

**HEALTHCARE BENEFIT TRUST**

**AGREEMENT**

**AND**

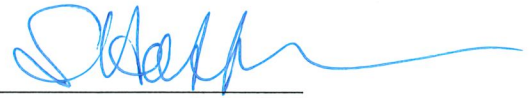
**DECLARATION OF TRUST**

***UNANNOTATED CONSOLIDATION***

***Incorporating:***

***Amending Agreement (No. 1) dated April 19, 2004***  
***Amending Agreement (No. 2) dated January 22, 2010***  
***Amending Agreement (No. 3) dated April 7, 2016***  
***Amending Agreement (No. 4) dated April 11, 2018***

**CERTIFIED CONSOLIDATION**



Sarah Hoffman  
President & Chief Executive Officer

Date: 10 OCTOBER 2019

***THIS CONSOLIDATION IS AN UNOFFICIAL DOCUMENT. IN THE EVENT OF ANY DISCREPANCY BETWEEN THIS DOCUMENT AND THE ORIGINAL AGREEMENT AND DECLARATION OF TRUST, THE ORIGINAL AGREEMENT AND DECLARATION OF TRUST, INCLUDING ALL AMENDMENTS ADOPTED THERETO, SHALL PREVAIL.***

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- Schedule 2 - Acceptance of Trust
- Schedule 3 - Powers and Duties of Chief Executive Officer<sup>1</sup>
- Schedule 4 - Permitted Employer Application

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<sup>1</sup> Schedules 1, 2 and 3 have been omitted from this Consolidation.

THIS AGREEMENT dated December 1, 1993 is among:

**HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA**, a Society  
duly incorporated under the laws of the Province of British Columbia (HEABC)

AND:

**GORDON R. ANDERSON, A.H. (BERT) GURNEY,  
ALICE D. LABERGE, PETER LUSZTIG and  
D.J. IAN MACDONALD** (Trustees)

**BACKGROUND:**

- A. A trust fund known as the "H.E.U. - H.L.R.A. HEALTH AND BENEFIT TRUST FUND" (the "First Trust") was established for the purpose of providing health and welfare benefits by an Agreement and Declaration of Trust made as of January 1, 1979 among Health Labour Relations Association of British Columbia, Hospital Employees' Union, Local 180 and eight named trustees.
- B. By resolution dated April 28, 1980, the trustees of the First Trust, acting in accordance with Article X of the January 1, 1979 Agreement and Declaration of Trust, agreed to transfer and pay, as of May 1, 1980, all the assets and all of the liabilities of the First Trust to the trustees of a new trust fund known as the "H.L.R.A. HEALTH AND BENEFIT TRUST FUND" (the "Second Trust").
- C. By resolution dated April 28, 1980, the trustees of the Second Trust agreed to accept, as of May 1, 1980, the assets and liabilities of the First Trust for the purpose of providing health and welfare benefits at least as great as those under the First Trust as at the date of transfer of assets and acceptance of liabilities.
- D. This Agreement establishes a new health and welfare trust fund and plan known as "Healthcare Benefit Trust" of which all Participating Employees (as defined by the Agreement and Declaration of Trust applicable to the Second Trust) are, or are about to become, members and entitled to Health and Welfare Benefits (as defined in paragraph 1.01), to which the trustees of the Second Trust have resolved it would be advantageous to transfer and pay as a "Successor Trust Fund" and "Successor Plan" all of the assets of the Second Trust in accordance with Part 11.01 of the Agreement and Declaration of Trust applicable to the Second Trust.
- E. In 2002, the BC Government restructured the public health care sector and formed six health authorities. Several independent organizations which were Participating Employers in the Trust were amalgamated into the health authorities. The largest denominational society in BC was also amalgamated with other denominational

societies to form Providence Health Care Society. In early 2004, it was determined to be appropriate for the purposes of the BC Government's financial statements that portions of the Trust's unfunded actuarial liability applicable to certain of its Participating Employers be more clearly identified and accounted for in their respective financial statements. Accordingly, in early 2004, the six health authorities and the BC Government indicated to the Trustees and HEABC that it would be desirable to allow such employers to provide health and welfare benefits to their employees on a "segregated pool" basis. Part 16 was added to this Agreement to allow such arrangements to be implemented.

- F. Pursuant to Amending Agreement (No.2) dated January 22, 2010, section 7.03 of this Agreement was amended to clarify the financial obligations of Participating Employers who terminate or withdraw from the Trust.
- G. Since the Trust's inception on December 1, 1993 it has qualified as a "health and welfare trust", as that term was used in Canada Revenue Agency's Interpretation Bulletin IT-85R2. On July 27, 2015, the Canada Revenue Agency issued Income Tax Folio S2-F1-C1, which superseded and replaced Interpretation Bulletin IT-85R2. Pursuant to Amending Agreement (No. 3) this Agreement was amended effective as July 27, 2015 to ensure the Trust continues to qualify as a "health and welfare trust", and to make various housekeeping amendments.
- H. Pursuant to Amending Agreement (No. 4), this Agreement was amended to provide benefit coverage to retired employees, to broaden HEABC and the Trustees' power to terminate employers participating in the Trust and to specify the intention of the Trustees to always distribute all of the Trust's income to the Trust's beneficiaries so that the Trust has no income subject to tax under Part 1 of the *Income Tax Act* (Canada) in any taxation year.

## **AGREEMENTS:**

The parties agree as follows:

### **PART 1 - INTERPRETATION**

1.01 **Defined Terms.** In this Agreement:

"Agreement" means this agreement as it may be amended or supplemented from time to time.

"Board" means the Trustees exercising the powers and performing the duties of the Trustees under this Agreement.

"Business Day" means any day from Monday to Friday, inclusive, except for any day that is a statutory holiday in British Columbia.

"Collective Agreement" means any agreement in writing between an Employer, or an employers' organization authorized by the Employer, and a trade union, containing conditions of employment and requiring the provision of Health and Welfare Benefits, together with any and all supplements, extensions and renewals thereof and successor agreements thereto.

"Contributions" means any and all sums of money as determined from time to time by the Trustees paid or to be paid by a Participating Employer to provide Health and Welfare Benefits in accordance with this Agreement including, without restricting the generality of the foregoing, any payment required under Part 7 hereof to fund any unfunded actuarial liability. Contributions include any amounts paid or to be paid by Participating Employees to provide Health and Welfare Benefits in accordance with this Agreement which are remitted to the Trustees on their behalf by their Participating Employers.

"Employer" means:

- (a) HEABC;
- (b) a Member; or
- (c) a Permitted Employer.

"Fund" means the trust estate of the "Healthcare Benefit Trust" which consists of all contracts and policies, together with all dividends, refunds or other sums payable to the Trustees on account of such contracts and policies, all investments made and held by the Trustees, all Contributions received by or on behalf of the Trustees, all monies held or deposited by any person, firm or corporation for the purpose of funding the provision of Health and Welfare Benefits, all fees generated and collected with respect to services provided under paragraph 4.06, income from investments, and any other property purchased or received and held by the Trustees for any purpose of the trusts set forth in this Agreement.

"HEABC" means "HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA" and any successor thereof.

"Health and Welfare Benefits" means employee health and welfare benefits (excluding pension benefits) as determined from time to time by the Trustees.

"Member" means any member of HEABC.

"Part", "paragraph", "subparagraph", "sub-subparagraph" and "Schedule" followed by a number or letter refer to the specified Part, paragraph, subparagraph, sub-subparagraph, or Schedule of this Agreement.

"Participating Employee" means any person:

- (a) who on December 1, 1993 was a "Participating Employee" under the terms of the trust agreement for the H.L.R.A. Health and Benefit Trust Fund;



- (b) employed under the terms of a Collective Agreement by a Participating Employer, or otherwise employed by a Participating Employer and, in either case, who is a member of a class of persons that the Participating Employer has designated in an application in the form annexed as Schedule 1, or in such other form as is approved by the Trustees, as being eligible to become Participating Employees if such application has been accepted by the Trustees;
- (c) who, while employed by a Participating Employer, became entitled to receive long term disability benefits in accordance with this Agreement and remained so entitled on the date, if any, upon which the Participating Employer, for whatever reason, ceased to be a Participating Employer; or
- (d) who, while employed by a Participating Employer, became entitled to receive long term disability benefits in accordance with this Agreement and the Plan and remained so entitled on the date, if any, upon which the person, for whatever reason, ceased to be employed by that Participating Employer.

if in all such cases such persons fulfil all the eligibility requirements of the Plan, except in the case of subparagraphs (c) and (d) above, such persons will only be a Participating Employee for the purpose of entitlement to long term disability benefits.

