



Greater Tompkins County Municipal Health Insurance Consortium

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"Individually and collectively we invest in realizing high quality, affordable, dependable health insurance."

AGENDA Operations Committee November 25, 2019 – 1:00 P.M. Town of Ithaca

1. Call to Order and Introductions Holmes

2. Changes to the Agenda Holmes

3. Approval of October 7, 2019 Minutes Holmes

4. Cyber Security Audit (1:05) Potter

5. MCA Review (1:25) Dowd/Drake

6. Review Drafts of Operational Practices (1:40) Dowd
 - Resolution/Item Grid
 - Committee Responsibilities
 - Invoice Payment Procedure

7. Open Meetings Law Compliance (2:00) Dowd
 - Attendance at Meetings

All meetings of the Consortium are open to the public. Members of Committees and the Board of Directors shall be provided with an option to call in to meetings when attendance in person is not possible; however, a member may not vote or be counted for purposes of quorum where participation is by phone. New York State Open Meetings Law permits attendance and participation by videoconferencing.

 - Code of Ethics and Conflict of Interest Policy

8. Set Next meeting date (currently 12/23) (2:20)

9. Future Discussion Topics: (2:25)

10. Adjournment (2:30)

Next Meeting: _____

**Operations Committee
Minutes – Draft
September 4, 2019 – 1:00 p.m.
Town of Ithaca**

Present: Lisa Holmes, Gary Mutchler, Judy Drake, Greg Pellicano, Doug Perine, Greg Pellicano, Mark Emerson, Schelley Michell-Nunn (arrived at 1:04 p.m.); Mike Catalano (arrived at 1:06 p.m.); Ed Fairbrother (arrived at 1:08 p.m.)

Excused: Luann King

Absent: Sundae Earle

Staff: Elin Dowd, Executive Director; Brittnei Griep, Administrative Assistant; Michelle Cocco, Clerk of the Board

Call to Order

Ms. Drake, Chair of the Board, called the meeting to order at 1:01 p.m.

Changes to the Agenda

There were no changes to the agenda.

Establishment of Committee Structure

Election of Chair and Vice Chair

Upon recommendation of Ms. Drake, it was MOVED BY Ms. Drake, seconded by Mr. Mutchler, and unanimously adopted by voice vote by members present, Ms. Holmes was elected as Committee Chair and Mr. Perine as Vice Chair. MOTION CARRIED.

Ms. Michell-Nunn arrived at this time.

Introductions took place at this time.

Mr. Catalano arrived at this time.

Membership Appointed by the Board

Ms. Dowd reviewed the Committee membership, stating members have been appointed by the Board of Directors and have staggered terms for the purpose of allowing the Committee to continue functioning when a group of terms expire at year-end. There are no term limits; therefore, members are eligible for reappointment.

Meeting Schedule

The Committee established its meeting schedule to be the 4th Monday of each month at 1 p.m. at the Town of Ithaca; the next meeting will be November 25th. She said if members cannot attend in person in the future they will have the option to call-in or attend via teleconference.

Discussion of Committee Purpose

Ms. Dowd said the Audit and Finance Committee was created to basically review the fiscal responsibilities of the organization and the appropriate audits to ensure the Consortium and its vendors are operating appropriately. The volume of topics the Committee has been taking up has continued to rapidly grow and after discussion the Executive Committee felt that a lot of the issues being reviewed were operational-related and not finance decisions. She provided

examples such as creating personnel related policies, establishing salaries, and Cyber Security policy and audits. She said as the creation of this Committee will help things move along at a faster pace and so that there can be a focus on the operations of the organization. It is also the hope that by creating a committee with more seats there will be an opportunity for increased involvement by more members to get involved.

Sample Routing Grid

Ms. Dowd said one suggestion of a work item for the Committee to consider is the routing process for topics and resolutions that go through the various committees. Ms. Cocco produced an outline of a sample grid that could be used to begin discussion of how to streamline the approval process and routing of items through the Consortium's committees.

There was consensus by the Committee for staff to populate the grid and to bring it back to the next meeting for discussion. Members were asked to submit any suggestions of additional areas to add.

Review of Consortium Policies

Ms. Dowd reviewed a list of current Consortium policies. She referenced the policy for applying for membership in the Consortium and how growth has driven the need to have a more structured and efficient process in place to manage the documentation associated with that process. Work is underway to develop an online portal for prospective participants to connect with the Consortium that would also retain all of the entity's data that would be accessible by all involved parties. She said Don Barber is still very much involved in the marketing aspect but this application portal is intended to ease the application process while also better-managing the documentation.

Conflict of Interest Acknowledgement

A question was raised as to whether Committee members are required to sign the form. This will be looked into and reported back at the next meeting.

Ms. Dowd said at some point she thinks there should be discussion of how the Consortium will continue to operate now that it is staffing positions. At some point the question of whether it should become its own entity and its own organization should be considered.

Investment Management Policy

This is a new Audit and Finance Policy; however, this Committee may want to look at how the investment policy statement is going and whether any recommendations should be made.

Policy for Private Advertising on Consortium Materials

Ms. Drake explained when the Consortium first contracted with ProAct, identification cards at the Kinney Drug logo on the card and this created labor issues.

Cyber Security Policy

This is a relatively new policy that is a requirement under Article 47. The Consortium has secured the services of the Tompkins County ITS Department but has not yet done a risk assessment.

Policy for Determining a Departing Member's Pro Rata Share of Assets

Ms. Dowd said this policy was developed at a time when no one was planning to leave. Although the Audit and Finance Committee has approved this policy she said there are many steps that will need to be looked at and reviewed by this Committee.

Mr. Fairbrother asked if there has been thought given to consolidation of villages into towns as he believes that will happen. He said he does not agree that an entity that decides to leave the Consortium should be entitled to any asset. Ms. Drake said the current Municipal Cooperative Agreement contains language and this was why the Audit and Finance Committee initially took up the issue. The point raised about municipal consolidation is something that hasn't been thought of but should be discussed.

Policy Regarding Compliance with Section A3 of the Municipal Cooperative Agreement

Ms. Dowd said there was a lot of discussion on this topic by the Audit and Finance and other Consortium committees. The policy basically says collective bargaining agreements are recognized but that all active and retiree members of a Participant need to be on the Plan within a period of three years. This policy was written to bring everyone into compliance although there are a couple of groups that are offering retiree benefits that the Consortium cannot offer. There are other groups that have members who have teamsters or other union benefits and cannot join immediately; this is understood and included in the resolution of adoption. She explained there is a waiver that can be applied for but there is no process in place to review that waiver. This is a process for this Committee to review.

Ms. Holmes asked what the Committee can do to help move some of these things forward and what would be the priorities for the next meeting. Ms. Dowd said the Executive Committee has not specifically been asked for input on priorities and thinks it would be good for them to provide direction on what they feel would be the top priorities in 2020 as well as what other ideas they have for additional policy needs.

List of Resolutions

The list of resolutions adopted in 2019 were provided for review and to inform future discussions that need to take place in areas such as personnel, outsourcing operations, information and review.

MCA Amendment Process

Ms. Dowd said this process has begun; if operational issues are identified they be brought before this Committee.

Ms. Dowd said the addition of the Lansing Community Library changes the make-up of the Consortium as the Library is not a municipality. The number of requests from unique groups is growing and as the Consortium looks at new types of members those decisions will be coming more frequently to the Consortium. There will need to be discussion and input from the Consortium's legal counsel and research on Article 47 on these groups and how to treat them going forward.

Ms. Dowd said the Governance/MCA Committee was formed and tasked with the five-year review as required under Article 47. There are a few things already being proposed of which some have come from the Department of Financial Services and the Consortium. It is a big process and there will be some significant changes in how the Consortium is governed going forward. Currently, a proposal is being developed that would have an Executive Committee operate throughout the year and the Board of Directors would meet once per year to approve the budget, plan design, and elect officers. If the Consortium moves to an annual meeting there needs to be discussion of what the organization would look like and how that reaction to meeting only once a year. The Executive Committee would also be given more responsibilities that are outlined in a proposed set of bylaws that are being drafted.

Operations Committee Minutes
October 7, 2019

Another issue that has come through committees relates to the involvement of labor and the level of labor per membership. At the present time labor membership is set at 15% but it is very hard to get labor to attend meetings. A cap has been recommended and will be part of the MCA review.

The last issue Ms. Dowd raised was if the Consortium were to grow outside of the six-county region, how would it like to look at that growth?

