

**JOINT HEALTH SCIENCE BENEFITS TRUST**

**AGREEMENT AND DECLARATION OF TRUST**

**[Copy 1 of 3]**

*Originally Executed Copies*

*Retained By:*

**Copy 1: HSPBA**

**Copy 2: HEABC**

**Copy 3: Koskie Glavin Gordon**

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**THIS AGREEMENT AND DECLARATION OF TRUST** made as of the \_\_\_\_ day of \_\_\_\_\_, 2015.

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

HEALTH SCIENCE PROFESSIONALS BARGAINING ASSOCIATION (“HSPBA”)

**OF THE FIRST PART**

- and -

HEALTH EMPLOYERS ASSOCIATION OF BRITISH COLUMBIA (“HEABC”)

**OF THE SECOND PART**

- and -

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

(hereinafter referred to collectively as the "ORIGINAL TRUSTEES")

**OF THE THIRD PART**

**WHEREAS**, pursuant to Memorandum of Understanding (Appendix “C”) forming part of the Final Agreement on renewal of the 2012-2014 Health Science Professionals Collective Agreement executed in December 2013 between the HEABC and the HSPBA (as defined herein), it has been agreed that a trust to be known as the “Joint Health Science Benefits Trust” will be established and this Agreement and Declaration of Trust (the “Agreement”, as defined herein) records the terms and conditions of such trust established for the benefit of the 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** any employer bound by the terms and conditions of the Collective Agreement must participate in the Trust;

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

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

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

#### **ARTICLE 1 – DEFINITIONS**

- (a) **"Actuary"** means the person, corporation or firm appointed by the Trustees to be the actuary of the Plan, who shall be, or in the case of a firm or corporation, a member of the staff shall be, a Fellow of the Canadian Institute of Actuaries;
- (b) **"Administrative Agent"** means a person or persons, including one or more employees, selected by the Trustees to perform duties and responsibilities related to the administration of the Joint Health Science Benefits Trust Plan;
- (c) **"Agreement"** means this agreement and declaration of trust and any amendment to it and any instrument supplemental or ancillary to it and any amendment to any such instrument;

- (d) **“Applicable Legislation”** means all statutes of Canada or a province of Canada, together with the regulations thereunder, as amended from time to time, which require compliance by the Plan or Fund, including the *Personal Information Protection Act* SBC 2003 and the *Income Tax Act* (Canada);
- (e) **“Auditor”** means the person or firm appointed from time to time by the Trustees to audit the financial statements of the Trust and the Fund;
- (f) **“Authorized Investments”** means investments made by the Trustees in accordance with any investment guidelines they may adopt from time to time, provided that the Trustees may not make a loan to or make an investment in an Employer, or a person or partnership with whom the Employer does not deal at arm’s length;
- (g) **“Beneficiary”** means a Participating Employee and his or her eligible dependents and beneficiaries as defined in the Plan;
- (h) **“Benefits”** means such benefits that qualify as “designated employee benefits” under s. 144.1(1) of the *Income Tax Act* (Canada), as amended from time to time, and are provided by the Trustees pursuant to the Plan from time to time;
- (i) **“Benefit Plan”** or **“Plan”** means the “Joint Health Science Benefits Trust Plan”, which shall set out the rules, regulations and procedures for the payment or provision of Benefits from the Trust Fund, as amended by the Trustees with the approval of the Parties from time to time;
- (j) **“Collective Agreement”** means the provincial agreement between HEABC and HSPBA, together with any and all supplements, extensions and renewals thereof and successor agreements thereto;



- (k) **"Consultant"** means such person, firm or corporation as may be from time to time appointed by the Trustees for the purpose of consulting with and advising the Trustees with respect to the Plan;
- (l) **"Contributions"** means Employer Contributions and Employee Contributions;
- (m) **"Eligibility Requirements"** means the rules, regulations and procedures for determining the eligibility, or the discontinuance of eligibility, for Benefits, as set out in the Benefits Plan, as amended from time to time;
- (n) **"Employee Contributions"** means any and all sums of money that may or must be paid by Participating Employees to the Trustees to provide Benefits in accordance with the Plan;
- (o) **"Employer Contributions"** means any and all sums of money determined by the Funding Formula required to be paid by Participating Employers to the Trustees to provide Benefits in accordance with this Agreement;
- (p) **"Fund"** means:
  - (i) the Settlement Amount paid to the Original Trustees;
  - (ii) Contributions;
  - (iii) all other property which is acquired at any time by the Trustees;
  - (iv) all capital accretions and income arising from all property referred to in paragraphs (i), (ii) and (iii) above;
  - (v) less any authorized payments therefrom.

