

**SEIU 775 SECURE RETIREMENT PLAN**

**Amended and Restated Effective as of July 1, 2019**

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## **SEIU 775 SECURE RETIREMENT PLAN**

(AMENDED AND RESTATED EFFECTIVE JULY 1, 2019)

Effective March 1, 2016, the Trustees adopted the SEIU 775 Secure Retirement Plan for the exclusive benefit of eligible Employees and their Beneficiaries. This amendment and restatement is effective July 1, 2019.

The Plan is intended to meet the requirements of Section 401(a) of the Internal Revenue Code, as amended, and the Employee Retirement Income Security Act of 1974, as amended and is intended to qualify as a profit-sharing plan.

## ARTICLE 1 DEFINITIONS

### 1.1 Terms Common to the Trust Agreement

Whenever the terms “Collective Bargaining Agreement,” “Employee,” “Trust Fund,” and “Trustees” are used herein, they will have the meanings given to these terms in the Trust Agreement.

Except where otherwise indicated, the word “Employees” will have the same meaning in administrating the Plan.

### 1.2 Account

“Account” means an account established by the Trustees for each Participant, which shall consist of an Employer Contribution Subaccount and such other subaccounts as may from time to time be established.

### 1.3 Beneficiary

"Beneficiary" means an individual designated by a Participant, or under Section 4.2, to receive benefits upon the death of such Participant

### 1.4 Break in Service

“Break in Service” means a Plan Year in which a non-vested Participant fails to complete 300 or more Hours of Service, the effect of which is set forth in Article 2. For the short plan year beginning March 1, 2019 and ending June 1, 2019, the computation period for determining whether a non-vested Participant has incurred a Break in Service is March 1, 2019 through February 29, 2020.

### 1.5 Compensation

“Compensation” means an Employee’s wages, within the meaning of Internal Revenue Code § 3401(a) and all other payments of compensation to an Employee by the Employer (in the course of the

Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Internal Revenue Code § 6049(d) and § 6051(a)(3).

“Compensation” also includes elective deferrals defined in Internal Revenue Code § 402(g)(3), including elective deferrals under § 401(k), § 402(e)(3), § 402(h), § 403(b) or § 408(p)(2)(A)(i), elective contributions or deferrals not included in gross income under Internal Revenue Code § 125 and § 457, and elective reductions under Internal Revenue Code § 132(f)(4).

The annual Compensation of each Employee taken into account will not exceed the annual limit in Internal Revenue Code § 401(a)(17), as adjusted from time to time.

#### 1.6 Covered Employment

“Covered Employment” means employment with an Employer on and after March 1, 2016 in an employment category for which a contribution to the Trust is required to be made to this Trust under the terms of a Collective Bargaining Agreement between the Employer and SEIU 775.

#### 1.7 Credited Past Service

“Credited Past Service” means Hours of Service with an Employer from July 1, 2015 through February 29, 2016 for which a contribution was required to this Trust under a Collective Bargaining Agreement.

#### 1.8 Credited Service

“Credited Service” for the purposes of the Employer Contribution Subaccount means the Hours of Service credited to a Participant for Covered Employment under this Plan after March 1, 2016.

Solely for the purposes of vesting in the Employer Contribution Subaccount and avoiding a Break in Service, a Participant is also entitled to Credited Service Hours of Service in Non-Covered Employment with an Employer, if such service is contiguous with Covered Employment. Non-Covered Employment is contiguous if: (1) the Non-Covered Employment precedes or follows Covered Employment; and (2) no

separation from employment, discharge, or retirement occurs between such Covered Employment and Non-Covered Employment.

After a Participant has reached the Normal Retirement Date, and prior to actual retirement, the Participant may continue to accumulate Credited Service.

1.9 Employee

“Employee” means an individual who is employed by an Employer.

1.10 Employer

"Employer" means any individual, sole proprietorship, partnership, corporation, or other business entity; any government, governmental agency, quasi-governmental or public corporation or unit that is obligated by the terms of a Collective Bargaining Agreement that satisfies the requirements for participation described in the Trust Agreement.

1.11 Employer Contributions

“Employer Contributions” means the contributions that an Employer is required to make to this Trust under the terms of a Collective Bargaining Agreement.

1.12 Employer Contribution Subaccount

“Employer Contribution Subaccount” means an account established by the Trustees for each Participant to receive allocations of Employer Contributions made to the Trust for Covered Employment under a Collective Bargaining Agreement.

1.13 Hour of Service

An “Hour of Service” means each hour for which a Participant is paid or entitled to payment from an Employer on account of: (1) performance of duties for the Employer; (2) non-performance of duties; (3) an award of back pay, irrespective of mitigation of damages, agreed to by the Employer. Hours will not be

credited under both (3) and (1) or (2). Hours for non-performance of duties will be credited in accordance with DOL Regulations Section 2530.200b-2(b). Hours will be credited to the applicable computation period in accordance with DOL Regulations Section 2530.200b-2(c). See DOL Regulations Section 2530.200b-2.

1.14 Non-Covered Employment

“Non-Covered Employment” means employment with an Employer on or after March 1, 2016 in an employment category that is not covered by a Collective Bargaining Agreement.

