

**TMPA LEGAL, INC.**  
**PEACE OFFICER'S LEGAL DEFENSE**  
**FUND PLAN AND TRUST**

**as amended as of 10/10/09 to be effective 11/1/09**

**TMPA LEGAL, INC.**

**PEACE OFFICER'S LEGAL DEFENSE FUND PLAN AND TRUST**

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**TMPA LEGAL, INC.**

**PEACE OFFICER'S LEGAL DEFENSE FUND PLAN AND TRUST**

THIS AGREEMENT is made and entered into by and between TMPA Legal, Inc. ("TMPA Legal") and Chris Heaton and Kevin Lawrence (herein referred to as the "Plan Trustees").

**PREAMBLE**

**WHEREAS**, TMPA Legal is a nonprofit organization, whose members are comprised of individuals currently or formerly employed as peace officers and public safety employees with various law enforcement and public safety jurisdictions; and

**WHEREAS**, peace officers and public safety employees have been subjected over many years to a variety of litigation arising out of the performance by them of their law enforcement and public safety duties; and

**WHEREAS**, TMPA Legal has established a prepaid legal services plan and trust known as the Peace Officer's Legal Defense Fund to provide legal service benefits for its members;

**NOW, THEREFORE**, effective November 1, 2009, TMPA Legal and the Plan Trustees, do hereby approve and adopt this plan document, as set forth in the following pages:

**ARTICLE I**

**NATURE OF THE PLAN**

This Plan is a prepaid legal services plan offered by TMPA Legal to its members. It is intended that TMPA Legal be an employees' beneficiary association as defined in ERISA, Section 3(4), and that this Plan be an employee welfare benefit plan as defined in ERISA, Section 3(1) and subject to the requirements and obligations of ERISA. All Trust assets under the Plan will be administered, distributed, forfeited and otherwise governed by the provisions of this Plan and the Trust Agreement included herein. The Plan is administered by the Plan Trustees and the Plan Administrator for the exclusive benefit of Participants (and if applicable, their beneficiaries).

**ARTICLE II**

**DEFINITIONS**

When the following words and phrases appear in this Plan, they shall have the respective meanings set forth below (whether or not such words and phrases are capitalized), unless their context clearly indicates the contrary:

2.1 **Administrative** means relating to the specific department or agency that employs a Participant.

2.2 **Administrative Office** means the following administrative office of the Peace Officer's Legal Defense Fund:

TMPA Legal, Inc.  
6200 La Calma Dr., Ste. 200  
Austin, TX 78752  
(800) 848-2088

2.3 **Affirmative Civil Relief** means a civil action brought by Participant that seeks to recover damages or other affirmative relief from a third party.

2.4 **Anniversary Date** means November 1 of each year.

2.5 **Bargaining Contract** means a contract between an employer and a bargaining unit concerning terms and conditions of employment, whether set up through a collective bargaining agreement or a meet and confer agreement.

2.6 **Benefit Election** means one of the five types of benefit plans described in Article V hereof under which Participants are entitled to certain benefits under this Plan.

2.7 **Board or Board of Trustees** means the Board of Directors of TMPA Legal.

2.8 **Calendar Quarter** means the three month period beginning on the first day of January, April, July or October of each calendar year.

2.9 **Concerted Legal Activity** means the concerted failure to work, respond to orders to work, or concerted use of sick leave in response to a labor dispute among employees and their employing entity.

2.10 **Constructive Discharge** means the discharge of an employee effected by creating working conditions that would make a reasonable employee feel compelled to resign.

2.11 **Course and Scope** means conduct, acts or omissions that are inherent to a Participant's work performance. The Plan Administrator shall determine, in its sole and absolute discretion, whether conduct, acts or omissions are within the course and scope of a Participant's work and may consider factors that include, but are not limited to, whether the conduct in question is of the kind the employee is hired to perform, whether it occurs within the authorized time and space limits, and whether it is motivated by a purpose to serve the employer.

2.12 **Critical Incident** means any conduct, act, or omission that occurs during the course and scope of a Participant's duties that results in:

- (a) The death or serious bodily injury of a person; or
- (b) Could have resulted in the death or serious bodily injury of a person as a result of Participant intentionally discharging his or her firearm.

2.13 **Disciplinary Action** means suspension for one (1) working day or more or the financial equivalent of eight (8) hours or more, termination from employment, demotion, reduction in base salary, or promotional pass over.

2.14 **Effective Date** means April 26, 2003.

2.15 **Employment** means employment as a Peace Officer or Public Safety Employee, as defined herein.

2.16 **ERISA** means the Employee Retirement Income Security Act of 1974, and regulations issued thereunder, as the same may be amended from time to time.

2.17 **Event** means an act or omission, or series of acts or omissions, of a Participant that gives rise to civil, criminal or administrative action. The term "Event" does not refer to a civil, criminal or administrative action.

2.18 **Legal Fees and Expenses** means reasonable and necessary fees charged and expenses incurred by a Plan Attorney who represents a Participant with regard to a legal proceeding covered by this Plan.

2.19 **Military Service** means full-time, active duty service with the armed forces of the United States, including the Coast Guard. "Military Service" also means the time spent by a Participant on active duty training or on weekend training with a reserve component of the armed forces or of the National Guard of the United States.

2.20 **Monitor** means action by the Plan Administrator or his or her designee to observe the progress of a civil case against a Participant where defense has been tendered by the Participant's employer as described in Section 6.2 of this Plan, to determine whether the appointment of a Plan Attorney, as individual counsel for the Participant is necessary. Monitoring may include, but is not limited to, receipt and review of pleadings, discovery documents and status reports from an employer's legal counsel, and discussion with the employer's legal counsel when necessary.

2.21 **No-Cause Termination** means any separation of service from an employer that is not the result of an Event or Critical Incident and includes, but is not limited to: failure to pass probationary period, lack of confidence, force reduction, employer refusal to renew commission, or termination with no reason given to Participant.

2.22 **Participant** means a Peace Officer or Public Safety Employee who qualifies for Benefits under this Plan pursuant to Section IV hereof.

2.23 **Peace Officer** means any peace officer, who has completed basic training as required by Texas Commission on Law Enforcement Official Standards and Education ("TCLEOSE") or other state-mandated basic training and is employed on a full-time basis working at least 32 hours per week and earning at least minimum wage by a public or private employer that is statutorily authorized to employ Peace Officers. In Texas, to determine issues of Peace Officer status or basic training, reference shall be made to applicable Texas statutes, e.g., Code of Criminal Procedure, Article 2.12. In other states,

reference shall be made to comparable statutes or, in the absence of such statutes, to Texas statutes by analogy.

2.24 **Peace Officer's Legal Defense Fund Plan** means the group prepaid legal services plan as set forth herein and any amendment or addendum thereto.

2.25 **Plan** means this Peace Officer's Legal Defense Fund.

2.26 **Plan Administrator** means TMPA Legal or one or more persons appointed by TMPA Legal to administer the Plan.

2.27 **Plan Attorney** means an attorney selected by the Plan Administrator to supervise, and/or provide, legal services under the Plan and who meets the minimum requirements established by the Board of Trustees.

2.28 **Plan Trustees** means the individuals named at the beginning of this Plan document and any successors or additional trustees named pursuant to the provisions of Section 7.11 of this Plan document.

2.29 **Plan Year** means the twelve (12) month period commencing on November 1 and ending on October 31.

2.30 **Promotional Pass Over** occurs when a Participant, after passing any and all qualifying promotional examinations and being ranked according to a predetermined grading system, is passed over for an available promotional position for another candidate who is ranked lower on the same promotional list.

2.31 **Public Safety Employee** means: (a) an unlicensed employee who is currently employed by an agency that employs Peace Officers or Fire Fighters, or (b) special investigators employed by federal law enforcement agencies as defined by the Texas Code of Criminal Procedure, Article 2.122.

2.32 **Referendum** means the process by which issues are placed on the ballot to be voted on by the citizens in a given jurisdiction.

2.33 **Reserve Peace Officer** means a Peace Officer who serves in a part-time or volunteer basis for a police or public safety agency and receives the basic training necessary for licensing as such.

