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East Rochester Schools, District Office

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Website: http://www.erschools.org

October 6, 2017

To: Dr. Mark D. Linton, Superintendent of Schools

From: David Green
Assistant Superintendent for Finance and Operations

Re: Explanation of MCA Adoption Resolution

Self-Funding Initiative – RASHP II

The East Rochester Union Free School District was one of the founding members of the Rochester Area School Health Plan in 2004. The RASHP II has operated as a minimum premium experience-rated cooperative and has achieved considerable success in providing health insurance coverage to our employees at considerably less cost than community plans. These savings have benefited both employees and taxpayers. Seventeen Monroe County school districts and two BOCES participate in the plans $215 million budget which covers 15,000 contracts and 40,000 individuals.

The RASHP-II consortium Board of Directors has considered a move from the current minimum premium (insured) funding arrangement to a self-insured arrangement regularly over the past 13 years. New York State has a process that municipal cooperatives must follow in order to become a self-insured plan, which falls under Insurance Law "Article 47".

Healthcare Reform imposed new taxes on health plans, some of which may be avoided if the plan is self-insured. In addition, moving to a self-funded arrangement would eliminate a state assessment as well as reduce administrative expenses. The total savings to the RASHP II plan under an Article 47 arrangement when fully implemented would be approximately $9-10 million dollars annually.

In light of the potential savings, the Board of Directors agreed during 2015 to move ahead with an Article 47 application to obtain a Certificate of Authority from the New York State Department of Financial Services. This application was coordinated in partnership with the plan's Consultant, Arthur J. Gallagher, and the plan's attorney, Harter, Secrest and Emery, LLC and was forwarded to the State in July 2015.

As of October 2017, the Article 47 approval status is still undetermined. However, the Department of Financial Services has approved the municipal cooperative agreement (MCA) which is a necessary step towards approval. Each participating district is required to approve the MCA, which is below. Approval is recommended.

RESOLUTION FOR APPROVAL OF THE ROCHESTER AREA SCHOOL HEALTH PLAN II MUNICIPAL COOPERATION AGREEMENT

WHEREAS, the East Rochester Union Free School District participates in the Rochester Area School Health Plan II (RASHP II), a municipal cooperative under Article 5G of the General Municipal Law;

WHEREAS, the RASHP II Board of Directors has applied to the Department of Financial Services, on behalf of the participating districts, for a Certificate of Authority to operate as a self-funded plan under Article 47 of the State Insurance Law

WHEREAS, The Department of Financial Services has reviewed and approved the Municipal Cooperation Agreement for RASHP 2 and requires the approval of each member school district who wishes to participate in the Plan;

NOW, THEREFORE, BE IT RESOLVED that the East Rochester Union Free School District hereby agrees to participate in the Rochester Area School Health Plan II Municipal Cooperative Health Benefit Plan, a municipal cooperative under Article 47 of the New York State Insurance Law.

BE IT FURTHER RESOLVED that the Board has reviewed the draft Municipal Cooperation Agreement for the Rochester Area School Health Plan II Municipal Cooperative Health Benefit Plan ('the Agreement") as approved by the New York State Department of Financial Services on October 17, 2017 and hereby expressly agrees to the terms and conditions of that Agreement. The Agreement shall go into effect on the date the Department of Financial Services issues a Certificate of Authority to the Rochester Area School Health Plan II Municipal Cooperative Health Benefit Plan.

BE IT FURTHER RESOLVED that the Board hereby authorizes the Superintendent of Schools to adopt and sign the agreement on behalf of the East Rochester Union Free School District.

Motion by _____, seconded by _____.

MUNICIPAL COOPERATION AGREEMENT

ROCHESTER AREA SCHOOL HEALTH PLAN II
MUNICIPAL COOPERATIVE HEALTH BENEFIT PLAN

SEPTEMBER 2017

THIS AGREEMENT (the "Agreement") is adopted by the municipal corporations named below (each, a "Participant," and collectively, the "Participants") for the benefit of certain Employees (as defined below) of each Participant, on the terms and conditions described herein.

WHEREAS:

1. Article 5-G of the New York General Municipal Law (the "General Municipal Law") authorizes municipal corporations to enter into cooperative agreements for the performance of those functions or activities in which they could engage individually;

2. Sections 92-a and 119-o of the General Municipal Law authorize municipal corporations to purchase a single health insurance policy, enter into group health plans, and establish a joint body to administer a health plan;

3. Article 47 of the New York Insurance Law (the "Insurance Law"), and the rules and regulations of the New York State Superintendent of Financial Services (the "Superintendent") set forth certain requirements for governing self-insured municipal cooperative health benefit plans;

4. Section 4702(f) of the Insurance Law defines the term "municipal corporation" to include a school district; and

5. the Participants have determined to their individual satisfaction that furnishing health benefits (including, but not limited to, medical, surgical, hospital, prescription drug, dental, and/or vision) for their eligible employees, eligible retirees, and the spouses and dependents of those employees and retirees (collectively, the "Employees") through a municipal cooperative is in their best interests as it is more cost-effective and efficient.

NOW, THEREFORE, the Participants agree as follows:

ARTICLE 1. DEFINITIONS

Section 1.01 **Definitions**. In this Agreement, the following terms shall have the meanings set forth below:

(a) *Administrative Expenses* shall mean the Claims Administrator Fee and other necessary and reasonable expenses incurred in the operation of the Plan, but such expenses shall not include the Medical Claims Expenses.

(b) *Contingent Assessment Liability* shall mean any additional amounts to be paid by the Participants to the Plan based upon the Participants' pro rata share of any assessment ordered by the Board of Directors or the Superintendent.

(c) *Board* or *Board of Directors* shall mean the Board of Directors of the Plan.

(d) *Claims Administration Agreement* shall mean a written agreement with a Claims Administrator to process claims under the Plan and provide other administrative services to the Plan.

(e) *Claims Administrator* shall mean the third party hired by the Plan to process claims under the Plan and provide other administrative services to the Plan.

(f) *Claims Administrator Fee* shall mean the amount that the Plan must pay to the Claims Administrator to pay for claims administration and other services provided by the Claims Administrator to the Plan.

(g) *COBRA* shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, Section 4980(B) of the Internal Revenue Code of 1986, and Title I Part 6 of ERISA, together with all regulations and proposed regulations promulgated thereunder.

(h) *Collective Bargaining Unit* shall mean a defined group of employees of a Participant that is represented by a Union.

(i) *Community Rating Methodology* shall mean a rating methodology in which the Premium Equivalent for all Enrollees covered under a Coverage Option under the Plan is the same, based upon the experience of the entire pool of risks covered under that Coverage Option under the Plan, without regard to age, sex, health status or occupation and such that refunds, rebates, credits or dividends based upon age, sex, health status or occupation are not permitted.

(j) *Coverage Option* shall mean a medical, dental, or vision coverage option offered under the Plan that a Participant may choose to make available to its Enrollees. A list of the Coverage Options is contained on Schedule A.

(k) *Deficit* shall mean the total amount that is paid for a Plan Year for Medical Claims Expenses incurred in that Plan Year for the Enrollees covered under a Coverage Option under the Plan that is in excess of the total amount of the Reserves for that Coverage Option for the same Plan Year.

(l) *Director* shall mean a member of the Board of Directors.

(m) *Distribution* shall mean any excess Reserves or Surplus paid to a Participant by the Plan.

(n) *Employee* shall mean a Participant's employee or retired employee.

(o) *Enrollee* shall mean a Participant's Employee and his or her spouse and dependents that are eligible, in accordance with eligibility standards created by the Plan and the employing Participant, to receive benefits under the Plan.

(p) *HIPAA* shall mean the Health Insurance Portability and Accountability Act of 1996.

(q) *HIPAA Rules* shall mean the privacy and security provisions of HIPAA and the accompanying regulations.

(r) *Legal Mandate* shall mean a law, order, rule or regulation promulgated by New York State or the United States Government or any department or agency of either, or the County of Monroe.

(s) *Medical Claims Expenses* shall mean the amounts paid by the Plan for health care expenses covered under the Plan (e.g., hospital, medical, drugs, dental, vision), including any charges paid pursuant to New York Public Health Law Section 2807-j or 2807-s.

(t) *Membership Interest* shall mean an interest of a Participant in the Plan.

(u) *New Participant* shall mean any Participant who obtains membership in the Plan after the Effective Date of this Agreement.

(v) *Officers* shall mean an individual holding a position described in Article 12 of this Agreement.

(w) *Participant* shall mean each school district that qualifies for membership in the Plan and executes this Agreement.

(x) *Person* shall mean any individual or entity.

(y) *PHI* shall mean protected health information within the meaning of HIPAA.

(z) *Plan* shall mean the Rochester Area School Health Plan II Municipal Cooperative Health Benefit Plan, a self-insured municipal cooperative health benefit plan under Article 47 of the New York Insurance Law. The specific terms of the Plan are described in the Plan Document, which is hereby incorporated herein by reference and shall be maintained with and considered part of this Agreement.

(aa) *Plan Administration Function* shall mean the administrative functions performed by a Plan Sponsor on behalf of the Plan, and shall not refer to functions performed

by the Participant in connection with any other benefit or benefit plan of the Participant.

(bb) *Plan Document* shall mean the document comprised of the Summary Plan Description Documents for each of the Coverage Options offered under the Plan.

(cc) *Plan Sponsor* shall mean each Participant in the Plan.

(dd) *Plan Year* shall mean the twelve-month period beginning January 1st and ending December 31st. If the Effective Date of the Plan is other than January 1st, the first Plan Year shall begin on the Effective Date of the Plan and end on the December 31st that follows.

