trustees and Employer Trustees qualified to vote is not equal, voting will be conducted on a unit basis so that the Union Trustees present will be deemed to have one vote and the Employer Trustees present will be deemed to have one vote. If the group of Union Trustees or the group of Employer Trustees is not able to reach agreement on how to cast its unit vote, the vote will automatically be postponed until the next regular meeting of the Board. If a unit vote is necessary at such next meeting and the group of Union Trustees or the group of Employer Trustees is not able to reach agreement on how to cast its unit vote, the group that does not reach agreement will be deemed to have declined to vote and the unit vote of the other group will decide the motion.

14. Any Trustee may, by power of attorney or other written authority, empower the other Trustee(s) from his group to act on his behalf, and use his name for execution or signature of any documents, for the purpose of those present and the Trust Fund hereby created, but without being responsible for or liable for any loss in connection therewith.

15. In the event that a dispute shall arise between the Trustees in the course of the administration of the Trust Fund, the Trustees shall endeavor to agree upon an impartial umpire to decide such dispute, and in the event of their failure to agree upon such umpire within 30 days from the date of such dispute, then the designation shall be made, upon petition of any one or more of the Trustees, by the American Arbitration Association. In considering and deciding any such dispute, the impartial umpire shall be subject to the American Arbitration Association Impartial Umpire Rules for Arbitration of Impasses Between Trustees of Joint Employee Benefit Trust Funds and shall be bound in any and all respects by the provisions of this Trust Agreement and of any supplementary agreement or agreements hereafter entered into as provided above. The expenses of any such umpire shall be payable out of the Trust Fund.

16. The Employer Trustees shall designate one Employer Trustee and the Union Trustees shall designate one Union Trustee to serve as co-chairs. The co-chairs shall serve until otherwise replaced. One Co-Chair shall preside at each Board meeting, alternating with the other co-chair. The co-chairs, acting jointly, shall have the right to act on behalf of the Board between full meetings of the Board.

17. The Trustees are the named fiduciary under ERISA of each Benefit Plan. The Trustees may, by resolution or bylaw or pursuant to this Trust Agreement allocate fiduciary and administrative responsibilities and duties to committees or subcommittees of the Board and they may delegate such responsibilities and duties, including, when appropriate, fiduciary responsibilities and duties to other individuals or entities as they deem appropriate or necessary in their sole discretion and consistent with ERISA. Committees and subcommittees of the Board shall have an equal number of Employer Trustees and Union Trustees or, subject to the unit vote rule described in Section 13, may have an unequal number of Employer Trustees and Union Trustees.

18. Trustees are entitled to reimbursement from the Trust Fund for reasonable and necessary expenses that they properly and actually incur in the performance of their duties for the Trust Fund and each Benefit Plan, including, without limitation, attendance at meetings and other functions of the Board or its committees or while on business of the Board, and attendance at institutes, seminars, conferences, or workshops for or on behalf of the Trust Fund or any Benefit Plan or for services rendered while performing specific assignments that the Trustees may approve. As the Trustees may determine in their sole discretion and in accordance with the provisions of ERISA, the assets of the Trust Fund may pay the reasonable and necessary expenses that a Trustee incurs for the defense of actual or threatened litigation arising out of such Trustee's duties as a fiduciary of the Trust Fund or a Benefit Plan.

The Trustees may provide that Trustees who are not receiving full-time pay from an Employer or the Union be paid reasonable compensation on a per-day and/or per-hour basis, which rate shall be established and reestablished by the Trustees from time to time. Reasonable compensation may also include payments to the Trust Fund to provide coverage from a Benefit Plan for Trustees who elect such coverage.

19. The Trustees may employ or contract for the services of an individual, firm, corporation, or other entity to be known as the Administrator, who shall, under the direction of the Trustees or an appropriate committee of the Trustees, administer the office or offices of the Trust Fund and each Benefit Plan; coordinate and administer the Trust Fund's and each Benefit Plan's accounting, bookkeeping, legal, and clerical services; provide for the coordination of actuarial services furnished by the consulting actuary; prepare (in cooperation, where appropriate, with the Trust Fund's consulting actuary, legal advisors, and independent auditor, as applicable) all reports and other documents to be prepared, filed, or disseminated by or on behalf of the Trust Fund or a Benefit Plan in accordance with applicable law; assist in the collection of contributions required to be paid to the Trust Fund by Employers; commence and participate in litigation (including alternative dispute resolution activities, as applicable; and perform such other duties and services as may be assigned, delegated, or directed or as may be contracted by or on behalf of the Trustees. The Administrator shall be the custodian on behalf of the Trustees of all documents and other records of the Trust Fund and of each Benefit Plan.

