

**CANADIAN UNION OF PUBLIC EMPLOYEES ("CUPE")  
EDUCATION WORKERS' BENEFITS TRUST ("EWBT")  
TRUST AGREEMENT**

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**THIS TRUST AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

B E T W E E N:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented  
by the Minister of Education  
("Crown")**

**OF THE FIRST PART**

- and –

the Ontario Public School Boards Association (OPSBA), on behalf of its member School Boards

- and –

Ontario Catholic School Trustees' Association (OCSTA), on behalf of its member School Boards

- and –

Association des conseils des écoles publiques de l'Ontario (ACÉPO), on behalf of its member  
School Boards

- and –

Association franco-Ontarienne des conseils scolaires catholiques (AFOCSC), on behalf of its  
member School Boards

hereinafter collectively known as:

**COUNCIL OF TRUSTEES' ASSOCIATIONS/CONSEIL DES ASSOCIATIONS  
D'EMPLOYEURS  
("CTA/CAE")**

**OF THE SECOND PART**

- and –

**ONTARIO SCHOOL BOARD COUNCIL OF UNIONS (CUPE)  
("OSBCU/CUPE")**

**OF THE THIRD PART**

**WHEREAS**, pursuant to the Letter of Agreement signed on December 20, 2016 (replacing Letter of Understanding #9 and forming part of the Central Collective Agreement for education workers executed on November 2, 2015 between the Crown, CTA/CAE and CUPE), it has been agreed that an employee life and health trust to be known as the "**CUPE Education Workers' Benefits Trust**" will be established and this Trust Agreement (the "Agreement", as defined herein) records the terms and conditions of such trust established for the benefit of the Participating Employees and other Beneficiaries as defined in this Agreement;

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

**AND WHEREAS** the purpose of the Trust is to provide benefits to education sector workers in the Province of Ontario on a sustainable, efficient and cost effective basis;

**AND WHEREAS** any employer bound by the terms and conditions of the Central Collective Agreement must participate in the Trust in respect of employees covered by the Central Collective Agreement and successor collective agreements in accordance with the terms of this Agreement;

**NOW THEREFORE**, for value received, the Parties agree, as follows:

#### **ARTICLE 1 – DEFINITIONS**

- (a) **"ACÉPO"** means Association des conseils des écoles publiques de l'Ontario and its successors;
- (b) **"Actuary"** means the person, corporation or firm appointed by the Trustees to be the actuary for the Board of Trustees, who shall be, or in the case of a firm or corporation, a member of the staff shall be, a Fellow of the Canadian Institute of Actuaries;
- (c) **"Administrative Agent"** means a person or persons, including one or more employees, or a firm or corporation, appointed by the Trustees to perform duties and responsibilities related to the administration of one or more Benefit Plans;
- (d) **"AFOCSC"** means Association franco-Ontarienne des conseils scolaires catholiques and its successors;
- (e) **"Agreement"** means this trust agreement and any amendment to it and any instrument supplemental or ancillary to it and any amendment to any such instrument;
- (f) **"Applicable Legislation"** means all statutes of Canada or of Ontario, together with the regulations thereunder, as amended from time to time, which require compliance by a Plan or the Fund;

- (g) **“Authorized Investments”** means investments made by the Trustees in accordance with any investment policies or guidelines they may adopt from time to time;
- (h) **“Beneficiary”** means a Participating Employee or Retired Employee and his or her eligible dependants and beneficiaries as defined in a Plan;
- (i) **"Benefits"** means health (including but not limited to vision and travel), life and dental benefits, including accidental death and dismemberment (AD&D), medical second opinion, and navigational support benefits that qualify as “designated employee benefits” under s. 144.1(1) of the *Income Tax Act* (Canada), as amended from time to time;
- (j) **"Benefit Plan" or "Plan"** means a plan for the provision of Benefits to a group of Participating Employees or Retired Employees covered by one or more Participation Agreements, which shall set out the Eligibility Requirements, rules, regulations and procedures for the payment or provision of Benefits to those Participating Employees or Retired Employees from the Separate Account maintained in respect of the Benefit Plan;
- (k) **"Central Collective Agreement”** means the agreement on central terms between CTA/CAE and CUPE, and agreed to by the Crown pursuant to the *School Boards Collective Bargaining Act, 2014*, for the initial term of September 1, 2014 to August 31, 2017, inclusive, and including the Letter of Agreement dated December 20, 2016 between the OPSBA, OCSTA, ACÉPO, AFOCSC, CUPE, and the Crown, that replaces Letter of Understanding #9 re: Benefits, and the Extension Agreement dated December 20, 2016 between OPSBA, OCSTA, ACÉPO, AFOCSC, and CUPE, and agreed to by the Crown, together with any and all supplements, extensions and renewals thereof and successor agreements thereto;
- (l) **“Cessation Date”** means the date as of which a person who was a Trustee ceases to be a Trustee;

- (m) **"Claims Fluctuation Reserve"** or ("CFR") means a reserve held as part of a Separate Account, with respect to a Plan, to offset future adverse claims fluctuations;
- (n) **"Consultant"** means such person, firm or corporation as may be appointed from time to time by the Trustees for the purpose of consulting with and advising the Trustees with respect to a Plan;
- (o) **"Contributions"** means Employer Contributions and Employee Contributions;
- (p) **"Crown Claims Fluctuation Reserve Payment"** means the one-time contributions by the Crown to the CUPE Separate Account in respect of the CUPE EWBT Plan as set out in s.16.1;
- (q) **"CUPE"** means the Canadian Union of Public Employees;
- (r) **"CUPE EWBT Plan"** means the Benefit Plan setting out the Eligibility Requirements and the Benefits to be provided to Participating Employees (and their beneficiaries) covered by the Central Collective Agreement and such other Participating Employees (and their beneficiaries) as participate in the CUPE EWBT Plan in accordance with a Participation Agreement, as amended from time to time;
- (s) **"CUPE Retired Employee Plan"** means a fully insured Benefit Plan setting out the Eligibility Requirements and the Benefits to be provided to Retired Employees (and their beneficiaries) covered by the Central Collective Agreement and such other Retired Employees (and their beneficiaries) who participate in the CUPE Retired Employee Plan in accordance with a Retired Employee Participation Agreement;
- (t) **"CUPE Retired Employee Separate Account"** means the Separate Account maintained by the Trustees within the CUPE EWBT with respect to the CUPE Retired Employee Plan, and shall comprise:
  - (i) additional Claims Fluctuation Reserve Payments made by Participating Employers in respect of Retired Employees, in accordance with a Participation Agreement;



- (ii) Employer Contributions in accordance with the Central Collective Agreement, and such other Employer Contributions as provided for under this Agreement or a Participation Agreement;
- (iii) Retired Employee Premium Shares, as calculated by the Trustees;
- (iv) all other property which is acquired at any time by the Trustees for the CUPE Retired Employee Separate Account; and
- (v) all capital accretions and income arising from all property referred to in paragraphs (i), (ii), (iii), (iv) and (v) above;

less any authorized payments therefrom;

(u) **"CUPE Separate Account"** means the Separate Account maintained by the Trustees within the CUPE EWBT with respect to the CUPE EWBT Plan, and shall comprise:

- (i) the Crown Claims Fluctuation Reserve Payment paid to the Trustees;
- (ii) additional Claims Fluctuation Reserve Payments made by Participating Employers, in accordance with a Participation Agreement;
- (iii) Employer Contributions in accordance with the Central Collective Agreement, and such other Employer Contributions as provided for under a Participation Agreement;
- (iv) Employee Contributions, as required by the Trustees;
- (v) all other property which is acquired at any time by the Trustees for the CUPE Separate Account; and
- (vi) all capital accretions and income arising from all property referred to in paragraphs (i), (ii), (iii), (iv) and (v) above;

less any authorized payments therefrom;

(v) **"Education Sector Employee Life and Health Trusts"** means the CUPE EWBT, the Ontario Secondary School Teachers' Federation Employee Life and Health Trust, Elementary Teachers' Federation of Ontario Employee Life and Health Trust, Fiducie de soins de santé au bénéfice d'employés de l'AEFO, the Ontario English Catholic Teachers' Association Employee Life and Health Trust, the Non-Union Education Trust (ONE-T) / Fiducie des employés non-syndiqués en éducation de l'Ontario (FENSEO), and any other Employee Life and Health Trusts providing Benefits to employees employed by an Eligible Employer;

- (w) **“Eligible Employer”** means:
- (i) a District School Board, District School Area Board, Public School Authority, or an entity controlled by them (including transportation consortia); and
  - (ii) a related or successor employer to a District School Board, District School Area Board or Public School Authority, in the Province of Ontario that employs CUPE represented employees who were receiving benefits from the CUPE EWBT; or
  - (iii) any other not-for-profit employer agreed to by the Parties;
- (x) **"Eligibility Requirements"** means the rules, regulations and procedures for determining the eligibility, or the discontinuance of eligibility, for Benefits, as set out in a Plan, as amended from time to time;
- (y) **“Employee Contributions”** means any and all sums of money required to be paid by Participating Employees to the Trustees to provide Benefits in accordance with a Plan, as determined by the Trustees from time to time;
- (z) **“Employer Contributions”** means any and all sums of money required by:
- (i) a last executed Central Collective Agreement; or
  - (ii) if the Central Collective Agreement does not apply to a group of Participating Employees, by the terms of a Participation Agreement;
- to be paid by a Participating Employer to the Trustees to provide Benefits to Participating Employees;
- (aa) **"Fund"** means the CUPE EWBT fund established by this Trust Agreement and comprises all property or interests in property held by the Trustees from time to time under this Trust Agreement;
- (bb) **“Funding Policy”** means the policy adopted by the Trustees pursuant to s. 16.4 or s. 17.2, as applicable, governing the financial basis upon which Benefits are provided to Beneficiaries and setting out the consequences of deficiencies or surpluses in relation to a Plan's liabilities and the consequences of Contribution shortfalls or excesses in relation to the costs of a Plan;

- (cc) **"Income Tax Act (Canada)"** means the *Income Tax Act (Canada)*, including any regulations made thereunder, as the same may be amended from time to time;
- (dd) **"Insurance Company"** means an insurance company licensed to carry on business in Canada;
- (ee) **"OCSTA"** means the Ontario Catholic School Trustees' Association and its successors;
- (ff) **"OPSBA"** means the Ontario Public School Boards Association and its successors;
- (gg) **"OSBCU\CUPE"** means the Ontario School Board Council of Unions (CUPE);
- (hh) **"Participating Employee"** means a person who is employed by an Eligible Employer, who meets the Eligibility Requirements of a Plan and who has not opted out of coverage under a Plan;
- (ii) **"Participating Employer"** means any Eligible Employer who:
  - (i) in respect of employees covered by the Central Collective Agreement is, as of September 1, 2014, bound by the Central Collective Agreement; or
  - (ii) in respect of a group of employees who are not covered by the Central Collective Agreement, is bound by a Participation Agreement described in clause (ii) of s. 1(jj) that covers the group of employees;and shall include successor employers and assigns;
- (jj) **"Participation Agreement"** means (i) with respect to a person, including a Retired Employee, whose participation in the Trust as a Beneficiary is provided for in the Central Collective Agreement, such Central Collective Agreement; and (ii) in the case of any other person, an agreement in writing between the Trustees and an Eligible Employer, in a form prescribed by the Trustees in accordance with s. 7.1 that, among other things, provides that such person is eligible for Benefits coverage by the Trust, stipulates the Contribution requirements in respect of such person (or group of persons to which he or she belongs) and binds the Eligible Employer to this Agreement;

- (kk) "**Participation Date**" means, for Participating Employers bound by the Central Collective Agreement, March 1, 2018, unless otherwise agreed by the Parties, and, in relation to a Participation Agreement signed by a Participating Employer, the date on which a Participating Employer commences participation in the Trust for the group of employees or Retired Employees covered by the Participation Agreement;
- (ll) "**Party**" means the Crown, OPSBA, OCSTA, ACÉPO and AFOCSC individually, including their successors, or OSBCU\CUPE and "**Parties**" means the Crown, OPSBA, OCSTA, ACÉPO and AFOCSC (and their successors) and OSBCU\CUPE collectively;
- (mm) "**Predecessor Benefit Plan**" means a benefit plan provided by a Participating Employer to either or both Participating Employees or Retired Employees immediately prior to the Participating Employer's Participation Date;
- (nn) "**Prime Rate**" means the rate of interest per annum from time to time publicly quoted by the Royal Bank of Canada, Main Branch, in Toronto, Ontario, 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;
- (oo) "**Remaining Start-up Costs**" means the unpaid and/or unspent portion, if any, of the percentage of estimated annual benefit costs to be provided by the Crown under the Central Collective Agreement in effect on the effective date of this Agreement as start-up costs for the Trust;
- (pp) "**Retired Employee**" means a person who was employed by a Participating Employer who was either a member of CUPE covered by the Central Collective Agreement, or a member of a bargaining unit covered by a Participation Agreement, and who was, immediately prior to their retirement, covered by a collective agreement that entitled the person to post-retirement benefits or to participate in a Benefit Plan that provides post-retirement Benefits;

- (qq) "**Retired Employee Participation Agreement**" means a Participation Agreement that governs the provision of Benefits to one or more Retired Employees through a Retired Employee Plan;
- (rr) "**Retired Employee Premium Share**" means the amount that a Retired Employee must pay as a condition for coverage under a Retired Employee Plan;
- (ss) "**Retired Employee Plan**" means a Benefit Plan for Retired Employees;
- (tt) "**School Board**" means a district school board or a school authority, within the meaning of the *Education Act*, R.S.O. 1990 c. E.2;
- (uu) "**Separate Account**" means a segregated fund or segregated account within the CUPE EWBT used for the provision of Benefits in accordance with the terms of a Plan to a discrete and identifiable group of Participating Employees or Retired Employees, and, for greater certainty, notwithstanding any other provision of this Agreement, the assets allocated to a Separate Account shall form part of the Fund;
- (vv) "**Termination Date**" means the earlier of:
  - (i) the date upon which the entirety of the Fund is transferred to the trustee of a successor trust; or
  - (ii) a future date determined under s.19.1 and occurring before the date specified in paragraph (i) above;
- (ww) "**Trust**" and "**CUPE EWBT**" means the "CUPE Education Workers' Benefits Trust";
- (xx) "**Trustees**" means the trustees who have been duly appointed in accordance with this Agreement, and have executed an acceptance of trust for so long as they are in office, and "**Board of Trustees**" shall mean all of the Trustees in office at the relevant time;
- (yy) "**Voluntary Plan**" means a Benefit Plan that is fully, partly or not insured and funded through individual premiums paid by Retired Employees.

