

**TRUST AND POOL AGREEMENT**

**FOR**

**MISSOURI FIRE FIGHTERS CRITICAL ILLNESS TRUST AND  
POOL**

**May 1, 2022**

# TABLE OF CONTENTS

Page

<b>ARTICLE 1</b>	<b>DEFINITIONS.....</b>	<b>2</b>
1.1	ADMINISTRATOR.....	2
1.2	AUTHORIZED INVESTMENT.....	2
1.3	BENEFICIARY.....	2
1.4	CODE.....	2
1.5	CUSTODIAN.....	2
1.6	FISCAL YEAR.....	2
1.7	INVESTMENT FUND.....	2
1.8	INVESTMENT MANAGER.....	2
1.9	MEMBER OF MEMBERS.....	2
1.10	MEMBERS REPRESENTATIVE.....	2
1.11	PARTICIPANT.....	3
1.12	PLAN.....	3
1.13	POOL.....	3
1.14	TRUST.....	3
1.15	Board of TRUSTEES.....	3
1.16	TRUST FUND.....	3
1.17	TRUSTEE.....	3
<b>ARTICLE II</b>	<b>ESTABLISHMENT OF THE TRUST AND POOL.....</b>	<b>3</b>
2.1	POOL ESTABLISHED.....	3
2.2	TRUST ESTABLISHED.....	3
2.3	LIMIT OF INTEREST – IMPOSSIBILITY OF DIVERSION.....	3
2.4	BOARD OF TRUSTEES’S ACCEPTANCE.....	3
<b>ARTICLE III</b>	<b>TRUSTEES AND SUCCESSOR TRUSTEES.....</b>	<b>4</b>
3.1	TRUSTEES.....	4
3.2	SUCCESSOR TRUSTEES.....	5
3.3	COMPENSATION.....	5
3.4	CHAIR AND OFFICERS; SUB-COMMITTEES.....	5
3.5	MEETINGS.....	5
3.6	PROXY.....	6
3.7	NO DELEGATES.....	6
3.8	QUORUM AND VOTING.....	6
3.9	ACTION WITHOUT A MEETING.....	6
3.10	CONFLICTS OF INTEREST.....	7
3.11	OFFICE LOCATION AND MEETING PLACE.....	7
3.12	AGENT FOR SERVICE OF LEGAL PROCESS.....	7
3.13	RULES AND REGULATIONS.....	7
<b>ARTICLE IV</b>	<b>DUTIES OF BOARD OF TRUSTEES.....</b>	<b>7</b>
4.1	DUTIES.....	7
(a)	<i>Receipt of Contributions.....</i>	7
(b)	<i>Management of Funds.....</i>	8
(c)	<i>Payments.....</i>	8
(d)	<i>Appointment of Administrator.....</i>	8
(e)	<i>Appointments of Committees.....</i>	8
<b>ARTICLE V</b>	<b>INVESTMENT OF TRUST ASSETS.....</b>	<b>8</b>
5.1	GENERAL INVESTMENT POWER/INVESTMENT FUNDS.....	8
(a)	<i>Authority of Trustees.....</i>	8
(b)	<i>Investment Funds.....</i>	8

(c)	<i>Funding Policy</i> .....	9
5.2	INVESTMENT MANAGERS.....	9
(a)	<i>Appointment</i> .....	9
(b)	<i>Contractual Arrangement</i> .....	9
(c)	<i>Board of Trustees's Duties</i> .....	9
(d)	<i>Failure to Direct</i> .....	10
(e)	<i>Termination of Appointment</i> .....	10
5.3	MANNER AND EFFECT OF DIRECTIONS.....	10
(a)	<i>Delegation of Authority to Custodian</i> .....	10
5.4	AUTHORIZATION OF DESIGNEE(S).....	10
<b>ARTICLE VI POWERS OF BOARD OF TRUSTEES.....</b>		<b>10</b>
6.1	GENERAL AUTHORITY.....	10
6.2	SPECIFIC POWERS.....	11
(a)	<i>Purchase of Property</i> .....	11
(b)	<i>Disposition of Property</i> .....	11
(c)	<i>Retention of Cash</i> .....	11
(d)	<i>Exercise of Owner's Rights</i> .....	11
(e)	<i>Registration of Investments</i> .....	11
(f)	<i>Borrowing</i> .....	11
(g)	<i>Purchase of Contracts</i> .....	12
(h)	<i>Execution of Instruments</i> .....	12
(i)	<i>Settlement of Claims and Debts</i> .....	12
(j)	<i>Establish Rules and Policies</i> .....	12
(k)	<i>Trustee Insurance</i> .....	12
(l)	<i>Risk Management</i> .....	12
(m)	<i>Delegation</i> .....	12
(n)	<i>Employment of Agents, Advisers and Counsel</i> .....	12
(o)	<i>Appointment of Custodian</i> .....	12
(p)	<i>Statutory Provisions</i> .....	13
(q)	<i>Power to do any Necessary Act</i> .....	13
6.3	AUTHORIZED INVESTMENTS.....	13
<b>ARTICLE VII CONTRIBUTIONS TO THE TRUST FUND.....</b>		<b>13</b>
7.1	MEMBER CONTRIBUTIONS.....	13
7.2	CONTRIBUTION ON ANNUAL BASIS/RATE STRUCTURE.....	13
7.3	FAILURE TO MAKE CONTRIBUTIONS.....	13
7.4	NO MULTI-YEAR OBLIGATION OF PUBLIC FUNDS.....	14
7.5	REPORTS.....	14
<b>ARTICLE VIII PARTICIPATION AND WITHDRAWAL OF MEMBERS.....</b>		<b>14</b>
8.1	PARTICIPATION IN TRUST BY MEMBERS.....	14
8.2	WITHDRAWAL BY MEMBER.....	15
8.3	SUCCESSORS AND ASSIGNS.....	15
8.4	POWERS OF THE MEMBERS.....	15
8.5	MEETINGS OF THE MEMBERS.....	16
8.6	MEMBER OBLIGATIONS.....	16
<b>ARTICLE IX ADMINISTRATION.....</b>		<b>17</b>
9.1	ACCOUNTING.....	17
(a)	<i>Books and Records</i> .....	17
(b)	<i>Accounting</i> .....	17
(c)	<i>Release</i> .....	17
(d)	<i>Valuations</i> .....	18
(e)	<i>Reliance on Administrator</i> .....	18
9.2	EXPENSES.....	18

