

Alternative Disputes Resolution Agreement ("ADR")

Between the
9th District,
International Brotherhood of Electrical Workers
and the
District 9,
National Electrical Contractors Association

This Agreement is made and entered into the 1st day of October, 1994, by and between the signatory Chapter of the National Electrical Contractors Association (hereinafter referred to as "NECA") and signatory Local Union of the International Brotherhood of Electrical Workers (hereinafter referred to as "Union"). The term "parties" as used herein shall refer to NECA and the Union. It shall apply only to firms who sign a Memorandum of Understanding to be bound by the terms of the Agreement.

ARTICLE I PURPOSE

1.01 It is the intent of this Agreement to provide employees who claim compensation for personal injuries and occupational diseases (hereinafter referred to as "injuries") under the California Workers' Compensation Law (hereinafter referred to as the "Law") with improved access to high-quality medical care, and to reduce the number and severity of disputes and provide an efficient and effective method of dealing with disputes resulting from such injuries by utilizing the provisions of SB 983, Chapter 117 of the 1993 session of the State of California Legislature (Labor Code Section 3201.5) to establish a system of medical care delivery and dispute prevention and resolution which may be used by any NECA contractor working in the State if California who is signatory to a collective bargaining agreement with an IBEW local union California.

ARTICLE II SCOPE OF AGREEMENT

2.1 This agreement which was negotiated by NECA and the IBEW shall apply to all firms who sign this Agreement or a memorandum of understanding

to be bound by this Agreement. The term "employer" as used herein, shall refer to any such a firm.

2.2 This Agreement shall apply only to injuries as defined by the Law sustained by employees covered by IBEW collective bargaining agreements during their employment by an employer in California during the term of this Agreement.

2.3 This Agreement shall remain in effect for a period of one year from the date of its execution by the parties. It shall continue in effect from year to year thereafter unless terminated by either party to the Agreement in the manner provided herein. Either party desiring to terminate this Agreement must notify the other, and the NECA/IBEW workers' Compensation Trust Fund established under this Agreement, in writing, at least 90 days prior to the anniversary date. Any employer wishing to withdraw from this Agreement may do so upon the anniversary date, provided it notifies the parties and the NECA/IBEW Workers' Compensation Trust Fund, in writing, at least 90 days prior to the anniversary date. Upon termination, or withdrawal, any case involving an injury that occurred during the term of the Agreement, or during the term this Agreement was applicable to the withdrawing

employer, shall continue and be resolved subject to the terms of this agreement.

2.4 This Agreement represents the complete understanding of the parties with required to the subject matter dealt with herein.

2.5 In any instance of conflict, the provisions of this Agreement shall take precedence over provisions of the Law, so far as permitted by the provisions of Labor Code 3201.5 of the State of California.

2.6 There shall be a labor-management safety and health committee established pursuant to the collective bargaining agreement between the parties hereto. The parties to this Agreement shall promulgate rules for the operation of the labor-management safety and health committee.

2.7 The parties to this Agreement have developed an exclusive list of vocational rehabilitation providers attached hereto and marked Attachment "A".

2.8 The parties to this Agreement agree that it is in their mutual best interest to establish a fee schedule limiting the fees which may be charged for mediation, arbitration, vocational rehabilitation, medical treatments, attorneys fees, providing documents and narratives, and any other associated costs. This list is attached hereto and marked Attachment "B".

ARTICLE III

AUTHORIZED MEDICAL PROVIDERS

3.1 All medical and hospital services required by employees subject to this Agreement as the result of a compensable injury, shall be furnished by health care professionals and facilities selected by the employee from a list of health care professionals and facilities. This list (hereinafter referred to as "authorized providers") shall include, but not be limited to, the local health and welfare trust preferred provider network. This list can be changed at any time by the Board of Trustees for the NECA/IBEW Workers' Compensation Trust Fund. Any health care professionals not listed on the approved list of "authorized providers" may be submitted to the Board of Trustees for review and inclusion. All authorized providers shall be board certified in their

respective specialties, assuming that such is available in the geographic area.