## **ARTICLE 2 – SETTLEMENT AND INTERPRETATION**

- 2.1 **Settlement of Trust Fund.** In conjunction with the establishment and settlement of the Fund, and notwithstanding any other Contributions required under this Agreement or any other agreement, OSBCU\CUPE shall contribute \$100 to the Fund on or before March 1, 2018.
- 2.2 **Interpretation.** In this Agreement, unless the context otherwise requires or it is otherwise specifically provided, words importing the singular include the plural and vice-versa, and words importing gender will include the masculine, feminine and other genders. The headings in this document are for convenience only and do not form part of this Agreement.

## **ARTICLE 3 – NAME AND TITLE, PAYMENTS**

- 3.1 **Name and Title.** The Trust hereunder shall be known as the "CUPE Education Workers' Benefits Trust." The title to all assets of the Fund shall be jointly vested in the Trustees. The Trustees shall jointly hold the property of the Fund and shall deal with it in accordance with the terms of this Agreement. The name of the Trust set out above may be used to refer to the Trustees collectively, and all agreements and other instruments may be entered into and executed by or on behalf of the Trustees in such name.
- 3.2 **Manner of Payment.** All payments and Contributions may be made payable to the "Trustees of the CUPE EWBT" or to the "CUPE Education Workers' Benefits Trust."
- 3.3 **Legal Sources of Payments.** The Trustees may accept money or property from sources other than those described in this Agreement provided that acceptance from any such other source is not contrary to the terms of this Agreement and does not cause the Trust to lose its status as an "employee life and health trust" within the meaning of the *Income Tax Act* (Canada).

## **ARTICLE 4 – PURPOSE AND APPLICATION OF TRUST FUND**

- 4.1 **Purpose.** The Trust is established for the sole purpose of providing Benefits to the Beneficiaries.

- 4.2 **Employee Life and Health Trust.** The Trustees shall administer the Fund and the Plans as an employee life and health trust in compliance with s.144.1 of the *Income Tax Act* (Canada) as amended.
- 4.3 **Rights or Interest.** Neither the Parties hereto, nor any Participating Employer, Beneficiary, or any other person, association, firm or corporation, shall have any right, title or interest in or to the assets of the Fund or any Separate Account, except as specifically provided by this Trust Agreement or a Plan and as may be permitted by Applicable Law; provided however that nothing in the Trust Agreement shall prevent a Contribution, made by a Participating Employer, Participating Employee, or Retired Employee by mistake of fact, from being returned by the Trustees to such person.
- 4.4 **Seizure or Attachment.** Subject to terms of any Plan and the laws of the Province of Ontario, no monies, property or equity of any nature whatsoever in the Fund or in any Separate Account, or policies or benefits or monies payable therefrom, shall be subject in any manner by any Beneficiary or person claiming through such Beneficiary or otherwise, to anticipation, alienation, seizure, sale, transfer, assignment, pledge, encumbrance, attachment, garnishment, execution, mortgage, lien or charge. If by reason of any seizure or sale or any attempted sale under any legal, equitable or other process or by way of any suit or proceedings, any Benefit becomes payable to any person other than the Beneficiary for whom the same is intended, as provided by the Plan, the Trustees shall have the power to withhold payment of such benefit to such Beneficiary until such anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, garnishment, mortgage, lien, charge or seizure or other legal process is cancelled or withdrawn, and the Trustees shall have the right to use and apply the amount of such Benefit during such period as the Trustees may deem best for the support and maintenance of such Beneficiary.
- 4.5 **No Diversion.** Except as otherwise provided herein, at no time prior to the termination and wind-up of the Fund shall any part of the corpus or income of the Fund, including the Separate Accounts, be used for or diverted to purposes other than the provision of Benefits for the exclusive benefit of Beneficiaries, and in connection therewith the payment of reasonable costs of establishment, amendment and administration of the Trust and Plans and the investment of the Fund including the compensation of the Trustees payable in accordance with the terms of this Agreement and all other

disbursements reasonably made and expenses incurred in the performance of the duties of the Trustees hereunder or arising out of the Trust.

- 4.6 **No Guarantee.** Nothing contained in the Trust or a Plan shall constitute a guarantee that the assets of the Fund or of any Separate Account will be sufficient to pay any Benefits offered from time to time under a Plan to any person throughout his or her lifetime or make any other payment. The obligation of the Trustees to pay Benefits provided under a Plan is expressly conditioned on the sufficiency, in their judgment, of the assets and expected income and Contributions allocated and to be allocated in the future to Fund, or to the Separate Account maintained in respect of such Plan, as the case may be.
- 4.7 **Binding Effect.** It is hereby agreed that the Trust Agreement is binding on the Crown, OPSBA, OCSTA, ACÉPO, AFOCSC and OSBCUCUPE, the Participating Employers, and all Beneficiaries and their respective heirs, executors, administrators, successors and assigns and, in this regard, OPSBA, OCSTA, ACÉPO and AFOCSC each warrant and represent that they have the authority to bind the School Boards set out in Schedules "A", "B", "C" and "D" (and their successors), as applicable, with respect to Participating Employees who are covered by the Central Collective Agreement.

## **ARTICLE 5 – ESTABLISHMENT AND AMENDMENT OF PLANS**

- 5.1 **Establishment of the CUPE EWBT Plan.** Subject always to the requirements of this Agreement, and the Central Collective Agreement, the Trustees shall establish the CUPE EWBT Plan. The CUPE EWBT Plan shall define the Eligibility Requirements, the Benefits to be provided to Participating Employees covered by the Central Collective Agreement and their eligible beneficiaries and such other Participating Employees and their eligible beneficiaries as are covered by a Participation Agreement that requires their participation in the CUPE EWBT Plan.
- 5.2 **Amendment of the CUPE EWBT Plan by the Trustees.** Subject always to the requirements of the Funding Policy and the Central Collective Agreement and to the requirements of this Agreement and this s. 5.2, and provided that the Trustees may not make any change, modification or alteration that could reasonably be expected to cause the Trust to cease to qualify as an “employee life and health trust” under s. 144.1 of the *Income Tax Act* (Canada), the Trustees may change, modify, or otherwise alter the CUPE EWBT Plan, in their sole and absolute discretion (including by way of changing,



enhancing, reducing or eliminating any benefit or term or condition of eligibility and coverage for a Benefit) and may provide for different Employee Contributions for different groups of Participating Employees. Any change, modification or alteration to the CUPE EWBT Plan may take effect retroactively or otherwise, provided that Benefits, once paid, may not be reclaimed. With the consent of CUPE, the Trustees may amend the CUPE EWBT Plan to provide different Benefits for different groups of Participating Employees, including, without limitation, different groups of Participating Employees with the same Participating Employer.

**5.3 Amendment of the CUPE EWBT Plan by the Parties.** The Parties may amend the CUPE EWBT Plan to provide other employee benefit programs if such other employee benefit programs are negotiated in a central collective agreement.

**5.4 Establishment and Amendment of Other Plans.** The Trustees may, subject to s. 12.3, establish one or more Benefit Plans in respect of some or all Participating Employees not covered by the Central Collective Agreement who participate in the CUPE EWBT pursuant to one or more Participation Agreements. The Trustees shall establish, for each such Plan, a corresponding Separate Account. The Trustees may change, modify, reduce, increase or otherwise alter such other Plan or Plans, in their absolute and unfettered discretion, to align, as much as possible, the assets in and Contributions to the Separate Account with the Benefits and liabilities of the Plan associated with the Separate Account. Any such alteration may take effect retroactively or otherwise, provided that Benefits, once paid, may not be reclaimed.

**5.5 Establishment and Amendment of Retired Employee Plans.**

(a) The Trustees shall establish the CUPE Retired Employee Plan and may establish one or more other Retired Employee Plans. Retired Employees shall not participate in the CUPE EWBT Plan. Retired Employees may only participate in the CUPE Retired Employee Plan, or any other Retired Employee Plan, subject to and in accordance with the terms of Retired Employee Participation Agreements;

(b) The Trustees may amend the CUPE Retired Employee Plan and any other Retired Employee Plan provided that they may not reduce a Retired Employee's Benefits without the consent of the Retired Employee's Participating Employer;

- (c) The Parties may establish and amend Retired Employee Participation Agreements. The Trustees shall have no authority to establish or amend a Retired Employee Participation Agreement.

## **ARTICLE 6 – ESTABLISHMENT OF SEPARATE ACCOUNTS**

- 6.1 **Separate Accounts.** The Trustees may establish any number of Separate Accounts within the Fund. The assets in each Separate Account shall be, for the purposes of this Agreement and for all other purposes, held as segregated funds and used for the provision of Benefits, in accordance with the terms of a Plan, to a discrete and identifiable group of Participating Employees, in accordance with the requirements of one or more Participation Agreements. Under no circumstances shall the assets in a Separate Account be used other than to provide Benefits and fund reserves related to the discrete and identifiable group of Participating Employees for whom the Separate Account is maintained. Notwithstanding the foregoing, the assets of a Separate Account may be used to pay administrative and investment costs incurred by the Trustees with respect to the Fund and the Plans generally, and may be commingled with the assets of other Separate Accounts for such purpose, to the extent that such costs are reasonably determined by the Trustees to relate, in whole or in part, to the Separate Account and the Participating Employees whose Benefits are provided through the Separate Account. For further clarity, the Trustees shall establish a CUPE EWBT Plan Separate Account, in respect of the CUPE EWBT Benefit Plan, and a CUPE Retired Employee Separate Account in respect of the CUPE Retired Employee Plan, as Separate Accounts for the purposes of this Agreement. Further, each Separate Account shall be maintained for so long as there remain assets credited thereto.
- 6.2 **Pooled Investment.** Notwithstanding s. 6.1, assets credited to the Trust and to each Separate Account may be pooled for investment purposes, provided that, except as provided in s. 6.1 with respect to the payment of administrative and investment costs, under no circumstances may the assets credited to a Separate Account be available to meet the liabilities of or to subsidize the liabilities of, or defray the expenses attributable to another Separate Account. For greater clarity, costs associated with the investment of assets that have been pooled pursuant to this s. 6.2 may be payable from the pooled funds, but shall be allocated on a reasonable basis by the Trustees to the Separate Accounts from which such pooled funds derive.

## **ARTICLE 7 – PARTICIPATING EMPLOYER OBLIGATIONS**

7.1 **Participation Agreement.** Each Participating Employer within the meaning of s.1(ii)(ii) shall execute a Participation Agreement in a form acceptable to the Trustees. An initial template form of Participation Agreement is attached as Schedule "E". The Trustees may agree to alternative forms of Participation Agreement reflecting the different financial relationships between the Trustees and the Participating Employers, provided that a Participation Agreement with an Eligible Employer described in s. 1(w)(ii) that has entered into an agreement on central terms within the meaning of the *School Boards Collective Bargaining Act, 2014* that addresses participation in the Education Sector Employee Life and Health Trusts, shall be consistent in all material respects with such agreement on central terms.

### **7.2 Contributions by Participating Employers**

- (a) Each Participating Employer described in s.1(ii)(i) shall promptly pay to the Trustees or to such person, firm or corporation as the Trustees may from time to time direct, all Employer Contributions in the amount and in the manner described in the Central Collective Agreement, and such other agreements between the Parties, until such amounts are varied by a successor Central Collective Agreement. Each Participating Employer described in s.1(ii)(ii) shall promptly pay to the Trustees or to such person, firm or corporation as the Trustees may from time to time direct, all Employer Contributions in the amount and in the manner described in the Participation Agreement to which the Employer is a party, until such amounts are varied by a successor or amended Participation Agreement. All Employer Contributions shall be remitted in equal monthly instalments by the first business day of each month from and after the Participating Employer's Participation Date. Payment by a Participating Employer of Employer Contributions in accordance with the directions of the Trustees shall discharge the Employer of any obligations with respect to the payment or application of such Employer Contributions except as otherwise provided herein, or in the Central Collective Agreement where applicable;
- (b) The Participating Employers' absolute obligation to make Employer Contributions to the Fund shall not be subject to any set-off or counter-claim that a Participating Employer may have for any liability of any Beneficiary.