<b>ARTICLE X</b>	<b>AMENDMENT OF TRUST; TERMINATION OF PLAN.....</b>	<b>18</b>
10.1	AMENDMENT OF TRUST.....	18
(a)	<i>Right to Amend</i> .....	18
(b)	<i>Exclusive Benefit</i> .....	19
10.2	TERMINATION OF PLAN.....	19
10.3	FINAL ACCOUNTING.....	19
<b>ARTICLE XI</b>	<b>MISCELLANEOUS .....</b>	<b>19</b>
11.1	NONALIENATION OF BENEFITS.....	19
11.2	BENEFIT.....	19
11.3	EFFECT OF PLAN.....	19
11.4	DISPUTE RESOLUTION.....	20
11.5	ENTIRE AGREEMENT.....	20
11.6	APPROVAL OF THE MEMBERS.....	20
11.7	LIABILITY FOR PREDECESSOR OR SUCCESSOR.....	21
11.8	LIABILITY FOR ACTS OF OTHERS.....	21
11.9	GOVERNMENTAL IMMUNITY.....	21
11.10	CONTROLLING LAW.....	21
11.11	EFFECTIVE DATE.....	21
11.12	EXECUTION IN COUNTERPARTS.....	21
<b>EXHIBITS</b>	<b>SIGNATORY AGENCIES .....</b>	<b>22</b>

## **TRUST AGREEMENT**

**THIS AGREEMENT** (“Agreement”) is entered by and between the undersigned Missouri governmental entities (who, together with and any other Missouri governmental entities that becomes a participating Member of this Pool under this Trust Agreement, are collectively the “Members”) and the undersigned Trustees constituting the Trustees for the Trust, as defined herein (“Trustees”; “Board of Trustees”).

### **WITNESSETH:**

**WHEREAS**, the Members are exempt from federal income tax under the Internal Revenue Code of 1986, as amended, as a state or territory of the United States, or any political subdivision, municipality or agency thereof, or an agency of such political subdivision or municipality (including any corporation owned or controlled by any state or territory of the United States or by any political subdivision, municipality, or agency); and

**WHEREAS**, the Members desire by and through this Agreement to create a Fire Fighters Critical Illness Benefits Trust, with said Trust to be considered a “pool” to provide a benefit plan that provides cancer benefits consistent with the provisions of Chapters 320 and 537 of the Missouri Revised Statutes (RSMO), as specified in the Missouri Fire Fighters Critical Illness Trust Cancer Benefits Plan, (collectively, the “Plan”); and

**WHEREAS**, the Members desire said Pool to be managed by a Board of Trustees; and

**WHEREAS**, the Members desire for the Trust to accept funds that shall from time to time be paid over to the Board of Trustees in accordance with the terms of this Agreement, together with the earnings and profits thereon, if any, and to hold the funds in Trust (the “Trust”), constituting a trust, and to make disbursements from the Trust in accordance with the provisions of this Agreement and the Plan; and

**WHEREAS**, the Members desire to appoint the Board of Trustees as a trustee to hold and administer the assets of the Plan as trustees, and manage the Pool in accordance with this Agreement; and

**WHEREAS**, the Board of Trustees has agreed to manage the Pool and to serve as trustee of the Trusts established under this Agreement; and

**WHEREAS**, the Members intend that the Trust hereby established, together with the Plan, shall constitute a trust exempt from taxation under Internal Revenue Code Section 115; and

**WHEREAS**, the Members intend that the Trust hereby established, together with the Plan, shall constitute a Pool and Plan for the purpose of RSMO 320.400 and 537.620 ;

**NOW, THEREFORE**, the Members and the Board of Trustees hereby mutually covenant and agree as follows:

## **ARTICLE I DEFINITIONS**

The following words and phrases, when used herein with an initial capital letter, shall have the meanings set forth below unless a different meaning plainly is required by the context. Any reference to a section number shall refer to a section of this Agreement unless otherwise specified.

- 1.1 **Administrator** means the person, committee or entity appointed by the Board of Trustees to serve as plan administrator of the Plan. The Administrator shall be retained by the Board of Trustees and shall administer the Plan pursuant to an administrative services agreement entered into between the Administrator and the Board of Trustees.
- 1.2 **Authorized Investment** means and is limited to those investments that are defined as permissible for investment of public funds in accordance with the Missouri Constitution Article IV, Section 15, and RSMO 30.270, as may be in effect from time to time.
- 1.3 **Beneficiary** means any person designated under the terms of the Plan to receive benefits payable upon the death of a Participant.
- 1.4 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.5 **Custodian** means a depository banking institution meeting the criteria of RSMO 110.010 and selected by the Trustees, which shall serve as custodian for the Trust Fund. To the extent any assets are held by any custodian other than the selected depository banking institution, such party shall also be considered a Custodian for the Trust and must meet the same statutory criteria.
- 1.6 **Fiscal Year** means the accounting year of the Trust, which shall commence on January 1 and end on December 31 of each year, except that the first year shall commence on the Effective Date and shall end on the immediately following December 31.
- 1.7 **Investment Fund** means any of the separate funds established by the Trustees for the investment of Plan assets.
- 1.8 **Investment Manager** means any person, corporation or other organization or association appointed by the Board of Trustees pursuant to the terms of Section 4.3 to manage, acquire or dispose of the assets of an Investment Fund.
- 1.9 **Members or Member** means those governmental employers listed on Exhibit A and any other governmental employer that becomes a participating Member under this Trust pursuant to Article VIII, below.
- 1.10 **Member Representative** means that person who has been designated in writing by a Member as its representative to the Pool.

- 1.11 **Participant** means an employee or former employee of the Member.
- 1.12 **Plan** means the Missouri Fire Fighters Critical Illness Cancer Benefits Plan set forth in the Plan Summaries of Benefits as such Plan may be amended from time to time.
- 1.13 **Pool** means the Pool established by this Trust and Pool Agreement.
- 1.14 **Trust** means the Missouri Fire Fighters Critical Illness Trust and Pool established by this Agreement, also referred to herein as “Pool”, “MFFCIT”, or MFFCIP.”
- 1.15 **Board of Trustees** means the Board of Trustees as appointed according to Section 3.1 of this Agreement, acting in their role as Trustees of the Trust and manager of the Pool as defined herein.
- 1.16 **Trust Fund** means the total amount of cash and other property held in the Trust under this Agreement.
- 1.17 **Trustee** means the members of the Board of Trustees and their successors as provided by this Agreement.