3.2 In case of emergency when no authorized provider is available, the employee may seek treatment from a health care professional or facility not otherwise authorized by this agreement, to provide treatment during the emergency. Responsibility for treatment shall be transferred by the employer or its insurance carrier to an authorized provider as soon as possible, consistent with sound medical practices.

3.3 After selecting an authorized provider to furnish treatment for a particular injury, an employee may change once to another authorized provider.

3.4 When referred by the authorized provider to another provider in a particular specialty, the employee may also change once to another authorized provider in such specialty. Additional changes will be made only with written agreement of the employer.

3.5 Neither the employers nor its insurance carrier shall be responsible for the cost of medical services furnished by a health care professional or facility not authorized pursuant to this Agreement. Nothing in this Article shall be construed to create a right for an employee to receive care at employer expense which is not reasonably required to cure or relieve a work related injury.

3.6 The list of authorized providers shall include, but not be limited to, providers within the following specialties:

- Cardiology
- Chiropractic
- Dermatology
- General Practice
- Internal Medicine
- Neurosurgery
- Neurology
- Occupational Medicine
- Oncology
- Ophthalmology
- Orthopedics
- Psychiatry
- Pulmonary/Respiratory
- Radiology

3.7 The parties to this Agreement may include providers from additional specialties or providers who are not specialists, on the list of authorized providers. In the event that an authorized provider furnishing treatment to an employee determines that consultation or treatment is necessary from a specialty for which no authorized provider has been selected through this agreement, or in the event that distance makes it impractical for treatment from the authorized provider, the authorized provider and injured employee shall mutually select the additional specialist or the additional provider who offers treatment at a distance not greater than 40 miles in one direction for the employee.

3.8 All prescription medicines required by virtue of injury subject to this Agreement shall be furnished by the employer through a prescription medicine provider or providers agreed to by the parties to this Agreement, and as listed. This list is attached hereto and marked Attachment "C". The parties to this Agreement may change the list at any time by mutual agreement. Except in those instances in which an authorized medical provider determines that due to time constraints or other valid medical reasons, use of another prescription source is required.

3.9 Both the employer and the employee may request a second opinion from an authorized provider regarding diagnosis, treatment evaluation of related issue. Only one such second opinion shall be permitted by either party for any issue.

3.10 Both the employer and the employee shall be bound by the opinions and recommendations of the authorized provider selected in accordance with this agreement. In the event of disagreement with an authorized provider's findings or opinions, the sole recourse shall be to obtain a second opinion through dispute prevention and resolution procedures established in this agreement.

ARTICLE IV

DISPUTE PREVENTION AND RESOLUTION

The parties hereto acknowledge that the provisions of California law governing the adjudication of disputed Workers' Compensation claims have resulted in delay, increased expense and other inefficiencies which result in undue detriment to employees and employers. In recognition of the foregoing, the

parties hereby establish the exclusive alternative dispute resolution system set forth below.

4.1 The dispute prevention and resolution program will consist of three components:

Ombudsman
Mediation
Arbitration

4.2 This program shall be used in place of the filing of an application with the WCAB. Any claim subject to this agreement filed with the WCAB for resolution will immediately be removed and placed within the program established by this Agreement. This is the sole means of dispute resolution and no dispute shall proceed to the California Workers' Compensation Appeals Board until it has completed the mediation and arbitration process defined by this agreement.

4.3 The Ombudsman will be a NECA/IBEW Workers' Compensation Trust Fund employee selected and paid by the trust. The Ombudsman shall receive complaints from employees who have filed claims for Workers' Compensation benefits subject to this Article and upon request of the employee shall assist the employee in attempting to resolve those disputes with the workers' Compensation insurer of an employer subject to this Article. The Ombudsman shall, upon request of an employee, assist the employee in filing request for mediation and arbitration related to alleged work-related injuries subject to this Article.

4.4 An employee covered by this Agreement who believes that he/she is entitled, including medical and hospital services, shall notify the Ombudsman. If the issue cannot be resolved to the satisfaction of the employee within ten working days, the employee shall apply for mediation on the form attached hereto and marked Attachment "D". The Ombudsman shall assist the employee in filing with the mediator the application. The employee and employer may extend the ten working day period by mutual agreement. No issue will proceed to mediation without first being presented to the Ombudsman. The response of the Ombudsman to the employee shall be explained in terms which are readily understandable by the employee. The Ombudsman will maintain a log recording all Ombudsman activity, including the date of each notification and the date of each response.

