

**NY44 HEALTH BENEFITS PLAN TRUST  
AGREEMENT**

As amended effective March 15, 2022

## TABLE OF CONTENTS

<b>ARTICLE 1</b>	
NAME, PURPOSE, GENERAL NATURE AND GOAL OF TRUST .....	1
<b>ARTICLE 2</b>	
DURATION AND PLACE OF BUSINESS .....	2
<b>ARTICLE 3</b>	
ESTABLISHMENT OF THE TRUST .....	2
<b>ARTICLE 4</b>	
DUTIES AND POWERS OF TRUSTEES .....	3
<b>ARTICLE 5</b>	
PLAN ADMINISTRATOR, HEALTH BENEFITS INSURER, AND CLAIMS ADMINISTRATOR .....	6
A. Appointment .....	6
B. Duties of the Plan Administrator, Health Benefits Insurer, and/or the Claims Administrator .....	6
<b>ARTICLE 6</b>	
FISCAL RESPONSIBILITIES .....	8
A. Designation of Fiscal Agent .....	8
B. Role of Fiscal Agent .....	8
<b>ARTICLE 7</b>	
FISCAL YEAR, ASSESSMENTS, EXCESS MONIES AND DEFAULT .....	9
A. Fiscal Year .....	9
B. Contribution Rates and Assessments .....	9
C. Excess Monies .....	9
D. Payment Due Date and Late Payment .....	9
E. Default .....	10
<b>ARTICLE 8</b>	
DUTIES OF EMPLOYER(S) .....	11
<b>ARTICLE 9</b>	
LIMITATIONS .....	12
<b>ARTICLE 10</b>	
GOVERNING BOARD .....	12
A. Board of Trustees .....	12
B. Term of Office .....	14
C. Selection Procedures .....	14

D.	Conduct of Business .....	15
E.	Standards and Guidelines .....	16
F.	Indemnification and Hold Harmless .....	16

**ARTICLE 11**

	MEMBERS, ADDITIONAL BARGAINING UNITS, AND WITHDRAWAL FROM THE PLAN .....	16
A.	Membership .....	16
B.	Additional Bargaining Units .....	17
C.	Withdrawal from the Plan .....	18
	1. Withdrawal upon Mutual Consent of Employer and Employee Unit	18
	2. Unilateral Withdrawal .....	18
	3. Employer Obligations Upon Withdrawal .....	18
D.	Termination of Participating Employers .....	19
E.	Withdrawal Liability .....	19

**ARTICLE 12**

	TERMINATION AND AMENDMENT OF TRUST .....	20
--	--	----

**ARTICLE 13**

	MISCELLANEOUS .....	21
A.	Separability Provisions .....	21
B.	Counterparts .....	21
C.	Governing Law .....	21

**NY44 HEALTH BENEFITS PLAN  
TRUST AGREEMENT**

**THIS DECLARATION OF TRUST** is made by and between the Erie 1 BOCES Board of Education ("Grantor) and the Board of Trustees of the NY44 Health Benefits Plan Trust ("Trustees").

**ARTICLE 1**

**NAME, PURPOSE, GENERAL NATURE AND GOAL OF TRUST**

A. The name of this Trust shall be the NY44 Health Benefits Plan Trust ("Trust").

B. The purpose of the Trust, and the general nature of its business, shall be to establish and managed, as allowed under Article 44 of the Insurance Law of the State of New York, an employee welfare plan ("Plan"), self-funding in whole or in part, or insuring in whole or in part, health benefits coverage for eligible Employees. The Trust's goal is to improve health benefits at a reduced cost to the taxpayers of the Employer(s). The term "Employer" means Erie 1 BOCES and any of its component school districts, any other public school district located in New York State, any charter school established under the provisions of Article 56 of the Education Law and any community college established and operated pursuant to Article 126 of the Education Law that become Employer members of the Trust. The term "Employee" shall include Officers, Superintendents, Administrators, individuals holding a position by election, appointment or employment in the service of an Employer, and any individual included within the definition of Employee contained in Section 201(7) of the Civil Service Law and any individual the Employer is obligated to provide health and/or dental benefits to pursuant to a contractual obligation, and in addition, shall include the Employee's dependents, as well as retirees, past and future, and their dependents. The term "Employee" shall also include individuals employed by the Trust, including retirees and their dependents. However, Employees of the Trust receiving benefits under the Plan shall in no way participate in claims adjudication of his or her own claims or the claims of his or her dependent(s). An Employee's

eligibility for health benefits, however, is determined by the Employer and Employee Unit representatives pursuant to any applicable collective bargaining agreements. The term "Employee Unit" means any collectively bargained unit of Employees of an Employer member of the Trust, that elects participation in the Trust for its members. The term "Covered Participant Unit" or "Covered Participant" means (i) an Employee with his or her dependents who are covered under the Trust's Plan as a unit; (ii) an Employee who is covered under the Plan without any dependents; or (iii) a Covered Participant who has lost dependent status but is still receiving benefits pursuant to COBRA. Except with respect to the designation Trustees who are Erie 1 BOCES employees, as set forth in Section 10(A)(1), (B) and (C) and for purposes of signatures necessary to execute the Trust Agreement and any amendment thereto, the term "Trustee" shall mean the Board of Trustees and the then current "At Large Trustees" as defined under Section 10(A)(2).

