

**JOINT COMMUNITY BENEFITS TRUST**

**AGREEMENT AND  
DECLARATION OF TRUST**

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**THIS AGREEMENT AND DECLARATION OF TRUST** made as of the \_\_\_ day of \_\_\_\_\_, 2017.

BETWEEN:

**HEALTH SERVICES AND SUPPORT – COMMUNITY SUBSECTOR  
BARGAINING ASSOCIATION**

(“CBA”)

AND:

**HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA**

(“HEABC”)

AND:

**MARINA BEAUCHAMP, SUSANNE BELLEFONTAINE, MAL GRIFFIN,  
ADRIENNE HOOK, KIM KERRONE, DEAN LEVANGIE, LAURA O'NEILL,  
MONICA STAFF, BONNIE WILSON AND DEB WILSON**

(“Original Trustees”)

**WHEREAS**, pursuant to Memorandum of Understanding #35 – Re: Health and Welfare Benefits forming part of the 2014-2019 Collective Agreement between the HEABC and the CBA, it has been agreed that a trust to be known as the “Joint Community Benefits Trust” will be established and this Agreement and Declaration of Trust records the terms and conditions of such trust established for the benefit of the Beneficiaries (as defined below);

**AND WHEREAS** it is intended that the Plan (as defined below) and the terms hereof will at all times meet the requirements for an “employee life and health trust” within the meaning of the *Income Tax Act* (Canada);

**AND WHEREAS** any employer bound by the terms and conditions of the Collective Agreement must participate in the Plan;

**AND WHEREAS** the Original Trustees are willing to exercise the authority granted to them herein;

**AND WHEREAS** the Original Trustees desire to declare the trusts, terms and conditions upon which the Trustees (as defined below) agree to hold the contributions and all future property acquired by the Trustees in trust for the Beneficiaries;

**NOW THEREFORE**, for value received, the Original Trustees declare, and the Parties agree, as follows:

## ARTICLE 1 – INTERPRETATION

1.1 **Definitions.** In this Agreement the following defined terms have the following meanings:

**"Acceptance of Trust"** means the acceptance of trust, in the form set out in Schedule B or such other form as prescribed by the Trustees, by which a Trustee accepts the trusts created and established under this Agreement, consents to act as a Trustee and agrees to administer the Plan.

**"Actuary"** means the person, corporation or firm appointed by the Trustees in accordance with subsection 9.4(a) to be the actuary of the Plan, who shall be, or in the case of a firm or corporation, a member of the staff shall be, a Fellow of the Canadian Institute of Actuaries.

**"Administrative Agent"** means a person or persons, including one or more employees, selected by the Trustees in accordance with subsection 9.4(b) to perform duties and responsibilities related to the administration of the Plan.

**"Agreement"** means this agreement and declaration of trust and any amendment to it and any instrument supplemental or ancillary to it and any amendment to any such instrument.

**"Applicable Legislation"** means all statutes of Canada or a province of Canada, together with the regulations thereunder, as amended from time to time, which require compliance by the Plan, including the *Personal Information Protection Act* (British Columbia) and the Income Tax Act.

**"Auditor"** means the person or firm appointed from time to time by the Trustees in accordance with subsection 9.4(a) to audit the financial statements of the Plan.

**"Authorized Investments"** means investments made by the Trustees in accordance with any investment guidelines they may adopt from time to time, provided that the Trustees may not make a loan to or make an investment in a Participating Employer, or a person or partnership with whom the Participating Employer does not deal at arm's length.

**"Beneficiary"** means a Participating Employee and his or her eligible dependents and beneficiaries as defined in the Plan Text.

**"Benefits"** means such benefits that qualify as "designated employee benefits" under subsection 144.1(1) of the Income Tax Act and are provided by the Trustees under the Plan from time to time.

**"CBA"** means the association of bargaining agents for employees known as the Health Services and Support – Community Subsector Bargaining Association, which is an association formed in accordance with the *Health Authorities Act* (British Columbia) and authorized to bargain collectively on behalf of and bind by the Collective Agreement certain bargaining agents for employees, and includes any successor thereto.

**"CBA Trustees"** has the meaning set out in subsection 7.1(a).

**"Collective Agreement"** means the provincial agreement between HEABC and CBA, together with any and all supplements, extensions and renewals thereof and successor agreements thereto or another collective agreement.

**"Contributions"** means Employer Contributions and Employee Contributions.

**"Employee Contributions"** means any and all sums of money that may or must be paid, in accordance with the Collective Agreement, by Participating Employees to the Trustees to provide Benefits.

**"Employee Life and Health Trust"** means an "employee life and health trust" as defined and governed by section 144.1 of the Income Tax Act.

**"Employer Contributions"** means any and all sums of money required to be paid by Participating Employers to the Trustees to provide Benefits in accordance with this Agreement as determined by the Trustees in accordance with the funding mechanism agreed to in the Collective Agreement for the provision of Benefits.

**"Funding Policy"** means the policy adopted by the Trustees in accordance with section 4.3.

**"HEABC"** means the employers association known as the Health Employers Association of British Columbia, which is an employers' organization accredited by the Labour Relations Board of British Columbia and authorized to bargain collectively on behalf of and bind by the Collective Agreement certain employers, and includes an employer or employers' organization that is a successor to the HEABC as a whole.

**"HEABC Trustees"** has the meaning set out in subsection 7.1(a).

**"Healthcare Benefit Trust"** means that agreement and declaration of trust established December 1, 1993 amongst the HEABC and Gordon R. Anderson, A.H. (Bert) Gurney, Alice D. Laberge, Peter Lusztig and D.J. Ian MacDonald.

**"Income Tax Act"** means the *Income Tax Act* (Canada), including any regulations made thereunder, as the same may be amended from time to time.

**"Original Trustees"** means the original persons appointed pursuant to the provisions of this Agreement to administer the Plan.

**"Participating Employee"** means a person who fulfils the eligibility requirements of the Plan.

**"Participating Employer"** means any employer who is covered by the Collective Agreement.

**"Participation Agreement"** means an agreement between the Trustees and a Participating Employer, in the form set out in Schedule A or such other form prescribed by the Trustees, by which a Participating Employer agrees to participate in the Plan.

**"Party"** or **"Parties"** means HEABC and CBA individually or collectively as the context requires.

**"Plan"** means the "Joint Community Benefits Plan", as constituted under this Agreement and the Plan Text.

**"Plan Text"** means the document adopted by the Trustees in accordance with section 4.1 that describes the terms of the Plan.

**"Prime Rate"** means the rate of interest per annum from time to time publicly quoted by the Royal Bank of Canada, Main Branch, in Vancouver, British Columbia, as being the reference rate

of interest (commonly known as its "prime rate") used by it to determine rates it will charge on loans to its commercial customers of varying degrees of creditworthiness.

"**Successor Trust**" has the meaning set out in subsection 16.1(a).

"**Trade Union**" means a bargaining agent for a Participating Employee.

"**Trust Fund**" means the "Joint Community Benefits Trust" constituted under this Agreement.

"**Trustees**" means the Original Trustees and any successor trustees, and the Chair, and "**Board of Trustees**" shall mean all of the Trustees in office at the relevant time.

1.2 **Interpretation.** In this Agreement, unless otherwise specifically provided, words importing the singular include the plural and vice-versa, and words importing gender will include the masculine, feminine and other genders. The headings in this document are for convenience only and do not form part of this Agreement.

1.3 **Conflict between Plan Text and this Agreement.** If there is any conflict between the provisions of this Agreement and the provisions of any document describing the terms of the Plan, including the Plan Text, the provisions of this Agreement prevail and govern.

#### **ARTICLE 2 – SETTLEMENT, NAME AND TITLE, PAYMENTS**

2.1 **Settlement of Trust Fund.** The Original Trustees acknowledge receipt of the sum of \$10.00 from HEABC settle the Trust Fund, which shall be held in trust pursuant to this Agreement.

2.2 **Name and Title.** The title to all assets of the Trust Fund shall be jointly vested in the Trustees. The Trustees shall jointly hold the property of the Trust Fund and shall deal with it in accordance with the terms of this Agreement.

2.3 **Manner of Payment.** All payments and Contributions shall be made payable to the "Board of Trustees of the Joint Community Benefits Trust" and all Contributions shall be remitted to the Trustees no later than the calendar month immediately following the dates upon which such Contributions were deducted at source.