- (q) **“Funding Formula”** means the funding mechanism agreed to in the Collective Agreement for the provision of Benefits;
- (r) **“Funding Policy”** means the policy adopted by the Parties governing the funding basis upon which Benefits are provided to Beneficiaries and setting out the consequences of deficiencies or surpluses in relation to such funding basis;
- (s) **“HEABC”** means the employers association known as the Health Employers Association of British Columbia, which is an employers’ organization accredited by the Labour Relations Board of British Columbia and authorized to bargain collectively on behalf of and bind by the Collective Agreement certain employers, and includes an employer or employers’ organization that is a successor to the HEABC as a whole;
- (t) **“Healthcare Benefit Trust”** means that agreement and declaration of trust established December 1, 1993 amongst the HEABC and Gordon R. Anderson, A.H. (Bert) Gurney, Alice D. Laberge, Peter Lusztig and D.J. Ian MacDonald;
- (u) **“HSPBA”** means the Health Science Professionals Bargaining Association as defined by the HSPBA Articles of Association as amended on March 26, 2006;
- (v) **“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;
- (w) **“Insurance Company”** means an insurance company licensed to carry on business in Canada;
- (x) **“Member Premiums Trust Account”** means the Member Premiums Trust Account created pursuant to a Memorandum of

Agreement between the HSPBA, HEABC and HBT, dated January 16, 2015;

- (y) **“Original Trustees”** means the original persons appointed pursuant to the provisions of this Agreement to administer the Fund and the Plan;
- (z) **“Participating Employee”** means a person who fulfils the eligibility requirements of the Plan;
- (aa) **“Participating Employer”** means any employer who is a member of HEABC and covered by the Collective Agreement;
- (bb) **“Participation Agreement”** means an agreement in writing between the Trustees and a Participating Employer, in form and substance prescribed by the Trustees that, among other things, defines persons eligible for coverage by the Trust in relation to the Participating Employer and binds the Participating Employer to this Agreement;
- (cc) **“Party” or “Parties”** means HEABC and HSPBA individually or collectively as the context requires;
- (dd) **“Prime Rate”** means the rate of interest per annum from time to time publicly quoted by the Royal Bank of Canada, Main Branch, in Vancouver, British Columbia, as being the reference rate of interest (commonly known as its “prime rate”) used by it to determine rates it will charge on loans to its commercial customers of varying degrees of creditworthiness;
- (ee) **“Settlement Amount”** means the sum of TEN (\$10.00) DOLLARS paid by HEABC to the Original Trustees to settle the Trust;
- (ff) **“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 (as defined in Article 15); or
  - (ii) a future date chosen at any time by the Trustees by deed and occurring before the date specified in paragraph (i) above;
- (gg) “**Trust**” means the “Joint Health Science Benefits Trust”; and
- (hh) “**Trustees**” means the Original Trustees and any additional and replacement trustees, and “**Board of Trustees**” shall mean all of the Trustees in office at the relevant time.

## ARTICLE 2 – SETTLEMENT AND INTERPRETATION

- 2.1 **Settlement of Trust Fund.** The Original Trustees acknowledge receipt of the Settlement Amount from HEABC to be held in trust pursuant to this Agreement.
- 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.
- 2.3 **Incorporation of the Plan.** The provisions of the Plan from time to time are incorporated into and form part of this Agreement.

## ARTICLE 3 – NAME AND TITLE, PAYMENTS

- 3.1 **Name and Title.** 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.
- 3.2 **Manner of Payment.** All payments and Contributions shall be made payable to the "Trustees of the Joint Health Science Benefits Trust Plan"

and all Contributions shall be remitted to the Trustees no later than the calendar month immediately following the dates upon which such Contributions were deducted at source.

- 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 Plan 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, Participating Employee, Beneficiary or any other person, association, firm or corporation, shall have any right, title or interest in or to the assets of the Fund, except as specifically provided by this Trust Agreement or the 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 or Participating Employee by mistake of fact, from being returned by the Trustees to such person within one (1) year after the payment of such Contribution.
- 4.4 **Seizure or Attachment.** Subject to the Plan and the laws of the Province of British Columbia, no monies, property or equity of any nature whatsoever in the Fund, or policies or benefits or monies payable therefrom, shall be subject in any manner by any Participating Employee or Beneficiary or

person claiming through such Participating Employee or Beneficiary or otherwise, to anticipation, alienation, seizure, sale, transfer, assignment, pledge, encumbrance, attachment, garnishment, execution, mortgage, lien or charge. If by reason of any seizure or sale or any attempted sale under any legal, equitable or other process or by way of any suit or proceedings, any Benefit becomes payable to any person other than the Beneficiary for whom the same is intended, as provided in the Plan, the Trustees shall have the power to withhold payment of such benefit to such Beneficiary until such anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, garnishment, mortgage, lien, charge or seizure or other legal process is cancelled or withdrawn, and the Trustees shall have the right to use and apply the amount of such Benefit during such period as the Trustees may deem best for the support and maintenance of such Beneficiary.

