**Warehouse Employees Union Local No. 730
Health and Welfare Trust Fund,**

**Warehouse Employees Union Local No. 730
Pension Trust Fund,**

and the

**Warehouse Employees Union Local No. 730
& Contributing Companies' Prepaid Legal Services Fund**

DELINQUENCY COLLECTION AND PAYROLL AUDIT PROCEDURES

Dated: January 1, 2025

I. INTRODUCTION

The Trustees of the Warehouse Employees Union Local No. 730 Health and Welfare Trust Fund, the Warehouse Employees Union Local No. 730 Pension Trust Fund, and the Warehouse Employees Union Local No. 730 & Contributing Companies' Prepaid Legal Services Fund (collectively referred to as the "Funds") establish the following Delinquency Collection and Payroll Audit Procedures. In accordance with the requirements of the Employee Retirement Income Security Act of 1974 ("ERISA"), these written guidelines set forth the documents and procedures to be used by the Funds in enforcing Employers' contribution obligations to the Funds and collecting delinquent contributions (the "Collection Program").

The Fund Administrator, the Fund Auditor, and Fund Counsel shall implement and follow these procedures (the "Collection Policy") and make reasonable, diligent, and systematic efforts to conduct employer payroll audits and collect delinquent contributions, interest, and liquidated damages.

II. THE COLLECTION PROGRAM

A. Administration and Receipt of Contributions

The Fund Administrator shall supervise and coordinate the Collection Program.

The Fund Administrator shall review all of the Employers' monthly contribution and corresponding payroll/remittance reports ("Monthly Contribution Reports"). Such reports and contributions are due by the 15th day of the month following the month during which an eligible employee worked or received wages under any Collective Bargaining or Participation Agreement ("Due Date"), unless the 15th day falls on a weekend or Federal holiday, in which case the contribution and Monthly Contribution Report are due on the next following business day. Interest will begin to accrue on any contribution that is not received by the last calendar day of the month following the month during which an eligible employee worked or received wages under any Collective Bargaining Agreement.

The Monthly Contribution Report must be filed by the due date even if no contributions are due to the Fund.

The Fund must receive the Monthly Contribution Report and contributions on or before the Due Date; the date on which these are mailed shall not apply. The Monthly Contribution Report shall be date-stamped on the day received by the Fund.

B. Delinquency Defined

If the required contribution and Monthly Contribution Report are not received on or before the Due Date, the contribution and Monthly Contribution Report are delinquent. A contribution will be considered delinquent for purposes of interest and liquidated damages if it is not received by the Fund by the last day of the month in which the Due Date occurs.

C. Interest

If a contribution and/or Monthly Contribution Report is delinquent (as defined in item B above) as of the end of the month in which the Due Date occurs, the Employer shall be obligated to pay interest on the unpaid contributions assessed from the Due Date at the prime rate plus 3%.

D. Liquidated Damages

If a contribution and/or Monthly Contribution Report is delinquent (as defined in item B above) as of the end of the month in which the Due Date occurs, the Employer shall be obligated to pay liquidated damages in an amount equal to 20% of the amount of contributions owed on the Due Date.

E. First Formal Notice

If contributions are not received by the fifth day after the Due Date, the Fund Administrator shall notify the Employer that it is delinquent and demand payment of the delinquent contributions. The First Formal Notice will explain that if contributions are not paid by the end of the month in which the Due Date occurs, interest and liquidated damages in the amounts above will be assessed.

F. Second Formal Notice

If the Employer does not submit its Monthly Contribution Report and appropriate contributions or pay its receivables within 10 business days of the date of the mailing of the First Formal Notice, the Employer shall be assessed interest at the prime rate plus 3% from the Due Date and liquidated damages in the amount of twenty percent (20%) of the contributions due. The Fund Administrator shall send a Second Formal Notice to the Employer stating the amount of contributions due, including interest and liquidated damages, for the months for which contributions are due.

