

HCSP and RHFV Plan Document

Effective: May 14, 2003
Restated: December 31, 2005
As Amended: April 18, 2024

TABLE OF CONTENTS

ARTICLE I - INTRODUCTION..... 1

Section 1. Overview..... 1

Section 2. Definitions..... 1

 2.1 “Account” 1

 2.2 “Applicable Form”..... 1

 2.3 “Board” 1

 2.4 “Code” 1

 2.5 “Covered Division” 1

 2.6 “Dependent” 1

 2.7 “Eligible Employee” 1

 2.8 “Eligible Former Employee” 1

 2.9 “Eligible Employer” 1

 2.10 “Eligible Retiree” 1

 2.11 “Employee” 2

 2.12 “Employee Contributions” 2

 2.13 “Employer Contributions” 2

 2.14 “Governing Body” 2

 2.15 “Health Care Savings Program (HCSP)” 2

 2.16 “HCSP Assets Subject to Vesting” 2

 2.17 “HCSP Non-Forfeitable Assets” 2

 2.18 “HCSP Participation Agreement” 2

 2.19 “Investment Fund” 2

 2.20 “Investment Manager” 2

 2.21 “Medical Expenses” 2

 2.22 “MERS” 2

 2.23 “MERS Participating Municipalities and Courts” 2

 2.24 “MERS Plan Document” 2

 2.25 “Participant” 3

 2.26 “Participating Employer” 3

 2.27 “Plan Sponsor” 3

 2.28 “Plan Year” 3

 2.29 “Program” or “Programs” 3

 2.30 “Program Administrator” 3

 2.31 “Program Resolutions and Agreements” 3

HCSP and RHFV Plan Document

2.32	“Property”	3
2.33	“Retiree Health Funding Vehicle (RHFV)”	3
2.34	“RHFV Program Account”	3
2.35	“Rule”	3
2.36	“State”	3
2.37	“Separation from Service”	3
2.38	“System”	3
2.39	“Trust” or “Trust Agreement”	3
2.40	“Trust Fund”	4
2.41	“Trust Year”	4
2.42	“Written” or “Writing”	4
Section 3. Administration of the Trust		4
3.1	Compliance with Code and Governing Law	4
3.2	Duties and Powers of the Board	4
3.3	Duties and Powers of the Program Administrator	4
3.4	Delegation by Program Administrator	5
3.5	Group Trusts	5
Section 4. Amendment of the Program		5
4.1	Amendment of Program Document and the Participation Agreement	5
4.2	Amendment for Qualification of Program	6
4.3	Amendment of Participation Agreement by Participating Employee	6
Section 5. Confidentiality		6
5.1	Open Records	6
5.2	Privileged Records	7
Section 6. Nonassignability		7
6.1	Rights	7
ARTICLE II - HEALTH CARE SAVINGS PROGRAM (“HCSP”)		7
Section 1. HCSP Participation by Eligible Employers		7
1.1	Adoption by Eligible Employer	7
Section 2. Eligible Employee and Eligible Former Employee Participation		8
2.1	Participation Procedure for the HCSP	8
2.2	Cessation of Participation in HCSP	8
Section 3. HCSP Contributions		8
3.1	HCSP Contributions	8
3.2	Types of HCSP Contributions	8
3.3	Changes in Contributions for the HCSP	9

HCSP and RHFV Plan Document

3.4	Delinquent Contributions.....	9
Section 4.	HCSP Accounts.....	9
4.1	Separate Accounts.....	9
4.2	Valuation.....	9
4.3	Deposits.....	9
Section 5.	HCSP Reports.....	10
5.1	HCSP Participant Account Statements.....	10
5.2	Employer HCSP Contributions Report.....	10
5.3	Report from Program Administrator to Board.....	10
5.4	Year-End Reports.....	10
Section 6.	Investment of HCSP Accounts.....	10
6.1	Investment.....	10
Section 7.	Medical Expenses.....	10
7.1	Medical Expense Payments.....	10
7.2	Source of Medical Benefits.....	10
7.3	Termination of Public Service.....	11
7.4	Payment of Expenses.....	11
7.5	Payouts-Proof of Expenses.....	11
Section 8.	HCSP Termination.....	11
8.1	Automatic Participant Account Termination.....	11
8.2	HCSP Termination and Plan Asset Transfers.....	12
Section 9.	Claims Procedure.....	12
9.1	Program Administrator.....	12
9.2	HCSP Accounts.....	12
9.3	Claims Review.....	13
ARTICLE III - RETIREE HEALTH FUNDING VEHICLE ("RHFV").....		13
Section 1.	RHFV Participation by Eligible Employers.....	13
1.1	Adoption by Eligible Employer.....	13
1.2	Cessation of Participation in RHFV.....	13
Section 2.	RHFV Contributions.....	13
2.1	RHFV Contributions.....	13
2.2	Delinquent Contributions.....	13
Section 3.	RHFV Accounts.....	14
3.1	RHFV Accounts.....	14
3.2	Valuation.....	14
3.3	Deposits.....	14

HCSP and RHFV Plan Document

Section 4. RHFV Reports	14
4.1 Statement of RHFV Program Accounts	14
4.2 Report from Program Administrator to Board	14
4.3 Year-End Reports	14
Section 5. Investment of RHFV Accounts	14
5.1 Investment	14
Section 6. Retiree Health Care Expenses	14
6.1 Retiree Health Care Expense Payments	14
6.2 Health Insurance Payment or Subsidy	15
6.3 Source of Retiree Health Care	15
6.4 Payouts-Proof of Expenses	15
Section 7. RHFV Termination.....	15
7.1 Automatic RHFV Termination	15
7.2 Termination—Plan Asset Transfers	15
7.3 Termination—Satisfaction of RHFV Liabilities	15
ARTICLE IV. MISCELLANEOUS.....	16
1.1 Federal Taxes	16
1.2 Entire Agreement	16
1.3 Conflicts	16
1.4 Limitation on Rights	16
1.5 USERRA Compliance	17
1.6 Erroneous Payments.....	17
1.7 Release	17
1.8 Liability.....	17
1.9 Governing Laws	17
1.10 Necessary Parties to Disputes	17
1.11 Rules of Construction.....	17
1.12 Severability	18
1.13 Supersession	18
1.14 Counterparts	18
1.15 Health Privacy.....	18
1.16 Health Information Security	19
1.17 Adequate Separation Between the Plan and the Plan Sponsor.....	20
1.18 Limitations on Access and Disclosure	20
1.19 Noncompliance	20

RESTATED MERS HEALTH CARE SAVINGS PROGRAM and RETIREE HEALTH FUNDING VEHICLE PLAN DOCUMENT

("HCSP and RHFV Plan Document")

ARTICLE I - INTRODUCTION

Section 1. Overview

The Municipal Employees Retirement Act of 1984, 1984 PA 427, section 36, MCL 38.1536(2)(a); Plan Document Section 36(2)(a) confers authority on the Municipal Employees' Retirement System of Michigan ("MERS") Board ("Board") beginning August 15, 1996 ("the certification date"), to establish additional programs including but not limited to defined benefit and defined contribution programs. In accordance with such authorization, the Board has approved MERS' establishment of a Trust, which consists of two programs: the Health Care Savings Program ("HCSP"), and the Retiree Health Funding Vehicle ("RHFV"). Any eligible public employer in Michigan that is a "municipality" under MCL 38.1502b(2) and MERS Plan Document Section 2B(4), may adopt the programs for their employees. MERS is authorized to make available one or more governmental trusts for these purposes:

- 1) The Health Care Savings Program is an employer-sponsored program that allows employers and employees to save assets for the use of post-employment medical expenses; and
- 2) The Retiree Health Funding Vehicle is an employer trust that allows employers to advance fund their retiree health care liability.

