



40 SQUARE HEALTH PLAN TRUST AGREEMENT

Originally Effective January 1, 2018 and Restated as of December 19, 2019

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40 SQUARE HEALTH PLAN TRUST AGREEMENT

THIS AGREEMENT (hereinafter "Agreement" or "Trust Agreement"), originally effective as of January 1, 2018 and **restated as of December 19, 2019**, established by 40 Square Cooperative Solutions (the "Cooperative Solutions"), a Minnesota cooperative association organized under Minnesota Statutes, Chapter 308B, and the Trustees hereinafter named, together with any successors as trustees (the "Trustees"), for the benefit of its Employer Members (the "Participating Employers").

WITNESSETH

WHEREAS, Cooperative Solutions was organized and approved by the Minnesota Secretary of State as a 308B Cooperative under applicable state law. The Minnesota agricultural cooperative community organized Cooperative Solutions to (i) better inform and educate members about health care; (ii) provide wellness information; and (iii) offer increased access to a quality health plan and ancillary benefit options for the Minnesota's agricultural community; and

WHEREAS, in accordance with Minnesota Statute, Section 62H.18, which allows the creation of agricultural cooperative health plans, Cooperative Solutions formed 40 Square Consortium Health Plan Trust and in 2019 approved a name change to 40 Square Health Plan Trust (the "Trust") in January 2018; and

WHEREAS, Cooperative Solutions shall provide support services, including but not limited to, marketing, communications and distribution for the Trust; and

WHEREAS, Cooperative Solutions' wholly owned company, Trusted Acres, LLC ("Trusted Acres") is a Minnesota licensed insurance agency, and Trusted Acres shall provide distribution assistance to the Trust particularly for ancillary products;

WHEREAS, the Trust is formed to offer self-insured medical and prescription plans to Cooperative Solutions members through this trust organized as a multiple employer welfare arrangement ("MEWA") under the Employer Retirement Income Security Act ("ERISA"); and

WHEREAS, in order to offer fully-insured ancillary benefits to Cooperative Solutions members, an additional trust was created by Cooperative Solutions to offer dental, vision and life benefits. This trust is called 40 Square Ancillary Trust (the "Ancillary Trust"). The Ancillary Trust is also organized as a MEWA; and

WHEREAS, Cooperative Solutions recognizes that ERISA allows a MEWA to offer both self-insured and full- insured health and ancillary benefits to Cooperative Solutions members in a common Trust; thereby reducing administrative costs incurred by separate benefit Trusts; and

WHEREAS, in December 2019, Cooperative Solutions Board of Trustees approved the merger of the Ancillary Trust into the Trust, and the Trust continues to operate as a MEWA in accordance with

state and federal requirements. The Cooperative Solutions members are able to purchase both medical, prescription and ancillary benefits from the Trust; and

WHEREAS, the Trust needs to have access to reserve funds made available to Cooperative Solutions by a grant from the United States Department of Agriculture (the "USDA Grant") totaling \$1.4 million dollars. The purpose of the USDA Grant is to establish a stop loss fund for the Trust to pay 90% of claims ranging between \$30,000 and \$90,000, reducing the financial obligation of Cooperative Solutions members enrolled in the Trust for self-insured medical and prescription benefits; and

WHEREAS, Cooperative Solutions formed an additional trust, the 40 Square Cooperative Solutions Trust (the "Cooperative Trust") to hold the USDA Grant; and

WHEREAS, Cooperative Solutions has adopted a process for USDA Grant funds to be transferred from the Cooperative Trust to the Trust, when necessary, to offer Cooperative Solutions members enrolled in the Trust the form of lower health care fees and/or insurance premium; and **NOW, THEREFORE**,

BE IT RESOLVED, in consideration of the premises and of the mutual promises herein contained, the Board of Trustees for Cooperative Solutions, Cooperative Trust, Trust and Ancillary Trust hereby agree (1) to provide a source of funds to pay benefits and administrative expenses under the Trust, and (2) to permit Trust assets to be invested and such earnings thereon to be not taxable under the Code. Cooperative Solutions, Cooperative Trust and the Trust are established and maintained so as to collectively be an "agricultural cooperative health plan" within the meaning of Minnesota Statutes Section 62H.18.

NOW, THEREFORE, in consideration of the premises and of the mutual promises herein contained, the Trustees hereby agree as follows:

ARTICLE I. INTRODUCTION

- 1.1 **Establishment.** The 40 Square Health Plan Trust (the "Trust") is heretofore established effective January 2018. The Fiscal Year of the Trust shall be January through December. The Trust is intended to qualify as a tax-exempt trust under Section 501(c)(9) of the Code.
- 1.2 **Purpose.** The purposes of the Trust are (1) to provide a source of funds to pay benefits and administrative expenses under the 40 Square Health Plan (the "Plan"), and (2) to permit Trust assets to be invested and such earnings thereon to be not taxable under the Code. The Plan and the Trust are established and maintained so as to collectively be an "agricultural cooperative health plan" within the meaning of Minnesota Statutes Section 62H.18.
- 1.3 **Bona Fide Association.** The Cooperative Solutions is intended to be "a bona fide association" for purposes of the definition of employer under Section 3(5) of ERISA. As reflected by the description of an employer eligible to participate, and the definition of Participating Employer, the Trust limits itself to entities with sufficient commonality

of interest independent from the provision of benefits. As illustrated by the terms and conditions of the Trust Agreement, Participating Employers exercise actual control over the Trust, direct and indirect, both in form and substance. Only Participating Employers in this Trust may provide benefits through the Plan.

- 1.4 **Internal References.** Any reference in this Trust Agreement to a specific article or section shall be a reference to an article or section of this Trust Agreement unless otherwise noted.

ARTICLE II. DEFINITIONS

The following words and phrases are used in this Trust Agreement and shall have the meanings set forth in this Article unless a different meaning is clearly required by the context or is defined within an Article.

- 2.1 **Administrator** shall mean any third-party administrator hired by the Trust to perform services on behalf of the Trust, including a claims administrator or management services company.
- 2.2 **Agricultural Cooperative** shall mean a cooperative organized under chapter 308A or 308B that meets the requirements of Minnesota Statute 62H.18 Agricultural Cooperative Health Plan, Subdivision 2.
- 2.3 **Association** shall mean 40 Square Cooperative Solutions, a Minnesota cooperative organized and operating under Minnesota Statutes Chapter 308B and pursuant to Articles of Incorporation and Bylaws adopted by the Association.
- 2.4 **Board of Trustees** means the governing body of the Trust made up of the Trustees and described under Article VI.
- 2.5 **Code** means Section 501(c)(9) of the Internal Revenue Code.
- 2.6 **Covered Individual** Shall mean an individual properly receiving coverage through the Trust in accordance with Trust provisions.
- 2.7 **Employee** shall mean any person regularly employed by an Employer on a full-time basis, as defined in the applicable Trust documents, Underwriting Guidelines and Participation Agreements. Such persons may include any Employer who is an individual proprietor or partner if the individual proprietor or partner is actually engaged in and devotes a substantial part of his or her time to the conduct of the business of the proprietorship or partnership. Employees shall not include a director/trustee of a corporate Employer or member of a limited liability company unless such director/trustee or member, as the case may be, is otherwise eligible as a bona fide Employee performing services other than the usual duties of a corporate director/trustee or member of a limited liability company. Such persons shall not include any person ineligible, under any state or federal law, to be covered in any of the benefit plans maintained by the Directors/Trustees.