2.34 **Retired Peace Officer** means a Peace Officer who is honorably retired from a law enforcement agency and retains the right to carry a concealed weapon after meeting all applicable standards, as provided by state law.

2.35 **Simple Will** means a will, without trusts and without tax or asset protection planning, that distributes assets to beneficiaries, provides for guardians for minor children, and provides for independent executors.

2.35 **TMPA** means the Texas Municipal Police Association, Inc.

2.36 **Trust** means the trust established in Article VII of this Plan and any amendments, extensions or renewals thereof.

2.37 **Trust Fund** means the assets of the Plan and Trust as the same shall exist from time to time.

2.38 **Valuation Date** means the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Plan Administrator for the valuation of the Trust assets during the Plan Year.

### **ARTICLE III**

#### **ADMINISTRATION**

##### **3.1 POWERS AND RESPONSIBILITIES OF TMPA LEGAL**

(a) In addition to the general powers and responsibilities otherwise provided for in this Plan, TMPA Legal, acting through its Board of Directors, shall be empowered to appoint and remove the Plan Trustees and, if TMPA Legal is not the Plan Administrator, the Plan Administrator, from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their beneficiaries in accordance with the terms of the Plan and ERISA. TMPA Legal may appoint counsel, specialists, advisers, agents (including any non-fiduciary agent) and other persons as TMPA Legal deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. TMPA Legal may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any settlor expenses of TMPA Legal), to the extent not paid by TMPA Legal.

(b) TMPA Legal may by written agreement or designation appoint at its option an investment manager (qualified under the Investment Company Act of 1940, as amended), investment adviser, or other agent to provide direction to the Plan Trustees with respect to any or all of the Plan assets. Such appointment shall be given by TMPA Legal in writing in a form acceptable to the Plan Trustees and shall specifically identify the Plan assets with respect to which the investment manager or other agent shall have authority to direct the investment.

(c) TMPA Legal shall establish a "funding policy and method," i.e., it shall determine whether the Plan has a short term need for liquidity (e.g., to pay benefits) or whether liquidity is a long term goal and investment growth (and stability of same) is a more current need, or shall appoint a qualified person to do so. TMPA Legal or its delegate shall communicate such needs and goals to the Plan Trustees, who shall coordinate such Plan needs with its investment policy. The communication of such a "funding policy and method" shall not, however, constitute a directive to the Plan Trustees as to the investment of the Trust Funds. Such "funding policy and method" shall be consistent with the objectives of this Plan and with the requirements of Title I of ERISA.

(d) TMPA Legal shall periodically review the performance of any fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal

periodic review by TMPA Legal or by a qualified person specifically designated by TMPA Legal, through day-to-day conduct and evaluation, or through other appropriate ways.

### 3.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY

TMPA Legal shall be the initial Plan Administrator. TMPA Legal may appoint any person, including, but not limited to, the employees of TMPA to perform the duties of the Plan Administrator. Any person so appointed shall indicate his or her acceptance by filing written acceptance with TMPA Legal. Upon the resignation or removal of any individual performing the duties of the Plan Administrator, TMPA Legal may designate a successor.

### 3.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Plan Administrator, the responsibilities of each Plan Administrator may be specified by TMPA Legal and accepted in writing by each Plan Administrator. In the event that no such delegation is made by TMPA Legal, the Plan Administrators may allocate the responsibilities among themselves, in which event the Plan Administrators shall notify TMPA Legal and the Plan Trustees in writing of such action and specify the responsibilities of each Plan Administrator. The Plan Trustees thereafter shall accept and rely upon any documents executed by the appropriate Plan Administrator until such time as TMPA Legal or the Plan Administrator files with the Plan Trustees a written revocation of such designation.

### 3.4 POWERS AND DUTIES OF THE PLAN ADMINISTRATOR

The primary responsibility of the Plan Administrator is to administer the Plan for the exclusive benefit of the Participants and their beneficiaries, subject to the specific terms of the Plan. The Plan Administrator shall administer the Plan in accordance with its terms and shall have the sole and exclusive power and discretionary authority to construe the terms of the Plan and to resolve all questions concerning the administration, interpretation, and application of the Plan, including, without limitation, discretionary authority to determine eligibility for participation and eligibility for benefits. Any such determination by the Plan Administrator shall be conclusive and binding upon all persons. The Plan Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to be deemed an employee welfare benefit plan under ERISA, and shall comply with the terms of the ERISA and all regulations issued pursuant thereto. The Plan Administrator shall have all powers necessary or appropriate to accomplish the Plan Administrator's duties under the Plan.

The Plan Administrator shall be charged with the duties of the general administration of the Plan as set forth under the terms of the Plan, including, but not limited to, the following:

(a) the sole and absolute power and discretionary authority to determine all questions relating to the eligibility of members of TMPA Legal to participate in or remain a Participant hereunder and to receive benefits under the Plan;

(b) to compute, certify, and direct the Plan Trustees with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;

(c) to authorize and direct the Plan Trustees with respect to all nondiscretionary or otherwise directed disbursements from the Trust;

(d) to maintain all necessary records for the administration of the Plan;

(e) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are consistent with the terms hereof;

(f) to determine the size and type of any contract to be entered into with any Plan Attorney;

(g) to compute and certify to TMPA Legal and to the Plan Trustees from time to time the sums of money necessary or desirable to be contributed to the Plan;

(h) to consult with TMPA Legal and the Plan Trustees regarding the short and long-term liquidity needs of the Plan in order that the Plan Trustees can exercise any investment discretion in a manner designed to accomplish specific objectives;

(i) to assist any Participant regarding the Participant's rights, benefits, or elections available under the Plan.

### 3.5 RECORDS AND REPORTS

The Plan Administrator shall keep a record of all actions taken and shall keep all other books of account, records, policies, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Department of Labor, Participants, beneficiaries and others as required by law.

### 3.6 APPOINTMENT OF ADVISERS

The Plan Administrator, or the Plan Trustees with the consent of the Plan Administrator, may appoint counsel, specialists, advisers, agents (including non-fiduciary agents) and other persons as the Plan Administrator or the Plan Trustees deem necessary or desirable in connection with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Plan Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and to Plan Participants.

### 3.7 PAYMENT OF EXPENSES

All expenses of administration may be paid out of the Trust Fund unless paid by TMPA Legal. Such expenses shall include any expenses incident to the functioning of the Plan Administrator, or any person or persons retained or appointed by any named fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants,

counsel, investment managers, agents (including non-fiduciary agents) appointed for the purpose of assisting the Plan Administrator or the Plan Trustees in administering the Plan. Until paid, the expenses shall constitute a liability of the Trust Fund.

### 3.8 CLAIMS PROCEDURE

Claims for benefits under the Plan must be documented in writing with or by the Plan Administrator, through the Plan Trustees if this authority is so designated by the Plan Administrator. The Plan Administrator or Plan Trustee will provide the Participant with a claim tracking number as evidence of this documentation. A Participant shall be obligated to notify the Plan Administrator of his or her claim for benefits before he or she is entitled to any benefits under the Plan. Notification to any Plan Attorney, TMPA personnel, the personnel of another sponsoring organization or any party other than the Plan Administrator is ineffective to obtain entitlement to benefits. Failure to notify the Plan Administrator shall relieve the Plan of any obligation to provide benefits.

The Plan Administrator shall maintain a 24-hour-a-day telephone service to respond to Participants' needs for services. The number is (800) 848-2088. Written notice of the disposition of a claim shall be furnished to the claimant within five (5) business days after the application is filed, or such other period as is required by applicable law or Department of Labor regulation. This deadline may be extended if additional information is requested by the Plan Administrator of the Participant before a decision can be made, but in any event, written notice of the disposition of a claim shall be made within ninety (90) days of receipt of a claim. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited, and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided.

Without limiting the foregoing, any notice of a denial of benefits shall advise the Participant (or beneficiary) of:

- (a) the specific reason or reasons for the denial;
- (b) the specific provisions of the Plan on which the denial is based;
- (c) any additional material or information necessary for the Participant (or beneficiary) to perfect his claim and an explanation of why such material or information is necessary; and
- (d) the steps which the Participant (or beneficiary) must take to have his claim for benefits reviewed.

