

SUBROGATION AGREEMENT AND ASSIGNMENT OF BENEFITS

I, _____, acknowledge that I claim that the injuries sustained by me and/or my lawful dependent on (date) _____, were the result of the fault, negligence or carelessness of a third party or parties or a work-related injury arising under the jurisdiction of the California Department of Industrial Standards, Division of Workers' Compensation or under the jurisdiction of any other comparable agency located in another state, and as a condition to having the San Diego Electrical Health & Welfare Trust ("Trust") pay claims for eligible expenses caused by or arising from these injuries, I agree to be bound by all of the terms of this Subrogation Agreement:

1. INCLUSION OF TRUST'S CLAIM IN THIRD PARTY SUIT. If I pursue a claim against a third party on behalf of myself or my dependents, benefits payable under the San Diego Electrical Health & Welfare Plan ("Plan") will be included in said claim as well as in any recovery I obtain, either by judgment, settlement, or otherwise.

2. DEPOSIT OF FUNDS IN SEPARATELY IDENTIFIED ACCOUNT. Upon monetary recovery from any party, parties, employer, workers' compensation carrier, insurance company, or other organization, whether by action at law, settlement or otherwise, and whether paid by the Trust prior to or after the date of execution of this Subrogation Agreement, I agree to deposit all monies recovered in a separately identified bank account as mutually agreed upon by myself and the Trust, or into my attorney's client trust account. I agree that no monies recovered on my behalf shall be withdrawn from such account without express written acknowledgment and authorization from the Trust. From this separate account or my attorney's client trust account, I agree to reimburse the San Diego Electrical Health & Welfare Trust in accordance with the Reimbursement Schedule contained in this Agreement for all medical benefits which have been paid or will be paid by the Trust as a result of such injury(ies).

3. LIEN. I agree that the Trust shall have a lien on said funds in accordance with the terms of the Reimbursement Schedule. I agree to reimburse the Trust regardless of whether the recovery I receive makes me whole (economically)

for my injuries as the term “make whole” is defined in the Plan Document. I acknowledge that the Trust does not recognize the “make whole” doctrine or the “common fund” doctrine, and I agree that those doctrines will have no application to the Trust’s right of recovery under this Subrogation Agreement. In the event legal action is necessary to enforce this right, the Trust shall also be entitled to reimbursement for all attorney's fees and Court costs incurred.

4. **ASSIGNMENT OF RIGHTS.** I irrevocably assign to the Trust all rights which I or my dependent have to receive monetary compensation from said third party, parties, my employer, or their insurance or indemnity carriers including any workers’ compensation insurance carrier, or through my own insurance carrier under any liability policy, any homeowner’s insurance policy, any uninsured or under-insured motorist provision or policy, including any monetary compensation received by anyone acting on behalf of me or my dependent, including, but not limited to, any agent or attorney who represents me or my dependent, to the extent of the benefits paid by the Trust. The assignment shall specifically direct that any and all monies recovered from any third party shall be deposited in a separately identified bank account as mutually agreed upon by the third party and the Trust, or my attorney’s client trust account. The assignment shall specifically direct that no monies recovered on my behalf shall be withdrawn from such account without express written acknowledgment and authorization from the Trust. The parties who shall be bound by such assignment are:

a. Any party or its insurance carriers making payments to or on behalf of myself or my dependent; or,

b. Any agent or attorney receiving payments for or on behalf of myself or my dependent.

I direct that this Assignment of Benefits may be given to said third party, parties, my employer or their insurance or indemnity carriers, including any workers’ compensation insurance carrier, or to my insurance carrier, and/or may be given to any agent or attorney who is retained to represent me or my dependent. I direct the person receiving this Assignment of Benefits, or a copy thereof, must deposit all monies recovered in a separately identified bank account as mutually agreed upon by the person receiving this Assignment of Benefits and the Trust, or my attorney’s client trust account.

I direct that the person receiving this Assignment of Benefits, or a copy thereof, shall only deposit monies from such recovery or recoveries in this separate bank account or my attorney's client trust account and that no monies recovered on my behalf shall be withdrawn from such account without express written acknowledgment and authorization from the Trust. The person receiving this Assignment of Benefits is authorized and directed to accept and rely upon the written demand of the Trust as to the amount due to the Trust from the separately identified bank account or my attorney's client trust account, provided that such written demand is signed by the Trust Administrative Manager.

