

**MDA HEALTH PLAN TRUST**

**EFFECTIVE August 24, 2023**

**TRUE COPY**

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## MDA HEALTH PLAN TRUST

This Amendment and Restatement to the Michigan Dental Association ("MDA") Health Benefit Plan Trust (the "Trust") is made effective as of the 24th day of August, 2023.

WHEREAS, the certain Employer Members (hereafter referred to as "Participating Employers") of the Michigan Dental Association, in January 2014 adopted an employee benefit plan, the Michigan Dental Association Health Benefit Plan (hereafter referred to as the "Plan" or "MDA Health Plan") the purpose of which is to provide certain group employee benefits for those eligible Employees of the Participating Employers, and their eligible dependents, who are covered by the Plan and Trust ; and

WHEREAS, this Trust was made contemporaneously and entered into effective as of the 1st day of January 2014, and amended and restated by the Trustees effective as of the 27th day of February, 2014; and amended again effective the 5<sup>th</sup> day of August, 2014 (Trust Agreement), by and between the Michigan Dental Association, a non-profit Michigan corporation, "MDA" on behalf of its members who are Participating Employers, and the individuals who were designated as Trustees hereunder, and who were parties to this Agreement, and to the Plan, in accordance with the terms hereof, hereafter referred to as "Trustees;" and

WHEREAS, Trustees, as Plan Administrator and Named Fiduciary were appointed to administer the Plan and Trust and the claims thereunder; and

WHEREAS, the funds which are contributed, as and when received by the Trustees, will constitute a trust fund (hereinafter called the "Trust Fund") to be held for the benefit of the Plan Participants and Beneficiaries under and in accordance with the Plan; and

WHEREAS, Section 7.1 of the Trust provides the Trustees with the authority to amend the Trust; and

WHEREAS, the Trustees deem it to be in the best interest of the Trust, the Participating Employers and Plan Participants and Beneficiaries to amend and restate the Trust;

NOW, THEREFORE, the Trust Agreement dated effective January 1, 2014, and previously amended and restated by the Trustees effective as of the 27th day of February, 2014; and amended again effective the 5<sup>th</sup> day of August, 2014, is hereby amended and restated by deleting the same in its entirety and substituting the following in lieu thereof:

### **ARTICLE I** **NAME AND PURPOSE**

1.1 **Name.** The Trust established pursuant to this Agreement shall be known as the MDA Health Plan Trust.

1.2 **Purpose.** The objectives and purpose of the Trust is to hold the assets of the MDA Health Plan and administer the Plan to provide group health and welfare benefits for the Plan Participants and Beneficiaries. Such group benefits are to include benefits in the event of sickness, accident, disability or death, medical and hospital benefits and such other health care benefits as may from time to time be determined by the Trustees.

1.3 **Effective Date.** The effective date of this Plan and Trust, as hereby amended and restated, shall be August 24<sup>th</sup>, 2023.

1.4 **Operational Date.** The date on or following the date that a Certificate of Authority to operate as a Multiple Employer Welfare Arrangement ("MEWA") is issued by the State of Michigan and upon which the Trustees determined that coverage under the Plan commenced.

## **ARTICLE II** **ACCEPTANCE OF TRUST**

The Trustees hereby accept the Trust hereby created, and covenant to hold all property which the Trust may receive hereunder, pursuant to the terms of this Agreement. All trust property shall be held for the exclusive benefit of the Plan Participants and Beneficiaries, subject only to reasonable and necessary administrative fees and expenses.

## **ARTICLE III** **DEFINITIONS**

The following words and terms, as used in this Agreement and Declaration of Trust, shall have the meaning set forth below:

3.1 **Anniversary Date.** The Anniversary Date of this Trust shall be January 1<sup>st</sup> of each year, or such other date as may be established by resolution of the Trustees.

3.2.

3.2 **Contribution.** The term "Contribution" shall mean the money received by the Fund pursuant to this Trust, excluding investment income.

3.3 **Employee.** The term "Employee" shall mean (a) any person employed by an Employer (as defined herein) and (b) individual proprietors, partners in a partnership, members in a limited liability company, or self-employed two (2%) percent owners of a subchapter S-corporation who are also Participating Employers. An "Eligible Employee" shall be an Employee who meets the Employee eligibility requirements set out in the Plan.