### 7.3 Strikes and Lockouts

- (a) During any periods of full withdrawal of service at a location where services are ordinarily provided to, or on behalf of, a Participating Employer, by some or all Participating Employees covered by a collective agreement with a Participating Employer or a third party that provides services to a Participating Employer, including, for greater certainty, the full withdrawal of services at different locations where services are ordinarily provided to, or on behalf of, a Participating Employer on a rotating basis (a "strike"), or a lock-out (within the meaning of the Labour Relations Act, 1995 (Ontario)) of Participating Employees, the collective bargaining agent shall, subject to its own constitution and by-laws (in the case of OSBCU\CUPE, the CUPE Constitution and National Strike Fund Regulations, as amended from time to time), make Employer and Employee Contributions in respect of Participating Employees eligible for strike pay (or the FTE equivalent) during the period of the strike or lockout;
- (b) Prior to the strike or lockout, the collective bargaining agent shall identify to the Trustees the Participating Employees who will be eligible for strike pay and the Trustees shall advise the collective bargaining agent of the amount in lieu of Participating Employer and Participating Employee Contributions that would otherwise be made during the strike or lockout, and the collective bargaining agent shall, subject to its own constitution and by-laws (in the case of OSBCU\CUPE, the CUPE Constitution and National Strike Fund Regulations, as amended from time to time), pay such Contributions to the Trustees in the manner and at the times required by the Trustees;
- (c) During the course of any strike or lockout, the collective bargaining agent may advise the Trustees of any changes to the Participating Employees eligible for strike pay from the collective bargaining agent, and the Trustees shall adjust the Contributions to be paid by the collective bargaining agent accordingly;
- (d) For purposes of clarity, Participating Employers shall continue to make Employer Contributions and otherwise comply with this Agreement during labour disruptions and interruptions that are not a strike or a lockout within the meaning of s. 7.3(a);

(e) All information exchanged between the Trustees and the collective bargaining agent pursuant to this section shall be maintained in the strictest confidence by both parties. Under no circumstances shall such information be disclosed to any third party except with the consent of the collective bargaining agent and the Trustees;

7.4 **Non-Payment by One Contributor.** Non-payment by any one required to make Contributions to the Fund shall not relieve any other person of his or her obligations to make such Contributions hereunder.

7.5 **Provision of Data.** Each Participating Employer shall provide to the Trustees, or, at the Trustees' direction, to the Administrative Agent, the data set out in Schedule "F" as well as any additional data required by a Participation Agreement to which the Participating Employer is a party in the manner and in the formats and at the time or times required by Schedule "F" or the Participation Agreement. Schedule "F" and the Participation Agreement shall also specify the consequences, if any, in the event that a Participating Employer does not comply with its requirements. For greater certainty, such consequences may include a requirement for the Participating Employer to cover actual costs incurred by the Trustees or the Administrative Agent as a result of the Participating Employer's failure to comply within a reasonable time with the data requirements of the Trustees or the Administrative Agent but shall not, without the agreement of the Parties, include an obligation to pay penalties. The Trustees may amend Schedule "F" from time to time on at least thirty (30) days, or such greater number of days as the Trustees may determine, advance written notice to CTA/CAE and the affected Participating Employers, but may not impose consequences on a Participating Employer except as provided in this s. 7.5.

7.6 **Obligation to Furnish Additional Information.** Each Participating Employer will, within thirty (30) days, or such greater number of days as the Trustees may determine, of a request from the Trustees or their Administrative Agent, and on an ongoing basis, provide the Trustees or their designates with such reports, payroll records, timesheets and accounting information and other data as the Trustees may reasonably require for the proper administration of the Trust and the applicable Plan, including, but not limited to, the determination of eligibility to participate in a Plan, changes in status of Participating Employees, and the determination of the Benefits to be provided under a Plan.

7.7 **Audits.** Each Participating Employer agrees that, upon the written demand of the Trustees, it shall permit a chartered professional accountant acting on the Trustees' behalf, or in accordance with their instructions, to:

- (a) enter upon that Participating Employer's premises at any reasonable time or times, upon giving thirty (30) days written notice, for the purpose of carrying out an inspection, audit or examination of the books of account, documents, payrolls, records, and other materials relating directly to a Benefit Plan under which current or former employees of the Participating Employer participate or participated, or the obligations of the Participating Employer with respect to the Trust under this Agreement, a Benefit Plan or a Participation Agreement; and,
- (b) make inquiries of the Participating Employer or any persons employed or otherwise engaged by a Participating Employer, solely in respect of matters that may be the subject of such an inspection, audit or examination under s. 7.7(a), which persons shall cooperate and will produce all books of account, documents, payrolls, records, or any other material which are relevant to the said inspection, audit or examination;

for the purpose of ensuring that the Participating Employer has been complying with the terms and conditions of a Participation Agreement, this Agreement and any applicable Plan including, and without limiting the generality of the foregoing, complying with its obligations to make Contributions to the Fund. It is agreed that the chartered professional accountant shall not reveal any of the information or documents reviewed or obtained to the Trustees or any other person, unless such inspection, audit or examination reveals that a Participating Employer has failed to carry out its obligations under a Participation Agreement, a Plan or this Agreement, in which case the results of the audit shall be disclosed to the Trustees and the Participating Employer. The costs of the chartered professional accountant related to any such inspection, audit or examination shall be borne by the Fund unless it reveals a material breach by the Participating Employer of its obligations.

7.8 **Errors and Omissions.** Participating Employer errors and retroactive adjustments shall be the responsibility of the Participating Employer. If an error is identified by a Participating

Employer, notification must be made to the Trustees within seven (7) days of identification of the error.

**7.9 Claims Support.**

- (a) A Participating Employer shall complete and submit the Waiver of Life Insurance Premium Statement to the Trustees for life waiver claims;
- (b) Each Participating Employer shall provide to the Trustees, within 30 days of their Participation Date, all beneficiary designations on behalf of Participating Employees current and in their possession as of the Participating Employer's Participation Date;
- (c) Participating Employees shall be responsible for updating their beneficiary declarations in accordance with the procedures established by the Administrative Agent.

**7.10 Grace Period.** The Trustees are authorized to establish a reasonable and lawful grace period by which Contributions must be received.

**ARTICLE 8 – ENFORCEMENT**

**8.1 Interest.** Whenever and so often as a Participating Employer fails to pay or remit Contributions on or before the date upon which such Contributions were due (subject to any grace period established pursuant to s. 7.10) to be paid, such Participating Employer will also pay, as liquidated damages to the Trust, interest at two (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 (if any) and the Trustees shall not seek any higher rate of interest in any proceeding against the Participating Employer as liquidated damages or otherwise.

**8.2 Enforcement.** Whenever and so often as a Participating Employer fails to pay Contributions required to be paid under this Agreement (subject to any grace period established pursuant to s. 7.10) following a written demand for payment from the Trustees containing such detail as a Participating Employer would reasonably require in order to know the amount and circumstances of the alleged default in payment, 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 in s. 8.1 accruing from the date the Contributions were due (subject to any grace period established pursuant to s. 7.10). The amount of such overdue Contributions and interest, will, for all purposes, be deemed to be held in trust by the Participating Employer for the Trustees. The Trustees may also claim such further and other relief whether with respect to future payments of Contributions or otherwise as may be available to the Trustees. Participating Employers that fail to pay Contributions are also liable for, and shall pay to the Fund, all legal fees and disbursements for the collection of Contributions, reasonably incurred, on a full indemnity basis. All costs incurred by the Trustees in relation to delinquent Contributions shall be charged to the Separate Account, if any, to which such Contributions relate.

- 8.3 **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. No Participating Employer shall be entitled to have such action delayed, stayed or otherwise postponed on the ground that the claim of the Trustees in such action might also be a claim capable of being dealt with by a trade union or Participating Employer under the Central Collective Agreement or other collective agreement.
- 8.4 **Participating Employer Failure to Comply.** In the event that a Participating Employer has failed to carry out its obligations under a Participation Agreement, a Plan or this Agreement, other than obligations to pay Contributions, the Participating Employer shall forthwith, upon written demand from the Trustees:
- (a) complete and remit any information, forms or other related and supporting documents which may be required of the Participating Employer pursuant to the applicable Participation Agreement or Plan, or this Agreement; and
  - (b) pay to the Trustees the reasonable costs, expenses, or losses, incurred by it in connection with or arising out of any inspection, audit or examination or other proceedings or steps taken in respect to any such failure.



## **ARTICLE 9 – PARTICIPATING EMPLOYEE CONTRIBUTIONS**

- 9.1 **Deducting and Remitting Employee Contributions.** If required by the Trustees, a Participating Employer shall deduct from the wages of a Participating Employee in their employ the amount of Employee Contributions that the Participating Employee is required by the Trustees to make, and shall remit such Employee Contributions to the Trustees, on or before the last day of each month, from and after the Participating Employer's Participation Date. The Trustees shall enter into a contractual arrangement with the Administrative Agent that requires the Administrative Agent to consult with Participating Employers to facilitate the collection of Employee Contributions for periods of time that a Participating Employee is not eligible for pay, including seasonal layoffs such as summer breaks, and remit to the Fund in a timely manner and in accordance with the applicable Benefit Plan.
- 9.2 **Calculation of Participating Employee Contributions.** Each Participating Employee shall pay Employee Contributions to the Trustees in such amounts and in such manner as is determined by the Trustees.

## **ARTICLE 10 – TRUSTEES**

- 10.1 **Board of Trustees.** The Board of Trustees of the CUPE EWBT shall consist of nine (9) voting Trustees to be appointed as follows:
- (a) Five (5) Trustees shall be appointed by OSBCU\CUPE (hereinafter referred to as "Employee Trustees");
  - (b) Three (3) Trustees shall be appointed by either CTA/CAE or the Crown, as determined by CTA/CAE and the Crown (hereinafter referred to as "Employer Trustees");
  - (c) One (1) Trustee shall be appointed by CTA/CAE and the Crown, and shall be an Employer Trustee for purposes of this Agreement;
  - (d) The Board of Trustees will include among its members two independent experts, one appointed by OSBCU\CUPE and one appointed by CTA/CAE and the Crown;
  - (e) The appointed independent expert Trustees shall:

- (i) not be currently employed or retained, or have been employed or retained at any time during the one (1) preceding year, by any of the CUPE EWBT, the shared services office supporting the CUPE EWBT, any federation or trade union that represents teachers or education workers, any School Board, School Board Association or the Crown;
- (ii) have no systemic conflict of interest in their role as Trustee such that as a result of the person's employment, or other position, personal relationships or legal or financial interests, the person can reasonably be expected to have ongoing or frequent conflicts of interest acting as Trustee;
- (iii) be accredited from one of the following fields: actuarial science, law, accounting, or hold the Certified Employee Benefit Specialist designation; and
- (iv) have demonstrated experience with employee benefit plans.

10.2 **Term of Office and Succession.** Each Trustee shall be appointed to serve an initial term of three (3) years. Notwithstanding, OSBCU\CUPE and CTA/CAE and the Crown may each determine to appoint one or more of their initial Trustees for a term of fewer than three (3) years. A succession plan will be designed by the Trustees so that the terms of no more than three Trustees expire in any twelve month period. Any Trustee may be reappointed, provided that no person may serve as a Trustee for more than nine (9) years.

10.3 **Qualification of Trustees.** Trustees shall meet the following requirements and complete the Trustee Attestation attached as Schedule "G":

- (a) be an individual;
- (b) be a resident of Canada;
- (c) be at least eighteen years of age;
- (d) not been found under the *Substitute Decisions Act, 1992* or under the *Mental Health Act* to be incapable of managing property, or been found to be incapable by a court in Canada or elsewhere; and
- (e) not be an undischarged bankrupt.

10.4 **Acceptance of Trusts.** Each individual, upon signing and filing with the Trustees an Acceptance of Trust in the form set out in Schedule "H" hereto, is deemed to accept the

trusts created and established by this Agreement, to have consented to act as a Trustee and to have agreed to administer the Fund and Trust as set out herein.

