

Appendix B Trust Agreement – Execution Version

APPENDIX “B” to the Sponsors Agreement

TRUST AGREEMENT

THIS AGREEMENT AND DECLARATION OF TRUST is made the 24th day of November, 2017,

BETWEEN:

UNIVERSITY OF PRINCE EDWARD ISLAND as represented by its Board of Governors

(the “**Employer**”)

AND:

UNIVERSITY OF PRINCE EDWARD ISLAND FACULTY ASSOCIATION, BARGAINING UNIT #1 (“UPEIFA1”),

UNIVERSITY OF PRINCE EDWARD ISLAND FACULTY ASSOCIATION, BARGAINING UNIT #2 (“UPEIFA2”),

THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1870 (“CUPE 1870”),

THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 501 SECURITY POLICE (“CUPE 501”), and

THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1928 (“IBEW”),

(the “**Unions**”)

WHEREAS the Sponsors Agreement contemplates the establishment of a Board of Trustees appointed pursuant to a trust agreement to act as administrator of the Pension Plan (as defined below);

AND WHEREAS the Employer and the Unions wish to enter into this agreement and declaration of trust for the purposes of setting out the terms of the administration of the Pension Plan;

NOW THEREFORE the Employer and the Unions hereby agree and declare as follows:

1. Interpretation

1.1 Unless the context requires another meaning, the following terms have the following meanings:

(a) “**Active Member**” means an employee of an Employer, who is required to participate in the Pension Plan;

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- (b) **“Board”** or **“Board of Trustees”** or **“Trustees”** means the trustees appointed under Section 4.2 and their successors;
- (c) **“Co-Chairs”** means those individuals appointed as co-chairs of the Board of Trustees pursuant to this Trust Agreement and “Co-Chair” shall mean one of them;
- (d) **“Contributions”** shall mean sums of money paid or payable to the Fund:
 - (i) by the Employer, pursuant to the Funding Agreement, Trust Agreement, Plan text or other arrangement requiring contributions to the Fund;
 - (ii) by any Employee pursuant to the Funding Agreement, Trust Agreement, Plan text or other arrangement requiring contributions to the Fund; or
 - (iii) pursuant to any reciprocal agreement.
- (e) **“Effective Date”** shall have the meaning ascribed in Section 2;
- (f) **“Employer Representatives”** means the Representatives on the Sponsor Board appointed by the Employer;
- (g) **“Employer Trustee”** means a Trustee appointed by the Employer, and for greater certainty, shall not include any Inactive Member Appointee;
- (h) **“Former Member”** shall have the meaning ascribed in the Pension Plan;
- (i) **“Fund”** means the trust fund established for the Pension Plan and continued and administered pursuant to this Trust Agreement;
- (j) **“Funding Agreement”** means the Funding Agreement which is attached as Appendix “A” to the Sponsors Agreement as may be amended;
- (k) **“Inactive Member Appointee”** means an individual appointed by either the Employer or the Unions who is an Inactive Member, and who has certain rights and obligations in connection with the Board of Trustees;
- (l) **“Inactive Members”** means Former Members and Pensioners, and “Inactive Member” shall mean any one of them;
- (m) **“Indemnified Claims”** has the meaning ascribed to that term in Section 9.1;
- (n) **“Indemnified Parties”** has the meaning ascribed to that term in Section 9.1;
- (o) **“Independent Trustee”** means the individual appointed in accordance with Section 11.
- (p) **“ITA”** means the *Income Tax Act* (Canada), including the Regulations thereunder and any administrative rules, policies, waivers, or rulings made by the CRA;
- (q) **“Members”** means Active Members and Inactive Members and “Member” shall mean any one of them;

