Pension Comparison - question and timelines confirmation.rtf

From: Kaufman, Paul (TBS) []
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Murray Gold [mgold@kmlaw.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Pension Comparison - question and timelines confirmation
Date: Friday, September 16, 2016 20:38:18

Hi Murray -

To confirm our discussion, you are going to provide a comparative legal/governance analysis of how the frameworks for the two Ontario pension plans we identified (OTPP and OPSEU) and the four BC plans we identified (municipal, teachers, college, public service) compare on the issue of the authority of the pension boards and the plan partners to determine the utilization of plan surpluses. Your preliminary thinking is that in Ontario this determination is left to the partners, while in BC either the boards or the partners can make this determination.

You expect that you can provide this analysis by Monday or Tuesday.

We've provided the relevant joint trust agreements for the plans noted above and you don't expect that you need further documentation from us to respond to this request, but you will let us know if any need arises.

Cindy, if the above is inconsistent with what you are looking for please advise.

Paul

RE_ Letter from Ms. Lysyk, Auditor General.rtf

From:	Kaufman, Paul (TBS) []
To:	Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Steele, Jana [JSteele@osler.com]
Subject:	RE: Letter from Ms. Lysyk, Auditor General
Date:	Tuesday, September 13, 2016 21:03:02
Attachment 1:	OTPP_Asset_ceiling_document_Final.pdf
Attachment 2:	Current - Partners' Agreement - 03-06-15.pdf

Jana, here are the documents Len mentions below (the FMP is an appendix to the partners' agreement and begins at page 18 of that document). I think those are the key documents you'll need to start.

Paul

From: Hatzis, Len (TBS)
Sent: Tuesday, September 13, 2016 8:54 PM
To: Steele, Jana
Cc: Kaufman, Paul (TBS)
Subject: Re: Letter from Ms. Lysyk, Auditor General

Paul can you pls send Jana the FMP and Deloitte's August report as well. Do you think Jana needs anything else at this juncture to get a good understanding of the issues? We will need to chat with Jana tomorrow once her and her team has had a chance to digest - thanks.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Hatzis, Len (TBS)
Sent: Tuesday, September 13, 2016 8:52 PM
To: Steele, Jana
Cc: Kaufman, Paul (TBS)
Subject: Fw: Letter from Ms. Lysyk, Auditor General

Jana
Here is the AG's letter setting out her position.

OTPP_Asset_ceiling_document_Final.pdf

Deloitte.

Analysis of Pension Asset Ceiling Accounting Considerations for the Office of the Provincial Controller Division re: Ontario Teachers' Pension Plan (OTPP)

August 19, 2016

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Introduction

In preparation of the Province of Ontario Financial statements, the Office of the Provincial Controller Division (OPCD) has retained Deloitte to provide support in analyzing issues around pension accounting. The present document is prepared in relation to the assessment of the application of public sector accounting standards as related to asset ceiling and valuation allowance to the Ontario Teachers' Pension Plan (OTPP).

The relevant accounting standard referenced in our analysis is public sector accounting standard PS3250 on retirement benefits.

The document will cover the following elements:

- Summary of the situation;
- Overview of the accounting paragraphs that apply to this and the explanation;
- Review of the considerations that go into the asset ceiling test and the Expected Future Benefit (EFB) calculation;
- Review of the employer access to future contribution reduction or surplus withdrawal;
- Summary of findings relating to observations made in discussing the applicability of the asset ceiling test for Ontario's 2015-16 Financial statements.

We are available to discuss the content of this document.

Martin Raymond
Partner, FSA, FCIA

Trevor Gary
Senior Consultant

Section 1 – Summary of the situation

The OPCD in preparation of the Ontario Financial statements for 2015-16 has requested support to assess potential asset ceiling risks in relation to the calculation for the OTPP reported on the Province's consolidated financial statements.

Here are a few facts obtained from discussion / documentation around the OTPP and its accounting:

- The plan is covered by its own legislation, the Teachers' Pension Act
- Most recent funding report was prepared at January 1, 2015 with contributions set for 2015, 2016 and 2017
- The OTPP is a Joint Sponsored Pension Plan (JSPP) as per the Ontario Pension Benefit Act (PBA)
- The plan is accounted for using Joint defined accounting provisions of the standards and the government portion of the plan is determined at 50% of the overall plan, this reflects the 50/50 sharing principle underlying the OTPP (per Teachers' Pension Act par. 5 (1.1) and 10 (1) and page 16 of the funding valuation report – extracts provided in Section 4)
- The total accounting service accrual (service cost) is about $2.9B per year calculated in accordance with PSAB (per the Jan. 26, 2016 Mercer letter to OTPP)
- The recent accounting surplus measure (Dec 31, 2015) for the portion of the government (50% of the total plan) is around $20B, using a market-related value of assets (smoothed assets). The surplus using fair value measure of assets is about $28B (per the excel supporting file for accounting calculations received).

We note that the accounting actuarial values are prepared at Dec 31, 2015 and that an adjustment for March 31, 2016 is performed to obtain the year-end values. The balance sheet asset position for the OTPP can be illustrated as follows: (per the excel supporting file for accounting calculations received)

(all figures in $B)	Total plan	50% Share of the plan
Market related value of assets	157.0	78.5
Value of obligation	116.4	58.2
Surplus (deficit)	40.6	20.3
Unamortized (gains) losses	(18.0)	(9.0)
Adjustment for March 31, 2016	(1.8)	(0.9)
Asset (liability) position	20.8	10.4
Specific Government adjustment		(0.3)
Final asset (liability) position on balance sheet		10.1

This document will cover the following key questions:

- What are the key considerations that go into the asset ceiling determination?
- What is the impact of an asset ceiling for 2015-16, if applicable?
- Is there an asset ceiling impact for OTPP as at March 31, 2016 (that would apply to the $10.1B shown above) and if so how is it calculated?

Below is a list of documents and references used in our analysis.

List of documents
Funding management policy (FMP) of OTPP – agreement between the parties to the plan (provided by OPCD)
Asset ceiling documentation prepared by Allan Shapira (Aon) dated August 2, 2016 (provided by OPCD)
Actuarial valuation report of OTPP as at January 1, 2015 – funding purposes – prepared by Mercer (provided by OPCD)
Accounting standards PS3250 on post-employment benefits
Teachers' Pension Act (found on the internet)
Discussions with OPCD and Allan Shapira (incl. overview of some results used in this document) including a summary note prepared by Nadine Petsche, Director of Accounting Policy and Financial Reporting at OPCD (August 4, 2016)
Excel supporting file for accounting calculations (provided by OPCD)
Supporting document from OTPP to OPCD on accounting results, including the communication from Mercer on valuation results for different assumption basis – both documents dated Jan. 26, 2016 (provided by OPCD)

Section 2 – Relevant PS3250 paragraphs

Below are some extracts from the PS3250 which are relevant for calculating the limit on carrying amount of accrued benefit asset (the asset ceiling test) and the joint defined benefit which are relevant to the analysis and position taken for financial statement preparation. Note that the underlined are from us.

Limit on the carrying amount of an accrued benefit asset

.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.

.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 3250.050 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.

.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.

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.

Section 3 – Asset ceiling test and EFB calculation basis

PS3250.053 refers to the adjusted benefit asset. This is the amount on which the asset ceiling test applies (PS3250.054) by comparing it to the Expected future benefit (EFB). In many cases, we are seeing unamortized losses, and the adjusted benefit asset effectively equals the accounting surplus. However, for the OTPP, as shown in the Section 1, it is unamortized gains which exist rather than losses.

In this situation, if we take the OTPP case, we would have:

- Adjusted benefit asset = accrued benefit asset less unamort. losses = $10.1B - $0.0B = $10.1B
- So the amount to test against EFB would be $10.1B

Further, PS3250.053 refers to market value of assets rather than market-related value of assets that allows for some smoothing of assets gains and losses (which is used under OTPP). Considering that the market value of assets (total plan) is $171.4B at Dec 31, 2015 as per the excel file for accounting calculation and applying the 50% share, we do get $85.7B for the Government share. The difference represents gains on assets not yet reflected in the market-related value of assets and therefore, the unamortized (gains) losses are adjusted accordingly for the test. Making the adjustment for market value measures, we would therefore obtain the following:

(all figures in $B)	50% Share of the plan- market related value	50% Share of the plan market value
Value of assets	78.5	85.7
Value of obligation	58.2	58.2
Surplus (deficit)	20.3	27.5
Unamortized (gains) losses	(9.0)	(16.2)
Adjustment for March 31, 2016	(0.9)	(0.9)
Asset (liability) position	10.4	10.4
Specific Government adjustment	(0.3)	(0.3)
Final Asset (liability) position on balance sheet	10.1	10.1

We note that the end result for the test is still $10.1B adjusted benefit asset on either market-related value or market value. This occurs because the test is showing unamortized gains in both basis. If unamortized losses were present instead, the results of the test would differ.

The above are basic considerations of the asset ceiling test and mostly straight-forward in application. The most challenging part of the asset ceiling test is identifying the basis to value the EFB under PS3250.056. There are various elements to be considered in this calculation that will determine the amount to use. The definition of EFB incorporates key components that need some analysis. The present section deals with these components.

Definition of EFB

.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.

Key components of the definition are:

- present value calculation
- future service accruals
- current number of active employees
- required employee contributions
- minimum contributions the government is required to make regardless of any surplus
- amount of surplus that can be withdrawn

Current number of employees – Open group notion

Under the definition of the EFB, it is indicated that the present value of future accruals for service is to be based on the current number of active employees. The application of this particular element of the calculation has generally been seen in practice as assuming that the plan would have a perpetuity of future accruals since active employees terminating or retiring would be replaced by new active employees, keeping the number equal to the current population. Unless there is signal or expectation of reduction in population (e.g. if the plan was closed to new entrants or if the employer is going through downsizing), this open group notion has been observed in practice.

Future service accruals - Projection of salary

Under the definition of the EFB, we are performing a present value calculation and therefore this assumes that the underlying components of the calculation are projected into the future (future accruals and contributions). In performing such projection, an increase in salary based on the accounting assumption for salary increase would be applicable.

Present value – discounting effect

Calculation of a present value requires the determination of an interest rate to use. Under PS3250.057, the interest rate used is determined in reference to the expected rate of return on plan assets used to determine the benefit expense.

Future service accruals and required employee contributions - Joint Defined Benefit accounting

Since the OTPP is accounted for based on joint defined benefit provisions of the accounting standards, the asset ceiling test needs to be performed based on the government's portion of the plan (par. PS3250.081). Looking at the EFB definition, it means that the calculation of PS3250.056 a) needs to be adjusted to only reflect the employer share (50% of the total accruals) and to remove any employee contributions that were considered in the calculation (since this relates to the employee portion of the plan).

Observations on PS3250 EFB calculation (in practice)

Deloitte has shared with management that historically there has been in practice a very liberal application of the PS3250 asset ceiling calculation. The EFB has generally been determined as the present value of all future employer service accruals (perpetuity) considering the increase of salary factored into the calculation. This approach is based on View 1 described in the minimum employer contribution required discussion below. One simple way of obtaining that value is based on the following calculation:

- Determine the total accrual for service for one year
- Determine the accrual for service for the employer for one year (i.e. total accrual net of the employee portion)
- Calculate the perpetuity of increasing service cost as follows : accrual of service for employer / (expected return on plan assets – salary increase)
- To illustrate this for OTPP, we did get the following information
  - Total service accrual = $2.9B
  - Employer service accrual (assuming 50% share) = $2.9B / 2 = $1.45B
  - Expected return on plan assets = 6.25% (per the Jan 26, 2016 document and the observed values used in the excel file for accounting calculation)
  - Salary increase = 3% (excluding merit/promotional scale for simplicity - per the Jan 26, 2016 document and the observed values used in the excel file for accounting calculation)
  - Perpetuity = $1.45B / (6.25% - 3%) = $44.6B

Minimum employer contributions required regardless of any surplus – Views for determination in EFB calculation

There has been in recent years more questions around the meaning of the EFB definition and mostly around what the last part of PS3250.056 a) means. The terminology used of "minimum employer contribution required regardless of any surplus" has been discussed and there have been different views on what this represents.