In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

### 3.9 CLAIMS REVIEW PROCEDURE

Any Participant, former Participant, or beneficiary of either, who has been denied a benefit by a decision of the Plan Administrator pursuant to Section 3.8 hereof shall be entitled to

request the Plan Administrator to give further consideration to the claim by filing with the Plan Administrator a written request for a hearing. Such request, together with a written statement of the reasons why the claimant believes the claim should be allowed, shall be filed with the Plan Administrator no later than sixty (60) days after receipt of the written notification of denial required in Section 3.8 hereof. The Plan Administrator shall then notify the Board of Trustees, and the Board of Trustees shall conduct a hearing within the next sixty (60) days, at which the claimant may be represented by an attorney or any other representative of such claimant's choosing and expense and at which the claimant shall have an opportunity to submit written and oral evidence and arguments in support of the claim. At the hearing (or prior thereto upon five (5) business days' written notice to the Plan Administrator) the claimant or the claimant's representative shall have an opportunity to review all documents in the possession of the Plan Administrator which are pertinent to the claim at issue and its disallowance. Either the claimant or the Board of Trustees may cause a court reporter to attend the hearing and record the proceedings. In such event, a complete written transcript of the proceedings shall be furnished to both parties by the court reporter. The full expense of any such court reporter and such transcripts shall be borne by the party causing the court reporter to attend the hearing. A final decision as to the allowance of the claim shall be made by the Board of Trustees within sixty (60) days of receipt of the appeal (unless there has been an extension of sixty (60) days due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the sixty (60) day period). Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.

### 3.10 REFERRAL BY PLAN ADMINISTRATOR TO PLAN ATTORNEY

The Plan Administrator shall refer representation of a Participant who is entitled to benefits to a Plan Attorney. In making such a referral, the Plan Administrator shall, where feasible, select a Plan Attorney who meets the approval of TMPA Legal and the Participant. If more than one Plan Attorney is available in the geographic area, the Participant may make his or her choice of Plan Attorney. Any dispute concerning the referral of a case to a Plan Attorney may be appealed by the Participant to the Board of Trustees pursuant to Section 3.9 of this Article.

### 3.11 DISSATISFACTION OR NON-COOPERATION WITH PLAN ATTORNEY

Subject to the appeal rights described in Section 3.9 above, if a Participant unreasonably refuses representation by the Plan Attorney selected to represent him or her or fails or refuses to accept the advice of the Plan Administrator or a Plan Attorney, the Plan shall be free from further obligation to such Participant to provide benefits. Such Participant shall be free to employ counsel at his or her own expense to represent him or her.

## **ARTICLE IV**

### **ELIGIBILITY**

#### 4.1 CONDITIONS OF ELIGIBILITY AND PARTICIPATION

(a) Any Peace Officer, Retired Peace Officer, Reserve Peace Officer or Public Safety Employee who is a member in good standing of TMPA Legal shall be eligible to participate hereunder and shall become a Participant in this Plan as of the date on which all of the following requirements have been satisfied:

- (i) The Plan Administrator has received a properly completed application to join the Plan on forms provided by the Plan Administrator;
- (ii) The applicant has made the required initial contribution to the Plan; and
- (iii) The Board of Trustees or the Plan Administrator, if the Board of Trustees so provides, has reviewed and approved the application.

#### (b) Method of Application

- (i) Application - A Peace Officer, Retired Peace Officer, Reserve Peace Officer or Public Safety Employee who is a member of TMPA Legal can make application to the Plan on forms provided by the Plan Administrator.
- (ii) Benefit Election --
  - (1) All TMPA members who participate in the Plan, except Reserve Officers and Retired Officers, will be deemed to have elected Benefit Election I with non-scope Administrative coverage.
  - (2) Reserve Peace Officers who are members of TMPA Legal may only be enrolled in Benefit Election II set forth in Section 5.2.
  - (3) Retired Officers who are members of TMPA Legal may only be enrolled in Benefit Election III, set forth in Section 5.3.

#### (c) Required Contributions

Participant contributions are based on the Benefit Election. Participants who are TMPA Legal members may elect any payment option offered herein. The Plan Administrator shall review the payment schedule and may from time to time adjust required payments.

- (i) Amount -Each application to the Plan must clearly indicate the payment option chosen and can only be changed after a different payment method

is approved in writing by the Plan Administrator. The contributions required in order to be entitled to benefits under the Plan are as follows:

- (1) Monthly contributions
  - (2) Quarterly contributions
  - (3) Semi-annual contributions
- (ii) Payment of Contributions -
- (1) TMPA Legal Members - Payment of contributions by Participants who are members of TMPA Legal may be made in a form that is approved in writing by the Plan Administrator.
- (iii) Termination of Participation - If a Participant terminates participation in the Plan, the Plan Administrator shall only refund contributions that have been previously made by or on behalf of the Participant for future months, not including the month that termination of participation was effected.
- (iv) Effect of Delinquency -- If payments are not made as required in this Section, benefits under this Plan for Participants on whose behalf such payments were due shall cease immediately, and a Participant shall not be entitled to benefits under this Plan until all amounts due with respect to such Participant are paid in full.
- (v) Late Payments - Notwithstanding the provisions of the immediately preceding paragraph, if a delinquent payment is made within two (2) months of the payment due date, entitlement to benefits may be reinstated on the date of actual payment of all contributions and interest, if any, due, upon written approval of the Plan Administrator. If the Plan Administrator consents to reinstatement, reinstatement shall be effective retroactively to the original payment due date. Any late payments shall automatically be applied first to the periods of delinquency and then, if sufficient, to the current period. Any decision to provide retroactive reinstatement shall be in the Plan Administrator's sole and absolute discretion.
- (vi) Application after Termination - If Participant remains delinquent for more than two (2) months, the Participant shall be deemed to have terminated participation in this Plan and must reapply for membership. Membership benefits may not be reinstated retroactively to the original payment due date without written approval of the Plan Administrator. If retroactive reinstatement is not provided, the effective date of participation will be established upon satisfaction of the requirements of Section 4.1. Any decision to provide retroactive reinstatement shall be in the Plan Administrator's sole and absolute discretion.

## 4.2 DETERMINATION OF ELIGIBILITY

The Plan Administrator shall determine the eligibility of each applicant for participation in the Plan. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan and ERISA. Such determination shall be subject to review pursuant to Section 3.9. The Plan Administrator may deny eligibility to become a Participant in the Plan to any applicant whom the Plan Administrator, in his sole discretion, determines that the applicant's admission to the Plan would be contrary to the best interest of the Plan, including but not limited to, an applicant who has violated the constitution or bylaws of TMPA, an applicant who has violated a provision of the Plan, an applicant whose conduct is detrimental to the interest or welfare of TMPA or the Plan, an applicant whose conduct is abusive or fraudulent with respect to the Plan, and an applicant whose conduct has been dishonest.

## 4.3 TERMINATION OF BENEFITS

1.0 In addition to termination due to non-payment of Plan contributions, the benefits for a Participant shall automatically terminate upon occurrence of any of the following:

- (a) When a Participant ceases to be a member of TMPA Legal;
- (b) Subject to Section 4.4 of this Article, when the employment of the Participant terminates;
- (c) When a Participant voluntarily resigns as a Peace Officer, Reserve Peace Officer or Public Safety Employee and there is no claim of constructive discharge;
- (d) When a Retired Peace Officer fails to follow any local, state or federal rules necessary to preserve current credentials that allow the Officer to carry a concealed weapon.

2.0 A Participant's benefits may also be terminated, and his status as a Participant terminated, if the Plan Administrator, in his sole discretion, determines that the Participant's continued participation in the Plan would be contrary to the best interest of the Plan, including but not limited to, a Participant who has violated the constitution or bylaws of TMPA, a Participant who has violated a provision of the Plan, a Participant whose conduct is detrimental to the interest or welfare of TMPA or the Plan, a Participant whose conduct is abusive or fraudulent with respect to the Plan, and a Participant whose conduct has been dishonest. A termination under this section 2.0, shall not affect benefits to be provided under an existing claim.