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- (r) **“Non-Union Trustee”** means a Trustee appointed by the Employer as representative of the non-union Active Members;
- (s) **“Parties”** means the parties to the Trust Agreement and **“Party”** means one of them;
- (t) **“Pension Plan”** or **“Plan”** means the Pension Plan for the Employees of the University of Prince Edward Island;
- (u) **“Pensioner”** shall have the meaning ascribed in the Pension Plan;
- (v) **“Representatives”** means, collectively, the Union Representatives and the Employer Representatives on the Sponsor Board, and **“Representative”** means one of the Representatives;
- (w) **“Sponsor Board”** means the body appointed in accordance with Section 4 of the Sponsors Agreement;
- (x) **“Sponsors”** means the Employer and the Unions and **“Sponsor”** shall mean either the Employer or the Unions;
- (y) **“Sponsors Agreement”** means the agreement relating to the joint sponsorship of the Pension Plan, between the Employer and the Unions, dated the 24th day of November, 2017, and includes Appendices “A”, “B” and “C” to that agreement;
- (z) **“Statement of Investment Policies and Procedures”** shall have the meaning ascribed in Subsection 7(b);
- (aa) **“Trust Agreement”** means this agreement and declaration of trust;
- (bb) **“Union Representatives”** means the Representatives on the Sponsor Board appointed by the Unions;
- (cc) **“Union Trustee”** means a Trustee appointed by a Union, and for greater certainty, shall not include any Inactive Member Appointee; and
- (dd) **“Unions”** means UPEIFA1, UPEIFA2, CUPE 1870, CUPE 501 and IBEW and **“Union”** means one of them.

1.2 *Interpretation*

- (a) The definitions in the Sponsors Agreement shall not apply to this Trust Agreement, except where a term used in this Trust Agreement is defined in the Sponsors Agreement but not in this Trust Agreement.
- (b) In this Trust Agreement, unless the context otherwise requires, words in the singular shall be construed as including words in the plural, and words in the plural as including words in the singular.

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2. Effective Date

- 2.1 Subject to the Sponsors Agreement, this Trust Agreement shall come into effect on January 1, 2017 (the “**Effective Date**”), or as soon as possible thereafter as agreed between the Employer and the Unions.

3. Transition

- 3.1 On the Effective Date, the Fund established by the Employer for the Plan is hereby continued, amended and restated in its entirety by this Trust Agreement. The powers, rights, duties, responsibilities and obligations of the Employer and the Unions in respect of the Pension Plan are limited to those expressly set out in this Trust Agreement, the Sponsors Agreement, the Funding Agreement and the Plan text.
- 3.2 The Fund was established and is continued for the purpose of providing pension benefits and the payment of the reasonable expenses of the administration and investment of the Pension Plan and Fund in accordance with the terms of this Trust Agreement.
- 3.3 The title to all assets of the Fund shall be jointly vested in and remain exclusively with the Trustees. Except as otherwise provided herein, the Trustees shall at all times act as Trustees of the Fund.
- 3.4 The Trustees shall jointly hold property, enter into contracts and act in all matters on behalf of the Fund, subject to the provisions of this Trust Agreement.
- 3.5 The Trustees shall administer the Fund for the purpose of providing pension benefits in accordance with the terms of this Trust Agreement and the Pension Plan.
- 3.6 The purpose of this Trust Agreement is to provide for the continuation of the Fund and Pension Plan and a restructuring of the governance framework such that the Members, Sponsors, and Trustees share the responsibility, as applicable, for the funding and administration of the Fund and Pension Plan, subject to and as set out in the terms of this Trust Agreement, the Funding Agreement and the Sponsors Agreement and to provide benefits as described in the Pension Plan.

4. Board of Trustees

4.1 *Income Tax Act*

The Trustees shall be the administrator of the Pension Plan for the purposes of the ITA.

4.2 *Board Established*

As of the Effective Date, the Board of Trustees shall be established and shall consist of 10 persons who shall be appointed as follows:

- (a) 4 Employer Trustees appointed by the Employer, which shall include at least 1 Non-Union Trustee;
- (b) 4 Union Trustees appointed by the Unions; and
- (c) 2 Inactive Member Appointees, one appointed by the Employer and the other appointed by the Unions.

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No person is permitted to act in the place of a Trustee.

4.3 Each Trustee appointed under Section 4.2 or 4.10, or any of their successors shall execute an acceptance of trusteeship in the form attached as Appendix "A" to this Trust Agreement.

4.4 *Qualifications of Trustees*

A representative on the Sponsor Board shall not be a Trustee.

4.5 *Orientation and Continuing Education*

- (a) The Board shall ensure that all new Trustees receive a comprehensive orientation, ensuring that all new Trustees are oriented to and develop a reasonable understanding of:
- (i) the role of the Board and its committees, if any;
 - (ii) the role of individual Trustees;
 - (iii) all relevant documents and information about the Pension Plan;
 - (iv) the purpose of the Plan and Fund;
 - (v) pension plan governance, including understanding the roles of the Sponsors, the Board and the service providers in the overall governance of the Pension Plan;
 - (vi) pension administration;
 - (vii) delegation to and monitoring of agents, employees and advisors;
 - (viii) asset/liability management and pension policy;
 - (ix) investment risk management;
 - (x) pension plan design issues and pension policy issues;
 - (xi) actuarial terminology and actuarial balance sheets;
 - (xii) the application of and compliance with pension laws, cases and regulatory rules, including the requirements of any provincial legislation and the *Income Tax Act* (Canada).
- (b) The Board shall provide continuing education opportunities for Trustees, so that they can maintain or enhance their skills and abilities and ensure that their knowledge and understanding for the purposes of the Plan and Fund remain current.

