

Fw_ OTTP Key legal Docs.rtf

From: Hatzis, Len (TBS) []
To: Steele, Jana [JSteele@osler.com]; Marin, Jon [jomarin@osler.com]
CC: Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]
Subject: Fw: OTPP Key legal Docs
Date: Thursday, September 15, 2016 07:20:54
Attachment 1: OTPP_Asset_ceiling_document_Final.pdf
Attachment 2: Current - Partners' Agreement - 03-06-15.pdf
Attachment 3: OTPP Surplus Opinion Sept 12 2016.docx
Attachment 4: [Untitled].pdf

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>

Sent: Wednesday, September 14, 2016 7:33 PM

To: Hatzis, Len (TBS)

Subject: OTPP Key legal Docs

- Our internal opinion on the province's legal control of the pension surplus
- Recent correspondence from the Auditor General of Ontario
- Analysis of the accounting treatment of the surplus under Public Sector Accounting Standards that was prepared by Deloitte
- The Partners' Agreement in respect of the OTPP – the Funding Management Policy for the plan is the key document and begins at page 18 of the pdf

They will likely also want to refer to the *Teachers' Pension Act* <https://www.ontario.ca/laws/statute/90t01>

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OTPP_Asset_ceiling_document_Final.pdf



**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:

- 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
- 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 OTTP, as shown in the Section 1, it is unamortized gains which exist rather than losses.

In this situation, if we take the OTTP 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 OTTP). 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 OTTP, we did get the following information
 - o Total service accrual = \$2.9B
 - o Employer service accrual (assuming 50% share) = $\$2.9B / 2 = \$1.45B$
 - o 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)
 - o 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)
 - o 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 OTTP (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.

Amount of surplus that can be withdrawn and contribution reduction availability – OTTP plan characteristics

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 OTTP 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 adjustments 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 OTTP

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 OTTP 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 OTTP 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 OTTP 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 OTTP 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 OTTP asset amount reported under PSAB.



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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*.

Role of the partners

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.
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 indemnitor 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 indemnitor 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. Funding Zone - Restoration

Section 3.01 Definitions: 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)

OTPP Surplus Opinion Sept 12 2016.pdf

**Ministry of the
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Solicitor-Client Privileged

September 11, 2016

To: Nadine Petsche, Director, Accounting Policy and Financial Reporting,
Office of the Provincial Controller

Re: Actuarial Surplus in the Ontario Teachers' Pension Plan

1. Request

You have asked for a legal opinion on the Province of Ontario's (Ontario's) legal rights in connection with a surplus in the Ontario Teachers' Pension Plan (the Plan). Specifically, you have asked for confirmation that Ontario is legally entitled to benefit from the 'Government Portion' of the surplus recognized by Ontario as a pension asset in its 2015-16 Public Accounts (\$10.1 billion after adjustments), for example through reduced contributions or a contribution holiday, further to the analysis provided to Ontario by Deloitte LLP in August 2016 through an initial report and supplementary analysis (Deloitte Report).

2. Short Answer

Ontario has an enforceable legal interest in the 'Government Portion' of the identified surplus recognized by Ontario as a pension asset in its 2015-16 Public Accounts.

3. Background

i. Legal Framework for the Plan

The Plan is established by the *Teachers' Pension Act*¹ (TPA). The TPA provides that the Plan is a defined benefit pension plan within the meaning of the *Pension Benefits Act*² (PBA). The TPA provides that the governing

¹ R.S.O. 1990, c. T.1

² R.S.O. 1990, c. P.8

documents for the Plan are the pension plan established under Schedule 1 to the TPA, along with such other governing documents as may be created or adopted under the TPA or the text of the pension plan.

Section 5 of the TPA provides that the contributions of Ontario and contributing employers, on one hand, and active Plan members on the other hand, are to be approximately equal.

Section 10 of the TPA provides that the Minister of Education and the executive of The Ontario Teachers' Federation (OTF) may enter into an agreement that provides for, among other things, the joint management of the Plan and the sharing of entitlement to gains or surplus under the plan and of liability for deficiencies in the pension fund.

The Minister of Education and the OTF have entered into an agreement for the management of the Plan (Partners Agreement), to which is appended a Funding Management Policy (FMP) that is deemed to form part of the agreement.³ The FMP provides for the funding of the Plan and how deficits and surpluses will be addressed.

ii. Accounting Treatment for Plan Surpluses

Ontario's audited financial statements have reflected the Province's respective portion of the accrued pension benefit as calculated in accordance with Public Sector Accounting Standards. Consistent with past practice, in the 2015-16 Public Accounts, Ontario continues to report its portion of the pension asset (\$10.1 billion as of March 31, 2016.) The Deloitte Report sets out an accounting analysis supporting the recognition of the surplus as an asset for the purposes of reporting the Province's financial position, as assessed in accordance with Public Sector Accounting Standards. Deloitte provides the following rationale in support of this position:

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

³ Partners Agreement, section 110.

- 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 value⁴

While the Deloitte analysis speaks to Ontario benefitting from surplus withdrawal, the Office of the Provincial Controller Division (OPCD) in Treasury Board Secretariat has advised that the analysis under Public Sector Accounting Standards completed by Deloitte demonstrates that no surplus withdrawal is necessary to support the asset recorded in Ontario's Public Accounts.

iii. Concerns of the Auditor General

The Auditor General of Ontario (AGO) has expressed concerns with Ontario's treatment of the pension asset in the Public Accounts. We understand that the AG believes that the ability to benefit through surplus withdrawals is necessary in order to support recognition of the asset on the Province's books. The accounting treatment of surplus withdrawals is governed by Public Sector Accounting Board (PSAB) standard PS3250.059:

.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

⁴ Deloitte Report p. 14

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. [emphasis added]

In light of this provision, the AGO has taken the position that Ontario cannot rely on the potential for future surplus withdrawals as a rationale for treating the Ontario portion of a Plan surplus as an asset. Any such withdrawal would be subject to the agreement of Plan members and would require regulatory approval under the PBA.

As previously noted, it is OPCD's position that in accordance with PSAS, the value of the pension asset is sufficiently satisfied by other means of benefiting from the surplus, and that the ability to withdraw any surplus is not a necessary consideration based on the results of the analysis included in Deloitte's Report.

OPCD has advised that despite the references in the Deloitte Report, Ontario is not seeking to recognize the value of potential surplus withdrawals from the Plan (which would be subject to the analysis described in PSAB standard PS3250.059). Rather, Ontario is supporting the value of the pension asset recognized through the ability to benefit from contribution holidays to which the government would be entitled under the terms of the FMP. OPCD notes that PSAB Standards PS3250.052 and PS3250.055 provides guidance for determining the amount that is appropriately recognized as a pension asset:

.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.

.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.

The AGO has requested that Ontario provide a legal opinion confirming the government's ability to access/realize benefits sufficient to support the pension asset recognized. While the AGO's questions in connection with the treatment of the surplus have referenced surplus withdrawals, we understand

that OPCD is focussing on Ontario's right to apply the surplus toward reduced contributions or contribution holidays.

4. Analysis

i. Plan is a Jointly Sponsored Pension Plan

Section 5 of the TPA provides for Ontario and contributing employers to make contributions to the Plan that are equal to the contributions made by members, and we understand that the Plan is a jointly sponsored pension plan under the PBA. One of the defining features of a jointly sponsored pension plan is that both employer and members are jointly responsible for funding the benefits under the plan.

Regulation 909 under the PBA requires that the documents that create and support a jointly sponsored pension plan must set out the methods by which decisions relating to the terms and conditions of the Plan are to be made. The FMP is the mechanism by which the Plan partners have articulated the manner in which they will share the burden of Plan shortfalls and the benefit of Plan surpluses. As noted in Deloitte's analysis, the FMP provides guidance on how the Plan will be funded in different financial situations. Specific to surplus scenarios, the FMP provides for the actions that may be taken by the partners (i.e. Ontario and the OTF) in two different surplus "zones" - i.e. the Temporary Plan Improvement Zone and the Permanent Plan Improvement Zone.

ii. FMP Framework Governing Surpluses

The FMP expressly anticipates the possibility of contribution holidays in two scenarios:

- Article IV (Temporary Improvements) of the FMP provides for temporary actions that can be taken by the partners when Plan assets are greater than current liabilities (subject to the restorations required in section 3.06 of the FMP having already been provided). Section 4.05 of the FMP provides that in such a scenario, the parties may reduce current contributions, provide temporary surplus distributions or provide a temporary benefit improvement.
- Article V (Permanent Improvements) of the FMP provides for permanent actions that can be taken when Plan assets exceed current liabilities by more than 10% of current liabilities. Section 5.05 provides

for actions that can be taken in respect of the amount that assets exceed current liabilities plus the 10% margin noted previously. Such actions can include changes to current benefits, current contributions, or both.

iii. Ontario's Legal Interest in Plan Surpluses

Section 10 of the TPA clearly indicates that the Plan is to be managed jointly by Ontario and the OTF. Further, section 10(1)3 expressly permits Ontario and the OTF to enter into an agreement governing "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."

Pursuant to this provision, Ontario and the OTF have entered into the FMP. The FMP provides for actions that Ontario and the OTF may take in a deficiency or surplus situation. Where there is a deficiency, contributions can be increased or benefits can be reduced. Under section 5(1.1) of the TPA, increases to contributions would generally need to be shared equally between Ontario and active Plan members (although section 5(7) of the TPA gives Ontario the discretion to pay additional unmatched contributions in the event of a solvency deficiency). The FMP also provides that reductions of benefits would be subject to an agreement whereby those reductions were offset by contributions from Ontario.

In terms of surpluses, the terms of the FMP do not give either Ontario or the OTF any unfettered ability to apply Plan surpluses for their own purposes. Rather, both parties must agree to any proposed application of Plan surpluses. For this reason, it is clear that Ontario would not have any authority to unilaterally apply the Government Portion of the Plan surplus for the purposes of a future contribution holiday.

However, this does not mean that Ontario would not have a legally enforceable expectation that Plan surpluses should result in future contribution holidays. The Supreme Court of Canada has also held, in *Schmidt v. Air Products Canada Ltd.*⁵ and *Nolan v. Kerry (Canada) Inc.*⁶ that "unless the terms of [a] plan specifically preclude it, an employer is **entitled** to take a contribution holiday" (emphasis added). There is nothing in the Plan or FMP that precludes a contribution holiday and, in fact, it is explicitly contemplated as a possible use of plan surpluses.

⁵ *Schmidt v. Air Products Canada Ltd.*, [1994] 2 S.C.R. 611 at p. 638

⁶ *Nolan v. Kerry (Canada) Inc.*, [2009] 2 SCR 678 at para 68.

In our view, the need for agreement with the OTF before implementing a specific reduction or holiday does not diminish Ontario's enforceable legal interest in the surplus or Ontario's reasonable expectation that a surplus could be applied to a contribution holiday at some future point. Instead, the FMP creates a framework through which Ontario can protect and realize this interest, including a process for negotiation, mediation and arbitration of disputes.

In point of fact, Ontario and the OTF have successfully negotiated in the past to deal with Plan surpluses and deficits through mutual agreement, with both parties receiving negotiated benefits (e.g. in 1998 and 1999, when surpluses were used to eliminate the special payments owed by Ontario, with Ontario and the OTF agreeing that other surpluses would be used to fund benefit improvements.)

Based on the forgoing we are of the view that the FMP provides Ontario with a reasonable basis on which to expect to benefit proportionately from Plan surpluses, with the nature and exact extent of that benefit determinable through a fair process of negotiation, mediation and arbitration.

Tom McKinlay, General Counsel, Crown Law Office – Civil
Len Hatzis, Deputy Director, TBS Legal Services
Paul Kaufman, Counsel, TBS Legal Services

RE_urgent request - teachers pension.rtf

From: Kaufman, Paul (TBS) []
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; 'Murray Gold' [mgold@kmlaw.ca]
Subject: RE: urgent request - teachers pension
Date: Friday, September 16, 2016 18:20:32
Attachment 1: image001.png
Attachment 2: [Untitled].pdf
Attachment 3: Scanned from a Xerox multifunction device001.pdf
Attachment 4: Scanned from a Xerox multifunction device001.pdf
Attachment 5: OPSEU Sponsorship Agreement April 18 1994.pdf
Attachment 6: Trust Agreement.pdf
Attachment 7: BC_mpp_joint_trust_agreement.pdf

Murray – further to Len’s email, here are agreements relating to the plans that our clients would like your review to cover. On the Ontario side, the clients would like the review to cover the OTPP and OPSEU plans. Documents relating to those plans are attached.

Our clients would also like your review to cover the following BC plans: College Pension Plan, the Public Service Pension Plan, the Municipal Pension Plan, and the Teachers' Pension Plan. Documents relating to the BC teachers. The joint trust agreements relating to three of these plans are at the links below, and the agreement for the municipal plan is attached.

College:

http://www.pensionsbc.ca/portal/page/portal/pencorcontent/cpppage/publications/boarddocuments/cpp_jta.pdf

Public Service:

http://www.pensionsbc.ca/portal/page/portal/pencorcontent/pspppage/publications/boarddocuments/pspp_jointtrust.pdf

amending agreements:

http://www.pensionsbc.ca/portal/page/portal/pencorpccontent/pspppage/publications/boarddocuments/pspp_jta_amending_agreement1.pdf

http://www.pensionsbc.ca/portal/page/portal/pencorpccontent/pspppage/publications/boarddocuments/pspp_jta_amending_agreement2.pdf

Teachers:

<http://www.pensionsbc.ca/portal/page/portal/pencorpccontent/tpppage/publications/boarddocuments/joint-trust-agreement-unofficial-consolidation-with-partners-agreement.pdf>

Amendment number 3

http://www.pensionsbc.ca/portal/page/portal/pencorpccontent/tpppage/publications/boarddocuments/tpp_jointtrust_amending_agreement_3.pdf

Paul Kaufman

Counsel

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delete the copy you received. Thank you.

From: Hatzis, Len (TBS)
Sent: September-16-16 5:57 PM
To: Murray Gold
Cc: Kaufman, Paul (TBS)
Subject: Re: urgent request - teachers pension

Murray

Paul will connect with you - we do need some work done - do you have a number we can reach you at. Paul can flip you the relevant documents as well

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Murray Gold
Sent: Friday, September 16, 2016 3:12 PM
To: Hatzis, Len (TBS)
Cc: Kaufman, Paul (TBS)
Subject: RE: urgent request - teachers pension

Len/Paul,

Did you want to proceed with anything here? I haven't heard anything today.

Murray

<http://www.kmlaw.ca/>

Murray Gold

Partner

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

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

kmlaw.ca

From: Hatzis, Len (TBS) [<mailto:Len.Hatzis@ontario.ca>]

Sent: September-15-16 5:27 PM

To: Murray Gold

Cc: Kaufman, Paul (TBS)

Subject: urgent request - teachers pension

Hi Murray

I work with Cindy V, provincial controller – can we chat about an urgent legal opinion request. Thank you

Len Hatzis

Deputy Director

Legal Services Branch | Treasury Board Secretariat

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

416.327.6393

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**KOSKIE
MINSKY**
JUSTICE MATTERS

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**AMENDMENT NO. 1 TO THE AGREEMENT AND DECLARATION OF TRUST
BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO AS REPRESENTED BY THE SECRETARY
OF THE MANAGEMENT BOARD OF CABINET**

("Ontario")

OF THE FIRST PART

-and-

THE ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

("OPSEU")

OF THE SECOND PART

WHEREAS Ontario and OPSEU are parties to an Agreement and Declaration of Trust made as of the 25th day of October, 1994 (the "Trust Agreement");

AND WHEREAS Ontario and OPSEU have the power to amend the Trust Agreement by unanimous written agreement pursuant to Article 10.01 thereof;

AND WHEREAS Ontario and OPSEU wish to amend section 8.06 of the Trust Agreement to recognize the use of insurance as well as fidelity bonds;

NOW THEREFORE Ontario and OPSEU agree as follows:

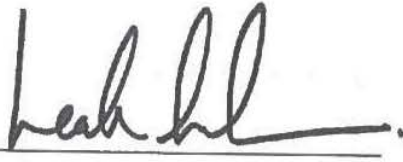
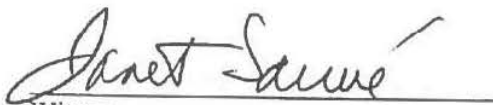
**1. SECTION 8.06 IS AMENDED EFFECTIVE OCTOBER 25TH, 1994 TO
READ AS FOLLOWS:**

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

In witness whereof the parties hereto have hereunto executed this Amendment to the Trust Agreement on the _____ day of _____, 2006.

THE ONTARIO PUBLIC SERVICE
EMPLOYEES' UNION

Per:

A handwritten signature in black ink, appearing to read "Leah Hill", written over a horizontal line.A handwritten signature in black ink, appearing to read "Janet Sauré", written over a horizontal line.
Witness

HER MAJESTY THE QUEEN IN
RIGHT OF THE PROVINCE OF
ONTARIO AS REPRESENTED BY
THE SECRETARY OF THE
MANAGEMENT BOARD OF CABINET

Per:

A handwritten signature in black ink, written over a horizontal line.A handwritten signature in black ink, written over a horizontal line.
Witness

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AMENDMENT NO. 1 TO THE SPONSORSHIP AMENDMENT AND ASSET TRANSFER AGREEMENT MADE AS OF DECEMBER 12, 1994 (THE "ASSET TRANSFER AGREEMENT")

B E T W E E N

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS
REPRESENTED BY THE CHAIR OF THE MANAGEMENT BOARD OF CABINET**

("Ontario")

PARTY OF THE FIRST PART

- and -

THE ONTARIO PENSION BOARD

("OPB")

PARTY OF THE SECOND PART

- and -

THE ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

("OPSEU")

PARTY OF THE THIRD PART

- and -

**THE TRUSTEES OF THE ONTARIO PUBLIC SERVICE EMPLOYEES'
UNION PENSION PLAN TRUST FUND**

(the "Trustees")

PARTY OF THE FOURTH PART

Preamble:

1. OPSEU and Ontario agreed to create the OPSEU Pension Plan for members of the Ontario Public Service represented by OPSEU. The terms of their agreement are in a Sponsorship Agreement dated April 18, 1994, as amended by the Asset Transfer Agreement and Amendment No. 2 to the Sponsorship Agreement.
2. Ontario, OPSEU, the OPB and the Trustees then entered into the Asset Transfer Agreement on December 12, 1994 to set out the mechanisms and timetables for transferring assets from the OPB to the Trustees.

3. Three types of assets were transferred - Marketable Assets, Debentures, and the right to receive special payments in respect of an initial unfunded liability of the Public Service Pension Plan ("PSPP").
4. The Asset Transfer Agreement anticipated an initial asset transfer, and two subsequent adjustments. The initial asset transfer was made in December 1994.
5. The first adjustment, called the Roll Forward Adjustment, was made in April 1996. This adjustment was necessary because the transfer of assets was as at December 31, 1992, but did not take place until December 1994. The Roll Forward Adjustment accounted for certain activity between January 1, 1993 and December 31, 1994, and adjusted for certain estimates in the initial asset transfer.
6. The second adjustment, called the Purification Adjustment, was scheduled for April 15, 1996 (with a possible delay until October 15, 1996 if Ontario and OPSEU agreed), but has not yet been made. It is necessary because the initial asset transfer, the determination of the Transferred Initial Unfunded Liability and the related special payments and the Roll Forward Adjustment, were made on the basis of plan affiliation and plan member data that was not accurate.
7. A project to review and correct the data, known as the "purification project", was initiated in 1994. It was anticipated that the purification project would be complete before April 15, 1996. But it is only partially complete and is not expected to be finished until 1998.

8. The part of the purification project that will be completed by December 31, 1996 relates to "plan affiliation data". For the purposes of the Asset Transfer Agreement, "plan affiliation data" means data which identifies whether a person was an active or inactive member of the Public Service Pension Plan ("PSPP") or the OPSEU Pension Plan on December 31, 1992 and between January 1, 1993 and December 31, 1994, whether or not the person was previously identified as a member of either plan.
9. The purification project has not yet corrected general "plan member data", such as the member's date of birth, years of service, salary history and significant pension entitlement related transactions.
10. Since the purification project is not finished, the Purification Adjustment cannot be completed in its entirety as set out in the Asset Transfer Agreement. However, because the purification project will be completed with respect to Plan affiliation data by December 31, 1996, the Purification Adjustment can be made in part.
11. Accordingly, the parties wish to amend the Asset Transfer Agreement to provide for a two-stage Purification Adjustment. The first stage of the Purification Adjustment - with respect to "plan affiliation data" - shall be made in April 1997. The second stage - with respect to "plan member data" - will be made when the purification project is complete.
12. Further, in order to simplify the two-stage Purification Adjustment, the Debentures will only be reissued by Ontario in the first stage of the adjustment. Any adjustment to the Debentures that would have been made because of changes to "plan member data", will instead be paid in cash.

Amendments

1. Part C of Schedule "1" to the Asset Transfer Agreement is replaced with the following:

"C. Purification Adjustment

The Purification Adjustment shall be made in two stages. The first stage, called Purification Adjustment (Plan Affiliation), shall be made on or before April 15, 1997. The second stage, called Purification Adjustment (Member Data), shall be made on or before December 15, 1998.

C1. Purification Adjustment (Plan Affiliation)

The Purification Adjustment (Plan Affiliation) will equal the Plan Affiliation Transfer Amount rolled forward to December 31, 1995 less \$30,799,235¹. The Plan Affiliation Transfer Amount will be calculated in the same way as the Roll Forward Transfer Amount except as outlined below.

- (a) Split of Debentures and Marketable asset position on December 31, 1992.
 - (i) The OPSEU and Total Net Actuarial Liabilities will be recalculated by Mercer's by January 11, 1997 then verified for reasonableness by the OPT and Government actuaries. These calculations will be based upon the actual active and inactive membership and the actual split between the two

¹ \$30,799,235 assumes no accounts payable adjustment is needed as OPB has paid all outstanding accounts related to the roll forward period.

pension plans.

- (ii) The asset split transfer percentage will be recalculated using the revised actuarial liabilities calculated above and applying the formula provided in the Sponsorship Agreement. This asset split transfer percentage will be used to determine the split of the Final Debentures in the Asset Transfer Agreement.

- (b) Roll Forward activity from January 1, 1993 to December 31, 1994.

As the initial asset split will change as of December 31, 1992, this will have an impact on the split of the unfunded liability payments, the proportionate share of payments which were received in the roll forward period on the Debentures, as well as any of the Roll Forward items that are dependent upon the proportionate share of the asset pools (ie. income/loss on marketable investments (excluding real estate), unrealized gains/losses and investment expenses, etc.). Further, the final plan affiliation data will change the allocation of contributions and entitlement payments in the roll forward period.

C2. Purification Adjustment (Member Data)

The Purification Adjustment (Member Data) will equal the Member Data Transfer Amount less the Plan Affiliation Transfer

Amount, both rolled forward to December 31, 1995. The Member Data Transfer Amount will be calculated in the same way as the Plan Affiliation Transfer Amount, except as outlined below.

(a) Split of Debentures and Marketable Asset position on December 31, 1992.

- (i) The OPSEU and Total Net Actuarial Liabilities will be recalculated by Mercer's by June 1, 1998 then verified for reasonableness by the OPT and Government actuaries. These calculations will be based upon plan member data (eg. data such as a member's date of birth, years of service, salary history and significant pension entitlement related transactions) resulting from the purification project.

The final asset split transfer percentage will be recalculated using the revised actuarial liabilities calculated above and applying the formula provided in the Sponsorship Agreement. The final asset split transfer percentage will be applied to the Debentures and the Marketable Assets, but will be paid in cash by the OPT or the OPB, as the case may be.

(b) Roll Forward activity from January 1, 1993 to December 31, 1994.

As the initial asset split will change as of December 31, 1992, this will have an impact on the split of the unfunded liability payments, the proportionate share of payments which were received in the Roll Forward period on the Debentures, as well as any of the Roll Forward items that are dependent upon the proportionate share of the asset pools (ie. income/loss on marketable investments (excluding real estate), unrealized gains/losses and investment expenses, etc.). Further, the final plan affiliation data will change the allocation of contributions and entitlement payments in the roll forward period.