- 2.8 **Employee Retirement Income Security Act (“ERISA”)** Shall mean the Employee Retirement Income Security Act of 1974, as amended and in effect from time to time, as well as any regulations issued pursuant thereto, as such law and regulations affect this Trust. ERISA shall also mean any subsequent legislation and regulations (or amendments) with similar purpose.
- 2.9 **Enrollment Form** shall mean the document an Employee of a Participating Employer signs requesting coverage under a Plan.
- 2.10 **Fiscal Year** shall mean the fiscal year of the Trust shall begin on January 1 and end on December 31 of each year.
- 2.11 **Insurer or Insurance Company** shall mean any insurance company licensed to do business in any state wherein the Trust provides coverage that, upon application of the Trustees, issues one or more insurance contracts to the Trust, including, but not limited to, dental, life insurance, vision and so-called "stop-loss" coverage.
- 2.12 **Investment Manager** means an individual or entity selected pursuant to Section 7.16 to manage the Investment of all or a portion of the Trust assets
- 2.13 **Joint Self-Insurance Plan** shall mean a Plan, or any other arrangement established for the benefit of two or more entities authorized to transact business in the state, in order to jointly self-insure through a single employee welfare benefit plan funded through a trust, to provide health, dental, or other benefits as permitted under ERISA.
- 2.14 **MEWA** shall mean a Multiple Employer Welfare Arrangement as that term is defined under applicable federal and state law.
- 2.15 **Participation Agreement (Contract)** shall mean the document a Participating Employer signs requesting participation in the Trust and the Plan for its Employees.
- 2.16 **Participating Employer** shall mean any eligible employer under Section 4.1 that is participating in the Trust, including, but not limited to, a sole proprietorship, partnership, firm, limited liability company or corporation certified by any such legal entity, or its designated Administrator, as a member in good standing of Cooperative Solutions; provided in each case that such person or entity shall not be prohibited by any state or federal law from covering its employees under any of the benefit plans maintained by the Trustees; and provided further, that such person or entity shall satisfy the underwriting provisions of the applicable benefit Plan(s) and assume the obligations of this Trust and the benefit plans maintained hereunder with respect to its Employees by agreeing to become a party to this Agreement on the forms to be supplied by the Trustees.
- 2.17 **Plan** shall mean the 40 Square Health Plan, as amended from time to time, an insured and/or self-funded program of welfare benefits for Employees of Participating Employers as defined in ERISA mean.
- 2.18 **Plan Administrator** means the person identified as such, for purposes of ERISA, in the

Trust.

- 2.19 **Plan Benefit Year** shall mean the period beginning January 1 and ending on December 31 each year or as otherwise defined in the applicable Plan documents, Underwriting Guidelines and Participation Agreements.
- 2.20 **Plan Requirements.** A joint self-insurance plan operating under this section must:
- Offer health coverage to members of the agricultural cooperative that establishes the plan and their dependents, to employees of members of the agricultural cooperative that establishes the plan and their dependents, or to employees of the agricultural cooperative that establishes the plan and their dependents. Health coverage may be offered only to those individuals who meet certain criteria described in the joint self-insurance plan governing documents, however the criteria cannot be based on health status factors of the individuals to be covered through the joint self-insurance Plan;
 - include stop-loss coverage with an individual attachment point not lower than \$20,000 and an aggregate attachment point not lower than 110 percent of expected claims, issued by an insurance company licensed in Minnesota;
 - Establish a reserve fund, certified by an actuary to be sufficient to cover unpaid claim liability for incurred but not reported liabilities in the event of plan termination. Certification from the actuary must include all maximum funding requirements for plan fixed cost requirements and current claims liability requirements and must include a calculation of the reserve levels needed to fund all incurred but not reported liabilities in the event of member or plan termination. These reserve funds must be held in a trust;
 - Be governed by a board elected by agricultural cooperative members that participate in the plan;
 - Contract for services with a service plan Administrator; and
 - Satisfy the requirements of ERISA that apply to employee welfare benefit plans.
- 2.21 **Policy(ies)** shall mean any contract of individual or group insurance issued by an Insurer as part of the Plan(s) maintained hereunder for fully-insured benefits.
- 2.22 **Sponsor or Plan Sponsor** shall mean Cooperative Solutions, which makes the benefits afforded by the Trust available to its member employers.
- 2.23 **Trust** means the 40 Square Health Plan Trust, as reflected in this Trust Agreement, established to accept and hold assets of the joint self-insurance plan in trust and use and disperse funds in accordance with the terms of this written trust document and joint self-insurance plan for the sole purposes of providing benefits and defraying reasonable administrative costs of providing the benefits.
- 2.24 **Trust Agreement** means this Trust Agreement, as it may be amended from time to time, and all amendments thereof and supplements thereto.

- 2.25 **Trustees** means the Board of Trustees established pursuant to Article VI hereof, and the individual Trustees that constitute the Board of Trustees, who shall also be the Plan Administrator established pursuant to Article 6.
- 2.26 **Underwriting Guidelines** shall mean those requirements an Employee and/or Employer must satisfy in order to be eligible for coverage under the Trust Plans.

ARTICLE III. CREATION OF THE FUND

- 3.1 **Creation.** There is hereby created a fund, to be known for all purposes as the 40 Square Health Plan Trust, which fund shall be used solely as provided under ARTICLE V hereof.
- 3.2 **Administration of the Fund.** The fund shall be administered by the Trustees (and any successors) with the powers, duties and responsibilities of the Trustees as hereinafter set forth in ARTICLE VI hereof. The Trustees may delegate their administrative, non-discretionary duties to an Administrator or any other legally appropriate entity(ies).
- 3.3 **Source of the Funds.** The Trustees shall hold all contributions received by it and Plan assets in trust and administer the Trust in accordance with this Trust Agreement.
- 3.4 **Accounts.** The Trust may be divided into two or more segregated accounts. One account shall be an aggregated account and shall hold all Plan assets associated with the 40 Square Health Plan. Additional accounts may be established for specific purposes on an as needed basis.

ARTICLE IV. PARTICIPATING EMPLOYERS/EMPLOYEES AND CONTRIBUTIONS

- 4.1 **Eligible Employers.** Any employer shall be eligible to participate in the Plan(s) if it satisfies the requirements for coverage of its Employees as established by the Trustees and/or the Insurer, if any, in accordance with applicable laws and regulations; and provided further, that the employer adopts and subscribes to the Trust Agreement, agrees to the terms hereof and requests inclusion of its Employees under the benefit plans which the Trustees either purchase or self-fund under the Plan(s).

The employer is eligible to apply to participate in the Trust if:

- (a) the employer is a patron member of Cooperative Solutions in continued good standing; and
- (b) the employer has at least one common law employee.

New Participating Employers must agree to participate for an initial period of at least three (3) consecutive years in accordance with Minnesota Statutes Section 62H.18, Subdivision 5. Every applicant the Trustees find eligible to become a Participating Employer shall be promptly notified in writing of the approval of its application and shall become a Participating Employer effective at such date as the Trustees shall determine upon

execution of a Participation Agreement and timely payment of any contributions required for participation as established the Trust. Every other applicant shall be notified in writing that the application has been denied. Until notified in writing that it is a Participating Employer hereunder, no applicant shall rely upon the Trustees to take any action on behalf of such applicant.

4.2 **Eligible Employees.** Any Employee shall be eligible to participate under a Plan provided he/she satisfies the definition of an Employee as set forth in the applicable Plan documents, Underwriting Guidelines and Participation Agreement and qualifies for benefits under the respective policy(ies) and/or the self-funded benefit plan(s) and timely pays any contributions required for participation as established by his/her Employer.

4.3 **Date Participation Begins.** The participation of an Employer under the Trust Plan(s) shall begin on the date specified by the Trustees, which date shall be set by the Trustees or the Administrator after application to the Trustees by the Employer for participation in the Plan(s) and in accordance with the provisions of the applicable Plan documents, Underwriting Guidelines and Participation Agreements.

The participation of an Employee under an insured and/or self-funded benefit plan shall begin on the date prescribed by the policy(ies) and/or the self-funded benefit plan(s) in accordance with the provisions of the applicable Plan documents, Underwriting Guidelines, Enrollment Forms and Participation Agreements. The Participating Employer or Trust may establish a waiting period in accordance with the Plan(s) and applicable law and regulation before benefits may be available to its Employees or any class thereof.

4.4 **Date Participation Terminates.** The participation of an Employer shall cease when such Employer (1) ceases to be an Employer as defined in Section 4.1; (2) fails to make the contributions due from it as provided in its Participation Agreement with the Trust; (3) terminates its participation hereunder pursuant to the provisions of the Participation Agreement; (4) ceases to qualify as an Employer under and by virtue of any applicable state or federal law; (5) fails to comply with the rules and regulations contained in the Plan(s) or established by the Trustees and/or the Administrator with respect to the administration of the Plan(s) and the Trust as defined in the applicable Plan documents, Underwriting Guidelines and Participation Agreements; or (6) fails to cooperate with the Trustees and/or the Administrator in all necessary and proper duties and responsibilities required of Employers by the Trustees and/or the applicable laws, regulations or directives of state or federal agencies, commissions or departments. The date on which said participation shall terminate shall be the date determined by the Trustees and/or the Administrator or the date provided for in the applicable Plan documents, Underwriting Guidelines and Participation Agreements, whichever is earlier.

An Employee's participation in the Plan(s) shall cease when such Employee (1) ceases to satisfy the definition of an Employee, (2) fails to meet the requirements for coverage under the Plan(s), (3) fails to timely pay required contributions for coverage, (4) is deemed ineligible for coverage under applicable law, regulation or rule, or (5) misrepresents pertinent enrollment or claims information to his/her Participating Employer and/or the

Trustees and/or the Administrator in accordance with the provisions of the applicable Plan documents, Underwriting Guidelines, Enrollment Forms and Participation Agreements.