4.6 *Appointment of Co-Chairs*

- (a) There shall be two Co-Chairs of the Board. One Co-Chair shall be appointed by the Employer from among the Employer Trustees. The other Co-Chair shall be

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appointed by the Unions from among the Union Trustees. Inactive Member Appointees are not eligible to be appointed as Co-Chair.

- (b) The Co-Chairs shall each serve as Co-Chair for a two year term.
- (c) At the end of each two year term, the Employer Trustees shall, from their numbers, appoint a Co-Chair and the Union Trustees shall from their numbers appoint a Co-Chair.
- (d) If a Co-Chair ceases to be a Trustee, then his or her position as Co-Chair shall be filled for the balance of his or her respective term by a Trustee appointed in the same manner as set out in this Section.
- (e) Where the position of Co-Chair is vacant or a Co-Chair is unavailable, the other Co-Chair may perform the duties of the Co-Chairs as set out in this Agreement and any applicable policies of the Trustees.

4.7 *Remuneration of Trustees*

The Trustees shall serve without remuneration but shall be reimbursed for their reasonable expenses from the Fund in accordance with the policies of the Trustees.

4.8 *Residency*

Each Trustee shall be a resident of Canada for the duration of his or her appointment.

4.9 *Terms for Trustees*

- (a) Subject to Subsection 4.9(b) below, a Trustee shall serve for a three year term.
- (b) For the initial appointment of Trustees, two Trustees appointed by each of the Employer and the Unions shall serve for an initial four year term and two Trustees appointed by each of the Employer and the Unions shall serve for an initial two year term.
- (c) No later than six months before the expiry date of a Trustee's term, the Co-Chairs shall give to the entity that appointed the Trustee written notice of the expiry of the Term.
- (d) A Trustee shall continue to serve until their replacement is appointed or they resign.
- (e) A Trustee may be reappointed for any number of terms.

4.10 *Replacement of Trustee*

- (a) In the case of a vacancy, the party that appointed the Trustee who has left the Board shall, within 30 days of receiving notice of the vacancy, appoint a successor Trustee to fill the vacancy, including to serve for the remaining term of the former Trustee.
- (b) In the event that a party fails to appoint a successor Trustee in accordance with Subsection 4.10(a), such Trustee shall be appointed, in the case of a Union

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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. Appointment of an Actuary and Auditor of the Trustees

5.1 Appointment of Auditor

The Board shall appoint one or more persons licenced under the *Chartered Professional Accountants and Public Accounting Act*, RSPEI 1988, c C-4.2 or equivalent legislation, to audit the accounts of the Trustees and the Fund each year and to express an opinion on its financial statements.

5.2 Appointment of Actuary

The Board shall appoint a Fellow of the Canadian Institute of Actuaries to act as the actuary of the Pension Plan.

6. Operation of the Board of Trustees

6.1 Voting

- (a) The Trustees shall meet to discuss and consider any matters prior to any voting being undertaken in regard to those matters.
- (b) Each Employer Trustee and Union Trustee shall have one vote at any duly called and constituted meeting of the Board.
- (c) Inactive Member Appointees shall not be entitled to vote at meetings of the Trustees.

6.2 Voting by Co-Chairs

The Co-Chairs are not entitled to a second or deciding vote.

6.3 Quorum

- (a) A quorum at a meeting of the Board shall consist of at least three Employer Trustees and at least three Union Trustees. Inactive Member Appointees shall not be counted for the purposes of establishing quorum.
- (b) If a quorum is not present within 15 minutes 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.
- (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.
- (d) If the Trustees meet when a Trustee position is vacant, the meeting is validly constituted as long as a quorum is present.

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6.4 *Decisions*

Resolutions of the Board shall not be adopted unless they receive the affirmative votes of both a majority of the Union Trustees and a majority of the Employer Trustees at a duly called and constituted meeting of the Board. If a resolution does not receive the requisite number of affirmative votes, or there is a tie, the status quo will prevail unless the matter is resolved in accordance with Section 11 of this Trust Agreement.