- 4.5 **No Diversion.** Except as otherwise provided herein, at no time shall any part of the corpus or income of the Fund be used for or diverted to purposes other than the provision of Benefits for the exclusive benefit of the Beneficiaries, and in connection therewith the payment of reasonable costs of establishment, amendment and administration of the Trust and Plan and the investment of the Fund.
- 4.6 **No Guarantee.** Nothing contained in the Trust or the Plan shall constitute a guarantee that the assets of the Fund will be sufficient to pay any Benefits offered from time to time under the Plan to any person throughout his or her lifetime or make any other payment. The obligation of the Trustees to pay Benefits provided under the Plan is expressly conditioned on the sufficiency of Fund assets.
- 4.7 **Binding Effect.** It is hereby agreed that the Trust Agreement is binding on the HSPBA, the HEABC, the Participating Employers and all Beneficiaries and their respective heirs, executors, administrators, successors and assigns.

## **ARTICLE 5 – ESTABLISHMENT OF THE PLAN**

- 5.1 **Establishment of the Plan.** Subject always to the requirements of this Agreement, the Trustees, with the approval of the Parties, shall establish the Plan which shall define the Benefits to be provided to the Beneficiaries and the conditions of eligibility for such Benefits.
- 5.2 **Amendment of the Plan.** Subject always to the requirements of the Funding Policy, the Trustees may, with the approval of the Parties, at any time, change or modify the Plan. Any such change or modification to the Plan may take effect retroactively or otherwise.

## **ARTICLE 6 – PARTICIPATING EMPLOYER OBLIGATIONS**

- 6.1 **Mandatory Participation.** Every employer bound by the Collective Agreement, whether or not the employer is a member of HEABC, is required to participate in the Trust and the Plan.
- 6.2 **Participation Agreement.** Each Participating Employer shall execute a Participation Agreement in the form attached hereto as Schedule A.
- 6.3 **Contributions by Participating Employers.** In consideration of being accepted by the Trustees for participating, each Participating Employer agrees with the Trustees and promises to promptly pay to the Trustees, or to such person, firm or corporation as the Trustees may from time to time direct, all Contributions which the Participating Employer is required by the Trustees to pay. The Participating Employers' absolute obligation to make Employer Contributions to the Fund shall not be subject to any set-off or counter-claim which a Participating Employer may have for any liability of any Participating Employee or Beneficiary.
- 6.4 **Participating Employer Contributions.** Each Participating Employer will pay Contributions to the Trustees in such amount and in such manner as determined by the Funding Formula.

- 6.5 **Interest.** Whenever and so often as a Participating Employer fails to pay Contributions within 30 days of the date upon which such Contributions were due to be paid, such Participating Employer will also pay, as liquidated damages, interest at 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 judgement.
- 6.6 **Enforcement.** Whenever and so often as a Participating Employer fails to pay Contributions, the Trustees have the right to commence and prosecute legal action in the names of the Trustees against the defaulting Participating Employer for the recovery and payment of the amount of such Contributions accrued due and payable at the date of the commencement of such action, including for interest as provided in section 6.4. The amount of such 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, and interest, reasonably incurred on a full indemnity basis.
- 6.7 **Nature of Right of Action.** The right of action hereby conferred upon the Trustees will be in addition to and independent of any other procedure or remedy which may be available to the Trustees, or to any other person whomsoever. No Participating Employer shall be entitled to have such action delayed, stayed or otherwise postponed on the ground that the claim of the Trustees in such action might also be a claim capable of being dealt with by a trade union or Participating Employer under a Collective Agreement.
- 6.8 **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 payments.



- 6.9 **Contributions Held in Trust.** Contributions to the Fund payable by a Participating Employer are deemed to be held in trust by the Participating Employer for the Trustees of the Fund until remitted to the Fund.
- 6.10 **Obligation to Furnish Information.** In consideration of being accepted by the Trustees for participating, each Participating Employer agrees with the Trustees that it will promptly provide the Trustees or their designates with such reports, payroll records, timesheets and accounting information and other data as the Trustees may reasonably require and request from it and consider necessary for the proper administration of the Trust and the Plan, including, but not limited to, the determination of eligibility to participate in the Plan and the determination of the Benefits to be provided under the Plan.
- 6.11 **Audits.** Each Participating Employer agrees that, upon the written demand of the Trustees, it shall permit a chartered accountant acting on the Trustees' behalf, or in accordance with their instructions, to:
- (a) enter upon that Participating Employer's premises at any reasonable time or times, upon giving one (1) week's written notice, for the purpose of carrying out an inspection, audit or examination of all books of account, documents, payrolls, records, or any other material which may be relevant to the said inspection, audit or examination; and,
  - (b) make inquiries of the Participating Employer or any persons employed or otherwise engaged by a Participating Employer, which persons shall cooperate and will produce all books of account, documents, payrolls, records, or any other material which may be relevant to the said inspection, audit or examination,

in order to ensure that the Participating Employer has been complying with the terms and conditions of the Participation Agreement, Collective

Agreement, this Agreement and the 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 accountant shall not reveal any of the information or documents reviewed or obtained, unless such inspection, audit or examination reveals that a Participating Employer has failed to carry out his or her obligations under the Participation Agreement, Collective Agreement, the Plan or this Agreement.