- 4.5 **Voluntary Employer Withdrawal.** Upon expiration of the period of participation required under the Participation Agreement with the Trust any Participating Employer may, upon thirty (30) days advance written notice to the Trustees, withdraw from the Trust and thereby from the Plan. The withdrawing Participating Employer may be assessed a termination fee determined in accordance with policies and procedures adopted by the Trustees. Such fee shall be used to defray the reasonable administrative costs of the Trust and Plan. The Trustees reserve the right to notify all impacted Covered Individuals of the withdrawal.
- 4.6 **Involuntary Employer Withdrawal.** Upon expiration of the period of participation required under the Participation Agreement with the Trust, any Participating Employer that fails to make contributions as required shall, upon ten (10) days written notice and failure to make up, or make arrangements satisfactory to the Trustees to make up, any delinquent contributions, cease to be a Participating Employer and shall be assessed the termination fee described in the Participation Agreement. The Trustees reserve the right to notify all impacted Covered Individuals of the withdrawal.
- 4.7 **Termination of Participation.** If participation in the Trust is terminated as provided in the Participation Agreement:
- (a) With respect to the Trust account that funds the Plan:
 - (i) all of the provisions of the Trust evidenced by this Trust Agreement shall continue in effect with respect to the withdrawing Participating Employer until all benefits accrued prior to the effective date of the withdrawal attributable to its Covered Individuals' have been paid;
 - (ii) the Trust, Trustees, and the Association shall have no further liability to the withdrawing Participating Employer or its Covered Individuals other than to distribute from the Trust amounts necessary to pay benefits under the Plan that accrued prior to the effective date of the Participating Employer's withdrawal; and
 - (iii) except as provided herein and/ or in Section 4.8, upon withdrawal, the Trustees shall not transfer any of the Trust's assets attributable to contributions made by a withdrawing Participating Employer to any other trust or otherwise pay or distribute such assets to the withdrawing Participating Employer.
 - (b) A withdrawing Participating Employer shall remain liable for all contributions, fees, and/or assessments due or accrued prior to the effective date of the Participating Employer's withdrawal from the Trust. The withdrawing Participating Employer shall indemnify and hold harmless the Plan, the Trust, the Trustees, Cooperative Solutions, the Administrator(s), and the other Participating Employers from any and all liabilities, losses, costs or expenses (including legal fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by or asserted against any of them as a result of said Participating Employer's withdrawal from the Trust.
 - (c) When, in accordance with the provisions of the Participation Agreement, a Participating Employer's participation ceases, the Trustees and/or the Administrator

shall forthwith give notice thereof to the Participating Employer and to any affected Insurer. The terminated Participating Employer shall give notice thereof to its Covered Individuals. The Trustees and/or the Administrator may but are not required to also give such notice of termination to Covered Individuals of the terminated employer.

- (d) Upon termination of participation, neither the employer nor its Employees shall have any further interest under the Plan(s), except for any applicable extensions of benefits.

4.8 **Reinstatement.** An employer that was a Participating Employer but withdrew voluntarily or involuntarily as provided in Sections 4.5 and 4.6 shall be eligible to apply for reinstatement as a Participating Employer in accordance with Section 4.1.

4.9 **Contributions.** Each Participating Employer who is accepted for self-funded and/or fully-insured coverage hereunder shall pay to the Trustees or the Administrator such initial, monthly and other contributions, healthcare fees, premiums and assessments with respect to its participation in the Plan(s), as may be determined by the Trustees or the Administrator in accordance with the provisions of the applicable Plan documents, Underwriting Guidelines and Participation Agreements or this Trust Agreement.

Each Participating Employer shall be responsible only for the contributions it is obligated to make or forward under the Plan on behalf of its respective Covered Individuals, including, but not limited to, those Covered Individuals receiving continuation coverage at the time such Participating Employer withdraws from the Trust and the Plan if the Plan must continue to provide such continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 "COBRA") as amended. The Trustees, or such other person or entity designated or appointed by the Trustees, are hereby designated as the persons to receive the contributions made to the Trust by the Participating Employers. Contributions to the Trust shall be pooled; the assets of the Trust shall not be segregated on behalf of Participating Employers' respective Covered Individuals. The Trustees (or such other person or entity designated or appointed by the Trustees) are hereby designated as the persons to receive the contributions made to the Trust by the Participating Employers. Contributions shall be allocated to Trust accounts as provided in Section 3.4.

The contributions and/or premiums received from Participating Employers by the Trustees or the Administrator shall be used for the following purposes:

- (a) to pay or provide for the payment of benefits or premiums when such benefit payments or premiums shall become due on account of the coverage of the Participating Employer and their respective Employees under the Plan(s) selected;
- (b) to establish and accumulate such a reserve as the Trustees or the Administrator shall deem advisable and adequate to carry out the purposes of the Plan(s) (reserves shall also include such amounts as are required under applicable legislation, regulation and directives);
- (c) to return deposits to employers;
- (d) to pay or provide for the payment of all reasonable and necessary expenses of collecting the Participating Employer contributions, defraying the expenses involved

in promoting and administering the Plan(s), and otherwise paying or providing for the payment of the reasonable expenses involved in operating and administering the Trust;

- (e) to pay withdrawing Participating Employers applicable refunds of contributions received from such Participating Employers; provided, however, that the Trustees and/or the Administrator shall be under no obligation to make any refund of contributions of such Participating Employer, if insurance has been purchased or benefits paid on its account, until such Participating Employer's pro rata share of all premiums, contributions and Trust expenses to the date of termination of the benefits coverage for its Employees has been paid in full;
- (f) to make equitable distributions to Participating Employers when participating in the Fund (after payment of all obligations then outstanding in accordance with section 8.4 of this Agreement), as the Trustees and/or the Administrator may determine and in accordance with the law, in the event the Trust is terminated (if any of the return funds are attributed to Employee contributions, the Participating Employer, upon receipt of such funds, shall deal with them in accordance with the terms of its individual employer plan or policy, and the Trustees and/or the Administrator shall have no further responsibility as to them). Notwithstanding this provision for the return of the remaining Fund to then Participating Employers, in the event of termination of the Trust, the Trustees and/or the Administrator, in their best judgment, may elect to use any amounts remaining in the Fund to fund benefits for Employees through a successor plan, policy, MEWA or other similar arrangement;
- (g) The Trustees shall determine the appropriate level of reserves to maintain to provide the Trust financial stability in accordance with Minnesota Statutes Section 62H.18, Subdivision 3(3). The contributions and/or premiums may be used to pay surplus funds (collectively defined to be any annual dividends, experience rating refunds, returns of contributions and/or investment earnings), if any, remaining in their possession to those Participating Employers who were Participating Employers in the Trust at the end of the Plan Year for which the surplus funds were credited. Any such decision as to distribution shall be in the sole discretion of the Trustees or the Administrator. Each such Participating Employer shall participate in such surplus in the same proportion as the total contributions made by such Participating Employer during such Plan Year generating such dividend, refund or return bears to the total of all the contributions received by the Trustees during such plan year from all such Participating Employers which generated such dividend, refund, investment return or surplus. A surplus shall be deemed to exist to the extent that the funds in the hands of the Trustees attributable to any such program exceed the total necessary to fully comply with Paragraphs (a), (b), (c), (d) and (e) of this Section 4.9. If any of the return funds are attributed to Employee contributions, the Participating Employers, upon receipt of funds, shall deal with the funds in accordance with the terms of their individual plan or policy.

4.10 **Dates on which contributions and/or Premiums are to be made.** The Trustees or the Administrator shall determine the date on which the initial contribution and/or premium shall be made by each Participating Employer who becomes covered hereunder, and shall establish the date in each month, which shall be uniform as to all Participating Employers, as of which each Participating Employer shall pay in advance the contributions to cover its Employees and the share of expenses to be borne by the respective Participating Employers

of the Plan(s). These dates will be outlined to each Participating Employer in the applicable Trust documents, Underwriting Guidelines and Participation Agreements. In addition, the Trustees or the Administrator shall fix such date as they may deem suitable or proper, which shall be uniform as to all Participating Employers, on which the Participating Employers shall make a contribution sufficient at all times to maintain a contributed reserve, if established and maintained, for each Plan in the amount which the Trustees or the Administrator determine, as provided for under Section 4.9(b) above. The Trustees shall have the power to impose and collect fines or penalties, in an amount to be established by the Trustees, on any delinquent contributions.