(ee) *Premium Equivalent or Premium Equivalent Rates* shall mean the amount contributed by each Participant to cover expected Medical Claim Expenses, required Reserves, Surplus, Stop-Loss Insurance, and Administrative Expenses of the Plan.

(ff) *Reserves* shall have the meanings set forth in Section 4706 of the Insurance Law.

(gg) *Stop Loss Insurance* shall have the meaning set forth in Section 4707 of the Insurance Law.

(hh) *Summary Health Information* shall mean information that may be PHI and:

(i) that summarizes the claims history, claims expenses or types of claims experienced by the Enrollees; and

(ii) has been de-identified as provided in the HIPAA Rules by deleting such information as the name, address, age, telephone number, social security number, medical records number, Plan beneficiary number, photograph, or other identifying information, except that addresses may be aggregated to the level of a five-digit zip code.

(ii) *Summary Plan Description Documents* shall mean the detailed benefit descriptions provided to Enrollees that describe the benefits provided under the Plan. The Plan provides several Coverage Options, each of which is described in a separate Summary Plan Description Document.

(jj) *Superintendent* shall mean the Superintendent of the New York State Department of Financial Services.

(kk) The term "*Superintendent of each Participant*", as used in Section 9.04, shall mean the individual filling the role titled "Superintendent" at each Participant. If

no individual is filling a role titled "Superintendent" at a Participant, then the top administrator employed by the Participant shall be deemed the "Superintendent" of that Participant.

(ll) *Surplus* shall have the meaning set forth in Section 4706 of the Insurance Law.

(mm) *Unions* shall mean the local affiliates (i.e., established with respect to each Participant) of New York State United Teachers ("NYSUT"), the local chapters (i.e., established with respect to each Participant) of School Administrators Association of New York State ("SAANYS"), the local affiliates (i.e., established with respect to each Participant) of Civil Service Employees Association ("CSEA"), the local affiliates (i.e., established with respect to each Participant) of Teamsters, the local affiliates (i.e., established with respect to each Participant) of United Public Service Employees Union ("UPSEU"), and such other local affiliates (i.e., established with respect to each Participant) of unions that are the exclusive collective bargaining representative of an Enrollee.

ARTICLE 2. FORMATION

Section 2.01 **Name of Plan.** The name of the Plan is the Rochester Area School Health Plan II Municipal Cooperative Health Benefit Plan (the "Plan").

Section 2.02 **Purpose of the Plan.** The purpose of the Plan is to pay for health benefits for the Employees of Participants through a municipal cooperative arrangement.

Section 2.03 **Effective Date.** The effective date of this Agreement is the date on which the final Participant executes this Agreement. The effective date of the Plan established by this Agreement is January 1, 2016 (the "Effective Date") or such later date as determined by the Superintendent.

Section 2.04 **Term.** The Plan shall continue until dissolved in accordance with the terms of this Agreement.

ARTICLE 3. PARTICIPANTS

Section 3.01 **Participants.** The Participants hereby enter into this Agreement for the purpose of providing health benefits (medical, surgical, hospital, prescription drug, dental, and/or vision) to those Employees that each Participant individually elects to include in the Plan.

Section 3.02 **Initial Participants.** The following Participants shall comprise the initial membership in the Plan: (a) Brighton Central School District; (b) Brockport Central School District; (c) Churchville-Chili Central School District; (d) East Irondequoit Central School

District; (e) East Rochester Union Free School District; (f) Fairport Central School District; (g) Gates Chili Central School District; (h) Greece Central School District; (i) Hilton Central School District; (j) Honeoye Falls-Lima Central School District; (k) Penfield Central School District; (l) Pittsford Central School District; (m) Rush-Henrietta Central School District; (n) Spencerport Central School District; (o) Webster Central School District; (p) West Irondequoit Central School District; (q) Wheatland-Chili Central School District; (r) Monroe #1 BOCES; and (s) Monroe #2 Orleans BOCES.

Section 3.03 **Class of Participants.** There shall be one (1) class of Participant in the Plan.

Section 3.04 **Membership Eligibility**. Membership in the Plan may be offered to any school district which is a component public school district of Monroe # 1 BOCES and Monroe # 2 Orleans BOCES within the geographical boundaries of Monroe County, New York (a "Component District") provided that the applicant provides proof of its financial responsibility that is satisfactory to the Board of Directors in its sole discretion, and the applicant is the same type of municipal corporation as the initial Participants. Admission of new Participants to the Plan shall require amendment of Section 3.02 pursuant to Section 20.01 of this Agreement. New Participants shall be listed on Schedule B to this Agreement when New Participants become members in the Plan pursuant to a formal amendment to this Agreement. Membership shall be subject to the terms and conditions set forth in this Agreement, any amendments hereto, and applicable law.

Section 3.05 **New Participants**. Membership of a municipal corporation that enters the Plan after the Effective Date of this Agreement (a "New Participant") shall become effective on the first day of the calendar month following a majority vote of the entire Board of Directors and the adoption by the Board of Directors of a resolution to accept the municipal corporation as a Participant. Upon approval for admission by the Board of Directors, and approval by the New Participant's governing body by a majority vote of a resolution expressly approving the terms and conditions of this Agreement, such New Participant shall become a signatory to this Agreement and thereby assume all the obligations of a Participant, have all of the rights and powers of a Participant, and be subject to all of the restrictions applicable to a Participant. Such resolution of the New Participant's governing body shall be attached to and considered a part of this Agreement pursuant to Section 21.02.

Section 3.06 **Merger of Participant**. Should a Participant experience a merger with another school district (the combined entity, a "Merged District"), the following rules shall apply:

(a) If a Participant merges with a school district that is not a Component District and the Merged District remains as a Component District, then its membership in the Plan shall continue, but the Board of Directors shall have the right to impose admission requirements on the Merged District (financial or otherwise) in order to remain a Participant in the Plan.

(b) If a Participant merges with a school district that is not a Component District and the Merged District is not a Component District, the Board may amend this Agreement to allow the Merged District to become a Participant, and the Board

may impose admission requirements on the Merged District (financial or otherwise) in order to remain as a Participant in the Plan.

(c) If a Participant merges with another Participant, the Merged District will remain as a Participant of the Plan and will be charged with the rights and obligations of the two Participants that merged.

(d) If a Participant merges with a school district that is a Component District and the Merged District remains as a Component District, then its membership shall continue, but the Board of Directors shall have the right to impose admission requirements on the Merged District (financial or otherwise) in order to remain as a Participant in the Plan.

(e) If a Merged District is eligible to, but does not wish to remain a Participant, the Merged District must withdraw from the Plan in accordance with Article 15 of this Agreement.

Section 3.07 **Additional Membership Qualifications.** In addition to meeting the membership eligibility requirements described above in Section 3.04, as a condition to new and continuing membership in the Plan, each Participant must:

(a) make such representations as the Board of Directors reasonably requires;

(b) offer to some or all of its Employees coverage under the Plan and have that offer accepted by some or all of the Employees;

(c) satisfy such criteria and admission requirements (financial or otherwise) for initial and continuing membership established under this Agreement and as may be further established from time to time by the Board of Directors; and

(d) approve, execute, and agree to be bound by the terms of this Agreement.

Section 3.08 **Participant's Restriction on Transfer or Assignment.** No Participant may, directly or indirectly, voluntarily or involuntarily, transfer or assign its Membership Interest in the Plan. Any direct, indirect, voluntary or involuntary, transfer or assignment in violation of this Agreement shall not pass legal or beneficial ownership or rights and shall be void *ab initio*.

Section 3.09 **Withdrawal/Termination of Participants**. A Participant will be deemed to have withdrawn from the Plan if the Participant either decides to voluntarily withdraw from the Plan in accordance with Article 15 of this Agreement, or the Participant's membership in the Plan is terminated in accordance with Article 16 of this Agreement.

ARTICLE 4. PARTICIPANT LIABILITY

Section 4.01 **Participant Liability**. The Participants shall share in the cost of and assume the liabilities for health benefits (medical, surgical, hospital, dental, and/ or vision) provided under the Plan to Enrollees. In addition to paying on demand their applicable Premium Equivalent payments, each Participant shall pay on demand such Participant's share of any Assessment Contribution ordered by the Board of Directors or the Superintendent, as set forth in Section 4.03 of this Agreement. The pro rata share shall be based on the Participant's relative Premium Equivalent contribution to the Plan for the Coverage Option with respect to which the Assessment Contribution is due as a percentage of the aggregate Premium Equivalent contributions to the Plan for such Coverage Option, as is appropriate based on the nature of the assessment or contribution.

Section 4.02 **New Participant Liability**. New Participants in the Plan may be assessed a fee for additional financial costs above and beyond the Premium Equivalent contributions to the Plan. Any such additional financial obligations and any related terms and conditions associated with membership in the Plan shall be determined by the Board of Directors, and shall be disclosed to the potential New Participant prior to its admission to the Plan.

Section 4.03 **Participant Contingent Assessment Liability**. Pursuant to Section 4708 of the Insurance Law, each Participant in the Plan shall be liable, on a pro rata basis, in the following circumstances:

(a) In the event the Plan does not have admitted assets (as defined in Insurance Law § 107) at least equal to the aggregate of its liabilities, reserves, and minimum surplus required by the Insurance Law, the Board of Directors shall, within thirty (30) days, order an assessment for Contingent Assessment Liability in the amount that will provide sufficient funds to remove such impairment and collect from each Participant a pro rata share of such assessed amount.

(b) Every Participant that participated in the Plan at any time during the two-year period prior to the issuing of a Contingent Assessment Liability order by the Plan's Board of Directors shall, if notified of such liability, pay its pro rata share of such liability within ninety (90) days after the issuance of that Contingent Assessment Liability order. This provision shall survive termination of the Agreement or withdrawal or termination of a Participant.

