

0001 B3 Supplement to Pension Asset Position Paper- HOOPDec 5.docx

1.0 Preamble

This document addresses the accounting for a net pension asset under Public Sector Accounting Standards (PSAS) by the Province of Ontario in relation to the Healthcare of Ontario Pension Plan (HOOPP).

As at March 31, 2016; HOOPP was not in an accrued benefit asset position for accounting purposes however, HOOPP may achieve this status in the near future.

2.0 Issue to be considered

This position paper addresses the following three questions in relation to the accounting for HOOPP:

1. For accounting purposes, what type of pension plan is HOOPP (i.e. how should HOOPP be classified under PSAS)?
2. As a result of the classification, how should the Province of Ontario account for a pension surplus of HOOPP in the Public Accounts?
3. How should a pension asset of HOOPP be measured in the Public Accounts of the Province of Ontario?

3.0 Conclusions

The following conclusions were reached regarding each of the above questions:

1. Classification of HOOPP - The Province has concluded that HOOPP meets the definition of a multiemployer benefit plan as the plan is a defined benefit plan to which two or more governments or government organizations contribute. For HOOPP, multiple Provincially controlled hospitals contribute. Contributions by one participating entity are not segregated in a separate account or restricted to provide benefits only to employees of the entity. The classification of HOOPP as a multiemployer benefit plan for accounting purposes has been consistent for over 10 years and had been consistently accepted without question by the Office of the Auditor General of Ontario (OAG), including throughout the 2015/16 Public Accounts.
2. Recognition of a pension asset for a multiemployer benefit plan - The Province has concluded that PSAS (Section PS 3250) supports the recognition by a government sponsor of its portion of a pension plan asset in respect of a multiemployer benefit plan. The Province is the primary funder of HOOPP through its funding of its controlled hospitals. The Province's portion of a pension surplus for HOOPP meets the definition of an accrued benefit asset under Section PS 3250. For HOOPP, the Province's portion as at March 31, 2016 of the pension liability is 39.1% which is calculated as 85% (the % of members in HOOPP from hospitals consolidated in the public accounts) of 56% (the portion of contributions to HOOPP made by the employers).
3. Measurement of a pension asset - The Province has concluded that the attributes of the multiemployer arrangement for HOOPP do not allow the Province to access its portion of any plan surplus through withdrawal of the surplus or through reduced future contributions. As a result, the Province is not expected to realize any expected future benefit from a plan surplus of HOOPP. A 100% valuation allowance would be recorded against the accrued benefit asset by the Province of Ontario.

4.0 Background information

4.1 Overview of HOOPP

HOOPP was established by the Ontario Hospital Association (OHA) in 1960 to provide post-retirement benefits to Ontario's health care community. HOOPP is a multi-employer contributory defined benefit, where factors, such as earnings and years of service, define members' benefits. The plan was established under an Agreement and Declaration of Trust for the benefit of eligible employees of participating employers.

HOOPP operates in accordance with:

- a) The *Teachers' Pension Act* (TPA), R.S.O. 1990, c.T.1 (TPA);
- b) The *Pension Benefits Act (Ontario)*, R.S.O. 1990, c. P.8 (PBA) and the regulations thereunder (PBR);
- c) Plan text for HOOPP ; and
- d) HOOPP's policies and procedures.

HOOPP is governed by a board of trustees (the Board) consisting of 16 voting members. OHA appoints eight trustees, and four unions, the Ontario Nurses' Association (ONA), the Canadian Union of Public Employees (CUPE), the Ontario Public Service Employees Union (OPSEU) and the Service Employees International Union (SEIU), each appoint two Trustees. There are also two non-voting Board members. One observer representing pensioners is appointed by the OHA, and one is appointed by the Settlor Unions. Each Trustee has a legal obligation to administer the plan in the best interests of all its members, regardless of their union or other affiliation. Neither the OHA nor the four unions are controlled by Province of Ontario nor included in the government reporting entity.

The HOOPP Board is responsible for administering the Plan. The Board oversees all aspects of the plan and the HOOPP Trust Fund. The Boards' duties include:

- approving changes to the Plan and benefits;
- setting contribution levels;
- establishing investment policy;
- monitoring investment performance; and
- approving annual operating budgets.

The design of the Board is such that the Province of Ontario does not have voting decision making authority on the HOOPP Board and therefore does not appear to have the ability to exercise control over key decisions such as approving changes to the Plan and benefits, setting contribution levels and approving annual operating budgets.

Based on the latest information received from HOOPP as at March 31, 2016, approximately 85% of the membership in HOOPP represents employees from consolidated hospitals (the other 15% are members from consolidated and primarily non-consolidated health agencies). Currently, 4 out of the Province's

Accounting by the Province of Ontario for the Healthcare of Ontario Pension Plan

146 consolidated hospitals are not members of HOOPP.

4.2 Accounting for HOOPP by the Province

In accordance with RETIREMENT BENEFITS, Section PS 3250 of PSAS, the Province has accounted for HOOPP as a multi-employer plan.

As at March 31, 2016 the Province's consolidated financial statements reported 39.1% of the net liability of HOOPP which is calculated as 85% (the % of members in HOOPP from hospitals consolidated in the public accounts) of 56% (the portion of contributions to HOOPP made by the employers). The 56% is determined in reference to the employer to employee contribution ratio which currently stands at \$1.26¹ employer contribution for each \$1.00 contributed by the employee. As such, the \$1.26 employer contribution is 56% of total contributions of \$2.26.

85% of the employer contributions for HOOPP, in the amount of \$747 million for the year ended March 31, 2016 are included in the Salaries, Wages and Benefits expenses of the hospitals sector (Schedule 10) and in the expenses of the Ministry of Health and Long-Term Care (Schedule 4) in the Province of Ontario's consolidated financial statements.

The pension liability as well as the consolidation % used in the reporting by the Province of Ontario for HOOPP for the prior 10 years is reflected in Appendix A.

4.3 Applicability of PS 3250 as primary source of GAAP

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, Section PS 1150 prescribes that, in developing and applying accounting policies, all primary sources of GAAP should be applied (Section PS 1150 paragraph .04). Primary sources of generally accepted accounting principles (GAAP) are Sections PS 1201-PS 3510, Public Sector Guidelines and appendices and illustrative material to those pronouncements. Only when there are no primary sources of GAAP that relate to the transactions or events under consideration, or more specific guidance is needed (Section PS 1150 paragraph .05), does an entity consider other primary sources of GAAP dealing with similar issues and also the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000 (issued January 2003). Section PS 1000 is not, however, a "primary source of GAAP" under the PSA Handbook.

The primary sources of GAAP specific to the accounting for pension assets is RETIREMENT BENEFITS, Section PS 3250 (issued in September 2001 replacing the prior EMPLOYEE PENSION OBLIGATIONS, also titled Section PS 3250).

There have not been consequential changes to Section PS 3250 since its introduction into the PSA Handbook in 2001.

¹ Per the 5-year agreement reached between HOOPP and the Government of Ontario in October 2012

5.0 Question 1 – Classification of a pension asset

The analysis below addresses whether the Province's share of a pension surplus in HOOPP, calculated in accordance with PSAS under Section PS 3250, would represent a reportable asset to the Province of Ontario in the Public Accounts.

5.1 RETIREMENT BENEFITS PSAS 3250

The focus of the following analysis is on the accounting requirements in RETIREMENT BENEFITS, Section PS 3250 as this standard is a primary source of GAAP which specifically addresses the accounting for pension assets. The following highlights some key concepts and guidance contained in this standard.

5.1.1 Section PS 3250 – Purpose and Scope

The purpose and scope of Section PS 3250 is included in paragraph .001 which states:

PURPOSE AND SCOPE

.001 This Section establishes standards on how to account for and report obligations for employee retirement benefits in government financial statements. Other employee future benefits are specifically dealt with in POST-EMPLOYMENT BENEFITS, COMPENSATED ABSENCES AND TERMINATION BENEFITS, Section PS 3255.

Obligations for retirement benefits are further explained in RETIREMENT BENEFITS, Section PS 3250.003 as follows:

.003 Obligations for retirement benefits result from a promise by a government to provide these benefits to employees because of retirement in return for their services. Pensions and other retirement benefits, such as extended health care and life insurance benefits, are a form of compensation offered for services rendered and accrue over the years employees render those services. The fundamental accounting task is to determine the amount of the obligation for retirement benefits to attribute to each period of employee service. Determining such amounts involves not only accounting for past transactions and events; it also requires forecasts of future events, such as inflation, investment returns, medical costs and employee turnover and mortality.

RETIREMENT BENEFITS, Section PS 3250 applies to the accounting for HOOPP in the Province of Ontario's financial statements as the pension plan represents an obligation of the Province (funded through its consolidated hospitals) to provide retirement benefits to the members of the plan in return for their services.

5.1.2 PS 3250 – Types of pension plans

RETIREMENT BENEFITS, Section PS 3250 addresses the accounting for different types of pension plans including:

- defined benefit plans (of which joint defined benefit plans are a subset),
- defined contribution plans, and
- multiemployer and multiple-employer benefit plans.

Accounting by the Province of Ontario for the Healthcare of Ontario Pension Plan

The definitions of a multiemployer and defined benefit plan are included in the glossary to Section PS 3250 as follows:

A **multiemployer plan** is a defined benefit plan to which two or more governments or government organizations contribute, usually pursuant to legislation or one or more collective bargaining agreements. The main distinguishing characteristic of a multiemployer plan is that the contributions by one participating entity are not segregated in a separate account or restricted to provide benefits only to employees of the entity and, thus may be used to provide benefits to employees of all participating entities.

A **defined benefit plan** specifies either the benefits to be received by employees after retirement or the method for determining those benefits. The most commonly used defined benefit plans are:

Final pay plan — Bases benefits on an employee's length of service and compensation over a specified number of years (usually the years of an employee's highest earnings).

Flat benefit plan — Provides a specified benefit for each year of service rendered; the benefit earned in each period is usually fixed and determinable under the terms of the plan and the amount of benefits to be received varies only with the years of service rendered.

HOOPP specifies the method for determining benefits to be received by employees after retirement in the Plan text. It is a defined benefit plan to which two or more governments or government organizations contribute. For HOOPP, multiple Provincially controlled hospitals contribute. Contributions by one participating entity (for example, one specific hospital) are not segregated in a separate account or restricted to provide benefits only to employees of the entity.

The classification of HOOPP as a multiemployer benefit plan for accounting purposes by the Office of the Provincial Controller has been consistent for over 10 years and had been consistently accepted without question by the OAG, including throughout the 2015/16 Public Accounts.

5.2 Conclusion on classification

The Province has concluded that HOOPP meets the definition of a multiemployer benefit plan as the plan is a defined benefit plan to which two or more governments or government organizations contribute. For HOOPP, multiple Provincially controlled hospitals contribute. Contributions by one participating entity are not segregated in a separate account or restricted to provide benefits only to employees of the entity. The classification of HOOPP as a multiemployer benefit plan for accounting purposes has been consistent for over 10 years and had been consistently accepted without question by the Office of the Auditor General of Ontario (OAG), including throughout the 2015/16 Public Accounts.

6.0 Question 2 – Recognition of a pension asset for a multiemployer benefit plan

6.1 Standards in the PSA Handbook

RETIREMENT BENEFITS, Section PS 3250 paragraphs .105 to .111 provide guidance on the accounting for a multiemployer benefit plan in the financial statements of a government sponsor as follows:

Multiemployer plans

.105 A multiemployer plan is a defined benefit plan to which two or more governments or government organizations contribute, usually pursuant to legislation or one or more collective bargaining agreements. The main distinguishing characteristic of a multiemployer plan is that the contributions by one participating entity are not segregated in a separate account or restricted to provide benefits only to employees of the entity and thus may be used to provide benefits to employees of all participating entities.

.106 The federal and most provincial governments sponsor defined benefit plans in which many public sector organizations participate. Many local governments participate in such multiemployer plans. When benefits are provided to employees through a multiemployer plan, the amount for which an individual government is obligated under the plan may not be quantified. Generally, a contribution rate is established for each period to ensure that the plan assets are adequate to cover the plan's future benefit payments.

.107 When a government sponsors a defined benefit multiemployer retirement benefit plan, it has the responsibility to ensure that the defined benefits promised to employees are met. In that circumstance the sponsoring government is at risk for future experience gains or losses and would account for its related obligation for the entire multiemployer plan as a defined benefit plan.

.108 When a government sponsors a defined benefit multiemployer retirement plan, the government should follow the standards for defined benefit plans in accounting for its obligation for the plan. [SEPT. 2001]

.109 Although a multiemployer plan may have the characteristics of a defined benefit plan, sufficient information to follow the standards for defined benefit plans is normally not available for each participating employer other than the sponsoring government. For this reason, a multiemployer plan is accounted for by each participating government following the standards for defined contribution plans.

.110 When benefits are provided to employees through a multiemployer retirement benefit plan, each entity participating in the plan, other than the sponsoring government, should follow the standards for defined contribution plans. [SEPT. 2001]

Accounting by the Province of Ontario for the Healthcare of Ontario Pension Plan

.111 The government should disclose any available information about any surplus or deficit in a multiemployer plan, the basis used to determine the surplus or deficit and the implications, if any, for the government. [SEPT. 2001]

Section PS 3250 paragraph .108 states that “When a government sponsors a defined benefit multiemployer retirement plan, the government should follow the standards for defined benefit plans in accounting for its obligation for the plan.” Additionally, paragraph .107 indicates the sponsoring government “... would account for its related obligation for the entire multiemployer plan as a defined benefit plan.” Therefore Section PS 3250 paragraphs .050 to .059 (guidance for defined benefit plans) are applicable to government sponsors in a multiemployer plan. These paragraphs (which also apply to the accounting for joint defined benefit plan) require an accrued benefit asset to be reported net of a valuation allowance.

The term “sponsor” is not defined in PSAS. A common definition of the term is “a person or organization that provides funds for a project or activity carried out by another, in particular.” Since the participating employers to HOOPP (primarily hospitals) receive the majority of their funding from the Province of Ontario (for example, approximately 85% of the funding for the broader public sector was from the Province for 2015/2016 per Schedule 10), it can be suggested that the Province of Ontario is the sponsor of HOOPP. The Province is the primary funder of HOOPP through its funding of its controlled hospitals. The HOOPP Board and the Province have negotiated in the past (most recently October 2012 regarding a 5 year agreement) on the funding ratio between the employees and employers of HOOPP.

As mentioned, paragraphs .107 and .108 of Section PS 3250, indicate that only the government’s portion of the plan is included in the government’s financial statements following the requirements of Section PS 3250 for defined benefit plans (recognition) and the measurement of that portion is based on the requirements of Section PS 3250 (measurement). While PSAS is not explicit as to how a government sponsor would calculate its obligation or related obligation, if it was intended that no pension asset/liability could be recognized for a multiemployer plan Section PS 3250 paragraphs .107 and .108 would have made this clear. Similarly, if it was intended the government sponsor report 100% of the pension asset/liability, these paragraphs would not have referred to “its obligation” or “its related obligation”.

This paper discusses the question of measurement separately in Question 3.

6.4 Conclusion on recognition

The Province has concluded that PSAS (Section PS 3250) supports the recognition by a government sponsor of its portion of a pension plan asset in respect of a multiemployer benefit plan. The Province is the primary funder of HOOPP through its funding of its controlled hospitals. The Province’s portion of a pension surplus for HOOPP meets the definition of an accrued benefit asset under Section PS 3250. For HOOPP, the Province’s portion as at March 31, 2016 of the pension liability is 39.1% which is calculated as 85% (the % of members in HOOPP from hospitals consolidated in the public accounts) of 56% (the portion of contributions to HOOPP made by the employers). The measurement of that accrued benefit asset is

determined by reference to the guidance in Section PS 3250 regarding the Limit on the Carrying Amount of an Accrued Benefit Asset, discussed in Question 3 of this position paper.

7.0 Question 3 – Measurement of a pension asset

7.1 Standards in the PSA Handbook

Section PS 3250 addresses how to measure a pension asset. This is a two-step process for HOOPP which is consistent with the calculation for the Ontario Teachers' Pension Plan (OTPP).

Consistent with OTPP, the relevant guidance for HOOPP is Section PS 3250 paragraphs .050-.059 which are included below for completeness and ease of reference:

Limit on the carrying amount of an accrued benefit asset

.50 An accrued benefit asset should be presented on a government's statement of financial position net of any valuation allowance. When a defined benefit plan gives rise to an accrued benefit asset, a government should recognize a valuation allowance for any excess of the adjusted benefit asset over the expected future benefit. A change in valuation allowance should be recognized in the statement of operations for the period in which the change occurs. [SEPT. 2001]

.51 A government with a defined benefit plan may have an accrued benefit asset for accounting purposes. An accrued benefit asset arises when the government's total contributions to the plan, including interest earned thereon, are greater than the retirement benefit expense recognized since the start of the plan. Contributions reflect the funding objectives of the plan. The benefit expense reflects the accounting objectives and may differ for a number of reasons, including the fact that actuarial gains and losses are deferred and amortized in future periods.

.52 A government may benefit from an accrued benefit asset either by withdrawing surplus assets or by taking a contribution holiday or receiving a refund of contributions. The accrued benefit asset may become impaired when there is a plan surplus for accounting purposes that the government is not entitled to benefit from fully. For example, there may be a regulatory moratorium on pension surplus withdrawals or uncertainties as to a government's legal right to use a plan's accounting surplus.

.53 To determine the extent to which an accrued benefit asset may be impaired, the government first determines the adjusted benefit asset. The adjusted benefit asset is the accrued benefit asset less net unamortized actuarial losses (determined on a basis using market value of assets).

.54 The adjusted benefit asset is then compared to the expected future benefit. When the expected future benefit exceeds the adjusted benefit asset, the accrued benefit asset is not impaired and, accordingly, no valuation allowance is required. The chart included as Appendix A to this Section is intended to set out the relationship between the various defined terms.

.55 The objective of the standard in paragraph PS 3250.050 is to limit a government's accrued benefit asset to the amount it can realize in the future. The expected future benefit is a calculated amount representing the benefit a government expects to realize from a plan surplus. An expected future benefit includes any withdrawable surplus or reduction in future contributions.

.56 A government determines its expected future benefit as the sum of:

- a) the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
- b) the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

.57 A government's expected future accruals for service for the current number of active employees are determined on a basis consistent with that used to determine its accrued benefit obligation. These expected future accruals for service, less required employee contributions and minimum contributions the government is required to make regardless of any surplus, are then discounted back to the current period to determine the present value. The interest rate used to calculate this present value is the expected rate of return on plan assets used to determine the benefit expense in the period.

.58 When administration expenses are paid by the plan and included in the normal cost calculation, a best estimate of the future administration expense is included in the expected future accruals for service. When administration expenses are paid by the plan and not included in the normal cost calculation, the rate of return on plan assets is adjusted to reflect the deduction of the administrative expenses.

.59 A key factor in determining a government's expected future benefit from a defined benefit plan with a plan surplus for accounting purposes is the ability of the government to withdraw assets from the plan. The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal. It excludes any withdrawable plan surplus a government is currently required, or intends, to allocate to employees. A government may not anticipate obtaining a legally enforceable right to withdraw a portion of a plan surplus to which it is not currently entitled, whether on the basis of precedent or otherwise. Accordingly, when withdrawal of plan surplus requires the approval of employees or an appropriate regulatory authority or a court of law, a government excludes any amount subject to this restriction from its expected future benefit until such approval has been obtained. A change in the allocation of surplus between a government and its employees is incorporated into the calculation of the expected future benefit only when it has been agreed to and, when required, approved by the appropriate regulatory authorities.

Accounting by the Province of Ontario for the Healthcare of Ontario Pension Plan

Section 3250 paragraph .052 states that a government may benefit from an accrued benefit asset by either i) withdrawing surplus assets from the plan or ii) by taking a contribution holiday or receiving a refund of contributions. This is an explanatory paragraph on how a government may benefit from an accrued benefit asset and why a valuation allowance may be needed.

7.2 Calculating the limit on the carrying amount of an accrued benefit asset

Section PS 3250 paragraphs .053 to .058 lay out a mathematical calculation that determines the value of the adjusted benefit asset and the expected future benefit, and tests whether a government can expect to recover its accrued benefit asset through a withdrawal of surplus or through the reduction of future contributions. The stated objective of this exercise, as set out in Section PS3250 paragraph .055, is to limit the amount of the government's accrued benefit asset to the amount "it can realize in the future." The expected future benefit is further described as "a calculated amount representing the benefit a government expects to realize from a plan surplus". A valuation allowance is recorded against the pension asset to limit the asset value, if necessary, based on this analysis. This is a prescriptive test under Section PS 3250, specifically that the amount of an asset is limited to the "expected future benefit" as defined in Section 3250 paragraph .56.

Therefore in accordance with Section PS 3250 paragraph .56 the Province calculated the expected future benefit as the sum of:

- a) the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
- b) the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

Each of these is discussed separately.

7.3 Considerations re: withdrawal of the surplus (Section PS 3250 paragraph .056 (b))

In relation to the ability of a government to benefit from a surplus through the withdrawal of the surplus, Section 3250 paragraph .059 indicates "The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal."

For HOOPP, according to the Plan text, there is no ability for the Province to withdraw a surplus. Section 14.5 (1) of the Plan text indicates that a surplus in the plan is to be used for improving benefits or reducing the total annual cost of the plan. A paragraph from Section 14.5 (1) is as follows:

If the actuary determines on an on-going basis that there is a surplus in the trust fund at a triennial valuation date equal to or less than ten percent of actuarial liabilities, the administrator, in consultation with the actuary, shall determine the portion, if any, of the surplus

Accounting by the Province of Ontario for the Healthcare of Ontario Pension Plan

to be used for the purpose of improving benefits or reducing the total annual cost.

There are no provisions in the HOOPP Plan text to permit the withdrawal of a surplus.

7.4 Considerations re: reduced future contributions (Section PS 3250 paragraph .056 (a))

Section PS 3250 paragraph .056(a) sets out that the government's calculation of expected future benefit would be the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus.

In the event of a surplus, the HOOPP Board is responsible for making decisions in the Plan members' best interest regarding improving benefits and/or the reducing contributions. One might assume that the Board is inherently motivated to oppose the reduction of contributions because the design of HOOPP effectively allows for employees to earn a 26% premium for employee contributions under the current arrangement. Additionally, there is no incentive for union appointees on the Board, who represent the interests of employees and OHA appointees, who do not have direct accountability to represent the interests of the Province of Ontario to reduce contributions as this would go against the best interests of Plan members.