The employer shall also be allowed to file disputes with the Ombudsman.

4.5 Application for mediation shall be made not more than 60 days after the Ombudsman has responded to the employee's or employer's notification. Failure to mediate will bar any further right to adjudicate the issue. Any application for mediation shall be assigned to a mediator selected under this Agreement within three (3) working days of a receipt of a request. The mediator will contact the parties to the dispute, including the insurance carrier and take whatever steps the mediator deems reasonable to bring the dispute to an agreed conclusion.

4.6 The mediator subject to this Agreement shall be from the list mutually agreed to by the parties to this Agreement and who has experience and is knowledgeable in the workers' compensation industry. This list is attached hereto and marked Attachment "E". As needed, this list may be modified by the NECA/IBEW Workers' Compensation Trust Fund Committee.

4.7 Mediation shall be completed in not more than 10 working days from the date of referral, except that in no event shall an issue be permitted to proceed beyond mediation until and unless the moving party cooperates with the mediator and the mediation process, or if both the employee and the employer mutually agree to an extension.

4.8 Neither party will be permitted to be represented by legal counsel at mediation. The fact that an employee or employer representative or its workers' compensation carrier's representative has had legal training or is a licensed attorney shall not bar such person from participating in mediation unless he or she seeks to participate on the basis of a lawyer-client relationship. All communications between the mediator and the parties shall be directly with the parties, and not through legal counsel.

4.9 Within 30 calendar days after the completion of the mediation process, any party not satisfied with the outcome shall file with the mediation board a request that the matter be referred for arbitration. Upon receipt of such a request, the board shall immediately refer the matter to the arbitrator agreed to by the parties to this Agreement for arbitration. The arbitration date will be set with sufficient

advance notice to permit the parties to retain and/or consult with legal counsel.

4.10 The arbitrator shall have experience and be knowledgeable in the workers' compensation dispute process and shall have been at one time a California Workers' Compensation judge. The arbitrator shall be selected by the administrator from the list negotiated by the parties to this Agreement attached hereto and marked Attachment "F". As needed, this list may be modified by the NECA/IBEW Workers' Compensation Trust Fund Committee.

4.11 Arbitration will be conducted pursuant to the rules of the American Arbitration Association, using the arbitrator agreed to by the parties to this Agreement. Unless the parties to the matter otherwise agree, arbitration proceeding shall be completed within 30 days after referral, and an arbitration decision rendered within 10 working days of the completion of the proceedings. The arbitrator's decision shall be written in form consistent with the WCAB practices.

4.12 No written or oral offer, finding or recommendation made during the mediation process by any party or mediator shall be admissible in the arbitration proceedings except by mutual agreement of the parties.

4.13 Whenever the employee prevails at arbitration, either through the entry of a favorable arbitration decision or by agreement with the employer at any time subsequent to mediation, the employer shall pay a fee to the employee's attorney in an amount equal to the prevailing wage of attorneys practicing in workers' compensation for the geographical area which the dispute has arisen. The arbitrator may increase or decrease such fee based on the complexity of the dispute or the effort expended by the attorney. This amount shall not exceed 12% of the P.D. award.

4.14 The mediator or arbitrator may in his sole discretion appoint an authorized health care professional to assist in the resolution of any medical issue, the cost to be paid by the insurance carrier, unless voluntarily paid by the employer.

4.15 Arbitration shall be subject to the provisions of Labor Code Section 3201.5. The decision of the arbitrator shall be subject to review by the State of California Workers' Compensation Appeals Board in

accordance with California law, be made by its workers' compensation insurance carrier. Similarly, all actions required by law to be undertaken by the insurance carrier rather than the employer shall be performed by the employer's workers' compensation insurance carrier.

6.2 Upon termination of this Agreement the parties and the employers shall take whatever steps are necessary to insure that all obligations under this Agreement are fulfilled until all claims subject to this Agreement are resolved.

6.3 On projects where the owner, developer or general contractor supplies a project wrap-around insurance that includes worker' compensation insurance, the employer at his or her option may suspend this Agreement for that specific project.

