

INTERGOVERNMENTAL AGREEMENT

to participate in Utrust
Effective July 1, 2016

WHEREAS, Tennessee law identified as the Interlocal Cooperation Act (Tenn. Code Ann. § 12-9- 101, et seq.) and the Tennessee Governmental Tort Liability Act (Tenn. Code Ann. § 29-20-101, et seq.) with special emphasis on (Sec. 401) provide that public entities may contract with one another to perform any activity authorized by law; and

WHEREAS, Utrust and the Member are desirous of setting forth the obligations and responsibilities of each party hereto;

NOW THEREFORE, IN CONSIDERATION OF THESE PREMISES, and the mutual covenants herein contained, the parties, intending to be legally bound, agree as follows:

ARTICLE I Establishment and Purpose

Section 1. NAME. Pursuant to the provisions of the Tennessee Interlocal Cooperation Act and the policies and bylaws from time to time promulgated by the Board of Trustees (Board), the members hereby affirm the establishment of the Tennessee School Boards Unemployment Compensation Trust and agree to change the official name to Utrust.

Section 2. CLASSIFICATION. The Trust shall be a section 115 organization with the funds collected as provided herein to be used only for the purpose and in the manner set out in this Agreement or bylaws promulgated pursuant to the authority granted by this Agreement.

Section 3. PURPOSE. The purpose of the Trust is to allow Members to equalize annual fluctuations in unemployment compensation costs by establishing a program through the Trust whereby reserves may be created to equalize the risks and stabilize the costs of providing unemployment compensation coverage. Secondary purposes are to promote excellent employment practices and to assist members in making schools better places to work and learn.

ARTICLE II Term of Agreement

Section 1. TERM. The term of this agreement shall commence on July 1, 2016 replacing all previous Intergovernmental Agreements for the Tennessee School Boards Unemployment Compensation Trust, and all other agreements.

ARTICLE III Officers and Trustees

Section 1. ELECTION OF TRUSTEES. There shall be (7) Trustees elected by the membership of the Trust. The Trustees shall establish procedures for election, length of initial terms necessary to make staggered terms with one trustee elected annually, and districts from which trustees shall be elected. The term of trustees shall be seven years. Elections will occur at the conclusion of the term.

Section 2. OFFICERS. Officers of the Trust shall consist of a Chairman, a Vice-Chairman, an Administrator and such other officers as are established from time to time by the Trustees. All officers shall be elected annually by the Board of Trustees, except the Administrator, who shall be employed by and serve at the pleasure of the Board of Trustees.

Section 3. EXPENSES OF TRUSTEES. No Trustee shall receive any salary for services from the Trust. Any Trustee or other officer of the Trust may submit to the Trust for approval, and be reimbursed for, expenses incurred in the pursuit of his position. Reimbursement for such expenses shall be in accordance with procedures and policies established by the Board of Trustees consistent with the terms of this Agreement.

Section 4. MEETINGS OF TRUSTEES. Regular meetings of the Board of Trustees shall be held; any item of business may be considered at a regular meeting. The time, date and location of meetings of the Board shall be determined by the Board.

Section 5. NOTICE OF MEETINGS. All meetings of the Board shall be conducted in the manner required by law. In the event of any conflict between any provision of this Agreement and any provision of any applicable law, this Agreement shall be deemed modified to the extent necessary to comply with such law. In addition to any notices of meetings required to be served under this Agreement, the Administrator shall cause to be published any schedule or notice of meeting of the Board required by law. Such publication requirement shall be deemed met by announcement in the Trust newsletter and/or website.

Section 6. REQUIRED VOTE. Any action by the Trustees may be taken at a duly constituted meeting. A majority of the Trustees in attendance and voting at a duly constituted meeting where a quorum is present shall be required for action.

Section 7. MANAGEMENT OF THE TRUST. It is the express intention of the settlors of this Trust that the Trustees herein named and their successors in Trust have the exclusive authority to manage this Trust and to delegate to others, as the Trustees may deem necessary, the performance of any duties required in the administration of this Trust. It is also the express intention of the settlors that no court shall substitute its judgment for that of the Trustees in the making of any decisions relative to the carrying out of the Trust.

Section 8. LIABILITY OF TRUSTEES. The Trustees shall use ordinary care and reasonable diligence in the exercise of their power and in the performance of their duties. They shall not be liable for any mistake of judgment or other action made, taken or omitted by them in good faith; nor for any action taken or omitted by any agent, employee or attorney selected with reasonable care; nor for the loss incurred through investment of Trust money, or failure to invest. No Trustee shall be liable for any action taken or omitted by any other Trustee. They shall not be required to give a bond or other security to guarantee the faithful performance of their duties hereunder.