## **ARTICLE II ESTABLISHMENT OF THE POOL AND TRUST**

- 2.1 **Pool Established.** The Members do hereby establish a pool as defined under Missouri Statute for the provision of benefits as defined in RSMO 320.400, with funds for said Pool to be held in trust as defined in this Agreement, and the Pool to be managed by the Board of Trustees of said established trust.
- 2.2 **Trust Established.** The Members hereby establish with the Board of Trustees (the Board), as a funding medium for the Plan, a Trust consisting of the Trust Fund and such earnings, profits, increments, additions, contributions and appreciation thereto and thereon as may accrue from time to time.
- 2.3 **Limit of Interest - Impossibility of Diversion.** It shall be impossible at any time for any part of the Trust to be used for or diverted to purposes other than for the exclusive benefit of the Participants and Beneficiaries covered under the Plan, except that the payment of taxes and administration expenses may be made from Trust funds as hereinafter provided. Funds of the Trust may not be transferred to any other account or fund of a Member.
- 2.4 **Board of Trustees’s Acceptance.** The Board of Trustees accepts the Trust hereby created and agrees to perform the duties hereby required of the Board of Trustees.

## **ARTICLE III TRUSTEES AND SUCCESSOR TRUSTEES**

3.1 **Trustees.** The Trust and Pool shall be administered by the Board of Trustees of the Trust. The Board of Trustees shall be comprised of a minimum of seven (7) and a maximum of twelve (12) individual voting Trustees; provided, however, that the Board of Trustees shall be deemed duly constituted and may commence operations of the Pool and Trust upon seating of and execution of this Agreement by four (4) initial Trustees. Each Trustee must be a Participant and current employee of a Member, except as provided below.

**Initial Board of Trustees:** Trustees shall be appointed to the initial Board of Trustees from among the following:

- (a) One At-Large Trustee who is a Member Representative from the Missouri State Council of Fire Fighters (MSCFF);
- (b) One At-Large Trustee who is a Member Representative from the Missouri Association of Fire Chiefs (MAFC);
- (c) One At-Large Trustee who is a Member Representative from the Fire Fighters Association of Missouri (FFAM);
- (d) Advisory Trustee Dr. Sarah Janke, Director and Senior Scientist, NDRI-USA;
- (e) At least three (3) Trustees who are Member Representatives taken from the pool Members of any size or type, who are employees of the Member. There shall be one Member Representative Trustee position elected from each of the following regions: Western Missouri; Central Missouri; Eastern Missouri.

**Future Board of Trustees:**

- (a) At-Large” and Advisory Trustee positions shall remain as permanent Trustee positions unless removed by the subsequent amendment of this Agreement.
- (b) The number of Member Representative Trustees shall be no less than three (3) and may be increased at the discretion of the Board.
- (c) Regional designations as required for Member Representative Trustees shall remain as constituted for the initial Board of Trustees; except that if the Board of Trustees shall in their discretion expand the number of Trustee positions for Member Representatives such regional designations or districts may be expanded or reconfigured at the Discretion of the Board of Trustees.
- (d) Nominations for Trustees from the Members and representative organizations shall be made by elected governing body of the Member (i.e., district board of directors, city

council, MSCFF Board of directors) and be submitted to the Board of Trustees at such time as the Board may require.

- (e) The initial Board appointments notwithstanding, Trustees shall be elected by the members present at an Annual Meeting as provided for in this Agreement. Terms of the Trustees shall be three-year, overlapping terms or until their successors have been appointed, except that in the initial appointment of Trustees, two of them shall serve an initial term of one year, two shall serve an initial term of two years and two of them shall serve an initial term of no more than one year so as to establish the staggering of terms. The term shall begin on a January 1, and end at midnight on a December 31, except that the initial Trustees' terms shall begin upon the formation of the Pool.
- (f) A vacancy shall occur on the Board of Trustees when a Trustee (1) submits a written resignation to the Board of Trustees; (2) dies; (3) ceases to be a Participant; (4) ceases to be a Member Representative; (5) fails to attend three consecutive regular meetings of the Board of Trustees without the Board having entered upon the record its proceedings an approval for an additional absence or absences, except that such additional absence or absences shall be excused for temporary mental or physical disability or illness; or (6) is convicted of a felony. Any vacancy on the Board of Trustees shall be filled by appointment of the Board for the unexpired portion of the term. Upon appointment and written acceptance thereof, a successor Trustee shall have all the title, rights, powers and privileges and duties conferred or imposed upon the initial or predecessor Trustee.

3.2 **Successor Trustees.** No successor Trustee need examine the accounts, records and acts of any previous Trustee of any allocation of the Trust assets, nor shall such successor Trustee be responsible for any act or omission to act on the part of any previous Trustee. All Trustees and their successors from time to time acting under this Agreement shall have all the rights, powers and duties of the initial Trustees named in this Agreement, unless this Agreement is amended to provide otherwise.

3.3 **Compensation.** The Trustees shall receive no compensation for their services rendered under this Agreement other than any compensation as an employee of a particular Member. The Board of Trustees may adopt policies to reimburse Trustees for actual meeting expenses and attendance at the Board of Trustees meetings and other properly incurred expenses on Trust matters.

3.4 **Chair and Officers; Sub-Committees.** The officers of the Board of Trustees shall be the chair, vice chair and secretary/treasurer. The officers shall be appointed by the Board of Trustees from among its members. Appointment of officers shall occur at the first meeting of the Trustees each year. The Board of Trustees may establish sub-committees necessary or appropriate to the exercise of its powers.

3.5 **Meetings.** The Board of Trustees shall determine the time and place of its regular meetings. Special meetings of the Board of Trustees may be called by the chair or by four (4) Trustees. The Trustees shall be provided with at least ten (10) days prior written notice designating

the time, place and agenda of a regular meeting and three (3) days prior written notice designating the time, place and agenda of any special meeting. The manner of giving notice of meetings may include, without limitation, service by electronic mail to the Trustee's e-mail address. Regular and special meetings of the Board of Trustees may be held by telephone or electronic (internet-based) conference call. Any meeting at which all Trustees are present in person, or concerning which all Trustees have waived notice in writing, shall be a valid meeting without the requirement to provide any notice.

3.6 **Proxy.** Any Trustee may duly authorize in writing another Trustee to cast a vote on one (1) or more specific matters to be voted on at a meeting, on behalf of such Trustee. Any such written authorization must specify the matter or matters and be given for a specific meeting and may not carry over to subsequent meetings.

3.7 **No Delegates.** A Trustee and/or the Trustee's Member Representative may not appoint a delegate to serve in his or her place.

3.8 **Quorum and Voting.**

- (a) To constitute a quorum at any regular or special meeting of the Board of Trustees and for any action to be valid at such meeting, there must be present in person or by proxy a majority of the seated appointed Trustees.
- (b) Valid actions at meetings at which a quorum is present require the affirmative vote of a simple majority of those Trustees present and voting, except where an absolute majority is expressly required. Each Trustee shall cast his or her vote on each matter upon which action is taken, except where abstention from voting is required because of conflict of interest.
- (c) To approve the following items, an absolute majority vote (as defined below) is required:
  - (1) Annual budget;
  - (2) Incurring any debt other than liabilities in the ordinary course of business;
  - (3) Settling any litigation involving the Plan or Trust.