(c) For purposes of this Section 4.03, a Participant's pro rata share of any Contingent Assessment Liability shall be determined by applying the ratio of the total Contingent Assessment Liability to the total Premium Equivalents earned during the period covered by the Contingent Assessment Liability on all Participants subject to the liability to the Premium Equivalent earned during such period attributable to such Participant.

ARTICLE 5. PLAN

Section 5.01 **Plan Document.** Each Participant shall have the right to provide health benefits to its Enrollees in accordance with the terms and conditions of this Agreement and the Plan Document, and provided that the Participant satisfies any other requirements imposed specifically on the Participant by applicable law or agreement. An Enrollee may also be required to satisfy requirements for receipt of benefits imposed by the employing Participant.

Section 5.02 **Prior Notice.** Each Participant must provide the Plan with sixty (60) days prior written notice of its decision and its ability to provide coverage under the Plan for Employees who are members of a Collective Bargaining Unit or for Employees who are not members of a Collective Bargaining Unit. Coverage for those Employees will only commence after the expiration of the notice period and on the immediately succeeding January 1st or July 1st of the Plan Year. For Enrollees who are retired as of the date on which coverage will commence, they will have six months thereafter to enroll.

Section 5.03 **Terms and Conditions.** The specific terms and conditions governing benefits which are available to an Enrollee who is covered under the Plan shall be described in the applicable Summary Plan Description Document. Each Participant expressly represents and warrants that it will take all such action as may be required by law or any agreement to which the Participant is a party, and make any and all necessary amendments to its existing employee welfare benefit plans in order to offer Plan coverage to its Enrollees.

Section 5.04 **Alternative Coverage Not Required.** Without limiting the range of coverage options which may be provided under this Plan, no one shall have any duty to procure alternative coverage for a person who does not satisfy any requirements for insurability or receipt of benefits (including any geographical limitation on the scope of services) under any particular Plan Coverage Option.

Section 5.05 **Coordination of Benefits.** The Plan Document will contain terms providing that the benefits that would otherwise be payable under the Plan shall be reduced by the amount, if any, necessary so that the sum of the benefits payable under the Plan and any other plans (whether or not maintained by the Participant) does not exceed the total of the Enrollee's allowable expenses under the Plan. The manner and extent to which the Plan coordinates benefit payments with other coverages shall be governed by the terms of the applicable Summary Plan Description Document.

Section 5.06 **Right of Recovery.** The Plan Document will contain terms providing that whenever benefits have been paid with respect to expenses covered under the Plan, such payment shall be considered as a payment made, received and held in trust by the Enrollee. If a payment is made in a total amount at any time in excess of the amount of payment required under the Plan, the Plan shall have the right to recover such payment to the extent of such excess from among any one or more of the following, as the Plan shall determine:

(a) any person (including, without limitation, an Employee, an Enrollee, a trust, or an estate) to, for or with respect to whom such payments were made;

(b) any insurance companies; or

(c) any other Person.

The Plan shall have the right to pay any amount it shall determine to be warranted to satisfy the intent of this Section to any organization making payments under other plans which should have been made under the Plan. Included in this right of recovery is the right to recover from an Enrollee any payment made under the Plan that the Enrollee may recover in any action arising out of the conduct of a third party. This right of recovery may be exercised by collecting the money directly from the Enrollee or by way of subrogation of the Enrollee's claim against the third party.

Section 5.07 **Claims Procedure.** With respect to any benefit under the Plan, a written application for benefits shall be submitted to the Claims Administrator pursuant to the terms and conditions established by the Claims Administrator. The Claims Administrator shall be solely responsible for deciding such claim, for providing a full and fair review of the decision, and for determining a claimant's entitlement to benefits provided under the Plan and in accordance with applicable law. For these purposes, the Claims Administrator shall have the sole discretionary authority and responsibility to interpret and apply the provisions of the applicable Summary Plan Description Document and any rules or regulations thereunder. Each Participant has the authority to decide claims relating to an individual's eligibility to be an Enrollee in the Plan.

Section 5.08 **Continuation of Coverage.** If a qualifying event, within the meaning of COBRA, occurs with respect to an Enrollee, and if required by law, the Plan shall give the Enrollee the opportunity to continue coverage in accordance with the procedures established by the Board of Directors, as is required by COBRA.

Section 5.09 **Exclusivity.** If a Participant offers coverage under the Plan to the Employees who are members of a Collective Bargaining Unit or to Employees who are not members of a Collective Bargaining Unit, and the respective group of Employees agrees to accept the offer, then the provisions of the Plan shall be exclusive, which means that the Participant may not provide health benefits to the respective group other than under the Plan or the insurance contracts referred to in Section 5.10 below.

Section 5.10 **Change in Benefit Plan.**

(a) If, for a Plan Year, there is a Legal Mandate that applies to the Plan and requires a change in benefits or coverage under the Plan, then the change shall be made to the Summary Plan Description Document(s), as applicable, as of the date required under the Legal Mandate.

(b) No other changes may be made in the Plan without the consent of the Board of Directors, and the consent of the Superintendent, if required.

(c) If there is a change in the Plan as described in this Section, then the required Assessment Contributions may change.

Section 5.11 **Over Age 65 Retiree Coverage.**

(a) Retired Employees who are age 65 or older and eligible for coverage under the Plan are eligible only for the Coverage Options (provided as Medicare carve-out plans) that each Participant may choose to offer at its discretion. Such retired Employees must be enrolled in Medicare Parts A and B and the Plan shall pay benefits secondary to Medicare. Certain retired Employees age 65 or older may also have the right to elect coverage under health coverage arrangements other than the Plan. Such coverage is not provided under the Plan and is not subject to the terms of this Agreement.

Section 5.12 **Special Benefit Provisions for Initial Plan Year**

If the Effective Date of the Plan is other than a January 1st, then the following will be applicable:

(a) Each Enrollee will be automatically enrolled in the Plan Coverage Option(s) that correspond(s) to the insured coverage option(s) in which the individual was enrolled immediately prior to the Effective Date.

(b) The Plan will recognize all amounts that had been applied toward the annual deductible, out-of-pocket maximum, or other cost-sharing provision under the corresponding insured coverage in which each Enrollee was enrolled immediately prior to the Effective Date of the Plan.

ARTICLE 6. FUNDING/ PREMIUM EQUIVALENT

Section 6.01 **Premium Equivalent.** The annual Premium Equivalent for each Coverage Option under the Plan shall be established and approved by a majority of the entire Board of Directors. The method used for development of the Premium Equivalent may be changed from time to time by the approval of the entire Board of Directors, subject to review and approval by the Superintendent. The Premium Equivalent shall consist of such rates and categories of benefits as is set forth in the Plan that is determined and approved by the Board of Directors consistent with New York State law.

Section 6.02 **Funding.**

(a) Each Participant will be required to contribute to the Plan an amount equal to the Premium Equivalent applicable to the Coverage Option(s), under which the Participant's Enrollees are covered. The form and timing of such payments shall be determined by the Board of Directors, unless provided otherwise in this Agreement. The Plan shall only be obligated to provide benefits to the extent a Participant timely remits the required Premium Equivalent.

(b) Each Participant shall indemnify and hold the Plan harmless, at all times during the term of this Agreement and thereafter, from all claims, damage, liability and expense, including reasonable legal fees and court costs, arising from or in any

way connected with the Participant's failure to properly and timely remit the amounts required under this Agreement.

Section 6.03 **Payment.**

(a) Each Participant's monthly Premium Equivalent, by Enrollee classification, shall be paid by the first day of each calendar month during the Plan Year. The Premium Equivalent will be based on the enrollment information existing on the 15th day of the prior month. The Premium Equivalent may also include adjustments due to Enrollees who enroll or disenroll in the Plan subsequent to the 15th day of the prior month.

(b) A late payment charge of one percent (1%) of the monthly installment then due will be charged by the Board of Directors for any payment not received by the first of each month, or the next business day when the first falls on a Saturday, Sunday, legal holiday, or day observed as a legal holiday by the Participants.

Section 6.04 **Interest.** No Participant shall be entitled to interest on its payments to the Plan, unless this Agreement or the Board of Directors authorizes such a payment.

Section 6.05 **Return of Funding.** No Participant shall receive a return of any portion of its payments to the Plan, unless this Agreement or the Board of Directors authorizes such a payment.

Section 6.06 **Deposits.** All monies paid to the Plan shall be deposited in one or more bank accounts at such bank or banks as the Board of Directors may authorize, subject to the applicable provisions of law governing the deposit of municipal funds.

Section 6.07 **Investment of Funds.** The Chief Fiscal Officer may invest monies not required for immediate expenditure in the types of investments specified in the General Municipal Law or the New York Education Law (if applicable) for temporary investments, or as otherwise expressly permitted by the Superintendent.

Section 6.08 **Reserves/Surplus/ Stop-Loss Insurance.** The Plan shall maintain Reserves, Surplus, and Stop-Loss Insurance to the level and extent required by the Insurance Law and as directed by the Superintendent.

Section 6.09 **Contingent Assessment Liability**. The Board of Directors shall assess Participants for Contingent Assessment Liability, if actual and anticipated losses due to Medical Claims Expenses, Administrative Expenses, and Reserve and Surplus requirements exceed the amount in the joint funds, as set forth in Section 4.03 above.

Section 6.10 **Distribution of Excess Reserves or Surplus.** The Board of Directors may make a Distribution to Participants for amounts in excess of the Plan's Reserves and Surplus, or may choose to retain such excess amounts or a portion thereof and apply those amounts to amounts

projected to be paid under the next Plan Year's budget. The Plan may offset against any Distribution to be made to a Participant all amounts owing by the Participant to the Plan.