6.12 **Security.** The Trustees may require a Participating Employer who has failed to make contributions on time in three (3) consecutive months, to furnish cash deposits, in such amounts and at such times as are reasonably determined by the Trustees, provided the Participating Employer has been given reasonable notice of such requirement. The Trustees may also require a Participating Employer to furnish a bond or letter of credit acceptable to the Trustees for an amount equivalent to a maximum of six (6) months' of reasonably anticipated Contributions. Such bond or letter of credit, at the expiry of six (6) months, will be renewed at the request of the Trustees. If the Participating Employer fails to comply with such request at least ten (10) days prior to the expiry of the current bond or letter of credit, then the Trustees will be entitled to convert such bond or letter of credit to a cash deposit.

6.13 **Participating Employer Failure to Comply.** In the event that a Participating Employer has failed to carry out its obligations under the Participation Agreement, the Collective Agreement, this Agreement or the Plan, the Participating Employer shall forthwith, upon written demand from the Trustees:

- (a) pay to the Trustees all sums which may have been determined by the said inspection, audit or examination or otherwise, to be due and owing by the Participating Employer, as well as interest at Prime Rate plus 2% from the due date until all such sums are paid to the Trustees;

- (b) complete and remit any information forms or other related and supporting documents which may be required of the Participating Employer; and
- (c) pay to the Trustees all costs, expenses, or losses, incurred by it in connection with or arising out of any inspection, audit or examination or other proceedings or steps taken in respect to any such failure.

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

## **ARTICLE 7 – PARTICIPATING EMPLOYEE CONTRIBUTIONS**

7.1 **Deduction and Remitting Employee Contributions.** A Participating Employer shall deduct from the wages of a Participating Employee in their employ the amount of Participating Employee Contributions that the Participating Employee is required to make, and shall remit such Employee Contributions to the Trustees within thirty (30) days of the deduction. The amount of the Employee Contributions shall be deemed to be held in trust by the Participating Employer from the time that the Employee Contributions ought to have been deducted until the time they are remitted to the Trustees.

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

## ARTICLE 8 – TRUSTEES

8.1 **Board of Trustees.** The Board of Trustees of the Joint Health Science Benefits Trust Fund shall consist of eight (8) Trustees to be appointed as follows:

- (a) Four (4) Trustees shall be appointed by HSPBA (hereinafter referred to as "HSPBA Trustees").
- (b) Four (4) Trustees shall be appointed by HEABC (hereinafter referred to as "HEABC Trustees").

8.2 **Term of Office.** Each Trustee shall be appointed to serve a term of three (3) years. Trustees may be reappointed for any number of terms.

8.3 **Qualification of Trustees.** Trustees shall be residents of Canada.

8.4 **Acceptance of Trusts.** Each individual, upon signing this Agreement as one of the Original Trustees, or, in the case of a successor Trustee, upon signing and filing with the Trustees an Acceptance of Trust in the form set out in Schedule B 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.

8.5 **Resignation, Removal, Incapacity or Death.**

- (a) **Resignation.** A Trustee may resign by giving notice in writing to the remaining Trustees, the HEABC and the HSPBA. 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 and has accepted the Trust 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 Party. 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*.
- (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 immediately appointed 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 B, 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 Article 9.5 of this Agreement.
- 8.6 **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 the effective date of cessation (the "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.

8.7 **No Conflict.** A person is not disentitled from serving as a Trustees solely because they:

(a) are entitled to receive Benefits under the Plan; or

(b) are an officer or employee of the HEABC, the HSPBA or its constituent trade unions.

8.8 **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.

8.9 **Fees and Expenses.** Trustees shall not be entitled to any fee or payment on account of their holding office. However, subject to the approval of the Trustees, a Trustee may be reimbursed from the Fund for his or her actual expenses incurred in attending each meeting of the Trustees at which the Trustee is physically present, the reasonable expenses incurred for attending educational conferences or courses for which conferences or courses the prior approval of the Trustees has been obtained and the actual expenses in carrying out any other duty in connection with the Trust, all in accordance with policies to be established from time to time by the Trustees.

8.10 **Chair and Vice-Chair.** On a rotating basis, the HEABC Trustees shall, from among their number, appoint a Chair or Vice-Chair of the Board of Trustees and the HSPBA Trustees shall, from among their number, appoint

a Chair or Vice-Chair. The Chair shall act as the chair of all meetings of the Trustees and perform the duties set out in this Agreement, provided that the Chair shall consult with the Vice-Chair as to the agendas and the conduct of business for the Board of Trustees. In the absence of the Chair, the Vice-Chair shall perform the duties of the Chair. The Chair and Vice-Chair shall each serve for terms of two years. If the Chair or Vice-Chair ceases to be a Trustee, then their position shall be filled for the balance of their term by a Trustee appointed by the same appointing Party. The initial Chair shall be appointed by the HSPBA Trustees. The initial Vice-Chair shall be appointed by the HEABC. The positions of Chair and Vice-Chair shall rotate between an HEABC Trustee and an HSPBA Trustee every two years.