An absolute majority vote is the affirmative vote of at least four (4) Trustees, unless fewer Trustees are seated. Then a majority of the seated Trustees is needed.

3.9 **Action without a Meeting.** Any action that may be taken at a meeting of the Board of Trustees may be taken without a meeting upon the written consent of a sufficient number of the Trustees otherwise required to approve such action at a meeting and shall be effective on the date of the last consent, unless two (2) or more Trustees object to taking the action without a meeting. A copy of such written consent, signed by the Trustees, shall be provided within ten (10) days of the effective date of the consent to each Trustee. Consent may be signified by a signature of the Trustee on a written consent or by an electronic means, such as an affirmative email response to a request for confirmation of favorable action on a matter, approval of a specific resolution, etc.

3.10 **Conflicts of Interest.** Trustees should avoid the appearance of impropriety. A Trustee shall exercise care that the Trustee's independent judgment in the discharge of Board of Trustees responsibilities is not impaired as a result of conflicts between the interests of the Trust and the Trustee's own financial interests or personal interests, or the financial interests or personal interests of the members of the Trustee's family or associates. A Trustee shall not vote or decide upon any matter relating solely to himself or herself, or matter solely relating to their Member organization, or vote in any case in which his or her individual right or claim to any benefit under the Plan is particularly involved or in which he or she otherwise has a conflict of interest. In the event that a Trustee believes that he or she has a conflict of interest, the Trustee shall disclose the conflict to the Board of Trustees and shall refrain from participating in the matter to which the conflict relates. The minutes of the meeting where the disclosure is made shall reflect the disclosure and the fact of the Trustee having abstained from participation in the matter. A Trustee shall not use confidential information acquired in the course of the performance of Board of Trustees responsibilities to further that Trustee's own financial interests or personal interests, or the financial interests or personal interests of the members of the Trustee's family or associates.

3.11 **Office Location and Meeting Place.** All meetings of the Board of Trustees shall be held at a place designated at least annually by the Board of Trustees, or the chair, if the Board of Trustees is unable to reach an agreement regarding a meeting location. The Trust shall have its initial principal office at The Scarborough Law Office, LLC, 130 S. 2<sup>nd</sup> Street, Odessa, Missouri, 64076. Said designated principal office may be changed at the discretion of the Board of Trustees.

3.12 **Agent for Service of Legal Process.** The designated agent for service of legal process shall be The Scarborough Law Office, 130 S. 2<sup>nd</sup> St., Odessa, Missouri, 64076, or any successor agent as the Board of Trustees shall designate.

3.13 **Rules and Regulations.** The Board of Trustees shall have the power at any regular or special meeting to adopt bylaws, rules, regulations, and policies for the administration of the Trust, and for the conduct of the affairs of the Board of Trustees. Any bylaws, rules, regulations and policies of the Board of Trustees shall be consistent with the written provisions of the Trust Agreement and shall be binding upon all persons dealing with the Trust and upon any and all persons claiming any benefits under the Plan.

## **ARTICLE IV DUTIES OF BOARD OF TRUSTEES**

4.1 **Duties.** It shall be the duty of the Board of Trustees:

- (a) **Receipt of Contributions.** To receive any contributions paid to it under this Agreement in cash or in other property acceptable to the Board of Trustees. The Board of Trustees shall not be responsible for the calculation or collection of any contribution required to be paid by the Member to the Trust under the Plan but shall be responsible only for property actually received by it pursuant to this Agreement.

- (b) **Management of Funds.** To hold, invest, reinvest, manage, and administer (except as otherwise provided herein) all contributions so received, together with the income therefrom and any other increment thereon, for the benefit of Participants and their Beneficiaries in accordance with the terms of this Agreement.
- (c) **Payments.** To direct payments under the Plan; provided, however, that the Board of Trustees may rely upon the directions received from the Administrator, and the Administrator hereby indemnifies the Board of Trustees from any loss, claim, damage or liability, including legal expenses, that may arise in connection with the Board of Trustees acting upon such direction.
- (d) **Appointment of Administrator.** To appoint such person, committee or entity as the Board of Trustees shall determine to serve as Administrator of the Plan, and to contract with the Administrator for provision of its services. The Board of Trustees shall have the power to terminate the appointment of the Administrator upon written notice with or without cause.
- (e) **Appointment of Committees.** To appoint or delegate as necessary such persons, committees or entities as the Board of Trustees shall determine in its sole discretion to make and advise decisions under the Plan and Trust; provided, however, that the Board of Trustees may withhold to itself all authority and decision making to itself without delegation.

## ARTICLE V INVESTMENT OF TRUST ASSETS

### 5.1 **General Investment Power/Investment Funds.**

- (a) **Authority of Trustees.** Except as provided in Sections 5.2 and 5.3, the Board of Trustees shall have all authority and responsibility for the management, disposition and investment of the Trust Fund, and the Board of Trustees may consider the advice and directions of investment advisors if so appointed. The Board shall not issue any directions that are in violation of terms of the Plan or this Agreement, or the law governing investment of public funds as stated in the Missouri Constitution Article IV, Section 15, and RSMO 30.270, as may be in effect from time to time.
- (b) **Investment Funds.** The Trust may be divided into one or more separate Investment Funds, the number, makeup and description of which shall be determined from time to time by the Trustees. The Board of Trustees shall implement, terminate, value, transfer to and from and allocate the gains, losses and expenses among the Investment Funds in accordance with the advice and input of the Administrator, or their delegates, and, to the extent applicable under the terms of this Agreement, the directions of Investment Managers if so utilized.

- (c) **Funding Policy.** The Board of Trustees shall have responsibility for selecting or establishing and carrying out a funding policy and method, consistent with the objectives of the Plan. The Board of Trustees shall be responsible for the proper diversification of the Trust Fund, for the prudence of any investment of Trust assets consistent with State law, for compliance with statutory limitations on the amount of investment in securities, and for assuring that any such investments meet the requirements of State law.