## **ARTICLE 2**

### **DURATION AND PLACE OF BUSINESS**

**A.** The Trust became effective on May 15, 2003, and continues thereafter, from year to year, unless and until terminated, pursuant to Article 12 hereof.

**B.** The principal place of business of the Trust shall be: NY44 Health Benefits Plan Trust, 355 Harlem Road, West Seneca, New York 14224.

## **ARTICLE 3**

### **ESTABLISHMENT OF THE TRUST**

**A.** The Grantor hereby establishes with the Trustees, a Trust consisting of such sums of money and such earnings, profits, increments, appreciation and additions thereto as may accrue from time to time. All such sums of money, all investments made therewith or proceeds thereof, and all earnings, profits, increments, appreciation and additions thereto, less the payments which shall have been made by the Trust, as authorized herein, to carry out the Trust, are referred to herein as the "Fund."

**B.** The Fund shall be applied for the benefit of the Covered Participants and/or Covered Participant Units in accordance with the purpose of the Trust.

**ARTICLE 4**  
**DUTIES AND POWERS OF TRUSTEES**

**A.** The Trustees shall perform their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. The Trustees may delegate to persons, firms, corporations and other entities the power to carry out any specific duty of the Trustees, subject to approval of the Trustees.

**B.** In the administration of any property forming a part of the Trust, or any Plan created hereunder, the Trustees, without limitation by reason of enumeration and in addition to powers conferred by Section 11-1.1 of the New York State Estates, Powers and Trusts Law and other law, shall have the following powers to be exercised in their absolute discretion:

1. To retain any or all property for any period whether or not the same be of the character permissible for investments by fiduciaries under any applicable law, and without regard to any effect the retention may have upon the diversification of the investments, and to hold funds uninvested, or deposit any monies in one or more savings accounts or other banks in any form of account whether or not interest bearing.
2. To render liquid the Trust or any Fund created hereunder, in whole or in part, at any time or from time to time, and hold cash for readily marketable securities of little or no yield for such period as the Trustees may deem advisable.
3. To hold two or more trusts or other funds in one or more consolidated funds, in which the separate trusts or funds shall have undivided interest.
4. To receive reimbursement for actual and necessary expenses incurred in the

performance of their duties as Trustees.

5. To delegate discretionary powers to agents, remunerate them, and pay their expenses; to vote in person at meetings of the Board of Trustees; and to engage the services of and pay the compensation of Trust employees, actuaries, accountants, consultants, custodians, legal and investment counsel, Plan Administrators, Claims Administrators, Case Managers, Fiscal Agent and other agents, assistants or advisors deemed by the Trustees to be necessary in the administration of the Trust and Plan.
6. To engage the services of such other professionals as the Trustees may deem necessary to advise them at meetings and to otherwise carry out the purposes of the Trust and Plan.
7. To renew, assign, alter, extend, compromise, release, with or without consideration, or submit to arbitration, obligations or claims, including taxes held by or asserted against them which affect Trust assets.
8. To abandon, in any way, property which they determine not to be worth protecting.
9. To abstain from rendering or filing an inventory or periodic account in any court.
10. To execute and deliver any and all instruments in writing which they may deem advisable to carry out any of the foregoing powers. No party to any such instrument in writing shall be obliged to inquire into its validity.
11. To possess, manage, and insure, including purchase of appropriate Stop Loss Insurance as necessary, any and all assets of the Trust.
12. To adopt this Trust Agreement and one or more Plans and, from time to time, Trust Agreement and Plan amendments, or a restated Trust Agreement or Plan, and to self-fund, or contract with a licensed insurer, licensed Health Maintenance Organization or New York Insurance Law Article 43 insurer, for Plan benefits; provided, however, that nothing in this paragraph "12" shall be construed as a waiver of an employee organization's rights under the Public

Employees' Fair Employment Act (Article 14 of the Civil Service Law).

13. To execute and deliver agreements, assignments, insurance plans, contracts, notes, receipts, and any other instruments the Trustees deem necessary or appropriate for the administration of the Trust and Plan and the protection of the Trustees, the Trust, the Trust's employees, Plan Administrator, the Fiscal Agent and the Grantor, including but not limited to, the purchase of, and payment from the Fund of premiums for, Fidelity Insurance coverage and Fiduciary, and/or Errors and Omissions, and/or Directors and Officers, and/or General Liability Insurance coverage(s).
14. To hear and determine Employee appeals of pre-service authorization denials, claim denials, or payment reductions, after review by the Plan Administrator.
15. To pay, in addition to those expenses specifically provided for in this Article, all other reasonable and proper expenses of administration from the Fund, including any reasonable counsel fees they may necessarily incur in the performance of their duties herein.
16. As to any successor or substitute Trustee(s), to succeed to all of the powers, duties and discretion of the original or predecessor Trustee(s) with respect to the Trust as were given to the original Trustee(s), unless the exercise of such powers, duties or discretion of the original Trustee(s) are expressly prohibited by the Trust or other instrument to any successor or substituted Trustee(s).
17. In the event of the demise, incapacity, removal or resignation of any Trustee prior to the expiration of his or her term, to continue to administer the property of the Trust without awaiting the appointment of a successor to the Trustee who has ceased to act and to exercise and perform all of the duties given to the original Trustee unless contrary to the express provisions of the Trust or other instrument. Incapacity shall be deemed to exist if an individual retires or otherwise ceases to be an active Employee of any of the Employers.