The employers, primarily Ontario Hospitals, also do not have decision making authority on the HOOPP Board and as such, the likelihood of a reduction of contributions to HOOPP as a result of surpluses is very low.

7.8 Conclusion on measurement

The Province has concluded that the attributes of the multiemployer arrangement for HOOPP do not allow the Province to access its portion of any plan surplus through withdrawal of the surplus or through reduced future contributions. As a result, the Province is not expected to realize any expected future benefit from a plan surplus of HOOPP. A 100% valuation allowance would be recorded against the accrued benefit asset by the Province of Ontario.

This conclusion is consistent with the Province of British Columbia who disclosed the following in its 2015/16 public accounts:

Where plans are in a net asset position and Joint Trusteeship Agreements restrict access to the assets, the province records the value of plan net assets as nil. The province records a liability for its share where plans are in a net obligation position.

Appendix A – Pension liability for HOOPP including the consolidation % used in the reporting by the Province of Ontario for the prior 10 years

Financial year-end date	Province's Pension Liability for HOOPP (in \$ millions)	% of HOOPP members from consolidated hospitals	% of employer contributions
March 31, 2007	153	88.5%	56%
March 31, 2008	198	88.5%	56%
March 31, 2009	317	88.5%	56%
March 31, 2010	501	88.5%	56%
March 31, 2011	634	88.5%	56%
March 31, 2012	802	86.6%	56%
March 31, 2013	991	85.9%	56%
March 31, 2014	1,112	85.0%	56%
March 31, 2015	1,056	84.4%	56%
March 31, 2016	872	85.2%	56%

2014-03-31 S&TA Consolidation.pdf

SPONSORSHIP AND TRUST AGREEMENT

CAAT PENSION PLAN

Effective January 1, 1995

As amended:

December 13, 2006;

December 2, 2009;

December 7, 2011; and

March 31, 2014

THIS SPONSORSHIP AND TRUST AGREEMENT made between:

THE BOARD OF GOVERNORS OF ALGONQUIN COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF CAMBRIAN COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF CANADORE COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF CENTENNIAL COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF CONESTOGA COLLEGE INSTITUTE OF TECHNOLOGY AND ADVANCED LEARNING (formerly known as CONESTOGA COLLEGE OF APPLIED ARTS AND TECHNOLOGY), THE BOARD OF GOVERNORS OF CONFEDERATION COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF DURHAM COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF GEORGE BROWN COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF GEORGIAN COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF HUMBER COLLEGE INSTITUTE OF TECHNOLOGY AND ADVANCED LEARNING (formerly known as the HUMBER COLLEGE OF APPLIED ARTS AND TECHNOLOGY), THE BOARD OF GOVERNORS OF LA CITÉ COLLÉGIALE, THE BOARD OF GOVERNORS OF LAMBTON COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF LOYALIST COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF MOHAWK COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF NIAGARA COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF NORTHERN COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF SAULT COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF SENECA COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF SHERIDAN COLLEGE INSTITUTE OF TECHNOLOGY AND ADVANCED LEARNING (formerly known as the SHERIDAN COLLEGE OF APPLIED ARTS AND TECHNOLOGY), THE BOARD OF GOVERNORS OF SIR SANDFORD FLEMING COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF ST. CLAIR COLLEGE OF APPLIED ARTS AND TECHNOLOGY, THE BOARD OF GOVERNORS OF ST. LAWRENCE COLLEGE OF APPLIED ARTS AND TECHNOLOGY AND THE BOARD OF GOVERNORS OF LE COLLÈGE BORÉAL (the "Colleges")

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION ("OPSEU")

- and -

ONTARIO COLLEGE ADMINISTRATIVE STAFF ASSOCIATION ("OCASA")

- and -

the Board of Trustees (as defined herein)

In consideration of the premises and mutual covenants contained herein, the Parties agree as follows:

ARTICLE 1 – DEFINITIONS

1.01 In this Agreement,

"Act" shall mean the Ontario Pension Benefits Act, R.S.O. 1990 c. P. 8, and any future legislation amending, supplementing or superseding or incorporating it, including any Regulations issued pursuant to it, and including any other pension benefits legislation other than the Income Tax Act (Canada) having jurisdiction over the Plan.

"Actuary" shall mean the actuary or firm of actuaries who is, or one of whose employees is, a Fellow of the Canadian Institute of Actuaries, retained by, but independent of, the Board of Trustees.

"Agreement" shall mean this Sponsorship and Trust Agreement, as may be amended from time to time.

"Auditor" shall mean such person, firm or corporation as may, from time to time, be appointed by the Board of Trustees as auditor of the Trust Fund, provided that such person, or at least one principal of such firm or corporation, is a public accountant licensed to practice as such in the province of Ontario.

"Bank" shall mean a scheduled bank under the Bank Act (Canada).

"Benefits" shall mean all pension and related benefits, including disability, death and termination benefits, among others, as may, from time to time, be provided to Members of the Plan, their beneficiaries or dependents, all as set forth in the Plan.

"Board of Trustees" shall mean the group of twelve persons designated from time to time as Trustees, pursuant to the provisions of this Agreement, which shall act as the administrator of the Plan for the purposes of the Act.

"College" means a Board of Governors of a College of Applied Arts and Technology established under the *Colleges of Applied Arts and Technology*, 2002 (Ontario) or any successor legislation, and that participates in the Plan.

"Contributions" shall mean sums of money paid or payable to the Trust Fund in accordance with the provisions of the Plan:

- (a) by an Employer, in accordance with applicable legislation and any agreement requiring pension contributions to the Plan;
- (b) by any Member as required by this Agreement, the Plan or any agreement; or
- (c) pursuant to any written agreement for the transfer of funds into the Plan in exchange for Pensionable Service in accordance with the provisions of the Plan.

"Credit Union" shall mean a credit union as defined in the Credit Unions and Caisses Populaires Act (Ontario).

"Employee Committee Members" shall mean those members of the Sponsors' Committee referred to as Employee Committee Members in Section 11.02 of this Agreement.

"Employer" means (a) a College or (b) any other employer that has made an application to the Board of Trustees to become a participating employer in the Plan, that has been approved by the Sponsors' Committee as a participating employer, and that participates in the Plan.

"Employer Committee Members" shall mean those members of the Sponsor's Committee referred to as Employer Committee Members in Section 11.02 of this Agreement.

"Former Member" shall mean a person who has either terminated the employment that relates to the Plan or has terminated membership in the Plan and who is entitled to a Benefit under the Plan, but does not include a Retired Member.

"Insurance Company" shall mean a person or corporation licensed under the Insurance Act (Ontario).

"Investment Manager" shall mean any persons, firms or corporations appointed by the Board of Trustees to act in the capacity of financial advisors or managers regarding the investment and management of the assets of the Trust Fund.

"Member" shall mean any person who is employed by an Employer and on whose behalf an Employer is making contributions to the Fund or who is otherwise eligible for Benefits as an active member of the Plan.

"Pensionable Service" shall mean Pensionable Service as defined in the Plan.

"Plan" shall mean The Colleges of Applied Arts and Technology Pension Plan, as may be amended from time to time.

"Plan Manager" shall mean such person, firm or corporation as may, from time to time, be appointed, hired or retained by the Board of Trustees, in accordance with the provisions of this Agreement, for the purpose of the administration of the Trust Fund and Plan.

"Retired Member" shall mean a person who has either terminated the employment that relates to the Plan or has terminated membership in the Plan and who is receiving or has elected to receive a normal or early retirement pension from the Plan.

"Sponsors' Committee" shall mean the Sponsors' Committee appointed in accordance with Article 11 of this Agreement.

"Trust Company" shall mean a trust company which is licensed to carry on business in Canada.

"Trust Fund" or "Fund" shall mean all of the assets of the Plan trust fund consolidated with all funds and assets received from time to time by way of Contributions, together with all increments, earnings and

profits accrued thereon from the administration and investment of the said Fund and from which Benefits under the Plan are to be paid.

"Trustee" shall mean a person appointed as a member of the Board of Trustees in accordance with Article 4 of this Agreement.

"University" means an institution that is recognized as a university in Ontario with the power to grant university degrees specifically conferred by a legislative or parliamentary act or charter, but excluding any entity that is a party to this Agreement by virtue of being a College.

ARTICLE 2 ESTABLISHMENT OF THE TRUST FUND

2.01 The Trust Fund was created and established, and is continued, for the purpose of providing such Benefits or other payments as may be approved from time to time in accordance with the Plan.

2.02 (Deleted)

2.03 The Board of Trustees accepts the trusts herein contained and hereby agrees to receive, hold, maintain, manage, administer, invest and distribute the assets of the Trust Fund subject to the provisions of this Agreement, the Plan and applicable legislation. The Board of Trustees shall at all times act as trustee of the Plan and Trust Fund (known as "The Colleges of Applied Arts and Technology Pension Plan Trust Fund"). The Board of Trustees shall jointly hold all property, enter into contracts in the name of the Trust Fund, and act in all manners on behalf of the Trust Fund, subject to the provisions of this Agreement, the Plan and applicable legislation. Title to all assets of the Trust Fund shall be jointly vested in and remain exclusively with the Board of Trustees, except as otherwise provided in this Agreement or required by law.

2.04 Except as otherwise set out in this Agreement or in the Plan, none of the parties to this Agreement, or any Employer, Member, Former Member, Retired Member or any other person, association, firm or corporation, shall have any right, title or interest in or to the assets of the Trust Fund.

2.05 Subject to the Plan and any applicable legislation, no assets of the Trust Fund or Benefits or monies payable therefrom, shall be subject in any manner by any Member, Former Member, Retired Member or person claiming through such Member, Retired Member or Former Member, or otherwise, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, garnishment, execution, mortgage, lien or charge.

2.06 No party to this Agreement nor any Member nor any Retired Member or Former Member shall be liable or responsible for any debts, liabilities or obligations of the Trustees, except as set out in this Agreement.

ARTICLE 3 THE PLAN

3.01 The Plan document at Schedule 1 to this Agreement is a restatement of the Plan that took effect on January 1, 1995, except where otherwise indicated therein.

3.02 The Plan document at Schedule 1 to this Agreement may be further amended or restated at any time in accordance with its terms, the terms of this Agreement and any governing legislation, and Article 9 of this Agreement does not apply to any such further amendments or restatements of the Plan.

ARTICLE 4 THE BOARD OF TRUSTEES

4.01 The Trust Fund and the Plan shall be administered in accordance with the provisions of this Agreement, the Plan and all governing legislation by the Board of Trustees which, subject to Article 6, shall be comprised of twelve (12) members. Those Trustees appointed under clause 4.02(a) shall be referred to in this Agreement as Employer Trustees and those Trustees appointed under clauses 4.02(b), 4.02(c) and 4.02(d) shall be referred to in this Agreement as Employee Trustees. For greater certainty, (a) each Employee Trustee is a representative of Members, and (b) there shall not be any alternate Trustees permitted to act in the place of any of the Trustees.

4.02 (a) Six of the Trustees shall be appointed by the Employer Committee Members of the Sponsors' Committee by way of written resolution signed by each of the Employer Committee Members, which resolution shall be filed with the office of the Plan Manager;

(b) Four of the Trustees shall be appointed by the Employee Committee Members of the Sponsors' Committee appointed by OPSEU by way of written resolution signed by each of the Employee Committee Members appointed by OPSEU, which resolution shall be filed with the office of the Plan Manager;

(c) One Trustee shall be appointed by the Employee Committee Member of the Sponsors' Committee appointed by OCASA by way of written resolution signed by the Employee Committee Member appointed by OCASA, which resolution shall be filed with the office of the Plan Manager;

(d) One Trustee shall be appointed by the Employee Committee Members of the Sponsors' Committee for a three-year term in accordance with the provisions of this clause 4.02(d). The right to appoint such Trustee shall rotate between the Employee Committee Members of the Sponsors' Committee referred to in clause 4.02(b) and the Employee Committee Member of the Sponsors' Committee referred to in clause 4.02(c), such that:

(i) the first three-year appointment (terminating at midnight on December 31, 2009) shall be made by the Employee Committee Members referred to in clause 4.02(b);

(ii) the second three-year appointment (effective January 1, 2010 and terminating at midnight on December 31, 2012) shall be made by the Employee Committee Member referred to in clause 4.02(c);

(iii) for the next three such three-year appointments, the first two appointments shall be made by the Employee Committee Members referred to in clause 4.02(b) and the third appointment shall be made by the Employee Committee Member referred to in clause 4.02(c); and

(iv) subsequent appointments shall be made in accordance with the sequence described in subclause 4.02(d)(iii).

For the purposes of this clause 4.02(d), appointments made by the Employee Committee Members referred to in clause 4.02(b) shall be made in accordance with the provisions of clause 4.02(b), and appointments made by the Employee Committee Member referred to in clause 4.02(c) shall be made in accordance with the provisions of clause 4.02(c).

(e) (Deleted)

4.03 (Deleted)

4.04 (Deleted)

4.05 Each Trustee, after signing an Acceptance of Trust, as adopted by the Trustees from time to time, shall be deemed to accept the trusts created and established by this Agreement and to consent to act as a Trustee.

4.06 Each Trustee shall be appointed to a term not to exceed three (3) years, although a Trustee, other than a Trustee appointed pursuant to clause Section 4.02(d), may be reappointed to successive terms not to exceed three (3) years at a time.

4.07 A Trustee may by deed resign from his or her appointment. In the event of the incapacity or resignation by deed of a Trustee, such Trustee shall be fully discharged from all future duties and responsibilities in respect of this Agreement and the trusts created under it. Notice of such incapacity or resignation shall be in writing by him or her, or on his or her behalf, and be sent to the office of the Plan Manager. Such notice shall state the date of such resignation or incapacity and shall be effective as of that date. In the event of the death of a Trustee, his or her heirs, administrators, executors and assigns shall be fully discharged from all future duties and responsibilities in respect of this Agreement and the trusts created under it as of the date of death.

4.08 Any party appointing a Trustee pursuant to subsection 4.02, may, in the same manner as the Trustee was appointed thereunder and upon sending written notice to the office of the Plan Manager, remove such Trustee at any time. Such removed Trustee shall be deemed to no longer be a Trustee, effective as of the date the notice is delivered, and shall be fully discharged from all future duties and responsibilities in respect of this Agreement and the trusts created under it as of that date.

4.09 In the event that any Trustee shall die, become incapacitated, resign or be removed in accordance with this Agreement, a successor Trustee shall immediately be designated by the appointing party. Any successor Trustee so designated shall immediately, upon written Acceptance of Trust, as

adopted by the Trustees from time to time, being filed with the Board of Trustees and with the office of the Plan Manager, become vested with all of the rights, powers and duties of a Trustee under this Agreement, with the like effect as if he or she had originally been named as a Trustee.

4.10 (a) The Trustees shall, from among their number, appoint a Chair and a Vice Chair. The Chair or, in the Chair's absence, the Vice Chair, shall chair the meetings of the Board of Trustees. The Chair and Vice Chair shall vote at all meetings of the Board of Trustees or its committees.

(b) The term of the Chair and the Vice Chair shall be eighteen months, unless otherwise resolved by the Board of Trustees.

(c) At all times, a Trustee nominated by the Employee Trustees shall be either the Chair or the Vice Chair, and the other position shall be filled by a Trustee nominated by the Employer Trustees. If a Trustee who is Chair or Vice Chair ceases at any time for any reason to be a Trustee, then his or her position shall be filled for the balance of the term by a Trustee selected in the same fashion as the Chair or Vice Chair that is being replaced. The term of any replacement Chair or Vice Chair shall be deemed to have commenced at the commencement or deemed commencement of the predecessor Trustee's term.

(d) Unless otherwise resolved by the Board of Trustees, at the end of their first terms, the Chair and Vice Chair, or their replacements, if any, will exchange positions. At the end of their second terms, the Chair and Vice Chair will cease to hold those positions, and the Trustees shall select a new Chair and Vice Chair in accordance with paragraphs (a) and (c) of this Section 4.10.

4.11 The Board of Trustees, and each of the Trustees acting in said capacity shall at all times act in the best interests of the Members, Former Members, Retired Members and the beneficiaries of the Plan and the Trust Fund, even where such interests may conflict with the desires and the intentions of any Employer, OPSEU, OCASA, or any other party to this Agreement.

ARTICLE 5 MEETINGS OF THE BOARD OF TRUSTEES AND CONDUCT OF MEETINGS

5.01 The Chair, or an officer of the Plan Manager delegated to do so by the Chair, shall cause written notice of the meetings of the Board of Trustees to be served upon the Trustees, no less than fourteen days prior to the date of the meeting.

5.02 The notice of meeting shall specify the date, time and location of the meeting and shall include an agenda of matters to be addressed at such meeting. Whenever possible, any reports or other documentation to be considered at such meeting shall be provided, including by electronic means, to the Trustees with the notice of meeting.

5.03 The notice of meeting may be served upon the Trustees by delivering it to the address for service provided for this purpose to all other Trustees or the Plan Manager by each of the Trustees. Service may be effected by prepaid registered mail, delivery, electronic mail or facsimile transmission. In the case of service by mail, notice shall be deemed to have been given on the fifth business day after mailing, except where there is an interruption or cessation in postal service at any time prior to the fifth

business day after mailing, in which case there shall be no deemed service. A notice served by delivery electronic mail or by facsimile transmission shall be deemed to have been given on the day of delivery or transmission provided such transmission or delivery takes place during regular business hours.

5.04 A Trustee may waive the service of notice herein and shall be deemed to have done so by attending at such meeting without objection.

5.05 There shall be five meetings of the Board of Trustees in each year unless otherwise resolved by the Board of Trustees.

5.06 The Chair may call special meetings of the Board of Trustees, subject to the notice provisions contained herein.

5.07 Any three Trustees may require the Chair to call a special meeting. Such request shall be in writing and include such information as is reasonably required by the Chair to fulfil the agenda provisions contained herein. Upon receipt of such request, the Chair shall call the special meeting for a date not later than thirty days following receipt of the request and information required for the agenda.

5.08 The Chair, with the consent of the Vice-Chair, may call extraordinary meetings of the Board of Trustees on twenty four hours notice. The notice of such an extraordinary meeting need not be in writing, but must specify the date, time, location and the reasons for the meeting and must be communicated by the Chair in such fashion as to ensure that the Trustees receive such notice. The requirements of Sections 5.02, 5.03, 5.04 and 5.09 do not apply to extraordinary meetings.

5.09 The agenda for each meeting and draft minutes of the previous meeting shall be distributed with the notice of meeting. The agenda shall permit any Trustee to introduce any new business at any meeting of the Board of Trustees.

5.10 With the exception of the meetings described in Section 5.17, all meetings of the Board of Trustees shall be held at the office of the Plan Manager, or such other location as resolved by the Board of Trustees. Trustees may participate in any meetings of the Trustees by telephone, internet-based or telecommunications conferences, provided that the Trustee is able to hear and participate fully in the meeting. In addition, all records and minutes of the Board of Trustees shall be kept at the office of the Plan Manager, or such other location as resolved by the Board of Trustees.

5.11 Any resolutions of the Board of Trustees shall require a vote of the majority of the Trustees present. Neither the Chair nor the Vice Chair, acting in the Chair's absence, shall be entitled to a second vote in the event of a deadlock.

5.12 A quorum for the transaction of business at any meeting of the Board of Trustees shall consist of not less than seven Trustees present in person or participating by means of a telephone conference call or internet-based or telecommunications conferences. No proxies shall be permitted at any time.

5.13 The Plan Manager or his or her designate shall act as recording secretary at any meeting of the Board of Trustees. Proper minutes will be prepared in draft form and provided to the Trustees for verification and approval at the following meeting.

5.14 A resolution in writing, signed by all of the Trustees, is valid as if it had been passed at a meeting of the Board of Trustees. Such resolutions may be executed in counterpart.

5.15 The Board of Trustees may establish such standing and ad hoc committees as they deem necessary from time to time, by way of a simple majority vote of the Board of Trustees at any meeting. The Board of Trustees shall, however, establish a Finance and Administration Committee and an Investment Committee and shall define the mandate of each of them.

5.16 Committees of the Board of Trustees shall consist of an equal number of Employer and Employee Trustees, and may include observers and such expert resource persons as the Board of Trustees may deem advisable, provided that only Trustees shall be entitled to move or vote on motions.

5.17 Unless the Board of Trustees resolves otherwise, any meeting of the Board of Trustees, except for a meeting to which Sections 6.02 or 6.05 applies, may be held by way of a telephone, internet-based or telecommunications conference provided that the Trustees participating in the said conference shall have the opportunity to consider the business of the Board of Trustees, move and vote on motions as at any other meeting of the Board of Trustees. The provisions of this Section 5 shall apply with such necessary modifications to such telephone, internet-based or telecommunications conferences.

ARTICLE 6 DISPUTE RESOLUTION

6.01 A deadlock shall be deemed to exist where a proposal, motion or resolution made by the Board of Trustees or any Trustee or Trustees is neither adopted nor rejected by a majority vote or where a resolution or motion is unable to be made at a meeting due to lack of a quorum of two consecutively called meetings.

6.02 In the event of a deadlock, a further meeting of the Board of Trustees shall be held no later than ten days after the deadlock has arisen for the purpose of resolving the matter in dispute. If the matter is not resolved at such meeting, any six Trustees may require the naming of a thirteenth Trustee, who shall cast the deciding vote at the next scheduled or special meeting.

6.03 Unless otherwise agreed to by the Sponsors' Committee, the thirteenth Trustee shall be selected by the Sponsors' Committee in accordance with Section 6.04 from a group of up to five persons chosen by the Sponsors' Committee for the purpose of discharging the duties of the thirteenth Trustee. The Sponsors' Committee shall agree on the number of persons to be chosen for such group. Where the Sponsors' Committee cannot agree which person or persons should be chosen for such group, the Employer Committee Members of the Sponsors' Committee shall nominate one person, the Employee Committee Members of the Sponsors' Committee appointed by OPSEU shall nominate one person and the Employee Committee Member of the Sponsors' Committee appointed by OCASA shall nominate one person; and these three nominees shall choose the person or persons for such group to discharge the

duties of the thirteenth Trustee. If such nominees fail to agree on the person or persons to be chosen for the purpose of discharging the duties of the thirteenth Trustee, the Sponsors' Committee shall ask the Chief Justice of Ontario to choose the person or persons who shall discharge the duties of the thirteenth Trustee.