G. Notification of Fund Counsel

If an Employer has not submitted its Monthly Contribution Report and/or appropriate contributions, liquidated damages and interest by thirty (30) calendar days after the Second Formal Notice was mailed, the Fund Administrator shall notify Fund Counsel, who shall then make a demand for payment from the Employer including interest, liquidated damages and all costs of recovery, including, but not limited to, attorneys' fees and costs.

H. Collection Litigation

If the Employer does not submit payment or produce records in response to the demand of Fund Counsel, Counsel shall request that the Trustees authorize a collection action. Fund Counsel shall initiate legal proceedings after receiving authorization from the Trustees. The Funds shall also seek to be awarded the costs of any such litigation, including reasonable attorneys' fees, auditing fees, any other related fees or costs, and court costs. Fund Counsel shall advise the Trustees of any settlement offers that are received and provide the Trustees with their professional legal judgment and advice as to the desirability of acceptance of such offer and the basis therefore.

I. Approval of Settlements or Compromises

If, after the Funds have made systematic, reasonable and diligent efforts to collect delinquent contributions, the Trustees determine that it is in the best interest of the Funds to accept less than the full amount due or to allow the Employer to pay the amount due over an extended period of time, the Funds may enter into a settlement or compromise agreement with an Employer.

Similarly, the Trustees may discontinue collection efforts in any case in which, upon advice of Fund Counsel, they determine that the expense of pursuing collection is likely to be greater than the amount likely to be recovered.

III. <u>THE PAYROLL AUDIT PROGRAM</u>

A. Scheduling Cycle

It is generally the Funds' policy that Employers will be audited once every three (3) years. The Fund Auditor, in consultation with the Fund Administrator, will identify the names of the Employers that the Fund Auditor proposes to audit in that year for the Trustees' approval. It is also generally the Funds' policy to audit an Employer upon cessation of its obligation to contribute to the Funds and after the expiration of one (1) year of an Employer's initial participation in the Funds. The Fund Administrator shall identify for the Trustees' consideration, the names of the terminating Employers and new Employers with one (1) year of contribution history. In addition, the Trustees reserve the authority and sole discretion to direct specific (targeted) audits of an Employer who is delinquent or in any case in which the Trustees determine that an audit is appropriate.

B. Contact Letter

The Fund Administrator or Fund Auditor will notify the Employers that have been selected for a payroll audit. This initial contact letter will cite the relevant Trust

Agreement provisions that authorize payroll audits and will also generally identify the books and records that the Fund Auditor intends to examine during the payroll audit. The initial contact letter also shall state that the Fund Auditor will keep the Employer's payroll records confidential unless disclosure is necessary to determine whether the Employer is complying with its obligations to the Funds, or to enforce those obligations in a collection proceeding.

C. Fieldwork

Shortly after the initial contact letter is mailed to the Employer, the Fund Auditor will contact the Employer to schedule a mutually agreeable time to perform the payroll audit. If the Employer refuses access to perform the payroll audit, fails to cooperate with the Fund Auditor, or otherwise hinders the audit in any way, the Fund Auditor will notify the Trustees, the Fund Administrator, and Fund Counsel. Examples of such uncooperative activity include, but are not limited to, (i) evading the Fund Auditor by refusing to schedule appointments or respond to telephone calls; (ii) unreasonable or repeated cancellation of audit appointments; (iii) cancelling audit appointments without adequate notice; and (iv) incomplete or piecemeal responses to requested record and document requests. The Trustees have reserved the authority to charge the Employer with the cost of the audit, in such circumstances.

D. Audit Process

1. The payroll audit will be performed in accordance with what the Fund Auditor calls an "Agreed Upon Procedure Engagement - Standard Payroll Audit Program."

2. Prior to undertaking any payroll audit, the Fund Auditor shall review the Employer's Collective Bargaining Agreement, the current Trust Agreements and any other documents necessary to determine whether the Employer has made the required contributions. If the Fund Auditor has questions concerning the Employer's contractual obligation to make contributions, he or she shall discuss such matter with the Fund Administrator, Fund Counsel, as appropriate, and, if necessary, the responsible Union Business Agent. Fund Counsel will help the Fund Auditor with any document interpretation questions.

