

**ARIZONA METROPOLITAN TRUST (AzMT)**

**AGREEMENT AND DECLARATION OF TRUST**

**Effective:**  
July 01, 2012

## TABLE OF CONTENTS

<u>Article</u>	<u>Title</u>	<u>Page(s)</u>
I.	Definitions	1 - 3
II.	Purpose of Trust and Application of the Fund	3
III.	Board of Trustees	3 - 4
IV.	Powers and Duties of the Board of Trustees	4 - 8
V.	Payments to the Fund	9 - 10
VI.	Payment of Benefits	10 - 11
VII.	Controversies and Disputes	11
VIII.	Responsibilities and Liabilities	12
IX.	Amendment of the Trust Agreement	12 - 13
X.	Non-Vesting of Rights	13
XI.	Provisions Relating to Insurance Companies	13
XII.	Program Administration	13 - 14
XIII.	Additional Members	14 - 15
XIV.	Duration of Agreement	15
XV.	Voluntary Termination of Membership	16 - 17
XVI.	Suspension and Expulsion	17
XVII.	Termination of Trust	18
XVIII.	Distributions of Surpluses and Deficits Upon Termination of the Trust, Voluntary Termination of Membership or Expulsion	18 - 20
XIX.	Miscellaneous	20 - 22
XX.	Stop-Loss Provisions	22
XXI.	Loss Control Program	22

<b>XXII.</b>	<b>Use and Disclosure of Protected Health Information by Participating Entities</b>	<b>22 - 25</b>
	<b>Exhibit A – Participating Entities</b>	<b>26</b>

**This Agreement and Declaration of Trust**, with an effective date of July 1, 2012, is made and entered into by and between the Participating Entities who have been invited to Join this Trust and who have provided a Resolution adopted by the Governing Board of the Participating Entity accepting membership in this Trust, for the purposes set forth in A.R.S. § 11-952.01.

### **RECITALS**

**WHEREAS**, The Participating Entities desire to enter into an agreement pursuant to A.R.S. § 11-952.01 et seq. to pool and maintain a program of employee benefits for the Employees of the Participating Entities and to certain other persons deemed eligible for coverage hereunder; and

**WHEREAS**, To effect the aforesaid purpose, it is mutually beneficial to the parties hereto to declare and create a Trust which establishes a Trust Fund for and in the manner more particularly set forth herein; and

**WHEREAS**, The Participating Entities which accept this Agreement and Declaration of Trust and agree to be bound by the provisions hereof shall, upon acceptance by the Board of Trustees, be deemed parties to this Agreement and Declaration of Trust.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Participating Entities hereby agree as follows:

#### **ARTICLE I. DEFINITIONS**

The following are definitions of terms as used in the By-Laws as well as this Trust Agreement. To the extent a term is not specifically defined in the By-Laws, but is defined in this Trust Agreement, the term shall have the meaning given to it in this Trust Agreement.

**1.01 “A.R.S.”** shall mean the Arizona Revised Statutes, as amended.

**1.02 “Beneficiary”** shall mean Employees, their dependents and such other persons designated by the Participating Entities as eligible for coverage as set forth in the Summary Plan Description and approved by the Board.

**1.03 “Benefits Administrator”** shall mean the person(s) or firm employed by the Board who is responsible for processing of claims and payment of benefits, and related services.

**1.04 “Board of Trustees” or “Board”** shall mean the Trustees of the Arizona Metropolitan Trust acting in their joint capacity as the governing board of the Trust.

**1.05 “Employee”** shall mean any person employed by a Participating Entity on a regular basis working not less than the number of hours per week required by the Participating Entities for eligibility, and who are not eligible for benefits under any other employee benefits to which the Participating Entity makes contributions.

**1.06 “Employee Benefit Program”** shall mean the program of benefits to be established by the Board pursuant to this Trust Agreement and A.R.S. § 11-952.01(c).

**1.07 “Employee Contributions”** shall mean any contributions made by Employees whether comprising part of the Entity Premium or whether made directly to the Fund in order to obtain coverage by the Employee Benefit Program.

**1.08 “Entity Contributions”** shall mean the contributions made by Participating Entities comprising all or part of the Entity Premium.

**1.09 “Entity Premium”** shall mean the total monies paid by each Participating Entity to the Fund for the Employee Benefit Program, and shall be equal to the sum of Entity Contributions and Employee Contributions.

**1.10 “Fund”** shall mean the Trust Fund created by this instrument, and shall mean generally, the monies, property, contracts or things of value, tangible or intangible, received and held by the Board for the uses and purposes of the Trust set forth herein, and those things of value which comprise the corpus and additions to the Fund.

**1.11 “Governing Board”** shall mean the policy making board of a Participating Entity duly elected or appointed to their respective positions in accordance with the laws and constitution of the State of Arizona.

**1.12 “Participating Entities”** shall mean those entities listed in Exhibit A which is attached hereto and incorporated by reference herein, and such additional Participating Entities as may be approved for membership by the Board of Trustees pursuant to Article XIII of this Trust Agreement.

**1.13 “Summary Plan Description”** shall mean the document(s) that generally describe the employee benefits to be provided by the Trust to the Beneficiaries.

**1.14 “Trust”** shall mean the entity established by the Trust Agreement pursuant to A.R.S. § 11-952.01 et seq., which shall be referred to as the Arizona Metropolitan Trust.

**1.15 “Trust Agreement”** shall mean this Agreement and Declaration of Trust and any modifications or amendments thereto.

**1.16 “Trust Administrator”** shall mean the employee benefit consultant retained by the Board to carry out the obligations of this Agreement in compliance with A.R.S. § 11-952.01(H)(5).

**1.17 “Trustee or Trustees”** shall mean the individual Trustees and their successors as provided for in this Trust Agreement.

## **ARTICLE II. PURPOSE OF TRUST AND APPLICATION OF THE FUND**

**2.01 Creation of Trust.** There is hereby declared and created the Arizona Metropolitan Trust to provide employee benefits for the Beneficiaries of the Trust. Such benefits may include, but are not limited to those described under Article 4.05 of this Trust Agreement, whether provided through one or a combination of self-funded or insured programs or both.

**2.02 Principal Office.** The Principal Office of the Trust shall be located at the location specified in the Bylaws (hereinafter designated and referred to as the “Principal Office”).

## **ARTICLE III. BOARD OF TRUSTEES**

**3.01 Trustees.** The Employee Benefit Program shall be operated and administered by a Board of Trustees for the benefit of the Beneficiaries. Individual Trustees shall be selected by the Participating Entities as provided herein and may resign or be removed at any time by the applicable Participating Entity’s Governing Board. Trustees must be employees of the Participating Entity.

**3.02 Membership and Appointment.** The Board of Trustees shall be comprised of one Trustee and one “Alternate Trustee” appointed by each participating entity. The Trustee shall be the City Manager (or that participating entity’s equivalent) and the Alternate Trustee shall be a management level staff member employed by the Participating Entity. The appointing Participating Entity may remove a Trustee at any time without cause. In the event of the removal or resignation of a Trustee, the appointing Participating Entity shall designate a successor to such Trustee to serve the remainder of the vacated term. The successor shall succeed to the legal interest of his/her predecessor and have the same powers and duties.