There were no questions on future discussion topics present: Invoice Payment Procedure, CyberSecurity Review, MCA Review and updates from Governance Structure Committee.

Adjournment

The meeting adjourned at 2:01 p.m.

Risk Assessment for Greater Tompkins County Municipal Health Insurance Consortium - August 9, 2019

Identification of Information Systems used by Consortium

1. Office 365 – Email, group data exchange, file repository
2. Connected file storage – F and G drives (Filer system with backups)
3. Active Directory – Access control, Identity management, role-based rights
4. Laserfiche – Form creation, processing, and storage
5. Webpages – Discovery.Gov vendor
6. Hardware inventory –

Risks

1. Physical
 - a. Access to physical data
 - i. Locked doors
 - ii. Locked file cabinets
 - iii. All physical data secured before leaving premises
 - b. Access to Hardware
 - i. Login required
 - ii. Portable devices encrypted
 - iii. Portable media locked and/or encrypted
2. Data
 - a. Active Directory rights delineate access to centralized data storage
 - b. Multi-factor authentication required for Office 365 data
 - c. Financial software requires access to network as well as login to the software
 - d. Access to Excellus requires encrypted web connection as well as authentication
 - e. If work takes place outside physical network a VPN connection is required with authentication
 - f. Network is firewalled from external network (Internet) and local traffic monitored for non-approved behavior
 - g. Staff are trained against outside attacks against data systems (phishing, vishing, etc.)
 - h. Centralized data audited as to activity and is backed up in case of hardware failure or user error
3. 3rd party Penetration testing and vulnerability assessment – as part of the consortium’s contract with Tompkins County, it maintains effective continuing monitoring, with systems to detect on an ongoing basis changes that may create or indicate vulnerabilities.

System Controls

1. Office 365 Security Center
 - a. allows for auditing PII/HIPAA data in e-mail
 - b. recognizes non-normal logins
 - c. allows for data auditing and discovery/recovery tools
 - d. encryption for email and data traffic
 - e. data encrypted on servers with company key

2. Varonis
 - a. allows for data classification
 - b. auditing of centralized data sources (ownership, changes, access)
 - c. auditing of Active Directory changes
3. Sophos Cloud-based management system
 - a. Antivirus
 - b. Web Protection
 - c. scanning desktops for malware
4. Internal Intrusion Detection System (IDS)
 - a. Analyzes internal network traffic for malicious or abnormal transactions
 - b. Monitored 24x7 by IDS vendor with alerts to local staff as appropriate
 - c. Collects data by incident for analysis.

Access Control

1. Multifactor access to Office 365
2. VPN encryption required for all outside connections to internal network
3. Folders on filer allow for access by company, role, identity through Active Directory

Reporting and Accountability

1. Contracts (with BAA agreements and appropriate security responsibilities documented) in place with external vendors
 - a. Excellus
 - b. Tompkins County
 - c. Discovery.Gov
2. Breach Response Reporting in place to initiate investigation, incident Response, and appropriate reporting to outside entities

**2020 AMENDMENT
TO THE**

**MUNICIPAL
COOPERATION
AGREEMENT**

(dated 11/15/2019)

THIS AGREEMENT (the "Agreement") made effective as of 1st day of October 2010 (the "Effective Date"), and as amended herein, by and among each of the signatory municipal corporations hereto (collectively, the "Participants").

W H E R E A S:

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

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

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

4. Section 4702(f) of the Insurance Law defines the term "municipal corporation" to include a county, city, town, village, school district, board of cooperative educational services, public library (as defined in Section 253 of the New York State Education Law) and district (as defined in Section 119-n of the General Municipal Law); and

5. The Participants have determined to their individual satisfaction that furnishing the health benefits (including, but not limited to, medical, surgical, hospital, prescription drug, dental, and/or vision) for their eligible officers, eligible employees (as defined by the Internal Revenue Code of 1986, as amended, and the Internal Revenue Service rules and regulations), eligible retirees, and the eligible dependents of eligible officers, employees and retirees (collectively, the "Enrollees") (such definition does not include independent contractors and/or consultants) through a municipal cooperative is in their best interests as it is more cost-effective and efficient. Eligibility requirements shall be determined by each Participant's collective bargaining agreements and/or their personnel policies and procedures.

NOW, THEREFORE, the parties agree as follows:

A. PARTICIPANTS.

1. The Participants hereby designate themselves under this Agreement as the Greater Tompkins County Municipal Health Insurance Consortium (the "Consortium") for the purpose of providing health benefits (medical, surgical, hospital, prescription drug, dental, and/or vision) to those Enrollees that each Participant individually elects to include in the Greater Tompkins County Municipal Health Insurance Consortium Medical Plan(s) (the "Plan(s)").

2. The following Participants shall comprise the current membership of the Consortium:

Municipality Name	Effective Date
City of Ithaca	1/1/2011
County of Tompkins	1/1/2011
Town of Caroline	1/1/2011
Town of Danby	1/1/2011
Town of Dryden	1/1/2011
Town of Enfield	1/1/2011
Town of Groton	1/1/2011
Town of Ithaca	1/1/2011
Town of Ulysses	1/1/2011
Village of Cayuga Heights	1/1/2011
Village of Dryden	1/1/2011
Village of Groton	1/1/2011
Village of Trumansburg	1/1/2011
City of Cortland	1/1/2013
Town of Lansing	1/1/2013
Town of Willet	1/1/2015
Village of Homer	1/1/2015
Town of Marathon	1/1/2016
Town of Truxton	1/1/2016
Town of Virgil	1/1/2016

Municipality Name	Effective Date
Town of Aurelius	1/1/2017
Town of Cincinnatus	1/1/2017
Town of Montezuma	1/1/2017
Town of Moravia	1/1/2017
Town of Preble	1/1/2017
Town of Scipio	1/1/2017
Town of Springport	1/1/2017
Village of Union Springs	1/1/2017
Town of Homer	1/1/2018
Town of Newfield	1/1/2018
Town of Owasco	1/1/2018
County of Seneca	1/1/2019
Town of Big Flats	1/1/2019
Town of Mentz	1/1/2019
Town of Niles	1/1/2019
Town of Sennett	1/1/2019
Village of Freeville	1/1/2019
Village of Horseheads	1/1/2019
Village of Lansing	1/1/2019
Town of Horseheads	1/1/2020
Town of Spencer	1/1/2020
Lansing Library	1/1/2020
Village of Watkins Glen	1/1/2020

3. Membership in the Consortium may be offered to any municipal corporation as defined in N.Y. Ins. Law §4702(f) within the geographical boundaries of the Counties of Tompkins, Cayuga, Chemung, Cortland, Tioga, Schuyler, and Seneca, provided however that, in the sole discretion of the Board (as defined below), the applicant provides satisfactory proof of its financial responsibility and is of the same type of municipal corporation as the initial Participants. Notwithstanding anything to contrary set forth in this Agreement, admission of new Participants shall not require amendment of this Section A(2). Membership shall be subject to the terms and conditions set forth in this Agreement, any amendments hereto and applicable law.

4. The Board, in its sole discretion, and by a two-thirds (2/3) vote of the entire Board, may elect to permit additional municipal corporations located within the geographical boundaries set forth in Paragraph A(3) to become Participants subject to satisfactory proof, as determined by the Board, of such municipal corporation's financial responsibility. Such municipal corporations must agree to continue as a Participant for a minimum of three (3) years upon entry.

5. The Board, in its sole discretion, and by a two-thirds (2/3) vote of the entire Board, may elect to permit a municipal corporation, who does not satisfy the membership definition set forth in Section A(3), to become a Participant upon consideration of such factors including but not limited to financial responsibility and the municipal corporation's similarity in terms of risk and demographic make-up to the current Participants of the Consortium. Such municipal corporations must agree to continue as a Participant for a minimum of three (3) years upon entry.

6. Participation in the Plan(s) by some, but not all, collective bargaining units or employee groups of a Participant is not encouraged and shall not be permitted absent prior Board approval. Further, after obtaining approval, any Participant which negotiates an alternative health insurance plan offering other than the plan offerings of the Consortium with a collective bargaining unit or employee group may be subject to a risk charge as determined by the Board.

Further any Participant with active employees not enrolled in Consortium benefit plan options, must, within 3 years of the date of enrolling in the Consortium fully enroll all of their active employees on Consortium plan options or otherwise seek further Board Approval for an additional waiver or they may be subject to termination of their further participation in the Consortium as defined in Section Q (3.)