One view (View 1) focus on whether there is a minimum employer contribution under the plan / legislation that is required even if a surplus would be present. For instance, a plan contribution could be defined as always being at least of 5% of salaries. In such circumstances, there would be a contribution requirement to a minimum level for every year even when surplus is present. If no such minimum exists and there is a possibility to get to 0% contribution, for instance in surplus position, then there would be no minimum contribution required "regardless of any surplus". This view leads to no reduction in the EFB calculation in cases where no minimum % contribution exists in the plan provisions. In the example above, the perpetuity of $44.6B is not reduced and therefore EFB remains at $44.6B.

Another view (View 2) is that minimum required contribution must at least consider the effect of the most recent funding valuation report. This report determines what contribution requirement applies to the current period of the valuation report and until a new report is completed. For instance, if the employer needs to contribute for the next 3 years a certain amount of contribution (service cost and special contribution for deficit), then this represents the minimum required employer contribution regardless of any surplus. As an example, under the most recent funding report of the OTPP (Jan 1, 2015) this amount is about $1.7B per year for 2015, 2016 and 2017 which includes service cost and also special contributions. Contributions from 2018 will be determined based on a new valuation report and therefore are unknown as of now (no minimum required contribution on the valuation date for years beyond 2017). In the example above, the perpetuity of $44.6B is reduced by 2 years of $1.7B (excluding interest for simplicity) for an EFB of $41.2B.

Finally, a more extreme view (View 3) could be to actually prepare detailed future projections of funding valuation results on either a deterministic calculation with identification of the actual year(s) when funding surplus would be present or a stochastic calculation to identify what is the probability of occurrence of funding surplus in future years and the outcome in those cases for contribution reduction/surplus withdrawal. Such an approach would need the inclusion of some many complex assumptions and the preparation of a high volume of calculations. In the example above, the perpetuity of $44.6B would be reduced more than View 1 or View 2 because of possible future years in the projection that lead to required contribution payments.

We have never seen in practice the use of View 3 under PS3250, while View 1 has been largely used historically. On the other hand, we note that View 2 has been recently observed as a possible emerging interpretation of the paragraph 3250.056.

<u>Amount of surplus that can be withdrawn and contribution reduction availability – OTPP plan characteristics</u>

One element of importance (PS3250.052 and PS3250.059) is to identify whether the employer does have access to the surplus based on legislation and plan characteristics. Is there really some way the government can either withdraw surplus from the plan or reduce future contributions through contribution holiday. The OTPP does have its own Legislation (Teachers' Pension Act) and a Funding policy (Funding Management Policy – FMP) agreed between employer / employees to determine whether and how surplus can be used under the plan. The FMP provides insight on this significant element and is dealt with in the next section.

Section 4 – Sharing principle, contribution reduction and surplus withdrawal

Extracts from the Teachers' Pension Act

The following paragraphs of the Teachers' Pension Act are supporting elements for the use of the 50 / 50 sharing of contributions - paragraph 5. (1.1) - and also support the use of the Funding Management Policy agreed between the parties for treatment of the surpluses and deficits – paragraph 10. (1) 3.

Contributions by the Crown

5. (1) The Minister of Finance shall pay from the Consolidated Revenue Fund an amount equal to contributions under the pension plan payable by the Minister of Education. R.S.O. 1990, c. T.1, s. 5 (1); 1993, c. 39, s. 3 (1); 2005, c. 31, Sched. 21, s. 2 (1).

Matching contributions

(1.1) The total amount of the contributions payable by the Minister of Education and the employers who contribute under the pension plan in respect of any year shall not exceed the amount of contributions payable by or on behalf of active plan members in respect of credited service for that year. 1991, c. 52, s. 3; 1993, c. 39, s. 3 (1); 2005, c. 31, Sched. 21, s. 2 (2).

Joint management

10. (1) The Minister of Education and the executive of The Ontario Teachers' Federation may enter into an agreement that provides for the following matters:

1. The joint management of the pension plan by the Minister and the executive of the Federation.
2. The composition of the Board, the appointment of the members of the Board and the delineation of the powers and duties of the Board.
3. The sharing of entitlement to gains or surplus under the plan and of liability for deficiencies in the pension fund by the Minister, the employers who contribute under the plan and the active plan members.
4. The amendment of the plan, including the amendment of Schedule 1, by agreement between the Minister and the executive of the Federation.
5. The resolution of disputes between the Minister and the executive of the Federation with respect to amendments to the plan.
6. Any other matter to which the Minister and the executive of the Federation agree. 1991, c. 52, s. 6; 1993, c. 39, s. 5; 2005, c. 31, Sched. 21, s. 4 (1).

Extracts from the most recent funding valuation report (Jan. 1, 2015 – page 16)

The extracts show that Government contributions are matching employees, besides a small portion for LT disability cases and also that there might be an additional contribution for what is referred as foregone inflation. These are supporting the assessment of the 50 / 50 sharing nature of the plan.

- The Province or Designated Employers, as the case may be, should generally match active teacher contributions. However, in the case of teachers on LTIP, they should pay 12.0% (6.9% for Designated Employers if disability occurred before January 1, 1991) of the member's pensionable earnings, indexed to inflation in accordance with the Teachers' Pension Act.

- In addition to the above matching contributions, the Province and Designated Employers are also required to make special contributions for any year in which the cumulative cost-of-living adjustment to pensions in respect of service after 2009 is less than 100% of CPI increases (but only to the first 50% of any inflation foregone) since the members' retirement. The amount of such special contributions is equal to the amount by which the pensions or other entitlements received by members for the year are less than the pension amounts they would have received for that year if 100% CPI indexing had been provided for post-2009 service.

Funding Management Policy (FMP)

The FMP is a document agreed between employer / employees that identifies how the plan is to be funded and specifically how it will deal with deficit and surplus situations. We are particularly interested to identify whether in surplus position the government has access to surplus withdrawal or contribution reduction.

The idea of the plan is that the employer contribution will match the employees' contribution. The use of Joint Defined benefit accounting under PS3250 reflects that general principle underlying the nature of the plan by applying a 50/50 share.

The plan also has provisions that make post-retirement indexing for some service period (post-2009) conditional on the plan financial situation. Should the indexing not be provided fully (100% CPI), some portion (or all) of the indexing amount not provided to the retirees (called foregone inflation) will lead to additional employer contribution in that year. This also reflects the 50 / 50 principle of the plan in that on the employee side, a benefit is not fully provided (less than 100% indexing for retirees) and on the employer side an additional contribution is paid. In similar way, if and when benefits would be increased to the employees, the employer would also get a similar benefit in value (contribution reduction and/or surplus withdrawal).

The FMP will have first use of surplus to reduce contributions to the "basic contribution level" which is the 2012 value (10.4% of salary below YMPE and 12.0% above YMPE) and / or increase benefit to restore any foregone inflation. The Partners need to agree on the actions that will be taken. We also note that for the employer, should the contribution rate already be at the basic rate and a surplus is present, surplus withdrawal and / or further contribution reduction is also possible action to be taken.

In discussing with Allan Shapira (Aon), we understand that the FMP has five funding zones:

- The middle zone is the Fully Funded zone under which base benefits and contributions are maintained. In this zone, the plan is adequately funded to provide base benefits (including indexation at 100% of CPI) supported by the base contributions. Given the volatility of market factors and the numerous assumptions in the funding valuation, "fully funded" is considered a range.
- There are two zones below the Fully Funded zone that address the treatment of deficits (through additional contributions and / or reduction of benefits).
- There are two zones above the Fully Funded zone that address the treatment of surpluses. The first zone is the Temporary Plan Improvement zone where contributions can be temporarily reduced, a surplus distribution can be made on a temporary basis and/or benefits can be temporarily improved (as long as it does not create a long term cost). If the surplus reaches a

specified level, the next zone, the Permanent Plan Improvement zone, provides for permanent changes to contribution rates and/or benefits.

We also note that surplus distribution is a possible approach to deal with surplus in the FMP as per paragraphs 1.06 and 4.04.

Under the FMP, a surplus distribution or a benefit improvement can only be made if the Partners have entered into a written agreement governing the manner in which employer contributions will be adjusted to offset any surplus distribution or changes in benefits that are reflected in the obligation value through benefit changes.

As illustrated in the latter zones above, the FMP considers that surplus situations and actions taken can be of permanent nature but also temporary nature. We understand that the inclusion of temporary use of the surplus has the effect of having more likelihood of years of surplus usage than if only permanent approach was possible.

Based on the information received, we note that the accounting obligation calculated for the financial statements, and the accounting surplus resulting from that obligation value, is already including an assumption that 100% CPI is provided. Therefore, the accounting surplus is already based on fully restored benefits and full indexing. Any remaining surplus would therefore be available from the employer side to reduce the contribution level or withdraw surplus.

We also note that the accounting valuation is based on best estimate assumptions and that the surplus amount determined by that calculation represents what is the most likely outcome, considering that assumptions are realized in the future. As such, the amount for the employer portion does represent a realistic potential value to the government in contribution reduction and / or surplus withdrawal. We do not know when the actual event would take place and whether it would be through contribution reduction or surplus withdrawal, but we know that this represents a realistic economic benefit.

Section 3.06 of the FMP does identify the steps of restoration of indexing and also identifies under 3.06 e) the contribution reduction action that can apply. We note again that the accounting obligation measure already includes the 100% CPI indexing and therefore covers the escalated adjustements defined in 3.06.

Section 3.06 *Application of Restoration Basis Excess*: For purposes of clarity, excesses identified pursuant to Section 3.05 shall be applied in the following order, provided that the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors:

(a) *Bring Escalated Adjustments to 50% for Post-2013 Service*: to provide escalated adjustments up to 50% of the CPI adjustment in respect of service accrued after 2013 for the period covered by the valuation, and assumed thereafter at the same rate;

(b) *Bring Escalated Adjustments to 100%*: to provide escalated adjustments up to 100% of the CPI adjustment for the period covered by the valuation, and assumed thereafter at the same rate;

(c) *Restore Escalated Adjustments for Post-2013 Years*: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2013, to the current accumulated adjustment ratio for the period from 2010 to 2013, beginning with the first year in which current escalated adjustments were less than 50% of the run-rate escalated adjustments;

(d) *Restore Escalated Adjustments for Post-2009 Years*: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2009 to the run-rate accumulated adjustment ratio, beginning with the first year in which current escalated adjustments were less than run-rate escalated adjustments;

(e) *Provide Benefit Increases or Contribution Rate Reductions*: to provide the following:

(i) an increase in benefits, where the present value of current benefits is less than the present value of run-rate benefits,

(ii) a reduction in contribution rates, where the present value of current contributions exceeds the present value of basic contributions, or

(iii) a combination of (i) and (ii).

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 5 – Asset ceiling for OTPP

The factors illustrated in the Section 4 coming from the analysis of the FMP and surplus application are considerations to determine the Government access to the surplus. We have discussed the plan mechanics with OPCD and here are the key factors of the FMP and OTPP plan characteristics that would be considered in support of the Government Expected future benefit coming from surplus withdrawal and contribution reduction:

- The plan nature is defined to be a 50 / 50 share between employees and employer
- Looking at the FMP, this principle applies to bad news and good news, hence for deficit and surplus situations
- The employer can benefit from surplus withdrawal and contribution reduction
- The surplus situations could be dealt with permanent and temporary changes, increasing the likelihood of surplus application
- The accounting valuation currently includes a 100% CPI indexing, hence the resulting accounting surplus to the employer portion has already fully restored benefits considered
- Accounting valuation uses best estimate assumptions and therefore the resulting surplus is considered a realistic value

Based on the Government view on the OTPP and our discussions with OPCD, we understand that the position is that the asset position should not be reduced by any valuation allowance. This position is based on the nature of the sharing principle of the OTPP which allows for the Government to have access to the surplus and hence the Economic benefit. It is unknown when the benefit will materialize and what form it will take but it is of realistic economic value.

That being said, a very important consideration is that the amount determined represents what the accounting defines as the best estimate. The selection of assumptions to prepare the accounting valuation is therefore significant to ensure that the surplus calculated is realistic. Considering the accounting standards requirement to use best estimate assumptions, it is reasonable to consider that those assumptions are selected by the Government as best estimates and therefore the surplus determined is a realistic value of what benefit the Government may realize in the future through surplus withdrawal/contribution reduction.

Should the characteristics of the plan or the FMP parameters change in the future, or if the Government has a different view on the application of the OTPP provisions and the FMP for surpluses, this may affect the Government access to surplus and hence the Government view on asset ceiling test.