- 8.11 **Minutes of Meetings.** The Trustees shall appoint a Recording Secretary who shall keep minutes or records of all meetings, proceedings and acts of the Trustees. Such minutes need not be verbatim.
- 8.12 **Execution of Documents and Cheques.** All documents to be executed by the Trustees and all cheques payable out of the Fund shall be signed by at least one HEABC Trustee and one HSPBA Trustee or by such other persons as the Trustees may by resolution appoint.
- 8.13 **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, in consultation with the Vice-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 in consultation with the Vice-Chair.



- (c) At least fourteen (14) days' written notice shall be provided to the Trustees of any meeting, provided that such notice may be waived by the consent, in writing, of all Trustees, or by a unanimous resolution of the Trustees.
- (d) At each annual meeting of the Trustees, the Trustees shall consider, among other things:
  - (i) a financial statement from the 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 Auditor.

8.14 **Other Meetings.** The Chair, in consultation with the Vice-Chair, or any two (2) or more Trustees may call a meeting of the Trustees at any time by giving at least three (3) days' written notice of the time and place thereof to each Trustee. Meetings of the Trustees may be held at any time without notice if all Trustees consent thereto.

8.15 **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.

8.16 **Quorum and Voting.**

- (a) A quorum shall consist of four (4) Trustees provided that at least two (2) HEABC Trustees and two HSPBA Trustees are present. The decisions of the Trustees shall be determined by a majority vote.

- (b) The Chair at any meeting of Trustees shall not be entitled to a second or casting vote.

#### 8.17 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.
- (b) **Mediation.** In the event that the Trustees are deadlocked on an issue, three (3) 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. Any such mediation will be governed by the Mediation Rules of Procedure of the British Columbia International Commercial Arbitration Centre.
- (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 HEABC Trustees or the HSPBA Trustees may request the Chief Justice for the British Columbia Supreme Court to appoint an arbitrator to act as a 9<sup>th</sup> Trustee, and to cast a deadlock breaking vote in accordance

with the fiduciary principles applicable to the exercise of the Trustees' duties and responsibilities hereunder.

- (d) **Final and Binding Decisions.** Any decision of the Parties reached through the mediation and arbitration steps of the dispute resolution procedure in accordance with paragraphs (b) and (c) above shall be final and binding upon the Trustees, the HEABC, the HSPBA, all Participating Employers, all Participating Employees and all Beneficiaries.

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

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

- 9.1 **Administration of the Trust Fund.** The administration of the Fund shall be the responsibility of the Trustees, and they shall administer the Fund in accordance with the express powers given them pursuant to this Trust Agreement and the Benefits Plan. The terms of this Trust Agreement and the Plan 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 Plan that would otherwise be inconsistent with the requirements of such provisions shall be modified to the extent necessary to comply with such requirements. Subject to the provisions of this Trust Agreement and Applicable Legislation, the Trustees shall have sole, absolute and discretionary authority to adopt such policies, rules and regulations and take all actions that they deem desirable for the administration of the Trust Fund, to interpret the terms of the Plan and Trust Agreement and to make findings of fact and decide any and all matters arising hereunder or in

connection with the administration of the Trust Agreement. The decisions of the Trustees shall be final and binding on all Participating Employers, Participating Employees, Beneficiaries, the HEABC and the HSPBA.

- 9.2 **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.
- 9.3 **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.
- 9.4 **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.
- 9.5 **Liability and Indemnity.** No Trustee shall be liable for the act or omission of any other Trustee. The Fund shall indemnify and save harmless the Trustees, 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 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 with respect to any matter or thing arising out of his or her own dishonesty, wilful misconduct or gross negligence.

9.6 **Liability of HEABC and HSPBA.** Neither the HSPBA nor the HEABC is a fiduciary with respect to the Plan or Fund, and neither the HSPBA nor the HEABC 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 the HEABC or the HSPBA 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 Benefits Plan, a Collective Agreement or a Participation Agreement;
- (g) any losses, expenses, claims, demands or actions in connection with the establishment of the Fund;
- (h) the provision or failure to provide any Benefits.

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

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

the Trustees may provide Benefits in accordance with the Benefits Plan that are 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 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 the Plan and this Agreement from time to time;

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

in a manner consistent with the provisions of the Plan, this Agreement and Applicable Legislation, the Trustees shall construe the provisions of the Plan and this Agreement and any construction adopted by the Trustees will be binding upon HEABC, HPSBA, Participating Employers, Participating Employees and Beneficiaries;

(c) **Power to Establish Reserves.** The Trustees may, based on actuarial advice and in accordance with the Funding Policy, establish Reserves to enable the Trust to provide the Benefits to the Beneficiaries.