2. The following provisions of Part D of Schedule "1" to the Asset Transfer Agreement are hereby amended:

- (i) Section D(1)(b) is replaced with the following:

"(b) the value of total plan marketable assets at December 31, 1992 as taken from the audited financial statements after making the following adjustments, **the first four of which are outlined in the Lease Agreement dated September 26, 1994:**

- (i) subtract the net book value of the fixed assets which amounts to \$2,889,000;
 - (ii) add the accounts payable and accrued charges of \$4,042,000;

- (iii) add income tax payable and accrued charges of \$5,202,000;
 - (iv) subtract contributions receivable of \$66,454,000;
 - (v) for the Purification Adjustment (Plan Affiliation) and the Purification Adjustment (Member Data), subtract the transfer amount related to the divestiture of the Community Services in Hastings, Lennox and Addington, as at December 31, 1992 [Note to Draft: Is this the correct legal reference];
 - (vi) for the Purification Adjustment (Member Data), add the buyback receivable as at December 31, 1992, provided that each Plan's buyback receivable as at January 1, 1993 shall be credited against their opening asset position."
- (ii) The second and third paragraphs of Section D(2) are replaced with the following:
- "In calculating the Purification Adjustment (Plan Affiliation) and the Purification Adjustment (Member Data), the interest income and principal payments received on the Debentures will be allocated based on the asset transfer percentage as determined in section 2 of Appendix "C" of the Sponsorship Agreement.

In addition to the **Purification Adjustment (Plan Affiliation)** and the **Purification Adjustment (Member Data)**, the change in the split of the Debentures will also impact the split of the payments that should have been received by each of the Plans subsequent to December 31, 1994. The adjustments required are outlined in Schedule "E" of this Schedule."

- (iii) The second and third paragraphs of section D(10) are replaced with the following:

"In calculating the **Purification Adjustment (Plan Affiliation)** and the **Purification Adjustment (Member Data)**, the asset transfer percentage will be used in applying the methodology outlined specifically in the Sponsorship Agreement (Appendix "C") and the interim payments received on account of the unfunded liability so adjusted.

In addition to the **Purification Adjustment (Plan Affiliation)** and the **Purification Adjustment (Member Data)**, the change in the asset transfer percentage may also impact the split of the payments that should have been received by each of the plans subsequent to December 31, 1994. The adjustment required is dealt with in section "E" of this Schedule."

- (iv) The first paragraph of section D(13) is replaced with the following:

"Operating expenses will be treated on a cash basis in the roll forward period. Consequently, the accruals and accounts payable are being reversed at the beginning of the period. Accruals will be recognized at the end of the period and allocated between the Plans, as appropriate.

When the Purification Adjustment (Plan Affiliation) is settled, any over or under accruals will be credited to the appropriate plan and paid in cash."

3. Section 4.05 of the Asset Transfer Agreement is replaced with the following:

"4.05 Effective on the date of the Purification Adjustment (Plan Affiliation), the New Debentures shall again be surrendered and exchanged for Final Debentures ("Final Debentures") which reflect the percentage of Debentures to be held by each of the OPSEU Fund and the PSP Fund on the date of the Purification Adjustment (Plan Affiliation)."

4. Section 4.07 of the Asset Transfer Agreement is replaced with the following:

"4.07 Upon the issuance of the Final Debentures, and then again upon the making of the Purification Adjustment (Member Data), there shall be an adjustment between the PSP Fund and the OPSEU Fund for payments on the Debentures and interest thereon for the period from 12.01 a.m. of December 19, 1994 to the date of the payment of the adjustments as between the OPSEU Fund and the PSP Fund, which adjustments shall be paid in cash. There shall also be a third adjustment reflecting the application of Roll Forward Methodology set out in Schedule "1" to the first two adjustments. Interest on the payments until October 15, 1996 shall be calculated at the highest guaranteed investment certificate rate payable by the Royal Bank for a period of one year commencing January 1, 1995 (the "GIC Rate"), and interest from October 15, 1996 to the date

of payment shall be calculated at CANSIM series B14045 for the preceding calendar year plus 3%. The adjustments shall be calculated by Price Waterhouse and subject to verification of all the Parties on thirty (30) days' notice, and then paid forthwith after the expiry of the thirty (30) days".

5. Section 5.03 of the Asset Transfer Agreement is replaced with the following:

"5.03 The estimated Transferred Initial Unfunded Liability as of December 31, 1992 shall be adjusted in accordance with the Purification Adjustment (Plan Affiliation) and the Purification Adjustment (Member Data) pursuant to Schedule "1" of this Agreement. Payments shall be made accordingly, with interest payable on any adjustments to unfunded liability payments made from December 31, 1994 to October 15, 1996 calculated at the GIC Rate, and interest on any adjustments to unfunded liability payments after October 15, 1996 at the CANSIM series B14045 rate plus 3%. Thereafter, Ontario shall make payments in respect of unfunded liabilities as adjusted pursuant to this Agreement".

6. Section 8.01 of the Asset Transfer Agreement is replaced with the following:

"8.01 In accordance with Schedule "1" of this Agreement, there shall be two adjustments made subsequent to the Transfer Date as defined in Schedule "1", which adjustments shall be known as the Purification Adjustment (Plan Affiliation) and the Purification Adjustment (Member Data). The Purification Adjustment (Plan Affiliation) shall be made on

or before April 15, 1997, and the Purification Adjustment (Member Data) shall be made on or before December 15, 1998. Interest in respect of such adjustments from the Transfer Date to October 15, 1996 shall be paid at the GIC Rate, and interest in respect of such adjustments after October 15, 1996 shall be calculated at CANSIM series B14045 rate for the preceding calendar year plus 3%.

7. Section 9.01 of the Asset Transfer Agreement is replaced with the following:

"9.01 For purposes of implementing the terms of this Agreement, the parties will meet from time to time and make their best efforts to resolve any issues in dispute. If any payment has not been made by the date stipulated for it in this Agreement the parties shall meet on a weekly basis until the appropriate payment is made. Nothing in this provision restricts any party from initiating the arbitration process set out in section 11.01 with respect to a late payment.

Dated at Toronto, Ontario this day of , 1996.

SIGNED, SEALED AND DELIVERED)
IN THE PRESENCE OF)

Witness)

Witness)

ONTARIO PENSION BOARD

By: _____

By: _____

HER MAJESTY THE QUEEN IN
RIGHT OF THE PROVINCE OF
ONTARIO AS REPRESENTED
BY THE CHAIR OF THE
MANAGEMENT BOARD OF
CABINET

By:

Chair of Management Board of Cabinet

ONTARIO PUBLIC SERVICE
EMPLOYEES' UNION

By:

By:

THE TRUSTEES OF THE OPSEU
PENSION PLAN TRUST FUND

By:

By:

Witness

Witness

Witness

Witness

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AMENDMENT NO. 2 TO THE SPONSORSHIP AGREEMENT

B E T W E E N

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS
REPRESENTED BY THE CHAIR OF THE MANAGEMENT BOARD OF CABINET
("ONTARIO")**

PARTY OF THE FIRST PART

-and-

**THE ONTARIO PUBLIC SERVICE EMPLOYEES' UNION
("OPSEU")**

PARTY OF THE SECOND PART

I. PREAMBLE:

December 31, 1995 Actuarial Valuation of the OPSEU Plan

1. OPSEU and Ontario entered into a Sponsorship Agreement dated April 18, 1994 (the "Sponsorship Agreement") to create the OPSEU Pension Plan. It refers to an actuarial valuation of the OPSEU Pension Plan as of December 31, 1995 and contains provisions governing the application of any net actuarial gains or net actuarial losses shown in that valuation.
2. It is important to both Ontario and OPSEU that the December 31, 1995 valuation be reliable. However, the data to be used by the OPSEU Pension Plan Trust Fund's ("OPT") actuaries in performing the valuation is, as of the date of this Agreement, in the process of being reviewed and corrected as part of a "purification project". This means that a valuation performed with such data may misstate the Plan's actuarial status, and that net actuarial gains or losses may be over or under stated.
3. It is, however, desirable to perform a December 31, 1995 valuation prior to March 31, 1997, or as soon thereafter as possible, in order, among other things, to determine the appropriate level of special payments for the Transferred Initial Unfunded Liability.

4. Accordingly, OPSEU and Ontario agree that the December 31, 1995 actuarial valuation will be performed in May 1997 based on accurate plan affiliation data and the best available plan member data at the time.

Adjustments to the Asset Transfer Because of Corrected Member Data

5. OPSEU, Ontario, the Trustees of the OPT (the "Trustees") and the Ontario Pension Board ("OPB") entered into a Sponsorship Amendment and Asset Transfer Agreement on December 12, 1994 (the "Asset Transfer Agreement"), to govern the transfer of assets from the OPB to the Trustees. The Asset Transfer Agreement was amended and restated on (the "Restated Asset Transfer Agreement").
6. The Restated Asset Transfer Agreement requires an adjustment to the initial asset transfer, known as the Purification Adjustment (Plan Affiliation). The purpose of this adjustment is to redetermine the December 31, 1992 asset split between the two plans, and the appropriate allocation of calendar year 1993 and 1994 income (including gains) and disbursements between the Plans, on the basis of accurate plan affiliation data. The Restated Asset Transfer Agreement does not, however, provide a mechanism for redetermining the December 31, 1992 asset split on the basis of accurate plan member data.
7. Accordingly, the amendment herein provides for adjustments to the December 31, 1992 asset position on the basis of accurate plan member data.

II. GENERAL PROVISIONS

1. In this Amending Agreement, all terms which are defined in the Sponsorship Agreement shall have the same meaning herein unless the context or Amending Agreement otherwise requires.

2. The parties acknowledge and agree that the purposes of this Amending Agreement are:

- (a) to provide for the performance of OPSEU Plan's December 31, 1995 actuarial valuation in May 1997;
- (b) to provide for the performance of an actuarial valuation of the OPSEU Plan as at December 31, 1992 on the basis of accurate plan member data, and for a comparison between the Plan's liabilities disclosed by such valuation and the OPSEU Plan's December 31, 1992 liabilities as disclosed in the actuarial valuation of the PSPP as of December 31, 1992 performed by William M. Mercer on [Date] (the "December 31, 1992 Valuation").

Other than as is expressly provided herein, nothing in this agreement limits, removes or changes any right, claim or obligation provided in the Sponsorship Agreement or Asset Transfer Agreement as those agreements are amended from time to time.

III. AMENDMENTS

1. Ontario and OPSEU agree to amend the Sponsorship Agreement by adding the following:

58a

- (a) The parties agree that the December 31, 1992 Valuation will be restated on the basis of accurate plan member data by Buck Consultants Ltd, or such other entity as may be agreed by Ontario and OPSEU, on or before December 31, 2001 (the "Restated 1992 Valuation"). The Restated 1992 Valuation shall use the same actuarial method and assumptions disclosed in the December 31, 1992 Valuation Report, but shall be performed, subject to paragraph (g), with accurate plan member data.

- (b) In the event that the Restated 1992 Valuation discloses a loss, attributable to accurate plan member data, in comparison with the December 31, 1992 Valuation, the loss shall be accumulated with interest in accordance with paragraph (h) to March 31, 2002 (the "accumulated actuarial loss").
- (c) On each of March 31, 2002 and April 1, 2002, Ontario shall pay a lump sum amount to the OPT equal to one half of the lesser of:
 - (i) 50% of the amount of the accumulated actuarial loss; and
 - (ii) \$20,000,000.
- (d) Ontario shall amortize the balance of the accumulated actuarial loss over six years from March 31, 2002. The interest rate to be applied for the purpose of calculating the stream of special payments shall be the valuation rate of the OPSEU Plan as of December 31, 2001.
- (e) Despite (c) and (d) above, Ontario may make payments to OPT at any time for the purpose of set off against any actuarial loss that may be disclosed in the Restated 1992 Valuation. Where such payment or payments are made, interest for the portion of the actuarial loss that is set off by a payment shall accumulate in accordance with paragraph (h) up to the date of the payment. Despite (b) above, where such payments are made to OPT, the accumulated actuarial loss shall not include any payments made by Ontario under this paragraph or interest on such amount of the actuarial loss that is set off by such payment after the payment or payments are made. Despite (d) above, Ontario may also, after March 31, 2002 prepay a part or all of the special payments set out

in (d) above. Any special payments that remain after any prepayment by Ontario shall be restated at the time of the prepayment, taking into account interest at the rate for such special payments set out in (d) above. In the event that the lump sum prepayment exceeds the amount described in (c), or Ontario's prepayments on account of the special payments exceed the value of the amounts payable under (d), Ontario shall be credited for any such overpayment without interest.

- (f) Any actuarial-gain disclosed by the Restated 1992 Valuation, plus interest to March 31, 2002 calculated in accordance with subsection (h) (the "accumulated actuarial gain"), shall be applied against the outstanding balance as of March 31, 2002, of the Transferred Initial Unfunded Liability to reduce the remaining amortization period, or, if the Transferred Initial Unfunded Liability has already been liquidated or is less than the actuarial gain, then the gain or the amount of the gain in excess of the outstanding balance of the Transferred Initial Unfunded Liability, as the case may be, up to \$20,000,000 for each twelve (12) month. period beginning April 1, 2002 and on each anniversary thereof, shall be applied as directed by Ontario. Interest shall accrue on such amounts of the gain carried forward from year to year after March 31, 2002, at the valuation rate of the OPSEU Plan as of December 31, 2001.
- (g) Ontario shall review and correct all plan member data for OPSEU Plan members as at December 31, 1992, which shall incorporate such plan member data corrections as are provided to Ontario by the OPT. On or before December 31, 2001 Ontario shall provide the OPT with a detailed list of plan member data changes made as at December 31, 1992, such that the calculations required by paragraphs (a) - (e) may be performed.

- (h) For the purposes of this section, interest will be calculated at:
 - (i) the rate of return of the PSP Fund from January 1, 1993 to December 31, 1994, being 13.2% for 1993 and 6.65% for 1994;
 - (ii) the GIC Rate as defined in the Restated Asset Transfer Agreement, being 8.64% from January 1, 1995 to December 31, 1995 and 5.75% from January 1, 1996 to October 15, 1996;
 - (iii) the CANSIM B14045 rate calculated and compounded monthly, from and after October 16, 1996.

58b In this Agreement,

- (a) “plan affiliation data” means data which identifies whether a person was an active or inactive member of the Public Service Pension Plan (“PSPP”) or the OPSEU Pension Plan on December 31, 1992 and between January 1, 1993 and December 31, 1995, whether or not the person was previously identified as a member of either plan;
- (b) “plan member data” means data relevant to the determination of benefits under the plan, including the member’s date of birth, years of service, salary history and significant pension entitlement related transactions;
- (c) “purification project” means a project led by Ontario to obtain accurate payroll data (including plan member data plan affiliation data) for the PSPP and the OPSEU Plan as at December 31, 1992 and for the period January 1, 1993 to December 31, 1994.

2. Ontario and OPSEU agree to amend the Sponsorship Agreement by adding the following:

"65a For purposes of implementing the terms of this Agreement, the parties will meet from time to time and make their best efforts to resolve any issues in dispute. If any payment has not been made as of the date stipulated for it in this Agreement, then the parties shall meet on a weekly basis until the appropriate payment is made. For purposes of clarity, nothing in this provision restricts any party from initiating the arbitration process set out in section 65".

3. In consideration for entering into this Agreement, Ontario shall pay \$50,000 to OPSEU for its reasonable fees, costs and expenses from November 1, 1996 to the date hereof, and to pay \$50,000 to the OPSEU Pension Trust Fund for their expenses. Such payments shall be made within fifteen (15) working days of the execution of the Restated Asset Transfer Agreement between Ontario, OPSEU, the OPT and the Ontario Pension Board

Dated at Toronto, Ontario this 13th day of June, 1997.

SIGNED, SEALED AND DELIVERED)
IN THE PRESENCE OF)


Witness

HER MAJESTY THE QUEEN IN
RIGHT OF THE PROVINCE OF
ONTARIO AS REPRESENTED
BY THE CHAIR OF THE
MANAGEMENT BOARD OF
CABINET

By:


Chair of Management Board of Cabinet

ONTARIO PUBLIC SERVICE
EMPLOYEES' UNION

By: Leah Hul

By: Shirley S.

OPSEU Sponsorship Agreement April 18 1994.pdf

THIS SPONSORSHIP AGREEMENT made as of this 18th day of April, 1994.

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS
REPRESENTED BY THE CHAIR OF THE MANAGEMENT BOARD OF CABINET
("Ontario")

- and -

THE ONTARIO PUBLIC SERVICE EMPLOYEES' UNION
("OPSEU")

A. PREAMBLE

Whereas s. 6 of the Public Service Pension Act, R.S.O. 1990, c.P.48 ("PSPA") permits the Lieutenant Governor in Council to amend the Public Service Pension Plan ("PSPP") to, among other things, establish a separate pension plan for any class or classes of persons who are members of the PSPP and to direct the transfer from the Public Service Pension Fund to any fund related to such separately established pension plan any amount specified to represent the value, as determined by an actuarial valuation, of the pension benefits of persons who will be members of such separately established pension plan; and

Whereas Ontario and OPSEU propose to enter into an agreement pursuant to which a separate pension plan will be established for those members of OPSEU who are now members of the PSPP, which plan will be funded in part by a transfer of assets from the Public Service Pension Fund; and

Whereas Ontario and OPSEU propose that the separate pension plan established for the members of OPSEU who are now members of the PSPP will be jointly managed by Ontario and OPSEU;

Therefore Ontario and OPSEU hereby agree to establish a pension plan on the terms set out below:

B. INTRODUCTION

1. The terms used in this agreement shall have the meanings given to them in the draft Agreement and Declaration of Trust attached hereto as Appendix "A", and the document attached as Appendix "C", and:

- (a) the pension plan established by this agreement will be referred to as the "OPSEU Plan" or the "Plan";
- (b) the OPSEU Pension Fund established by this agreement will be referred to as the "OPSEU Fund" or the "Fund";
- (c) the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended, and all Regulations made thereunder will be referred to as the "PBA";
- (d) the Public Service Pension Act, R.S.O. 1990, c.P.48 will be referred to as the "PSPA", the Public Service Pension Plan established pursuant to the PSPA will be referred to as the "PSPP", and the Public Service Pension Fund established pursuant to the PSPA will be referred to as the "PSPF", provided that, effective as of January 1, 1993, the "PSPP" and "PSPF" will be amended to reflect the amendments made by the Implementing Legislation referred to herein;
- (e) "Factor 80" means the early retirement program described at s. 41 of the PSPP and in the social contract sectoral agreement, and extended to March 31, 2000;
- (f) "Sponsors" means Ontario and OPSEU; and

- (g) in determining any "solvency gain" or "solvency deficiency" of the Plan, solvency assets shall include the present value of future special payments required to liquidate the Transferred Initial Unfunded Liability.
- 2. Ontario and OPSEU agree to establish the Plan and the Fund, in accordance with the terms described herein. The Plan shall be a single employer pension plan.
- 3. The Plan will be a successor pension plan to the PSPP created pursuant to the PSPA.
- 4. The Plan and Fund will be administered and managed by a Board of Trustees, pursuant to an Agreement and Declaration of Trust made between the Sponsors substantially in the form attached hereto as Appendix "A", and which is hereinafter referred to as the "Trust Agreement". The Sponsors shall finalize the terms of the Trust Agreement, which shall be consistent with the terms of this agreement, and shall execute and cause the Trustees to execute the Trust Agreement on October 30, 1994.
- 5. Ontario will enact legislation (the "Implementing Legislation") with respect to certain aspects of the Plan's successorship to the PSPP, and certain aspects of the Plan and Fund. The essential elements of the Implementing Legislation applicable to the Plan are described in Section K of this agreement.
- 6. Each of OPSEU and Ontario acknowledge and agree that they have a collective bargaining relationship with each other that applies to all issues pertaining to the Plan except as otherwise provided by this agreement.
- 7. The Plan and Fund shall be governed by this agreement, the Trust Agreement, the Plan, the Implementing Legislation, the PBA, the Income Tax Act (Canada) ("ITA") and any collective agreement between the parties, as well as any rules and regulations made pursuant to any of these documents. If any provision of

these documents is found to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the documents.

8. OPSEU and Ontario agree that the Board of Trustees of the OPSEU Fund shall not be a Crown agency.

9. OPSEU and Ontario agree that the Plan and the Fund shall be subject to all of the provisions of the PBA, except for those identified in Section K, below.

10. OPSEU and Ontario agree:

- (a) that the Plan and the Fund shall not be exempted from any statutory provision, except those provisions as described in section K; and
- (b) that the Plan and the Fund shall not be made subject to any statutory provision that does not apply generally to pension plans in Ontario except those provisions as described in section K,

except with the consent of OPSEU.

11. Ontario may designate one or more persons to act in Ontario's place under this agreement. OPSEU may designate one or more persons to act in its place under this agreement.

12. The Plan shall be effective as of the 1st day of January, 1993 (the "Effective Date").

13. The Plan and the Fund shall be established on or before the 1st day of January, 1995 (the "Joint Sponsorship Date").

14. If the Trustees advise the Sponsors that a change must be made to the Plan or Fund to comply with any law, then the Sponsors agree that they will meet as soon as possible to discuss such change and will work together in good faith to achieve a resolution with respect to any such required change.

15. Either Sponsor may ask the actuary hired by the Trustees to provide or prepare any information that the Sponsor 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 Sponsors.

16. Either Sponsor may audit the Plan and the Fund at any time at the expense of that Sponsor. The Trustees will cooperate in the audit.

17. Ontario shall make its best efforts to cause the Ontario Pension Board ("OPB") to provide to OPSEU, on or before April 22, 1994, and on an ongoing basis until the transition is complete, disclosure of, and all documentation in relation to:

- (a) any claims or potential claims by or against the OPB or any real estate or resource corporation in which it holds an interest, except for individual claims for Benefits;
- (b) the provision of payroll and related information with respect to OPSEU Plan members provided by Ontario to the OPB;
- (c) the timetable for the development and implementation of PRISM and all other particulars with respect to PRISM;
- (d) contractual relationships with respect to the administration of the PSPP, the custody of the PSPF's assets, the investment of the PSPF's assets, the provision of advice to the OPB or its wholly owned corporations, the retainer of professionals, professional firms or professional corporations;
- (e) all policies and practices used by the OPB in the administration and interpretation of the PSPP;
- (f) an inventory of the operational assets of the OPB, including a physical description of them, their acquisition costs and acquisition dates; and

- (g) an inventory of all investments held directly or indirectly by the OPB, including a description of them, their acquisition costs, their current market values, and any material facts within the knowledge of the OPB that may affect their market or actuarial values.

18. Notwithstanding paragraph 17, Ontario shall cause the OPB to disclose, and provide all documentation in respect of the matters listed in paragraph 17 as of a date that is two weeks after the Implementing Legislation is enacted.

19. This agreement is subject to ratification by OPSEU on or before May 13, 1994.

C. COLLECTIVE BARGAINING

20. The Sponsors may collectively bargain with respect to the Plan and may amend this agreement, the Trust Agreement, the Plan or any Plan documents adopted by the Sponsors, without the agreement of any other employer, trade union or person, provided, however, that no agreement or amendment shall:

- (a) be inconsistent with the purposes of the Trust Fund;
- (b) divert the Trust Fund, or any part thereof, to a purpose other than the provision of benefits for the Plan members;
- (c) authorize the return of contributions or any other assets of the Fund to Ontario or to other Participating Employers unless required by law or as permitted by the PBA in the case of an overpayment pursuant to Section 78(4) thereof, as amended from time to time;
- (d) eliminate the annual audit or restrict the availability of information to the Sponsors;
- (e) provide for the administration of the Plan and the Fund other than by an equal number of Trustees appointed by Ontario and Trustees appointed by OPSEU with each Trustee having equal voting privileges;

- (f) provide for or permit any payment of surplus out of the Fund to Ontario, or any employer participating in the Plan. For greater certainty, the use of actuarial gains to offset Employer Contributions and any going concern unfunded liability or solvency deficiency does not constitute the payment of surplus out of the Fund; or
- (g) remove the right of the Sponsors to appoint Trustees.

21. Collective bargaining agents other than OPSEU that represent members of the Plan may collectively bargain, with those members' employers, with respect to the following types of benefit improvements for those members, provided that the full cost of any such improvements is paid for by the members and the employer covered by the improvement:

- (a) early retirement benefits;
- (b) pensions payable to surviving spouses; and
- (c) disability benefits.