## 4.4 EXTENDED COVERAGE

Participants will be entitled to benefits under limited circumstances when participation would otherwise be terminated. These circumstances include:

- (a) Involuntarily Terminated Participants
  - (i) A Participant whose employment is involuntarily terminated will be entitled to benefits for actions arising from Events involving the

involuntary termination of employment in accordance with Participant's Benefit Election.

- (ii) If extended coverage has been granted under Subsection (a)(i) above and a second or subsequent action involving the Participant is commenced after termination of employment, the Participant shall be entitled to benefits for the second or subsequent action only if:
  - (1) the new action arises from the Events giving rise to the involuntary termination; or
  - (2) actions involving covered Events that preceded and are unrelated to the Events involving the termination of employment, provided that the Participant notifies the Plan Administrator immediately upon receiving notice.
- (iii) A Participant will be entitled to benefits for Events that result in his or her resignation or for other good cause determined by the Plan Administrator, only if the Plan Administrator determines that the Participant's resignation was a constructive discharge and only to the extent provided under the Participant's Benefit Election. All determinations by the Plan Administrator shall be in its sole and absolute discretion.
- (iv) A Participant's administrative coverage will not be reinstated under any circumstances after termination proceedings for any Event are concluded, if the Participant's termination is upheld. Participants shall not be entitled to benefits for the purposes of filing civil actions for involuntary termination, constructive discharge, wrongful termination, or other related actions unless approved in writing by the Plan Administrator. All determinations by the Plan Administrator shall be in its sole and absolute discretion.

(b) Retired Participants

A former Participant shall be entitled to benefits in accordance with the Plan for any Event that occurs while he or she was a Participant if, subsequent to the Event, he or she retires pursuant to the retirement rules of his or her employer. Retired Participants who maintain statutory authority to carry a concealed firearm and qualify as a Retired Peace Officer under this plan may continue to participate in the plan with the benefit level established for Retired Peace Officers. Such Participants shall pay the Retired Peace Officer rate through TMPA Legal.

(c) Laid-Off Participants

A Participant who has been involuntarily laid-off from employment due to a reduction in force, a reorganization of operations, the disbanding of a department, or the consolidation or merger of the Participant's department with another department or agency shall be entitled to benefits in accordance with the Benefit Election applicable to the Participant on the effective date of the lay-off for any Event, except the layoff, that occurred during the Participant's employment, provided that the Participant notifies the Plan Administrator immediately after learning of the action. Absent compelling circumstances determined by the Plan Administrator in its sole and absolute discretion, a Participant who has been laid-off shall not be entitled to benefits with respect to any administrative disciplinary action brought against the Participant.

(d) Leave of Absence for Military Service

A Participant while on a voluntary or involuntary leave of absence for military service shall be entitled to benefits under this Plan applicable to the Participant immediately prior to the leave of absence for Events occurring prior to the leave of absence. For Events occurring during the leave of absence, such coverage shall be provided only if each of the following is satisfied:

- (i) The Participant pays contributions to the Plan during the leave of absence for military service; and
- (ii) The Event occurs within the jurisdiction in which the Participant is legally authorized to exercise Peace Officer powers or, in the case of a Public Safety Employee, the jurisdiction in which he or she is employed; and the Event does not arise out of or relate, either directly or indirectly, to the scope of the Participant's military service responsibilities. TMPA Legal shall notify the Plan Administrator promptly if a Participant does not elect to make contributions during a leave of absence for military service.

(e) Voluntary Separation

A Participant who voluntarily separates from service is entitled to benefits for any covered Event that preceded the Participant's separation from employment. Absent compelling circumstances determined by the Plan Administrator in its sole and absolute discretion, a Participant who has voluntarily separated from employment shall not be entitled to benefits with respect to any administrative disciplinary action brought against the Participant.

## **ARTICLE V**

### **BENEFITS**

Subject to the exclusions and limitations set forth in this Plan, a Participant is entitled to the benefits provided under the Benefit Election selected by TMPA Legal provided that all required contributions to the Plan have been made.

#### **5.1 BENEFIT ELECTION I - CIVIL, CRIMINAL AND DISCIPLINARY ACTIONS**

The Plan will pay on behalf of a Participant who is a member of TMPA Legal the following:

- (a) All reasonable and necessary legal fees and expenses incurred by a Plan Attorney in defending Participants with regard to any civil, criminal, or disciplinary actions that arise from any act or omission of the Participant within the course and scope of employment, including administrative disciplinary actions brought as a result of a Participant's involvement in concerted labor activity. In addition, the Plan shall pay for all legal fees and expenses of a Plan Attorney to represent a Participant's appeal of disciplinary action for any acts, errors, or omissions allegedly committed by the Participant that occurred outside the course and scope of employment. Appeals from disciplinary action are limited to the normal administrative reviews that are available to the Participant in his or her jurisdiction.
- (b) Reasonable and necessary legal fees and expenses incurred by a Plan Attorney to respond to the scene of a critical incident involving a Participant.
  - (i) Upon receipt of notification of a critical incident, the Plan Administrator will immediately notify a Plan Attorney to respond to the scene and assist the Participant. The Plan Administrator will pay the Participant \$500 if the Plan Attorney does not arrive within two (2) hours of the Participant's notification to the Plan Administrator of a critical incident. This benefit applies to all TMPA Legal members without regard to the proximity of a Plan Attorney.
- (c) Reasonable and necessary legal fees and expenses incurred by a Plan Attorney in preparation and defense of a referendum petition, up to \$10,000, unless the Plan Administrator approves a higher amount in writing.
- (d) Reasonable and necessary legal fees and expenses incurred by a Plan Attorney to research, review, and advise a contract bargaining unit of an agency (whether meet and confer or collective bargaining) with regard to bargaining contract negotiations, bargaining contract disputes, and bargaining contract grievances, if more than fifty percent (50%) of all eligible bargaining unit members are Participants in the Plan. The Plan Administrator will set such fees and expenses allowed based on the agency size.

(e) On approval by the Plan Administrator, the Plan will pay for reasonable and necessary legal fees and expenses incurred by a Plan Attorney to file and pursue affirmative civil actions (whether in a court of law or an arbitration) alleging breach of a bargaining contract or asserting an impasse arbitration provision in the contract. The Plan Administrator will set such fees and expenses to be allowed in the action.

(f) If less than fifty percent (50%) of all eligible bargaining unit members of an agency are Participants in the Plan, then, upon approval by the Plan Administrator, the Plan will pay reasonable and necessary legal fees and expenses incurred by a Plan Attorney to provide consultation services of up to 3.5 hours to assist with filing bargaining contract grievances at the request of a local association with at least 50% of whose members are participants in the Plan.

(g) Reasonable and necessary legal fees and expenses incurred by a Plan Attorney to provide corporate counsel services to a local association, if more than 50% of the peace officers of the agency are both members of the local association and Participants in the Plan. The Plan Administrator will set such fees and expenses allowed based on the agency size. Corporate counsel services include entity formation, creation of and amendments to corporate governance documents, corporate filings with the Texas Secretary of State, advice and review on contracts, advise and review on open meetings and open records act issues, advise and review of political action committee and election legal issues, and other corporate counsel services as approved by the Plan Administrator.

(h) If a Participant has been a Participant in the Plan for a period of two years, then the Plan will pay reasonable and necessary legal fees and expenses incurred by a Plan Attorney to prepare a simple will for the Participant.

(i) All reasonable and necessary expert witness fees, professional service fees and hearing examiner fees required for the defense of Participants, subject to prior written approval by the Plan Administrator, in covered civil, criminal, or disciplinary actions.

(j) All reasonable and necessary legal fees and expenses incurred in the pursuit of an affirmative civil action in an amount that has been approved in writing in advance by the Plan Administrator.

(k) Reasonable and necessary legal fees and expenses to consult with a Plan Attorney prior to the imposition of disciplinary, civil, or criminal action against a Participant when it is reasonably likely that Participant will face such action, and such action would be covered under 5.1(a). Such legal fees and expenses are limited to 3.5 billable hours unless the Plan Administrator waives that limitation in writing.