20. The Trustees may appoint one or more banks, trust companies, or other financial institutions to serve as Custodian(s) and to enter into and execute a contract with such Custodian for the custody of all or some of the assets in the Trust Fund. Upon the execution of the contract, the Trustees shall convey and transfer the Trust Fund to the Custodian or Custodians and authorize the Custodian to exercise such powers as the Trustees may delegate to the or Custodian

or Custodians, consistent with the terms and conditions of this Trust Agreement. All of the powers and duties herein provided for the Trustees in connection with the management of the Trust Fund may be delegated in whole or in part to the Custodian or Custodians. In the event the Trustees appoint a Custodian or Custodians, to the fullest extent permitted by law the Trustees shall be relieved of their fiduciary responsibilities with regard to the assets under the control of the Custodian or Custodians.

21. The Trustees shall determine the immediate and long term financial requirements of each Benefit Plan and establish investment and funding policies and guidelines intended to meet the objectives and financial needs of each Benefit Plan. The Trustees may appoint one or more Investment Managers who shall be responsible for the management, acquisition, disposition, investment, and reinvestment of such of the assets of the Trust Fund as the Trustees shall specify. The fees and expenses of such Investment Manager, to the extent permitted by law, shall be paid out of the Trust Fund. In the event the Trustees appoint an Investment Manager, to the fullest extent permitted by law the Trustees shall be relieved of their fiduciary responsibilities with regard to the assets under the control of such Investment Manager.

22. The Trustees shall engage one or more independent, qualified public accountants, one or more actuaries, investment advisors, and legal counsel to perform all services on behalf of the Trust Fund and such other services as the Trustees deem necessary or appropriate. The Employer Trustees on the one hand and the Union Trustees on the other are empowered to retain separate legal counsel and such other consultants as they respectively may deem to be reasonably appropriate. The Trust Fund shall pay for all such services.

The Trustees shall engage such accountant(s) to make an annual audit of the Trust Fund and of all transactions relating thereto as of the end of each calendar year, at the expense of the Trust Fund. Such accountant or accountants shall provide a report of such audit to each Trustee and such report shall be available for inspection by any interested persons at the principal office of the Trust Fund. The Trustees, in their sole discretion, may procure audits more frequently than annually.

23. The Trustees shall keep true and accurate books of account and a record of all their transactions and meetings (including actions taken at meetings and by informal action of the Trustees). Records of transactions of the Trust Fund and each Benefit Plan shall be maintained at the Trust Fund's office for six calendar years following the date of filing of the annual report reflecting the transactions.

24. In addition to any actions otherwise provided herein, the Trustees shall have the full and exclusive power, authority, and discretion to take the following actions, so long as not in contravention of applicable law:

(a) To open a bank account or accounts in the name of the Trust Fund in such depository or depositories as the Trustees may select from time to time and to receive, collect, hold, deposit, invest, and disburse all contributions, refunds, dividends, and all other money or property belonging to the Trust Fund.

(b) To retain the principal and income of the Trust Fund, in the sole discretion of the Trustees, in such bank account or accounts and to invest or reinvest principal and income in common and preferred stocks, bonds, notes, mortgages, equipment lease certificates, open end type investment companies, real estate, real estate investment trusts, common trust funds, certificates of deposit, banker's acceptances, obligations of the United States government, its agencies, and authorities, or of any state or local government authority or agency, or in any other investment that the Trustees deem appropriate and that is a permissible investment for an employee welfare benefit plan under applicable federal and state law, and to dispose of such investments at any time and from time to time.

(c) To hold cash uninvested, without liability on the Trustees to pay any interest thereon, as a part of the principal of the Trust Fund, in such amounts and for such periods of time as they in their sole discretion deem desirable.