(d) **Legal Action by Trustees**

the Trustees may, if they deem it necessary, seek a judicial determination or declaratory judgment on any questions of the

construction of this Agreement or the Plan, or to obtain directions as to any action hereunder. Any such determination is binding on HEABC, HSPBA, Participating Employers, Participating Employees and Beneficiaries;

(e) **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;

(f) **Power to Determine Evidence**

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

(g) **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 the 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;

(h) **Power to Sell**

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

(i) **Power to Incorporate**

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

(j) **Power to Retain**

the Trustees may retain any property forming part of the Fund 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 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;

(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;

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

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



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

the Trustees shall establish a written investment policy setting out the Authorized Investments for the Fund and shall also adopt financial risk management guidelines. The Trustees shall no less than annually review and monitor their compliance with the investment policy and financial risk management guidelines;

(o) **Investment Advice**

the Trustees must 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 Trust Fund;

(p) **Power to Commingle**

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

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

the Trustees may engage such persons as they consider advisable to assist in the management or administration of the Plan and Fund including, without limitation, an employee, agent, Administrative Agent, custodian, lawyer, accountant, actuary, financial or investment advisor or benefits consultant, manager, broker, surveyor, valuer and appraiser. They may delegate to and rely upon such persons as the Trustees deem advisable 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 Delegate**

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

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

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

(t) **Power to Borrow**

the Trustees may borrow from HEABC on an interim basis to ensure that the Trust has sufficient funds to pay the Benefits described in the Plan during its initial start-up phase.

To the extent permitted by Applicable Legislation, the Trustees may borrow on behalf of the Trust such sums of money as may be required to fund the payment of Benefits but only if such borrowing is required for the payment of benefits under the Plan on a short term basis to prevent the distress sale of long-term investments and the Trustees may mortgage, pledge or charge the income and/or capital of the Fund to secure the payment of any money so borrowed. The Trustees may execute and deliver under seal or otherwise such instruments evidencing the indebtedness and the security so given which they consider necessary or desirable;

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

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

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

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

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

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

(x) **Power to Insure**

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

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

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

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

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

(aa) **Banking Arrangements**

the Trustees may appoint from time to time any credit union, bank, trust company or other company to be the banker or one of the bankers for the purposes of the Fund and from time to time may revoke any such appointment. 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:

- (i) sign, endorse, make, draw or accept any cheques, promissory notes, bills of exchange or other negotiable instruments;

- (ii) 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
- (iii) 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;

(bb) **Taxes, Etc.**

the Trustees, in the exercise of an absolute discretion, may:

- (i) pay all or any part of any taxes in respect of the Fund or any part thereof, out of the Fund; and
- (ii) take any other action concerning the taxation of the Trust, 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;

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

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

- (i) costs of collection and disbursement of funds pursuant to the provisions of this Agreement, the Benefits 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) legal, consulting, actuarial 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;

(dd) **Power to Indemnify**

the Trustees may indemnify and enter into any indemnity in favour of 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 otherwise pursuant to this Agreement. The Trustees may apply the whole or any part of the

Fund by way of mortgage, pledge or otherwise as security for such indemnity; and

(ee) **Exercise of Powers and Discretion**

all of the powers and discretions conferred upon the Trustees by this Agreement and by law will be exercised by them in their absolute discretion.

9.8 **Member Premiums Trust Account.** Notwithstanding any other provision of this Agreement:

- (a) the Trustees shall accept a transfer of the assets of the Member Premium Trust Account from the trustees of the Healthcare Benefit Trust, which the Trustees shall account for separately from the other assets of the Fund;
- (b) all decisions with respect to the use and application of monies or assets transferred under s. 9.8(a) shall be made solely and exclusively by the HSPBA Trustees without any need or requirement for a vote or resolution by the Board of Trustees;
- (c) monies or assets transferred under s. 9.8(a) shall be used and applied by the HSPBA Trustees, in their discretion, solely and exclusively for the provision of benefits to the Beneficiaries.

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

9.10 **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) hold and account for the money or other property it receives, and be responsible for the collection of any deposits, contributions, remittances, or transfers due to the Trust unless otherwise directed by the Trustees; and
  - (b) apply the assets of the Trust Fund to pay all reasonable costs, charges, and expenses (including, but not limited to, all brokerage fees and transfer tax expenses and other expenses) incurred in connection with the sale or purchase of investments, all real and personal property taxes, income taxes and other taxes of any kind at any time levied or assessed under any present or future law upon, or with respect to, the Trust Fund or any property included in the Trust Fund and all legal, actuarial, accounting and financial advisory expenses reasonably incurred and previously approved by the Trustees in connection with establishment, amendment, administration and operation of the Trust or Plan.
- 9.11 **Appointment of Administrative Agents.** The Trustees may engage one or more Administrative Agents to administer all or part of the Plan and may delegate to them such duties and responsibilities as the Trustees see fit. The Trustees shall monitor the performance of their Administrative Agents and shall require that any Administrative Agent, insofar as it performs duties or discharges responsibilities in relation to the Joint Health Science Benefits Trust Plan, act solely and exclusively in the best interests of the Beneficiaries.
- 9.12 **Employees.** The Trustees may hire, employ and terminate employees on such terms and conditions as the Trustees deem necessary and appropriate.
- 9.13 **Records.** The Trustees shall maintain suitable and adequate records of and for the administration of the Fund.