(l) Reasonable and necessary legal fees and expenses to consult with a Plan Attorney concerning potential affirmative employment related claims (i.e. age, race, gender, and disability discrimination, wage and hour claims, workers compensation claims, unemployment claims, whistle blower claims, and retaliation claims), upon approval by the Plan Administrator,. Such legal fees and expenses are limited to 2.0 billable hours unless the Plan Administrator waives that limitation in writing.

(m) Upon approval by the Plan Administrator, legal fees and expenses to appeal an F-5 Report of Separation of employment if: 1. the agency filing the report does not provide the Participant the right to a review hearing on the merits of the termination, either before a hearing examiner, arbitrator, commission, or city council; 2. it is reasonably likely that the category marked of Honorably Discharged, General Discharge, or Dishonorably Discharged as the designation of separation is incorrect; 3. it is reasonably likely that the Participant can prevail on the appeal by changing the category designation; and 4. the separation of employment is the result of an otherwise covered event under this Plan.

(n) The appeal of any adverse action taken against the Participant's professional license provided that:

- (i) the adverse action is the result of an otherwise covered event under this plan; and,
- (ii) it appears reasonably likely that the reason given and the information used to justify the adverse action are false.

## 5.2 BENEFIT ELECTION II - RESERVE OFFICERS - CIVIL AND CRIMINAL ACTIONS

A Participant who is a Reserve Officer is entitled to the following services.

(a) All reasonable and necessary legal fees and expenses incurred by a Plan Attorney in defending Participants with regard to any civil or criminal actions that arise from any act or omission of the Participant within the course and scope of employment as a Reserve Officer, excluding civil actions brought as a result of a concerted labor activity unless approved in writing in advance by the Plan Administrator..

(b) Reasonable and necessary legal fees and expenses incurred by a Plan Attorney to respond to the scene of a critical incident involving a Participant.

- (i) Upon receipt of notification of a critical incident, the Plan Administrator will immediately notify a Plan Attorney, or an attorney of Participant's choice, to respond to the scene and assist the Participant. Where a Plan Attorney resides within 50 aerial miles of the location of a critical incident, the Plan will pay the Participant \$500 if a Plan Attorney does not arrive within two (2) hours of the Participant's notification to the Plan Administrator of a critical incident.

(c) All reasonable and necessary expert witness fees, professional service fees and hearing examiner fees required for the defense of a Participant, subject to prior written approval by the Plan Administrator, in covered civil or criminal actions.

(d) Reasonable and necessary legal fees and expenses to consult with a Plan Attorney prior to a civil or criminal action against a Participant when it is reasonably likely that Participant will face such action, and such action would be covered under 5.2 (a) above. Such legal fees and

expenses are limited to 3.5 billable hours unless the Plan Administrator waives that limitation in writing.

### 5.3 BENEFIT ELECTION III - RETIRED OFFICERS - CIVIL AND CRIMINAL ACTIONS

A TMPA Participant with no less than two (2) consecutive years participation in the POLDF Plan immediately prior to retirement and who becomes a Retired Peace Officer is entitled to the following services.

(a) All reasonable and necessary legal fees and expenses incurred by a Plan Attorney in defending Participants with regard to any civil or criminal actions that arise from any act or omission of the Participant in a critical incident, including, but not limited to, the use of a firearm in defense of himself or others and authorized under applicable law.

(b) Reasonable and necessary legal fees and expenses incurred by a Plan Attorney to respond to the scene of a critical incident involving a Participant.

(i) Upon receipt of notification of a critical incident, the Plan Administrator will immediately notify a Plan Attorney, or an attorney of Participant's choice, to respond to the scene and assist the Participant. Where a Plan Attorney resides within 50 aerial miles of the location of a critical incident, the Plan will pay the Participant \$500 if a Plan Attorney does not arrive within two (2) hours of the Participant's notification to the Plan Administrator of a critical incident.

(c) All reasonable and necessary expert witness fees, professional service fees and hearing examiner fees required for the defense of a Participant, subject to prior written approval by the Plan Administrator, in covered civil or criminal actions.

(d) Reasonable and necessary legal fees and expenses to consult with a Plan Attorney prior to a civil or criminal action against a Participant when it is reasonably likely that Participant will face such action, and such action would be covered under 5.3(a). Such legal fees and expenses are limited to 3.5 billable hours unless the Plan Administrator waives that limitation in writing.

### 5.4 BENEFITS FOR DEPARTMENT HEADS

A Participant who is a chief of police, sheriff, marshal, or other chief administrative officer shall be entitled to representation only in relation to civil, criminal or administrative disciplinary actions taken against him or her because of his or her personal performance of active law enforcement duties, i.e., when he or she is acting in his or her capacity as a Peace Officer or a Public Safety Employee, rather than as an administrator or department head.

A department head will not be entitled to the benefits of the Plan in relation to civil, criminal or administrative disciplinary actions arising from any act, omission or performance of activities in his or her capacity as an administrator or department head.

## 5.5 REPRESENTATION FOR AFFIRMATIVE RELIEF

A Participant may receive legal representation arising from any act or omission within the course and scope of the Participant's employment and seek legal or equitable affirmative relief in any court or tribunal of appropriate jurisdiction if the Plan Administrator, in its sole and absolute discretion, approves such representation and determines that:

(a) Considering all facts and circumstances, the relief sought is in the best interest of law enforcement and Participants of TMPA Legal; or

(b) A recovery sufficient to reimburse the Plan for all of its expenditures associated with the action, including but not limited to attorneys' fees and expenses is sought and believed likely to succeed.

## 5.6 CASES OF GENERAL IMPORTANCE

The Plan Administrator may, in its sole and absolute discretion, authorize that legal service benefits be provided for matters of general importance and significance to Participants in any court or tribunal of appropriate jurisdiction. In determining whether to authorize benefits under this Section, the Plan Administrator shall consider the factors set forth in Section 5.3 above.

# ARTICLE VI

## EXCLUSIONS AND LIMITATIONS

In addition to the exclusions and limitations set forth elsewhere in this Plan, the following exclusions and limitations shall apply:

### 6.1 EXCLUSIONS

The provisions of benefits under this Plan shall be subject to the following exclusions:

(a) Employment Practices - Except as provided below, no benefits shall be provided under this Plan for any action brought by a Participant arising out of any violation of, or covered by provisions of the Equal Employment Opportunity Act, 42 U.S.C. Section 2000(3) et seq.; the Age Discrimination in Employment Act, 29 U.S.C. Section 623 et seq.; the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001 et seq.; the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq.; the Labor-Management Relations Act, 29 U.S.C. Section 141 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301-4333; the federal civil rights statutes, i.e., 42 U.S.C. Section 1983 et seq., insofar as the subject matter of the action is similar to that of any of the above-described statutes; the federal or any state constitution, insofar as the subject matter of the action is similar to that of any of the above-described statutes; or any law, statute, ordinance, regulation, or rule of similar type or description enacted by the federal government or any state or political subdivision thereof, including but not limited to counties, districts, and cities, and which is similar either on its fact or as applied to any of the above-described statutes.

Notwithstanding the foregoing, when any such action is brought in connection with a disciplinary action that is covered by this Plan, benefits may be provided in the sole and absolute discretion of the Plan Administrator.

(b) Retirement - No benefits shall be provided under this Plan to obtain, protect, preserve, or set aside pension or retirement benefits, including disability retirement benefits, under any federal, state, county, city, or city and county pension retirement system.

(c) Worker's Compensation - No benefits shall be provided under this Plan for any action within the jurisdiction of the workers' compensation appeals board or similar agency or board; for any action to obtain, protect, preserve, or set aside workers' compensation benefits, industrial or non-industrial disability benefits, social security benefits, disability, health or other insurance benefits of a like or similar nature; or for any action for benefits payable under or because of an industrial injury, illness, disease, or death, whether by contract or otherwise, arising out of any of the provisions of a state Workers' Compensation Act or any similar federal, state, county, city, or city and county ordinance, law, resolution, regulation, or any contract of insurance.