## 5.2 **Investment Managers.**

- (a) **Appointment.** The Board may, but shall not be required to, appoint one or more Investment Managers to manage the assets of all or any one or more of the Investment Funds. Each such Investment Manager shall be either (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) a bank, as defined in such Act; or (iii) an insurance company qualified to perform the services of Investment Manager under the laws of more than one state. The Board of Trustees shall obtain from any Investment Manager so appointed by it a written statement acknowledging (i) that such Investment Manager is or on the effective date of its appointment will become a fiduciary with respect to the Trust assets under its management; (ii) certifying that such Investment Manager has the power to manage, acquire or dispose of Trust assets in the manner contemplated by the contract or other written instrument by which its appointment is or will be effected; and (iii) certifying that it is either an investment adviser, a bank or an insurance company which is qualified to be appointed as an Investment Manager under this Agreement.
- (b) **Contractual Arrangement.** The Board shall enter into a written contract or agreement with each such Investment Manager in connection with its appointment as such, and such contract shall be subject to such terms and conditions and shall grant to the Investment Manager such authority and responsibilities in the management of the applicable Investment Fund assets as the Trustees deem appropriate under the circumstances. Without limiting the generality of the foregoing, such contract may establish investment objectives for the assets of the Investment Fund(s) under the management of the Investment Manager and may limit the types of assets that may be acquired or held by such Investment Fund(s).
- (c) **Board of Trustees's Duties.** With respect to each Investment Fund the management of which has been delegated to an Investment Manager, the Board of Trustees shall at their discretion follow and carry out the instructions of the appointed Investment Manager with respect to the acquisition, disposition and reinvestment of assets of such Investment Fund, including instructions relating to the exercise of all ownership rights in such assets.

- (d) **Failure to Direct.** In the event that an appointed Investment Manager shall fail to provide direction the Board of Trustees with respect to investment of all or any portion of the cash held in an Investment Fund under its management, the Board of Trustees shall invest such cash only when appropriate, and in suitable fashion, to the best interest of the Trust.
- (e) **Termination of Appointment.** The Board shall have the power to terminate the appointment of an Investment Manager upon written notice with or without cause. Upon the termination of the appointment of an Investment Manager, the Trustees may (i) seek a successor Investment Manager with respect to the Investment Fund(s) formerly under the management of the terminated Investment Manager, (ii) merge or combine such Investment Fund(s) with other Investment Fund(s) or Trust assets, or (iii) invest the assets of such Investment Fund as the Trustees deem appropriate in accordance with the existing funding policy.

### 5.3 **Manner and Effect of Directions.**

- (a) **Delegation of Authority to Custodian.** The Custodian is delegated the authority and responsibility for receiving and carrying out the directions of the Board of Trustees, the Administrator, any Investment Manager or their designees. With respect to any assets held by a party other than Board of Trustees, the Board of Trustees is authorized and directed to delegate to the Custodian the authority and responsibility for receiving and carrying out the directions of the any Investment Manager or their designees. The Board of Trustees is authorized and directed to enter into such agreements with another Custodian as are deemed necessary or appropriate to affect such delegation.

- 5.4 **Authorization of Designee(s).** The Administrator and the Custodian may each appoint one or more designees to act on their behalf. If a designee (or designees) is appointed, the appropriate committee shall furnish the Board of Trustees with written documentation of the appointment and a specimen signature of each designee. The Board of Trustees shall be entitled to rely upon such documentation until the Board of Trustees is otherwise notified in writing.

## **ARTICLE VI POWERS OF BOARD OF TRUSTEES**

- 6.1 **General Authority.** In accordance with the stated intent of the Pool, directions of the Members, and advice of any Investment Managers as provided in Article V, the Board of Trustees shall have the power to manage the Pool, and receive, hold, manage, convert, sell, exchange, invest, reinvest, disburse and otherwise deal with the assets of the Trust, including contributions to the Trust and the income and profits therefrom, to be held in trust, without distinction between principal and income and in the manner and for the uses and purposes set forth in the Plan and as hereinafter provided.

- 6.2 **Specific Powers.** In the management of the Pool and Trust, the Board of Trustees shall have the following powers in addition to the powers customarily vested in Trustees by law and in no way in derogation thereof; provided, all such powers shall be exercised only upon due consideration and advice to the extent applicable of any duly appointed advisors and/or Investment Managers:
- (a) **Purchase of Property.** With any cash at any time held by it, to purchase or subscribe for any authorized investment (as defined in Section 6.3) and to retain the same in trust.
  - (b) **Disposition of Property.** To sell, exchange, transfer or otherwise dispose of any property at any time held by it.
  - (c) **Retention of Cash.** To hold cash without interest in administrative accounts for contribution and distribution processing in such amounts as may be reasonable and necessary for the proper operation of the Plan and the Trust.
  - (d) **Exercise of Owner's Rights.** The Members acknowledge and agree that the Board of Trustees shall have the right or power to vote proxies appurtenant to securities that it holds. The Members acknowledge and agree that the Board of Trustees shall have the power to make any review of, or consider the propriety of, holding or selling any assets held in the Trust Fund in response to any tender offer, conversion privilege, rights offering, merger, exchange, public offering and/or any proxy action for any of such assets.
  - (e) **Registration of Investments.** To cause any stock, bond, other security or other property held as part of the Trust to be registered in its own name or in the name of one or more of its nominees; provided, the books and records of the Board of Trustees shall at all times show that all such investments are part of the Trust.
  - (f) **Borrowing.** To the extent permitted by State law, to borrow or raise money for the purposes of the Trust in such amounts, and upon such terms and conditions, as appropriate in the best interest of the Trust; and, for any sum so borrowed, to issue its promissory note as Board of Trustees and to secure the repayment thereof by pledging all or any part of the Trust Fund to the extent permitted by State law; and no person lending money to the Board of Trustees shall be bound to see to the application of the money lent or to inquire into the validity, expediency or propriety of any such borrowing.

- (g) **Purchase of Contracts.** To apply for, purchase, hold, transfer, surrender and exercise all incidents of ownership of any insurance, re-insurance, excess or stop loss insurance or annuity contract that the Board of Trustees determines to purchase or that is necessary or appropriate to carrying out the purposes of the Plan. The Board of Trustees shall endeavor to obtain stop loss insurance to provide coverage for payment of benefits under the Plan above specified per claim and aggregate limits, provided such stop loss coverage can be obtained at a reasonable cost as determined by the Board of Trustees.
- (h) **Execution of Instruments.** To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments, which may be necessary or appropriate to carry out the powers herein granted.
- (i) **Settlement of Claims and Debts.** To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust, to commence or defend suits or legal or administrative proceedings and to represent the Trust in all suits and legal and administrative proceedings.
- (j) **Establish Rules and Policies.** To establish, to the extent consistent with this Agreement and the Plan, rules and policies necessary or appropriate to the administration of the Trust or the carrying out of the powers herein granted.
- (k) **Trustee Insurance.** To purchase on behalf of the Board of Trustees, Trustees' errors and omissions insurance or similar coverage in such amounts as are recommended by a licensed insurance broker for benefit plans and a Trust of similar size and purpose.
- (l) **Risk Management.** To establish reasonable risk management policies and procedures.
- (m) **Delegation.** To delegate in writing fiduciary responsibilities or ministerial powers and duties to such officers, agents, representatives and independent contractors as determined desirable, provide such delegation does not conflict with the provisions of this Agreement or the Plan.
- (n) **Employment of Agents, Advisers and Counsel.** To employ suitable agents, actuaries, auditors, accountants, investment advisers, brokers, consultants and counsel, and to pay their reasonable expenses and compensation.
- (o) **Appointment of Custodian.** The Board of Trustees shall designate a custodian to hold Trust assets. The Board of Trustees may change the custodian upon an affirmative vote of a majority of seated Trustees.