**3.03 Votes.** Each Participating Entity shall be entitled to cast one vote in matters requiring a vote of the Board of Trustees which vote may be cast by a duly-appointed Trustee or Alternate Trustee. In the event the Trustee and the Alternate Trustee are present at the same meeting, in person or by phone, only the Trustee shall cast the Participating Entity’s vote.

**3.04 Terms of Office.** Following appointment, Trustees and Alternate Trustees shall serve until such time as they resign, are removed by the appointing Participating Entity’s Governing Board or cease to be employees of the Participating Entity that they were designated to represent. In the event that a Trustee or Alternate Trustee resigns, is removed or ceases to be an employee of the designating Participating Entity, the position shall be deemed vacant and a new Trustee or Alternate Trustee shall be designated by that Participating Entity.

## **ARTICLE IV. POWERS AND DUTIES OF THE BOARD OF TRUSTEES**

**4.01 Appointment of Trustees.** The Trust shall be administered by the Board of Trustees who shall be selected and shall serve as provided in Article III.

**4.02 Duties of the Board of Trustees.** The Board of Trustees shall:

- (a) Hold, manage, care for and keep the Fund for the benefit of the Beneficiaries and collect the income and increments thereof, and shall keep and maintain adequate and proper records to render an annual audit, accounting and reports as hereinafter mentioned.
- (b) Employ or hire such agents, attorneys, accountants, actuaries, employees or other persons and shall purchase, lease or rent real or personal property as may be necessary or desirable in administering the Fund and carrying out its purposes. Agreements for such expenditures shall be in writing and formally approved by the Board. Fees, salaries, wages, emoluments or compensation of any and all such persons and other such expenses shall be paid from the Fund. When acting upon and consistent with advice of counsel for the Trust, the Board shall be relieved of all responsibility for acts performed or not performed.
- (c) Pay any and all taxes of whatever nature the Fund is, or may be, obligated to pay and incur any expenses for supplies, rental of space, or other items, or anything else determined to be necessary or desirable in administering the Fund and carrying out the objects and purposes of this Trust and Trust Agreement.
- (d) Establish terms and conditions of coverage within the plan document including the exclusions of coverage.
- (e) Ensure that all claims are paid promptly.
- (f) Take all necessary precautions to safeguard the assets of the Trust.

**4.03 Authority of the Board of Trustees.** In carrying out the purposes of the Trust Agreement, the Board shall have all right, power and authority to:

- (a) Enter into contracts, procure insurance policies, or provide such benefits through self-funding, and to place into effect and maintain the desired schedule of benefits.
- (b) Provide the intended benefits under this Trust by means of self-funding by the Trust and/or by the procurement of group insurance contracts (as permitted by the laws of the State of Arizona) including group insurance contracts issued to and in the name of the Trust, together with such other forms of contracts issued by qualified insurance companies authorized to do business in the State of Arizona as may be selected by the

Board for the purpose of providing for all or part of the benefits provided for under this Trust. The Board is hereby expressly authorized to pay to any insurance company as may be selected by the Board the required insurance premiums in connection with such group insurance contracts issued to the Trust. Whether or not benefits are provided by means of self-funding or by the procurement of group insurance, such decision shall be at the sole and exclusive discretion of the Board.

- (c) Should the Board select or provide for any policy or program of self-funding, no claims for benefits or claims for liabilities shall be brought against the Board or any individual Trustee. The sole and exclusive liability of said Board in the management and operation of any program of self-funding shall be limited to due care in the selection of administrators, claims representatives, actuaries or other officials charged with the administration of such a program of self-funding, subject to the limitations upon such liability based on actions taken with advice of counsel as provided in Section 4.03 of this Agreement. In the event that submitted claims of employees exceed the funds available, the claims shall be paid in the order received.
- (d) Do all those things that the Board determines to be necessary or desirable for the administration and operation of and accomplishment of the objectives and purposes of the Fund and this Trust and Trust Agreement.

**4.04 Selection of Benefits.** The Board may, subject to their discretion and the continuing right to change, obtain for the Beneficiaries of the Trust forms of employee benefits which may include, but are not limited to, the following:

- (a) Medical and Prescription Drug;
- (b) Long and Short-Term Disability;
- (c) Accidental Death and Dismemberment;
- (d) Dental Benefits;
- (e) Vision Benefits;
- (f) Life Insurance;
- (g) Health Savings Accounts, Health Reimbursement Accounts and Flexible Spending Accounts; and
- (h) Employee Wellness Programs, Employee Assistance Programs, utilization review programs, claims management programs and other programs intended to (i) improve Employee health, (ii) reduce costs to the Trust and to Employees and (iii) otherwise control losses.



**4.05 Deposits and Investments.** All corpus or portion of the Fund not expended pursuant to Article IV may be deposited by the Board in the name of the Trust in such depository or depositories as the Board shall from time to time select in accordance with this Section, and any such deposit or deposits should bear interest. The Board is empowered to receive for the benefit of the Fund such interest as might accrue on the above deposits.

- (a) If not so deposited, any accumulated funds not currently required for the purposes of this Trust shall be invested by the Board in reasonably secure, reasonably liquid investments in a manner consistent with the adopted investment policy of the Trust and in compliance with the provisions of A.R.S. § 35-323 et seq.
- (b) The Board may accumulate dividends, experience rating refunds or other monies, if any, accruing from any insurance policy or policies, deposits or investments. Such dividends, refunds or other monies, or all of them, shall be held in the Fund, applied to the payment of self-funded claims, the payment of insurance premiums or held, used or applied as herein set forth.
- (c) The Board may enter into financial services agreements with banks and may authorize the Trust to issue checks in its own name as required to further the purposes and objectives of the Trust.

**4.06 Trustees' Expense Reimbursement.** The Trustees shall receive reimbursement for actual reasonable and necessary expenses incurred by the Trustees in carrying out their duties pursuant to the Trust Agreement. Expenses reimbursed under this provision shall be limited to those which would be reimbursable under the policies of the Participating Entity that the Trustee has been appointed to represent.

**4.07 Trustees' Compensation.** The Trustees shall not receive compensation for services rendered pursuant to the Trust Agreement.

**4.08 Presumption of Validity.** No person transacting business with the Board shall be obligated to (i) ensure proper application of any monies or property of the Fund, (ii) ensure that the terms of this Trust Agreement have been complied with or (iii) inquire as to the necessity of expediency of any act by the Board. Every instrument executed by the Board shall be conclusive in favor of every person who in good faith relies upon it that:

- (a) At the time of the delivery of the instrument, this Trust Agreement was in full force and effect;
- (b) The instrument was executed in accordance with the terms and conditions of the Trust Agreement; and
- (c) The Board was duly authorized to execute the instrument or direct its execution.

**4.09 Withdrawals.** All checks, drafts, vouchers or other withdrawals from the fund or

depositories and the transfer or liquidating of insurance policies of investments shall be signed by appropriate signatories as determined by the Board of Trustees.

**4.10 Administrative Disputes.** In the event of any dispute between the Board and the Benefits Administrator or any other parties providing services to the Trust over exercise of powers granted herein, the Board's interpretation shall prevail and the service organization shall have no liability to any person with respect to the disputed act or omission in the event that it gives written notice of its dissent from such act or omission to each Trustee and to the Participating Entities no later than thirty (30) calendar days from the date of such event or disputed act.