6.04 Where more than one person has been chosen for the group of persons from which the thirteenth Trustee shall be selected to discharge the duties of the thirteenth Trustee, the selection of the thirteenth Trustee by the Sponsors' Committee of one of the persons chosen for the group shall be rotated as amongst those in the group, except that if any one of them is unavailable within thirty days of the dispute arising to act as the thirteenth Trustee, selection as the thirteenth Trustee shall pass to the next person in the group, or if such person is not available within thirty days, to the next available person in the group. Where none of the persons in the group are available to act as the thirteenth Trustee, the Sponsors' Committee shall appoint as the thirteenth Trustee such other person to which the Sponsors' Committee may agree. If the Sponsors' Committee fails to agree on the person to be chosen for the purpose of discharging the duties of the thirteenth Trustee, the Sponsors' Committee shall ask the Chief Justice of Ontario to choose the person or persons who shall discharge the duties of the thirteenth Trustee.

6.05 The thirteenth Trustee shall attend a meeting at which time he or she shall review all relevant documentation and entertain submissions from the remaining Trustees or any group of Trustees with respect to the matter in issue. The thirteenth Trustee shall cast a tie breaking vote and shall make his or her determination within seven days of the meeting at which submissions are made. The decision of the thirteenth Trustee shall be final and binding on all other Trustees, Employers, Members, Retired Members and Former Members and other beneficiaries of the Plan. The provisions of Section 5.11 shall not apply in respect of any vote utilizing the thirteenth Trustee. Upon rendering his or her decision, the thirteenth Trustee shall be functus and shall cease to be a Trustee.

6.06 The reasonable expenses and fees of the thirteenth Trustee incurred in the execution of his or her duties set out in this Article shall be paid out of the Fund.

ARTICLE 7 POWERS, DUTIES AND RESPONSIBILITIES OF THE BOARD OF TRUSTEES

7.01 The operation and administration of the Plan and the custody, investment and management of the Fund shall be the responsibility of the Board of Trustees and it is hereby given the authorization and power so to do, subject to the limitations and conditions contained in this Agreement and the Plan.

7.02 The Board of Trustees shall use all reasonable means to collect and receive all Contributions due to the Trust Fund and shall, promptly after receipt, deposit such Contributions in a special Trust Fund account established with a reputable Bank, Trust Company, Credit Union or other financial institution.

7.03 The Board of Trustees shall incur no liability collectively and no individual Trustee shall incur personal liability in acting,

- (a) upon any documents, data or information believed by it, him or her to be genuine and accurate and to have been made, executed, delivered or assembled by the proper parties, or
- (b) upon the written instructions of the Sponsors' Committee in respect of a matter for which the Sponsors' Committee has the authority under this Agreement to instruct the Board of Trustees.

7.04 No Trustee shall be liable for the act or omission of any other Trustee. The Fund shall indemnify and save harmless the Board of Trustees and the Trustees individually from and against any loss, expense, claim, demand, action or thing of any nature whatsoever, including any amount paid to settle an action or to satisfy a judgment, arising out of the performance or purported performance of their duties or responsibilities hereunder, except that this indemnity shall not, in any way, extend so as to protect any Trustee with respect to any matter or thing arising out of his or her own dishonesty, bad faith, wilful misconduct or negligence.

7.05 (Deleted)

7.06 The Board of Trustees is hereby empowered, in addition to any other power, as set forth herein or conferred by law:

- (a) to administer the Plan and invest the Trust Fund for the benefit of the Plan's Members, and other beneficiaries, as the case may be, subject to the terms of this Agreement and the Plan, and the requirements of applicable federal and provincial legislation;
- (b) to adopt such procedures, policies, rules and regulations necessary for the carrying out of their trusts, consistent with the provisions of this Agreement, the Plan text and the requirements of applicable provincial and federal legislation;
- (c) to enter into agreements with a Bank, Trust Company, Insurance Company, Credit Union or Investment Manager, selected by the Board of Trustees, for the purpose of providing investment management or advice, or for the purpose of acting as a depository or custodian for safekeeping of assets of the Trust Fund, or for any other purpose as the Board of Trustees shall deem necessary or desirable and to authorize any such Bank, Trust Company, Credit Union, Insurance Company, or Investment Manager to commingle any monies deposited with them in any mutual or pooled pension fund administered or managed by any of them subject to any applicable laws of Ontario and Canada;
- (d) to pay or provide for the payment of Benefits from the Trust Fund in accordance with the terms of the Plan and applicable laws of Ontario and Canada to those persons eligible to receive them;
- (e) to pay from the Fund all reasonable expenses incurred in collecting Contributions and administering and investing the Fund and administering the Plan including, but not limited to, all compensation and all reasonable and necessary costs and fees which may be incurred in connection with the retaining of such legal, actuarial, accounting, expert and clerical assistance

as the Board of Trustees, in their discretion, may find necessary or expedient in the performance of their duties. The Board of Trustees and individual Trustees shall be completely and fully protected in acting and relying reasonably and in good faith upon the opinions or advice of the aforementioned persons;

(f) to enter into contracts and agreements for carrying out the terms of this Agreement and the Plan and for the administration of the Plan and the administration and investment of the Fund and to do all acts as they, in their discretion, may deem necessary and advisable;

(g) to compromise, settle, arbitrate and release claims or demands in favour of, or against the Plan and Trust Fund, or the Board of Trustees, on such terms and conditions as the Board of Trustees may deem advisable;

(h) to establish procedures to be followed in filing applications for Benefits and for the furnishing and certification of evidence necessary to establish a right to such Benefits;

(i) to pay out of the Trust Fund, all real and personal property taxes, income taxes and other taxes of any and all kinds, levied or assessed under existing or future laws, upon or in respect of the Fund or any money, property or securities forming a part thereof;

(j) to accept payments to the Trust Fund from any source whatsoever, to the extent permitted by law, the Plan and this Agreement;

(k) to invest and reinvest such portion of the Fund as is not required for current expenditures, in any type of investments that are permitted by applicable federal and provincial laws and regulations, except that any restriction on investments set out in the Trustee Act (Ontario) or any other successor legislation shall not apply, and by the Statement of Investment Policies and Procedures established by the Board of Trustees, and to take any and all actions with respect to the holding, buying, selling or exchanging of such investments as they, in their sole discretion, may deem appropriate or necessary;

(l) to hold as uninvested cash, without any liability for interest thereon, such sums as they reasonably deem necessary or advisable for the reasonably current cash requirements of the Fund;

(m) to exercise all rights or privileges granted by the provisions of any contract entered into by the Board of Trustees with any Insurance Company, Bank, Trust Company, Credit Union or Investment Manager, and to make any alteration, modification, amendment or cancellation of such contract, or to take any other action respecting such contracts which they, in their discretion, may deem necessary or advisable;

(n) to enter into written agreements with other registered pension plans (as defined under the Income Tax Act) for the reciprocal recognition of Pensionable Service and the reciprocal transfer of the value of such Pensionable Service between the Plan and such other registered

pension plans, with the approval of the Sponsors' Committee if consequential amendments to the Plan are required;

(o) to delegate any of their administrative powers or duties or such other powers and duties as may be permitted by subsection 22(5) of the Act to any of their agents or employees, in such manner and subject to such terms and conditions as the Board of Trustees may deem necessary or appropriate; provided that such agents or employees report to the Board of Trustees as may be required in writing by it;

(p) to lease or purchase such lands, premises, materials, supplies and equipment as the Board of Trustees deems necessary or appropriate in the performance of its duties hereunder;

(q) to enter into cost sharing agreements with any other pension or welfare fund to permit the Board of Trustees to share expenses pertaining to the administration and investment of the Trust Fund and administration of the Plan, provided that any amounts paid by the Trust Fund to any other trust fund, in respect of the above expenses, shall be approved by the Auditor of the Trust Fund as being necessary and reasonable, and provided further that such cost sharing agreement shall provide that the Board of Trustees may terminate such agreement at any time, subject to such notice as may be required in such agreement;

(r) to incorporate corporations, the shares of which shall be held by or on behalf of the Board of Trustees, for purposes of administering the Trust Fund, investing the assets of the Fund or holding any investment thereof;

(s) to authorize the preparation of and to file an actuarial valuation in accordance with the Act and any other governing legislation and at such frequency as is required by the Act or any other governing legislation or at such greater frequency as may be directed by the Sponsors' Committee;

(t) to consult with the Sponsors' Committee during the preparation of an actuarial valuation and to make their best efforts to respond to any questions, comments or recommendations of the Sponsors' Committee, provided that the Board of Trustees shall be solely and exclusively responsible for the content of any actuarial valuation filed in accordance with the Act and any other governing legislation;

(u) to provide a copy of every actuarial valuation prepared for the Board of Trustees to the Sponsors' Committee and provide to all of the members of the Sponsors' Committee any information requested by any of them as quickly as possible;

(v) to hold a meeting between the Board of Trustees or its Chair and Vice-Chair or their delegate and the Sponsors' Committee at least once each year to explain the annual report to it and to answer any questions Sponsors' Committee members may have regarding the Plan and the Trust Fund;

- (w) to advise the Sponsors' Committee in respect of any changes to the Plan that need to be made to comply with any applicable law;
- (x) to advise the Sponsors' Committee in respect of changes that the Board of Trustees considers would improve the administration of the Plan;
- (y) to receive instructions from the Sponsors' Committee on issues of the design of the Plan and amendments to the Plan, to advise the Sponsors' Committee on the feasibility or consequences of implementing such instructions, and, after the giving of such advice, to act in accordance with the instructions, however modified, of the Sponsors' Committee, and to report to the Sponsors' Committee on the results of the Board of Trustee's actions in accordance with those instructions;
- (z) to retain auditors, actuaries and other financial and legal advisors that the Board of Trustees deems necessary;
- (aa) to take all steps, whether or not previously authorized herein, which the Board of Trustees may deem necessary or proper for the protection of the Trust Fund;
- (bb) to pay and adopt such policies or rules to provide for the reimbursement of reasonable out-of-pocket expenses of the individual Trustees and members of the Sponsors' Committee, and to provide for the payment of such other reasonable amounts, including reimbursement of lost compensation of individual Trustees and members of the Sponsors' Committee up to such limits as the Board of Trustees shall deem necessary or appropriate for the administration of the Plan and Trust Fund. Any change in the expense and compensation policies applicable to Trustees or members of the Sponsors' Committee shall require the approval of the Board of Trustees and the Sponsors' Committee; and
- (cc) to enter into agreements and take such other actions as the Board may deem necessary or advisable to administer supplementary pension arrangements established for Plan Members, on behalf of such supplementary plan's sponsor(s), at no cost to the Fund.

7.07 The Board of Trustees shall procure fidelity bonds for the persons authorized to receive, handle, deal with, or draw upon the monies in the Trust Fund for any purpose whatsoever. Such persons shall be bonded in such amounts and in such manner as the Board of Trustees may determine. The cost of such bonds shall be paid out of the Trust Fund.

7.08 The Board of Trustees may purchase such errors and omissions and fiduciary liability insurance for the Sponsors' Committee, members of the Sponsors' Committee, the Board of Trustees, the Trustees, the Plan Manager and the employees of the Plan Manager as the Board of Trustees deems necessary. The cost of such insurance may be paid out of the Trust Fund.

7.09 The Board of Trustees shall promptly appoint an Auditor of the Trust Fund who shall serve until his or her successor is appointed.

7.10 The Board of Trustees may require any Employer, Member, Retired Member or Former Member to submit to them any information, data, report or documents relevant to, and suitable for the purposes of administration of the Plan and the Trust Fund. For the avoidance of doubt and without limiting the generality of the foregoing, the Board of Trustees may require an Employer to submit such personal information in respect of Members and other employees employed by the Employer, as the Board of Trustees deems appropriate, for such purposes as tracking and determining eligibility to join the Plan, determining concurrent employment with other Employers, and notifying such individuals of their eligibility to join the Plan.

7.11 The Board of Trustees shall maintain suitable and adequate records of and for the administration of the Plan and Trust Fund.

7.12 The books of account and records of the Board of Trustees, including the trust accounts and records pertaining to the Plan and Trust Fund, shall be audited at least once every year by the Auditor of the Trust Fund, as of the fiscal year end of the Plan and the Trust Fund. A statement of the results of the annual audit shall be available for inspection by Members, Retired Members or Former Members and Employers or their agents at the office of the Plan Manager and at such other suitable place as the Board of Trustees may designate from time to time. Copies of such statement shall be delivered to each Trustee within sixty days after that statement is prepared.

7.13 The Board of Trustees shall appoint, hire or retain a Plan Manager and may, at any time, but subject to any agreement reached between the Board of Trustees and the Plan Manager, with or without cause, remove the Plan Manager and appoint, hire or retain a successor. The Plan Manager shall assume the responsibility of accounting for payments from the Trust Fund and such other duties and responsibilities as may be delegated to him or her hereby, or from time to time by the Board of Trustees. Without limiting the generality of the foregoing, the rights, duties and obligations of the Plan Manager shall include the following:

- (a) to submit a report to the Board of Trustees as soon as possible after the end of each fiscal year of the Trust Fund and on such interim basis as the Board of Trustees may require regarding the status of the Trust Fund, financial or otherwise;
- (b) to attend such meetings of the Board of Trustees, or committees thereof, as required by direction of the Board of Trustees, and to execute such instructions, as may be given to him or her;
- (c) to keep such records as are necessary to determine each Member's, Retired Member's, Former Member's or his or her beneficiaries' or dependents' Benefits under the Plan and to determine the amount of such Benefits as they become due;
- (d) to communicate with Members, Retired Members, Former Members, Employers and others, with respect to the Trust Fund and the Plan and the terms of this Agreement;

- (e) to validate all claims against the Trust Fund and obtain all necessary declarations, certificates or other evidence required for the proper administration of the Trust Fund;
- (f) to advise the Board of Trustees if an Employer is delinquent in or not contributing to the Trust Fund as required; and
- (g) to obtain and supervise such outside administrative services as may be required by the Board of Trustees from time to time in connection with the administration of the Plan and the Trust Fund.

7.14 The Board of Trustees may enter into agreements, contracts or instruments in respect of the administration of the Plan and the administration and investment of the Trust Fund in the name of the Trust Fund.

7.15 The Board of Trustees may commence such legal proceedings as they deem necessary and appropriate in connection with the enforcement of this Agreement, the administration of the Plan and the administration and investment of the Trust Fund, as well as defend any legal proceedings which may be brought against them, the Plan or the Trust Fund, the reasonable expenses for which shall be paid by the Trust Fund, except for expenses with respect to any proceedings brought against any Trustee in relation to any matter or thing arising out of his or her dishonesty, bad faith, wilful misconduct or negligence.

7.16 The Board of Trustees may, from time to time, borrow money on behalf of the Trust Fund for a period not exceeding ninety days for short term contingencies from any Bank, Trust Company, or Credit Union on such terms and conditions as may be necessary and appropriate in the circumstances, provided that such borrowing shall only be for the purposes of:

- (a) providing for the payment of any Benefit authorized by the Board of Trustees, or
- (b) permitting the orderly disposition of investments and the acquisition of any new investments during the planned conversion of any investments,

in order to avoid a distress sale of any investment of the Trust Fund that would otherwise be necessary to pay such Benefits or to acquire such new investments.

7.17 The Board of Trustees may seek the advice, opinion or direction of a court of competent jurisdiction on any matter pertaining to this Agreement, the administration of the Plan or the administration or the investment of the Trust Fund.

ARTICLE 8 CONTRIBUTIONS TO THE TRUST FUND AND FUNDING

8.01 Every Employer shall and, where applicable, the Members shall:

- (a) pay all Contributions to the Trust Fund required pursuant to the Plan in accordance with applicable legislation; and

(b) complete and remit to the Trust Fund such report forms, whether or not any Contributions are, in fact, due for any particular period, in the manner and form determined by the Board of Trustees from time to time.

8.02 Contributions payable by an Employer that are due to the Trust Fund are deemed to be held in trust by the Employer for the beneficiaries of the Trust Fund until remitted to the Trust Fund.

8.03 Every Employer shall provide the Board of Trustees with such information and reports that may be required by the Board of Trustees from time to time, and every Employer shall provide access to their records during regular business hours to the Board of Trustees or any agent appointed by the Board of Trustees for the purposes of determining Benefit entitlements, appropriate Contribution levels or such other matters as are necessary for the Board of Trustees to carry out their duties under this Agreement and the Plan.

8.04 Where an Employer has failed to remit Contributions to the Trust Fund in a timely manner as and when required by applicable legislation or by the terms of this Agreement or the Plan, such Employer shall be liable for interest thereon at the rate and according to the method of calculation set out in the Plan.

8.05 Subject to any cost sharing agreement entered into pursuant to and in accordance with Section 7.06 (q) of this Agreement, if an Employer becomes delinquent in remitting its Contributions and the Board of Trustees is required to take legal action or such other action as may be necessary to recover outstanding Contributions, the Employer shall be liable for all reasonable fees of collection including legal, actuarial and accounting fees as well as any court fees or disbursements.

ARTICLE 9 AMENDMENT OF SPONSORSHIP AND TRUST AGREEMENT

9.01 Any amendment to this Agreement that, in the opinion of the Actuary, does not have the effect of increasing contribution rates in effect at the time of the amendment may be made by OPSEU, OCASA and, on thirty (30) days' prior notice to the Colleges, on behalf of the Colleges, by the Executive Committee of the Association of Colleges of Applied Arts and Technology of Ontario (ACAATO Executive Committee) now operating under the name "Colleges Ontario" or any successor thereto. Any other amendment to this Agreement shall require the unanimous written agreement of all of the parties to this Agreement, other than the Trustees, or shall be made pursuant to such dispute resolution mechanism as may be agreed to by them, excluding the Trustees. No amendment, however, shall:

- (a) be inconsistent with the purposes of the Plan or the Trust Fund;
- (b) divert the Trust Fund, or any part thereof, to a purpose other than the provision of Benefits or other payments (including the administration of the Plan and Trust Fund) for the benefit of Plan Members, Retired Members, Former Members or other beneficiaries of the Plan;
- (c) authorize the return of Contributions or any other assets of the Trust Fund to any Employer unless required by law, or permitted by the Act, as amended from time to time, (as in the case of an overpayment pursuant to Section 78(4) thereof) or otherwise agreed to by the

parties to this Agreement, other than the Trustees, and permitted by applicable law. For greater certainty, the use of actuarial gains to offset Employer Contributions or any going concern unfunded liability or solvency deficiency shall not constitute a return of Contributions or any other assets of the Trust Fund to any Employer;

(d) eliminate the annual audit or restrict any requirement in this Agreement to make information available to the Sponsors' Committee, the Members, the Retired Members, the Former Members or the Employers; or

(e) provide for the administration of the Plan and the Trust Fund other than by an equal number of Trustees appointed by the Employers and Trustees appointed by or on behalf of Members, Retired Members or Former Members with each Trustee having equal voting privileges.

9.02 (Deleted)

ARTICLE 10 TERMINATION

10.01 Subject to the Act, this Agreement may be terminated by the unanimous written agreement of the parties to this Agreement, other than the Trustees, in which case, the Board of Trustees shall terminate and wind up the Plan and the Trust Fund within six months thereafter. As part of the termination of the Plan and the Trust Fund, the Board of Trustees shall:

(a) provide for a final audit and accounting for the purposes of the termination of the Trust Fund;

(b) provide for payment out of the Trust Fund of all Benefits or other payments, expenses, claims and obligations including the expenses incidental to the termination of the Plan and the Trust Fund, except where there are insufficient assets in the Trust Fund for the payment out of all Benefits or such other payments, in which case, the payment out of the Trust Fund shall be in accordance with the Act; and

(c) distribute the balance or surplus, if any, of the Trust Fund in accordance with the applicable provisions of the Plan, subject always to the applicable federal and provincial legislation, provided, however, that no part of the capital or income of the Trust Fund shall be used for, or diverted to purposes other than for the exclusive benefit of the Members, Retired Members, Former Members, or their beneficiaries or dependants, except as may otherwise be provided by this Agreement or agreed to by the parties to this Agreement, other than the Trustees. Under no circumstances shall any portion of the capital or income of the Trust Fund, directly or indirectly, revert or accrue to the benefit of any party to this Agreement, the Board of Trustees or any Trustee, the Sponsors' Committee or any member thereof except in the case of any Trustee or member of the Sponsors' Committee who is a Member, a Retired Member or Former Member and receives his or her share of Trust Fund assets in accordance with the terms

of the Plan, or except as may otherwise be provided by this Agreement or agreed to by the parties to this Agreement, other than the Trustees.

10.02 Upon termination of the Plan and the Trust Fund in accordance with this Article, the Board of Trustees shall forthwith notify the Sponsors' Committee or its successor, all Employers and any other necessary parties, and the Board of Trustees shall continue as trustee for the purpose of winding up the Plan and the Trust Fund, including all affairs of the trust.

10.03 In lieu of termination of the Plan, the Board of Trustees, with the unanimous written consent of the parties to this Agreement, other than the Board of Trustees or Trustees, may elect to establish a successor pension plan within a reasonable period to provide similar benefits for some or all of the Members, Retired Members or Former Members and to do all such acts and things and execute such documents as may be necessary for this purpose.

ARTICLE 11 - SPONSORS' COMMITTEE

11.01 A committee known as the Sponsors' Committee shall be established by the appointment to the Committee of eight persons. Trustees, the Plan Manager or employees or agents of the Plan Manager shall not be eligible for appointment to the Sponsors' Committee. For greater certainty, no person is permitted to act in the place of any Sponsors' Committee member.

11.02 Four of the members of the Sponsors' Committee shall be appointed by the Employers collectively, using whatever method they may adopt, and they shall be referred to in this Agreement as the Employer Committee Members. Three of the members of the Sponsors' Committee shall be appointed by OPSEU. One member of the Sponsors' Committee shall be appointed by OCASA. The Sponsors' Committee members appointed by OPSEU, and the Sponsors' Committee member appointed by OCASA, shall be referred to in this Agreement as the Employee Committee Members.

11.03 Subject to the terms of this Article, the Sponsors' Committee members shall be appointed to a term not exceeding three years although any member may be reappointed to successive terms, each such successive term not to exceed three years.

11.04 Any party or parties appointing a Sponsors' Committee member may, upon sending written notice to all remaining Sponsors' Committee members and the Plan Manager, remove a member appointed by it or them at any time. Such removed Sponsors' Committee member shall no longer be a member of the Sponsors' Committee.