3. **Employer.** The term "Employer" shall mean any MDA member (a) who is an employer, whether as a corporation, partnership, limited liability company, subchapter S-corporation, individual proprietor, with at least one (1) common-law employee, or (b) who are partners in a partnership, members in a limited liability company, or self-employed two (2%) percent owners of a subchapter S-corporation with at least one (1) common-law employee, and who in writing, adopts, subscribes to, and agrees to be bound by, the terms and provisions of the MDA Health Plan and this Agreement, and any amendments or modifications thereof, and meets any other conditions as the Trustees may require as provided herein. A "Participating Employer" is an Employer which participates in the Plan and is in good standing with the financial requirements of the Plan.

3.5 **ERISA** means the Employee Retirement Income Security Act of 1974, as now existing or hereafter amended.

3.6 **Fund or Trust Fund.** The term "Fund" or "Trust Fund" shall mean the Trust Fund created pursuant to this Agreement **to hold the assets of the MDA Health Plan**, and shall mean generally any contributions of money or property when received by the Trustees under the provisions of this Trust Agreement; and all investments and reinvestments made therewith and proceeds thereof, and all earnings and profits, plus any losses thereon, shall be deemed the Trust Fund.

3.7 **Named Fiduciary.** The term "Named Fiduciary" means the Board of Trustees of the MDA Health Plan and the Trust.

3.8 **Party in Interest.** The term "Party in Interest" **means as defined in ERISA 3(14), and for this Trust Agreement:**

- (A) Any fiduciary (including, but not limited to, any administrator, officer, Trustee, or custodian), counsel, or employee of this Trust Fund or the MDA Health Plan;
- (B) A person providing services to this Trust Fund or the MDA Health Plan;
- (C) An Employer, any of whose Employees are covered by this Trust Fund **and the MDA Health Plan**;
- (D) An Employee organization any of whose members are provided benefits by this Trust Fund **and the MDA Health Plan**;
- (E) An owner, direct or indirect, of fifty (50%) percent or more of:
  - (i) The combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation;
  - (ii) The capital interest or the profit's interest of a partnership; or
  - (iii) The beneficial interest of a trust or unincorporated enterprise; which is an Employer or an Employee organization described in subparagraph (C) or (D);
- (F) A relative (as defined in 3.13 below) of any individual described in subparagraph (A), (B), (C) or (E); or
- (G) Any other person described in Section 3(14) of ERISA.

3.9 **Plan.** The group employee benefits and provisions for payment of the same provided within the terms and purpose of the Trust and the MDA Health Plan, hereinafter referred to as the "Plan" or **"MDA Health Plan."**

3.10 **Plan Administrator.** For purposes of the Employee Retirement Income Security Act of 1974 as amended, as applied to the MDA Health Plan and Trust, the "Plan Administrator" will be the Board of Trustees of the MDA Health Plan and Trust.

3.11 **Plan Participant and Plan Beneficiary.** Those Eligible Employees of the Participating Employers, and their eligible dependents, as defined as participants and beneficiaries in ERISA sections 3(7) and 3(8).

3.12 **Plan Supervisor.** The third-party administrator holding a certificate of authority issued by the State of Michigan that has contracted with the MDA Health Plan and this Trust to process claims pursuant to the Plan.

3.13 **Relative.** The term "Relative" means a spouse, ancestor, lineal descendent, or spouse of a lineal descendent.

3.14 **Trustees.** The term "Trustees" shall mean the Trustees elected or appointed as hereinafter provided and shall further mean the Trustees collectively who at any time, during the term of the Plan and this Agreement and Declaration of Trust, shall be serving as Trustees of the Plan and Trust Fund established hereunder.

## **ARTICLE IV** **TRUSTEES**

### **4.1 Number of Trustees; Qualifications.**

- (A) The Board of Trustees shall consist of a minimum of five (5) and a maximum of seven (7) voting members, the exact number to be set by the Board of Trustees from time to time. The voting Trustees shall be employers who participate in the MDA Health Plan (or a designated employee or officer of the Participating Employer) and who are elected by the group of Participating Employers, or are appointed to a vacancy under Section 4.3 of this Article ("Participating Employer Trustees"). No Trustee shall be an owner, officer or employee of a third-party administrator who provides services to the Trust and/or Plan. The Trustees, from time to time may appoint up to two (2) trustees, other than participating employers, whose expertise will assist the Trustees in their duties.
- (B) The Chairman of the Board of Trustees shall be elected by the Board of Trustees.
- (D) The Board of Trustees may appoint from among their number a Secretary, Treasurer, or employ such other agents or representatives of the Plan and Trust, as it deems necessary from time to time for the Plan and Trust. . An officer, agent or representative appointed under this Section 4.1 (D) will be subject to removal by vote of the Board of Trustees.