3. If a Contributing Employer refuses to permit a payroll audit upon request, refuses to provide requested records, or otherwise hinders the payroll audit process, the Fund Auditor shall refer the matter to Fund Counsel. Fund Counsel will notify the Employer in writing that the Employer is acting inconsistently with its legal obligations and will demand compliance. If necessary, Fund Counsel will ask the Trustees for authority to institute legal action to enforce the Funds' right to conduct a payroll audit. In the event

that legal action is necessary, the costs of recovery shall be assessed against the Employer.

4. Upon completion of the payroll audit, the Fund Auditor shall conduct an exit interview with the audited Employer to discuss any deficiencies found.

5. If during the course of a payroll audit, the Fund Auditor discovers any systemic problems with respect to the Employer's contributions, the Fund Auditor will notify the Trustees to determine whether the payroll audit should be extended to cover the entire time period through the date the Fund Auditor conducts the examination of records.

6. After the Fund Auditor has conducted the exit interview with the Employer, or if the Employer has declined an exit interview, the Fund Auditor shall prepare a payroll audit report that shall identify and describe, among other items, any deficiencies found during the course of the audit.

7. The Fund Auditor will provide the Employer with a copy of the payroll audit report, together with a "ten (10) day letter" specifying that the Employer should contact the Fund Auditor if the Employer disputes any discrepancies noted in the report. The Fund Auditor will also send a copy of the payroll audit report and ten-day letter to the Fund Administrator.

8. The Fund Auditor shall inform the Fund Administrator as soon as administratively possible by letter and e-mail 1) if the Employer and the Auditor agree on the payroll audit findings; 2) if the Employer does not contact the Fund Auditor within ten calendar (10) days; or 3) if the Fund Auditor and the Employer cannot agree on disputed items in the payroll audit.

E. Procedure for Pursuing Underpaid Contributions

1. After receiving the Fund Auditor's notice that one of the following situations outlined in Section III.D.8 has occurred or of any other issues with the Employer, the Fund Administrator shall promptly send the Employer a bill for the payroll audit deficiency owed to the Fund(s), including liquidated damages and interest owed from the date the contributions were originally due in writing.

2. No interest or liquidated damages will be due and owing if the Employer pays the full amount of the payroll audit deficiency owed to the Fund(s) within thirty (30) calendar days of the date the Employer receives the bill identified in paragraph 1.

3. If the Employer refuses to pay the contribution deficiency identified by the payroll audit report or fails to respond to the bill within thirty (30) calendar days of receipt, the Fund Administrator shall notify Fund Counsel.

4. Fund Counsel shall then send the delinquent Employer a "fifteen (15) day demand" letter (by first class certified mail) requesting payment of the unpaid contributions to the Fund(s) within fifteen (15) calendar days. Fund Counsel shall send a copy of this letter to the Fund Administrator.

5. If the delinquent Employer does not respond to Fund Counsel's demand letter or remit the full payment owed to the Fund(s) within the fifteen (15) calendar days of receipt, Fund Counsel is authorized to 1) either send another fifteen (15) day demand letter or 2) seek the Trustees' approval to take immediate legal action, including but not limited to, commencing legal proceedings to collect the unpaid contributions, liquidated damages, interest, attorneys' fees, and audit fees from the Employer, as appropriate. Instances in which the collection of audit fees may be appropriate include, but are not limited to, the following:

    a. the Employer fails to timely pay the contribution underpayment following demand for payment;
    b. the Employer resists the Fund Auditor's attempt to conduct the payroll audit or obstructs completion of the payroll audit and such action results in the cost of the payroll audit exceeding the budgeted cost for such audit;
    c. the Employer fails or refuses to schedule the payroll audit;
    d. the Employer fails or refuses to provide the necessary documentation to perform the payroll audit;
    e. upon arrival of the payroll auditor at the Employer's site, the Employer fails to keep the scheduled appointment without reasonable explanation; and/or
    f. the Employer keeps the Fund Auditor waiting for more than one hour for a scheduled audit with no reasonable explanation before allowing the Auditor to begin the audit.