- 4.11 **Employer Financial Responsibility in Self-Funded Plans.** Employers that participate in any self-funded benefit plan maintained by the Trust shall remain individually, severally and proportionately liable for any financial deficiency that may arise in the event that the self-funded plan and the Trust are unable to meet their financial obligations to claimants and/or medical service providers or as directed by the appropriate governmental department, commission or agency or order of the court. Each Employer will be required to sign a Participation Contract acknowledging this contingent liability.
- 4.12 **Special Assessments.** In the event and to the extent the cost of providing benefits exceeds the amount determined by a certified Actuary, the Trustees have discretion to use reserves, assess Participating Employers, or a combination of the two sources to cover the deficiency.
- 4.13 **Reserves.** The Trustees shall determine the appropriate level of reserves to maintain to provide the Trust financial stability in accordance with Minnesota Statutes Section 62H.18, Subd. 3(3). The Trustees shall also determine at what point reserves exceed that level necessary to provide the Trust financial stability. Such reserves are the amounts in excess of the amount necessary to provide benefits under the Plan determined under Section 4.9. To the extent any excess reserve accumulates or any credit, refund, dividend, or similar payment is paid or payable to the Plan from any insurer or service provider or any other amounts from any other source are paid to the Plan that creates a reserve in excess of the amounts deemed necessary by the Trustees, such amounts shall serve to reduce Participating Employer contributions, unless a different allocation is required under the Plan.

ARTICLE V. THE FUND

- 5.1 **Purpose.** This Trust has created a fund for the sole purpose of enabling the Employers to join together and act like a single employer in the purchase and/or maintenance of Policy(ies) of insurance or self-funded benefit plans to cover their respective Employees and to effect economies in the purchase, maintenance and administration of the benefits.
- 5.2 **Manner of Use.** The Trustees and/or the Administrator shall use the funds contributed by the Employers under the Plan(s) to provide benefits or purchase a Policy or Policies issued by an Insurer for the benefit of the Employees, which may include but are not limited to life insurance, health care benefits, disability insurance or any other benefit permitted under ERISA to be offered by employers as an employee welfare benefit plan. Each Policy or benefit plan shall be established, issued and/or maintained in the name of the Trust or the Trustees who, merely for the purposes of the Plan(s) and of dealings with

the Insurer or Administrator, shall be deemed to be the contract holder, and each benefit plan for the covered Employees shall be such as the Trustees may determine.

Each self-funded benefits Plan shall be established and maintained by the Trust or the Trustees for the benefit of Employees of participating Employers. The amount of benefits to be provided by the benefit plans for the covered Employees and the provisions of the benefit plans with respect to waiting periods, definitions of employment and other matters necessary or desirable to be provided shall be such as the Trustees and/or the Administrator may determine and establish or as may be required of certain benefit plans by applicable Minnesota or federal laws, regulations or rules and will be outlined in the applicable Plan documents, Underwriting Guidelines, Enrollment Forms and Participation Agreements.

- 5.3 **Deposit of Funds Pending Use.** The Trustees, in their sole discretion, and in accordance with Section 7.16, should they hold any funds under the terms of the Plan(s) that are not immediately needed for the purchase and maintenance of a Policy or the payment of benefits and expenses, shall also have the right to invest and reinvest such moneys in stocks, bonds and other securities, in any other type of personal property, in real property and in evidence of debt secured by personal or real property provided such investments shall be confined to the class of investments prescribed for trustees or fiduciaries under applicable laws and regulations. The Trustees shall not make any investments in loans of any Participating Employer or any Sponsor, nor shall the Trustees make any investments in loans to employees, officers, directors, members or stockholders of any Participating Employer or any Sponsor. The Trustees may employ the services or recommendations of an investment counselor(s) to protect the funds being invested while maximizing the revenue being realized in accordance with Section 7.16.
- 5.4 **Association With Other Similar Agriculture Benefits Trusts for the Purpose of Securing Benefits Plans.** Anything contained in the Trust or Plan(s) to the contrary notwithstanding, the Trustees may agree with other similar benefit trusts for the combination of financial experience (for dividend purposes or for experience rating purposes) of any benefit plans or Policies issued to the Trustees pursuant to the Plan(s). The Trustees may also elect to participate in a health care exchange, master benefits trust or MEWA as defined herein in Section 2.14. The Trustees may agree with any such health care exchange, master benefits trust or MEWA to provide for centralized administration of all such benefit plans in any manner deemed advisable by them.
- 5.5 **Addition of Other Individual Benefits Trusts.** An individual benefits trust that is not a party to this Trust Agreement may become such a party by signing an application form provided for such purpose by the Trustees and consented to by a majority of the Trustees at a meeting in which a quorum is present. Acceptance of an individual benefits trust to join this Trust is at the sole and exclusive discretion of the Trustees, provided it meets the requirements of any federal or state regulation.

ARTICLEVI. BOARD OF TRUSTEES - APPOINTMENT NUMBER AND TENURE OF TRUSTEES

6.1 **General Management.** The property and business of the Trust herein created shall be managed and controlled by the Trustees, collectively referred to as the Board of Trustees. The Board of Trustees shall elect officers from the members of the Board of Trustees to facilitate the proper function of the Board of Trustees.

6.2 **Number and Appointment.** There shall be five (5) Trustees, each from a different Participating Employer. The Trustees shall be appointed by majority vote of the Participating Employers and shall serve until their expiration of term, death, incapacity, resignation, or removal. Term durations for the Trustees shall be determined by the Participating Employers as part of the appointment process, however, there shall be no term limit as to the amount of time a Trustee may serve as a member of the Board of Trustees unless otherwise determined by the Board of Trustees. No person shall be a Trustee unless he or she accepts such appointment, in writing, filed with the other Trustees. The Participating Employers may, by majority vote following a thirty (30) day advance written notice, increase the number of Trustees from five (5) to some larger (odd) number.

Class B Voting Members of Cooperative Solutions and the Executive Director of Cooperative Solutions shall serve as non-voting ex-officio members of the Board of Trustees for the Trust, at the discretion of the Trustees and may be required to execute a Code of Ethics and a non-disclosure agreement.

6.3 **Qualification.** In order to be a Trustee, the individual must at all times be a Covered Individual that is either a Participating Employer or a common law employee of a Participating Employer. No person shall serve as a Trustee if such service is in violation of provisions of ERISA concerning persons convicted or imprisoned for certain criminal misconduct. All appointed Trustees shall, before assuming their duties, evidence in writing their acceptance of their office as Trustee and agreement to abide by the terms, conditions and provisions of the Trust and all state and federal laws and regulations required of benefit plans and fiduciaries, as well as providing Biographical Affidavits. All Trustees shall annually provide Conflict of Interest and Code of Ethics Statements.

A Trustee may be a Participating Employee or Employee hereunder, but if any matter pertaining to the Trustee's own particular participation under the Plan(s) comes up for the action of the Trustees, the affected Trustee shall be disqualified to act upon the particular matter, which shall be resolved by the remaining Trustees. The disqualified Trustee may, however, act on matters of general applicability to all persons covered under the Plan(s), including himself/herself.

6.4 **Resignation and Removal.** Any Trustees may resign upon not less than thirty (30) days written notice of resignation served upon the other Trustees. Any Trustee may be removed by a majority vote of Trustees or a majority vote of Participating Employers, with or without cause, and without prior notice.

6.5 **Appointment of Successor Trustees.** In the event of resignation, removal, inability or refusal of a Trustee of the Trust to serve, or in the event of a Trustee's death, a successor

Trustees shall be appointed, as soon as reasonably possible, by the then remaining Trustees to serve the unexpired term of the Trustee who resigned, was unable to or refused to serve. For any period during which there is no appointed successor Trustees, the remaining Trustees shall continue to conduct the business under this Trust Agreement.

- 6.6 **Duties of Successor Trustees or Resigning or Removed Trustees.** Immediately upon appointment and upon written acceptance of the trusteeship, a successor Trustees shall become vested with all the rights, powers, and duties of a Trustees hereunder, but any resigning or removed Trustees shall execute all documents and do all acts necessary to vest title to any successor Trustees. Each successor Trustees shall have all the powers, rights and duties conferred by this Trust Agreement as if originally named a Trustee.
- 6.7 **Compensation.** The Trustees hereunder shall be expected to voluntarily serve without compensation. The Trustees collectively may engage agents, consultants and others to assist the Trustees in their duties at the expense of the Fund. The proper and necessary expenses of the Trustees in the administration of the Trust shall be a charge against the Fund. The Trustees may be reimbursed by the Fund for any expenses they may personally incur in their capacity as Trustees.
- 6.8 **Rules and Procedures.** The Trustees shall adopt rules and procedures in furtherance of their powers, authority, and responsibilities described in this Trust Agreement.