(d) Certain Civil Service Disputes - No benefits shall be provided under this Plan for any action to obtain, protect, preserve, or set aside any benefits or position with respect to any civil service, merit system, or personnel eligibility list, except for promotion, without written approval of the Plan Administrator.

(e) Punitive or Other Damages - No benefits shall be provided under this Plan to cover any monetary award for damages, including but not limited to punitive or compensatory damages, whether by judgment, settlement or otherwise against a Participant in any action.

(f) Attorneys' Fees - No benefits shall be provided under this Plan to cover the attorneys' fees or costs of an opposing party awarded against a Participant in any action.

(g) Minor Discipline - No benefits shall be provided under a Benefit Election in a case where it is determined that the administrative discipline to be imposed upon the Participant is a reprimand, negative notation or suspension of less than one (1) day pay or the financial equivalent thereof.

(h) Breach of Employment Contract - No benefits shall be provided under this Plan related to proceedings brought against a Participant for breach of an agreement with his or her employer to remain employed.

(i) Health Condition - No benefits shall be provided under this Plan related to proceedings involving the health condition of a Participant, including physical and psychological conditions.

(j) Unemployment benefits - No benefits shall be provided under this Plan related to proceedings involving Participant's right to, or pursuit of, unemployment compensation.

(k) Pre-participation Events - No benefits shall be provided under this Plan relating to an Event that occurred prior to a Participant meeting all Conditions of Eligibility and Participation set forth in Article IV above.

## 6.2 LIMITATIONS

The provision of benefits under this Plan shall be subject to the following limitations:

(a) Civil Action Against Public Employee and Employer

- (i) Employer accepts defense and agrees to indemnify - No benefits shall be provided under this Plan in any civil proceedings in which the Participant's employer or its insurer, whether by agreement, policy or operation of law, or applicable case law, agrees to or undertakes to provide a defense, agrees to or undertakes to indemnify the Participant for general damages arising out of the proceedings, and is entitled to so agree or undertake under the laws of the applicable jurisdiction.
- (ii) Reservation of rights by employer - In the event the Participant's employer agrees to defend the Participant but refuses to indemnify the Participant or asserts a reservation of rights as to the indemnification of the Participant pending the outcome of the proceedings, then the Participant shall be entitled to benefits as set forth in Article V hereof, if the following two requirements are met:
  - (1) The Plan Administrator, in his sole discretion, determines, in accordance with the advice of legal counsel with expertise in the field of civil litigation: (1) that a material conflict of interest exists between the Participant's employer and the Participant and Participant's employer refuses to hire separate counsel for Participant, or (2) the counsel hired by the employer is not adequately representing Participant (that is the representation is incompetent) and Participant's employer refuses to hire new counsel for Participant ; and
  - (2) The Plan is subrogated to the Participant's rights against the employer or its insurer.

In the event that these two requirements are not satisfied, the Plan Administrator shall monitor the case to ascertain if they become satisfied, in which case, provided that the Plan is subrogated to the Participant's rights against the employer or its insurer, the case will then be referred to a Plan Attorney and benefits will be provided as set forth in Article V hereof.
- (iii) Employer refuses defense - In the event the employer or its insurer refuses to defend the civil proceedings, then the Participant shall be entitled to benefits in accordance with the applicable Benefit Election in Article V hereof, and the Plan shall be subrogated to the Participant's rights against the employer or its insurer. However, before Participant is eligible for

benefits, Participant must first make demand on the employer, and the employer or its insurer must refuse to defend the civil proceeding.

(b) Non-cooperation or misrepresentation by Participant - No benefits shall be provided to a Participant who is untruthful to or uncooperative with his or her attorney. In such a case, the right of the Participant to benefits hereunder may be terminated or suspended.

Furthermore, if benefits are provided to a Participant based upon misrepresentations by the Participant to the Plan Administrator, the Plan shall be entitled to terminate or suspend benefits hereunder and to obtain reimbursement from the Participant for the full amount expended by the Plan on behalf of the Participant.

(c) No provision of this Plan shall require the Plan Administrator or its employees or agents, or Plan Attorneys or any attorneys associated with them, to perform any act in violation of any State Bar Rules of Professional Conduct, including but not limited to any rule which prohibits any organization or group from interfering with or controlling the performance of an attorney's duty to his or her client.

(d) Settlement opportunity or jeopardy - Benefits may be terminated in the event the Plan Administrator determines, on advice of the Plan Attorney, that it is in the best interest of a Participant to cease his or her participation in any particular case, including but not limited to cases where continued proceedings may subject the Participant to more severe civil, criminal or administrative sanctions, damages, or attorneys' fees, or where the Participant has rejected a reasonable settlement proposal to resolve his or her case.

(e) Appeal - No benefits shall be provided to appeal a decision by an administrative body or court, unless approved in writing by the Plan Administrator.

(f) Geographic scope of coverage - As a general rule, this Plan shall only cover proceedings brought within the geographic boundaries of the state in which a Participant works. However, if a Participant works for a federal law enforcement agency and his or her work requires the Participant to travel beyond the geographic boundaries of the state in which the Participant is assigned to work, this Plan may cover proceedings in such other jurisdictions in the sole and absolute discretion of the Plan Administrator. Further, if a Participant's work requires the Participant to travel beyond the geographic boundaries of the state in which he or she works or if federal or state law allows a Participant to carry weapons beyond the geographic boundaries of the state in which he or she works, this Plan may cover proceedings brought in such other jurisdictions in the sole and absolute discretion of the Plan Administrator.

(g) Coordination of Benefits - Benefits under this Plan shall not be provided to the extent they are furnished to a Participant by any other plan, program or policy that provides group legal services to Peace Officers or Public Safety Employees.

(h) Benefits paid according to fee schedule - Benefits under this Plan will be provided in accordance with the fee schedule for Plan Attorney and other professional services adopted by the Plan Administrator from time to time. The Plan shall not be responsible for any charges made by a Plan Attorney or other professional in excess of such fee schedule.

(i) No-Cause Terminations - Benefits under this Plan will not be provided for the administrative appeal of or other legal proceedings relating to no cause terminations, unless the termination occurs more than sixty (60) days after a Participant becomes a Participant of this Plan as set forth in Section 4.1(a) above.

(j) Lay-offs - Benefits under this Plan will not be provided for the administrative appeal of terminations due to legitimate reductions in force, unless the reduction was done in violation of a statute or local rule.

## **ARTICLE VII**

### **TRUST AGREEMENT AND PLAN TRUSTEES**

#### **7.1 TRUST AGREEMENT**

This Trust Agreement is made and entered into by and between TMPA Legal and the Plan Trustees. The Plan, this Trust Agreement and the Trust Fund are intended to meet all of the requirements of ERISA.

#### **7.2 CONTRIBUTIONS**

The Plan Trustees shall receive all contributions paid to them in cash or in the form of such other property as the Plan Trustees may from time to time deem acceptable and which shall have been delivered to them. All contributions so received, together with the income there from and any other increment thereon, shall be held, invested, reinvested and administered by the Plan Trustees pursuant to the terms of this Trust Agreement without distinction between principal and income. The Plan Trustees shall not be responsible for the calculation or collection of any contribution under the Plan, but shall be responsible only for property received by them pursuant to this Trust Agreement.

#### **7.3 PAYMENTS FROM TRUST FUND**

##### **(a) Payments Directed by Plan Administrator.**

The Plan Trustees shall from time to time at the Plan Administrator's direction make payments out of the Trust Fund to the persons or entities to whom such monies are to be paid in such amounts and for such purposes as may be specified in the Plan Administrator's directions. To the extent permitted by law, the Plan Trustees shall be under no liability for any payment made pursuant to the direction of the Plan Administrator. Any direction of the Plan Administrator shall constitute a certification that the distribution or payment so directed is one which the Plan Administrator is authorized to direct.

##### **(b) Impossibility of Diversion**

It shall be impossible at any time for any part of the Trust Fund to be used for, or diverted to, purposes other than to provide benefits contemplated under the Plan for the exclusive benefit of Participants (and their beneficiaries, if applicable),

except that any taxes and administration expenses for which the Trust is liable may be paid from the Trust Fund.