This HCSP and RHFV Plan Document, and the related Program Resolution and Agreements, may only be used by an entity that meets the MERS definition of "municipality."

Section 2. Definitions

- 2.1 "**Account**" means the bookkeeping entry established for each Participant to reflect the HCSP Assets Subject to Vesting and the HCSP Non-Forfeitable Assets credited to them.
- 2.2 "**Applicable Form**" means the appropriate form as designated and furnished by the Program Administrator to make an election or provide a notice as required by the Program.
- 2.3 "**Board**" refers to the Retirement Board of MERS.
- 2.4 "**Code**" means the Internal Revenue Code of 1986, as amended.
- 2.5 "**Covered Division**" means the administrative employee divisions designated by a Participating Employer of the HCSP and/or RHFV Plan. A Covered Division may be further divided into employee classifications, as determined by the System. The establishment of Covered Divisions by a Participating Employer of the HCSP and/or RHFV shall not impact the operation of Article II, Section 8 or Article III, Section 7, regarding Plan transfers and termination, which are determined on a Plan basis.
- 2.6 "**Dependent**" means the spouse of a Participant or any person who may be claimed as a dependent of the Participant, as defined in Section 105(b) of the Code.
- 2.7 "**Eligible Employee**" means an Employee who under the HCSP Participation Agreement is eligible to participate in the HCSP.
- 2.8 "**Eligible Former Employee**" means a former Employee who under the HCSP Participation Agreement is eligible to participate in HCSP.
- 2.9 "**Eligible Employer**" means any public employer in Michigan that is a "municipality" under MCL 38.1502b(2) or a "judicial circuit court," "judicial district court" or judicial probate court" under MCL

- 38.1502a(4), (5) and (6), including but not limited to MERS Participating Municipalities and Courts.
- 2.10 **“Eligible Retiree”** means a former Employee who has a Separation from Service from a Participating Employer and who meets the criteria for coverage under a health insurance program established by a Participating Employer who participates in the RHFV.
- 2.11 **“Employee”** means any common law employee of an Eligible Employer and may include elected and appointed officials. However, the term does not include independent contractors.
- 2.12 **“Employee Contributions”** is defined in Article II Section 3.2 and refers only to Employee Contributions that are HCSP Non-Forfeitable Assets.
- 2.13 **“Employer Contributions”** is defined in Article II Section 3.2. Employer Contributions include contributions to the HCSP and/or to the RHFV.
- 2.14 **“Governing Body”** means the representative legislative body of a municipality, the administrative board or commission of a public corporation or instrumentality that does not have a representative legislative body, or the chief judge of a judicial court, a judicial district court, or a judicial probate court as provided in the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948, as applicable.
- 2.15 **“Health Care Savings Program (HCSP)”** means an employer-sponsored program administered by MERS that allows employers and employees to save money to pay post-employment Medical Expenses, and the Medical Expenses of Dependents, following the Eligible Employees’ Separation from Service. The program consists of Accounts, which may contain HCSP Assets Subject to Vesting and/or HCSP Non-Forfeitable Assets.
- 2.16 **“HCSP Assets Subject to Vesting”** means the assets maintained in each Participant’s account that are subject to the employer’s vesting schedule, which may include Basic Employer Contributions described in Section 3.2(a) for Eligible Employees, if so provided in the Employer’s Participation Agreement.
- 2.17 **“HCSP Non-Forfeitable Assets”** means the assets maintained in each Participant’s account that are always non-forfeitable, and include Mandatory Salary Reduction Contributions described in Section 3.2(b), Leave Conversion Contributions described in Section 3.2(c) and Voluntary Employee Contributions described in Section 3.2(d), and which may include the Basic Employer Contributions described in Section 3.2(a), if so provided in the Employer’s Participation Agreement.
- 2.18 **“HCSP Participation Agreement”** means one or more documents by which the Participating Employer indicates the effective date, covered employee groups, employee eligibility, contribution structure and other matters regarding its HCSP, and its intent to be bound to and adopt the HCSP.
- 2.19 **“Investment Fund”** means an investment fund that forms part of the Trust Funds established by the Board.
- 2.20 **“Investment Manager”** means an investment manager selected by the Board.
- 2.21 **“Medical Expenses”** are defined by the Code Section 213 and excludable from income under Code Sections 105 and 106, as amended from time to time. An expense shall only be a “Medical Expense” to the extent that the Participant or other person incurring the expense is not reimbursed for the expense through Social Security, Medicaid, Medicare, or any other medical and health insurance contracts held by the Participants, their Dependents, or the Participating Employers (other than the HCSP), and only to the extent that the Participant or his or her Dependents are legally obligated to pay for the expense.
- 2.22 **“MERS”** means the Municipal Employees’ Retirement System of Michigan.
- 2.23 **“MERS Participating Municipalities and Courts”** refers to those municipalities and courts

- that participate in the MERS retirement plan.
- 2.24 **“MERS Plan Document”** refers to the Michigan Employees’ Retirement System Plan Document of 1996, as amended.
- 2.25 **“Participant”** means: (i) an Eligible Employee or Eligible Former Employee who participates under the HCSP by enrolling and maintaining an account balance; or (ii) after death of an Eligible Employee or Eligible Former Employee, his/her Dependents are considered Participants for purposes of the Program.
- 2.26 **“Participating Employer”** means any Eligible Employer who elects to participate in any of Programs.
- 2.27 **“Plan Sponsor”** means the participating employer, except that, for purposes of Code Section 4376, “Plan Sponsor” means the Board, and for purposes of Article IV, Sections 1.15 – 1.19, Plan Sponsor means the Board through its agents.
- 2.28 **“Plan Year”** means the plan year of the program, which is the calendar year.
- 2.29 **“Program”** or **“Programs”** refers to the RHFV and/or the HCSP set forth in the Trust Plan Document, along with the provisions set forth in the Program Resolutions and Agreements of any Participating Employer, and any amendments to these documents.
- 2.30 **“Program Administrator”** means MERS or any third party administrator with which MERS contracts to perform some or all its functions as Program Administrator.
- 2.31 **“Program Resolutions and Agreements”** means either the (i) HCSP Uniform Resolution and Participation Agreement adopting the HCSP or (ii) the RHFV Uniform Resolution adopting the RHFV.
- 2.32 **“Property”** refers to any property, real or personal, or part interest therein, wherever situated, including, but without being limited to, preferred and common stocks, shares of investment companies, bonds, notes, debentures and mortgages, equipment trust certificates, investment trust certificates, interest in partnerships whether limited or general or in any insurance contract, policy, annuity, or other investment media offered by an insurance company, in which trust assets may be invested pursuant to the Public Employee Retirement System Investment Act.
- 2.33 **“Retiree Health Funding Vehicle (RHFV)”** means an employer savings trust that allows employers to advance fund their retiree health care liability.
- 2.34 **“RHFV Program Account”** means the account maintained for each Participating Employer who elects to establish the RHFV. The RHFV is a sub-trust of the Trust Fund.
- 2.35 **“Rule”** as applied to action of the Retirement Board means any Regulation, Policy, Statement, or other official action approved by at least 5 concurring votes, as provided by MCL 38.1536(6); MERS Plan Document Section 36(6).
- 2.36 **“State”** refers to the State of Michigan.
- 2.37 **“Separation from Service”** means a Participant’s separation from employment with the Participating Employer for any reason, including retirement, within the meaning of Code Section 402(e)(4)(D)(i)(III). A Participant shall be deemed to have separated employment with the Participating Employer for purposes of the Program when, in accordance with the established personnel practices of the Participating Employer, the employment relationship is considered actually terminated. If a Participant has not been terminated, but the Participant has not performed services for the Participating Employer for a period of twelve (12) consecutive months and the Participant is not on a paid leave of absence, the Participant shall be deemed Separated from Service for purposes of this Program at the end of the twelve (12) month period.
- 2.38 **“System,”** as used in Article IV, Sections 1.15 – 1.19, means employees and agents of MERS, to whom are delegated, directly or through others, the day to day operations of the Plan.