18. To take such measures as may be necessary to protect the confidentiality of Employee claims and records.

**ARTICLE 5**  
**PLAN ADMINISTRATOR, HEALTH BENEFITS INSURER,**  
**AND CLAIMS ADMINISTRATOR**

**A. Appointment.** The Trustees, as they shall deem appropriate from time to time, shall appoint, hire, contract with, and pay, a Plan Administrator, Health Benefits insurer and/or Claims Administrator, which may or may not be the same person or entity, to administer and manage the day-to-day operations of the Plan, including the processing and payment of claims. Such Plan Administrator, Health Benefits Insurer and Claims Administrator shall be subject to dismissal by the Trustees. The Trustees shall be authorized to enter into such agreements with the Plan Administrator, Health Benefits Insurer and Claims Administrator as they deem necessary or desirable to compensate him, her or it and to reimburse him, her or it for administrative expenses which expenses shall be considered expenses of the Trust.

**B. Duties of the Plan Administrator, Health Benefits Insurer and/or the Claims Administrator.**

1. To enter into Preferred Provider Organization agreements for the benefit of the Trust and the Employees, subject to approval of the Trustees.
2. To maintain eligibility and enrollment records of Plan-covered Employees and dependents.
3. To furnish to the Trustees a quarterly claims experience report pertaining to Employees.
4. To carry out the notification and administration requirements for group health plans under applicable laws or governmental regulations.
5. To provide a paid benefit analysis to the Trustees at the close of each fiscal year.

6. Upon reasonable notice, to make available to the Trustees, or their independent auditor, the books and records pertaining to the Trust and Plan, for audit during business hours.
7. To receive, investigate, negotiate and pay covered claims.
8. To communicate directly with the Employer, Employee and medical service provider, as applicable, in regard to treatment plans, Plan requirements, and other inquiries.
9. To undertake and implement standard claims cost-control procedures, including claim review, claim audit, utilization review, case management and claim investigation.
10. To conduct investigations of suspected fraudulent claims after prior notice to the Plan Administrator.
11. To provide a quarterly service report to the Trustees and the Fiscal Agent documenting the length of time between incurral of claims and the payment of those claims and the length of time necessary to process a claim.
12. To maintain true and accurate records of assigned benefits and to issue the appropriate tax forms, if required.
13. To review, approve and, subject to prior approval of the Fiscal Agent, pay claims.
14. To negotiate and, if directed by the Trustees, contract with such agents or advisors to assist in performing day-to-day duties, including, but not limited to, second opinion review, hospital review and large case management, such contracts to be subject to the approval of the Trustees.
15. To perform such other duties related to efficient operations of the Trust and the Plan, and processing and payment of claims, as may be directed by the Trustees pursuant to a separate agreement.
16. To take such measures as may be necessary to protect the confidentiality of Employee claims and records.

17. To prepare the Trust's annual budget in consultation with (a) any consultant designated by the Trustees, and/or (b) the Claims Administrator, which budget shall be subject to approval of the Trustees.
18. To perform such other duties related to efficient management of the Trust, Plan and Fund as may be directed by the Trustees.
19. In the case of the Plan Administrator, to serve as a non-voting ex-officio member of the Board of Trustees.

**ARTICLE 6**  
**FISCAL RESPONSIBILITIES**

**A. Designation of Fiscal Agent.** The Trustees shall hire an employee of the Trust, or contract with a third-party, to serve as the Trust's Fiscal Agent who shall manage, acquire, invest or dispose of the Fund as specified in Article 6(B) herein. The Trustees shall be authorized to enter into such agreements as they deem necessary to satisfy the fiscal responsibilities of the Trust.

**B. Role of the Fiscal Agent.**

1. To have custody of all monies made available to the Fund;
2. To make necessary transfers between accounts;
3. To invest, as permitted by statute, monies not required for immediate expenditure;
4. To provide periodic financial reports to Trustees through the Plan Administrator;
5. To pay all administration expenses upon direction of the Trustees;
6. To maintain books of account as may be required by the rules and regulations of the New York State Department of Audit and Control and any and all other applicable laws and/or regulations; and
7. To segregate the monies belonging to the Fund in separate bank accounts and to invest same in accordance with the investment policies of the Trust, subject

to the rules and regulations of the New York State Department of Audit and Control and any and all other applicable laws and/or regulations.