7. Initial membership of additional participants shall become effective as soon as practical but preferably on the first day of the Plan Year following the adoption by the Board of the resolution to accept a municipal corporation as a Participant. Such municipal corporation must agree to continue as a Participant for a minimum of three (3) years upon entry.

8. A municipal corporation that was previously a Participant, but is no longer a Participant, and which is otherwise eligible for membership in the Consortium, may apply for re-entry after a minimum of three (3) years has passed since it was last a Participant. Such re-entry shall be subject to the approval of two-thirds (2/3) of the entire Board. This re-entry waiting period may be waived by the approval of two-thirds (2/3) of the entire Board. In order to re-enter the

Consortium, a municipal corporation employer must have satisfied in full all of its outstanding financial obligations to the Consortium. A municipal corporation must agree to continue as a Participant for a minimum of three (3) years upon re-entry.

B. PARTICIPANT LIABILITY.

1. The Participants shall share in the costs of, and assume the liabilities for benefits (including medical, surgical, and hospital) provided under the Plan(s) to covered officers, employees, retirees, and their dependents. Each Participant shall pay on demand such Participant's share of any assessment or additional contribution ordered by the governing Board of the municipal cooperative health benefit plan, as set forth in Section L(4) of this Agreement or as ordered by the Superintendent or under Article 74 (seventy four) of the New York State Insurance Law. The pro rata share shall be based on the Participant's relative "premium" contribution to the Plan(s) as a percentage of the aggregate "premium" contribution to the Plan(s), as is appropriate based on the nature of the assessment or contribution.

2. New Participants (each a "New Participant") who enter the Consortium may, at the discretion of the Board of Directors, be assessed a fee for additional financial costs above and beyond the premium contributions to the Plan(s). Any such additional financial obligations and any related terms and conditions associated with membership in the Consortium shall be determined by the Board, and shall be disclosed to the New Participant prior to its admission.

3. Each Participant shall be liable, on a pro rata basis, for any additional assessment required in the event the Consortium funding falls below those levels required by the Insurance law as follows:

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

b. Each Participant that participated in the Consortium at any time during the two (2) year period prior to the issuing of an Assessment Order by the Board shall, if notified of such Assessment Order, pay its pro rata share of such assessment within ninety (90) days after the issuance of such Assessment Order. This provision shall survive termination of the Agreement of withdrawal of a Participant.

c. For purposes of this Section B(3), a Participant's pro-rata share of any assessment shall be determined by applying the ratio of the total assessment to the total contributions or premium equivalents earned during the period covered by the assessment on all Participants subject to the assessment to the contribution or premium equivalent earned during such period attributable to such Participant.

C. BOARD OF DIRECTORS.

1. The governing board of the Consortium, responsible for management, control and administration of the Consortium and the Plan(s), shall be referred to as the "Board of Directors" (the "Board"). The voting members of the Board shall be composed of one representative of each Participant and representatives of the Joint Committee on Plan Structure and Design (as set forth in Section C(11)), who shall have the authority to vote on any official action taken by the Board (each a "Director"). Each Director, except the representatives of the Joint Committee on Plan Structure and Design, shall be designated in writing by the governing body of the Participant.

2. If a Director designated by a Participant cannot fulfill his/her obligations, for any reason, as set forth herein, and the Participant desires to designate a new Director, it must notify the Consortium's Chairperson in writing of its selection of a new designee to represent the Participant as a Director.

3. Directors shall receive no remuneration from the Consortium for their service and shall serve a term from January 1 through December 31 (the "Plan Year").

4. No Director may represent more than one Participant.

5. No Director, or any member of a Director's immediate family shall be an owner, officer, director, partner, or employee of any contractor or agency retained by the Consortium, including any third-party contract administrator.

6. Except as otherwise provided in Section D of the Agreement, each Director shall be entitled to one vote. A majority of the entire Board, not simply those present, is required for the Board to take any official action, unless otherwise specified in this Agreement. The "entire Board", as used herein and elsewhere in this Agreement, shall mean the total number of Directors when there are no vacancies.

While physical presence is strongly encouraged, Directors who cannot be physically present at any meeting may attend remotely utilizing **videoconferencing** that allows for real time audio and visual participation and voting in the meeting upon confirmation that communication is with all participants as it progresses.

7. Each Participant may designate in writing an alternate Director to attend the Board's meeting when its Director cannot attend. The alternate Director may participate in the discussions at the Board meeting and will, if so designated in writing by the Participant, be authorized to exercise the Participant's voting authority. Only alternate Directors with voting authority shall be counted toward a quorum. The Joint Committee on Plan Structure and Design may designate alternate Directors as set forth in Section C(11).

8. A majority of the Directors of the Board shall constitute a quorum. A quorum is a simple majority (more than half) of the entire Board. A quorum is required for the Board to conduct any business. This quorum requirement is independent of the voting requirements set forth in Section C(6). The Board shall meet on an **annual** basis, at a time and place within the State of New York determined by a vote of the Board. The Board shall hold an annual meeting (the "Annual Meeting") **in September** of each Plan Year.

9. Special meetings of the Board may be called at any time by the Chairperson or by any two (2) Directors. Whenever practicable, the person or persons calling such special meeting shall give at least three (3) day notice to all of the other Directors. Such notice shall set forth the time and place of the special meeting as well as a detailed agenda of the matters proposed to be acted upon. In the event three (3) day notice cannot be given, each Director shall be given such notice as is practicable under the circumstances.

10. In the event that a special meeting is impractical due to the nature and/or urgency of any action which, in the opinion of the Chairperson, is necessary or advisable to be taken on behalf of the Consortium, the Chairperson may send resolutions regarding said actions via electronic communication to each and all of the Directors. The Directors may then electronically communicate their approval or disapproval of said resolution via signed document to the Chairperson. In accordance with NY Business Corporation Law Section 708(b), unanimous consent is required for the Chairperson to act on behalf of the Board in reliance upon such approvals. Any actions taken by the Chairperson pursuant to this paragraph shall be ratified at the next scheduled meeting of the Board

11. The Chair of the Joint Committee on Plan Structure and Design and any At-Large Labor Representatives (as defined in Section K) (collectively the “Labor Representatives”) shall serve as Directors and shall have the same rights and obligations as all other Directors. The Joint Committee on Plan Structure and Design may designate in writing alternate Directors to attend the Board’s meetings when the Labor Representatives cannot attend. The alternate Director may, if designated in writing, be authorized to exercise the Labor Representatives’ voting authority.

D. WEIGHTED VOTING.

1. Except as otherwise provided in this Agreement, any two or more Directors, acting jointly, may require a weighted vote on any matter that may come before the Board. In such event, the voting procedure set forth in this Section D shall apply in lieu of any other voting procedures set forth in this Agreement. Such weighted voting procedures shall apply solely with respect to the matter then before the Board.

2. For purposes of this Section D, each Director shall receive votes as follows:

a. each Director representing a Participant with five hundred (500) or fewer Enrollees shall be entitled to one (1) vote.

b. each Director representing a Participant with more than five hundred (500) Enrollees shall be entitled to a number of votes equaling the total number of votes assigned under subsection 2(a) above minus the number of Labor Representative votes, divided evenly by the number of Participants eligible under this subsection 2(b) and rounded down to the nearest whole number.

c. the Labor Representatives shall be entitled to one (1) vote each.

3. Attached as Addendum “A” to this Agreement is an example of the application of the voting formula contained in subparagraph “2” of this Section.

4. Notwithstanding anything to the contrary contained in this Agreement, any action taken pursuant to this Section D shall require the approval of two-thirds (2/3) of the total number of votes, if all votes had been cast.