- 2.39 **“Trust” or “Trust Agreement”** means the trust established pursuant under the Restated MERS Trust Agreement for Health Care Savings Program and Retiree Health Funding Vehicle, which constitutes a valid trust under Michigan law.
- 2.40 **“Trust Fund”** means all such money, Property, and all investments made therewith and proceeds thereof and all earnings and profits thereon, less payment made by the Board as authorized herein.
- 2.41 **“Trust Year”** means the calendar year, on which the books and records of the Trust are maintained.
- 2.42 **“Written” or “Writing”** as used herein shall include electronic communication, in the manner required or adopted by the System or Program Administrator, unless procedures adopted by the System or Program Administrator provide otherwise.

Section 3. Administration of the Trust

3.1 **Compliance with Code and Governing Law**

At all times, the Program shall be administered in accordance with and construed to be consistent with applicable provisions of the Code and its accompanying regulations, federal and state law, and the MERS Plan Document.

3.2 **Duties and Powers of the Board**

The Board has such duties and powers as are prescribed by: federal and state law; the Program, vesting in the Board the sole power and authority to amend the MERS Plan Document; the HCSP and RHFV Plan Document; and the form of the related Program Resolution and Agreements. The Board has the sole power to select and remove the Program Administrator, the custodian for the Programs, and any third party administrator, and prescribe their duties and powers. MERS may purchase fiduciary liability insurance and/or errors and omissions insurance to cover any fiduciary of the Program or Trust, including the Board, and MERS shall pay the premiums from the Trust.

3.3 **Duties and Powers of the Program Administrator**

The Program Administrator shall have the authority to control and manage the operation and administration of the Program. The Program Administrator shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable the Program Administrator to carry out its duties under the Program. By way of illustration and not limitation, the Program Administrator is empowered and authorized:

- (a) To establish procedures with respect to administration of the Program, not inconsistent with the Program and the Code, and to amend or rescind such procedures;
- (b) To determine, consistent with the Program, applicable law, rules or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Program and eligibility for distribution of benefits from the Program, and the status of any person claiming benefits under the Program, including without limitation Participants, former Participants, Dependents, former Dependents, Eligible Employees and Eligible Former Employees;
- (c) Pursuant to the HCSP and RHFV Plan Document, to make payments from the Trust Fund;
- (d) To employ one or more persons to render advice with regard to its responsibilities under the Program;
- (e) Subject to and consistent with the Code, to construe and interpret the Program as to administrative issues and to correct any defect, supply any omission or reconcile any

inconsistency in the Program with respect to same.

Any action by the Program Administrator, which is not found to be an abuse of discretion, shall be final, conclusive and binding on all individuals affected thereby. The Program Administrator may take any such action in such manner and to such extent as the Program Administrator in its sole discretion may deem expedient, and the Program Administrator shall be the sole and final judge of such expediency.

3.4 **Delegation by Program Administrator**

In addition to the powers stated in Article I Section 3.3, the Program Administrator may delegate to an individual, committee or organization certain of its fiduciary or other responsibilities under the Program. Any such individual, committee or organization shall remain a fiduciary until the delegation of fiduciary duty is revoked by the Program Administrator, which revocation may be without cause and without advance notice. Such individual, committee or organization shall have power and authority with respect to such delegated fiduciary or other responsibilities as the Program Administrator has under the Program.

3.5 **Group Trust**

To the extent permitted by law, the Board may commingle the investment of the Trust Fund with other funds that it administers. To the extent that the Board invests any money or assets of the Trust in a group trust as authorized by MCL 38.1140c, said group trust must:

- (i) expressly prohibit any part of the MERS' corpus or income from being used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the System,
- (ii) be operated or maintained exclusively for the comingling and collective investment of funds from other trusts that it holds,
- (iii) be intended to qualify as a group trust under Internal Revenue Code Sections 401(a) and 501(a), and
- (iv) satisfy the requirements of Internal Revenue Code Section 401(a)(24) and the requirements for a group trust as established by Revenue Ruling 81-100, 1981-1 C.B. 326, as amended by Revenue Ruling 2004-67, 2004-2 C.B. 28, and as modified by Revenue Ruling 2011-1, 2011-2 I.R.B. 251.

In this regard, the Board will only invest in group trusts that also are maintained to reflect the interest(s) of each participating retiree benefit plan, including separate accounting for contributions to the group trust by each such plan, disbursements made from each such plan's account, and the investment experience of the group trust as allocable to that account. To the extent necessary, the Board is authorized to adopt the terms of the group trust as additional terms of this Trust.

Section 4. Amendment of the Program

4.1 **Amendment of Program Document and the Participation Agreement**

Subject to the provisions of any applicable law, the Board may at any time amend or modify this HCSP and RHFV Plan Document without the consent of the Participating Employers or of the Participants. Any modification, alteration, or amendment of the HCSP and RHFV Plan Document, made in accordance with this section, may be made retroactively, if deemed necessary or appropriate by the Board.

A certified copy of the resolution of the Board making such amendment shall be delivered to the Program Administrator, and the HCSP and RHFV Plan Document shall be amended

in the manner and effective as of the date set forth in such resolution, and the Participating Employers, Eligible Employees, Eligible Former Employees, Participants, Dependents, and Program Administrator shall be bound by the amendment. A Participating Employer may not amend the HCSP and RHFV Plan Document in any way.

Subject to provisions of applicable law, the Board may at any time amend or modify the form of the Program Resolution and Agreements with the consent of the Participating Employer(s) who may be affected by any change.

4.2 **Amendment for Qualification of Program**

It is the intent of the Board that the Program shall be and remain a medical expense plan for tax purposes under Code Section 105(b) and other applicable Code provisions. The Board shall promptly submit the Programs to the Internal Revenue Service for appropriate rulings under the Code and all expenses incident thereto shall be borne by the Trust. The Board may make any modifications, alterations, or amendments to the HCSP and RHFV Plan Document, the Trust, and the Program Resolutions and Agreements necessary to obtain and retain approval of the Secretary of the Treasury or his delegate as may be necessary to establish and maintain the status of the Programs under the provisions of the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder.

Any modification, alteration, or amendment of the HCSP and RHFV Plan Document, the Trust, and the Program Resolutions and Agreements, made in accordance with this Section, may be made retroactively, if necessary or appropriate. A certified copy of the resolution of the Board making such amendment shall be delivered to the Program Administrator. The HCSP and RHFV Plan Document, the Trust, and the Program Resolution and Agreements shall be amended in the manner and effective as of the date set forth in such resolution, and the Participating Employers, Eligible Employees, Eligible Former Employees, Participants, Dependents, Program Administrator, and all others having any interest under the Program shall be bound thereby.

