

EARNHARDT MANAGEMENT COMPANY  
SECTION 125 PRE-TAX PREMIUM CONVERSION PLAN  
*(Effective January 1, 2016)*

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**INTRODUCTION**

This Plan document is adopted by the Sponsor effective as of January 1, 2016 and amends and restates the prior Plan document in its entirety. The Plan is intended to qualify as a cafeteria plan under Code Section 125 and to comply with Code Sections 105, 106, and 223, as applicable. Accordingly, the Plan shall at all times be construed and administered in a manner consistent with the requirements of Code Sections 105, 106, 125, and 223 and rulings and regulations thereunder.

**ARTICLE I  
DEFINITIONS**

As used herein, the following words and phrases shall have the meanings specified below unless the context clearly requires a different meaning.

1.1 *Code* means the Internal Revenue Code of 1986, as amended from time to time. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provisions of any legislation which amends, supplements, or replaces such section or subsection.

1.2 *Coverage Period* means the Plan Year, with the following exceptions: (a) for Employees who first become eligible to participate during a Plan Year, the Coverage Period means the portion of the Plan Year following the date on which participation commences; and (b) for Employees who terminate participation during a Plan Year, the Coverage Period means the portion of the Plan Year prior to the date on which participation terminates.

1.3 *Dependent* means a Participant's Spouse or any of the Participant's dependents within the meaning of Code Section 152, subject to the following modifications. For purposes of Employee Benefit Program coverage, the definition of dependent is modified as provided in Code Section 105(b) and includes any natural child, stepchild, legally adopted child (or child legally placed for adoption) or eligible foster child of the Employee, whether married or unmarried, to age 26.

1.4 *Effective Date* means January 1, 2016, the effective date of this Plan document.

1.5 *Election Period* means the period of time commencing prior to each Coverage Period and ending prior to the first day of each Coverage Period, during which eligible Employees may elect to make Salary Reductions under this Plan. The initial Election Period for an Employee who first becomes eligible to participate in an Employee Benefit Program during a Coverage Period shall be the initial enrollment period for coverage established by the Sponsor in its discretion.

1.6 *Employee* means each individual who is classified by the Employer as a common law employee of the Employer. The term Employee shall not include (i) any leased employee as defined in Code Section 414(n)(2); (ii) any employee who is part of a collective bargaining unit unless the Employer and the representative for the collective bargaining unit have agreed to participation in this Plan; or (iii) any person whose relationship with the Employer is deemed by the Employer to be an independent contractor. For purposes of the foregoing, the Employer's employment classification of a person shall be binding and controlling on all parties and shall continue in effect regardless of any contrary classification

or reclassification of such person by any other person or entity including, but not limited to, the Internal Revenue Service, the Department of Labor, or a court of competent jurisdiction.

1.7 *Employer* means the Sponsor and any other member of the Sponsor's controlled group that has adopted this Plan with the approval of the Sponsor. The term "controlled group" shall include (i) a controlled group of corporations, within the meaning of Code Section 414(b), (ii) a group of trades or businesses under common control, within the meaning of Code Section 414(c), (iii) an affiliated service group, within the meaning of Code Section 414(m), or (iv) a trade or business required to be aggregated pursuant to Code Section 414(o).

1.8 *Employee Benefit Program* means any group medical, dental, vision or other benefit plan maintained by the Employer with respect to which Employees are offered the opportunity to pay the Employee's share of the cost of coverage on a pre-tax basis through this Plan.

1.9 *ERISA* means the Employee Retirement Income Security Act of 1974, as amended from time to time.

1.10 *Highly Compensated Individual* means an individual defined in Code Section 125(e).

1.11 *Health Savings Account (or HSA)* means a health savings account, if any, established under Section 223 of the Code. Such arrangements are individual trusts or custodial accounts, each separately established and maintained by an Employee with a qualified trustee/custodian.

1.12 *High Deductible Health Plan* means the high deductible health plan, if any, offered by the Employer that is intended to qualify as a high deductible health plan under Section 223(c)(2) of the Code, as described in materials provided separately by the Employer.

1.13 *HSA Benefits* means the benefits described in Article XI.