11.05 In the event that any Sponsors' Committee member dies, becomes incapacitated, resigns or is removed, a successor Sponsors' Committee member shall be immediately appointed by the appointing party or parties. Any successor Sponsors' Committee member shall immediately become vested with all of the rights, powers and duties of a Sponsors' Committee member under this Agreement.

11.06 The Employer Committee Members shall, from their numbers, appoint a Co-Chair of the Sponsors' Committee and the Employee Committee Members shall, from their numbers, appoint another Co-Chair of the Sponsors' Committee. Each Co-Chair so appointed shall chair meetings of the

Sponsors' Committee on a rotating basis with the other Co-Chair. The term of their appointment as Co-Chair shall not exceed two years, although each Co-Chair may be re-appointed for successive terms, each such successive term not to exceed two years. If any Co-Chair ceases to be a member of the Sponsors' Committee, then his or her position as Co-Chair shall be filled for the balance of the term by a Sponsors' Committee member appointed in the same manner as set out in this Article.

11.07 The Co-Chair who is chairing a meeting of the Sponsors' Committee shall cause written notice of the meeting to be served upon the Sponsors' Committee members, no less than 14 days prior to the date of the meeting.

11.08 The notice of meeting shall specify the date, time and location of the meeting and shall include an agenda of matters to be addressed at such meeting. Whenever possible, any reports or other documentation to be considered at such meeting shall be provided, including by electronic means, to the members of the Sponsors' Committee with the notice of meeting.

11.09 The notice of meeting may be served upon the members of the Sponsors' Committee by delivering it to the address for service provided for such purposes to both Co-Chairs or the Plan Manager by each of the members of the Sponsors' Committee. Service may be effected by prepaid registered mail, delivery, electronic mail or facsimile transmission. In the case of service by mail, notice shall be deemed to have been given on the fifth business day after mailing, except where there is an interruption or cessation in postal service at any time prior to the fifth business day after mailing, in which case there shall be no deemed service. A notice served by delivery, electronic mail or by facsimile transmission shall be deemed to have been given on the day of delivery or transmission provided such transmission or delivery takes place during regular business hours.

11.10 A Sponsors' Committee member may waive the service of notice herein and shall be deemed to have done so by attending at such meeting without objection.

11.11 There shall be at least five meetings of the Sponsors' Committee in each year unless otherwise agreed to by the Sponsors' Committee. The chairing of each meeting shall alternate between the Co-Chairs, unless otherwise agreed to by the Sponsors' Committee. At the first regular meeting of the Sponsors' Committee following the filing of an actuarial valuation of the Plan by the Board of Trustees, the Sponsors' Committee shall consider the effect of the valuation on the design of the Plan, including the contribution rates set out in the Plan.

11.12 Each Co-Chair may call special meetings of the Sponsors' Committee, subject to the notice provisions contained herein.

11.13 Any three Sponsors' Committee members may require a Co-Chair to call a special meeting. Such request shall be in writing and include such information as is reasonably required by the Co-Chair to fulfil the agenda provisions contained herein. Upon receipt of such request, the Co-Chair shall call the special meeting for a date not later than thirty days following receipt of the request and information required for the agenda.

11.14 The agenda for each meeting and draft minutes of the previous meeting shall be distributed with the notice of meeting. The agenda shall permit any Sponsors' Committee member to introduce any new business at any meeting of the Sponsors' Committee.

11.15 With the exception of the meetings described in Section 11.16, all meetings of the Sponsors' Committee shall be held at the office of the Plan Manager, or such other location agreed upon by the Sponsors' Committee. In addition, all records and minutes of the Sponsors' Committee shall be kept at the office of the Plan Manager, or such other location as may be agreed upon by the Sponsors' Committee.

11.16 Unless the Sponsors' Committee resolves otherwise, any meeting of the Sponsors' Committee, may be held by way of a telephone, internet-based or telecommunications conference provided that the Sponsors' Committee members participating in the said conference shall have the opportunity to consider the business of the Committee, move and vote on motions as at any other meeting of the Sponsors' Committee. The provisions of this Section 11 shall apply with such necessary modifications to such telephone, internet-based or telecommunications conferences.

11.17 A quorum for the transaction of business at any meeting of the Sponsors' Committee shall consist of not less than five Sponsors' Committee members present in person or participating by means of a telephone conference call or internet-based or telecommunications conferences. No proxies shall be permitted at any time.

11.18 Any resolutions of the Sponsors' Committee shall require unanimity of all Sponsors' Committee members present at a meeting of the Sponsors' Committee.

11.19 The Plan Manager or his or her designate shall act as recording secretary at any meeting of the Sponsors' Committee. Proper minutes will be prepared in draft form and provided to the Sponsors' Committee members for verification and approval at the following meeting.

11.20 A resolution in writing, signed by all Sponsors' Committee members, is valid as if it had been passed at a meeting of the Sponsors' Committee. Such resolutions may be executed in counterpart.

11.21 The Sponsors' Committee may establish such standing and ad hoc subcommittees as they deem necessary from time to time, by way of a simple majority vote of the Sponsors' Committee members at any meeting.

11.22 Subcommittees of the Sponsors' Committee shall consist of an equal number of Employer and Employee Committee Members, and may include observers and such expert resource persons as the subcommittee may deem advisable, provided that only Sponsors' Committee members shall be entitled to move or to vote on motions.

11.23 The Sponsors' Committee shall be responsible for,

- (a) making amendments to the Plan or restating the Plan at such times as the Sponsors' Committee determines are necessary or appropriate, after receiving the advice, if any, from the Board of Trustees in respect of such amendments or restatements,
- (b) at its discretion, but subject to applicable law, instructing the Board of Trustees as to the frequency with which actuarial valuations of the Plan shall be prepared and filed with the applicable regulatory authorities,
- (c) meeting with the Board of Trustees, or the Chair and Vice Chair of the Board of Trustees or their delegates at least once a year or at the request of the Sponsors' Committee to receive an explanation of the annual report of the Plan and the Trust Fund from the Board of Trustees and at such other times as are requested by resolution of the Board of Trustees to consider any matter of Plan design as is requested by the Board of Trustees, including any issue regarding the frequency of the preparation and filing of actuarial valuations of the Plan,
 - (d) the selection of such persons to act as the thirteenth Trustee on the Board of Trustees for the purposes of Article 6 of this Agreement, the determination of the order of appointment of such persons as the thirteenth Trustee, the determination of fees and expenses to be paid to a person for services provided as a thirteenth Trustee and any other matter related to the selection of persons to act as the thirteenth Trustee and their respective appointments as the thirteenth Trustee,
- (e) advising the parties to this Agreement of any amendments to the Plan,
- (f) making recommendations to the Board of Trustees respecting the administration of the Plan,
- (g) preparing a report at the end of every fiscal year of the Plan setting out the activities of the Sponsors' Committee in that year, such report to be delivered to the parties to this Agreement as soon as reasonably possible after the end of the fiscal year of the Plan,
- (h) exercising such authority granted by the Plan to the extent that the exercise of such authority does not conflict with this Agreement,
- (i) (deleted)
- (j) adopting, reviewing and, if appropriate, amending a funding policy which sets forth, among other things, the use of any funding excesses and cumulative gains, and
- (k) subject to section 7.06(bb) to amend the policies or rules in effect as at the effective date of this amendment to provide for the reimbursement of reasonable out-of-pocket expenses of the individual Trustees and members of the Sponsors' Committee, and to provide for the payment of such other reasonable amounts, including reimbursement of lost compensation of individual Trustees and members of the Sponsors' Committee up to such limits

as the Board of Trustees and Sponsors' Committee shall deem necessary or appropriate for the administration of the Plan and Trust Fund.

11.24 After consulting with and receiving the advice, if any, of the Board of Trustees, the Sponsors' Committee may, by resolution, instruct the Board of Trustees to prepare an amendment or amendments to the Plan. Once such an amendment or amendments to the Plan have been drafted by the Board of Trustees or such person or persons so instructed by the Board of Trustees, the text of the proposed amendment or amendments shall be placed before the Sponsors' Committee for its review, revision, and approval or rejection by resolution. If the amendment text is rejected without further revision and approval, the Sponsors' Committee may issue further instructions to the Board of Trustees in respect of the proposed amendment or amendments. If no such further instructions are made, then no Plan amendment or amendments shall be processed by the Board of Trustees and the original resolution of the Sponsors' Committee to prepare an amendment or amendments shall be deemed to be withdrawn for the time being.

11.25 Once the text of a proposed amendment or amendments is approved by the Sponsors' Committee, the Board of Trustees shall cause the Plan to be amended to incorporate the text of the proposed amendment or amendments approved by the Sponsors' Committee. The Board of Trustees shall then seek to have the amendment or amendments registered under the applicable legislation. Should the amendment or amendments not be registered under the applicable legislation, the Board of Trustees will inform the Sponsors' Committee of the reasons and make recommendations as to the changes, if any, that may be required to the amendment text to allow it to be registered.

11.26 The Sponsors' Committee shall, at the request of the Board of Trustees made by resolution of the Board of Trustees, convene and meet with respect to any issue referred to the Sponsors' Committee by the Board of Trustees.

11.27 (a) The Sponsors' Committee shall incur no liability collectively and no individual member of the Sponsors' Committee shall incur personal liability in acting upon any documents, data or information believed by it, him or her to be genuine and accurate and to have been made, executed, delivered or assembled by the proper parties.

(b) No individual member of the Sponsors' Committee (Member) shall be liable for the act or omission of any other Member. The Fund shall indemnify and save harmless the Sponsors' Committee and the Members individually from and against any loss, expense, claim, demand, action or thing of any nature whatsoever, including any amount paid to settle an action or to satisfy a judgment, arising out of the performance or purported performance of their duties or responsibilities hereunder, except that this indemnity shall not, in any way, extend so as to protect any Member with respect to any matter or thing arising out of his or her own dishonesty, bad faith, wilful misconduct or negligence.

ARTICLE 12 GENERAL PROVISIONS

12.01 (Deleted)

12.02 With the exception of such notice as set out in Section 5.08, all notices, requests, demands or other communications provided for herein to be given, shall be given in the manner set out in Section 5.03 of this Agreement. Notices to the parties to this Agreement, members of the Sponsors' Committee, Trustees, Employers, Members, Retired Members or Former Members shall be given to them at their last known address as appears on the records of the Plan Manager of the Fund. Notices to the Trust Fund shall be given to the Plan Manager.

12.03 If any provision of this Agreement, the Plan, or the rules or regulations made pursuant thereto are held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of this Agreement, the Plan, or the said rules or regulations.

12.04 Wherever the singular or masculine or neuter is used throughout this Agreement, the same shall be construed as meaning the plural or feminine or a body corporate where the context or the parties hereto so requires.

12.05 The headings used herein are for ease of reference only and shall not be deemed to form part of this Agreement.

12.06 Each of the parties hereto shall cooperate with every other party to effectively implement this Agreement and shall, from time to time, make, do, execute and deliver, or cause to be made, done, executed and delivered, all such further acts, deeds, assurances, things and written instruments as may be necessary for more effectively implementing and carrying out the intent of this Agreement.

12.07 The Province of Ontario shall be deemed to be the situs of the Trust Fund and all questions pertaining to the validity, construction and administration of this Agreement and the Plan shall be determined in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

12.08 (Deleted)

12.09 This Agreement must be executed by all parties hereto but may be executed in several counterparts each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute the one and the same Agreement.

ARTICLE 13 - NEW PARTIES

13.01 The Board of Governors of a college of applied arts and technology that is established under the Ontario Colleges of Applied Arts and Technology Act, 2002 or any successor legislation after the execution of this Agreement shall become a party to this Agreement as an Employer upon notice by such Board of Governors to all parties to this Agreement of its desire to become a party. Upon such notice, and upon its execution of an agreement to be bound by the terms of this Agreement, such Board of Governors becomes a party to this Agreement as an Employer at the date of such notice.

13.02 Such addition, as an Employer, of the Board of Governors of a newly established college as a party to this Agreement shall not be considered to be an amendment of this Agreement for the purposes of Article 9.

13.03 Subject to the provision of the Plan, those employees of a newly established college the Board of Governors of which becomes a party to this Agreement in the manner set out in Section 13.01 who are eligible to be Members of the Plan and who are not already Members of the Plan shall become Members of the Plan on the later of the date of the notice described in Section 13.01 and the date of commencement of employment with the newly established college.

13.04 (Deleted)

13.05 An entity which has been admitted as a participating employer in the Plan pursuant to paragraph (b) of the definition of “Employer” under section 1.01, shall not be considered a party to this Agreement and the addition of such a new Employer shall not be considered to be an amendment of this Agreement for the purpose of Article 9.

ARTICLE 14 – UNIVERSITY PARTICIPATION

14.01 Upon a University being admitted as a participating employer in the Plan pursuant to paragraph (b) of the definition of employer under Section 1.01, the provisions set out in Schedule A hereto shall become immediately operative and this Agreement shall be read and interpreted in accordance with the provisions of Schedule A and may be amended and restated in accordance with Schedule A which shall not be considered to be an amendment of this Agreement for the purpose of Article 9.

In witness whereof the parties hereto have executed in counterpart this Sponsorship and Trust Agreement as of the date set out below.

SIGNED, SEALED AND DELIVERED by:

THE BOARD OF GOVERNORS OF ALGONQUIN COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF CAMBRIAN COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF CANADORE COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF CENTENNIAL COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF CONESTOGA COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF CONFEDERATION COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF DURHAM COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF GEORGE BROWN COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF GEORGIAN COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF HUMBER COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF LA CITÉ COLLÉGIALE

Per:

Date:

THE BOARD OF GOVERNORS OF LAMBTON COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF LOYALIST COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF MOHAWK COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF NIAGARA COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF NORTHERN COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF SAULT COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF SENECA COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF SHERIDAN COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF SIR SANDFORD FLEMING COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF ST. CLAIR COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF ST. LAWRENCE COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Per:

Date:

THE BOARD OF GOVERNORS OF LE COLLÈGE BORÉAL

Per:

Date:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Per:

Date:

ONTARIO COLLEGE ADMINISTRATIVE STAFF ASSOCIATION

Per:

Date:

SCHEDULE A – AMENDMENTS UPON UNIVERSITY PARTICIPATION

Upon the coming into effect of this Schedule A pursuant to Article 14 of the Agreement, the Agreement shall be read and interpreted in accordance with the provisions of this Schedule A as follows:

1. The definitions of “Board of Trustees”; “Employee Committee Members”; “Employer Committee Members”; “Employer”; “Plan”; and “University” as set out in Section 1.01 of Article 1 of the Agreement shall be deleted and replaced with:

“Board of Trustees” shall mean the group of persons designated from time to time as Trustees, pursuant to the provisions of this Agreement, which will act as the administrator of the Plan for the purposes of the Act.

“Employer” means (a) a College, (b) a University, or (c) any other employer that has made an application to the Board of Trustees to become a participating employer in the Plan, that has been approved by the Sponsors’ Committee as a participating employer, and that participates in the Plan.

“Employee Committee Members” means (a) the Colleges Committee Members appointed pursuant to clause 11.03(b) and (b) the Sponsor Universities Committee Members appointed pursuant to subclause 11.04(b)(ii) and as appointed by the Sponsor Universities Nominating Committee (Employee) pursuant to clause 4.04(e).

“Employer Committee Members” means (a) the Colleges Committee Members appointed pursuant to clause 11.03(a) and (b) the Sponsor Universities Committee Members appointed pursuant to subclause 11.04(b)(i) and as appointed by the Sponsor Universities Nominating Committee (Employer) pursuant to clause 4.04(e).

“Plan” shall mean the Ontario Colleges and Universities Pension Plan, as may be amended from time to time.

“University” means an institution that is recognized as a university in Ontario with the power to grant university degrees specifically conferred by a legislative or parliamentary act or charter that has made an application to the Board of Trustees to become a participating employer in the Plan, that has been approved by the Sponsors’ Committee as a participating employer, and that participates in the Plan, but excluding any entity that is a party to this Agreement by virtue of being a College.

2. The following definitions shall be added to Section 1.01 of Article 1 of the Agreement:

“Allocation Cycle” means the cycle commencing on the Effective Date of the first University to participate in the Plan through to the second June 30th following such Effective Date and thereafter being a recurring 2-year cycle running from July 1st to June 30th.

“Colleges Committee Members” means the Sponsors’ Committee members appointed pursuant to Section 11.03.

“College Pension Assets” means (a) in respect of a determination of whether a University is a Direct University or a Direct Sponsor University, the ratio of the market value of Fund assets to the Plan’s College related liabilities measured at the Plan’s most recent valuation prior to or coincident with the Effective Date and, where such valuation is prior to the Effective Date, rolled forward to the Effective Date using the Fund rate of return to the Effective Date and (b) in respect of a determination of the Universities Trustee Nominating Committee Appointment Entitlement or the Sponsor Universities Nominating Committee Appointment Entitlement, the ratio of the market value of Fund assets to the Plan’s College related liabilities measured at the Plan’s most recent valuation prior to or coincident with the beginning of the current Allocation Cycle and, where such valuation is prior to the beginning of the current Allocation Cycle, rolled forward to the beginning of the current Allocation Cycle using the Fund rate of return to the beginning of the current Allocation Cycle.

“Colleges Trustees” means Trustees appointed to the Board of Trustees pursuant to Section 4.03

“Direct Sponsor University Employee Committee Member” means the Sponsor Universities Committee Member, if any, appointed in respect of a Direct Sponsor University by the faculty association and/or other bargaining agents, if applicable, representing Members at such Direct Sponsor University by whatever means they adopt and evidenced by way of written certificate confirming such appointment, which shall be filed with the office of the Plan Manager.

“Direct Sponsor University Employer Committee Member” means the Sponsor Universities Committee Member, if any, appointed by a Direct Sponsor University and evidenced by way of written certificate confirming such appointment, which shall be filed with the office of the Plan Manager.

“Direct Sponsor University Limit” means in respect of the Sponsors’ Committee and as at any given time, the difference between four and the greater of (a) one and (b) the number of Sponsor Universities Nominating Committee Appointment Entitlement at the beginning of the current Allocation Cycle.

“Direct Sponsor University” means the first of the Sponsor Universities, if any, up to the Direct Sponsor University Limit, which has committed to transfer into the Fund assets in respect of a pension plan or plans sponsored by that Sponsor University that are greater than 20%, or such lower percentage that may be determined by the Sponsors’ Committee on the admission of such Sponsor University, of the College Pension Assets. For the avoidance of doubt, once the Direct Sponsor University Limit has been reached no further Sponsor Universities shall thereafter be designated as a Direct Sponsor University.

“Direct University Employee Trustee” means the Trustee, if any, appointed in respect of a Direct University by the faculty association and/or other bargaining agents, if applicable, representing

Members at such Direct University by whatever means they adopt and evidenced by way of written certificate confirming such appointment, which shall be filed with the office of the Plan Manager.

“Direct University Employer Trustee” means the Trustee, if any, appointed by a Direct University and evidenced by way of written certificate confirming such appointment, which shall be filed with the office of the Plan Manager.

“Direct University Limit” means in respect of the Board of Trustees and at any given time, the difference between five and the greater of (a) one and (b) the number of Universities Trustee Nominating Committee Appointment Entitlement as at the beginning of the current Allocation Cycle.

“Direct University” means the first of the Universities, if any, up to the Direct University Limit, which has committed to transfer into the Fund assets in respect of a pension plan or plans sponsored by that University that are greater than 20%, or such lower percentage that may be determined by the Sponsors’ Committee on the admission of such University, of the College Pension Assets. For the avoidance of doubt, once the Direct University Limit has been reached no further Universities shall thereafter be designated as a Direct University.

“Effective Date” means either of, as applicable, the effective date on which a University commences participation in the Plan and the effective date, if any, on which a University has committed to transfer into the Fund assets in respect of a pension plan or plans sponsored by that University.

“Employee Colleges Committee Members” means the Colleges Committee Members appointed pursuant to clause 11.03(b).

“Employer Colleges Committee Members” means the Colleges Committee Members appointed pursuant to clause 11.03(a).

“Employee Trustees” shall have the meaning set out in Section 4.01.

“Employer Trustees” shall have the meaning set out in Section 4.01.

“Indirect Sponsor University” means any Sponsor University, if any, which (a) as at the Effective Date, is not a Direct Sponsor University or (b) as at the beginning of the current Allocation Cycle, has ceased to be a Direct Sponsor University.

“Indirect University” means any University, if any, which (a) as at the Effective Date, is not a Direct University or (b) as at the beginning of the current Allocation Cycle, has ceased to be a Direct University.

“Retired Members Advisory Committee” means an advisory committee in respect of the Plan established, and on such terms as determined, by the Board of Trustees which shall on behalf of

Retired Members (a) monitor the administration of the Plan, (b) make recommendations to the Board of Trustees on the administration of the Plan, and (c) promote awareness and understanding of the Plan. For the avoidance of doubt, the Retired Members Advisory Committee shall be advisory only with no power or discretion in respect of the administration of the Plan.

“Sponsor University” means a University, if any, which has irrevocably waived any right to unilaterally terminate its participation in the Plan.

“Sponsor Universities Committee Members” means the Sponsors’ Committee members, if any, appointed pursuant to Section 11.04.

“Sponsor Universities Employee Committee Members” means the Sponsor Universities Committee Members, if any, appointed pursuant to subclause 11.04(b)(ii) and by the Sponsor Universities Nominating Committee (Employee) pursuant to clause 11.04(e).

“Sponsor Universities Employer Committee Members” means the Sponsor Universities Committee Members appointed pursuant to subclause 11.04(b)(i) and by the Sponsor Universities Nominating Committee (Employer) pursuant to clause 11.04(e).

“Universities Trustees” means the Trustees appointed to the Board of Trustees pursuant to Section 4.04.

“Indirect University Pension Assets” means, at any given time, the aggregate market value of the assets transferred into, or which are committed to be transferred into, the Fund in respect of a pension plan or plans sponsored by each Indirect University and rolled forward from the applicable Effective Date using the Fund rate of return to the beginning of the current Allocation Cycle.

“Indirect Sponsor University Pension Assets” means, at any given time, the aggregate market value of the assets transferred into, or which are committed to be transferred into, the Fund in respect of a pension plan or plans sponsored by each Indirect Sponsor University and rolled forward from the applicable Effective Date using the Fund rate of return to the beginning of the current Allocation Cycle.