- (p) **Statutory Provisions.** To exercise powers and carry out obligations provided for in the Revised Statutes of the State of Missouri, in matters relating to the administration of the Plan and Trust, upon such terms and conditions as it may deem in the best interest of the Trust.
- (q) **Power to do any Necessary Act.** To do all acts which it may deem necessary or proper and to exercise any and all powers under the Plan and this Agreement upon such terms and conditions as it may deem in the best interests of the Trust.

### 6.3 **Authorized Investments.**

- (a) **General Definition.** “Authorized investment” as used in this Article VI shall mean and be limited to those investments that are defined as permissible for investment of public funds in Missouri Constitution Article IV, Section 15, and RSMO 30.270, as may be in effect from time to time.
- (b) **Responsibility for Compliance.** The responsibility for determining whether any investment of Trust assets complies with the terms of this Agreement and applicable law shall lie solely with the Board of Trustees.

## **ARTICLE VII CONTRIBUTIONS TO THE TRUST FUND**

7.1 **Member Contributions.** Subject to the limitations of this Agreement, each Member shall pay or cause to be paid contributions to the Trust at such times and in the amounts determined by the Board of Trustees as are necessary to ensure funding of the Trust is sufficient, that operation of the Trust is not hazardous to the public or Participants or which the Board of Trustees otherwise deems beneficial to protect the financial condition of the Trust. The Board of Trustees shall establish Member contributions consistent with this Agreement, the Plan and any guidelines consistent with this Agreement and the Plan as established by the Board of Trustees from time-to-time. The Trustees may, in their discretion, assess special or additional member contributions for any fiscal year if, in the discretion of the Trustees, it is in the best and necessary fiscal interests of the Trust and Pool.

7.2. **Contributions on Annual Basis; Rate Structure.** The contribution rate structure for Member contributions shall provide for contributions to be made on an annual basis. Contributions shall be sufficient to fund the projected benefits and applicable expenses for the Participants receiving benefits under the Plan.

### 7.3 **Failure to Make Contributions.**

- (a) If any Member fails to make its Member contribution to the Trust within thirty (30) business days after the date on which they are due, such contributions shall bear interest from the date due at the rate of return for the current Prime rate set on the

date when such contribution was first due plus one percent (1%), compounded monthly.

- (b) The Board of Trustees has the right, upon an affirmative vote of a majority of seated Trustees, with any Trustees from a Member in default excluded from the vote, should the delinquent Member not cure the delinquency within thirty (30) calendar days after the Administrator provides written notice to the Member of its delinquency, to terminate:
  - (1) such Member's participation in the Plan and Pool at the end of an additional thirty (30) calendar day notice period or the end of the Plan year of the Member's delinquency, if earlier, if such delinquency is not cured, and
  - (2) upon such termination, no claims submitted by Participants of the delinquent Member for benefits subsequent to the date of the termination, shall be paid by the Trust.
- (c) The Board of Trustees also has the right, upon an affirmative vote of a majority of seated Trustees, with any Trustees from the Member in default excluded from the vote, to notify the Participants of such delinquent Member that such Member's participation in the Plan and Pool has been or will be terminated.
- (d) Nothing herein, however, shall relieve the delinquent Member of its responsibility for benefits payable to its Participants.

7.4 **No Multi Year Debt Obligation of Public Funds.** This Agreement does not create a multiple fiscal year direct or indirect debt or other financial obligation. All financial obligations of a Member under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. The total of a Member's contributions for any Fiscal Year, including special or additional contributions, shall not exceed one and one half (1 ½) times the annual contribution billed for such Fiscal Year unless additional funds for payment thereof have been appropriated by the Member.

7.5 **Reports.** The Board of Trustees shall provide reports needed for purposes of administration of this Agreement and the Plan.

## **ARTICLE VIII**

### **PARTICIPATION, WITHDRAWAL AND OBLIGATIONS OF MEMBERS**

8.1 **Participation in Trust by Members.** The initial participating Members in the Trust are as set forth on Exhibit A. Additional Members may participate in the Trust subject to the approval of the Board of Trustees, which participation shall be effective as of the beginning of the next Fiscal Year or such other date as determined by the Board of Trustees. Participation in the Trust is limited to those employers who are governmental entities as defined in RSMO 610.010 (4), participating for the purposes defined by RSMO 537.620 and of RSMO 320.400, and a Member

may participate in the Trust for such purposes. The Board of Trustees reserves the right to require a new participating Member at the time of joining the Trust to contribute to the reserves of the Trust or to make such other appropriate financial contribution as determined by the Board of Trustees. The Board of Trustees may reject requested participation by any additional Member for any reason. To participate in the Trust, a Member must properly adopt and enter into this Trust Agreement and associated bylaws, which shall be evidenced by providing to the Board of Trustees (i) a certified copy of the resolution or ordinance of the governing body of the Member approving and entering into and agreeing to be subject to, this Agreement and associated bylaws, and (ii) a signed counterpart original of this Agreement duly executed by presiding officer of the governing body or other authorized officer of the Member. An electronic copy of a signed original shall suffice. In addition, the Board of Trustees may in its discretion allow for execution of required documents via digital signature.

8.2 **Withdrawal by Member.** A Member may withdraw from participation in the entire Trust on the following terms and conditions:

- (a) Except as provided in this section, any Member which intends to withdraw from participation in the Trust must give at least ninety (90) days advance written notice to the Board of Trustees. Upon a Member's withdrawal from the Trust, any Trustees who are employees of such Member shall no longer serve as Trustees.
- (b) Upon withdrawal, the Member shall be deemed to have withdrawn from participation in the entire Trust. Upon the effective date of withdrawal, the Member's Participants shall cease to participate in the Plan, provided, that if required by law, a Participant's benefits may be extended pursuant to, if and to the extent applicable, the terms and provisions of the Plan, including those Participants who have filed a claim for or are receiving benefits under the terms of the Plan prior to the effective date of the Member's withdrawal, in which case benefits shall continue subject to the withdrawing Member's payment of required contributions.
- (c) Upon withdrawal, the Board of Trustees also has the right to notify the Participants of such withdrawing Member that such Member's participation in the Plan and Trust has ceased or will cease.
- (d) In the event of a Member's withdrawal pursuant to this section, such withdrawing Member shall have no right to any of the assets, income or reserves of the Trust at any time, nor shall such Member have any right to a refund or rebate of any of its contributions to the Trust.