### **4.2 Appointment and Changes in Trustees.**

- (A) The Trustees shall be elected by the Participating Employers as provided in Article VI. Each trustee is to serve, subject to annual reelection, until his or her removal, resignation, death, incapacity, or, until the trustee's employer ceases to be an MDA participating employer member, and a participating employer in the Plan and Trust.

#### 4.3 Vacancies.

- (A) The Trustees will in the event of a participating employer vacancy, appoint a Participating Employer or its designee to serve the remaining term of the vacant seat on the Board or until a successor is duly qualified as provided herein. In the event of a vacancy in the two non-participating employer trustee positions, the Trustees may appoint a successor trustee.
- (B) Any resignation by a Trustee shall be in writing addressed to the office of the Trust.
- (C) A Trustee may be removed by the unanimous consent of all the other Trustees.

4.4 Meetings. Meetings of the Trustees shall be held at the call of the Chairman, or any two (2) Participating Employer Trustees, or by the consent of all the Trustees. In all meetings of the Trustees, a majority of the voting Trustees shall constitute a quorum for the transaction of Business. Except as otherwise provided in this Agreement, any action requiring a Trustee vote, shall pass and constitute an action of the Board of Trustees, provided it receives a vote of the majority of the Trustees present at a meeting at which a quorum is present. A Trustee may participate in a Board meeting by means of conference telephone or other electronic transmission, by means of which all persons participating in the meeting can hear and identify each other; participation by conference telephone or other electronic transmission constitutes presence at the meeting. Moreover, any action of the Board of Trustees which may be taken at a meeting of the Board, may be taken without a meeting if, before or after the action, all Trustees consent thereto in writing.

4.5 Compensation and Expenses of Trust Employees and Trustees . Any Trust or Plan Employee may be paid such reasonable compensation as shall, from time to time, first be agreed upon by a majority vote of the Trustees but in no event shall such compensation be calculated in any manner as a percentage of money or premiums collected, without the consent of the Insurance Commissioner of the State of Michigan. The term "reasonable compensation" shall not include any compensation paid to a Trust or Plan employee who is already receiving full-time pay from a Participating Employer (any of whose members are Participants or Beneficiaries in the Plan or Trust). Trustees will be reimbursed for direct expenses properly and actually incurred and not otherwise reimbursed. Each Trustee shall be reimbursed pursuant to a policy first established by a majority vote of the Trustees for any properly and actually incurred direct expense that is not otherwise reimbursed.

4.6 Arbitration. In the event that the Trustees are unable to agree upon any matter, in connection with the administration of this Plan and Trust, they shall select a neutral person as an impartial arbitrator of the dispute. In the event the Trustees are unable to decide on an arbitrator, the Chairman of the Trust shall name a neutral person as the arbitrator. The decision of the arbitrator shall be final and binding. The cost and expense incidental to any arbitration proceeding, including an arbitrator's fee, shall be borne by the Trust Fund.



## **ARTICLE V**

### **POWERS AND DUTIES OF TRUSTEES**

5.1 **Standard of Care.** The Trustees shall discharge their duties under this Trust Agreement and the Plan solely in the interest of and for the exclusive purpose of providing benefits for the Plan Participants and Beneficiaries and for the defraying of reasonable expenses of administering the MDA Health Plan and this Trust. Such duties shall be discharged in conformance with the care, skill and diligence, that a prudent person's use in like or similar circumstances familiar with such matters would use in the conduct of any enterprise of like character and with like aims.

5.2 **Provision of Benefits.** The Trustees shall provide health and welfare benefits for the Plan Participants and Beneficiaries upon a self-insured basis, and shall have the power to select and contract with service providers to provide claims administration, consulting, actuarial services and such other administrative services as the Trustees in their discretion may decide. The Trustees shall have the authority to purchase contracts of excess insurance for health benefits provided under this Plan, and to purchase such other forms of group insurance as the Trustees in their judgment determine to implement the purposes of this Trust. Trustees shall be responsible for all operations of the Trust and MDA Health Plan and shall take all necessary precautions to safeguard the assets of the Plan and Trust. To the extent permitted by ERISA, no Trustee shall be held liable for any delinquency under this paragraph after six (6) years from the date of the delinquency, or after two (2) years from the date the delinquency is discovered by a person complaining of the delinquency, whichever occurs sooner.