ARTICLE 7. ENROLLEE CONTRIBUTIONS

Section 7.01 **Enrollee Contributions**. If any Participant requires an Enrollee's contribution for benefits provided by the Plan, the Participant shall collect such contributions at such time and in such amounts as it requires. However, the failure of a Participant to receive the Enrollee's contribution on time shall not diminish or delay the payment of the Participant's monthly Premium Equivalent to the Plan, as set forth in this Agreement.

ARTICLE 8. ADDITIONAL BENEFITS

Section 8.01 **Additional Benefits**. Any Participant choosing to provide more benefits, coverages, or enrollment eligibility other than that provided under the Plan, will do so at its sole expense and outside of the Plan (subject to the exclusivity requirement hereunder). This Agreement shall not be deemed to diminish such Participant's benefits, coverages, or enrollment eligibility, the additional benefits and the payment for such additional benefits, shall not be part of the Plan and shall be administered solely by and at the expense of the Participant.

ARTICLE 9. BOARD OF DIRECTORS

Section 9.01 **Governing Board**. The governing board of the Plan, responsible for the management, control, and administration of the Plan, shall be referred to as the "Board of Directors."

Section 9.02 **Board of Directors.**

(a) *General Rules*

The Board of Directors shall consist of (i) a representative from each Participant; (ii) two (2) representatives representing all of the local affiliates of NYSUT; (iii) one representative representing all of the local chapters of SAANYS; (iv) one (1) representative to collectively represent the local affiliates of CSEA, Teamsters, and UPSEU and any other Union that first begins, after the Effective Date, to represent Employees at that time enrolled in the Plan and that does not qualify under Section 9.02(b) to appoint a Director to the Board (hereinafter the "Collective Seat");(v) two (2) representatives of the Enrollees (one from the Enrollees employed by a Participant that is a component school district of Monroe #1 BOCES, and one from the Enrollees employed by a Participant that is a component school district of Monroe #2 Orleans BOCES); and (vi) one representative from any Union that obtains a Director seat pursuant to Section 9.02(b). There shall be an alternate for each Director, and the alternate may attend Board meetings and vote as a Director when the Director is unable to attend and vote. Reference in this Agreement to a Director shall be deemed to include the Director's alternate where

appropriate or required. Each Director shall serve until his/her successor is duly appointed, unless the position is terminated sooner by death, resignation or removal. It shall be the responsibility of each Director who represents a Participant and of each Director who represents a Union to report to the Participant or Union that it represents any action taken by the Board of Directors and any other information relating to the operation of the Plan that is relevant to the interests of the entity being represented, and to distribute to the Participant or Union any and all reports the Director received in his or her Director capacity.

(b) *Addition of Union Directors*

(i) A Union that first begins to represent Employees after the Effective Date will initially be represented by the Collective Seat unless at the time the Union begins to represent Enrollees enrolled in the Plan (hereinafter the "New Union Participation Date"), the total number of local affiliates (as described in Section 1.01(mm) herein) of the Union with Employees enrolled in the Plan equals or exceeds 18% of the total number of local affiliates/chapters of all Unions that represent Employees enrolled in the Plan. If the new Union's local affiliate/chapter percentage equals or exceeds 18% as of the New Union Participation Date, an additional seat will be added to the Board effective as of the first day of the month after the New Union Participation Date, and the new Union shall appoint its Director to the additional seat as of that date.

(ii) A Union that is represented by the Collective Seat will be eligible to appoint a Director to the Board if the number of local affiliates/chapters of that Union with Employees enrolled in the Plan equals or exceeds 18% of the total number of local affiliates/chapters of all Unions that represent Employees enrolled in the Plan. In such case, an additional seat will be added to the Board effective as of the first day of the month after the Union's percentage equals or exceeds the 18% threshold. As of that date, the Union shall appoint a Director and shall cease to be represented by the Collective Seat.

Section 9.03 **Directors and Action**. The number of Directors constituting the entire Board of Directors shall be equal to the number of Participants, and the four (4) Directors representing the Unions (unless the Collective Seat is inactive in a given year, in which case there will be three (3) Directors representing Unions for that year), the two (2) Directors representing the Enrollees, and any Union Directors that obtains a Director seat pursuant to Section 9.02(b). As used in this Agreement, the term "entire Board of Directors" shall mean the total number of Directors then in office. Unless provided otherwise in this Agreement, the Board shall act by the affirmative vote of a majority of the Directors present at a meeting provided that a Quorum (as defined below) is present at the time of the vote.

Section 9.04 **Appointment of Directors**. The Superintendent of each Participant, all of the local affiliates of NYSUT, all of the local chapters of SAANYS, and all of the local affiliates or chapters of any Union that obtains a Director seat pursuant to Section 9.02(b) shall on an annual basis appoint respectively its representative Director and alternate on the Board of Directors. All of the local affiliates of NYSUT shall determine the representative and alternate for the two (2) Directors representing the Enrollees on an annual basis. The applicable local affiliates of the Unions represented by the Collective Seat will be responsible for establishing a sub-procedure for selecting the Director for the Collective Seat and providing written notification of their selection to the Chairperson of the Board of Directors.

Section 9.05 **Vacancies.** Vacancies on the Board of Directors (including alternates and including any vacancies resulting from an increase in the number of Directors) created for any reason shall be filled in accordance with Section 9.04 above. A successor who is appointed shall hold office until his/her successor has been duly appointed. An inactive Collective Seat for any given year shall not be considered a vacancy on the Board of Directors for that year.

Section 9.06 **Removal.** Any one or more Directors may be removed from office, only with cause, by a majority vote of the entire Board of Directors (determined based on the Directors then in office). Any Director proposed to be removed for cause must be given at least twenty (20) days prior written notice of the reasons why the Board of Directors is proposing to remove the person and the meeting of the Board of Directors at which the removal will be considered. The person shall be entitled to attend the meeting of the Board of Directors and address the Board regarding his/her removal.

Section 9.07 **Resignation.** Any Director may resign from office at any time. A Director shall be deemed to have resigned if the Participant or Union who designated the Director withdraws its designation, which it may do at any time with or without cause, or if the Participant's membership in the Plan terminates. The resignation or withdrawal of a designation shall be made in writing and shall be delivered or mailed to the Plan, and shall take effect on the date designated therein without the necessity of acceptance by the Board of Directors.

Section 9.08 **Meetings of the Board of Directors.** An annual meeting of the Board of Directors shall be held during December of each year. Regular meetings of the Board of Directors shall be held during the months of March, May, August, September, and October, at such times as the Board of Directors determines. Written notice of the date, time and place of a regular meeting shall be provided to each Director not less than ten (10) and not more than thirty (30) days before the date fixed for the meeting. Special meetings of the Board of Directors may be held at any time when called by the Chairperson, or by the Secretary upon the written request of at least three (3) of the Directors. Written notice of the date, time and place of a special meeting shall be provided to each Director not less than three (3) and not more than thirty (30) days before the date fixed for the meeting.

Section 9.09 **Place of Meetings.** Each meeting of the Board of Directors shall be held at such place, within Monroe County, as the Board of Directors determines.

Section 9.10 **Notice of Meeting of the Board of Directors.** Written notice of the date, time and place of each regular and special meeting of the Board of Directors shall be given to each Director (but not to an alternate) in any of the following ways:

(a) *Personal Delivery.* Notice may be given by personally delivering such notice to the Director. Notice will be deemed given upon receipt.

(b) *Notice by Electronic Means.* Notice may be given by sending such notice to a Director by telecopier, telex, fax, electronic mail or similar mode of communication, provided that the source of the communication can be verified and the receipt confirmed. Notice will be deemed given twenty-four (24) hours after receipt.

(c) *Mail.* Notice may be given by placing such notice, addressed to the Director at his/her last known address according to the Plan's records, in the United States mail, first-class postage prepaid. Notice will be deemed given on the second day after the day of mailing (not counting the day mailed), irrespective of the date of receipt.

(d) *Express Mail.* Notice may be given by delivering such notice, addressed to the Director at his/her last known address according to the Plan's records, to a reputable express mail delivery service that will provide for next day delivery. Notice will be deemed given on the first day after the day of mailing (not counting the day mailed), irrespective of the date of receipt.

Section 9.11 **Waiver of Notice.** Notice of any meeting of the Board of Directors need not be given to any Director who waives such notice, in a signed writing before, during or after the meeting, or who attends the meeting without protesting the lack of notice, either prior to the meeting or at the commencement of the meeting.

Section 9.12 **Quorum.** A "Quorum" must be present at a meeting of the Board of Directors for the transaction of any item of business at such meeting. A Quorum shall exist if a majority of the entire Board of Directors (determined based on the Directors then in office) is present at the meeting. If less than a Quorum is present at a meeting, a majority of the Directors present at such meeting may adjourn the meeting from time to time without notice other than by announcement at the meeting, until a Quorum shall attend. The vote of a majority of the Board of Directors present at the time of the vote, if a Quorum is present at such time, shall be the act of the Board of Directors, unless a greater vote is required under this Agreement to take action. Once a Quorum is present, it may be broken by the subsequent withdrawal of a Director.

Section 9.13 **Action Without a Meeting.** Any action required or permitted to be taken by the Board of Directors, or by any committee thereof, at a duly held meeting may be taken without a meeting if all members of the Board of Directors or of the committee (then in office), as the case may be, consent in writing to the adoption of a resolution authorizing the action. Such resolution and such written consent shall be filed with the minutes of the proceedings of the Board of Directors or of the committee, as applicable.

Section 9.14 **Personal Attendance by Conference Communication Equipment.** Any Director and any committee member may participate in a meeting of the Board of Directors or of such committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at the meeting.