## ARTICLE 7

### FISCAL YEAR, ASSESSMENTS, EXCESS MONIES AND DEFAULT

- A. Fiscal Year.** The fiscal year of the Trust shall be July 1 through June 30.
- B. Contribution Rates and Assessments.** The Board of Trustees shall, no later than April 30 of each year, establish the per employee per month coverage contribution rates for the next fiscal year. The Trustees shall approve and adopt those rates unless they determine them to be inadequate, in which event the Trustees shall increase the rates and/or assess additional amounts against the Employer(s) as required. Additional contributions in the form of supplemental assessments shall be assessed by the Trustees in the event of a shortfall in the Fund in any fiscal year if warranted by the total experience of the Trust. Such supplemental assessments shall be made on a uniform percentage of each Employer's contributions payable for the fiscal year of the Trust at the time of the supplemental assessment. It is understood and agreed that the aggregate supplemental assessment shall be added to the Fund and may be commingled in the Fund without regard to any allocation among the participating Employer(s).
- C. Excess Monies.** A financial reconciliation shall be made at the end of each fiscal year. In the event of a year end balance, the Trustees shall have the power to:
1. apply any year end balance to reserves for actuarially determined claim liabilities;
  2. retain the excess monies as a year end balance, provided it is within reasonable limits, thereby lowering the amount of Employer's contributions during the next fiscal year; and
  3. apply the year end balance in preparing the Plan's budget for the following year.
- D. Payment Due Date and Late Payment.** The Employer(s) shall pay all contributions

and supplemental assessments on or before the fifth (5<sup>th</sup>) day of the month to which they shall apply. If the 5<sup>th</sup> day of the month falls on a Saturday, Sunday or holiday, payments must be received by the last business day prior to that Saturday, Sunday or holiday. In the event an Employer fails to pay the contribution or supplemental assessment within 10 days after the 5<sup>th</sup> day of the month or applicable date prior to a Saturday, Sunday or holiday, a late charge of 2.0% per month calculated on a daily rate shall be added to the contribution or supplemental assessment.

**E. Default.** An Employer that fails to pay a contribution or supplemental assessment by the end of the month in which the due date falls ("Grace Period"), or who fails to give required notice of withdrawal pursuant to Article 11, shall be deemed in default. The Fiscal Agent shall thereupon notify the Trustees and the Plan Administrator of the default. If the required payment is not made by the Employer on or before the end of the Grace Period, the Trustees may deem coverage of all the Employer's enrollees covered by the Plan to have terminated automatically as of the last date for which contribution for coverage payments have been made ("Coverage Termination Date"), without notice from the Trustees to the Employer or to the enrollees. The Trustees shall be entitled to notify enrollees and bargaining units of the non-payment of contribution for coverage and the expiration date of the Grace Period provided by this provision. The termination of coverage upon expiration of the Grace Period shall not relieve the employer of its obligation to pay for coverage provided. Upon termination of coverage, the Employer shall be liable to the Plan for the payment of any and all contributions for coverage and accrued interest, which are due but unpaid at the time of termination. In addition, the Plan will cease paying that Employer's claims at the end of the Grace Period and the Plan shall have no further obligation thereafter for an Employer's member's claims regardless of the date such claim was incurred. Eligibility for coverage for an Employer's members shall continue through the Coverage Termination Date, however any claims incurred through the Coverage Termination Date, but not yet paid by the Plan at the end of the Grace Period shall become the responsibility of the Employer on a self-funded basis. Additionally, the Plan shall have the right of reimbursement from the Employer for any claims paid by the Plan for dates of service after the Coverage Termination Date. The claim of any Employee hospitalized at the end of the Grace Period will be considered to have been incurred on the

date of discharge from the facility to which he/she is committed. If, because of Diagnosis Related Groups (DRGs) or other reasons, the inpatient stay has already been paid, the Trust will have the right to re-imbursement from the Employer for the previously paid facility charge. In the case of a default and/or additional incurred charges by the Trust, the Trustees shall be entitled to exhaust all available legal and equitable remedies, and in addition to damages, the Trust shall be entitled to the payment by a defaulting Employer of reasonable attorneys' fees, together with the costs and disbursements related to any collection efforts.

## **ARTICLE 8**

### **DUTIES OF EMPLOYER(S)**

- A.** Each Employer shall have the duty to:
1. Execute and deliver any and all instruments in writing which, the Trustees deem advisable and necessary to carry out the purpose of the Trust and Plan. No party to any such instrument in writing shall be obliged to inquire into its validity.
  2. Present the Trustees with a duly executed form of resolution or other document evidencing the approval of the Employer's participation in the Plan by the Employer's governing board and, if required by law or a collective bargaining agreement, the approval of the labor organization representing Employees of the Employer who are to become Employees covered under the Plan.
  3. Continue contributions toward group health benefits pursuant to Collective Bargaining Agreement, policy or law.
  4. Furnish the Plan Administrator with monthly additions, deletions and changes regarding Employee eligibility.
  5. Pay its allocated contribution to the Fiscal Agent as collection agent for the Trustees at such times as may be specified by the Trustees, and in such amounts as are determined by the Trustees, to be sufficient to annually fund the Trust and Plan, embellishments to the Plan, and appropriate reserves.