A person becomes a Participating Employee:

- (a) on the date upon which that person's Participating Employer is accepted for participation in accordance with this Agreement if that person then fulfils all the eligibility requirements of the Plan;

otherwise

- (b) on the date, following acceptance of the Participating Employer for participation in accordance with this Agreement, upon which that person first fulfils all the eligibility requirements of the Plan.

"Participating Employer" means any Employer whose completed application in the form annexed as Schedule 1, or in such other form as is approved by the Trustees, has been accepted by the Trustees. Subject to Part 10, a Participating Employer may, with the consent of the Trustees:

- (a) change the classes of persons designated as eligible to become Participating Employees; and
- (b) change the coverage provided for Participating Employees.

"Permitted Employer" means an employer (other than HEABC or a Member) which has received the written permission of HEABC to participate in the Trust upon such terms and conditions established by HEABC at the time such permission is given and upon such further terms and conditions established from time to time in accordance with this

Agreement. Despite any other provision of this Agreement, any employer who becomes a Permitted Employer on or after January 1, 2017 must enter into an agreement in the form annexed as Schedule 4.

"Plan" means the Healthcare Benefit Trust plan referred to in paragraph 3.03 as amended from time to time.

"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.

"Trust" means the program known as the "Healthcare Benefit Trust" established by this Agreement for the purpose of providing Health and Welfare Benefits.

"Trustee" means a person designated in this Agreement to administer the Fund and Trust and includes each of those individuals named on the first page of this Agreement and any successor Trustee appointed in accordance with this Agreement.

1.02 **Gender and Number.** Words in one gender include all genders, and words in the singular include the plural and vice versa.

1.03 **Interpretation Not Affected.** In this Agreement, using separate Parts, providing a table of contents, and inserting headings are for convenient reference only and will not affect how this Agreement is interpreted.

1.04 **Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with British Columbia law and applicable Canadian law and will be treated in all respects as a British Columbia contract.

1.05 **Legislation.** In this Agreement any reference to legislation includes a reference to the legislation and to any regulations made under that legislation as that legislation or those regulations may be amended or re-enacted from time to time.

1.06 **Enurement.** This Agreement is binding on the parties and their respective heirs, executors, administrators and successors.

1.07 **Schedules.** The following attached Schedules form part of this Agreement:

Schedule 1	Application
Schedule 2	Acceptance of Trust
Schedule 3	Powers and Duties of Chief Executive Officer <sup>2</sup>
Schedule 4	Permitted Employer Application

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<sup>2</sup> Schedules 1, 2 and 3 have been omitted from this Consolidation.

## **PART 2 - TRUSTEES**

2.01 **Appointment and Selection of Trustees.** There will be a minimum of 5 and a maximum of 12 Trustees, the actual number of Trustees to be as determined from time to time by HEABC, all of whom will be appointed by HEABC.

2.02 [Intentionally Deleted – Spent.]

2.03 **Term.** Except as specified below, each Trustee will continue to serve as a Trustee for 3 years or until death, resignation from office or removal from office by HEABC as provided in this Agreement. The term of any of the first Trustees may be specified by HEABC to be for a period shorter than 3 years, so that a system of rotation of Trustees may be established and the initial term of successor Trustees may be limited to periods shorter than 3 years so that a system of rotation may be continued. If the term of any Trustee is to be less than 3 years, such fact must be identified on the date the Trustee is appointed. Any Trustee who ceased to be a Trustee by virtue of having served a term as Trustee may be again appointed as a Trustee 1 or more times.

2.04 **Acceptance of Trust by Trustees.** A Trustee who has signed this Agreement or, in the case of a successor Trustee, upon written acceptance being filed with the Secretary of the Board, will be deemed to have accepted the trusts created and established by this Agreement, to have consented to act as a Trustee, and to have agreed to administer the Fund and Trust as provided herein. The written acceptance of a Trustee will be in the form annexed as Schedule 2 or in such other form as is approved by the Trustees.

2.05 **Appointment of Chair and Vice-Chair.** The Board will designate, from time to time, one Trustee to be Chair and one Trustee to be Vice-Chair.

2.06 **Functions of Chair and Vice-Chair.** The function of the Chair is to act as chair of all meetings of the Board, to advise, from time to time, HEABC concerning the status of the Fund, to liaise with HEABC as and when necessary, and generally to perform such other duties as required by this Agreement. The function of the Vice-Chair is to substitute for the Chair when the Chair is unable to perform the functions of the Chair or is not present at any meeting of the Board.

2.07 **Meetings of Trustees.**

- (a) **Regular Meetings.** The Chair will determine the date, time, and place for regular meetings of the Board, which will be held quarterly. At quarterly meetings, the Trustees will review the report of the Chief Executive Officer, review performance of the Trust, and will consider such other business as they see fit.
- (b) **Annual Meetings.** One of the quarterly meetings each year will be designated as the annual meeting of the Trustees. The annual meeting must be held within 90 days after the end of the fiscal year of the Fund. At each annual meeting of Trustees:
  - (i) an audited financial statement will be produced of the affairs of the Fund at the end of the previous fiscal year, and if it is proper to so do, will be approved;

- (ii) the Chief Executive Officer will report on the affairs of the Trust for the period since the last annual meeting; and
  - (iii) a report from an actuary, including an actuarial valuation of the liabilities of the Trust and the financial condition of the Trust, will be considered.
- (c) **Special Meetings.** Either the Chair, the Vice-Chair or any group of Trustees constituting a majority of the Board may call a special meeting of the Board by giving written notice to all other Trustees of the time, place and purpose of such meeting at least 7 days before the date set for such meeting. Any meeting for which no such notice has been given but at which all Trustees are present, or concerning which all Trustees have waived notice in writing, will be a valid meeting of the Board.

2.08 **Appointment and Duties of Secretary.** From time to time the Board will appoint 1 of their number as Secretary. If the Secretary is not present at any meeting of the Board, the Trustees present may select another or others to act as Secretary for the purpose of such meeting. The Secretary will cause minutes or records of all meetings, proceedings and acts of the Board to be taken or kept. Such minutes need not be verbatim.

2.09 **Quorum.** To constitute a quorum at any meeting of the Board, there must be present in person no fewer than the Chair or the Vice-Chair and a majority of all Trustees.

2.10 **Rules.** The Board may establish procedural rules governing, amongst other things, the conduct of meetings, but any such rules will be subject to the provisions of this Agreement.

2.11 **Voting by Trustees.** All decisions of the Board will be made by majority vote of the Trustees personally present at the meeting at which such vote is taken. The Chair or Vice-Chair presiding at a meeting will be entitled to vote on all motions and in the event of a deadlock will have a second or casting vote.

2.12 **Decision without Meeting.** If all of the Trustees then in office could form a quorum if they met in person, any decision of the Board may be made by unanimous consent in writing signed by all Trustees without a meeting.

2.13 **Telephone Voting.** A meeting of the Board or of any committee of the Board may be held, or a Trustee may participate in any such meeting, by means of conference telephones or other communications facilities through which all Trustees participating can hear each other. Trustees participating in such meeting in accordance with this paragraph 2.13 are deemed to be present at the meeting and will be counted in the quorum thereat.

2.14 **Resignation of Trustees.** A Trustee may resign as a Trustee by giving notice in writing to the Secretary of HEABC and a copy of such notice to the Secretary of the Board specifying the date upon which the resignation is to take effect, which date will not be less than 45 days next following the date upon which such Trustee gives such notice. If the date of resignation specified by such Trustee, through inadvertence or otherwise, should be a date which is less than 45 days next following the date upon which such Trustee gives notice of resignation,

such Trustee's resignation will take effect on the 45th day next following the giving of such notice.

2.15 **Removal of Trustee.** Any Trustee may be removed at any time by notice in writing to that effect from HEABC.

2.16 **Discharge of Trustee.** Any Trustee, upon resigning or being removed from office will thereafter be fully discharged of and from all future duties, obligations and responsibilities under this Agreement.

2.17 **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 any or all the rights and property of the Fund, and will, if necessary, convey, assign, transfer, and make over to the remaining Trustees any or all the rights and property of the Fund as the remaining Trustees may direct. Each Trustee, by signing this Agreement, or an acceptance of appointment, constitutes and appoints the remaining Trustees as attorneys, to sign all documents and deeds in such Trustee's name, if such person ceases to be a Trustee, and the said remaining Trustees will take the place of the person who ceased to be a Trustee, until such time as a successor Trustee is appointed.