1.15 Normal Retirement Date

“Normal Retirement Date” means the first day of a month coincident with or following the later of the date a Participant attains age 65 or is vested.

1.16 Participant

“Participant” means an Employee or former Employee who participates in the Plan pursuant to Article 2.

1.17 Participation Date

“Participation Date” means the first day on which an Employee became a Participant in the Plan.

1.18 Participation Service

An Employee will be credited with “Participation Service” from the first day of the calendar month in which the Employee works for an Employer until the last day of the calendar month in which occurs the earlier of the day the Employee (i) retires, quits, is discharged, or dies or (ii) the first anniversary of the first date of absence for any other reason (e.g., vacation, holiday, sickness, disability, leave of absence or layoff).

(a) If the Employee returns to Covered Employment within twelve (12) months after retirement, quit or discharge, the absence between the dates the Employee left and returned to employment will be credited as if the Employee were continuously employed by the Employer. If an Employee who has

not satisfied the Plan's participation requirements fails to return within twelve (12) months after a retirement, quit or discharge, the Employee's period of Participation Service prior to such retirement, quit or discharge is disregarded and if such Employee later returns to Covered Employment, the Employee will be treated as a new Employee for participation purposes.

(b) If an Employee is absent from employment for reasons other than retirement, quit or discharge, the Employee will be treated as employed for up to (twelve) 12 months of any one continuous absence. In no event, however, shall this rule and the rule in paragraph (a) above combine to require the Plan to credit an Employee with more than twelve (12) months of Participation Service for any one continuous absence.

1.19 Plan

"Plan" means the SEIU 775 Secure Retirement Plan as described herein and as hereafter amended.

1.20 Plan Administrator

"Plan Administrator" means the individual or entity employed by the Board of Trustees to assist them in administering the Plan.

1.21 Plan Year

"Plan Year" means the 12-consecutive month period beginning each July 1 and ending June 30, beginning with July 1, 2019. Prior to July 1, 2019, the Plan Year meant the 12-consecutive month periods beginning March 1, 2016, March 1, 2017, and March 1, 2018, and the short plan year beginning March 1, 2019 and ending on June 30, 2019.

1.22 Rollover Subaccount

*Reserved.*

1.23 Trust or Trust Agreement

“Trust” or “Trust Agreement” means the SEIU 775 Secure Retirement Trust Agreement originally created and established on November 20, 2014 and amended and restated April 21, 2016.

1.24 Valuation Date

“Valuation Date” means February 28, 2017, and thereafter the last day of each Plan Year, each Plan Year quarter, and such other dates as the Trustees determine, as of which the fair market value of the Trust’s assets and the value of Participants’ Accounts is determined.

1.25 Year of Vesting Service

“Year of Vesting Service” means a Plan Year in which a Participant completes at least 300 Hours of Credited Service.

**ARTICLE 2 PARTICIPATION AND VESTING**

2.1 Participation

(a) Prior to July 1, 2019. An individual who is or first becomes an Employee after March 1, 2016 and prior to July 1, 2019, will commence participation in the Plan on the later of March 1, 2016 or the day on which the Employee first completes an Hour of Service in Covered Employment. .

(b) Beginning July 1, 2019. An individual who:

(1) First becomes an Employee on or after July 1, 2019; or

(2) Is a terminated Participant with no vested Account balance on July 1, 2019,

subsequently incurs a Permanent Break in Service, and thereafter returns to Covered Employment;

Will commence participation in the Plan on the first day of the calendar month coinciding with or immediately following completion of a six-consecutive month period of Participation Service.

(c) Such Employee shall continue to be a Participant until all benefits due to the Participant or Participant's beneficiaries have been fully paid, or any non-vested Employer Contributions are forfeited in a zero dollar distribution. A Participant shall receive retirement benefits based upon Hours of Service completed during the Plan Year while a Participant.

## 2.2 Vesting and Forfeitures

(a) Employer Contribution Subaccount. An Employee who has one (1) hour of Credited Service on or after July 1, 2019 shall be fully vested in and have a nonforfeitable right to amounts credited to his or her Account at all times.

(b) An Employee who has no hours of Credited Service after June 30, 2019 shall become fully vested in and have a nonforfeitable right to amounts credited to his or her Account:

- (1) Upon completion of three (3) Years of Credited Service; or
- (2) When the Participant attains normal retirement age, which is the earlier

of:

(A) the Participant's Normal Retirement Date; or

(B) the later of:

(i) the Participant's 65<sup>th</sup> birthday; or

(ii) the first day of the Plan year in which the fifth anniversary of the Participant's Participation Date occurs, provided the Participant is an active Participant on such date.

A Participant who is not vested in the Employer Contribution Subaccount who incurs a Permanent Break in Service as defined in Section 2.4, shall forfeit all previously accrued rights to benefits from the Employer Contribution Subaccount.

(c) Contributions for Vested Participant. All Employer Contributions made on behalf of a vested Participant shall be non-forfeitable.

(d) Rollover Contribution Subaccount.

*Reserved*

### 2.3 One-Year Break in Service

A Participant will have a one-year Break in Service for any Plan Year in which such Participant fails to complete 300 or more Hours of Service. After incurring one or more one-year Breaks in Service a Participant who is not yet vested in his or her Employer Contribution Subaccount shall be deemed a non-vested terminated Participant until such Participant earns 1 or more Hours of Service in a subsequent Plan Year, provided the Participant does so before incurring a Permanent Break in Service.