- 9.14 **Annual Audits.** The books of account and records of the Trustees, including the books of account and records pertaining to the Fund, shall be audited at least once every year by the auditor of the Fund, 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.
- 9.15 **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 10 – PARTICIPATION

### 10.1 **Class of Beneficiaries.**

- (a) The Trust and the Plan may contain one or more classes of beneficiaries provided (i) the members of one class of beneficiaries represent at least 25% of all the beneficiaries of the Trust who are employees of an Employer within the meaning of the *Income Tax Act* (Canada), and (ii) at least 75% of the members of that class are not “key employees” of such an Employer within the meaning of the *Income Tax Act* (Canada).
- (b) No more than 25% of the members of a class of beneficiaries may be “key employees” within the meaning of the *Income Tax Act* (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 the *Income Tax Act* (Canada) or persons related to any such key employee.

## **ARTICLE 11 – ADMINISTRATIVE INFORMATION**

### **11.1 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 the 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.

### **11.2 Quarterly Financial Information.** On a quarterly basis the Trustees shall provide the following information to the Parties, such information to be provided without charge:

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

### **11.3 Annual Information.** On an annual basis the Trustees shall provide the following information to the Parties, such information to be provided without charge:

- (a) audited financial statements;

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

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

## **ARTICLE 12 – AMENDMENTS TO TRUST AGREEMENT**

- 12.1 **Amendment.** The Parties may amend this Trust Agreement in whole or in part by an instrument in writing. Any such amendment may take effect retroactively or otherwise as the Parties decide.
- 12.2 **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.

### **ARTICLE 13 – WITHDRAWAL OF A PARTICIPATING EMPLOYER**

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

### **ARTICLE 14 – FUNDING OF THE PLAN**

- 14.1 **Actuarial Valuations.** The Actuary shall prepare annual actuarial valuations of the Plan and Fund as at December 31. 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 Parties.
- 14.2 **Funding Policy.** The Trustees, with the approval of the Parties, shall adopt a Funding Policy, and may amend it from time to time, governing, inter alia:
- (a) the actuarial methods and assumptions to be used in actuarial valuations of the Plan;
  - (b) the margins or explicit reserves, if any, to be used in the actuarial valuations of the Plan;
  - (c) the consequences of any excess or deficiency of assets relative to the Plan's liabilities as may be disclosed in any actuarial valuation.

**14.3 Plan Amendments.** The Trustees, with the approval of the Parties:

- (a) may amend the Plan at any time, subject to the Funding Policy;
- (b) shall amend the Plan by decreasing the value of the Plan's Benefits or increasing the rate of Employee Contributions, in the circumstances prescribed by the Funding Policy.
- (c) shall amend the Plan by increasing the value of the Plan's Benefits in the circumstances prescribed by the Funding Policy.

**14.4 Parties' Deadlock Regarding Benefit Changes.**

- (a) **Deadlock.** A deadlock subject to the provisions of this s.14.4 shall be deemed to exist where:
  - (i) a proposal made by one Party to the other Party concerning an enhancement to or a reduction of a Benefit, or a change to the Benefit Plan, is not accepted by the other Party within 30 days of its delivery to the other Party;
  - (ii) the proposal arises under s.14.3(b) or (c); and
  - (iii) the Party making the proposal invokes this section.
- (b) **Mediation.** In the event of a deadlock, a Party may refer the matter at issue to a mediator to be selected by the Parties, or, failing their agreement within forty-five days of the delivery of the proposal, to a mediator selected by the Trustees. Any such mediation will be governed by the Mediation Rules of Procedure of the British Columbia International Commercial Arbitration Centre.
- (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 Parties 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 Party may

request the Chief Justice for the British Columbia Supreme Court to appoint an arbitrator.

- (d) **Final and Binding Decisions.** Any decision of the Parties or an arbitrator reached through the mediation and arbitration steps of the dispute resolution procedure in accordance with paragraphs (b) and (c) above shall be final and binding upon the Trustees, the HEABC, the HSPBA, all Participating Employers, all Participating Employees and all Beneficiaries.