1.14 *HSA-Eligible Employee* means an Employee who is eligible to contribute to an HSA under Section 223 of the Code and who has elected qualifying coverage under the High Deductible Health Plan and who has not elected any disqualifying coverage under a non-High Deductible Health Plan.

1.15 *Key Employees* means those Employees defined in Code Section 416(i) and the regulations thereunder.

1.16 *Participant* means any Employee who becomes a Participant as provided in Article II.

1.17 *Plan* means the Earnhardt Management Company Section 125 Pre-Tax Premium Conversion Plan document set forth herein, as amended from time to time.

1.18 *Plan Administrator* means the person or committee designated by the Sponsor to serve in such capacity. If the Sponsor fails to designate a person or committee to serve as the Plan Administrator, the Sponsor shall fulfill such role.

1.19 *Plan Year* means the 12-month period beginning each October 1 and ending the ensuing September 30.

1.20 *Qualified Change in Status* means an event with respect to an Employee that would allow such Employee to revoke or modify his Salary Reduction election during a Coverage Period, in accordance with Code Section 125 and the regulations or other guidance issued thereunder as amended

from time to time. Code Section 125 and the regulations generally provide that existing elections may be modified or revoked under one or more of the following circumstances:

(a) If the Employee and/or his dependents are enrolling for group health coverage pursuant to the special enrollment rules set forth in Code Section 9801(f), including the special enrollment rights described in Section 8.8;

(b) If the Employee has one or more of the following "change in status" events: a change in the legal marital status of the Employee; a change in the number of dependents of the Employee; a change in employment status (including worksite) of the Employee or his dependents; a dependent child ceasing to be eligible for dependent coverage; a change in the place of residence of the Employee and/or his dependents. In the case of such an event, an Employee's new Salary Reduction election must be consistent with such event to the extent required by the regulations;

(c) If the Employee is required to enroll his child under a health plan pursuant to a judgment, decree or order of a court;

(d) With respect to a health plan, if the Employee or his dependents become entitled to or ineligible for Medicare (Part A or B) or Medicaid coverage (other than coverage consisting solely of coverage for pediatric vaccines);

(e) With respect to a health plan, if there is a significant change in the cost or coverage of a benefit option or a new benefit option is added or an existing benefit option is eliminated; or

(f) With respect to a health plan, if the Participant takes a leave pursuant to the Family and Medical Leave Act.

The Plan Administrator, in its discretion, shall determine whether a Participant has incurred a Qualified Change in Status based on all the relevant facts and circumstances and in accordance with the rules and regulations issued under Code Section 125.

1.21 *Salary Reduction* means the amount by which a Participant authorizes the Employer to reduce his salary in order to provide for Employer contributions in lieu of contributions otherwise required from the Employee to participate in an Employee Benefit Program. Compensation shall be reduced pursuant to an election made by such Participant during the applicable Election Period.

1.22 *Sponsor* means Earnhardt Management Company or any successor or successors that continue to maintain the Plan.

1.23 *Spouse* means the legally married spouse of a Participant under applicable state law, unless legally separated by court decree. A Participant's Spouse may be the same or opposite-sex for purposes of the tax benefits of this Plan; however, whether a same-sex spouse is eligible for the Employer's health and welfare plans will be determined by the terms of those plans.

## **ARTICLE II ELIGIBILITY**

2.1 *Eligibility to Participate.* Each active Employee shall automatically become a Participant in this Plan after satisfying the following requirements:

- (a) he is eligible to participate in an Employee Benefit Program; and
- (b) he irrevocably elects to participate in an Employee Benefit Program in the manner designated by and acceptable to the Plan Administrator during the applicable Election Period.

An Employee who becomes a Participant in this Plan pursuant to the foregoing shall be deemed to have elected to pay for his share of his contributions otherwise due under such Employee Benefit Program by pre-tax Salary Reduction. An Employee may not pay for his share of any contributions under an Employee Benefit Program on an after-tax basis, except in the case of dependent coverage which cannot be paid for with pre-tax dollars under federal tax laws.