2.4 **Legal Sources of Payments.** The Trustees may accept money or property from sources other than those described in this Agreement provided that acceptance from any such other source is not contrary to the terms of this Agreement and does not cause the Plan to lose its status as an Employee Life and Health Trust.

#### **ARTICLE 3 – COMPOSITION, PURPOSE AND APPLICATION OF TRUST FUND**

3.1 **Composition of the Trust Fund.** The Trust Fund consists of the settlement amount paid to the Original Trustees pursuant to section 2.1, all Contributions received by the Trustees, all other property which is acquired at any time by the Trustees and all capital accretions and income arising from the foregoing less any authorized payments therefrom.

- 3.2 **Purpose.** The Trust Fund is established for the sole purpose of providing Benefits to the Beneficiaries.
- 3.3 **Employee Life and Health Trust.** The Trustees shall administer the Plan as an Employee Life and Health Trust in compliance with section 144.1 of the Income Tax Act.
- 3.4 **Rights or Interest.** Neither the Parties, nor any Participating Employer, Beneficiary or any other person, association, firm or corporation, shall have any right, title or interest in or to the assets of the Trust Fund, except as specifically provided by this Agreement or the Plan Text and as may be permitted by Applicable Legislation; provided however that nothing in this Agreement shall prevent a Contribution, made by a Participating Employer or Participating Employee by mistake of fact, from being returned by the Trustees to such person within one year after the payment of such Contribution.
- 3.5 **Seizure or Attachment.** Subject to the laws of the Province of British Columbia, no monies, property or equity of any nature whatsoever in the Trust Fund, or policies or benefits or monies payable therefrom, shall be subject in any manner by any Beneficiary or person claiming through such Beneficiary or otherwise, to anticipation, alienation, seizure, sale, transfer, assignment, pledge, encumbrance, attachment, garnishment, execution, mortgage, lien or charge. If by reason of any seizure or sale or any attempted sale under any legal, equitable or other process or by way of any suit or proceedings, any Benefit becomes payable to any person other than the Beneficiary for whom the same is intended, as provided in the Plan, the Trustees shall have the power to withhold payment of such benefit to such Beneficiary until such anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, garnishment, mortgage, lien, charge or seizure or other legal process is cancelled or withdrawn, and the Trustees shall have the right to use and apply the amount of such Benefit during such period as the Trustees may deem best for the support and maintenance of such Beneficiary.
- 3.6 **No Diversion.** Except as otherwise provided herein, at no time shall any part of the corpus or income of the Trust Fund be used for or diverted to purposes other than the provision of Benefits for the exclusive benefit of the Beneficiaries, and in connection therewith the payment of reasonable costs of establishment, amendment and administration of the Plan and the investment of the Trust Fund.
- 3.7 **No Guarantee.** Nothing contained in this Agreement or the Plan Text shall constitute a guarantee that the assets of the Trust Fund will be sufficient to pay any Benefits offered from time to time under the Plan to any person throughout his or her lifetime or make any other payment. The obligation of the Trustees to pay Benefits provided under the Plan is expressly conditioned on the sufficiency of Trust Fund assets.
- 3.8 **Binding Effect.** It is hereby agreed that this Agreement is binding on the CBA, the HEABC, the Participating Employers and all Beneficiaries and their respective heirs, executors, administrators, successors and assigns.

#### ARTICLE 4 – BENEFITS AND ESTABLISHMENT AND FUNDING OF THE PLAN

- 4.1 **Establishment of the Plan.** The Trustees shall establish and maintain the Plan, which shall provide the benefits provided for in the Collective Agreement to the Beneficiaries as modified by

the Trustees in accordance with this Agreement and the Funding Policy. The terms of the Plan shall be set out in the Plan Text, which document will also set out the conditions of eligibility for such benefits.

- 4.2 **Changes to Non-LTD Benefits.** The CBA Trustees shall have the sole and exclusive right to determine the nature of changes to any Benefit(s) other than long term disability benefits and to adopt the necessary amendments to the Plan Text in respect of such changes. The CBA Trustees shall exercise their power under this section 4.2 by majority vote amongst themselves. The voting procedures in section 8.9 shall have no application to decisions of the CBA Trustees made pursuant to this section 4.2.
- 4.3 **Funding Policy.** The Trustees shall adopt a Funding Policy, which addresses the following:
- (a) the actuarial methods and assumptions to be used in actuarial valuations of the Plan;
  - (b) the margins or explicit reserves, if any, to be used in the actuarial valuations of the Plan;
  - (c) the consequences of any present or expected excess or deficiency of assets relative to the Plan's liabilities as may be disclosed in any actuarial valuation; and
  - (d) such other matters as the Trustees consider appropriate,

The Trustees may amend the Funding Policy at any time.

- 4.4 **Amendment of the Plan Text.** Subject to section 4.2 and the Funding Policy, the Trustees may amend the Plan Text at any time and, in the circumstance prescribed in the Funding Policy, must amend the Plan Text to (i) decrease the value of the Benefits or (ii) increase the value of Benefits, as the circumstances require.
- 4.5 **Actuarial Valuation of the Plan.** The Actuary shall prepare annual actuarial valuations of the Plan as at December 31. The actuarial methods and assumptions used in such valuations shall be in accordance with generally accepted actuarial principles and the Funding Policy.

#### ARTICLE 5 – PARTICIPATING EMPLOYER OBLIGATIONS

- 5.1 **Mandatory Participation.** Every employer bound by the Collective Agreement, whether or not the employer is a member of HEABC, is required to participate in the Plan.
- 5.2 **Participation Agreement.** Each Participating Employer shall execute a Participation Agreement.
- 5.3 **Contributions by Participating Employers.** In consideration of being accepted by the Trustees for participation in the Plan, each Participating Employer agrees with the Trustees and promises to promptly pay to the Trustees, or to such person, firm or corporation as the Trustees may from time to time direct, all Contributions which the Participating Employer is required by the Trustees to pay. The Participating Employers' absolute obligation to make Employer Contributions to the Trust Fund shall not be subject to any set-off or counter-claim which a Participating Employer may have for any liability of any Beneficiary.
- 5.4 **Interest.** Whenever and so often as a Participating Employer fails to pay Contributions within 30 days of the date upon which such Contributions were due to be paid, such Participating



Employer will also pay, as liquidated damages, interest at an annual rate of four percentage points above the Prime Rate, compounded annually, from the date the Contributions were due to be paid until the actual date of payment thereof both before and after judgement.

- 5.5 **Enforcement.** If a Participating Employer fails to pay Contributions or other required payments by the due date, the Trustees must provide particulars to the CBA as requested to enforce payment including interest as provided in Section 5.4. The Trustees shall monitor the actions taken by the CBA in respect of enforcement and may in their discretion take legal action to enforce payment. Participating Employers that fail to pay Contributions are also liable for, and shall pay to the Trust Fund, all legal fees and disbursements and other expenses incurred by the Trustees for the collection of Contributions, and interest, reasonably incurred on a full indemnity basis.
- 5.6 **Nature of Right of Action.** The right of action hereby conferred upon the Trustees will be an action in debt and is in addition to and independent of any other procedure or remedy which may be available to the Trustees, the CBA, or to any other person whomsoever. No Participating Employer shall be entitled to have such action delayed, stayed or otherwise postponed on the ground that the claim of the Trustees in such action might also be a claim capable of being dealt with by a trade union or Participating Employer under a collective agreement.
- 5.7 **Non-Payment by One Contributor.** Non-payment by anyone required to make Contributions shall not relieve any other person of his or her obligations to make such payments.
- 5.8 **Contributions Held in Trust.** Any sum required to be paid to the Trust Fund by a Participating Employer, including Contributions and any interest payable pursuant to section 5.4, is deemed to be held in trust by the Participating Employer for the Trustees, whether or not the amount thereof has been kept separate and apart by the Participating Employer, and the Participating Employer must not appropriate or convert any part of the amount required to be paid to the Trustees to its own use.
- 5.9 **Obligation to Furnish Information.** In consideration of being accepted by the Trustees for participation in the Plan, each Participating Employer agrees with the Trustees that it will promptly provide the Trustees or their designates with such reports, payroll records, timesheets and accounting information and other data as the Trustees may reasonably require and request from it and consider necessary for the proper administration of the Plan, including, but not limited to, the determination of eligibility to participate in the Plan and the determination of the Benefits to be provided under the Plan.
- 5.10 **Audits.** Each Participating Employer agrees that, upon the written demand of the Trustees, it shall permit a chartered professional accountant acting on the Trustees' behalf, or in accordance with their instructions, to:
- (a) enter upon that Participating Employer's premises at any reasonable time or times, upon giving one week's written notice, for the purpose of carrying out an inspection, audit or examination of all books of account, documents, payrolls, records, or any other material which may be relevant to the said inspection, audit or examination; and,
  - (b) make inquiries of the Participating Employer or any persons employed or otherwise engaged by a Participating Employer, which persons shall cooperate and will produce all