**ARTICLE 9  
LIMITATIONS**

**A.** Trust assets shall be used only for the purpose of the Trust and Plan and shall not for any other purpose be subject to anticipation, alienation, sale, transfer, pledge, assignment, or encumbrance by an Employer, Employee, Employee Unit, Plan Administrator, Claims Administrator, Fiscal Agent, Trustee, or others, and any instrument purporting to take such action shall be null and void. Plan funds shall not be subject to debts, contracts, or liabilities of an Employer, Employee, Employee Unit, Plan Administrator, Health Benefits Insurer, Claims Administrator, Fiscal Agent, Trustee or others.

**B.** The rights and interest of an Employer, Employee, Employee Unit or person claiming through an Employee covered under the Plan, shall be limited specifically to the benefits provided in the Plan, and it is expressly understood that the Trustees, the Fiscal Agent, the Plan Administrator, the Health Benefits Insurer and the Claims Administrator shall not have any responsibility for providing benefits except as are specifically imposed upon them by this Agreement in accordance with the Plan.

**ARTICLE 10  
GOVERNING BOARD**

**A. Board of Trustees.**

1. The Governing Board, responsible for the operation, administration and maintenance of the Trust and its Plan(s), shall be the Board of Trustees. The Board of Trustees shall consist of five (5) managerial representatives employed by Erie 1 BOCES, five (5) non-managerial employees of Erie 1 BOCES, each of whom shall be a member of, and separately designated by, one of the five labor organizations that has a collective bargaining agreement with Erie 1 BOCES (the aforementioned managerial and non-managerial employees shall be the "Trustees"), as well as two (2) managerial and two (2) non-managerial "At Large Trustees" (as further described in Section 10(A)(2) below), all of whom are to serve as such without bond, and without compensation by the Trust. However,

the Trust shall purchase and pay the premium of a fiduciary liability insurance policy covering the Trustees, the Trust and its employees. For purposes of this Article, a managerial representative shall be defined as any employee designated as "managerial or confidential" under the Public Employees' Fair Employment Act (Article 14 of the Civil Service Law). All other employee Trustees are considered non-managerial. Trustees shall serve without loss of pay or benefits from their Employer.

2. In addition to the Trustees, four (4) At Large Trustees shall serve on the Board of Trustees in the manner further described herein. The At Large Trustees shall consist of one (1) managerial employee and one (1) non-managerial (Employee Unit member) employee each from two (2) Employers participating in the Trust. The Employers and Employee Units who shall be represented by the At Large Trustees shall rotate based upon the total number of enrollees in the Trust starting with the Employers with the largest and smallest number of total enrollees and continuing with the next largest and next smallest, and so on, in accordance with the "At Large Trustee Chart" approved by the Trustees based upon annual enrollment numbers of the Trust. An Employer and Employee Unit shall be eligible to be represented on the Board of Trustees by At Large Trustees, provided the following conditions are met:
  - a) The Employer offers the Trust's medical benefits to at least one (1) Employee Unit; and
  - b) The Employer and applicable Employee Unit(s) sign an "At Large Trustee Participation Agreement" agreeing to:
    - i. designate one (1) managerial employee and one (1) non-managerial (Employee Unit member) employee to serve as an At Large Trustee by July 1 of the applicable Fiscal Year who will attend all scheduled Board of Trustee Meetings and the Trust's Annual Meeting, and participate in applicable Trust subcommittees during the applicable Fiscal Year;
    - ii. sign a HIPAA Confidentiality Agreement to protect the Trust in the event individually identifiable protected health information (PHI) is



shared with the Employer and Employee Unit At Large Trustees;  
and

- iii. its understanding that in limited circumstances certain sensitive information related to another Employer or Enrollee in the Trust will not be shared with At Large.

**B. Term of Office.** Each Trustee designated upon the inception of the Trust shall serve an initial term expiring at the end of the next Fiscal Year following the Fiscal year in which the Trust began. Thereafter, the term of each Trustee shall expire at the end of every third Fiscal Year. Trustees may serve for an unlimited number of terms of office. The At Large Trustees shall serve for one (1) year terms which shall begin on July 1 and end on June 30 of the applicable Fiscal Year. At the end of each one (1) year term, the current At Large Trustees shall be replaced by At Large Trustees from the next eligible two (2) Employers.