### 2.4 Permanent Break in Service

A non-vested terminated Participant who incurs one or more one-year Breaks in Service, whose Credited Service is not restored as provided in Section 2.5 before the Participant incurs five (5) consecutive one-year Breaks in Service will incur a Permanent Break in Service and forfeit permanently all amounts in the Participant's Employer Contribution Subaccount.

### 2.5 Reinstating One-Year Breaks in Service

Notwithstanding any other provision herein, if after incurring one or more one-year Breaks in Service a non-vested terminated Participant subsequently earns a Year of Vesting Service, the Participant's previously forfeited rights shall be recovered if such Hours of Service are earned before she or he incurs five (5) consecutive one-year Breaks in Service; provided such credits shall not be reinstated until the first Plan Year after which the Participant earns a Year of Vesting Service.

## 2.6 Maternity/Paternity Leave

Notwithstanding Sections 2.3 and 2.4, a Participant who is absent due to maternity/paternity leave shall be credited with up to a maximum of 300 Hours of Service for each such leave solely to avoid a one-year Break in Service. Hours of Service will be credited for the specific period of absence, except that all Hours of Service will be credited to the Plan Year in which the absence begins if necessary to avoid a one-year Break in Service in that year; otherwise, they will be credited to the immediately following Plan Year.

For purposes of this Section 2.6, a Participant shall be deemed to be on maternity/paternity leave if the Participant is absent from work by reason of the pregnancy of the Participant, by reason of the birth of a child of the Participant, by reason of the placement of a child with the Participant in connection with the adoption of the child by such Participant, or for the purpose of caring for such child during the period immediately following such birth or placement.

## **ARTICLE 3 ELIGIBILITY FOR AND PAYMENT OF BENEFITS**

### 3.1 Eligibility for Retirement Benefits

A Participant who separates from Covered Employment and completes an application for benefits, as described in Section 3.4, will be eligible on the Participant's Normal Retirement Date to receive his or her vested Account balance.

Notwithstanding the foregoing, beginning July 1, 2019, a Participant who has reached his or her Normal Retirement Date and has an Account balance that exceeds \$2,400, may elect to begin payment of his or her vested Account balance in Monthly Installments, as described in Section 3.2(a), without separating from Covered Employment.

### 3.2 Form of Payment

(a) Monthly Installments. If a Participant's Account balance exceeds \$2,400 on the Valuation Date immediately preceding the Participant's Normal Retirement Date as elected in accordance with Section 3.4, the benefit will be paid as monthly installment payments to the Participant (and upon the Participant's death, to the Participant's Beneficiary) until there is no balance remaining in the Account. If the Beneficiary should die before the Account is paid in full, the balance will be paid in a single lump sum to the designated beneficiary of the Participant's Beneficiary. For each calendar year, such monthly installments will be the greater of:

(1) \$100.00; or

(2) One-twelfth (1/12th) of the amount determined by dividing the balance in the Participant's Account as of the immediately preceding Valuation Date by the Participant's life expectancy, based on the Single Life Table in Treasury Regulation 1.401(a)(9)-9 (Q/A-1) and the Participant's attained age in the calendar year in which payments begin.

(b) Lump Sum for Small Accounts. Notwithstanding the foregoing, if a Participant's account is \$2,400 or less as of the Valuation Date immediately preceding the Participant's retirement date, the Participant's entire vested Account balance, together with any Employer Contributions allocated to the Participant after such Valuation Date, will be distributed in a lump sum payment.

### 3.3 Eligible Rollover Distributions

(a) Direct Rollover. A Participant, surviving spouse or non-spouse Beneficiary who is entitled to a distribution may elect to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan in a Direct Rollover. Notwithstanding the foregoing, distributions less than \$200 per calendar year are not eligible for Direct Rollover.

(b) Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Participant, surviving spouse or non-spouse Beneficiary provided 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 surviving spouse or a non-spouse Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Internal Revenue Code § 401(a)(9); and the portion of any distribution that is not includible in gross income.

(c) Eligible Retirement Plan. In the case of distributions made to a Participant, an Eligible Retirement Plan is an individual retirement account described in Internal Revenue Code § 408(a), an individual retirement annuity described in Internal Revenue Code § 408(b), an annuity plan described in Internal Revenue Code § 403(a), a qualified trust described in Internal Revenue Code § 401(a), an annuity contract described in Internal Revenue Code § 403(b), or an eligible plan under Internal Revenue Code § 457(b) which is maintained by an eligible employer described in Internal Revenue Code § 457(e)(1)(A), that accepts the Eligible Rollover Distribution. An Eligible Retirement Plan will also mean a Roth IRA. The definition of Eligible Retirement Plan applicable to a Participant will also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order. In the case of distributions made to a non-spouse Beneficiary, an Eligible Retirement Plan is an individual retirement account described in Internal Revenue Code § 408(a) or an individual retirement annuity described in Internal Revenue Code § 408(b), which is established in a manner which identifies it as an account with respect to the deceased Participant and also identifies the deceased Participant and the non-spouse Beneficiary.