books of account, documents, payrolls, records, or any other material which may be relevant to the said inspection, audit or examination,

in order to ensure that the Participating Employer has been complying with the terms and conditions of the Participation Agreement, the Collective Agreement, this Agreement and the Plan Text including, and without limiting the generality of the foregoing, complying with its obligations to make Contributions. It is agreed that the chartered professional accountant shall not reveal any of the information or documents reviewed or obtained, unless such inspection, audit or examination reveals that a Participating Employer has failed to carry out his or her obligations under the Participation Agreement, the Collective Agreement, the Plan Text or this Agreement.

- 5.11 **Security.** The Trustees may require a Participating Employer who has failed to make Contributions on time in three consecutive months, to furnish cash deposits, in such amounts and at such times as are reasonably determined by the Trustees, provided the Participating Employer has been given reasonable notice of such requirement. The Trustees may also require a Participating Employer to furnish a bond or letter of credit acceptable to the Trustees for an amount equivalent to a maximum of six months' of reasonably anticipated Contributions. Such bond or letter of credit, at the expiry of six months, will be renewed at the request of the Trustees. If the Participating Employer fails to comply with such request at least 10 days prior to the expiry of the current bond or letter of credit, then the Trustees will be entitled to convert such bond or letter of credit to a cash deposit.
- 5.12 **Participating Employer Failure to Comply.** If a Participating Employer has failed to carry out its obligations under the Participation Agreement, the Collective Agreement, this Agreement or the Plan Text, the Participating Employer shall forthwith, upon written demand from the Trustees:
- (a) pay to the Trustees all sums which may have been determined by the said inspection, audit or examination or otherwise, to be due and owing by the Participating Employer, as well as interest in accordance with section 5.4 from the due date until all such sums are paid to the Trustees;
  - (b) complete and remit any information forms or other related and supporting documents which may be required of the Participating Employer; and
  - (c) pay to the Trustees all costs, expenses, or losses, incurred by it in connection with or arising out of any inspection, audit or examination or other proceedings or steps taken in respect to any such failure.
- 5.13 **Grace Period.** The Trustees are authorized to establish a reasonable and lawful grace period by which Contributions must be received.

## ARTICLE 6 – PARTICIPATING EMPLOYEE CONTRIBUTIONS

- 6.1 **Deduction and Remitting Employee Contributions.** A Participating Employer shall deduct from the wages of a Participating Employee in their employ the amount of Participating Employee Contributions that the Participating Employee is required to make, and shall remit such Employee Contributions to the Trustees within 30 days of the deduction.

- 6.2 **Calculation of Participating Employee Contributions.** Each Participating Employee shall pay Employee Contributions to the Trustees in such amounts and in such manner as is determined by the Collective Agreement.

## ARTICLE 7 – BOARD OF TRUSTEES

### 7.1 Board of Trustees.

- (a) The Board of Trustees shall consist of 11 Trustees. Five Trustees shall be appointed by the CBA (the “CBA Trustees”) and five Trustees shall be appointed by the HEABC (the “HEABC Trustees”). One Trustee, the Chair, will be appointed by the Parties in accordance with section 8.1.
- (b) Marina Beauchamp, Susanne Bellefontaine, Laura O’Neill, Monica Staff and Deb Wilson are confirmed to be the initial Trustees appointed by the CBA. Mal Griffin, Adrienne Hook, Kim Kerrone, Dean Levangie and Bonnie Wilson are confirmed to be the initial Trustees appointed by the HEABC.

- 7.2 **Term of Initial Trustees’ Appointment.** The 10 Trustees appointed pursuant to subsection 7.1(b) shall be appointed for terms of up to three years, as specified by the CBA for the CBA Trustees and as specified by HEABC for the HEABC Trustees.

- 7.3 **Term of Office.** Trustees other than the Chair shall serve for terms ending on March 31<sup>st</sup>. The initial one, two and three year terms described in section 7.2 shall be for the periods ending on March 31, 2017, March 31, 2018 and March 31, 2019, respectively. Upon the expiration of the initial terms of the Trustees as set out in section 7.2, the subsequent terms for Trustees appointed under subsection 7.1(a) shall be three years.

- 7.4 **Qualification of Trustees.** All Trustees shall be residents of Canada.

- 7.5 **Acceptance of Trusts.** Each individual, upon signing this Agreement as one of the Original Trustees, or, in the case of the Chair or a successor Trustee, upon signing and filing with the Trustees an Acceptance of Trust, is deemed to accept the trusts created and established by this Agreement, to have consented to act as a Trustee and to have agreed to administer the Plan as set out herein and, in the case of a Chair or successor Trustee, becomes vested with all the rights, powers and duties of a Trustee under this Agreement without the necessity of the execution of any conveyance, assignment, transfer or other documentation.

### 7.6 Appointment of Trustees:

- (a) **Expiration of Term.** With respect to Trustees other than the Chair, no later than six months prior to the expiry of a Trustee’s term, the Administrative Agent shall give written notice to such Trustee’s appointing Party and that appointing Party shall renew the appointment of the Trustee or appoint a successor Trustee.
- (b) **Resignation, Removal, Death.** If a Trustee resigns, is removed from office or dies, such Trustee’s appointing Party will immediately appoint a successor Trustee to serve until the expiry of the term of the Trustee being replaced.

**7.7 Removal of Trustee.**

- (a) A Trustee other than the Chair may be removed from office at any time by his or her appointing Party by that Party giving seven days' written notice to the Trustees, the Administrative Agent and the other Party. The effective date of removal will be the day immediately following the expiry of the notice period.
- (b) A Trustee shall be removed from office without prior notice if:
  - (i) a receiving order is made against him or her or if he or she makes an assignment under the *Bankruptcy and Insolvency Act* (Canada); or
  - (ii) he or she becomes incapable of acting as a Trustee and such Trustee or his or her personal representative gives notice of such incapacity to his or her appointing Party and the Trustees.

**7.8 Resignation of Trustee.** A Trustee may resign by giving at least seven days' written notice to the remaining Trustees, the Administrative Agent and the Parties. Any such notice must state the date, not prior to the expiry of the notice period, on which such resignation is to take effect. Such resignation will take effect on the date stated in the notice.

**7.9 Death of Trustee.** If a Trustee dies, his or her heirs, administrators, executors and assigns will be fully discharged from all future duties, obligations and responsibilities under this Agreement as of the date of such Trustee's death. A deceased Trustee's estate will not be discharged from, and will remain liable for, any of the deceased's duties, obligations and responsibilities arising under this Agreement prior to the date of death.

**7.10 Discharge of Trustee.** If a Trustee resigns, is removed from office or reaches the end of his or her term without renewal, he or she will be fully discharged from all future duties, obligations and responsibilities under this Agreement as of the date of such resignation, removal or expiry of term. Such an individual will not be discharged from, and will remain liable for, any of his or her duties, obligations and responsibilities arising under this Agreement prior to the effective date of his or her resignation, removal or expiry of term.

**7.11 Remaining Trustees.** If a Trustee resigns, is removed from office or dies, the remaining Trustees shall have jointly all the powers, rights, estates and interests of the Trustees as provided hereunder and shall be charged with all duties of the Trustees hereunder.

**7.12 Status.** Any Trustee that resigns, is removed from office or reaches the end of his or her term without renewal and the personal representatives of any deceased Trustee must forthwith turn over to the Administrative Agent any and all records, books, documents, money and other property and assets in his or her possession, forming part of the Trust Fund or incidental to his or her duties as Trustee under this Agreement or relating to the administration of the Plan.