2.18 **Successor Trustee.** If any Trustee dies, resigns, is removed from office, or otherwise becomes incapable of acting, a successor Trustee will immediately be appointed by HEABC and if HEABC fails to appoint a successor Trustee within 30 days next following the date upon which a Trustee dies, resigns, is removed from office or otherwise becomes incapable of acting, the remaining Trustees may themselves appoint a successor Trustee. Every successor Trustee will, immediately upon filing a written acceptance of appointment with the Secretary of the Board, become vested with all the property, rights, powers and duties of a Trustee hereunder, with like effect, as if originally named as a Trustee without the execution of any conveyance, assignment or transfer or other documents whatsoever.

2.19 **Right of Trustees to Rely on Information Supplied.** The Trustees will be under no obligation to determine the validity of any notice, advice, instructions or information given to them by or on behalf of HEABC, any Participating Employer, any Participating Employee, or any other person in connection with the administration of the Fund and Plan, before accepting or acting upon same.

2.20 **Validity of Action of Trustees.** Notwithstanding that it be subsequently discovered or determined that there existed some defect in the appointment, removal or qualifications of any Trustee, or, that at the time an action of the Board was taken there were not appointed the minimum number of Trustees, all acts and proceedings of the Board done and carried on in good faith at any time while any such defect existed will be nevertheless valid and effective.

2.21 **Compensation of Trustees**

- (a) **General.** Except as provided in subparagraphs 2.21(b) and 2.21(c), a Trustee is not entitled to be paid or to receive any compensation from the Fund for the performance of duties as a Trustee.

- (b) **Expenses.** A Trustee may be reimbursed from the Fund the actual expenses incurred in attending each meeting of the Board at which that Trustee is personally present, the reasonable expenses actually incurred of attending educational conferences or courses and the actual expenses in carrying out any other duty in connection with the Trust, all in accordance with policies established from time to time by the Board of Directors of HEABC.
- (c) **Honorarium or Per Diem.** The Board of Directors of HEABC may, from time to time determine an appropriate sum of money, if any, to be paid to the Trustees as an honorarium, a per diem rate, or an hourly rate, (or any combination thereof) representing compensation for time expended by a Trustee in attending personally at any meeting of the Trustees or in carrying out any duty in connection with the Trust, and the same may be paid to any Trustee who should properly receive the same in accordance with the policies established from time to time by the Board of Directors of HEABC.

### **PART 3 - CREATION, PURPOSE AND APPLICATION OF THE FUND**

3.01 **Creation of Fund.** The Fund is hereby established.

3.02 **Purpose of the Fund.** The Fund is established and to be maintained, and the Trustees agree to receive the Fund and to hold and administer it, for the purpose of providing, to the extent the Fund permits:

- (a) Health and Welfare Benefits for Participating Employees, their eligible dependents, or eligible beneficiaries, and Participating Employees who retire from a Participating Employer; and
- (b) such Health and Welfare Benefits, excluding any which would cause the Trust or the Plan to become a "retirement compensation arrangement" as defined in the *Income Tax Act* (Canada), as the Trustees, after considering actuarial advice, may from time to time determine and designate as appropriate:
  - (i) for individuals who cease to be Participating Employees by virtue of retiring from a Participating Employer, their eligible dependents, or eligible beneficiaries; and
  - (ii) for the eligible dependents of deceased Participating Employees

all in accordance with the Plan, and for no purposes other than those set forth in this Agreement. A determination and designation under subparagraph 3.02(b) may only be made with respect to Participating Employees who are subject to a Collective Agreement if such determination is consistent with the provisions of such Collective Agreement.

3.03 **The Plan.** The Trustees will establish the Plan which will at all times be subject to the written approval of HEABC. The Plan will be consistent with this Agreement and Collective Agreements to which Participating Employers are a party. The Plan will define the Health and

Welfare Benefits to be provided, the conditions of eligibility for such benefits, and such other terms as the Trustees deem necessary to include. The Trustees may, at any time, with written approval of HEABC, change or modify the Plan, Any such change or modification to the Plan may take effect retroactively or otherwise, as HEABC and the Trustees decide. For the purpose of maintaining the Plan and providing the Health and Welfare Benefits, the Trustees have power to enter into such contracts or arrangements and to obtain such insurance policies and other undertakings as the Trustees think advisable, and power to renew, modify or terminate any such contract, arrangement, policy or undertaking as and when they consider it expedient to so do. Any such contract, arrangement, policy or undertaking may be executed or made in the name of the Trust.

3.04 **Application of the Fund.** For the purpose set forth in paragraph 3.02, the Trustees have power to use and apply the Fund as follows:

- (a) to pay the Health and Welfare Benefits required to be paid in accordance with this Agreement;
- (b) to pay or provide for the payment of all reasonable and necessary expenses, costs and fees incurred by the Board in connection with the maintenance, operation and administration of the Fund and Plan, including the leasing or purchasing of such premises, materials, supplies and equipment and the employment of such officers, actuarial, legal, accounting, administrative and other assistants and staff as the Trustees in their discretion deem necessary or appropriate for the proper performance of their duties as well as to compensate the Trustees as provided in paragraph 2.21 and to pay or provide for the payment of expenses incurred by officers and staff of the Trust in the performance of their duties in connection with the Trust in accordance with policies established from time to time by the Chief Executive Officer;
- (c) to acquire, to keep in good standing, and to replace, from time to time, such fiduciary liability, crime, third party liability, property, travel accident and other insurance, in such amounts as the Trustees deem advisable;
- (d) to pay all necessary expenses incurred by HEABC in connection with the establishment of the Fund and Plan, including consultation fees and charges of employee benefit consultants, actuarial, legal, accounting and other professional fees, charges and disbursements, the premiums and other costs for obtaining and maintaining fiduciary liability and such other insurance as the Trustees deem appropriate;
- (e) to pay or provide for the payment of all real and personal property taxes, income and other taxes, or assessments of any and all kinds levied or assessed under existing or future laws upon or with respect to the Fund, or any money or property forming a part thereof;
- (f) to establish and accumulate such reserve funds as, based on actuarial advice, may be necessary to provide for payment of Health and Welfare Benefits, administrative expenses and other obligations of the Fund, including the proper maintenance and operation of the Trust; and

- (g) subject to subparagraph 4.01(m), to invest and re-invest the principal and income of the Fund, without distinction between principal and income, in investments which conform to the investment requirements of the Pension Benefits Standards Act (British Columbia) as amended from time to time and which also conform to the investment policies and guidelines adopted by the Trustees, from time to time. The investment policies and guidelines adopted by the Trustees will serve to restrict, and not to exceed, the investment provisions of the Pension Benefits Standards Act (British Columbia) or of any legislation which may supersede and replace same. In determining investment policies and guidelines, the Trustees will have primary regard to the nature of the liabilities of the Trust, investment risk, and rate of return and will not require the rejection of an investment, or the preference of one investment over another, based on factors unrelated to the nature of the liabilities of the Trust, investment risk and rate of return. The Trustees must not make a loan to, make an investment in, or otherwise permit any part of the Fund to be used by, a Participating Employer, a person who does not deal at arm's length with a Participating Employer, or a person who is a member of a group of persons not dealing at arm's length with a Participating Employer.

3.05 **Limitation of Right to the Fund.** The following limitations apply to the rights, or interests in, or use, of the Fund:

- (a) none of HEABC, any Participating Employer, any Participating Employee, and any other person, firm, association, or corporation will have any right, title or interest in or to the Fund, except as expressly provided by this Agreement, and except as provided by law;
- (b) except as otherwise provided in this Agreement no part of the corpus or income of the Fund will be used for or diverted to purposes other than those set forth in paragraph 3.02 hereof; and
- (c) no money, property, equity or interest of any nature whatsoever in the Fund or in any benefits or monies payable therefrom is subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, lien, or charge by any person in receipt of, or eligible to receive, Health and Welfare Benefits or any person claiming through any such person, and any attempt to cause the same to be subject thereto, is null and void.

3.06 **Distribution of Trust Income.** Since the Trust's inception in 1993 it has qualified as a health and welfare trust, as described by Government of Canada Income Tax Folio S2-F1-C1 (as may be amended or superseded from time to time). Consistent with that status, since the Trust's inception all of the Trust's income and net taxable capital gains, as determined under the *Income Tax Act* (Canada), for each taxation year have been used to pay taxable Health and Welfare Benefits to the Trust's beneficiaries, and it is the Trustees' intention to and expectation that it will continue to distribute all of the Trust's income to the Trust's beneficiaries in that manner. As a result, since the Trust's inception it has not had any income subject to tax under Part 1 of the *Income Tax Act* (Canada) in any taxation year, and it is the Trustees' intention and



expectation that the Trust will continue to have no income subject to tax under Part 1 of the *Income Tax Act* (Canada) in any taxation year.