Section 9.15 **Compensation.** Directors shall not receive compensation from the Plan for their services in their capacity as Directors but, by resolution of the Board of Directors, a fixed sum and reimbursement of expenses may be paid to Directors for attendance at each meeting of the Board. Nothing in this Section shall be construed to preclude a Director from serving the Plan in any other capacity and receiving compensation in such capacity.

ARTICLE 10. POWERS OF THE BOARD OF DIRECTORS

Section 10.01 **Powers of the Board of Directors**. Subject to the voting and quorum requirements set forth in this Agreement, the Board of Directors is authorized and/or required to take action on the following matters:

(a) Shall design the benefits provided by the Plan and prepare the Summary Plan Description Documents in accordance with Section 4709 of the Insurance Law.

(b) May enter into a Claims Administration Agreement with a Claims Administrator, determined by the Board of Directors to be qualified, to receive, investigate, recommend, audit, approve or make payment of claims under the Plan, provided that:

(i) the charges, fees, and other compensation for any contracted services shall be clearly stated in written administrative services contract as required in Section 92-a(6) of the General Municipal Law;

(ii) payment for contracted services shall be made only after such services are rendered;

(iii) no Director or any member of such Director's immediate family shall be an owner, officer, director, partner, or employee of any Claims Administrator retained by the Plan; and

(iv) all such agreements shall comply with the requirements of Section 92-a(6) of the General Municipal Law.

(c) Shall be authorized to purchase Stop-Loss Insurance on behalf of the Plan, to the extent required by Section 4707 of the Insurance Law.

(d) Shall be authorized to establish a joint fund or funds to finance all Plan expenditures, Medical Claims Expenses, Reserves, Surplus, Administrative Expenses, Stop-Loss Insurance, and other expenses.

(e) Shall prepare an annual budget for the Plan to determine the Premium Equivalent Rates for Participants to be deposited in the Plan's joint fund or funds during the fiscal year, provided that:

(i) the Board of Directors shall designate the bank or trust company in which joint funds, including reserve funds, are to be deposited and which shall be located in New York State, duly chartered under federal law or the laws of New York State; and

(ii) the Board of Directors shall establish the Premium Equivalent Rates for Participants on the basis of a Community Rating Methodology filed with and approved by the Superintendent, and, in determining the annual Premium Equivalent, the Board of Directors:

1) may contract for necessary actuarial services to estimate expected plan expenditures during the fiscal year;

2) shall maintain Reserves in amounts equal to or exceeding the minimum amounts required by Section 4706 of the Insurance Law; and

3) shall maintain a Stop-Loss policy or policies, to the extent required by Section 4707 of the Insurance Law.

(f) Shall be authorized to assess Participants for additional Assessment Contributions, if actual losses due to Medical Claims Expenses, Administrative Expenses, and Reserve and Surplus requirements exceed amounts held in the Plan's joint funds.

(g) Shall be authorized to refund amounts in excess of Reserves and Surplus required by Section 4706 of the Insurance Law and anticipated expenses in the Plan's joint funds for Participants, or retain such excess amounts or a portion thereof and apply such amounts in preparing the Plan's budget for the following year.

(h) Shall be authorized to fill any vacancy in any of the Officers of the Plan.

(i) Shall be authorized to fix the frequency, time, and place of regular Board of Directors meetings.

(j) Shall be authorized to audit receipts and disbursements of the Plan and provide for independent audits, and periodic financial and operational reports to Participants.

(k) Shall hold responsibility for the maintenance of accurate records and books of account in regard to the Plan.

(l) Shall establish administrative guidelines for the efficient operation of the Plan.

(m) Shall establish financial regulations for the entry of new Participants into the Plan consistent with all applicable legal requirements and this Agreement.

(n) Shall designate a Director to retain custody of all reports, statements, and other documents of the Plan and take minutes of each Board of Directors meeting which shall be acted on by the Board of Directors at a subsequent meeting.

(o) Shall choose the certified public accountant and the actuary to provide the reports required by this Agreement and any applicable law.

(p) Shall designate an attorney-in fact to receive summons or other legal process in any action, suit, or proceeding arising out of any contract, agreement, or transaction involving the Plan. The Board of Directors designates the Plan's Chairperson and Vice-Chairperson as the Plan's initial attorneys-in fact.

(q) Shall be authorized to take all necessary action to ensure that the Plan obtains and maintains a Certificate of Authority in accordance with the laws of the State of New York.

(r) Shall be authorized to take any other action authorized by law and deemed necessary to accomplish the purposes of this Agreement.

ARTICLE 11. BOARD COMMITTEES.

Section 11.01 **Executive Committee**. The Board of Directors may appoint an Executive Committee consisting of the Officers designated under Article 12 of the Agreement and three (3) other Directors, but the Committee shall not have more than seven (7) members. The non-Officer members of the Executive Committee shall be determined by a vote of the Board of Directors. The three nominees receiving the plurality of the votes cast shall be elected. Meetings of the Executive Committee shall be noticed and conducted in accordance with the terms of this Article 11, but meetings may only be called by the Chairperson of the Board, who shall be the Chairperson of the Executive Committee. The Executive Committee shall have the authority of the Board of Directors, except that the Committee shall not have authority with respect to the following matters: filling of vacancies on the Board of Directors; determining the amount of Assessment Contributions to be charged to the Participants and how such Assessment Contributions will be allocated among the Participants; determining Distributions; admission or termination of a Participant; incurring an expenditure greater than ten thousand dollars ($10,000), or incurring multiple expenditures in a Plan Year in excess of that amount for the same purpose; and, amendment or termination or merger of all or any portion of this Agreement. The purpose of the Executive Committee is to address operational matters that relate primarily to the approval of an expenditure of money and that need to be addressed prior to a scheduled Board of Directors meeting.

Section 11.02 **Standing Committees**. The Board of Directors may appoint, from time to time, one or more Standing Committees of the Board of Directors, which shall consist of three (3) or more Directors. At least one Participant of the Standing Committee(s) will be a Director representing a Union, provided that one of the Union Directors is willing to serve on the

Standing Committee. Committees of the Board of Directors shall have such powers as are conferred upon them by the Board of Directors.

Section 11.03 **Board Committee Quorum**. A majority of the members of a committee of the Board shall constitute a Quorum for the transaction of any item of business of such committee. The committee of the Board of Directors may make other rules for the conduct of its business. Members of any committee of the Board of Directors may be removed from office in the same manner as Officers of the Plan may be removed from office.

Section 11.04 **General Committees**. The Board of Directors may appoint, from time to time, one or more committees of the Plan. A majority of the members of the committee shall constitute a Quorum. The committee may make other rules for the conduct of its business. The committee shall have authority only to make recommendations to the Board of Directors, and such recommendations shall be subject to review and revision or approval by the Board of Directors. Members of a committee may be removed from office in the same manner as Officers of the Plan may be removed from office.

ARTICLE 12. OFFICERS

Section 12.01 **Election of Officers**. The Board of Directors shall elect a Chairperson and a Vice-Chairperson of the Board, a Secretary and a Treasurer, and such other Officers (collectively, the "Officers"), with such powers as it shall determine each year at its annual meeting, and thereafter if necessary to fill a vacancy. Each Officer shall be a member of the Board of Directors and shall serve for a term of one (1) year and until his/her successor is duly elected and qualified, or until his/her earlier death, resignation or removal. Any two offices may be held by the same person. There shall be at least two individuals acting as Officers at all times. Any vacancies in any office may be filled by the Board of Directors.

Section 12.02 **Removal**. Any Officer of the Plan may be removed at any time, with or without cause, by the affirmative vote of a majority of the entire Board of Directors (determined based on the Directors then in office).

Section 12.03 **Compensation**. Officers shall not receive compensation from the Plan for their services in their capacity as Officers. The Officers may be reimbursed for reasonable expenses incurred in connection with the discharge of their duties as an Officer of the Plan. Nothing in this Section shall be construed to preclude an Officer from serving the Plan in any other capacity and receiving compensation in such capacity.

Section 12.04 **Chairperson/Vice-Chairperson**. The Chairperson shall preside at all meetings of the Board of Directors. At the request of the Chairperson or in his/her absence or inability to act, the Vice-Chairperson shall perform the duties and exercise the functions of the Chairperson.

Section 12.05 **Secretary**. The Secretary shall keep full minutes of all meetings of Board of Directors. The Secretary shall see that all notices are duly given in accordance with the provisions of this Agreement. The Secretary shall be the custodian of the records, reports, statements, and other documents of the Plan. The Secretary shall have such other powers and

duties as may be properly designated by the Board of Directors. The Secretary is employed by the Brighton Central School District.

Section 12.06 **Treasurer.** The Treasurer shall act as the Chief Fiscal Officer of the Plan. The Treasurer shall have such powers and duties as may be properly designated by the Board of Directors. The Treasurer is employed by Monroe 2-Orleans BOCES.

ARTICLE 13. CHIEF FISCAL OFFICER

Section 13.01 **Chief Fiscal Officer**. The Chief Fiscal Officer of the Plan shall be the Treasurer of the Board of Directors. The Chief Fiscal Officer, an employee of Monroe 2- Orleans BOCES, shall act as the chief financial administrator of the Plan and disbursing agent, on behalf of Monroe 2-Orleans BOCES, for all payments made by the Plan. The Chief Fiscal Officer, through Monroe 2-Orleans BOCES, shall provide, coordinate, and/or contract certain services ("Coordination Services") for the Plan, including: (1) clerical services, (2) monthly invoicing, (3) receiving and accounting for premium receipts and depositing the same into a separate bank account of the Plan, (4) payment processing, (5) accounting, (6) reporting, (7) auditing and actuarial services, (9) office space and facilities and (10) office supplies and services for the Plan. These Coordination Services shall be provided to the Plan by Monroe 2-Orleans BOCES (acting through the Chief Fiscal Officer) at no cost to the Plan. The Chief Fiscal Officer shall be a fiscal officer of a Participant.