**7.13 Conveyance of Property.** Every person ceasing to be a Trustee hereunder is deemed to have conveyed, assigned, transferred or made over to the remaining Trustees upon the effective date of cessation (the "**Cessation Date**") any or all the rights to and property of the Trust Fund, and will, if necessary, convey, assign, transfer and make over to the remaining Trustees upon the Cessation Date any or all the rights and property of the Trust Fund as the remaining Trustees may direct. Each Trustee, by signing this Agreement, or an Acceptance of Trust, constitutes and appoints the remaining Trustees as his or her attorneys, to sign all documents and deeds in such

Trustee's name as may be necessary to convey his or her legal interest in the rights to and property of the Trust Fund to the other Trustees upon the Cessation Date. Upon the appointment of a successor Trustee, the Trustees upon the effective date of such Acceptance of Trust by a successor Trustee will be deemed to have conveyed, assigned, transferred or made over to the successor Trustee all the rights to and property of the Trust Fund and will sign all documents and deeds as may be necessary to convey a joint legal interest in the rights to and property of the Trust Fund to the successor Trustee.

- 7.14 **No Conflict.** A person is not disentitled from serving as a Trustee solely because he or she is entitled to receive Benefits or is an officer or employee of the HEABC, the CBA or its constituent trade unions.
- 7.15 **Validity of Actions of the Trustees.** Notwithstanding that it is subsequently discovered or determined that there existed some defect in the appointment, removal or qualifications of any Trustee, or, that at the time a decision or action of the Trustees was taken there was not appointed the required number of Trustees, all acts and proceedings taken by the Trustees in good faith at any time while any such defect existed will nevertheless be valid and effective.
- 7.16 **Fees and Expenses.** Trustees other than the Chair shall not be entitled to any fee or payment on account of their holding office. However, subject to the approval of the Trustees, a Trustee may be reimbursed from the Trust Fund for his or her actual expenses incurred in attending each meeting of the Trustees at which the Trustee is physically present, the reasonable expenses incurred for attending educational conferences or courses for which conferences or courses the prior approval of the Trustees has been obtained and the actual expenses in carrying out any other duty in connection with the Plan, all in accordance with policies to be established from time to time by the Trustees.

#### ARTICLE 8 – BOARD OF TRUSTEES OPERATION

- 8.1 **Chair.** The Parties will appoint a Chair of the Board of Trustees by agreement in writing which Chair will be a Trustee with full voting privileges and responsibilities. The Chair will serve until removed and replaced by the Parties from time to time.
- 8.2 **Minutes of Meetings.** The Trustees shall appoint a recording secretary who shall keep minutes or records of all meetings, proceedings and acts of the Trustees. Such minutes need not be verbatim.
- 8.3 **Execution of Documents and Cheques.** All documents to be executed by the Trustees and all cheques or other negotiable instruments payable out of the Trust Fund shall be signed by at least one HEABC Trustee and one CBA Trustee or by such other persons as the Trustees may by resolution appoint.
- 8.4 **Meetings.**
- (a) The Trustees shall hold at least four meetings each year, one of which shall be designated as the annual meeting of the Trustees. The Chair shall be responsible for setting the dates of each such annual meeting, provided that the annual meeting must be held within six months of the end of the fiscal year of the Plan.

- (b) Each meeting of the Trustees shall be held at a time and place to be determined by the Chair.
- (c) At least 14 days' written notice shall be provided to the Trustees of any meeting, provided that such notice may be waived by the consent, in writing, of all Trustees, or by a unanimous resolution of the Trustees.
- (d) At each annual meeting of the Trustees, the Trustees shall consider, among other things:
  - (i) a financial statement from the Auditor covering the immediately preceding fiscal period of the Plan;
  - (ii) the Administrative Agent's report relating to the period since the inception of the Plan or from the date of the last preceding annual meeting as the case may be;
  - (iii) the appointment or re-appointment of the Auditor; and
  - (iv) an actuarial valuation of the Plan from the Actuary as at the immediate past December 31.

8.5 **Other Meetings.** The Chair or any two or more Trustees may call a meeting of the Trustees at any time by giving at least three days' written notice of the time and place thereof to each Trustee. Meetings of the Trustees may be held at any time without notice if all Trustees consent thereto.

8.6 **Meetings by Conference Call.** Any meeting of the Trustees may be held by means of a conference telephone call or such other electronic means as deemed appropriate by the Trustees.

8.7 **Quorum.** A quorum shall consist of at least six Trustees provided that at least three HEABC Trustees and three CBA Trustees are present.

8.8 **Consent in Writing.** If all of the Trustees then in office could form a quorum if they met in person, any decision is effective without a meeting of the Trustees if evidenced by instrument in writing signed by all the Trustees then in office, which instrument may be signed in counterparts.

#### 8.9 **Voting**

- (a) Subject to section 4.2, the decisions of the Trustees shall be determined by a majority vote. The CBA Trustees shall collectively have one vote and the HEABC Trustees shall collectively have one vote. Each group of Trustees may caucus separately from the other group of Trustees to determine by majority vote how to cast their one vote.
- (b) The Chair is entitled to one vote if there is a tie. Should the Chair fail or decline to cast a deciding vote, the process in section 8.10 shall apply.

#### 8.10 **Trustees' Deadlock.**

- (a) **Deadlock.** A deadlock shall be deemed to exist wherever a proposal, motion or resolution made by any Trustee is neither adopted nor rejected by a majority vote, or where a proposal, motion, or resolution is unable to be made at a meeting due to lack of

a quorum at two consecutively called meetings. In the event of a deadlock, a further meeting of the Trustees shall be held within 10 days after the deadlock has arisen for the purpose of resolving the matter in dispute.

- (b) **Mediation.** If a deadlock has arisen pursuant to paragraph (a), and:
- (i) a further meeting to resolve the matter in dispute is not held within the 10 day period after the deadlock has arisen;
  - (ii) the Trustees try to hold such a meeting within the 10 day period after the deadlock has arisen but fail to do so because they cannot form a quorum; or
  - (iii) a further meeting is held within the 10 day period after the deadlock has arisen but the matter in dispute is not resolved,

then either the HEABC Trustees or the CBA Trustees may, by giving written notice to the other Trustees (the “**Initiating Notice**”), require that the matter at issue be referred to mediation. Upon referring the matter to mediation, the Trustees must forthwith appoint a mediator to help them resolve the disputed issue. Any such mediation will be governed by the Mediation Rules of Procedure of the British Columbia International Commercial Arbitration Centre.

- (c) **Arbitration.** If within 60 days after the delivery of the Initiating Notice pursuant to paragraph (b), the matter in dispute has not been fully and finally resolved, the Trustees must designate an arbitrator to resolve the dispute. If within 90 days after the delivery of the Initiating Notice, no arbitrator has been designated by the Trustees, and the matter in dispute has not been resolved, then either the HEABC Trustees or the CBA Trustees may ask a judge of the British Columbia Supreme Court to appoint an arbitrator to resolve the dispute. The arbitrator selected by the Trustees or appointed by the judge shall act as an 11<sup>th</sup> Trustee and cast a deadlock breaking vote in accordance with the fiduciary principles applicable to the exercise of the Trustees’ duties and responsibilities hereunder. The arbitrator shall conduct the arbitration in accordance with the *Arbitration Act* (British Columbia).
- (d) **Direct to Arbitration.** Despite paragraphs (b) and (c), the Trustees may resolve to refer the matter at issue directly to arbitration in accordance with the procedure set out in paragraph (c).
- (e) **Final and Binding Decisions.** Any decision of the Trustees reached through the mediation and arbitration steps of the dispute resolution procedure in accordance with paragraphs (b) and (c) above shall be final and binding upon the Trustees, the HEABC, the CBA, all Participating Employers and all Beneficiaries.

8.11 **Meetings with HEABC and CBA.** The Trustees shall convene an annual meeting with representatives of the HEABC and CBA to discuss matters of interest to the Trustees, the HEABC or the CBA.