Based on the facts coming from the FMP, the plan nature and based on discussions with OPCD, it has been determined that the current view is that any surplus identified to the Government portion would be used to its own benefit and that the Government is not obligated to using any surplus towards increasing benefits to the members (either through historic practice or internal policy). The above analysis provides evidence to support OPCD's position that no valuation allowance is required to the OTPP asset amount reported under PSAB.

Current - Partners' Agreement - 03-06-15.pdf

This is an AGREEMENT

BETWEEN:

Her Majesty the Queen
in right of the Province of Ontario
represented by the Minister of Education and Training
("the Minister")

and

The Ontario Teachers' Federation
represented by its Executive
("the OTF")

These are the terms to which the Minister and the OTF agree;

Introduction

1. The Minister and the OTF have agreed to establish a partnership for the purpose of designing and administering the Ontario Teachers' Pension Plan and managing the Ontario Teachers' Pension Fund.

2. It is the intention of the partners that this partnership will start on the 1st day of January, 1992.

3. In this agreement,

(a) the Minister and the OTF will be referred to as the "partners" or the "partnership",

(b) the Ontario Teachers' Pension Plan Board continued by the *Teachers' Pension Act, 1989* will be referred to as "the Board",

(c) the Ontario Teachers' Pension Plan continued by the *Teachers' Pension Act, 1989* will be referred to as the "pension plan" or the "plan" and,

(d) the Ontario Teachers' Pension Fund continued by the *Teachers' Pension Act, 1989* to provide benefits in respect of the pension plan will be referred to as the "pension fund" or the "fund".

4. The partnership established by this agreement is intended to govern all aspects of the plan and the fund. Wherever this agreement differs with any law, that part of the agreement is of no effect but the rest of the agreement continues to govern the plan and the fund.

5. The Minister agrees to do everything possible to make sure that the Teachers' Pension Plan Board will not be considered a Scheduled Agency under the Guidelines of the Management Board of Cabinet.

6. The Minister agrees to do everything possible to have subsection 43(3) of Ontario Regulation 708/87 amended to provide that the pension fund is no longer exempted from the application of subsection 23(1) of the *Pension Benefits Act.*

7. The Minister may designate one or more persons to act in the Minister's place under this agreement. The OTF may designate one or more persons to act in its place under this agreement.

Role of the partners

8. The partners will be responsible for designing the plan structure, setting the benefits of the plan, developing new policy, deciding what the contribution rate will be, what the funding levels, margins and contingency reserves will be, making changes to the plan, this agreement or other plan documents, deciding whether or not to file a valuation more frequently than required by the *Pension Benefits Act,* appointing the Board, and defining the role of the Board.

9. The partners will enter into a memorandum of understanding with the Board setting out,

(a) the duties of the Board,

(b) the process for consultation in the preparation of valuations,

(c) the process for consultation on the amount of money to be paid to members of the Board, including the Chair and to members of committees appointed by the Board,

(d) the actuarial methods which the Board will use in valuing the plan and,

(e) any other terms of the relationship between the partners and the Board to which the partners agree.

10. The partners agree that every three years they will follow the procedure described in this agreement to meet and negotiate changes to the plan.

11. Either partner may ask the other to meet at any time to discuss changes to any of the matters referred to in paragraph 8 and the partners agree to make their best efforts to do so.

11a. The partners agree to meet as required to discuss the amount of the Minister's contribution due on the first business day of January that is to be deferred to the first business day of April of the same year and to determine the interest rate to be applied for the period of the deferral; determination of such interest rate to be guided by the principle that the Teachers' Pension Plan not be disadvantaged by the deferral. (Last amended May 29, 1992 - Effective May 29, 1992)

11b. The partners agree that the payment of a portion of the Minister's contribution that is due on the first business day of January of 1994 and a portion of the Minister's contribution that is due on the first day of January of 1995 may be deferred to March 31 of each respective year; the amount of the deferral, with interest, to equal $200 million in 1994 and $125 million in 1995; amounts to be adjusted to reflect payments authorized under Paragraph 65. (Last amended November 15, 1993 - Effective November 15, 1993)

12. If the Board advises the partners that a change must be made to the plan to comply with any law the partners agree that they will meet as soon as possible to discuss it.

13. The partners will establish a Partners Committee by each appointing three members. Either partner may refer to the Committee any matter referred to in paragraph 8 or 12 when no agreement results from discussion of the matter.

14. The Partners Committee may by agreement use the services of the manager of negotiations referred to in paragraph 76 to resolve any dispute. The Committee may by agreement use any dispute resolution mechanism including voluntary arbitration to resolve any dispute.

15. Either partner may ask the actuary hired by the Board to provide or prepare any information which that partner thinks it needs in discussing changes to the plan. The cost of the actuary in preparing that information will be paid out of the fund. The information will be provided to both partners.

15a. The partners may initiate, with the Board, discussions, reviews and research regarding the funded status of the plan including the design of conditional inflation protection, the reasonable costs of such reviews and research to be paid out of the fund subject to the prior approval of the Board. (Last amended October 9, 2008 – Effective January 1, 2009)

16. Either partner may audit the plan and the fund at any time at the expense of that partner. The Board will cooperate in the audit.

Role of the Board

17. The Board is responsible for the administration of the pension plan, the management of the pension fund and all other matters set out in this agreement.

18. The Board may exercise every power necessary to administer the pension plan, manage the pension fund and fulfil every other task which the partners assign to it.

19. The responsibilities of the Board include,

(a) investing and managing the pension fund to do all things possible so that the obligations of the pension plan will be met,

(b) preparing a valuation at least every three years to comply with the *Pension Benefits Act,*

(c) preparing annual valuations if the Board decides it is appropriate and providing preliminary results to the partners as soon as they are available,

(d) deciding on the actuarial assumptions used in administering the plan and in preparing valuations of the plan,

(e) consulting with the partners during the preparation of a valuation and making its best effort to respond to any comments and recommendations of the partners. The content of a final valuation is the decision of the Board,

(f) giving a copy of every valuation prepared for the Board to each partner and giving any information requested by a partner to each partner as quickly as possible,

(g) having the plan and the fund audited every year,

(h) preparing a report at the end of every fiscal year that tells how the plan and the fund have been doing in that year,

(i) holding a meeting with both partners at least once each year to explain the annual report to them and to answer any questions about the plan and fund,

(j) making sure that the plan and the fund are administered and managed to comply with all laws that affect them,

(k) advising the partners about any changes to the plan that need to be made to comply with the law,

(l) advising the partners about changes that would improve the administration of the plan,

(m) interpreting the plan and determining benefit entitlements,

(n) developing an investment policy and giving a copy to each partner and to the Financial Services Commission of Ontario,

(o) making rules regarding the conduct of its business,

(p) appointing or electing a vice Chair and any other officers that the Board feels are necessary for the conduct of its business.

The Board

20. The Board will have a maximum of nine members. The partners will each appoint four members.

21. The ninth member of the Board will be the Chair. The process for appointing a Chair is set out in the next section of this agreement.

22. The Minister and the OTF will each appoint two members to the Board to terms ending on the 31st day of December, 1992.

23. The Minister and the OTF will each appoint two members of the Board whose terms will end on the 31st day of December, 1993.

24. If a person appointed under paragraph 19 or 20 is a member of the Board when the partnership starts, the Lieutenant Governor in Council will make an Order changing the length of that person's term.

25. After the expiry of the term of a member of the Board who holds office on the 1st day of January, 1992 the partner who recommended to the Lieutenant Governor in Council the appointment of that member will fill the vacancy by appointing or re-appointing.

26. Unless a member cannot complete his or her term, is removed or is appointed after a member whose term was extended because of a delay in the appointment of his or her successor, the term of all members appointed after the 1st day of January, 1992 will be two years.

27. No person may be a member of the Board for more than four consecutive terms. The initial term of a member who is appointed as a successor under paragraph 29, or as a new member under paragraph 30 or 31, shall not be counted in the number of consecutive terms a member may serve. (Last amended January 15, 2014 – Effective January 1, 2014)

28. If no appointment is made to fill the vacancy at the end of a member's term, the member will continue in office until an appointment is made.

29. When a successor is appointed to a term after his or her predecessor's term has been extended for failure to appoint a successor, the successor's term will end two years after the predecessor's term would have ended but for the delay in appointment.

30. If a member of the Board cannot finish his or her term then the partner who appointed the member may appoint a new member for a term ending on the date when the term of the departing member would have ended.

31. At any time either partner may remove a board member whom that partner has appointed and appoint a new member for a term ending on the date when the term of the departing member would have ended.

The Chair

32. The partners may decide together on the person to be appointed as Chair of the Board. The partners agree to meet six months before the term of the Chair of the Board expires to discuss candidates, and attempt to agree upon the Chair.

33. Either partner may initiate the selection of a Chair in the following way as an alternative to the discussion referred to in paragraph 32,

(a) The partners will each prepare a list of at least three persons that they would like to be Chair. The partners will give each person named a number indicating priority. The lowest priority will be indicated by the number equal to the number of persons on the list.

(b) The partners will then examine the list prepared by the other.

(c) If one name appears on both lists that person will be appointed Chair.

(d) If two or more persons appear on both lists the priority ratings given to those persons by each partner will be added together. The person whose priority rating adds to the lowest number will be appointed Chair.

(e) If no name appears on both lists the partners agree to consult together and to prepare and exchange lists until a name does appear on lists prepared by each.

34. The person selected by the partners will be the Chair for a term of two years beginning on the 1st day of January of the year following selection.

35. No person may be Chair for more than four consecutive terms. Previous terms served by a Chair as a board member shall not be counted in the number of consecutive terms a Chair may serve. (Last amended December 16, 1994 - Effective December 16, 1994)

36. The Lieutenant Governor in Council will make an order making the term of the current Chair of the Board end on the 31st day of December, 1991.

37. If no appointment is made to fill the vacancy at the end of a Chair's term then the Chair will continue in office until an appointment is made.

38. If the Chair cannot finish his or her term then the Minister and the OTF will select a new Chair. The new Chair will be appointed for a term ending on the date when the term of the departing Chair would have ended.

39. The Chair may vote on any matter the Board is considering.

Operation of the Board

40. The Board may appoint committees and delegate to them any function of the Board. The Board may appoint persons who are not Board members to sit on any committee.

41. Committee members will be appointed for a term of up to two years.

42. A quorum of the Board or a Committee is a majority of the members. No meeting of the Board or a Committee may conduct any business unless a member appointed by each partner is present.

43. The Board will decide on a reasonable amount of money to be paid to the Board members, Committee members and the Chair for time and effort spent on Board business. The money will be paid out of the pension fund.

44. If any Board or Committee member is a public servant of Ontario that person will only be paid for any income the person loses as a result of time spent on Board business and for his or her expenses of doing Board business.

45. Any expenses that the Board must pay to operate and to administer the pension plan and manage the pension fund will be paid out of the pension fund.

46. The Board will employ a Chief Executive Officer and such other staff as are necessary to carry out its responsibilities.

47. The Board may decide which of its employees will be able to participate in the Public Service Pension Plan established under the *Public Service Pension Act, 1989* and the Minister agrees to do all things possible to ensure that those employees are covered.

48. The Board may employ persons to provide it with professional, technical or other help.

49. The Board must employ an external actuary and an external auditor.

50. The Board's employees will be paid out of the pension fund.

Indemnification

51. (a) Subject to subsection (e), the Board shall indemnify a person or his or her heirs or legal representatives (the “Indemnee”) against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment (collectively “Expenses”), reasonably incurred by the person in respect of any civil, criminal, administrative or investigative action or proceeding (collectively a “Proceeding”) to which the person is made or threatened to be made a party by any person including the Board, by reason of being or having been a member, committee member, officer or employee of the Board or a person who acts or acted at the Board’s direction as a member, director, officer, employee, partner or agent of another corporation, partnership, joint venture, trust or other enterprises (collectively “enterprise”), if,

i) the person acted honestly and in good faith with a view to the best interests of the Board or such other enterprise; and

ii) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the person had reasonable grounds for believing that his or her conduct was lawful.