#### 7.4 BASIC RESPONSIBILITIES OF THE PLAN TRUSTEES

(a) The Plan Trustees shall have the following categories of responsibilities:

- (i) Consistent with the "funding policy and method" determined by the Plan Administrator, to invest, manage, and control the Plan assets subject, however, to the direction of an investment manager appointed by the Plan Administrator or any agent of the Plan Administrator;
- (ii) At the direction of the Plan Administrator, to pay benefits required under the Plan to be paid; and
- (iii) To maintain records of receipts and disbursements and furnish to the Plan Administrator for each Plan Year a written annual report pursuant to Section 7.9.

(b) In the event that the Plan Trustees shall be directed by an investment manager or other agent appointed by the Plan Administrator with respect to the investment of any or all Plan assets, the Plan Trustees shall have no liability with respect to the investment of such assets, but shall be responsible only to execute such investment instructions as so directed.

- (i) The Plan Trustees shall be entitled to rely fully on the written (or other form acceptable to the Plan Administrator and the Plan Trustees, including, but not limited to, voice recorded) instructions of any Fiduciary or non-fiduciary agent of the Plan Administrator, in the discharge of such duties, and shall not be liable for any loss or other liability, resulting from such direction (or lack of direction) of the investment of any part of the Plan assets.
- (ii) The Plan Trustees may delegate the duty of executing such instructions to any non-fiduciary agent, which may be an affiliate of the Plan Trustees or any Plan representative.

(c) If there shall be more than one Trustee, they shall act by a majority of their number, but may authorize one or more of them to sign papers on their behalf.

#### 7.5 INVESTMENT POWERS AND DUTIES OF THE PLAN TRUSTEES

(a) The Plan Trustees shall invest and reinvest the Trust Fund to keep the Trust Fund invested without distinction between principal and income and in such securities or property, real or personal, wherever situated, as the Plan Trustees shall deem advisable, including, but not limited to, stocks, common or preferred, open-end or close-end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. The Plan Trustees shall at all times in making investments of the Trust Fund consider, among other factors, the short and long-term financial needs of the Plan on the basis of information furnished by the Plan

Administrator. In making such investments, the Plan Trustees shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Plan Trustees shall give due regard to any limitations imposed by the Code or ERISA.

(b) The Plan Trustees may employ a bank or trust company pursuant to the terms of its usual and customary bank agency agreement, under which the duties of such bank or trust company shall be of a custodial, clerical and record-keeping nature.

## 7.6 OTHER POWERS OF THE PLAN TRUSTEES

The Plan Trustees, in addition to all powers and authorities under common law, statutory authority, including ERISA, and other provisions of the Plan, shall have the following powers and authorities, to be exercised in the Plan Trustees' sole and absolute discretion:

(a) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;

(b) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Plan Trustees, by private contract or at public auction. No person dealing with the Plan Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;

(c) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property. However, the Plan Trustees shall not vote proxies relating to securities for which it has not been assigned full investment management responsibilities. In those cases where another party has such investment authority or discretion, the Plan Trustees will deliver all proxies to said party who will then have full responsibility for voting those proxies;

(d) To cause any securities or other property to be registered in the Plan Trustees' own name or in the name of one or more of the Plan Trustees' nominees, in a clearing corporation, in a depository, or in entry form or in bearer form, but the books and records of the Plan Trustees shall at all times show that all such investments are part of the Trust Fund;

(e) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Plan Trustees shall deem advisable; and for any sum so borrowed, to issue a promissory note as Plan Trustees, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Plan Trustees shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;

(f) To keep such portion of the Trust Fund in cash or cash balances as the Plan Trustees may, from time to time, deem to be in the best interests of the Plan, without liability for interest thereon;

(g) To accept and retain for such time as the Plan Trustees may deem advisable any securities or other property received or acquired as Plan Trustees hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;

(h) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(i) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;

(j) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agent or counsel may or may not be agent or counsel for the Plan Administrator;

(k) To apply for and procure from responsible insurance companies, to be selected by the Plan Administrator, as an investment of the Trust Fund such annuity, or other contracts (on the life of any Participant) as the Plan Administrator shall deem proper; to exercise, at any time or from time to time, whatever rights and privileges may be granted under such annuity, or other contracts; to collect, receive, and settle for the proceeds of all such annuity or other contracts as and when entitled to do so under the provisions thereof;

(l) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon;

(m) To invest in Treasury Bills and other forms of United States government obligations;

(n) To invest in shares of investment companies registered under the Investment Company Act of 1940;

(o) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations;

(p) To appoint a non-fiduciary agent or agents to assist the Plan Trustees in carrying out any investment instructions of Participants and of any investment manager or fiduciary, and to compensate such agent(s) from the assets of the Plan, to the extent not paid by the Plan Administrator;

(q) To do all such acts and exercise all such rights and privileges, although not specifically mentioned herein, as the Plan Trustees may deem necessary to carry out the purposes of the Plan.

## 7.7 DUTIES OF THE PLAN TRUSTEES REGARDING PAYMENTS

At the direction of the Plan Administrator, the Plan Trustees shall, from time to time, in accordance with the terms of the Plan, make payments out of the Trust Fund. The Plan Trustees shall not be responsible in any way for the application of such payments.

## 7.8 PLAN TRUSTEES' COMPENSATION AND EXPENSES AND TAXES

The Plan Trustees shall be paid such reasonable compensation as set forth in the Plan Trustees fee schedule (if the Plan Trustees has such a schedule) or as agreed upon in writing by the Plan Administrator and the Plan Trustees. However, an individual serving as Plan Trustee who already receives full-time pay from TMPA shall not receive compensation from the Plan. In addition, the Plan Trustees shall be reimbursed for any reasonable expenses, including reasonable counsel fees incurred by them as Plan Trustees. Such compensation and expenses shall be paid from the Trust Fund unless paid or advanced by the Plan Administrator. All taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof, shall be paid from the Trust Fund.

## 7.9 ANNUAL REPORT OF THE PLAN TRUSTEES

(a) Within a reasonable period of time after the Valuation Date, the Plan Trustees, or their agent, shall furnish to the TMPA Legal and Plan Administrator a written statement of account with respect to the Plan Year for which such contribution was made setting forth:

- (i) the net income, or loss, of the Trust Fund;
- (ii) other gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets;
- (iii) the increase, or decrease, in the value of the Trust Fund;
- (iv) all payments and distributions made from the Trust Fund; and
- (v) such further information as the Plan Trustees and/or Plan Administrator deem appropriate.

(b) TMPA Legal, promptly upon their receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Plan Trustees and/or Plan Administrator of their approval or disapproval thereof. Failure by TMPA Legal to disapprove any such statement of account within thirty (30) days after receipt thereof shall be deemed an approval thereof. The approval by TMPA Legal of any statement of account shall be binding on them and the Plan Trustees as to all matters contained in the statement to the same extent as if the account of the Plan Trustees had been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Plan Trustees, TMPA Legal, and all persons having or claiming an interest in the Plan were parties. However, nothing contained in this Section shall deprive the Plan Trustees of their right to have their accounts judicially settled if the Plan Trustees so desire.

## 7.10 AUDIT

(a) If an audit of the Plan's records shall be required by ERISA and the regulations there under for any Plan Year, the Plan Administrator shall direct the Plan Trustees to engage on behalf of all Participants an independent qualified public accountant for that purpose. Such accountant shall, after an audit of the books and records of the Plan in accordance with generally accepted auditing standards, within a reasonable period after the close of the Plan Year, furnish to the Plan Administrator and the Plan Trustees a report of the audit setting forth the accountant's opinion as to whether any statements, schedules or lists that are required by ERISA, Section 103 or the Secretary of Labor to be filed with the Plan's annual report, are presented fairly in conformity with generally accepted accounting principles applied consistently.

(b) All auditing and accounting fees shall be an expense of and may, at the election of the Plan Administrator, be paid from the Trust Fund.