**ARTICLE 9 – POWERS, DUTIES AND RESPONSIBILITIES  
OF THE TRUSTEES**

- 9.1 **Administration of the Plan.** The administration of the Plan shall be the responsibility of the Trustees, and they shall administer the Plan in accordance with the express powers given them pursuant to this Agreement and the Plan Text. The terms of this Agreement and the Plan Text shall be construed and administered so as to comply with the requirements to be an Employee Life and Health Trust. Any term of this Agreement or the Plan Text that would otherwise be inconsistent with the requirements of such provisions shall be modified to the extent necessary to comply with such requirements. Subject to the provisions of this Agreement and Applicable Legislation, the Trustees shall have sole, absolute and discretionary authority to adopt such policies, rules and regulations and take all actions that they deem desirable for the administration of the Plan, to interpret and construe the terms of the Plan Text and this Agreement and to make findings of fact and decide any and all matters arising hereunder or in connection with the administration of this Agreement. The decisions of the Trustees shall be final and binding on all Participating Employers, Beneficiaries, the HEABC and the CBA.
- 9.2 **Collection of Contributions.** The Trustees may use all reasonable means to collect and receive all Contributions due to the Trust Fund, and shall, promptly after receipt, deposit such Contributions in an account established in a reputable bank, trust company, or other financial institution.
- 9.3 **Powers.** Subject to the provisions of this Agreement, and to the duties, powers and responsibilities expressly reserved to the Parties, the Trustees have in relation to the Plan and the Trust Fund all the powers that a natural person would have if such person were the beneficial owner of the Trust Fund, including without limitation the specific powers set forth below:
- (a) **Power to Make Arrangements for Provision of Benefits.** The Trustees may provide Benefits in accordance with the Plan that are fully insured, partially insured or self-insured, as determined from time to time by the Trustees in accordance with and subject to the Funding Policy and section 4.2 and may make such arrangements and agreements, including insurance arrangements, on behalf of the Plan with corporations, firms or persons to provide the Benefits required to be provided pursuant to the Plan and this Agreement from time to time.
  - (b) **Power to Establish Reserves.** The Trustees may, based on actuarial advice and in accordance with the Funding Policy, establish reserves to enable the Plan to provide the Benefits to the Beneficiaries.
  - (c) **Legal Action by Trustees.** The Trustees may, if they deem it necessary, seek a judicial determination or declaratory judgement on any questions of the construction of this Agreement or the Plan Text, or to obtain directions as to any action hereunder. Any such determination is binding on HEABC, CBA, Participating Employers and Beneficiaries.
  - (d) **Power to Determine Evidence.** The Trustees may determine the standard of proof and the sufficiency of evidence as to any factual question arising under the Plan.
  - (e) **Power to Determine Eligibility for Benefits.** The Trustees may determine and decide upon the right of any person to receive Benefits, the type, extent or amount thereof,



and whether or not any hearing will be granted to any person who may be affected by any such determination or decision, and every such determination and decision will be final and binding upon all parties and persons whomsoever.

- (f) **Power to Sell.** The Trustees may sell, exchange, lease, grant any option, or otherwise alienate or dispose of any property of the Trust Fund for such consideration and upon such terms and conditions as they think fit and they may execute and deliver all deeds or other instruments to make good and sufficient title thereto and to give full and valid discharges therefor.
- (g) **Power to Incorporate.** The Trustees may incorporate corporations, the shares of which shall be held by or on behalf of the Trustees for purposes of administering the Plan, making investments of the Trust Fund or holding any Authorized Investment.
- (h) **Power to Retain.** The Trustees may retain any property forming part of the Trust Fund in the actual state or condition in which the same is received by the Trustees for so long as the Trustees consider appropriate.
- (i) **Power to hold Uninvested Cash.** The Trustees may hold in uninvested cash, without any liability for interest thereon, such sums as they deem necessary or advisable for the reasonably current cash requirements of the Plan.
- (j) **Power to Hold Trust Fund in Names of Nominee.** The Trustees may hold the whole or any part of the Trust Fund in the name or names of any nominees of the Trustees or agents for the Trustees and deposit with any such agent or nominee or any custodian any property or documents of title in respect of any property forming part of the Trust Fund.
- (k) **Power to Commingle.** The Trustees may commingle all or part of the Trust Fund with assets of other trust funds for the purpose of making joint, collective or participating investments with respect to such commingled assets, if separate accounts reflecting the share of the Trust are maintained.
- (l) **Power to Delegate.** The Trustees may delegate any of their administrative powers or duties to any committee of the Trustees, including any committee that is a joint committee that includes trustees of other similar trusts, or, subject to section 10.3 **Error! Reference source not found.**, to any of their agents or employees, where it is reasonable and prudent to the circumstances to do so.
- (m) **Power to Enter into Reciprocal Agreements.** The Trustees may enter into reciprocal agreements or arrangements for the transfer or sharing, on an equitable basis, of services or benefits with other similar trusts or plans.
- (n) **Power to Borrow.** The Trustees may borrow from HEABC on an interim basis to ensure that the Trust Fund has sufficient funds to pay the Benefits during its initial start-up phase.

To the extent permitted by Applicable Legislation, the Trustees may borrow on behalf of the Plan such sums of money as may be required to fund the payment of Benefits but only if such borrowing is required for the payment of Benefits on a short term basis to prevent the distress sale of long-term investments and the Trustees may mortgage,

pledge or charge the income and/or capital of the Trust Fund to secure the payment of any money so borrowed. The Trustees may execute and deliver under seal or otherwise such instruments evidencing the indebtedness and the security so given which they consider necessary or desirable.

- (o) **Power to Join in Corporate Reorganizations.** The Trustees may consent to and join in any plan for the reconstruction, reorganization, merger, amalgamation, consolidation, liquidation, wind up or dissolution of any company or corporation the shares, bonds or other securities of which are held as investments of the Trust Fund and authorize the sale of the undertaking or the assets of any such company or corporation, and in pursuance of any such plan accept any shares or securities in lieu of or in exchange for the shares or other interest held by them in such company or corporation.
- (p) **Power to Deal with Securities.** The Trustees may vote upon or in respect of any shares, securities, bonds, notes or other evidence of interest in or obligations of any corporation, company or other entity (and issue proxies in respect thereof).
- (q) **Power to Maintain One Fund or Several Funds.** The Trustees may hold, manage and invest any funds held hereunder as a consolidated fund in which each separate fund will have an appropriate undivided interest.
- (r) **Power to Insure.** The Trustees may purchase and maintain any policy of insurance and apply any part of the Trust Fund towards the payment of any premium for the effecting or maintaining of any such policy. The Trustees may deal with any such policy in such manner as they consider advisable. All monies and benefits under any such policy will constitute part of the capital of the Trust Fund.
- (s) **Power to Deal with Incapacitated Beneficiary.** The Trustees may direct the payment of any Benefits under the Plan payable to an incapacitated Beneficiary to the legal guardian or court-appointed committee of such Beneficiary whose receipt will be a sufficient discharge to the Trustees. The Trustees are not bound to see to the application of any Benefits so paid. The Trustees will establish a policy for the payment of Benefits to minors or incapacitated Beneficiaries and must specifically ensure that a trustee be appointed to receive the interest of any minor intended to receive any Benefits under the Plan.
- (t) **Power to Institute or Defend Proceedings at Law.** The Trustees may institute and defend proceedings at law in any way relating to or arising out of the affairs of the Plan and this Agreement and proceed to the final determination thereof or compromise the same as they consider advisable.
- (u) **Banking Arrangements.** The Trustees may appoint from time to time any credit union, bank, trust company or other company to be the banker or one of the bankers for the purposes of the Plan and from time to time may revoke any such appointment.
- (v) **Taxes, Etc.** The Trustees may (i) pay all or any part of any taxes in respect of the Plan out of the Trust Fund and (ii) take any other action concerning the taxation of the Plan, or any transactions relating thereto, including, without limitation, conducting inquiries into tax matters, obtaining rulings, opinions and similar material from taxation

authorities, contesting the actions or determinations of taxing authorities and conducting objections, appeals, or litigation of any nature whatsoever.