“Sponsor Universities Nominating Committee (Employee)” means the committee in respect of the Sponsors’ Committee to which the faculty association and/or other bargaining agents, as applicable, representing Members at an Indirect Sponsor University may between them make an appointment of one representative by whatever means they adopt and evidenced by way of written certificate confirming such appointment, which shall be filed with the office of the Plan Manager.

“Sponsor Universities Nominating Committee (Employer)” means the committee in respect of the Sponsors Committee to which an Indirect Sponsor University may make an appointment of one representative.

“Sponsor Universities Nominating Committee Appointment Entitlement” means the number of Sponsors’ Committee members each of the Sponsor Universities Nominating Committee (Employer) and the Sponsor Universities Nominating Committee (Employee) is entitled to appoint pursuant clause 11.04(e), as at beginning of the current Allocation Cycle.

“Universities Trustee Nominating Committee (Employee)” means the committee in respect of the Board of Trustees to which the faculty association and/or other bargaining agents, as applicable, representing Members at an Indirect University may between them make an appointment of one representative by whatever means they adopt and evidenced by way of written certificate confirming such appointment, which shall be filed with the office of the Plan Manager.

“Universities Trustee Nominating Committee (Employer)” means the committee in respect of the Board of Trustees to which an Indirect University may make an appointment of one representative.

“Universities Trustee Nominating Committee Appointment Entitlement” means the number of Trustees each of the Universities Trustee Nominating Committee (Employer) and the Universities Trustee Nominating Committee (Employee) is entitled to appoint to the Board of Trustees pursuant clause 4.04(e), as at the beginning of the current Allocation Cycle.

3. Section 2.03 of Article 2 of the Agreement shall be deleted and replaced with the following:

2.03 The Board of Trustees accepts the trusts herein contained and hereby agrees to receive, hold, maintain, manage, administer, invest and distribute the assets of the Trust Fund subject to the provisions of this Agreement, the Plan and applicable legislation. The Board of Trustees shall at all times act as trustee of the Plan and the Trust Fund (known as the “Ontario Colleges and Universities Pension Plan Trust Fund”). The Board of Trustees shall jointly hold all property, enter into contracts in the name of the Trust Fund, and act in all manners on behalf of the Trust Fund, subject to the provisions of this Agreement, the Plan and applicable legislation. Title to all assets of the Trust Fund shall be jointly vested in and remain exclusively with the Board of Trustees, except as otherwise provided in this Agreement or required by law.

4. Section 4.01 of Article 4 of the Agreement shall be deleted and replaced with the following:

4.01 The Trust Fund and the Plan shall be administered in accordance with the provisions of this Agreement, the Plan and all governing legislation by the Board of Trustees which, subject to Article 6, shall be comprised of the number of persons determined in accordance with this Article 4. Those Trustees, if any, appointed under clause 4.03(a) and subclause 4.04(b)(i) and as appointed by the Universities Trustee Nominating Committee (Employer) under clause 4.04(e) shall be referred to in this Agreement as Employer Trustees; and those Trustees, if any, appointed under clauses 4.03(b), 4.03(c) and 4.03(d) and subclause 4.04(b)(ii) and as appointed by the Universities Trustee Nominating Committee (Employee) under clause 4.04(e) shall be referred to in the Agreement as Employee Trustees. For greater certainty, (a) each Employee

Trustee is representative of Members and (b) there shall not be any alternate Trustees permitted to act in the place of any of the Trustees.

5. Section 4.02 of Article 4 of the Agreement shall be deleted and replaced with the following:

4.02 (a) The Board of Trustees shall consist of Colleges Trustees the appointment and number of which shall be determined in accordance with Section 4.03 and Universities Trustees the appointment and number of which shall be determined in accordance with Section 4.04.

(b) Upon the number of Universities Trustees to be appointed being ten, as at the beginning of the current Allocation Cycle, and provided the Board of Trustees has established a Retired Members Advisory Committee, then effective as at the end of the calendar year in which such determination is made:

(i) the number of Trustees to be appointed by the Employer Colleges Committee Members of the Sponsors' Committee shall be limited to five; and

(ii) there shall no longer be a Trustee appointed pursuant to Section 4.03(d).

6. The following Section 4.03 shall be added to Article 4 of the Agreement:

4.03 (a) Subject to clause 4.02(b), six Trustees shall be appointed by the Employer Colleges Committee Members of the Sponsors' Committee by way of written resolution signed by each of the Employer Colleges Committee Members, which resolution shall be filed with the office of the Plan Manager.

(b) Four Trustees shall be appointed by the Employee Colleges Committee Members of the Sponsors' Committee appointed by OPSEU by way of written resolution signed by each of the Employee Committee Members appointed by OPSEU, which resolution shall be filed with the office of the Plan Manager.

(c) One Trustee shall be appointed by the Employee Committee Member of the Sponsors' Committee appointed by OCASA by way of written resolution signed by the Employee Colleges Committee Member appointed by OCASA, which resolution shall be filed with the office of the Plan Manager

(d) Subject to clause 4.02(b), one Trustee shall be appointed by the Employee Colleges Committee Members of the Sponsors' Committee for a three-year term in accordance with the provisions of this clause 4.02(d). The right to appoint such Trustee shall rotate between the Employee Colleges Committee Members of the Sponsors' Committee referred to in clause 4.02(b) and the Employee Colleges Committee Member of the Sponsors' Committee referred to in clause 4.02(c), such that:

- (i) the first three-year appointment (terminating at midnight on December 31, 2009) shall be made by the Employee Colleges Committee Members referred to in clause 4.03(b);
- (ii) the second three-year appointment (effective January 1, 2010 and terminating at midnight on December 31, 2012) shall be made by the Employee Colleges Committee Member referred to in clause 4.03(c);
- (iii) for the next three such three-year appointments, the first two appointments shall be made by the Employee Colleges Committee Members referred to in clause 4.03(b) and the third appointment shall be made by the Employee Colleges Committee Member referred to in clause 4.03(c); and
- (iv) subsequent appointments shall be made in accordance with the sequence described in subclause 4.03(d)(iii).

For the purposes of this clause 4.03(d), appointments made by the Employee Colleges Committee Members referred to in clause 4.03(b) shall be made in accordance with the provisions of clause 4.03(b), and appointments made by the Employee Colleges Committee Member referred to in clause 4.03(c) shall be made in accordance with the provisions of clause 4.03(c).

7. The following Section 4.04 shall be added to Article 4 of the Agreement:

4.04 (a) There shall be a minimum of two Universities Trustees and, subject to this section 4.04, a maximum of ten Universities Trustees.

(b) In respect of each Direct University, if any, there shall be an entitlement to appoint:

- (i) one Direct University Employee Trustee; and
- (ii) one Direct University Employee Trustee.

Such appointments shall commence as of the first January 1st following the University's identification as a Direct University or such earlier date as may be determined by the Sponsors Committee on the admission of such Direct University..

(c) A Direct University shall cease to be a Direct University on either of the following occurring:

- (i) the Direct University terminates participation in the Plan; or
- (ii) the Direct University, as at the beginning of the current Allocation Cycle, becomes a university in excess of the Direct University Limit.

(d) A Direct University becomes in excess of the Direct University Limit if, as at beginning of the current Allocation Cycle, there exists more Direct Universities than the Direct University Limit, and such Direct University would not have originally qualified as a Direct University, as at the Effective Date, if the Direct University Limit, as at the beginning of the current Allocation Cycle, had been instead applied.

(e) Each of the Universities Trustee Nominating Committee (Employer) and the Universities Trustee Nominating Committee (Employee) shall appoint Trustees by way of written resolution signed by each member of the applicable committee, which resolution shall be filed with the office of the Plan Manager and the number of Trustees each of the University Nominating Committee (Employer) and the University Nominating Committee (Employee) is entitled to appoint shall be determined in accordance with the following:

(i) If Indirect University Pension Assets, as at the beginning of the current Allocation Cycle, are equal to or less than 20% of the College Pension Assets, then the Universities Trustee Nominating Committee (Employer) and Universities Trustee Nominating Committee (Employee) shall appoint one Trustee each.

(ii) If Indirect University Pension Assets, as at the beginning of the current Allocation Cycle, are greater than 20% but equal to or less than 50% of the College Pension Assets, then the Universities Trustee Nominating Committee (Employer) and Universities Trustee Nominating Committee (Employee) shall appoint two Trustees each.

(iii) If Indirect University Pension Assets, as at the beginning of the current Allocation Cycle, are greater than 50% but equal to or less than 75% of the College Pension Assets, then the Universities Trustee Nominating Committee (Employer) and Universities Trustee Nominating Committee (Employee) shall appoint three Trustees each.

(iv) If Indirect University Pension Assets, as at the beginning of the current Allocation Cycle, are greater than 75% but equal to or less than 100% of the College Pension Assets, then the Universities Trustee Nominating Committee (Employer) and Universities Trustee Nominating Committee (Employee) shall appoint four Trustees each.

(v) If Indirect University Pension Assets, as at the beginning of the current Allocation Cycle, are greater than 100% of the College Pension Assets, then the Universities Trustee Nominating Committee (Employer) and Universities Trustee Nominating Committee (Employee) shall appoint five Trustees each.

Any new appointment entitlements pursuant to subclause 4.04(e)(i) shall be made effective as of the January 1st immediately following or coincident with the Effective Date of the first Indirect University to participate in the Plan and any other new appointment entitlements pursuant to this clause 4.04(e) shall be made effective as of the January 1st immediately following the beginning of the current Allocation Cycle.

8. Section 4.06 of Article 4 of the Agreement shall be deleted and replaced with the following:

4.06 Each Trustee shall be appointed to a term not to exceed three (3) years, although a Trustee, other than a Trustee appointed pursuant to clause Section 4.03(d), may be reappointed to successive terms not to exceed three (3) years at a time. Notwithstanding the foregoing:

(a) upon there no longer being an entitlement to appoint Colleges Trustee pursuant to Section 4.03(d), the term of the Colleges Trustee appointed pursuant to clause 4.03(d) shall terminate as at the end of that calendar year with no successive term.

(b) upon the Colleges Employer Committee Members no longer being entitled to appoint 6 Colleges Trustees, the term of the longest serving Colleges Trustee appointed pursuant to clause 4.03(a) shall terminate as at the end of that calendar year with no successive term.

(c) upon a University ceasing to be a Direct University, the term of the Universities Trustees appointed in respect of such University shall terminate immediately where subclause 4.04(c)(i) applies or at the end of that calendar year with no successive term where subclause 4.04(c)(ii) applies.

9. Section 4.08 of Article 4 of the Agreement shall be deleted and replaced with the following:

4.08 Any party appointing a Trustee pursuant to subsections 4.03 or 4.04, may, in the same manner as the Trustee was appointed thereunder and upon sending written notice to the office of the Plan Manager, remove such Trustee at any time. Such removed Trustee shall be deemed to no longer be a Trustee, effective as of the date the notice is delivered, and shall be fully discharged from all future duties and responsibilities in respect of this Agreement and the trusts created under it as of that date.

10. Section 5.12 of Article 5 of the Agreement shall be deleted and replaced with the following:

5.12 A quorum for the transaction of business at any meeting of the Board of Trustees shall consist of not less than 50 percent of the Trustees plus one Trustee, which Trustees shall be present in person or participating by means of a telephone conference call or internet-based or telecommunications conferences. No proxies shall be permitted at any time.

11. Article 6 shall be deleted and replaced with the following:

ARTICLE 6 – DISPUTE RESOLUTION

6.01 A deadlock shall be deemed to exist where a proposal, motion or resolution made by the Board of Trustees or any Trustee or Trustees is neither adopted nor rejected by a majority

vote or where a resolution or motion is unable to be made at a meeting due to lack of a quorum of two consecutively called meetings.

6.02 In the event of a deadlock, a further meeting of the Board of Trustees shall be held no later than ten days after the deadlock has arisen for the purpose of resolving the matter in dispute. If the matter is not resolved at such meeting, any Trustees constituting half of the Board of Trustees may require the naming of an additional Trustee, who shall cast the deciding vote at the next scheduled or special meeting.

6.03 Unless otherwise agreed to by the Sponsors' Committee, the additional Trustee shall be selected by the Sponsors' Committee in accordance with Section 6.04 from a group of up to five persons chosen by the Sponsors' Committee for the purpose of discharging the duties of the additional Trustee. The Sponsors' Committee shall agree on the number of persons to be chosen for such group. Where the Sponsors' Committee cannot agree which person or persons should be chosen for such group, the Colleges Employer Committee Members of the Sponsors' Committee shall nominate one person, the Colleges Employee Committee Members of the Sponsors' Committee appointed by OPSEU shall nominate one person and the Colleges Employee Committee Member of the Sponsors' Committee appointed by OCASA shall nominate one person and the Sponsor Universities Employer Committee Members, if any, shall nominate one person and the Sponsor Universities Employee Committee Members, if any, shall nominate one person; and these five nominees shall choose the person or persons for such group to discharge the duties of the additional Trustee. If such nominees fail to agree on the person or persons to be chosen for the purpose of discharging the duties of the additional Trustee, the Sponsors' Committee shall ask the Chief Justice of Ontario to choose the person or persons who shall discharge the duties of the additional Trustee.

6.04 Where more than one person has been chosen for the group of persons from which the additional Trustee shall be selected to discharge the duties of the additional Trustee, the selection of the additional Trustee by the Sponsors' Committee of one of the persons chosen for the group shall be rotated as amongst those in the group, except that if any one of them is unavailable within thirty days of the dispute arising to act as the additional Trustee, selection as the additional Trustee shall pass to the next person in the group, or if such person is not available within thirty days, to the next available person in the group. Where none of the persons in the group are available to act as the additional Trustee, the Sponsors' Committee shall appoint as the additional Trustee such other person to which the Sponsors' Committee may agree. If the Sponsors' Committee fails to agree on the person to be chosen for the purpose of discharging the duties of the additional Trustee, the Sponsors' Committee shall ask the Chief Justice of Ontario to choose the person or persons who shall discharge the duties of the additional Trustee.

6.05 The additional Trustee shall attend a meeting at which time he or she shall review all relevant documentation and entertain submissions from the remaining Trustees or any group of Trustees with respect to the matter in issue. The additional Trustee shall cast a tie breaking vote

and shall make his or her determination within seven days of the meeting at which submissions are made. The decision of the additional Trustee shall be final and binding on all other Trustees, Employers, Members, Retired Members and Former Members and other beneficiaries of the Plan. The provisions of Section 5.11 shall not apply in respect of any vote utilizing the additional Trustee. Upon rendering his or her decision, the thirteenth Trustee shall be functus and shall cease to be a Trustee.

6.06 The reasonable expenses and fees of the additional Trustee incurred in the execution of his or her duties set out in this Article shall be paid out of the Fund.

12. Article 9 shall be deleted and replaced with the following:

ARTICLE 9 – AMENDMENT OF SPONSORSHIP AND TRUST AGREEMENT

9.01 Any amendment to this Agreement that, in the opinion of the Actuary, does not have the effect of increasing contribution rates in effect at the time of the amendment may be made by (i) OPSEU, (ii) OCASA, (iii) on thirty (30) days' prior notice to the Colleges, on behalf of the Colleges, by the Executive Committee of the Association of Colleges of Applied Arts and Technology of Ontario (ACAATO Executive Committee) now operating under the name "Colleges Ontario" or any successor thereto, (iv) each Direct Sponsor University Employer Committee Member, if any, (v) each Direct Sponsor University Employee Committee Member, if any, (vi) on thirty days' prior notice to the Sponsor Universities, if any, on behalf of the Indirect Sponsor Universities, by the Universities Sponsor Nominating Committee (Employer), and (vii) on thirty days' prior notice to all faculty associations and bargaining agents, as applicable, representing Members at each Indirect Sponsor University, if any, by the Sponsor Universities Nominating Committee (Employee). Any other amendment to this Agreement shall require the unanimous written agreement of all of the parties to this Agreement, other than the Trustees, or shall be made pursuant to such dispute resolution mechanism as may be agreed to by them, excluding the Trustees. No amendment, however, shall:

- (a) be inconsistent with the purposes of the Plan or the Trust Fund;
- (b) divert the Trust Fund, or any part thereof, to a purpose other than the provision of Benefits or other payments (including the administration of the Plan and Trust Fund) for the benefit of Plan Members, Retired Members, Former Members or other beneficiaries of the Plan;
- (c) authorize the return of Contributions or any other assets of the Trust Fund to any Employer unless required by law, or permitted by the Act, as amended from time to time, (as in the case of an overpayment pursuant to Section 78(4) thereof) or otherwise agreed to by the parties to this Agreement, other than the Trustees, and permitted by applicable law. For greater certainty, the use of actuarial gains to offset Employer Contributions or any going concern unfunded liability or solvency deficiency shall not constitute a return of Contributions or any other assets of the Trust Fund to any Employer;

- (d) eliminate the annual audit or restrict any requirement in this Agreement to make information available to the Sponsors' Committee, the Members, the Retired Members, the Former Members or the Employers;
- (e) provide for the administration of the Plan and the Trust Fund other than by an equal number of Trustees appointed by the Employers and Trustees appointed by or on behalf of Members, Retired Members or Former Members with each Trustee having equal voting privileges; or,
- (f) eliminate or alter appointment rights to the Board of Trustees in respect of a University that is not a Sponsor University without the consent of that University and the faculty association and/or other bargaining agent, as applicable, representing Members at that University.

13. Article 11 of the Agreement shall be deleted and replaced with the following:

ARTICLE 11 – SPONSORS' COMMITTEE

11.01 A committee known as the Sponsors' Committee shall be established by the appointment to the Committee of such persons determined in accordance with this Article 11. Trustees, the Plan Manager or employees or agents of the Plan Manager shall not be eligible for appointment to the Sponsors' Committee. For greater certainty, no person is permitted to act in the place of any Sponsors' Committee member.

11.02 The Sponsors' Committee shall consist of Colleges Committee Members and Sponsor Universities Committee Members the appointment and number of which shall be determined in accordance with section 11.03 and 11.04.

11.03 (a) Four of the Colleges Committee Members shall be appointed by the College Employers collectively, using whatever method they may adopt, and they shall be referred to as the College Employer Committee Members.

(b) Three of the College Committee Members shall be appointed by OPSEU. One of the College Committee Members shall be appointed by OCASA. The College Committee Members appointed by OPSEU, and the College Committee Member appointed by OCASA, shall be referred to as the Colleges Employee Committee Members

11.04 (a) There shall be a minimum of two Sponsor Universities Committee Members and a maximum of eight Sponsor Universities Committee Members.

(b) In respect of each Direct Sponsor University, if any, there shall be an entitlement to appoint:

- (i) one Direct Sponsor University Employer Committee Member; and
- (ii) one Direct Sponsor University Employee Committee Member.

Such appointments shall commence as of the first January 1st following the University's identification as a Direct Sponsor University or such earlier date as may be determined by the Sponsors Committee on the admission of such Direct Sponsor University.

(c) A Direct Sponsor University shall cease to be a Direct Sponsor University if, as at the beginning of the current Allocation Cycle, it becomes a Sponsor University in excess of the Direct University Sponsor Limit.

(d) A Direct Sponsor University becomes a Sponsor University in excess of the Direct Sponsor University Limit if, as at the beginning of the current Allocation Cycle, there exists more Direct Sponsor Universities than the Direct Sponsor University Limit, and such Direct Sponsor University would not have originally qualified as a Direct Sponsor University, at the Effective Date, if the Direct Sponsor University Limit, as at the beginning of the current Allocation Cycle, had been instead applied.

(e) Each of the Sponsor Universities Nominating Committee (Employer) and the Sponsor Universities Nominating Committee (Employee) shall appoint Sponsor Universities Committee Members by way of written resolution signed by each member of the applicable Sponsor Universities Nominating Committee, which resolution shall be filed with the office of the Plan Manager and the number of Sponsor Universities Committee Members each of the Sponsor Universities Nominating Committee (Employer) and the Sponsor Universities Nominating Committee (Employee) is entitled to appoint shall be determined in accordance with the following:

(i) If Indirect Sponsor University Pension Assets, as at the beginning of the current Allocation Cycle, are equal to or less than 20% of the College Pension Assets, then the Sponsor Universities Nominating Committee (Employer) and Sponsor Universities Nominating Committee (Employee) shall appoint one Sponsor University Committee Member each.

(ii) If Indirect Sponsor University Pension Assets, as at the beginning of the current Allocation Cycle, are greater than 20% but equal to or less than 60% of the College Pension Assets, then the Sponsor Universities Nominating Committee (Employer) and Sponsor Universities Nominating Committee (Employee) shall appoint two Sponsor Universities Committee Members each.

(iii) If Indirect Sponsor University Pension Assets, as at the beginning of the current Allocation Cycle, are greater than 60% but equal to or less than 100% of the College Pension Assets, then the Sponsor Universities Nominating Committee (Employer) and Sponsor Universities Nominating Committee (Employee) shall appoint three Sponsor Universities Committee Members each.

(iv) If Indirect Sponsor University Assets, as at the beginning of the current Allocation Cycle, are greater than 100% of the College Pension Assets, then the

Sponsor Universities Nominating Committee (Employer) and Sponsor Universities Nominating Committee (Employee) shall appoint four Sponsor Universities Committee Members each.

Any new appointment entitlements pursuant to subclause 11.04(e)(i) shall be made effective as of the January 1st immediately following or coincident with the Effective Date of the first Indirect Sponsor University to participate in the Plan and any other new appointment entitlements pursuant to this clause 11.04(e) shall be made effective as of the January 1st immediately following the beginning of the current Allocation Cycle.

11.05 Subject to the terms of this Article, the Sponsors' Committee members shall be appointed to a term not exceeding three years although any member may be reappointed to successive terms, each such successive term not to exceed three years. Notwithstanding the foregoing, upon a University ceasing to be a Direct Sponsor University pursuant to clause 11.04(c), the term of the University Committee Members appointed in respect of such University shall terminate as of the end of that calendar year with no successive term.

11.06 Any party or parties appointing a Sponsors' Committee member may, upon sending written notice to all remaining Sponsors' Committee members and the Plan Manager, remove a member appointed by it or them at any time. Such removed Sponsors' Committee member shall no longer be a member of the Sponsors' Committee.

11.07 In the event that any Sponsors' Committee member dies, becomes incapacitated, resigns or is removed, a successor Sponsors' Committee member shall be immediately appointed by the appointing party or parties. Any successor Sponsors' Committee member shall immediately become vested with all of the rights, powers and duties of a Sponsors' Committee member under this Agreement.

