

**SMART GROUP VSTD PLAN**

**AMENDED AND RESTATED**

**PLAN DOCUMENT**

**Effective April 1, 2016**

## **PLAN DOCUMENT**

### **INTRODUCTION**

The International Association of Sheet Metal, Air, Rail and Transportation Workers ("SMART") is the sponsor of a welfare benefit plan hereinafter set forth to provide short-term disability and long term disability benefits to SMART-TD Members. The plan, as stated herein, and as amended from time to time, shall be known as the SMART Group VSTD Plan (the "VSTD" or "Plan"). The purpose of the Plan is to protect Members from a loss of income due to a disability.

The Plan self-insures the short-term disability benefit. It also provides long term disability benefits through an insurance policy with MetLife. Together, the Rail Summary Plan Description (SPD), the Bus SPD and the MetLife Policies and this Plan Document constitute the Plan.

### **ARTICLE I**

#### **DEFINITIONS**

The following words and phrases as used in the Plan shall have the following meanings, unless a different meaning is required by the context:

- (a) Effective Date means January 1, 2010, the original effective date of this Plan.
- (b) Member means a member in good standing of SMART.
- (c) Monthly Assessment is the amount a Member must pay monthly to participate in the Plan as described in Section 4.1 and to be eligible for the benefits that the Member has elected.
- (d) Participant means a Member who has become a Participant pursuant to Section 2.1 and whose participation in the Plan has not terminated.
- (e) Plan means this Plan Document and the STD RAIL SPD, BUS SPD and the MetLife LTD Policies (and successors thereto), which are incorporated herein.
- (f) Plan Year means the calendar year.
- (g) SMART means the International Association of Sheet Metal, Air, Rail and Transportation Workers.
- (h) SMART-TD means the Transportation Division of SMART.
- (i) Trust means the trust created by the Trust Agreement.
- (j) Trust Agreement means the agreement establishing the Trust effective December 30, 2009, as amended from time to time, and any successor thereto, providing for the establishment and maintenance of a trust for the Plan.
- (k) Trustees means the trustees of the VSTD appointed by SMART.

## **ARTICLE II**

### **PARTICIPATION**

- 2.1 Participation. Except as provided in Section 2.2(a), eligible SMART-TD Members are automatically enrolled in the Plan for short term disability benefits, with a weekly benefit as outlined in separate Schedules of Benefits. A Member who is automatically enrolled will be subject to a Monthly Assessment at the rate established periodically by the Trustees. Members may elect LTD coverage in accordance with the applicable LTD Policy.
- 2.2 Elections.
- (a) A SMART-TD Member may elect to opt out of STD coverage under the Plan by submitting an opt-out election, on a form and in the manner designated by the Trustees in accordance with the applicable STD SPD. A SMART-TD member may elect LTD coverage in accordance with the applicable LTD SPD.
- (b) Subject to any requirements outlined in the applicable STD SPD, a SMART-TD Member who has made an opt-out election under this Section 2.2 may, subsequently, elect to participate in the Plan by submitting an application to the Plan office.
- 2.3 Coverage. Coverage under the Plan, including coverage pursuant to a participation election described in Section 2.2(b), shall commence on the date specified by the applicable SPD.

## **ARTICLE III**

### **BENEFITS**

- 3.1 Eligibility. All active dues-paying Railroad-Operating SMART-TD Members and all active dues-paying Bus-Operating SMART-TD Members, including Field Supervisors, are eligible to participate in the Plan. Eligibility for benefits under the Plan shall be determined in accordance with the applicable SPD.
- 3.2 Benefits. STD Benefits shall be in such amount and for such period as set forth in the Rail or Bus SPD, as applicable, subject to any limitations, maximums, exclusions and reductions in the SPD.
- 3.3 Benefit Application. To receive benefits, a Participant must provide a notice of claim for benefits as described in the applicable SPD or LTD Policy.

## **ARTICLE IV**

### **CONTRIBUTIONS AND FUNDING**

- 4.1 Monthly Assessments. Except as provided in guidelines established by the Trustees, prior to the first day of each month in which a Participant participates in the Plan, the Participant shall pay an amount known as the Monthly Assessment. The Monthly Assessment shall be determined by the Trustees from time-to-time. A Participant who

elects a long term disability benefit shall pay the applicable premium each month until he or she terminates coverage in accordance with that Policy.