E. ACTIONS BY THE BOARD

1. Subject to the voting and quorum requirements set forth in this Agreement, the Board is required, in accordance with NY Insurance Law **Section** 4705, to take action on the following matters:

- a. A. In accordance with N.Y. Ins. Law § 4705(d)(5), to approve an annual budget for the Consortium, which shall be prepared and approved prior to **October 1st** of each year, and determine the annual premium equivalent rates to be paid by each Participant for each Enrollee classification in the Plan on the basis of a community rating methodology in accordance with N.Y. Ins. Law § 4705(d)(5)(B) and filed with and approved by the Superintendent.
- b. To audit receipts and disbursements of the Consortium and provide for independent audits, and periodic financial and operational reports to Participants in accordance with N.Y. Ins. Law § 4705(e)(1).
- c. To establish a joint fund or funds to finance all Consortium expenditures, including claims, reserves, surplus, administration, stop-loss insurance and other expenses in accordance with N.Y. Ins. Law § 4705(d)(4).
- d. To select and approve the benefits provided by the Plan(s) including the plan document(s), insurance certificate(s), and/or summary plan description(s) in accordance with N.Y. Ins. Law § 4709, a copy of the Plan(s) effective on the date of this Agreement is incorporated by reference into this Agreement.
- e. In accordance with N.Y. Ins. Law § 4705(d)(2), may contract with third parties, if appropriate, which may include one or more Participants, for the furnishing of all goods and services reasonably needed in the efficient operation and administration of the Consortium, including, without limitation, accounting services, legal counsel, contract administration services, consulting services, purchase of insurances and actuarial services. Provided, however (a) the charges, fees and other compensation for any contracted services shall be clearly stated in written administrative services contracts, as required in Section 92-a(6) of the General Municipal Law; (b) payment for contracted services shall be made only after such services are rendered; (c) no Director or any member of such Director's immediate family shall be an owner, officer, director, partner or employee of any contract administrator retained by the Consortium; and (d) all such agreements shall otherwise comply with the requirements of Section 92-a(6) of the General Municipal Law.
- f. To purchase stop-loss insurance on behalf of the Consortium and determine each year the insurance carrier or carriers who are to provide the stop-loss insurance coverage during the next Plan Year, as required by N.Y. Ins. Law §§ 4707 and 4705(d)(3).
- g. To designate one governing Board member to retain custody of all reports, statements, and other documents of the Consortium, in accordance with N.Y. Ins. Law § 4705(c)(2), and who shall also take minutes of each Board meeting which, if appropriate, shall be acted upon by the Board in a subsequent meeting.
- h. In accordance with N.Y. Ins. Law § 4705(e)(1), to choose the certified public accountant and the actuary to provide the reports required by this Agreement and any applicable law.
- i. In accordance with N.Y. Ins. Law § 4705(d)(5) (A), designate the banks or trust companies in which joint funds, including reserve funds, are to be deposited and which shall be located in this state, duly chartered under federal law or the laws of this state.

j. In accordance with N.Y. Ins. Law § 4705(a)(6), designate the fiscal officer of a participating municipal corporation to be the Chief Fiscal Officer of the municipal cooperative health benefit plan, and who will serve on the Executive Committee.

k. In accordance with N.Y. Ins. Law § 4705(a)(7), designate an attorney-in-fact to receive summons or other legal process in any action, suit or proceeding arising out of any contract, agreement or transaction involving the Consortium.

2. Subject to the voting and quorum requirements set forth in this Agreement, the Board is authorized to take action on the following matters:

a. To fix the frequency, time and place of regular Board meetings.

b. To have a plan consultant (the "Plan Consultant) contract in place for the upcoming Plan Year, prior to October 1st of each year.

c. To determine and notify each Participant prior to October 15th of each Plan Year of the monthly premium equivalent for each enrollee classification during the next Plan Year commencing the following January 1st.

d. To take all necessary action to ensure that the Consortium obtains and maintains a Certificate of Authority in accordance with the Insurance Law.

e. To take any other action authorized by law and deemed necessary to accomplish the purposes of this Agreement.

f. Annually elect Directors to the Executive Committee to oversee operations and develop recommendations for Board actions stated in this Section E.

F. EXECUTIVE COMMITTEE.

1. The Executive Committee of the Consortium shall consist of at least eleven (11) and no greater than fifteen (15) Directors. Executive Committee Directors are elected annually, but shall always include the elected Chairperson, Vice-Chairperson, and the Secretary of the Consortium, as well as the designated Chief Fiscal Officer and Chairperson of the Joint Committee on Plan Structure and Design.

2. The Secretary shall be the governing board member who holds all records in accordance with Article E, Section 16.

3. The Executive Committee shall establish meeting dates at its Organizational Meeting. The Executive Committee shall meet no less frequently than once per quarter.

4. Special meetings of the Executive Committee may be called at any time by the Chairperson or by any two (2) Executive Committee Directors. Whenever practicable, the person or persons calling such special meeting shall give at least three (3) day notice to all of the other Directors. Such notice shall set forth the time and place of the special meeting as well as a detailed agenda of the matters proposed to be acted upon. In the event three (3) day notice cannot be given, each Director shall be given such notice as is practicable under the circumstances.

5. The Executive Committee shall:

a. conduct business according to its Bylaws within its delegated authority, subject

to approval and/or ratification of its actions at the next scheduled Board meeting.

b. Create sub-committees as necessary to monitor operations and make recommendations, to the Executive Committee and/or Board, to protect and enhance operations.

c. Manage the Consortium between meetings of the Board, subject to such approval by the Board as may be required by this Agreement.

d. Develop Bylaws for its operations.

e. In consultation with at Nomination Committee, fill any vacancy on the Executive Committee from among its members except the elected officers of the Consortium.

f. Establish administrative guidelines for the efficient operation of the Plan.

g. Annually appoint a treasurer (the "Treasurer") who may or may not be a Director and who shall be the treasurer, or equivalent financial officer, for one of the Participants. The Treasurer's duties shall be determined by the Chief Fiscal Officer to whom he/she will report.

h. Take all necessary action to ensure the Consortium is operated and administered in accordance with the laws of the State of New York.

G. OFFICERS.

1. At the Annual Meeting, the Board shall elect from its Directors a Chairperson, Vice Chairperson, Chief Fiscal Officer, and Secretary, who shall serve for a term of one (1) year or until their successors are elected and qualified. Any vacancy in an officer's position shall be filled at the next meeting of the Board.

2. Officers of the Consortium and employees of any third-party vendor, including without limitation the officers and employees of any Participant, who assist or participate in the operation of the Consortium, shall not be deemed employees of the Consortium. Each third-party vendor shall provide for all necessary services and materials pursuant to annual contracts with the Consortium. The officers of the Consortium shall serve without compensation from the Consortium, but may be reimbursed for reasonable out-of-pocket expenses incurred in connection with the performance of such officers' duties.

3. Officers shall serve at the pleasure of the Board and may be removed or replaced upon a two-thirds (2/3) vote of the entire Board. This provision shall not be subject to the weighted voting alternative set forth in Section D.

H. CHAIRPERSON; VICE CHAIRPERSON; SECRETARY.

The Chairperson shall be the chief executive officer of the Consortium.

1. The Chairperson, or in the absence of the Chairperson, the Vice Chairperson, shall preside at all meetings of the Board.

2. In the absence of the Chairperson, the Vice Chairperson shall perform all duties related to that office.

3. The Secretary shall retain custody of all reports, statements, and other documents of the Consortium and ensure that minutes of each Board meeting are taken and transcribed which shall be acted on by the Board at a subsequent meeting, as appropriate.

I. CHIEF FISCAL OFFICER.

1. The Chief Fiscal Officer shall act as the chief financial administrator of the Consortium and disbursing agent for all payments made by the Consortium, and shall have custody of all monies either received or expended by the Consortium. The Chief Fiscal Officer may delegate their duties to the Treasurer to take all necessary action to ensure the Consortium is operated and administered in accordance with the laws of the State of New York. The Chief Fiscal Officer shall be a fiscal officer of a Participant. The Chief Fiscal Officer shall receive no remuneration from the Consortium. The Plan shall reimburse the Participant that employs the Chief Fiscal Officer for reasonable and necessary out-of-pocket expenses incurred by the Chief Fiscal Officer in connection with the performance of his or her duties that relate to the Consortium.

2. All monies collected by the Chief Fiscal Officer relating to the Consortium, shall be maintained and administered as a common fund. The Chief Fiscal Officer shall, notwithstanding the provisions of the General Municipal Law, make payment in accordance with procedures developed by the Board and as deemed acceptable to the Superintendent.

3. The Chief Fiscal Officer shall be bonded for all monies received from the Participants. The amount of such bond shall be established annually by the Consortium in such monies and principal amount as may be required by the Superintendent.

4. All monies collected from the Participants by the Chief Fiscal Officer in connection with the Consortium shall be deposited in accordance with the policies of the Participant which regularly employs the Chief Fiscal Officer and shall be subject to the provisions of law governing the deposit of municipal funds.