(Last amended August 4, 2011 – Effective September 1, 2000)

(b) In furtherance of its obligations under subsection (a) the Board may purchase and maintain insurance for the benefit of any person referred to in subsection (a) in relation to any Expenses that may be indemnifiable under subsection (a). (Last amended August 4, 2011 – Effective September 1, 2000)

(c) The Board’s indemnification of a person referred to in subsection (a) and any cost of purchasing and maintaining insurance for the benefit of such person are expenses of operating and administering the pension plan and managing the pension fund and may be paid out of the pension fund. (Last amended August 4, 2011 – Effective September 1, 2000)

(d) The Board or a person referred to in subsection (a) may apply to the court for an order approving an indemnity under this section and the court may so order and make any further order it thinks fit. (Last amended August 4, 2011 – Effective September 1, 2000)

(e) An indemnity given pursuant to subsection (a) extends only to Expenses that exceed amounts otherwise recoverable (and, in fact, recovered) by the Indemnee under any indemnity or policy of insurance applicable in respect of a Proceeding, and is to be regarded specifically as excess to any such amounts. An indemnity given pursuant to subsection (a) shall be subject to the condition that, in the event any indemnor or insurer against whom an Indemnee may have a claim for indemnity shall decline to pay, deny liability or otherwise contest either a claim by a person or the due amount thereof, the Indemnee must, if so requested by the Board, co-operate with and assist the Board in pursuing any claim against the other indemnor or insurer as the case may be, in such manner and to the extent that counsel to the Board may recommend or advise in the circumstances. (Last amended August 4, 2011 – Effective September 1, 2000)

(f) In any case where the Board reasonably considers that a person has fulfilled the conditions set out in clauses (a)(i) and (ii), above, and that it is otherwise appropriate to do so, prior to any settlement or judgment the Board may make an advance to an Indemnee in respect of a person referred to in subsection (a) to defray Expenses incurred or to be incurred by the Indemnee in relation to a Proceeding on such conditions as the Board considers appropriate and necessary. Any advance made under this subsection (f) shall be repayable by the Indemnee if the Indemnee fails to meet the conditions set out in clauses a(i) and (ii), above, in respect of such person. (Last amended August 4, 2011 – Effective September 1, 2000)

(g) Where the Board considers it appropriate, the Board may enter into an indemnity agreement with any person and such agreement shall reflect the limitation of this provision. (Last amended August 4, 2011 – Effective September 1, 2000)

(h) The application of paragraph 51 is effective as of September 1, 2000. (Last amended August 4, 2011 – Effective September 1, 2000)

52. The Board may buy, sell or lease real estate either as an investment or to provide a place to carry on business.

53. The Board may delegate any of its powers or duties to a committee or to an employee. It may impose conditions on any delegation it makes.

54. A committee of the Board may delegate any of its tasks to an employee of the Board if the Board approves.

Initial unfunded liability

55. The going concern unfunded actuarial liability disclosed by the initial valuation of the pension fund as at the 1st day of January, 1990 will be paid by the Treasurer of Ontario out of the Consolidated Revenue Fund according to Schedule 2 of the *Teachers' Pension Act, 1989.*

56. Revoked. (Last amended November 15, 1993 - Effective November 15, 1993)

Gains and losses

57. A valuation which is prepared for filing with the Superintendent of Financial Services shall be actuarially balanced so that the present value of,

(a) benefits and costs to be paid out of the fund, and

(b) any contingency reserve,

are equal to the sum of the value of the plan's assets, including

(c) the present value of,

(i) the members' contributions,

(ii) the employers' contributions,

(iii) the outstanding balance of special payments to liquidate the going concern unfunded actuarial liability disclosed by the valuation as at January 1, 1990, and

(iv) any outstanding payments required to discharge a solvency deficiency. (Last amended March 5, 2002 - Effective April 2, 2001)

The IUL Settlement

57a. Notwithstanding any other provision in this agreement, and including without limitation, paragraphs 10, 55, 59, 60, 60a and paragraphs 73 to 101, during the IUL settlement period this paragraph shall apply to the application of actuarial gains.

(i) In this paragraph,

(a) the "initial unfunded liability settlement period" (the "IUL settlement period") means the period between January 1, 1998 and December 31, 2002 and includes any period of extension pursuant to subparagraph (v).

(b) the "initial unfunded liability" means the going concern unfunded actuarial liability disclosed by the initial valuation of the pension fund referred to in paragraph 55 of the agreement.

(ii) Notwithstanding subparagraph 19(c), during the IUL settlement period, an actuarial valuation for funding purposes of the pension fund shall be prepared by the Board's actuary as at the 1st day of January and filed annually with the Superintendent of Financial Services, unless the partners jointly agree to instruct the Board not to file the valuation.

(iii) Effective with the valuation as at January 1, 1998, any actuarial gains disclosed in a valuation prepared in accordance with subparagraph (ii) will be applied in the following order of priority:

(a) (1) to provide an early retirement pension calculated in accordance with subsection 43(4) of Schedule 1, to members who have accumulated at least that number of years of qualifying service that, when added to the member's age upon termination of employment in education, totals eighty-five years (the "factor 85 entitlement"), provided that such member so qualifies on or after June 1, 1998, and on or before December 31, 2002;

(2) to provide early retirement reductions measured from 85 points rather than 90 points for benefits calculated under sections 44 and 52 of Schedule 1 for members who cease to be employed in education between June 1, 1998 and December 31, 2002;

(b) to provide for a permanent reduction in the amount of the Canada Pension Plan or Quebec Pension Plan reduction for pension instalments payable on or after January 1, 1999 as provided for in subsection 81(3) of Schedule 1 by substituting "0.0060" for "0.0068" in the formula;

(c) to provide to members on an absence, as defined in subsection 94(1) of Schedule 1, that commences during the period from the 1st day of June, 1998 to the 31st day of December, 2002, an exemption from the requirement in subsection 94(3)(b) of Schedule 1 where the member is otherwise eligible to purchase credited service under that section, and where the member, at the beginning of the leave,

(1) was at least 60 years of age;

(2) has accumulated at least that number of years qualifying service that, when added to the member's age, totals 75 years; or

(3) has credited service which totals at least 30 years; and

(d) to eliminate the obligation on the Minister of Finance to make special payments on account of the initial unfunded liability, in accordance with this agreement.

(iv) Subject to subparagraphs (v) and (vi), if there are any actuarial gains remaining after providing for (iii) (a), (b), (c) and (d), such gains disclosed in the annual actuarial valuations for funding purposes up to and including the valuation as at January 1, 2002, will be available for benefit enhancements including, but not limited to, the renewal on a permanent or temporary basis of the factor 85 entitlement, member contribution rate reductions, or to be allocated to a contingency reserve, as determined by the OTF in its sole discretion. (Last amended March 5, 2002 - Effective April 2, 2001)

(v) (a) The sum of the actuarial gains available to the OTF under subparagraph (iv), including the actuarial gains disclosed in the valuation as at January 1, 2002, shall be equal to the present value of the special payments, before the application of actuarial gains pursuant to subparagraph (iii)(d), required to amortize the initial unfunded liability as determined by the Board's actuary and disclosed in the valuation as at January 1, 1998 (the "IUL amount"), and the increase in the going concern liabilities required to provide the benefits conferred by (iii)(a), (b) and (c) as determined by the Board's actuary as at January 1, 1998, (the "benefit cost amount"). The partners agree that, effective April 3, 2001, after recognition of plan changes adopted to that time, there remains $76 million in actuarial gains available to the OTF under subparagraph (iv). (Last amended March 5, 2002 - Effective April 2, 2001)

(b) In the event that the sum of the actuarial gains available to the OTF under subparagraph (iv) up to and including the actuarial gains disclosed in the valuation as at January 1, 2002 is less than the difference between the IUL amount and the benefit cost amount, all actuarial gains disclosed in any actuarial valuation for funding purposes subsequent to the valuation as at January 1, 2002, will be available for such benefit enhancements, member contribution rate reductions, or to be held in a contingency reserve, as determined by the OTF in its sole discretion, until the sum of the actuarial gains available to the OTF for such purposes equals the difference between the IUL amount and the benefit cost amount.

(c) In the event that the sum of the actuarial gains available to the OTF under subparagraph (iv) up to and including the actuarial gains disclosed in the valuation as at January 1, 2002 is less than the difference between the IUL amount and the benefit cost amount, the IUL settlement period shall be extended to the date that the sum of the actuarial gains available to the OTF under subparagraph (iv) and (v) equals the difference between the IUL amount and the benefit cost amount.

(vi) (a) Prior to April 1, 2001, if actuarial gains are available after provision has been made for (iii)(a) to (d), and the OTF wishes to apply such gains pursuant to subparagraph (iv) for benefit enhancements or member contribution rate reductions, the partners shall meet to determine the effective date for the implementation of such benefit enhancements or contribution rate reductions.

(b) Subsequent to April 1, 2001, the OTF may, at its sole discretion, determine when such benefit enhancements or contribution rate reductions, are to be implemented. The Minister agrees to waive his consent to the plan amendments necessary to implement such benefit enhancements or member contribution rate reductions, provided these amendments are not filed by the OTF prior to April 1, 2001. Pursuant to paragraphs 8 and 104 of this agreement, the partners agree that Schedule 1 shall be amended by the OTF, to implement such benefit enhancements or contribution rate reductions, and the OTF shall promptly deliver the amendment(s) to the Board, and the Board shall promptly file the amendment(s) with the Superintendent of Financial Services upon receipt of same from the OTF.

(vii) The Minister of Finance will continue to make special payments out of the Consolidated Revenue Fund in accordance with paragraph 55 of the agreement during the IUL settlement period until the obligation to make special payments on account of the initial unfunded liability is eliminated in accordance with this agreement. The amount of the special payments payable pursuant to this subparagraph shall be in accordance with the schedule of payments set out in Appendix H to the Report on the Actuarial Valuation for Funding Purposes for the plan as at January 1, 1996 ("Appendix H") until December 1, 2001, and in accordance with Schedule 2 subsequent to December 1, 2001, if the Minister of Finance continues to be obligated to make special payments on account of the initial unfunded liability beyond this date. If subsection 3(12) of Schedule 2 to the *Teachers' Pension Act* is applicable with respect to any actuarial gains disclosed in a valuation pursuant to subparagraph (ii), the Minister of Finance shall not exercise his discretion in subsection 3(12) of Schedule 2 to reduce the remaining special payments as set out in Appendix H, until the obligation of the Minister of Finance to make special payments on account of the initial unfunded liability is eliminated.

(viii) The issue raised in the "part-time leave" case pending before the Ontario Court of Appeal shall be referred to mediation by Mr. M. Stanley Beck. Mr. Beck will be asked to provide a non-binding opinion on the merits of the case by no later than July 15, 1998. The cost of the mediation pursuant to this subparagraph shall be paid from the fund.

(ix) The partners shall establish a committee to deal on a priority basis with accounting matters relating to joint pension plan sponsorship, and agree to contact the Public Sector Accounting and Auditing Board (PSAAB) to raise issues of concern to the partners. The committee shall report to the Partners by May 1, 1999. The reasonable costs of the committee shall be paid from the fund.

(x) Subject to any extension of the IUL settlement period pursuant to subparagraph (v), at the end of the IUL settlement period, the provisions of this agreement respecting the use of actuarial gains or losses, other than this paragraph 57a, will apply. The next triennial negotiation pursuant to paragraphs 73 to 101 will be based on the actuarial valuation for funding purposes as at January 1, 2002, unless the IUL settlement period is extended beyond this date, or the partners agree otherwise.

(xi) Any dispute regarding the interpretation, application, administration and implementation of the provisions in this paragraph 57a may be resolved in accordance with paragraph 14 of the agreement, and/or through such other proceedings as are otherwise available to either partner.

58. If the preliminary results of a valuation prepared for filing with the Financial Services Commission of Ontario as at a date after the 1st day of January, 1993 indicate a need to increase the contribution rate the partners agree to meet as soon as possible to discuss how to adjust for that need on an equally shared basis. If the partners cannot agree on how to adjust they will refer the issue to the mediation and arbitration procedures described elsewhere in this agreement to adjust the contribution rate and/or benefits. (Last amended November 15, 1993 - Effective November 15, 1993)

59. If the preliminary results of a valuation prepared for filing with the Financial Services Commission of Ontario as at a date after the 1st day of January, 1993 indicate that the contribution rate can be decreased the implicit actuarial gain disclosed by the valuation will be applied to reduce and, if possible, eliminate the payments required to liquidate any unamortized balance of a solvency deficiency. (Last amended November 15, 1993 - Effective November 15, 1993)

60. An implicit actuarial gain remaining after the elimination of a deficiency mentioned in paragraph 59, will be used to establish a contingency reserve in an amount agreed upon by the partners or for any of the following purposes upon which the partners have agreed or which an arbitrator has awarded,

(i) to reduce contributions which members and employers are required to pay, and/or

(ii) to improve benefits payable to members.