Section 9. INDEMNIFICATION OF OFFICERS AND EMPLOYEES. The Trust shall have the power and authority to indemnify and hold harmless to the full extent permitted by law any person who is or was a Trustee, officer, employee or agent of the Trust when such actions are not in conflict with advice from the Trust's attorneys.

Section 10. TREASURER. The Trust Administrator shall serve as Treasurer of the Trust, without voting privileges.

Section 11. RESIGNATION OF A TRUSTEE. Any Trustee may resign upon giving notification in writing to the Trust Administrator.

Section 12. REMOVAL OF A TRUSTEE. Any Trustee may be removed at any time by a two-thirds majority vote of the other members of the Board of Trustees. In the event that the entity on whose governing board the trustee serves ceases to participate in the Trust the trustee's membership on the Board of Trustees shall terminate immediately. If a Trustee is not present at three (3) trustee meetings during any term, the trustee's membership on the Board of Trustees shall terminate with the adjournment of the third meeting missed unless a two-thirds majority of the trustees vote during the meeting to excuse the third absence. If such trustee misses a fourth meeting during

one term, the removal of the trustee shall automatically become effective with the adjournment of the fourth meeting missed.

Section 13. APPOINTMENT OF SUCCESSOR TRUSTEES. Upon the death, resignation or removal of a trustee, the remaining trustees shall appoint a new Trustee to serve the remainder of the term.

Section 14. DUTIES OF ADMINISTRATOR. The Administrator shall be the principal operating officer of the Trust and shall supervise and control the operations of the Trust and carry out the purpose of the Trust as directed by the Board of Trustees. Among the duties and authority of the Administrator shall be the following:

- (a) Sign on behalf of the Trust any instrument which the Trust has authorized to be executed and, in general, to perform all duties incidental to the office of Administrator and such other duties as may be prescribed by the Board of Trustees, consistent with this Agreement.
- (b) At each regular meeting of the Board of Trustees and at such other times as requested to do so by the Board, to present a full report of activities and the fiscal condition of the Trust.
- (c) To compile and list annually all claims filed and payouts made for the Trust.
- (d) Make distributions from the Trust funds for payment of claims and administrative expenses of the Trust within the constraints of the budget approved by the Trustees.
- (e) Disburse funds held by the Trust as needed to carry out the purposes of the Trust.

Section 15. BYLAWS. The Trustees shall adopt by-laws which shall govern and control the operation and administration of the Trust which shall not be in conflict with any terms and provisions of the Intergovernmental Agreement.

Section 16. AMENDMENT OF AGREEMENT. The provisions of this Intergovernmental Agreement may be amended by the Board of Trustees subject to the execution of the so revised Agreement by the members choosing to continue participation in the Trust at each effective date.

ARTICLE IV Authority and Duties of the Trustees

Section 1. DUTIES. The board shall carry out the purposes and duties of the Trust through its Administrator including, but not limited to, the following:

- (a) Prepare the annual budget of the Trust and any amendments to that budget;
- (b) Approve education and other programs relating to claim reduction;
- (c) Contract for the services of agents, independent contractors, investment counsel, accountants, attorneys, auditors and such other persons as may be necessary to administer and accomplish the purposes of the Trust;
- (d) Determine the compensation for all such agents, and independent contractors;
- (e) Prepare annual reports of claims filed and paid by the Trust;
- (f) Obtain annually an audited report of the financial affairs of the Trust;
- (g) Receive and hold all payments and contributions paid to it;
- (h) Procure fidelity bonds for persons as required by this Agreement or by law;
- (i) Carry out other activities as necessary to carry out the purpose of the Trust or the specific activities enumerated in this Agreement.

Section 2. ETHICAL STANDARDS. As required by Tennessee Code Annotated § 8-17- 102(b), the Trustees have adopted a code of ethics for the Trust, its officials and employees, which is patterned on the Model Code of Ethics as promulgated by the County Technical Assistance Services.

ARTICLE V Membership

Section 1. PARTICIPATION. A board may become a participating member in Utrust by making application for participation as prescribed by the Trust, paying any contributions determined by the Trust and satisfying all requirements for participation. If accepted, the member shall be notified in writing by the Trust.

Section 2. MEMBER CONTRIBUTIONS. A member who is accepted for participation shall thereafter pay contributions on such dates and in such amounts as the Trust shall require for paying claims and for administering the Trust and shall comply with such decisions, bylaws and regulations promulgated by the Trust. It is specifically agreed that the Trustees may determine the amounts of contributions required and differentiate in the rates charged participating members based on their experience.

Section 3. SUPPLEMENTARY PAYMENT. It is agreed that if the assets of the Trust are at any time insufficient in the opinion of the Trustees, to enable it to discharge its obligations, then the Trust shall have the right to assess all Members which have participated in the Trust during any part of the period of insufficiency such total amount as is, in the opinion of the Trustees, required to end the insufficiency and each Member shall have the duty to pay its proportionate amount of the total.