4.3 **Amendment of Participation Agreement by Participating Employer**

The Governing Body shall have the right at any time to amend, in whole or in part, any or all of its elections under the Program Resolution and Agreements. However, no such amendment shall:

- (a) Deprive any Participant or their Dependent of any of the benefits to which the Participant or their Dependent is entitled under this Program with respect to amounts credited prior to the effective date of the amendment; or
- (b) Authorize or permit any part of the Trust Fund to be diverted to purposes other than for the exclusive benefit of Participants or their Dependents; or
- (c) Become effective until approved by the Board. In order to be approved by the Board, any amendment must comply with the HCSP and RHFV Plan Document, the MERS Plan Document, and all applicable state and federal laws, including the Code as applicable to governmental trusts. If the Board does not approve an amendment, the Program Administrator shall continue to administer the Program as if such amendment had not been made.

A Participating Employer must notify the Program Administrator of any proposed change to the Participation Agreement at least forty-five (45) days prior to the proposed effective date of the change.

Section 5. Confidentiality

5.1 **Open Records**

The records of the Program Administrator shall be open to public inspection and copying under

the Freedom of Information Act, except for the following, which shall be excluded to the fullest extent of the law, except with the written authorization of the individual concerned:

- (a) The individual's statement of previous service and other information that must or may be kept confidential under Michigan or federal law;
- (b) The amount of a benefit paid from the Trust to the individual for Medical Expenses;
- (c) The individual's personal history record, which means information maintained by the Program Administrator on an individual who is a Participant, former Participant, or Dependent that includes the address, telephone number, social security number, record of contributions, correspondence with the Program Administrator, or other information the Program Administrator determines to be confidential.

5.2 Privileged Records

All medical reports and recommendations required by this Program are privileged, except that copies of such medical reports or recommendations shall be made available to the personal physician, attorney, or authorized agent of the individual concerned upon written release from the individual or the individual's agent, or when necessary for the proper administration of the Program, to the physician or medical personnel assigned by the Program Administrator.

Section 6. Nonassignability

6.1 Rights

The rights of Participants or their Dependents under this Program shall not be subject to the rights of their creditors, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third person, as further provided in Section 10 of the MERS Plan Document.

ARTICLE II - HEALTH CARE SAVINGS PROGRAM ("HCSP")

Section 1. HCSP Participation by Eligible Employers

- 1.1 **Adoption by Eligible Employer.** MERS shall determine whether the Eligible Employer complies with this section. The Board and MERS may request any additional information it considers necessary or appropriate if the Eligible Employer meets all conditions established by the Board and if all requirements of the Program and Trust are met, MERS shall execute the HCSP Uniform Resolution and Participation Agreement. Any Eligible Employer may make the HCSP available to its Eligible Employees and Eligible Former Employees if it takes the following actions:

- (a) For an Eligible employer that is a municipality:
 - The Governing Body of the Eligible Employer must approve the HCSP Uniform Resolution and Participation Agreement formally adopting the HCSP for its Eligible Employees and/or its Eligible Former Employees.
 - The resolution must be completed in its entirety, including the date of adoption. The resolution must specify that the Eligible Employer shall abide by the terms of the Program and the Trust, including all investment, administrative, and service agreements of the Program, and all applicable provisions of the Code and other applicable law.
- (b) For an Eligible employer that is a court:
 - The court's chief judge must issue an administrative order approving the participation of the court's Eligible Employees and/or its Eligible Former Employees, which order is concurred in by resolution of the governing bodies of the municipalities that are

required by law to fund the circuit, district, or probate court, or by resolution of the joint board or commission of the municipalities that are required by law to fund the relevant court if those municipalities have entered into a contract to transfer functions and responsibilities pursuant to MCL 124.531 to 124.536.

- The chief judge must complete, approve and execute the HCSP Uniform Resolution and Participation Agreement, and certify to MERS, in the manner and form prescribed by MERS, the election of the court to participate in the HCSP. The certification shall be made within 10 days after the date of concurrence of the governing bodies of the municipalities that are required by law to fund the court or the joint board or commission of the municipalities that are required by law to fund the court.

Section 2. Eligible Employee and Eligible Former Employee Participation

- 2.1 **Participation Procedure for the HCSP.** The Participating Employer, in the HCSP Participation Agreement, shall define which of its Employees shall be Eligibility Employees, and any other terms and conditions of eligibility, as MERS may require. The Program Administrator shall prescribe the Applicable Form for Eligible Employees and/or Eligible Former Employees to become Participants in the Program, and default election shall be required.
- 2.2 **Cessation of Participation in HCSP.** A Participant or a Dependent shall cease to be a Participant in the HCSP on the distribution and/or forfeiture of the Participant's entire interest in the Program.

Section 3. HCSP Contributions

3.1 HCSP Contributions

Employer Contributions shall and Employee Contributions may be made to the Program in accordance with this Article and the HCSP Participation Agreement. Contributions shall be made in accordance with the formula and method specified by the Participating Employer in the Participation Agreement, subject to MERS' approval. It is the Participating Employer's responsibility to correctly calculate and remit the appropriate Employer and Employee Contributions.

The Participation Agreement establishing the amount and method of calculating Contributions continues in effect from Plan Year to Plan Year until amended or repealed by the Governing Body or until the Participating Employer's participation in the Program is terminated.

3.2 Types of HCSP Contributions

Contributions may be derived from one or more of the following sources, as determined by the Participation Agreement.

- (a) **Basic Employer Contributions:** Contributions may be made to the HCSP Accounts in addition to the salary and other benefits provided to Eligible Employees. The Participating Employer shall elect on the HCSP Participation Agreement whether Basic Employer Contributions made on behalf of Eligible Employees shall be HCSP Assets Subject to Vesting or shall be HCSP Non-Forfeitable Assets. Basic Employer Contributions may be made to the HCSP Accounts of Eligible Former Employees and/or on behalf of their surviving spouses, and shall be HCSP Non-Forfeitable Assets.
- (b) **Mandatory Salary Reduction Contributions:** The Participating Employer may mandate that Eligible Employees' salaries be reduced to offset the contributions. These contributions be HCSP Non-Forfeitable Assets.

- (c) Leave Conversion Contributions: The Participating Employer may mandate that all or a portion of unused leave (including, but not limited to, annual leave, personal time, sick leave) and severance pay shall be paid to the Trust Fund and that pre-retirement leave balances shall be converted to a cash contribution on an annual basis or upon end of service for Eligible Employees. Leave Conversion Contributions shall be HCSP Non-Forfeitable Assets. Leave Conversion Contributions may only be made in the form approved by the Board, unless the Employer secures a favorable letter ruling from the Internal Revenue Service.
- (d) Voluntary Employee Contributions. Post-tax Voluntary Employee Contributions may be made to the HCSP Accounts by Eligible Employees if permitted by the Participation Agreement. Post-tax Employee Contributions shall be HCSP Non-Forfeitable Assets. Voluntary Employee Contributions are not permitted by Eligible Former Employees.

3.3 Changes in Contributions for the HCSP

A Participating Employer may adjust the amount or method of Contributions throughout the Plan Year by adopting a resolution to amend its Participation Agreement. The resolution must be sent to the Program Administrator. MERS must approve or disapprove the amendment and, if approved, establish the effective date of any change to the Contributions.