Section 13.02 **Powers of the Chief Fiscal Officer**. The Chief Fiscal Officer shall be responsible for the following duties:

(a) shall have custody of all monies received by the Plan or made available for expenditure under the Plan;

(b) shall, notwithstanding any provisions of the General Municipal Law, make payment in accordance with the procedures developed by the Board of Directors and acceptable to the Superintendent; and

(c) may invest monies not required for immediate expenditure in the types of investment specified in the General Municipal Law or the New York Education Law (as applicable) for temporary investments or as otherwise expressly permitted by the Superintendent.

Section 13.03 **Compensation**. The Chief Fiscal Officer shall receive no remuneration from the Plan. The Plan may reimburse the Participant that employs the Chief Fiscal Officer for reasonable expenses incurred in connection with the duties of the Chief Financial Officer in connection with the Plan.

Section 13.04 **Bond**. The Chief Fiscal Officer shall be adequately bonded by Monroe 2-Orleans BOCES for all monies received from the Participants in accordance with the provisions of the education law, general municipal law, and public officers law, as applicable, for the

protection of the employees and retirees and their dependents covered by the Plan. The amount of such bond shall be established annually by the Plan in such monies and principal amount as may be required by the Superintendent.

Section 13.05 **Depositing of Plan Funds**. All moneys collected from the Participants by the Chief Fiscal Officer in connection with the Plan shall be deposited in accordance with the policies of Monroe 2-Orleans BOCES, and shall be subject to the provisions of applicable general municipal or education law governing the deposit of municipal funds.

Section 13.06 **Accounting of Plan Funds**. The Chief Fiscal Officer shall account for the Plan's Reserves fund separate and apart from all other funds of the Plan, and such account shall show:

(a) the purpose, source, date, and amount of each sum paid into the fund;

(b) the interest earned by such funds;

(c) capital gains or losses resulting from the sale of investments of the Plan's Reserves;

(d) the order, purpose, date, and amount of each payment from the Reserves; and

(e) the assets of the fund, indicating cash balance and schedule of investments.

Section 13.07 **Annual Reserves Report**. Within ninety (90) days after the end of each Plan Year, the Chief Fiscal Officer shall furnish to the Board of Directors a detailed report of the operation and condition of the Plan's Reserves.

Section 13.08 **Annual Fiscal Reports**. The Chief Fiscal Officer shall cause to be prepared and furnished to the Board of Directors, to Participants, to unions which are the exclusive bargaining representatives of Enrollees, and to the Superintendent:

(a) an annual audit, and opinions thereon, by an independent certified public accountant, of the financial condition, accounting procedures, and internal control systems of the Plan;

(b) an annual report and quarterly reports describing the Plan's current financial status; and

(c) an annual independent actuarial opinion on the financial soundness of the Plan, including the actuarial soundness of Contingent Assessment Liability or Premium Equivalents Rates and Reserves, both as paid in the current Plan Year and projected for the next Plan Year.

ARTICLE 14. INDEMNIFICATION

Section 14.01 **Generally.** Each Person who was or is made a party to or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he/she/it or his/her/its is or was an Officer, committee member, Participant, Union, representative of a Participant or a Union, or Director of the Plan (an "Indemnitee"), shall be indemnified and held harmless by the Plan against all expense, liability and loss, including without limitation excise taxes or penalties, judgments, fines, penalties, amounts paid in settlement (provided the Board of Directors shall have given its prior consent to such settlement, which consent shall not be unreasonably withheld by it) and reasonable expenses, including attorneys' fees, suffered or incurred by such Indemnitee in connection therewith, and such indemnification shall continue as to an Indemnitee who has ceased to be an Officer, committee member, Participant, Union, representative of a Participant or a Union, or Director and shall inure to the benefit of the Indemnitee's heirs, representatives, and fiduciaries, provided that such Person acted in good faith, for a purpose which he or she reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the Plan and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his or her conduct was unlawful, and further provided, however, that no indemnification may be made to or on behalf of any Indemnitee (i) if his/her/its acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or otherwise disposed of, (ii) if he/she/it personally gained in fact a financial profit or other advantage to which he/she/it was not legally entitled, or (iii) for any excise tax, penalties, judgments, or fines that are the result of a Participant's determinations with respect to eligibility rules for its Employees to participate in the Plan or a Participant's failure to satisfy a legal obligation imposed on the Participant with respect to its participation in the Plan. Notwithstanding the foregoing, except as contemplated by Section 14.03 of this Agreement, the Plan shall indemnify any such Indemnitee in connection with a proceeding (or part thereof) initiated by such Indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors.

Section 14.02 **Advancement of Expenses.** All expenses reasonably incurred by an Indemnitee in connection with a threatened or actual proceeding with respect to which such Indemnitee is or may be entitled to indemnification under this Article 14 shall be advanced to him/her/it or promptly reimbursed by the Plan in advance of the final disposition of such proceeding, upon receipt of an undertaking satisfactory to the Board of Directors by him/her/it or on his/her/its behalf to repay the amount of such advances, if any, as to which he/she/it is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent such advances exceed the indemnification to which he/she/it is entitled. Such person shall cooperate in good faith with any request by the Plan that common counsel be used by the parties to any proceeding who are similarly situated unless to do so would be inappropriate due to an actual or potential conflict of interest.

Section 14.03 **Procedure for Indemnification.** Not later than thirty (30) days following final disposition of a proceeding with respect to which the Plan has received written request by an Indemnitee for indemnification pursuant to this Article 14 or with respect to which there has

been an advancement of expenses pursuant to Section 14.02 of this Agreement, the Board of Directors shall meet and find whether the Indemnitee met the standard of conduct set forth in Section 14.01 of this Agreement and, if it finds that he/she/it did, or to the extent it so finds, the Board of Directors shall authorize such indemnification.

(a) Such standard shall be found to have been met unless: (i) a judgment or other final adjudication adverse to the Indemnitee established that the standard of conduct set forth in Section 14.01 of this Agreement was not met; or (ii) if the proceeding was disposed of other than by judgment or other final adjudication, the Board of Directors finds in good faith that, if it had been disposed of by judgment or other final adjudication, such judgment or other final adjudication would have been adverse to the Indemnitee and would have established that the standard of conduct set forth in Section 14.01 of this Agreement was not met.

(b) If the Board of Directors fails or is unable to make the determination called for by Section 14.03(a), or if indemnification is denied, in whole or part, because of an adverse finding by the Board of Directors, or because the Board of Directors believe the expenses for which indemnification is requested to be unreasonable, such action, inaction or inability of the Board of Directors shall in no way affect the right of the Indemnitee to make application therefor in any court having jurisdiction therein. In such action or proceeding, or in a suit brought by the Plan to recover an advancement of expenses pursuant to the terms of an undertaking, the issue shall be whether the Indemnitee met the standard of conduct set forth in Section 14.01 of this Agreement, or whether the expenses were reasonable, as the case may be (not whether the finding of the Board of Directors with respect thereto was correct). If the judgment or other final adjudication in such action or proceeding establishes that the Indemnitee met the standard set forth in Section 14.01 of this Agreement, or that the disallowed expenses were reasonable, or to the extent that it does, the Board of Directors shall then find such standard to have been met or the expenses to be reasonable, as the case may be, and shall grant such indemnification, but shall not grant to the Indemnitee indemnification of the expenses incurred by him/her/it in connection with the action or proceeding resulting in the judgment or other final adjudication that such standard of conduct was met, or relating to the reasonableness of the expenses. Neither the failure of the Board of Directors to have made timely a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in Section 14.01 of this Agreement, nor an actual determination by the Board of Directors that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct. In any suit brought by the Indemnitee to enforce a right to indemnification, or by the Plan to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to indemnification, under this Article 14 or otherwise, shall be on the Plan.

(c) A finding by the Board of Directors pursuant to this Section 14.03 that the standard of conduct set forth in Section 14.01 of this Agreement has been met shall mean a finding: (i) by the Board of Directors acting by a quorum consisting of Board of Directors who are not parties to such proceeding; or (ii) if such a quorum is not obtainable, or if obtainable, such a quorum so directs, by the Board of Directors upon the written opinion of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct has been met, or by the Participants upon a finding that such standard of conduct has been met.

Section 14.04 **Contractual Article.** The rights conferred by this Article 14 are contract rights which shall not be abrogated by any amendment, repeal, termination or expiration of this Article 14, with respect to events occurring prior to such amendment, repeal termination or expiration, and shall be retroactive to events occurring prior to the adoption of this Article 14. This Article 14 shall be binding on any successor to the Plan.

Section 14.05 **Non-Exclusivity.** The indemnification provided by this Article 14 shall not be deemed exclusive of any other rights to which any Person covered hereby may be entitled other than pursuant to this Article 14. The Plan is authorized to enter into agreements with any such Person providing rights to indemnification or advancement of expenses in addition to the provisions set forth in this Article 14, and the Participants and the Board of Directors are authorized to adopt, in their discretion, resolutions providing any such person with any such rights.

Section 14.06 **Indemnification of Employees and Agents of the Plan.** The Plan may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and the advancement of expenses to any employee or agent of the Plan with the same scope and effect as provided by this Article 14.

Section 14.07 **Insurance.** The Plan may, to the extent determined by the Board of Directors, purchase insurance in order to insure the Plan's obligations set forth in this Article 14.

ARTICLE 15. WITHDRAWAL OF PARTICIPANT

Section 15.01 **Withdrawal of Participant.** A Participant shall have the right to withdraw from the Plan, but such withdrawal shall be effective only on January 1st of the next Plan Year following the Plan Year in which the Participant provides notice in accordance with Section 15.02.