ARTICLE VII. BOARD OF TRUSTEES - DUTIES AND POWERS

- 7.1 **Trustees' Responsibilities and Limitations on Liabilities.** The Trustees shall use the ordinary care and reasonable diligence of a prudent man in the performance of their duties in administering the Trust and the Plan(s). The Trustees shall not be liable for any loss or lack of income sustained by reason of any decision that does not violate their fiduciary duties, is performed in good faith and is in accordance with the provisions hereof, subject only to any limitations regarding responsibility as set forth under ERISA or any other applicable legislation or regulation.

The Trustees' powers, duties, rights and obligations shall be limited to those expressly conferred or imposed upon them by this Trust or by law. The Trustees, as a group, shall be the named fiduciary under the Plan(s) and shall have all the powers of management and administration under the Plan(s), unless, in accordance with the provisions of applicable law, a particular management and/or administration function has been delegated to another person. No Trustee or other fiduciary, as that term is defined under the law, shall be liable for breaches of fiduciary duty regarding the Plan(s), if such breach was committed before he/she became a fiduciary or after he/she ceased to be one.

- 7.2 **Limitations on Powers of the Trustees.** The Trust and the Trustees on its behalf, shall not engage in, the business of insurance as an insurer. However, this shall not prevent the Trustees from furnishing to any administrator and the Employers information or solicitation material as to the existence and provisions of the Plan(s).
- 7.3 **ERISA Related Responsibilities.** The Trustees shall delegate to each Employer under

the Plan(s) the responsibility to distribute to or collect from Employees any information that is required by ERISA, other state or federal legislation and regulation, or they otherwise deem necessary. Each Employer shall accept the above responsibilities in order to continue its participation under the Plan(s). Failure to accept the above responsibilities or distribute or collect the required information may result in the termination of a Participating Employer's participation in the Plan(s) as specified in Section 4.6.

7.4 **General Responsibilities.** The general responsibilities of the Trustees shall be as follows:

- (a) Except as expressly provided otherwise herein, the Trustees shall have exclusive authority and discretion to manage and control the assets of the Plan held in the Trust.
- (b) The Trustees shall hold, administer, invest and reinvest, and disburse the Trust assets in accordance with the powers and subject to the restrictions stated herein.
- (c) The Trustees (or its designee under the Plan) shall disburse monies and other properties from the Trust, pursuant to the provisions of the Plan. Such directions shall be in writing and shall be signed by the person or persons thereto authorized by the Trustees. Except as otherwise provided under ERISA, the Trustees shall be under no liability for any distribution made by them pursuant to such directions and shall be under no duty to make inquiry as to whether any distribution made by them pursuant to any such direction is made pursuant to the provisions of the Plan. The receipt of the payee shall constitute a full acquittance to the Trustees.
- (d) The Trustees shall establish one or more custodial agreements with financial institution(s) to hold all assets of the Trust.
- (e) The Trustees shall serve as the Plan Administrator if so provided in the Plan.

7.5 **Exercise of Trustees' Duties.** The Trustees shall discharge its duties hereunder:

- (a) Solely in the best interest of the Covered Individuals;
- (b) Solely for the exclusive purpose of:
 - (i) providing benefits to Covered Individuals and other persons entitled to benefits under the Plan; and
 - (ii) defraying reasonable expenses of administering the Trust and the Plan;
- (c) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a fiduciary capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
- (d) By diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

7.6 **General Powers.** With respect to the Trust assets and subject only to the limitations expressly provided in this Trust, the Trustees shall have the following powers, rights and duties in addition to those vested in them elsewhere in this Trust or by law:

- (a) To receive and hold all contributions paid to them;
- (b) To retain in cash (pending investment, reinvestment or payment of benefits) any reasonable portion of the Trust assets and to deposit cash in any depository selected by them, provided such deposits bear a reasonable rate of interest;
- (c) To manage, operate, sell, contract to sell, grant options with respect to, convey, exchange, partition, transfer, abandon, improve, repair, insure, lease for any term (although commencing in the future or extending beyond the term of this Trust or the Plan) and otherwise deal with all property, real or personal, in such manner,

for such considerations, and on such terms and conditions as the Trustees shall decide;

- (d) To compromise, contest, arbitrate, settle or abandon claims and demands (exclusive of claims and demands arising under the Plan);
- (e) To begin, maintain or defend any litigation necessary in connection with the investment, reinvestment or administration of the Trust;
- (f) To have all rights of an individual owner, including the power to give proxies, to vote stocks, to join in or oppose (alone or jointly with others) voting trusts, mergers, consolidations, foreclosures, reorganizations, recapitalizations or liquidations, and to exercise or sell stock subscription or conversion rights;
- (g) To hold securities or other property in the name of the Trustees or its nominee, or nominees, or in such other form as it determines best, with or without disclosing the trust relationship, provided the records of the Trustees shall indicate the actual ownership of such securities or other property;
- (h) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction;
- (i) To pay any tax, charge or assessment attributable to any benefit which, in the Trustees' opinion, it shall or may be required to pay from the benefit distribution; and to require before making any payment such release or other document from any taxing authority and such indemnity from the intended payee as the Trustees shall deem necessary for its protection;
- (j) To employ agents, attorneys, investment counsel, accountants, actuaries, or other persons (who also may be employed by or represent the Trust and/or the Association) for such purposes as the Trustees considers desirable and appropriate;
- (k) To furnish the Administrator with such information in the Trustees' possession as those entities may need for tax or other purposes; and
- (l) To perform any and all other acts in the judgment of the Trustees necessary or appropriate for the proper and advantageous management, investment, and distribution of the Trust assets and to make rules and regulations consistent with the provisions of this Trust Agreement.

7.7 Allocation of Responsibilities Among Trustees and Committees. The Trustees, collectively, shall be solely responsible for the entire administration of the Trust and the Plan(s). The Trustees, as a group, shall also be responsible for all investment decisions and the creation of the benefit plans. Notwithstanding the foregoing, the Trustees shall have the right to fully allocate to or share with other persons any of their responsibilities. Such persons may include any one or all of the other Trustees.

The Trustees may assign or delegate any of their non-discretionary duties to any one of their number, to any agent or properly licensed agency and/or any of their employees or staff. The Trustees may also establish special and/or standing committees composed of appointed Trustees to investigate, evaluate and recommend action or inaction to the collective Board of Trustees in specific defined areas of authority.

7.8 Discretion, Arbitrators and Rules and Regulations. Wherever in this Trust discretionary powers are given to the Trustees, it shall be understood that they shall have complete discretion and their decisions shall be binding, final and conclusive upon all

parties. The Trustees shall be the arbitrator of any questions that may arise as to the operation of this Trust and the Plan(s) and as to any matter whatsoever in connection with the Plan(s); the Trustees' decision on any question shall be binding, final and conclusive on all concerned. The Trustees, however, shall exercise their discretion in a non-discriminatory manner. The Trustees may from time to time formulate and issue to the Employers and the Employees such rules, regulations and procedures not inconsistent with the declared purpose of this Trust and the Plan(s), the provisions of this Agreement or state and federal law, regulation or rule, as they, in their sole discretion, may deem necessary to enable them to administer and carry out their duties under this Trust and the Plan(s). Such rules, regulations and procedures may clarify any of the provisions of this Trust which the Trustees deem in need of clarification and may supply to any provisions of this Agreement such construction as they deem necessary in the administration of this Trust and the Plan(s). No rule, regulation or procedure, however, shall amend any substantive provisions of the Plan(s) so as to supersede the rights given to the Employees and other participants by ERISA.

Where an Employee's or beneficiary's claim for the benefits which are described in the Plan(s) is denied, in whole or in part, the Trustees shall give the affected Employee or beneficiary adequate written notice of any denial. The Trustees shall set up a review procedure for claims that have been denied that shall provide a full, fair and prompt review of the claim in accordance with applicable law. The review procedure shall be consistent and shall contain the specific reasons for the denial, description of the review procedure and instructions on how to apply for review and seek redress in court. Such notice shall be written in a manner calculated to be understood by all Employees and beneficiaries covered under the Plan(s). The Trustees may delegate any or all functions for the claim review procedure to the appropriate claims administrator under the Plan(s) and/or an outside-qualified facility.