The Sponsors agree to amend the Plan as necessary to provide for such benefit improvements and contribution increases provided that the Trustees are satisfied, on the basis of their Actuary's advice, that the benefit improvement is properly funded.

D. THE TRUST AGREEMENT

22. The powers, duties and responsibilities of the Trustees shall be set out in the Trust Agreement.

23. The Trustees will be responsible for the administration of the Plan and the custody, investment and management of the Fund and all of the matters set out in this agreement or the Trust Agreement.

24. The powers, duties and responsibilities of the Trustees will include the following:

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

and relying reasonably and in good faith upon the opinions or advice of the aforementioned persons;

- (f) to enter into any and all contracts and agreements for carrying out the terms of this agreement, the Trust Agreement and the Plan and for the administration of the Plan and the administration and investment of the Fund and to do all acts as they, in their discretion, may deem necessary and advisable;
- (g) to compromise, settle, arbitrate and release claims or demands in favour of, or against the Plan and Fund, or the Trustees, on such terms and conditions as the Trustees may deem advisable;
- (h) to establish procedures to be followed in filing applications for Benefits and for the furnishing and certification of evidence necessary to establish a right to such Benefits;
- (i) to pay out of the Fund, all real and personal property taxes, income taxes and other taxes of any and all kinds, levied or assessed under existing or future laws, upon or in respect of the Fund or any money, property or securities forming a part thereof;
- (j) to receive payments from any source whatsoever, to the extent permitted by law and this agreement;
- (k) to invest and reinvest such portion of the Fund as is not required for current expenditures, in any type of investments that are permitted by applicable federal and provincial laws and regulations, except that any restrictions on investments set out in the Trustees Act shall not apply, and by the Statement of Investment Policies and Goals established by the Trustees, and to take any and all actions with respect to the holding, buying, selling or exchanging such investments as they, in their sole discretion, may deem appropriate or necessary;

- (l) to hold in uninvested cash, without any liability for interest thereon, such sums as they reasonably deem necessary or advisable for the reasonably current cash requirements of the Fund;
- (m) to exercise all rights or privileges granted by the provisions of any contract entered into by the Trustees with any Insurance Company, Bank, Trust Company, Credit Union or Investment Manager, or Custodian, and to make any alteration, modification, amendment or cancellation of such contract, or to take any other action respecting such contracts which they, in their discretion, may deem necessary or advisable;
- (n) to do all acts, whether or not previously authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder;
- (o) to enter into reciprocal arrangements with other like or similar funds or plans, in such manner and subject to such terms and conditions as the Trustees may deem desirable;
- (p) to delegate any of their administrative powers or duties or such other powers and duties as may be permitted by s. 22(5) of the PBA to any of their agents or employees, in such manner and subject to such terms and conditions as the Trustees may deem necessary or appropriate; provided that such agents or employees report to the Trustees as may be required by them;
- (q) to lease or purchase such lands, premises, materials, supplies and equipment as the Trustees deem necessary or appropriate in the performance of their duties;
- (r) to enter into cost-sharing agreements with OPSEU, any other union, or any other pension or welfare funds to permit the Trustees to share expenses pertaining to the administration of the Fund, provided that any amounts paid by the Fund to OPSEU, any other union, or any

other trust fund, in respect of the above expenses, shall be approved by the auditor of the Fund as being necessary and reasonable; and provided further, that such cost-sharing agreement provide that the Trustees may terminate such agreement at any time, subject to such notice as may be required;

- (s) to incorporate corporations, the shares of which shall be held by or on behalf of the Trustees for purposes of administering the Fund, making investments of the Fund or holding any investment;
- (t) to authorize the preparation of and to file an actuarial valuation in accordance with the PBA and any other governing legislation;
- (u) to approve the actuarial methods and assumptions to be used in the administration of the Plan and used in the actuarial valuations of the Plan, prepared by the Actuary;
- (v) to consult with the Sponsors during the preparation of an actuarial valuation and to make their best efforts to respond to any questions, comments or recommendations of the Sponsors, provided that, the Trustees shall be solely and exclusively responsible for the content of any actuarial valuation filed in accordance with the PBA and any other governing legislation;
- (w) to give a copy of every actuarial valuation prepared for the Trustees to each Sponsor and to give each Sponsor any information requested by it as quickly as possible;
- (x) to have the Plan and the Fund audited every year;
- (y) to prepare a report at the end of every fiscal year describing how the Plan and the Fund have been doing in that year;

- (z) to hold a meeting with both Sponsors at least once each year to explain the annual report to them and to answer any questions they may have about the Plan and the Fund;
 - (aa) to advise the Sponsors in respect of any changes to the Plan that need to be made to comply with any applicable law; and
 - (bb) to advise the Sponsors in respect of changes that the Trustees consider would improve the administration of the Plan.
25. The Board of Trustees shall be comprised of 10 Trustees, 5 of whom shall be appointed by OPSEU, and 5 of whom shall be appointed by Ontario.
26. Each Trustee shall serve at the discretion of the Sponsor that appoints the Trustee.
27. There shall not be any alternate Trustees permitted to act in the place of any of the Trustees.
28. The Trustees shall, from among their number, appoint a Chair and Vice-Chair. The Chair, or in the Chair's absence, the Vice-Chair, shall chair the meetings of the Board. The Chair shall also chair the Administration Committee, and the Vice-Chair shall chair the Investment Committee. The Chair and Vice-Chair shall vote at all meetings of the Board of Trustees or its Committees.
29. The term of the Chair and the Vice-Chair shall be two years.
30. At all times, a Trustee nominated by the Trustees appointed by OPSEU shall be either the Chair or the Vice-Chair, and the other position shall be filled by a Trustee nominated by the Trustees appointed by Ontario. If a Trustee who is Chair or Vice-Chair ceases at any time or for any reason, to be a Trustee, then his or her position shall be filled for the balance of the term, by a Trustee appointed by the same Sponsor. The term of any replacement Chair or Vice-Chair shall be deemed to have commenced at the commencement or deemed commencement of the predecessor Trustee's term.

31. At the end of their first terms, the Chair and Vice-Chair, or their replacements if any, will exchange positions. At the end of their second terms, the Chair and Vice-Chair will cease to hold those positions, and the Trustees shall select a new Chair and Vice-Chair in accordance with paragraphs 28 and 30.

32. Any resolutions of the Trustees, shall require a vote of the majority of the Trustees present, provided that at least one Employer Trustee and one Union Trustee have supported the resolution. The Chair shall not be entitled to a second vote in the event of a deadlock.

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

34. In the event of a deadlock, a further meeting of the Trustees shall be held no later than ten days after the deadlock has arisen for the purpose of resolving the matter in dispute. If the matter is not resolved at such meeting, any five Trustees may require the naming of an eleventh Trustee, who shall cast the deciding vote at the next scheduled or special meeting. The eleventh Trustee shall be one of three persons as shall be determined by the Sponsors from time to time who shall rotate in order between them as determined by the Sponsors, except that if any one of them is unavailable within 30 days of the dispute arising to resolve the matter in dispute, the eleventh Trustee shall pass to the next person, or if such person is not available within 30 days, to the next available person or to such other person as may be agreed by the Sponsors. If the Sponsors cannot agree on an eleventh Trustee, he or she shall be appointed by the Chief Justice of Ontario.

35. The eleventh Trustee shall attend a meeting at which time he or she shall review all relevant documentation and entertain submissions from the remaining Trustees or any group of Trustees with respect to the matter in issue. The eleventh Trustee shall cast a tie-breaking vote and shall make his or her determination within seven days of the meeting at which submissions are made. The decision of the eleventh Trustee shall be final and binding on all other

Trustees, the Sponsors, Participating Employers, Employees and their beneficiaries. The provisions of paragraph 32 shall not apply in respect of any vote utilizing the eleventh Trustee. Upon rendering his or her decision, the eleventh Trustee shall be functus and shall cease to be a Trustee.

36. The reasonable expenses and fees of the eleventh Trustee shall be paid out of the Fund.

E. THE PLAN

37. The Sponsors will adopt a Plan, to be effective January 1, 1993.

38. The Plan shall be the same in all material respects as the PSPP, as it was on April 18, 1994, except that the OPSEU Plan will be modified to be consistent with the terms of this agreement. These modifications shall include the following:

- (a) Ontario may proceed to amend the PSPP in accordance with the list of "housekeeping amendments" attached as Appendix "B" to this agreement;
- (b) subsections 7(3), (4), (5), and (7) of the PSPP shall be deleted;
- (c) the provisions of this agreement with respect to the Plan's membership, and the transfers of bargaining units or acquisitions of bargaining rights, if any, shall apply;
- (d) the provisions of this agreement with respect to contributions, actuarial gains, actuarial losses, solvency deficiencies and the initial unfunded liability, shall apply;
- (e) Factor 80 benefits shall be provided under the Plan to March 31, 2000 for all Plan Members;
- (f) the Plan shall provide that no amount of surplus shall be paid out of the Fund to Ontario or any Participating Employer.

39. OPSEU Plan Members shall be:

- (a) effective as of the later of January 1, 1993 and the date of the commencement of their employment with a Participating Employer, persons who are:
 - (i) civil servants within the meaning of the Public Service Act and are employed in a designated bargaining unit, for the purposes of section 22 of the Crown Employees Collective Bargaining Act,
 - (ii) employed by agencies, boards, commissions, foundations or organizations established by an Act of the Legislature that were designated by the order of the Lieutenant Governor in Council as one whose employees in that class were required to be members of the PSPP on December 31, 1992 or in a class that would have been required to be members of the PSPP at any time up to and including December 31, 1994, and are employed in a bargaining unit that was represented by OPSEU on January 1, 1993 or that was represented by OPSEU at any time thereafter;
 - (iii) employed by Go Transit ("GO"), and in a bargaining unit represented by the Amalgamated Transit Union ("ATU") Local 1587 on that date, provided that the ATU consents to the participation of these employees in the OPSEU Plan by notice in writing to the Sponsors on or before May 13, 1994;
 - (iv) employed by the Liquor Control Board of Ontario ("LCBO") or the Liquor License Board of Ontario ("LLBO"), and in a bargaining unit represented by the Ontario Liquor Board Employees' Union ("OLBEU") on that date, provided that the OLBEU consents to the participation of these employees in the OPSEU Plan by notice in writing to the Sponsors on or before May 13, 1994;

- (v) employed by the Metropolitan Toronto Housing Authority ("MTHA"), and in a bargaining unit represented by the Canadian Union of Public Employees ("CUPE") Local 767 on that date, provided that CUPE consents to the participation of these employees in the OPSEU Plan by notice in writing to the Sponsors on or before May 13, 1994; and
 - (vi) employed by the Ontario Housing Corporation ("OHC"), and in a bargaining unit represented by CUPE Local 3096 on that date, provided that CUPE consents to the participation of these employees in the OPSEU Plan by notice in writing to the Sponsors on or before May 13, 1994.
- (b) persons to whom subsection (1) does not apply, and who had elected to be members of the PSPP prior to January 1, 1993, or who filed an election with the OPB or were eligible to file an election with the OPB pursuant to s. 2(2)(b) of the PSPP after December 31, 1992, and are employed by Ontario under the Public Service Act in a bargaining unit represented by OPSEU, or by any agency, board, commission, foundation or organization established by an Act of the Legislature in a bargaining unit represented by OPSEU, the OLBEU, ATU, Local 1587, CUPE Local 767 or CUPE Local 3096.

40. The Sponsors agree to discuss in good faith the future membership of the Plan and the acquisition of bargaining rights to discuss whether employees of employers who are not Ontario Crown agencies, boards and commissions should become members of the Plan and, if so, the terms of such membership.

41. The Plan may be amended only by agreement in writing between OPSEU and Ontario.

F. INTERIM ADMINISTRATION OF THE PLAN

42. The OPB shall administer the Plan and manage the Fund as administrator, as that term is used in the PBA, subject to this agreement and subject to the Implementing Legislation, until January 1, 1995, or such other date as may be determined by the Sponsors.

43. (1) Subject to any agreement reached pursuant to subsection (2), the OPB shall be the agent of the Sponsors for the purposes of effecting the transition from the PSPP and the PSPF to the Plan and the Fund and, in particular:

- (a) the OPB shall cooperate with the Trustees to effect the transfer of the Plan and the Fund as contemplated by this agreement;
- (b) the OPB shall provide the Sponsors and the Trustees, or such persons as they may designate, with copies of all documents, information, data and software that are in the possession or within the power or under the control of the OPB that the Sponsors and Trustees may reasonably require for the purpose of establishing or administering the OPSEU Plan and establishing and managing the Fund;
- (c) the OPB shall permit such observers as may be specified by either Sponsor to attend at any meeting of the OPB, or any of its Committees, or any of its wholly owned corporations that relates to the administration or investment of the Plan or the Fund;
- (d) the OPB shall provide access to such inspectors or auditors as may be specified by either Sponsor to all of its books, records, documents, agreements, data bases and computer hardware and software, and all of the books, records, documents, agreements, data bases and computer hardware and software of any corporation wholly owned by the OPB;
- (e) from the effective date of this agreement to the Joint Sponsorship Date, or such other date as the Trustees assume all administrative and investment functions with respect to the Plan, the OPB shall:

- (i) incur only those expenses or make those capital purchases with respect to the Plan as are necessary to administer the Plan and manage the Fund until the transition is complete;
 - (ii) not contract for any goods or services of any kind whatsoever in respect of the Plan having the cost in excess of \$15,000.00 without the consent of the Sponsors; and
- (f) On January 1, 1995, or such later date as may be specified by the Trustees, all administrative and investment functions with respect to the Plan shall be assumed directly by the Trustees, or by such agents as they may designate.

(2) Each of OPSEU and Ontario shall use their best efforts to negotiate with each other and with the OPB concerning the transfer to the OPSEU Plan of software and data and such other matters as the Sponsors may agree; provided, however, that if a unanimous agreement is not reached, any of OPSEU, Ontario and the OPB may refer the issue to an expedited final and binding arbitration, in which the Mississauga Pensions Group of Price Waterhouse Limited ("Price Waterhouse") (or such member of that group as Price Waterhouse may designate) shall act as arbitrator. The Arbitrations Act, 1991, shall not apply to any such arbitration. The Sponsors will agree on an expedited arbitration procedure which will be made binding upon the OPB. The Sponsors agree that Price Waterhouse shall not be prevented from acting by reason of any conflicts of interests and this provision shall be made binding upon the OPB.

44. For the purposes of effecting this transition, the Sponsors shall act through transition teams. OPSEU's transition team shall consist of Heather Gavin, Shirley McVittie, Len Hupet, Leah Casselman, Grant MacGillivray and Paul Lane. Ontario will name its transition team by April 19, 1994. Both Sponsors reserve the right to alter the composition of their transition teams from time to time.

45. Each Sponsor shall have the right to retain such advisors as are reasonably necessary to effect this transition in a prudent manner. The costs of each Sponsor's advisors, and all disbursements, shall be paid from the Fund. Employees

of Ontario on Ontario's transition team shall be paid by Ontario. The members of OPSEU's transition team shall be granted time off with pay pursuant to Article 28 of the Collective Agreement between OPSEU and Ontario from April 11, 1994 to January 1, 1995. In addition, Ethel LaValley, Gus Collins and Noreen Angus will be provided time off with pay pursuant to Article 28 of the Collective Agreement from April 11, 1994 to May 20, 1994, inclusive.

46. Ontario's transition team will report to the Secretary of the Management Board of Cabinet. OPSEU's transition team shall report to the President of OPSEU.

G. PAYROLL DATA

47. (a) For the purposes of this section, the term "payroll data" shall mean all information in any manner relevant to Plan Members' employment and entitlement to salary and benefits, and shall include, but shall not be limited to, employees' full names, addresses, birthdates, Social Insurance Numbers, start dates, spouses, beneficiaries, wages, benefits, seniority and termination dates.
- (b) Ontario shall, on or prior to the Joint Sponsorship Date, provide to the Trustees all payroll data respecting Plan Members. The payroll Data shall be accurate. It shall be accessible to the Trustees for the purpose of establishing and administering the Plan and managing the Fund.
- (c) Commencing on or before the Joint Sponsorship Date, Ontario and each Participating Employer will provide and continue to provide, to the Trustees, all changes to their payroll data respecting Plan Members, including, but not limited to, all new hirings, salary and benefit alterations, name changes, changes in marital status, beneficiary changes, terminations and address changes. Such payroll data changes shall be provided forthwith as they occur.
- (d) All payroll data required to be provided to the Trustees will be provided on a without cost basis.

H. TRANSFER OF ASSETS OF PSPF AND SPECIAL FUNDING

48. As of the Effective Date:

- (a) all the obligations for benefits with respect to the OPSEU Members will be transferred from the PSPP to the Plan; and
- (b) in consideration of the transfer of obligations, the portion of the assets of the PSPP equal to the Transferable Assets will be assumed by the Plan.

49. Ontario will undertake to pay the pro-rata share of special payments established for the purposes of the PSPP to the Plan to liquidate the Transferred Initial Unfunded Liability assumed by the Plan.

50. The Transferable Assets will be placed in a separate account under the PSPF as of the Effective Date. The separate account will be adjusted between the Effective Date and the Joint Sponsorship Date for all the customary transactions on an accrual basis including Plan Members' contributions and Ontario's matching employer and special contributions (subject to the contribution reductions described in paragraphs 52 and 53), any benefit payments with respect to Plan Members, administration expenses related to the operation of PSPP and the Public Service Pension Fund with respect to Plan Members, expenses for the set up of the Plan and the Fund, interest, dividends, capital gains or losses (realized and unrealized), principal repayments with respect to the Transferable Assets and any other receipts or payments attributable to the Transferable Assets or Plan Members' obligations. As of the Joint Sponsorship Date, an amount of assets equal to the balance of the separate account will be transferred from the PSPF to the Fund. The transfer of assets will be in kind and not in cash, to the extent possible.

51. Upon the transfer of assets from the PSPF to the Fund described in paragraph 50, the PSPP will be discharged of all obligations with respect to any benefits related to OPSEU Members and assumed by the Plan.

52. Ontario shall reduce the special contributions and then the matching employer contributions otherwise required from Ontario under the Plan for the period April 1, 1994 through March 31, 1997 in the amounts that are the greater of (a) and (b) where :

- (a) is the appropriate amount from the following table:
 - (i) April 1, 1994 to March 31, 1995: \$130 million;
 - (ii) April 1, 1995 to March 31, 1996: \$131 million; and
 - (iii) April 1, 1996 to March 31, 1997: \$131 million; and
- (b) for each year commencing on or after April 1, 1994 and ending March 31, 1997 equals the sum of (i) and (ii), prior to the contribution reductions provided herein, where:
 - (i) is the amount of special contributions otherwise payable by Ontario for the Transferred Initial Unfunded Liability for the year; and
 - (ii) is the amount calculated for the year under subparagraph (iii);
 - (iii) is the appropriate amount from the table below multiplied by the proportion described in subparagraph (iv):
 - April 1, 1994 to March 31, 1995: (\$312 minus \$123) million;
 - April 1, 1995 to March 31, 1996: (\$315 minus \$130) million; and
 - April 1, 1996 to March 31, 1997: (\$315 minus \$137) million;
 - (iv) is the proportion obtained from the formula $(A/B + .008)$ where:

- A equals OPSEU Members' contributions to the PSPP; and
- B equals all members' contributions to the PSPP,

for the year commencing after December 31, 1992 as calculated by the Board Actuary on the basis of the data upon which the Actuarial Report was prepared.

53. Ontario and the Members of the Plan will further reduce their contributions to the Plan as follows:

- (a) a reduction shall be made in each Member's contribution equal to 1% of salary for the period April 1, 1994 to March 31, 1997;
- (b) a reduction shall be made in the matching employer contribution required from Ontario equal to 1% of members' aggregate salaries for the period April 1, 1994 to March 31, 1995; and
- (c) a reduction shall be made in an amount equal to the aggregate special payments required to amortize any unfunded liability with respect to Factor 80 by March 31, 1997.

54. Any net actuarial gains remaining as at December 31, 1995, as determined by an actuarial valuation as of that date, after recognizing the reductions described in paragraphs 52, and 53, such net actuarial gains to be accumulated with interest at the valuation rate of interest to March 31, 1997 will be applied to reduce the remaining amount of the Transferred Initial Unfunded Liability as of March 31, 1997. Ontario's special contribution requirements will be restated over the period April 1, 1997 through December 1, 2029, in order to liquidate the resulting balance of the Transferred Initial Unfunded Liability over that period.

55. Any net actuarial losses remaining as at December 31, 1995, as determined by an actuarial valuation as of that date, after recognizing the reductions described in paragraphs 52, and 53, such net actuarial losses to be accumulated with interest at the valuation rate of interest to March 31, 1997 will be liquidated through

future additional contributions from Ontario and the members as collectively bargained.

56. Any net actuarial gains remaining as at December 31, 1995, as determined by an actuarial valuation as of that date, after recognizing the effect of paragraphs 52, 53, and 54, and any actuarial gains disclosed under an actuarial valuation prepared as of December 31, 1996, all such actuarial gains to be accumulated with interest at the valuation rate of interest to March 31, 1997, and any actuarial gains disclosed under an actuarial valuation prepared as of a date after March 31, 1997, will be utilized in the following order:

- (a) until the Transferred Initial Unfunded Liability is fully liquidated:
 - (i) 50% of the gain shall be used to reduce the remaining Transferred Initial Unfunded Liability and the period of amortization over which the Transferred Initial Unfunded Liability is to be fully liquidated shall be adjusted to reflect the reduction; and
 - (ii) 50% of the gain shall be used for the benefit of Plan Members;
- (b) after the Transferred Initial Unfunded Liability is fully liquidated, 100% of the remaining gains shall be used for the benefit of the Plan Members subject to the PBA until the aggregate gains so utilized equal the amount utilized under paragraph 54;
- (c) thereafter, the remaining gains shall be used equally for the benefit of Ontario and OPSEU subject to the following:
 - (i) 50% of the gain or such other amount as may be collectively bargained shall be used for the benefit of Ontario, to be applied against any special payments required to be made by Ontario and thereafter to reduce Ontario's normal costs; and

- (ii) 50% of the gain or such other amount as may be collectively bargained shall be used for the benefit of Plan Members.

57. Subject to the Income Tax Act (Canada), actuarial gains may be used to establish rate stabilization funds. Actuarial gains for the benefit of Plan Members under paragraph 56 may be used to establish a rate stabilization fund for the benefit of the Members. Actuarial gains for the benefit of Ontario under Section 56(c)(i) may be used to establish a rate stabilization fund for the benefit of Ontario.

58. In the event of any actuarial loss or solvency deficiency, contributions by the Members and Ontario shall be increased in equal amounts to liquidate the actuarial loss or solvency deficiency in accordance with the PBA. The contribution increase will be automatic, and effective as of the first day of January of the year after the actuarial valuation was filed, or such earlier date as may be required by the PBA; provided that no contribution increase will be provided for any actuarial loss or solvency deficiency prior to April 1, 1997, and provided further that the Members, and Ontario, may provide for their payments in respect of such actuarial loss or solvency deficiency from their rate stabilization funds, at their option.

I. COSTS OF THE SUCCESSORSHIP

59. The reasonable costs incurred by the Sponsors, between March 28, 1994 and the date on which the Trustees assume all administrative and investment functions with respect to the OPSEU Plan and the OPSEU Fund, other than costs in respect of their own officers and employees, shall be paid from the Fund.

60. The reasonable costs incurred by the Trustees, between the date of their appointments and the date on which the Trustees assume all administrative and investment functions with respect to the Plan and the Fund, shall be paid from the Fund.