60a. The portion of the gain disclosed by the January 1, 1996 valuation remaining after the implementation of the benefit improvements contained in the December 30, 1996 arbitration award shall be placed in a contingency reserve called the Rate Stabilization Fund for the period January 1, 1996 to December 31, 1998. (Last amended February 20, 1997 - Effective January 1, 1996)

60b. The $76 million of actuarial gains that, effective April 3, 2001, remain available to the OTF under the subparagraph 57a (iv) shall be allocated to a contingency reserve until such time as the OTF, in its sole discretion, may determine, at which time such gains shall be used toward the provision of future benefit enhancements and/or member contribution rate reductions as determined by the OTF, in its sole discretion. (Last amended March 5, 2002 – Effective April 2, 2001)

60c. The portion of the actuarial surplus disclosed by the January 1, 2001 valuation that remains after providing for,

(a) the benefit improvements contained in the plan amendments dated April 2, 2001, and

(b) the contingency reserve pursuant to paragraph 60b,

shall be allocated to a contingency reserve called the Rate Stabilization Fund for the period January 1, 2001 to December 31, 2001, or until such later date agreed to by the partners. (Last amended March 5, 2002 – Effective April 2, 2001)

60d. The partners acknowledge that the $76 million referred to in paragraph 60b will be used towards reducing the additional contributions payable by active members in accordance with section 19 of Schedule 1 in 2008 from 3.1% to 2.3% and that this application will fully discharge the credit owing the Ontario Teachers' Federation under paragraph 60b. (Last amended December 21, 2006 – Effective January 1, 2007)

60e. The partners agree that $7 million shall be allocated to a contingency reserve, to the credit of the Minister, to reflect the additional $7 million that was used, in addition to the $76 million referred to in paragraph 60d, towards reducing the additional contributions payable by active members in accordance with section 19 of Schedule 1 in 2008 from 3.1% to 2.3%. (Last amended December 21, 2006 – Effective January 1, 2007)

61. The valuation as at January 1, 1992 that was prepared and provisionally filed with the Pension Commission of Ontario shall be considered invalid. (Last amended November 15, 1993 - Effective November 15, 1993)

62. The board will prepare a valuation of the plan as at the 1st day of January, 1993. (Last amended November 15, 1993 - Effective November 15, 1993)

63. A portion, in the amount of $1.2 billion, of the gain disclosed by the January 1, 1993 valuation is to be applied to reduce the Minister's scheduled special payments under Schedule 2 of the Act, in the period from January 1, 1993 until the entire amount is exhausted. (Last amended November 15, 1993 - Effective November 15, 1993)

64. A further portion, in the amounts of $200 million as at March 31, 1994 and $125 million as at March 31, 1995, of the gain disclosed by the January 1, 1993 valuation, is to be applied to reduce scheduled government payments to the plan on or before the 31st of March, 1995. (Last amended November 15, 1993 - Effective November 15, 1993)

65. The partners may authorize the use of an additional portion of the gains from the 1993 valuation to offset social contract targets for those members of the plan who are not covered by the Teachers' Sub-Sectoral Framework Agreement and who meet the set of principles agreed on by the partners; these gains will be allocated in the same proportion as members of the plan who are covered by the Teachers' Sub-Sectoral Agreement. (Last amended November 15, 1993 - Effective November 15, 1993)

66. Any residual portion of the gain disclosed by the January 1, 1993 valuation is to be placed in a contingency reserve for rate stabilization until at least January 1, 1996. (Last amended November 15, 1993 - Effective November 15, 1993)

67. Revoked. (Last amended November 15, 1993 - Effective November 15, 1993)

68. If a solvency valuation of the plan, conducted as at a date on or before the 1st day of January, 1996, discloses a solvency deficiency the contributions of members, the Minister and employers required to contribute to the fund under Schedule 1 will be adjusted in the following way,

(1) The members will during each of the fifteen years following the date of the solvency valuation contribute the members' contribution required under Schedule 1 plus an amount equal to "B" as defined in subparagraph (2).

(2) The Minister and employers will during each of the five years following the date of the solvency valuation contribute the Minister's and employers' contributions required under Schedule 1 plus an amount equal to,

$$A - B$$

where

"A" is equal to the amount of the annual payment required to amortize the solvency deficiency amortized over the five years following the date of the solvency valuation, and

"B" is equal to one half of the amount of the annual payment required to amortize the solvency deficiency over the fifteen years following the date of the solvency valuation.

(3) The Minister and employers will during each of the sixth through fifteenth years following the date of the solvency valuation contribute the contributions required of them under Schedule 1 less an amount equal to "B". (Last amended November 15, 1993 - Effective November 15, 1993)

69. If a solvency valuation of the plan, conducted as at a date after the 1st day of January, 1996, discloses a solvency deficiency the contributions of members, the Minister and employers required to contribute to the fund under Schedule 1 will be adjusted in the following way,

(1) The members will during each of the ten years following the date of the solvency valuation contribute the members' contribution required under Schedule 1 plus an amount equal to "B" as defined in subparagraph (2).

(2) The Minister and employers will during each of the five years following the date of the solvency valuation contribute the Minister's and employers' contributions required under Schedule 1 plus an amount equal to,

$$A - B$$

where

"A" is equal to the amount of the annual payment required to amortize the solvency deficiency amortized over the five years following the date of the solvency valuation, and

"B" is equal to one half of the amount of the annual payment required to amortize the solvency deficiency over the ten years following the date of the solvency valuation.

(3) The Minister and employers will during each of the sixth through tenth years following the date of the solvency valuation contribute the contributions required of them under Schedule 1 less an amount equal to "B". (Last amended November 15, 1993 - Effective November 15, 1993)

70. If a valuation done after one which showed a solvency deficiency discloses that there is no solvency deficiency or one that is less than would be expected based on the first valuation, the partners agree to adjust on an equally shared basis for any payments that have been made under paragraphs 68 or 69. (Last amended November 15, 1993 - Effective November 15, 1993)

71. Revoked. (Last amended November 15, 1993 - Effective November 15, 1993)

Triennial negotiation of changes to the plan

72. The Board will prepare a valuation of the plan as at the 1st day of January, 1996 as soon as possible after that date. This will be the valuation to be used for the first set of negotiations. (Last amended November 15, 1993 - Effective November 15, 1993)

73. The subject of the negotiations and of all subsequent triennial negotiations will be any of the matters referred to in paragraphs 8 and 12.

74. As soon as preliminary results of the valuation are available the partners will meet to bargain in good faith and make every reasonable effort to reach an agreement on the changes, if any, that will be made to the plan.

75. The partners will advise the Board what changes affecting benefits and contribution rates they are proposing and the Board will provide cost estimates and comments on the administrative impact of the changes to both partners as soon as possible.

76. There will be a manager of negotiations whose fees and expenses shall be paid by the fund. The manager will be appointed by agreement of the partners or if they cannot agree the Chief Executive Officer of the Board will act as manager. When the manager is appointed, the partners may give the manager any role in the negotiation process in addition to the role described in this agreement. (Last amended March 27, 1996 - Effective January 1, 1996)

77. At any time after the preliminary results of a valuation are available the partners may agree to appoint a mediator. The mediator will be chosen by the agreement of the partners or by a method to which they agree at that time.

78. If no agreement is reached on all proposed changes by the 1st day of May, 1996 and no mediator has been appointed by agreement the manager will appoint a mediator to mediate proposed changes to the contribution rate or benefits under the plan. The manager will do so by preparing a list of five persons willing to act as mediator and asking each partner to select three names from the list. The manager will appoint one of the persons chosen by both partners. (Last amended November 15, 1993 - Effective November 15, 1993)

79. Any proposed changes to the plan not involving the contribution rate or benefits which remain unresolved on the 1st day of May, 1996 will be referred to the Partners Committee established under paragraph 13. The Partners Committee will make every effort to resolve those issues referred to it. (Last amended November 15, 1993 - Effective November 15, 1993)

80. If the partners agree, the mediator may be appointed as a mediator/arbitrator in which case the appointee will decide on the process and time frame for conducting mediation/arbitration.

81. If the partners do not agree on mediation/arbitration the mediator will meet with them and try to mediate an agreement.

82. Within 30 days of appointment the mediator will prepare a confidential report setting out his or her views on the positions of the two partners and containing a recommendation. The report will be delivered to the partners.

83. The mediator may extend the deadline for delivering the report by 14 days if he or she is of the opinion that the partners are likely to reach an agreement during the extension.

84. If the partners do not accept the report within 14 days of its being delivered to them it will be destroyed and an arbitration board will be appointed.

85. At any time after a mediator has been appointed the partners may agree to appoint a board of arbitration.

86. If the partners agree to appoint a board of arbitration or if 14 days have passed since the mediator's report each partner will appoint one person to the board of arbitration and the two appointees will select a final member who will be the umpire.

87. This agreement together with a referral to a board of arbitration constitutes a submission under the *Arbitrations Act,* R.S.O. 1980, c. 25, as amended.

88. If the persons appointed by the partners to a board of arbitration do not appoint an umpire within 14 days of the appointment of the latter of them, the manager will prepare a list of five persons who are willing to act as umpire and ask each partner to select three names from the list. The manager will appoint as umpire one of the persons chosen by both partners.

89. The umpire will establish the procedure for conducting the arbitration but will allow each partner an opportunity to present evidence and make representations. The persons appointed by the partners will consult with the appointing partner during the arbitration.

90. The board of arbitration will hold a hearing within 30 days of its appointment and make an award within 60 days of the conclusion of the hearing. The board of arbitration will provide reasons for its award.

91. The board of arbitration in making an award will consider prevailing economic conditions and the overall state of the provincial economy.

92. The award made by the board of arbitration will,

(a) deal only with the contribution rate and/or benefits of the pension plan and otherwise maintain the plan as it is set out in Schedule 1,

(b) comply with the laws of Ontario,

(c) provide that the contributions of the Minister and those employers who are required to contribute are equal to the contributions of members,

(d) be based on the valuation of the plan and the costing of changes to benefits which were prepared by the Board,

(e) ensure that any increase in benefits is adequately funded,

(f) not impair the ability of the Board to fulfil its fiduciary responsibilities,

(g) if it includes benefit improvements, not provide for an increase in the contribution rate paid by plan members greater than .5% of pensionable salary,

provided that all such awards shall be subject to the limitations referred to in subparagraph EE(2). (Last amended March 26, 2003 – Effective January 1, 2003)

92.1 In the event that a board of arbitration is appointed pursuant to any provision of the agreement, other than paragraph 57a, to determine the application of actuarial gains disclosed in a valuation for funding purposes where a portion of the actuarial gains disclosed in such valuation is subject to the provisions of paragraph 57a, the board of arbitration shall not issue an award regarding that portion of the actuarial gains which is subject to the provisions of paragraph 57a. (Last amended May 27, 1998 - Effective April 18, 1998)

93. The board of arbitration will give the partners a copy of the award and reasons as soon as they are prepared.

94. The Board will prepare a final valuation of the plan which implements all of the changes to the plan which have been awarded or agreed to by the partners. The changes will take effect on the 1st day of January, 1997 or on such earlier date to which the partners have agreed. (Last amended November 15, 1993 - Effective November 15, 1993)

95. The final valuation will be filed with the Financial Services Commission of Ontario and Schedule 1 will be amended to reflect the changes agreed to and the award if any.

96. Every three years, after January 1, 1996, the process described in this section will be repeated unless the partners agree that no changes will be made to the plan. (Last amended November 15, 1993 - Effective November 15, 1993)

97. The manager and the umpire may agree to extend the timelines set out by this agreement if they think it will help the partners reach an agreement.

98. The partners may agree to change the procedure described in this agreement, either for one round of negotiations or for all future negotiations.

99. The costs of mediation and arbitration will be paid out of the fund. (Last amended March 27, 1996 - Effective January 1, 1996)

100. The mediator or the umpire may employ experts to assist her or him. The cost of employing experts will be shared equally by the partners. The mediator or umpire will consult with the partners about a reasonable budget for such costs.

101. Revoked. (Last amended March 26, 2003 – Effective January 1, 2003)

General

102. Schedule 1 to the *Teachers' Pension Plan, 1989* as amended is adopted by the partners as part of this agreement.

103. The partners agree that this agreement forms part of the plan documents of the pension plan and that they will file a copy of this agreement with the Pension Commission of Ontario.