#### **PART 4 - ADMINISTRATION**

4.01 **General.** The Trustees have all power and authority necessary to administer the Trust. Without limiting the generality of the foregoing, the Trustees are hereby authorized and empowered:

- (a) to make such arrangements and agreements, including insurance arrangements, on behalf of the Trust with corporations, firms or persons to provide the Health and Welfare Benefits required to be provided pursuant to this Agreement from time to time;
- (b) to engage and dismiss, from time to time, such officers, employees, agents, advisors, administrators, professionals (including auditors, solicitors, and actuaries), and others, as the Trustees deem necessary on staff or as consultants to assist them in their administration of the Fund and Plan and the Trustees may delegate any of their administrative powers or duties to any such person or persons;
- (c) to make, revise from time to time, and enforce such policies, rules and regulations consistent with the provisions of this Agreement as the Trustees consider advisable for the effective administration of the Trust; including, without restricting the generality of the foregoing, policies with respect to compensation of officers and staff of the Trust;
- (d) to determine and decide upon the right of any person to receive Health and Welfare Benefits provided by this Agreement and the Plan, the type, extent or amount thereof, and whether or not any hearing will be granted to any individual who may be affected by any such determination or decision, every which determination and decision will be final and binding upon all parties and persons whomsoever;
- (e) to develop and establish procedures to be followed by Participating Employers for reporting Contributions made by them;
- (f) to obtain and evaluate all statistical, actuarial and other data which may reasonably be required for the proper administration of the Trust;
- (g) to appoint one or more trust companies, chartered banks, insurance companies, credit unions or other corporations, partnerships or individuals to act as agent for any purpose of the Fund, including that of custodian of the assets of the Fund and including that of investment manager of all or part of the Fund and to delegate to such agents any of the powers and duties of the Trustees in connection with the administration of the Plan and the investment of the Fund or any part thereof;
- (h) to register any securities and any other documents evidencing ownership of or title to any properties acquired for the purposes of the Fund in the joint names of the

Trustees, or in the name of the Trust, or in the name of one or more custodians or nominees without the addition of words indicating that such are held in a fiduciary capacity and to hold any securities in bearer form;

- (i) to deal with any properties forming part of the Fund and execute and deliver any documents in connection therewith, including, without restricting the generality of the foregoing, securities lending programs with respect to securities of the Fund, and to enter into any contracts or agreements considered advisable in connection with the establishment, administration and operation of the Fund and the Plan, and do all other acts considered necessary or proper for the protection of the Fund and the Plan;
- (j) to retain monies and other properties of the Fund on deposit or for safekeeping at any one or more chartered banks or licensed trust companies or credit unions and to enter into arrangements and contracts with such banks, trust companies or credit unions for the purposes of the trusts set forth in this Agreement, (including, without restricting the generality of the foregoing, entering into credit card arrangements for the purpose of paying administrative expenses of the Trust) and, from time to time, to hold such part of the Fund uninvested when in the opinion of the Trustees it is necessary or advisable, in the best interest of the Fund, or for the proper administration thereof, so to do;
- (k) to sell for cash or on credit, convert, redeem, exchange for other securities or other properties or otherwise dispose of and deal with any securities or other properties at any time held by the Trustees for the purposes of the Fund and generally to act as owner and exercise all rights incidental to ownership thereof;
- (l) to make reciprocal agreements with any person, firm or corporation, charged with the duties of maintaining, operating and administering any other health and welfare plan for the reciprocal transfer of benefit entitlements between such plan and the Plan, and for the payment or receipt, as the case may require, of such funds as are required to be paid by the terms and provisions of such reciprocal agreements;
- (m) to incorporate one or more companies for the purpose of providing the expertise and services to third persons as contemplated by paragraph 4.06 and to be the tenant or subtenant of premises out of which the Trust may operate; notwithstanding any restriction on investment contained in subparagraph 3.04(g), to hold all of the shares in the capital of such companies as part of the Fund; to act as either or both directors and officers of such companies; and to grant, on behalf of the Fund, indemnities as to monies owing under leases or subleases of such premises in favour of landlords of such premises;
- (n) to compromise, settle, arbitrate, and release all claims or demands in favour of or against the Fund or the Trustees on such terms and conditions as the Trustees deem advisable;
- (o) to make appropriate allocations of common administrative expenses and disbursements shared or to be shared with another health and welfare plan or trust fund;

- (p) to borrow or raise money occasionally on a short term basis to provide funds for the current payment of benefits without resort to a distress sale of assets of the Fund and, with respect to such borrowings, to pay such rate or rates of interest as the Trustees in their absolute discretion deem appropriate;
- (q) to develop and establish budgets of both a capital and operating nature for the Trust;
- (r) to commingle all or part of the Fund with the 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 Fund are maintained; and
- (s) to develop strategic planning for the Trust.

4.02 **Chief Executive Officer.** The Trustees will hire a Chief Executive Officer and will delegate, from time to time, such powers and duties to the Chief Executive Officer as the Trustees feel are appropriate and necessary to allow the Chief Executive Officer to implement the policy decisions of the Trustees and carry out the administrative responsibilities delegated to the Chief Executive Officer. The powers and duties of the Chief Executive Officer will include, in accordance with policies set by the Board, but are not be limited to, those contained in Schedule 3.

4.03 **Delegation to Committees.** The Board may from time to time by resolution constitute, dissolve or reconstitute standing committees and other committees consisting of such persons as the Board may determine. Every committee constituted by the Board will have the powers, authorities and discretions delegated to it by the Board (subject always to the supervision by the Board) and will conform to the policies which may from time to time be imposed upon it by the Board. The Board will, in accordance with this paragraph 4.03, constitute, as a standing committee, a Finance and Audit Committee to be composed of 2 or more Trustees.

4.04 **Execution of Documents.** All cheques, drafts, vouchers or other withdrawals of money from the Fund and documents effecting the transfer of any property or security of the Fund, will be executed in accordance with policies set by the Trustees, but in the absence of any such policies will require the signature of at least two Trustees who will first have been duly authorized by the Board to sign such documents. In addition, the Trustees may authorize a Trustee or Trustees or any other persons they may designate to execute any notice or other instrument, and all persons, partnerships, corporations or associations may rely thereupon, that such notice or instrument has been duly authorized and is binding on the Fund and the Trustees.

4.05 **Audit.** The Trustees will cause an audit to be made of the Fund at least once in each calendar year. Whenever the Trustees consider it necessary or advisable for the proper administration of the Fund, the Trustees may authorize additional audits. Each auditor's report, including the results of each audit, will be available for inspection by any Trustee, HEABC and any Participating Employer.

4.06 **Services to Third Parties.** The officers and staff of the Trust may provide the expertise and services of the officers and staff of the Trust to third persons, including other health

and benefit plans, for a fee payable to the Fund.

## **PART 5 - MISCELLANEOUS PROVISIONS**

5.01 **Conclusiveness of Instruments.** No person, partnership, corporation or association dealing with the Trustees is obligated to see that the terms of this Agreement have been complied with, nor is any of them obliged to inquire into the necessity for or the expediency of any act of the Trustees and every instrument executed by or under the authority of the Trustees will be conclusive evidence that:

- (a) at the time of the delivery of the instrument the trusts hereby created were in full force and effect; and
- (b) the instrument was executed in accordance with the terms and conditions contained in this Agreement.

5.02 **Information for Participating Employees.** The Board will make available, to each Participating Employer for appropriate distribution, brochures or pamphlets setting out the essential features of the Plan.

5.03 **Communications.** Any communication required to be given or delivered to any Trustee, HEABC, any Participating Employer, or any Participating Employee will be in writing and delivered by hand, sent by telecopier, or sent by prepaid first class mail, addressed to the intended recipient, at the last address or telecopy number shown for the intended recipient in the records of the Trust.

5.04 **Receipt of Communication.** Any communication given under paragraph 5.03 will be given and received if delivered by hand or sent by telecopier (confirmed by telephone) upon receipt. Any communication that is mailed will be deemed given and received on the second Business Day after it has been mailed at any postal station in Canada. Should there be at the time of mailing (or between the time of mailing and the actual receipt of a communication), a mail strike or other such dispute which might affect the delivery of such communication by the mails, then such communication will only be effective when actually delivered.

5.05 **Trustees' Discretion.** The resolution of any questions arising in connection with the carrying out of the terms and provisions of this Agreement not specifically provided for herein will be left to the discretion of the Trustees.

5.06 **Action by Trustees.** The Trustees may seek judicial protection by any action or proceedings they may deem necessary to settle their accounts, or may obtain a judicial determination or declaratory judgment as to any question of construction of this Agreement or instruction as to any action hereunder. Any such determination will be binding upon all persons who are parties to, or claiming under, this Agreement.