J. TIMETABLES

61. The Sponsors shall make their best efforts to complete the following things on or before the following dates:

Action:	Date:
Finalize sponsorship agreement	April 18, 1994
Execute sponsorship agreement	April 18, 1994
Name transition team	April 19, 1994
Finalize trust agreement	April 22, 1994
Disclosure by OPB	April 22, 1994
Draft plan text to OPSEU	April 29, 1994
Draft plan text finalized and adopted	May 18, 1994
Ratification	May 13, 1994
Sponsors appoint trustees	October 29, 1994
Execute trust agreement	October 30, 1994
Trustees adopt statement of investment goals and policies	October 30, 1994
Plan text filed with PCO and with Revenue Canada	Within 2 weeks of enactment of legislation
Plan manager appointed	Within 2 weeks of enactment of legislation
Plan manager hires team	August 30, 1994
Appointment of actuary, auditor,	October 30, 1994

lawyer, custodian, investment
managers

Office space, furnishings, supplies January 1, 1995
in place

Trustees' employees in place January 1, 1995

Assets transferred to OPSEU Fund January 1, 1995;

K. IMPLEMENTING LEGISLATION

62. To give effect to the terms of this agreement, Ontario will make its best efforts to implement by legislation, regulation or order in council as follows:

(a) Transitional Matters:

- (a) to continue the PSPP as the pension plan for the members of the PSPP who do not become members of the OPSEU Plan;
- (b) to provide for the registration of amendments to the PSPP by the Superintendent of Pensions;
- (c) to provide for the transfer of assets and liabilities from the PSPP and from the Public Service Pension Fund to the OPSEU Plan and Fund in accordance with this agreement;
- (d) to provide that the amendments to the PSPP contemplated by this agreement do not constitute an adverse amendment under s. 26 of the PBA requiring notice to members;
- (e) to provide for the registration of the OPSEU Plan by the Superintendent of Pensions;

- (f) to provide for the payment by Ontario of special payments and matching contributions into the OPSEU Fund for the period April 1, 1994 to March 31, 1997 in accordance with this agreement;
 - (g) to provide that no new obligation to make special payments into the Fund shall be created for the period up to and including March 31, 1997;
 - (h) to provide for the payments out of the Fund in accordance with Section I;
 - (i) to require the OPB to transfer the Transferable Assets in the separate account from the PSPF to the Fund as of the Joint Sponsorship Date, with such assets to be determined by the Sponsors, provided that the Fund shall receive, to the extent possible, a pro rata share of investments in each class and category of investments held by the PSPF;
- (b) Exemptions of the OPSEU Plan from the PBA and Other Statutory Matters:**
- (j) to provide that the liquidation of the initial unfunded liability described in ss. 8 to 10 of the PSPA is solely the responsibility of Ontario;
 - (k) to provide that the portion of the initial unfunded liability described in ss. 8 to 10 of the PSPA that is assumed by the OPSEU Plan will continue to be liquidated through a series of special payments over 40 years as described in s. 10 of the PSPA; for greater clarity, the initial unfunded liability shall be liquidated in accordance with this agreement and not in accordance with s. 11 of the PSPA;
 - (l) to provide that notwithstanding the PBA and the regulations thereunder, the receipt and holding by the Board of Trustees of debentures issued under s. 7 of the PSPA shall not be considered to be imprudent or unreasonable or contrary to the PBA and regulations thereunder, and the nature, amount and terms of the debentures may

be taken into account by the Board of Trustees and any committee of the Board of Trustees in determining future investments of the assets of the OPSEU Plan, and to exempt the OPSEU plan from the provisions of ss. 22(1) and s. 62 of the PBA to this extent only;

- (m) to exempt the OPSEU Plan from the provisions of s. 5 of the Regulations of the PBA with respect to the funding of the initial going concern unfunded liability only;
- (n) to exempt the OPSEU Plan and the PSPP from the provisions of s. 19(7) of the Regulations of the PBA with respect to subsequent transfers between the two plans of bargaining units;
- (o) to provide that the costs of the Factor 80 program (as set out in s. 41 of the PSPP) will be paid out of the Public Service Pension Fund and out of the Fund;
- (p) to provide for the application of actuarial gains in the OPSEU plan as described in Section H of this Agreement;
- (q) to require those Ontario Crown agencies, boards and commissions who employ members of OPSEU to be participating employers of the OPSEU Plan as defined in the Trust Agreement;
- (r) to provide for the status of the OPSEU Plan as described in paragraphs 2 and 8, above;
- (s) to provide for the transfer of bargaining units and groups of members between the OPSEU Plan and the PSPP in accordance with this agreement;
- (t) to require that in the preparation of any actuarial valuation report the actuary will prepare the report in accordance with the requirements of the Implementing Legislation, using assumptions appropriate for the Plan and methods consistent with sound principles established by

precedent and common usage within the actuarial profession and otherwise in accordance with the PBA;

- (u) to provide that employees of the OPSEU Fund may be members of the OPSEU Plan; and
- (v) to bind the Ontario Pension Board (the "OPB") and the PSPP to comply with the terms of this agreement.

63. To the extent possible, Ontario intends to implement the Implementing Legislation through one bill.

64. The legislation referred to in Section K may be reviewed in draft form by OPSEU's lawyer, actuary, Heather Gavin and Len Hupet, at the offices of Ontario's legal counsel, provided that OPSEU will not be permitted to retain a copy of the draft legislation.

L. ENFORCEMENT

65. Any dispute with respect to the interpretation or application of this agreement or the terms of any other agreement or document that the Sponsors must execute pursuant to this agreement, may be referred by either Sponsor to final and binding arbitration. Either of the parties may notify the other in writing of its desire to submit a difference or dispute to arbitration and the notice shall contain the name of the first party's appointment to an Arbitration Board. The recipient of the notice shall within five (5) days inform the other party of the name of its appointee to the Arbitration Board. The two (2) appointees so selected shall, within five (5) days of the appointment of the second of them, appoint a third person who shall be the Chairperson. If the recipient of a notice fails to appoint an arbitrator, or if the two appointees fail to agree upon a Chairperson within the time limit, either party may request that the appointment shall be made by the Chief Justice for Ontario. For greater certainty, no decision of the arbitrator can impose any additional financial burden or obligation on any of the sponsors, the OPB or the PSPP that is not agreed to as part of this agreement or otherwise agreed to between the parties.

M. MISCELLANEOUS

66. Upon proclamation of the Implementing Legislation, OPSEU will withdraw, with prejudice (but without any admission that such proceedings were not meritorious) and without costs, all legal proceedings commenced on or before April 18, 1994, concerning the establishment and administration of the PSPP.

67. The OPSEU Plan and Fund will not assume any costs associated with any rate stabilization fund that may be established for the PSPP.

68. Each of the parties hereto agrees to promptly do, make, execute, deliver or cause to be done, made, executed or delivered all such further acts, documents and things as may reasonably be required for the purpose of giving effect to this agreement, whether before or after the Joint Sponsorship Date.

IN WITNESS WHEREOF the parties hereto have hereunto executed this Sponsorship Agreement at Toronto, Ontario, on the 18th day of April, 1994.

FOR OPSEU

Thrupel.

Leaf bud

glema bol

Q. Mattie

Feather Lawn

FOR ONTARIO:

Ambesee

Kari Wel

Jennifer Brown

10/10/10

APPENDIX "B"

OUTSTANDING TECHNICAL/HOUSEKEEPING
AMENDMENTS TO PSPP

March 31, 1994

- **Amend Section 8:**
 - To clarify where a leave of absence is for:
 - more than one month: the member may contribute and receive credit for service;
 - one month or less: contributions are required, and credit is automatic.
 - To limit the length of credited service for leaves of absence for a member to 5 years, and to an additional 3 years for pregnancy/adoption of child. The limitation is required by the *Income Tax Act*, and has been in effect since January 1, 1992.
- **Revoke Section 9 of the Plan:**
 - The *Income Tax Act* does not permit a plan to bridge a member to retirement after the member is terminated from employment.
- **Amend Section 11:**
 - reflect the conditions that Revenue Canada require in the case of buybacks with a prior employer
- **Amend section 13:**
 - to permit the designation of a refund recipient. This would tie in with a requirement under the Same-sex spouse supplementary plan that a member designate the same-sex spouse as the refund recipient under the Plan. The purpose is to ensure that the total outlays for same-sex situations do not exceed those for similarly situated other-sex situations. [Similar amendments will be required in other parts of the plan]
- **Amend section 14:**
 - reflect the limitations on the payment of disability pensions stipulated under the *Income Tax Act*. Related amendments will be required in other parts of the plan.
- **Amend section 19:**
 - clarify that when a former member who is pre-deceased by his/her spouse dies, and the member has eligible children, that the spousal pension is payable to the children
- **Amend section 26:**
 - clarify that where a pensioner is re-employed and commences to contribute to the plan, that the payment of the pension ceases

- **Amend section 27:**
 - add the term "surrender" to the list of prohibited transactions. This requirement was brought to the attention of the Ontario Pension Board by Revenue Canada.

APPENDIX "C"

1. Definitions:

- (a) "Actuarial Report" means the report on the actuarial valuation of the Ontario Public Service Pension Plan as at December 31, 1992 prepared by William M. Mercer Limited and dated February, 1994;
- (b) "Board Actuary" means William M. Mercer Limited;
- (c) "Debentures" means the special provincial debentures held under the Public Service Pension Plan as at December 31, 1992 and described in Appendix 5 of the Actuarial Report including accrued interest on the debentures;
- (d) "Government Actuary" means the Chief Actuary, Ontario Management Board Secretariat;
- (e) "Marketable Assets" means all securities, instruments and assets, other than the Debentures, held under the Public Service Pension Plan as at December 31, 1992, including receivables and fixed assets;
- (f) "Net Actuarial Liability" means the sum of the value of future benefits in respect of former members and active members less the value of future contributions of employees and the employer as at December 31, 1992, as described in the valuation balance sheet included on page 29 of the Actuarial Report;
- (g) "OPSEU Actuary" means an actuary or a firm of actuaries appointed by OPSEU for the purposes of this Appendix C;
- (h) "OPSEU Net Actuarial Liability" means the portion of the Net Actuarial Liability that pertains to OPSEU members based on the data with respect to the OPSEU Members and the members of the PSPP as included in the Actuarial Report, as calculated by the Board Actuary

and verified for overall reasonableness by the Government Actuary and the OPSEU Actuary; and

- (i) for the purposes of this Appendix "C" and Section H only, "OPSEU Members" means persons described in paragraphs 39 (a) and (b) who were members of the PSPP on December 31, 1992.

2. Transferable Assets:

The percentage of each of the two classes of assets, namely the Debentures and the Marketable Assets, that will constitute Transferable Assets as of the Effective Date will be the product of (a) and (b) below, where:

- (a) is the percentage obtained by dividing the OPSEU Net Actuarial Liability by the Net Actuarial Liability; and
- (b) is $1 + (1.4 / 27.6)$

3. Transferred Initial Unfunded Liability:

- (a) The Transferred Initial Unfunded Liability of the Plan as of December 31, 1992 equals (i) plus (ii) minus (iii) below, where:
 - (i) is OPSEU Net Actuarial Liability;
 - (ii) the percentage in s. 2(a) above multiplied by the provision for actuarial expenses set forth in the balance sheet on page 29 of the Actuarial Report; and
 - (iii) is the actuarial value of the Transferable Assets using the methods described in the Actuarial Report as calculated by the Board Actuary and verified for overall reasonableness by the Government Actuary and the OPSEU Actuary.
- (b) The special payments that Ontario undertakes to pay to the Plan will be the pro-rata share of the special payments established under the PSPP

remaining as of December 31, 1992 as described in the Actuarial Report. The pro-rata share equals (i) divided by (ii), below, where:

- (i) is the Transferred Initial Unfunded Liability of the Plan described in sub-paragraph 3(a) of this Schedule; and
- (ii) is the value of remaining payments against initial unfunded liability less the experience gain, both as stated in the valuation balance sheet included on page 29 of the Actuarial Report.

Trust Agreement.pdf

AGREEMENT AND DECLARATION OF TRUST
OF
OPSEU PENSION PLAN TRUST FUND
MADE AS OF THE 25TH DAY OF OCTOBER, 1994

THIS AGREEMENT AND DECLARATION OF TRUST made as of this 25th day of October, 1994.

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO AS REPRESENTED BY THE CHAIR
OF THE MANAGEMENT BOARD OF CABINET

("Ontario")

OF THE FIRST PART

- and -

THE ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

("OPSEU")

OF THE SECOND PART

- and -

THE TRUSTEES OF THE OPSEU PENSION PLAN TRUST FUND

(hereinafter the "Trustees")

OF THE THIRD PART

WHEREAS OPSEU and Ontario have established the OPSEU Pension Plan (the "Plan") for certain members of the Public Service Pension Plan who are employed by Ontario and by Ontario Crown agencies, boards and commissions;

AND WHEREAS Ontario and OPSEU (collectively, the "Sponsors") wish to provide for the creation of a Board of Trustees to administer the Plan and to administer and invest the OPSEU Pension Plan Trust Fund in accordance with the provisions of the *Pension Benefits Act*, R.S.O. 1990, as amended ("PBA") and the terms of the Sponsorship Agreement dated April 18, 1994 between the Sponsors (the Sponsorship Agreement");

NOW THEREFORE in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

ARTICLE I - RECITALS

1.01 The parties acknowledge and agree that the recitals contained herein are true in substance and in fact.

ARTICLE II - DEFINITIONS

2.01 "Actuary" shall mean the person or firm appointed as such, from time to time, by the Trustees and who is, or one of whose employees is, a Fellow of the Canadian Institute of Actuaries.

2.02 "Agreement and Declaration of Trust" or "Agreement" shall mean this instrument, including any amendments or modification thereof.

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

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

2.05 "Contributions" shall mean sums of money paid or payable to the Trust Fund in an amount and manner set out in the Plan:

- (a) by a Participating Employer, pursuant to applicable legislation, the Plan, a Collective Agreement or other agreement requiring employer contributions to the Plan;
- (b) by any Member pursuant to applicable legislation, the Plan, a Collective Agreement or other agreement requiring employee contributions to the Plan;
or
- (c) pursuant to any reciprocal agreement.

2.06 "Collective Agreement" shall mean any written collective agreement by and between a union with collective bargaining rights for members of the Plan, and a Participating Employer, which provides, among other things, for Contributions to this Fund, with any amendments, supplements, modifications thereto or renewals thereof.

2.07 "Eligibility Requirements" shall mean the rules, regulations and procedures established, from time to time, by the Trustees for determining the eligibility, or the discontinuance of eligibility, for Benefits, in accordance with the Plan.

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

2.09 "Member" means a member of the Plan, as defined in the Plan.

2.10 "Participating Employer" shall mean Ontario and such Ontario Crown agencies, boards, commissions, foundations or organizations established by an *Act* of the Legislature that employ Members and such other employers that employ Members as set forth in the Plan or the Sponsorship Agreement or as may otherwise be determined by the Sponsors.

2.11 "Plan" shall mean the OPSEU Pension Plan, as amended from time to time, which Plan shall be registered and subject to the Sponsorship Agreement, and shall comply with the *PBA* and all Regulations made thereunder, subject to any exemptions under the *OPSEU Pension Act*, 1994, and the *Income Tax Act* (Canada) ("ITA"), or successor legislation thereto.

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

2.13 "Sponsorship Agreement" shall mean the Sponsorship Agreement made as of the 18th day of April, 1994 between Ontario and OPSEU, as amended from time to time.

2.14 "Trustees" or "Board of Trustees" shall mean 10 persons designated from time to time as Trustees, pursuant to the provisions of the Sponsorship Agreement and/or this Agreement.

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

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

ARTICLE III - ESTABLISHMENT OF THE TRUST FUND

3.01 The Plan and the Trust Fund are established as successor pension plan and trust fund to the Public Service Pension Plan and Public Service Pension Plan trust fund and the Trustees shall at all times act as Trustees of the said Plan and Fund to be known as the "OPSEU Pension Plan Trust Fund". The Trustees shall jointly hold all property, enter into contracts and act in all matters on behalf of the Trust Fund, subject to the provisions of this Agreement. The title to all assets of the Trust Fund shall be jointly vested in and remain exclusively with the Trustees, except as otherwise provided herein.

3.02 The Trust Fund is created, established and maintained, and the Trustees agree to receive, hold, administer and invest the Trust Fund, for the purpose of providing such Benefits as may be approved in accordance with the Plan, as amended from time to time.

3.03 All payments into the Trust Fund made from time to time to the Trustees, together with any income or accretions thereon, shall constitute a trust fund to be administered and invested by the Trustees in accordance with the terms of this Agreement and the Plan.

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

3.05 Subject to the Plan and any applicable legislation, no monies, property or equity of any nature whatsoever, in the Fund, or policies or Benefits or monies payable therefrom, shall be subject in any manner by any Member or person claiming through such Member or, otherwise, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, garnishment, execution, mortgage, lien or charge.

3.06 None of the parties hereto, nor any Participating Employer or Member shall be liable or responsible for any debts, liabilities or obligations of the Trustees, except as set out in this Agreement.

ARTICLE IV - THE PLAN TEXT

4.01 The Plan shall be administered by the Trustees in accordance with the provisions of this Agreement and the Plan text.

4.02 Subject to the terms of the Sponsorship Agreement, the Sponsors may amend the Plan from time to time.

4.03 The Trustees shall have no power to amend either the Plan or this Agreement.

ARTICLE V - THE TRUSTEES

5.01 Subject to Article VII, the Trust Fund and the Plan shall be administered by a joint Board of Trustees having ten members. For greater certainty, there shall not be any alternate Trustees permitted to act in the place of any of the Trustees.

5.02 Five of the Trustees shall be appointed by Ontario and shall be hereinafter referred to as the "Employer Trustees". Five of the Trustees shall be appointed by OPSEU and shall be known as the "Union Trustees".

5.03 In the event that any party declines to appoint a Trustee, such persons shall be appointed, in the case of a Union Trustee, by a majority of the remaining Union Trustees and in the case of an Employer Trustee, by a majority of the remaining Employer Trustees.

5.04 Each Trustee, upon the execution of this Agreement, or in the case of a successor Trustee, after signing an Acceptance of Trusts in the form set forth in Schedule A attached hereto, shall be deemed to accept the trusts created and established by this Agreement and to consent to act as a Trustee.

5.05 Each Trustee shall continue to serve until death, incapacity, resignation or removal, as hereinafter provided.

5.06 In the event of the incapacity or resignation of a Trustee, such Trustee shall be fully discharged from all future duties and responsibilities in respect of this Agreement and the trusts created hereby, upon notice in writing being sent by him or her, or on his or her behalf, to the office of the Plan Manager. The notice shall state the date of such resignation or incapacity and shall be effective as of that date. In the event of the death of a Trustee, his or her heirs, administrators, executors and assigns shall be fully discharged from all future duties and responsibilities in respect of this Agreement and the trusts created hereby as of the date of death.

5.07 Any party appointing a Trustee may, upon sending written notice to the office of the Plan Manager, remove a Trustee appointed by it, at any time. Such removed Trustee

shall be deemed to no longer be a Trustee, effective as of the date the notice is delivered and shall be fully discharged from all future duties and responsibilities in respect of this Agreement and the trust as of that date.

5.08 In the event that any Trustee shall die, become incapacitated, resign or be removed, a successor Trustee shall immediately be designated by the appointing party. Any successor Trustee so designated shall immediately, upon an Acceptance of Trusts being filed in writing with the Trustees and with the office of the Plan Manager, become vested with all of the rights, powers and duties of a Trustee under the Agreement, with the like effect as if he or she had been originally named as Trustee.

5.09 In the event that either of the Sponsors shall cease to exist, any successor organization shall be entitled to appoint the Trustee or Trustees previously appointed by such Sponsor that has ceased to exist.

5.10 (a) The Trustees shall, from among their number, appoint a Chair and Vice-Chair. The Chair, or in the Chair's absence, the Vice-Chair, shall chair the meetings of the Board. The Chair shall also chair the Administration Committee, and the Vice-Chair shall chair the Investment Committee. The Chair and Vice-Chair shall vote at all meetings of the Board of Trustees or its Committees.

(b) The term of the Chair and the Vice-Chair shall be two years.

(c) At all times, a Trustee nominated by the Trustees appointed by OPSEU shall be either the Chair or the Vice-Chair, and the other position shall be filled

by a Trustee nominated by the Trustees appointed by Ontario. If a Trustee who is Chair or Vice-Chair ceases at any time or for any reason to be a Chair or Vice-Chair, then his or her position shall be filled for the balance of the term by a Trustee appointed by the same Sponsor. The term of any replacement Chair or Vice-Chair shall be deemed to have commenced at the commencement or deemed commencement of the predecessor's term.

- (d) At the end of their first terms, the Chair and Vice-Chair, or their replacements, if any, will exchange positions. At the end of their second terms, the Chair and Vice-Chair will cease to hold those positions, and the Trustees shall select a new Chair and Vice-Chair in accordance with paragraphs (a) and (c) of this Article 5.10.

5.11 Any resolutions of the Trustees shall require a vote of the majority of the Trustees present, provided that at least one Employer Trustee and one Union Trustee have supported the resolution. The Chair and Vice-Chair shall be entitled to vote on all resolutions but shall not be entitled to a second vote in the event of a deadlock.

ARTICLE VI - MEETINGS OF THE TRUSTEES AND CONDUCT OF MEETINGS

6.01 The Chair, or an officer of the Plan Manager delegated to do so by the Chair, shall cause written notice of the meetings of the Board to be served upon the Trustees, no less than 14 days prior to the date of the meeting.

6.02 The notice of meeting shall specify the date, time and location of the meeting, and shall include an agenda of matters to be addressed at such meeting. Whenever possible, any reports or other documentation to be considered at such meeting shall be provided to the members of the Board with the notice of meeting.

6.03 The notice of meeting may be served by delivering it to the address for service provided pursuant to this Agreement. Service may be effected by prepaid registered mail, delivery or facsimile transmission. In the case of service by mail, notice shall be deemed to have been given on the third day after mailing. A notice served by delivery or by facsimile shall be deemed to have been given on the day of delivery or transmission provided such transmission or delivery takes place during regular business hours.

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

6.05 There shall be at least six meetings of the Trustees in each year, to be held in the months of February, April, June, August, October and December, unless otherwise agreed to by the Trustees.

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

6.07 Any three Trustees may require the Chair to call a special meeting. Such request shall be in writing and include such information as is reasonably required by the Chair to fulfil the agenda provisions contained herein. Upon receipt of such request, the Chair shall call the special meeting for a date not later than 30 days following receipt of the request and information required for the agenda.

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

6.09 All meetings of the Board shall be held at the office of the Plan Manager, or such other location agreed upon by resolution of the Trustees. In addition, all records and minutes of the Trustees shall be kept at the offices of the Plan Manager.

6.10 A quorum for the transaction of business at any meeting of the Trustees shall consist of not less than six Trustees present in person or participating by means of a telephone conference call. No proxies shall be permitted at any time.

6.11 The Plan Manager or any of its employees shall act as recording secretary at any meeting of the Trustees. Proper minutes will be prepared and provided to the Trustees for verification at the following meeting.

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

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

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

ARTICLE VII - DISPUTE RESOLUTION

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

7.02 In the event of a deadlock, a further meeting of the Trustees shall be held no later than ten days after the deadlock has arisen for the purpose of resolving the matter in dispute. If the matter is not resolved at such meeting, any five Trustees may require the naming of an eleventh Trustee, who shall cast the deciding vote at the next scheduled or special meeting. The eleventh Trustee shall be one of three persons as shall be determined by the Sponsors from time to time who shall rotate in order between them as determined by the Sponsors, except that if any one of them is unavailable within 30 days of the dispute arising to resolve the matter in dispute, the eleventh Trustee shall pass to the next person, or if such person is not available within 30 days, to the next available person or to such other person as may be agreed by the Sponsors. If the Sponsors cannot agree on an eleventh Trustee, he or she shall be appointed by the Chief Justice of Ontario.

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

7.04 The reasonable expenses and fees of the eleventh Trustee shall be paid out of the Fund.

ARTICLE VIII - POWERS, DUTIES AND RESPONSIBILITIES OF THE TRUSTEES

8.01 The operation and administration of the Plan and the custody, investment and management of the Fund shall be the responsibility of the Trustees and they are hereby given the authorization and power so to do, subject to the limitations and conditions contained in the Sponsorship Agreement and this Agreement.

8.02 The Trustees shall use all reasonable means to collect and receive all Contributions due to the Fund, and shall, promptly after receipt, deposit such Contributions in a special Trust Fund account established with a reputable bank that is a scheduled bank under the *Bank Act* (Canada) (a "Bank"), Trust Company, Credit Union or other financial institution.

8.03 The Trustees shall incur no liability, either collectively or individually, in acting upon any documents, date or information believed by them to be genuine and accurate and to have been made, executed, delivered or assembled by the proper parties.