4.2 Contributions to the Trust.

- (a) The Monthly Assessment described in Section 4.1 shall be paid to the VSTD in the manner determined by the Trustees.
- (b) SMART shall not be required to make contributions to, or otherwise fund, the VSTD.

4.3 Funding Policy. The Trustees shall establish the funding policy and method of the VSTD, consistent with the objectives of the VSTD and applicable law. The funding policy shall take into account such factors as the Trustees deem appropriate, including the number of Participants, the level of Plan assets, and the investment performance of those assets.

## ARTICLE V

### ADMINISTRATION OF VSTD

5.1 Administration of the VSTD. The Trustees shall be the named fiduciaries of the VSTD, but SMART and the Trustees shall not be fiduciaries of the VSTD to the extent they exercise settlor or other non-fiduciary functions with respect to the VSTD.

5.2 Powers and Duties. The Trustees may establish guidelines for the administration of the VSTD. Without limiting the generality of the foregoing, the Trustees shall have the following powers, duties and discretionary authority:

- (a) To require any person to furnish such information as the Trustees may request for the purpose of the proper administration of the VSTD;
- (b) To make and enforce such guidelines and prescribe the use of such forms as the Trustees shall deem necessary for the efficient administration of the VSTD to communicate on questions concerning the VSTD and the eligibility of any Member to participate in the VSTD, in accordance with the provisions of this document;
- (c) To interpret this document and any other applicable document and to decide all matters arising thereunder, including remedying possible ambiguities, inconsistencies or omissions and construing disputed or ambiguous terms of this document or any other applicable document.

5.3 Allocation and Delegation.

- (a) SMART may allocate fiduciary responsibilities among named fiduciaries or designate persons other than a named fiduciary to carry out fiduciary responsibilities (other than Trustee responsibilities) under the VSTD.
- (b) The Trustees may employ the services of such companies or persons as they may deem necessary or desirable in connection with the VSTD and may

delegate any of their powers or duties to another person or persons. Without limiting the generality of the preceding sentence, the Trustees (and any person to whom the Trustees may delegate any duty or power in connection with the administration of the VSTD) and all persons connected therewith may rely upon all tables, valuations, certificates, reports and opinions furnished by any duly appointed actuary, accountant or legal counsel, or other specialist, and they shall be fully protected in respect of any action taken or permitted in good faith in reliance thereon. All actions so taken or permitted shall be conclusive upon all persons.

- (c) Any insurer providing benefits under the VSTD shall have all of the powers and discretionary authority given to the Trustees under Section 5.2 and shall have the discretionary authority to interpret the terms of the VSTD, determine eligibility for benefits, make factual determinations and determine the amount of benefits which shall be payable to any person in accordance with the provisions of the applicable Booklet.

- 5.4 Administration of the Trust. Subject to the provisions of the Trust Agreement, the Trustees shall have responsibility for the management and control of the assets of the VSTD that are held in the Trust except to the extent that the Trustees have appointed an investment manager to manage all or a portion of the assets of the VSTD that are held in the Trust. The Trustees shall have the sole fiduciary responsibility for determining whether investment of the VSTD assets held by them shall be managed by the Trustees, or by one or more investments managers, or by both, and to give proper directions. At the direction of the Trustees, or any person to whom the Trustees have delegated such authority pursuant to Section 5.3(b), the Trustees shall make payments from the Trust in order to pay the administrative expenses of the VSTD or Trust. SMART may appoint or remove the Trustees, as provided in the Trust Agreement. SMART shall designate, in accordance with its normal practice, such of its officers or other employees as it shall consider appropriate to carry out its duties hereunder and under the Trust.
- 5.5 Liability. To the extent permitted by law, neither the Trustees nor any person performing duties hereunder shall incur any liability for any act done, determination made or failure to act, if in good faith. Nothing in this document or any other applicable document shall preclude SMART from purchasing liability insurance to protect SMART and/or any other person with respect to their duties under the VSTD.
- 5.6 VSTD Expenses. All VSTD expenses incurred in connection with the VSTD and Trust shall be paid by the VSTD, unless SMART determines in its sole discretion to pay such expenses.