Section 4. WITHDRAWAL. Any participating member may withdraw from the Trust and/or terminate participation in the Trust at the end of the program year in which the member is participating by giving at least ninety (90) days written notification to the Trust prior to the close of such program year; and in the event of termination, said participating member shall remain liable for any and all contributions required to be paid by participating member during the remainder of the program year after the giving of notice that participation is being terminated. Any participating member who withdraws from the Trust and/or terminates participation shall have no right or claim to any portion of any surplus in the Fund.

ARTICLE VI Expulsion of a Member

Section 1. VOTE REQUIRED. By a two-thirds (2/3) vote of the entire Board of Trustees, any Member may be expelled from the Trust. Such expulsion, which shall take effect in the manner Set out below, may occur whenever a member: (a) fails to perform any obligation under this Agreement, (b) fails to make payments and supplemental payments due to the Trust, or (c) engages in activities detrimental to the purposes of the Trust.

Section 2. PROCEDURE. No Member may be expelled except after notice from the Trust and after a reasonable opportunity of not less than fifteen (15) days to cure the alleged failure. Within such fifteen-day (15) period, the Member may request a hearing before the Board before a decision is made as to whether to expel. The Trust shall set the date for such hearing, which shall not be less than fifteen (15) days after expiration of the time to cure. Expulsion of a Member after notice and hearing set forth in this Section shall be final.

ARTICLE VII Nature and Use of Funds

Section 1. USE OF FUNDS. The Trust may use Trust funds (a) to pay premiums for group policies, (b) to pay premiums for bonds and errors-and-omissions insurance which may be required by statute, regulation or action of the Trustees, (c) to pay unemployment insurance reimbursement charges imposed by the State of Tennessee against participating members in any group self-insurance program developed and maintained by the Trust, (d) to pay all other expenses and make all payments which the Trustees consider necessary in establishing the Trust and administering the services of the Trust with respect to any compensation paid to any service companies, attorneys,

actuaries, accountants, employees, clerical help, custodians, and others as the Trust may deem necessary, (e) to sponsor programs designed to reduce unemployment costs and/or to improve member board's relationships with their employees. It is understood and agreed that trustees may elect to invest Utrust funds in stocks and bonds in similar manner to funds held by the Tennessee Consolidated Retirement System. The Trustees shall develop an appropriate investment policy which will be part of the Utrust Bylaws.

ARTICLE VIII Amendments and Termination of the Trust

Section 1. AMENDMENT. The Trustees may amend the Bylaws at any time to such extent as they deem necessary or advisable.

Section 2. TERMINATION. The Trust shall terminate thirty (30) years from the effective date or upon the occurrence of one of the following events:

- (a) A final determination by a Court of competent jurisdiction, after all appeals have been exhausted or time for appeal has expired, that the Trust is invalid or contrary to law.
- (b) The number of Members is not sufficient to support the appropriate spread of risk.
- (c) The Trustees by an instrument in writing and upon prior notice to each participating member, decide to terminate the Trust whereupon, the Trustees shall pay all obligations of the Trust and distribute any remaining surplus in such manner as they determine fair and equitable to the participating members.

ARTICLE IX General Trust Provisions

Section 1. FISCAL YEAR. The fiscal year shall be July 1 through June 30.

Section 2. NOTICE. Any notice required by this Agreement shall be in writing and shall be deemed to have been given when notice is sent via registered or certified mail, postage prepaid, return receipt requested to the last known address. Notice may also be sent electronically to the last known e-mail address. General notice is posted on the Trust's website and specific notice to members is sent to the last known address or e-mail address.

Section 3. VALIDITY AND SAVINGS CLAUSE. In the event any provision of this Agreement shall be declared by a final judgment of a Court of competent jurisdiction to be unlawful or unconstitutional or invalid as applied to any Member, the lawfulness, constitutionally or validity of the remainder of this Agreement shall not be deemed affected thereby.

Section 4. SEVERABILITY. Any provision of this Agreement prohibited by the laws of the State of Tennessee shall be ineffective to the extent of such prohibition without invalidating the remaining portion of this Agreement.

Section 5. SITUS OF CONSTRUCTION. This Trust is executed in the State of Tennessee and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of such jurisdiction.

Section 6. CONTRACTS. The Trust shall be authorized to contract with any qualified organization or individual to perform any of the functions necessary for the carrying out of services that the Trustees deem expedient for the proper servicing of those members who use the services of the Trust.

Section 7. AGENCY. The Trust is operated under the provisions of this Intergovernmental Agreement as agent and representative of the participating members only.