8.3 **Successors and Assigns.** Upon approval of the Board of Trustees, a participating Member may transfer or assign its participation in the Trust to any successor in interest, whether by merger, consolidation, reorganization, restructuring, transfer of employees, or dissolution, creation or consolidation of Member entities or governing boards or otherwise.

8.4 **Powers of Members.** In addition to powers herein vested in the Members, the Members shall have the power to:

- (a) Amend the Agreement by a two-thirds (2/3) vote of the Members present at a meeting. Written notice of any proposed amendment shall be provided to each Member at least forty-five (45) days in advance of any vote on the amendment.
- (b) Terminate the Plan and disburse its assets by a two-thirds (2/3) vote of all Members, pursuant to such notice and in keeping with such procedure as shall be established by the Board of Trustees. In the case of such a vote, termination of the Plan shall be pursuant to provisions of Article X.

8.5 **Meetings of the Members.** Meetings of the Members shall be held as follows:

- (a) Members shall meet at least once annually at a time and place to be set by the Board of Trustees, with notice provided to each Member at least thirty (30) days in advance electronically.
- (b) Special meetings of the Members may be called by the Board of Trustees upon its own motion and shall be called by the Board of Trustees upon written request of thirty (30) percent of the Members, with notice mailed to each Member at least thirty (30) days in advance.
- (c) The chair of the Board of Trustees shall preside at the meetings; the vice chair shall preside in the absence of the chair; and the secretary/treasurer shall preside in the absence of both the chair and vice-chair.
- (d) Thirty percent (30%) percent of the Members shall constitute a quorum to conduct business at a member meeting.
- (e) Except for action to terminate the Plan, proxy voting shall be allowed, pursuant to such procedures as the Board of Trustees may determine. Each Member shall be entitled to one vote on each issue, to be cast by its Member Representative.

8.6 **Member Obligations.** In addition to the other provisions, hereof, each Member shall have the obligation to:

- (a) Pay all contributions or other payments to the Trust at such times and in such amounts as shall be established by the Board of Trustees. Any delinquent payments shall be paid with interest pursuant to a policy established by the Board of Trustees and uniformly applied.
- (b) Designate in writing a Member Representative and one or more alternates for the Members' meetings. The Representative and any alternate shall be an employee of the Member, and may be changed from time to time. Any alternate may exercise all the powers of the Representative during a Member meeting in the absence of the Member Representative.

- (c) Allow the Board of Trustees and Administrator and their agents reasonable access to records of the Member as required for the administration of Plan and Trust.
- (d) Cooperate fully with the Board of Trustees and Administrator and their agents in matters relating to the administration of the Plan and Trust and the administration and coordination of benefits under the Plan.
- (e) Allow the Board of Trustees to make decisions regarding, and to designate attorneys to represent the Member in, the investigation, settlement and litigation of any claim within the scope of benefits furnished through the Plan.
- (f) Comply with the benefits administration, claims handling and related policies established by the Board of Trustees.

## **ARTICLE IX ADMINISTRATION**

### **9.1 Accounting.**

- (a) **Books and Records.** The Administrator generally shall be responsible for keeping accurate and detailed records of all investments, receipts and disbursements and other transactions hereunder, including such specific records as shall be required by law and such additional records as may be agreed upon in writing between the Administrator and the Board of Trustees. The Trust shall account for contributions made for any benefits as may be offered by the Pool pursuant to RSMO 320.400, but separate audits or financial statements are not required. All books and records relating thereto shall be open to inspection and audit at all reasonable times by any person or persons designated by the Administrator or the Members. The Board of Trustees shall promptly provide copies of such books or records to any persons designated by the Administrator.
- (b) **Accounting.** Following the close of each Plan year of the Plan, or more frequently as the Board of Trustees and the Administrator may agree, the Board of Trustees, with the assistance of the Administrator, shall cause to be prepared a written statement setting forth all investments, receipts, disbursements and other transactions effected during such year or during the period beginning as of the close of the last preceding year. Except as may be required by statute or by regulations published by State or federal government agencies with respect to reporting and disclosure, as may be required pursuant to the terms of the Plan or this Agreement or as reasonably may be requested by a majority of the Members, no person shall have the right to demand or to be entitled to any further or different accounting by the Board of Trustees.
- (c) **Release.** Except with regard to claims of breach of fiduciary duty, upon the expiration of 90 days from the date of presentation to the Members of such annual

or other statement, the Board of Trustees shall forever be released and discharged from any liability or accountability to anyone as respects the propriety of its acts or transactions shown in such account, except with respect to any acts or transactions as to which, within such 90-day period, a Member whose interest is affected by such act or transaction shall file with the Board of Trustees its written disapproval. In the event such a disapproval is filed, and unless the matter is compromised by agreement of the Board of Trustees, the Board of Trustees shall file its statement covering the period from the date of the last annual statement to which no objection was made in any court of competent jurisdiction for audit or adjudication. The applicable statutes of limitation shall be available to the Board of Trustees in the event of a claim of breach of fiduciary duty.

- (d) **Valuations.** The Board of Trustees shall designate a party to be responsible for valuations of assets of the Trust for which prices are not readily available on a nationally recognized securities exchange.
- (e) **Reliance on Administrator.** The Board of Trustees shall be entitled to rely on the Administrator and any Custodian, other than Board of Trustees, for the maintenance and provision of all records specified in this Section.

9.2 **Expenses.** The expenses incurred by the Board of Trustees in the performance of its duties hereunder, including fees for legal and other services rendered and all other proper charges and disbursements of the Board of Trustees, including taxes of any and all kinds whatsoever, that may be levied or assessed under existing or future laws upon or in respect of the Trust or any money, property or security forming a part of the Trust Fund, shall be paid by the Board of Trustees from the Trust Fund, and the same shall constitute a charge upon the Trust Fund. To the extent the Member pays any expenses that are properly payable from the Trust Fund, the Board of Trustees shall reimburse the Member that has made payment from the Trust Fund if requested to do so by the Member.

## ARTICLE X AMENDMENT OF TRUST; TERMINATION OF PLAN

### 10.1 **Amendment of Trust.**

- (a) **Right to Amend.** The Members may amend this Agreement at any time or from time to time by the affirmative vote of two-thirds (2/3) of all Members, and any such amendment by its terms may be retroactive. An amendment shall require compliance with the terms of Section 8.4(a). An adopted amendment shall become effective upon the date specified in the ballot approved by the Members, without necessity of further written consent or signatures by the Members. Upon adoption of any amendment, the Board of Trustees shall cause a current copy of this Agreement to be sent to each Member.