6.5 *Meetings*

- (a) Following January 1, 2018, the Trustees shall meet at least four times in each calendar year. The Co-Chairs shall set the date and location of each meeting, by no later than the end of the prior calendar year.
- (b) Any one of the Union Trustees or Employer Trustees may request the Co-Chairs to convene a meeting of the Trustees, which request shall be in writing and shall include the information reasonably required by the Co-Chairs to fulfil the agenda provisions contained herein. If requested as described above, no later than five days following receipt of the written request the Co-Chairs shall give notice to the Trustees setting out the date and location of the meeting, which meeting shall be held within 15 days of the date upon which the request to convene a meeting was received by the Co-Chairs.
- (c) The Co-Chairs, or any other person delegated to do so by the Trustees, shall cause written notice of each meeting of the Trustees to be given to the Trustees not less than 10 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. 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 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.
- (d) A Trustee may waive notice of a meeting of the Trustees in writing. A Trustee shall be deemed to have waived notice of a meeting of the Trustees by attending at the meeting without objection.
- (e) The Co-Chairs shall act as chairs of a meeting of the Trustees. If a Co-Chair is not in attendance at a meeting, the other Co-Chair shall act as chair of a meeting of the Trustees, and if neither Co-Chair is in attendance at a meeting, the Trustees present at the meeting shall select a chair for the meeting from their numbers.
- (f) If the office of a Co-Chair is vacant, the other Co-Chair may exercise the powers otherwise given to the Co-Chairs to set the date and location of a meeting, and give notice to the other Trustees.
- (g) If the offices of both Co-Chairs are vacant, one Employer Trustee and one Union Trustee, acting jointly may exercise the powers otherwise given to the Co-Chairs in this Section, to set the date and location of a meeting, and give notice of it to the other Trustees.
- (h) 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 or

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its committees. Those minutes or records of Trustee meetings shall be provided to the Trustees for approval at the next meeting of the Trustees. All records and minutes of the Trustees shall be kept in the custody of the recording secretary.

- (i) Trustee meetings shall be held in the Province of Prince Edward Island. If a Trustee participating in a meeting does so by means of a telephone conference or such other communication facilities as are permitted by Subsection 6.5(j), that Trustee will be deemed to be in Prince Edward Island for the purposes of the meeting;
- (j) A meeting of the Trustees may be held or a Trustee may participate in a meeting of the Trustees, by means of telephone or such other communication facilities which permit all persons participating in the meeting to speak and to 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.
- (k) All Trustees shall act in good faith to resolve any differences.

6.6 *Removal and Replacement of Trustees*

A Trustee may be removed at any time at the sole discretion of the party that appointed such Trustee. A person shall also cease to be a Trustee:

- (a) upon being declared bankrupt;
- (b) upon being judicially found to be a mentally incompetent person;
- (c) upon conviction of a crime punishable by sentence to a penitentiary;
- (d) upon being removed as a Trustee in accordance with this Trust Agreement; and
- (e) upon the person's death.

Regardless of who removes a Trustee or the reason for the removal of a Trustee, the entity that appointed the Trustee shall appoint the successor for that Trustee in accordance with Subsection 4.10(a) above, and failing that, a Trustee shall be appointed in accordance with Subsection 4.10(b).

7. **Powers and Duties of the Trustees**

The Trustees are hereby empowered, in addition to any other power as set forth herein or conferred by law, but subject always to the powers, duties and responsibilities expressly reserved to the Sponsor Board under the Funding Agreement and the Sponsors Agreement, including, without limitation, under Article 6.3 thereof, as follows:

- (a) to administer and invest the Pension Plan and the Fund for the benefit of the Members and other beneficiaries, as the case may be, subject to the terms of this Trust Agreement and the Pension Plan, and the requirements of applicable federal and provincial legislation;
- (b) subject to the direction from the Sponsor Board in accordance with the Sponsors Agreement, to create and administer a written statement of investment policies and

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procedures for the Fund, with respect to the allocation and asset classes of the assets of the Fund (“**Statement of Investment Policies and Procedures**”);