6.4 In the event of legal action contesting the legality of this Agreement, or any portion of it, the NECA/IBEW Workers' Compensation Trust Fund shall pay the cost of defending the Agreement, and shall actively assist in such defense, and shall solicit the participation and financial assistance of other interested parties in such defense.

6.5 If any provision of this Agreement or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

EXCLUSIVE LIST
OF VOCATIONAL REHABILITATION PROVIDERS

Those vocational rehabilitation providers that contract with and are set forth on the vocational rehabilitation provider list of Calco Insurance.

FEE SCHEDULES

1) **Attorneys Fee Schedule**

The Arbitrator shall award the appropriate attorney fee in all cases. The attorney's fee shall be the reasonable fee as determined by the arbitrator or an amount not greater than 12% of the permanent disability award, whichever is the lesser.

2) **Medical Treatment Fee Schedule**

All medical treatment fees and costs shall not exceed those authorized by the State of California Official Medical Fee Schedule or an amount agreed upon as between the authorized provider and Calco Insurance, whichever is the lesser.

3) **Medical-Legal Fee Schedule**

All costs and charges for medical legal expenses as defined in Section 4620 of the California Labor Code shall not exceed those authorized by the State of California and set forth in the revised Fee Schedule for Medical-Legal Expenses as adopted by the Administrative Director or an amount agreed upon as between the authorized provider and Calco Insurance, whichever is the lesser.

4) **Vocational Rehabilitation Fee Schedule**

All costs and charges for vocational rehabilitation services as defined in Section 4635 of the California Labor Code shall not exceed those authorized by Section 139.5 of the California Labor Code.

5) **Mediator and Arbitrator Fees and Expenses**

All costs and charges for mediation and arbitration shall not exceed those provided for pursuant to contract between the Trust or Calco Insurance and the mediator, arbitrator or entity providing mediation and arbitration services.

6) **Copies of Documents**

The Board of Trustees of the NECA/IBEW Workers' Compensation Trust Fund shall establish a schedule of reasonable fees and charges for the furnishing of copies, certified or otherwise, of related documents and writings.

AUTHORIZED LIST

PRESCRIPTION MEDICINE PROVIDERS

The authorized list of prescription medicine providers shall be those prescription medicine providers set forth in the list of authorized providers attached to this Agreement or as duly licensed to provide such prescription medicines by the State of California.

APPLICATION FOR MEDIATION

(If multiple issues, submit an application for each issue.)

1) EMPLOYEE _____ EMPLOYER _____
 Address: _____ Address: _____

 Telephone No. _____

2) SOCIAL SECURITY NUMBER _____

3) DATE OF INJURY/ILLNESS _____
(Month) (Day) (Year)

4) BODY PART AFFECTED _____

5) BIRTH DATE _____
(Month) (Day) (Year)

6) OCCUPATION _____

7) DATE ISSUE PRESENTED TO OMBUDSMAN _____
(Month) (Day) (Year)

8) DATE OF OMBUDSMAN'S RESPONSE _____
(Month) (Day) (Year)

9) EXPLAIN THE ISSUE/PROBLEM PRESENTED TO THE OMBUDSMAN:
(Attach additional pages if necessary)

DATED: _____
Filing Party _____

LOCAL AREA RATIFICATION

This Agreement is made and entered into the _____ day of _____, 199__, by and between _____ Chapter of the National Electrical Contractors Association (hereinafter referred to as "NECA") and Local Union No. _____ of the International Brotherhood of Electrical Workers (hereinafter referred to as "Union"). The term "parties" as used herein shall refer to NECA and the Union.

SIGNED FOR _____ CHAPTER

SIGNED FOR LOCAL UNION _____

Name

Name

DATE: _____

SUBJECT TO APPROVAL OF THE INTERNATIONAL
PRESIDENT OF THE INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO.