104. The partners may at any time agree to change any of the provisions of Schedule 1. A change to Schedule 1 will be effected when it is filed with the Financial Services Commission of Ontario by the partners.

105. The partners will not make any change to Schedule 1 which is contrary to the laws of Ontario. Any change which is inconsistent will be void to the extent of the inconsistency.

106. Sections 116, 117, 118 and all of Part XII of Schedule 1 are revoked.

107. Revoked. (Last amended November 15, 1993 - Effective November 15, 1993)

108. The Board will print a new consolidation of Schedule 1 as soon as possible after any changes to it have been filed with the Financial Services Commission of Ontario.

109. The Minister will submit a copy of Schedule 1 and the annual report to the Lieutenant Governor in Council and lay it before the Assembly at the first opportunity after the report is prepared by the Board.

110. The partners agree that the Funding Management Policy attached hereto, and as amended from time to time, forms part of this agreement. (Last amended June 3, 2009 – Effective January 1, 2009)

July 15, 1991

APPENDIX "A"

Funding Management Policy

Article I. Application

Section 1.01 *Best Estimates Assumptions*: For the purposes of this Funding Management Policy, except as otherwise provided herein, the Board shall provide the required reports using the Board's best estimates assumptions including, in the case of the discount rate, a margin for adverse deviation. The Board's best estimate economic assumptions may be based on market data, smoothed data, the reference rate or the Board's expectation if the Board believes future experience may differ from market data. The Board's assumptions shall be used only if they would be consistent with accepted actuarial practice. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.02 *Escalated Adjustments Indices*: The Board shall also maintain indices to record escalated adjustments for post-2009 service. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.03 *Different Discount Rate*: If a preliminary valuation uses a discount rate lower than the restoration basis for valuations prepared under Article III and Article VI, lower than the temporary basis for valuations prepared under Article IV, or lower than the distribution basis for valuations prepared under Article V, then the Board shall notify the partners and the partners shall meet with the Board. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.04 *Exit Provision*: The provisions in Article II to Article IX shall expire twelve months after the notification referred to in Section 1.03 unless both partners otherwise notify the Board. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.05 This Funding Management Policy shall be applied as follows:

(a) *If there is a restoration basis excess when current contributions exceed basic contributions and/or current benefits are less than run-rate benefits, the excess can be used to reduce contributions and/or increase benefits in accordance with Article III*: If the results of a preliminary valuation, using the restoration basis, the definitions in Section 3.01 and the provisos in Section 3.02 and Section 3.03, satisfy the conditions in Section 3.04, then Section 3.05, Section 3.06, Section 3.07 and Section 3.08 shall apply;

(b) *If there is a restoration basis deficit using current contributions and current benefits, contributions must be increased and/or benefits must be reduced in accordance with Article III to eliminate the deficit*: If the results of a preliminary valuation, using the restoration basis, the definitions in Section 3.01 and the provisos in Section 3.02 and Section 3.03, satisfy the conditions in Section 3.09, then Section 3.10, Section 3.11, Section 3.12, Section 3.13, and Section 3.14 shall apply;

(c) *If there is a restoration basis excess when contributions are less than or equal to basic contributions and benefits are greater than or equal to run-rate benefits, prepare a temporary basis valuation in accordance with Article IV*: If the results of a preliminary valuation, using the restoration basis, the definitions in Section 3.01 and the provisos in Section 3.02 and Section 3.03, either:

(i) do not satisfy the conditions in either Section 3.04 or Section 3.09; or

(ii) satisfy the conditions in Section 3.04, and

1) the present value of revised benefits is equal to the present value of run-rate benefits, and

2) the present value of revised contributions is equal to the present value of basic contributions;

then the preliminary valuation shall be performed using the temporary basis, the definitions in Section 4.01 and the proviso in Section 4.02;

(d) Temporary and Distribution Basis Valuations:

(i) *If there is a temporary basis excess, prepare a distribution basis valuation in accordance with Article V*: If the results of a preliminary valuation, using the temporary basis, the definitions in Section 4.01 and the proviso in Section 4.02, satisfy the conditions in Section 4.03, then the preliminary valuation shall be performed using the distribution basis, the definitions in Section 5.01 and the proviso in Section 5.02, and

1) *If there is a distribution basis excess, the distribution basis excess can be used to make plan improvements in accordance with Article V*: if the results of that preliminary valuation satisfy the conditions in Section 5.03, then Article V shall apply;

2) *If there is a distribution basis deficit but a temporary basis excess, the temporary basis excess can be used to make temporary plan improvements in accordance with Article IV*: if the results of that preliminary valuation do not satisfy the conditions in Section 5.03, then the preliminary valuation shall be performed using the temporary basis, the definitions in Section 4.01 and the proviso in Section 4.02, and Article IV shall apply;

(ii) *If there is a temporary basis deficit, the restoration basis valuation will apply in accordance with Article III*: If the results of a preliminary valuation, using the temporary basis, the definitions in Section 4.01 and the proviso in Section 4.02, do not satisfy the conditions in Section 4.03, then the preliminary valuation shall be performed using the restoration basis, the definitions in Section 3.01 and the provisos in Section 3.02 and Section 3.03, and Section 3.05, Section 3.06, Section 3.07 and Section 3.08 shall apply;

(e) *Post-December 30, 2017 Valuations*: If the results of a preliminary valuation prepared as of a date after December 30, 2017, using the restoration basis and the definitions in Section 6.01, satisfy the conditions in Section 6.02, then Section 6.03 shall apply;

(f) *2013 Term Sheet Precedence*: The provisions of the 2013 Term Sheet shall take precedence over this Funding Management Policy. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.06 *Actions Subject to Pension Legislation*: Prior to the commitment of a surplus distribution or a contribution decrease, the partners shall ensure such distribution or contribution decrease is in accordance with the *Income Tax Act* (Canada), the *Pension Benefits Act* (Ontario) and their respective regulations. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.07 *Conditions on Temporary Improvements*: Any commitment to provide temporary improvements shall be made conditional on the results of a preliminary valuation for each year of the commitment period indicating that the conditions in Section 3.04(a) are met prior to and after such temporary improvement. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 1.08 *Headings*: Headings are underlined and are for convenience only and shall not affect the interpretation or meaning of any provision of this Funding Management Policy. (Last amended May 27, 2015 – Effective March 6, 2015)

Article II. Definitions

Section 2.01 For the purposes of this Funding Management Policy:

(a) “2013 Term Sheet” means the March 13, 2013 OTPP Term Sheet entered into by the partners;

(b) “basic contributions” are the contributions required by subsections 19(1) or (2) of Schedule 1 as it read on January 1, 2012;

(c) “commitment period” means the three-year period during which a temporary improvement is provided;

(d) “commitment value” means the present value of the portion of the temporary improvement value provided during the commitment period;

(e) “Consumer Price Index” means the Consumer Price Index for Canada as published by Statistics Canada under the authority of the *Statistics Act* (Canada);

(f) “CPI adjustment” means the ratio between 1.000 and 1.080 of the average for the Consumer Price Index over the last twelve months of the twenty-four-month period ending with the 30th day of September in the immediately preceding year to the average for the Consumer Price Index over the first twelve months of that period - 1. If the ratio would have been less than 1.000 or greater than 1.080, but for those limits, the difference shall be carried forward in a manner consistent with that set out in section 80 of Schedule 1;

(g) “current accumulated adjustment ratio” is an index maintained by the Board that begins with "1.000000" for 2010 and is the product of all current ratios for the years in the period commencing with 2010 and ending with the year prior to the year for which the current accumulated adjustment ratio is being determined. The index may differ in respect of service accrued before 2014 and service accrued after 2013 with both indices beginning with “1.000000” for 2010;

(h) “current benefits” are the pension benefits, current escalated adjustments and ancillary benefits calculated in accordance with Schedule 1 as it read at the current valuation date without taking into account any amendment made, or changes agreed to by the partners, on or after the current valuation date;

(i) “current contributions” are the contributions required by Schedule 1 as it read at the current valuation date without taking into account any amendment made on or after the current valuation date;

(j) “current escalated adjustments” are the escalated adjustments in respect of post-2009 service that were applied prior to the January 1st following the current valuation date and assumed thereafter at the rate set out in the most recent filed valuation;

(k) “current ratio”, for a year, means 1 + the proportion of the CPI adjustment granted as agreed to by the partners, and as may have been revised from time to time, provided that the proportion shall not be less than 50% in respect of service accrued before 2014, but not including any revision agreed to by the partners in relation to the current valuation;

(l) “current valuation date” in respect of a valuation is the date provided in Section 7.01;

(m) “distribution basis” is the reference rate with a positive adjustment of 0.5% together with the Board’s best estimate actuarial assumptions for all other factors;

(n) “freeze period” means the period from December 31, 2012 to December 30, 2017;

(o) “going concern liabilities” are the going concern liabilities within the meaning of Regulation 909 made under the *Pension Benefits Act* and must also include the present value of the pension benefits and escalated adjustments that both accrued prior to the valuation date and that will accrue on or after the valuation date to the persons who were members of the plan on the valuation date and the present value of the ancillary benefits for which the eligibility requirements will be satisfied on or after the valuation date by the persons who were members of the plan on the valuation date;

(p) “preliminary valuation” means a valuation referred to in Section 7.01;

(q) “reference rate” means the interest rate chosen by the Board representing the Government of Canada long bond yield (currently, CANSIM Series V39056 nominal and CANSIM Series V39057 real, or their reasonable respective replacements) that may be based on market data or smoothed data;

(r) “remaining amortization value” means the difference between the temporary improvement value and the commitment value;

(s) “restoration basis” is the reference rate with a positive adjustment of 1.55% together with the Board’s best estimate actuarial assumptions for all other factors;

(t) “revised accumulated adjustment ratio” is an index maintained by the Board that begins with "1.000000" for 2010 and is the current accumulated adjustment ratio, as modified by an agreement between the partners to change the proportion of the CPI adjustment in respect of post-2009 service prior to the year following the current valuation date. The index may differ in respect of service accrued before 2014 and service accrued after 2013 with both indices beginning with “1.000000” for 2010;

(u) “revised benefits” are the current benefits including any amendment made, or changes agreed to by the partners, on or after the current valuation date based on that valuation;

(v) “revised contributions” are the current contributions including any amendment made on or after the current valuation date based on that valuation;

(w) “revised escalated adjustments” are the current escalated adjustments including any amendment made, or changes agreed to by the partners, on or after the current valuation date based on that valuation and assumed thereafter at the rate set out in that valuation;

(x) “run-rate accumulated adjustment ratio” is an index maintained by the Board that begins with "1.000000" for 2010 and is the product of all run-rate ratios for the years in the period commencing with 2010 and ending with the year prior to the year for which the run-rate accumulated adjustment ratio is being determined;

(y) “run-rate benefits” are the pension benefits, run-rate escalated adjustments and ancillary benefits calculated in accordance with Schedule 1 as it read on January 1, 2009, together with any benefits provided by amendments described in Article IX;

(z) “run-rate escalated adjustments” are the escalated adjustments in respect of post-2009 service that would have applied at the rate of 100% of the CPI adjustment prior to the January 1st following the current valuation date and that would be assumed thereafter at the rate of 100% of the CPI adjustment;

(aa) “run-rate ratio”, for a year, means 1 + the CPI adjustment for the year;

(bb) “temporary basis” is the reference rate with a positive adjustment of 1.25% together with the Board’s best estimate actuarial assumptions for all other factors;

(cc) “temporary improvement” means an improvement provided in accordance with Section 4.05;

(dd) “temporary improvement value” is the present value of a contribution decrease, a distribution of surplus and/or a benefit improvement that is amortized over a period of up to ten years, but is committed to for the duration of the commitment period only, provided that at the establishment of the commitment:

(i) the partners may elect an amortization period between three and ten years; and

(ii) for amortization periods of less than ten years, any temporary improvement for a given year shall be limited such that the present value of that given year's temporary improvement is not greater than the present value of basic contributions, calculated using the temporary basis, to be paid in the same year.