I further direct that the person receiving this Assignment of Benefits shall remit the prescribed reimbursement from the separately identified bank account or my attorney's client trust account without unnecessary delay or making any attempt to negotiate a lesser reimbursement amount than what shall be due to be remitted in accordance with the Reimbursement Schedule. (Please complete pages 7 through 10, attached hereto.)

5. **SUBROGATION.** In addition to the rights provided above, I agree that the Trust may be subrogated to all rights of myself or my dependent to the extent of all benefits paid by the Trust, including the right to bring suit in the name of myself or my dependent, or to intervene in any action brought by me or my dependent to recover all sums paid by the Trust; and I agree that I, my dependent and any agent or attorney shall cooperate fully with the Trust in the exercise of this right of subrogation and to take no action or to refuse to take any action which would prejudice the rights of this Trust.

6. **WORKERS' COMPENSATION CASES.** In the event that the injuries sustained by me and/or my lawful dependent for which I claim medical benefits from the San Diego Electrical Health & Welfare Trust are deemed, at any time, to be under the jurisdiction of the California Department of Labor Standards, Division of Workers' Compensation or under the jurisdiction of any other comparable agency located in another state, I agree and acknowledge that I shall immediately (within ten (10) days of receipt of such information) inform the Trust that a workers' compensation matter may be pending, provide a WCAB Case Number or other state equivalent (if available) and the name of my workers' compensation attorney (if I have hired one). If I fail to so inform the Trust, I may be liable to the Trust for reimbursement of medical expenses not considered and/or reimbursed during the

workers' compensation proceedings because of my failure to inform and the Trust shall have the right to offset any benefits paid by the Trust.

7. **COOPERATION WITH TRUST.** I agree to cooperate fully with the Trust in the exercise of any right which the Trust may have, including but not limited to right of assignment, lien, intervention, restitution, or right of subrogation, and not to take any action or refuse to take any action which would prejudice the rights of the Trust.

8. **WITHHOLDING FUTURE BENEFITS.** I acknowledge that this Trust shall have the right of recovery against me, should I and/or my legal representative fail to reimburse the Trust, execute an assignment, subrogation agreement or any other documents required herein. I also agree that the Trust shall have the right to withhold and refuse payment of future benefits payable on behalf of myself or any of my dependents, to be applied against the total of benefits paid by the Trust should I, my dependent and/or our agent or attorney breach any of the terms of this Subrogation Agreement.

9. **DISCLAIMER.** If there is any reasonable cause to believe that the injuries or illnesses sustained by me or my dependents were in any way the result of the acts or omissions of a third party or parties, but I disclaim any third party involvement, the Trust shall have the right to require me and/or my dependent to sign a declaration under penalty of perjury, regarding such disclaimer as a precondition to the Trust's payment of any medical benefits resulting from such injuries.

10. **SEPARATE RIGHTS.** Each of the provisions set forth in this agreement is separate and any illegality or invalidity of any one provision shall not affect the legality or validity of any other provision.

11. **MEDICAL EXPENSES INCURRED AFTER SETTLEMENT OR FINAL JUDGMENT IN THIRD PARTY CLAIM.** I acknowledge that if I should incur medical expenses relating to my injuries or disabilities which are the subject of this Subrogation Agreement following any settlement or final judgment received from the third party(ies) responsible for my injuries, the Trust shall have no further responsibility to pay for such medical expenses. I further agree to release and hold the Trust harmless from any further obligations under the Subrogation Agreement for

any future medical expenses incurred following any settlement or final judgment received from the third party(ies) responsible for the injuries.

However, provision can be made by myself and the Trust for the continued payment of such medical expenses pursuant to an agreement in writing with the Trust. In that event, my rights to the continued payment of medical expenses shall also be assigned to the Trust under the Subrogation Agreement and I shall be required to reimburse the Trust for 100% of all medical expenses paid by the Trust under this provision.

12. **DIRECTION TO AGENT OR ATTORNEY** I acknowledge that it is my express direction that my agent or attorney shall readily comply with the obligation to deposit any and all monies recovered in a separately identified bank account as mutually agreed upon by myself and the Trust, or my attorney's client trust account. I further acknowledge that it is my express direction that no monies related to my case shall be withdrawn from such account without express written acknowledgment and authorization from the Trust. Finally, I acknowledge that from this separate account or my attorney's client trust account, I shall direct my agent or attorney to reimburse the San Diego Electrical Health & Welfare Trust in accordance with the Reimbursement Schedule contained in this Agreement for all medical benefits which have been paid or will be paid by the Trust as a result of such injury(ies). I shall take no action(s) intended to delay, reduce, prevent or mitigate the Trust's right to reimbursement from the separately identified bank account in accordance with the Reimbursement Schedule or otherwise interfere with the Trust's lien rights or right to reimbursement under the Plan and this Agreement.