(d) Direct Rollover. A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Participant, surviving spouse, or non-spouse Beneficiary.

(e) Limit on Distributions. A Participant, surviving spouse or non-spouse Beneficiary may split an Eligible Rollover Distribution that is greater than \$500, by receiving a portion as a Direct Rollover and receive direct payment of the balance, provided that the amount to be distributed as a Direct Rollover must be at least \$500. Only one Direct Rollover will be allowed with respect to each distribution.

### 3.4 Application and Payment of Retirement Benefits

#### (a) Application

(1) To begin payment of a retirement benefit under this Plan, a Participant who has reached the Plan's Normal Retirement Date must submit a written application to the Trustees and provide any necessary proof of eligibility in accordance with this Plan.

(2) Upon receipt of the Participant's application for retirement benefits, the Plan Administrator will provide a written explanation from the Trustees of the terms and conditions of payment. In no event will benefits commence fewer than seven days after the Participant receives this written explanation. Each Participant will have an election period of 180 days commencing with the date the written explanation has been provided to the Participant.

The election, or revocation of an election, must be in writing and filed with the Trustees before expiration of the election period. The benefit commencement is date on which all events have occurred which entitle the Participant to such benefit.

(b) Commencement Date. Unless the Participant elects otherwise, payment of Normal Retirement benefits will commence not later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occur:

- (1) The Participant's application is received by the Trust;
- (2) The Participant attains the Normal Retirement Date; or

(3) The Participant has separated from Covered Employment and earned no Hours of Service for a period of twenty-four (24) calendar months.

(c) Required Beginning Date. Notwithstanding any provision to the contrary, commencement of benefits may not be postponed to a date later than the “required beginning date.” A Participant’s “required beginning date” is April 1 of the calendar year following the later of:

- (1) The calendar year in which the Participant attains age 70½; or
- (2) The calendar year in which the Participant retires, if the Participant is not a five-percent (5%) owner.

The determination of whether a Participant is a five-percent (5%) owner will be made in accordance with Internal Revenue Code § 416.

This Article is to be construed in accordance with Code § 401(a)(9) and IRS Regulations 1.401(a)(9)-2 through 1.401(a)(9)-9, including the incidental death benefit requirements of Code § 401(a)(9)(G).

(d) Lost Participant/Beneficiary. If a Participant has not submitted an application for retirement benefits as of the “required beginning date” as defined by Section 3.4(b), and the Plan is unable to locate the Participant, the Participant’s accrued benefits will be forfeited effective one year from the Participant’s “required beginning date.” If retirement benefits are payable to a Participant’s Beneficiary under Article 4 or Article 5, and the Plan is unable to locate the Beneficiary, such benefits will be forfeited effective one year from the date benefits first became payable to the Beneficiary. Notwithstanding the foregoing, previously forfeited benefits of a Participant or Beneficiary will be reinstated upon written application of the Participant or Beneficiary. The amount to be reinstated will be equal to the balance of the Account on the date of the forfeiture, adjusted for income gains or losses since the date of forfeiture.

### 3.5 Legal Disabilities -- Facility of Payment

If, in the opinion of the Trustees, any Participant who is eligible to receive payments under this Plan is legally, physically, or mentally incapable of personally receiving and receipting for any such payment, the Trustees may direct payments to such other person, persons, or institutions, who, in the opinion of the Trustees, are then maintaining or have custody of such Participant, until claim is made by a duly appointed guardian or other legal representative of such Participant. Such payments, to the extent thereof, will constitute a full discharge of the liability of the Fund and of the Trustees under the Plan.

### 3.6 Effect of Returning to Work

In the event a Participant who has elected Normal Retirement under this Plan returns to work, payment of benefits under this Plan will continue.

### 3.7 Automatic Cash-out of Small Accounts due to Separation from Covered Employment

A vested Participant who has separated from Covered Employment and earns no Hours of Service for a period of twenty-four (24) calendar months will receive an automatic cash-out of the Participant's Account if the total Account Balance is \$2,400.00 or less as of the Valuation Date that immediately follows the last day of the 24th calendar month.

If the Participant's Account balance is greater than \$1,000, and the Participant neither elects to have such distribution paid directly to an Eligible Retirement Plan in a direct rollover nor to receive the distribution directly in accordance with Section 3.4, the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Trustees that is established for the benefit of the Participant.

## **ARTICLE 4 PRERETIREMENT DEATH BENEFIT**

### 4.1 Death Benefit

Upon the death of a vested Participant who had not retired at the time of death, the Participant's designated Beneficiary will receive the balance of the Participant's Account in one lump sum.

### 4.2 Designation of Beneficiaries

(a) A Participant may designate any person to receive preretirement death benefits under this Plan; provided, that if the Participant is married, the Participant's spouse shall be the Beneficiary of any preretirement death benefits, unless the Participant designates a non-spouse Beneficiary with the written consent of the Participant's spouse, as provided in paragraph (b).