3.4 Delinquent Contributions

It is the Participating Employer's responsibility to correctly calculate and remit the appropriate Contributions. The Program Administrator reserves the right to give notice to the highest elected official, the designated representative of the Eligible Employer and/or the Eligible Employees and Eligible Former Employees of any delinquency in the event it comes to the Program Administrator's attention that Contributions are not being remitted in a timely manner. The Program Administrator may, with the approval of the Board, establish enforcement procedures for prompt reporting and payment.

Neither MERS nor the Board has any liability for the delinquency of a Participating Employer. MERS liability is limited to the contributions made to the Trust. MERS does not have any additional liability with respect to any obligation to fund the Trust to any Eligible Employee, Eligible Former Employee, Participant, former Participant, Dependent, or any of their respective heirs, assigns or other representatives.

Section 4. HCSP Accounts

- 4.1 **Assets in Accounts.** The Program Administrator shall track the following as a bookkeeping entry with respect to each Participant, as applicable to each Participating Employer:
 - (a) HCSP Assets Subject to Vesting – Basic Employer Contributions for Eligible Employees only, if so provided by the HCSP Participation Agreement;
 - (b) HCSP Non-Forfeitable Assets – Basic Employer Contributions for Eligible Employees (if so provided by the HCSP Participation Agreement) and Eligible Former Employees;
 - (c) HCSP Non-Forfeitable Assets – Mandatory Salary Reduction Contributions, Leave Conversion Contributions and Voluntary Employee Contributions.

The balance of each Participant's HCSP Account shall be adjusted periodically to reflect any distributions and all interest, dividends, account charges and changes of market value, positive or negative, resulting from the investment of each Participant's HCSP Account.

4.2 Valuation

The Program Administrator shall mark to market the investments in the Programs at least quarterly.

4.3 Deposits

In all cases, deposits of contributions shall be treated as actually made only as of the date the funds are accepted as in good order by the Program Administrator.

The Program Administrator may prescribe such minimum deposits to Participant's HCSP Program Accounts.

Section 5. HCSP Reports

5.1 HCSP Participant Account Statements

A written report of the status of each Participant's HCSP Account shall be furnished to the Participant by the Program Administrator within a reasonable time after the quarter ends, in accordance with standard industry practices. All reports to Participants shall be based on the fair market value of investments credited to their HCSP Accounts as of the quarter-end. Participant reports shall be deemed to have been accepted by the Participant as correct unless written notice to the contrary is received by the Program Administrator within ninety (90) days after the mailing or distribution of a report to the Participant.

5.2 Employer HCSP Contributions Report

The Program Administrator shall provide a report for each Participating Employer of the aggregate Employer Contributions and any Employee Contributions made by the Participating Employer semi-annually.

5.3 Report from Program Administrator to Board

The Program Administrator shall provide a report to the Board concerning the valuation of HCSP Accounts within the period established by agreement.

5.4 Year-End Reports

Within one-hundred eighty days (180) days after the end of each Plan Year, a written report shall be prepared and maintained on file by the Program Administrator showing the assets held under the Programs, a schedule of all receipts and disbursements, and all material transactions of the Programs during the preceding year. This report shall be in a format determined by the Program and shall contain other information as the Program Administrator requires. The report shall also contain such information as is necessary to enable the Board to prepare its accounting due under the Trust. This report may be included as part of the MERS Annual Comprehensive Financial Report.

Section 6. Investment of HCSP Accounts

6.1 Investment

The investment of HCSP Accounts is governed by the Trust Agreement creating the Trust. See Trust Agreement, Section 2.3.

Section 7. Medical Expenses

7.1 Medical Expense Payments

Medical Expense Payments under the HCSP shall be paid from the Trust Fund in accordance with this Section. A Participant's HCSP Account, to the extent vested, may be used for the purpose of reimbursing post-employment Medical Expenses for a Participant or the Participant's Dependents.

7.2 Source of Medical Benefits

The liability of the Program, Participating Employers, Program Administrator, Board, and the

Trust to any Participant or Dependent for Medical Expenses under the Program shall be limited to the balance in such Participant's Accounts. The State of Michigan, its agencies, MERS and the Board, and their officers, employees, and contractors shall not be responsible for any Medical Expenses and their funding under the Program in any respect.

7.3 Termination of Public Service

Participants are eligible to seek reimbursement from their Accounts, to the extent vested, for Medical Expenses under one or more of the following circumstances:

- (a) An Eligible Employee may seek reimbursement from the Eligible Employee's Account for Medical Expenses:
 - Upon Separation from Service;
 - Upon receipt of a duty or non-duty disability benefit from any public pension plan; or
 - Upon being on a medical leave for six months or longer.
- (b) An Eligible Former Employee may seek reimbursement from the Eligible Former Employee's HCSP Account (to the extent vested) after: (i) enrollment; and (ii) a Participating Employer has made a Basic Employer Contribution to the Eligible Former Employee's HCSP Account.

7.4 Payment of Expenses

Hardship withdrawals, advance reimbursements, or loans are not permitted under the HCSP. The Board by Rule may make the following determinations:

- (a) To pay Medical Expenses only on a reimbursement basis;
- (b) To pay Medical Expenses on both a reimbursement or a direct payment basis;
- (c) To limit the amount of Medical Expenses to the limits established by the Board; and
- (d) To allow the reimbursement and/or direct payment of Medical Expenses in excess of limits established by the Board and establish a maximum for these excess amounts.

7.5 Payouts—Proof of Expenses

In order to receive reimbursement for allowable expenses, a Participant must complete the Applicable Form. The Program Administrator shall establish any procedures necessary to process payments and transfer funds to Participants. Any claim that is denied can be appealed in accordance with the appeal process set forth in this HCSP and RHFV Plan Document.

Section 8. HCSP Termination

- 8.1 **Automatic Participant Account Termination.** Upon the death of a Participant, his/her Dependents, if any, shall be considered Participants and have the rights of Participants with respect to payment of Medical Expenses. If there is an account balance remaining after a Dependent would no longer meet the legal requirements to be a dependent, such former Dependent may continue to use the account balance remaining for reimbursement of Medical Expenses on a taxable basis.

A Participant may designate one or more individual(s) as primary beneficiary(ies) and one or more individual(s) as a contingent beneficiary(ies) in a format required by the Program, which must be submitted to the Program prior to the Participant's death. If there is an account balance remaining after there are no remaining Dependents or former Dependents (or if there are no Dependents at the time of the Participant's death), the primary beneficiary(ies) may use the account balance remaining for reimbursement of Medical Expenses on a taxable basis.

The account balance shall be divided among all surviving primary beneficiary(ies) in the manner designated by the Participant. Upon the death of any primary beneficiary, that primary beneficiary's account balance shall be allocated to the remaining primary beneficiary(ies) in equal shares as applicable.

If there is an account balance remaining after there are no longer Dependents, former Dependents or primary beneficiary(ies), the contingent beneficiary(ies) may use the account balance remaining for reimbursement of Medical Expenses on a taxable basis. The account balance shall be divided among all surviving contingent beneficiary(ies) in the manner designated by the Participant. Upon the death of any contingent beneficiary, that contingent beneficiary's account balance shall be allocated to the remaining contingent beneficiary(ies) in equal shares as applicable.

If there is an account balance remaining after there are no longer Dependents, former Dependents, primary or contingent beneficiary(ies), the remaining account balance shall revert to the Employer to the extent permitted by law.