## ARTICLE VI

### AMENDMENT OR TERMINATION OF VSTD

- 6.1 Amendment or Termination of VSTD. Subject to the limitations of Section 6.3, SMART reserves the right to amend or terminate the Plan at any time, to any extent, and in any manner that it may deem advisable.
- 6.2 Procedure for Amendment or Termination. Any amendment or termination of the Plan shall be adopted pursuant to a resolution of the General Executive Council. In deciding

to amend or terminate the Plan, the General Executive Council acts in a settlor capacity and not as a fiduciary of the Plan.

6.3 Disposition of VSTD Assets Upon Termination. The following provisions shall apply upon or following termination of the VSTD:

- (a) All assets remaining in the Plan following the payment of any outstanding benefits and satisfaction of the Plan's liabilities, including any expenses described in Section 5.6, shall be disposed of as determined by the Trustees in their sole discretion (including reversion of such assets to SMART), except as provided in the Trust Agreement or Section 6.3(b).
- (b) Assets of the Plan shall be used solely to provide benefits to participants in the VSTD and to defray the reasonable expenses of administering the Plan and Trust, including the outstanding benefits described in Section 6.3(a).
- (c) In no event shall any Participant, former Participant, or any other person have any claim against, right to, or security or other interest in any fund, account, or asset of SMART or the Plan on and after the date of termination of the Plan, except as provided in this Section 6.3.

## **ARTICLE VII** **MISCELLANEOUS**

7.1 Assignment and Alienation. No Participant shall have the right to assign, alienate, transfer, encumber or otherwise subject to lien any of the benefits provided under the VSTD, and the right of any Participant to any benefit provided under the VSTD shall not be subject to assignment, alienation, transfer or encumbrance or otherwise subject to lien, except as provided in Sections 7.2 and 7.4.

7.2 Information to be Furnished. A Participant eligible to receive benefits under the VSTD shall furnish to the Trustees any information or proof requested by the Trustees and reasonably required for the proper administration of the VSTD. Failure on the part of any Participant to comply with any such request within a reasonable period of time shall be sufficient grounds for delay in the payment of any benefits that may be due under the VSTD until such information or proof is received by the Trustees. If any Participant claiming benefits under the VSTD makes a false statement that is material to such Participant's claim for benefits, the Trustees may offset against future payments or seek to recover from the Participant any amount paid to such Participant to which such Participant was not entitled under the provisions of the VSTD.

7.3 Limitation of Rights. Neither the establishment of the VSTD nor Trust nor any amendment thereof shall be construed as giving any Member or other person any legal or equitable right against the Trustees or SMART, except as provided by the express terms of the VSTD.

7.4 Overpayments. If any overpayment of benefits is made under the VSTD, the amount of the overpayment may be set off against further amounts payable to or on account of the Participant who received the overpayment until the overpayment has been recovered. The foregoing remedy is not to be exclusive.

- 7.5 Taxes. The Participant shall bear all taxes imposed by any government or government agency on benefits provided under the VSTD, whether or not amounts are withheld or required to be withheld from such benefits in order to satisfy such tax obligations.
- 7.6 Subrogation. As a condition precedent to the receipt of benefits under this VSTD, the Participant agrees that the VSTD shall be subrogated, to the extent of any benefit payment by the VSTD for any injury or illness, to all rights of recovery by the Participant against any person, organization or other entity in connection arising out of any claim, demand, cause of action or right of recovery which has accrued, may accrue, or which is asserted in connection with the injury or illness to which the payment relates. The VSTD shall be entitled, to the extent of any benefit payment from the VSTD for disability benefits, to reimbursement from the proceeds of any settlement or amount recovered, no matter how characterized or from whom or which entity it is received, from any third party or parties in connection with the disability for which benefits were paid by the VSTD.

As a further condition precedent to the receipt of benefits, the Participant must notify the VSTD within ten days of any disability for which a third party may be liable and must notify the VSTD within ten days of the initiation of any lawsuit arising out of the disability, and of the conclusion of any settlement, judgment or payment relating to the disability in any lawsuit initiated to protect the VSTD's claims.

The VSTD shall have a constructive trust, lien, and/or an equitable lien by agreement in favor of the VSTD on any amount received by a Participant, or his representatives (including his attorney) that is due to the VSTD under this Section and any such amount shall be deemed to be held in trust by him for the benefit of the VSTD until paid to the VSTD. The Participant hereby consents and agrees that a constructive trust, lien, and/or equitable lien by agreement in favor of the VSTD exists with regard to any payment, amount and/or recovery from a third party; and in accordance with that constructive trust, lien, and/or equitable lien by agreement, the Participant agrees to cooperate with the VSTD in reimbursing it for VSTD costs and expenses.