(b) A Participant's written designation of a Beneficiary shall be on a form approved by the Board of Trustees. If a married Participant designates an individual who is not their spouse as a primary Beneficiary under the Plan, the spouse must consent to the designation of such Beneficiary, acknowledging the effect of the election. The spouse's consent must be witnessed by a notary public or Plan representative. If a Participant designates a person to receive preretirement death benefits who is or subsequently becomes the Participant's spouse, the designation will be automatically revoked if the marriage is subsequently dissolved or invalidated, unless the Participant redesignates the former spouse as Beneficiary following the dissolution or invalidation of marriage, or except as otherwise provided in a Qualified Domestic Relations Order (QDRO).

(c) Whenever any benefits under this Article become payable, the person or persons designated to the Trustees as the beneficiaries of the Participant according to the Beneficiary designation then on file with the Trustees will be entitled to receive such benefits and to give full acquittance therefor to the Trust, and payment by the Trust of such benefits to such person or persons will fully discharge the Trust from all claims under this Article unless, before payment is made, the Trust has received, at its administrative

office, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the benefits under this Plan.

(d) If a death benefit under this Article would otherwise be payable but for the fact that no valid Beneficiary designation is on file with the Trustees as of the date of the Participant's death, and the Participant is survived either by a lawful spouse or by any child of the Participant whether natural, adopted or stepchild, then the Trustees will deem such surviving spouse, or if none, then such surviving child or children as the designated Beneficiary(ies) of such Participant. If there is no surviving spouse or child, payment will be made in the following order: (1) surviving parents, in equal shares; (2) surviving siblings, in equal shares, or (3) the Participant's estate.

## **ARTICLE 5 ADMINISTRATION OF THE PLAN**

### **5.1 Valuation of Participant Accounts**

The Trustees will value the Plan assets at their fair market value as of each Valuation Date. The term "fair market value" will mean the value of the assets which takes into account the fair market value of all the investments of the Trust. The amount of a Participant's benefits shall be the Participant's Account as of the most recent Valuation Date.

(a) Allocation of Employer Contributions. Employer contributions shall be allocated to each Participant's Account upon receipt for Hours of Credited Service in Covered Employment while a Participant reported since the immediately preceding Valuation Date in the amount per hour set forth in the Collective Bargaining Agreement under which such Contributions were made.

For purposes of allocating Employer Contributions for the Plan Year beginning March 1, 2016:

(i) Credited Service shall include Hours of Credited Past Service.

(ii) Any Employer contributions that remain unallocated after all Participant Accounts have received an allocation in accordance with the first paragraph of (a) above (“surplus Employer contributions”) shall be allocated as of February 28, 2017 among Participants’ Accounts pro rata based on each Participant’s Account balance relative to all Participant Accounts as of February 28, 2017 (both as determined before allocation of such surplus Employer contributions); provided that, they are received by the Trust prior to the federal tax filing deadline of an Employer for the year within which the 2016 Plan Year began. Any surplus Employer contributions received after such Employer’s federal tax filing deadline shall be applied to offset the reasonable administrative expenses of the Plan and Trust.

(b) Allocation of Investment Earnings and Losses. As of each Valuation Date, amounts in Participants' Accounts that have not been distributed since the prior Valuation Date will have the Net Income of the Trust earned since the prior Valuation Date allocated in accordance with such rules and procedures that are established by the Board of Trustees. Such rules and procedures will be applied in a uniform and nondiscriminatory manner based upon the Trust’s investments, taking into account any segregation of Trust assets for investment purposes and Participants’ account to which the Net Income is allocated.

For purposes of this Section 5.1, the term "Net Income" means the net of any interest, dividends, unrealized appreciation and depreciation, capital gains and losses, and investment expenses of the Trust determined on each Valuation Date. Participants' Accounts that have been segregated for investment purposes will only have the Net Income earned thereon allocated thereto. Dividends or credits will be allocated to the Participant's Account for whose benefit the investment fund is held.

(c) Administrative Expenses. Each Participant’s Account will be charged a pro-rata share of Plan administrative expenses after the application of unallocated Employer contributions and forfeitures, as determined in accordance with Section 5.2.

## 5.2 Payment of Administrative Expenses and Use of Forfeitures

Expenses of administration shall be charged against the Trust's Administration Account which shall be composed of accumulated unallocated Employer Contributions, forfeitures (if any) and amounts charged to Participants' Accounts. For the purposes of defraying the expenses charged against the Administration Account, the following steps shall be taken at each Valuation Date:

(a) All forfeitures and all unallocated Employer Contributions made on account of Hours of Covered Service in Credited Employment by Employees who are not yet Participants since the immediately preceding Valuation Date shall be used to offset reasonable and necessary Plan administrative expenses.

(b) If the amount of expenses exceeds the amount of accumulated forfeitures and unallocated Employer Contributions, then such expenses shall be charged pro-rata among all Participant Accounts.

## 5.3 Forfeiture of Contributions

If a non-vested Participant experiences five consecutive one-year Breaks in Service, the Participant's Account shall be forfeited and transferred to and deposited in the Trust's Administration Account for the purpose of defraying administrative expenses. In the event such forfeited contributions are not required for administrative expenses during a Plan Year, the Trustees shall allocate such forfeitures to Participant Accounts in the same manner as Employer contributions for the year as described in Section 5.15.1(a) above.

## 5.4 Claims and Appeals Procedure

(a) Claims. Claims or application for benefits under this Plan must be made in writing to the Plan Administrator on forms prescribed by the Administrator.