5.3 **The Trust Fund.**

- (A) **Contributions.** The Trustees shall have the power and duty to demand, collect, and receive contributions from a Participating Employer as agreed upon from time to time (and including any participant contributions, if necessary), and shall hold such monies as part of the Trust Fund for purposes specified in this Trust Agreement and the Plan. Moreover, the Trustees shall have the power and duty to establish and accumulate as part of the Trust Fund an adequate reserve which the Trustees shall deem advisable to carry out the purpose of the Trust. The Trustees shall have the power and duty to take steps as may be necessary or desirable to effectuate the collection of such contributions from Participating Employers, including but not limited to, the institution and prosecution of, or the intervention in, any legal action or proceeding at law, equity, or bankruptcy, together with the right to compromise any such action or proceeding and the employment of counsel in connection therewith.
- (B) **Penalties and Interest.** The Trustees are hereby given the power to add to the contributions from any Participating Employer, reasonable penalties such as interest on delinquent funds (but not necessarily limited thereto), to be fixed by rules and regulations promulgated by the Trustees from time to time, for failure to make prompt payments to the Plan and Fund as provided, and are hereby given the power to collect such penalty when assessed, in the same manner as they are given power to collect contributions.
- (C) **Participating Employer Reports and Contributions.** The Trustees shall establish a uniform system among the Participating Employers for the timely

transmission of reports and contributions and establish a periodic date upon which such reports and contributions shall be due, and the Trustees shall immediately notify any Participating Employer of a delinquency, error or discrepancy in any report or contribution.

- (D) Review of Participating Employer Records. The Trustees shall have the power to require any such Employer to, and the Employer when so required shall, make available to duly authorized members of the Board of Trustees such records as may be necessary for proper Trust and Plan administration. If further examination of an Employer's records is needed for proper Trust and Plan administration, the Trustees may authorize, and the Employer shall permit, an auditor to examine appropriate records of such Employer.

5.4 Office of the Trust and Names of Trustees. The Trustees shall designate a principal office for the MDA Health Plan and Trust which shall be located in Michigan. Further, they shall have the power to maintain or arrange for such additional office space, equipment, services or other assistance as may be necessary for the proper administration of the Plan and Trust. The Trustee's shall arrange to provide Participating Employers and **Plan Participants** and Beneficiaries with the names of the **Trustees** and the location of the office of the Plan and Trust from time to time.

5.5 Additional Duties/Reliance on Others. The Trustees shall have the power to employ and rely on the advice of independent legal and other counsel, actuaries, insurance brokers, insurance professionals, third-party administrators, accountants, auditors and others as they deem advisable. The Trustees shall have the power to authorize payment of expenses necessary for the proper administration of the Plan and Trust, including fees and expenses. Further, any person or group of persons may serve in more than one (1) fiduciary capacity with respect to the Plan and Trust including service both as Trustee and as Administrator). The Named Fiduciary shall be allowed to designate persons other than the Named Fiduciary to carry out fiduciary responsibilities (other than Trustee responsibilities) under the Plan and Trust. Said Named Fiduciary, or a fiduciary designated by said Named Fiduciary, may employ one (1) or more persons to render advice with regard to any responsibility such fiduciary has under the Plan and Trust. Further, the Named Fiduciary with respect to control or management of the assets of the Plan may appoint an investment manager or managers to manage any assets of the Trust Fund as provided in Section 5.6(B).

5.6 Bank Accounts and Investment Powers.

- (A) Bank Accounts. The Trustees shall deposit in a Plan and Trust Fund account (or accounts), all monies received pursuant to this Trust in such reputable bank or banks located in the United States of America, as the Trustees may select for the purpose. All withdrawals of funds from such bank or banks shall be by check or wire transfer signed by or sent by the Trustees or such other person or persons otherwise authorized by the Trustees to sign or counter-sign checks or send such wire transfers. The Trustees, by bond or otherwise, shall secure the fidelity of any or all officers or agents of the Trust who handle funds of the **Plan and Trust**. In no event, shall cash reserves maintained by the Trust pursuant to MCLA 500.7040 be commingled with other funds of the Plan and Trust.