- (c) to use all reasonable means to collect and receive all Contributions due to the Fund, and shall, promptly after receipt, deposit such Contributions in an account in an appropriate Canadian financial institution for the Fund;
- (d) to adopt such procedures, policies, by-laws, rules and regulations necessary for the carrying out of their trusts and other duties, consistent with the provisions of the Sponsors Agreement, this Trust Agreement, the Pension Plan and the requirements of applicable provincial and federal legislation;
- (e) to establish committees, including an investment committee, necessary for the carrying out of their trusts and other duties, consistent with the provisions of the Sponsors Agreement, this Trust Agreement, the Pension Plan and the requirements of applicable provincial and federal legislation. The Trustees may determine the composition, duties, responsibilities, limitations and operating procedures of those committees provided that such committees shall consist of an equal number of appointees of the Employer and Unions, or their respective Trustees. The Trustees may appoint persons other than the Trustees to a committee and set the terms of appointment to the committee that applies to those persons;
- (f) 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 or custodian for safekeeping of assets of the 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 subject to any applicable provincial and federal legislation;
- (g) to pay or provide for the payment of benefits from the Fund in accordance with the terms of the Pension Plan and applicable provincial and federal legislation to those persons eligible to receive them;
- (h) to provide Members with an explanation of the terms and conditions of the Pension Plan, and of their rights and obligations in respect of the Pension Plan;
- (i) to provide each Active Member and Former Member with an annual statement with respect to that Member’s entitlement under the Pension Plan;
- (j) to pay from the Fund all reasonable expenses incurred in collecting contributions and administering and investing the Fund and administering the Pension Plan including, but not limited to, all compensation and all reasonable and necessary costs and fees which may be incurred in connection with the retaining of such employees, consultants and legal, actuarial, accounting, expert and clerical assistance as the Board, in their discretion, may find necessary or expedient in the performance of their duties;
- (k) to enter into contracts and agreements for carrying out the terms of this Agreement and the Pension Plan and for the administration of the Pension Plan and the

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administration and investment of the Fund and to do all acts as they, in their discretion, may deem necessary and advisable including, but not limited to, entering into such agreement or agreements with the Employer for the interim administration of the Pension Plan and the interim administration and investment of all or part of the Fund, for the transfer of the assets of the Pension Plan into the Fund and for the transfer of the duties and powers of administering the Pension Plan from the University to the Trustees;

- (l) to compromise, settle, arbitrate and release claims or demands in favour of, or against the Pension Plan and Fund, or the Trustees, on such terms and conditions as the Board may deem advisable;
- (m) 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;
- (n) 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;
- (o) to accept payments to the Fund from any source whatsoever, to the extent permitted by law, the Pension Plan and this Agreement;
- (p) to hold liquid investments in accordance with the provisions of the Statement of Investment Policies and Procedures;
- (q) 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, 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;
- (r) to enter into written agreements with other registered pension plans for the reciprocal recognition of credited service and the reciprocal transfer of the value of such credited service between the Pension Plan and other registered pension plans with the approval of the Sponsor Board if consequential amendments to the Pension Plan are required;
- (s) to delegate any of their administrative powers or duties or such other powers and duties as may be permitted under applicable legislation to any of their agents or employees, in such manner and subject to such terms and conditions as the Board of Trustees may deem necessary or appropriate, provided that such agents or employees report to the Board as may be required;
- (t) to lease or purchase and dispose of such lands, premises, materials, supplies, services and equipment as the Trustees deem necessary or appropriate in the performance of their duties hereunder;
- (u) to enter into cost-sharing agreements with any other pension or welfare fund to permit the Trustees to share expenses pertaining to the administration and investment of the Fund and administration of the Pension Plan, provided that any amounts paid by the Fund to any other trust fund, in respect of the above

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expenses, shall be necessary and reasonable, and provided further that such cost-sharing agreement shall provide that the Trustees may terminate such agreement at any time, subject to such notice as may be required in such agreement;