#### 10.5 **Resignation, Removal, Incapacity or Death.**

- (a) **Resignation.** A Trustee may resign by giving notice in writing to the remaining Trustees, the Crown, CTA/CAE and OSBCU\CUPE. Any such notice must state the date, not prior to the actual date of the notice, on which such resignation is to take effect. Such resignation will take effect on the date stated in the notice unless another Trustee has been appointed to and has accepted the appointment as a Trustee pursuant to subsection (h), below, in which event the resignation takes effect as of the date of acceptance by the successor Trustee;
- (b) **Removal.** A Trustee may be removed at any time by his or her appointing Party by that Party giving seven (7) days' written notice to the Trustees, the Administrative Agent, and the other Parties. The effective date of removal will be the day immediately following the expiry of the notice period;
- (c) **Automatic Removal.** A Trustee shall be automatically removed if a receiving order is made against him or her or if he or she makes an assignment under the *Bankruptcy Act*, or ceases to meet any of the qualifications in s. 10.3;
- (d) **Incapacity.** In the case of a Trustee becoming incapable of acting as a Trustee, the appointment of the Trustee may be terminated by notice from the Trustee, or his or her personal representatives, to the Party that appointed the Trustee and the remaining Trustees;
- (e) **Death.** In the event of the death of a Trustee, his or her heirs, administrators, executors and assigns shall be fully discharged from all duties, responsibilities and liabilities in respect of the Trust Agreement arising after the date of death;
- (f) **Remaining Trustees.** In the event of the death, resignation, incapacity or removal of any one or more of the Trustees, the remaining Trustees shall have jointly all the powers, rights, estates and interests of the Trustees as provided hereunder and shall be charged with all duties of the Trustees hereunder;

- (g) **Status.** Any Trustee resigning or being removed and the personal representatives of any deceased Trustee shall forthwith turn over to his or her successor Trustee, or if no successor is immediately appointed, to the other Trustees, any and all records, books and documents in any form, in the possession of the Trustee incidental to his or her duties as a Trustee under this Agreement or relating to the administration of the Fund;
- (h) **Appointment of Replacement Trustees.** When a Trustee dies, resigns, is removed or reaches the end of his or her term and is not re-appointed, a successor Trustee will be appointed as soon as reasonably possible by the applicable Party. Any such successor Trustee, immediately upon completing and filing with the Recording Secretary an Acceptance of Trust in the form of Schedule "H", is vested with all the property, rights, powers and duties of a Trustee hereunder from that date forward as if originally named as a Trustee;
- (i) **Discharge of Trustees.** Any Trustee upon dying, resigning, being removed from office or reaching the end of his or her term and is not re-appointed, will thereafter be discharged of and from all future duties, obligations and responsibilities under this Agreement;
- (j) **Indemnity.** A retiring or removed Trustee shall be entitled to require and receive from each continuing Trustee or new Trustee an indemnity on the terms described in s. 11.8 of this Agreement.

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

conveyed, assigned, transferred or made over to the successor Trustee all the rights to and property of the Fund and will sign all documents and deeds as may be necessary to convey a joint legal interest in the rights to and property of the Fund to the successor Trustee.

10.7 **No Conflict.** A person is not disentitled from serving as a Trustee, solely because they:

- (a) are entitled to receive Benefits under a Plan; or
- (b) except in the case of independent expert trustees appointed under s.10.1, are an officer or employee of the Crown, CTA/CAE, another employer association, an Ontario school board, the OSBCU\CUPE or its constituent local unions;

For greater clarity, a Trustee of the CUPE EWBT shall not serve as a Trustee of another Education Sector Employee Life and Health Trust while serving as a Trustee of the CUPE EWBT.

10.8 **Validity of Actions of the Trustees.** Notwithstanding that it is subsequently discovered or determined that there existed some defect in the appointment, removal or qualifications of any Trustee, or, that at the time a decision or action of the Trustees was taken there was not appointed the required number of Trustees, all acts and proceedings taken by the Trustees in good faith at any time while any such defect existed will nevertheless be valid and effective.

10.9 **Fees and Expenses.** Trustees shall not be entitled to any fee or payment from the Trust on account of their holding office, except in accordance with this section, s. 10.10 or s.10.11, as applicable. However, subject to the approval of the Trustees, a Trustee may be reimbursed from the Fund for his or her actual expenses incurred in attending each meeting of the Trustees at which the Trustee is physically present, the reasonable expenses incurred for attending educational conferences or courses for which attendance the prior approval of the Trustees has been obtained, and the actual expenses in carrying out any other duty in connection with the Trust, all in accordance with the rates established by OSBCU\CUPE. Except for trustees to whom s. 10.10 applies, trustees employed in the education sector shall be paid, or their employer reimbursed, for their regular wages for lost time in connection with their duties as Trustee.

**10.10 Appointed Independent Expert Trustees' Compensation.** To the extent permitted by law, the two independent expert Trustees appointed in accordance with s.10.1(d) shall be entitled to such reasonable compensation for the performance of their duties hereunder. They shall receive:

- (a) an annual retainer of \$20,000, payable in equal quarterly instalments in arrears, adjusted annually for the wage rate increase for CUPE education workers. In the event that an independent expert Trustee's tenure as a Trustee ends on a day other than the last day of the quarter for which a quarterly instalment of his or her annual retainer is due, he or she shall be paid for the pro rata portion of such quarter that coincides with his or her tenure as Trustee; and
- (b) a meeting fee of \$500 for each meeting of the Trustees in which the Trustee participates in excess of four meetings per year, adjusted annually for changes to the wage rate increase for CUPE education workers. Participation by telephone or other simultaneous communication device shall qualify for a participation fee only if the meeting is scheduled and anticipated to last at least one (1) hour;

provided that the total amount paid to independent expert Trustees pursuant to (a) and (b) may not exceed \$40,000 (adjusted annually for changes to the wage rate increase for CUPE education workers) in any calendar year.

**10.11 Trustee Fees.** Trustees, other than the two independent expert Trustees and any Employee Trustee who is an employee of CUPE, shall be entitled to a meeting fee of \$100 for each meeting of the Trustees in which the Trustee participates, adjusted annually for changes to the wage rate increase for CUPE education workers. Participation by telephone or other simultaneous communication device shall qualify for a participation fee only if the meeting is scheduled and anticipated to last at least one (1) hour.

**10.12 Chair.** The Trustees shall, from among their number, appoint a Chair of the Board of Trustees for a term of at least one (1) year but not longer than three (3) years, which term shall be renewable at the discretion of the Trustees. The Chair shall act as the chair of all meetings of the Trustees and perform the duties set out in this Agreement or assigned to the Chair by the Board. The Trustees may terminate a trustee's appointment as Chair at any time, and may replace the Chair as circumstances require. Notwithstanding the foregoing, in the event the Chair is unable to attend a meeting of the Trustees for which

there is a quorum, the Trustees attending such meeting shall, from among their number, appoint a Chair for purposes of that meeting and such meeting Chair shall perform the duties assigned to the Chair of the Board solely for that meeting.

**10.13 Minutes of Meetings.** The Trustees shall keep minutes or records of all meetings, proceedings and acts of the Trustees. Such minutes shall be accurate and complete in all material respects, but need not be verbatim.

**10.14 Execution of Documents, Cheques and Electronic Payments.** All documents to be executed by the Trustees and all cheques payable out of the Fund shall be signed by any two (2) Trustees or by such other persons as the Trustees may by resolution appoint.

**10.15 Meetings.**

- (a) The Trustees shall hold at least four (4) meetings each year, one of which shall be designated as the annual meeting of the Trustees. The Chair shall be responsible for setting the dates of each such annual meeting, provided that the annual meeting must be held within six (6) months of the end of the fiscal year of the Fund;
- (b) Each meeting of the Trustees shall be held at a time and place to be determined by the Chair;
- (c) At least fourteen (14) days' written notice shall be provided to the Trustees of any such meeting, provided that such notice may be waived by the consent, in writing, of all Trustees, or by a unanimous resolution of the Trustees;
- (d) At each annual meeting of the Trustees, the Trustees shall consider, among other things:
  - (i) a financial statement from the auditors of the fund covering the immediately preceding fiscal period of the Fund;
  - (ii) the Administrative Agent's report relating to the period since the inception of the Fund or from the date of the last preceding annual meeting as the case may be; and
  - (iii) the appointment or re-appointment of the Trust's auditors.

10.16 **Other Meetings.** The Chair or any two (2) or more Trustees may call a meeting of the Trustees at any time by giving at least five (5) days' written notice of the time and place thereof to each Trustee. Meetings of the Trustees may be held at any time without notice if all Trustees consent thereto.

10.17 **Meetings by Conference Call or Consent in Writing.** Any meeting of the Trustees may be held by means of a conference telephone call or such other electronic means as deemed appropriate by the Trustees. Any decision is effective without a meeting of the Trustees if evidenced by instrument in writing signed by all the Trustees, which may be signed in counterparts.

10.18 **Quorum and Voting.**

- (a) A quorum shall consist of five (5) Trustees, at least two of whom must be Trustees appointed by CTA/CAE and/or the Crown pursuant to s. 10.1(b) or (c), and at least three (3) of whom must be Trustees appointed by OSBCU\CUPE pursuant to s.10.1(a). In determining whether a quorum is in place, Trustees who may not vote on a matter due to a conflict of interest shall be included in the number of Trustees present notwithstanding that they may not vote on the matter;
- (b) Except as otherwise provided in a Central Collective Agreement and in s.5.2, each Trustee shall be entitled to one (1) vote on all matters requiring a decision by the Trustees. The decisions of the Trustees shall be determined by a majority vote of those Trustees present and entitled to vote at a duly constituted meeting of the Board of Trustees;
- (c) The Chair at any meeting of Trustees shall be entitled to vote but shall not be entitled to a second or casting vote.

10.19 **Trustees' Deadlock.**

- (a) **Deadlock.** A deadlock shall be deemed to exist wherever a proposal, motion or resolution made by any Trustee is neither adopted nor rejected by a majority vote, or where a proposal, motion, or resolution is unable to be made at a meeting due to lack of a quorum at two (2) consecutively called meetings. In the event of a deadlock, a meeting of the Trustees shall be held at least ten (10) days after the



deadlock has arisen for the purpose of either resolving the matter in dispute or agreeing upon the designation of a mediator to assist in the resolution of the matter in dispute. In the event a meeting is not held within ten (10) days after the deadlock has arisen, or if a mediator has not been appointed within 20 days after the deadlock has arisen, the dispute shall proceed to arbitration in accordance with s. 10.19(c);

- (b) **Mediation.** In the event that the Trustees are deadlocked on an issue, four (4) Trustees, provided that two (2) of the four Trustees are Employee Trustees and two (2) of the Trustees are Employer Trustees, may propose a resolution to refer the matter at issue to a mediator. Upon a resolution being passed the Trustees will engage a mediator to help them resolve the disputed issue;
- (c) **Dispute Resolution Procedures.** If, within sixty (60) days after the date a mediator has been appointed, the matter in dispute has not been fully and finally resolved, the Trustees shall designate an arbitrator to resolve the dispute. If, within ninety (90) days of the appointment of a mediator, no arbitrator has been designated, and the matter in dispute has not been resolved, then either the Employee Trustees or the Employer Trustees may request the Chief Justice for the Ontario Superior Court of Justice to appoint an arbitrator;
- (d) **Scope of Mediation or Arbitration.** The terms of reference for a mediator or arbitrator appointed pursuant to s. 10.19(b) or (c), as the case may be, shall provide such mediator or arbitrator with all power and authority reasonably required to resolve the dispute in question in a manner consistent with the Central Collective Agreement, but in no event shall a mediator or arbitrator have the authority to increase the Employer Contributions provided for under the Central Collective Agreement in force at the time the dispute arises;
- (e) **Final and Binding Decisions.** Any decision reached through the mediation and arbitration steps of the dispute resolution procedure in accordance with paragraphs (b) and (c) above shall be final and binding upon the Trustees, the Crown, CTA/CAE, OSBCU\CUPE, all Participating Employers, all Participating Employees and all Beneficiaries.

10.20 **Meetings with the Crown, CTA/CAE and OSBCU\CUPE.** The Trustees shall convene an annual meeting within 6 months of the fiscal year end with representatives of the Crown, CTA/CAE and OSBCU\CUPE to discuss matters of interest to the Trustees, the Crown, the CTA/CAE or the OSBCU\CUPE.

**ARTICLE 11 – POWERS, DUTIES AND RESPONSIBILITIES OF THE TRUSTEES**

11.1 **Administration of the Trust Fund.** The administration of the Fund shall be the responsibility of the Trustees. The Board of Trustees are responsible for the operational and financial sustainability of the Trust, and they shall administer the Fund in accordance with the express powers given to them pursuant to this Trust Agreement and the Plans. The terms of this Trust Agreement and the Plans shall be construed and administered so as to comply with the requirements to be an employee life and health trust under subsection 144.1(2) of the *Income Tax Act* (Canada). Any term of this Trust Agreement or the Plans that would otherwise be inconsistent with the requirements of such provisions shall be modified to the extent necessary to comply with such requirements.

11.2 **Trustee Responsibilities.** The Trustees are responsible for the operational and financial sustainability of the Trust, including, but not limited to:

- (a) review of the design of the Plans at regular, periodic intervals and such other times as the Trustees determine to be prudent;
- (b) the validation of the sustainability of the Plans design at regular, periodic intervals and such other times as the Trustees determine to be prudent;
- (c) setting and revising Employee Contribution rates or premium requirements and deductibles with respect to the Plans at regular, periodic intervals and such other times as the Trustees determine to be prudent;
- (d) delivery of annual reports of Trust actuaries and auditors to the Parties, including reports regarding recommendations on sustainability and any subsequent changes to Plan design;
- (e) on an ongoing basis identifying efficiencies that can be achieved in the administration and investment of the CUPE EWBT;

- (f) design, adoption and implementation of a Funding Policy or Policies and an investment policy or policies with respect to the Plans;
- (g) adopting a policy for the appointment, review, evaluation and if necessary termination of service providers;
- (h) compliance with all applicable statutory requirements, including all applicable tax statutes; and
- (i) procurement of adjudicative, administrative, insurance, consultative and investment services.