13. **MEDICAL BILLS RECEIVED AFTER SETTLEMENT.** In the event a bill for medical services applicable to the accident is received by the Trust Office after settlement with the Trust in accordance with the Plan's "Right of Recovery" it will become my financial responsibility, in accordance with the reimbursement schedule, to the extent the bill had been remitted on a more timely basis and would have been paid by the **Trust** prior to settlement, and for which the **Trust** would have been reimbursed for part or all of the amount paid as part of said settlement.

If the Trust has paid a bill for medical services arising out of a third party claim subsequent to reimbursement under this Agreement, the Trust retains the right

to offset said amount against future medical expenses incurred by the participant and/or beneficiary.

THIRD PARTY INFORMATION

1. The identity of the third party or parties responsible for the injuries or responsible for reimbursement of claims due to such injuries are:

(Name)

(Address)

(Phone)

2. The insurance carrier(s) for the third party or parties, including workers' compensation carriers, or other state equivalent are:

(Name)

(Address)

(Phone)

3. My insurance carrier providing coverage pursuant to any policy of liability insurance, an uninsured or under-insured motorist provision is:

(Name)

(Address)

(Phone)

4. The following is the agent or attorney that I and/or my dependent have retained. If an attorney has not yet been retained, I agree to notify the Trust Office as soon as one has been so retained. I further agree that if any agent or attorney is retained after the date of this SUBROGATION AGREEMENT is executed, that I will direct said attorney to comply with all provisions within Section 6 of this Agreement regardless of whether said agent or attorney was provided with a copy prior to receiving any proceeds to be distributed to myself or my dependent.

(Name)

(Address)

(Phone)

REIMBURSEMENT SCHEDULE

For the purpose of determining the amount of reimbursement to which the Trust is entitled under this Agreement, and the amount which the employee's or dependent's agent or attorney is obligated to pay to the Trust, the Trust agrees to accept from the monetary recovery received, after deducting for attorney's fees and court costs actually incurred, the following in full satisfaction. Net Recovery is defined as total recovery minus attorney's fees and costs actually incurred:

NET RECOVERY

PAYMENT DUE

At least two times benefit paid.

100% of benefits paid

At least one and one-half times benefits paid.

75% of benefits paid

At least one times benefits paid.

66 $\frac{2}{3}$ % of benefits paid

At least one-half times
benefits paid.

50% of benefits paid

One-half or less times
benefits paid.

33⅓% of benefits paid

I (we) agree that the Trust is entitled to a lien on any proceeds received from a third party and reimbursement from the separately identified bank account or my attorney's client trust account in accordance with this Reimbursement Schedule, and I (we) direct my agent or attorney to pay over directly to the Trust from the separately identified bank account or client trust account the amount specified by this Reimbursement Schedule from any, and all, compensation received prior to the distribution of any sums to me. I (we) agree that the Trust is entitled to reimbursement from the separately identified bank account or my attorney's client trust account in accordance with this Reimbursement Schedule, even if the recovery I receive fails to make me whole economically, and that the Trust has no obligation to share directly in the fees and/or costs incurred to secure the applicable recovery other than as expressly set forth above.

Upon the Trust being reimbursed from the separately identified bank account or my attorney's client trust account, to the extent benefits were paid, any and all past or future benefits to be paid (related to the injury) will be payable in accordance with the Reimbursement Schedule and the actual amount of net recovery. I (we) agree to provide the Trust with accurate complete copies of entire Settlement Agreement or Judgment and that my agent or attorney, if any, is hereby directed to remit the required reimbursement from the separately identified bank account without any unreasonable delay or attempt to delay, reduce, prevent or mitigate the Trust's right to such reimbursement.

I (we) declare under penalty of perjury that the foregoing is true and correct and that I expressly enter into this Subrogation Agreement with the intent of inducing the Trust to pay the medical benefits covered hereby for which it will be entitled to reimbursement as provided within.

DATE: _____

EMPLOYEE

DATE: _____

DEPENDENT