**4.11 Selection of Chairperson.** The Trustees shall elect from among themselves at their first meeting a Chairperson who shall preside at all meetings of the Board and who shall be empowered to perform ministerial duties of the Board as the Board may from time to time delegate to him/her.

**4.12 Selection of Vice-Chairperson.** The Trustees shall elect from among themselves at their first meeting a Vice-Chairperson who shall, in the absence or incapacity of the Chairperson, preside at all meetings of the Board and who shall, when acting as Chairperson, be empowered to perform ministerial duties of the Board as the Board may from time to time delegate to him/her.

**4.13 Selection of Recording Secretary.** The Chairperson shall appoint a Recording Secretary who shall keep minutes of all meetings, proceedings and acts of the Board, which record shall be available at the Principal Office for inspection by all the Trustees and interested persons during usual business hours. Such record and minutes need not be verbatim. The Recording Secretary need not be a Trustee.

**4.14 Board of Trustees' Meetings.** The Board shall hold an initial meeting as soon as practical after being appointed. The Board shall determine the time and place of the regular meetings which shall be held at least quarterly. Special meetings may be called by the Chairperson or by a number of Trustees equal to one less than a majority of the Board. Minutes of all meetings shall be taken. Meetings shall be conducted in accordance with applicable laws, rules, bylaws or regulations. At least seven (7) days written notice designating the time and place of an annual, regular or special meeting shall be given to the Trustees. In the event of an emergency, a special meeting may be held with such lesser notice as may be appropriate and otherwise permissible by law. 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 requirement that notice be given to the Trustees.

**4.15 Quorum Requirement and Voting.** To constitute a quorum at any regular or special meeting of the Board, there must be present in person or telephonically at least one Trustee or Alternate Trustee from a majority of the Participating Entities. Unless otherwise specifically stated in this Agreement, or as required by applicable law, action of the Board of Trustees will be by a majority vote of the quorum present when such action is taken.

**4.16 Location of Meetings.** All meetings of the Board shall be held at such location or locations as designated from time to time by the Board, and Trustees may appear by telephonic or other electronic means if necessary. When meetings are conducted electronically, reasonable efforts will be made to accommodate public participation at a publicly accessible location in the Principal Offices or at a facility owned or controlled by a Participating Entity and in a manner consistent with applicable federal and Arizona laws and regulations.

**4.17 Fiscal Year and Audit.** The accounting year of the Fund shall be on a fiscal year basis. The initial fiscal year shall commence on July 1, 2012 and end on June, 30 2013. Subsequent fiscal years shall commence on July 1 and end on June 30 of the following year. Any report required by law, city, county, State or Federal or the respective subdivisions thereof, shall be made by the Board. The Board shall have an annual audit and accounting of the Trust Fund by an independent Certified Public Accountant in accordance with generally accepted accounting practices, at the end of each fiscal year. The Accountant shall certify to the accuracy of the audit and accounting. A statement of the results of each audit shall be available for inspection by authorized persons at the Principal Office of the Trust. Copies of the audit and generalized statements of the accounting and reports shall be filed with the Arizona Department of Insurance and also delivered to the Clerk of the Governing Board of each Participating Entity and to each Trustee after each audit or as otherwise required. Copies of the audit shall be retained by the Board of Trustees for a period of at least five years.

**4.18 Bylaws, Rules and Regulations.** The Board shall have the power to adopt bylaws, rules, procedures and regulations pertaining to the purpose, powers and administration of the Trust, which shall be consistent with covenants, terms, conditions and duties as set forth in the Trust Agreement. Such bylaws, rules, procedures and regulations shall be binding on all persons transacting business with the Trust and upon any and all persons claiming any benefits thereunder. Adoption or amendment of bylaws, rules, procedures or regulations shall require a majority vote of the Board of Trustees.

**4.19 Bonding Requirements.** The Board shall procure or provide for the procurement of fidelity bonds for the Trust and persons and organizations authorized to receive handle, deal with or draw upon the monies in the fund for any purpose whatsoever, said bonds to be in such amount to aid in the reimbursing of bondable loss of money, and in the event shall meet the requirements as may be required, from time to time as applicable under United States or State law. Such bonds are to be obtained from reputable fidelity or surety companies as the Board shall determine. If convenient, and in conformity with the law, such bonds may be position bonds. The cost of the premiums on such bonds may be paid out of the corpus or income of the fund or paid for by the persons or organizations required to purchase such bonds. If any fidelity or surety company refuses to bond or write a bond for any Trustee, or other person described in this section, said Trustee or person shall not serve and shall resign.

## ARTICLE V. PAYMENTS TO THE FUND

**5.01 Entity Contributions.** In order to effectuate the purposes of the Trust, each Participating Entity shall contribute to the Fund an amount determined by the Board to be necessary to pay for the benefits provided hereunder to the Employees and other persons covered by the Employee Benefit Program. The Entity Contributions shall be due and payable as of the date specified in the Bylaws. The Entity Contributions shall not include amounts payable directly by persons receiving extended coverage under the Employee Benefit Program as required by law or otherwise.

**5.02 Interest on Premiums in Arrears.** Entity Premiums not paid as of the due date as provided in Section 5.01 shall be subject to the late payment process as outlined in the Bylaws.

**5.03 Employer Contributions Not Wages.** Employer Contributions paid or accrued to the order of the Fund through Entity Premiums shall not constitute or be deemed wages due employees, nor shall such contributions in any manner be subject to the debts, contracts or liabilities of the Participating Entity. No Participating Entity, Employee, or Beneficiary under the Plan shall have any rights, title or interest in the Fund, except as specifically provided in this Trust Agreement.

**5.04 Employee Contribution.** Employees may be required to contribute a portion of the Entity Premium in amounts to be determined by each Participating Entity as appropriate for the benefits to be provided hereunder. Nothing in this paragraph shall be deemed to preclude a Participating Entity from making all or any portion of Employee Contribution payments on behalf of its employees.

**5.05 Payment in Lieu of Benefits.** No employee shall have any right to receive any part of his/her own Employee Contributions or any part of Employer Contributions paid to such Employee in lieu of benefits.

**5.06 Payroll Deductions.** All Employee Contributions shall be paid by payroll deductions. The Participating Entity shall remit all monies obtained through payroll deductions in a lump sum to the Fund as part of the Entity Premium described herein.

**5.07 Manner of Payment.** All Entity Premiums and other payments to the fund shall be payable to the name of the Trust and shall be paid in the manner and form determined by the Board.

**5.08 Wage Reports/Audits.** The Participating Entity shall provide to the Trust or make available to the Trust for inspection all payroll or wage reports required by the Board upon request. The Board may at any time vote to have an audit of a Participating Entity's payroll records performed by an independent Certified Public Accountant or other qualified individual or organization as determined by the Board to confirm the accuracy of required reports and to confirm the correct levels of contributions.