11.08 The Employer Committee Members shall, from their numbers, appoint a Co-Chair of the Sponsors' Committee and the Employee Committee Members shall, from their numbers, appoint another Co-Chair of the Sponsors' Committee. Each Co-Chair so appointed shall chair meetings of the Sponsors' Committee on a rotating basis with the other Co-Chair. The term of their appointment as Co-Chair shall not exceed two years, although each Co-Chair may be re-appointed for successive terms, each such successive term not to exceed two years. If any Co-Chair ceases to be a member of the Sponsors' Committee, then his or her position as Co-Chair shall be filled for the balance of the term by a Sponsors' Committee member appointed in the same manner as set out in this Article.

11.09 The Co-Chair who is chairing a meeting of the Sponsors' Committee shall cause written notice of the meeting to be served upon the Sponsors' Committee members, no less than 14 days prior to the date of the meeting.

11.10 The notice of meeting shall specify the date, time and location of the meeting and shall include an agenda of matters to be addressed at such meeting. Whenever possible, any reports

or other documentation to be considered at such meeting shall be provided, including by electronic means, to the members of the Sponsors' Committee with the notice of meeting.

11.11 The notice of meeting may be served upon the members of the Sponsors' Committee by delivering it to the address for service provided for such purposes to both Co-Chairs or the Plan Manager by each of the members of the Sponsors' Committee. Service may be effected by prepaid registered mail, delivery, electronic mail or facsimile transmission. In the case of service by mail, notice shall be deemed to have been given on the fifth business day after mailing, except where there is an interruption or cessation in postal service at any time prior to the fifth business day after mailing, in which case there shall be no deemed service. A notice served by delivery, electronic mail or by facsimile transmission shall be deemed to have been given on the day of delivery or transmission provided such transmission or delivery takes place during regular business hours.

11.12 A Sponsors' Committee member may waive the service of notice herein and shall be deemed to have done so by attending at such meeting without objection.

11.13 There shall be at least five meetings of the Sponsors' Committee in each year unless otherwise agreed to by the Sponsors' Committee. The chairing of each meeting shall alternate between the Co-Chairs, unless otherwise agreed to by the Sponsors' Committee. At the first regular meeting of the Sponsors' Committee following the filing of an actuarial valuation of the Plan by the Board of Trustees, the Sponsors' Committee shall consider the effect of the valuation on the design of the Plan, including the contribution rates set out in the Plan.

11.14 Each Co-Chair may call special meetings of the Sponsors' Committee, subject to the notice provisions contained herein.

11.15 Any three Sponsors' Committee members may require a Co-Chair to call a special meeting. Such request shall be in writing and include such information as is reasonably required by the Co-Chair to fulfil the agenda provisions contained herein. Upon receipt of such request, the Co-Chair shall call the special meeting for a date not later than thirty days following receipt of the request and information required for the agenda.

11.16 The agenda for each meeting and draft minutes of the previous meeting shall be distributed with the notice of meeting. The agenda shall permit any Sponsors' Committee member to introduce any new business at any meeting of the Sponsors' Committee.

11.17 With the exception of the meetings described in Section 11.16, all meetings of the Sponsors' Committee shall be held at the office of the Plan Manager, or such other location agreed upon by the Sponsors' Committee. In addition, all records and minutes of the Sponsors' Committee shall be kept at the office of the Plan Manager, or such other location as may be agreed upon by the Sponsors' Committee.

11.18 Unless the Sponsors' Committee resolves otherwise, any meeting of the Sponsors' Committee, may be held by way of a telephone, internet-based or telecommunications conference provided that the Sponsors' Committee members participating in the said conference shall have the opportunity to consider the business of the Committee, move and vote on motions as at any other meeting of the Sponsors' Committee. The provisions of this Section 11 shall apply with such necessary modifications to such telephone, internet-based or telecommunications conferences.

11.19 A quorum for the transaction of business at any meeting of the Sponsors' Committee shall consist of not less than 50 percent of the Sponsors' Committee members plus one Sponsors' Committee member, which members shall be present in person or participating by means of a telephone conference call or internet-based or telecommunications conferences. No proxies shall be permitted at any time.

11.20 Any resolutions of the Sponsors' Committee shall require unanimity of all Sponsors' Committee members present at a meeting of the Sponsors' Committee. Notwithstanding the foregoing:

(a) any resolution of the Sponsors' Committee concerning the admission of an employer as a participating employer in the Plan pursuant to paragraphs (c) of the definition of "Employer" under section 1.01 or pursuant to the definition of "University" under section 1.01 shall require a vote of 2/3rd of the Sponsors' Committee members present at a meeting of the Sponsors' Committee;

(b) The Sponsor's Committee may by a resolution of 2/3rds of the Sponsors' Committee members present at a meeting, following notice of such resolution at the immediately preceding meeting of the Sponsor's Committee, resolve to eliminate the requirement of unanimity in favour of a requirement that all subsequent resolutions of the Sponsors' Committee shall be by a vote of 2/3rds of the Sponsors' Committee members present at a meeting of the Sponsors' Committee and upon any such resolution being passed this section 11.18 shall be deemed to be so amended without requiring further approvals pursuant to Article 9.

11.21 The Plan Manager or his or her designate shall act as recording secretary at any meeting of the Sponsors' Committee. Proper minutes will be prepared in draft form and provided to the Sponsors' Committee members for verification and approval at the following meeting.

11.22 A resolution in writing, signed by all Sponsors' Committee members, is valid as if it had been passed at a meeting of the Sponsors' Committee. Such resolutions may be executed in counterpart.

11.23 The Sponsors' Committee may establish such standing and ad hoc subcommittees as they deem necessary from time to time, by way of a simple majority vote of the Sponsors' Committee members at any meeting.

11.24 Subcommittees of the Sponsors' Committee shall consist of an equal number of Employer and Employee Committee Members, and may include observers and such expert resource persons as the subcommittee may deem advisable, provided that only Sponsors' Committee members shall be entitled to move or to vote on motions.

11.23 The Sponsors' Committee shall be responsible for,

- (a) making amendments to the Plan or restating the Plan at such times as the Sponsors' Committee determines are necessary or appropriate, after receiving the advice, if any, from the Board of Trustees in respect of such amendments or restatements,
- (b) at its discretion, but subject to applicable law, instructing the Board of Trustees as to the frequency with which actuarial valuations of the Plan shall be prepared and filed with the applicable regulatory authorities,
- (c) meeting with the Board of Trustees, or the Chair and Vice Chair of the Board of Trustees or their delegates at least once a year or at the request of the Sponsors' Committee to receive an explanation of the annual report of the Plan and the Trust Fund from the Board of Trustees and at such other times as are requested by resolution of the Board of Trustees to consider any matter of Plan design as is requested by the Board of Trustees, including any issue regarding the frequency of the preparation and filing of actuarial valuations of the Plan,
- (d) the selection of such persons to act as the thirteenth Trustee on the Board of Trustees for the purposes of Article 6 of this Agreement, the determination of the order of appointment of such persons as the thirteenth Trustee, the determination of fees and expenses to be paid to a person for services provided as a thirteenth Trustee and any other matter related to the selection of persons to act as the thirteenth Trustee and their respective appointments as the thirteenth Trustee,
- (e) advising the parties to this Agreement of any amendments to the Plan,
- (f) making recommendations to the Board of Trustees respecting the administration of the Plan,
- (g) preparing a report at the end of every fiscal year of the Plan setting out the activities of the Sponsors' Committee in that year, such report to be delivered to the parties to this Agreement as soon as reasonably possible after the end of the fiscal year of the Plan,
- (h) exercising such authority granted by the Plan to the extent that the exercise of such authority does not conflict with this Agreement,

- (i) adopting, reviewing and, if appropriate, amending a funding policy which sets forth, among other things, the use of any funding excesses and cumulative gains, and
- (j) subject to section 7.06(bb) to amend the policies or rules in effect as at the effective date of this amendment to provide for the reimbursement of reasonable out-of-pocket expenses of the individual Trustees and members of the Sponsors' Committee, and to provide for the payment of such other reasonable amounts, including reimbursement of lost compensation of individual Trustees and members of the Sponsors' Committee up to such limits as the Board of Trustees and Sponsors' Committee shall deem necessary or appropriate for the administration of the Plan and Trust Fund.

11.26 After consulting with and receiving the advice, if any, of the Board of Trustees, the Sponsors' Committee may, by resolution, instruct the Board of Trustees to prepare an amendment or amendments to the Plan. Once such an amendment or amendments to the Plan have been drafted by the Board of Trustees or such person or persons so instructed by the Board of Trustees, the text of the proposed amendment or amendments shall be placed before the Sponsors' Committee for its review, revision, and approval or rejection by resolution. If the amendment text is rejected without further revision and approval, the Sponsors' Committee may issue further instructions to the Board of Trustees in respect of the proposed amendment or amendments. If no such further instructions are made, then no Plan amendment or amendments shall be processed by the Board of Trustees and the original resolution of the Sponsors' Committee to prepare an amendment or amendments shall be deemed to be withdrawn for the time being.

11.27 Once the text of a proposed amendment or amendments is approved by the Sponsors' Committee, the Board of Trustees shall cause the Plan to be amended to incorporate the text of the proposed amendment or amendments approved by the Sponsors' Committee. The Board of Trustees shall then seek to have the amendment or amendments registered under the applicable legislation. Should the amendment or amendments not be registered under the applicable legislation, the Board of Trustees will inform the Sponsors' Committee of the reasons and make recommendations as to the changes, if any, that may be required to the amendment text to allow it to be registered.

11.28 The Sponsors' Committee shall, at the request of the Board of Trustees made by resolution of the Board of Trustees, convene and meet with respect to any issue referred to the Sponsors' Committee by the Board of Trustees.

11.27 (a) The Sponsors' Committee shall incur no liability collectively and no individual member of the Sponsors' Committee shall incur personal liability in acting upon any documents, data or information believed by it, him or her to be genuine and accurate and to have been made, executed, delivered or assembled by the proper parties.

(b) No individual member of the Sponsors' Committee (Member) shall be liable for the act or omission of any other Member. The Fund shall indemnify and save harmless the Sponsors' Committee and the Members individually from and against any loss, expense, claim, demand, action or thing of any nature whatsoever, including any amount paid to settle an action or to satisfy a judgment, arising out of the performance or purported performance of their duties or responsibilities hereunder, except that this indemnity shall not, in any way, extend so as to protect any Member with respect to any matter or thing arising out of his or her own dishonesty, bad faith, wilful misconduct or negligence.

14. Section 13.05 of Article 13 of the Agreement shall be deleted and replaced with the following:

13.05 (a) An entity which has been admitted as a participating employer in the Plan pursuant to paragraph (c) of the definition of "Employer" under section 1.01, shall not be considered a party to this Agreement and the addition of such a new Employer shall not be considered to be an amendment of this Agreement for the purpose of Article 9.

(b) A University which has been admitted as a participating employer in the Plan pursuant to the definition of "University" under section 1.01, shall not be considered a party to this Agreement unless such University is a Sponsor University and the addition of such a new University shall not be considered to be an amendment of this Agreement for the purpose of Article 9.

15. Upon the Agreement being amended and restated pursuant to Article 14 and this Schedule A, Article 14 shall be deleted and Schedule A shall cease to be a schedule to this Agreement which shall not be considered to be an amendment of this Agreement for the purpose of Article 9.

Email - December 6 2016 - RE_ CATT, HOOP, & OPSEU Documents.pdf

From: [Murray Gold](#)
To: [Tam, Nelson \(TBS\)](#)
Subject: RE: CATT, HOOP, & OPSEU Documents
Date: December-06-16 9:25:48 AM
Attachments: [logo_d1ac01ba-f783-4248-82df-84549cb6f0b7.png](#)

Thanks Nelson.



Murray Gold

Partner

T: +1 416-595-2085 | F: +1 416-204-2873 | E: mgold@kmlaw.ca

Koskie Minsky LLP, 20 Queen Street West, Suite 900, Toronto, ON. M5H 3R3

kmlaw.ca

From: Tam, Nelson (TBS) [<mailto:Nelson.Tam@ontario.ca>]
Sent: December-06-16 9:22 AM
To: Murray Gold
Subject: RE: CATT, HOOP, & OPSEU Documents

Murray

Sorry, I forgot about the position papers (password protected).

Nelson
416-212-0514

From: Murray Gold [<mailto:mgold@kmlaw.ca>]
Sent: December-06-16 9:11 AM
To: Tam, Nelson (TBS)
Subject: RE: CATT, HOOP, & OPSEU Documents

Tam,

Were any documents distributed yesterday that you could send to me?

Murray



Murray Gold

Partner

T: +1 416-595-2085 | F: +1 416-204-2873 | E: mgold@kmlaw.ca

Koskie Minsky LLP, 20 Queen Street West, Suite 900, Toronto, ON. M5H 3R3

kmlaw.ca

From: Tam, Nelson (TBS) [<mailto:Nelson.Tam@ontario.ca>]
Sent: December-06-16 8:50 AM
To: Patricia O'Malley (plomalley@outlook.com); Martin, Paul (FIN) (Paul.Martin@gnb.ca); Uros Karadzic (uros.karadzic@ca.ey.com); Murray Gold; lucy.durocher@ca.pwc.com
Subject: CATT, HOOP, & OPSEU Documents

Patricia, Paul, Uros, Murray, Lucy

As promised, attached are the documents relating to HOOP and CATT.

Also included is IAS19 and IPSAS 39 and OPSEU chart (password protected).

Thanks

Nelson
416-212-0514

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.
Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.
Le contenu du présent courriel est privilégié, confidentiel et soumis à des droits d'auteur. Il est interdit de l'utiliser ou de le divulguer sans autorisation.

logo_d1ac01ba-f783-4248-82df-84549cb6f0b7.pdf

KOSKIE MINSKY

JUSTICE MATTERS

OPSEUPP - Pension Asset Accounting Dec 5F.docx

Accounting by the Province of the OPSEUPP

1.0 Preamble

This document addresses the accounting for an accrued benefit asset under Canadian Public Sector Accounting Standards (PSAS) by the Province of Ontario in relation to the Ontario Public Sector Employees Union ("OPSEU") Pension Plan ("OPSEUPP" or the "Plan").

As at March 31, 2016, OPSEUPP had an accrued asset position for accounting purposes of \$521 million.

The details of the accounting valuation for the plan for purposes of reporting by the Province of Ontario as of March 31, 2016 are as follows:

(all figures in \$M)	Total plan	50 % Share of the plan
Market related value of assets	17,380	8,690
<u>Value of obligation</u>	<u>15,557</u>	<u>7,778</u>
Surplus (deficit)	1,823	912
Unamortized (gains) losses	(96)	(48)
<u>Adjustment for March 31, 2016</u>	<u>(583)</u>	<u>(291)</u>
Asset (liability) position	1,144	573
<u>Specific Province of Ontario adjustment</u>		<u>(52)</u>
<u>Final Accrued Benefit Asset (liability)</u>		<u>521</u>
<u>position on balance sheet</u>		

2.0 Issue to be considered

1. For accounting purposes, how should OPSEUPP be classified under PSAS?
2. As a result of the classification, how should the Province of Ontario recognize the pension surplus (for accounting purposes) of OPSEUPP in the Public Accounts?
3. How should a pension asset of OPSEUPP be measured in the Public Accounts of the Province of Ontario?

3.0 Conclusions

1. OPSEUPP is a Joint Defined Benefit Plan under PS 3250
2. The Province of Ontario should account for OPSEUPP as a defined benefit plan for its proportionate share of the surplus or obligation that arises under the plan.
3. The Province of Ontario should record its proportionate share of the asset and apply the asset ceiling test under PS 3250. The Province of Ontario believes that the asset is recoverable through the reduction of future contributions and as such, no valuation allowance is necessary.

4.0 Background information

4.1 Overview of OPSEUPP

The Plan is jointly sponsored by the Province of Ontario and the executive of OPSEU. The Plan is managed by OPTrust, a 10-member Board of Trustees, five of whom are appointed by OPSEU and five by the Province of Ontario. The sponsors appoint experienced, professional experts to the OPTrust's Board. More specifically, the Province of Ontario and OPSEU each appoint to the Board of Trustees one experienced member to fill the position of Chair and Vice-Chair, with the roles alternating between Province of Ontario and OPSEU appointees every two years.

OPSEU and the Province of Ontario are equally responsible for ensuring the pension plan has the financial resources to meet its long-term pension obligations. Section 4.6 of the Plan Text notes that the Employer shall pay into the Plan an amount equal to the aggregate amount of all contributions deducted from the members.

The assets of the Plan are held by OPTrust in trust for the beneficiaries of the plan – Ontario public servants who work in the broader public sector (approximately 130,000 members across Ontario). The Province of Ontario does not have unilateral access to the assets of the trust nor does it have the right to unilaterally change contribution amounts, take contribution holidays. Actions of this nature require negotiation and agreement between the two sponsors. While access to the assets of the Trust is not in the Province of Ontario's sole control, it should be noted that the Province of Ontario, as a sponsor of the plan, has established a rate stabilization reserve (RSR) in which surpluses are allocated so that the Province's share of the surplus from the plan is identified and can be used for future decision making on funding and benefit improvements.

Given the historical volatility of the Plan's funding results, the long term risk mitigation decision to date has been to deposit any actuarial gains to the Employer RSR. This reserve has been used to cover the cost of negotiated temporary benefit changes (Factor 80 and Surplus Factor 80), to fund future potential losses, and cover any required amortization payments for prior year losses.

Under the Sponsorship Agreement and the Plan text, the Government has the option to apply their share of the gains to reduce Employer costs (special payments, contribution reductions, contribution holidays, etc.), or deposit the gains to the Employer RSF. There is no provision within the Plan to withdraw the Employer portion of gains.

The Funding Policy, Board-Approved Policy, dated July 17, 2014

OPTrust provides the following regarding the use of Plan Surpluses:

OPTrust recognizes that decisions on the use of surplus are reserved to the Sponsors. However, in the interests of providing information to the Sponsors, OPTrust has recommended a number of principles for the Sponsors to consider when determining how to use surplus that arises from time to time, designed to minimize the risk to future Plan funding. They are as follows, in order:

1. Use surplus to pay for any past unfunded liability that has not been fully amortized through previous valuations.
2. Restore benefits previously lost due to prior deficits.
3. Restore stabilization reserves to recommended levels to protect against future adverse actuarial and investment experience.
4. If the current employee and employer contribution rates are above the normal rate specified in OPTrust Management studies, use surplus to return contributions back to the normal rate.
5. If surplus is still available, consider temporary contribution reductions as the most predictable way to reduce the surplus in the Plan.
6. When considering Plan improvements, establish a preference for temporary benefit improvements over permanent Plan changes since temporary improvements will be prepaid from existing surplus and are less likely to have an impact on future contribution rates.
7. When considering permanent Plan improvements, recommend those that better rationalize the overall Plan design, such as provisions that present an undue hardship or level of unfairness to Plan members.

Member and Employer Rate Stabilization Reserves

The Sponsors of the OPSEUPP have established two stabilization reserves to deal with actuarial gains when they arise. The Employer and Member Stabilization Reserves are the remaining employer's and members' share of the net actuarial gain. These stabilization reserves are intended to be used as a buffer against any future actuarial losses that may arise.

Gains (and losses) are shared equally by Plan members, subject to the following:

- (i) 50% of the gain or such other amount as may be collectively bargained shall be used for the benefit of employers, to be applied against any special payments required to be made by any employers and thereafter to reduce employers' normal costs [SA, s. 56 (c) (i)]; and
- (ii) 50% of the gain or such other amount as may be collectively bargained shall be used for the benefit of Plan members [SA, s. 56 (c) (ii)].

Excerpts from Plan Text on Withdrawal of Surplus

Section 18.2 of the Plan Text notes that, if the Plan is wound up in whole or in part, the assets in the Fund shall first be allocated for the provision of benefits in accordance with terms of the Plan, the Pension Benefits Act, the Income Tax Act (Canada) and any other applicable legislation or agreement between the sponsors.

Section 18.3 also notes that if after provision for benefits payable to or in respect of members of the wind up, in whole or in part, of the plan, assets remain in the Fund or the part of the Fund affected by a partial windup, such assets shall be applied as determined by OPSEU subject to the Pension Benefits Act

and the Income Tax Act (Canada) for the exclusive benefit of the members and former members, their beneficiaries and dependents.

4.2 Accounting for OPSEUPP by the Province of Ontario

The Province of Ontario's Public Accounts as of March 31, 2016 includes an accrued pension asset of \$521M that represents the employer's share of the OPSEUPP surplus position based on the accounting actuarial valuation for the plan. This situation has arisen because, to this point in time, the Province of Ontario's share of the total contributions to the Plan plus the actual investment returns on the Plan's assets have exceeded the Province of Ontario's share of the accumulated retirement benefit expense.

The Province of Ontario recognizes 50% of the accrued benefit asset on its consolidated statement of financial position, which represents the Province of Ontario's Share of the Pension Plan.

5.0 Question 1 – Classification of the OPSEUPP

5.1 Relevant Guidance on Classification

PS 3250 has specific application guidance to Joint Defined Benefit Plans:

Joint defined benefit plans

.079 Governments may participate jointly in defined benefit plans where the government shares the risks and rewards jointly with plan participants, represented by a sponsor or sponsors. Joint defined benefit plans are governed by a formal agreement between the sponsors, which establishes that the sponsors have shared control over the plan. A governing board is generally appointed by the joint sponsors with equal representation and a mutually agreed-upon chair.

.080 A government would consider the characteristics of the plan to determine whether it meets the definition of a joint defined benefit plan. In a joint defined benefit plan, funding contributions are shared mutually between the government and the plan members. The sponsors have control over decisions related to the administration of the plan and the level of benefits and contributions on an ongoing basis based on the terms of the contractual agreement. The sponsors share, on an equitable basis, the significant risks associated with the benefit plan. Risk would not be considered to be equitably shared in an arrangement where the government and the joint sponsors fund the plan equally but where the government retains the full risk of the accrued benefit obligation. If the government retains the residual risks it is unlikely that the plan meets the definition of a joint defined benefit plan.

.081 *When a government participates in a joint defined benefit plan, the government's risk is limited to its portion of the plan. The government should account for its portion of the plan in accordance with the standards for defined benefit plans.* [SEPT. 2001]

.082 A government may convert an existing defined benefit plan for which it is the sole sponsor to a joint defined benefit plan where the risks and benefits are shared. When converting to a joint plan, a government would consider whether there are any special accounting issues that arise, including whether the predecessor plan has been settled or partially settled and/or curtailed or partially curtailed.