- (v) to authorize the preparation of and to file an actuarial valuation in accordance with the Funding Agreement and any other governing legislation and at such frequency as is required by the Funding Agreement or any other governing legislation or at such greater frequency as may be directed by the Sponsor Board;
- (w) to provide a copy of every actuarial valuation, including preliminary valuations, prepared for the Trustees to the Sponsor Board and provide to all of the members of the Sponsor Board any information requested by any of them as quickly as possible;
- (x) to provide the Sponsor Board with information and/or options as required and permitted by the Funding Agreement;
- (y) to provide for the financial administration of the Pension Plan by:
 - (i) having an accounting system established for 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 immediately above; and
 - (iv) providing to the Sponsor Board an annual report on the Pension Plan, including the audited financial statements, no later than 160 days after the end of each fiscal year of the Pension Plan;
- (z) to prepare an annual report, and make it available to the Members and the Sponsor Board, and to prepare any other report requested by the Sponsor Board;
- (aa) to provide information required by the Employer for budget and financial reporting purposes;
- (bb) to hold a meeting between the Board of Trustees and the Sponsor Board at least once each year to consider matters of interest to either the Board or the Sponsor Board, including explaining the annual report to the Sponsor Board and to answer any questions Sponsor Board members may have regarding the Pension Plan and the Fund;
- (cc) to recommend to the Sponsor Board any changes to the Pension Plan that need to be made to comply with the Funding Agreement or any applicable law (including any order, policy, guideline or rule of any governmental authority);
- (dd) to advise the Sponsor Board in respect of changes that the Board considers would improve the administration of the Pension Plan;
- (ee) if the Sponsor Board instructs the Trustees on issues relating to the design of the Pension Plan and amendments to the Pension Plan, to advise the Sponsor Board

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on the feasibility or consequences of implementing such instructions, and, after the giving of such advice, to act in accordance with the instructions, if any and however modified, of the Sponsor Board, and to report to the Sponsor Board on the results of the Trustees' actions in accordance with those instructions;

- (ff) to retain auditors, actuaries and other financial and legal advisors that the Trustees deems necessary:
 - (i) to assist them in the valuation or transfer of the assets of the Pension Plan from the Fund or in respect of any other matter related to the transfer of responsibility for the administration of the Pension Plan from the Employer to the Trustees; and
 - (ii) generally in relation to the Fund;
- (gg) to provide for the reimbursement of reasonable out-of-pocket expenses of the Representatives appointed to the Sponsor Board, and to provide for the payment of such other reasonable amounts, in accordance with the policies of the Sponsor Board;
- (hh) to provide for the reimbursement of reasonable out-of-pocket expenses of the individual Trustees and to provide for the payment of such other reasonable amounts. Any expense and compensation policies, or changes thereto, applicable to Trustees shall require the approval of the Board of Trustees and the Sponsor Board;
- (ii) to adopt an annual budget for Pension Plan administration, investment management of the Fund and the activities of the Trustees and prepare an annual report on the Pension Plan administration, investment management of the Fund and the activities of the Trustees;
- (jj) to ensure that any administrative agent keeps an account of all money and assets received and paid out of the Fund and keeps an accounting of the assets and liabilities of the Fund;
- (kk) to ensure that any administrative agent keeps an individual record of contributions made by each Member;
- (ll) subject to the direction of the Sponsor Board in accordance with the Sponsors Agreement, to invest and manage the Fund in a prudent manner, which shall include, without limitation, the duty to:
 - (i) implement and review annually the Statement of Investment Policies and Procedures;
 - (ii) 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 Procedures, and to take any and all actions with respect to the holding, buying, selling or exchanging of such investments as they, in their sole discretion, may deem appropriate or necessary;

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- (iii) ensure that the money and assets of the Fund are invested having regard to the Statement of Investment Policies and Procedures, and taking into account the following criteria, in addition to any others that are relevant to the circumstances:
 - (A) general economic conditions;
 - (B) the possible effect of inflation or deflation;
 - (C) the role that each investment or course of action plays within the overall Fund portfolio;
 - (D) the expected total return from income and the appreciation of capital;
 - (E) needs for liquidity, regularity of income and preservation or appreciation of capital; and
 - (F) the permitted asset categories and level of risk that is appropriate with respect to the assets of the Fund, and any other criteria or direction provided by the Sponsor Board; and
- (mm) to take all steps, whether or not previously authorized herein, which the Trustees may deem necessary or proper for the protection of the Fund, provided always that the Trustees may not take any actions or make any decision within the scope of the Sponsor Board's duties and responsibilities, including, for greater certainty, the Sponsor Board's duties and responsibilities under Article 6.3 of the Sponsors Agreement.

8. Contributions

8.1 The Employer and Members shall:

- (a) pay all Contributions to the Fund in an amount and in the form and manner and by the dates required by the Trustees and Funding Agreement or other arrangement as may be permitted by this Trust Agreement or the Funding Agreement; 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.

8.2 Contributions to the Fund payable by the Employer or deducted and withheld from Members by the Employer are deemed to be held in trust by the Employer for the Trustees of the Fund until remitted to the Fund.