6. Fund Counsel shall have discretion under this Collection Policy when pursuing a delinquent Employer's payment of unpaid contributions in order to facilitate that Employer's payment of the unpaid contributions to the Fund(s) and to avoid more costly forms of legal action where possible. Fund Counsel shall provide the Fund Administrator with updates as the matter moves along.

7. Fund Counsel shall advise the Trustees of any Employer settlement offers and provide the Trustees with their professional legal judgment and advice as to the desirability of acceptance of such offer and the basis therefore. Any settlements or compromises between the Fund and a delinquent

Employer shall be in compliance with Sections III.E and III.F of this Collection Policy.

F. Procedure for Overpaid Contributions

If the Fund Auditor determines that an Employer has potentially over contributed to the Fund(s), the Fund Auditor will notify Fund Counsel and the Fund Administrator and the Trustees. The Fund Auditor, Fund Counsel, Fund Administrator, and Trustees will confer prior to scheduling an exit interview. The Fund Auditor will seek instructions from the Fund Administrator and/or Fund Counsel with respect to the determination of whether the contributions were made by reason of mistake of fact or law and any appropriate subsequent steps.

V. REFUND AND CREDIT POLICY

No Employer shall, directly or indirectly, receive any refund or credit of contributions except as provided herein. Effective as of the adoption of this Collection Policy, if the Trustees determine that the Employer remitted the contributions to the Fund(s) by a mistake of fact or law (other than a mistake relating to whether the Plan is described in Section 401(a) of the Internal Revenue Code of 1986 or the Fund is exempt from taxation under Section 501(a) of such Code), the Fund(s) shall either return such contributions or payment to the Employer or provide a credit against future contributions due if the following conditions are met:

1. The refund or credit is made within six (6) months after the Trustees or, when delegated, the Fund Administrator, determine that a contribution or payment was made by mistake of fact or law; and

2. Any such refund or credit is for a contribution or payment made within three (3) years of the date the Trustees or, when delegated, the Fund Administrator, determine that the contribution or payment was made by mistake of fact or law; and

3. No pensions have been paid on the basis of the contributions paid in error.

If the aforementioned conditions have been met, the provision of a credit against the Employer's future contributions shall be the normal method for making the Employer whole. With respect to the Health Fund, any such credit shall be reduced by any benefits or fees the Fund has paid as a result of the mistaken contributions. Similarly, any credit for a particular Fund shall be reduced by any contribution shortages in that Fund. Interest on or earnings attributable to any mistaken contributions shall not be returned to the Employer.

If the aforementioned conditions have been met, the Fund Administrator shall promptly notify the Employer of its entitlement to take a credit against future contributions. The notification shall further explain that the Employer shall forfeit its entitlement to a credit if the employer fails to take the credit within six (6) months of the determination that the contributions were made by mistake of fact or law. Employee pension records shall be adjusted to correctly reflect hours worked or paid, irrespective of whether the employer takes the credit. In their sole discretion, the Trustees may choose to refund mistakenly paid contributions to the Employer, in lieu of providing a credit, consistent with these rules.

IN WITNESS WHEREOF, the Boards of Trustees of the Warehouse Employees Union Local No. 730 Health and Welfare Trust Fund, the Warehouse Employees Union Local No. 730 Pension Trust Fund, and the Warehouse Employees Union Local No. 730 & Contributing Companies' Prepaid Legal Services Fund herewith affix our signatures this ____ day of ________________, 2024.

Warehouse Employees Union Local No. 730 Health and Welfare Trust Fund

UNION TRUSTEES	**EMPLOYER TRUSTEES**
By:____________________	By:____________________
By: ____________________	By: ____________________
By: ____________________	By: ____________________

Warehouse Employees Union Local No. 730 Pension Trust Fund

UNION TRUSTEES	**EMPLOYER TRUSTEES**
By:____________________	By:____________________
By: ____________________	By: ____________________
By: ____________________	By: ____________________

Warehouse Employees Union Local No. 730 & Contributing Companies' Prepaid Legal Services Fund

UNION TRUSTEES	**EMPLOYER TRUSTEES**
By:____________________	By:____________________
By: ____________________	By: ____________________
By: ____________________	By: ____________________