**C. Selection Procedures.** Each of the five (5) labor organizations representing employees of Erie 1 BOCES shall have the right to appoint a non-managerial Trustee from its membership. Managerial Trustees shall be appointed by Erie 1 BOCES. The eligible Employers and Employee Unit(s) shall have the right to appoint their respective At Large Trustees. In the event an Employer or Employee Unit decides to not participate as At Large Trustees, the opportunity shall move to the next eligible Employer. Only active, as opposed to retired, individuals who are Covered Participants under the Trust's Plan are eligible to serve as Trustees. In the event of the termination of active employment status or Covered Participant status, demise, incapacity, removal or resignation of any Trustee, an appointment of a Managerial Trustee replacement to fill the unexpired portion of the term shall be made by Erie 1 BOCES, and in the case of a non-managerial Trustee, appointment of a replacement to fill the unexpired portion of the term, shall be made by the union which appointed the Trustee being replaced. In the event of the termination of active employment status or Covered Participant status, demise, incapacity, removal or resignation of any At Large Trustee, an appointment of a replacement to fill the unexpired portion of the term shall be made by the Employer or Employee Unit, as appropriate.

**D. Conduct of Business.** The Board of Trustees shall meet at least six (6) times per year. The Board of Trustees shall elect a Chairperson and Vice-Chair at the first meeting of each Fiscal Year. At the beginning of each Fiscal Year, the Board of Trustees shall appoint a Secretary, who shall not be members of the Board of Trustees. Six (6) Trustees, with at least three (3) each from the managerial Trustees and from the non-managerial Trustees present in person at any meeting of the Board of Trustees, including a telephonic conference call meeting, shall constitute a quorum for the transaction of business. Any action taken by the Trustees, except as herein otherwise provided, shall be by unit vote. In such voting, a proposal must be approved by a majority of the Managerial Trustees present at the meeting, and a majority of the Non-Managerial Trustees present at the meeting. Without such approval, the proposal shall not be deemed adopted. Any action permitted or required by this Agreement may be taken without a meeting by written consent (including e-mail consent) of all of the Trustees who are then eligible to vote. The written consent will be filed with the minutes of the proceedings of the Board of Trustees.

A deadlock shall be deemed to exist whenever the Managerial Trustees Unit and the Non-Managerial Trustees Unit fail to jointly adopt, reject or otherwise act upon a proposal, nomination, motion or resolution made or proposed by any one of the Trustees, and the maker of the proposal, nomination, motion or resolution notifies the remaining Trustees in writing that a deadlock exists. In the event of such deadlock arising, the Trustees shall meet for the purpose of agreeing upon an impartial umpire to break such deadlock by deciding the dispute in question. In the event of the inability of the Trustees to agree upon the selection of such impartial umpire within a reasonable time, then, on the petition of either group of Trustees, a Judge of the District Court of the United States for the Western District of New York shall appoint such impartial umpire. Such impartial umpire shall immediately proceed to hear the dispute between the Trustees and decide such dispute, and the decision and award of such umpire shall be final and binding upon the parties. The reasonable compensation of such umpire and the costs and expenses (including, without limitation, attorneys' and reporter fees) incidental to any proceedings instituted to break a deadlock shall be paid by the Trust Fund. Any impartial umpire selected or designated to break a deadlock shall be required to enter his decision within a reasonable time fixed by the Trustees. The scope of any such proceeding before such impartial umpire shall be limited to the provisions of this Trust

Agreement and to the provisions of the rules, regulations and by-laws adopted by the Trustees and to the plan of benefits established by them. The impartial umpire shall have no jurisdiction or authority to change or modify the provisions of this Trust Agreement or to decide any issue arising under or involving the interpretation of any collective bargaining agreements between the unions and Erie 1 BOCES, and such impartial umpire shall have no power or authority to change or modify any provisions of any such collective bargaining agreement.

**E. Standards and Guidelines.** The Board of Trustees shall, from time to time, adopt rules and procedures for the maintenance and operation of the Trust, Plan and Fund including, but not limited to, any applicable laws, rules or regulations.

**F. Indemnification and Hold Harmless.** The Trust shall indemnify and hold harmless from all claims, judgments, reasonable attorneys' fees and expenses, each Trustee, for acts undertaken in good faith and within the scope of the Trustees' authority. The Trust may purchase fiduciary liability, errors and omissions, Directors and Officers and general liability, insurance coverages on behalf of the Trust, the Trustees, the Trust employees, the Plan Administrator (if applicable) and the Fiscal Agent.

## ARTICLE 11 MEMBERS ADDITIONAL BARGAINING UNITS, AND WITHDRAWAL FROM THE PLAN

**A. Membership.** An Employer who seeks membership in the Trust and Plan after the Trust's inception may be accepted upon a majority vote of the Board of Trustees. The Trustees may require such Employer to pay an enrollment fee to be determined by the Trustees. In addition to the above, any Employer joining after inception of the Trust must comply with the following:

1. Request to join the Trust and Plan must be made in writing to the Trustees at least thirty (30) days, preferably one hundred twenty (120) days, prior to the proposed effective date of coverage.