8.3 The Employer's obligation to make Contributions to the Fund shall not be subject to any set-off or counter-claim which the Employer may have for any liability of the Unions or any Member or beneficiary as the case may be.

8.4 For the purpose of enabling the Trustees to recover unpaid Contributions, Contributions payable to the Fund by the Employer shall be deemed to be payments of wages due to Members, which have been irrevocably assigned by the Members to the Fund.

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8.5 Non-payment by anyone required to make Contributions to the Fund shall not relieve any other person of his obligations to make such payments. The Trustees may take any action necessary to enforce payment of Contributions and damages due hereunder including, but not limited to, proceedings at law and in equity.

8.6 Where the Employer has failed to remit Contributions to the Trustees in an amount and manner required, the Employer shall be liable for interest thereon calculated, in the Trustees' discretion, from the date on non-payment together with all expenses of collection incurred by the Trustees. The Trustees are authorized to establish a reasonable and lawful grace period by which Contributions must be received.

9. Indemnification, Limitation of Liability and Insurance

9.1 *Indemnification for Trustees and Independent Trustee*

All Trustees, any Independent Trustee, former Trustees and former Independent Trustee and each of his or her heirs and legal representatives (the "**Indemnified Parties**") shall be indemnified by the Fund for all costs, charges and expenses (including legal 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 or Independent Trustee, and including an action brought by the Sponsor Board or the Trustees (the "**Indemnified Claims**"), except that this indemnification shall not apply in respect of Indemnified Claims that result from an Indemnified Party's dishonesty or wilful misconduct.

9.2 *Fiduciary Insurance*

(a) The Trustees may purchase and maintain insurance for the benefit of a person referred to in Section 9.1 against liability incurred by the person.

(b) Insurance purchased under this Section shall be paid for by the Fund.

9.3 *Court Approval of Indemnity*

A person referred to in Section 9.1 may apply to a court for an order approving an indemnity and the court may so order and make such further order it deems appropriate.

9.4 *Reliance on Documents, etc.*

Subject to Sections 9.1, 10.1 and 10.2, 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 9.1, the Trustees shall incur no liability, either collectively or individually, in acting and relying upon the opinions or advice of the professional advisor.

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9.6 Recourse Solely Against Fund

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

9.7 No Liability of Appointing Entity

A Party or other entity 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 other entity, or the Party or other entity appointed the Trustee.

9.8 Extended Meaning of Trustee

- (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 of the Trustees, unless such person is being compensated for so acting. Reimbursement of reasonable expenses does not constitute compensation for the purpose of this paragraph.
- (b) Any reference in this Agreement to the indemnification or other protection of a Trustee or other person appointed to a committee of the Trustees shall, unless the context clearly indicates otherwise, apply to individuals who formerly held these positions on or after the Effective Date, and to the personal representatives of any such individuals.

10. Fiduciary Responsibilities

10.1 Fiduciary Obligations

- (a) Each Trustee, including the Independent Trustee, shall act honestly and in good faith and in the best interests of Members, Former Members and Pensioners, and shall exercise the care, diligence and skill in the administration and investment of the Pension Plan and Fund that a person of ordinary prudence would exercise in dealing with the property of another person.
- (b) The Trustees, including the Independent Trustee, and their agents or delegates shall use in the administration of the Pension Plan and in the administration and investment of the Fund all relevant knowledge and skill that the Trustees possess or, by reason of their profession, business or calling, ought to possess.

10.2 No Conflict of Interest

- (a) No Trustee, including the Independent Trustee, shall act in respect of a matter if the Trustee has a conflict of interest in regard to the matter.
- (b) Entitlement to a pension or other benefit under the Pension Plan does not create a conflict of interest.
- (c) Membership in a Union or employment by the Employer or a Union does not in and of itself create a conflict of interest, provided that if a Trustee does have a conflict of interest as a result of membership in a Union or employment by the Employer or a Union, the Trustee shall not act in respect of such conflict.

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- (d) A Trustee is required to disclose and manage conflicts in accordance with policies of the Trustees.

10.3 *Restrictions on Benefits Payable to Trustees*

No Trustee is entitled to any benefit from the Pension Plan other than,

- (a) a pension benefit provided in accordance with the Pension Plan, where the Trustee is also a Member; and
- (b) any reimbursement of expenses related to the trusteeship of the Pension Plan provided for in this Agreement or the Pension Plan.