(Last amended May 27, 2015 – Effective March 6, 2015)

Article III. <u>Funding Zone - Restoration</u>

Section 3.01 *<u>Definitions</u>*: For the purposes of Article III, as at the current valuation date, using the restoration basis:

(a) “assets” are the assets described in paragraph (a) of the definition of “going concern assets” in Regulation 909 made under the *Pension Benefits Act*;

(b) “current liabilities” are the difference between:

(i) the going concern liabilities calculated using current benefits, and

(ii) the present value of current contributions;

(c) "revised liabilities" are the difference between:

(i) the going concern liabilities calculated using revised benefits, and

(ii) the present value of revised contributions.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.02 _Restoration Basis Plus an Adjustment_: For the purposes of Article III, current liabilities and revised liabilities may be calculated as at the current valuation date using the restoration basis plus an adjustment. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.03 _CPI Adjustment_: For the purposes of Article III, and subject to a subsequently filed valuation, the proportion of the CPI adjustment for the period covered by the current valuation, in respect of each applicable period of service, will be the same for each year in that period and assumed at the same rate thereafter. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.04 _Restoration Basis Excess, but Basic Contributions and/or Run-Rate Benefits Not Restored_:

(a) If assets are greater than current liabilities; and

(b) if:

(i) the present value of current contributions is greater than the present value of basic contributions, or

(ii) the present value of current benefits is less than the present value of run-rate benefits, or

(iii) both (i) and (ii);

then Section 3.05, Section 3.06, Section 3.07 and Section 3.08 shall apply.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.05 _Restoration Basis Excess Report_: The Board shall report to the partners:

(a) the excess of assets over current liabilities; and

(b) the extent to which the excess can be used to provide the changes specified in Section 3.06.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.06 _Application of Restoration Basis Excess_: For purposes of clarity, excesses identified pursuant to Section 3.05 shall be applied in the following order, provided that the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors:

(a) _Bring Escalated Adjustments to 50% for Post-2013 Service_: to provide escalated adjustments up to 50% of the CPI adjustment in respect of service accrued after 2013 for the period covered by the valuation, and assumed thereafter at the same rate;

(b) _Bring Escalated Adjustments to 100%_: to provide escalated adjustments up to 100% of the CPI adjustment for the period covered by the valuation, and assumed thereafter at the same rate;

(c) _Restore Escalated Adjustments for Post-2013 Years_: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2013, to the current accumulated adjustment ratio for the period from 2010 to 2013, beginning with the first year in which current escalated adjustments were less than 50% of the run-rate escalated adjustments;

(d) *Restore Escalated Adjustments for Post-2009 Years*: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2009 to the run-rate accumulated adjustment ratio, beginning with the first year in which current escalated adjustments were less than run-rate escalated adjustments;

(e) *Provide Benefit Increases or Contribution Rate Reductions*: to provide the following:

(i) an increase in benefits, where the present value of current benefits is less than the present value of run-rate benefits,

(ii) a reduction in contribution rates, where the present value of current contributions exceeds the present value of basic contributions, or

(iii) a combination of (i) and (ii).

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.07 *Conditions on Application of Excess*: Subject to Section 3.06 and Section 3.08 or any mutual agreement to the contrary, the partners shall apply the excess of assets over current liabilities to change benefits, contributions, or both, provided that no change or amendment shall be made unless, after such change or amendment:

(a) assets are equal to or greater than revised liabilities;

(b) the revised accumulated adjustment ratio is equal to or less than the run-rate accumulated adjustment ratio;

(c) the revised accumulated adjustment ratio is equal to or greater than the current accumulated adjustment ratio;

(d) the present value of revised benefits is equal to or less than the greater of the present value of current benefits and the present value of run-rate benefits;

(e) the present value of revised benefits is equal to or greater than the lesser of the present value of current benefits and the present value of run-rate benefits;

(f) the present value of revised contributions is equal to or greater than the lesser of the present value of current contributions and the present value of basic contributions; and

(g) the present value of revised contributions is equal to or less than the greater of the present value of current contributions and the present value of basic contributions.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.08 *2013 Term Sheet Limits*: As set out in further detail in the 2013 Term Sheet, during the freeze period:

(a) The partners may provide escalated adjustments pursuant to Section 3.06(a), Section 3.06(b), Section 3.06(c) and Section 3.06(d) only if the assets are greater than 100% of the current liabilities and do not fall below 100% of the revised liabilities after the adjustment; and

(b) The partners may agree to improve benefits, or to restore benefits that were reduced during the freeze period, pursuant to Section 3.06(e) only if the net assets available for benefits (as such term is used in the preliminary valuations) are equal to or greater than 105% of the current liabilities and do not fall below 105% of the revised liabilities after the benefit improvement or restoration.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.09 *Restoration Basis Deficit*: If current liabilities are greater than assets, then Section 3.10, Section 3.11, Section 3.12, Section 3.13 and Section 3.14 shall apply. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.10 *Restoration Basis Deficit Report*: The Board shall report to the partners:

(a) the excess of current liabilities over assets; and

(b) the amount required to change current benefits, current contributions, or both, to eliminate the excess referred to in Section 3.10(a) above, as requested by either partner.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.11 *Conditions on Elimination of Deficit*: Subject to Section 3.12 and Section 3.14, the partners may change benefits, contributions, or both, to eliminate the excess referred to in Section 3.10(a), provided that no change or amendment shall be made unless, after such change or amendment:

(a) assets are equal to or greater than revised liabilities; and

(b) revised member contributions shall be limited to 15% of pensionable salaries above the Year's Maximum Pensionable Earnings as prescribed under the *Canada Pension Plan.*

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.12 *Restrictions on Benefit Reductions*: Current benefits shall not be reduced unless:

(a) the partners agree on the terms and conditions of any reduction in current benefits;

(b) the partners have entered into a written agreement governing the manner in which contributions by the Minister and the Employers will be adjusted to offset any reduction in benefits; and

(c) the revised accumulated adjustment ratio, in respect of each year, is equal to or greater than the current accumulated adjustment ratio for the year.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.13 *Restrictions on Contribution Increases*: Subject to Section 3.14, the partners have the authority to set the level of contributions that must be reached before current benefits are reduced below run-rate benefits, subject to the commitment that member contributions will not exceed 15% of pensionable salaries above the Year's Maximum Pensionable Earnings (as prescribed under the Canada Pension Plan). (Last amended May 27, 2015 – Effective March 6, 2015)

Section 3.14 *Further Restrictions on Contribution Increases*: As set out in further detail in the 2013 Term Sheet, during the freeze period there will be no employer contribution increases except as provided under the 2013 Term Sheet. (Last amended May 27, 2015 – Effective March 6, 2015)

Article IV. Funding Zone – Temporary Improvements

Section 4.01 *Definitions*: For the purposes of Article IV, as at the current valuation date, using the temporary basis:

(a) "assets" are either:

(i) the market value of net assets available to provide benefits as determined by the Board, if the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data is less than the excess of the assets in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data; or

(ii) the assets described in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act, if the excess of the assets described in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data is less than the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data;

(b) "current liabilities" are the sum of:

(i) the difference between:

1) the going concern liabilities calculated using the greater of current benefits and run-rate benefits, and

2) the present value of the lesser of current contributions and basic contributions;

and

(ii) the remaining amortization value (equal to zero with respect to a particular commitment period if, as of the valuation date, the payment in respect of the last year of a commitment period will be paid in that year);

(c) "revised liabilities" are the sum of:

(i) the difference between:

1) the going concern liabilities calculated using the greater of revised benefits and run-rate benefits, and

2) the present value of revised contributions;

and

(ii) the remaining amortization value (equal to zero with respect to a particular commitment period if, as of the valuation date, the payment in respect of the last year of a commitment period will be paid in that year);

(d) The reference rate for purposes of determining the temporary basis is based on:

(i) market data, if the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data is less than the excess of the assets in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data; and

(ii) smoothed data, if the excess of the assets in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data is less than the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.02 *Temporary Basis Plus an Adjustment*: For the purposes of Article IV, current liabilities and revised liabilities may be calculated as at the current valuation date using the temporary basis plus an adjustment. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.03 *Temporary Basis Excess*: If assets are greater than current liabilities, then Section 4.04, Section 4.05 and Section 4.06 shall apply, provided that no temporary improvements may be provided unless the partners have provided all of the changes specified in Section 3.06. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.04 *Temporary Basis Excess Report*: The Board shall report to the partners:

(a) the amount by which assets exceed current liabilities;

(b) the commitment value;

(c) the extent to which the commitment value can be used to provide a reduction to current contributions, beginning with the year following the year in which a preliminary valuation is filed and lasting for the commitment period;

(d) the extent to which the commitment value can be used to provide annual surplus distributions, beginning with the year following the year in which a preliminary valuation is filed and lasting for the commitment period;

(e) the extent to which the commitment value can be used to provide a temporary benefit improvement, beginning with the year following the year in which a preliminary valuation is filed and lasting for the commitment period; and

(f) the extent to which the commitment value can be used to provide a combination of Section 4.04(c), Section 4.04(d) and Section 4.04(e).

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.05 *Conditions on Application of Excess*: Subject to Article VI and Section 4.06, the partners may apply all or part of the commitment value to change temporarily current contributions, provide surplus distributions on a temporary basis, or provide a temporary benefit improvement, provided that no amendment shall be made unless, after such amendment, the excess of assets over revised liabilities is equal to or greater than zero. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.06 *Side Agreement*: The commitment value shall be used to provide a surplus distribution referred to in Section 4.04(d) or a temporary benefit improvement referred to in Section 4.04(e) only if the partners have entered into a written agreement governing the manner in which the contributions by the Minister and the Employers may be adjusted to offset any surplus distribution or temporary improvement of benefits that is reflected in the value of the liabilities. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.07 *Temporary Basis Deficit*: If assets are equal to or less than current liabilities, then Section 4.08 and Section 4.09 shall apply. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.08 *Temporary Basis Deficit Report*: The Board shall report to the partners the amount by which current liabilities exceed assets. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 4.09 *No Action on Temporary Basis and Return to Restoration Basis*: Subject to Article VI, the partners shall not provide new temporary improvements and Article III shall apply. (Last amended May 27, 2015 – Effective March 6, 2015)

Article V. Funding Zone – Permanent Improvements

Section 5.01 *Definitions*: For the purposes of Article V, as at the current valuation date, using the distribution basis:

(a) "assets" are either:

(i) the market value of net assets available to provide benefits as determined by the Board, if the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data is less than the excess of the assets in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data; or

(ii) the assets described in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act, if the excess of the assets described in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data is less than the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data;

(b) "current liabilities" are the sum of:

(i) the difference between:

1) the going concern liabilities calculated using the greater of current benefits and run-rate benefits, and

2) the present value of the lesser of current contributions and basic contributions;

and

(ii) the remaining amortization value (equal to zero with respect to a particular commitment period if, as of the valuation date, the payment in respect of the last year of a commitment period will be paid in that year);

(c) "current targeted funding amount" is 10% of current liabilities;

(d) "revised liabilities" are the sum of:

(i) the difference between:

1) the going concern liabilities calculated using the greater of revised benefits and run-rate benefits, and

2) the present value of revised contributions;

and

(ii) the remaining amortization value (equal to zero with respect to a particular commitment period if, as of the valuation date, the payment in respect of the last year of a commitment period will be paid in that year);

(e) The reference rate for purposes of determining the distribution basis is based on:

(i) market data, if the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data is less than the excess of the assets in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data; and

(ii) smoothed data, if the excess of the assets in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the Pension Benefits Act over current liabilities calculated using a reference rate based on smoothed data is less than the excess of the market value of net assets available to provide benefits over current liabilities calculated using a reference rate based on market data;

(f) "revised targeted funding amount" is 10% of revised liabilities.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.02 *Distribution Basis Plus an Adjustment*: For the purposes of Article V, current liabilities and revised liabilities may be calculated as at the current valuation date using the distribution basis plus an adjustment. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.03 *Distribution Basis Excess*: If the excess of assets over current liabilities is greater than the current targeted funding amount, then Section 5.04 and Section 5.05 shall apply, provided that no changes pursuant to Section 5.05 may be provided unless the partners have provided all of the changes specified in Section 3.06. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.04 *Distribution Basis Excess Report*: The Board shall report to the partners:

(a) the amount by which assets minus current liabilities exceed the current targeted funding amount; and

(b) the amount required to change current benefits, current contributions, or both, as requested by either partner.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.05 *Conditions on Application of Excess*: Subject to Article VI, the partners may apply all or part of the amount by which assets minus current liabilities exceed the current targeted funding amount to change current benefits, current contributions, or both, provided that no amendment shall be made unless:

(a) after such amendment the excess of assets over revised liabilities is equal to or greater than the revised targeted funding amount; and

(b) the partners have entered into a written agreement governing the manner in which the contributions by the Minister and the Employers may be adjusted to offset any change in current benefits that is reflected in the value of the liabilities.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.06 *Distribution Basis Deficit*: If:

(a) the excess of assets over current liabilities is less than the current targeted funding amount;

(b) the present value of current contributions is equal to or less than the present value of basic contributions;

(c) the present value of current benefits is equal to or greater than the present value of run-rate benefits; and

(d) the current accumulated adjustment ratio is equal to the run-rate accumulated adjustment ratio;

then Section 5.07 and Section 5.08 shall apply.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.07 *Distribution Basis Deficit Report*: The Board shall report to the partners the amount by which assets minus current liabilities are less than the current targeted funding amount. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 5.08 *No Action on Distribution Basis and Return to Temporary Basis*: Subject to Article VI, the partners shall not apply, pursuant to this Article V, any part of the amount by which assets exceed current liabilities, and Article IV shall apply. (Last amended May 27, 2015 – Effective March 6, 2015)

Article VI. Post December 30, 2017 Valuations

Section 6.01 *Definitions*: For the purposes of Article VI, as at the current valuation date, using the restoration basis:

(a) "assets" are the assets described in paragraph (a) of the definition of "going concern assets" in Regulation 909 made under the *Pension Benefits Act*;

(b) "current liabilities" are the difference between:

   (i) the going concern liabilities calculated using current benefits, and

   (ii) the present value of current contributions;

(c) "revised liabilities" are the difference between:

   (i) the going concern liabilities calculated using revised benefits, and

   (ii) the present value of revised contributions.