As each new Employee completes the employment requirements to be eligible for an Employee Benefit Program, he shall be eligible to participate in this Plan as of the first day of such eligibility and shall continue to participate for the remainder of the Coverage Period, provided that he irrevocably makes an election in the manner designated by and acceptable to the Plan Administrator prior to his initial commencement of participation. If the Employee does not elect to participate in an Employee Benefit Program when first eligible, he shall not be eligible to participate in this Plan until the next Plan Year unless he incurs a Qualified Change in Status, in which case he may commence participation within 30 days (or such shorter or longer period as determined by the Plan Administrator) of such event. To receive HSA Benefits, an Employee must be an HSA-Eligible Employee and must satisfy any additional requirements specified in the High Deductible Health Plan.

2.2 *Cessation of Participation.* Each Participant shall continue as such until the earliest date upon which any one of the following events occurs:

- (a) the Participant terminates employment with the Employer for any reason including death, even though coverage or benefits may continue to the extent provided in the applicable Employee Benefit Program documents and/or by law;
- (b) the Participant ceases to be an eligible Employee;
- (c) the Participant revokes his election with respect to all coverage under an Employee Benefit Program during a Coverage Period pursuant to Section 3.4 or during the annual Election Period for the succeeding Coverage Period.

Subject to any specific limitations set forth herein or under any applicable Employee Benefit Program documents, a Participant shall continue to participate in this Plan during any leave of absence subject to the following:

- (d) If the Participant continues to receive compensation during such leave, the Participant's cash compensation will be reduced and applied in accordance with Article III.
- (e) If the Participant does not continue to receive compensation during such leave, the Participant's participation in this Plan shall be suspended.

Notwithstanding the foregoing, a Participant shall have the right to continue participation under the Employee Benefit Program during an unpaid leave of absence pursuant to the Family and Medical Leave Act of 1993 ("FMLA") by contributing his share of the contributions for his elected benefits on a pre-pay basis prior to beginning FMLA leave, on a pay-as-you-go basis on the same schedule as payments would have been made in the absence of FMLA leave, or any other manner as voluntarily

agreed between the Employer and Participant. A Participant may elect not to participate in the Plan during any FMLA leave, provided that upon the return of such Participant from his FMLA leave, the Participant shall be entitled to be reinstated under this Plan on the same terms as prior to taking such leave. The provisions of this Plan shall be interpreted and construed in accordance with the FMLA and the regulations promulgated thereunder, and in the case of conflict, the provisions of the FMLA shall control.

2.3 *Reinstatement of Former Participant.* If a Participant terminates employment with the Employer and is re-employed within 30 days of his date of termination, the Participant shall automatically be reinstated in the Plan and his elections in effect prior to termination of his employment shall be resumed unless an intervening event has occurred that otherwise would permit him to modify his elections in a manner consistent with Section 3.4. If a Participant terminates employment and is re-employed more than 30 days following his termination of employment, such Participant will be eligible to recommence participation in the Plan following satisfaction of the eligibility requirements of Section 2.1.

### **ARTICLE III BENEFITS**

3.1 *Benefits Provided.* The Plan provides Participants the opportunity to pay for their share of the contributions for coverage under an Employee Benefit Program on a pre-tax Salary Reduction basis.

3.2 *Election of Benefits and Authorization of Salary Reduction.* During each applicable Election Period, an eligible Employee shall elect coverage under one or more Employee Benefit Programs offered by the Employer. Any such election be made in the manner designated by and acceptable to the Plan Administrator. At the Plan Administrator's sole discretion, a Participant who fails to make a new election during any applicable Election Period may be deemed to have elected, for the ensuing Coverage Period, the same coverage in effect for the immediately preceding Coverage Period.

3.3 *Irrevocability of Benefit Election and Salary Reduction Designation.* A Participant's election of coverage under an Employee Benefit Program and his authorization of Salary Reduction for a Coverage Period shall be irrevocable with respect to such Coverage Period except that a Participant shall be entitled to change or revoke his election and authorization during a Coverage Period and make a new election and authorization if both the change or revocation and new election are made within 30 days of the applicable change event (or within 60 days for events described in Section 8.8) and are determined by the Plan Administrator to be on account of a Qualified Change in Status. Notwithstanding anything to the contrary, a Qualified Change in Status that results in ineligibility for coverage under an Employee Benefit Program shall automatically cause a corresponding change in election. Any new election under this Section shall be effective at such time as the Plan Administrator shall prescribe.