(B) Investment Powers. The Trustees shall establish a written investment policy (the "Investment Policy") for the MDA Health Plan and Trust under which they or the investment manager, if so delegated, shall, if contained in such Investment Policy, have the full power and authority:

- (i) To invest and reinvest for the Plan and Trust any amounts, in excess of any legally required reserves and which in their discretion they consider not required for current expenditures; and to invest and reinvest for the Plan and Trust Fund any legally required reserves. Further, they shall be allowed to invest and reinvest the Trust Fund and any accretions thereto with the capital gains or income or both, and the proceeds of any sale, pledge, lease or other disposition of any assets of the Plan and Trust Fund in bonds, notes, mortgages, commercial papers, preferred stocks, common stocks or other securities, and any other type of personal property, and real property, or any other forms of investment permitted by statute or rule of law or custom of governing the investment of the Trust Fund, except as provided in Section 5.9 of this Article and in ERISA.
- (ii) To invest and reinvest any and all stock under the Plan and Trust Fund and to continue any investment in stocks, bonds, real estate notes or other securities, or real or personal property which may at any time form a part of the Plan and Trust Fund.
- (iii) To invest, reinvest, and change investment; to sell, mortgage, pledge, lease, assign, transfer and convey any and all of the Plan and Trust property, whether real or personal or any and all interest therein, for cash or on credit, at public or private sales; to exchange any Trust property for other property; to grant options to purchase or acquire any Trust property; and to determine the prices in terms of sales, exchanges and options, and to execute, acknowledge and deliver any and all deeds or other Trust instruments or conveyance which may be required to carry the foregoing powers into effect without obligation on the part of the purchaser, lessee, lender, assignee, or transferee, or anyone to whom the property in any way may be conveyed as to the application of monies so conveyed.
- (iv) To the extent permitted by ERISA, to allow cash in the Trustee's hands to remain uninvested and on deposit in the commercial or savings department of any bank or trust company supervised by the United States or a state or agency thereof ; and as to such amount on deposit, except as required by ERISA, the Trustees shall have no liability for interest therein, except for such interest as may be paid on such deposit.
- (v) To exercise with respect to all investments, all of the rights, powers and privileges of an owner including without limiting the foregoing, power to give proxies, pay call assessments, and other sums deemed necessary for protection of the Plan and Trust Fund; to participate in

voting Trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations, and in connection therewith, to deposit securities with and transfer title to any protective or other committee under such terms as the Trustees may deem advisable; to exercise or sell stock subscriptions for conversion rights and to accept and retain as an investment hereunder any securities received through the exercise of any of the foregoing powers. If the Trustees shall pay more than par value of any security purchased, the Trustees shall not be obligated to establish a sinking fund out of the income of such investments for repayment of the principal amount paid above par.

- (vi) To take any action with respect to conserving or realizing on the value of any Trust property, and with respect to foreclosures, reorganizations, or other changes affecting Trust property; to collect, pay, protest, compromise or abandon demands of or against the **Plan and** Trust Fund.
- (vii) To compromise any claim existing in favor of, or made against the **Plan and** Trust Fund.
- (viii) To engage in any litigation, either for the collection of monies or for other properties due the **Plan and** Trust Fund, or in defense of any claim against the **Plan and** Trust Fund.

#### 5.7 **Records and Reports.**

- (A) The Trustees shall keep full accounts of all receipts and disbursements under this **Plan and** Trust Fund. Records with respect to the assets under this **Plan and** Trust Fund shall be open to inspection by an officer of any participating Employer during business hours of the Trustee.
- (B) The Trustees shall render an annual report; said report to contain a complete accounting showing the total assets in **the Plan and** Trust Fund as of a date each year to be determined by the Trustees, and the fair market value placed on each asset as of that date, as well as a statement of purchases, sales and any investment changes and all income, expenses and disbursements since the last such report, and to be in such form and contain such other information concerning the **Plan and** Trust Fund and the management thereof by the Trustees as shall be required in writing of the Plan Administrator, by the U.S. Secretary of Labor. No Employer shall have the right to demand or be entitled to any further or different accounting by the Trustees, and no person shall have the right to demand or be entitled to any accounting by the Trustees, other than those to which they may be entitled under law. Nothing contained herein shall be construed or interpreted to deny the Trustees the right to have the account judicially determined.