8.04 No Trustee shall be liable for the act or omission of any other Trustee. The Fund shall indemnify and save harmless the Trustees, their employees and the heirs of the Trustees and their employees, and each of them, from and against any loss, expense, claim, demand, action or thing of any nature whatsoever, including any amount paid to settle an action or to satisfy a judgement, arising out of the performance or purported performance of their duties or responsibilities hereunder, except that this indemnity shall not, in any way,

extend so as to protect any person with respect to any matter or thing arising out of his or her own dishonesty, wilful misconduct or gross negligence. Every payment made for the indemnification shall be an administrative expense of the Board.

8.05 The Trustees are hereby empowered, in addition to any other powers, as set forth herein or conferred by law:

- (a) to administer the Plan for the benefit of the Members, their beneficiaries and dependants, as the case may be, subject to the terms of the Sponsorship Agreement, this Agreement and the Plan Text, and the requirements of applicable federal and provincial legislation;
- (b) to adopt such procedures, policies, rules or regulations, necessary for the carrying out of their trusts, consistent with the provisions of this Agreement, the Sponsorship Agreement, the Plan text and the requirements of applicable provincial and federal legislation;
- (c) to enter into agreements with a Bank, Trust Company, Insurance Company, Credit Union or Investment Manager, selected by the Trustees, for the purpose of providing investment management or advice, or for the purpose of acting as a depository for safekeeping of assets of the Trust Fund, or for any other purpose as the Trustees shall deem necessary or desirable and to authorize any such Bank, Trust Company, Credit Union, Insurance Company, or Investment Manager to commingle any monies deposited with them in any mutual or pooled pension fund administered or managed by any of them;
- (d) to pay or provide for the payment of Benefits to those persons eligible to receive them;

- (e) to pay from the Fund all reasonable expenses for collecting Contributions and administering and investing the Fund and administering the Plan including, but not limited to, all compensation and all reasonable and necessary costs and fees which may be incurred in connection with the employment of such legal, actuarial, accounting, expert and clerical assistance as the Trustees, in their discretion, may find necessary or expedient in the performance of their duties. The Trustees shall be completely and fully protected in acting and relying reasonably and in good faith upon the opinions or advice of the aforementioned persons;
- (f) to enter into any and all contracts and agreements for carrying out the terms of this Agreement, the Sponsorship Agreement and the Plan text and for the administration of the Plan and the administration and investment of the Fund and to do all acts as they, in their discretion, may deem necessary and advisable;
- (g) to compromise, settle, arbitrate and release claims or demands in favour of, or against the Plan and Fund, or the Trustees, on such terms and conditions as the Trustees may deem advisable;
- (h) to establish procedures to be followed in filing applications for Benefits and for the furnishing and certification of evidence necessary to establish a right to such Benefits;
- (i) to pay out of the Fund, all real and personal property taxes, income taxes and other taxes of any and all kinds,*levied or assessed under existing or future laws, upon or in respect of the Fund or any money, property or securities forming a part thereof;

- (j) to receive payments from any source whatsoever, to the extent permitted by law, the Sponsorship Agreement, the Plan and this Agreement;
- (k) to invest and reinvest such portion of the Fund as is not required for current expenditures, in any type of investments that are permitted by applicable federal and provincial laws and regulations, and by the Statement of Investment Policies and Goals, except that any restrictions on investments set out in the *Trustee Act* shall not apply, and to take any and all actions with respect to the holding, buying, selling or exchanging such investments as they, in their sole discretion, may deem appropriate or necessary;
- (l) to hold in uninvested cash, without any liability for interest thereon, such sums as they reasonably deem necessary or advisable for the reasonably current cash requirements of the Fund;
- (m) to exercise all rights or privileges granted by the provisions of any contract entered into by the Trustees with any Insurance Company, Bank, Trust Company, Credit Union or Investment Manager, or Custodian, and to make any alteration, modification, amendment or cancellation of such contract, or to take any other action respecting such contracts which they, in their discretion, may deem necessary or advisable;
- (n) to do all acts, whether or not previously authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder;

- (o) to enter into reciprocal arrangements with other like or similar funds or plans, in such manner and subject to such terms and conditions as the Trustees may deem desirable;
- (p) to delegate any of their administrative powers or duties or such other powers and duties as may be permitted by ss.22(5) of the *PBA* to any of their agents or employees, in such manner and subject to such terms and conditions as the Trustees may deem necessary or appropriate; provided that such agents or employees report to the Trustees as may be required by them;
- (q) to lease or purchase such lands, premises, materials, supplies and equipment as the Trustees deem necessary or appropriate in the performance of their duties;
- (r) to enter into cost-sharing agreements with OPSEU, any other union, or any other trust funds providing non-pension benefits to the Members, to permit the Trustees to share expenses pertaining to the administration of the Fund, provided that any amounts paid by the Fund to OPSEU, any other union, or any other trust fund, in respect of the above expenses, shall be approved by the auditor of the Fund as being necessary and reasonable; and provided further, that such cost-sharing agreement provide that the Trustees may terminate such agreement at any time, subject to such notice as may be required;
- (s) to incorporate corporations, the shares of which shall be held by or on behalf of the Trustees for purposes of administering the Fund, making investments of the Fund or holding any investment;

- (t) to authorize the preparation of and to file an actuarial valuation in accordance with the *PBA* and any other governing legislation;
- (u) to approve the actuarial methods and assumptions to be used in the administration of the Plan and used in the actuarial valuations of the Plan, prepared by the Actuary;
- (v) to consult with the Sponsors during the preparation of an actuarial valuation and to make their best efforts to respond to any questions, comments or recommendations of the Sponsors, provided that the Trustees shall be solely and exclusively responsible for the content of any actuarial valuation filed in accordance with the *PBA* and any other governing legislation;
- (w) to give a copy of every actuarial valuation prepared for the Trustees to each Sponsor and to give each Sponsor any information requested by it as quickly as possible;
- (x) to have the Plan and the Fund audited every year;
- (y) to prepare a report at the end of every fiscal year describing how the Plan and the Fund have been doing in that year;
- (z) to hold a meeting with both Sponsors at least once each year to explain the annual report to them and to answer any questions they may have about the Plan and the Fund;

- (aa) to advise the Sponsors in respect of any changes to the Plan that need to be made to comply with any applicable law; and
- (bb) to advise the Sponsors in respect of changes that the Trustees consider would improve the administration of the Plan.

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

8.07 The Trustees may purchase such errors and omissions and fiduciary liability insurance as they deem necessary. The cost of such insurance may be paid out of the Fund.

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

8.09 The Trustees may require any Participating Employer or Member to submit to them, any information, data, report or documents relevant to, and suitable for the purposes of administration of the Plan and Fund;

8.10 The Trustees shall maintain suitable and adequate records of and for the administration of the Fund.

8.11 The books of account and records of the Trustees, including the books of account and records pertaining to the Fund, shall be audited at least once every year by the Auditor of the Fund, as of the fiscal year-end of the Fund. A statement of the results of the annual,

audit shall be available for inspection by Members and by Sponsors at the office of the Plan Manager and at such other suitable place as the Trustees may designate from time to time. Copies of such statement shall be delivered to each Trustee within sixty (60) days after that statement is prepared.

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

- (a) to submit a report to the Trustees as soon as possible after the end of each fiscal year and on such interim basis as the Trustees may order, of the status of the Fund, financial or otherwise;
- (b) to attend such meetings of the Trustees, or committees thereof, as required by direction of the Trustees, and to execute such instructions, as may be given to him or her, and to attend such meetings in connection with the Fund, as required by direction of the Trustees;
- (c) to keep such records as are necessary to determine each Member's or his or her beneficiaries' or dependents' Benefits under the Plan and to determine the amount of such Benefits as they become due;

- (d) to deal with all communications to Members and others, with respect to the Fund and the Plan and the terms of the Sponsorship Agreement and the Agreement;
- (e) to validate all claims against the Fund and obtain all necessary declarations, certificates or other evidence required for the proper administration of the Fund;
- (f) to advise the Trustees if a Participating Employer is delinquent in or not contributing to the Fund as may be required; and
- (g) to obtain and supervise such outside administrative services as may be required by the Trustees from time to time.

8.13 The name of the Fund may be used to designate the Trustees collectively, and all instruments may be executed by or for the Trustees in such name.

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

8.15 The Trustees may, from time to time, borrow money for a period not exceeding ninety (90) days for short term contingencies from any Bank, Trust Company, or Credit Union on such terms and conditions as may be necessary and appropriate in the circumstances, provided that such borrowing shall only be for the purposes of:

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

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

8.16 The Trustees may seek the advice, opinion or direction of an appropriate court on any matter pertaining to the Sponsorship Agreement, the Trust Agreement, the Plan or the administration of the Fund.

ARTICLE IX - CONTRIBUTIONS TO THE FUND AND FUNDING

9.01 The Participating Employer shall, and where applicable, the Members shall:

- (a) pay all Contributions to the Fund in an amount and in the manner required by the Plan; and
- (b) complete and remit to the Fund, such report forms, whether or not any Contributions are, in fact, due for any particular period, in the manner and form determined by the Trustees from time to time.

9.02 Contributions to the Fund payable by a Participating Employer are deemed to be held in trust by the Participating Employer for the Trustees of the Fund until remitted to the Fund.

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

9.04 Where a Participating Employer has failed to remit Contributions to the Trustees in an amount and manner required by the Plan, subject to applicable legislation, such Participating Employer shall be liable for interest thereon at the greater of the Fund earnings rate for the period of delinquency, or the appropriate rate chargeable for pre-judgment interest under the *Courts of Justice Act*, R.S.O., 1990 or any successor legislation. The Trustees are authorized to establish a reasonable and lawful grace period by which Contributions must be received.

9.05 Subject to any cost-sharing agreement entered into pursuant to or in accordance with Section 8.05 (r) of this Agreement, if a Participating Employer becomes delinquent in its Contributions and the Trustees are required to take legal action or such other action to recover outstanding Contributions, the Participating Employer shall be liable for all reasonable fees of collection including legal, actuarial and accounting fees as well as any court fees or disbursements.

ARTICLE X - AMENDMENT OF TRUST AGREEMENT

10.01 Any amendment to this Agreement shall require unanimous written agreement of the Sponsors or shall be made pursuant to such dispute resolution mechanism as may be agreed to by them. No amendment, shall however:

- (a) be inconsistent with the purposes of the Trust Fund;
- (b) divert the Trust Fund, or any part thereof, to a purpose other than the provision of Benefits for Members. For greater certainty, the use of actuarial gains to offset Employer Contributions and any going concern unfunded liability or solvency deficiency does not constitute the diversion of the Trust Fund for a purpose other than the provision of Benefits for Members;
- (c) authorize the return of contributions or any other assets of the Fund to Ontario or to other Participating Employers unless required by law or as permitted by the *PBA* in the case of an overpayment pursuant to Section 78(4) thereof, as amended from time to time;
- (d) eliminate the annual audit or restrict the availability of information to the Sponsors;
- (e) provide for the administration of the Plan and the Fund other than by an equal number of Trustees appointed by Ontario and Trustees appointed by OPSEU with each Trustee having equal voting privileges;

- (f) provide for or permit any payment of surplus out of the Fund to Ontario, or any Participating Employer. For greater certainty, the use of actuarial gains to offset Employer Contributions and any going concern unfunded liability or solvency deficiency does not constitute the payment of surplus out of the Fund; or
- (g) remove the right of the Sponsors to appoint Trustees.

10.02 The Sponsors may amend this Agreement, the Sponsorship Agreement, the Plan text or any other Plan documents adopted by them, without the agreement of any other employer, trade union or person.

ARTICLE XI - ACTUARIAL GAINS

11.01 While the Plan is ongoing, each of the Sponsors shall be permitted to apply any actuarial gains realized by the Plan from time to time, in accordance with and pursuant to the Sponsorship Agreement, any Collective Agreement and applicable law respecting the application of such gains.

ARTICLE XII - TERMINATION

12.01 This Agreement may be terminated by unanimous agreement of the Sponsors, in which case the Trustees shall wind-up and terminate the Plan and the Trust Fund within six (6) months thereafter. As part of the termination of the Plan and the Fund, the Trustees shall:

- (a) provide for a final audit and accounting for the purposes of the termination of the Fund;
- (b) provide for payment out of the Trust Fund of all Benefits, expenses, claims and obligations including the expenses incidental to the termination of the Fund;
- (c) distribute the balance or surplus, if any, of the Fund in accordance with the applicable provisions of the Plan, subject always to the applicable federal and provincial legislation, provided, however, that no part of the capital or income of the Fund shall be used for, or diverted to purposes other than for the exclusive benefit of the Members, their beneficiaries or dependants, except as may otherwise be provided by this Agreement. Under no circumstances shall any portion of the capital or income of the Fund, directly or indirectly, revert or accrue to the benefit of any Participating Employer, OPSEU, or the Trustees, except in the case of any Trustee who is a Member and receives his or her share of Fund assets in accordance with the same distribution formula as is applicable to all other Members.

12.02 Upon termination of the Plan and Trust Fund in accordance with this Article, the Trustees shall forthwith notify the Sponsors, all Participating Employers and any other necessary parties, and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

12.03 In lieu of termination, the Trustees, with the written consent of the Sponsors, may elect to establish a successor pension plan within a reasonable period to provide similar

benefits for some or all of the Members under this Agreement and to do all such acts and things and execute such documents as may be necessary for this purpose.

ARTICLE XIII - GENERAL PROVISIONS

13.01 The undersigned Trustees having been designated to serve as Employer and Union Trustees, as the case may be, hereby accept the trusts created and established by this Agreement, consent to act as Trustees and agree to be bound by this Agreement and to administer the Trust Fund for the purposes set forth in this Agreement and in the Plan. Trustees shall serve without remuneration but may be reimbursed out of the Fund for their reasonable expenses and, if the Trustee is a public servant, for his or her lost wages.

13.02 All notices, requests, demands or other communications provided for herein to be given, shall be given within the time limits set out in Article 6.03 of this Agreement. Notices to the Sponsors, Trustees, Participating Employers or Members shall be given to them at their last known address as appears on the records of the Plan Manager of the Fund. Notices to the Fund shall be given to the Plan Manager.

13.03 If any provision of the Sponsorship Agreement, this Agreement, the Plan, the rules and regulations made pursuant thereto, or any actions in the administration and investment of the Fund are held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the Sponsorship Agreement, this Agreement, the Plan, or the said rules and regulations.

13.04 Wherever the singular and any word connoting gender is inserted throughout this Agreement, the same shall be construed as meaning the plural, masculine, feminine or a body corporate where the context so requires.

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

13.06 Each of the parties hereto shall, from time to time and at any time hereafter upon reasonable written request to do so, make, do, execute and deliver, or cause to be made, done, executed and delivered, all such further acts, deeds, assurances, things and written instruments as may be necessary in the opinion of any party, for more effectively implementing and carrying out the intent of the Sponsorship Agreement and this Agreement.

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

ARTICLE XIV - MISCELLANEOUS

14.01 The Sponsors shall, at the request of the Trustees made by resolution of the Trustees, convene and meet with respect to any issue referred to the Sponsors by the Trustees. The Sponsors shall also meet at least once every calendar year.

14.02 Either Sponsor may ask the Actuary to provide or prepare any information that the Sponsor thinks it needs in discussing changes to the Plan. The Trustees shall instruct the Actuary to prepare the information, and will pay the Actuary from the Fund. The Trustees shall instruct the Actuary to provide the information to both Sponsors.

14.03 Either Sponsor may audit the Plan and the Fund at any time at the expense of that Sponsor. The Trustees will cooperate fully with the Sponsor in the conduct of the audit.

In witness whereof the parties hereto have hereunto executed this Trust Agreement as of the date and year first above written.

THE ONTARIO PUBLIC SERVICE
EMPLOYEES' UNION

HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF ONTARIO AS
REPRESENTED BY THE CHAIR OF THE
MANAGEMENT BOARD OF CABINET

Per:

F. Upsham

Per: Brian Charlton

THE TRUSTEES OF THE OPSEU
PENSION PLAN TRUST FUND

Per:

Heather Gavin

Colleen Parrish

Theresa

Jim Brown

Leah Loh

Janet Hill

J. Grant Morgan

Janet Hill

Paul Lee

Janet Hill

SCHEDULE "A"

ACCEPTANCE OF TRUST

TO: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
ONTARIO ("Ontario")

AND TO: THE ONTARIO PUBLIC SERVICE EMPLOYEES' UNION ("OPSEU")

AND TO: THE TRUSTEES (the "Trustees") OF THE TRUST FUND FOR THE
ONTARIO PUBLIC SERVICE EMPLOYEES' UNION PENSION PLAN
(the "Plan")

1. Pursuant to an Agreement and Declaration of Trust (the "Trust Agreement") dated the 25th day of October, 1994, between Ontario, OPSEU and the Trustees, Ontario and OPSEU created and established a trust fund (the "Fund") for the purpose of providing benefits under, pursuant to and in accordance with the Plan.

2. The undersigned has been designated by [Ontario] [OPSEU] [the Trustees] as a Trustee of the Fund, pursuant to the Trust Agreement.

3. In consideration of the sum of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned consents to be a Trustee of the Fund and accepts the trusts created and established by the Trust Agreement and agrees to be bound by the terms and conditions of the Trust Agreement and to administer the Fund and the Plan in accordance with and for the purposes set forth in the Trust Agreement.

DATED this • day of • , 199•

BC_mpp_joint_trust_agreement.pdf

MUNICIPAL PENSION PLAN JOINT TRUST AGREEMENT (CONSOLIDATED)

Updated to September 30, 2015

Includes the following amendments:

Amendment No. 1, effective January 1, 2010

Amendment No. 2, effective October 10, 2014

Amendment No. 3, effective September 30, 2015

Disclaimer

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**MUNICIPAL PENSION PLAN
JOINT TRUST AGREEMENT**

THIS JOINT TRUST AGREEMENT is made the second day of April, 2001,

BETWEEN:

Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Finance and Corporate Relations, the **Union of British Columbia Municipalities**, and the **Health Employers Association of British Columbia**

AND:

The **Municipal Employees' Pension Committee** constituted by the Hospital Employees' Union, the Canadian Union of Public Employees, B.C. Division, the Health Sciences Association of British Columbia, the British Columbia Nurses' Union, the British Columbia Police Association, the British Columbia Professional Fire Fighters' Association, and the Council of Joint Organizations and Unions.

WHEREAS:

- A. Pursuant to the *Pension (Municipal) Act*, R.S.B.C. 1996, c. 355 (the "**PMA**"), a pension plan was provided for the benefit of certain public service employees;
- B. Pursuant to s. 4 of the PMA, the Municipal Pension Fund (the "**Pension Fund**") was continued under the PMA;
- C. The *Public Sector Pension Plans Act*, S.B.C. 1999, c. 44 (the "**Act**"), which received Royal Assent on July 15, 1999, introduced certain changes to British Columbia's four statutory pension plans, including the plan provided for under the PMA;
- D. Pursuant to s. 2 of Schedule B to the Act ("**Schedule B**"), the plan provided for under the PMA was continued on April 1, 2000 as the Municipal Pension Plan (the "**Pension Plan**") under Schedule B and the regulations made pursuant to s. 16(1) of Schedule B (the "**Statutory Pension Plan Rules**");
- E. Pursuant to s. 9 of Schedule B, the Pension Fund constituted under the PMA was further continued under Schedule B effective April 1, 2000;

- F. In conjunction with the continuation of the Pension Plan and the Pension Fund under Schedule B, the PMA was repealed effective April 1, 2000 pursuant to s. 124(b) of the Act;
- G. The Act established an agency known as the British Columbia Pension Corporation to provide pension plan administration services to British Columbia's statutory pension plans, including the Pension Plan;
- H. The Act also established an agency known as the British Columbia Investment Management Corporation which may provide investment management services to British Columbia's statutory pension plans, including the Pension Plan;
- I. Section 18 of Schedule B provides that the parties hereto may enter into a unanimous joint management agreement that provides for, but is not limited to, all of the following:
 - (a) the continuation of the Pension Plan and the Pension Fund for the benefit of plan members;
 - (b) the joint management of the Pension Plan and the Pension Fund;
 - (c) the establishment of who will manage the joint management agreement;
 - (d) the establishment of an arrangement to hold and invest the Pension Fund;
 - (e) the composition of the board of trustees, including the appointment of trustees and the delineation of their powers, functions and duties;
 - (f) the sharing by the employers and plan members of gains or surplus and of liability for deficiencies in the Pension Fund;
 - (g) the method for amending the Pension Plan by the agreement of the Partners;
 - (h) the resolution of disputes; and
 - (i) any other matter on which agreement is reached;
- J. Once a joint management agreement is concluded pursuant to s. 18 of Schedule B, s. 1 of the Act is amended pursuant to s. 113 of the Act, and Part 1 of Schedule B is repealed pursuant to s. 120 of the Act, the joint management agreement and the Pension Plan Rules (as hereinafter defined) will govern the Pension Plan and the Pension Fund;
- K. By letters dated November 18, 1999 from the Chairperson of the Municipal Employees' Pension Committee to the other parties to this Agreement (the "**Chairperson's Letters**"), the Chairperson gave notice pursuant to s. 18(6) of Schedule B that the Municipal Employees' Pension Committee wished to initiate discussions regarding a joint management agreement;

- L. On September 6, 2000, John Cook, Chair of the Municipal Pension Board, conveyed to the Honourable Paul Ramsey, Minister of Finance and Corporate Relations, for his consideration a joint trusteeship agreement-in-committee dated September 1, 2000.
- M. On October 13, 2000 a joint trusteeship information booklet was released for distribution to all members of the Municipal Pension Plan.
- N. As a result of the discussions initiated by the Chairperson's Letters, and pursuant to s. 18 of Schedule B, the parties wish to enter into this Joint Trust Agreement to provide for, among other things, the joint management of the Pension Plan and the Pension Fund and for that purpose have made this Joint Trust Agreement.

THEREFORE THE PARTIES AGREE as follows:

PREAMBLE

The purpose of this Agreement is to provide for the prudent management of the Pension Plan and the Pension Fund in a framework where the Plan Members and Employers share the responsibility of plan governance and share the risks and rewards of plan sponsorship.

ARTICLE 1.- INTERPRETATION

1.1. Definitions.

In this Agreement, unless the context requires another meaning, the following defined terms have the following meanings:

- (a) “**Act**” means the *Public Sector Pension Plans Act*, S.B.C. 1999, c. 44.
- (b) “**Agreement**” means this joint trust agreement which is a joint management agreement entered into pursuant to s. 18 of Schedule B, as amended from time to time.
- (c) “**Basic Account**” means the basic account of the Pension Fund established pursuant to s. 75 of the Statutory Pension Plan Rules and continued in accordance with s. 75 of the Pension Plan Rules.
- (d) “**BCPSEA**” means the British Columbia Public School Employers' Association, a society incorporated under the *Society Act*, R.S.B.C. 1996, c. 433.
- (e) “**Board**” or “**Board of Trustees**” means the Municipal Pension Board of Trustees constituted under this Agreement, which Board shall consist of the individuals appointed from time to time to act as Trustees in accordance with the terms of this Agreement.
- (f) “**Chair**” means the chair of the Board appointed pursuant to Section 5.1.
- (g) “**Effective Date**” means the date ss. 113 and 120 of the Act come into force.
- (h) “**Employee**” means those persons who are considered eligible employees under s. 3 of the Pension Plan Rules.