2. The Employer must supply a copy of its present benefit plan.
3. The Employer must provide a separate list of all Employees to be covered, by bargaining unit, or by job category, if the Employees are not covered by a bargaining unit.
4. The Employer must identify all retirees.
5. The Employer shall supply three (3) years of claims experience, if available.
6. The Employer must supply claims experience for any active or retired Employee or dependent who is presently disabled or who has received substantial benefits in the past two years for long term illness, if available.
7. The Employer must provide a copy of each bargaining unit's collective bargaining agreement, if any.
8. The Employer must provide a copy of signed agreements between the Employer and any affected Employee Units or Employee groups authorizing a change to the Plan.
9. The Employer must comply with any other conditions and provide any other data and information that may be requested by the Trustees.
10. The Board of Trustees may in its sole discretion waive any of the above requirements in particular cases. The Board of Trustees reserves the right to deny entry to the Trust or Plan for any reason or for no reason whatsoever.

#### **B. Additional Bargaining Units**

1. An Employer that desires to bring additional bargaining units, or categories or classes of Employees into the Plan after inception of the Trust or the Employer's participation in the Trust may be assessed an additional contribution to reimburse the Trust for start-up costs.
2. A request to add an employee group of a participating Employer for coverage under the Plan must be made in writing to the Trustees at least thirty (30) days, preferably ninety (90) days, prior to the proposed effective date of

coverage.

3. An Employer must comply with the provisions of Article 11.A.2-9 above. The Board of Trustees may in its sole discretion waive any of the above requirements in particular cases. The Board of Trustees reserves the right to deny entry to the Plan for any reason or for no reason whatsoever.

### **C. Withdrawal from the Plan**

1. Withdrawal upon Mutual Consent of Employer and Employee Unit. Participation in the Plan may cease after three (3) years by the Employer giving an additional one year written notice to the Trustees that the parties in the participating Employer have agreed to withdraw.
2. Unilateral Withdrawal. An Employer may unilaterally elect to cease participation by giving one year written notice of termination after three (3) years of participation if the Employer's contributions and supplemental assessments exceed the billed rate and any other assessments or charges of a New York licensed commercial insurer providing coverage equivalent to the Plan in any consecutive 12 month period. As used in this Trust Agreement, the term commercial insurer shall include an entity licensed under Article 43 of the Insurance Law of the State of New York.
3. Employer Obligations Upon Withdrawal. In the event of a withdrawal pursuant to Paragraph C.1, the Employer shall comply with subdivisions 3 (a) through 3 (d) herein. A withdrawal pursuant to Paragraph C.2 above shall require:
  - a) the Employer to give written notice of intent at least twelve (12) months in advance of the date upon which the withdrawal is to become effective;
  - b) the Employer to continue to be liable for the cost of health benefits coverage provided to its Employees until the effective date of its withdrawal from the Plan; and

c) the Employer to assume liability for any Employee with a currently covered pre-existing medical condition or expense, not covered by a new Plan, unless the Trustees determine that extraordinary circumstances exist warranting continued coverage of the Employee by the Trust.

4. The Board of Trustees may in its sole discretion waive any of the above requirements in particular cases for any reason or for no reason whatsoever.

**D. Termination of Participating Employers.** The Trustees shall have the power in their discretion to terminate, with a 12 month written notice from the Board of Trustees, the relationship of a participating Employer as a party to this Agreement and a participant in the Trust upon a majority vote of the Trustees. A participating Employer will also cease to be a party to this Agreement, and a participant in the Trust, if (a) the Employer ceases to meet any eligibility criteria established by the Trustees, (b) the Trustees determine that it is not financially sound for the Trust to continue to provide services to the Employees of an Employer, or (c) the Employer fails to comply with its obligations under this Agreement, or any applicable membership agreement, participation agreement, memorandum of agreement or other agreement reflecting terms under which an Employer may participate in the Trust. This Section shall not limit any other rights of the Trustees to remove participating Employers as set forth elsewhere in this Agreement.

**E. Withdrawal Liability.**

1. If an Employer gives notice of intent to withdraw from the Plan prior to the completion of four (4) years of participation, such Employer shall remain liable to pay the balance of its proportionate share of contributions and supplemental assessments for those four years. The Trustees shall be entitled to exhaust all available legal and equitable remedies and to payment by such Employer of reasonable attorneys' fees, together with the costs and disbursements related to collection of said contributions and supplemental assessments.
2. If an Employer fails to give the required one year notice of withdrawal either

before or after four years of participation, or failure to pay any required contribution or supplemental assessment during the twelve (12) month notice period shall be deemed a default in accordance with Article 7(E) and treated consistent with such.

**ARTICLE 12**  
**TERMINATION AND AMENDMENT OF TRUST**

**A.** The Trust shall terminate when there shall be fewer than 500 Covered Participant Units enrolled in the Plan or when financial conditions exist that would render continuation of the Trust imprudent. The Trust and Plan may be amended or terminated at any time by a majority vote of the Trustees. In the event of a termination, the Trustees and Plan Administrator, with the assistance of the Fiscal Agent, and the actuary, shall prepare a fiscal plan providing for reserves to cover existing, contingent and disputed claims. Thereafter, if any surplus monies remain after payment of expenses, the balance, if any, shall be paid over to a successor health plan or an insurance company and otherwise applied in accordance with the purpose of the Trust to provide health benefits for eligible Covered Participants until such surplus monies have been exhausted, and upon the disbursement of the entire Trust Fund, this Trust shall terminate.

