

**HEALTHCARE BENEFIT TRUST  
AMENDING AGREEMENT (NO. 5)**

This Amending Agreement is made September 23, 2021 BETWEEN:

**HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA  
("HEABC")**

AND:

**THE BOARD OF TRUSTEES OF THE HEALTHCARE BENEFIT TRUST  
("Trustees")**

**WHEREAS:**

- A. Pursuant to an Agreement and Declaration of Trust between HEABC and certain individual trustees dated December 1, 1993 (as amended by Amending Agreement (No. 1) dated April 19, 2004, Amending Agreement (No. 2) dated January 22, 2010, Amending Agreement (No. 3) dated April 7, 2016 and Amending Agreement (No. 4) dated April 11, 2018) (the "**Trust Agreement**"), a health and welfare trust fund and plan known as the Healthcare Benefit Trust (the "**Trust**") was established;
- B. The Trust is a health and welfare trust governed by Canada Revenue Agency policies, including Folio S2-F1-C1;
- C. Pursuant to recent amendments to the *Income Tax Act* (Canada), all health and welfare trusts are required to convert to employee life and health trusts by December 31, 2021;
- D. Certain amendments to the Trust Agreement are required to effect the conversion of the Trust to an employee life and health trust;
- E. Paragraph 9.01 of the Trust Agreement provides that HEABC and the Trustees may amend the Trust Agreement at any time by written agreement; and
- F. It is desirable to amend the Trust Agreement to effect the conversion of the Trust to an employee life and health trust, as well as to make certain housekeeping amendments.

**NOW THEREFORE** the parties agree as follows:

- 1. Effective January 1, 2021, the Trust Agreement is amended as follows:
  - (a) Paragraph D of the Background is deleted and replaced with the following:
    - D. As of December 1, 1993, this Agreement created 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) became members entitled to employee health and welfare benefits and to which the trustees of the Second Trust paid and transferred 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.

- (b) Two new paragraphs are added to the Background recitals after paragraph H, as follows:

- I. On June 29, 2021, the *Income Tax Act* (Canada) was amended to require all health and welfare trusts to convert to employee life and health trusts by December 31, 2021.
- J. Pursuant to Amending Agreement (No. 5), this Agreement was amended to effect the conversion of the Trust from a health and welfare trust to an employee life and health trust effective January 1, 2021.

- (c) The definitions of "Collective Agreement", "Contributions", "Fund", and "Trust" in Section 1.01 are amended by replacing the words "Health and Welfare Benefits" with "Employee Life and Health Benefits".

- (d) A new definition, "Employee Life and Health Benefits", is added to Section 1.01 as follows:

"Employee Life and Health Benefits" means "designated employee benefits" within the meaning of section 144.1 of the ITA and such other benefits as may be provided through an employee life and health trust pursuant to section 144.1 of the ITA.

- (e) The definition of "Employer" in Section 1.01 is deleted and replaced with the following:

"Employer" means HEABC, a Member or a Permitted Employer.

- (f) The definition of "HEABC" in Section 1.01 is amended by replacing the capitalized words "HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA" with "Health Employers Association of British Columbia".

- (g) The definition of "Health and Welfare Benefits" in Section 1.01 is deleted.



- (h) A new definition, "ITA", is added to Section 1.01 as follows:

"ITA" means the *Income Tax Act* (Canada).

- (i) The definition of "Participating Employer" in Section 1.01 is amended by adding "paragraph 3.07 and" after "Subject to" and before "Part 10".  
3.08

- (j) Section 1.02 is deleted and replaced with the following:

1.02 **Number.** Words in the singular include the plural and vice versa.

  
Trustees  
  
HEABC



- (k) Section 3.02 is amended by replacing the words “Health and Welfare Benefits” with “Employee Life and Health Benefits”, by replacing the words “*Income Tax Act (Canada)*” with “ITA”, and by adding the following as the final sentence thereof:

It is intended that as of January 1, 2021, the trust terms hereof will at all times meet the requirements of an “employee life and health trust” within the meaning of the ITA.

- (l) Sections 3.03, 3.04 and 3.05 are amended by replacing the words “Health and Welfare Benefits” with “Employee Life and Health Benefits”.
- (m) Section 3.06 is deleted and replaced with the following:

3.06 **Distribution of Trust Income.** From the Trust’s inception in 1993 to its conversion to an employee life and health trust on January 1, 2021, it qualified as a health and welfare trust, as described by Government of Canada Income Tax Folio S2-F1-C1. Consistent with the Trust’s status as a health and welfare trust prior to 2021, and as an employee life and health trust after 2020, since the Trust’s inception all of the Trust’s income and net taxable capital gains, as determined under the ITA, for each taxation year have been used to pay taxable employee health and welfare benefits (from inception until 2021) and Employee Life and Health Benefits (after 2020) to the Trust’s beneficiaries, and it is the Trustees’ intention to and expectation that they 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 ITA 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 ITA in any taxation year.