- (i) “**Employer**” means those persons or other bodies who are considered eligible employers under s. 2 of the Pension Plan Rules.
- (j) “**Employer Trustees**” means those Trustees appointed by the Government, the UBCM, the HEABC and the BCPSEA, as described in subsections 4.1(a), 4.1(b), 4.1(c), 4.1(d) and 4.1(e) of this Agreement.
- (k) “**Family Law Act**” means the *Family Law Act*, S.B.C. 2011, c. 25.
- (l) “**Government**” means Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Finance and Corporate Relations.
- (m) “**HEABC**” means the Health Employers Association of British Columbia, a society incorporated under the *Society Act*, R.S.B.C. 1996, c. 433.
- (n) “**ITA**” means the *Income Tax Act* (Canada).
- (o) “**Inflation Adjustment Account**” means the inflation adjustment account of the Pension Fund established pursuant to s. 75 of the Statutory Pension Plan Rules and continued in accordance with s. 75 of the Pension Plan Rules.
- (p) “**Investment Management Corporation**” means the British Columbia Investment Management Corporation established under s. 16 of the Act.
- (q) “**Member Trustees**” means those Trustees appointed by the Plan Member Partner as described in subsections 4.1(f) and 4.1(g).
- (r) “**MEPC**” means the Municipal Employees’ Pension Committee.
- (s) “**Partners**” means the Plan Employer Partner and the Plan Member Partner, and “**Partner**” means either of them.
- (t) “**PBSA**” means the *Pension Benefits Standards Act*, S.B.C. 2012, c. 30.
- (u) “**Pension Corporation**” means the British Columbia Pension Corporation established under s. 5 of the Act.
- (v) “**Pension Fund**” means the Municipal Pension Fund which, pursuant to s. 9 of Schedule B, was continued under Schedule B and which is further continued in accordance with this Agreement.
- (w) “**Pension Plan**” means the Municipal Pension Plan which, pursuant to s. 2(1) of Schedule B, was continued under Schedule B and the Statutory Pension Plan Rules and which is further continued in accordance with this Agreement.
- (x) “**Pension Plan Rules**” means the plan rules made under Article 11, which continue and replace the Statutory Pension Plan Rules. The initial Pension Plan Rules are attached as Appendix C.

- (y) **“Plan Administrative Agent”** means the Pension Corporation.
- (z) **“Plan Employer Partner”** means the Government and the UBCM.
- (aa) **“Plan Investment Agent”** means the Investment Management Corporation or an investment manager referred to in Section 7.3.
- (bb) **“Plan Member”** means a member, as that term is defined in the Pension Plan Rules.
- (cc) **“Plan Member Partner”** means the MEPC, which represents:
 - (i) the British Columbia Nurses’ Union;
 - (ii) the Canadian Union of Public Employees, B.C. Division;
 - (iii) the Health Sciences Association of British Columbia;
 - (iv) the Hospital Employees’ Union, also known as the Healthcare Division of the Canadian Union of Public Employees, B.C. Division;
 - (v) the British Columbia Police Association;
 - (vi) the British Columbia Professional Fire Fighters’ Association; and
 - (vii) the other unionized Plan Members, as represented by the Council of Joint Organizations and Unions.
- (dd) **“PMA”** means the *Pension (Municipal) Act*, R.S.B.C. 1996, c. 355.
- (ee) **“Primary Trustee”** has the meaning specified in subsection 4.3(b).
- (ff) **“Schedule B”** means Schedule B to the Act.
- (gg) **“Signatories”** means the Partners and HEABC.
- (hh) **“Statutory Pension Plan Rules”** means the *Municipal Pension Plan Regulation*, B.C. Reg. 113/2000, made pursuant to Section 16(1) of Schedule B.
- (ii) **“Trustees”** means the initial persons appointed pursuant to the terms of this Agreement to administer the Pension Plan and manage the Pension Fund and those persons appointed from time to time in accordance with this Agreement as their successors.
- (jj) **“Unions”** means the unions and other organizations described in paragraphs 4.1(f)(i) through (vi).
- (kk) **“UBCM”** means the Union of British Columbia Municipalities, a body corporate incorporated by *An Act to Incorporate the Union of British Columbia Municipalities*, S.B.C. 1959, c. 106.

1.2. Use of Plural or Gender Specific Terms.

In this Agreement according to the context:

- (a) gender specific terms include both genders and include a corporation, partnership, society, association or union;
- (b) words in the singular include the plural and words in the plural include the singular; and
- (c) where a word or expression is defined, other parts of speech and grammatical forms of the same word or expression will have corresponding meanings.

1.3. Headings.

The headings used in this Agreement are for ease of reference only and shall form no part of this Agreement.

1.4. Use of Certain Terms.

The expressions “herein”, “hereof”, “hereto”, “above”, “below” and similar expressions used in any Article, Section, subsection or paragraph of this Agreement refer and relate to the whole of this Agreement and not to that Article, Section, subsection or paragraph only, unless otherwise expressly provided.

1.5. Statutory References.

In this Agreement, any reference to a statute shall include the regulations promulgated under that statute and any final judicial decisions interpreting the same, with all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant to that statute.

1.6. Recitals, Preamble and Appendices.

The recitals, the Preamble and the various Appendices hereto form part of this Agreement. However, unless the context or the terms of this Agreement require otherwise, all references to “this Agreement” shall be interpreted as references to the main body of this Agreement.

1.7. Survival of Provisions.

The provisions of this Agreement which, by their context are meant to survive the termination of this Agreement, shall so survive the termination of this Agreement.

1.8. Conflict Between Pension Plan Rules and Agreement.

If there is any conflict between the provisions of the main body of this Agreement and the provisions of the Pension Plan Rules, the provisions of the main body of this Agreement shall prevail and govern.

1.9. Other Joint Management Agreements.

Joint management agreements may be concluded pursuant to s. 18 of each of Schedule C and D of the Act. Those agreements are the product of different negotiating processes among different parties, and any differences between those agreements and this Agreement shall have no bearing on the interpretation of this Agreement.

ARTICLE 2.- JOINT TRUST AGREEMENT

2.1. Acknowledgement by the Parties.

This Agreement is made pursuant to, and constitutes a joint management agreement for the purposes of, s. 18(2) of Schedule B.

2.2. Effective Date.

On the Effective Date, the terms and conditions of this Agreement and the Pension Plan Rules shall come into force and thereafter govern the Pension Plan and the Pension Fund.

2.3. Registration of Pension Plan with Regulatory Authorities.

The adoption of this Agreement and the Pension Plan Rules shall for the purposes of the PBSA and the ITA be considered an amendment to the Pension Plan, and the Board shall make application on that basis to register this Agreement, the Pension Plan Rules and any other documentation which is required to be registered under the PBSA and the ITA in respect of the Pension Plan and the Pension Plan Rules.

2.4. Status of Board under PBSA and ITA.

It is confirmed that for the purposes of the PBSA and the ITA the Board is the “administrator” of the Pension Plan.

2.5. Status of Agreement under PBSA.

This Agreement and the Pension Plan Rules made pursuant to it continue the multi-employer plan constituted under Schedule B. Pursuant to s. 47 of the PBSA, all Employers are bound by this Agreement and any amendments to it.

2.6. Status of MEPC.

The Unions confirm that the MEPC is a body created by them to act on their behalf in all matters relating to the Pension Plan and the Pension Fund. Each Union confirms that it is and will be irrevocably bound by all actions of the MEPC in relation to the Pension Plan and the Pension Fund, and that the other parties to this Agreement may conclusively rely on the MEPC’s authority to act on the Unions’ behalf.

**ARTICLE 3.- CONTINUATION OF THE PENSION PLAN
AND PENSION FUND**

3.1. Pension Plan Continued.

- (a) Effective the Effective Date, the pension plan continued under Schedule B and the Statutory Pension Plan Rules is further continued under this Agreement and the Pension Plan Rules.
- (b) An entity who immediately before the Effective Date was an “employer” to whom Schedule B applied continues to be an Employer, and those persons who were eligible employees of that entity continue to be Employees, on and after the Effective Date.
- (c) A person who immediately before the Effective Date was a “member” to whom Schedule B applied continues to be a Plan Member under the Pension Plan on and after the Effective Date.
- (d) Any rights vested in an individual under the pension plan provided for by and under Schedule B continue to apply to the individual, in the same manner and to the same extent, under the pension plan continued under this Agreement and the Pension Plan Rules.
- (e) The fiscal year end of the Pension Plan is December 31st, or any other date that the Board may establish as the fiscal year end for the Pension Plan.

3.2. Pension Fund Continued.

- (a) Effective the Effective Date, the Pension Fund continued under Schedule B is further continued under this Agreement.
- (b) The Pension Fund held by the trustee described in s. 3(6) of Schedule B is hereby conveyed to the Board, which shall hold the Pension Fund in trust in accordance with this Agreement. The Signatories and the Board shall take all necessary steps, including entering into appropriate custodial arrangements and an asset transfer agreement with the trustee described in s. 3(6) of Schedule B, to ensure that legal title to the Pension Fund is vested in the Board, and that the Board can exercise and discharge all rights and obligations associated with the ownership of the Pension Fund.
- (c) The Pension Fund shall consist of cash, investments and other assets held by the Board.
- (d) The contributions from Employers and Plan Members and any other payments or assets paid or delivered to and received by the Board for the purposes of the Pension Fund, including returns on investments, form part of the Pension Fund.
- (e) Benefits and disbursements payable under this Agreement and the Pension Plan Rules must be paid from the Pension Fund and, for this purpose, the Pension Fund must be considered one and indivisible.

- (f) The following fees, expenses and disbursements, as are reasonably necessary and approved by the Board, must be paid from the Pension Fund:
- (i) the fees, expenses and disbursements of the Board incurred in administering the Pension Plan and managing the Pension Fund;
 - (ii) any expenses incurred by a Trustee in attending or participating in any program of trustee education;
 - (iii) the fees, expenses and disbursements of, and amounts invoiced by, the Pension Corporation and the Investment Management Corporation, or the amounts payable to other investment managers, to operate and administer the Pension Plan and to manage the Pension Fund; and
 - (iv) any other expenses incurred in the administration of this Agreement and the Pension Plan Rules.

3.3. Pension Fund Held for Purposes Set Out in Agreement.

The Pension Fund is for the sole benefit of the Plan Members. The Signatories and the Employers shall have no claim on the assets of the Pension Fund other than as expressly provided for in this Agreement. Without limitation, nothing in this Section 3.3 derogates from the Board's ability to apply actuarial excess to the reduction of Employer contribution rates in accordance with Section 10.3, or pay surplus assets to the Employers pursuant to Section 14.4, if the agreement among the Signatories contemplated by paragraph 14.4(b)(i) provides for the payment of surplus assets to the Employers.

ARTICLE 4. - APPOINTMENT AND REPLACEMENT OF TRUSTEES

4.1. Board of Trustees Established.

Subject to Section 5.1, the Board shall consist of 16 Trustees appointed as follows:

- (a) two persons appointed by the Government;
- (b) two persons appointed by the UBCM;
- (c) two persons appointed by the HEABC;
- (d) one person appointed by the BCPSEA;
- (e) one person, who is a Plan Member but not a retired Plan Member nor a member of a union, appointed by the Plan Employer Partner through a process adopted by the Plan Employer Partner which enables the Plan Employer Partner to receive input from such Plan Members or their representatives regarding such an appointment;
- (f) seven persons appointed as follows:

- (i) one person appointed by the Hospital Employees' Union (also known as the Healthcare Division of the Canadian Union of Public Employees);
 - (ii) one person appointed by the Canadian Union of Public Employees, B.C. Division;
 - (iii) one person appointed by the Health Sciences Association of British Columbia;
 - (iv) one person appointed by the British Columbia Nurses' Union;
 - (v) one person appointed jointly by the British Columbia Police Association and the British Columbia Professional Fire Fighters' Association;
 - (vi) one person appointed by the Council of Joint Organizations and Unions; and
 - (vii) one person appointed by the Plan Member Partner;
- (g) one person, who is a retired Plan Member, appointed by the Plan Member Partner through a process adopted by the Plan Member Partner which enables the Plan Member Partner to receive input from retired Plan Members or their representatives regarding such an appointment.

4.2. Duty to Appoint.

The parties referred to in Section 4.1 have a duty to make the appointments to the Board of Trustees described in that Section. If any of them fail to do so, Sections 4.11 and 4.12 shall apply.

4.3. Alternate Trustees.

- (a) Each party described in Section 4.1 as being authorized to appoint a Trustee may appoint an alternate Trustee for each Trustee that party is entitled to appoint. An individual appointed a Trustee pursuant to Section 4.1 is ineligible to be appointed an alternate Trustee.
- (b) Once an alternate Trustee is appointed, the alternate Trustee's term of office shall be coincident with the remainder of the term of the Trustee for whom the individual is appointed alternate Trustee (hereinafter described as the alternate Trustee's "**Primary Trustee**"). An alternate Trustee shall be appointed and replaced in the same manner and on the same terms as a Trustee may be appointed and replaced.
- (c) If a Primary Trustee dies, resigns, or is removed from office, his or her alternate Trustee shall continue to hold office for the remainder of what would have been the term in office of the Primary Trustee, subject to the alternate Trustee's death, resignation or removal in accordance with this Agreement. The alternate Trustee shall not assume the Primary Trustee's office as Trustee unless the alternate Trustee is appointed as such in accordance with this Agreement. Pending the appointment of a replacement Primary Trustee, the alternate Trustee shall be entitled to attend and vote at meetings as provided in subsection (e).

- (d) Except as otherwise provided in this Agreement, an alternate Trustee has all the rights, duties and responsibilities of a Trustee, including the right to be indemnified and otherwise protected in accordance with this Agreement. Without limitation, an alternate Trustee shall be entitled to receive all information provided to the Trustees, shall be entitled to attend and speak to, but except as provided in subsection (e) shall not be entitled to vote at, any duly called and constituted meeting of the Board of Trustees.
- (e) If an alternate Trustee's Primary Trustee does not attend a meeting of the Board of Trustees, the alternate Trustee shall be entitled to vote at that meeting, and for all purposes of this Agreement, including the determination of whether the quorum requirements in Section 5.5 and the voting requirements in Section 5.6 have been satisfied, the alternate Trustee's presence and vote at a meeting of the Board of Trustees shall be considered the presence and vote by the alternate Trustee's Primary Trustee.
- (f) An alternate Trustee's Primary Trustee shall have no responsibility for the acts or omissions of his or her alternate Trustee, and vice versa.
- (g) An individual may be appointed alternate Trustee for more than one Trustee, provided that an alternate Trustee may never cast more than one vote at a meeting of the Board of Trustees. If an individual is appointed alternate Trustee for two or more Trustees, and more than one of those Trustees is not present at a meeting, the alternate Trustee, if present at that meeting, must declare at the commencement of the meeting for which of his or her Primary Trustees he or she is attending the meeting. Compliance with the quorum and voting requirements in Sections 5.5 and 5.6 will be evaluated on the basis of that declaration.

4.4. Acceptance by Trustees.

Each Trustee and successor Trustee, upon signing an Acceptance of Trust in the form set forth in Appendix A attached hereto, thereby accepts the trusts established by this Agreement and consents to act as a Trustee.

4.5. Terms for Employer Trustees.

Except as otherwise described herein, the first eight Employer Trustees shall be appointed for initial terms as follows:

- (a) one of the Trustees appointed pursuant to subsection 4.1(a), one of the Trustees appointed pursuant to subsection 4.1(b) and the Trustee appointed pursuant to subsection 4.1(e) shall each be appointed for an initial term of one year;
- (b) the Trustees appointed pursuant to subsections 4.1(c) and 4.1(d) shall each be appointed for an initial term of two years; and
- (c) one of the Trustees appointed pursuant to subsection 4.1(a) and one of the Trustees appointed pursuant to subsection 4.1(b) shall each be appointed for an initial term of three years.

The term of every Employer Trustee shall be stated on his or her Acceptance of Trust completed pursuant to Section 4.4.

4.6. Terms for Member Trustees.

Except as otherwise described herein, the first eight Member Trustees shall be appointed for initial terms as follows:

- (a) the Trustees appointed pursuant to paragraphs 4.1(f)(vi) and (vii) shall each be appointed for an initial term of one year;
- (b) the Trustees appointed pursuant to paragraphs 4.1(f)(i) and (ii) and subsection 4.1(g) shall each be appointed for an initial term of two years; and
- (c) the Trustees appointed pursuant to paragraphs 4.1(f)(iii), (iv) and (v) shall each be appointed for an initial term of three years.

The term of every Member Trustee shall be stated on his or her Acceptance of Trust completed pursuant to Section 4.4.

4.7. Term.

Trustees shall serve for terms ending on December 31st. The initial one, two and three year terms described in Sections 4.5 and 4.6 shall be for the periods ending December 31, 2001, December 31, 2002 and December 31, 2003, respectively. Upon the expiration of the initial terms of the Trustees as set out in Sections 4.5 and 4.6, the subsequent terms for Trustees appointed under Section 4.1 or subsection 5.1(b) shall be made for three years provided that no more than six appointments shall be scheduled to expire in any single calendar year. If an individual is appointed Trustee pursuant to Section 4.12, his or her initial term shall be for the balance of what would have been the remainder of the term of the Trustee whose death, resignation or removal from office necessitated the appointment of that Trustee.

4.8. Renewal.

An appointment under Section 4.1 or subsection 5.1(b) may be renewed by the party that made the appointment.

4.9. Removal.

Despite Section 4.1 or subsection 5.1(b), but subject to Sections 4.11 and 4.12, a Trustee appointed to the Board may be removed at any time by the party who appointed that Trustee.

4.10. Residency.

Each Trustee must be a permanent resident of Canada.

4.11. Appointment of Trustees on Expiration of Term.

- (a) No later than six months prior to the expiry date of a Trustee's term, the Chair shall give written notice to the party who appointed the Trustee, and that party shall renew the appointment of the Trustee or appoint a successor Trustee.
- (b) If the party does not renew the appointment of the incumbent Trustee or appoint a successor Trustee within three months after the expiry of the term, and:
 - (i) the Trustee being replaced was a Member Trustee, the Plan Member Partner shall appoint a successor to fill the vacant position; or
 - (ii) the Trustee being replaced was an Employer Trustee, the Plan Employer Partner shall appoint a successor to fill the vacant position.
- (c) The successor, when appointed, shall have the same power, authority and right to hold office as if that person had been appointed by the party who failed to appoint the successor Trustee, except that the successor shall not be removed during that term by that party unless the removal is first agreed to by the Partner who appointed the successor Trustee.

4.12. Appointment of Trustees on Death, etc.

If a Trustee dies, resigns or is removed from office, the party who appointed the Trustee must forthwith appoint a successor Trustee. If that party fails to appoint a successor Trustee within two months of the Trustee ceasing to serve, the Chair shall give written notice to the party who appointed the Trustee. The party who appointed the Trustee shall have a further two months from the date upon which the notice is received to appoint a successor Trustee. If that party does not appoint a successor Trustee, and the Trustee being replaced was a Member Trustee, the Plan Member Partner shall appoint a successor Trustee. If that party does not appoint a successor Trustee, and the Trustee being replaced was an Employer Trustee, the Plan Employer Partner shall appoint a successor Trustee. The successor shall not be removed during that term unless the removal is first agreed to by the Partner who appointed the successor Trustee.

4.13. Resignation of a Trustee.

A Trustee may resign by giving written notice thereof to the party who appointed him or her who shall promptly notify all the other Trustees. The effective date of a resignation shall be stated in the notice of resignation, which date may be no earlier than the date the Trustee signs the resignation, failing which it shall be the date when the party who appointed the Trustee receives the written notice of resignation.

4.14. Death of a Trustee.

If a Trustee dies, his or her heirs, administrators, executors and assigns shall be fully discharged from all future duties and responsibilities in respect of this Agreement as of the date of the Trustee's death. A deceased Trustee's estate shall not be discharged from, and shall remain liable for, any of the deceased's liabilities arising hereunder prior to the date of death.

4.15. Discharge of Trustees.

If a Trustee resigns, is removed or the Trustee's term expires, he or she shall be fully discharged from all future duties and responsibilities in respect of this Agreement as of the date of such resignation, removal or the expiration of his or her term, as the case may be. However, a Trustee who resigns, is removed or whose term expires shall not be discharged from, and shall remain liable for, any of the Trustee's liabilities arising hereunder prior to the effective date of his or her resignation, removal or the expiration of his or her term, as the case may be.

4.16. Termination of Trusteeship.

A Trustee who resigns, is removed or whose term expires without being reappointed and the personal representatives of any deceased Trustee, all as the case may be, must forthwith turn over to the Trustees any and all records, books, documents, money and other property and assets in his or her possession, forming part of the Pension Fund or incidental to his or her duties as Trustee under this Agreement or relating to the administration of the Pension Fund or the Pension Plan. In addition, any such individual shall convey, assign or transfer to the Trustees any or all rights or property of that individual in the Pension Fund, excluding any rights or property that individual has in his or her capacity as a Plan Member, and shall, if necessary, convey, assign or transfer to the Trustees any or all rights or property of that individual in the Pension Fund as the Trustees may direct. Despite the foregoing, if the Board considers it appropriate, a former Trustee, or the personal representatives of any deceased former Trustee, may have reasonable access to any of the former Trustee's records, books or documents turned over to the Trustees as described above.

4.17. Former Trustee Purporting to Act.

If a Trustee resigns, is removed or is not reappointed upon the expiration of his or her term but purports to continue to act as a Trustee, the Board may do such things and take such action at law or equity as it determines necessary to cause the person to cease to purport to act as a Trustee including, without limitation, making application to a court of competent jurisdiction for the relief, including injunctive relief, as may be appropriate in the circumstances.

ARTICLE 5. - BOARD OPERATION

5.1. Chair of Board.

The Trustees appointed under Section 4.1 must:

- (a) designate one of the Trustees appointed under Section 4.1 as chair of the Board; or
- (b) appoint a person, not appointed pursuant to Section 4.1, as a Trustee and designate that person as chair of the Board.

If the Chair is a Trustee appointed under Section 4.1, an alternate Trustee appointed for that Trustee shall not have the rights, duties or responsibilities of the Chair.

5.2. Term of Chair.

- (a) A Chair designated pursuant to subsection 5.1(a) shall serve for a term determined by the Trustees appointed under Section 4.1, which term shall not exceed three years, subject to that individual's resignation, death or removal by the Trustees in accordance with subsection 5.2(e).
- (b) A Chair appointed pursuant to subsection 5.1(b) shall serve for a term determined by the Trustees appointed under Section 4.1, which term shall not exceed three years, subject to that individual's resignation, death or removal by the Trustees in accordance with subsection 5.2(e).
- (c) The term of a Chair designated pursuant to subsection 5.1(a) shall coincide with that person's term of appointment as Trustee such that, in the normal course, the individual's term as Chair and term as Trustee shall expire on the same date.
- (d) A designation pursuant to subsection 5.1(a) or an appointment pursuant to subsection 5.1(b) may be renewed by the Trustees appointed under Section 4.1.
- (e) The Trustees appointed under Section 4.1 may remove at any time a Chair designated pursuant to subsection 5.1(a) or appointed pursuant to subsection 5.1(b).
- (f) A Chair designated pursuant to subsection 5.1(a) who ceases to hold office for any reason shall not cease to be a Trustee because he or she has ceased to be Chair. The person who ceased to be Chair shall remain a Trustee until he or she resigns, dies or is removed as Trustee in accordance with the provisions of this Agreement.
- (g) A Chair designated pursuant to subsection 5.1(a) who ceases to be a Trustee for any reason shall cease to be Chair effective the date upon which the person ceases to be a Trustee.
- (h) A Chair appointed pursuant to subsection 5.1(b) who ceases to hold office as Chair for any reason shall cease to be a Trustee effective the date upon which the person ceases to be Chair.
- (i) If a Chair ceases to hold office at any time for any reason, the Trustees appointed under Section 4.1 shall forthwith designate a replacement in accordance with Section 5.1.

5.3. Voting by Chair.

- (a) If the Trustees appointed under Section 4.1 designate a Chair in accordance with subsection 5.1(a), those Trustees must determine whether the Chair is entitled to a second or casting vote.
- (b) If the Trustees appointed under Section 4.1 appoint a Chair in accordance with subsection 5.1(b), those Trustees must determine whether the Chair has a vote and, if so, whether the Chair is entitled to a second or casting vote.

- (c) Any determination pursuant to subsection (a) or (b) remains in effect until the Trustees appointed under Section 4.1 determine otherwise.
- (d) If the Chair is a Trustee appointed under Section 4.1 and the Chair is entitled to a second or casting vote, an alternate Trustee appointed for that Trustee shall not be entitled to a second or casting vote.

5.4. Voting.

Subject to Sections 4.3 and 5.3, each Trustee appointed pursuant to this Agreement shall have one vote at any duly called and constituted meeting of the Board of Trustees.