In assessing such issues a government would have regard to its specific circumstances and the terms of the joint defined benefit plan.

5.2 Conclusion on classification

Application of PS 3250 to Joint Defined Benefit Plans

A joint defined benefit plan is a unique retirement benefit plan where the sponsors have shared control over the plan. No one party can, by itself, control decisions around funding, benefits and other matters; funding contributions, risks and benefits are to be shared mutually between the sponsors. This is the case for OPSEUPP where the Province and OPSEU are joint sponsors. This classification has been applied consistently by the Province for OPSEUPP for over the last 10 years. Paragraph .081 of PS 3250 clearly states that a government should account for its portion of the Plan in accordance with the standards for defined benefit plans. As a result, the Province of Ontario accounts for its proportionate share of the Plan and has historically recorded its share as 50% of the Plan.

6.0 Question 2 – Recognition of surplus

6.1 Standards in the PSA Handbook

The following standards were considered relevant when determining whether an asset can be recognized in the Public Accounts:

.081 When a government participates in a joint defined benefit plan, the government's risk is limited to its portion of the plan. The government should account for its portion of the plan in accordance with the standards for defined benefit plans. [SEPT. 2001]

.050 An accrued benefit asset should be presented on a government's statement of financial position net of any valuation allowance. When a defined benefit plan gives rise to an accrued benefit asset, a government should recognize a valuation allowance for any excess of the adjusted benefit asset over the expected future benefit. A change in valuation allowance should be recognized in the statement of operations for the period in which the change occurs. [SEPT. 2001]

.051 A government with a defined benefit plan may have an accrued benefit asset for accounting purposes. An accrued benefit asset arises when the government's total contributions to the plan, including interest earned thereon, are greater than the retirement benefit expense recognized since the start of the plan. Contributions reflect the funding objectives of the plan. The benefit expense reflects the accounting objectives and may differ for a number of reasons, including the fact that actuarial gains and losses are deferred and amortized in future periods.

.052 A government may benefit from an accrued benefit asset either by withdrawing surplus assets or by taking a contribution holiday or receiving a refund of contributions. The accrued benefit asset may become impaired when there is a plan surplus for accounting purposes that the government is not entitled to benefit from fully. For example, there may be a regulatory moratorium on pension surplus withdrawals or uncertainties as to a government's legal right to use a plan's accounting surplus.

6.2 Analysis

PS 3250.50 requires that an accrued benefit asset should be presented on a government's statement of financial position net of any valuation allowance. When a defined benefit plan gives rise to an accrued benefit asset, a government should recognize a valuation allowance for any excess of the adjusted benefit asset over the expected future benefit. This comparison between the adjusted benefit asset and the expected future benefit informs whether a valuation allowance is required and if so, how much of a valuation allowance should be recorded.

PS 3250.52 contemplates that there are two ways in which a government can benefit from an accrued benefit asset. A government may benefit from an accrued benefit asset either by withdrawing surplus assets or by taking a contribution holiday or receiving a refund of contributions. As such, an expected future benefit would include the ability to either withdraw plan assets from the Plan or reduce future contributions.

PS3250.52 also goes on to consider that an accrued benefit asset may become impaired when there is a Plan surplus that the government is not entitled to benefit from fully. The paragraphs in the standard that follow determine how a government would go about considering the extent of any impairment, which would give rise to a valuation allowance. In order to make this determination, the government is required to consider the “expected future benefit”, which would effectively create a ceiling for the asset. Here the guidance diverges between benefit expected to be realized through future reductions in contributions and those to be realized through withdrawal of surplus.

Specifically with respect to withdrawal of surplus, PS 3250.59 is very clear that expected future benefit can only be asserted where the Province of Ontario has a current legally enforceable right to withdraw assets from the Plan. This guidance was considered as to whether it should be applied to cases where the expected future benefit related to the Pension Asset is expected to be realized through reduced contributions; however it was concluded that the guidance does not apply in this situation. While PS 3250.59 does introduce the concept of a legally enforceable right, it does so solely in the context of a government’s future withdrawal of a Plan surplus, and not in the context of a government’s reduction of future contributions.

OPSEUPP has established a rate stabilization reserve for each Plan Sponsor, one for the Government and one for the employees. The Funding Management Policy and the Sponsorship Agreement establishes that actuarial gains must be shared equally amongst the Sponsors. Now that the initial transferred unfunded liability of the Plan has been eliminated, as actuarial gains are generated, the Government has the ability to use its 50% share of the gain to reduce contributions.

6.3 Conclusion

The Province of Ontario should account for OPSEUPP as a joint defined benefit plan, which means applying PS 3250 defined benefit accounting for its share of the Plan. As the Plan is in an asset position, the Province of Ontario should reflect its proportion of the asset (50%) subject to any valuation allowance.

7.0 Question 3 – Measurement of a pension asset

7.1 Standards in the PSA Handbook

The following standards are relevant to determining how the Pension Asset should be measured

.053 To determine the extent to which an accrued benefit asset may be impaired, the government first determines the adjusted benefit asset. The adjusted benefit asset is the accrued benefit asset less net unamortized actuarial losses (determined on a basis using market value of assets).

.054 The adjusted benefit asset is then compared to the expected future benefit. When the expected future benefit exceeds the adjusted benefit asset, the accrued benefit asset is not impaired and, accordingly, no valuation allowance is required. The chart included as Appendix A to this Section is intended to set out the relationship between the various defined terms.

.055 The objective of the standard in paragraph PS 3250.50 is to limit a government's accrued benefit asset to the amount it can realize in the future. The expected future benefit is a calculated amount representing the benefit a government expects to realize from a plan surplus. An expected future benefit includes any withdrawable surplus or reduction in future contributions.

.056 A government determines its expected future benefit as the sum of:

- a) the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
- b) the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

.057 A government's expected future accruals for service for the current number of active employees are determined on a basis consistent with that used to determine its accrued benefit obligation. These expected future accruals for service, less required employee contributions and minimum contributions the government is required to make regardless of any surplus, are then discounted back to the current period to determine the present value. The interest rate used to calculate this present value is the expected rate of return on plan assets used to determine the benefit expense in the period.

.058 When administration expenses are paid by the plan and included in the normal cost calculation, a best estimate of the future administration expense is included in the expected future accruals for service. When administration expenses are paid by the plan and not included in the normal cost calculation, the rate of return on plan assets is adjusted to reflect the deduction of the administrative expenses.

.059 A key factor in determining a government's expected future benefit from a defined benefit plan with a plan surplus for accounting purposes is the ability of the government to withdraw assets from the plan. The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal. It excludes any withdrawable plan surplus a government is currently required, or intends, to allocate to employees. A government may not anticipate obtaining a legally enforceable right to withdraw a portion of a plan surplus to which it is not currently entitled, whether on the basis of precedent or otherwise. Accordingly, when withdrawal of plan surplus requires the approval of employees or an appropriate regulatory authority or a court of law, a government excludes

any amount subject to this restriction from its expected future benefit until such approval has been obtained. A change in the allocation of surplus between a government and its employees is incorporated into the calculation of the expected future benefit only when it has been agreed to and, when required, approved by the appropriate regulatory authorities

7.2 Calculating the limit on the carrying amount of an accrued benefit asset

Section PS 3250 paragraphs .053 to .058 lay out a mathematical calculation that determines the value of the adjusted benefit asset and the expected future benefit, and tests whether a government can expect to recover its accrued benefit asset through a withdrawal of surplus or through the reduction of future contributions. The stated objective of this exercise, as set out in Section PS3250 paragraph .055, is to limit the amount of the government's accrued benefit asset to the amount "it can realize in the future." The expected future benefit is further described as "a calculated amount representing the benefit a government expects to realize from a plan surplus". A valuation allowance is recorded against the pension asset to limit the asset value, if necessary, based on this analysis. This is a prescriptive test under Section PS 3250, specifically that the amount of an asset is limited to the "expected future benefit" as defined in Section 3250 paragraph .56.

Therefore in accordance with Section PS 3250 paragraph .56 the Province of Ontario calculated the expected future benefit as the sum of:

- a) the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
- b) the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

Each of these is discussed separately.

7.3 Considerations re: withdrawal of the surplus (Section PS 3250 paragraph .056 (b))

In relation to the ability of a government to benefit from a surplus through the withdrawal of the surplus, Section 3250 paragraph .059 indicates "The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal."

For OPSEUPP, the Funding Policy does not contemplate surplus withdrawal and so for the purposes of this analysis, it is assumed that any surplus withdrawal would have to be negotiated between the sponsors. Only at the time of wind-up and if there were remaining assets would negotiations be required to determine how the surplus would be used for the benefit of the members.

There are no provisions in the OPSEU Plan text to permit the withdrawal of a surplus. PS 3250.59 indicates that the expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal. As there is no certainty that the Province will be able to access an OPSEUPP surplus through withdrawal, the Province cannot rely on withdrawal of surplus to support the measurement of the OPSEUPP accrued benefit asset.

7.4 Considerations re: reduced future contributions (Section PS 3250 paragraph .056 (a))

Section PS 3250 paragraph .056(a) sets out that the government's calculation of expected future benefit would be the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus.

In the event of a surplus, OPTrust recommends to the Sponsors certain principles be followed when determining how to use the surplus. The recommendation from OPTrust is to allocate actuarial gains to any unfunded liabilities or restore cuts to benefits due to prior deficits, before moving into the rate stabilization reserves, reducing contributions, and then restoring benefits. Appendix A provides a history of the allocation of actuarial gains (losses) from January 1, 1993 to December 31, 2014. As such, there are two significant indicators that lead the Province to believe that future contributions can be reduced, which are:

1. The Province has its own RSR that can be utilized to reduce future contributions. The Sponsorship Agreement outlines the priorities for the Government's RSR utilization. Within the parameters of the Sponsorship Agreement there is "some" autonomy for the Government on how it allocates its RSR funds.
2. The Funding Principles of the plan put an emphasis on eliminating unfunded liabilities and reducing current contributions, before enhancing benefits. Any unfunded liabilities (UL) in a plan require past service special contributions to be made over a number of years to eliminate the UL. If a significant portion of the UL is eliminated, the special contributions that are being paid over the amortization period would be reduced upon filing of the applicable valuation with the regulator.

In determining the expected future benefit of the asset, the Government has looked at the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the Government is required to make regardless of any surplus. Typically for defined benefit plans minimum contributions

include those that are required by the pension regulator to be made for funding. However, minimum contributions regardless of any surplus, may be required by plan text, legislation or other agreements with employees. For OPSEUPP a key element of judgment is determining what contributions are required by the current plan arrangements “regardless of any surplus”. The constating agreements for OTPP require that the parties negotiate every 3 years as a minimum, and when there is a funding surplus.

7.5 Conclusion on measurement

The OPSEUPP is in a surplus position for accounting purposes and therefore it is appropriate to recognize an accrued benefit asset on the Province of Ontario’s consolidated statement of financial position. The measurement of that accrued benefit asset is subject to the asset ceiling test. The Province of Ontario performed an asset ceiling test on OPSEUPP and it was determined that no valuation allowance was necessary. The expected future benefit from the asset is the amount of contributions that could be reduced in the future from this surplus. As each of the Plan Sponsors have their own stabilization reserves, and the Funding Policy promotes contribution reduction ahead of benefit improvement, the expected future benefit exceeds the net plan asset, which means there is no basis to require the recording of a valuation allowance.

Appendix A- History of Allocation of Actuarial Gains (Losses) (in millions)

OPSEUPP may have actuarial gains or losses each year because the actual events during the year ("experience") do not exactly match the long-term assumptions previously made. Actuarial gains or losses on plan assets occur because the actual investment returns were higher or lower than anticipated. Gains or losses on actuarial liabilities can occur because long-term assumptions (e.g., mortality, salary increases, termination, retirement and economic) differed from actual experience. These gains or losses are amortized under PSAS. Changes in the unfunded actuarial liability may also be amortized where due to changes in actuarial assumptions or methods.

Under the OPSEUPP Sponsorship Agreement, no agreement or amendment to the Plan shall provide for or permit any payment of surplus out of the Fund to the Province of Ontario, or any employer participating in the Plan. For greater certainty, the use of actuarial gains to offset Employer Contributions and any going concern unfunded liability or solvency deficiency does not constitute the payment of surplus out of the Fund.

In its history, the OPSEU Pension Plan has not reported excess surplus as per section 147.2(2) of the Income Tax Act.

The Employer and Member Stabilization Funds are the remaining employer's and members' share of the net actuarial gain. These funds are to be used as a buffer against any future actuarial losses that may arise.

As per the Sponsorship Agreement, the Government's share of gains was not recognized until the Transferred Initial Unfunded Liability had been fully liquidated as of December 31, 2001. As a result, the Government's gains were recognized in the years: 2001, 2007, 2013, 2014 and 2015. The gains for 2015 were not allocated and remain as an experience gain to be carried forward to the next funding valuation. The December 31, 2014 RSR for each Sponsor has accumulated interest at the valuation discount rate of 5.85%.

Pension Asset Accounting CAATTPP Dec 5.docx

Accounting by the Province of Ontario for the CAAT Pension Plan

1.0 Preamble

This document addresses the accounting for a net pension asset under Canadian Public Sector Accounting Standards (PSAS) by the Province of Ontario in relation to the Colleges of Applied Arts and Technology (CAAT) Pension Plan.

CAAT engaged its actuary to perform an actuarial valuation for funding purposes as at January 1, 2016. The results of this valuation indicate that CAAT is 110.4% funded. Furthermore, the excess of the total actuarial value of assets as compared to the total actuarial liabilities is held in a funding reserve as per CAAT's Board of Trustees' Funding Policy. The Plan's reserves have increased to \$1.2 billion (up from \$773 million in 2015). As at March 31, 2016; CAAT was not in an accrued benefit asset position for accounting purposes but it is expected to achieve this position in the near future.

2.0 Issue to be considered

This position paper addresses the following three questions in relation to the accounting for CAAT:

1. For accounting purposes, what type of pension plan is CAAT (i.e. how should CAAT be classified under PSAS)?
2. As a result of the classification, how should the Province of Ontario account for a pension surplus of CAAT in the Public Accounts?
3. How should a pension asset of CAAT be measured in the Public Accounts of the Province of Ontario?

3.0 Conclusions

The following conclusions were reached regarding each of the above questions:

1. Classification of CAAT - The Province has concluded that CAAT meets the definition of a multiemployer benefit plan as the plan is a defined benefit plan to which two or more governments or government organizations contribute. Ontario's 24 provincially controlled community colleges contribute along with 14 other employers in the province's postsecondary sector. Contributions by one participating entity are not segregated in a separate account or restricted to provide benefits only to employees of the entity. The classification of CAAT as a multiemployer benefit plan for accounting purposes had been consistent for the past 7 years and had been consistently accepted without question by the Office of the Auditor General of Ontario (OAG), including throughout the 2015/16 Public Accounts.
2. Recognition of a pension asset for a multiemployer benefit plan - The Province has concluded that PSAS (Section PS 3250) supports the recognition by a government sponsor of its portion of a pension plan asset/liability in respect of a multiemployer benefit plan. The Province of Ontario is the primary funder of CAAT through its funding of Ontario's 24 provincially-controlled community colleges. The Province's portion of a pension surplus for CAAT meets the definition of an accrued benefit asset under Section PS 3250. For CAAT, the Province's portion as at March 31, 2016 of the pension liability is 50% which is calculated based on the % of members in CAAT from community colleges consolidated in the public accounts.

Accounting by the Province of Ontario for the CAAT Pension Plan

3. Measurement of a pension asset - The Province has concluded that the attributes of the multiemployer arrangement for CAAT coupled with CAAT's Board of Trustees' Funding Policy do not allow the Province to access its portion of any plan surplus through withdrawal of the surplus or through reduced future contributions. As a result, the Province is not expected to realize any expected future benefit from a plan surplus of CAAT. A 100% valuation allowance would be recorded against the accrued benefit asset by the Province of Ontario.

4.0 Background information

4.1 Overview of CAAT

CAAT was established on June 1, 1967 with OMERS acting as Trustee, and the CAAT Plan was represented by an advisory committee that provided comments on investments and administration. In December, 1994, a new governance arrangement was formally implemented and CAAT became a Jointly-Sponsored Pension Plan.

CAAT is a contributory defined benefit pension plan with benefits being financed by equal contributions from participating employees and employers, and by investment earnings. The Plan has three key stakeholders: The College Employer Council (previously Colleges Ontario), acting on behalf of the Boards of Governors of the colleges; the Ontario College Administrative Staff Association ("OCASA") and the Ontario Public Service Employees Union ("OPSEU"). These three organizations appoint representatives to the Sponsors' Committee and Board of Trustees.

CAAT operates in accordance with:

- a) *The Income Tax Act* (ITA) and regulations, which set the maximum limits for Registered Pension Plans;
- b) *The Pension Benefits Act (Ontario)*, R.S.O. 1990, c. P.8 (PBA) and the regulations thereunder (PBR);
- c) CAAT Pension Plan Text ; and
- d) CAAT's policies and procedures.

CAAT is governed through a unique joint governance model which includes a:

- Board of Trustees; and
- Sponsors' Committee

The Board of Trustees is a 12 member board with fiduciary responsibility to act in the best interest of all members and beneficiaries. The Board of Trustees are responsible for the day-to-day operations of the Plan including overseeing the operations, including investments and administration. The Board of Trustees is committed to delivering benefit security at stable contribution rates by adhering to the CAAT's Board of Trustees' Funding Policy. Membership on the board of Trustees is equally split between 6 employee representatives and 6 employer representatives.

The Sponsors' Committee is an 8 member group who are responsible for the benefit design and contributions of the Plan including approval of Plan amendments and the filing of actuarial valuations. The 8 member group includes 4 employee representatives and 4 employer representatives. The Committee

Accounting by the Province of Ontario for the CAAT Pension Plan

members can act in the interests of their separate appointing bodies, but their decisions must be unanimous.

Members and employers together share the risks to CAAT's defined benefit lifetime commitment. This means members and employers, through their representatives on the Board of Trustees and Sponsors' Committee, must ensure that the Plan is sufficiently funded to pay benefits now and in the future. CAAT's governance structure is designed such that the Province of Ontario does not have direct voting decision making authority on either the Sponsors' Committee or the Board of Trustees and therefore does not appear to have the ability to exercise control over key decisions such as approving changes to Plan benefits and setting contribution levels.

4.2 Accounting for CAAT by the Province

In accordance with RETIREMENT BENEFITS, Section PS 3250 of PSAS, the Province has accounted for CAAT as a multi-employer plan.

As at March 31, 2016 the Province's consolidated financial statements reported 50% of the net liability of CAAT (the portion of contributions to CAAT made by the employers). The employers for CAAT are government controlled community colleges. The employer contributions for CAAT, in the amount of \$190 million for the year ended March 31, 2016 are included in the Salaries, Wages and Benefits expenses of the colleges sector (Schedule 10) and in the expenses of the Ministry of Training, Colleges and Universities (Schedule 4) in the Province of Ontario's consolidated financial statements.

4.3 Applicability of PS 3250 as primary source of GAAP

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, Section PS 1150 prescribes that, in developing and applying accounting policies, all primary sources of GAAP should be applied (Section PS 1150 paragraph .04). Primary sources of generally accepted accounting principles (GAAP) are Sections PS 1201-PS 3510, Public Sector Guidelines and appendices and illustrative material to those pronouncements. Only when there are no primary sources of GAAP that relate to the transactions or events under consideration, or more specific guidance is needed (Section PS 1150 paragraph .05), does an entity consider other primary sources of GAAP dealing with similar issues and also the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000 (issued January 2003). Section PS 1000 is not, however, a "primary source of GAAP" under the PSA Handbook.

The primary sources of GAAP specific to the accounting for pension assets is RETIREMENT BENEFITS, Section PS 3250 (issued in September 2001 replacing the prior EMPLOYEE PENSION OBLIGATIONS, also titled Section PS 3250).

There have not been consequential changes to Section PS 3250 since its introduction into the PSA Handbook in 2001.

5.0 Question 1 – Classification of a pension asset

The analysis below addresses whether the Province's share of an accrued benefit asset in CAAT, calculated in accordance with PSAS under Section PS 3250, would represent a reportable asset to the Province of Ontario in the Public Accounts.

5.1 RETIREMENT BENEFITS PSAS 3250

The focus of the following analysis is on the accounting requirements in RETIREMENT BENEFITS, Section PS 3250 as this standard is a primary source of GAAP which specifically addresses the accounting for pension assets. The following highlights some key concepts and guidance contained in this standard.

5.1.1 Section PS 3250 – Purpose and Scope

The purpose and scope of Section PS 3250 is included in paragraph .001 which states:

PURPOSE AND SCOPE

.001 This Section establishes standards on how to account for and report obligations for employee retirement benefits in government financial statements. Other employee future benefits are specifically dealt with in POST-EMPLOYMENT BENEFITS, COMPENSATED ABSENCES AND TERMINATION BENEFITS, Section PS 3255.

Obligations for retirement benefits are further explained in RETIREMENT BENEFITS, Section PS 3250.003 as follows:

.003 Obligations for retirement benefits result from a promise by a government to provide these benefits to employees because of retirement in return for their services. Pensions and other retirement benefits, such as extended health care and life insurance benefits, are a form of compensation offered for services rendered and accrue over the years employees render those services. The fundamental accounting task is to determine the amount of the obligation for retirement benefits to attribute to each period of employee service. Determining such amounts involves not only accounting for past transactions and events; it also requires forecasts of future events, such as inflation, investment returns, medical costs and employee turnover and mortality.

RETIREMENT BENEFITS, Section PS 3250 applies to the accounting for CAAT in the Province of Ontario's financial statements as the pension plan represents an obligation of the Province (funded through its consolidated community colleges) to provide retirement benefits to the members of the plan in return for their services.

5.1.2 PS 3250 – Types of pension plans

RETIREMENT BENEFITS, Section PS 3250 addresses the accounting for different types of pension plans including:

- defined benefit plans,
- defined contribution plans
- multiemployer and multiple-employer benefit plans., and
- joint defined benefit plans.

Accounting by the Province of Ontario for the CAAT Pension Plan

The definitions of a multiemployer and defined benefit plan are included in the glossary to Section PS 3250 as follows:

A **multiemployer plan** is a defined benefit plan to which two or more governments or government organizations contribute, usually pursuant to legislation or one or more collective bargaining agreements. The main distinguishing characteristic of a multiemployer plan is that the contributions by one participating entity are not segregated in a separate account or restricted to provide benefits only to employees of the entity and, thus may be used to provide benefits to employees of all participating entities.