Section 15.02 **Notice of Intention to Withdrawal.** Notice of intention of a Participant withdraw must be given in writing to the Chairperson and the Treasurer by April 1st of the Plan Year immediately preceding the January 1st withdrawal date. After such notice is given, the Participant and the Board of Directors will review the impact of the withdrawal on the Participant and the Plan, and the Participant shall then confirm or revoke its decision to withdraw by written notice given on or before September 1st of the Plan Year immediately preceding the January 1st withdrawal date. Failure to provide the required written notices in a timely manner as

required herein shall render the Participant's attempt to withdraw from the Plan null and void, and the Participant's membership and obligations under the Agreement shall automatically extend for another Plan Year, unless the Board of Directors shall consent to an earlier withdrawal of the Participant.

Section 15.03 **Liability of Withdrawing Participant**. Any withdrawing Participant shall be responsible for its pro rata share of any Plan Deficit, and shall satisfy any other obligation relating to the Participant's membership in the Plan (including any Assessment Contribution required under Section 4.03(b)). The withdrawing Participant shall not be entitled to share in any Plan surplus.

ARTICLE 16. TERMINATION OF PARTICIPANT

Section 16.01 **Termination of Participant**. A Participant's membership in the Plan may be terminated by the Board of Directors upon the occurrence of either of the following events:

(a) the Participant does not satisfy the membership criteria as set forth in this Agreement and as established from time to time by the Board of Directors; or

(b) the Participant breaches any of its obligations under the terms of this Agreement and does not cure such breach within fifteen (15) days after written notice of the breach.

Section 16.02 **Liability of Terminated Participant**. A terminated Participant shall be responsible for its pro rata share of any Plan Deficit, and shall satisfy any other obligation relating to the Participant's membership in the Plan (including any Assessment Contribution required under Section 4.03(b)). The terminated Participant shall not be entitled to share in any Plan surplus.

ARTICLE 17. DISSOLUTION, TERMINATION, WINDING UP, AND MERGER OF THE PLAN

Section 17.01 **Dissolution**. The Board of Directors, by a two-thirds (2/3) vote of the entire Board, may determine that the Plan shall be dissolved and terminated. The Board shall inform the Superintendent and submit a plan for the Superintendent's approval for winding up the Plan's affairs in accordance with Section 4713 of the New York Insurance Law.

Section 17.02 **Notification to Superintendent and Winding Up**. Upon determination to dissolve the Plan, the Board of Directors shall provide notice of its determination to the Superintendent. The Board of Directors shall develop and submit to the Superintendent for approval a plan for winding-up the Plan's affairs in an orderly manner designed to result in timely payment of all benefits.

Section 17.03 **Deficit/Surplus Payment**. Upon termination of this Agreement, or the Plan, each Participant shall be responsible for its pro rata share of any Deficit or shall be entitled to any pro rata share of Surplus that exists, after the affairs of the Plan are closed. No part of any funds of the Plan shall be subject to the claims of general creditors of any Participant until all Plan benefits and other Plan obligations have been satisfied. The Plan's Surplus or Deficit shall be based on actual expenses. These expenses will be determined one year after the end of the Plan Year in which this Agreement or the Plan terminates. Any Surplus or Deficit shall include recognition of any claims/expenses incurred at the time of termination, but not yet paid. Such pro rata share shall be based on each Participant's relative Premium Equivalent contribution to the Plan as a percentage of the aggregate Premium Equivalent contributions to the Plan during the period of participation. This percentage amount would then be applied to the Surplus or Deficit which exists at the time of termination.

Section 17.04 **Termination.** Upon completion of the dissolution, winding up, liquidation, and distribution of the assets of the Plan, the Plan shall be deemed terminated.

Section 17.05 **Merger.** The merger of this Plan with any other plan shall require the approval of two-thirds (2/3) of all of the Board of Directors.

ARTICLE 18. REPORTING & RECORDKEEPING REQUIREMENTS

Section 18.01 **Reporting Requirements**. The Board of Directors, through its Officers, agents, or delegates, shall ensure that the following reports are prepared and submitted in accordance with Section 4710 of the Insurance Law:

(a) annually, not later than one-hundred twenty (120) days after the close of the Plan Year, file a report with the Superintendent showing the financial condition and affairs of the Plan, including an annual independent financial audit statement and independent actuarial opinion, as of the end of the preceding Plan Year.

(i) The Board of Directors shall provide the annual report of the Plan to all Participants and to all Unions which are the exclusive collective bargaining representatives of Enrollees. This annual report shall be made available for inspection to all Enrollees.

(b) The Board of Directors shall file a report each quarter with the Superintendent describing the Plan's current financial status and providing such information as the Superintendent may prescribe.

(c) The Board of Directors shall submit to the Superintendent a report describing any material changes in any information provided in the original application for a Certificate of Authority. Such reports shall be in such form, and containing such additional content, as may be required by the Superintendent.

Section 18.02 **Records**. The Secretary shall have the custody of all records and documents, including financial records, associated with the operation of the Plan. Each Participant may request records and documents that are reasonably related to its interest in the Plan by providing a written request to the Chairperson and Chief Fiscal Officer. The Plan shall respond to each request no later than fifteen (15) days after its receipt thereof, and shall include all information which can be provided under applicable law (including, but not limited to, the HIPAA Privacy Rules).

ARTICLE 19. HIPAA COMPLIANCE

Section 19.01 **Compliance With HIPAA.** The Plan Document will contain provisions as described below to comply with HIPAA.

Section 19.02 **General Requirements.** The Plan may disclose PHI to a Participant or allow a Claims Administrator to make a disclosure to the Participant in the following circumstances:

(a) The Plan or a Claims Administrator on behalf of the Plan may disclose Summary Health Information to a Participant if the Participant requests the Summary Health Information for the purpose of obtaining premium bids from Insurers for providing health insurance coverage under the Plan, or modifying, amending or terminating the Plan.

(b) The Plan or Claims Administrator on behalf of the Plan may disclose to a Participant information on whether an Employee is participating in the Plan, or is enrolled in or has disenrolled from the Plan.

(c) The Plan or a Claims Administrator on behalf of the Plan may disclose PHI to a Participant if the disclosure is made for a Plan Administration Function or if the disclosure is made pursuant to an authorization that is in compliance with the HIPAA Rules.

(d) Disclosure of PHI to the Participant by the Plan or by Claims Administrator on behalf of the Plan may occur provided such use and disclosure of PHI are in accordance with the requirements of the HIPAA Rules and this Article.

Section 19.03 **Implementation Specifications.**

(a) The Plan and Claims Administrator on behalf of the Plan may disclose PHI to a Participant provided that the Participant agrees to the following, which the Participant has done by executing this Agreement:

(i) the Participant will not use or further disclose the PHI other than as permitted or required by the Plan or as required by law;

(ii) the Participant will ensure that any agent, including a subcontractor, to whom the Participant provides PHI received from the Plan or Claims Administrator on behalf of the Plan agrees to the same restrictions and conditions that apply to the Participant with respect to the PHI;

(iii) the Participant will not use or disclose the PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Participant;

(iv) the Participant will report to the Plan any use or disclosure of PHI that is inconsistent with the uses or disclosures provided for, if and when it becomes aware of such a situation;

(v) the Participant will make PHI available in accordance with the access provisions of the HIPAA Rules;

(vi) the Participant will make PHI available for amendment and incorporate any amendments to PHI in accordance with the amendment provisions of the HIPAA Rules;

(vii) the Participant will make PHI available required to provide an accounting of disclosures in accordance with the accounting provisions of the HIPAA Rules;

(viii) the Participant will make its internal practices, books and records relating to the use and disclosure of PHI received from the Plan or Claims Administrator on behalf of the Plan available to the Secretary of Health and Human Services for purposes of determining compliance by the Plan with the HIPAA Rules;

(ix) the Participant will, if feasible, return or destroy all PHI received from the Plan or Claims Administrator on behalf of the Plan that the Participant still maintains in any form and retain no copies of such information when no longer needed for the purpose for which the disclosure was made, except that, if such return or destruction is not feasible, the Participant will limit further use and disclosure to those purposes that make the return or destruction of the information infeasible; and

(x) the Participant will ensure that there is adequate separation between the Participant and the Plan as described below.

(b) In order to create adequate separation between the Plan and the Participant, the Plan will do the following:

(i) describe those employees or classes of employees or other persons under the control of the Participant who will be given access to PHI, provided that any employee or person who receives PHI relating to payment under,

health care operations of, or other matters pertaining to the Plan in the ordinary course of business must be included in such descriptions;

(ii) PHI will be disclosed to the Participant for use only as necessary to fulfill Plan Administration Functions that the Participant performs for the Plan; and

(iii) the Plan will provide an effective mechanism for resolving any issues of non-compliance by such individuals with the requirements set forth in this Article.

(c) The Participant may only use or disclose PHI if:

(i) the Participant has properly received the PHI from the Plan or Claims Administrator on behalf of the Plan;

(ii) the use and disclosure of the PHI is required or permitted by the Plan; and

(iii) such use and disclosure complies with the requirements of the HIPAA Rules and this Article.

(d) The Plan, with respect to disclosure of PHI to a Participant, may do the following:

(i) disclose PHI to a Participant to carry out Plan Administration Functions that the Participant performs, provided that the Participant abides by the restrictions set forth in this Article;

(ii) not permit Claims Administrator to disclose PHI to a Participant, except as permitted by the HIPAA Rules or this Article;

(iii) not disclose PHI or permit Claims Administrator to disclose PHI to a Participant as otherwise permitted, unless a statement regarding such disclosure is included in the Plan's Privacy Notice; and

(iv) not disclose PHI to a Participant for the purpose of employment-related actions or decisions or in connection with any other benefit or employee benefit plan of the Participant.