5.07 **Cost of Suit.** The costs and expenses incurred by the Trustees of any action, suit or proceedings brought by or against the Trustees, or any of them, (including legal fees and disbursements reasonably incurred on a full indemnity basis), will be paid from the Fund, except

in relation to matters which it is adjudged in such action, suit or proceeding that such Trustees were acting in bad faith or were guilty of wilful default.

5.08 **Fidelity Bonds.** Each person employed by the Trust and any Trustee who may be engaged in the handling of monies or other assets of the Fund, will be bonded by a duly authorized surety company for such sum as the Board from time to time will determine. The premiums for such bonds will be paid out of the Fund. Except as otherwise expressly provided by law, no other bond or other security will be required of any Trustee.

5.09 **Obligation of Participating Employers and HEABC to Furnish Information.** Each Participating Employer and HEABC hereby agrees with the Trustees that they, and each of them, will promptly provide the Chief Executive Officer with such reports, payroll records, time-sheets, accounting information and other data as the Chief Executive Officer may reasonably require and request from them and consider necessary for the proper administration of the Trust and the Plan, including, but not limited to, the determination of eligibility to participate in the Plan and the determination of the Health and Welfare Benefits to be provided under the Plan.

#### **PART 6 - OBLIGATION OF PARTICIPATING EMPLOYERS TO MAKE PROMPT PAYMENT OF CONTRIBUTIONS**

6.01 **Obligation.** In consideration of being accepted by the Trustees for participation, 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.

6.02 **Amount of Contributions.** The Trustee will from time to time determine the Contributions to be paid by Participating Employers. The amount of the Contributions required to be paid by Participating Employers will be those amounts necessary to fund the obligations required under this Agreement as determined, from time to time, by the Trustees, including, without restricting the generality of the foregoing, amounts which are required pursuant to Part 7. Nothing in this paragraph 6.02 restricts the right of the Trustees to reduce or eliminate Contributions for such period of time as the Trustees consider appropriate. Any determination under this paragraph 6.02 will only be made after receipt and consideration of actuarial advice.

6.03 **Interest.** Whenever and so often as a Participating Employer fails to pay Contributions within 30 days of the date upon which they were due to be paid, such Participating Employer will also pay, as liquidated damages, interest at 2 percentage points above the Prime Rate from the date the Contributions were due to be paid until the actual date of payment thereof both before and after judgment.

6.04 **Enforcement.** Whenever and so often as a Participating Employer fails to pay Contributions, the Trustees have the right to commence and prosecute legal action in the names of the Trustees against the defaulting Participating Employer for the recovery and payment of the amount of such Contributions accrued due and payable at the date of the commencement of such action, including for interest as provided for in paragraph 6.03. The amount of such Contributions and interest, will, for all purposes, be deemed to be a debt then due and payable by such Participating Employer to the Trustees. The Trustees may also claim such further and other

relief whether with respect to future payment of Contributions or otherwise, as may be available to the Trustees. Participating Employers which fail to pay Contributions are also liable for, and will pay to the Fund, all legal fees and disbursements for the collection of Contributions, and interest, reasonably incurred on a full indemnity basis.

6.05 **Nature of Right of Action.** The right of action hereby conferred upon the Trustees will be in addition to and independent of any other procedure or remedy which may be available to the Trustees, or to any other person whomsoever. No Participating Employer will 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 Employee under a Collective Agreement.

6.06 **Right of Entry.** If the Chief Executive Officer determines it is necessary for purposes connected with establishing, reviewing, revising or collecting Contributions, then, upon written demand of the Chief Executive Officer to a Participating Employer, the representatives of the Chief Executive Officer and anyone acting on behalf of the Chief Executive Officer will be permitted to:

- (a) enter upon a Participating Employer's premises at any reasonable time for the purpose of carrying out any inspection, audit or examination;
- (b) examine and make copies of all books of accounts, documents, vouchers, payroll records, time sheets or any other material which may be relevant to the said inspection, audit or examination; and
- (c) make inquiries of the Participating Employer or any persons employed or otherwise engaged by the Participating Employer.

If the Chief Executive Officer makes such a written demand, then access to premises and documentation in accordance with subparagraphs (a) and (b) above will be granted, and the Participating Employer of whom the demand was made will produce all books of account, documents, vouchers, payroll records, time sheets and any other material which may be relevant to the inspection, audit or examination, in order to ensure that the Participating Employer has been complying with the terms and conditions of this Agreement.

6.07 **Security.** The Trustees may require any Participating Employer to furnish a cash deposit, in such amounts and at such times as is reasonably determined by the Trustees, provided the Participating Employer has been given reasonable notice of such cash deposit. 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 6 months of reasonably anticipated Contributions. Such bond or letter of credit, at the expiry of 6 months, will be renewed at the request of the Trustees. If such bond or letter of credit is not renewed upon the request of the Trustees, and received at least 10 days prior to the expiry of the current bond or letter of credit in force, then the Trustees have the right to convert the said current bond or letter of credit to a cash deposit.

6.08 **Participating Employee Contributions.** Participating Employees may make Contributions to fund all or some part of the cost of a specific Health and Welfare Benefit

provided under this Agreement. The Trustees must use such Contributions solely for the purpose of providing the Health and Welfare Benefits for which the Contributions were made.

### **PART 7 - UNFUNDED ACTUARIAL LIABILITY**

7.01 **Liability of Participating Employer.** Participating Employers are liable for payment to Trustees of the amount of any unfunded actuarial liability which may exist, from time to time, with respect to the provision of benefits under this Agreement.

7.02 **Notice to Participating Employer.** The Trustees may from time to time in their discretion:

- (a) calculate, based on actuarial advice, the amount, if any, of the unfunded actuarial liability attributable to each Participating Employer;
- (b) give notice in writing to each Participating Employer of the amount of their unfunded actuarial liability as at the date upon which each such notice is given; and
- (c) include in such notice a demand that the Participating Employer pay the amount referred to in subparagraphs 7.02(a) and 7.02(b) to the Trustees in such manner and upon such terms and conditions as may be determined by the Trustees.

7.03 **Financial Responsibility of a Participating Employer Upon Termination or Withdrawal.**

- (a) If a Participating Employer ceases, for any reason, to participate in the Trust in respect of all or an identified group of employees (the "**Departing Group**") as of a date (a "**Termination Date**") when the Trust has an unfunded actuarial liability in respect of a benefit program the Departing Group participates in (a "**Program**"), such Participating Employer (a "**Departing Employer**") shall in respect of each such Program make an additional payment of Contributions to the Trustees in accordance with this paragraph 7.03.
- (b) The determination of the composition of a Departing Group and its Termination Date shall be made by the Trustees, and any such determination made by the Trustees in good faith shall be binding on the Departing Employer and all other parties to the Trust.
- (c) The determination of whether the Trust has an unfunded actuarial liability as of a Termination Date in respect of a Program, and the amount of such unfunded actuarial liability as of such Termination Date, shall be made by the Trustees in accordance with paragraphs 16.10 and 16.11, and with the advice of the Trust's actuary, based on the then most recent audited financial statements for the Trust, and such other more current actuarial and financial information as is then available to the Trustees. Any such determination made by the Trustees in good faith shall be binding on the Departing Employer and all other parties to the Trust.

- (d) If the Trustees determine that an unfunded actuarial liability exists as of the Termination Date in respect of a Program, and that Program is not part of the program of Segregated Benefits (as defined in Part 16), the Trustees shall cause an actuary to calculate:
- (i) the portion of the premiums paid by the Departing Employer in respect of the Program attributable to recovering the actuarial deficit in respect of that Program over the three year period preceding the Termination Date, or such shorter period of time preceding the Termination Date during which the Departing Group participated in the Program;
  - (ii) the portion of the aggregate premiums paid by all Participating Employers that participated in the Program attributable to recovering the actuarial deficit in the Program over the three year period preceding the Termination Date, or such shorter period of time preceding the Termination Date during which the Departing Group participated in the Program; and
  - (iii) the "**Departing Employer's Payment**" in respect of the Program, which will equal the amount determined pursuant to item (i) divided by the amount determined pursuant to item (ii) and multiplied by the Program's unfunded actuarial liability as of the Termination Date determined pursuant to subparagraph (c).
- (e) If the Trustees determine that an unfunded actuarial liability exists as of the Termination Date in respect of a Program, and that Program is part of a program of Segregated Benefits (as defined in Part 16), the amount of that unfunded actuarial liability will be the "**Departing Employer's Payment**" in respect of that Program.
- (f) The Trustees shall forthwith notify the Departing Employer of the amount of the Departing Employer's Payment in respect of each Program, which amount shall be considered Contributions owing to the Trustees as of the Termination Date. The Departing Employer shall forthwith pay to the Trustees an amount equal to the aggregate of all such Departing Employer's Payments (plus interest at the rate specified in its Participation Agreement from the Termination Date to the date of payment) without set off or reduction of any kind in a single lump sum cash payment.
- (g) The Trustees may, in their absolute and unfettered discretion, waive a Departing Employer's Payment in respect of a Program.