11.3 **Shared Services.** The Trustees may enter into an administrative services agreement with an Administrative Agent, or shared service arrangements with the trustees of other Education Sector Employee Life and Health Trusts, or with other entities, and may delegate to such Administrative Agent or shared service entities any responsibilities or powers that the Trustees consider appropriate. Shared administrative services will be competitively procured. The Trustees shall monitor the performance of the Administrative Agent, and shall require that the Administrative Agent, insofar as it performs duties or discharges responsibilities in relation to the CUPE EWBT Plan and any other Plans, comply with Applicable Legislation, acts solely and exclusively in the best interests of the Beneficiaries, and, where receiving or having access to personal information of Beneficiaries, establishes a privacy policy based on and in compliance with Applicable Legislation.

11.4 **Collection of Contributions.** The Trustees may use all reasonable means to collect and receive all Contributions due to the Fund, and shall, promptly after receipt, deposit such Contributions in a Trust Fund account, established in a reputable bank, trust company, or other financial institution.

11.5 **Participation Agreements - Separate Accounts.** Subject to s. 12.3, the Trustees may enter into Participation Agreements that provide for the participation of Eligible Employers on a segregated basis, such that the assets and Contributions related to the Eligible Employer(s) will be held in a Separate Account and used for the provision of Benefits in accordance with the terms of a Plan, to a discrete and identifiable group of Participating Employees. For greater certainty, Article 6 will apply to any Separate Account established

for a discrete and identifiable group of Participating Employees pursuant to a Participation Agreement and the Trustees shall separately account for the assets and liabilities of each Separate Account, including, without limitation:

- (a) deposits, contributions, remittances, subsidies, investment and other income from whatever source to each Separate Account; and
- (b) Benefits to Participating Employees from each respective Separate Account, and the investment, administrative, and other expenses attributable to the maintenance of each Separate Account and the administration of the Plan to which the Separate Account relates.

11.6 **Authority of Trustees.** All persons dealing with the Trustees are released from inquiry into any decision or authority of the Trustees and from seeing to the application of any monies, securities or other property paid or delivered to the Trustees and may rely upon any document required to be executed by the Trustees which has been executed as provided herein, as having been duly authorized.

11.7 **Liability of Trustees.** The Trustees shall incur no liability, either collectively or individually, in acting in accordance with this Agreement, data or information believed by them to be genuine and accurate and to have been made, executed, delivered or assembled by the proper parties. No Trustee shall be liable for the act or omission of any other Trustee. No Trustee shall incur any liability as a result of acting in good faith on the basis of the actions, opinion or advice of the Administrative Agent in respect of any matter relating to the administration, or investment, as applicable of the Trust, the Fund or a Plan. Provided reasonable care was used by the Trustees in the engagement and continued retention of the Administrative Agent, no Trustee shall incur any liability in respect of such engagement or retainer. No Trustee shall be liable for any honest error of judgment nor shall any Trustee be personally liable for any obligations of the Trust or a Plan, except for obligations arising out of his or her own dishonesty, willful misconduct or gross negligence.

11.8 **Trustee Indemnity.** The Fund shall indemnify and save harmless the Trustees, and any person selected to act as a Trustee by a Party, their employees, assigns, executors, heirs and each of them, of, from and against any loss, expense, claim, demand, action or thing of any nature whatsoever, arising out of the establishment of the Trust and a Plan, and the

performance or purported performance of their duties or responsibilities hereunder except that this indemnity shall not, in any way, extend so as to protect any Trustee or person selected to act as Trustee (or any of their respective employees, assigns, executors or heirs) with respect to any matter or thing arising out of his or her own dishonesty, wilful misconduct or gross negligence.

**11.9 Liability of the Crown, CTA/CAE and OSBCU\CUPE.** None of the Crown, CTA/CAE, nor OSBCU\CUPE is a fiduciary with respect to any Plan or the Fund, and none shall be responsible or liable for:

- (a) the validity of the Trust Agreement;
- (b) any delay occasioned by any restriction or provision in this Trust Agreement, the rules and regulations of the Trustees issued hereunder, or any contract to which the Trustees are party;
- (c) any act or omission of the Trustees;
- (d) any investment of the Fund, including the making or retention of any deposit or investment of the Fund, or any portion thereof, or the disposition of any such investment, or the failure to make any investment of the Fund, or any portion thereof, or any loss or diminution of the Fund;
- (e) any of the obligations or acts of the Trustees notwithstanding that such Trustees may be associated with CTA/CAE or OSBCU\CUPE or any Participating Employer;
- (f) any Contributions required to be paid to the Fund, other than its own Contributions as may be required by the Central Collective Agreement or other collective agreement, if applicable, or a Participation Agreement;
- (g) any losses, expenses, claims, demands or actions in connection with the establishment of the Fund;
- (h) the insufficiency of the Fund or any Separate Account to provide Benefits under any Plan;

- (i) the provision or failure to provide any Benefits.

11.10 **Powers.** Subject to the provisions of this Agreement, including, without limitation, Article 4, and to the duties, powers and responsibilities expressly reserved to the Parties, the Trustees have in relation to the Fund and each Separate Account all the powers that a natural person would have if such person were the beneficial owner of the Fund or Separate Account, including without limitation the specific powers set forth below:

(a) **Power to Make Arrangements for Provision of Benefits**

the Trustees may provide Benefits in accordance with a Benefits Plan that is fully insured, partially insured or self-insured, as determined from time to time by the Trustees in their sole discretion and in accordance with the applicable Funding Policy and may make such arrangements and agreements, including insurance arrangements, on behalf of the Trust with corporations, firms or persons to provide the Benefits required to be provided pursuant to a Plan and this Agreement from time to time; and in addition the Trustees shall have the power to design and administer supplemental Benefits, or make other payments as may be permissible under Applicable Legislation, for Participating Employees that belonged to a predecessor benefit plan of a Participating Employer that transferred surplus assets to the CUPE Trust;

(b) **Power to Interpret Agreement and Plan**

in a manner consistent with the provisions of a Plan, this Agreement, Applicable Legislation, and the Central Collective Agreement, the Trustees shall have the power to construe the provisions of each Plan and this Agreement and any construction adopted by the Trustees will be binding upon the Crown, CTA/CAE, OSBCU\CUPE, Participating Employers and Beneficiaries;

(c) **Legal Action by Trustees**

the Trustees may, if they deem it necessary, seek a judicial determination or declaratory judgement on any questions of the construction of this Agreement or a Plan, or to obtain directions as to any action hereunder. Except as otherwise determined by the court, (a) the Parties will each have standing to participate in

any judicial proceeding initiated by the Trustees under this s. 11.10(c) and; (b) any such determination or judgment is binding on the Crown, CTA/CAE, OSBCU\CUPE, Participating Employers, Participating Employees and Beneficiaries;

(d) **Power to Make Policies and Rules**

the Trustees may 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;

(e) **Power to Determine Evidence**

the Trustees may determine the standard of proof and the sufficiency of evidence as to any factual question arising under a Plan;

(f) **Power to Determine Eligibility for Benefits**

the Trustees may determine and decide upon the right of any person to receive Benefits provided by this Agreement and a Plan, the type, extent or amount thereof, and whether or not any hearing will be granted to any person who may be affected by any such determination or decision, and every such determination and decision will be final and binding upon all parties and persons whomsoever;

(g) **Power to Sell**

the Trustees may sell, exchange, lease, grant any option, or otherwise alienate or dispose of any property of the Fund or a Separate Account for such consideration and upon such terms and conditions as they think fit and they may execute and deliver all deeds or other instruments to make good and sufficient title thereto and to give full and valid discharges therefor;

(h) **Power to Incorporate**

the Trustees may incorporate corporations, the shares of which shall be held by or on behalf of the Trustees, for purposes of administering the Fund or a Separate Account, making investments of the Fund or a Separate Account or holding any Authorized Investment;

(i) **Power to Establish Corporations or Other Entities with Other Education Sector Employee Life and Health Trusts;**

The Trustees may, together with other Education Sector Employee Life and Health Trusts, establish corporations or other entities to fulfil common administrative or investment functions;

(j) **Power to Retain**

The Trustees may retain any property forming part of the Fund or a Separate Account in the actual state or condition in which the same is received by the Trustees for so long as the Trustees consider appropriate;

(k) **Power to Invest**

The Trustees shall have unlimited discretion in the investment and management of the Fund or a Separate Account with respect to particular investments and schemes of investment, notwithstanding that any investment or investments may not be authorized by law for trustees and whether any investment is within or without Canada, including without restricting the generality of the foregoing, investments in mutual funds, common trust funds and pooled funds, and shall have the power to engage in transactions ancillary to any such investments, including, without restricting the generality of the foregoing, hedging, derivatives and securities lending transactions, subject to the terms of this Agreement and provided that the Trustees may not make any investment that could reasonably be expected to cause the Trust to cease to qualify as an “employee life and health trust” under s. 144.1 of the *Income Tax Act* (Canada);

(l) **Power to hold Uninvested Cash**



to hold in uninvested cash, without any liability for interest thereon, such sums as they deem necessary or advisable for the reasonably current cash requirements of the Fund or a Separate Account;

(m) **Power to Hold Fund in Names of Nominee**

to hold the whole or any part of the Fund or a Separate Account in the name or names of any nominees of the Trustees or agents for the Trustees and deposit with any such agent or nominee or any custodian any property or documents of title in respect of any property forming part of the Fund or a Separate Account;

(n) **Investment Policy and Financial Risk Management Guidelines**

to establish a written investment policy setting out the Authorized Investments for the Fund or a Separate Account and setting out financial risk management guidelines, and to review and monitor compliance with the investment policy and financial risk management guidelines;

(o) **Investment Advice**

to retain an external investment advisor to provide them with investment advice. The Trustees may rely on any such advice if a prudent investor would rely upon the advice under comparable circumstances. The Trustees must request all external investment advisors to disclose all conflicts in writing, including any material interest such advisor may have in any transaction involving the Fund;

(p) **Power to Commingle**

to commingle all or part of the Fund or a Separate Account with assets of other trust funds for the purpose of making joint, collective or participating investments with respect to such commingled assets, if separate accounts reflecting the share of the Trust are maintained;

(q) **Power to Retain Experts and Agents**

to engage such persons as they consider advisable to assist in the management or administration of the Trust or a Plan including, without limitation, an agent,

Administrative Agent, custodian, lawyer, accountant, actuary, financial or investment advisor or benefits consultant, manager, broker, surveyor, valuation expert and appraiser. The Trustees may delegate to such persons to the extent deemed advisable by the Trustees from time to time, including without limitation the authority to subdelegate any such authority, and pay to such persons out of the Fund any fees or charges thereby incurred;

**(r) Power to Hire and Terminate Employees**

to hire and terminate employees, as they see fit, to determine their duties and responsibilities and other terms of employment and to pay such employees' compensation from the Fund;

**(s) Power to Delegate**

to delegate any of their administrative powers or duties to any committee of the Trustees, including any committee that is a joint committee that includes trustees of other similar trusts funds, or to any of their agents or employees, where it is reasonable and prudent to the circumstances to do so;

**(t) Power to Enter into Reciprocal Agreements**

to enter into reciprocal agreements or arrangements for the transfer or sharing, on an equitable basis, of services or benefits with other similar trusts or plans;

**(u) Power to Borrow**

to the extent permitted by Applicable Legislation, the Trustees may borrow on behalf of the Trust or a Separate Account in order to fund the payment of Benefits or in connection with an investment permitted under an applicable investment policy and the Trustees may mortgage, pledge or charge the income and/or capital of the Fund or a Separate Account to secure the payment of any money so borrowed. The Trustees may execute and deliver under seal or otherwise such instruments evidencing the indebtedness and the security so given which they consider necessary or desirable;

**(v) Power to Join in Corporate Reorganizations**

to join in any plan for the reconstruction, reorganization, merger, amalgamation, consolidation, liquidation, wind up or dissolution of any company or corporation the shares, bonds or other securities of which are held as investments of the Fund or a Separate Account and authorize the sale of the undertaking or the assets of any such company or corporation, and in pursuance of any such plan accept any shares or securities in lieu of or in exchange for the shares or other interest held by them in such company or corporation;

(w) **Power to Deal with Securities**

to vote upon or in respect of any shares, securities, bonds, notes or other evidence of interest in or obligations of any corporation, company or other entity (and issue proxies in respect thereof);

(x) **Power to Maintain One Fund or Several Funds**

to hold, manage and invest any funds held hereunder as a consolidated fund in which each separate fund will have an appropriate undivided interest;

(y) **Power to Insure**

to purchase and maintain any policy of insurance and apply any part of the Fund or a Separate Account towards the payment of any premium for the effecting or maintaining of any such policy. The Trustees may deal with any such policy in such manner as they consider advisable. All monies and benefits under any such policy will constitute part of the capital of the Fund or a Separate Account;

(z) **Power to Deal with Incapacitated Beneficiary**

to direct the payment of any Benefits under a Plan payable to an incapacitated Beneficiary to the legal guardian or court-appointed committee of such Beneficiary whose receipt will be a sufficient discharge to the Trustees. The Trustees are not bound to see to the application of any Benefits so paid. The Trustees will establish a policy for the payment of Benefits to minors or incapacitated Beneficiaries and must specifically ensure that a trustee be appointed to receive the interest of any minor intended to receive any Benefits under a Plan;