3.4 *Effective Date of Benefit Election.* A Participant's election of coverage under an Employee Benefit Program and his authorization or designation of Salary Reduction for the applicable Coverage Period shall be effective as of the first day of such Coverage Period.

3.5 *Limitation on Benefits for Certain Participants.* No more than twenty five percent (25%) of the statutory nontaxable benefits provided under this Plan may be provided to Key Employees. The Plan Administrator, in its absolute discretion, may reduce or reject elections of some or all Key Employees so that this limit will not be exceeded. The Plan will not discriminate as to eligibility or contributions and benefits in favor of Highly Compensated Individuals. The Plan Administrator, in its absolute discretion, may reduce or reject elections of Highly Compensated Individuals to comply with such requirements.



3.6 *Increase or Decrease in the Cost of Coverage.* Each Participant's Salary Reduction authorization shall be automatically increased or decreased, as the case may be, during the Coverage Period to reflect any change in the Participant's share of the cost of coverage under an Employee Benefit Program. Notwithstanding the foregoing, if during the Coverage Period the cost of coverage applicable to a benefit option selected by a Participant under an Employee Benefit Program significantly increases, the Plan Administrator, in its discretion, may permit each affected Participant to choose among the following options: (i) make a corresponding prospective increase in his Salary Reduction election, (ii) revoke his existing benefit election and, in lieu thereof, to receive prospective coverage under another benefit option providing similar coverage, or (iii) if no other benefit option providing similar coverage is available, cease coverage. If during a Coverage Period the cost of coverage applicable to a benefit option under an Employee Benefit Program significantly decreases, the Plan Administrator, in its discretion, may permit Employees (including Employees who are not Participants) to make new elections to receive prospective coverage under the benefit option which had a significant decrease in cost. The Plan Administrator shall have the sole discretion to determine whether or not a change in the cost of coverage for a benefit option results in a "significant increase" or "significant decrease" in cost.

#### **ARTICLE IV CONTRIBUTIONS**

4.1 *Contributions.* Participant contributions under this Plan shall be made through Salary Reduction with respect to each Employee Benefit Program in which the Participant is enrolled. Salary Reduction contributions shall be deducted for each payroll period during the Coverage Period. No Salary Reduction shall be made for any period during which the Employee does not receive compensation from the Employer.

#### **ARTICLE V ADMINISTRATION**

5.1 *Plan Administrator.* The Plan Administrator is the "named fiduciary" under the Plan, and is responsible for the operation and administration of the Plan. The Plan Administrator has the exclusive authority to interpret and construe the Plan, to correct defects, to supply omissions, to reconcile inconsistencies, to make factual determinations to the extent necessary to effectuate the Plan, and to determine all questions that arise in connection with the operation and administration of the Plan, in its sole and absolute discretion, including without limitation, all questions regarding eligibility for coverage and eligibility for and the amount of any benefits paid or payable under the Plan. The Plan Administrator's interpretations and decisions shall be controlling, binding and final on all Plan Participants and all other parties. This provision shall apply for all purposes under the Plan, regardless of whether or not the Plan specifically provides that any particular action by the Plan Administrator shall be in its sole discretion. The Plan Administrator, in its sole discretion, may designate, appoint or employ any number of persons or entities that it deems necessary and appropriate to assist it in the operation and administration of the Plan.

The Plan Administrator shall adopt rules for the administration of the Plan as it considers desirable, provided such rules do not conflict with the Plan. All rules, decisions and designations by the Plan Administrator under the Plan shall be made in a nondiscriminatory manner and persons similarly situated shall be treated alike.

The responsibility for the administration of the Plan shall be exercised with care, skill, prudence and diligence under the circumstances then prevailing that a prudent person, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims.