**B.** The Trustees shall provide notice to Employers of any amendment(s) adopted pursuant to this Article 12 and shall execute any instrument or instruments in connection therewith. Notice shall be deemed given when posted on the Trust's website.

**C.** The Trustees have full power and discretion to establish the effective date of any Amendment. Any Amendment may have retroactive effect if it is determined to be necessary by the Trustees.

**ARTICLE 13**  
**MISCELLANEOUS**

**A. Separability Provisions.** If any provision of this Trust Agreement shall be held by any court, tribunal or board or authority of competent jurisdiction, to be invalid, such invalid provision may be disregarded by the Trustees and, in that event, shall be deemed null and void, but such invalidation shall not otherwise impair or affect the Trust or any of its other provisions or terms.

**B. Counterparts.** This Trust Agreement may be executed in one or more counterparts. The signature of a party on any counterpart shall be sufficient evidence of its execution hereof.

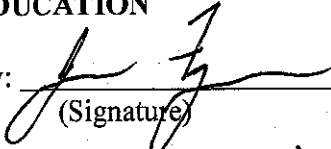
**C. Governing Law.** This Trust Agreement is established in the State of New York and all questions and disputes pertaining to its validity, construction, effect and administration shall be determined in accordance with the laws of the State of New York.

To make this Agreement effective and binding, it is signed by and on behalf of the Grantor and the Trustees, on the dates set forth, on the pages attached hereto.



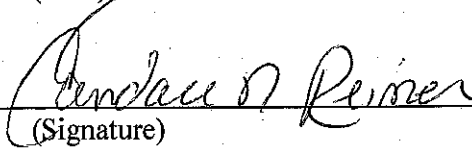
**MANAGERIAL TRUSTEES:  
APPOINTED BY  
ERIE 1 BOCES BOARD OF  
EDUCATION**

Date: 3/24/2022

By:   
(Signature)  
Jim Fregelette  
(Print Name)

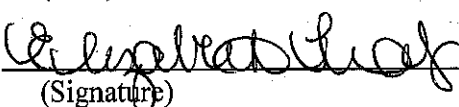
Chair  
(Title)

Date: 3/24/2022

By:   
(Signature)  
Candace N. Reimer  
(Print Name)

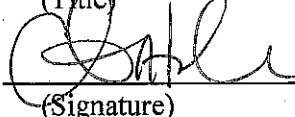
Trustee  
(Title)

Date: 3/24/2022

By:   
(Signature)  
Elizabeth Freas  
(Print Name)

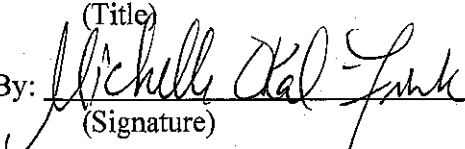
Trustee  
(Title)

Date: 3/24/2022

By:   
(Signature)  
Christa McHale  
(Print Name)

Trustee  
(Title)

Date: 3/28/2022

By:   
(Signature)  
Michelle Okal-Frink  
(Print Name)

Trustee  
(Title)

**NON-MANAGERIAL TRUSTEES:  
APPOINTED BY:**

**AMERICAN FEDERATION OF STATE  
COUNTY MUNICIPAL EMPLOYEES AFL-  
CIO NEW YORK STATE COUNCIL 66,  
LOCAL 2567**

Date: 3/24/2022

By: \_\_\_\_\_

Robert D. Giannicchi  
(Signature)

Robert D. Giannicchi  
(Print Name)

Trustee  
(Title)

**AMERICAN FEDERATION OF STATE  
COUNTY MUNICIPAL EMPLOYEES AFL-  
CIO NEW YORK STATE COUNCIL 66,  
LOCAL 2341**

Date: 4-27-22

By: \_\_\_\_\_

Deborah A. Pradek  
(Signature)

Deborah A. Pradek  
(Print Name)

Trustee  
(Title)

**ERIE 1 BOCES ADMINISTRATORS'  
ASSOCIATION**

Date: 4/5/2022

By: \_\_\_\_\_

John W. Pope  
(Signature)


John W. Pope  
(Print Name)

Trustee  
(Title)

**ERIE 1 BOCES MANAGEMENT  
ASSOCIATION**

Date: 3/24/22

By: \_\_\_\_\_

  
(Signature)

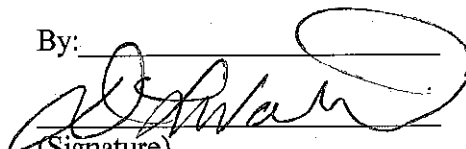
David Scuto  
(Print Name)

Trustee  
(Title)

**ERIE 1 PROFESSIONAL EDUCATION  
ASSOCIATION**

Date: 3-29-22

By: \_\_\_\_\_

  
(Signature)

Donna L Walters  
(Print Name)

Vice Chair  
(Title)