(c) If some or all of the information necessary to enable the Plan Administrator to comply with ERISA, Section 103 is maintained by a bank, insurance company, or similar institution, regulated, supervised, and subject to periodic examination by a state or federal agency, then it shall transmit and certify the accuracy of that information to the Plan Administrator as provided in ERISA, Section 103(b) within one hundred twenty (120) days after the end of the Plan Year or by such other date as may be prescribed under regulations of the Secretary of Labor.

## 7.11 RESIGNATION, REMOVAL AND SUCCESSION OF PLAN TRUSTEES

(a) Unless otherwise agreed to by both the Plan Trustees and the Plan Administrator, a Trustee may resign at any time by delivering to the Plan Administrator, at least thirty (30) days before its effective date, a written notice of resignation.

(b) Unless otherwise agreed to by both the Plan Trustees and the Plan Administrator, the Plan Administrator may remove a Plan Trustee at any time by delivering to the Plan Trustee, at least thirty (30) days before its effective date, a written notice of such Plan Trustee's removal.

(c) Upon the death, resignation, incapacity, or removal of any Plan Trustee, a successor may be appointed by the Plan Administrator; and such successor, upon accepting such appointment in writing and delivering same to the Plan Administrator, shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as a Plan Trustee herein. Until such a successor is appointed, the remaining Plan Trustee shall have full authority to act under the terms of the Plan.

(d) The Plan Administrator may designate one or more successors prior to the death, resignation, incapacity, or removal of a Plan Trustee. In the event a successor is so designated by the Plan Administrator and accepts such designation, the successor shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been named as Plan Trustee herein immediately upon the death, resignation, incapacity, or removal of the predecessor.

(e) Whenever any Plan Trustee hereunder ceases to serve as such, the Plan Trustee shall furnish to the Plan Administrator a written statement of account with respect to the portion of the Plan Year during which the individual or entity served as Plan Trustee. This statement shall be either (i) included as part of the annual statement of account for the Plan Year required under Section 7.9 or (ii) set forth in a special statement. Any such special statement of account should be rendered to the Plan Administrator no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 7.9 for the approval by the TMPA Legal of annual statements of account shall apply to any special statement of account rendered hereunder and approval by the TMPA Legal of any such special statement in the manner provided in Section 7.9 shall have the same effect upon the statement as the TMPA Legal's approval of an annual statement of account. No successor to a Plan Trustee shall have any duty or responsibility to investigate the acts or transactions of any predecessor who has rendered all statements of account required by Section 7.9 and this subparagraph.

#### 7.12 PLAN TRUSTEES' INDEMNIFICATION

The Plan Administrator agrees to indemnify and hold harmless the Plan Trustees against any and all claims, losses, damages, expenses and liabilities the Plan Trustees may incur in the exercise and performance of the Plan Trustees power and duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct.

### **ARTICLE VIII**

#### **VALUATIONS**

##### 8.1 VALUATION OF THE TRUST FUND

The Plan Administrator shall direct the Plan Trustees, as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Plan Trustees shall value the assets comprising the Trust Fund at their fair market value (or their contractual value in the case of a contract or policy) as of the Valuation Date and shall deduct all expenses for which the Plan Trustees have not yet obtained reimbursement from the Plan Administrator or the Trust Fund.

##### 8.2 METHOD OF VALUATION

Valuations must be made in good faith and based on all relevant factors for determining the fair market value of Plan assets. In the case of a transaction between a Plan and a disqualified person, value must be determined as of the date of the transaction. For all other Plan purposes, value must be determined as of the most recent Valuation Date under the Plan. An independent appraisal will not in itself be a good faith determination of value in the case of a transaction between the Plan and a disqualified person. However, in other cases, a determination of fair market value based on at least an annual appraisal independently arrived at by a person who customarily makes such appraisals and who is independent of any party to the transaction will be deemed to be a good faith determination of value.

## **ARTICLE IX**

### **MISCELLANEOUS**

#### **9.1 LIMITATION OF RIGHTS**

Neither the establishment of the Plan or Trust, nor any modifications thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving any Participant or other person any legal or equitable right of action or recourse against TMPA or its employees or agents, TMPA Legal or its employees or agents, any Adopting Associations or their respective employees or agents, or the Plan Trustees, except as provided in the Plan and in the Trust agreement.

#### **9.2 APPLICABLE LAWS AND REGULATIONS**

References in the Plan to any particular sections of any local, state or federal statute shall include any regulation pertinent to such sections and any subsequent amendments to such sections or regulations. Except where the Plan specifically refers to state law, the Plan and the Trust shall be governed by ERISA.

#### **9.3 THIRD PARTY RECOVERY**

In the event that a Participant recovers from any third party any amounts as damages (other than lost compensation), attorneys' fees, or costs in a case in which the Plan provided benefits, the Plan shall be entitled to reimbursement from such Participant to the full extent of the expenditures made by the Plan on behalf of said Participant hereunder. Participants agree to cooperate with the Plan in obtaining reimbursement and, upon request, to execute any and all necessary documents. If a Participant has a cause of action against any third party for damages, attorneys' fees, or costs and does not wish to pursue the action, he or she will, upon request, assign those rights to the Plan to the extent lawfully permissible and assist the Plan in its prosecution of such action. If the Plan has provided benefits under this Plan to Participant, then Participant agrees that the Plan and TMPA Legal, Inc. are subrogated to Participants rights and claims against third parties to the full extent of the expenditures made by the Plan on behalf of said Participant.

#### **9.4 CONFIDENTIALITY**

A provider of services to a Participant pursuant to a Benefit Election shall not divulge to third parties matters that a Participant revealed to the provider in confidence. A provider shall, however, be entitled to provide information to the Plan, including to the Plan Trustees or Plan Administrator, concerning a Participant's case. Neither the Plan, the Plan Trustees nor the Plan Administrator shall reveal to third parties matters revealed to any of them in confidence by a Participant in the course of his or her application for benefits or receipt of benefits from the Plan.

#### **9.5 INDEPENDENT CONTRACTORS**

All Plan Attorneys and other providers of service are independent contractors and not agents of the Plan.

## **ARTICLE X**

### **AMENDMENT AND TERMINATION**

In order that the Plan Administrator may carry out its obligation to maintain, within the limits of its resources, a program dedicated to providing the maximum possible benefits for all Participants, the Plan Administrator expressly reserves the right, in its sole and absolute discretion, at any time and from time to time, but upon a non-discriminatory basis:

- (a) To amend or terminate any benefit, even though such amendment or termination affects cases already accepted by the Plan Administrator, provided that the responsibility of the Plan to pay for approved services previously rendered shall not be affected;
- (b) To increase the rate of contributions or alter the method of payment thereof; and
- (c) To amend or rescind any other provision of this Plan.

## **ARTICLE XI**

### **DISPUTE RESOLUTION PROVISIONS**

#### **12.1 ARBITRATION.**

Any claim by a Participant or beneficiary arising out of or relating to this Plan shall be settled by arbitration in accordance with the rules for arbitration of employment disputes of the American Arbitration Association. Arbitration shall be by a single arbitrator experienced in the matters at issue and selected by Participant and TMPA Legal in accordance with the said arbitration rules of the American Arbitration Association. The decision of the arbitrator shall be final and binding as to any matters submitted under this Agreement. The arbitration hearing shall be held in Austin, Texas.

#### **12.2 VENUE.**

If the arbitration clause in Section 11.1 above is determined to be unenforceable by a court of competent jurisdiction, any action or proceeding to enforce any provision of, or arising out of, this Plan document may be brought in or transferred to the courts of the State of Texas or any United States District Court within the State of Texas (presuming such District Court is able to acquire jurisdiction) located within Travis County, Texas, and the Participants consent to the jurisdiction of such courts and hereby irrevocably waive any objection to venue laid therein. Process in any such action may be served on a party anywhere in the world. Each party further irrevocably waives hereby any defense of inconvenient forum to any such action. Participants hereby irrevocably waive any right to a trial by jury in any legal proceedings or to have a jury participate in resolving any disputes or claims, whether any such proceedings, disputes or claims

relate to or arise in contract, tort or otherwise, whether regarding this Plan or any other documents or instruments delivered in connection with this Plan.