(d) To borrow money, with or without security, at such times and on such terms as the Trustees, in their discretion may deem desirable for such purposes consistent with purposes of this Trust Agreement and in the best interests of Employees and Beneficiaries, and to enter into and make any indentures of trust or other agreements, covenants, or arrangements for the benefit or security of such obligations.

(e) To collect, sue for, and receive all sums of money coming due as part of the Trust Fund; to consent to the extension of the time for payment or to the renewal of any bonds or other securities or obligations belonging to the Trust Fund; and to prosecute, defend, compound, compromise, abandon, or adjust, by arbitration or otherwise any actions, suits, proceedings, disputes, or claims demands and things relating to the Trust Fund.

(f) To commence other legal proceedings, and to compromise, settle, arbitrate, and release claims or demands in favor or against the Trust Fund or the Trustees on such terms and conditions as the Trustees may deem advisable.

(g) To pay or provide for the payment of all real and personal property taxes, income taxes, or other taxes or assessments of any and all kinds levied or assessed in respect to the Trust Fund or any money or property forming a part thereof.

(h) To establish or accumulate as part of the Trust Fund such reasonable reserves as the Trustees shall deem advisable to carry out the purposes of the Trust Fund and each Benefit Plan.

(i) To the extent and in the manner prescribed by applicable law, to determine, from time to time, to what extent and at what times and places, and under what conditions and regulations, books, and records of the Trustees shall be open for inspection. No Employer or Union representative shall have any right to inspect any books or documents of the Trustees except to the extent and in the manner required by applicable law and in accordance with such conditions and regulations, if any, as the Trustee's may prescribe at any time or from time to time acting in a manner not prohibited by applicable law, to issue such financial statements as are proper and to determine at what time such statements shall be issued and in the method of distribution thereof.

(j) To demand, collect, and receive Employer contributions to the Trust Fund, including the right to commence legal proceedings in the name of the Trust Fund or any Benefit Plan or any permitted assignee in a court of competent jurisdiction to collect the amount of unpaid contributions, interest, liquidated damages, late charges, attorneys' fees, and costs.

(k) To refuse to accept contributions from an Employer and provide coverage for Employees if the Trustees determine that either the amount of such contributions or the conditions under which such contributions are tendered is contrary to the financial integrity, actuarial soundness, or best interests of the Trust Fund or of the Employees.

(l) To declare null and void any provision in a Collective Bargaining Agreement or other agreement or understanding that tenders contributions to the Trust Fund in a manner that the Trustees refuse to accept under Subsection 24(j), herein.

(m) To obtain, audit, and verify all documents relating to an Employer's employees or business operations (including, but not limited to, the Employer's wage, withholding, and tax records) and information that the Trustees reasonably request in order for the establishment, maintenance, and efficient administration of each Benefit Plan and to confirm the accuracy of the contributions that the Employer or other employer owes or pays to the Trust Fund. The remainder of this Subsection 24(m) does not limit the powers given to the Trustees by the previous sentence or by any other provision of this Trust Agreement. In furtherance of this Subsection 24(m), the Trustees may require an Employer or other employer to produce all records of employees (regardless of whether those employees participate in a Benefit Plan) and all business activities or operations that the Trustees reasonably require for purposes of that audit. The Trustees may, by their designated representatives, examine the pertinent records requested for an audit at the Employer's or other employer's place of business whenever such examination is deemed necessary or advisable by the Trustees or their representatives.

(n) Subject to the stated purposes of the Trust Fund and the provisions of this Trust Agreement, and the terms and conditions of any policy or policies of insurance or other agreement obtained as provided herein, and any Benefit Plan, to determine all questions of coverage and eligibility, methods of providing and arranging for benefits, all matters concerning the operation of the Trust Fund and each Benefit Plan and all claims for benefits. The Trustees shall have full and exclusive power, authority and discretion to construe the provisions of this Trust Agreement herein, and other documents and instruments governing the Trust Fund, including, but not limited to, the terms of each Benefit Plan and rules and regulations adopted by the Trustees; and any construction or interpretation adopted by the Trustees shall be final and binding. The Trustees are free to use their own judgment and discretion in all things pertaining to the affairs of the Trust Fund. No matter arising under this Trust Agreement or any Benefit Plan shall be subject to the grievance procedures in any Collective Bargaining Agreement between any Employer and the Union.