5.5. Quorum.

- (a) A quorum at a meeting of the Board shall consist of at least ten Trustees, of whom five must be Employer Trustees and five must be Member Trustees. In addition, of the five Employer Trustees, one of them must be appointed under subsection 4.1(a) and one must be appointed under subsection 4.1(b).
- (b) If a quorum is not present within one-half hour of the time specified for a meeting of the Board, the Trustees present may adjourn the meeting to a fixed time and place but may not transact any other business. The Trustees present shall cause notice of such adjourned meeting to be given to all Trustees in accordance with Section 5.10.
- (c) If during a meeting a quorum is lost, the Trustees remaining at the meeting shall not transact any business except to fix a time and place for a continuation of the meeting. The Trustees present shall cause notice of such continued meeting to be given to all Trustees in accordance with Section 5.10.
- (d) If the Trustees meet when a Trustee position is vacant, the meeting is validly constituted as long as a quorum is present.
- (e) Except as provided in subsection 4.3(e), an alternate Trustee shall not be counted in determining whether the quorum requirements of this Section 5.5 have been satisfied.

5.6. Decisions.

- (a) All decisions of the Board must be made by a resolution passed by a majority vote of the Trustees present at a duly called and constituted meeting of the Board, except those decisions provided for elsewhere in this Agreement, of which:
 - (i) one vote in favour of the decision must be cast by a Trustee appointed under subsection 4.1(a);
 - (ii) one vote in favour of the decision must be cast by a Trustee appointed under subsection 4.1(b);

- (iii) three votes in favour of the decision, including the votes which satisfy paragraphs 5.6(a)(i) and 5.6.(a)(ii), must be cast by Employer Trustees other than the Trustee appointed under subsection 4.1(e); and
 - (iv) three votes in favour of the decision must be cast by Member Trustees appointed under subsection 4.1(f).
- (b) If the Chair has a second or casting vote and was appointed a Trustee under subsection 4.1(a), 4.1(b), 4.1(c), 4.1(d) or 4.1(f), his or her second or casting vote will be ignored in determining whether the requirements of subsection (a) have been satisfied.

5.7. Resolutions in Writing.

Despite Section 5.6, if all of the Primary Trustees then in office could form a quorum if they met, any decision of the Board may be made by unanimous consent in writing signed by all Primary Trustees then in office without a meeting of the Trustees. An alternate Trustee cannot sign a resolution in writing on behalf of his or her Primary Trustee.

5.8. Trustee Expenses and Remuneration.

The Board may pay from the Pension Fund:

- (a) to a Trustee or a person appointed to a committee of the Board an allowance for reasonable travel and other expenses necessarily incurred by that person in carrying out the business of the Board;
- (b) to a Trustee or a person appointed to a committee of the Board, if the Trustee or person is not receiving remuneration from any other source for acting as a Trustee or as a committee member, remuneration that has been set by the Board; and
- (c) to an organization specified by a Trustee or a person appointed to a committee of the Board, remuneration for the services of the Trustee or person at the rate set by the Board under subsection (b).

5.9. Frequency of Meetings.

- (a) The Trustees shall meet no less frequently than three times per calendar year. The Chair shall set the date and location of each meeting.
- (b) Any four Trustees may request the Chair to call a meeting of the Board, which request shall be in writing and shall include the information reasonably required by the Chair to fulfil the agenda provisions contained herein. If requested as described above, the Chair shall call a meeting no later than 14 days following receipt of the written request.
- (c) If the office of Chair is vacant, any two Employer Trustees and any two Member Trustees acting jointly may exercise the powers otherwise given to the Chair to set the date and location of a meeting, and give notice of it to the other Trustees.

- (d) Alternate Trustees are not entitled to request the Chair hold a meeting or convene a meeting when the office of Chair is vacant.

5.10. Notice of Meeting.

The Chair, or any other person delegated to do so by the Board, shall cause written notice of each meeting of the Board to be given to the Trustees no less than seven days prior to the date of the meeting. The notice of a meeting shall specify the date, time and location of the meeting, and shall include an agenda of matters to be addressed at the meeting. The agenda for each meeting shall be distributed with the notice of meeting. Whenever possible, any reports or other documentation to be considered at a meeting shall be provided to the Trustees with the notice of the meeting. For greater certainty, nothing in this Section 5.10 precludes a Trustee from bringing forth any matter for discussion at a meeting, and business not included in the agenda for a meeting may be conducted at a meeting.

5.11. Waiver of Notice.

A Trustee may waive notice of a meeting of the Board in writing. A Trustee shall be deemed to have waived notice of a meeting of the Board by attending at the meeting without objection.

5.12. Recording Secretary.

The Trustees shall appoint a recording secretary who need not be a Trustee to keep minutes or records of all meetings, proceedings and acts of the Trustees. Those minutes or records of Trustee meetings must be provided to the Trustees for verification at the next meeting of the Board.

5.13. Chair of Meeting.

The Chair shall act as chair of a meeting of the Board of Trustees. If the Chair is not in attendance at a meeting, the Trustees present at the meeting shall select a chair for the meeting from their number. An alternate Trustee present at the meeting shall not participate in the selection of a chair for the meeting unless that alternate Trustee is entitled to vote at that meeting pursuant to subsection 4.3(e).

5.14. Telephone Meetings.

A meeting of the Board or any committee of the Board may be held, or a Trustee may participate in a meeting of the Board or any committee of the Board, by means of telephone or such other communication facilities which permit all persons participating in the meeting to speak to and hear each other, and a Trustee participating in a meeting by that means is deemed to be present at the meeting and will be counted in determining whether a quorum is present.

5.15. Defect in Appointment, etc.

Despite that it is subsequently discovered or determined that there exists some defect in the appointment, removal or qualification of any Trustee, all acts and proceedings of the Trustees done and carried on in good faith while the defect existed shall be valid and effective.

5.16. Execution of Documents.

All agreements and other documents to be executed by the Board shall after being approved by the Board be signed by one Employer Trustee and one Member Trustee, or by other persons as the Board may from time to time direct. All cheques payable out of the Pension Fund shall be signed by one Employer Trustee and one Member Trustee, or by other persons or in other manners as the Board may from time to time direct. An alternate Trustee shall not be entitled to execute agreements or other documents or cheques unless the Board specifically directs that the alternate Trustee can do so.

5.17. Legal Capacity of the Board.

The Board has the necessary legal capacity to sue and be sued in its own name for the purposes of any matter arising under this Agreement or the Pension Plan Rules.

5.18. Enforcement of Contributions

Every Employer and Plan Member is required to make contributions and other payments to the Board and the Pension Fund in the amounts and at the times specified in the Pension Plan Rules. The Board may enforce the payment or delivery of contributions or transfers or any other payments due to it by action in any court in the name of the Board as a debt due to the Board.

5.19. Procedures and Meetings.

The Board must make rules regarding the conduct of the business of the Board including, but not limited to:

- (a) voting by the Chair at meetings of the Board;
- (b) appointing committees of the Board and delegating functions to them;
- (c) allowing non-Board members to serve as members of a committee;
- (d) setting the remuneration of eligible Board members and persons serving on committees;
and
- (e) establishing the practice and procedure for appeals to the Board.

5.20. Formal Name of Board.

The Board shall enter into agreements and act in all matters in the name of the “Municipal Pension Board of Trustees”.

ARTICLE 6. - POWERS, FUNCTIONS AND DUTIES OF THE BOARD

6.1. General.

The Board has all powers necessary to enable it to administer the Pension Plan and manage the Pension Fund, subject only to the limitations set out in this Agreement, the Pension Plan Rules, the Act, the PBSA and all other applicable laws.

6.2. Management and Investment of Pension Fund.

The Board must invest and manage the Pension Fund in a prudent manner. Without limitation, the Board must:

- (a) establish a written statement of investment policies and procedures for the Pension Fund in accordance with the PBSA;
- (b) monitor the performance of the Plan Administrative Agent and the Plan Investment Agents;
- (c) ensure that the money and assets of the Pension Fund are invested or loaned in the best interests of the Plan Members and, in doing that, must:
 - (i) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person; and
 - (ii) make the investments and loans in accordance with the provisions of the PBSA and other regulatory requirements;
- (d) ensure that the Plan Administrative Agent keeps an account of all money and assets received and paid out of the Pension Fund and keeps an accounting of the assets and liabilities of the Pension Fund;
- (e) ensure that the Plan Administrative Agent keeps an individual record of contributions made by each Plan Member; and
- (f) ensure that the Pension Plan and Pension Fund are administered in compliance with this Agreement, the Pension Plan Rules, the Act, the PBSA and all applicable laws.

6.3. Direction to Plan Administrative Agent.

The Board must direct the Plan Administrative Agent respecting:

- (a) the application of the Pension Plan Rules;
- (b) the negotiation of agreements on behalf of the Board with a person, class of persons or body, including agreements which may differ from the Pension Plan Rules, respecting:
 - (i) portability of pension benefits;
 - (ii) pension-based early retirement incentive programs;

- (iii) continuation of Pension Plan membership in the case of employer merger or reorganization;
- (iv) provision of benefits in addition to those provided for in the Pension Plan Rules;
- (v) reporting requirements on behalf of Employers under the ITA; and
- (vi) any other agreements the Board considers to be advisable; and
- (c) the implementation of any agreements entered into by the Board.

6.4. Functions and Duties.

The Board must carry out the following functions and duties:

- (a) adopt an annual budget for Pension Plan administration, investment management of the Pension Fund and the activities of the Board, and communicate information on the approved budget to Plan Members and Employers;
- (b) prepare an annual report, including audited financial statements, on the Pension Plan and Pension Fund;
- (c) obtain an actuarial valuation and report on the Pension Plan and the Pension Fund at least every three years;
- (d) retain professional, technical and other advisors that it considers necessary and determine the remuneration and reimbursement for expenses to which they are entitled;
- (e) provide for the financial administration of the Pension Plan by:
 - (i) having an accounting system established for the proper reporting and accountability to the Board in a timely manner and at a reasonable cost,
 - (ii) having annual financial statements of the Pension Plan prepared in accordance with generally accepted accounting principles,
 - (iii) having a financial reporting audit performed on the financial statements referred to in subparagraph (ii), and
 - (iv) providing to the Partners and Plan Members at an annual general meeting held for Plan Members and Employers an annual report on the Pension Plan, including the audited financial statements;
- (f) assess the administration of the Pension Plan at the times and in the manner required by the PBSA, including without limitation:
 - (i) the Pension Plan's compliance with the PBSA,
 - (ii) the Pension Plan's governance,

- (iii) the funding of the Pension Plan,
 - (iv) the investment of the Pension Fund,
 - (v) the performance of the Trustees, and
 - (vi) the performance of the administrative staff and any agents of the Board;
- (g) establish a written governance policy in accordance with the PBSA;
 - (h) establish a written funding policy in accordance with the PBSA.

6.5. Resolutions, Committees and Appointments.

The Board may:

- (a) pass resolutions it considers necessary or advisable to administer the Pension Fund and the Pension Plan and to exercise the Board's powers and perform its duties;
- (b) establish committees or panels of the Board, and determine the composition, duties, responsibilities, limitations and operating procedures of those committees or panels;
- (c) appoint persons other than Trustees to a committee or panel referred to in subsection (b), and set the term of appointment to the committee or panel that applies to those persons;
- (d) appoint Trustees to the boards of the Pension Corporation and the Investment Management Corporation, or to the boards of directors or trustees of other bodies corporate or trusts;
- (e) rescind an appointment made under subsections (c) or (d);
- (f) retain the services of agents or employees; and
- (g) enter into any agreements the Board considers necessary or appropriate to discharge its responsibilities, including the agreements contemplated by subsection 6.3(b).

6.6. Power to Settle Claims.

The Board may, if and as it thinks fit, compromise, compound, abandon, submit to arbitration or otherwise settle a debt, account, claim or other thing relating to the Pension Plan or the Pension Fund. For any of these purposes, the Board may enter, give, execute and do the agreements, instruments of composition or arrangement, releases and other things that the Board considers expedient without being responsible for loss caused by an act or thing so done in good faith and in accordance with the Board's fiduciary responsibilities under the PBSA.

ARTICLE 7. - PLAN ADMINISTRATION AND INVESTMENT

7.1. Pension Corporation.

The Board must retain the services of the Pension Corporation upon terms satisfactory to the Board, which terms shall be set out in a service agreement between the Board and the Pension Corporation, to carry out the Board's responsibilities respecting the administration of the Pension Plan. Without limitation, the service agreement must require the Pension Corporation to discharge the responsibilities of the Board under the ITA relating to the administration of the Pension Plan, and any other responsibilities that the Act imposes on the Pension Corporation in respect of the Pension Plan or the Pension Fund.

7.2. Investment Management Corporation.

The Board must appoint the Investment Management Corporation for funds management services upon terms satisfactory to the Board, which terms shall be set out in a funds management services agreement between the Board and the Investment Management Corporation.

7.3. Other Investment Managers.

Despite Section 7.2, the Board may place some or all of the Pension Fund with other investment managers for funds management services if:

- (a) a period of at least one year has elapsed from the date the first actuarial valuation report was prepared under Section 10.3; and
- (b) in the opinion of the Board, the alternative funds management services are in the best financial interests of the Plan Members. If the Board appoints investment managers other than the Investment Management Corporation, it shall do so upon terms satisfactory to the Board, which terms shall be set out in an investment management agreement between the Board and the investment manager.

7.4. Service and Investment Management Agreements.

The service and investment management agreements required under Sections 7.1 through 7.3 may contain performance standards and such other service objectives as are agreed to by the Board and the Pension Corporation, the Investment Management Corporation or the other investment managers, as the case may be.

ARTICLE 8. - APPEALS TO THE BOARD

8.1. Decision of Plan Administrative Agent.

A person, an organization, or a person and an organization directly affected by a decision of the Plan Administrative Agent in the application of the Pension Plan Rules may, by written notice to the Board, appeal all or part of the decision in accordance with the practice and procedure for appeals to the Board.

8.2. Appeals.

- (a) The Board must ensure that each appeal is dealt with promptly and efficiently.
- (b) The Board may establish a panel under subsections 6.5(b) or 6.5(c) consisting of one or more persons to consider appeals.
- (c) If a panel consists of more than one person, the Chair must preside over the panel or designate the person who is to chair the panel.
- (d) For an appeal referred to a panel:
 - (i) the panel has all the jurisdiction and may exercise the powers and perform the duties of the Board; and
 - (ii) a decision of the panel is a decision of the Board.
- (e) The Board or panel must confirm, vary or reverse the decision, order or ruling being appealed.

ARTICLE 9. - INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

9.1. Indemnification.

A Trustee, an employee or former employee of the Board or a member or former member of the Council of Partners constituted under Article 13 must be indemnified out of the Pension Fund against all costs, charges and expenses actually and reasonably incurred by that person, including an amount paid to settle an action or satisfy a judgment in a civil, criminal or administrative action or proceeding to which the person is made a party because of being or having been a Trustee, an employee of the Board or a member of the Council of Partners, and including an action brought by the Board, if:

- (a) the individual acted in good faith and carried out his or her fiduciary responsibilities under the PBSA;
- (b) in the case of a criminal action or proceeding, the individual had reasonable grounds for believing that his or her conduct was lawful; and
- (c) the act(s) or omission(s) which gave rise to the claim for indemnification occurred on or after the Effective Date.

9.2. Liability for Losses in Pension Fund.

The Trustees, individually or collectively, shall not be liable for the making, retention or sale of any investment or reinvestment made by them in accordance with this Agreement or in accordance with any other legal duties nor for any loss to or diminution of the Pension Fund, except a loss or diminution that resulted from a Trustee not acting in good faith or an action that was inconsistent with the Trustee's fiduciary responsibilities under the PBSA and no individual

Trustee shall incur any liability for any loss or diminution unless he or she was a party to the action that resulted in the loss or diminution.

9.3. Liability for Other Matters.

The Trustees, individually or collectively, shall not be responsible or liable for:

- (a) any matter, cause or thing arising due to the invalidity of all or any part of this Agreement or the Pension Plan Rules;
- (b) any delay occasioned by any restriction or provision in:
 - (i) this Agreement;
 - (ii) the Pension Plan Rules;
 - (iii) any contract procured in the course of the administration of the Pension Plan or Pension Fund; or
 - (iv) by any other procedure;
- (c) any contributions required to be paid to the Pension Fund other than the contributions a Trustee may be required or permitted to make under the Pension Plan in the Trustee's capacity as a Plan Member.

9.4. Reliance on Documents, etc.

The Trustees shall incur no liability, either collectively or individually, in acting upon any documents, data or information believed by them to be genuine and accurate and to have been made, executed, delivered or assembled by the appropriate parties.

9.5. Reliance on Advisors.

So long as the Trustees exercise reasonable care in the selection, instruction and supervision of a professional advisor, then subject to Section 15.4 the Trustees shall incur no liability, either collectively or individually, in acting and relying upon the opinions or advice of the professional advisor.

9.6. Further Assurances.

The Trustees shall do such things and execute and deliver such documents in order that any and all funds required to be paid out of the Pension Fund by way of indemnity as herein set forth are paid as required from time to time.

9.7. Recourse Solely Against Pension Fund.

A Plan Member or person claiming through a Plan Member shall have recourse solely to the Pension Fund for any benefit or other payment under the Pension Plan.

9.8. Acting as a Director or Trustee of Other Body.

- (a) The Board may pay from the Pension Fund an amount it considers appropriate in the circumstances to indemnify, fully or partly, a Trustee against costs, loss or damages incurred or awarded against him or her as a result of any act or omission done, or omitted to be done, in good faith as trustee of another trust, or as director of a body corporate, to which the Trustee was appointed by the Board as trustee or director for the purpose of representing the Board in the operation of that other trust or body corporate.
- (b) Despite subsection (a), where a loss suffered by the Trustee in serving as trustee of another trust, or as director of a body corporate, as described in subsection (a) results from liability to pay the deductible amount under an insurance policy that insured the other trust or body corporate, or its trustees and directors, against the loss except for the deductible amount, then the Board shall pay from the Pension Fund the amount necessary to indemnify the Trustee for liability to pay that part of the deductible amount that the Trustees consider was a reasonable deductible amount.
- (c) For greater certainty, a Trustee's potential right to indemnification under this Section 9.8 while acting as a trustee of another trust or a director of a body corporate shall not derogate from any fiduciary duties that individual has to that other trust or body corporate. When acting in that other capacity, the individual shall have sole regard to his or her fiduciary duties to that other trust or body corporate.

9.9. Financial Responsibility for the Pension Plan.

The Employers' and Plan Members' sole financial obligation in respect of the Pension Plan is to make contributions and other payments to the Board and the Pension Fund in the amounts and at the times specified in the Pension Plan Rules. Without limitation, no Plan Member, Employer, Signatory or union or association that represents any of the Plan Members shall be liable or responsible for any debts, liabilities, obligations, or deficiencies of the Board, the Pension Plan or the Pension Fund.

9.10. No Liability for Trustees Appointed.

A party is not liable for any of the acts or obligations of a Trustee solely because the Trustee is or was an officer or employee of the party, or the party appointed the Trustee.

9.11. Extended Meaning of Trustee, etc.

- (a) Any reference in this Agreement to the indemnification or other protection of a Trustee shall, unless the context clearly indicates otherwise, include a person appointed to a committee or a panel under subsection 6.5(c) or Section 8.2 or an alternate Trustee appointed under Section 4.3.
- (b) Any reference in this Agreement to the indemnification or other protection of a Trustee, a person appointed to a committee or panel under subsection 6.5(c) or Section 8.2 or an alternate Trustee appointed under Section 4.3 shall, unless the context clearly indicates otherwise, apply to individuals who formerly held those positions on or after the Effective Date, and to the personal representatives of any such individuals.

9.12. Bonding.

The Board may procure insurance or fidelity bonds for those persons the Board considers appropriate. Those persons may be insured or bonded in the amounts and in the manner decided by the Board. The cost of the insurance or bonds must be paid out of the Pension Fund.

9.13. Fiduciary Liability and Other Insurance.

The Board may purchase and maintain the errors and omissions insurance or fiduciary liability insurance, or insurance of a similar nature or description, it considers necessary for the Board, any Trustee or anyone else engaged in the administration or operation of the Pension Plan or Pension Fund. The cost of this insurance must be paid from the Pension Fund.

ARTICLE 10. - ENGAGEMENT OF ACTUARY AND AUDITOR

10.1. Appointment of an Actuary.

The Board must engage the services of an actuary to prepare all actuarial reports and perform all actuarial valuations required by the Board. The fees of the actuary must be paid from the Pension Fund.

10.2. Appointment of an Auditor.

The Board must engage the services of an auditor to perform, at least once in each year, an audit of the financial statements of the Pension Plan, including the accounts of the Board. The fees of the auditor must be paid from the Pension Fund.

10.3. Actuarial Valuation Reports.

- (a) The Board must have the Pension Plan reviewed and the results of the review set out in the form of an actuarial valuation report for a going concern valuation in the manner and at the times specified in the PBSA and the regulations under the PBSA.
- (b) If an actuarial valuation report indicates that there is a requirement to increase contribution rates to the Basic Account, the increase must be shared equally between the Employers and the Plan Members, and the Board must amend the Pension Plan Rules accordingly.
- (c) Subject to the transitional funding arrangements set out in Appendix B of this Agreement, if an actuarial valuation report indicates that the Pension Plan has actuarial excess, as defined in the PBSA, such actuarial excess will be considered unallocated actuarial excess of the Pension Fund unless and until the Board elects to apply the actuarial excess in one or more of following manners so as to achieve over time an equitable sharing of the benefits of the actuarial excess between Plan Members and Employers:
 - (i) transfer all or a portion of the actuarial excess to the reserve established within the Pension Fund for stabilizing contribution rates;

- (ii) transfer all or a portion of the actuarial excess to the Inflation Adjustment Account;
 - (iii) apply all or a portion of the actuarial excess to an equal reduction or elimination of Employer and Plan Member contribution rates to the Basic Account for a period of time;
 - (iv) apply all or a portion of the actuarial excess to fund changes to the benefit provisions set out in the Pension Plan Rules as provided in Section 11.5; or
 - (v) apply all or a portion of the actuarial excess, amortized over a period of 15 years, towards the payment of contributions otherwise payable by Plan Members, Employers, or both, pursuant to the Pension Plan Rules.
- (d) Any reference in subsection (c) to actuarial excess shall be interpreted as a reference to the actuarial excess associated with the benefits payable from the Basic Account.
 - (e) Any action taken by the Board under subsection (b) or (c) must comply with the PBSA funding requirements for a going concern valuation, and must result in the Pension Plan being funded in accordance with such funding requirements.
 - (f) The Board must administer the Pension Plan to ensure that the amount of surplus assets in the Pension Plan does not, for the purposes of the ITA, exceed the amount described in paragraph 147.2(2)(d) of the ITA (the “**excess surplus threshold**”). If the actuary preparing an actuarial valuation report advises that the actuarial valuation report will indicate that the excess surplus threshold will be exceeded, prior to the finalization of that actuarial valuation report the Board must implement one or a combination of the options described in subsection (c), with the result that when the actuarial valuation report is finalized the amount of surplus assets in the Pension Plan will not exceed the excess surplus threshold.

ARTICLE 11.- MUNICIPAL PENSION PLAN RULES

11.1. Pension Plan Rules.

- (a) The Board may make plan rules, applicable generally or to a specified person or class of persons, prescribing the Pension Plan Rules.
- (b) In making plan rules under this Agreement, the Board may delegate a matter to a person or agent of the Board and confer a discretionary power on a person or agent of the Board.
- (c) Beginning the Effective Date, the Statutory Pension Plan Rules are continued and replaced with the Pension Plan Rules attached as Appendix C.
- (d) Beginning the Effective Date, the Board may amend, repeal or replace the Pension Plan Rules as provided in this Agreement.

11.2. Amendment to Pension Plan Rules to Comply with Law.

Despite Sections 11.3 and 11.4, the Board must amend the Pension Plan Rules to the extent necessary to keep the Pension Plan Rules in compliance with the *Family Law Act*, the ITA, the PBSA and any other enactment applicable to the Pension Plan, the Pension Fund and the benefits payable under the Pension Plan.

11.3. Amendment Requested by Partners.

The Partners may direct the Board to amend the Pension Plan Rules, and the Board must so amend the Pension Plan Rules if:

- (a) the Partners have first received and considered the advice of the Board respecting both the cost and the administrative impact of implementing the proposed amendment;
- (b) the proposed amendment is not inconsistent with Section 11.2 or the Trustees' fiduciary responsibilities; and
- (c) the proposed amendment will not result in the Pension Plan failing to be funded in accordance with the PBSA's going concern funding requirements.