A **defined benefit plan** specifies either the benefits to be received by employees after retirement or the method for determining those benefits. The most commonly used defined benefit plans are:

Final pay plan — Bases benefits on an employee's length of service and compensation over a specified number of years (usually the years of an employee's highest earnings).

Flat benefit plan — Provides a specified benefit for each year of service rendered; the benefit earned in each period is usually fixed and determinable under the terms of the plan and the amount of benefits to be received varies only with the years of service rendered.

A **joint defined benefit plan** is a contractual arrangement between the government and another sponsor or sponsors representing plan participants that has all of the following characteristics:

- (a) The sponsors co-operate toward achieving the significant clearly defined common goal of providing retirement benefits in exchange for services rendered by the employees;
- (b) funding contributions are shared mutually between the government and the plan members, represented by the non-government sponsor;
- (c) the sponsors share control of decisions related to the administration of the retirement benefit plan and to the level of benefits and contributions on an ongoing basis; and
- (d) the significant risks associated with the retirement benefit plan are shared on an equitable basis between the government and the plan members, represented by the non-government sponsor.

The contractual arrangement establishes that the sponsors have shared control over the retirement benefit plan, and ensures that neither party is in a position to control the plan unilaterally. Nevertheless, overall, there must be an equitable relationship between the funding by the government of the retirement benefit plan, the extent of control it is able to exercise over the plan and the risks and benefits that accrue to the government from the plan.

CAAT specifies the method for determining benefits to be received by employees after retirement in the Plan text. It is a defined benefit plan to which two or more governments or government organizations contribute. For CAAT, multiple provincially controlled community colleges contribute. Contributions by one participating entity (for example, one specific community college) are not segregated in a separate account or restricted to provide benefits only to employees of the entity.

Accounting by the Province of Ontario for the CAAT Pension Plan

The classification of CAAT as a multiemployer benefit plan for accounting purposes by the Office of the Provincial Controller has been consistent for over 7 years and had been consistently accepted without question by the OAG, including throughout the 2015/16 Public Accounts.

5.2 Conclusion on classification

The Province has concluded that CAAT meets the definition of a multiemployer benefit plan as the plan is a defined benefit plan to which two or more governments or government organizations contribute. For CAAT, multiple provincially controlled community colleges contribute along with 14 other employers in the Province's postsecondary sector. Contributions by one participating entity are not segregated in a separate account or restricted to provide benefits only to employees of the entity. The classification of CAAT as a multiemployer benefit plan for accounting purposes has been consistent for over 10 years and had been consistently accepted without question by the Office of the Auditor General of Ontario (OAG), including throughout the 2015/16 Public Accounts.

6.0 Question 2 – Recognition of a pension asset for a multiemployer benefit plan

6.1 Standards in the PSA Handbook

RETIREMENT BENEFITS, Section PS 3250 paragraphs .105 to .111 provide guidance on the accounting for a multiemployer benefit plan in the financial statements of a government sponsor as follows:

Multiemployer plans

.105 A multiemployer plan is a defined benefit plan to which two or more governments or government organizations contribute, usually pursuant to legislation or one or more collective bargaining agreements. The main distinguishing characteristic of a multiemployer plan is that the contributions by one participating entity are not segregated in a separate account or restricted to provide benefits only to employees of the entity and thus may be used to provide benefits to employees of all participating entities.

.106 The federal and most provincial governments sponsor defined benefit plans in which many public sector organizations participate. Many local governments participate in such multiemployer plans. When benefits are provided to employees through a multiemployer plan, the amount for which an individual government is obligated under the plan may not be quantified. Generally, a contribution rate is established for each period to ensure that the plan assets are adequate to cover the plan's future benefit payments.

.107 When a government sponsors a defined benefit multiemployer retirement benefit plan, it has the responsibility to ensure that the defined benefits promised to employees are met. In that

Accounting by the Province of Ontario for the CAAT Pension Plan

circumstance the sponsoring government is at risk for future experience gains or losses and would account for its related obligation for the entire multiemployer plan as a defined benefit plan.

.108 When a government sponsors a defined benefit multiemployer retirement plan, the government should follow the standards for defined benefit plans in accounting for its obligation for the plan. [SEPT. 2001]

.109 Although a multiemployer plan may have the characteristics of a defined benefit plan, sufficient information to follow the standards for defined benefit plans is normally not available for each participating employer other than the sponsoring government. For this reason, a multiemployer plan is accounted for by each participating government following the standards for defined contribution plans.

.110 When benefits are provided to employees through a multiemployer retirement benefit plan, each entity participating in the plan, other than the sponsoring government, should follow the standards for defined contribution plans. [SEPT. 2001]

.111 The government should disclose any available information about any surplus or deficit in a multiemployer plan, the basis used to determine the surplus or deficit and the implications, if any, for the government. [SEPT. 2001]

Section PS 3250 paragraph .108 states that “When a government sponsors a defined benefit multiemployer retirement plan, the government should follow the standards for defined benefit plans in accounting for its obligation for the plan.” Additionally, paragraph .107 indicates the sponsoring government “... would account for its related obligation for the entire multiemployer plan as a defined benefit plan.” Therefore Section PS 3250 paragraphs .050 to .059 (guidance for defined benefit plans) are applicable to government sponsors in a multiemployer plan. These paragraphs (which also apply to the accounting for joint defined benefit plan) require an accrued benefit asset to be reported net of a valuation allowance.

The term “sponsor” is not defined in PSAS. A common definition of the term per Wikipedia is “a person or organization that provides funds for a project or activity carried out by another, in particular.” Since the participating employers to CAAT (primarily community colleges) receive the majority of their funding from the Province of Ontario, it can be suggested that the Province of Ontario is the sponsor of CAAT. The Province is the primary funder of CAAT through its funding of its controlled community colleges.

This paper discusses the question of measurement separately in Question 3.

6.4 Conclusion on recognition

The Province has concluded that PSAS (Section PS 3250) supports the recognition by a government sponsor of its portion of a pension plan asset in respect of a multiemployer benefit plan. The Province is

Accounting by the Province of Ontario for the CAAT Pension Plan

the primary funder of CAAT through its funding of its controlled community colleges. The Province's portion of a pension surplus for CAAT meets the definition of an accrued benefit asset under Section PS 3250. For CAAT, the Province's portion as at March 31, 2016 of the pension liability is 50% which is the portion of contributions to CAAT made by the employers. The measurement of that accrued benefit asset is determined by reference to the guidance in Section PS 3250 regarding the Limit on the Carrying Amount of an Accrued Benefit Asset, discussed in Question 3 of this position paper.

7.0 Question 3 – Measurement of a pension asset

7.1 Standards in the PSA Handbook

Section PS 3250 addresses how to measure a pension asset. This is a two-step process for CAAT which is consistent with the calculation for the Ontario Teachers' Pension Plan (OTPP).

Consistent with OTPP, the relevant guidance for CAAT is Section PS 3250 paragraphs .050-.059 which are included below for completeness and ease of reference:

Limit on the carrying amount of an accrued benefit asset

.50 An accrued benefit asset should be presented on a government's statement of financial position net of any valuation allowance. When a defined benefit plan gives rise to an accrued benefit asset, a government should recognize a valuation allowance for any excess of the adjusted benefit asset over the expected future benefit. A change in valuation allowances should be recognized in the statement of operations for the period in which the change occurs. [SEPT. 2001]

.51 A government with a defined benefit plan may have an accrued benefit asset for accounting purposes. An accrued benefit asset arises when the government's total contributions to the plan, including interest earned thereon, are greater than the retirement benefit expense recognized since the start of the plan. Contributions reflect the funding objectives of the plan. The benefit expense reflects the accounting objectives and may differ for a number of reasons, including the fact that actuarial gains and losses are deferred and amortized in future periods.

.52 A government may benefit from an accrued benefit asset either by withdrawing surplus assets or by taking a contribution holiday or receiving a refund of contributions. The accrued benefit asset may become impaired when there is a plan surplus for accounting purposes that the government is not entitled to benefit from fully. For example, there may be a regulatory moratorium on pension surplus withdrawals or uncertainties as to a government's legal right to use a plan's accounting surplus.

.53 To determine the extent to which an accrued benefit asset may be impaired, the

Accounting by the Province of Ontario for the CAAT Pension Plan

government first determines the adjusted benefit asset. The adjusted benefit asset is the accrued benefit asset less net unamortized actuarial losses (determined on a basis using market value of assets).

.54 The adjusted benefit asset is then compared to the expected future benefit. When the expected future benefit exceeds the adjusted benefit asset, the accrued benefit asset is not impaired and, accordingly, no valuation allowance is required. The chart included as Appendix A to this Section is intended to set out the relationship between the various defined terms.

.55 The objective of the standard in paragraph PS 3250.050 is to limit a government's accrued benefit asset to the amount it can realize in the future. The expected future benefit is a calculated amount representing the benefit a government expects to realize from a plan surplus. An expected future benefit includes any withdrawable surplus or reduction in future contributions.

.56 A government determines its expected future benefit as the sum of:

- a) the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
- b) the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

.57 A government's expected future accruals for service for the current number of active employees are determined on a basis consistent with that used to determine its accrued benefit obligation. These expected future accruals for service, less required employee contributions and minimum contributions the government is required to make regardless of any surplus, are then discounted back to the current period to determine the present value. The interest rate used to calculate this present value is the expected rate of return on plan assets used to determine the benefit expense in the period.

.58 When administration expenses are paid by the plan and included in the normal cost calculation, a best estimate of the future administration expense is included in the expected future accruals for service. When administration expenses are paid by the plan and not included in the normal cost calculation, the rate of return on plan assets is adjusted to reflect the deduction of the administrative expenses.

.59 A key factor in determining a government's expected future benefit from a defined benefit plan with a plan surplus for accounting purposes is the ability of the government to withdraw assets from the plan. The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal. It excludes any withdrawable plan surplus a government is currently required, or intends, to allocate to employees. A government may not anticipate obtaining a legally enforceable right to withdraw a portion of a plan surplus to which it is not currently entitled, whether on the basis of precedent or otherwise. Accordingly, when

Accounting by the Province of Ontario for the CAAT Pension Plan

withdrawal of plan surplus requires the approval of employees or an appropriate regulatory authority or a court of law, a government excludes any amount subject to this restriction from its expected future benefit until such approval has been obtained. A change in the allocation of surplus between a government and its employees is incorporated into the calculation of the expected future benefit only when it has been agreed to and, when required, approved by the appropriate regulatory authorities.

Section 3250 paragraph .052 states that a government may benefit from an accrued benefit asset by either i) withdrawing surplus assets from the plan or ii) by taking a contribution holiday or receiving a refund of contributions. This is an explanatory paragraph on how a government may benefit from an accrued benefit asset and why a valuation allowance may be needed.

7.2 Calculating the limit on the carrying amount of an accrued benefit asset

Section PS 3250 paragraphs .053 to .058 lay out a mathematical calculation that determines the value of the adjusted benefit asset and the expected future benefit, and tests whether a government can expect to recover its accrued benefit asset through a withdrawal of surplus or through the reduction of future contributions. The stated objective of this exercise, as set out in Section PS3250 paragraph .055, is to limit the amount of the government's accrued benefit asset to the amount "it can realize in the future." The expected future benefit is further described as "a calculated amount representing the benefit a government expects to realize from a plan surplus". A valuation allowance is recorded against the pension asset to limit the asset value, if necessary, based on this analysis. This is a prescriptive test under Section PS 3250, specifically that the amount of an asset is limited to the "expected future benefit" as defined in Section 3250 paragraph .56.

Therefore in accordance with Section PS 3250 paragraph .56 the Province calculated the expected future benefit as the sum of:

- a) the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
- b) the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

Each of these is discussed separately.

As mentioned, paragraphs .107 and .108 of Section PS 3250, indicate that only the government's portion of the plan is included in the government's financial statements following the requirements of Section PS 3250 for defined benefit plans (recognition) and the measurement of that portion is based on the requirements of Section PS 3250 (measurement). While PSAS is not explicit as to how a government sponsor would calculate its obligation or related obligation, if it was intended that no pension asset/liability could be recognized for a multiemployer plan Section PS 3250 paragraphs .107 and .108 would have made this clear. Similarly, if it was intended the government sponsor report 100% of the

Accounting by the Province of Ontario for the CAAT Pension Plan

pension asset/liability, these paragraphs would not have referred to “its obligation” or “its related obligation”.

7.3 Considerations re: withdrawal of the surplus (Section PS 3250 paragraph .056 (b))

In relation to the ability of a government to benefit from a surplus through the withdrawal of the surplus, Section 3250 paragraph .059 indicates “The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal.”

According to the CAAT Plan text, there is limited ability for the Province of Ontario to withdraw a surplus from CAAT. Section 4.10 of the Plan text indicates that a surplus in the plan is to be used for improving benefits or at the direction of the Sponsors’ Committee.

Furthermore, the Board of Trustees adhere to a formal funding policy where, at each valuation period, the financial health of CAAT is measured and the actions required at each level are implemented. See Appendix A for a summary of the funding policy. This funding policy has six distinct levels and dictates the requirements at various levels which essentially require the use of surpluses to build reserves with an overall of providing stability of contributions and inflation protection through the building of reserves.

There are limited provisions in the CAAT Plan text to permit the withdrawal of a surplus by the Province of Ontario as this could only occur at the direction of the Sponsors’ Committee and is considered to be unlikely given the requirements of CAAT’s formal funding policy.

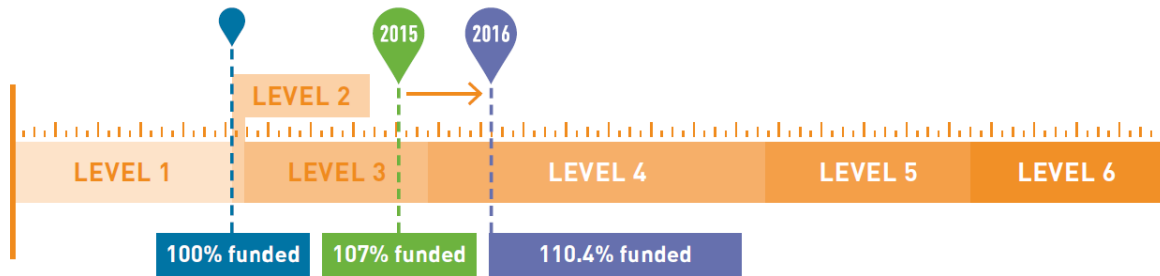
7.4 Considerations re: reduced future contributions (Section PS 3250 paragraph .056 (a))

Section PS 3250 paragraph .056(a) sets out that the government’s calculation of expected future benefit as the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus.

In the event of a surplus, the CAAT Board of Trustees are guided by its prescriptive funding policy in order to fulfill its fiduciary responsibility to make decisions in the Plan members’ best interest. As detailed in Appendix A, the Funding Policy highlights the Plan’s long term focus of protecting promised benefits and minimizing contribution rate volatility, while recognizing the desire to achieve intergenerational equity. To deliver on these longer term goals while managing through short term volatility a blend of stability contributions, conditional benefits, and reserves are used.

CAAT’s funded status moved into Level 4 based on the January 1, 2016 valuation from Level 3 where it stood with the previous valuation as at January 1, 2015.

Accounting by the Province of Ontario for the CAAT Pension Plan

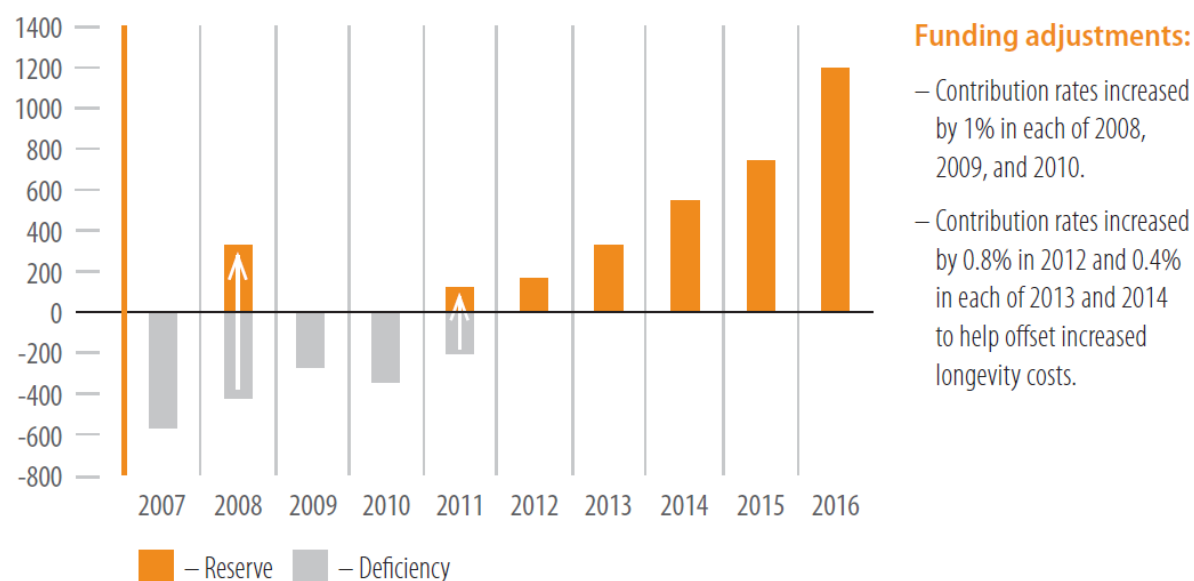


Level 4 spans a broad band that allows the Board of Trustees to determine how to best use reserves. At level 4, the options available are any mix of: reducing stability contributions, building additional reserves, and prefunding conditional inflation protection. On that basis, the Board of Trustees determined that building additional reserves was the most prudent option to further strengthen benefit security and contribution stability. CAAT's reserves have increased to \$1.2 billion (up from \$773 million in 2015).

The decision by the Board of Trustees in 2016 to increase reserves reaffirms CAAT's long term focus and the inherent design of the Funding Policy to give preference to the use of surpluses to fund increases to reserves rather than decreases to contributions. This preference is infused throughout the Funding Policy and driven by CAAT's funding valuation history and related volatility from 2007 to 2016 which is reproduced below. CAAT's funding history since 2007 indicates that despite surpluses, CAAT has continued to increase contributions in order to fund reserves to offset future funding risks for CAAT such as longevity costs. Accordingly, based on past history, the Province is not expected to realize any expected future benefit from a plan surplus of CAAT through reduced future contributions.

FUNDING VALUATIONS HISTORY (as at January 1st)

From 2007-2016 (\$ millions) on a going-concern basis



7.8 Conclusion on measurement

The Province of Ontario has concluded that the attributes of the multiemployer arrangement for CAAT do not allow the Province to access its portion of any plan surplus through withdrawal of the surplus or through reduced future contributions. As a result, the Province is not expected to realize any expected future benefit from a plan surplus of CAAT. A 100% valuation allowance would be recorded against the accrued benefit asset by the Province of Ontario.

Appendix A- CAAT Funding policy

Excerpt from <https://www.caatpension.on.ca/en/about-us/funding>

The Funding Policy highlights the Plan's long term focus of protecting promised benefits and minimizing contribution rate volatility, while recognizing the desire to achieve intergenerational equity. To deliver on these longer term goals while managing through short term volatility a blend of stability contributions, conditional benefits, and reserves are used.

Funding Policy, Revised effective December 31, 2012

At each valuation period the financial health of the Plan is measured and the actions required at each level are implemented.

At Level 1

The Plan has a deficit after using all reserves and the 3% stability contributions being paid by active members. Provincial law would require contributions to be increased temporarily and/or that benefits members build in future be reduced. Inflation protection on post-2007 service would not be paid.

At Level 1 – Temp (temporarily in effect until December 30, 2017 and applies only in respect of valuations effective on and after December 31, 2012 and filed on or before December 30, 2017)

The Plan has a deficit after using all reserves and the 3% stability contributions being paid by active members. No increase in contributions (other than those previously provided for under a filed valuation report with a valuation date before December 31, 2012), but to ensure compliance with Provincial law benefits members build in future would be reduced up to the Benefit Reduction Limit.* Once the Benefit Reduction Limit is reached, Funded Level 1 shall apply in respect of any remaining deficit. Inflation protection on post-2007 service would not be paid.

At Level 2

With the 3% in stability contributions being paid by active members and the Plan's funding reserves being fully used, the funding level exceeds provincial minimums, meaning the Plan has a small surplus. The Plan will provide the current period of inflation protection increases to pensions in pay, on the part of the pension that is based on post-2007 service. Any temporary benefit reductions made in respect of a valuation filed on or before December 30, 2017 to be restored.**

At Level 3

3% in stability contributions are required from active members. On the part of the pension in pay that is based on post-2007 service, the Plan will provide increases for the current period of inflation plus make additional increases for past years of inflation missed (if any). Surplus funds over provincial minimums will also be allocated into funding reserves to withstand up to a 0.5% change in the discount rate.

Accounting by the Province of Ontario for the CAAT Pension Plan

At Level 4

Stability contributions of 1% or 2% are required from active members. All periods of inflation protection increases on the part of the pension that is based on post-2007 service have been made. Surplus funds over provincial minimums will also be allocated into reserves to withstand up to a 1% change in the discount rate and build reserves to fund future inflation increases on post-2007 service.

At Level 5

Active members will be contributing at basic contribution levels only, no stability contributions are required. The Plan has the reserves required to fund future inflation protection increases on post-2007 service and withstand a 1% change in the discount rate. Additional funding reserves are being built to withstand up to a 7.5% increase in liabilities as an additional cushion for securing promised benefits.

At Level 6

Full funding reserves have been built. The Plan has sufficient surplus to consider any combination of the following changes:

- Provide ad hoc inflation protection increases on the part of pensions based on pre-1992 service
- Put additional funds into reserves – up to the federal tax limit
- Reduce contributions below basic contribution levels
- Improve benefits.

*Benefit Reduction Limit means the aggregate value of benefit reductions made after the December 31, 2011 filed valuation totalling 20% of the present value of the Plan's future benefits measured against the level of benefits in effect on December 30, 2012. Assumption changes that directly relate to the benefit reductions may be considered in calculating the Benefit Reduction Limit.

** While Level 1 –Temp remains in effect, no benefit restoration shall occur unless the Plan can remain at least 100% funded measured on a going concern basis, without the use of asset smoothing, after such benefit restoration.