**(aa) Power to Institute or Defend Proceedings at Law**

to institute and defend proceedings at law in any way relating to or arising out of the affairs of the Trust, the Fund, a Separate Account and this Agreement and proceed to the final determination thereof or compromise the same as they consider advisable;

**(bb) Banking Arrangements**

- (i) to appoint from time to time any credit union, bank, trust company or other company to be the banker or one of the bankers for the purposes of the Fund or a Separate Account and from time to time may revoke any such appointment;
- (ii) Any two or more Trustees may be authorized in writing on behalf of the Trustees, or, any person or persons appointed by the Trustees by resolution specifying the specific authorities of such individuals, to:
  - (1) sign, endorse, make, draw or accept any cheques, promissory notes, bills of exchange or other negotiable instruments;
  - (2) receive from the banker and where applicable give receipts for all statements of accounts, cheques and other debit vouchers, unpaid and unaccepted bills of exchange and other negotiable instruments; and
  - (3) negotiate with, deposit with or transfer to the said banker any cheques, promissory notes, bills of exchange or other negotiable instruments and orders for the payment of money and for the said purpose to draw, make, sign, endorse all or any of the foregoing, and such signatures will be binding upon all the Trustees;

**(cc) Taxes, Etc.**

- (i) pay all or any part of any taxes in respect of the Fund or a Separate Account or any part thereof, out of the Fund or a Separate Account, as the case may be; and
- (ii) take any other action concerning the taxation of the Trust or a Separate Account, or any transactions relating thereto, including, without limitation, conducting inquiries into tax matters, obtaining rulings, opinions and similar material from taxation authorities, contesting the actions or determinations of taxing authorities and conducting objections, appeals, or litigation of any nature whatsoever;

(dd) **Power to Enter into Cost Sharing Agreements**

to enter into written agreements with any successor or similar trust, or any Party, to share certain expenses pertaining to the administration of the Fund with respect to such matters as:

- (i) costs of collection and disbursement of funds pursuant to the provisions of this Agreement, a Plan or any other agreement;
- (ii) salaries of office and supervisory staff;
- (iii) cost of office equipment, supplies and incidental material;
- (iv) costs of computer equipment and facilities and computer maintenance;
- (v) rent of office space, furnishings, fixtures and office equipment;
- (vi) cost of producing Participating Employer lists and addresses;
- (vii) professional, consulting, advisory, and audit fees; and
- (viii) such other costs that in the opinion of the Trustees may be shared;

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

(ee) **Power to Indemnify**

to indemnify from the Fund any person employed pursuant to s. 11.10(r), any former Trustee or other person in respect of any actual, contingent or prospective liability, including without limitation any tax liability, arising in respect of the Fund or a Separate Account or otherwise pursuant to this Agreement, except that no indemnity shall be payable from the Fund in favour of any person with respect to any matter arising from that person's dishonesty, bad faith, wilful misconduct or gross negligence.

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

**11.12 Appointment of Custodian.** The Trustees shall have the power to appoint a Custodian who may be assigned such duties and responsibilities as the Trustees may deem necessary and advisable. Without limiting the foregoing, the responsibilities of the Custodian may be to:

- (a) establish and maintain accounts for the Fund and for each Separate Account, in accordance with this Agreement;
- (b) hold and account for the money or other property it receives, and be responsible for the collection of any deposits, Contributions, remittances, or transfers due to the Fund or a Separate Account unless otherwise directed by the Trustees; and
- (c) apply the assets of the Fund or a Separate Account to pay all reasonable costs, charges, and expenses (including, but not limited to, all brokerage fees and transfer tax expenses and other expenses) incurred in connection with the sale or purchase of investments, all real and personal property taxes, income taxes and other taxes of any kind at any time levied or assessed under any present or future law upon, or with respect to, the Fund or a Separate Account or any property included in the Fund or a Separate Account or any payment of benefits, and all legal, actuarial, accounting and financial advisory expenses reasonably incurred and previously approved by the Trustees in connection with establishment, amendment, administration and operation of the Trust or a Plan.

**11.13 Employees and Services in both Official Languages.** Services provided by the CUPE EWBT are to be available in both official languages, English and French.

**11.14 Records.** The Trustees shall maintain suitable and adequate records of and for the administration of the Fund.

**11.15 Annual Audits.** The books of account and records of the Trustees, including the books of account and records pertaining to the Fund and the Separate Accounts, shall be audited at least once every year by the auditor of the Fund, which shall be appointed by the

Trustees, as of the fiscal year end of the Fund. A statement of the results of the annual audit shall be available for inspection by interested persons at the principal office of the Fund and at such other suitable place as the Board of Trustees may designate from time to time. Copies of such statement shall be delivered to each Trustee within sixty (60) days after that statement is prepared.

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

## **ARTICLE 12 – PARTICIPATION**

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

- (a) Each Plan may contain one or more classes of beneficiaries provided that, with respect to each Participating Employer (i) the members of one class of beneficiaries represent at least 25% of all the beneficiaries of the Trust who are employees of the Participating Employer within the meaning of s. 144.1(2)(d) the *Income Tax Act* (Canada), and (ii) at least 75% of the members of that class are not “key employees” of such Participating Employer within the meaning of s. 144.1(1) of the *Income Tax Act* (Canada);
- (b) No more than 25% of the members of a class of beneficiaries of a Plan may be “key employees” within the meaning of s. 144.1(1) of the *Income Tax Act* (Canada). No key employee shall have rights under a Plan that are more advantageous than the rights of the other members of the Plan;
- (c) No Plan may be operated or maintained primarily for the benefit of one or more “key employees” within the meaning of s. 144.1(1) of the *Income Tax Act* (Canada) or persons related to any such key employee.

**12.2 Membership in the CUPE EWBT Plan.** Subject to any requirements or restrictions in the Central Collective Agreement, the CUPE EWBT Plan shall define the persons eligible to participate in it as well as the terms and conditions of their eligibility for Benefits.

### **12.3 Other Employees – Coverage by EWBT**

- (a) Subject to applicable law, the Trustees may provide Benefits from the CUPE EWBT:
  - (i) through the CUPE EWBT Plan and the CUPE Separate Account to active employee groups who are represented by CUPE and employed by Eligible Employers, but who are not bound by the Central Collective Agreement;
  - (ii) through the CUPE EWBT Plan and the CUPE Separate Account to active employee groups who are employed by Eligible Employers, and who are covered by a collective agreement (including a central collective agreement) that provides per FTE or claims fluctuation reserve funding that is at least equal, in the opinion of the Trustees' actuary, to the funding provided under the Central Collective Agreement;
  - (iii) through a Plan other than the CUPE EWBT Plan and a Separate Account other than the CUPE Separate Account to active employee groups who are employed by Eligible Employers, but who are covered by a collective agreement (including a central collective agreement) that provides less funding, in the opinion of the Trustees' actuary, than provided for under the Central Collective Agreement.
- (b) Coverage by the CUPE EWBT of a group of employees as described in s. 12.3(a) shall be in accordance with a Participation Agreement between the Trustees and the applicable Eligible Employer to which the applicable bargaining agent or other representative of such group of employees consents in writing.
- (c) Where an employee group is seeking benefits from the CUPE EWBT and has concerns with the terms in s. 12.3(a)(ii), the Parties shall convene to review options for that employee group.

**12.4 Retired Employees – CUPE Members.** Retired Employees covered by the Central Collective Agreement and Retired Employees who were represented by CUPE and were formerly employed by an Eligible Employer, but who are not referenced in the Central Collective Agreement, may participate in the CUPE Retired Employee Plan, subject to and in accordance with a Retired Employee Participation Agreement, provided the Retired Employee continued to be covered under the Predecessor Benefit Plan on the day before their former employer's Participation Date.

**12.5 Other Retired Employees.** Retired Employees who were not represented by CUPE, but who were formerly employed by an Eligible Employer, may participate in a Retired Employee Plan, subject to and in accordance with a Retired Employee Participation



Agreement, provided the Retired Employee continued to be covered under the Predecessor Benefit Plan on the day before their former employer's Participation Date.

### **ARTICLE 13 – ADMINISTRATIVE INFORMATION**

#### **13.1 Reports of Activities.** In the event the Trustees:

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

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

#### **13.2 Quarterly Financial Information.** On a quarterly basis the Trustees shall provide the following information to the Parties with respect to the CUPE EWBT and to each Separate Account:

- (a) total Employer and Employee Contributions received from each Participating Employer, and Employee Contributions received directly from Participating Employees;
- (b) total claims by type of Benefit; and
- (c) expenses attributed by type of Benefit and major function such as legal, accounting, actuarial, etc.

#### **13.3 Annual Information.** On an annual basis the Trustees shall provide the following information to the Parties with respect to the CUPE EWBT and each Separate Account:

- (a) audited financial statements;
- (b) actuarial valuation report, including projections regarding the adequacy of contributions to cover projected benefit and related costs for a period of not less than three (3) years into the future;

- (c) a summary of the annual investment performance of the Fund and of each Separate Account; and
- (d) a discussion and analysis of the material issues affecting the CUPE EWBT and each Separate Account and Plan.

13.4 **Additional Information.** A Party may request the Trustees to provide additional information regarding the Benefits, a Plan, or the Fund at the cost of the Party requesting the information. If there is more than one requester of information under this s. 13.4, the costs will be borne equally by each requester. Any information requested by a Party will be provided to the other Parties. Subject to Applicable Legislation, anonymized, individual level claim information may be provided.

#### **ARTICLE 14 – AMENDMENTS TO TRUST AGREEMENT**

- 14.1 **Amendment.** This Trust Agreement may be amended, in whole or in part, by an instrument in writing executed by OSBCU\CUPE and by the Crown and CTA/CAE, acting together.
- 14.2 **Corpus or Income.** No amendment shall authorize or permit any part of the corpus or income of the Fund to be used for or diverted to purposes other than for the exclusive benefit of the Beneficiaries and as permitted under s. 144.1 of the *Income Tax Act* (Canada) or any successor provision thereto.

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

- 15.1 **Withdrawal of Participating Employer.** No Participating Employer covered by the Central Collective Agreement has the right to withdraw in whole or in part from participation in the Trust except on such terms as may be prescribed by the Trustees, which terms shall be in compliance with the Central Collective Agreement.

#### **ARTICLE 16 – FUNDING OF THE CUPE EWBT PLAN**

- 16.1 **Claims Fluctuation Reserve.**
- (a) The Crown shall make a one-time payment to the CUPE Separate Account equal to 15% of annual benefits costs, determined in accordance with the Central Collective Agreement, to establish a CFR on or before March 1, 2018.

- (b) Where an Eligible Employer who is covered by a collective agreement on central terms under the *School Boards Collective Bargaining Act, 2014* that includes a commitment to provide a contribution towards a CFR becomes a Participating Employer, the Crown will pay the agreed upon contribution to the CFR on or before the date the Participating Employer commences participation in the Trust.
- (c) On a day that a Participating Employer commences participation in the CUPE EWBT, or as soon as reasonably and feasibly possible thereafter, all employee portions of eligible and available surpluses in Participating Employer-owned defined benefit plans will be transferred, pursuant to and in accordance with the Central Collective Agreement, to the Trust by the applicable Participating Employer.

#### 16.2 **Negotiated/Ongoing Funding.**

Each Participating Employer who is bound by the Central Collective Agreement shall make ongoing contributions in accordance with s. 7.2.

16.3 **Actuarial Valuations of the CUPE EWBT Plan.** The CUPE EWBT Plan's actuary shall prepare annual actuarial valuations of CUPE EWBT Plan and each other Plan and related Separate Account. The actuarial methods and assumptions used in such valuations shall be in accordance with generally accepted actuarial principles, and in accordance with the Funding Policy adopted by the Trustees with the approval of the Parties. The annual actuarial report will include projections for the Trust for a period of not less than three (3) years:

- (a) The first actuarial report shall be prepared and provided to the Trustees no sooner than six months and no later than twelve months following the implementation of the CUPE EWBT Plan;
- (b) if the actuarial report with respect to the CUPE EWBT Plan projects the CFR balance to be less than 8.3% of Plan expenses over a projected three year period, then the Trustees shall address the shortfall using one or more of the following techniques:
  - (i) adjust Participating Employee Contributions;

- (ii) change the design of the Plan;
  - (iii) cost containment measures;
  - (iv) change Eligibility Requirements;
  - (v) terminate the provision of certain Benefits (other than life insurance); or
  - (vi) obtain new sources of revenue;
- (c) If measures to restore the CFR balance to 8.3% of Plan expenses are not adopted by the Trustees, then the Trustees will increase Employee Contributions to restore the CFR balance to 8.3% of Plan expenses.