(o) To make, adopt, amend, or repeal bylaws, rules, and regulations not inconsistent with the terms of this Trust Agreement as they may deem necessary or desirable for the conduct of Trust Fund business and the government of themselves, their officers, agents, and other representatives. Any such rules and regulations that the Trustees shall adopt shall be binding on

the Union, each Employer, and all Employees, Beneficiaries, and any other party claiming any benefits under a Benefit Plan.

(p) To perform and do all such further acts, whether or not expressly authorized herein, as may be properly incidental to the exercise of the foregoing powers, or any agreement, to the same extent to which such further acts might be performed and done by a corporation lawfully organized and existing for the purpose and with the powers set forth in this Trust Agreement.

(q) To enter into a reciprocal agreement or agreements with other health and welfare funds in this and other areas on a prospective basis or on a retroactive basis subject to Internal Revenue Service approval, to the extent required by law; and

(r) In appropriate circumstances, to expel an Employer as a contributing Employer to the Trust Fund.

25. Except as otherwise provided herein or by a Benefit Plan or as the Trustees may delegate, the Trustees shall have the exclusive authority and discretion to manage and control the assets of the Trust Fund. They shall discharge their duties as Trustees solely in the interest of the Participants and Beneficiaries and for the exclusive purpose for providing benefits to Participants and their beneficiaries in accordance with the terms of each Benefit Plan and for defraying reasonable expenses of administering the Trust Fund or a Benefit Plan.

26. The Trustees shall not be liable to any person hereunder for any action or omission if made with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity of an enterprise of a like character and with like aims; nor the action or omission of any other party that is a fiduciary with respect to the Benefit Plans that is not in conformity with this standard, unless (i) he knowingly participates in or knowingly conceals conduct which he knows to be in breach of this standard, (ii) his own conduct has enabled another fiduciary to be in breach of this standard, or (iii) he has knowledge of such breach by another fiduciary and fails to make reasonable efforts under the circumstances to remedy such breach.

27. To the extent permitted by law, no Trustee acting hereunder shall be liable for any action taken or omitted by him or her in good faith, nor for the acts or omissions of any agent, employee, or attorney that the Trustee solicited with reasonable care nor for the acts or omissions of any other Trustees. No Trustee shall be held liable for any act done pursuant to any provision of the Trust Agreement prior to a holding by a court of competent jurisdiction that such provision is unlawful.

The Trustees shall not be liable for the acts or omissions of any Investment Manager, actuary, consultant, attorney, agent, assistant, or other service provider that the Trustees engage pursuant to this Trust Agreement if the Trustees engaged such service provider pursuant to this Trust Agreement and the Trustees periodically reviewed the performance of such service provider found to be satisfactory.

No Trustee shall be individually or personally liable for any of the obligations of the Trustees acting as such or for any obligations of a Benefit Plan, except as provided by applicable law.

The Trustees, to the extent permitted by law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, or other paper or document, whether electronic or otherwise, believed by them to be genuine and to contain a true statement of facts, and to have been signed or sent by the proper person. To the extent permitted by law, any Trustee may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument.

28. The Trustees shall obtain and maintain a policy or policies of insurance, to the extent permitted by law, to insure themselves, the Trust Fund, each Benefit Plan, and employees or agents of the Trust and of each Benefit Plan while engaged in business and related activities for and on behalf of the Trust Fund with respect to liability to others as a result of acts, errors, or omissions of any Trustee or of the Trustees, employees, or agents. Such insurance policy or policies shall provide recourse by the insurer against the Trustees as may be required by law. The cost of the premiums for such policy or policies of insurance shall be paid out of the assets of the Trust Fund, to the extent permitted by law. The Trustees may obtain a waiver of recourse under such policy or policies, but the premium for such waiver of recourse may not be paid from the assets of the Trust Fund.

29. The Trustees, or their delegees, as applicable, shall, pursuant to the rules and regulations that they made adopt, the terms of the Benefit Plans, and the requirements of ERISA Section 503 and regulations thereunder (a) see to the processing of all disputed claims or appeals for benefits that a person claiming to be entitled to benefits under a Benefit Plan and (b) issue decisions of such disputed claims and appeals, but shall not be held personally liable for the payment of such claims. Benefits under a Benefit Plan will be paid only if the Trustees (or their delegees, as applicable) decide in their discretion that the applicant is entitled to them.