ARTICLE 20. MISCELLANEOUS PROVISIONS

Section 20.01 **Amendment of this Agreement**. Any change or amendment to this Agreement shall require the unanimous approval of the Participants, as authorized by a majority vote of their respective governing bodies. Any such change or amendment shall be submitted to the Superintendent of Financial Services for approval.

Section 20.02 **Confidentiality**. Nothing contained in this Agreement shall be construed to waive any right that a covered person (i.e. an Enrollee) possesses under the Plan with respect to the confidentiality of medical records and that such rights may only be waived upon the written consent of such covered person.

Section 20.03 **Performance**. Each Participant will perform all acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intended purposes of this Agreement.

Section 20.04 **Notices**. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing and shall be given in accordance with Section 9.10 of this Agreement. Notices may be signed and given by the attorney for any party delivering a notice hereunder.

Section 20.05 **Merger**. This Agreement contains the sole and entire agreement and understanding of the parties with respect to its subject matter. Except as provided in this Agreement, any and all prior discussions, negotiations, commitments, and understandings relating thereto are hereby merged in this Agreement.

Section 20.06 **Article 47 Agreement**. This Agreement is intended to be a municipal cooperation agreement for the provision of joint services as described in Article 47 of the New York Insurance Law. The Participants have determined that they can provide health benefits for the Enrollees at a significant cost savings by being a Participant in the Plan.

Section 20.07 **No Guarantee of Tax Consequences**. Neither the Plan nor the Participants make any commitment or guarantee that any amounts paid to or for the benefit of an Enrollee under the Plan shall be excludable from the Enrollee's gross income for federal or state income tax purposes, or that any other federal or state tax treatment shall apply to or be available to any Enrollee. It shall be the obligation of each Enrollee to determine whether such payment under the Plan is excludable from the Enrollee's gross income for federal or state income tax purposes, and to notify the employing Participant if the Enrollee has reason to believe that any such payment is not so excludable.

Section 20.08 **Quality of Health Services**. The selection by the Board of the Coverage Options that may be offered under the Plan does not constitute any warranty, express or implied, as to the quality, sufficiency or appropriateness of the services that may be provided by any health care or other service provider, nor do the Plan or Participants assume or accept any responsibility with respect to the denial by any prospective provider of access to, or financial support for, any service, whether or not such denial is appropriate under the circumstances. Each Enrollee for whom enrollment is provided under any coverage agrees, as a condition of such enrollment, that such Enrollee will look only to appropriately certified or licensed providers, and not to the Plan or Participants, for health care or other services, and further that the Enrollee releases, discharges, indemnifies and holds harmless the Participants, the Plan, their respective employees, officers, designees, board members, and all other persons associated with them, with respect to all matters relating to: (a) the quality, sufficiency and appropriateness of health care or other services provided; (b) the failure by any provider to provide any service needed, or to properly

obtain informed consent prior to rendering or withholding any service, regardless of the reason for such failure; and (c) professional malpractice by a service provider.

Section 20.09 **Dispute Resolution.** If a dispute arises with respect to any Participant's participation in the Plan, a dispute will be submitted to a dispute resolution committee created by the Board of Directors (the "Dispute Committee"). The Dispute Committee will investigate the dispute and make a recommendation to the Board of Directors regarding resolution of the dispute. The Board of Directors will then make a final determination regarding resolution of the dispute. If the Participant who is the subject of the dispute disagrees with the Board of Director's determination, then either the Participant or the Plan may pursue legal action to seek resolution of the dispute.

Section 20.10 **Governing Law.** This Agreement and the obligations of the Participants hereunder shall be operated and performed and interpreted, construed and enforced in accordance with all applicable laws of the State of New York without reference to the principles of conflicts of laws and all applicable federal laws.

Section 20.11 **Waiver.** No consent or waiver, express or implied, by any Participant to any breach or default by another or the performance by another of its obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such Participant under this Agreement.

Section 20.12 **Severability.** If any provision of this Agreement or the application of the provisions of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by law. If any court determines that any provision of this Agreement, or any part thereof, is unenforceable for any reason, then there shall be added to this Agreement a legal, valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

Section 20.13 **Captions.** The captions used in this Agreement are inserted for convenience only and are not part of this Agreement.

Section 20.14 **Gender.** The masculine, feminine or neuter pronouns used in this Agreement shall be deemed to include the masculine, feminine or neuter genders, as appropriate.

Section 20.15 **Binding Agreement.** Subject to the restrictions on transfers set forth in this Agreement, this Agreement shall inure to the benefit of and be binding upon the Participants and their respective legal representatives, successors and assigns.

Section 20.16 **Counterparts Execution.** This Agreement may be executed in one or more counterparts each of which, when executed and delivered, shall be an original but all of which together shall constitute one and the same agreement. This Agreement may also be executed by having each Participant sign a separate copy of the signature page, which, when combined, shall constitute the required execution of this Agreement.

Section 20.17 **Failure of Performance.** If a Participant fails in a due performance of any of its obligations under the terms of this Agreement, the Plan will have the right, at its election, to sue for damages for such breach and to seek such legal and equitable remedies as may be available to it, including the right to recover all reasonable expenses, which shall include reasonable legal fees and court costs, incurred to sue for damages or to seek such other legal and equitable remedies. Nothing contained herein shall be construed to restrict or impair the rights of the Plan to exercise this election. All rights and remedies herein provided or existing at law or in equity shall be cumulative of each other and may be enforced concurrently therewith or from time to time.

Section 20.18 **Periodic Review.** The Board of Directors shall appoint a committee of at least seven (7) members of the Board of Directors who shall be responsible for reviewing, at least annually, the terms and conditions of this Agreement. The results of its review shall be submitted to the Board of Directors for review and possible action.

Section 20.19 **Survival.** Every provision of this Agreement shall survive the expiration or termination of this Agreement, or to the extent applicable a withdrawal of a Participant, if specifically provided in this Agreement, or if necessary to complete performance under the terms of this Agreement, or if necessary to protect the right of any Person granted under the terms of this Agreement (e.g., Article 6, Article 14, Article 15, Article 19, and Article 20).

Section 20.20 **Attorney-in-Fact.** The Plan's Chairperson and Vice-Chairperson are designated to receive, on behalf of the Plan, service of a summons or other legal process in any action, suit or proceeding arising out of any contract, agreement or transaction involving the Plan. Summons or other legal process may be served upon either the Chairperson or Vice-Chairperson; service upon either will constitute effective service.

Section 20.21 **Union's Participation in the Plan.** Any participation or involvement in: (a) the formation of the Plan; or (b) the activities of the Board of Directors by any Union or any collective bargaining representative shall not constitute a waiver by the Union or any collective bargaining representative, or the employees represented by the Union or collective bargaining representative, of their rights under their respective collectively bargained agreements or under Civil Service Law Article 14. In the event there exists a conflict or inconsistency between (a) the terms of this Agreement and any documents entered into by the Plan, and (b) the terms of a collectively bargained agreement covering any Enrollee, then the terms and conditions of the collectively bargaining agreement shall take priority and shall be deemed controlling. However, a collectively bargained agreement shall not create an obligation on the part of the Plan that does not exist in this Agreement. For example, a collectively bargained agreement shall not create an obligation on the part of the Plan to offer a Coverage Option other than as described in this Agreement.

ARTICLE 21. APPROVAL, RATIFICATION, AND EXECUTION

Section 21.01 **Condition Precedent.** As a condition precedent to execution of this Agreement and membership in the Plan, each eligible municipal corporation desiring to be a Participant shall

obtain approval of the terms and conditions of this Agreement by a majority vote of the municipal corporation's governing body.

Section 21.02 **Resolution**. Prior to execution of this Agreement by a Participant, the Participant shall provide the Chairperson with the resolution of the Participant's governing body approving by majority vote the municipal corporation's participation in this Plan and expressly approving the terms and conditions of this Agreement. Each presented resolution shall be attached to and considered a part of this Agreement.

Section 21.03 **Warranty**. By executing this Agreement, each signatory warrants that he/she has complied with the approval and ratification requirements herein and is otherwise properly authorized to bind the participating municipal corporation to the terms and conditions of this Agreement.

Adopted _____ (Date)

[Signature Page Follows]

ROCHESTER AREA SCHOOL HEALTH PLAN II
MUNICIPAL COOPERATIVE HEALTH BENEFIT PLAN

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the date adopted by the Board of Directors of the Rochester Area School Health Plan II Municipal Cooperative Health Benefit Plan and subsequently adopted by all participating municipal corporations.

Brighton Central School District

By: _____

Brockport Central School District

By: _____

Churchville-Chili Central School District

By: _____

East Irondequoit Central School District

By: _____

East Rochester Union Free School District

By: _____

Fairport Central School District

By: _____

Gates Chili Central School District

By: _____

Greece Central School District

By: _____

Hilton Central School District

By: _____

Honeoye Falls-Lima Central School District

By: _____

Penfield Central School District

By: _____

Pittsford Central School District

By: _____

Rush-Henrietta Central School District

By: _____

Spencerport Central School District

By: _____

Webster Central School District

By: _____

West Irondequoit Central School District

By: _____

Wheatland-Chili Central School District

By: _____

Monroe 1 BOCES

By: _____

Monroe 2-Orleans BOCES

By: _____

ROCHESTER AREA SCHOOL HEALTH PLAN II
MUNICIPAL COOPERATIVE HEALTH BENEFIT PLAN

SCHEDULE A

Coverage Options

RASHP II 152 Extended Point of Service Plan

RASHP II 159 Value Point of Service Plan

RASHP II 160 Select Point of Service Plan

RASHP II High Deductible Health Plan

RASHP II Bronze Plan