- (b) **Exclusive Benefit.** Notwithstanding the foregoing, no amendment shall be made which would authorize or permit any assets of the Trust Fund, other than such assets as are required to pay taxes and administration expenses, to be used for or diverted to purposes other than the exclusive benefit of Participants or Beneficiaries.
- 10.2 **Termination of Plan.** The Trust shall continue for such time as may be necessary to accomplish the purposes for which it was created and shall terminate only upon the complete distribution of the Trust. The Trust may be terminated as of any date (and shall in fact terminate upon the complete distribution of the funds of this Trust on such date or thereafter) by unanimous vote of the Board of Trustees and approval by a two-thirds (2/3) vote of all Members. Upon termination of the Trust, provided that the Board of Trustees has not received instructions to the contrary, the Board of Trustees shall liquidate the Trust and, after paying the reasonable expenses of the Trust, including expenses involved in the termination, distribute the balance thereof according to the written directions of each Member for the provision of benefits similar to those provided under the Plan for the benefit of each such Member's Participants and Beneficiaries covered thereunder; provided, however, that the Board of Trustees shall not be required to make any distribution until the Board of Trustees is reasonably satisfied that adequate provision has been made for the payment of all taxes, if any, which may be due and owing by the Plan and the Trust; and provided, further, that in no event shall any distribution be made by the Board of Trustees until the Board of Trustees is reasonably satisfied that the distribution will not be contrary to the applicable provisions of the Plan dealing with termination of the Plan and the Trust.
- 10.3 **Final Accounting.** At such time as the Trust is terminated, the Board of Trustees shall render a final accounting of the affairs of the Trust to each participating Member, and thereafter there shall be no claim or action against the Board of Trustees or any Trustee, and they shall have no further responsibilities or duties and shall be discharged.

## ARTICLE XI MISCELLANEOUS

- 11.1 **Nonalienation of Benefits.** Neither the benefits payable from the Trust Fund nor any interest in any of the assets of the Trust Fund shall be subject in any manner to the claim of any creditor of a Participant, or Beneficiary or to any legal process by any creditor of such Participant, or Beneficiary; and neither a Participant nor any Beneficiary shall have any right to alienate, commute, anticipate or assign any right to benefits payable from or any interest in the Trust, except as provided in the Plan.
- 11.2 **Benefit.** Except as otherwise provided in the Plan and this Agreement, no part of the Trust hereunder shall be used for or diverted to any purpose other than for the benefit of Participants and Beneficiaries or the payment of expenses as herein provided.
- 11.3 **Effect of Plan.** The Board of Trustees is not a party to the Plan, and in no event shall the terms of the Plan, either expressly or by implication, be deemed to impose upon the Board

of Trustees any power or responsibility other than as set forth in this Agreement. In the event of any conflict between the provisions of the Plan and this Agreement, this Agreement shall be deemed to be incorporated into and be a part of the Plan, and the terms of this Agreement shall control over any inconsistent terms of the Plan not contrary to State law.

11.4 **Dispute Resolution.**

- (a) Disputes arising in relation to benefits under the Plan shall be resolved in accordance with the procedures established in the Plan.
- (b) The parties to this Agreement (each, a “party”) are mutually committed to collaborative problem solving for resolving issues that may arise among or between them concerning this Agreement. In the event of a dispute, the complaining party may notify the other party of the dispute in writing and each party to the dispute will each appoint a representative to negotiate in good faith to resolve the dispute. These negotiations between representatives of the parties shall continue until the earliest of: (a) the time the dispute has been resolved; (b) the designated representatives have concluded that continued negotiation does not appear likely to resolve the dispute; or (c) sixty (60) days from the date of written notice of the dispute. If the dispute is not resolved through direct negotiations, the parties may, with the consent of all parties, attempt to settle any dispute arising out of or related to this Agreement through mediation. Unless otherwise agreed by the parties, mediation shall proceed as follows: The parties may agree on a mediator. If they are unable to agree on a mediator within sixty (60) days of the agreement to mediate, the parties shall contact an agreed upon dispute resolution organization or service and shall use its selection process to select a mediator. Each party shall bear its own costs of the mediation and the parties shall share the costs of the mediator. The mediation shall be scheduled within ninety (90) days of the agreement to mediate. If the direct negotiation process is unsuccessful and the parties do not consent to mediation or the agreed-upon mediation process does not successfully resolve the dispute within ninety (90) days of the agreement to mediate, the parties shall be entitled to pursue any other remedy allowed by law or this Agreement. However, no party shall pursue such a remedy without first exhausting the direct negotiation process.

11.5 **Entire Agreement.** This Agreement, Trust Agreement, and all exhibits and amendments attached hereto, together with Bylaws and Articles of Incorporation, constitutes the entire understanding and agreement between the parties with regard to the subject matter hereof, shall serve as an intergovernmental agreement between the members, and there are no other agreements or understandings between the parties relating to the subject matter hereof other than those set forth or provided for herein.

11.6 **Approval of the Members.** The Members shall have the right, on behalf of all individuals at any time having any interest in the Trust, to approve any action taken or omitted by the Board of Trustees.

- 11.7 **Liability for Predecessor or Successor.** No successor Trustee hereunder in any way shall be liable or responsible for any actions or omissions of any prior Trustee in the administration of the Trust or the Trust Fund prior to the date such successor Trustee assumes its obligations hereunder, nor shall any prior Trustee in any way be liable or responsible for any actions or omissions of any successor Trustee.
- 11.8 **Liability for Acts of Others.** No Trustee shall be liable for the acts or omissions of a Member, the Custodian, the Administrator, or any Investment Manager except with respect to any acts or omissions of any such party in which the Trustee participates knowingly or which the Trustee knowingly undertakes to conceal, and which the Trustee knows constitutes a breach of fiduciary responsibility of such party.
- 11.9 **Governmental Immunity.** It is specifically understood and agreed that nothing contained in this Agreement shall be construed as an express or implied waiver by the Trust, the Board of Trustees, the individual Trustees, or the Members, of governmental immunity or of the sovereign immunity of the State of Missouri or its instrumentalities or any provision of the Constitution of the State of Missouri, the Revised Statutes of the State of Missouri, including but not limited to RSMO Chapter 537.
- 11.10 **Controlling Law.** This Agreement shall be construed according to the laws of the State of Missouri.
- 11.11 **Effective Date.** This Agreement shall be effective on and after October 1, 2021. Any amendment to this Agreement shall become effective upon the date specified in the ballot approved by the Members to adopt such amendment.
- 11.12 **Execution in Counterpart.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each Member has taken appropriate legislative action approving this Agreement, and caused this Agreement to be signed by its duly authorized officers or representatives as of the day set forth its signature.

**EXHIBIT A**

**MEMBER**

Entity: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Member Adoption of Agreement:

Date: \_\_\_\_\_