If the Participant has no Dependents, primary or contingent beneficiary(ies) at the time of death, the personal representative of the Participant's estate may, within one year of the death of the Participant's death, provide MERS with such Participant's estate documents that designate one or more individuals who may use the account balance remaining for reimbursement of Medical Expenses on a taxable basis. The individual(s) so designated shall be designated as the owner(s) of the account (in equal shares in the case of more than one such individual). If a personal representative of the estate does not contact MERS within one year of the death of the Participant, the remaining account balance shall irrevocably revert to the Employer to the extent permitted by law.

8.2 **HCSP Termination and Plan Asset Transfers.** A Participating Employer may terminate its participation in the HCSP and transfer the assets of their Participants to a Successor Plan that is a trust, if it takes the following actions:

- (a) The Governing Body of the Participating Employer must adopt a resolution terminating its participation in the HCSP;
- (b) The resolution must specify when the HCSP will be closed to any additional contributions; and
- (c) The resolution must name the Successor Plan and identify the legal structure of the Successor Plan. The Program Administrator will identify if the Successor Plan is eligible to accept a transfer of plan assets from the Trust funds.

The Plan Administrator shall determine whether the resolution complies with this section, and all applicable federal and state laws. After such determination, the Program Administrator will supply the Employer with the Applicable Form for termination. The Program Administrator will transfer the Plan assets on a mutually agreed upon date, and by a direct trustee-to-trustee basis only. Such plan-to-plan transfers are NOT, and shall not be construed as, a distribution to individual participants resulting in issuance of a 1099-R by MERS as the transferring plan.

Section 9. Claims and Appeals Procedure; Declaratory Rulings

9.1 Appeals Regarding Benefit Claims

- (a) Where a claim for, concerning, or in any way affecting benefits is denied by the Program Administrator, the claimant and the affected Participating Employer shall be notified in writing of the Program Administrator's decision.
- (b) Except as provided in Section 9.6, the claimant or the Participating Employer may appeal,

in writing, the Program Administrator's decision and request a hearing before the Retirement Board's administrative law judge, which appeal must be received by the Program Administrator no later than 60 days from the date of the Program Administrator's mailing of the Program Administrator's written decision.

- (c) A hearing shall be conducted as provided in subsection 9.3.

9.2 Correction of Records.

- (a) A request for correction of records may be initiated by a claimant (an interested Participant, Eligible Retiree, beneficiary or Participating Employer) by submitting a written request to the Program Administrator. The Program Administrator may initiate a hearing for correction of records by submitting written notification to the affected Participating Employer and Participant, Eligible Retiree, or beneficiary.
- (b) The request or notification shall state the following in detail:
 - (i) The record and the part of the record to be corrected.
 - (ii) The correction that should be made.
 - (iii) The facts and legal basis that could support a finding that the record should be corrected.
- (c) The Program Administrator shall respond to the written request in a reasonable time frame, setting forth in writing the decision to correct the record in whole or in part or to deny the request for correction in whole or in part, with the supporting reasons for said decision.
- (d) Within 60 days of the date of mailing of the Program Administrator's written decision with supporting reasons, the claimant may appeal the Program Administrator's decision, and request a hearing before the Retirement Board's administrative law judge as provided in subsection 9.3.

9.3 Hearings.

Hearings provided for in subsections 9.1 and 9.2 shall be conducted in accordance with the provisions of Chapter IV of the Administrative Procedures Act, MCL 24.271-24.287, and such guidelines, rules and procedures as may be adopted by the Program Administrator that are consistent with such Act.

- (a) At a hearing, the claimant, the Participating Employer, and the Program Administrator may appear in person, by authorized agent or through counsel.
- (b) Following issuance of a proposal for decision by the administrative law judge, and the opportunity to file exceptions and responses, the Retirement Board shall review the proposal for decision and issue a final agency decision.

9.4 Declaratory Rulings.

An interested Participant, Eligible Retiree, beneficiary, Participating Employer, the Program Administrator, or other person with a significant interest distinct from that of the general public may make a written request for a declaratory ruling from the Retirement Board as to the applicability of

a statute, constitutional provision, Plan Document provision, resolution, or order, issued or administered by the Retirement Board, to an actual state of facts. The request shall contain the relevant and material facts along with a reference to the statute, constitutional provision, Plan Document provision, resolution, or order, and a statement of a proposed application of same to the facts. The Retirement Board will decide whether to consider issuing a declaratory ruling by its next regularly scheduled meeting unless the request is filed less than 30 days before that meeting, in which case the Retirement Board will decide whether to consider the request no later than the next regularly scheduled meeting. If the Retirement Board decides to consider issuing a declaratory ruling it may take necessary action, including but not limited to the following:

- (a) Request more information from the petitioner;
- (b) Request information from other interested parties, Program Administrator staff, consultants, or other persons who may have relevant information or expertise;
- (c) Request oral or written arguments from interested parties and Program Administrator staff;
- (d) Hold a hearing upon notice to interested parties and Program Administrator staff, or refer the matter to the Retirement Board's administrative law judge for hearing and issuance of a proposed ruling as provided in subsection (3)(b);
- (e) Issue a declaratory ruling; or
- (f) Decline to issue a declaratory ruling;

9.5 **Promulgation of Policies and Procedures.**

The Program Administrator may develop policies and procedures to implement this section.

9.6 **Matters Not Subject to Appeal.**

Notwithstanding the foregoing, the Program's compliance with the requirements imposed by the Internal Revenue Code, regulations and guidance thereunder, including but not limited to, substantiation of claims, type and manner of contributions accepted, the limitations on benefits payable, taxation of distributions and limitations on beneficiaries, shall not be subject to this Section 9.

ARTICLE III - RETIREE HEALTH FUNDING VEHICLE ("RHFV")

Section 1. RHFV Participation by Eligible Employers

1.1 Adoption by Eligible Employer

Any Eligible Employer may adopt the RHFV if it takes the following actions:

- (a) The Governing Body of the Eligible Employer must approve the RHFV Uniform Resolution formally adopting the RHFV.
- (b) The resolution must be completed in its entirety, including the date of the adoption. The resolution must specify that the Eligible Employer shall abide by the terms of the Program and the Trust, including all investment, administrative, and service agreements of the Program, and all applicable provisions of the Code and other applicable law. MERS shall determine whether the resolution complies with this section.

- (c) However, the Board and MERS may request additional information it considers necessary or appropriate. If the Eligible Employer meets all conditions necessary or appropriate, and if all requirements of the Program and Trust are met, MERS shall execute the RHFV Uniform Resolution.

1.2 Cessation of Participation in RHFV

An Eligible Employer shall cease to be a Participant in the Program on the distribution of the Employer's entire interest in the Program.

Section 2. RHFV Contributions

2.1 RHFV Contributions

Employer Contributions may be made to the Program in accordance with this Article. No contribution method other than "pay as you go" cash funding shall be required or imposed on the Participating Employer.

2.2 Delinquent Contributions

Neither MERS nor the Board has any liability for the delinquency of a Participating Employer's contributions. MERS liability is limited to the contributions made to the Trust. MERS does not have any additional liability with respect to any obligation to fund the Trust.

Section 3. RHFV Accounts

3.1 RHFV Accounts

The Program Administrator shall maintain a separate RHFV Account for each Participating Employer. The balance of the Participating Employer's RHFV Account shall be adjusted periodically to reflect any distribution to the Employer and all interest, dividends, account charges, and changes of market value, positive or negative, resulting from the investment of the RHFV Account.

3.2 Valuation

The Program Administrator shall mark to market the investments in the RHFV at least quarterly.