5. The Chief Fiscal Officer may invest moneys not required for immediate expenditure in the types of investments specified in the General Municipal Law for temporary investments or as otherwise expressly permitted by the Superintendent.

6. The Chief Fiscal Officer shall account for the Consortium's reserve funds separate and apart from all other funds of the Consortium, and such accounting shall show:

- a. the purpose, source, date and amount of each sum paid into the fund;
- b. the interest earned by such funds;
- c. capital gains or losses resulting from the sale of investments of the Plan's reserve funds;
- d. the order, purpose, date and amount of each payment from the reserve fund;
and
- e. the assets of the fund, indicating cash balance and schedule of investments.

7. The Chief Fiscal Officer shall cause to be prepared and shall furnish to the Board, to participating municipal corporations, to unions which are the exclusive bargaining representatives of Enrollees, the Board's consultants, and to the Superintendent:

- a. an annual audit, and opinions thereon, by an independent certified public

accountant, of the financial condition, accounting procedures and internal control systems of the municipal cooperative health benefit plan;

- b. an annual report and quarterly reports describing the Consortium's current financial status; and
- c. an annual independent actuarial opinion on the financial soundness of the Consortium, including the actuarial soundness of contribution or premium equivalent rates and reserves, both as paid in the current Plan Year and projected for the next Plan Year.

8. Within ninety (90) days after the end of each Plan Year, the Chief Fiscal Officer shall furnish to the Board a detailed report of the operations and condition of the Consortium's reserve funds.

J. PLAN ADMINISTRATOR.

The Board, by a two-thirds (2/3) vote of the entire Board, may annually designate an administrator and/or insurance company of the Plan (the "Plan Administrator") and the other provider(s) who are deemed by the Board to be qualified to receive, investigate, **audit,** and recommend or make payment of claims, provided that the charges, fees and other compensation for any contracted services shall be clearly stated in written administrative services and/or insurance contracts and payment for such contracted services shall be made only after such services are rendered or are reasonably expected to be rendered. All such contracts shall conform to the requirements of Section 92-a(6) of the General Municipal Law.

I.

K. JOINT COMMITTEE ON PLAN STRUCTURE AND DESIGN.

1. There shall be a Joint Committee on Plan Structure and Design (the "Joint Committee"), which shall consist of (a) a representative of each collective bargaining unit that is the exclusive collective bargaining representative of any Enrollee or group of Enrollees covered by the Plan(s) (the "Union Members"); and (b) a representative of each Participant (the "Management Members"). Management Members may, but are not required to be, Directors.

2. The Joint Committee shall review all prospective Board actions in connection with the benefit structure and design of the Plan(s), and shall develop findings and recommendations with respect to such matters. The Chair of the Joint Committee shall report such findings and recommendations to the Board at any regular or special meeting of the Board.

3. The Joint Committee shall select (a) from among the Union Members, an individual who shall serve as Chair of the Joint Committee; and (b) from among the Management Members, an individual who shall serve as Vice Chair of the Joint Committee. The Joint Committee shall establish its own parliamentary rules and procedures.

4. Each eligible union shall establish such procedures by which its representative to the Joint Committee is chosen and such representative shall be designated in writing to the Chairperson of the Board and the Chair of the Joint Committee.

5. The Union Members on the Joint Committee on Plan Structure and Design shall select from among the Union Members an individual to serve as an additional at-large voting Labor Member on the Board of Directors of the Consortium. If the number of municipal members on the Consortium rises to seventeen (17), the union members of the Joint Committee on Plan

Structure and Design shall select from among the Union Members an additional at-large voting Labor Member on the Board of Directors of the Consortium. The at-large voting Labor Member(s) along with the Joint Committee Chair shall collectively be the “Labor Representatives” as defined in Section C(11) of this Agreement. If the number of municipal members on the Consortium rises to twenty-three (23), the Union Members may select from among their members a third At-Large Labor Representative to serve as a Director. Thereafter, for every increase of five (5) additional municipal members added to the Consortium Union Members may select from among their members one (1) At-large Labor Representative to serve as Director. Attached hereto as Addendum “B” is a table illustrating the addition of At-Large Labor Representatives as set forth in this Section. Any At-Large Labor Representative designated according to this section shall have the same rights and obligations as all other Directors.

L. PREMIUM CALCULATIONS/PAYMENT.

1. The annual premium equivalent rates shall be established and approved by a majority of the entire Board. The method used for the development of the premium equivalent rates may be changed from time to time by the approval of two-thirds (2/3) of the entire Board, subject to review and approval by the Superintendent. The premium equivalent rates shall consist of such rates and categories of benefits as is set forth in the Plan[s] that is determined and approved by the Board consistent with New York law.

2. In accordance with N.Y. Ins. Law § 4706, the Consortium shall maintain reserves and stop-loss insurance to the level and extent required by the Insurance Law and as directed by the Superintendent.

3. Each Participant's monthly premium equivalent, by enrollee classification, shall be paid by the first day of each calendar month during the Plan Year. A late payment charge of one percent (1%) of the monthly installment then due may be charged by the Board for any payment not received by the first of each month, or the next business day when the first falls on a Saturday, Sunday, legal holiday or day observed as a legal holiday by the Participants.

The Consortium may waive the first penalty once per Plan Year for each Participant, but will strictly enforce the penalty thereafter. A repeated failure to make timely payments, including any applicable penalties, may be used by the Board as an adequate justification for the expulsion of the Participant from the Consortium.

4. The Board shall assess Participants for additional contributions, if actual and anticipated losses due to benefits paid out, administrative expenses, and reserve and surplus requirements exceed the amount in the joint funds, as set forth in Section B(3) above.

5. The Board, in its sole discretion, may refund amounts in excess of reserves and surplus, or retain such excess amounts and apply these amounts as an offset to amounts projected to be paid under the next Plan Year’s budget.

M. EMPLOYEE CONTRIBUTIONS.

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

N. ADDITIONAL BENEFITS.

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

O. REPORTING.

The Board, through its officers, agents, or delegates, shall ensure that the following reports are prepared and submitted:

1. Annually after the close of the Plan Year, not later than one-hundred twenty (120) days after the close of the Plan Year, the Board shall file a report with the Superintendent showing the financial condition and affairs of the Consortium, including an annual independent financial audit statement and independent actuarial opinion, as of the end of the preceding plan year.
2. Annually after the close of the Plan Year, the Board shall have prepared a statement and independent actuarial opinion on the financial soundness of the Plan, including the contribution or premium equivalent rates and reserves, both as paid in the current Plan Year and projected for the next Plan Year.
3. The Board shall file reports with the Superintendent describing the Consortium's then current financial status within forty-five (45) days of the end of each quarter during the Plan year.
4. The Board shall provide the annual report to all Participants and all unions, which are the exclusive collective bargaining representatives of Enrollees, which shall be made available for review to all Enrollees.
5. The Board shall submit to the Superintendent a report describing any material changes in any information originally provided in the Certificate of Authority. Such reports, in addition to the reports described above, shall be in such form, and containing such additional content, as may be required by the Superintendent.

P. WITHDRAWAL OF PARTICIPANT.

1. Withdrawal of a Participant from the Consortium shall be effective only once annually on the last day of the Plan Year.
2. Notice of intention of a Participant to withdraw must be given in writing to the Chairperson prior to **September 1st** of each Plan Year. Failure to give such notice shall automatically extend the Participant's membership and obligations under the Agreement for another Plan Year, unless the Board shall consent to an earlier withdrawal by a two-thirds (2/3) vote.
3. Any withdrawing Participant shall be responsible for its pro rata share of any Plan deficit that exists on the date of the withdrawal, subject to the provisions of subsection "4" of this Section. The withdrawing Participant shall be entitled to any pro rata share of surplus that exists on the date of the withdrawal, subject to the provisions of subsection "4" of this Section. The

Consortium surplus or deficit shall be based on the sum of actual expenses and the estimated liability of the Consortium as determined by the Board. These expenses and liabilities will be determined one (1) year after the end of the Plan Year in which the Participant last participated.

4. The surplus or deficit shall include recognition and offset of any claims, expenses, assets and/or penalties incurred at the time of withdrawal, but not yet paid. Such pro rata share shall be based on the Participant's relative premium contribution to the Consortium as a percentage of the aggregate premium contributions to the Consortium during the period of participation. This percentage amount may then be applied to the surplus or deficit which existed on the date of the Participant's withdrawal from the Consortium. Any pro rata surplus amount due the Participant shall be paid to the Participant one year after the effective date of the withdrawal. Any pro rata deficit amount shall be billed to the Participant by the Consortium one year after the effective date of the withdrawal and shall be due and payable within thirty (30) days after the date of such bill.