**5.09 Contributions Irrevocable.** Subject to the provisions of Article XVII with respect to

termination of this Trust Agreement, Article XVI with respect to suspension and expulsion and Article XV with respect to voluntary termination of membership in the Trust, all Contributions to the Fund shall be irrevocable and under no circumstances shall any monies properly paid into the Fund, or any part of the Fund, be recoverable by or payable to a Participating Entity or any Employee, nor shall any of the same be used for or diverted to purposes other than for the exclusive program of benefits for Employees and other covered persons as provided in this Trust Agreement.

**5.10 Assessments.** In the event a deficit shall develop which is creditable to any plan or fiscal year, the Board shall specifically notify each Participating Entity of such deficit and vote to order an assessment to the Participating Entities sufficient to cure the deficit. Assessments shall be distributed among the Participating Entities on a pro-rata basis, as calculated by the amount of each member's contributions for the plan or fiscal year to which the deficit is credited. Assessments shall not exceed the amount of the member's annual contribution to the pool. All such assessments shall be made to comply with applicable provisions of A.R.S. § 11-952.01 et seq.

## **ARTICLE VI. PAYMENT OF BENEFITS**

**6.01 Benefits Liability.** Subject to the terms and conditions set forth in this Trust Agreement, the Summary Plan Description and other procedures, rules, regulations and conditions established by the Board, the Trust shall pay all claims for which each Participating Entity's Beneficiaries would be liable and would be entitled to receive benefits under the Employee Benefit Program.

**6.02 Discharge of Liability.** Subject to the terms and conditions set forth in this Trust Agreement, the Summary Plan Description and other procedures, rules, regulations and conditions established by the Board, liabilities incurred for claims for services rendered to the Beneficiaries of Participating Entities under the Employee Benefit Program will be relieved only by payment of claims by the Trust, by the Beneficiary or by such other party who may be deemed responsible for payment of such claims.

**6.03 Method of Payment.** The Board shall arrange for disbursement of benefits under the Employee Benefit Trust through a Benefits Administrator appointed by the Board.

**6.04 Summary Plan Description.** The Benefits to be provided pursuant to the Trust Agreement, whether by self-funding or by insurance contract, shall be set forth in one or more Summary Plan Descriptions which shall also explain the eligibility rules for coverage for employees and dependents.

**6.05 Protection of Employees.** Prior to payment to an Employee or other Beneficiary, all assets of the Trust shall be owned by the Trust and shall not be liable in any way for any debt or obligation of any Employee. To the extent permitted by law, all Trust benefits shall be exempt from attachment, garnishment, levy of execution, bankruptcy proceedings, or other legal process at any time subject to the Trustee's possession and control; but in any event, such assets shall be

subject to such process only to the extent of such Employee's benefits hereunder as they come due.

**6.06 Employee Claims to Benefits.** No Employee or other Beneficiary shall have any right or claim to benefits under the Employee Benefit Plan except as specified in the policy or policies or contract or contracts or self-funded benefits procured or entered into pursuant to Articles II and IV of this Agreement and as set forth in the Summary Plan Description. Any disputes as to eligibility, time, amount, or duration of benefits shall be resolved by the appropriate insurance carrier or Benefits Administrator, under and pursuant to the applicable policy or contract; and the Employee or other Beneficiary shall not have the right or claim in respect thereto against the Fund or The Board. Any dispute as to eligibility, type, amount, time or duration of benefits provided by the Fund as self-funded shall be decided by the Board, and all disputes shall be finally settled pursuant to Article VII of this Agreement.

**6.07 Maintenance of Reserves.** The Board shall maintain, as part of the Trust Fund, claim reserves in an amount at least equal to known incurred losses and reasonable estimates of claims incurred but not reported.

**6.08 Failure to Pay Benefits.** Neither the Participating Entities nor the Board shall be liable for the failure or omission, for any reason, to pay any benefits under the Employee Benefit Program. If for any reason, including, but not limited to, epidemics, catastrophes, or normal depletion, the Board determines that self-insured funds are insufficient to pay current claims, the amount of benefits payable to an eligible Employee or other Beneficiary shall, in all events, be limited to the extent that sufficient funds are available to the Board for the payment of all such claims; and, in such event, benefits payments to each eligible Employee or other Beneficiary shall be limited to the extent that sufficient funds are available from the Trust Fund, and shall be further prorated in such amounts that all such claims shall be treated proportionally equal to the ratio that such total claims bear to the funds that are available for such payment. If any controversy or dispute exists concerning such matters, they shall be settled in accordance with the provisions of Article VII of this Agreement.

## **ARTICLE VII. CONTROVERSIES AND DISPUTES**

**7.01 Interpretation of Trust Documents.** The Board of Trustees shall have the power to construe, interpret and apply the provisions of the Agreement and Declaration of Trust or any amendments, rules or regulations adopted pursuant thereto and the terms used herein and any construction, interpretation or application adopted in good faith shall be final and binding upon the Participating Entities, and upon Employees and their respective families, dependents, successors, assigns, executors, administrators and/or their legal representatives.

**7.02 Settlement of Benefit Claims.** The Board may, in its sole discretion, compromise or settle any disputed benefits claim controversy in such manner as it deems appropriate and consistent with applicable law and regulation. All decisions made by the Board shall be conclusive and binding upon all parties.

## ARTICLE VIII. RESPONSIBILITIES AND LIABILITIES

**8.01 Responsibilities and Liabilities of the Board of Trustees.** The Board shall only be responsible for monies when and if said monies are received in accordance with the provisions of this Trust Agreement. The Trustees shall only be responsible for any liability arising from their respective gross negligence, bad faith or willful misconduct in handling of the monies received in hand by them for execution and administration of the terms of the Fund. The Trustees shall not be responsible for the actions or omissions of their Co-Trustees, nor for the acts or omissions of other agents, or for any of the acts or omissions of any insurance company or its agents, servants or representatives, including, but not limited to non-payment of claims by an insurance company or companies for any reason. No Trustee shall be entitled to any indemnifications of court costs or attorneys' fees from any liability arising from his/her own willful misconduct, bad faith or gross negligence. To the extent that their actions do not constitute willful misconduct, bad faith or gross negligence, Trustees shall not be liable for actions taken on advice of counsel for the Trust as provided in Section 4.03.

**8.02 Successors' Liability.** No Successor Trustee shall be liable or responsible for any acts or defaults of his/her predecessor(s), or for any losses or expenses resulting from or occasioned by acts or omissions of the prior administration of the Fund or the Trust. A Successor Trustee is responsible solely for his/her actions as set forth in Section 8.01 herein.

## ARTICLE IX. AMENDMENT OF THE TRUST AGREEMENT

**9.01 Powers.** It is anticipated that in the administration of this Trust, conditions may arise that are not foreseen at the time of execution of this Trust Agreement and it is the intention of the Participating Entities that the power of amendment which is herein granted be exercised in order to carry out the spirit, object and purposes of the Trust. Therefore the general power is granted by the Participating Entities to amend this Agreement in accordance with the procedures set forth in Article IX of this Trust Agreement. All parties to the Trust and all persons claiming any interest hereunder are and shall be bound thereby.