The Plan Administrator may delegate to any person or entity any of its powers or duties under the Plan. Such delegation shall be in writing and, to the extent of any such delegation, the delegate shall become the fiduciary responsible for the administration of this Plan and have the discretionary authority to determine eligibility for benefits or to construe the terms of the Plan (if the delegate is a fiduciary by reason of the delegation); in such event, references to the Plan Administrator shall apply instead to the delegate. Any action by the Plan Administrator in assigning any of its responsibilities to specific persons who are officers or employees of the Plan Administrator or any affiliates shall not constitute a delegation of the Plan Administrator's responsibilities but rather shall be treated as the manner in which the Plan Administrator has determined internally to discharge such responsibilities.

5.2 *Compensation and Expenses of Plan Administrator.* Unless otherwise determined by the Employer, the Plan Administrator shall serve without compensation for services as such but all expenses of the Plan Administrator shall be paid by the Employer. Such expenses shall include any expense incident to the functioning of the Plan, including but not limited to, attorneys' fees, accounting and clerical charges, and any other costs of administering the Plan.

5.3 *Indemnification.* The Employer shall indemnify any employee to whom it has delegated fiduciary duties under the Plan against any and all claims, losses, damages, expenses and liabilities arising from responsibilities in connection with this Plan, unless the same is determined to be due to gross negligence or willful misconduct.

## **ARTICLE VI CLAIM FOR BENEFITS**

6.1 *General.* Any claim for benefits under an Employee Benefit Program shall be made to the applicable administrator or insurance carrier and administered in accordance with the provisions of such plan. If the administrator or insurance carrier denies any claim, a Participant or beneficiary shall follow the claim review procedures set forth under such plan.

## **ARTICLE VII AMENDMENT/TERMINATION**

7.1 *Right to Amend or Terminate.* The Sponsor and/or Plan Administrator reserves the right to amend or terminate the Plan in whole or in part at any time and from time to time; provided that no such amendment or termination shall affect in any way the amount of or the terms of any benefits payable under the Plan prior to the effective date of such amendment or termination. No Plan Participant shall have or attain any vested right, contractual or otherwise, to any further contributions to the Plan by the Employer after the Plan has been terminated.

7.2 *Exclusive Benefit.* The Plan shall not at any time be used for or diverted to purposes other than for the exclusive benefit of the Participants. No amendment shall divest any person of his interest herein, except as may be required by the Internal Revenue Service or other governmental authority.

## **ARTICLE VIII MISCELLANEOUS**

8.1 *Governing Law.* The Plan shall be construed, regulated and administered according to the laws of the State of Arizona, except to the extent preempted by the Employee Retirement Income Security Act of 1974.

8.2 *Construction.* The headings and subheadings in the Plan have been inserted for convenience of reference only and shall not affect the construction of the provisions hereof. In any necessary construction of the Plan, the masculine gender shall include the feminine gender and the singular shall include the plural where applicable and vice versa.

8.3 *No Guarantee of Employment.* The Plan shall not be deemed to constitute a contract between the Employer and any Employee or to be consideration or an inducement for the employment of any Employee. No Participant in the Plan shall acquire any right to be retained in his Employer's employ by virtue of the Plan; nor upon his dismissal or upon his voluntary termination of employment, shall he have any right or interest in the Plan other than as specifically provided herein.

8.4 *Spendthrift Provisions.* Except as otherwise required by law, the benefit, right or interest of any Participant hereunder shall not be subject to the claims of creditors of the Participant nor are they subject to attachment, garnishment or other legal process. No Participant may assign, sell, borrow on or otherwise encumber his beneficial interest in this Plan, nor shall any such benefits be in any manner liable for or subject to the deeds, contracts, liabilities, engagements or torts of a Participant.

8.5 *No Guarantee of Tax Treatment.* The Plan Administrator and the Employer do not guarantee that any amounts paid for the benefit of any Participant are excludable from the Participant's income for federal, state or local income tax purposes or from wages for FICA purposes.