Q. DISSOLUTION; RENEWAL; EXPULSION.

1. The Board at any time, by a two-thirds (2/3) vote of the entire Board, may determine that the Consortium shall be dissolved and terminated. If such determination is made, the Consortium shall be dissolved ninety (90) days after written notice to the Participants.

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

b. Upon termination of this Agreement, or the Consortium, each Participant shall be responsible for its pro rata share of any deficit or shall be entitled to any pro rata share of surplus that exists, after the affairs of the Consortium are closed. No part of any funds of the Consortium shall be subject to the claims of general creditors of any Participant until all Consortium benefits and other Consortium obligations have been satisfied. The Consortium's surplus or deficit shall be based on actual expenses. These expenses will be determined one year after the end of the Plan Year in which this Agreement or the Consortium terminates.

c. Any surplus or deficit shall include recognition of any claims/expenses incurred at the time of termination, but not yet paid. Such pro rata share shall be based on each Participant's relative premium contribution to the Plan as a percentage of the aggregate premium contributions to the Plan during the period of participation. This percentage amount would then be applied to the surplus or deficit which exists at the time of termination.

2. The continuation of the Consortium under the terms and conditions of the Agreement, or any amendments or restatements thereto, shall be subject to Board review on the fifth (5th) anniversary of the Effective Date and on each fifth (5th) anniversary date thereafter (each a "Review Date") as deemed required by Article 5-G of the New York General Municipal Law (the "General Municipal Law").

a. At the annual meeting a year prior to the Review Date, the Board shall include as an agenda item a reminder of the Participants' coming obligation to review the terms and conditions of the Agreement.

b. During the calendar year preceding the Review Date, each Participant

shall be responsible for independently conducting a review of the terms and conditions of the Agreement and submitting to the Board of Directors a written resolution containing any objection to the existing terms and conditions or any proposed modification or amendment to the existing Agreement, such written resolution shall be submitted to the Board on or before March 1st preceding the Review Date. Failure to submit any such resolution shall be deemed as each Participant's agreement and authorization to the continuation of the Consortium until the next Review Date under the existing terms and conditions of the Agreement.

c. As soon as practicable after March 1st, the Board shall circulate to all Participants copies of all resolutions submitted by the Participants. Subject to Section S hereof, any resolutions relating to the modification, amendment, or objection to the Agreement submitted prior to each Review Date shall be considered and voted on by the Participants at a special meeting called for such purpose. Such special meeting shall be held on or before July 1st preceding the Review Date.

d. Notwithstanding the foregoing or Section T hereof, if at the Annual Meeting following any scheduled Review Date the Board votes on and approves the budget and annual assessment for the next year, the Participants shall be deemed to have approved the continuation of the Consortium under the existing Agreement until the next Review Date.

3. The Participants acknowledge that it may be necessary in certain extraordinary circumstances to expel a Participant from the Consortium. In the event the Board determines that:

a. a Participant has acted inconsistently with the provisions of the Agreement in a way that threatens the financial well-being or legal validity of the Consortium; or

b. a Participant has acted fraudulently or has otherwise acted in bad faith with regards to the Consortium, or toward any individual Participant concerning matters relating to the Consortium, the Board may vote to conditionally terminate said Participant's membership in the Consortium. Upon such a finding by the affirmative vote of **two-thirds (2/3)** of the Participants, the offending Participant shall be given sixty (60) days to correct or cure the alleged wrongdoing to the satisfaction of the Board. Upon the expiration of said sixty (60) day period, an absent satisfactory cure, the Board may expel the Participant by an affirmative vote of seventy-five percent (75%) of the Participants (exclusive of the Participant under consideration). This section shall not be subject to the weighted voting provision provided in Section D. Any liabilities associated with the Participant's departure from the Consortium under this provision shall be determined by the procedures set forth in Section P of this Agreement.

R. REPRESENTATIONS AND WARRANTIES OF PARTICIPANTS.

Each Participant by its approval of the terms and conditions of this Agreement hereby represents and warrants to each of the other Participants as follows:

1. The Participant understands and acknowledges that its participation in the Consortium under the terms and conditions of this Agreement is strictly voluntary and may be terminated as set forth herein, at the discretion of the Participant.

2. The Participant understands and acknowledges that the duly authorized decisions of the Board constitute the collective will of each of the Participants as to those matters within the

scope of the Agreement.

3. The Participant understands and acknowledges that the decisions of the Board made in the best interests of the Consortium may on occasion temporarily disadvantage one or more of the individual Participants.

4. The Participant represents and warrants that its designated Director or authorized representative understands the terms and conditions of this Agreement and is suitably experienced to understand the principles upon which this Consortium operates.

5. The Participant understands and acknowledges that all Directors, or their authorized representatives, are responsible for attending all scheduled meetings. Provided that the quorum rules are satisfied, non-attendance at any scheduled meeting is deemed acquiescence by the absent Participant to any duly authorized Board-approved action at the meeting. (Section deleted.)

6. The Participant understands and acknowledges that, absent bad faith or fraud, any Participant's vote approving any Board action renders that Board action immune from later challenge by that Participant.

S. RECORDS

The Board shall have the custody of all records and documents, including financial records, associated with the operation of the Consortium. Each Participant may request records and documents relative to their participation in the Consortium by providing a written request to the Chairperson and Chief Fiscal Officer. The Consortium shall respond to each request no later than thirty (30) days after its receipt thereof, and shall include all information which can be provided under applicable law.

T. CHANGES TO AGREEMENT.

Any change or amendment to this Agreement shall require the unanimous approval of the Participants, as authorized by their respective legislative bodies.

U. CONFIDENTIALITY.

Nothing contained in this Agreement shall be construed to waive any right that a covered person possesses under the Plan with respect to the confidentiality of medical records and that such rights will only be waived upon the written consent of such covered person.

V. ALTERNATIVE DISPUTE RESOLUTION ("ADR").

1. General. The Participants acknowledge and agree that given their budgeting and fiscal constraints, it is imperative that any disputes arising out of the operation of the Consortium be limited and that any disputes which may arise be addressed as quickly as possible. Accordingly, the Participants agree that the procedures set forth in this Section V are intended to be the exclusive means through which disputes shall be resolved. The Participants also acknowledge and agree that by executing this Agreement each Participant is limiting its right to seek redress for certain types of disputes as hereinafter provided.

2. Disputes subject to ADR. Any dispute by any Participant, Board Member, or

Committee Person arising out of or relating to a contention that:

a. the Board, the Board's designated agents, a Committee person, or any Participant has failed to adhere to the terms and conditions of this Agreement or any duly-passed resolution of the Board or any duly-passed resolution of the Board;

b. the Board, the Board's designated agents, a Committee person, or any Participant has acted in bad faith or fraudulently in undertaking any duty or action under the Agreement; or

c. any other dispute otherwise arising out of or relating to: (i) the terms or conditions of this Agreement; (ii) any duly-passed decision, resolution, or policy by the Board of Directors; or (iii) otherwise requiring the interpretation of this Agreement shall be resolved exclusively through the ADR procedure set forth in paragraph (3) below.