## **PART 8 - LIMITATION OF LIABILITY**

8.01 **Liability of Trustees.** A Trustee will not be liable for any error of judgment or for any loss to the Fund or any insufficiency or deficiency of the Fund or any consequent reduction or cessation of benefits under the Plan, arising through any act or omission done or suffered by such Trustee reasonably and in good faith.



8.02 **Liability of HEABC.** HEABC, in its capacity as an employers' organization as that term is defined in the Labour Relations Code or in any successor legislation thereto, will not be liable for the payment of any benefits provided by the Plan nor for the failure of the Trustees to secure or provide the benefits contemplated herein or in the Plan nor for any default or neglect of the Trustees. Nothing in this Part exempts or relieves HEABC from liability to pay Contributions as determined by the Trustees should it participate in the Trust as a Participating Employer.

## **PART 9 - AMENDMENT**

9.01 **Power to Amend.** HEABC and the Trustees may at any time, by written agreement, modify or amend this Agreement, except that no amendment or modification may be made which:

- (a) permits the Fund to be used other than:
  - (i) to provide for Health and Welfare Benefits as set forth in paragraph 3.02;
  - (ii) for the payment of the costs of administration of the Trust; and
  - (iii) for the payment of such other costs and expenses as are now authorized or may hereafter be authorized by this Agreement; or
- (b) diverts the Fund or any part thereof to a purpose other than as set out in this Agreement; or
- (c) eliminates the requirement of an audit.

9.02 **Power to Amend Part 2.** Without restricting the generality of paragraph 9.01, it is expressly agreed that HEABC and the Trustees may amend any of the provisions of Part 2.

## **PART 10 - TERMINATION OF RIGHT TO PARTICIPATE IN THE TRUST AND PLAN**

10.01 **Termination of Participating Employer's Right to Participate in the Trust and Plan.**

- (a) **Right to Withdraw.** No Participating Employer has the right to withdraw in whole or in part from participation in the Trust and Plan except with the prior consent of HEABC and the Trustees. If such consent is given, such Participating Employer will continue to be liable to pay all Contributions due and accrued due up to the effective date of withdrawal. HEABC and the Trustees will be under no obligation whatsoever to grant such consent and may arbitrarily withhold same.
- (b) **Termination for Failure to Pay Contributions.** If a Participating Employer fails to pay Contributions, then HEABC and the Trustees may terminate such Participating

Employer's right to participate in the Plan, but such termination will not affect the rights of the Trustees under paragraphs 6.04 and 6.05 hereof.

- (c) **Termination**. For any Participating Employer whose effective date for participating in the Plan is on or after January 1, 2017, HEABC and the Trustees may terminate such Participating Employer's right to participate in the Plan for any reason, but such termination will not affect the rights of the Trustees under paragraphs 6.04 and 6.05 hereof.

10.02 **Termination of Participating Employee's Right to Participate**. Except as provided in subparagraphs (c) and (d) of the definition of Participating Employee, a Participating Employee will cease to be such, and former Participating Employees, their eligible dependents, or eligible beneficiaries entitled to Health and Welfare Benefits under subparagraph 3.02(b) will cease to be entitled to Health and Welfare Benefits immediately upon the termination of the respective or former Participating Employer's right to participate in the Plan as provided in subparagraphs 10.01(a), 10.01(b) and 10.01(c) of this Agreement.

## **PART 11 - TRANSFER OF ASSETS**

11.01 **Trustees' Power and Authority to Transfer and Pay Over Trust Assets and the Liabilities for Accrued Benefits**. If, at any time hereafter:

- (a) persons entitled to benefits under this Agreement become or are about to become covered by and entitled to benefits under another health and welfare trust fund or trust fund and plan (the "Successor Trust Fund") which provide benefits either identical, or substantially similar to the benefits provided under this Agreement; and
- (b) if the Trustees, in their discretion, decide it would be advantageous to transfer and pay assets of the Fund into the Successor Trust Fund (on behalf of such persons who at the time of such payment and transfer are entitled to receive a benefit or benefits under this Agreement for the purpose of providing for such persons a benefit or benefits under the Successor Trust Fund); then
- (c) if the trustees of the Successor Trust Fund undertake and agree to accept and to discharge all liabilities of the Trustees with respect to the provision of such benefits to such persons;
- (d) if the trustees of the Successor Trust Fund agree that the benefits to be provided to such persons under the Successor Trust Fund will be at least as great as those provided under the Trust at the date of such payment and transfer; and
- (e) if HEABC first approves in writing such action by the Trustees;

the Trustees may pay such assets into the Successor Trust Fund for such purpose.

11.02 **Release of Trustees.** If all assets of the Fund are to be paid to a Successor Trust Fund in accordance with paragraph 11.01, then as soon as the Trustees decide to make payment into a Successor Trust Fund as contemplated and authorized therein, the provisions of paragraph 14.02 hereof apply to and govern their actions. Upon such payment into the Successor Trust Fund 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. If not all assets of the Fund are to be paid to a Successor Trust Fund in accordance with paragraph 11.01, then upon payment into the Successor Trust Fund of the assets which are to be so paid, all of the trusts contained herein with respect to such assets cease and terminate, and, with respect thereto and with respect to the persons referred to in subparagraph 11.01(b), the Trustees are relieved and released of and from all future obligations, responsibilities and liabilities imposed upon them pursuant to this Agreement, and otherwise.

## **PART 12 - RECEIPT OF ASSETS OF OTHER HEALTH AND WELFARE TRUST FUNDS**

12.01 **Trustees' Power.** If, at any time, the trustees of any other health and welfare trust fund or trust fund and plan under which the benefits provided are either identical or substantially similar to the benefits provided under the Trust (the "Transferor Trust Fund") and the Trustees agree that it would be advantageous for some or all of the assets of any Transferor Trust Fund to be transferred and paid into the Fund for the purpose of providing benefits under the Trust to persons entitled to benefits from the Transferor Trust Fund, then, if the Trustees obtain the approval in writing of HEABC, the Trustees are authorized to:

- (a) accept and receive such assets as part of the Fund;
- (b) provide benefits for such persons under the Trust and out of the Fund;
- (c) accept and discharge the liabilities of the trustees of the Transferor Trust Fund with respect to the provision of such benefits to such persons; and
- (d) undertake and agree with the trustees of the Transferor Trust Fund as a condition of such transfer and payment that the benefits to be provided to such persons under the Trust will be at least as great as those provided under the Transferor Trust Fund to such persons at the date of such transfer and payment.

## **PART 13 - MERGERS AND AMALGAMATION**

13.01 **Trustees' Powers.** The Trustees have the power and authority with the consent of HEABC to merge or amalgamate the trust created by this Agreement and the Fund with one or more similar trusts and funds (herein called the "Amalgamated Fund"), provided that the Trustees are satisfied that the merger or amalgamation will not have the effect of depriving any person of any right to Health and Welfare Benefits to which such person had become entitled or which had accrued to their credit, and that the rights of such persons under the Amalgamated Fund will, at the effective date of the merger or amalgamation, be the substantial equivalent of their rights

under this Agreement. In connection with such merger or amalgamation, the Trustees may enter into a merger or amalgamation agreement with Trustees of one or more other trusts, amend or terminate this Agreement, transfer or cause the custodian or custodians (if any) to transfer and deliver the Fund to trustees or custodians of the Amalgamated Fund, 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 merger or amalgamation.

#### **PART 14 - TERMINATION OF TRUST**

14.01 **Termination of Trust and Plan.** This Agreement and Plan will be terminated by the Trustees:

- (a) on receipt by the Trustees of written instructions to so do from HEABC; or
- (b) upon payment and transfer of all of the assets of the Fund pursuant to paragraph 11.01 of this Agreement.

14.02 **Duties of the Trustees.** If this Agreement and the Plan are terminated, the Trustees will:

- (a) make provisions out of the Fund for the payment of expenses incurred up to the date of termination and the expenses incidental to such termination;
- (b) arrange for a final audit and report of their transactions and accounts for the purpose of terminating their trusteeship; and
- (c) pay the residue of the Fund, if any, as follows:
  - (i) having in mind the extent of the Fund at the date of termination, make a final determination of the benefits then available to the Participating Employees, their eligible dependents and eligible beneficiaries in accordance with the provisions of the Plan and provide, or make arrangements to provide, such benefits to such persons; or
  - (ii) pay the same to a Successor Trust Fund in accordance with paragraph 11.01.
- (d) despite sub-paragraph (c)(i), if this Agreement and the Plan are terminated and any funds remain in the Fund after full provision has been made for all benefits accrued as of the date of termination by the Participating Employees, their eligible dependents and eligible beneficiaries, such remaining funds may be used as the Trustees consider appropriate to provide additional Health and Welfare Benefits to such individuals, or may be distributed to such individuals or to a registered charity.