(b) Denial of Claim. Any person whose application for benefits under the Plan has been denied in whole or in part, or whose claim to benefits against the Fund is otherwise denied, will be

notified in writing of the denial within 90 days after the Plan's receipt of the application or claim. An extension of time, not to exceed an additional 90 days, may be required by special circumstances. If so, notice of the extension, indicating the special circumstances and the date by which a final decision is expected to be rendered, will be furnished the claimant before the expiration of the initial 90-day period.

(c) Notice of Denial. The notice of denial will set forth the following in a manner calculated to be understood by the claimant:

- (1) The specific reason or reasons for the denial;
- (2) Specific reference to pertinent Plan provisions on which the denial is based;
- (3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why the material or information is necessary; and
- (4) An explanation of the Plan's claim review procedure, and the time limits applicable to such procedures, and a statement of the claimant's right to bring a civil action under ERISA § 502(a).

(d) Notice of Appeal to Trustees. The claimant may appeal to the Board of Trustees for a review of the denial. The notice of appeal must be in writing and shall contain the following information:

#### NOTICE OF APPEAL

Notice is hereby given to the Trustees of the SEIU 775 Secure Retirement Plan and Trust that: (claimant's name, social security number, address and telephone number) hereby appeals from the decision or action of the Trustees or their representative (name of representative, if any) in (make a statement clearly identifying the decision or action being appealed) which decision was made or action taken on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

This appeal is based upon the rights accrued under the Plan by (name, address and social security number of the employee on the basis of

whose accrued rights under the Plan the appeal is made, if made by a Beneficiary other than such Employee).

Together with the Notice of Appeal, a claimant shall file with the Trustees a statement in writing containing the following additional information:

(1) A statement as to each ground on which claimant believes the decision or other action appealed from to have been in error;

(2) A list of the names and addresses of each person on whose testimony claimant will rely, in whole or in part, in support of the appeal, together with a short statement of the facts to which each such person is expected to testify;

(3) A list of each document on which claimant will rely in support of the appeal.

In the case of an adverse determination, notice must be filed by the claimant or the claimant's duly authorized representative with the Administrator of the Trust within 60 days after receipt of notice of the determination. The failure to file a written notice of appeal within the time period prescribed will operate as a complete waiver and will bar claimant's right to appeal, and the decision or other action of the Trustees will be final.

(e) Scheduling of Appeal. After claimant has filed with the Trustees the required written statement in support of appeal, the Trustees will set a date for review of the appeal. The review will be conducted by the Board of Trustees, or by the Appeals Committee of the Board of Trustees, which has been allocated the authority for making a final decision in connection with the appeal.

The Trustees will review a properly filed appeal at the next regularly scheduled quarterly meeting of the Appeals Committee, unless the request for review is received by the Trustees within thirty (30) days preceding the date of such meeting. In such case, the appeal will be reviewed no later than the

date of the second quarterly meeting following the Trustee's receipt of the notice of appeal, unless there are special circumstances requiring a further extension of time, in which case a benefit determination will be rendered not later than the third quarterly meeting of the Appeals Committee following the Trustee's receipt of the notice of appeal. If such an extension of time for review is required because of special circumstances, such as a request for a hearing on the appeal, then prior to the commencement of the extension, the Plan will notify the claimant in writing of the extension, describe the special circumstances and the date as of which the benefit determination will be made.

(f) Appeal Procedures. The claimant may be represented by an attorney or by any other representative of the claimant's choosing at the claimant's own expense. The claimant may submit written comments, documents, records, and other information relating to the claim. The claimant will be provided upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the claim for benefits.

The claimant must introduce sufficient credible evidence on appeal to establish, prima facie, entitlement to the relief from the decision or other action from which the appeal is taken. The claimant will have the burden of proving his or her right to relief from the decision or action appealed, by a preponderance of evidence. The Trustees will review all comments, documents, records and other information submitted by the claimant related to the claim, regardless of whether such information was submitted or considered in the initial benefit determination. The Trustees will not afford deference to the initial adverse benefit determination.

(g) Decision of Trustees. The Trustees will issue a written decision on review as soon as possible and no later than sixty (60) days after the meeting at which the claim is reviewed. The decision will include:

(1) The specific reasons for the decision, written in a manner calculated to be understood by the claimant;

(2) Specific references to pertinent Plan provisions on which the decision is based;

(3) 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; and

(4) A statement of the claimant's right to bring a civil action under ERISA § 502(a).

(h) Review of Trustees' Decision

(1) Arbitration. If the claimant is dissatisfied with the written decision of the Trustees, the claimant may request a further appeal by arbitration in accordance with the Employee Benefit Plan Claims Arbitration Rules of the American Arbitration Association. However, the request must be submitted in writing to the Trustees within 60 days of receipt of the Trustees' written decision. If the claimant fails to submit a timely request for arbitration, the decision of the Trustees shall be final and binding, and the claimant shall be barred from any further consideration of the claim. If requested, the Administrator will assist the aggrieved person in preparing the request for arbitration. In the event the matter is submitted to arbitration, the appeal will be limited to the exhibits and the findings and decision of the Trustees (or Appeals Committee of the Trustees). The arbitrator shall not have the power or authority to add to, subtract from, or in any way modify the Plan, Trust Agreement, contracts, if any, or the rules and regulations of the Trust.