3. ADR Procedure. Any dispute subject to ADR, as described in subparagraph (2), shall be resolved exclusively by the following procedure:

a. Board Consideration: Within ninety (90) days of the occurrence of any dispute, the objecting party (the "Claimant") shall submit a written notice of the dispute to the Chairperson specifying in detail the nature of the dispute, the parties claimed to have been involved, the specific conduct claimed, the basis under the Agreement for the Participant's objection, the specific injury or damages claimed to have been caused by the objectionable conduct to the extent then ascertainable, and the requested action or resolution of the dispute. A dispute shall be deemed to have occurred on the date the objecting party knew or reasonably should have known of the basis for the dispute.

i. Within sixty (60) days of the submission of the written notice, the Executive Committee shall, as necessary, request further information from the Claimant, collect such other information from any other interested party or source, form a recommendation as to whether the Claimant has a valid objection or claim, and if so, recommend a fair resolution of said claim. During such period, each party shall provide the other with any reasonably requested information within such party's control. The Executive Committee shall present its recommendation to the Board in writing, including any underlying facts, conclusions or support upon which it is based, within such sixty (60) day period.

ii. Within sixty (60) days of the submission of the Executive Committee's recommended resolution of the dispute, the Board shall convene in a special meeting to consider the dispute and the recommended resolution. The Claimant and the Executive Committee shall each be entitled to present any argument or material it deems pertinent to the matter before the Board. The Board shall hold discussion and/or debate as appropriate on the dispute and may question the Claimant and/or the Executive Committee on their respective submissions. Pursuant to its regular procedures, the Board shall vote on whether the Claimant has a valid claim, and if so, what the fair resolution should be. The weighted voting procedure set forth in Section D shall not apply to this provision. The Board's determination shall be deemed final subject to the Claimant's right to arbitrate as set forth below.

b. Arbitration. The Claimant may challenge any Board decision under subparagraph (V)(3)(a)(ii) by filing a demand for arbitration with the

American Arbitration Association within thirty (30) days of the Board's vote (a "Demand"). In the event a Claimant shall fail to file a Demand within thirty (30) days, the Board's decision shall automatically be deemed final and conclusive. In the event the Participant files a timely Demand, the arbitrator or arbitration panel may consider the claim:

provided however;

- i. in no event may the arbitrator review any action taken by the Board that occurred three (3) or more years prior to when the Chairperson received notice of the claim; and
 - ii. in no event may the arbitrator award damages for any period that precedes the date the Chairperson received notice of the claim by more than twenty-four (24) months.
- c. The Participants agree that the procedure set forth in this Section V shall constitute their exclusive remedy for disputes within the scope of this Section.

W. MISCELLANEOUS PROVISIONS.

1. This instrument constitutes the entire Agreement of the Participants with respect to the subject matter hereof, and contains the sole statement of the operating rules of the Consortium. This instrument supersedes any previous Agreement, whether oral or written.

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

3. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

4. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any claims made under Section V(3)(b) except to the extent otherwise limited therein, shall be governed by New York substantive law.

5. All notices to any party hereunder shall be in writing, signed by the party giving it, shall be sufficiently given or served if sent by registered or certified mail, return receipt requested, hand delivery, or overnight courier service addressed to the parties at the address designated by each party in writing. Notice shall be deemed given when transmitted.

6. This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original but all of which shall constitute the same Agreement and shall become binding upon the undersigned upon delivery to the Chairperson of an executed copy of this Agreement together with a certified copy of the resolution of the legislative body approving this Agreement and authorizing its execution.

7. The provisions of Section V shall survive termination of this Agreement, withdrawal or expulsion of a Participant, and/or dissolution of the Consortium.

8. Article and section headings in this Agreement are included for reference only and shall not constitute part of this Agreement.

9. No findings or recommendations made by the Joint Committee on Plan Structure and Design or by the Chair of the Joint Committee shall be considered a waiver of any bargaining rights under any contract, law, rule, statute, or regulation.

X. APPROVAL, RATIFICATION, AND EXECUTION.

1. As a condition precedent to execution of this Municipal Cooperative Agreement and membership in the Consortium, each eligible municipal corporation desiring to be a Participant shall obtain legislative approval of the terms and conditions of this Agreement by the municipality's governing body.

2. Prior to execution of this Agreement by a Participant, the Participant shall provide the Chairperson with the resolution approving the municipality's participation in this Consortium and expressly approving the terms and conditions of this Municipal Cooperative Agreement. Each presented resolution shall be maintained on file with the Consortium.

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

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned has caused this Amended Agreement to be executed as of the date adopted by the Board of Directors of the Greater Tompkins County Municipal Health Insurance Consortium and subsequently adopted by all participating municipalities.

DRAFT

Addendum “A”

Example of Weighted Voting Formula under Section D(2)

If 11 Participants have 500 or fewer enrollees each and 2 Participants have more than 500 enrollees each, under subparagraph “a” the 11 each get 1 vote. Under subparagraph “b” the 2 large Participants get 4 votes each, which is calculated by taking the total number of votes under subparagraph “a” [11] subtracting the number of Labor Representative votes [2], dividing by the number of eligible Participants under subsection “b” [2], and rounding the result [4.5] down to the nearest whole number [4]. The Labor Representative shall have 1 vote, irrespective of the votes available to the Participants.

Addendum "B"

Illustration of At-Large Labor Representative Calculation

Total Number of Participants	Total Number of At-Large Labor Representatives
< 17	1
17-22	2
23-27	3
28-32	4
33-37	5
38-42	6
43 - 47	7
47 -52	8
53 - 57	9
58+	10

Consortium Topic/Resolution Routing Guideline

Item	ED & Board Chair	OYOH	Operations Committee	Audit & Finance Committee	JCPSD	Special Committee	Executive Committee	2020 Board of Directors	2021 Board of Directors
Benefits									
Plan Adjustments				X	X			X	X
Ancillary Benefits			X					X	X
Committees									
Appointments to Positions/Committees		<i>RELEVANT COMMITTEE</i>						X	
Creation and Charges to committees	Board Chair						X	X	
Contracts and Agreements									
Authorizaiton to Enter into Contract or Agreement			X	X if budget amended			3rd Party Admin./ Consultants	X	
RFP's - Issuing			X	X				X	
Governance									
Ethics complaints							X		
Appeals							X		
MCA			X				X	X	X
Elect Leadership						X		X	X
Policies			X	X if budget amended			X	X	
Third Party Administrator Issues			X				INFO.		
Financial									
Adopt Budget and Set Rates				X			X	X	X
Audits				X				X	*FINANCIAL AUDIT APPRVD BY AFC/RATIFIED BY BOD
Fiscal Policies				X			X	X	
New Members				X			X	X	X
Invoices									
Invoices for budgeted items				Monthly list of paid invoices included in Committee agenda for					
Invoices for unbudgeted items/contract final payments	X			X					
Personnel									
Positions/Benefits/Policies			X	X if budget amended			X	X	
Programs									
New Participant Application Process			X				INFO.	X	
New Program or Initiative			X	X if budget amended			X	X	
Online enrollment			X						
Wellness									
Flu Clinics		X							
Wellness programs		X		X if budget amended	X			X if budget amended	

* Anything that has an impact on the budget that is not budgeted would go to AFC & BoD

* ED and Board Chair should be informed of everything from the beginning

AFC

Invoice payments
Requests for Proposals
Policies with Financial Impact
New Members
Benefit Plan Changes
Budget/Premium Rates
Fiscal Policies
Audits
DFS Reporting
New Program or Initiative with Budget implication

Operations

Personnel: Policies, Benefits, Positions, Structure
Contracts and Agreements
Policies
Ancillary Benefits
Online Enrollment
Third Party Administrator Issues
New Program or Initiative
Application Process

Executive

Appeals
Ethics Complaints
Performance Evaluations
Creation of New or Special Committees
MCA

Joint Committee/OYOH

Benefit Plan Changes
Wellness Programs

GTCMHIC Invoice Payment Procedure

All invoices are sent to the Executive Director for approval, unless they are invoices considered “**Ready for Payment**” when received. The Clerk of the Board will work with the Account Clerk to prepare invoices for approval by the Executive Director.

Invoices Ready for Payment

Invoices for the following items are considered ready for payment when received and will be processed by the Finance Department without further approval:

- Claims invoices and administrative fees from our third-party benefit administrators (medical and prescription drug) including flu clinic fees,
- State and Federal taxes and fees,
- Stop-loss, D&O and E&O insurance invoices,
- Internal compilation and coordination expenses, and
- Ancillary benefit premiums.

These transactions will in the monthly financial report submitted by the Treasurer for review at the Audit and Finance Committee meeting.

All other invoices received will be reviewed by the Account Clerk and then shall be forwarded to the Executive Director for approval.

Executive Director Approval

Invoices for expenses allocated and approved as part of the annual budget approval process or a contractual agreement will be approved by the Executive Director with notice of approval to the Account Clerk for payment.

Upon receipt, the following invoices will be sent to Executive Director for approval.

- Contract progress payment invoices (e.g. Actuary, Claims Auditor):
- Invoices for non-fixed price contract payment under \$10,000 (e.g. consultants, newsletter production, photography, and printing)
- Invoices for supplies, reimbursements and day to day operations under \$10,000
- Invoices for non-fixed price contract payment with Consortium Consultant, Benefit Plan Design Consultant, Treasurer’s Office, and Information Technology Office:

These transactions will be in the monthly financial report submitted by the Treasurer for review at the Audit and Finance Committee meeting.