In any controversy, claim, demand, suit at law or in equity, or other proceeding between any Employee, Beneficiary, or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, the Union, the TEA, or an Employer, any facts that the Union, the TEA, or an Employer certifies to the Trustees, any facts of public record, and any other evidence pertinent to the issue involved.

Any question or controversy, of whatsoever character, arising in any manner or between any parties or persons in connection with the Trust Fund or a Benefit Plan or the operation thereof may be submitted to the Trustees for decision in accordance with the rules and regulations adopted by the Trustees, and the decision of a majority of the Trustees shall be binding upon all persons dealing with the Trust Fund or claiming any benefit under a Benefit Plan.

The Trustees may, in their sole fiduciary discretion, compromise or settle any claim or controversy in such manner as they think best, and any decision that the Trustees make in

compromise or settlement of a claim or controversy, or any compromise or settlement agreement that the Trustees enter into shall be conclusive and binding on all parties interested in the Trust Fund.

30. The Trustees shall provide for fidelity bonds for the Trustees, the Administrator, and for employees of the Trust Fund and affiliates of the Trust Fund who handle funds or other Trust Fund property. The amount of such fidelity bonds shall be in such amount as the Trustees may determine in accordance with the requirements of ERISA.

31. This Trust Agreement and the Trust Fund shall continue until terminated as provided herein. In the event the Trust Fund or any Benefit Plan is terminated or partially terminated, the Trustees are authorized and empowered to dispose of the Trust assets attributable to a terminated Benefit Plan (or portion thereof) in accordance with the purposes of this Trust Agreement, and none other, and upon the disbursement of the entire Trust Fund, the Trust Fund shall terminate.

32. This Trust Agreement may be terminated by an instrument in writing executed by all the Trustees when there is no longer in force and effect a Collective Bargaining Agreement between any Employer and any Union requiring contributions to the Fund.

In the event of the termination of this Trust Agreement, the Trustees shall apply the Fund to pay or to provide for the payment of any and all obligations of the Fund as set forth in the Benefit Plans adopted by the Trustees; provided, however, that no part of the corpus or income of said Fund shall be used for or diverted to purposes other than for the exclusive benefit of the employees, their families, beneficiaries, or dependents, or the administrative expenses of the Fund or for other payments in accordance with the provisions of the Fund. Under no circumstances shall any portion of the corpus or income of the Fund, directly or indirectly, revert or accrue to the benefit of any contributing Employer or any Union.

Upon termination of the Fund, the Trustees shall forthwith notify the Union, each Employer, each participant, any beneficiaries, and all other necessary parties; and the Trustees shall continue as Trustees for the purposes of winding up the affairs of the Fund.

33. This Trust Agreement may be amended at any time by joint agreement of TEA and the Union. In addition, the provisions of this Trust Agreement may be amended by an instrument in writing executed by the Trustees; provided, however, that no amendment shall divert any of the assets of the Trust Fund from the purposes of the Trust Fund and further provided that no amendment shall be made as a result of which there would not be an equal number of Trustees appointed by Union and TEA, as applicable.

34. To the extent not preempted by ERISA, this Trust Agreement shall be construed in accordance with the laws of the State of New Jersey.

35. Each signatory to this Trust Agreement shall file with the Trustees a written designation of address to which all notices may be mailed. Any notice given to a Trustee or any other person, unless otherwise specified herein, shall be sufficient if in writing and delivered to or sent by postage prepaid, first class mail to the latest address on file with the Trustees.

36. Should any provision of this Trust Agreement be determined to be illegal or invalid, such illegality or invalidity shall not affect the remaining provisions of the Trust Agreement unless such illegality or invalidity prevents the Trustees from accomplishing the purposes of the Trust Fund. In such event, the Trustees agree to take any reasonable action necessary to correct such defect.

37. When used in this Trust Agreement, all capitalized terms shall have the following meanings, unless the context clearly indicates otherwise:

(i) “Administrator” means the Administrator of the Trust Fund that the Trustees appoint pursuant to Section 19.

(ii) “Beneficiary” means a person who the terms of a Benefit Plan, as applicable and appropriate, designates is, or may become, entitled to receive a benefit under a Benefit Plan.