- (n) New sections 3.07 and 3.08 are added as follows:

3.07 **Residence of Trust.** The Trust will at all times be administered such that it is resident in Canada for the purposes of the ITA, determined without reference to section 94 thereof.

3.08 **Classes.** The Plan may provide for more than one class of beneficiaries in accordance with the requirements of section 144.1 of the ITA and, for greater certainty, any class designated by a Participating Employer must comply with such requirements.

- (o) Section 4.01 is amended:

- (i) by replacing the words “Health and Welfare Benefits” with “Employee Life and Health Benefits” in paragraphs (a) and (d);
- (ii) by replacing the words “health and welfare plan” with “employee life and health trust fund and plan” in paragraph (l); and
- (iii) by replacing the words “health and welfare plan or trust fund” with “employee life and health trust fund and plan” in paragraph (o).

- (p) Section 4.06 is amended by replacing the words “health and benefit plans” with “employee life and health trust funds and plans”.
- (q) Section 5.03 is amended by adding the words “email or other electronic transmission,” after “sent by telecopier,”, by replacing the word “or” after the words “at the last address” with a comma, and by adding the words “or email or other electronic address” after the words “telecopy number”.
- (r) Section 5.04 is amended by adding the following sentence immediately after the first sentence:

Any communication that is sent by email or other electronic transmission will be deemed given and received on the first Business Day following the date of sending thereof, provided the sender did not receive a failure of transmission notice.

- (s) Sections 5.09, 6.08, and 9.01 are amended by replacing the words “Health and Welfare Benefits” with “Employee Life and Health Benefits”.
- (t) A new section 9.03 is added as follows:

9.03    **Maintenance of Tax Status.** Despite any other provision of this Agreement, the Trustees may amend this Agreement or the Plan to maintain the Trust’s status as an “employee life and health trust” under the ITA or to otherwise comply with any other applicable law. A copy of every such amendment shall be provided to HEABC.

- (u) Section 10.02 is amended by replacing the words “Health and Welfare Benefits” with “Employee Life and Health Benefits”.
- (v) Section 11.01 is amended by replacing the words “health and welfare trust fund or” with “employee life and health” in paragraph (a).
- (w) The heading of Part 12 is amended by replacing the words “HEALTH AND WELFARE” with “EMPLOYEE LIFE AND HEALTH”.
- (x) Section 12.01 is amended by replacing the words “health and welfare trust fund or” with “employee life and health”.
- (y) Section 13.01 is amended:
  - (i) by adding the words “employee life and health” before the words “trusts and funds” in the first sentence;
  - (ii) by replacing the words “Health and Welfare Benefits” with “Employee Life and Health Benefits”;
  - (iii) by replacing the word “their” in the phrase “or which had accrued to their credit” in the first sentence with the words “such person’s”; and



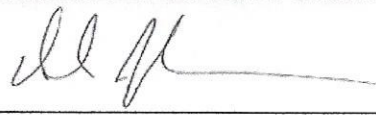
- (iv) by adding the words "employee life and health" before the word "trusts" in the second sentence.
  - (z) Section 14.02 is amended:
    - (i) by replacing the words "to a Successor Trust Fund" in paragraph (c)(ii) with "to one or more Successor Trust Funds"; and
    - (ii) by deleting paragraph (d) and replacing it with the following:
      - (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 will be distributed to such individuals, other than "key employees" within the meaning of section 144.1 of the ITA, or individuals who are related to "key employees", on a *pro rata* basis.
  - (aa) Section 15.01 is amended by replacing the words "is effective as of and for" with the words "was originally effective as of".
  - (bb) Sections 16.01 and 16.11 are amended by replacing the words "Health and Welfare Benefits" with "Employee Life and Health Benefits".
  - (cc) The form of Permitted Employer Participation Agreement in Schedule 4 is amended by replacing the words "Health and Welfare Benefits" with "Employee Life and Health Benefits".
2. This Amending Agreement may be executed electronically and delivered by the parties in one or more counterparts, each of which will be an original, and each of which may be delivered by fax, email or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

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

**HEALTH EMPLOYERS ASSOCIATION  
OF BRITISH COLUMBIA**

  
 Name: Betsy Gibbons  
 Title: Board Chair, HEABC

**THE BOARD OF TRUSTEES OF THE  
HEALTHCARE BENEFIT TRUST**

  
 Name: Howard Johnson  
 Title: Board Chair, HBT