3.3 Deposits

In all cases, deposits of contributions shall be treated as actually made only as of the date the funds are accepted as in good order by the Program Administrator.

Section 4. RHFV Reports

4.1 Statement of RHFV Program Accounts

A written report of the status of each Employer's RHFV Account shall be furnished to the Employer by the Program Administrator within a reasonable time after the quarter ends, in accordance with standard industry practices. All reports shall be based on the fair market value of investments credited to their RHFV Accounts as of the quarter-end. Reports shall be deemed to have been accepted by the Employer as correct unless written notice to the contrary is received by the Program Administrator within ninety (90) days after the mailing or distribution of a report to the Employer.

4.2 Report from Program Administrator to Board

The Program Administrator shall provide a report to the Board concerning the valuation of RHFV Accounts within the period established by agreement.

4.3 Year-End Reports

Within one-hundred eighty days (180) days after the end of each Plan Year, a written report

shall be prepared and maintained on file by the Program Administrator showing the assets held under the Programs, a schedule of all receipts and disbursements, and all material transactions of the Programs during the preceding year. This report shall be in a format determined by the Program Administrator and shall contain other information, as the Program Administrator requires. The report shall also contain such information as is necessary to enable the Board to prepare its accounting due under the Trust. This report may be included as part of the MERS Annual Comprehensive Financial Report.

Section 5. Investment of RHFV Accounts

5.1 Investment

The investment of RHFV Accounts is governed by the Trust Agreement creating the Trust. See Trust Agreement, Section 2.03.

Section 6. Retiree Health Care Expenses

6.1 Retiree Health Care Expense Payments

Retiree health care expenses under the RHFV shall be paid from the Trust Fund in accordance with this Article.

6.2 Health Insurance Payment or Subsidy

Amounts in a Participating Employer's RHFV account shall be used to provide or subsidize the provision of health insurance for Eligible Retirees to provide health benefits as defined by Code Section 213 and excludable from income under Code Sections 105 and 106 as may be amended from time to time. The liability for health benefits shall be determined under the terms of the Resolution.

6.3 Source of Retiree Health Care

The liability of the Program, Participating Employers, Program Administrator, Board and the Trust to any Participant or Dependent for retiree health care expenses under the Program shall be limited to the balance in such Participating Employer's Accounts. The State of Michigan, its agencies, MERS and the Board, and their officers, employees, and contractors shall not be responsible for any retiree health care expenses and their funding under the Program in any respect.

6.4 Payouts-Proof of Expenses

In order to receive distribution for allowable expenses, an Employer must complete the Applicable Form. The Program Administrator shall establish any procedures necessary to process payments and transfer funds to Participants.

Section 7. RHFV Termination

7.1 Automatic RHFV Termination

All payments for retiree health care expenses shall be terminated by the Program Administrator when the Participating Employer's Account has no funds remaining. The Participating Employer's participation in the RHFV shall be deemed terminated if the account balance remains zero for a consecutive period of 5 years, or as amended by Rule.

7.2 Termination—Plan Asset Transfers

A Participating Employer may initiate the termination of its participation in the RHFV and the transfer of available RHFV assets to a Successor Plan that is a trust, if it takes the following actions:

- (a) The Governing Body of the Participating Employer must adopt a resolution terminating

- its participation in the RHFV, subject to the terms and conditions of this section;
- (b) The resolution must specify when the RHFV will be closed to any additional contributions; and
 - (c) The resolution must name the Successor Plan and identify the legal structure of the Successor Plan. The Program Administrator will identify whether [if] the Successor Plan is eligible to accept a transfer of plan assets from the Trust funds.

The Program Administrator shall determine whether the resolution complies with this section, this HCSP and RHFV Plan Document, and the Trust Agreement, and all applicable federal and state laws. After such determination, the Program Administrator will supply the Employer with the appropriate form for termination. The Program Administrator will transfer the Plan assets on a mutually agreed upon date, and by a direct trustee-to-trustee basis only.

7.3 Termination—Satisfaction of RHFV Liabilities

A Participating Employer may initiate termination of its participation in the RHFV upon demonstrating to the Program Administrator that it has clearly satisfied all of its liabilities for providing medical benefits for Eligible Retirees, if it takes all the following actions:

- (a) The Governing Body of the Participating Employer must adopt a resolution terminating its participation in the RHFV subject to the terms and conditions of this section;
- (b) The resolution must specify the full extent of the Participating Employer's liabilities for providing medical benefits for Eligible Retirees, and the manner in which they have been satisfied; and
- (c) The Participating Employer must submit full supporting documentation of the satisfaction of all liabilities for providing medical benefits for Eligible Retirees and any additional relevant documentation that may be requested or required by the Board or the Plan Administrator.

The Program Administrator shall determine whether the Participating Employer's resolution and documentation clearly demonstrate the satisfaction of all of the Participating Employer's liabilities for medical benefits for Eligible Retirees, and whether they comply with this section, this HCSP and RHFV Plan Document, the Trust Agreement, and all applicable federal and state laws. After such determination, the Program Administrator will supply the Participating Employer with the appropriate form for termination. The Program Administrator will return the assets remaining in the RHFV to the Participating Employer only (or Transfer the same as provided under Section 7.2) after the satisfaction of all liabilities for medical benefits for Eligible Retirees.

ARTICLE IV - MISCELLANEOUS

1.1 Federal Taxes

The Board, the Eligible Employers, and the Program Administrator do not guarantee that any particular Federal or State income, payroll or other tax consequence will occur because of participation in the Programs.

1.2 Entire Agreement

The HCSP and RHFV Plan Document, the Trust Agreement, and the Program Resolution and Agreements, including any properly adopted or executed amendments thereof, shall constitute the total agreement between the Participating Employer and any Participant regarding the Programs. No oral statement regarding the Programs may be relied upon by any Participant or other person.

1.3 Conflicts

In resolving any conflict between provisions of the Program and in resolving any other uncertainty as to the meaning or intention of any provision of the Program, the interpretation that (i) causes the Program to constitute a medical benefits program under the provisions of Code and the Trust to be exempt from tax under the Code, (ii) causes the Program to comply with all applicable requirements of the Code, and (iii) causes the Program to comply with all applicable statutes and rules, shall prevail over any different interpretation.

1.4 **Limitation on Rights**

Neither the establishment nor maintenance of a Program (including the Program Resolution and Agreements), nor any amendment thereof nor any act or omission under a Program (or resulting from the operation of a Program) shall be construed:

- (a) as conferring upon any Participant, Dependent, or any other person a right or claim against the Trust, Board, Participating Employers or Program Administrator, except to the extent that such right or claim shall be specifically expressed and provided in the Program;
- (b) as creating any responsibility or liability of the Participating Employers for the validity or effect of the Program;
- (c) as a contract between the Participating Employers and any Participant or other person;
- (d) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Participating Employers or any Participant or other person to continue or terminate the employment relationship at any time; or
- (e) as giving any Participant the right to be retained in the service of the Participating Employers or to interfere with the right of the Participating Employers to discharge any Participant or other person at any time.

1.5 **USERRA Compliance**

Notwithstanding any provision of this HCSP and RHFV Plan Document that may be to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided as required by the Uniformed Services Employment and Reemployment Rights Act ("USERRA").

1.6 **Erroneous Payments**

If the Board or Program Administrator makes any payment that according to the terms of a Program and the benefits provided hereunder should not have been made, the Board or Program Administrator may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Board or Program Administrator, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Board or Program Administrator may deduct it when making any future payments directly to that Participant.