MEMORANDUM OF UNDERSTANDING

In signing this memorandum of understanding, the undersigned firm hereby agrees to be bound by all the terms and provisions of the Agreement on Workers' Compensation Alternate Disputes Resolution Procedure (hereinafter, the "Workers' Compensation Agreement") between the _____ Chapter of the National Electrical Contractors Association and Local Union _____ of the International Brotherhood of Electrical Workers. This memorandum of understanding shall become effective on the ___ day of 199__. It shall remain in effect until the earlier of the termination of this memorandum of understanding or of the workers' Compensation Agreement, in the manner provided in the Workers' Compensation Agreement.

The undersigned firm also agrees to be bound by the terms of the NECA/IBEW Workers' Compensation Trust Agreement and Funding Agreement. In doing so said firm authorizes California Casualty to assess and transmit to the Trust two percent (2%) of the premium earned by CCIE under the policy issued to the firm.

NAME OF FIRM

Type or Print

SIGNED FOR THE EMPLOYER

SIGNED FOR LOCAL UNION _____, IBEW

Original Signature

Original Signature

Title

Title

Date

Date

AUTHORIZED PROVIDERS

HEALTH CARE PROFESSIONALS AND FACILITIES LIST

This list can be changed at any time by the Board of Trustees for the NECA/IBEW Workers' Compensation Trust Fund. This list shall be referred to as "authorized providers" and shall initially include:

- 1) The physician that the employee has designated in writing as his or her personal physician, provided the employee has notified his or her employer in writing prior to the date of the industrial injury of the name, address and telephone number of such designated personal physician.
- 2) The local health and welfare trust preferred provider network.
- 3) Those health care providers set forth in the Admar Southern California Providers Directory.
- 4) Those health care providers set forth in the Preferred Health Network Provider Directory.
- 5) Those health care providers set forth in:
 - (a) The Blue Shield of California, September, 1993, Directory of Participating Dentists, Northern California;
 - (b) The Blue Shield of California, June, 1993, Director of Physician Members Preferred Hospitals, Northern California;
 - (c) The Blue Shield of California, October, 1993, Directory of Participating Health Professionals, Northern California Edition.
- 6) Those health care providers set forth in the current directory for Foundation For Medical Care For Mendocino & Lake Counties.
- 7) Those health care providers set forth in the PPO Provider Directory, February, 1994, Sonoma and Napa Counties of the Foundation For Medical Care of Sonoma County.
- 8) Those health care providers set forth in the current directory of Participating Providers of Marin Foundation For Medical Care, Inc.
- 9) Those health care providers set forth in the Directory of Participating Physicians of Humboldt-Del Norte Foundation For Medical Care.
- 10) Those health care providers set forth in the Preferred Provider Directory, Fall 1993, of the San Diego Foundation For Medical Care.
- 11) Those health care providers set forth in the current Directory of Participating Physicians of Interplan for Northern & Central California.

AUTHORIZED PROVIDERS

HEALTH CARE PROFESSIONALS AND FACILITIES LIST

(continued)

- 12) Those health care providers set forth in the January 1994 Directory of Participating Physicians and Hospitals of the Sacramento Area Electrical Workers Health and Welfare Plan.
- 13) Those health care providers set forth in the directory of the Participating Hospital Program of the Electrical Workers Health & Welfare Trust Fund for Contra Costa County.
- 14) Those health care providers set forth in the current directory or directories of preferred provider organizations (PPO's) of the Electrical Workers Health & Welfare Trust Fund for San Mateo County.
- 15) Those health care providers set forth in the 1992-1993 Providers Directory of the Foundation For Medical Care of San Bernardino County.
- 16) Those health care providers set forth in the directory of November 1993 Participating Member Physicians, Hospitals and Allied Providers of the Coastal Health Care Administrators.
- 17) Those health care providers set forth in the Directory of Participating Hospitals, Physicians and Physical Therapists of Affiliate Health Funds (AHF), Southern California IBEW-NECA TRUST FUND, April 1994.
- 18) Those health care providers set forth in the Directory of Participating Providers in Southern California of COMMUNITY CARE NETWORK.
- 19) Those health care providers set forth in the Directory of Participating Providers in Northern and Central California of COMMUNITY CARE NETWORK.
- 20) Those physicians appointed by, and in good standing with, the Industrial Medical Council of the State of California (IMC), as qualified medical evaluators (QMEs) may be selected for the purpose of evaluating medical issues.