- (w) **Power to Indemnify.** The Trustees may indemnify from the Trust Fund and enter into any indemnity in favour of any former Trustee or other party including an agent or employee employed or appointed pursuant to section 9.3 (l) or section 9.4 in respect of any actual, contingent or prospective liability arising in respect of the Plan or the employment or appointment of the agent or employee.
- (x) **Power to Enter into Cost Sharing Agreements.** The Trustees may enter into written agreements with the Healthcare Benefit Trust or any successor or similar trust, to share certain expenses pertaining to the administration of the Plan with respect to such matters as:
  - (i) costs of collection and disbursement of funds pursuant to the provisions of this Agreement, the Plan Text or any other agreement;
  - (ii) salaries of office and supervisory staff;
  - (iii) cost of office equipment, supplies and incidental material;
  - (iv) costs of computer equipment and facilities and computer maintenance;
  - (v) rent of office space, furnishings, fixtures and office equipment
  - (vi) cost of producing Participating Employer lists and addresses;
  - (vii) legal, consulting, actuarial and audit fees; and
  - (viii) such other costs that in the opinion of the Trustees may be shared;

provided that the Plan is fairly compensated for any expenses it incurs in connection with such an agreement, or alternatively, provided that any amounts paid from the Trust Fund to any other trust fund, in respect of the above costs and expenses, shall be certified by the Auditor as being necessary and reasonable; and provided further, that such cost sharing agreement provide that the Trustees may terminate such agreement at any time, with no more than 30 days' notice to all other parties.

- (y) **Exercise of Powers and Discretion.** All of the powers and discretions conferred upon the Trustees by this Agreement and by law will be exercised by them in their absolute discretion.

9.4 **Experts, Agents and Employees.** Subject to section 10.3 **Error! Reference source not found.**, the Trustees:

- (a) may engage such persons as they consider advisable to assist in the management or administration of the Plan and Trust Fund including, without limitation, an employee, agent, lawyer, accountant, Actuary, Auditor, financial advisor, benefits consultant, manager, broker, surveyor, valuer and appraiser;
- (b) may engage one or more Administrative Agents to administer all or part of the Plan and may delegate to them such duties and responsibilities as the Trustees see fit;

- (c) may appoint a Custodian who may be assigned such duties and responsibilities as the Trustees may deem necessary and advisable, including:
  - (i) hold and account for the money or other property it receives, and be responsible for the collection of any deposits, contributions, remittances, or transfers due to the Trust Fund unless otherwise directed by the Trustees; and
  - (ii) apply the assets of the Trust Fund to pay all reasonable costs, charges, and expenses (including, but not limited to, all brokerage fees and transfer tax expenses and other expenses) incurred in connection with the sale or purchase of investments, all real and personal property taxes, income taxes and other taxes of any kind at any time levied or assessed under any present or future law upon, or with respect to, the Trust Fund or any property included in the Trust Fund and all legal, actuarial, accounting and financial advisory expenses reasonably incurred and previously approved by the Trustees in connection with establishment, amendment, administration and operation of the Plan;
- (d) must retain an external investment advisor to provide them with investment advice and must require such advisor to disclose all conflicts in writing, including any material interest such advisor may have in any transaction involving the Trust Fund; and
- (e) may hire, employ and terminate employees on such terms and conditions as the Trustees deem necessary and appropriate.

**9.5 Investment of the Trust Fund.** The Trustees must:

- (a) establish a written investment policy setting out the Authorized Investments for the Trust Fund, adopt financial risk management guidelines, and no less than annually review and monitor their compliance with the investment policy and financial risk management guidelines; and
- (b) invest the Trust Fund in Authorized Investments.

**9.6 Errors and Omissions Insurance.** The Trustees may purchase such fiduciary and errors and omissions insurance as they deem necessary. The cost of such insurance may be paid out of the Trust Fund.

**9.7 Formal Name of Trustees.** The formal name of the Board of Trustees is the "Board of Trustees of the Joint Community Benefits Trust". The Trustees may enter into agreements or commence legal proceedings using the formal name of the Board of Trustees or the names of the individual Trustees.

## **ARTICLE 10 – FIDUCIARY RESPONSIBILITIES**

**10.1 Duty of Care.** In administering the Plan, each Trustee must:

- (a) act honestly, in good faith and in the best interests of the Beneficiaries 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.
- 10.2 **No Conflict of Interest.** A Trustee or member of a committee established by the Trustees must not knowingly permit his or her other interests to conflict with his or her powers, duties and responsibilities in respect of the Plan. The Trustees may adopt a conflict of interest policy whereby conflicts must be disclosed and addressed in accordance with the procedures specified in such policy.
- 10.3 **Use of Agents and Employees.** If the Trustees employ, appoint or delegate to an agent or employee pursuant to subsection 9.3(l) or section 9.4, the Trustees must personally select such agent or employee and be satisfied of the agent's or employee's qualifications and suitability to perform the duties for which that agent or employee was employed or appointed. The Trustees must monitor the performance of these agents and employees and require that any employee or agent, in so far as they perform duties or discharge responsibilities in relation to the administration of the Plan, act solely and exclusively in the best interests of the Beneficiaries.

#### ARTICLE 11 – LIMITATION OF LIABILITY

- 11.1 **Indemnification.** A Trustee or an employee or former employee of the Trustees must be indemnified out of the Trust 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 he or she is made a party because of being or having been a Trustee or an employee of the Trustees, and including an action brought by the Board of Trustees, if:
- (a) the individual acted in good faith and carried out his or her fiduciary responsibilities under this Agreement; and
  - (b) in the case of a criminal action or proceeding, the individual had reasonable grounds for believing that his or her conduct was lawful.
- 11.2 **Liability of Trustees.** The Trustees, individually or collectively, are not 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 error of judgment nor loss to or diminution of or insufficiency of the Trust Fund, or any consequent reduction or cessation of Benefits, except a loss, diminution or insufficiency that resulted from a Trustee not acting in good faith or a Trustee's breach of his or her fiduciary responsibilities set out in section 10.1, negligence, fraud or wilful misconduct. An individual Trustee is not liable for any loss, diminution or insufficiency of the Trust Fund, or any consequent reduction or cessation of the Benefits provided under the Plan, unless he or she was a party to the action that resulted in the loss, diminution or insufficiency of the Trust Fund or consequent reduction or cessation of Benefits.
- 11.3 **Liability for Other Matters.** The Trustees, individually or collectively, are not 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 Plan Text;

- (b) any delay occasioned by any restriction or provision in this Agreement, the documents setting out the terms of the Plan, any contract procured in the course of the administration of the Plan or any other procedure; or
  - (c) any Contributions required to be paid to the Trust Fund.
- 11.4 **Reliance on Documents and Information Supplied.** The Trustees are not liable, either individually or collectively, for acting upon any documents, data or information reasonably believed by them to be genuine and accurate and to have been made, executed, delivered or assembled by the appropriate parties.
- 11.5 **Reliance on Advisors or Agents.** Subject to section 10.3, the Trustees are not liable, either individually or collectively, for acting and relying upon the opinions or advice of an agent or professional advisor so long as the Trustees exercise reasonable care in the selection, instruction and supervision of an agent (including the custodian of the Trust Fund) or a professional advisor.
- 11.6 **Liability of HEABC and CBA.** Neither the CBA nor the HEABC is a fiduciary with respect to the Plan, and neither the CBA nor the HEABC shall be responsible or liable for:
- (a) the validity of this Agreement;
  - (b) any delay occasioned by any restriction or provision in this Agreement, the rules and regulations of the Trustees issued hereunder, or any contract to which the Trustees, but not any of the Parties, are party;
  - (c) any act or omission of the Trustees;
  - (d) any investment of the Trust Fund, including the making or retention of any deposit or investment of the Trust Fund, or any portion thereof, or the disposition of any such investment, or the failure to make any investment of the Trust Fund, or any portion thereof, or any loss or diminution of the Trust Fund;
  - (e) any of the obligations or acts of the Trustees notwithstanding that such Trustees may be associated with the HEABC or the CBA or any Participating Employer;
  - (f) any Contributions required to be paid to the Trust Fund, other than its own Contributions as may be required by the Plan, a Collective Agreement or a Participation Agreement;
  - (g) any losses, expenses, claims, demands or actions in connection with the establishment of the Plan;
  - (h) the provision or failure to provide any Benefits.
- 11.7 **Further Assurances Regarding Indemnity.** The Trustees must do such things and execute and deliver such documents in order that any and all funds required to be paid out of the Trust Fund by way of indemnity as herein set forth are paid as required from time to time.
- 11.8 **Recourse Solely Against the Trust Fund.** A Beneficiary or former Beneficiary or a person claiming through a Beneficiary or former Beneficiary has recourse solely to the Trust Fund for any Benefit or other payment under the Plan.