11.4. Recommendation of Amendments to the Partners by Board.

The Board may make recommendations to the Partners respecting amendments to the Pension Plan Rules that the Board considers to be in the best interests of the Plan Members and, with the approval of the Partners respecting those recommendations, the Board may so amend the Pension Plan Rules.

11.5. Amendments to Pension Plan Rules by Board.

- (a) Despite Sections 11.3 and 11.4, the Board may amend the Pension Plan Rules if:
 - (i) there is no resulting increase in the contribution rates for the non indexed basic benefits;
 - (ii) there is no resulting increase in the contribution rates for the indexing of benefits;
 - (iii) there is no creation of, or increase in, an unfunded liability; and
 - (iv) the proposed amendment is consistent with the Trustees' fiduciary responsibilities.
- (b) For the purposes of subsection 11.5(a), when considering an amendment to the Pension Plan Rules respecting a benefit improvement, the Board must determine the cost of the benefit improvement based on the open group of Plan Members and using a 25 year amortization schedule for the Pension Plan actuarial excess that will be used to fund the benefit improvement.

11.6. Retroactive Amendment.

Any amendment to the Pension Plan Rules may take effect retroactively or otherwise as the Partners or the Board, as the case may be, direct.

ARTICLE 12. – EMPLOYER ENTRY AND WITHDRAWAL

12.1. Employer Entry.

Entry to the Pension Plan by an Employer is only permitted if:

- (a) terms and conditions for entry are established by the Board; and
- (b) those terms and conditions are followed by the Employer wishing to enter.

12.2. Employer Withdrawal.

Withdrawal from the Pension Plan by an Employer is only permitted if:

- (a) terms and conditions for withdrawal are established by the Board; and
- (b) those terms and conditions are followed by the Employer wishing to withdraw.

ARTICLE 13. – DISPUTE RESOLUTION

13.1. Disputed Matters.

- (a) Each Trustee shall use his or her best efforts to resolve any item of business considered at a meeting of the Trustees.
- (b) If the Trustees are unable to resolve any matter other than the application of actuarial excess pursuant to subsection 10.3(c), they may by resolution to that effect declare that matter to be a “disputed matter”. Upon such a resolution being passed, the disputed matter shall be dealt with in accordance with this Article.
- (c) If after the conclusion of the Transitional Period defined in Appendix B an actuarial valuation report indicates that the Pension Plan has actuarial excess, and the Board fails to agree that such actuarial excess will be considered unallocated actuarial excess of the Pension Fund or to apply the actuarial excess in one or more of the manners described in paragraphs 10.3(c)(i) through (v) within 18 months of the effective date of the actuarial valuation report, the application of such actuarial excess shall be considered a “disputed matter”, and shall be referred to the Council of Partners pursuant to Section 13.5.

13.2. Mediator or Facilitator.

The Board may engage the services of a mediator or facilitator to help it resolve any disputed matter that arises among the Trustees.

13.3. Resolution by Chair.

If within one month of a disputed matter arising the Board remains unable to resolve the disputed matter, and the Chair then in office was appointed under subsection 5.1(b), the other Trustees may by resolution passed at a duly called and constituted meeting ask the Chair to resolve the disputed matter. The Chair may in his or her sole discretion decline such a request to resolve the disputed matter. If the Chair agrees to resolve the disputed matter, the Chair's decision regarding the disputed matter shall be deemed a resolution of the Board resolving the disputed matter in the manner decided by the Chair.

13.4. Council of Partners.

- (a) The Council of Partners shall consist of two individuals appointed by the Government, two individuals appointed by the UBCM and four individuals appointed by the MEPC. The Government or the UBCM may appoint as one of their appointees to the Council of Partners individuals nominated by the HEABC or the BCPSEA.
- (b) The parties appointing individuals to the Council of Partners may terminate and replace their appointees at any time, and for any reason.
- (c) The Council of Partners may act only by resolution approved by all of the individuals appointed to it.

13.5. Resolution by Council of Partners.

- (a) If the Board is unable to or chooses not to resolve a disputed matter under Section 13.2 or 13.3, the disputed matter must be referred to the Council of Partners. In that event, the Chair must relay a full written description of the disputed matter to the Council of Partners, together with any other written materials or submissions any Trustee wishes to have presented to the Council of Partners regarding the disputed matter.
- (b) If a disputed matter is referred to the Council of Partners, the Council must meet within one month of such referral to consider and resolve the disputed matter. At the request of any of the Partners a mediator will be engaged to assist in resolving the disputed matter. Selection of the mediator and establishment of the mediator's terms of reference will be the responsibility of the Council of Partners.
- (c) The Council of Partners' decisions regarding a disputed matter shall be deemed a resolution of the Board resolving the disputed matter in the manner decided by the Council of Partners.

13.6. Resolution by Arbitrator.

- (a) If the Council of Partners is unable to resolve a disputed matter under Section 13.5 within one month of the reference to it pursuant to Section 13.5 and if the disputed matter is one which arises pursuant to subsection 13.1(c) the Council must appoint an arbitrator to resolve the disputed matter pursuant to s. 62 of the PBSA.

- (b) If the Council of Partners cannot agree on an arbitrator then the Superintendent of Pensions will be asked to appoint an arbitrator pursuant to s. 62 of the PBSA.

ARTICLE 14.– AMENDMENT AND TERMINATION

14.1. Amendment to Agreement.

This Agreement may be amended at any time by the Signatories but only after first consulting with the Trustees. This power of amendment is to be construed as being subject to no restrictions other than those imposed by law. Without limitation, the power of amendment reserved to the Signatories under this Section 14.1 and to the Partners under Section 11.3 includes the power to revoke, in whole or in part, the trusts created under this Agreement or the Pension Plan Rules.

14.2. Amendment by Board.

Despite any other provision in this Agreement, the Board may amend this Agreement without the approval of the Signatories in the manner necessary to maintain the Pension Plan's registration under the PBSA and the ITA, or as is otherwise necessary to comply with applicable law.

14.3. Retroactive Amendment.

Any amendment to this Agreement may take place retroactively or otherwise as the Signatories or the Board, as the case may be, may direct, provided that no amendment shall be made which retroactively increases the duty of care required of a present or former Trustee or retroactively diminishes their right to indemnity under this Agreement.

14.4. Termination of Agreement or Pension Plan.

- (a) This Agreement or the Pension Plan may be terminated, in whole or in part, at any time by the Signatories but only after first consulting with the Trustees.
- (b) If the Pension Plan is terminated in its entirety, the assets of the Pension Fund shall be disbursed in accordance with the Pension Plan Rules, provided that the Pension Plan Rules must always, and shall be deemed to always, provide that:
 - (i) if any surplus assets remain in the Pension Fund after full provision has been made for all entitlements to receive a pension in respect of the Plan Members' membership in the Pension Plan to the date of termination, the surplus assets will be paid to the Employers or used to provide pension improvements or other benefits to the Plan Members in the manners and in the proportions as are then agreed to by the Signatories; and
 - (ii) if the assets in the Pension Fund as of the date of termination are insufficient to make full provision for all entitlements to receive a pension in respect of the Plan Members' membership in the Pension Plan to the date of termination, such shortfall will be dealt with in the manner as is then agreed to by the Signatories.

ARTICLE 15. – FIDUCIARY RESPONSIBILITIES

15.1. Duty of Care.

In administering the Pension Plan and Pension Fund, each Trustee must:

- (a) act honestly, in good faith and in the best interests of the Plan Members and former Plan Members and any other persons to whom a fiduciary duty is owed; and
- (b) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person.

15.2. No Conflict of Interest.

- (a) Except as provided in subsection (c), no Trustee shall knowingly permit his or her other interests to conflict with his or her powers, duties and responsibilities in respect of the Pension Plan and Pension Fund.
- (b) Entitlement to a pension or other benefit under the Pension Plan does not create a conflict of interest.
- (c) Subsection (a) does not apply to any determination made by the Trustees pursuant to subsection 10.3(c). In making any determination relating to the application of actuarial excess pursuant to subsection 10.3(c), the Trustees are not acting in a fiduciary capacity. When acting under subsection 10.3(c), a Trustee may take into account the financial and other interests of the party that appointed him or her as Trustee, and any other factor the Trustee considers appropriate, including factors unrelated to the Pension Plan or the Pension Fund.

15.3. Committee and Panel Members.

If the Board appoints a person to a committee or panel under subsection 6.5(c), the Board shall personally select the person and be satisfied of the person's qualifications and ability to perform the duties for which such person is appointed, and the Board shall carry out such supervision of the committee and panel members as is prudent and reasonable. A person appointed to a committee or panel under subsection 6.5(c) shall be subject to the same duty of care as the Board, and, in particular, shall be subject to the restrictions in Sections 15.1 and 15.2, and is not entitled to any payment from the Pension Fund other than the usual and reasonable fees and expenses for services provided by the committee or panel member in respect of the Pension Plan and Pension Fund.

15.4. Use of Agents and Employees.

Subject to Article 7, the Board may employ or appoint employees or agents to carry out any act required to be done in the administration of the Pension Plan or in the administration and investment of the Pension Fund. If the Board employs or appoints an employee or an agent, the Board shall personally select the employee or agent and be satisfied of the employee's or agent's qualifications and suitability to perform the duties for which the employee or agent is employed or appointed, and the Board shall supervise these employees and agents. Any agent or employee

so appointed or employed is subject to the same duty of care as the Board and, in particular, each agent and employee is subject to the restrictions in Sections 15.1 and 15.2, and is not entitled to any payment from the Pension Fund other than a pension benefit provided in accordance with the Pension Plan Rules, if applicable, and the usual and reasonable fees, expenses or compensation for the services provided by the agent or employee in respect of the Pension Plan and Pension Fund.

15.5. Restrictions on Benefits Payable to Trustees.

No Trustee is entitled to any benefit from the Pension Plan or Pension Fund other than a pension benefit provided for in the Pension Plan Rules, and any remuneration and reimbursement of expenses related to the administration of the Pension Plan or the administration and investment of the Pension Fund permitted by the common law or provided for in this Agreement or the Pension Plan Rules.

ARTICLE 16. – TRANSITIONAL PROVISIONS

16.1. Validation of Existing Calculations.

All benefits payable under the PMA and the regulations thereunder or the Act and the Statutory Pension Plan Rules continue to be payable under this Agreement and the Pension Plan Rules. All such benefits must be calculated based on the rules that were in effect at the time of the calculation under the PMA and the regulations thereunder or the Act and the Statutory Pension Plan Rules. For greater certainty, the continuation of the Pension Plan and the Pension Fund under this Agreement and the Pension Plan Rules shall not cause any recalculation of the benefits previously payable under the PMA and the regulations thereunder or the Act and the Statutory Pension Plan Rules.

16.2. Agreements Under Schedule B.

This Agreement shall apply to all agreements made under Part 1 of Schedule B that were in effect on the Effective Date, as if those agreements had been made by the Board under the authority of this Agreement.

16.3. Plan Rules.

The Board may make such plan rules as it considers necessary or advisable for meeting or removing any difficulty arising out of the repeal of Part 1 of Schedule B and its replacement with this Agreement pursuant to Part 2 of Schedule B, and for preserving and giving effect to the rights of all persons accrued or accruing under Part 1 of Schedule B except as those rights are expressly varied by this Agreement, and those plan rules may be made to apply generally or to a particular case.

16.4. Funding Arrangements.

The funding arrangements for the Pension Plan during the transitional period are as described in the funding proposal set out in Appendix B attached hereto. The Pension Plan Rules shall be amended where necessary to implement the terms of the funding proposal.

ARTICLE 17.– MISCELLANEOUS PROVISIONS

17.1. Methods of Giving Notice.

All notices, requests, demands or other communications provided for herein shall be given in writing and shall be effectively given if delivered personally, or sent by prepaid post, facsimile or email transmission to the respective last known address, facsimile number or email address of the recipient of the communication. A notice, request, demand and other communication shall be deemed to have been received when delivered, or if mailed, on the fifth business day after the mailing thereof, or, if sent by facsimile, on the day that the sending facsimile machine confirms that the facsimile transmission has been sent, or, if sent by email, on that day satisfactory proof that the email transmission has been sent, provided that in the event of a strike or other interruption in the normal delivery of the mail after the mailing of any notice, request, demand or other communication hereunder, but before the deemed receipt thereof as provided herein, that notice, request, demand or other communication shall not be deemed to have been received by the party for whom the same is intended, unless the same is actually delivered or sent via facsimile to such party as contemplated herein.

17.2. No Duty to Inquire.

All persons dealing with the Board do not have to inquire into any decision or authority of the Board or into the ability of the Board to receive any monies, securities or other property paid or delivered to the Board and may rely upon any document required to be executed by the Board which has been executed as provided herein, as having been duly authorized.

17.3. Severance of Illegal Provisions.

If any provision of this Agreement or the Pension Plan Rules is held to be illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining portions of this Agreement or the Pension Plan Rules unless the illegality or invalidity materially prevents the accomplishment of the respective objectives and purposes of the Pension Plan Rules or this Agreement as determined by the Board.

17.4. Binding Effect of Pension Plan Rules, etc.

The Pension Plan Rules and amendments thereto and all of the Board's decisions, rules, regulations, policies and procedures made or established in accordance with this Agreement or the Pension Plan Rules, shall be binding upon the Trustees, the Signatories, the Unions, the Employers, the Plan Members and their respective beneficiaries, dependents, estates, heirs, executors, administrators, successors and assigns.

17.5. Further Assurances.

Each Trustee shall from time to time and at any time hereafter, upon each reasonable written request to do so, make, do, execute and deliver or cause to be made, done, executed and delivered all further acts, deeds, assurances, things and written instruments as may be necessary in the opinion of any party, for more effectively implementing and carrying out the intent of this Agreement.

17.6. Governing Law.

The Province of British Columbia is the location for legal purposes of the Pension Fund. All questions pertaining to the validity, construction and administration of this Agreement or the Pension Plan Rules shall be determined in accordance with the laws of the Province of British Columbia. Any litigation which arises pursuant to or in connection with this Agreement, the Pension Plan Rules or any of their respective provisions, shall be referred to the courts in the Province of British Columbia.

17.7. Counterpart Execution.

This Agreement and any document prepared in connection with the Pension Plan or the Pension Fund may be signed in counterparts.

17.8. Binding Effect of Agreement.

This Agreement is binding upon the Trustees, the Signatories, the Unions, the Employers and the Plan Members and their respective beneficiaries, dependants, estates, heirs, executors, administrators, successors and assigns.

17.9. Time of Essence.

Time shall be of the essence of this Agreement and of every part hereof. All time limits shall be strictly observed.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

**MUNICIPAL EMPLOYEES' PENSION
COMMITTEE**

Per: ORIGINAL SIGNED
Steven Polak, Chair

**HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH
COLUMBIA, as represented by the
Minister of Finance and Corporate
Relations**

Per: ORIGINAL SIGNED
Honourable Paul Ramsey
Minister of Finance and Corporate Relations

**BRITISH COLUMBIA POLICE
ASSOCIATION**

Per: ORIGINAL SIGNED
Mark Shulz, Pension Representative

**THE UNION OF BRITISH COLUMBIA
MUNICIPALITIES**

Per: ORIGINAL SIGNED
Jim Abram, President

BRITISH COLUMBIA NURSES' UNION

Per: ORIGINAL SIGNED
 Fran MacDonnell, Chair Pension Committee

Per: ORIGINAL SIGNED
 Sharon Saunders, Coordinator Health/Safety
 and Benefits

**THE HEALTH EMPLOYERS
 ASSOCIATION OF BRITISH COLUMBIA**

Per: ORIGINAL SIGNED
 Gary Moser, Chief Executive Officer

**BRITISH COLUMBIA PROFESSIONAL
 FIRE FIGHTERS' ASSOCIATION**

Per: ORIGINAL SIGNED
 Ed Pakos, Vice-President

**CANADIAN UNION OF PUBLIC
 EMPLOYEES, BC DIVISION**

Per: ORIGINAL SIGNED
 Gary Johnson, National Representative

Per: ORIGINAL SIGNED
 Maria Wahl, Co-chair Pension Committee

**COUNCIL OF JOINT ORGANIZATIONS
 AND UNIONS**

Per: ORIGINAL SIGNED
 Koni Marrington, Bargaining Committee
 Member

Per: ORIGINAL SIGNED
 Brian Northam, Bargaining Committee
 Member

**HEALTH SCIENCES ASSOCIATION OF
BRITISH COLUMBIA**

Per: ORIGINAL SIGNED

Dennis Blatchford, Executive Assistant/
Human Resources Coordinator

HOSPITAL EMPLOYEES' UNION

Per: ORIGINAL SIGNED

Steven Polak, Director

Per: ORIGINAL SIGNED

Maurice Smith, Bargaining Committee
Member

APPENDIX A

THE MUNICIPAL PENSION PLAN Appointment and Acceptance of Trust

TO: THE MUNICIPAL PENSION BOARD OF TRUSTEES

The undersigned acknowledges receipt of a copy of the Municipal Pension Plan Joint Trust Agreement (the “**Agreement**”) pursuant to which the Municipal Pension Plan (the “**Pension Plan**”) and the Municipal Pension Fund (the “**Pension Fund**”) are established.

The undersigned is hereby appointed to act as a Trustee [or alternate Trustee] of the Pension Plan and the Pension Fund by the appointing party described below for a term of _____ years ending on _____.

The undersigned confirms that the undersigned is a permanent resident of Canada, and agrees to immediately notify the other Trustees if this ever ceases to be the case.

The undersigned consents to act as a Trustee [or alternate Trustee] of the Pension Plan and Pension Fund pursuant to the terms of the Agreement.

The undersigned hereby accepts the trusts created and established by the Agreement, and agrees to administer the Pension Plan and Pension Fund in accordance with the provisions of the Agreement.

The undersigned agrees that until further notice communications may be sent to the undersigned at the following addresses or number appropriate to the communication:

[Street address]

[Facsimile number]

[E-mail address]

DATED at _____, British Columbia, this _____ day of _____, _____.

[Name of Appointing Party]

Trustee [alternate Trustee]

Per: _____

Witness

APPENDIX B

MUNICIPAL PENSION PLAN

FUNDING ARRANGEMENT FOR TRANSITIONAL PERIOD

1. Terminology

- (a) In this Appendix B, “**actuarial gain**”, “**unfunded liability**” and “**actuarial excess**” have the meanings given to those phrases in the PBSA and the regulations under the PBSA. The determination of whether the Pension Plan has an actuarial gain, an unfunded liability or actuarial excess shall be made with reference to the benefits payable from the Basic Account.
- (b) The “**Transitional Period**” for the Pension Plan and the Pension Fund shall commence on the Effective Date and shall end effective as of the date the items set out in subsections 2(a), 2(b) and 2(c) of this Appendix B are achieved. Following the Transitional Period, the powers of the Board regarding use of actuarial excess will be as set out in subsection 10.3(c) of the Agreement.

2. Use of Actuarial Gains and Actuarial Excess During Transitional Period

During the Transitional Period, the powers of the Board with respect to the use of actuarial excess or actuarial gains in the Pension Plan which are identified in a regularly scheduled actuarial valuation are limited to achieving the following objectives, in the following order:

(a) Elimination of Unfunded Liabilities

If an actuarial valuation report indicates that an actuarial gain has occurred since the last valuation, the gain must first be applied to amortize or reduce the outstanding balance of any unfunded liability, with the oldest established unfunded liabilities being amortized or reduced before later ones. If all unfunded liabilities are amortized, and an actuarial valuation report indicates that the Pension Plan has actuarial excess, the actuarial excess must be applied in the manners described in subsections (b) and (c) in that order.

(b) Rebalancing of Contribution Rates and Benefit Improvements.

After all unfunded liabilities are eliminated as described in subsection 2 (a), and an actuarial valuation indicates that the Pension Plan has actuarial excess, the actuarial excess will be used to provide the benefit improvements in (i) below and to rebalance Plan Member and Employer contribution rates in the manner described in (ii) below. For greater certainty, actuarial excess may not be used for the purpose of rebalancing Plan Member and Employer contributions unless and

until there is sufficient actuarial excess to simultaneously implement the benefit improvements described in (i) below.

(i) Benefit Improvements.

The following are the benefit improvements:

- A. change the normal form of pension from a single life without guarantee to a single life with a ten-year guarantee; and
- B. change the benefit formula from 1.3/2.0% to 1.35/2.0%.

When considering the cost of the foregoing benefit improvements, the Board must determine the costs based on the open group of Plan Members and must use a 25 year amortization schedule for the Pension Plan actuarial excess that will be used to fund the benefit improvements.

These benefit improvements will only apply to those individuals who are active Plan Members at the date the improvements are implemented, and will apply to all of the benefits such individuals are entitled to under the Pension Plan. All active Plan Members who join the Pension Plan after the date of the benefit improvements will also be entitled to these benefit improvements.

(ii) Rebalancing.

The Employer contributions rates to the Basic Account for the purpose of rebalancing are 5.0/6.5% for group 1 and 4 Plan Members. For group 2 and 3 Plan Members, the Employer rate will be set at the foregoing 5.0/6.5% rate plus the differential in the normal cost rate for groups 2 and 3 vs. that for groups 1 and 4, as indicated by the actuarial valuation from time to time. Currently, based on the 1997 actuarial valuation, this differential is 2.73%, producing an Employer rate of 7.73/9.23% for groups 2 and 3. The doubling feature inherent in the current statutory rates will be removed. Groups 1 through 4 are as described in the Pension Plan Rules.

(c) Contribution Rate Stabilization Reserve and Inflation Adjustment Account

Once an actuarial valuation indicates that the Pension Plan has sufficient actuarial excess to finance both the benefit improvements and the rebalancing of contribution rates described in subsection (b), and the benefit improvements and rebalancing of contribution rates is implemented, 50% of any additional actuarial excess indicated in that actuarial valuation report, or future actuarial valuation reports, must be transferred to a contribution rate stabilization reserve, and 50% must be transferred to the Inflation Adjustment Account, to an aggregate total of one billion dollars. The contribution rate stabilization reserve will be shared on an equal (50/50) basis between Plan Members and Employers in order to maintain or reduce future Plan Member and Employer contribution rates.

3. **December 31, 2000 Actuarial Valuation**

Regardless of whether the Effective Date occurs before or after December 31, 2000, any actuarial gains or actuarial excess identified in the actuarial valuation of the Pension Plan performed as of December 31, 2000 will be dealt with as provided in Section 2 of this Appendix B.

4. **December 31, 2015 Actuarial Valuation & Sustainable Cost of Living**

Notwithstanding anything contained herein to the contrary:

- (a) Effective January 1, 2019 the Basic Account contributions shall be reduced by 1.06% of salary, and a corresponding increase to the overall contribution rate to the Inflation Adjustment Account of 1.06% of salary shall be made. The decrease in the Basic Account contribution rate and the increase in the Inflation Adjustment Account contribution rate shall be shared equally by the active members and the employers. The reduction in the Basic Account contribution rate and the corresponding increase in the contribution rate to the Inflation Adjustment Account referred to in this paragraph 4(a) shall be implemented regardless of the results of any subsequent actuarial valuation.
- (b) If Schedule 1 Statement of Actuarial Position of the actuarial valuation of the Pension Plan performed as at December 31, 2015 identifies that there is actuarial excess, the actuarial excess shall be dealt with as follows:
 - (i) a contribution rate stabilization account shall be established within the Basic Account in an amount up to but not exceeding \$2.5 billion; and
 - (ii) any actuarial excess in excess of \$2.5 billion shall be allocated to the Inflation Adjustment Account up to but not exceeding an amount which will fund full indexing based on the long term inflation rate assumed in the 2015 sustainable indexing valuation.

The methodology used in the actuarial valuation of the Pension Plan as at December 31, 2012 shall be used in the December 31, 2015 actuarial valuation to determine whether there is actuarial excess.

APPENDIX C

MUNICIPAL PENSION PLAN RULES

Note: The original Joint Trust Agreement includes the Pension Plan Rules as they were on April 2, 2001. To obtain a copy of the Pension Plan Rules in effect on April 2, 2001, contact the Municipal Pension Board Secretariat at (250) 356-6220.

The current Pension Plan Rules can be viewed at the following web address:

http://www.pensionsbc.ca/portal/page/portal/PENCORPCONTENT/MPPPAGE/PUBLICATIONS/PLANRULES/MPP_PLANRULES.PDF