5.8 **Third Party Dealings.** No person, firm or corporation dealing with the Trustees shall be obligated to see to the application of any monies or properties of the **Plan and** Trust Fund or to see that the terms of the Plan and Trust Agreement have been complied with, or be obligated to inquire into the necessity or expediency of any act of the Trustees; and with regard to every instrument executed by the Trustees, every such person, firm or corporation relying thereon, shall be entitled conclusively to assume that:

- (A) At the time of the delivery of said instrument, the Trust **and Plan** herein created was in full force and effect; and
- (B) Said instrument was executed in accordance with the terms and conditions of this **Plan and** Trust Agreement; and
- (C) The Trustees were duly authorized and empowered to execute such instrument or direct its execution.

5.9 **Prohibited Transactions.** Notwithstanding any other provision **of the MDA Health Plan and** this Trust Agreement to the contrary, the Trustees shall not engage nor cause to be engaged in any transaction, **unless permitted by an ERISA exemption**, if the Trustees know or should know that the transaction constitutes a direct or indirect:

- (A) Sale, exchange or leasing of any property between the **Plan and** Trust Fund and a Party in Interest;
- (B) Lending of money or extension of credit between **the Plan** and Trust Fund and a Party in Interest;
- (C) Furnishing of goods, services or facilities between the **Plan and** Trust Fund and a Party in Interest;
- (D) Transfer to or use by or for the benefit of a Party in Interest of any assets of the **Plan and** Trust;
- (E) Any other transaction as set forth in Section 406 of ERISA.
- (F) Provided that, any transaction exempted under Section 408 of ERISA shall not be a prohibited transaction.

5.11 **ERISA and Affordable Care Act Reporting.** In addition to 5.7 above, it shall be the duty of the Trustees, as Plan Administrator, to comply with all reporting and disclosure requirements set forth in Titles I and II of ERISA and in the Affordable Care Act. Such reports to the Plan's participants and beneficiaries and to the U.S. Department of Labor shall include, but shall not be limited to, a summary of benefits and coverage, a summary plan description and updates, plan modifications, a summary of plan modifications, changes in information required in the plan description, summary changes in information required in the plan description, annual report, terminal reports and other reports and forms as may from time to time be required by the U.S. Department of Labor. The summary plan description provided to each eligible Employee covered by the Plan and Trust shall contain the name **of the Plan Administrator and the address at which the Plan Administrator be contacted, and any change in the names or address of the Plan**

**Administrator** shall be provided in the next update to said summary plan description. For plans sponsored by multiple employers, the SPD **must contain either a statement that a complete list of all employers sponsoring the Plan may be obtained by participants and beneficiaries upon written request to the plan administrator and is available for examination, or a statement that participants and beneficiaries may receive from the plan administrator, upon written request, information as to whether a particular employer is a sponsor of the plan, and, if the employer is a sponsor, the sponsor's address.** Such reports and disclosures may be made in hard copy or in electronic format, all as permitted by regulations under ERISA and the Affordable Care Act.

5.12 **Interpretation of Agreement.** The Trustees shall have the final authority and discretion to construe the provisions of this Agreement and Declaration of Trust and the MDA Health Plan document and the terms therein, and any construction adopted by the Trustees in good faith shall be binding upon the Participating Employers and the Plan **Participants and Beneficiaries, to the extent permitted by ERISA.**

5.13 **Assessments and Rate Adjustments.**

- (A) **Security Fund.** The Trustees shall have the right and authority to assess upon each Participating Employer, and any Employer that has ceased to participate, its proportionate share of any Michigan Multiple Employer Welfare Arrangement Security Fund assessments made upon the Plan and Trust by the Insurance Commissioner **for any benefits paid by the Trust to or on behalf of Plan beneficiaries during the previous calendar year.**
- (B) **Rate Adjustments.** In the event cash reserves of the Trust and Plan are less than the requirements set forth by the State of Michigan, the Trustees shall have the right and authority to assess upon each Participating Employer and any Employer that has ceased to participate for a period of up to one (1) year after its termination, up to four (4) months of contingent premiums.

5.14 **Premium Holiday.** To the extent permitted by law, the Trustees in their absolute discretion may declare a premium deferral or holiday. Any premium deferral or holiday proposed by the Trustees shall be filed with and approved by the Insurance Commissioner of the State of Michigan prior to becoming operative.

**ARTICLE VI**  
**PARTICIPATING EMPLOYERS**

6.1 **Subscription.** In order to participate in the Plan, an Employer shall, in writing, adopt, subscribe to and agree to be bound by the terms and provisions of this Agreement and the MDA Health Plan.