## ARTICLE 12 – PARTICIPATION

### 12.1 **Class of Beneficiaries.**

- (a) The Plan may contain one or more classes of beneficiaries provided (i) the members of one class of beneficiaries represent at least 25% of all the beneficiaries of the Plan who are employees of a Participating Employer within the meaning of the Income Tax Act, and (ii) at least 75% of the members of that class are not “key employees” of such a Participating Employer within the meaning of the Income Tax Act.
- (b) No more than 25% of the members of a class of beneficiaries may be “key employees” within the meaning of the Income Tax Act. No key employee shall have rights under the Plan that are more advantageous than the rights of the other members of the Plan.
- (c) No part of the Plan may be operated or maintained primarily for the benefit of one or more “key employees” within the meaning of the Income Tax Act or persons related to any such key employee.

## ARTICLE 13 – RECORDS, AUDITS, ADMINISTRATIVE INFORMATION AND DISCLOSURE

13.1 **Records and Accounts.** The Trustees shall keep such books, records and accounts as are necessary and appropriate to document the administration of the Plan.

13.2 **Annual Audits.** The books of account and records of the Trustees, including the books of account and records pertaining to the Plan, shall be audited at least once every year by the Auditor, as of the fiscal year end of the Plan. A statement of the results of the annual audit shall be available for inspection by HEABC, CBA, Participating Employers and Beneficiaries at the principal office of the Plan and at such other suitable place as the Board of Trustees may designate from time to time. Copies of such statement shall be delivered to each Trustee within 60 days after that statement is prepared.

13.3 **Reports of Activities.** If the Trustees:

- (a) enter into an agreement with a provider of Benefits;
- (b) alter a policy of the Trustees relative to the Plan; or
- (c) communicate with the Beneficiaries,

the Trustees shall, within 30 days of such decision, agreement, alteration or communication, and without charge, provide to the Parties the name of the new provider of Benefits, a copy of such altered policy if such policy is in writing or a copy of the communication to the Beneficiaries.

13.4 **Quarterly Financial Information.** On a quarterly basis the Trustees shall provide the following information to the Parties without charge:

- (a) total Contributions received from each Participating Employer for the quarter;

- (b) total claims for each Participating Employer, by type of Benefit and number of Participating Employees, eligible dependents and eligible beneficiaries; and
- (c) expenses attributed by type of Benefit and major function such as legal, accounting, actuarial, etc.

13.5 **Annual Information.** On an annual basis the Trustees shall provide the following information to the Parties without charge:

- (a) audited financial statements;
- (b) actuarial valuation report;
- (c) reserves by line of benefit;
- (d) the funding position of the Plan for the quarter and projected funding position to December 31;
- (e) a summary of the annual investment performance of the Plan; and
- (f) a discussion and analysis of the material issues affecting the Plan.

13.6 **Additional Information.** A Party may request the Trustees to provide additional information regarding the Benefits, the Plan or the Trust Fund at the cost of the Party requesting the information. If the Parties jointly request the information, the costs will be borne equally by each Party. Any information requested by a Party will be provided to the other Party. Subject to Applicable Legislation, anonymized, individual level claim information may be provided.

13.7 **Reports to Beneficiaries.** The Trustees shall publish an annual report to the Beneficiaries, and may also publish such other reports, bulletins or communications as the Trustees see fit.

13.8 **Disclosure Concerning Participating Employers, Beneficiaries and Others.** The Trustees shall be entitled to make disclosures concerning:

- (a) any Beneficiary or Participating Employer;
- (b) any person who is or may be in any way interested hereunder or referred to herein;
- (c) the Trust Fund or any part thereof (which will include any corporation, company, partnership or other entity, and the assets and affairs thereof, whose shares or other ownership interests are comprised directly or indirectly in the Trust Fund); or
- (d) the affairs of any or all of those referred to in subsections (a), (b) and (c);

but only if in the opinion of the Trustees, disclosure is requisite or desirable in the performance of Trustees' functions as Trustees, or if so ordered by a court of competent jurisdiction.

#### ARTICLE 14 – AMENDMENTS TO AGREEMENT

14.1 **Amendment.** The Parties may amend this Agreement in whole or in part by an instrument in writing. Any such amendment may take effect retroactively or otherwise as the Parties decide.



- 14.2 **Corpus or Income.** No amendment shall authorize or permit any part of the corpus or income of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the Beneficiaries.
- 14.3 **Amendment to Comply with Law.** Despite any other provision of this Agreement, the Trustees have the power to and must amend this Agreement to the extent necessary to maintain the Plan's status as an Employee Life and Health Trust or as is otherwise necessary to comply with Applicable Legislation.

#### ARTICLE 15 – WITHDRAWAL OF A PARTICIPATING EMPLOYER

- 15.1 **Withdrawal of Participating Employer.** No Participating Employer has the right to withdraw in whole or in part from participation in the Plan except if such Participating Employer no longer has employees covered by the Collective Agreement and only on such terms as may be prescribed by the Trustees.
- 15.2 **Termination of a Participating Employer.** If a Participating Employer fails to pay Contributions, then the Trustees may terminate such Participating Employer's right to participate in the Plan but the Trustees shall continue to have the same rights vis-à-vis the former Participating Employer after the termination as the Trustees had prior to the termination.

#### ARTICLE 16 – TRANSFER OF ASSETS

- 16.1 **Transfer of Trust Fund to Successor Trust.** If at any time hereafter:
- (a) some or all Participating Employees entitled to Benefits become or are about to become covered by and entitled to benefits under another Employee Life and Health Trust (the "Successor Trust") which provides benefits either identical, or substantially similar to the Benefits; and
  - (b) the Trustees, in their discretion, but with the consent of the CBA and the HEABC, decide it would be advantageous to transfer and pay some or all of the Trust Fund to the trustee of the Successor Trust (on behalf of Beneficiaries who at the time of such payment and transfer are entitled to receive Benefits for the purpose of providing for such persons a benefit or benefits under the Successor Trust); then
  - (c) if the trustee of the Successor Trust undertakes and agrees to accept and to discharge all liabilities of the Trustees with respect to the provision of such benefits to such Beneficiaries; and
  - (d) if the trustee of the Successor Trust agrees that the benefits to be provided to such Beneficiaries under the Successor Trust will be at least as great as those provided under the Plan at the date of such payment and transfer;

the Trustees may pay such assets to the trustee of the Successor Trust for such purpose.

- 16.2 **Release and Discharge of the Trustees.**

- (a) If the entirety of the Trust Fund is paid to the trustee of the Successor Trust in accordance with section 16.1, then as soon as the Trustees decide to make such transfer, the provisions of section 18.1 apply to and govern the actions of the Trustees. Upon such payment to the trustee of the Successor Trust being effected, all of the trusts contained herein will cease and terminate and the Trustees are relieved and released of and from all future obligations, responsibilities and liabilities imposed upon them by and pursuant to this Agreement and otherwise.
- (b) If the entirety of the Trust Fund is not paid to the trustee of the Successor Trust, then upon payment to the trustee of the Successor Trust of the assets which are to be so paid, all of the trusts contained herein with respect to such portion of the Trust Fund will cease and terminate, and with respect thereto and with respect to the Beneficiaries referred to in subsection 16.1(b), the Trustees are relieved and released of and from all future obligations, responsibilities and liabilities imposed upon them pursuant to this Agreement.

#### ARTICLE 17 – AMALGAMATION OR MERGER OF TRUST FUND

- 17.1 **Ability to Merge or Amalgamate.** The Parties may amalgamate or merge the Trust Fund with one or more Employee Life and Health Trusts (the “**Amalgamated Trust**”) provided that the Parties are satisfied that any amalgamation or merger will not have the effect of depriving any Beneficiary of any right to Benefits to which such Beneficiary had become entitled or which had accrued to their credit, and that the rights of such Beneficiary under the Amalgamated Trust and the benefit plan thereunder will, at the effective date of the amalgamation or merger be the substantial equivalent of their rights under this Agreement and the Plan. In connection with such amalgamation, the Parties may enter into an amalgamation or merger agreement with the trustee or sponsor of one or more other Employee Life and Health Trusts, amend or terminate this Agreement, transfer or cause the custodian or custodians (if any) to transfer and deliver the Trust Fund to the trustee or custodian of the Amalgamated Trust, and execute and deliver all such other documents and instruments and do or cause to be done such other acts as may be required to carry out any such amalgamation.