The expenses of arbitration will be borne equally by the appealing party, and by the Trust Fund unless otherwise ordered by the arbitrator. Each party is responsible for its own attorney fees. The decision of the arbitrator is final and binding on all parties.

(2) Question on Review. The question for consideration on review of the Trustees' decision is whether, in the particular instance:

(i) The Trustees were in error upon an issue of law;

(ii) The Trustees acted arbitrarily or capriciously in the exercise of their discretion; or

(iii) The Trustees' findings of fact were supported by substantial evidence.

(i) Sole and Exclusive Procedure. The procedure specified in this Section 5.4 shall be the sole and exclusive procedure available to a Participant or Beneficiary who is dissatisfied with a claim or eligibility determination, or benefit award, or who is adversely affected by any action of the Trustees.

#### 5.5 Construction of the Plan

This Plan is administered by the Trustees. The Trustees may establish rules for the transaction of their business and administration of the Plan. The Trustees will have the exclusive right to construe the provisions of the Plan and to determine any and all questions arising thereunder or in connection with the administration thereof, including the right to remedy possible ambiguities and inconsistencies or omissions, and any such construction or determination by the Trustees made in good faith shall be conclusive on all persons affected thereby, provided that in any such construction or determination, the Trustees shall not discriminate in favor of any Employee or class of Employees.

### **ARTICLE 6 AMENDMENTS**

#### 6.1 Right to Amend

The Trustees reserve the right to change, modify or amend the Plan at any time, retroactively or otherwise. Action by the Trustees to amend the Plan will be taken in accordance with the procedures set forth in the Trust Agreement.

It is intended that the Plan will constitute a qualified Pension Plan under the applicable provisions of the Internal Revenue Code and Internal Revenue Service and Department of Labor regulations. Any amendment of the Plan may be made retroactively, if necessary and appropriate to qualify the Plan to meet the requirements of the applicable law and regulations. No amendment of the Plan will be adopted which will cause or result in the expenditure of any portion of the funds to inure to the benefit of any Employer or the SEIU 775 (or any of its successors) or for any other purpose other than for the exclusive benefit of the Participants and their beneficiaries.

Notwithstanding the foregoing, no amendment will be effective if it has the effect of decreasing, either directly or indirectly a Participant's accrued benefit, except to the extent permitted under Internal Revenue Code § 412(c)(8). If the vesting schedule is amended, in the case of an individual who is a Participant as of the later of the date the amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of the Participant's employer-derived accrued benefit will not be less than the percentage computed under the Plan without regard to such amendment.

Each Participant with at least three years of Vesting Service at the time of adoption of any amendment changing any vesting schedule under the Plan, or prior to the end of the election period, will have the right to elect at any time, but no later than 60 days after the election period, to have his or her vested percentage computed under the Plan without regard to such amendment. For purposes of this Section 6.1, the term "election period" means the later of:

- (a) The date the amendment is adopted;
- (b) The date on which the amendment is effective; or
- (c) The date on which the Participant is given written notice of the amendment.

Amendments will be approved by the Trustees and signed by the Chair and the Secretary of the Board of Trustees.

## 6.2 Mergers, Consolidations or Transfer of Assets

No merger, consolidation or other transfer of the assets and liabilities of the Trust to another Trust will be made unless each Participant to this Trust would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer (if the Plan had been terminated).

## **ARTICLE 7 TERMINATION OF PLAN**

### 7.1 Duration of Plan

It is expected that the Plan will be continued in effect indefinitely and that each Employer will continue to make Contributions required by applicable Collective Bargaining Agreements. The Trustees reserve the right to institute proceedings to effect a partial or total termination of the Plan. This will be done by action of the Board of Trustees, in accordance with procedures set forth in the Trust Agreement.

### 7.2 Non-forfeitable/Payment of Retirement Benefits

Upon termination or partial termination of the Plan the Accounts of all affected Participants will become fully vested and non-forfeitable. The Plan Administrator will arrange for the payment of the Account balances of the affected Participants after payment of any expenses properly chargeable thereto.

### 7.3 Payment of Any Remaining Funds

If, after the provisions of Section 7.2 have been applied, any balance remains in the Trust Fund, such remaining balance will be allocated among all Participants in accordance with a non-discriminatory formula to be determined by the Trustees. Any amount to be allocated to a Participant may be in cash or in the form of a monthly benefit at the discretion of the Trustees.

Upon final distribution of the assets as specified above, the Plan will be terminated. No persons, including any Employer, Participant, former Participant or Beneficiary will have any further right or claim therein.

#### **ARTICLE 8 INALIENABILITY**

No Participant or other person having or claiming to have any interest of any kind or character in or under this Plan or in any payment therefrom will have any right to sell, assign, transfer, convey, hypothecate, anticipate, or otherwise dispose of such interest, and such interest will not be subject to any liabilities or obligations of or any bankruptcy proceedings, claims of creditors, attachment, garnishment, execution, levy, or other legal process against such person or property.