(iii) “Benefit Plan” means a written group health, accident, or death benefit or other welfare benefit plans that the Trustees establish.

(iv) “Board” means the board of trustees of the Trust Fund.

(v) “Collective Bargaining Agreement” means any collective bargaining agreement between an Employer and the Union that provides for contributions to the Trust Fund, including any extensions or renewals of such collective bargaining agreement.

(vi) “Custodian” means each bank, trust company, or other financial institution that the Trustees designate to hold the all or some of the property of the Trust Fund in trust.

(vii) “Employee” means a person who is eligible to participate in and receive benefits from a Benefit Plan in accordance with this Agreement and rules and regulations adopted by the Trustees and who is:

- A. employed by an Employer and represented by the Union;
- B. employed by an Employer that contributes on behalf of a bargaining unit that the Union represents;
- C. employed by the Union or the Trust Fund;
- D. a Trustee who is not receiving full time pay from an Employer or a Union and who elects to receive coverage from a Benefit Plan;
- E. eligible to make self-contributions to the Trust Fund in accordance with rules and regulations adopted by the Trustees; or
- F. retired from employment with an Employer.

(viii) “Employer” means:

A. Any individual, firm, association, partnership, or corporation that (I) is represented in collective bargaining by an employer association and is bound by a Collective Bargaining Agreement and a Participation Agreement and in accordance therewith agrees to participate in and contribute to the Trust Fund, (II) is not a member of nor represented in collective bargaining by an employer association, but has duly executed and/or is bound by a Collective Bargaining Agreement and a Participation Agreement and in accordance therewith agrees to participate in and contribute to the Trust Fund, or (III) who contributes on behalf of an Employee to another health and welfare fund that has entered into a reciprocal agreement with the Trust Fund.

B. The Union, solely to the extent that it acts in the capacity of an Employer of its Employees on whose behalf it makes contributions to the Trust Fund in accordance with a Participation Agreement.

C. An employer association, solely to the extent that it acts in the capacity of an Employer of its Employees who receive coverage from a Benefit Plan.

D. The Trust Fund, solely to the extent that it acts in the capacity of an employer of Employees.

Any Employer who contributes to the Trust Fund shall, by the act of contributing, become a party to this Trust Agreement and conclusively be deemed to have accepted and be bound by this Trust Agreement.

(ix) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

(x) “Investment Manager” has the meaning set forth in ERISA Section 3(38).

(xi) “Participation Agreement” means an agreement between the Trust Fund and an Employer specifying the terms under which the Employer contribute to the Trust Fund.

(xii) “TEA” means the Transport Employers Association or its successors, individually and collectively.

(xiii) “Trust Agreement” means this Agreement and Declaration of Trust of the Teamsters Health & Welfare Fund of Philadelphia and Vicinity, as amended from time to time.

(xiv) “Trust Fund” means the Teamsters Health & Welfare Fund of Philadelphia and Vicinity and all of the assets thereof.

(xv) “Trustees” means the persons designated and appointed to serve on the Board in accordance with the terms of this Trust Agreement. The Trustees, collectively, shall be the plan administrator, as such term is defined in ERISA, of each Benefit Plan. “Employer Trustees” shall mean those Trustees, then serving, as the TEA appoints pursuant to Section 6 and

the “Union Trustees” shall mean those Trustees, then serving, as the local unions appoints pursuant to Section 6.

(xvi) “Union” shall mean, collectively, such local unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or otherwise authorized by law to represent employees in collective bargaining matters which unions may hereafter become parties to the Trust Fund:

A. by unanimous action of the Trustees,

B. upon compliance with such terms and conditions as may be imposed by the Trustees at the time of their unanimous action, and

C. upon securing any necessary ruling or approval by any governmental agency that may be required to preserve the qualified and tax-exempt status of the Trust Fund or otherwise comply with law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names, the day and year first above mentioned.

**TEAMSTERS HEALTH AND WELFARE FUND
OF PHILADELPHIA AND VICINITY**

/s/
William Hamilton, TRUSTEE

/s/
Daniel Schmidt, TRUSTEE

/s/
Howard Wells, TRUSTEE

/s/
William J. Einhorn, TRUSTEE

/s/
Robert Bryan, TRUSTEE

/s/
William D. Evans, TRUSTEE