As a further condition precedent to the receipt of benefits, the Participant and his or her representative, if applicable, must execute an agreement on a form provided by the VSTD or other documents necessary to document the VSTD's subrogation and reimbursement rights under this VSTD. If the Participant or his or her representative fails or refuses to execute any required agreement and the VSTD nevertheless pays benefits to or on behalf of the Participant, the Participant's acceptance of the benefits shall constitute the Participant's agreement to the VSTD's right to subrogation or reimbursement from any recovery by the Participant from a third party that is based on the circumstance from which the expense or benefit paid by the VSTD arose, and the Participant's agreement to a constructive trust, lien, and/or equitable lien by agreement in favor of the VSTD on any payment amount or recovery that the Participant recovers from a third party. The Participant must comply with the VSTD's rules regarding subrogation and reimbursement.

The Participant may not take action inconsistent with the requirements of this Section, nor settle, prejudice or release any claim without prior written consent of the Trustees.

The VSTD's rights of reimbursement and subrogation apply regardless of the terms of the claim, demand, right of recovery, cause of action, judgment, award, settlement,

compromise, insurance or order, regardless of whether the third party is found responsible or liable for the disability, and regardless of whether the Participant actually obtains the full amount of such judgment, award, settlement, compromise, insurance or order. The VSTD's right of reimbursement and subrogation provides the VSTD with first priority to any and all recovery in connection with the disability, whether recovery is full or partial and no matter how recovery is characterized, why or by whom it is paid, or the type of expense for which it is specified. The "make-whole" doctrine does not apply to the VSTD's right of reimbursement and subrogation. The VSTD's rights of reimbursement and subrogation are for the full amount of all related benefits payments; this amount is not offset by legal costs, attorney's fees or other expenses incurred by the Participant in obtaining recovery.

If a required agreement is not executed, or if there are any violations of the terms of this Section, benefits will not be payable by the VSTD. Under this provision, the Participant is obligated to take all necessary actions and cooperate fully with the VSTD in its exercise of its rights of reimbursement and subrogation, including notifying the VSTD of the status of any claim or legal action asserted against any party or insurance carrier and of the Participant's receipt of any recovery. The Participant also must do nothing to impair or prejudice the VSTD's rights. For example, if the Participant chooses not to pursue the liability of a third party, the Participant may not waive any rights covering any conditions under which any recovery could be received. If the Participant is asked to do so, he must contact the VSTD office immediately.

The Participant must also notify the VSTD before accepting any payment prior to obtaining a final judgment in a lawsuit. If the Participant does not, and he accepts payment that is less than the full amount of the benefits that the VSTD has advanced, the Participant will still be required to repay the VSTD, in full, for any benefits it has paid, even if the amount the VSTD paid is more than the amount received by the Participant. The VSTD may withhold benefits if the Participant waives any of the VSTD's rights to recovery or fails to cooperate with the VSTD in any respect regarding the VSTD's reimbursement and subrogation rights.

If the Participant refuses to reimburse the VSTD from any recovery or refuses to cooperate with the VSTD regarding its subrogation or reimbursement rights, the VSTD has the right to recover the full amount of all benefits paid by methods which include, but are not necessarily limited to, offsetting the amounts paid against the Participant's future benefit payments under the VSTD. Non-cooperation includes the failure of any party to execute a subrogation agreement required by the VSTD and the failure of any party to respond to the Plan's inquiries concerning the status of any claim or any other inquiry relating to the Plan's rights of reimbursement and subrogation.

If the Plan is required to pursue legal action against a Participant to obtain repayment of the benefits advanced by the Plan, the Participant shall pay all costs and expenses, including attorneys' fees and costs, incurred by the Plan in connection with the collection of any amounts owed the Plan or the enforcement of any of the Plan's rights to reimbursement. In the event of legal action, the Participant shall also be required to pay interest at the rate determined by the Trustees from time to time from the date the Participant becomes obligated to repay the Plan through the date that the Plan is paid the full amount owed. By accepting benefits under the terms of this Plan, Participants agree to waive any applicable statute of limitations defense available regarding the enforcement of any of the Plan's rights to reimbursement.



7.7 Effective Date of Amended and Restated Plan Document. Except to the extent otherwise provided herein, this amended and restated Plan Document shall be effective April 1, 2016.