Notwithstanding the foregoing, the Plan will pay benefits in accordance with the applicable requirements of any QDRO, which term, for the purposes of this Plan, means a state court order satisfying the following requirements:

(a) Such order must relate to the provision of child support, alimony payments or marital property rights of a spouse, former spouse, child or other dependent which recognizes the existence of such an alternate payee's right to, or assigns to such an alternate payee the right to, receive all or a portion of a Participant's benefits.

(b) Such order must specify:

(1) The name and last known mailing address of the Participant and each alternate payee covered by the order;

(2) The amount or percentage of benefits to be paid to each alternate payee, or the manner in which such amount or percentage is to be determined;

(3) The number of payments or period to which such order applies; and

(4) Each plan to which such order applies.

(c) Such order must not:

(1) Require the Plan to provide any type or form of benefits, or any option, not otherwise provided under the Plan, except as provided in (d) below;

(2) Require the Plan to provide increased benefits determined on the basis of actuarial value; or

(3) Require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a QDRO.

(d) Such order may:

(1) Provide that the former spouse will be treated as a surviving spouse of the Participant as to accrued benefits earned during the marriage to the former spouse; or

(2) Require that payments be made to an alternate payee on or after the date the Participant is eligible for a retirement benefit, even though the Participant has not ceased Covered Employment.

(e) If an alternate payee to whom benefits would have been payable under a QDRO dies before any such benefits are payable, then unless the QDRO provides for the payments to be made to another alternate payee or to a Beneficiary of the alternate payee, any interest of the alternate payee in the benefits will terminate and revert to the Participant.

(f) No domestic relations order will be considered a QDRO until it has been approved as such, in writing, by the Plan.

(g) During any period in which the Plan has received a proposed QDRO and the issue of whether the order is a QDRO is being determined, the Plan will separately account for amounts which would have been payable to the alternate payee during such period if the order had been determined to be a

QDRO (referred to as segregated amounts). If, within the 18-month period beginning with the date the first payment would be required under the order, it is determined that the order is a QDRO, the segregated amounts will be payable to the person or persons entitled thereto under the QDRO. If within the 18-month period it is determined that the order is not a QDRO, or the issue of whether the order is a QDRO is not resolved, the Plan will pay the segregated amounts to the person or persons who would have been entitled to such amounts if there had been no order. Any determination that an order is a QDRO made after the 18-month period will apply prospectively only.

(h) The Plan will not make a determination that an order is a QDRO if the order requires payment of benefits which were paid prior to the Plan's receipt of the QDRO.

(i) The alternate payee will notify the Trustees in writing of the intent to commence benefits. The Plan may require the alternate payee to submit documentation in support of the application to commence benefits.

(j) The Trustees of the Plan will establish reasonable written procedures to determine the qualified status of domestic relations orders and to administer distributions under qualified orders.

## **ARTICLE 9 MISCELLANEOUS PROVISIONS**

### **9.1 Information to Be Furnished**

A Participant will furnish the Trustees with any information or proof that they may deem necessary and reasonable in order to administer the terms of this Plan.

### **9.2 Savings Clause**

If any provisions of the Plan are held to be illegal or invalid for any reason, such illegality or invalidity will not affect the remaining parts of the Plan, but the Plan will be construed and enforced as if such illegal and invalid provisions had never been inserted in the Plan.

### 9.3 Limits on Contributions

Notwithstanding any other provision of this Plan, the annual addition that may be allocated to a Participant's Account under the Plan for any limitation year will not exceed the lesser of: (a) \$40,000, as adjusted for increases in the cost-of-living under Internal Revenue Code § 415(d); or (b) 100 percent (100%) of the Participant's Compensation for the limitation year. The compensation limit referred to in (b) will not apply to any contribution for medical benefits after separation from service (within the meaning of Internal Revenue Code § 401(h) or § 419A(f)(2)) which is otherwise treated as an annual addition. The provisions of this Section 9.3 will be interpreted in accordance with Internal Revenue Code § 415 and applicable regulations, which are incorporated herein by reference.

### 9.4 Veterans Rights Upon Reemployment

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code § 401(a)(37) and § 414(u), provided that for benefit accrual purposes, an individual will not be treated as resuming employment if the individual dies or becomes disabled while performing qualified military service. In the case of a Participant who dies while performing qualified military service, the survivors of the Participant are entitled to any additional benefits provided under the Plan (other than benefit accruals relating to the period of qualified military service) had the Participant resumed and then terminated employment on account of death. Funding to provide Employer Contributions and benefits attributable to periods of qualified military service will be a Plan expense. Contributions for qualified military service will be based upon the Participant's average Hours of Service during the twelve (12) month period immediately preceding the qualified military service or, if shorter, the period of employment immediately preceding the qualified military service; and the Employer Contribution rate in effect during qualified military service.

Amounts transferred will be held pursuant to the terms of the Plan, and allocated to the Rollover Subaccount of the Participant on whose behalf the transfer was made. A Participant's Rollover Subaccount may not be withdrawn by or paid to a Participant, in whole or in part, except as provided in Section 3.1.

9.5 Extension of Plan

The Trustees may extend the benefits of this Plan to employees of other employer groups and other union locals.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2019, to be effective July 1, 2019.

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Co-Chairman

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Secretary