- 7.9 **Appointment of Officers.** The Trustees, for their convenience, may appoint a Chairman, a Vice-Chairman, and a Treasurer (collectively referred to as the "Trust Officers") from their members to act as such. Trustees appointed as Chairman, Vice-Chairman and Treasurer shall hold such office for a two (2) year term and until the Board of Trustees ratifies a successor. Trustees may hold more than one office at the same time. A Secretary, who does not need to be a participating member, also may be appointed by the Trustees.

The Trust Officers and the Secretary shall have the following Powers and Duties:

- (a) **Chairman.** The Chairman shall be the chief executive officer of the Trust. The Chairman shall be entitled to attend and speak at, and shall be given notice of, all meetings of the Trustees and committees of the Trustees. The Chairman shall preside at all meetings of the Trustees. The authority of the Chairman shall include: (i) executing all policies and directions of the Trustees and providing the Trustees with such advice, information or reports as the Trustees may require; (ii) representing the Trust in its relationships with other agencies and organizations; (iii) executing all documents on behalf of the Trust, including contracts, deeds, mortgages, bonds or other documents; and (iv) voting all securities or corporate memberships which the Trust is entitled to vote, as may be directed by the Trustees. The Chairman

shall have all authority incident to the office of Chairman and shall discharge such other duties as may be prescribed by the Trustees from time to time.

- (b) **Vice Chair**. The Vice Chair shall, in the absence of the Chairman, preside at meetings of the Trustees and shall discharge such other duties as may be prescribed by the Trustees from time to time.
- (c) **Treasurer**. The Treasurer shall monitor, or cause to be monitored, the financial affairs of the Trust. The Treasurer shall oversee the custodianship of the monies belonging to the Trust, subject to audit by a certified public accountant. The Treasurer shall make, or cause to be made, regular financial reports to the Trustees, an annual report at the annual meeting of the Trustees, and reports at such other times as requested by the Trustees. The Treasurer shall perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Trustees. If required by the Trustees or by law, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Trustees may determine.
- (d) **Secretary**. Subject to the direction and control of the Trustees, the Secretary shall perform, or cause to be performed, the following duties:
 - (i) take and preserve the minutes of the meetings of the Trustees in books provided and kept for that purpose, which records of the proceedings of meetings of the Trustees shall be signed and dated by the Secretary, or by such other Officer of the Trust as may be designated by the Trustees in the Secretary's absence;
 - (ii) arrange for all notices to be duly given in accordance with the provisions of this Trust Agreement or as required by law;
 - (iii) be custodian of the records and seal of the Trust;
 - (iv) keep a register of the post office address of each Trustee as furnished by such Trustee;
 - (v) receive communications and conduct necessary correspondence;
 - (vi) together with the Chairman or any other Officer authorized by the Trustees, sign any contracts, deeds, mortgages, bonds, or other instruments which the Trustees have authorized to be executed, according to the requirements of the form of the instrument, unless a different mode of execution is expressly prescribed by the Trustees or this Trust Agreement;
 - (vii) see to the proper filing of all reports and other instruments and documents required by regulation or other applicable law; and
 - (viii) perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Trustees.
- (e) **Other Officers**. Any Officer whose title, powers and duties are not otherwise stated in this Trust Agreement shall have such powers and duties as the Trustees may delegate to him or her not inconsistent with this Trust Agreement.

7.10 Board of Trustees' Meetings. There must be at least one meeting per Fiscal Year. The Trustees shall meet at such times and places as they shall determine to discharge their duties hereunder. Any Trustee may call a meeting of the Trustees by giving not less than five (5) days advance written notice of the time, date, place and purpose of the meeting. By the Trustee's attendance at a participation in a meeting, a Trustee shall be deemed to have waived any required notice of the meeting. Before, at or after any meeting, a Trustee may in writing waive any required notice of the meeting. No action shall be taken at a meeting of Trustees (other than adjournment) unless proper notice of such meeting has been given to all Trustees or the Trustees have waived such notice as provided herein. The Trustees may meet by means of conference telephone call, provided a majority of all of the Trustees so agrees. Conference telephone call shall mean a telephone call in which all present can hear and be heard by all others present. The provisions of this Trust Agreement regarding the conduct of meetings shall apply to meetings conducted by conference telephone call.

A decision may also be made without calling a meeting of the Trustees, and action may be taken by a written document signed by a majority of the Trustees, provided that all of the Trustees shall have had at least five (5) days' written notice of the proposed decision to be made and action to be taken.

The Trustees' meeting may be held by in-person presence of the Trustees, by telephone conference call or by any other electronic communications that assures the simultaneous attendance of the Trustees and their opportunity to receive information and respond thereto. A Trustee, unable to attend or participate in a meeting, may also file in advance his/her vote with regard to an item of business duly listed on the agenda for the Board of Trustees Meeting. Such vote must be submitted in writing to the Secretary, signed by the Trustee and certified that it was made after consideration of the relevant facts involved in the issue presented for vote before the Trustees. The Secretary will report the advance vote to the Trustees at the meeting and it will be so noted in the minutes thereto. A Trustee, unable to attend or participate in a meeting, may also give his/her written proxy for such meeting to another member of the Board. Any such written proxy must be filed with the Secretary prior to the meeting for which the proxy is given. Trustees may also appoint a substitute representative to attend a meeting in their place and vote with his/her written proxy. Any such substitution with written proxy must be filed with the Secretary prior to the meeting for which the proxy is given.

The Chairman shall call the meeting of the Trustees to order when a quorum is present and shall manage the conduct of the meeting. In the absence of the Chairman, the Vice-Chairman shall assume the duties of the Chairman for the purposes of the meeting. The Secretary shall be responsible for the taking of minutes and the subsequent submission of the minutes to the Trustees for their acceptance and approval.

Attendance at Board of Trustee meetings or applicable committee or sub-committee meetings is required to remain in good standing with the Trust. Failure to attend scheduled meetings can result in involuntary termination at the Board of Trustees discretion or as otherwise prescribed in this Trust Agreement.

7.11 Quorum and Actions. A majority of the Trustees shall constitute a quorum at any

meeting. No action may be taken at a meeting unless a quorum is present. The concurrence of a majority of the Trustees present shall be required for all actions taken at a meeting. Any action which may be taken at a meeting may be taken without a meeting if done in writing and signed by all the Trustees. Each Trustee shall be entitled to one vote. Trustees may not vote by proxy. No Trustee who is also a Covered Individual shall be entitled to vote on any matter particularly and directly affecting his/her eligibility for benefits or the amount or form of his/her benefits under the Plan.

- 7.12 **Evidence of Action of the Trustees.** Minutes of the Trustees' meetings, under the direction of the Secretary, shall be maintained as part of the records of the Trust and relied upon, when necessary, to substantiate the actions of the Trustees.

Any action taken by the Trustees may also be evidenced by an instrument in writing signed by all of the Trustees then in office, or by the Secretary and any other Trustee, specifying the action taken by the Trustees. An Insurer, an administrator, any Employer or Employee and/or any third person dealing with the Trustees may accept any such instrument or certificate as conclusive evidence of the Trustees' action and shall be fully protected in relying thereon.

- 7.13 **Not Personally Obligated to Question Employee Data or Collect Contributions.** The Trustees shall be under no duty to the Participating Employers, the Employees and their beneficiaries to personally examine the records of any Participating Employer to determine whether the list of its Employees is correct, nor shall the Trustees have any personal duty or responsibility to the Participating Employers, the Employees and their beneficiaries to collect any sum which any Participating Employer is to contribute under this Plan. The Trustees may, instead, delegate any such responsibilities to an Administrator appointed for such purposes. The Trustees shall, in their sole and absolute discretion, require such evidence or statements from Participating Employers and/or Employees as they or the Administrator appointed by the Trustees may deem reasonable.

The Trustees shall not be required to make any investigation to determine the mailing address of any Employee entitled to benefits under the Plan(s) or to determine the identity or mailing address of any person entitled to benefits; and the Participating Employers agree, by their becoming such hereunder, that any and all pertinent information pertaining to their Employees and their beneficiaries shall be made available to the Trustees in such form as the Trustees or the Administrator may designate.

- 7.14 **Furnishing of Employee Data.** Each Participating Employer shall furnish the Trustees from time to time such information in its possession as will aid in the administration of the Plan(s), and, to that end, shall make available such data as it may have accumulated in its files or records with regard to its Employees, their ages, their history of employment, their compensation and, in short, any and all data which the Trustees may need for the coverage of the Employees under the Plan(s).

Any Participating Employer or Employee who purposely provides misinformation or fails to provide requested information to the Trustees when such information is necessary to ensure proper billing or benefit administration may subject itself, himself or herself to termination of participation in accordance with ARTICLE IV or possible further action for claims or enrollment fraud.