#### ARTICLE 18 – TERMINATION OF TRUST FUND

- 18.1 **Termination.** The Parties may terminate this Agreement by instrument in writing, in which case the Trustees shall wind up and terminate the Plan and the Trust Fund within 120 days of such date of termination as follows:
- (a) provide for a final audit and accounting for the purpose of the termination of the Plan and the Trust Fund;
  - (b) make payment or provision for payment out of the Trust Fund of all expenses of the Plan including the expenses incidental to such termination;
  - (c) reduce the Benefits to the extent if the balance of the Trust Fund is insufficient to pay the entirety of the Benefits accrued to the date upon which this Agreement and the Plan are terminated; and

- (d) pay the Trust Fund then remaining, if any, as follows:
  - (i) to pay, or to make arrangements to provide, the accrued Benefits determined by the Trustees to be owing to the Beneficiaries in accordance with the Plan, and distribute any excess to the Beneficiaries in cash or as may be permitted by Applicable Legislation; or
  - (ii) to pay the same to the trustee of the Successor Trust in accordance with section 16.1.

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

#### ARTICLE 19 – NOTICE

19.1 **Notices.** Any notice under the terms and conditions of this Agreement may be given to a person by any of the following methods and, in respect of the following methods, will be deemed to be duly given as follows:

- (a) upon receipt, if delivered personally;
- (b) on the seventh day after the date of sending, if sent by regular mail to the last known address of the person entitled to receive such notice as shown in the records of the Trustees and whether or not actually received; or
- (c) at the time when the appropriate confirmation is received, if sent by telecopier, facsimile sending machine, or electronic mail to the last known telecopier number, facsimile number or electronic mail address of the person entitled to receive such notice as shown in the records of the Trustees.

19.2 **Notice to the Trustees.** Notwithstanding section 19.1, a notice hereunder to a Trustee will only be effective as and when actually received by such Trustee.

19.3 **Change in Notice Period.** Notwithstanding any other provision of this Agreement, any notice period required to be given under the terms of this Agreement may be reduced or dispensed with by agreement between the person required to give such notice and the person(s) entitled to receive it.

#### ARTICLE 20 – MISCELLANEOUS

20.1 **Fiscal Year.** The fiscal year of the Plan and the Trust Fund shall end on the 31st day of December, in each year.

20.2 **Authority of Trustees.** All persons dealing with the Trustees are released from inquiry into any decision or authority of the Trustees and from seeing to the application of any monies, securities or other property paid or delivered to the Trustees and may rely upon any document required

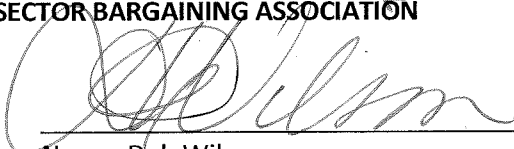
to be executed by the Trustees which has been executed as provided herein, as having been duly authorized.

20.3 **Illegality.** If any provision of this Agreement, the Plan Text or the rules and regulations made pursuant thereto, or any steps in the administration of the Plan, are held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of this Agreement, the Plan Text, or the said rules and regulations, unless such illegality or invalidity prevents accomplishment of the objectives and purposes of the Collective Agreement, this Agreement or the Plan.

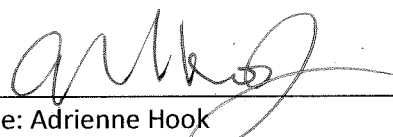
20.4 **Governing Law and Location.** British Columbia is the location for legal purposes of the Plan and the Trust Fund. All questions pertaining to the validity, construction and administration of the Plan, the Trust Fund, this Agreement or the Plan Text shall be determined in accordance with the laws of British Columbia. Any litigation which arises pursuant to or in connection with this Agreement, the Plan Text or any of their respective provisions, shall be referred to the courts in British Columbia. The Trust shall be administered such that throughout each taxation year it is resident in Canada for purposes of the Income Tax Act determined without reference to section 94 of the Income Tax Act.

**IN WITNESS WHEREOF** the Parties and the Original Trustees, in consideration of the mutual promises and undertakings herein set forth, and intending to be legally bound hereby, have caused this Agreement to be executed as of the date and year first above written.

**HEALTH SERVICES AND SUPPORT – COMMUNITY  
SUBSECTOR BARGAINING ASSOCIATION**

By:  March 17, 2017  
Name: Deb Wilson  
Title: Spokesperson, Community Bargaining Association  
I/We have the authority to bind the CBA

**HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA**

By:  March 17, 2017  
Name: Adrienne Hook  
Title: Executive Director, Health Authority Services & Benefits Administration  
I/We have the authority to bind the HEABC

**THE BOARD OF TRUSTEES OF THE JOINT COMMUNITY BENEFITS TRUST**

(in alphabetical order)

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Marina Beauchamp

---

Susanne Bellefontaine

---

Mal Griffin

---

Adrienne Hook

---

Kim Kerrone

---

Dean Levangie

---

Laura O'Neill

---

Monica Staff

---

Bonnie Wilson

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Deb Wilson

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**SCHEDULE A**

**JOINT COMMUNITY BENEFITS TRUST**

**EMPLOYER PARTICIPATION AGREEMENT**

**BETWEEN:**

**The Board of Trustees of the Joint Community Benefits Trust (the "Board")**

**AND:**

\_\_\_\_\_ (the "Employer")

1. The Employer acknowledges receipt of copies of the Agreement and Declaration of Trust (the "Trust Agreement") for the Joint Community Benefits Trust (the "Trust Fund") and the Joint Community Benefits Trust Plan (the "Plan").
2. Capitalized terms used in this Participation Agreement and not defined in this Participation Agreement have the meanings given to them in the Trust Agreement.
3. The Employer is required to participate in the Plan and the Trust Fund as a "Participating Employer."
4. By the Employer executing this Participation Agreement, it:
  - (a) warrants and represents that it has full and sufficient authority to enter into this Participation Agreement;
  - (b) agrees to provide to the Board such information and documentation reasonably required to verify the truth and accuracy of the foregoing warranty and representation;
  - (c) further agrees to:
    - (i) pay and remit Contributions to the Trustees in accordance with the terms of the Trust Agreement and Plan Text;
    - (ii) furnish the Board promptly with reports, payroll records, timesheets, accounting information and any other information as the Board may from time to time reasonably require;
    - (iii) be bound by all the terms and provisions of the Trust Agreement and the Plan Text, as each is amended from time to time;
    - (iv) duly perform all of the obligations and duties, and accept all the liabilities, imposed upon Participating Employers by the Trust Agreement and the Plan Text; and

- (v) that this Participation Agreement, when approved and accepted by the Board, will be binding on the Employer and the Employer's successors.

**THE EMPLOYER**

By: \_\_\_\_\_

Name:

Title:

I/We have the authority to bind the Employer

The Board hereby accepts the Employer's application to participate in the Plan and the Trust Fund, effective the date the employer became or becomes bound by the terms and conditions of the Collective Agreement.

**THE BOARD OF TRUSTEES OF THE JOINT COMMUNITY BENEFITS TRUST**

By: \_\_\_\_\_

Name:

Title:

I/We have the authority to bind the Board

**SCHEDULE B**

**JOINT COMMUNITY BENEFITS TRUST**

**ACCEPTANCE OF TRUST**

**TO: The Board of Trustees of the Joint Community Benefits Trust**

The undersigned, having been appointed to serve as a Trustee of the Joint Community Benefits Trust in accordance with the Agreement and Declaration of Trust dated \_\_\_\_\_ (the "Agreement") hereby accepts the trusts created and established by the Agreement and consents to act as a Trustee thereunder, and agrees to administer the Plan and the Trust Fund in accordance with the provisions of the Agreement.

DATED at \_\_\_\_\_, British Columbia, this \_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

Receipt is hereby acknowledged this \_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_