**9.02 Procedures.** Prior to amendment of this Trust Agreement, the Board shall notify each Participating Entity not less than thirty (30) calendar days prior to the date on which such proposed amendments are to be considered by the Board of Trustees. Such notice shall set forth in sufficient detail the nature of the proposed amendments and shall invite questions or comments. Amendments to the Trust Agreement shall require a 2/3 vote of the Board of Trustees. Approved amendments shall be signed by the Chairperson of the Board of Trustees. Amendments to the Trust Agreement shall be filed with the governmental entity or entities as required by law and in the manner provided by law for such agreements. Proposed amendments to the Trust Agreement shall be reviewed and approved in writing as to form by counsel for the Trust prior to consideration by the Board of Trustees. Following approval by the Board of Trustees, proposed amendments shall be submitted to the Governing Boards of the Participating Entities. A proposed amendment shall become effective on the date specified after approval by the Governing Boards of no less than  $\frac{3}{4}$  of the total number of Participating Entities. Upon

approval of a proposed amendment by the requisite number of Governing Boards as provided herein, a Participating Entity whose Governing Board fails to approve the proposed amendment may elect to voluntarily terminate its membership in the Trust pursuant to the provisions of Article XV of this Trust Agreement.

#### **ARTICLE X. NON-VESTING OF RIGHTS**

**10.01 Rights Not Vested.** No Employee, family, dependent, Beneficiary nor any other person or group nor their respective successors, assigns, nor legal representatives, shall have any right, title or interest, vested or otherwise, in or to the Fund, its corpus (income or increments thereto), insurance dividends, cash value, if any, or any insurance or benefits or monies payable therefrom, payments from the Fund, or in or to the eligibility requirements for benefits as changed or altered. Any participating Employee who withdraws or ceases to participate in the Employee Benefit Program shall be deemed to expressly waive and forfeit any right, title or interest in and to the Fund, its corpus and assets. No Employee, family, dependent, Beneficiary nor any other person or group nor their respective successors, assigns nor legal representatives shall have any right in or to the Trust Fund, corpus, insurance dividends, cash value, if any, of insurance, interest, income, benefits, or any benefits or money payable therefrom, or anything arising out of or in this Trust during the term of this Agreement and any benefit he or they may have is forever terminated and discharged upon the Employee's termination of employment with the Participating Entity (voluntary or involuntary discharge or otherwise), or when this Trust Agreement is terminated, wound up or dissolved. No benefit, right or interest of the forgoing is transferable by the Employee to another Employee or person, corporate or otherwise except to physicians, hospitals and any other person or institution furnishing medical services within the terms of this Trust Agreement. No monies, property or equity of any nature in the Fund, nor insurance policies or benefits or monies payable therefrom, nor investments, nor deposits nor any part or portion of the Fund, shall be subject in any manner by any Employee, or person claiming through such employee, ownership, anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, attachment, execution, mortgage lien or charge of whatsoever nature or kind and any attempt to cause the same is and shall be null and void.

#### **ARTICLE XI. PROVISIONS RELATING TO INSURANCE COMPANIES**

**11.01 Status of Insurance Companies.** No insurance company that issues any policies or contracts for the purpose of fulfilling the terms of the Agreement shall be deemed to be a party to this Agreement, nor shall it be responsible for the validity of this Agreement, nor is this Agreement in any manner for the benefit of any insurance company or companies. No insurance company shall be required to determine the validity of this Agreement or to question the authority of or action of the Board, or be responsible to confirm that any action taken by the Board is authorized by the terms of this Agreement.

#### **ARTICLE XII. PROGRAM ADMINISTRATION**

**12.01 Allocation of Administrative Duties.** The Board shall have the full obligation and



responsibility for administration of the Employee Benefit Program but may designate any person, firm, corporation or other entity as an agent or representative, for purposes of carrying out the objectives of the Trust. The Board shall designate an administrator to carry out the policies established by the Board and to provide day to day management. An administrator appointed pursuant to Section 12.03 may also serve in this capacity.

**12.02 Termination of Agents.** The Board may remove any agent for administration at any time, without cause, after thirty (30) calendar days written notice to the agent unless otherwise provided in contracts for employment of such agents that were approved by the Board.

**12.03 Consultant/Administrator.** The Board shall retain a Benefits Administrator and a Trust Administrator, both of whom must be licensed pursuant to Title 20, Chapter 2, Article 3 or 9 or such other law as may be applicable. Such licensing shall be verified by the Board prior to any appointment pursuant to this section. The Board shall keep minutes of its actions and shall reflect in those minutes the retention of these Administrators and the areas of their authority as required by A.R.S. § 11-952.01(H)(5).

**12.04 Duties of Agents.** Agents shall perform all designated duties in a workmanlike and professional manner and shall keep accurate and complete records of activities as prescribed by the Board. Any agent designated as Benefits Administrator shall, in addition to the other duties set forth in this section, keep its records open for examination at reasonable times during business hours by any person authorized by the Board of Trustees and shall, within sixty (60) calendar days after the end of each Trust year or such other date as determined by the Board, file with the Board a complete statement of its administrative activities during the period of time since the closing date of the previous statement.

**12.05 Business Offices.** The Trust may establish offices within the State of Arizona as required for the conduct of business and may employ necessary staff to carry out the purposes of the Trust.

### **ARTICLE XIII. ADDITIONAL MEMBERS**

**13.01 Eligibility for Membership.** Effective July 02, 2012, cities, towns, counties, fire districts, municipal corporations and any other political subdivisions of these types of entities as may be eligible for membership pursuant to A.R.S. § 11-952 et seq. located within the State of Arizona shall be eligible to be considered for membership as a Participating Entity.

**13.02 Application for Membership.** An entity desiring membership in the Trust may petition the Board for permission to become a Participating Entity. Applicants shall submit application forms as prescribed by the Board and shall provide such additional information as may be requested in order to fully evaluate the application. Completed applications and supporting data shall be submitted no later than the deadlines established by the Board. Applications deemed incomplete by the established deadlines may be rejected at the sole discretion of the Board.

**13.03 Approval of Applications.** Completed applications will be reviewed and evaluated based on standards established by the Board to ensure that approvals of applications are based on the best interest of the Trust, its Participating Entities and their Employees. Decisions of the Board may be based upon recommendations of their employees or agents. The Board, in a regularly convened meeting, may, by two-thirds vote, approve the application for membership subject to such terms and conditions as may be established by the Board in their sole discretion. Decisions of the Board with respect to membership applications will be final. If accepted for membership, an entity will be bound by all applicable terms and conditions of this Agreement and Declaration of Trust as well as all policies, procedures and regulations established pursuant to this Agreement. Representatives of Participating Entities approved for membership may attend meetings of the Board of Trustees, but will not be allowed to vote or otherwise formally participate in the governance or benefits of the Trust until the date on which the Entity's Employees become eligible to receive benefits under the Employee Benefit Program.

#### **ARTICLE XIV. DURATION OF AGREEMENT**

**14.01 Term of Agreement.** This Declaration of Trust shall continue in full force and effect until terminated as provided in accordance with the procedures set forth in Article XVII of this Trust Agreement.