7.15 **Administrator and Duties of Administrator.** The Plan Administrator of the Plan(s), as defined in Title I, Section 3(16) (A) of ERISA and as used in Part I, Title I of that law, shall be the Trustees. The Trustees shall assume all of the responsibilities assigned to the "Plan Administrator" under the terms of ERISA and shall receive all legal service of process.

The Trustees may, however, delegate their duties to other parties, including the Participating Employers or a management service company, and to an appropriately qualified entity as a third-party administrator of the Plan(s). Any delegation of discretionary duties must be preceded by a written request from the Trustees and the person who is assuming those duties must acknowledge that assumption in writing to the Trustees. Each Participating Employer under the Plan(s) accepts those duties delegated to it when it becomes a party to the Plan(s). The Trustees may delegate non-discretionary duties without any written delegations or acceptance. Delegation of non-discretionary authority and duties may include assignment of billing and collections, claims administration and benefits administration to a third-party administrator and sales and marketing, to the extent permitted hereunder, to an independent licensed agency or staff. To the extent that it has been delegated and/or exercises any discretionary authority as to the Plan(s), any such Administrator acknowledges that it is a fiduciary with respect to the Plan(s).

7.16 **Investments.** Except as otherwise expressly provided herein, the Trustees shall have exclusive authority and discretion to invest and reinvest the principal and income of the Trust in real or personal property of any kind and shall do so with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a fiduciary capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Trustees shall diversify the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances they are clearly prudent not to do so. No investment shall be made which would involve a "prohibited transaction" under the applicable law. The Trustees shall comply with applicable laws of any state proscribing or limiting the investment of trust funds by corporate or individual Trustees in or to certain kinds, types, or classes of investments or limiting the value or proportion of the trust assets that may be invested in any one property or kind, type, or class of investment. Investments and reinvestments shall be subject to the above standard, and without limiting the generality of the foregoing, shall also be subject to the following:

- (a) Investments shall be as consistent as reasonably possible with any funding policy documented by the Trustees. The Trustees may rely on the most recent such communication received by it without further inquiry or verification.
- (b) The Trustees may invest and reinvest principal and income of the Trust savings accounts or savings certificates, short term investments (including commingled short term investment funds) in common, preferred, and other stocks of any corporation; voting trust certificates; interests in investment trusts, including, without limiting the generality thereof, participations issued by an investment association as defined in the Investment Association Act of 1940, as from time to time amended; bonds, notes, and debentures, secured or unsecured; mortgages on real or personal property; conditional sales

contracts; and real estate and leases; provided that no investment shall be made in the real property or the stocks, bonds, notes or other obligations of the association or any of its subsidiaries unless there shall first have been obtained an opinion of counsel for the association, or a ruling from the Internal Revenue Service that such investment will not jeopardize the tax exempt status of the Trust.

(c) The Trustees may invest and reinvest the principal and income of the Trust through any common or collective trust fund or pooled investment fund maintained by the Trustees for the collective investment of funds held by it in a fiduciary capacity. The provisions of the document governing any such common or collective trust fund as it may be amended from time to time shall govern any investment therein and are hereby made a part of this Trust.

(d) **Appointment of Investment Manager.**

a. The Trustees shall have the right to appoint one or more Investment Managers. Nothing in this Article or Agreement requires the use of an Investment Manager(s). All appointments of Investment Managers shall be by written agreement between the Trust and the Investment Manager setting out the authority, duties, and responsibilities of the Investment Manager. The Trustees shall receive a copy of each such agreement and all amendments, modifications, and terminations thereof in advance of the effective date thereof.

b. **Investment Manager's Authority.** So long as the appointment of an Investment Manager is in effect, the Trustees shall follow the directions of the Investment Manager with respect to its Investment Account in exercising the powers granted to the Trustees in the Agreement regarding investment of the Trust assets.

c. **Trustees' Responsibility for Investment Manager's Account.** The Trustees shall monitor all instructions from the Investment Manager. However the Trustees shall have no further duty to question such instructions and, except as may be otherwise required under applicable law, the Trustees shall not be liable for any loss which may result by reason of any action taken by them in accordance with a direction of any Investment Manager acting within the powers granted to it under this Article VII, or by reason of any lack of action by them upon the failure of an Investment Manager to exercise its said powers.

7.17 **Records and Accounts of the Trustees.** The Trustees or their designee shall maintain accurate and detailed records and accounts of all proceedings and transactions hereunder. The Trustees' records with respect to the assets, finances and reserves under the Trust and the Plan(s), as well as all records as to the actions of the Trustees (including minutes of Trustees' meetings) shall be open to inspection by any Participating Employer or Covered Individual during regular business hours upon adequate advance notice of the intent to do so. The Trust may be reimbursed the expense of providing copies of any documents or records, if requested to provide same, to the extent such charge is permitted under ERISA or other similar legislation and regulation. The Trustees may withhold any documents or records that they deem confidential or protected under applicable law, regulation or practice.

The Trustees shall periodically, in accordance with applicable laws and regulations, submit the Trust to a financial audit to be conducted by a certified public accountant selected by the Trustees. The Trustees shall establish and maintain an Audit or Executive and Finance Committee composed of Trustee members appointed by the Board of Trustees to oversee audit activities, assure the creditability of the Trust's financial reports and maximize the quality of the Trust's administrative affairs.

The Trustees shall render an annual report to the Participating Employers and Covered Individuals as soon as possible after the end of each Plan Year, said report to be in such form and to contain such information concerning the Plan(s) and the administration thereof as deemed proper by the Trustees or as may be required by any governmental department, agency or commission, statute or regulation.

- 7.28 Trustees' Right to Purchase Fully-Insured Policies or Establish a Self-Funded Benefit Plan.** Promptly after acceptance by an Insurer, the Trustees may elect to purchase a Policy or Policies. The Trustees may also establish and maintain self-funded benefit plans. The Trustees may maintain any and all such Policy or Policies with current premium payments to the extent that funds are available under the Plan(s) for that purpose.

The Trustees and any Insurer may agree as to the provisions of the Policy or Policies to be purchased and maintained under the Plan(s), including the provisions with reference to waiting periods, definitions of full-time employment, definitions of coverage, and all other necessary and desirable provisions.

The Trustees may also establish the provisions of any self-funded benefits plan(s) established and maintained under the Plan(s), including the provisions with reference to waiting periods, definitions of full-time employment, definitions of coverage, and all other necessary and desirable provisions. Funds to establish and maintain any such Policy or self-funded benefit plan(s) shall be received from participating Employers in such amounts and upon such schedules of payments that the Trustees deem necessary and proper. The Trustees may purchase a Policy or Policies of stop-loss insurance to protect the financial stability of the Plan(s). The self-funded plan(s) established and maintained by the Trustees shall comply with all applicable state and federal laws and regulations pertaining to self-funded benefit plans.

- 7.29 Exercise of Rights Under Fully-Insured Policies or Self-Funded Benefit Plans.** The Trustees shall exercise all rights and privileges granted to or established by the Trustees by the provisions of each and every Policy or self-funded benefit plan which may be issued or established hereunder. The Trustees may agree with any Insurer to any alteration, modification or amendment of any such Policy and may take any action respecting such Policy, which may be deemed necessary or advisable for the carrying out of the purposes of the Plan(s). The Trustees reserve the exclusive right to make any alteration, modification or amendment of any self-funded benefit plan and may take any action respecting such self-funded benefit plan that may be deemed necessary or advisable for the carrying out of the purposes of the Plan(s) by the Trustees. In exercising any of the Trustees' rights and privileges under the Policies or self-funded benefit plans, the Trustees shall exercise them only in conformity with the terms of the Trust.

Each Employer shall be liable to the Trustees for its payment for the insurance or benefits for its Employees under the Policy(ies) issued to the Trustees or the self-funded benefits

for any period during which such insurance or benefits are in force. The Trustees may enforce any such liability to the extent necessary to pay the premiums due under the Policy(ies) or to satisfy the benefits incurred under the self-funded benefit plan(s).