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 6.02 *Post-2017 Excess*: Notwithstanding any other provision of this Funding Management Policy, as set out in further detail in the 2013 Term Sheet, after the end of the freeze period, if a valuation report with a valuation date after December 30, 2017 provides that assets are greater than current liabilities as at the date of the current valuation, then Section 6.03 shall apply. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 6.03 *2013 Term Sheet Provisions*:

(a) the OTF will have 'first call' on 100% of the value of the excess of the assets over the current liabilities (to take the form of "surplus credits") up to a cumulative total of the value of the lesser of:

(i) the value of the benefit reductions made during the freeze period, including the value of benefit reductions made in the January 1, 2012 valuation, but excluding: (1) the value of benefit reductions for which matching contributions are made by the Minister and the Employers, and (2) the value of benefit reductions relating to the removal and replacement of the remaining 50% guaranteed indexing with full conditional inflation protection for post-2013 service and the resulting change to the discount rate, and

(ii) the benefit reduction limit as calculated under the 2013 Term Sheet;

(b) if inflation protection is invoked below 50% during the freeze period, surplus credits will include an amount equal to the actual foregone pension payments during and after the freeze period that arise from the reduction in inflation protection invoked during the freeze period until such time as that inflation protection is restored at 50% or more during or after the freeze period; and

(c) the OTF may apply all or part of surplus credits to change current benefits, current contributions, or both, provided that no amendment shall be made unless assets are equal to or greater than revised liabilities after such amendment.

(Last amended May 27, 2015 – Effective March 6, 2015)

Article VII. Valuation Frequency and Timing

Section 7.01 The Board shall require the actuary to prepare a preliminary valuation of the plan as of January 1, 2003 and each January 1 thereafter and, in addition, on such other date as the partners mutually agree. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 7.02 Subject to the requirements of the *Pension Benefits Act*, the partners agree that valuations shall be filed with the Superintendent of Financial Services only by their mutual agreement. The partners shall direct the Board, no later than seven months following the valuation date, whether to file. No such filing shall affect the timing of triennial negotiations between the partners referred to in paragraph 96. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 7.03 The seven-month notice requirement referred to in Section 7.02 shall not apply to the January 1, 2005 valuation and shall not apply to the January 1, 2012 valuation. (Last amended May 27, 2015 – Effective March 6, 2015)

Article VIII. Arbitration

Section 8.01 Unless the partners mutually agree to the contrary, they shall follow the procedures described in paragraphs 74 to 100 when determining the plan changes arising from Section 3.07. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 8.02 The limitations on amendments set out in Section 3.07, Section 4.05, Section 4.06, Section 4.09, Section 5.05, and Section 5.08 shall apply to an award made by a board of arbitration pursuant to paragraph 92. (Last amended May 27, 2015 – Effective March 6, 2015)

Section 8.03 Subject to the 2013 Term Sheet, nothing in Article II to Article IX affects the timing of the triennial negotiation, mediation and arbitration process referred to in paragraphs 72 to 100. (Last amended May 27, 2015 – Effective March 6, 2015)

Article IX. **Limitations**

Section 9.01 The limitations on amendments in this Funding Management Policy shall not apply to amendments:

(a) made pursuant to paragraphs 60b, 60d, or 60e;

(b) that are required to comply with provincial law or, where both partners agree, to maintain registration as a registered pension plan under the *Income Tax Act (Canada*); or

(c) made by mutual agreement of the partners that do not increase liabilities by more than 0.5%.

(Last amended May 27, 2015 – Effective March 6, 2015)

image001.pdf

KOSKIE
MINSKY
JUSTICE MATTERS

RE_ Pension Comparison.rtf

From: Kaufman, Paul (TBS) []
To: Murray Gold [mgold@kmlaw.ca]
CC: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: RE: Pension Comparison
Date: Thursday, September 22, 2016 14:33:07
Attachment 1: image001.png

Murray, our client has had a chance to review the draft opinion that you provided. Could you please let us know if it is possible to reflect anything in the opinion on the following points:

- In BC's consolidated financial statements, they note in respect of the BC public sector pension plans that "The Province participates as a plan employer in each plan. Provisions of these plans stipulate that the province has no formal claim to any pension plan surplus or asset. The boards are fully responsible for the management of the plans, including investment of the assets and administration of the plans. The Pension Corporation provides benefit administrative services as an agent of the boards of trustees." Is it possible to reference a distinction in regard to the highlighted section – i.e. whether the agreements in respect of the BC plans and the Ontario plans differ in this regard, and if so what the implications would be in respect each province's expectation of receiving a benefit from a surplus in the respective plans?

- Does the discussion on page 3 of the opinion about the two equal pools under the OPTrust mean that the province has an unilateral right to use the funds in the pool that are to be used for the Province's benefit? If so it would be helpful if that ability could be clarified.

- Could the opinion be addressed to Len rather than to Cindy.

Paul

Paul Kaufman

Counsel

Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat

9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3

Phone: 416-327-7012 Fax: 416-325-9404

From: Murray Gold <mgold@kmlaw.ca>

Sent: Tuesday, September 20, 2016 7:59 PM

To: Hatzis, Len (TBS)

Subject: Pension Comparison

Here is draft with more detail on the transitional periods, per our discussion.

http://www.kmlaw.ca/

Murray Gold
Partner
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Koskie Minsky LLP, 20 Queen Street West, Suite 900, Toronto, ON. M5H 3R3
kmlaw.ca

image001.pdf

KOSKIE
MINSKY
JUSTICE MATTERS

RE_ opinion .rtf

From: Kaufman, Paul (TBS) []
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Rienzo, Douglas [DRienzo@osler.com]
CC: Marin, Jon [jomarin@osler.com]; Steele, Jana [JSteele@osler.com]
Subject: RE: opinion
Date: Monday, September 19, 2016 22:25:17

Douglas, per Len's email, here are our comments:

Page 2 – para 4 of background – our client has advised that this contains some factual inaccuracies – can this paragraph be corrected to provide as follows: "The Office of the Auditor General has communicated that because the Province does not have the legally enforceable right to unilaterally access the assets of the Plans, and in the absence of that right, because the Province does not have an agreement in place with the joint sponsors as of March 31, 2016 with respect to how the surplus would be utilized such that it would provide a benefit to the Province, the pension assets as presented in the Province's consolidated financial statements should be removed."

Page 3 – para 1 of conclusions – where it is noted that the Teachers' Act provides for a framework under which an agreement may be entered into – is it possible to note that one has in fact been entered into?

Page 4/5 – para 4 of conclusions – is it possible to emphasize this more prominently in the opinion, i.e. that the applicable legislation and plan documents provide considerations that may shape expectations? – particularly, the point in 4c regarding neither party having a unilateral right meaning that that both parties have an equal opportunity to benefit?

Page 5 – paragraph (a) – third last line – use of the word "typically" – are you using that because you are aware of situations where the split hasn't been 5/50?

Page 12 – is the discussion about the 'call right' really relevant to the discussion, given that the quantum is not expected to be material?

Page 16 – last paragraph before section V – can "it may be that" in the fourth last line be made any stronger?

Page 17/18 - Is it necessary that the discussion on page 17/18 be so extensive/definitive, and is the analogy on the top of page 18 really necessary? if the point here is that the FMP does not provide a specific right to utilize the surplus in a particular way (i.e. a unilateral right) that is fair, but is there not room to argue that the FMP is in fact a legally enforceable agreement, especially in light of the intention of the parties as expressed in para 110 of the partners' agreement? Also, consistent with the heading for section V, is it possible to use the term "unilateral" in connection with enforceable legal rights?

Page 20/21 – we are wondering if the last two paragraphs are really necessary to the opinion, and if so, if there is any way that the persuasive value of past practice on any potential arbitration process could be referenced here?

Paul Kaufman
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Phone: 416-327-7012 Fax: 416-325-9404

-----Original Message-----
From: Hatzis, Len (TBS)
Sent: September-19-16 10:04 PM
To: Rienzo, Douglas
Cc: Marin, Jon; Kaufman, Paul (TBS); Steele, Jana
Subject: Re: opinion

Douglas
No problem - we intend to send some comments by email tonight for your consideration re incorporation into draft. Hopefully these comments make sense in your view and can be accommodated to the extent possible for tomorrow morning. Happy to discuss tomorrow morning

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Rienzo, Douglas
Sent: Monday, September 19, 2016 8:58 PM
To: Hatzis, Len (TBS)
Cc: Marin, Jon; Kaufman, Paul (TBS); Steele, Jana
Subject: Re: opinion

Can we chat in the morning, Len?

> On Sep 19, 2016, at 8:47 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> Can we chat with you later this evening before you look to finalize?
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Hatzis, Len (TBS)
> Sent: Monday, September 19, 2016 7:59 PM
> To: Rienzo, Douglas
> Cc: Marin, Jon; Kaufman, Paul (TBS); Steele, Jana
> Subject: Re: opinion
>
>
> Thanks douglas
> I need to review with my clients and will be back to you.
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> From: Rienzo, Douglas
> Sent: Monday, September 19, 2016 7:06 PM
> To: Hatzis, Len (TBS)
> Cc: Marin, Jon; Kaufman, Paul (TBS); Steele, Jana
> Subject: RE: opinion
>
>
> Len:
>
> Please find enclosed the draft opinion. Please let us know if you have any comments or questions; subject to your comments we can prepare it in final form. Please note that due to time restrictions we are still reviewing it internally, so there may be some minor changes to be made before finalizing.
>

> Doug
> [cid:image001.gif@01D212A8.CC388EB0]
>
> Douglas Rienzo
> Partner, Pensions & Benefits
> Chair, Diversity Committee
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>
> [2016%20diversity-english]
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>
>
> From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
> Sent: Monday, September 19, 2016 3:15 PM
> To: Rienzo, Douglas <DRienzo@osler.com>
> Cc: Marin, Jon <jomarin@osler.com>; Kaufman, Paul (TBS)
> <Paul.Kaufman@ontario.ca>; Steele, Jana <JSteele@osler.com>
> Subject: opinion
>
> Hi
> Any update on delivery of draft opinion .   thanks
>
>
>
> Len Hatzis
> Deputy Director
> Legal Services Branch | Treasury Board Secretariat
> 77 Wellesley Street West, 9th Floor, Toronto ON M7A 1N3
> 416.327.6393
>

>
>
>
> ________________________________
>

RE_ update re opinion.rtf

From: Kaufman, Paul (TBS) []
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; 'Code, Jacqueline' [JCode@osler.com]
CC: Smook, Nick (TBS) [Nick.Smook@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: update re opinion
Date: Monday, September 19, 2016 19:07:29

Jacqueline - from Nadine. Nadine - feel free to add.

Definition: An audit report is a written opinion of an auditor regarding an entity's financial statements. The report is written in a standard format, as mandated by generally accepted auditing standards (GAAS).

Paul Kaufman
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