11. **Dispute Resolution**

11.1 *Disputes*

- (a) In the event that a resolution with respect to a matter that is within the authority of the Trustees:
 - (i) receives the affirmative votes of the majority of the Employer Trustees but not the majority of the Union Trustees, or vice versa, or
 - (ii) is unable to be made at a meeting due to lack of a quorum at two consecutively called meetings, (in either case, a "deadlock");

then the Trustees shall appoint an Independent Trustee who shall cast a vote to resolve the deadlock.

- (b) For greater certainty, a matter relating to the application and interpretation of Sections 4 to 6 of the Funding Agreement shall not be considered within the authority of the Trustees and shall not be determined in accordance with Subsection 11.1(a).
- (c) The Independent Trustee shall be appointed by agreement of the Parties.
- (d) If the Trustees are unable to agree to an Independent Trustee, the Parties shall have the opportunity to nominate individuals meeting the requirements of Subsections 11.1(e) and (f), two by the Employer and two by the Unions, and the Independent Trustee shall be chosen by lot from among the four nominated individuals at the next meeting of the Sponsor Board.
- (e) The Independent Trustee shall be experienced in defined benefit pension plans in Canada.
- (f) No person may be appointed an Independent Trustee who:
 - (i) is acting or has, within the immediately preceding six months, acted as a solicitor, counsel or agent, advisor, contractor or employee of the Board of Trustees, an Employer, or any of the Unions; or
 - (ii) is a Member.

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- (g) The reasonable expenses and fees of the Independent Trustee shall be paid for by the Fund.
- (h) The Independent Trustee shall receive submissions from the Trustees at a meeting of the Trustees with respect to the dispute under Subsection 11.1(a), and quorum shall be deemed to have been met for that purpose.
- (i) The Independent Trustee shall avail him or herself of expert actuarial advice and such other advice as it considers appropriate.
- (j) The Independent Trustee shall cast a final deciding vote within seven (7) days of the meeting of the Trustees under Subsection 11.1(h).
- (k) The decision of the Independent Trustee shall be in writing with written reasons provided. The final deciding vote shall be final and binding on the Trustees and is a decision of the Trustees for the purpose of this Trust Agreement. The Trustees shall implement the decision as soon as possible.
- (l) The Trustees may continue to discuss the resolution and the underlying matter and negotiate in good faith with respect to the dispute under Subsection 11.1(a) until the Independent Trustee has cast their deciding vote.

11.2 *Replacement of Independent Trustee*

- (a) Where the Independent Trustee is unable to carry on his or her duties so as to cast a deciding vote within the time specified in Subsection 11.1(j), a replacement Independent Trustee must forthwith be appointed in accordance with Section 11.1.

12. Amendment and Termination of Agreement

- (a) This Trust Agreement may only be amended by the Sponsor Board in accordance with the terms of the Sponsors Agreement.
- (b) The Board of Trustees may recommend amendments to the Trust Agreement to the Sponsor Board for consideration.

13. Notice

- (a) All notices, requests, demands or other communications provided for in this Agreement shall be given in writing and shall be effectively given if delivered personally, or sent by prepaid mail or facsimile to the respective last known address or facsimile number of the recipient of the communication, or sent by email to the recipient of the communication.
- (b) Subject to Subsection 13(c) below, a notice, request, demand or other communication shall be deemed to have been received when delivered, or if mailed, on the fifth business day after the mailing of the notice, or if sent by facsimile, on the day that the sending facsimile machine confirms that the facsimile has been sent, or if sent by e-mail, on the date sent.

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- (c) In the event of a strike or other interruption in the normal delivery of the mail after the mailing of a notice, request, demand or other communication, 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 it is intended, unless it is actually delivered or sent by facsimile or e-mail to that party as contemplated herein.

14. Severance of Illegal Provisions

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

15. Governing Law

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

16. Counterpart Execution

This Agreement may be signed in counterparts.

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Appendix "A"

TO THE: TRUSTEES

ACCEPTANCE OF TRUSTEESHIP

The undersigned, having been appointed as a Trustee of the Pension Plan for the Employees of the University of Prince Edward Island in accordance with the Trust Agreement dated ●, as amended from time to time, hereby accepts the trusts created and established by the aforesaid Trust Agreement, consents to act as a Trustee being vested with all rights, powers and duties of a Trustee thereunder and agrees to administer the said Fund in accordance with the terms thereof.

D A T E D as of the _____ day of _____, 20____.

Signed in the presence of:

Witness

(Signature)

(Name)

(Address)