- 7.30 **Right to Employ and Rely on Advice of Counsel.** The Trustees may consult with legal counsel who may be counsel for any of the Employers hereunder with respect to the meaning or construction of this Trust Agreement or of their obligations or duties under the Plan(s) established pursuant to this Trust Agreement or with respect to any action or proceeding or any question of law. The Trustees may also employ and rely on the counsel of other professionals, including, but not limited to, actuaries, benefits experts, accountants, auditors, insurance consultants, information and telecommunications experts, medical claims adjudicators and investment and banking consultants. The reasonable expenses of such counsel shall be paid out of moneys in the Fund.
- 7.31 **Prohibition Against Certain Persons' Holding Certain Positions.** No person shall serve or be permitted to serve as an administrator, fiduciary, party in interest, officer, trustee, custodian, counsel, agent or Employee of the Trust or the Plan(s), or as a consultant to the Plan(s), who has been prohibited from serving in one of the above positions under Section 411 of ERISA or under applicable state law.
- 7.32 **Prohibited Transactions.** Except as may be permitted by law, no Trustee or other fiduciary hereunder shall, directly or indirectly, engage in or permit the Plan or the Trust to engage in any "prohibited transaction" under ERISA or the Code.
- 7.33 **Indemnification.** The Trust may indemnify and hold harmless the Trustees and any agent or employee hired by the Trust and/or an Administrator of the Plan(s) to carry out the functions required of them by the provisions of this Trust; provided, however, that, in any such event, the Trustee, Administrator, agent or employee shall have acted in good faith and must have reasonably believed that the action taken was in the best interests of the Trust. No such indemnification shall be allowed in the event there is a finding of a breach of fiduciary responsibility, that an action taken was in violation of applicable law or resulted in personal benefit to the person seeking to be reimbursed.

ARTICLE VIII. AMENDMENT AND TERMINATION

- 8.1 **Amendment.** The Trustees reserve the right to amend, alter, or revise the Plan or Trust, prospectively or retrospectively, at any time. The interest of each Covered Individual and Participating Employer is subject to the powers so reserved. The Trustees expressly may amend, alter or revise the Plan or Trust if it determines it necessary or desirable, with or without retroactive effect, to comply with the law. Such changes shall not affect any right to benefits that accrued prior to such amendments. Such amendment shall be made in writing and shall be delivered promptly to the Participating Employers and Administrator, if any.

Notwithstanding the above, no amendment may be made that would divert any part of the Trust assets to any use or purpose other than for the exclusive benefit of the Participants and other individuals entitled to benefits under the Plan; provided, however, that any such amendment may be made which may be or become necessary in order that the Trust qualifies as tax exempt under the provisions of the Code, as amended, or in order that all provisions of the Trust will conform to all valid requirements of applicable federal and state laws.

- 8.2 **Termination.** Although the Trustees and Participating Employers expect the Plan and Trust to be maintained for an indefinite time, the Trustees may terminate the Trust by majority vote of the Trustees, with due notice to the Secretary of Commerce for the State of Minnesota, the Department of Labor, ERISA Division, and the Board of Trustees for Cooperative Solutions. The Trustees shall proceed to terminate the entire Trust as set forth in Section 4.9(f). Staff, if any, counsel and consultants may be retained for a sufficient period of time to systematically and efficiently wind down the operations of the Trust and the Plan(s). The Trustees shall also prepare a financial statement setting forth the assets and liabilities of the Trust. Upon termination, all contributions to the Trust shall cease. If the Trust is terminated, all of the provisions of the Trust evidenced by this Trust Agreement shall continue in effect and the Trustees shall continue to serve until the Trust assets have been distributed by the Trustees.
- 8.3 **Transfer of Assets.** Upon termination of the Trust, the Trustees may transfer all of the Trust's assets to another tax-exempt trust, which may or may not also involve a change in Trustees under Article V.
- 8.4 **Payment of Funds on Dissolution.** Upon the dissolution of the Trust, the Trustees shall, as soon as practicable, cause to be prepared a final statement setting forth the assets and liabilities of the Trust. The Trustees shall commence to wind up the affairs of the Trust and such assets of the Trust as the Trustees or the liquidator shall determine shall be liquidated as promptly as practical, but in an orderly and businesslike manner so as not to involve undue sacrifice. Until final distribution, the Trustees shall continue to operate the Trust. All Trust profits and losses shall be allocated, in accordance with requirements of Section 501(c)(9) of the Code. The proceeds of any excess distributions shall be applied or distributed in cash or in kind in the following order of priority:
- (a) To the payment of creditors of the Trust (other than members) in the order of priority provided by law, and to the payment of the expenses of liquidation;
 - (b) To the setting up of such reserves as the Trustees may deem reasonably necessary for unreported claims or any contingent or unforeseen liabilities or obligations of the Trust;
 - (c) To Participating Members on a pro-rata basis according to each Participating Member's contributions compared to all Participating Members' contributions for the immediately preceding twelve-month period.

If a surplus remains after such obligations are met, the surplus monies and property shall be distributed and applied in such manner as, in the Trustees' opinion, will best effectuate the purposes of the Trust and the requirements of applicable law.

- 8.5 **Liquidation powers.** From and after the date of the termination of the Trust and until the final distribution of the assets of the Trust has been completed, the Trustee shall continue to have all of the powers provided under this Trust that may be necessary or expedient for the orderly liquidation and distribution of the assets of the Trust.

ARTICLE IX. GENERAL PROVISIONS

- 9.1 **No Reversion to the Plan Administrator, Association, or Participating Employers.** No part of the corpus or income of the Trust shall revert to the Plan Administrator, the Association, or the Participating Employers, or be used for or diverted to, purposes other than the exclusive benefit of Covered Individuals.
- 9.2 **Persons Dealing With Trustees.** No person dealing with the Trustees shall be required to see to the application of any money paid or property delivered to the Trustees, or to determine whether or not the Trustees is acting pursuant to any authority granted under the Trust.
- 9.3 **Non-Alienation of Benefits.** Unless specifically provided in the Plan, benefits payable under the Plan shall not be subject to anticipation, alienation, sale, transfer, execution, or levy of any kind either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the Participant, prior to actually being received by the person entitled to the benefit under the terms of the Plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable under the Plan shall be void. The Trustees and/or the Association shall not in any manner be made liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits under the Plan.
- 9.4 **Limitation of Liability; Indemnification of the Trustees; Insurance.** Unless prohibited or specifically required otherwise by ERISA:
- (a) No Trustees shall be liable to any person for any act or omission unless (i) the act or omission is due to his/her gross negligence or willful breach of one or the provisions of this Trust Agreement or (ii) the liability is imposed under ERISA for fiduciary or co-fiduciary liability; and
 - (b) The Participating Employers hereby agree to indemnify the Trustees for and to hold them harmless against any and all liabilities, losses, costs or expenses (including legal fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by or asserted against the Trustees at any time by reason of the Trustees' service under the Trust provided that the liability, loss, cost or expense did not arise from the Trustees' negligence, omission, or willful misconduct.
 - (c) The Trustees may, but are not required, to obtain fiduciary insurance covering acts of negligence to the extent permitted under ERISA. The cost of such insurance premiums shall be paid by the Trust to the extent not prohibited by law (e.g., premium for waiver of recourse).
- 9.5 **Fiduciary Liability Insurance and Bonding.** The Trustees shall obtain from an authorized surety company bonds as may be required by ERISA or other applicable law, covering such persons and in such amounts as the Trustees, in their discretion, may determine (but not less than required by law). The cost of bond premiums shall be paid by the Trust. Each fiduciary under the Trust and the Plan(s) shall provide written acceptance of his/her/its responsibilities as evidence of the faithful performance of their

duties, as is required by law.

- 9.6 **Governing Law.** This Trust shall be construed and enforced according to the laws of the state of Minnesota, except to the extent preempted by federal law.
- 9.7 **No Third-Party Beneficiaries.** The provisions of this Trust Agreement are intended to benefit only the parties hereto, their respective successors and assigns, and Covered Individuals. There are no other third-party beneficiaries.
- 9.8 **Execution in Counterparts.** This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and said counterparts, shall constitute but one and the same instrument and may be sufficiently evidenced by one counterpart.
- 9.9 **Entire Agreement.** This Agreement (including exhibits, addenda, and documents authorized or incorporated by reference) contains the entire agreement between the parties hereto relating to the matters provided herein, and no representation or warranty not expressly contained or incorporated by reference herein shall be binding on any party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement as of the effective date set forth above.

40 SQUARE HEALTH PLAN TRUST

Trustee Robby Gieseke *Robby B. Gieseke* Date: *12/19/19*
Trustee Cole Trebesch *CT* Date: *12/19/19*
Trustee Kevin Lauwagie *Kevin Lauwagie* Date: *12/19/19*
Trustee Bruce Maas *Bruce W Maas* Date: *12-19-19*
Trustee (TBD) _____ Date: _____

40 SQUARE COOPERATIVE SOLUTIONS (PLAN SPONSOR)

Chairman, Robby Gieseke *Robby B. Gieseke* Date: *12/19/19*