1.7 **Release**

Any payment to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Board or Program Administrator may condition payment thereof on the delivery by the Participant of the duly executed receipt and release in such form as may be determined by the Board or Program Administrator.

1.8 **Liability**

The Program Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram or other paper or document or electronic transmission believed by the

Program Administrator to be genuine or to be executed or sent by an authorized person.

1.9 **Governing Laws**

Except to the extent pre-empted by federal law, the laws of the State of Michigan shall apply in determining the construction and validity of a Program.

1.10 **Necessary Parties to Disputes**

Necessary parties to any accounting, litigation or other proceedings relating to the Program shall include only the Board and the Program Administrator. The settlement or judgment in any such case in which the Board is duly served shall be binding upon all affected Participating Employers, Participants and their Dependents, and upon all persons claiming by, through, or under them.

1.11 **Rules of Construction**

Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

1.12 **Severability**

If any provision of a Program shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Program shall continue to be fully effective.

1.13 **Supersession**

The terms of the HCSP and RHFV Plan Document shall supersede any previous Agreement between the parties pertaining to a Program.

1.14 **Counterparts**

This HCSP and RHFV Plan Document may be executed in one (1) or more counterparts, each of which shall constitute an original.

1.15 **Health Privacy**

The HCSP (directly and through its third-party administrator) and the System use and disclose health information that is protected by the regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), for purposes of the operation of the HCSP as permitted by the Standards for Privacy of Individually Identifiable Health Information promulgated by the United States Department of Health and Human Services and codified at 45 C.F.R. Section 160 and Section 164 ("Standards").

The HCSP's third-party administrator may disclose protected health information ("PHI") to the System, who may disclose that PHI and PHI that it receives from any other source to any person, including the HCSP's service providers or prospective service providers, only to the extent necessary for the System to perform administrative functions including, but not limited to, business management and general administrative activities of the HCSP, including customer service and resolution of internal grievances and providing information to Participants and other covered persons on benefits and services, and reviewing appeals.

The Board and the System may have access to summary health information (de-identified and statistical) for considering amendment or termination of the HCSP. The System may also have access to PHI on whether a person is eligible for benefits under the terms of this HCSP. The Board may have access only to such PHI as is necessary in the appeals process.

The HCSP will disclose PHI to the Board and the System only upon receipt of a certificate, in accordance with 45 C.F.R. Section 164.504(f)(2)(ii), that this provision regarding Health Privacy has been adopted and that the Board agree to abide by its terms. The Board and the System are

subject to the following:

- (a) Neither the System nor the Board will use or further disclose PHI other than as permitted or required by this HCSP document or as required by law.
- (b) The Board will require that each of its agents, including subcontractors, to whom it or the System provides PHI agree to written contractual provisions that impose the same restrictions and conditions that apply to the Board and the System with respect to such information.
- (c) The Board or the System will report to the HCSP any security incident or use or disclosure of the PHI that is inconsistent with the uses or disclosures provided for of which it becomes aware.
- (d) The System will provide Participants and other covered persons with PHI in accordance with the rights accorded to them under Standards, including the right to access to PHI, the right to an opportunity to amend PHI and the right to an accounting of disclosures of PHI.
- (e) The Board and/or the System will make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services for purposes of determining compliance by the HCSP with the Standards.
- (f) The Board and the System will, as is administratively feasible, return or destroy all PHI it receives from the HCSP that the Board or the System maintain in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- (g) The Board and the System will use its best efforts to request only the minimum necessary type and amount of PHI to carry out the functions for which information is requested.
- (h) The Board and the System will ensure that adequate separation occurs between the Board and the HCSP by identifying the System employees who may have access to PHI for HCSP administration purposes, restricting access to PHI and such persons for HCSP administration purposes, and providing for an effective mechanism for noncompliance.

Anyone who suspects an improper use or disclosure of PHI may report the occurrence to the HCSP's Privacy Officer, as designated by the HCSP's Privacy Policy.

1.16 Health Information Security

The HCSP (through its third-party administrator) and the Board (through the System) will comply with the security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, codified at 45 C.F.R. §§ 160, 162 and 164 ("Security Rule"), with regard to Electronic PHI ("ePHI") that is created, received, maintained or transmitted by the System on behalf of the HCSP, except for the following types of ePHI:

- (a) ePHI received pursuant to an appropriate authorization (as described in 45 C.F.R. §164.508),
- (b) ePHI that qualifies as Summary Health Information that it receives for the purpose of modifying, amending or terminating the HCSP (as set forth in 45 C.F.R. §164.504(f)(1)(ii)(B)), and
- (c) ePHI that is information on whether an individual is participating in the HCSP, or is enrolled or has disenrolled from the HCSP.

The Board, through the System, shall, in accordance with the Security Rule:

- (a) Reasonably and appropriately safeguard ePHI created, received, maintained, or transmitted to or by the Board or the System on behalf of the HCSP,
- (b) Implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI they create, receive, maintain or transmit on behalf of the HCSP,
- (c) Ensure that “adequate separation” is supported by reasonable and appropriate security measures. “Adequate separation” means the Board and the System will use ePHI only for HCSP administration activities and not for employment-related actions or for any purpose unrelated to HCSP administration,
- (d) Ensure that any agent, including a subcontractor, to whom the Board or the System provide such information agrees to implement reasonable and appropriate security measures to protect the information, and
- (e) Report to the HCSP any Security Incident of which the Board or the System become(s) aware.

If other terms of the HCSP conflict with the provisions of this Section, this Section shall control. The Security Rule is incorporated herein by reference. Unless defined in the HCSP, all capitalized terms herein have the definition given to them by the Security Rule.

1.17 Adequate Separation Between the Plan and Plan Sponsor

In accordance with the Privacy Regulations, only the following employees or classes of System employees may be given access to Protected Health Information:

- (a) **Privacy Officer:** Any Protected Health Information necessary to enforce HCSP’s privacy policies and procedures or as necessary to perform any plan administrative functions, including, but not limited to, adjudicating appeals for claims denials and addressing claims questions.
- (b) **Employees Responsible for Plan Administrative Functions:** Any PHI necessary to perform any plan administrative functions.
- (c) **Accounting:** Only the minimum necessary amount of PHI necessary to ensure that funds are available to pay for claims made under HCSP. In most circumstances, unless otherwise approved by the Privacy Officer, information provided will include only information that does not identify the identity of an individual or an individual’s medical condition or treatment.
- (d) **Senior Management:** Only aggregated non-identifiable information, unless minimally necessary to perform an HCSP administrative function such as determining final appeals of claims.
- (e) **Others:** In his or her discretion, the Privacy Officer may, from time to time, designate other individuals or classes of individuals to use PHI. The Privacy Officer will identify such individuals and define the PHI they may use. Individuals performing services on behalf of HCSP will not access the PHI of any participant or dependent that is not relevant to the particular job they are performing for HCSP. All such individuals will be trained in the use and disclosure of PHI consistent with HCSP’s policies and procedures for employee education and discipline.

1.18 Limitations on Access and Disclosure

The persons described in Section 1.17 of this Article IV may only have access to and use and disclose PHI for Plan administration functions that the Board performs for HCSP.

1.19 Noncompliance

If the persons or classes of persons described in Section 1.17 of this Article IV do not comply with this plan document, HCSP and the Board or the System will provide a mechanism for resolving issues of noncompliance, including disciplinary sanctions.