8.6 *Funding.* Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific benefit, but shall instead be considered general assets of the Employer. Furthermore, and unless otherwise required by applicable law, nothing herein shall be construed to require the Employer or the Plan Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

8.7 *Severability.* If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

8.8 *Children's Health Insurance Program.* Notwithstanding anything contained herein to the contrary, the Plan shall comply at all times with the Children's Health Insurance Program Reauthorization Act of 2009, as amended from time to time. Generally, such Act creates a 60-day special enrollment right, effective April 1, 2009, for employees and dependent children to enroll in an Employee Benefit Program under the following two circumstances: (a) termination of coverage due to loss of eligibility under Medicaid or a state-sponsored children's health insurance program ("CHIP"); and (b) eligibility for assistance under Medicaid or CHIP to help pay for coverage under the Employee Benefit Program.

## **ARTICLE IX HSA PROGRAM**

9.1 *HSA Benefits.* If the Employer maintains a High Deductible Health Plan, each HSA Eligible Employee may elect to make contributions pursuant to a Salary Reduction agreement to such Employee's HSA established and maintained outside the Plan by a trustee/custodian to which the Employer can forward contributions to be deposited. An HSA Eligible Employee may elect to increase, decrease or revoke his or her election on a prospective basis, subject to the administrative rules established by the Plan Administrator in its sole discretion.

9.2 *Contributions for Cost of Coverage for HSA; Maximum Limits.* The annual contribution for a Participant's HSA Benefits is equal to the annual benefit amount elected by the Participant. In no event shall the amount elected exceed:

(a) the statutory maximum amount for HSA contributions applicable to the Participant's High Deductible Health Plan coverage option (i.e., single or family) for the calendar year in which the contribution is made; plus

(b) an additional catch-up Contribution may be made for Participants who are age 55 or older.

In addition, the maximum annual contribution shall be reduced by any matching (or other) Employer contribution made on the Participant's behalf, if any, and prorated for the number of months in which the Participant is an HSA-eligible individual.

9.3 *Recording Contributions for HSA.* The HSA is not an employer-sponsored employee benefit plan – it is an individual trust or custodial account separately established and maintained by a trustee/custodian outside the Plan. Consequently, the HSA trustee/custodian, not the Employer, will establish and maintain the HSA. The Employer may select a single trustee/custodian to receive HSA Contributions or allow HSA Eligible Employees to direct contributions to a trustee/custodian of their choosing. Although the Employer may limit the number of HSA providers to which it will forward contributions that the HSA Eligible Employee makes via pre-tax Salary Reductions, such a list is not an endorsement of any particular HSA provider. The Plan Administrator will maintain records to keep track of HSA Contributions an HSA Eligible Employee makes via pre-tax Salary Reductions, but it will not create a separate fund or otherwise segregate assets for this purpose. The Employer has no authority or control over the funds deposited in a HSA.

9.4 *Tax Treatment of HSA Contributions and Distributions.* The tax treatment of the HSA (including contributions and distributions) is governed by Section 223 of the Code.


9.5 *Trust/Custodial Agreement; HSA Not Intended to be an ERISA Plan.* HSA Benefits under this Plan consist solely of the ability to make contributions to the HSA on a pre-tax Salary Reduction basis. Terms and conditions of coverage and benefits (e.g., eligible medical expenses, claims procedures, use of debit and credit cards, and investments) will be provided by and are set forth in the HSA, not this Plan. The terms and conditions of each Participant's HSA trust or custodial account are described in the HSA trust or custodial agreement provided by the applicable trustee/custodian to each electing Participant and are not a part of this Plan.

The HSA is not an employer-sponsored employee benefits plan. It is a savings account that is established and maintained by an HSA trustee/custodian outside this Plan to be used primarily for reimbursement of "qualified eligible medical expenses" as set forth in Section 223(d)(2) of the Code. The Employer has no authority or control over the funds deposited in a HSA. Even though this Plan may allow pre-tax Salary Reduction contributions to an HSA, the HSA is not intended to be an ERISA benefit plan sponsored or maintained by the Employer.

[Signature page to follow]

IN WITNESS WHEREOF, the Sponsor has caused this Plan document to be executed effective as of the Effective Date.

EARNHARDT MANAGEMENT COMPANY

By:   
Hal J. Earnhardt III

Title: President

Date: August 15, 2016