**14.02 Initial Term of Participation; Renewals.** The initial membership term for new members shall be for a period of not less than thirty six (36) calendar months. The length of the initial term shall be set to align the Participating Entity's membership term with the July 01 to June 30 Fiscal Year of the Trust at the earliest possible date. Membership in the Trust may not be terminated by any Participating Entity during the initial membership term except as expressly provided herein. Notwithstanding these limitations on voluntary termination, coverage under the Employee Benefit Plan may be suspended or terminated as provided herein for nonpayment of Entity Premiums or other violations of the terms of this Agreement and Declaration of Trust. After expiration of the initial membership term, a Participating Entity may terminate its participation as provided in Article XV herein or may request that the Board of Trustees approve an additional Renewal Term. Renewal terms shall be for thirty six (36) calendar months. Approval of Renewal Terms requires a 2/3 vote of the Board of Trustees. Membership in the Trust may not be voluntarily terminated during Renewal Terms except as expressly provided herein.

**14.03 Non-Appropriation Penalty.** In the event a Participating Entity fails to appropriate the funds for any particular plan year, or portion of a plan year, within that Participating Entity's initial term of participation, or the current renewal term, which is applicable, the Participating Entity agrees to pay a penalty in an amount equal to what that Participating Entity's obligations would have been for the entire remainder of the initial term of participation, or the current renewal term, whichever is applicable, had the appropriation been made. The "initial term of participation" and the "renewal term" are set forth in Section 14.02 above.

## **ARTICLE XV. VOLUNTARY TERMINATION OF MEMBERSHIP**

**15.01 Procedure.** Membership in the Trust may be voluntarily terminated by a Participating Entity upon conclusion of its Initial Term of Participation or a subsequent Renewal Term, subject to the following conditions:

- (a) Written notice of voluntary termination must be received no later than ninety (90) calendar days prior to the last day of the Participating Entity's Initial Term of Participation or current Renewal Term, as applicable.
- (b) Termination will be effective as of the last day of the Participating Entity's Initial Term of Participation or current Renewal Term, as applicable.
- (c) Once termination is effective, a former Participating Entity shall not be eligible for readmission to the Trust for a minimum of three fiscal years. Application for readmission shall be made according to the procedures set forth in Article XIII of this Agreement.
- (d) Termination will not relieve a former Participating Entity of any obligations, financial or otherwise, imposed upon Participating Entities pursuant to this Agreement for the period during which the former Participating Entity was a member of the Trust.
- (e) Participating Entities terminating their membership in the Trust in accordance with this Article shall receive surplus amounts due them and shall remain liable for deficits owed by them to the Trust in accordance with Article 18.02 of this Agreement.

**15.02 Termination Due to Amendment of the Trust Agreement.** Notwithstanding the provisions of Article 15.01 a Participating Entity may elect to voluntarily terminate its membership prior to the end of their Initial Term of Participation or their subsequent Renewal Term provided the Participating Entity provides a ninety (90) calendar days advance notice as required by A.R.S. § 11-952.01(L), under the following conditions:

- (a) The Governing Board of the Participating Entity wishing to terminate its membership pursuant to this Article must have failed to approve a proposed amendment to the Trust Agreement which was approved by the requisite number of Governing Boards pursuant to Article 9.02 of this Trust Agreement.
- (b) The approved amendment to the Trust Agreement is to become effective prior to the end of the current renewal period.
- (c) The proposed date of termination of membership is to be on or before the effective date of the approved amendment to the Trust Agreement or upon such later date as

may be approved by the Board of Trustees during which period the terminating entity shall not be subject to the provisions of the approved amendment to the Trust Agreement.

- (d) Any voluntary termination pursuant to this Article 15.02 shall also be subject to the provisions of Article 15.01(c) of this Trust Agreement.
- (e) Participating Entities voluntarily terminating their memberships in the Trust in accordance with this Article shall receive surplus amounts due them and shall remain liable for deficits owed by them to the Trust in accordance with Article 18.02 of this Trust Agreement.

## **ARTICLE XVI. SUSPENSION AND EXPULSION**

**16.01 Suspension.** In the event that any Participating Entity shall fail to make its contributions as specified herein, or shall fail to comply with any other terms or conditions of this Trust Agreement or other requirements established by the Board, the Board may suspend benefits provided to the Beneficiaries of that Participating Entity. Prior to any suspension, the Board shall provide written notice of default to the Participating Entity. The notice of default shall advise the Participating Entity that:

- (a) Unless the default is cured within ten (10) calendar days of receipt of the notice, coverage may be suspended for a period of up to eighty (80) calendar days without further notice or administrative process.
- (b) During the eighty (80) day suspension period, the Board of Trustees shall determine if the Participating Entity should be expelled as a Participating Entity effective ninety (90) calendar days following receipt of notice of expulsion.
- (c) That prior to removal of any previously-imposed suspension, the Board may impose specific reasonable conditions for reinstatement of coverage and continued membership in the Trust.
- (d) That the defaulting Participating Entity will be liable for unpaid premiums and/or benefit payments, administrative costs and other costs incurred by the Trust between the date that premium payments became in arrears and the date of suspension of benefits plus interest accrued as provided in Section 5.02 of this Trust Agreement.

**16.02 Expulsion.** Participating Entities may only be expelled from the Trust upon a majority vote of a quorum of Trustees and upon the statutory required ninety calendar (90) notice prior to the effective date of expulsion. Participating Entities that are expelled from membership in accordance with this Article shall receive surplus amounts due them and shall remain liable for deficits owed by them to the Trust in accordance with Article 18.03 of this Agreement.

## **ARTICLE XVII. TERMINATION OF TRUST**

**17.01 Termination by the Trustees.** The Trust created by this Agreement and Declaration of Trust may be terminated at any time by formal resolution approved by majority vote of the Board of Trustees.

**17.02 Notice of Termination.** Upon termination of the Trust as provided herein, the Board shall forthwith notify all Employees and all other necessary parties.

**17.03 Duration after Termination.** Notwithstanding any provision set forth in this Trust Agreement regarding duration and termination of the Trust, the Trust shall continue in existence for as long a period as may be required to wind up its business. Upon termination, the Board shall continue in its capacity as a Board of Trustees for so long a period as may be required to wind up the business of the Trust.

**17.04 Disposition of Trust Assets and Final Accounting.** Upon termination of this Trust, any and all monies remaining in the Fund shall be disposed of in accordance with Article 18.01. At such time as the business of the Trust is wound up, the Board shall render a final accounting of the affairs of the Trust to the Participating Entities. Thereafter, there shall be no claim or action against the Board except as expressly provided herein and they shall have no further responsibility or duties and they shall be discharged.

## **ARTICLE XVIII. DISTRIBUTIONS OF SURPLUSES AND DEFICITS UPON TERMINATION OF THE TRUST, VOLUNTARY TERMINATION OF MEMBERSHIP OR EXPULSION**

**18.01 Termination of the Trust.** Upon termination of the Trust, the Board shall, by majority vote, provide for the development of a plan (the termination plan) to wind up the Trust's business over the course of a period not to exceed thirty six (36) calendar months from the effective date of the Trust's termination. The termination plan shall provide for at least the following:

- (a) Payment of all administrative and other costs reasonably required to wind up the Trust's operations;
- (b) Payment of all outstanding claims liabilities of the Trust including, without limitation, all known claims and incurred but not reported liabilities;
- (c) Payment to the Trust of any deficits owed to it by any current or former Participating Entities; and
- (d) Payment of any outstanding amounts due to former Participating Entities that have previously voluntarily terminated their memberships in the Trust in accordance with Articles 15.01 or 15.02 of this Trust Agreement.