6.2 **Admissions.** Any Employer which did not participate in the initial establishment of this **Plan and** Trust, may be admitted to participation by the Trustees, without condition or upon such condition as the Trustees may require.

6.3 **Annual Mailings to Participating Employers.** Each year between September 1 and November 30 as determined by the Board of Trustees, an Annual Mailing to all of the Participating Employers shall be made for purposes, including but not limited to, sending a



ballot, for the purposes of electing Trustees. Along with a ballot, each Participating Employer shall receive a return envelope addressed to the Trust. The ballot shall contain a slate of nominees for election or for any Trustee vacancy. Any Participating Employer may submit their name for the election, or may nominate another Participating Employer.

6.4 **Vote.** Each Participating Employer shall be entitled to one vote for purposes of electing the Trustees. The return envelope containing the ballot shall be mailed via U.S. mail, first class postage prepaid, to the Office of the Plan and Trust. All such votes must be postmarked no later than thirty (30) days after the date of the Annual Mailing. The ballot shall clearly state on the face of it, the day on or before which the return envelope containing the ballot must be post-marked in order to be valid.

6.5 **Quorum.** For purposes of the election of Trustees during the Annual Mailing, a majority vote of those Participating Employers that respond in writing within the time period described in Section 6.4 shall govern. A ballot must be signed by the Participating Employer or his or her authorized agent or representative and shall be dated.

## **ARTICLE VII**

### **AMENDMENT PROCESS**

7.1 **Amendments.** This Agreement and Declaration of Trust and the MDA Health Plan may be amended in any respect from time to time by majority vote of the Trustees, provided that each amendment shall be duly executed in writing by the Trustees and attached hereto. As to any such amendment, the Trustees, in their sole discretion, shall have full power to fix the effective date thereof. All amendments to this Plan and Trust shall be filed with and approved by the Insurance Commissioner of the State of Michigan pursuant to MCLA 500.7026(1) prior to becoming operative.

7.2 **Exceptions.** Notwithstanding 7.1 above, no amendment may be adopted which:

- (A) May cause any assets of the Plan and Trust to revert to a Participating Employer, or be diverted for purposes other than the exclusive benefit of the Plan **Participants and** Beneficiaries, except as permitted by ERISA.
- (B) Shall be in conflict with such laws as have been enacted prior to the date thereof by the legislature of the State of Michigan and the Congress of the United States.

7.3 **Distribution of Amendment.** Whenever an amendment is adopted in accordance with this Section, a copy thereof shall be distributed to all Trustees, and the Trustees shall notify all necessary parties, and shall execute any instrument or instruments necessary in connection therewith.

## **ARTICLE VIII**

### **MISCELLANEOUS**

8.1 **Costs and Expenses of Administration.** All expenses of administration of the **MDA Health Plan and** Trust Fund shall be paid from the Trust Fund. To the extent permitted by ERISA, the costs and expenses (including legal fees) of any action, suit or proceeding relating to the Trust which is

brought by or against the Trustees shall be paid as a general expense of administration; provided, however, that such costs or expenses shall not be paid from the Trust if it is adjudged in the action, suit, or proceeding that the Trustees were guilty of gross negligence or willful misconduct.

8.2 **Liability of Trustees.** To the extent permitted by ERISA, no Trustee shall be liable for any act or action pursuant to this Trust, in good faith taken, performed or omitted; nor for any act or action taken, performed or omitted by any other concern with which the Trustees contract for benefits hereunder; nor for any act or action taken, performed or omitted by an agent, employee or attorney with reasonable care; nor for any act or action taken, performed or omitted by any other Trustee; nor for any act or failure to act, except only for his own gross negligence or willful misconduct, other than for violation of the fiduciary responsibilities set forth in Sections 5.1 and 5.9.

8.3 **Errors of Judgment.** To the extent permitted by ERISA, in the exercise of their discretionary power, the Trustees may act solely upon their own best judgment upon the facts brought to their attention without liability for errors of judgment, and with complete immunity of liability for losses, damages, or liability sustained by the Trust, or any current or former Employer, Employee or dependent of an Employee, so long as the Trustees act in good faith.