**16.4 Funding Policy.** The Trustees, with the approval of the Parties, shall adopt a Funding Policy, and may amend it from time to time, in a manner not inconsistent with the Central Collective Agreement, governing, *inter alia*:

- (a) the actuarial methods and assumptions to be used in actuarial valuations of the CUPE EWBT Plan;
- (b) the margins or explicit reserves, if any, to be used in the actuarial valuations of the CUPE EWBT Plan;
- (c) the consequences of any excess or deficiency of assets relative to the CUPE EWBT Plan's liabilities as may be disclosed in any actuarial valuation, subject to the following conditions:
  - (i) Surpluses in the Fund or a Separate Account may not be refunded or distributed in cash, but may be used, as determined by the Trustees for any or all of the following:
    - (A) CFR or other reserves;
    - (B) enhance Benefits or change Eligibility Requirements;
    - (C) expand eligibility for the CUPE EWBT Plan; or
    - (D) reduce Participating Employee Contributions;
  - (ii) Actual and projected funding deficiencies of the CUPE EWBT Plan will be addressed by no later than the next regular Plan renewal by one or more of the following methods:

- (A) use of the CFR or other reserves;
  - (B) increased Participating Employee Contributions;
  - (C) amendment of the CUPE EWBT Plan or termination of Benefits (other than life insurance benefits);
  - (D) adoption of measures to decrease administration or delivery costs or Fund investment costs;
  - (E) restriction of eligibility in the CUPE EWBT Plan;
- (iii) the Funding Policy shall require that the Trustees take the necessary actions or decisions with respect to the CUPE Separate Account during a period in which the CFR is less than 8.3% of annual CUPE EWBT Plan expenses over a projected three year period. If the motion to amend the CUPE EWBT Plan is not adopted, the Trustees will increase Participating Employee Contributions to restore the balance to at least 8.3% of the total annual expenses.

**16.5 Investment Policy.** The Trustees shall adopt an investment policy with respect to the CUPE EWBT Plan that reflects prudent investment practices applicable to a large employee life and health trust, and may amend it from time to time. No Trustee shall incur any liability as a result of the Fund being invested in high interest savings accounts, Government of Canada treasury bills or cashable guaranteed investment certificates issued by one of the following Schedule 1 Canadian Banks: CIBC, TD Bank, BMO, Royal Bank of Canada or the Bank of Nova Scotia, for a period of up to 120 days following the effective date of this Agreement and prior to the establishment of an Investment Policy.

**16.6 CUPE EWBT Plan Amendments.** The Trustees:

- (a) may amend the CUPE EWBT Plan at any time, subject to the Funding Policy, the applicable Central Collective Agreement and the terms of this Agreement;
- (b) shall amend the CUPE EWBT Plan by decreasing the value of the Plan's Benefits or increasing the rate of Participating Employee Contributions, in the circumstances prescribed by the Funding Policy;
- (c) shall amend the CUPE EWBT Plan by increasing the value of the Plan's Benefits in the circumstances prescribed by the Funding Policy.

## **ARTICLE 17 – FUNDING OF PLANS (OTHER THAN THE CUPE EWBT PLAN)**

- 17.1 **Participation Agreements.** Plans, other than the CUPE EWBT Plan, shall be funded in accordance with the terms of Participation Agreements governing the terms by which a Participating Employer funds Benefits to its employees who participate in those Plans and are not covered by the Central Collective Agreement.
- 17.2 **Funding Policies.** The Trustees may design and adopt such Funding Policies, investment policies and other policies as they, in their absolute and unfettered discretion, consider necessary or appropriate for the proper governance of Plans other than the CUPE EWBT Plan and their supporting Separate Accounts.

## **ARTICLE 18 – AMALGAMATION OR MERGER OF TRUST FUND**

- 18.1 **Ability to Merge or Amalgamate.** The Parties may amalgamate or merge the Trust with one or more other trusts that are employee life and health trusts within the meaning of s. 144.1 of the *Income Tax Act* (Canada) and may amalgamate or merge the Fund, in whole or in part, or a Separate Account, with one or more funds maintained to provide benefits under an employee life and health trust within the meaning of s. 144.1 of the *Income Tax Act* (Canada) provided that the Parties are satisfied that any amalgamation or merger of the Trust, the Fund or a Separate Account (an “Amalgamation”) will not have the effect of depriving any Beneficiary of any right to Benefits to which such Beneficiary had become entitled or which had accrued to his or her credit pursuant to this Agreement or a Plan, and that the rights of such Beneficiary under the arrangement created by the Amalgamation, including the benefit plan thereunder will, at the effective date of the Amalgamation be the substantial equivalent of their rights under this Agreement and a Plan. In connection with such Amalgamation, the Parties may enter into an amalgamation or merger agreement with the trustee or sponsor of one or more other trusts, amend or terminate this Agreement, transfer or cause the custodian or custodians (if any) to transfer and deliver the Fund or the assets of a Separate Account to the trustee or custodian of another trust or 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 amalgamation.

## **ARTICLE 19 – TERMINATION OF TRUST FUND**

- 19.1 **Termination.** The Parties may terminate this Trust Agreement by instrument in writing, in which case the Trustees shall wind up and terminate the Fund within twelve (12) months

of such date of termination as follows (provided that the Trustees may extend such period for completing the wind up of the Fund where they determine that it is advisable to do so):

- (a) provide for a final audit and accounting for the purpose of the termination of the Fund;
- (b) make payment or provision for payment out of the Fund of all expenses of the Fund including the expenses incidental to such termination;
- (c) reduce the Benefits in the CUPE EWBT Plan and in each other Plan to the extent necessary in the event the balance of the Fund or a Separate Account is insufficient to pay the entirety of the Benefits accrued to the date upon which the Agreement and the Plan are terminated; and
- (d) distribute the Fund then remaining to pay, or make arrangements to provide, the accrued Benefits determined by the Trustees to be owing to the Beneficiaries in accordance with a Plan (subject to any reduction under s. 19.1(c)), and distribute any excess exclusively to the Beneficiaries.

19.2 **Notification of Termination.** Upon termination of the Fund in accordance with this s. 19.2, the Trustees shall forthwith notify the Participating Employers, and any other necessary parties and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

## **ARTICLE 20 – TRUSTEES' ACCOUNTS**

20.1 **Trustees' Accounts.** The Trustees shall keep such books, records and accounts as are necessary and appropriate to document the assets and transactions of the Fund and Separate Accounts.

20.2 **Accounting.** The Trustees shall account separately for Contributions, Benefits and related expenses in respect of the following groups within the CUPE EWBT Plan and Separate Account:

- (a) Participating Employees and their dependants and beneficiaries who participate in the CUPE EWBT Plan pursuant to the Central Collective Agreement, and Participating Employees who are CUPE members and are covered by any other collective agreement, and their dependants and beneficiaries;
- (b) Participating Employees who are not CUPE members and their dependants and beneficiaries who are covered by a central collective agreement, other than the Central Collective Agreement, and who participate in the CUPE EWBT Plan pursuant to a Participation Agreement;
- (c) Participating Employees who are not CUPE members and their dependants and beneficiaries who are covered by a collective agreement, but are not covered by a central collective agreement, and who participate in the CUPE EWBT Plan pursuant to a Participation Agreement;
- (d) Participating Employees and their dependants and beneficiaries who are not covered by a collective agreement and who participate in the CUPE EWBT Plan pursuant to a Participation Agreement;

The Trustees shall provide a report to the Parties within sixty (60) days of the end of each benefit year that sets out the results of the accounting referred to above.

20.3 **Audit Requirement.** The Trustees shall cause the Fund and each Separate Account to be audited on an annual basis. The auditor's report will be shared with the Crown, CTA/CAE, and OSBCU\CUPE.

## **ARTICLE 21 – NOTICE AND DISCLOSURE**

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

- (a) upon receipt, if delivered personally;



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

21.2 **Notice to the Trustees.** Notwithstanding s. 21.1, a notice hereunder to a Trustee will only be effective as and when actually received by such Trustee.

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

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

21.5 **Disclosure Concerning Participating Employers, Beneficiaries and Others.** Subject to Applicable Legislation, the Trustees shall be entitled to make disclosures concerning:

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

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

## **ARTICLE 22 – REVIEW OF TRUST AGREEMENT**

- 22.1 **Review of Trust Agreement.** The Parties shall review this Agreement, in good faith, in 2020 and every five years thereafter.

## **ARTICLE 23 – MISCELLANEOUS**

- 23.1 **Illegality.** If any provision of the Trust Agreement or the rules and regulations made pursuant hereto, or any steps in the administration of the Fund, are held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the Trust Agreement, the Plan, or the said rules and regulations, unless such illegality or invalidity prevents accomplishment of the objectives and purposes of the Central Collective Agreement, this Trust Agreement or the Plan.
- 23.2 **Fiscal Year.** The fiscal year of the Fund shall end on the 31<sup>st</sup> day of December, in each year.
- 23.3 **Situs.** The Province of Ontario shall be deemed to be the situs of the Fund and all questions pertaining to the validity, construction and administration of the Trust Agreement, the Plan and the fund shall be determined in accordance with the laws of the Province of Ontario. The Trust shall be administered such that throughout each taxation year it is resident in Canada for purposes of the *Income Tax Act* (Canada) determined without reference to s. 94 of that Act.
- 23.4 **Counterparts.** This Trust Agreement may be executed and delivered in any number of counterparts, each of which shall be deemed to be an original, and all such respective counterparts shall together constitute one and the same instrument.

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

SIGNED, SEALED AND DELIVERED  
in the presence of



**Crown**

Per:

Name:

Name:



**Ontario Public School Boards Association**

Per: \_\_\_\_\_

Name:

Name



**Ontario Catholic School Trustees' Association**

Per: \_\_\_\_\_

Name:

Name:



**Association des conseils des écoles publiques de l'Ontario**

Per: \_\_\_\_\_

Name:

Name:



**Association franco-Ontarienne des conseils scolaires catholiques**

Per: \_\_\_\_\_

Name:

Name:



**Ontario School Board Council of Unions (CUPE)**

Per: \_\_\_\_\_

Name:

Name:

**SCHEDULE "A"**  
**SCHOOL BOARDS BOUND BY THE ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION**  
**("OPSBA")**

1. Ontario North East DSB
2. Algoma DSB
3. Rainbow DSB
4. Near North DSB
5. Keewatin-Patricia DSB
6. Rainy River DSB
7. Lakehead DSB
8. Superior-Greenstone DSB
9. Bluewater DSB
10. Avon Maitland DSB
11. Greater Essex County DSB
12. Lambton Kent DSB
13. Thames Valley DSB
14. Toronto DSB
15. Durham DSB
16. Kawartha Pine Ridge DSB
17. Trillium Lakelands DSB
18. York Region DSB
19. Simcoe County DSB
20. Upper Grand DSB
21. Peel DSB
22. Halton DSB
23. Hamilton-Wentworth DSB
24. DSB of Niagara
25. Grand Erie DSB
26. Waterloo Region DSB
27. Ottawa-Carleton DSB
28. Upper Canada DSB
29. Limestone DSB
30. Renfrew County DSB
31. Hastings & Prince Edward DSB
32. Moosonee District School Board
33. Moose Factory Island District School Board
34. James Bay Lowlands Secondary School Board
35. Penetanguishine Protestant Separate School Board
36. Campbell Children's School Authority
37. John McGivney Children's Centre School Authority
38. KidsAbility Education Authority
39. Niagara Peninsula Children's Centre School Authority
40. Ottawa Children's Treatment Centre School Authority
41. Amethyst Demonstration School
42. Centre Jules-Léger
43. Ernest C. Drury School for the Deaf
44. Robarts School for the Deaf
45. Sagonaska Demonstration School
46. Sir James Whitney School for the Deaf

- 47. Trillium Demonstration School
- 48. W. Ross Macdonald School for the Blind

**SCHEDULE "B"**  
**SCHOOL BOARDS BOUND BY THE ONTARIO CATHOLIC SCHOOL TRUSTEES'**  
**ASSOCIATION ("OCSTA")**

1. Northeastern Catholic DSB
2. Nipissing-Parry Sound Cath DSB
3. Huron-Superior Catholic DSB
4. Sudbury Catholic DSB
5. Northwest Catholic DSB
6. Kenora Catholic DSB
7. Thunder Bay Catholic DSB
8. Superior North Catholic DSB
9. Bruce-Grey Catholic DSB
10. Huron-Perth Catholic DSB
11. Windsor-Essex Catholic DSB
12. London Dist. Catholic School
13. St. Clair Catholic DSB
14. Toronto Catholic DSB
15. PVNC Catholic DSB
16. York Catholic DSB
17. Dufferin-Peel Catholic DSB
18. Simcoe Muskoka Catholic DSB
19. Durham Catholic DSB
20. Halton Catholic DSB
21. Hamilton-Wentworth Cath DSB
22. Wellington Catholic DSB
23. Waterloo Catholic DSB
24. Niagara Catholic DSB
25. Brant Haldimand Norfolk CDSB
26. Cath DSB of Eastern Ontario
27. Ottawa Catholic DSB
28. Renfrew County Catholic DSB
29. Algonquin & Lakeshore Catholic DSB

**SCHEDULE "C"**  
**SCHOOL BOARDS BOUND BY ASSOCIATION DES CONSEILS SCOLAIRES DES ÉCOLES  
PUBLIQUE DE L'ONTARIO ("ACÉPO")**

1. Conseil scolaire public du Nord-Est de l'Ontario
2. Conseil scolaire public du Grand Nord de l'Ontario
3. Conseil scolaire Viamonde
4. Conseil des écoles publiques de l'Est de l'Ontario



**SCHEDULE "D"**  
**SCHOOL BOARDS BOUND BY ASSOCIATION FRANCO-ONTARIENNE DES CONSEILS**  
**SCOLAIRES CATHOLIQUES ("AFOCSC")**