**18.02 Voluntary Termination of Membership.** For entities voluntarily terminating membership as provided under Article 15.01 or 15.02, surpluses and deficits allocated to the Participating Entity during the term of its membership, including adjustments for administrative expenses associated with the termination, shall be paid in accordance with the following schedule:

- (a) Surpluses payable to the former Participating Entity shall be paid in two (2) installments, with the first installment comprised of an amount not to exceed seventy five percent (75%) of the total estimated amount due being paid no later than one hundred eighty (180) calendar days after the effective date of such termination, and any remaining surplus balances due being paid not later than twenty seven (27) months after the effective date of such termination, or in accordance with such other schedule as may be agreed to between the former Participating Entity and the Board.
- (b) Deficits payable to the Trust from the former Participating Entity shall be paid in two (2) installments, with the first installment comprised of an amount not to exceed seventy five percent (75%) of the total estimated amount due being paid no later than one hundred eighty (180) calendar days after the effective date of such termination and any remaining deficit balances due being paid not later than twenty seven (27) months after the effective date of such termination, or in accordance with such other schedule as may be agreed to between the former Participating Entity and the Trustees.
- (c) At the time of the final distribution of surpluses or deficits as provided for in this section 18.02, the Board shall render a final accounting of the affairs of the Trust to the former Participating Entity whose membership terminated as provided hereunder.

**18.03 Expulsion.** In the event that a Participating Entity is expelled and membership involuntarily terminated in accordance with Article 16.02 above, surpluses and deficits allocated to the Participating Entity during the term of its membership, including adjustments for administrative expenses associated with the termination, shall be paid in accordance with the following schedule:

- (a) Former Participating Entities shall remain liable for the full amount of contributions that would otherwise have been due to the Trust during the period of time between the date of such Entity's expulsion and the scheduled end of such Entity's Initial or Renewal Term of Participation. Amounts due to the Trust under this Article may be collected through reduction of any surpluses otherwise due to the former Participating Entity in accordance with Article 18.03 (b) or, in the event the former Participating Entity has no surplus due to it, or that the amount due to the Trust under this Article exceeds the amount of surplus due to the former Participating Entity, through assessment in accordance with Article 18.03(c) of this Trust Agreement.
- (b) Surpluses payable to former Participating Entities that were expelled in accordance

with Article XVI shall be reduced by the amount of the Member Contributions that would otherwise have been due to the Trust during the period of time between the date of such Entity's expulsion and the scheduled end of such Entity's Initial or Renewal Term of Participation. The balance of any remaining surpluses due to the former Participating Entity after making such adjustment shall be paid in two (2) installments, with the first installment comprised of an amount not to exceed seventy five percent (75%) of the remaining total estimated amount due being paid no later than one hundred eighty (180) calendar days after the effective date of such expulsion, and any remaining surplus balances due being paid not later than twenty seven (27) months after the effective date of such expulsion, or in accordance with such other schedule as may be agreed to between the former Participating Entity and the Board.

- (c) Deficits payable to the Trust from an expelled former Participating Entity shall be paid in two (2) installments, with the first installment comprised of an amount not to exceed seventy five percent (75%) of the total estimated amount due being paid no later than one hundred eighty (180) calendar days after the effective date of such termination and any remaining deficit balances due being paid not later than twenty seven (27) months after the effective date of such termination, or in accordance with such other schedule as may be agreed to between the former Participating Entity and the Board.
- (d) At the time of the final distribution of surpluses or deficits as provided for in this section 18.03, the Board shall render a final accounting of the affairs of the Trust to the former Participating Entity whose membership terminated as provided hereunder.

## **ARTICLE XIX. MISCELLANEOUS**

**19.01 Prosecution and Defense of Lawsuits.** In the event any claim, suit, action or legal or administrative proceeding is brought against the Trust, the Board of Trustees, one or more Trustees or the Fund, in connection with any matter arising out of the administration of the Trust or Fund or in connection with this Trust Agreement or in connection with any act or omission of the Board of Trustees or one or more of the Trustees, or in the event of any suit, action or proceeding commenced by the Board, including, but not limited to, a request for a judicial settlement of accounts, a suit for construction, a bill of interpleader, or any other matter relating to the Trust, the Board shall have the power and authority to employ legal counsel to represent it in any such suit, action or proceeding. Expenses, including legal counsel fees and other costs shall be paid from the Fund as long as the Board has acted in good faith and not with gross negligence, bad faith or willful misconduct, it being the intent to indemnify the Trustees, individually and as a Board, against all honest mistakes in judgment and all acts or omissions that are not deliberate or willful violations of the duties of the Board. In addition, the Board shall have the right to commence and prosecute such suits, actions or proceedings as it may determine are necessary and proper in order to protect the interest of the Trust or Fund, and, in this connection, the Board shall have the same rights and entitlement to reimbursement for costs and expenses as heretofore described for the defense of lawsuits.

**19.02 Fiduciary Liability.** The fiduciary liability and funding of all eligible benefits as determined by the Plan Document shall be the sole responsibility of the Board acting in their official capacity and shall not be determined to be a fiduciary duty of any Participating Entity.

**19.03 Worker's Compensation.** The insurance coverage contemplated by this Trust Agreement shall not apply in any case which is compensable under Worker's Compensation.

**19.04 Situs of Trust.** The City of Phoenix, County of Maricopa, State of Arizona, shall be deemed the situs of the Trust created hereunder. All questions pertaining to validity, construction and administration shall be determined in accordance with the laws of such State and County. This Trust Agreement is deemed made, executed and delivered in such State.

**19.05 Interpretation of Trust Agreement.** Whenever any words are used in this Trust Agreement in the masculine gender, they shall be construed as though they were also in the feminine or neuter gender in all situations where they would so apply and wherever any words are used in this Trust Agreement in the singular form, they shall also be construed as though they were also used in the plural form in all situations where they would so apply, and whenever any words are used in this Agreement in the plural form they shall be construed as though they were also in the singular form in all situations where they would so apply.

**19.06 Captions.** It is understood and agreed that the captions and headings contained in this Trust Agreement are included for convenience only and that they are not and shall not be deemed a part of the Agreement and that they shall in no way define, limit or expand any of the terms, obligations or conditions set forth herein.

**19.07 Severability.** The parties agree that, to the extent that any provision of this Trust Agreement is in conflict with any applicable statute, regulation or rule, that provision shall be deemed unenforceable and the applicable statute, regulation or rule shall govern. Should any provision or term in this Trust Agreement be deemed or held to be unlawful or invalid for any reason, such a determination will not adversely affect the remaining provisions contained herein unless such a determination will make the operation of the Trust impossible or impractical. In such a case, the appropriate parties shall immediately adopt such provisions as may be required to facilitate the proper functioning of the Trust.

**19.08 Taxation of Contributions, Assets, Income and Benefits.** This Trust Agreement is being entered into and contributions are being made based upon the expectation that contributions made hereunder will not be subject to taxation and that benefits received by employees or other beneficiaries will not be deemed compensation in determination of federal, state or local tax liability. The parties hereto, individually and collectively, agree to take or cause to be taken any and all steps that may be necessary or advisable in order to obtain and/or maintain a tax-exempt status for this Trust. In the event that any provisions of this Trust Agreement are determined to impose tax obligations on any Participating Entity or Employees or other Beneficiaries, any steps necessary to eliminate such obligations shall be taken immediately. Nothing in this section shall be deemed to impose liability on the Board, the Trust or Participating Entities in the event that



contributions or benefits are deemed taxable or in the event that investment income received by the Trust is determined to be subject to taxation.