## **PART 15 - EFFECTIVE DATE**

15.01 **December 1, 1993 Effective Date.** Notwithstanding the actual date of execution by each of the parties, this Agreement is effective as of and for December 1, 1993.

## **PART 16 – SEGREGATED BENEFITS AND EMPLOYERS**

16.01 **Application to Trustees and HEABC.** A Participating Employer may apply to the Trustees and HEABC to have the Trustees provide on a "segregated pool" basis all or certain of the Health and Welfare Benefits then being provided to such Participating Employer's employees through the Trust. The Trustees and HEABC will be under no obligation whatsoever to accept such application and may arbitrarily refuse to accept the application. If the Trustees and HEABC accept such an application, the Health and Welfare Benefits specified in the Participating Employer's application which are provided through the Trust to the categories or classes of employees of the Participating Employer specified in the application shall for the purposes of this Part 16 be referred to as "Segregated Benefits" and, in respect of such Segregated Benefits, the applicant Participating Employer shall be referred to as the "Segregated Employer". For greater certainty, a Participating Employer may make more than one application to the Trustees and HEABC, and more than one notional account may be established in respect of a Participating Employer, pursuant to this Part 16.

16.02 **Establishment of Notional Account for Segregated Benefits.** Concurrently with the Trustees' acceptance of a Participating Employer's application pursuant to paragraph 16.01 to be a Segregated Employer in respect of Segregated Benefits, the Trustees shall, effective as of a date specified by the Trustees (the "**Account Effective Date**"), establish a notional account within the Fund for the relevant Segregated Benefits. For greater certainty, the Trustees may establish separate notional accounts for each type of Segregated Benefit provided by a Segregated Employer or for each category or class of employees of the Segregated Employer, or as the Trustees otherwise determine would be appropriate.

16.03 **Calculation of Initial Balance in Notional Accounts.** The initial balance in any notional account shall equal

- (a) the aggregate amount of Contributions and other amounts received by the Trustees in respect of the relevant Segregated Benefits during the period commencing on a date specified by the Trustees and concluding on the date immediately prior to the Account Effective Date specified in respect of that notional account pursuant to paragraph 16.02,
- (b) minus all claims, expenses and other amounts paid from the Fund by the Trustees in respect of the Segregated Benefits during such period,
- (c) plus or minus any investment earnings or losses (whether realized or unrealized) of the Fund allocable to the amounts described in subparagraphs (a) and (b) during such period in a manner reasonably determined by the Trustees.

16.04 **Confirmation of Initial Account Balance.** The Trustees shall advise the relevant Segregated Employer of the initial balance of a notional account determined pursuant to paragraph 16.03, and the Segregated Employer shall have 30 days to accept, reject or request modifications to such initial balance. If within the 30 day period the Segregated Employer accepts the initial balance, or does not reject or request modifications to it, the initial balance specified by the Trustees shall be final and binding on all persons. If within the 30 day period the Segregated Employer rejects or requests modification to the initial balance proposed by the Trustees, and the Trustees and the Segregated Employer are not able to agree upon an initial balance within 90 days of the Trustees' initial advice to the Segregated Employer, the Segregated Employer shall be deemed to have withdrawn its application to provide the relevant Segregated Benefits in accordance with this Part 16. Any initial balance agreed to by the Trustees and the Segregated Employer in good faith pursuant to this paragraph 16.04 shall be final and binding on all persons.

16.05 **Maintenance of Balances in Notional Accounts.** After establishing the initial balance for a notional account pursuant to paragraphs 16.03 and 16.04, the Trustees shall maintain a continuous accounting of the balance in that notional account in a manner consistent with the manner in which the initial balance of the notional account was established pursuant to paragraph 16.03. Without limiting paragraph 16.13, unless otherwise determined by the Trustees, each notional account shall bear an appropriate share (as determined by the Trustees) of all general expenses incurred by the Trustees administering the Fund or the Plan as well as all expenses incurred by the Trustees associated with providing the Segregated Benefits for which the notional account was established.

16.06 **Frequency of Notional Account Balance Redeterminations.** After establishing the initial balance of a notional account in accordance with paragraphs 16.03 and 16.04, the Trustees shall redetermine the balance of each such notional account in accordance with paragraph 16.05 no less frequently than annually as of such dates which are month ends as are designated in writing by the relevant Segregated Employer. The Trustees shall advise the affected Segregated Employer of each such redetermination of a notional account's balance.

16.07 **Trustees' Power to Determine Notional Account Balances.** The determination of the initial balance of a notional account and all subsequent redeterminations of such notional account's balance shall be made by the Trustees after the receipt and consideration of such actuarial and accounting advice as they consider necessary or desirable. If for any reason the Trustees determine that an error has occurred in determining or redetermining a notional account balance, or that some other circumstance reasonably warrants the modification of a notional account's balance, the Trustees may at any time adjust the notional account balance to correct such error or address such other circumstance, provided that no adjustment may be made to an initial balance determined in accordance with paragraphs 16.03 and 16.04 without the prior written agreement of the affected Segregated Employer. Any such adjustment may if necessary be retroactive. Every redetermination of a notional account balance made by the Trustees in good faith shall be final and binding on all persons.

16.08 **Consolidation or Division of a Notional Account.** The Trustees may, with the prior written consent of the affected Segregated Employer, divide a notional account into two or more notional accounts or consolidate it with one or more other notional accounts in such manners and upon such terms (if any) as the Trustees consider appropriate.

16.09 **Extraordinary Alterations to Notional Accounts.** If a Segregated Employer is reorganized, whether by amalgamation or other acquisition of all or part of the operations of another entity, or by transferring all or part of its operations to another entity, or by dividing its operations into two or more entities, or otherwise, the Trustees may, of their own motion, and without the prior consent of the affected Segregated Employer(s), divide, consolidate or otherwise modify the affected notional accounts in such manners and upon such terms as the Trustees consider necessary to appropriately reflect such reorganization. Every such alteration made by the Trustees in good faith shall be final and binding on all persons.

16.10 **Determination of Contributions, Unfunded Actuarial Liabilities and Transfer Amounts to Successor Trust Fund.** For the purposes of the calculations and determinations described in this paragraph 16.10, and for no other purpose, the Trustees shall assume that assets equal in value to the balance from time to time of a notional account are the only assets available to fund the Segregated Benefits for which the notional account was established, and on that basis shall determine:

- (a) the amount of Contributions required to be paid by the Segregated Employer pursuant to paragraph 6.02 in respect of those Segregated Benefits;
- (b) whether for the purposes of paragraph 7.02 or 7.03 there is an unfunded actuarial liability associated with those Segregated Benefits;
- (c) the amount (if any) payable by a Segregated Employer pursuant to paragraph 7.02 or 7.03 in respect of those Segregated Benefits; and
- (d) the amount of assets of the Fund to be transferred pursuant to paragraph 11.01 to a Successor Trust Fund (as that term is defined in paragraph 11.01) in respect of those Segregated Benefits.

16.11 **Impact on Remainder of Plan and Fund.** For the purposes of the calculations described in this paragraph 16.11, and for no other purpose, the Trustees shall assume that assets within the Fund equal in value to the aggregate balances as of the relevant dates of all notional accounts established pursuant to this Part 16 are not available to fund Health and Welfare Benefits that are not Segregated Benefits, and on that basis shall determine:

- (a) the amount of Contributions required to be paid by Participating Employers pursuant to paragraph 6.02 in respect of Health and Welfare Benefits that are not Segregated Benefits;
- (b) whether for the purposes of paragraph 7.02 or 7.03 there are unfunded actuarial liabilities associated with the Health and Welfare Benefits that are not Segregated Benefits;
- (c) the amounts (if any) payable by a Participating Employer pursuant to paragraph 7.02 or 7.03 in respect of Health and Welfare Benefits that are not Segregated Benefits; and

- (d) the amount of assets of the Fund to be transferred pursuant to paragraph 11.01 to a Successor Trust Fund (as that term is defined in paragraph 11.01) in respect of Health and Welfare Benefits that are not Segregated Benefits.

16.12 **Effect of Creation of Notional Accounts.** The creation of notional accounts pursuant to this Part 16 shall be notional only, and all assets of the Fund shall be available to meet all liabilities of the Trust in the same manner that such assets were available to meet such liabilities prior to this Part 16 forming part of this Agreement. Without limitation, all assets of the Fund shall be commingled together and invested collectively.