1. CSD cath. des Grandes Rivières
2. CSD catholique Franco-Nord
3. CSD cath. du Nouvel-Ontario
4. CSD cath. des Aurores boréales
5. CSC Providence
6. CSD catholique Centre-Sud
7. CSD cath. de l'Est ontarien
8. CSD cath. Centre-Est de l'Ontario

**SCHEDULE "E"**  
**CUPE EMPLOYEE LIFE AND HEALTH TRUST PARTICIPATION AGREEMENT**  
**(TEMPLATE)**

The Agreement made this \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_\_\_\_

**B E T W E E N:**

(the "Eligible Employer")  
- and -

**CUPE EWBT ELHT BY ITS TRUSTEES**  
**(the "Trustees")**

In consideration of the Eligible Employer becoming a participating employer ("Participating Employer") in the CUPE EWBT (the "Trust") in respect of its employees who meet the eligibility conditions of the CUPE EWBT Benefit Plan ("Participating Employees"), commencing

\_\_\_\_\_ ("Participation Date"), and making contributions to the Trust in accordance with this Participation Agreement; and in consideration of the Trustees making health, life and dental benefits available to the Participating Employees covered by the CUPE EWBT in accordance with this Participation Agreement, the Trustees and the Participating Employer agree as follows:

1. **Benefits Plan.** The Trustees administer a Benefits Plan and the Participating Employees shall be eligible for benefits in accordance with the terms of the Benefits Plan. A copy of the Benefits Plan (the "Benefits Plan") is attached as Appendix A.
2. **Employer Contribution to the Trust.** In consideration of the provision of the Benefits Plan by the Trustees the Participating Employer shall make the following contributions and payments to the Trustees with respect to its Participating Employees who are not Retired Employees:
  - (a) an amount of \$\_\_\_\_\_ on before [DATE] on account of the Trustees' costs related to the creation and establishment of the ● Benefit Plan;
  - (b) an amount of \$\_\_\_\_\_ on or before [DATE] that shall be available to the Trustees to offset administration and benefits costs under the ● Benefit Plan;
  - (c) a monthly Participating Employer contribution of \_\_\_\_\_ or, if the Trustees agree, as required in accordance with an applicable collective agreement.
3. **Employee Monthly Contributions.** Where required in accordance with the Collective Agreement or the Benefit Plan, the Participating Employer shall deduct and remit Employee Contributions to the Trustees by the first business day of each month.
4. **Failure to Comply.** In the event that the Participating Employer fails to comply with any of the requirements set out in this Participation Agreement (subject to any grace period established pursuant by the Trustees in accordance with the Trust Agreement as defined below), the Trustees may take legal proceedings to enforce this Agreement, including the collection of such amounts owing by the Participating Employer pursuant to this Participation Agreement. If the Participating Employer is delinquent in remitting Monthly

Participating Employer or Employee Contributions, the Participating Employer shall pay the Trustees for any related losses or costs, including interest, liquidated damages and costs in accordance with the provisions of this Participation Agreement and the Trust Agreement dated [date] as amended ("Trust Agreement") which established the CUPE EWBT.

5. **Trust Agreement.** The Participating Employer agrees to be bound by the Trust Agreement including Schedule B attached. The Trustees will provide to the Participating Employer, at its request, a copy of the Trust Agreement and any subsequent amendments promptly as they are made.
6. **Trustee Appointments.** The Participating Employer acknowledges it has no right to appoint or participate in the appointment of Trustees under the Trust Agreement.
7. **No right, claim or interest.** The Participating Employer acknowledges that it has no right, claim or interest in or to any moneys held in the CUPE EWBT Fund or in any Separate Account(s).
8. **Third Party Administrator.** The Trustees may deliver services related to the Benefits Plan through a Third Party Administrator, or pursuant to any shared service arrangements with other Employee Life and Health Trusts.
9. **Termination.** This Participation Agreement may be terminated by the Participating Employer only with the consent of the Trustees on a date ("Termination Date") and on such terms as are mutually agreed. It may also be terminated by the Trustees as of a Termination Date, specified in a written notice, which is at least 180 days after the day of the notice. In the event of a termination, the Trustees shall prepare:
  - (a) a preliminary terminal accounting statement as of the effective date of termination of participation of the Participating Employees that is delivered on or before 70 days after the effective date of termination,
  - (b) a final terminal accounting statement as of date not later than 120 days after the effective date of termination of the group of Participating Employees in the CUPE EWBT,

the costs of which are to be applied to the Participating Employees whose coverage is terminating, and copies of which are to be provided to CUPE, the Crown, OPSBA, OCSTA, ACÉPO, AFOCSC, the Participating Employers whose Participating Employees are terminating participation in the CUPE EWBT and the collective bargaining agents representing those Participating Employees.

Subject to and in accordance with the Trust Agreement, the Trustees shall be responsible for claims for Benefits incurred by Beneficiaries up to the Termination Date, but shall have no liability for any claims for Benefits incurred after the Termination Date by Beneficiaries.

PARTICIPATING EMPLOYER:

\_\_\_\_\_  
Name:

CUPE EWBT, BY ITS TRUSTEES

\_\_\_\_\_  
Name:

10. On behalf of [name of participating entity], the undersigned consents to the terms of this Participation Agreement between the Participating Employer and the CUPE EWBT. I confirm that [name of participating entity], though providing consent to this Participation Agreement, is not a party to this Participation Agreement and is not bound by the Trust Agreement dated [insert date] establishing the CUPE EWBT.
11. The Trustees shall establish a Consultative Committee comprised of representatives of employees that are signatory to Participation Agreements and who represent at least \_\_\_\_ members of the Benefit Plan. The Consultative Committee's mandate will be to advise the Trustees about plan design issues. The [name of participating entity] may appoint one person to the Consultative Committee. The trade union or other participating entity shall be responsible for the costs and expense of their appointee to the Committee. In the event that the Trustees believe that benefits under the Benefit Plan must be reduced, the Trustees shall use their best efforts to meet with the Consultative Committee and to solicit its views about the alternatives available. The Consultative Committee shall use its best efforts to shall respond to the Trustees in any such consultation within the time limits set by the Trustees. The [name of participating entity] understands and agrees that the Trustees may from time to time amend the Participating Employees' Benefit Plan (including by way of changing, enhancing, reducing or eliminating any benefit or term or condition of eligibility and coverage for a benefit) where the Trustees conclude, in good faith, that the financial circumstances of the Participating Employees' Benefit Plan warrant such adjustments, notwithstanding the absence of any consultation and notwithstanding the views or recommendations that may be expressed by the Consultative Committee or the [name of participating entity].
12. The Trustees may contact the [name of participating entity] as follows:

Name of Contact:

Address:

Phone:

Fax:

Email:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

CUPE Education Worker Benefit Trust

Per: \_\_\_\_\_  
Authorized Officer

Appendix "A" - ● Benefit Plan

Appendix "B" – Employees Covered by ● Benefit Plan

Appendix "C" – Required Information and Format of Initial Transfer of Data

Appendix "YY" – Required Information and Format of Ongoing Data

Appendix "A" - ● Benefit Plan

Appendix "B" – Employees Covered by ● Benefit Plan

Appendix "CUPE" – Required Information and Format of Initial Transfer of Data

Appendix "CTA/CAE" – Required Information and Format of Ongoing Data

**SCHEDULE "F"**  
**CUPE EDUCATION WORKERS' BENEFITS TRUST**  
**PROVISION OF DATA**

1. **Provision of Data – General.** The Participating Employer agrees to provide to the Trustees, or, in the Trustees' discretion, the Administrative Agent, all information they may reasonably require in order to properly record and process Contributions and to establish and maintain benefit records for each eligible employee, without charge or compensation. All data shall be provided by the Participating Employer electronically, at the time or time(s) required by the Administrative Agent, in a format acceptable to the Administrative Agent using a system that is compatible with the system used by the Administrative Agent.
2. **Initial Transfer of Data.** No later than **XX** days prior to their Participation Date, a Participating Employer shall provide to the Trustees, or in the Trustees' discretion, the Administrative Agent, all information which they may reasonably require in order to establish initial records for each eligible employee, in a format acceptable to the Administrative Agent. Such information may be obtained directly from the Participating Employer's records or the Participating Employer may direct the current carrier to provide such information.

Such information will include, but will not be limited to:

- (a) Employee information for each eligible employee (name, address, identification number, birth date, gender, salary, status etc.)
- (b) Current Insurance information for each covered employee (insurance effective date, current amounts of Life and Accidental Death and Dismemberment coverage including any optional amounts of employee, spouse or dependants coverage, and single or family coverage level for Health and Dental etc.)
- (c) Information on each covered dependant (name, birth date, gender, details on whether the dependant is covered under any other group plan etc.)
- (d) Benefit history (pre-authorized drug or dental treatments, certain dollar amounts claimed and the associated dates that the expenses were claimed)
- (e) A listing of all employees not actively at work on the Participation Date including:
  - (i) Employees currently covered for life benefits under the waiver of premium provision
  - (ii) Disabled employees whose life insurance is being maintained on a premium paying basis
  - (iii) Employees on an approved leave of absence

The Participating Employer shall provide any changes to this Initial Data no later than **XX** days prior to their Participation Date.



3. **Ongoing Data Requirements.** On the last day of each month from and after a Participating Employer's Participation Date, the Participating Employer shall provide all updates to Participating Employee data to the Administrative Agent, in an electronic format acceptable to the Administrative Agent. The information details and format for ongoing data requirements are outlined in Appendix YY. The required information and format of the data may be subject to change from time to time in accordance with s. 7.5 of the Agreement.
4. **Leaves of Absence.** Administration of all leaves of absence, including long-term disability where applicable, will be the responsibility of the Administrative Agent. During such leaves of absence, the Participating Employer shall continue to provide HRIS information and updates as defined in s. 3. The Participating Employer shall provide electronic updates of Participating Employees' work status to the Trustees (or, at their direction, the Administrative Agent), including changes in types of leaves of absence, at least two (2) weeks in advance of the leave.
5. **Incompatible Electronic Systems.** Where a Participating Employer cannot provide information in an electronic format acceptable to the Administrative Agent, the Participating Employer shall enter the required employment information into the Administrative Agent's benefit site (Plan portal) in advance of a new Participating Employee's commencement of active employment. The Participating Employer shall enter any subsequent demographic or employment changes as specified by the Administrative Agent on the Administrative Agent's benefit site within one week of the change occurring. Where a Participating Employer does not have an electronic system that is acceptable to the Administrative Agent, a written member coverage report shall be used as an interim solution until an acceptable electronic system required is in place.
6. **Information on Plan Enrollment:**
  - (a) The Participating Employer shall distribute, either paper distribution or electronically (ex. Employee portal), benefit communication material as provided by the Third Party Administrator to existing Participating Employees within 10 days of receipt of such material; and
  - (b) The Participating Employer shall distribute, either paper distribution or electronically (ex. Employee portal), benefit communication material as provided by the Third Party Administrator to all new Participating Employees within 10 days from the date of hire.
  - (c) The Participating Employer shall complete and submit the Trust's Waiver of Life Insurance Premium Plan Administrator Statement to the Trust for life waiver claims when the Trustees do not administer and adjudicate the LTD benefits.
  - (d) Each Board shall maintain existing beneficiary declarations. When required, the Board shall provide the most recent beneficiary declaration on file to the Administrative Agent.
7. **Data in Regard to Contributions.** The Participating Employer shall remit its Employer Contributions to the CUPE ELHT together with its contributions to other Education Sector

Employee Life and Health Trusts to the Administrative Agent, and, at the same time shall provide an information advice in a form acceptable to the Administrative Agent, accounting for the full amount of the contributions so remitted and allocating them between all of the Education Sector Employee Life and Health Trusts.

8. **Confidentiality.** All personal information about employees provided to the Administrator of the Trust pursuant to s. 7.5 of the Agreement and/or the provisions of the Collective Agreement will be treated as Confidential Information in accordance with the Personal Information Protection and Electronic Documents Act (PIPEDA). Except as required by law, Confidential Information will only be disclosed to the Trustees, employees of the Administrator, a service provider retained by the Trustees, the individual to whom the Confidential Information pertains or a representative of that individual who has been authorized in writing. The Confidential Information is also subject to the provisions of the Trust's Privacy Statement. The Trustees will provide to the Participating Employer, at its request, a copy of the Trust's Privacy Statement.

**SCHEDULE "G"**  
**CUPE EMPLOYEE LIFE AND HEALTH TRUST**  
**TRUSTEE ATTESTATION**

I, \_\_\_\_\_, hereby attest that I satisfy all the qualifications to act as a Trustee of the CUPE Employee Life And Health Trust, specifically:

- (a) I am an individual;
- (b) I am a resident of Canada;
- (c) I am at least eighteen years of age;
- (d) I have not been found under the *Substitute Decisions Act, 1992* or under the *Mental Health Act* to be incapable of managing property, or been found to be incapable by a court in Canada or elsewhere;
- (e) I am not an undischarged bankrupt.

I acknowledge that the above Trustee eligibility requirements are ongoing, and I will resign as Trustee should I cease to meet any of the requirements.

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Signature of Witness

\_\_\_\_\_

Name of Witness