**19.09 Cancellation.** This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

## **ARTICLE XX. STOP LOSS PROVISIONS**

**20.01 Stop Loss Requirement.** Specific stop-loss reinsurance shall be an integral part of any self-funded benefit program established pursuant to this Trust Agreement. It is the intent of the parties to this Trust Agreement that stop-loss coverage, with such attachment points and policy limits as may be deemed necessary to protect the loss fund and allow complete and timely payment of benefits, be provided by an authorized carrier licensed to execute contracts in the State of Arizona.

## **ARTICLE XXI. LOSS CONTROL PROGRAM**

**21.01 Loss Control Program.** The Board shall provide for the development and implementation of a program of loss control for each plan year of Trust operations. The loss control program shall be further described in the Plan of Risk Management approved each year and may include one or combinations of:

- (a) Specific and/or aggregate reinsurance;
- (b) Conventional insurance, partial or full self-insurance;
- (c) Access to Preferred Provider Organizations (PPO) for benefit offerings;
- (d) Medical pre-certification, concurrent and/or post discharge review;
- (e) Large case management;
- (f) Health and wellness promotion;
- (g) Employee assistance programs; and
- (h) Such other loss control programs as the Board may determine to be appropriate.

## **ARTICLE XXII. USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION BY PARTICIPATING ENTITIES**

**22.01** The Participating Entities in the Arizona Metropolitan Trust shall only use protected health information ("PHI") to the extent of and in accordance with the uses and disclosures permitted by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Specifically, the Participating Entities may use and disclose PHI for purposes related to health care treatment,

payment for health care and health care operations.

**22.02** Payment includes activities undertaken by the Participating Entities individually or through the Benefits Administrator to determine or fulfill its responsibility for coverage and provision of plan benefits that relate to a Beneficiary to whom health care is provided. These activities include, but are not limited to, the following:

- (a) Determination of eligibility, coverage and cost sharing amounts (for example, cost of a benefit, plan maximums and copayments as determined for an individual's claim);
- (b) Adjudication of health benefit claims (including appeals and other payment disputes);
- (c) Subrogation of health benefit claims;
- (d) Establishing Employee Contributions;
- (e) Risk adjusting amounts due based on enrollee health status and demographic characteristics;
- (f) Billing, collection activities and related health care data processing;
- (g) Claims management and related health care data processing, including auditing payments, investigating and resolving payment disputes and responding to Beneficiary inquiries about payments;
- (h) Obtaining payment under a contract for reinsurance (including stop-loss and excess of loss insurance);
- (i) Medical necessity reviews or reviews of appropriateness of care or justification of charges;
- (j) Utilization review, including precertification, preauthorization, concurrent review and retrospective review;
- (k) Disclosure to consumer reporting agencies related to the collection of premiums or reimbursement (the following PHI may be disclosed for payment purposes: name and address, date of birth, Social Security number, payment history, account number and name and address of the provider and/or health plan); and
- (l) Reimbursement to the Trust.

**22.03** Health Care Operations include, but are not limited to, the following activities:

- (a) Quality assessment;

- (b) Population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, disease management, contacting health care providers and patients with information about treatment alternatives and related functions;
- (c) Rating provider and plan performance, including accreditation, certification, licensing or credentialing activities;
- (d) Underwriting, premium rating and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and ceding, securing or placing a contract for reinsurance of risk relating to health care claims (including stop-loss insurance and excess of loss insurance);
- (e) Conducting or arranging for medical review, legal services and auditing functions, including fraud and abuse detection and compliance programs;
- (f) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the Trust, including formulary development and administration, development or improvement of payment methods or coverage policies;
- (g) Business management and general administrative activities of the Trust, including, but not limited to:
  - (i) Management activities relating to the implementation of and compliance with HIPAA's administrative simplification requirements, or
  - (ii) Customer service, including the provision of data analyses for Employees, the Trust or other Beneficiaries; and
- (h) Resolution of internal grievances.

**22.04** The Participating Entity agrees to:

- (a) Not use or further disclose PHI other than as permitted or required by the Plan Document or as required by law;
- (c) Ensure that any agents, including a subcontractor to whom the Participating Entity provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Participating Entity with respect to PHI;
- (d) Not use or disclose PHI for employment-related actions and decisions unless authorized by a Beneficiary;
- (e) Not use or disclose PHI in connection with any other benefit or employee benefit plan of

the Participating Entity unless authorized by a Beneficiary;

- (f) Report to the Trust any PHI use or disclosure that is inconsistent with the uses or disclosures provided for of which it becomes aware;
- (g) Make PHI available to a Beneficiary in accordance with HIPAA's access requirements;
- (h) Make PHI available for amendment and incorporate any amendments to PHI in accordance with HIPAA;
- (i) Make available the information required to provide an accounting of disclosure;
- (j) Make internal practices, books and records relating to the use and disclosure of PHI received from the Plan available to the HHS Secretary for the purposes of determining the Trust's compliance with HIPAA; and
- (k) If feasible, return or destroy all PHI received from the Trust that the Participating Entity still maintains in any form, and retain no copies of such PHI when no longer needed for the purpose for which disclosure was made (or if return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction infeasible).

**22.05** In accordance with HIPAA, only the following employees or classes of employees of a Participating Entity may be given access to PHI:

- (a) The human resources director or the individual assigned by the governing body of a Participating Entity to perform said function; and
- (b) Staff designated by the person assigned pursuant to Article 22.05(a).

**22.06** The persons described in Article 22.05 may only have access to and use and disclose PHI for plan administration functions that the Trust performs for the Participating Entity.

**22.07** If the persons described in Article 22.05 do not comply with the Plan Document, the Trust may provide a mechanism for resolving issues on noncompliance, including disciplinary sanctions.

**EXHIBIT A**

Participating Entities – Arizona Metropolitan Trust as authorized and approved by the Board of Trustees as of July 1, 2012 including Initial Terms of Participation established pursuant to Article 14.02 of the Trust Agreement.

	<b><u>Participating Entity</u></b>	<b><u>Membership Term</u></b>
1.	City of Apache Junction	July 01, 2012 - June 30, 2018
2.	City of Avondale	July 01, 2012 - June 30, 2018
3.	City of El Mirage	July 01, 2012 - June 30, 2018
4.	Town of Youngtown	July 01, 2012 - June 30, 2018

Participating Entities – Arizona Metropolitan Trust as authorized and approved by the Board of Trustees effective March 1, 2015:

	<b><u>Participating Entity</u></b>	<b><u>Membership Term</u></b>
1.	Buckeye Valley Fire District	March 01, 2015 - June 30, 2018

Participating Entities – Arizona Metropolitan Trust as authorized and approved by the Board of Trustees effective July 1, 2015:

	<b><u>Participating Entity</u></b>	<b><u>Membership Term</u></b>
1.	Pinal County	July 01, 2015 - June 30, 2018