16.13 **Expenses Associated with Notional Accounts.** A Participating Employer who makes application pursuant to this Part 16 to become a Segregated Employer shall as a condition of such application first agree to indemnify the Trustees and HEABC from and against all expenses the Trustees or HEABC incur considering or responding to the Participating Employer's application or establishing initial notional account balance(s) in response to such application, regardless of whether such application is accepted or initial account balance(s) is (are) established. Thereafter, any expenses the Trustees incur redetermining the balance of a notional account or otherwise administering it shall be expenses deducted from the balance of the relevant notional account at its next redetermination.

16.14 **Notional Account Balance May be Negative Number.** For greater certainty, the balance of a notional account determined or redetermined pursuant to this Part 16 may be a negative number.

16.15 **Dissolution of Notional Account.** A Segregated Employer may apply to the Trustees and HEABC to have the Trustees cease to provide all or certain of its Segregated Benefits on a "segregated pool" basis. The Trustees and HEABC will be under no obligation whatsoever to accept such application and may arbitrarily refuse to accept the application. If the Trustees and HEABC accept such an application, the Segregated Benefits specified in the Segregated Employer's application shall with effect from the date specified by the Trustees (the "**Account Cessation Date**") cease to be Segregated Benefits and, in respect of such Segregated Benefits, the applicant Segregated Employer shall cease to be a Segregated Employer. Effective as of the Account Cessation Date specified by the Trustees, the notional account established by the Trustees in respect of the relevant Segregated Benefits (or the portion of it the Trustees reasonably determine is allocable to the relevant Segregated Benefits) shall be dissolved and the provisions of paragraphs 16.10 and 16.11 shall be applied after that date on that basis. Without limitation, concurrently with the dissolution (or partial dissolution) of a notional account, the Trustees may redetermine the amount of Contributions required to be paid by the applicant Segregated Employer in respect of the affected Segregated Benefits.

16.16 **Expenses Associated with Dissolution of Notional Account.** A Segregated Employer who makes application pursuant to paragraph 16.15 to cease to provide Segregated Benefits on a "segregated pool" basis shall as a condition of such application first agree to indemnify the Trustees and HEABC from and against all expenses the Trustees or HEABC incur considering or responding to such application or implementing any Contribution rate or other administrative changes consequential to the acceptance of such application, regardless of whether such application is accepted.



16.17 **Extraordinary Dissolution of Notional Account.** If the Trustees determine that it is no longer actuarially appropriate to provide certain Segregated Benefits on a "segregated pool" basis the Trustees may, of their own motion, and without the prior consent of the affected Segregated Employer, cease to provide such Segregated Benefits on a "segregated pool" basis. If the Trustees elect to do so, the Segregated Benefits specified by the Trustees shall with effect from the date specified by the Trustees (the "**Account Cessation Date**") cease to be Segregated Benefits and, in respect of such Segregated Benefits, the relevant Segregated Employer shall cease to be a Segregated Employer. Effective as of the Account Cessation Date specified by the Trustees, the notional account established by the Trustees in respect of the relevant Segregated Benefits (or the portion of it the Trustees reasonably determine is allocable to the relevant Segregated Benefits) shall be dissolved and the provisions of paragraphs 16.10 and 16.11 shall be applied after that date on that basis. Without limitation, concurrently with the dissolution (or partial dissolution) of a notional account, the Trustees may redetermine the amount of Contributions required to be paid by the relevant Segregated Employer in respect of the affected Segregated Benefits.

16.18 **Status of Provincial Health Services Authority.** For the purposes of this Part 16, and no other purpose, all Participating Employers under the control or direction of the Provincial Health Services Authority shall be considered a single Participating Employer, and the Provincial Health Services Authority may make application to the Trustees and HEABC, and notional accounts may be established and administered, pursuant to this Part 16 on that basis.

16.19 **Priority of Part 16.** If any provision in this Part 16 is inconsistent with any other provision of this Agreement, the provision in this Part 16 shall prevail, and all other provisions of this Agreement shall be interpreted as being subject to the provisions of this Part 16.

TO EVIDENCE THEIR AGREEMENT, each of the parties has executed this Agreement.

**SCHEDULE 1**

**EMPLOYER'S APPLICATION FOR PARTICIPATION IN THE  
HEALTHCARE BENEFIT TRUST**

[Content Omitted]

**SCHEDULE 2**  
**ACCEPTANCE OF TRUST**

[Content Omitted]

**SCHEDULE 3**

**POWERS AND DUTIES OF CHIEF EXECUTIVE OFFICER**

[Content Omitted]

**SCHEDULE 4**

**HEALTHCARE BENEFIT TRUST**

**PERMITTED EMPLOYER PARTICIPATION AGREEMENT (“Participation Agreement”)**

**Dated the      day of                      , 20 .**

AMONG:

The Board of Trustees of Healthcare Benefit Trust

(the “Trust”)

AND:

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The employer seeking to participate in the Trust (the “Employer”)

AND:

Health Employers Association of British Columbia

(“HEABC”)

In consideration for HEABC and the Trust accepting the Employer’s application to participate in the Trust the Employer agrees as follows:

1. The Employer acknowledges receipt of a copy of the Agreement and Declaration of Trust for the Healthcare Benefit Trust (the “Trust Agreement”).
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 hereby applies to participate in the Trust as a Participating Employer. The Health and Welfare Benefits to be provided under the Trust are limited to those approved by the Trust in writing. The coverage for which the Employer is applying and the requested effective date is set out on Schedule A attached hereto.
4. By the Employer executing this Participation Agreement, it:
  - 4.1 warrants and represents that:
    - (a) it has full and sufficient authority to enter into this Participation Agreement; and

- (b) it provides healthcare or community services (or related services) or is a public sector employer as defined under the Public Sector Employers Act.
- 4.2 agrees to provide to the Trust such information and documentation reasonably required to verify the truth and accuracy of the foregoing warranty and representation as of the date hereof and at any time in the future;
- 4.3 further agrees :
- (a) to pay and remit Contributions in accordance with the terms of the Trust Agreement;
  - (b) to pay interest on any outstanding Contributions or other amounts owed in accordance with the terms of the Trust Agreement and to pay to the Trust any audit and legal costs incurred by the Trust caused by the Employer's late or incorrect payment of Contributions;
  - (c) to furnish the Trust promptly with reports, payroll records, timesheets, accounting information, financial statements and any other information as the Trust may from time to time reasonably require;
  - (d) to be bound by all the terms and provisions of the Trust Agreement as amended from time to time;
  - (e) to duly perform all of the obligations and duties, and accept all the liabilities, imposed upon Participating Employers by the Trust Agreement and the Plan;
  - (f) to continuously maintain its operations so that the warranty and representation in section 4.1 (b) remains true and correct and to notify the Trust and HEABC immediately in writing if it no longer meets the criteria in section 4.1 (b);
  - (g) to provide to HEABC on request, copies of the Employer's financial statement;
  - (h) that the Employer's participation as a Participating Employer may be terminated upon 180 days' written notice being given by HEABC, it being understood and agreed that HEABC shall not be bound to provide reasons for termination; and
  - (i) that this Participation Agreement will be binding on the Employer and the Employer's successors.
5. The Trust agrees to provide HEABC with aggregate reporting on an annual basis for the pool in which the Employer-participates. Further the Trust agrees to provide an annual review of performance to the funding and contribution policies for the pool in which the Employer participates.

[NAME OF EMPLOYER]

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

Trustees of the Healthcare Benefit Trust

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

Health Employers Association of British Columbia

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**SCHEDULE A**

**To: The Board of Trustees of the Healthcare Benefit Trust (the “Trust”)**

We acknowledge receipt of a copy of the Trust Agreement relating to the Trust (the “Trust Agreement”).

Capitalized terms used in the application and not herein defined have the meanings given them in the Trust Agreement.

We hereby apply for acceptance for participation in the Healthcare Benefit Trust as a Participating Employer.

In consideration of your accepting us, we agree:

- (1) To pay Contributions promptly in such amounts and at such times as you from time to time decide;
- (2) To be bound by all the terms and provisions of the Trust Agreement;
- (3) To duly perform all of the obligations and duties, and accept all the liabilities, imposed upon Participating Employers by the Trusts Agreement; and
- (4) That the Health and Welfare Benefits to be provided under the Trust are limited to those which you approve in writing. The coverage for which we are now applying is:

Group or Class of Employee Coverage	Group Life Insurance	AD&D	Long Term Disability	Extended Health Care	Dental
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**REQUESTED EFFECTIVE DATE OF COVERAGE:** \_\_\_\_\_

**Note: the levels of benefits indicated above will be as dictated by the terms of the appropriate Collective Agreement, if any.**