Board Chair, CFO or Executive Committee Approval

Upon receipt, invoices will be sent to Executive Director for review and recommend to Board Chair, and CFO or any member of the Executive Committee in the Board Chair’s absence for advisement. The invoice will then become part of agenda packet of the Audit and Finance Committee at their next most immediate meeting for approval. If the Audit and Finance Committee will not be meeting by the time the final invoice becomes due, the Executive Director will first petition the contractor for a time extension until the Audit and Finance Committee meets. Should that petition be denied, the invoice must be approved by the Board Chair and Finance Committee chair. Copies of the paid invoice will be provided to the Audit and Finance Committee at it’s next meeting.

- **Invoices for non-fixed price contract payment over \$ 10,001 (e.g. financial auditor, Bonadio)**
- **Invoices for services not previously approved by contractual arrangement**
- **Contract final invoices (e.g. Actuary, Auditor, Claims Auditor):**

Invoice Payment Procedure

Approved by the Operations Committee

All invoices shall be reviewed by the Treasurer prior to issuance of the vendor check. Expenses relative to Executive Director reimbursement will be approved by the Board Chair.

In order to protect possible sensitive information that could affect future firms acting on behalf of the Consortium, copies of sensitive invoices regarding pricing and contract agreements will be provided as a confidential addendum to Committee member's agenda packets.

Open Meetings Law (“OML”)

The consortium is subject to the Open Meetings Law (“OML”), which is housed in Article 7 of the Public Officers Law. The State of New York Department of State Committee on Open Government has issued advisory opinions specifically opining that municipal health insurance consortiums, which are licensed under Article 5-G of the General Municipal Law and Article 47 of the Insurance Law, qualified as an “agency” as defined under Section 86(3) of the Freedom of Information Law, and that its governing boards qualified as a “public body” subject to the Open Meetings Law.

Under the OML, a member may not vote or be counted for purposes of quorum if they participate in the meeting by telephone. See N.Y. OML AO 5575 (2018); N.Y. OML AO 05396 (2014).

Originally, the OML explicitly required physical presence at a public meeting. In 2000, the OML was revised to permit the conduct of meetings by videoconference. N.Y. Pub. Off. Law § 102. Note that a corresponding obligation was created to provide public notice that videoconferencing will be used, of the locations for the meeting, and to provide the public access to attend, listen and observe at any site from which a member participates. N.Y. Pub. Off. Law §§ 103(c); 104. A 2018 Advisory Opinion indicated that this obligation applies only where a public meeting has more than one “primary meeting place” and does not apply when a member participates by videoconference for his or her personal convenience (e.g., from home, or while traveling); the Advisory Opinion states that the public access must only be provided at the “primary meeting place or places.

Conflict of Interest and Obligations Regarding Conflict of Interests

With respect to your primary question – can you require those abstaining from a vote explain why – as we reason below, our recommendation is to not impose this rule. Under Robert’s Rules, an abstention is simply a voter’s decision not to vote—for whatever reason. An abstention is not a vote and is not counted as a vote. Since the Consortium’s rules for conducting business require an affirmative vote of the “majority of the entire board” to take action, the number of votes needed to conduct business is *a fixed number*. While an abstaining director is present for purposes of calculating quorum, his/her abstention is neither a “yes” or a “no” vote, but it effectively acts as a “no” vote.

There is some opinion that abstainers should generally not be asked to identify why they abstained, because it is essentially asking them to make a record of their decision to not go on record. To this end, there are a myriad of pragmatic, political, or even ethical reasons why a director might abstain that are unrelated to conflicts of interest. Forcing a director to disclose why they are choosing not to participate in a particular vote is generally not done and may serve to alienate that director. While this is not necessarily a legal opinion, it is probably not best practice to ask a director why he or she has abstained from voting on a particular issue. I also note that abstaining for reasons other than conflicts of interest (as treated below) should not be a frequent occurrence. If they are, the Consortium should look to find the root of the problem. The directors have an obligation to participate and frequent refusal or failure to do so is problematic.

With respect to conflicts of interest, all conflicts of interest should be disclosed and noted in the minutes. All voting directors, including abstaining directors, should be instructed to self-disclose any conflict of interest for any issue being voted on (regardless of their vote).

Under the General Municipal Law, governing boards of municipalities are subject to very specific conflict of interest rules. Specifically, Section 803 requires that the conflict of interest must be described in writing by the municipal officer and recorded in the minutes of the relevant proceedings. These sections do not explicitly apply to the Consortium. However, because each of the consortium’s members are a public officer or employee, I recommend the adoption of these required procedures for the Consortium. Please note – the definition of conflict of interest is very limited, and so excludes the more generous definition of conflicts of interest that applies to non-municipal entities.

Greater Tompkins County Municipal Health Insurance Consortium
Code of Ethics and Conflict of Interest Policy

(Adopted 2-27-2014; amended by Res. No. 008-2016, Res. No. 016-2018)

Employees and the Board of Directors of the **Greater Tompkins County Municipal Health Insurance Consortium** shall:

1. Be dedicated to the concepts of an effective Consortium and believe that professional general management is essential to the achievement of this objective.
2. Shall affirm the dignity and work of the services rendered by the Consortium and maintain a constructive, creative, and practical attitude toward Consortium affairs and a deep sense of responsibility as a trusted public servant.
3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.
4. Conduct themselves so as to maintain public confidence in their profession, the Consortium, and in their performance of the public trust.
5. Conduct their official and personal affairs in such a manner as to give the clear impression that they cannot be improperly influenced in the performance of their official duties.
6. Recognize that the chief function of the Consortium at all times is to serve the interests of all members.
7. Shall not disclose **Confidential Information** to others or use to further their personal interest, confidential information acquired by them in the course of their official duties.
8. Shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
9. Make no unauthorized commitment or promises of any kind purporting to bind the Consortium.
10. Shall act impartially and not give preferential treatment to any private organization or individual.
11. Shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Consortium duties and responsibilities.
12. Shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.
13. Shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or disability.
14. Shall not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict with their official duties.

15. **Reporting of Ethics Violations.** When becoming aware of a possible violation of the Consortium’s Code of Ethics, employees, Board of Directors, employees of members, and the public may report the matter to the Consortium Attorney-in-fact, John Powers, Esq.. In reporting the matter, members may choose to go on record as the complainant or report the matter on a confidential basis. Resolution of the reported violation shall occur according to the alternative dispute resolution (ADR) process set forth in Article V of the 2015 Amended MCA, except as follows. In lieu of the ADR step set forth at MCA Article V.3.a.(i), the Attorney-In-Fact will collect all information presented regarding the matter and send that information to a neutral third party designated by the Board of Directors who shall attempt to resolve the matter informally through mediation. If unsuccessful, the mediator shall make a recommendation with respect to resolution of the dispute in writing to the Executive Committee, which shall present the recommendation to the Board as provided for in 2015 Amended MCA Article V.3.a.(i). The remainder of Article V shall remain in effect”,
16. Employees and the Board of Directors should not discuss or divulge information with anyone about pending or completed ethics cases except as authorized by the Board of Directors.
17. No later than April 15th, and each successive year thereafter, individuals serving as officer, director and key employee shall certify they have read and agree to the terms stated within the Greater Tompkins County Municipal Health Insurance Consortium’s Conflict of Interest and Code of Ethics Policy. The Board of Directors shall be made aware of any outstanding agreements at its next regularly scheduled meeting after the April 15 deadline. Should a successor be appointed to fill a position mid-year they shall be asked to sign the agreement at that time.

For purposes of this policy, (i) the terms "officer" and "director" shall have the same meaning as set forth in the Municipal Cooperative Agreement, dated October 1, 2010; and (ii) the term "key employee" shall mean any employee of the Consortium with executive or managerial capacity." These positions include:

- All Directors and Alternates designated by a Participant to have voting authority;
- Executive Director or Assistant Executive Director;
- Treasurer;
- Wellness Consultant;
- Plan Consultant;
- Administrative Clerk

CODE OF ETHICS AND CONFLICT OF INTEREST AGREEMENT

To be signed and submitted to the Consortium no later than April 15th of each year.

I have read and agree to the terms stated within the Greater Tompkins County Municipal Health Insurance Consortium’s Conflict of Interest and Code of Ethics.

Signature

Print Name

Consortium Title/ Municipality

Date