8.4 **Title to Trust Fund.** Title to the Trust Fund shall be vested and remain exclusively in the Trustees. No current or former Participating Employer, or Plan Participant or Beneficiary shall have any right, title or interest in the Trust Fund, or any right to the contributions made thereto. No contributions to be made hereunder shall be deemed wages to covered Employees. The Fund shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge by any person other than the Trustees and their duly authorized representatives, and by such Trustees, or representatives, only to the extent and for the purpose as herein specifically provided, except that any **Participant or Beneficiary in the MDA Health Plan** may assign any benefits under the Plan or Trust to which they may become entitled to a provider of health care services, in consideration for such services rendered or to be rendered within the terms of the Plan.

8.5 **Counterpart.** This Agreement and Declaration of Trust may be executed in one (1) or more counterparts. The signature of a party on any counterpart shall be sufficient evidence of his execution thereof.

8.6 **Invalidity.** In the event that any provision of the Plan and Trust Agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect its remaining provisions, and the provisions held illegal or invalid shall be considered fully severable and the **Plan and** Trust Agreement shall be construed and enforced as if said illegal or invalid provision had never been inserted herein.

8.7 **Governing Law.** This Trust Agreement is accepted by the Trustees in the State of Michigan and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of the State of Michigan, unless superseded by ERISA.

8.8 **Termination of Trust.** Notwithstanding any provision herein concerning the duration and termination of this **Plan and** Trust, it shall continue in existence for so long a period as may be necessary to conduct its affairs. Upon termination of the **MDA Health Plan and** this Trust upon a unanimous vote of the Board of Trustees, any and all monies remaining in the Plan and Trust Fund after the payment of all unpaid benefits and expenses and obligations of the **Plan and** Trust,



shall at the sole discretion of the Trustees be (a) paid or used for continuance on behalf of the Plan Participants and Beneficiaries of one (1) or more of the benefits of the character herein contemplated until such monies have been exhausted (said benefits shall not disproportionately benefit officers, shareholders or highly compensated employees of Participating Employers) or (c) paid, used or distributed in such other manner as the Trustees deem equitable; provided however, any distribution, payment or use hereunder shall not inure to the benefit of any current or former Participating employer, and shall comply in all respects with the provisions of Michigan law and ERISA. The right and authority of the Trustees to assess contingent premiums under Section 5.13(B). For purposes of paying all unpaid expenses and obligations of the Trust hereunder shall continue and be exercised by the Trustees if necessary, during the process of terminating the Trust or thereafter, within the time periods set forth in Section 5.13 (B).

8.9 **Irrevocable Trust.** Subject to the provisions for the termination of the Plan and this Trust in 8.8 above, the Trust shall be irrevocable and under no circumstances shall any money properly paid into the Trust Fund or any part of the Trust Fund be recoverable by or payable to any Employer, or used other than for payment of benefits and reasonable and necessary expenses incurred on behalf of the MDA Health Plan or this Trust, nor shall any of the same be used or diverted to purposes other than the exclusive benefit of Plan Participants and Beneficiaries hereunder. This Agreement shall be binding on all participants and upon the heirs, executors, administrators, successors, and the assigns of all persons having an interest herein.

8.10 **Interpretation.** Where so applicable in **the Plan and** this Agreement, words in the masculine shall include the feminine; words in the neuter shall include words in the masculine and feminine; words in the singular shall include the plural.

8.11 **Conformance with Statutes.** The Plan and this Trust are intended to conform in all respects with **the Employee Retirement Income Security Act of 1974, as now existing or hereafter amended,** and with the requirements of Public Act No. 121 of the Public Acts of 1986 which added Chapter 70 to the Michigan Insurance Code to provide for the authorization and regulation of Multiple Employer Welfare Arrangements (MCLA 500.7001 et seq.) and as such may be amended from time to time.

8.12 **Titles.** Titles of Articles herein are for convenience only, and this Agreement is not to be construed by reference thereto.

8.13 **Conflicts.** Any conflict between this Trust Agreement and any other Plan Document shall be resolved in favor of this Trust Agreement.

IN WITNESS WHEREOF, the Trustees have caused this Amendment and Restatement of Trust to be executed on the day of August , 2023.

**MDA-IFG TRUSTEES:**

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Dr. Toni Ausum

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Dr. Nick Fontana

**PLAN BENEFICIARIES' TRUSTEES:**

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Dr. Michelle Dziurgot

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Dr. Mark Johnston

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Dr. Eric Knudsen

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Dr. Elizabeth Ralstrom

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Dr. Michele Tulak-Goreck