## **ARTICLE 15 – TRANSFER OF ASSETS**

**15.1 Transfer of Fund to Successor Trust.** If at any time hereafter:

- (a) some or all Participating Employees entitled to benefits under this Agreement become or are about to become covered by and entitled to benefits under another health and welfare trust or employee life and health trust as described in Applicable Legislation (the “Successor Trust”) which provides benefits either identical, or substantially similar to the benefits provided under this Agreement; and
- (b) the Trustees, in their discretion, but with the consent of the HSPBA and the HEABC, decide it would be advantageous to transfer and pay some or all of the Fund to the trustee of the Successor Trust (on behalf of Beneficiaries who at the time of such payment and transfer are entitled to receive a benefit or benefits under this Agreement for the purpose of providing for such persons a benefit or benefits under the Successor Trust); then
- (c) if the trustee of the Successor Trust undertakes and agrees to accept and to discharge all liabilities of the Trustees with respect to the provision of such benefits to such Beneficiaries; and

- (d) if the trustee of the Successor Trust agrees that the benefits to be provided to such Beneficiaries under the Successor Trust will be at least as great as those provided under the Trust at the date of such payment and transfer;

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

- 15.2 Release and Discharge of the Trustees.** If the entirety of the Fund is paid to the trustee of the Successor Trust in accordance with section 14.1, then as soon as the Trustees decide to make such transfer, the provisions of section 15.1 apply to and govern the actions of the Trustees. Upon such payment to the trustee of the Successor Trust being effected, all of the trusts contained herein will cease and terminate and the Trustees are relieved and released of and from all future obligations, responsibilities and liabilities imposed upon them by and pursuant to this Agreement and otherwise. If the entirety of the Fund is not paid to the trustee of the Successor Trust, then upon payment to the trustee of the Successor Trust of the assets which are to be so paid, all of the trusts contained herein with respect to such portion of the Fund will cease and terminate, and with respect thereto and with respect to the persons referred to in section 14.1(b), the Trustees are relieved and released of and from all future obligations, responsibilities and liabilities imposed upon them pursuant to this Agreement.

## **ARTICLE 16 – AMALGAMATION OR MERGER OF TRUST FUND**

- 16.1 Ability to Merge or Amalgamate.** The Parties may amalgamate or merge the Trust and Fund created by this Agreement with one or more similar trusts and funds (the “Amalgamated Fund”) provided that the Parties are satisfied that any amalgamation or merger will not have the effect of

depriving any Beneficiary of any right to Benefits to which such Beneficiary had become entitled or which had accrued to their credit, and that the rights of such Beneficiary under the Amalgamated Fund and the benefit plan thereunder will, at the effective date of the amalgamation or merger be the substantial equivalent of their rights under this Agreement and the Plan. In connection with such amalgamation the Parties may enter into an amalgamation or merger agreement with the trustee or sponsor of one or more other trusts, amend or terminate this Agreement, transfer or cause the custodian or custodians (if any) to transfer and deliver the Fund to the trustee or custodian of the Amalgamated Fund, and execute and deliver all such other documents and instruments and do or cause to be done such other acts as may be required to carry out any such amalgamation.

#### **ARTICLE 17 – TERMINATION OF TRUST FUND**

**17.1 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 one hundred and twenty (120) days of such date of termination as follows:

- (a) provide for a final audit and accounting for the purpose of the termination of the 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 to the extent necessary in the event the balance of the Fund is insufficient to pay the entirety of the Benefits accrued to the date upon which the Agreement and the Plan are terminated;  
and



- (d) pay the Fund then remaining, if any, as follows:
  - (i) to pay, or to make arrangements to provide, the accrued Benefits determined by the Trustees to be owing to the Beneficiaries in accordance with the Plan, and distribute any excess to the Beneficiaries in cash or as may be permitted by Applicable Legislation; or
  - (ii) to pay the same to the trustee of the Successor Trust in accordance with section 14.1.

17.2 **Notification of Termination.** Upon termination of the Fund in accordance with this Section, 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 18 – TRUSTEES ACCOUNTS

18.1 **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.

18.2 **Audit Requirement.** The Trustees shall cause the Fund to be audited on an annual basis. The auditor's report shall be available for inspection by HEABC, HSPBA, Participating Employers and Beneficiaries.

## ARTICLE 19 – NOTICE AND DISCLOSURE

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

- (a) upon receipt, if delivered personally;

- (b) on the seventh day after the date of sending, if sent by regular mail to the last known address of the person entitled to receive such notice as shown in the records of the Trustees and whether or not actually received; or
  - (c) at the time when the appropriate confirmation is received, if sent by telecopier, facsimile sending machine, or electronic mail to the last known telecopier number, facsimile number or electronic mail address of the person entitled to receive such notice as shown in the records of the Trustees.
- 19.2 **Notice to the Trustees.** Notwithstanding section 19.1, a notice hereunder to a Trustee will only be effective as and when actually received by such Trustee.
- 19.3 **Change in Notice Period.** Notwithstanding any other provision of this Agreement, any notice period required to be given under the terms of this Agreement may be reduced or dispensed with by agreement between the person required to give such notice and the person(s) entitled to receive it.
- 19.4 **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.
- 19.5 **Disclosure Concerning Participating Employers, Beneficiaries and Others.** The Trustees shall be entitled to make disclosures concerning:
  - (a) any Beneficiary or Participating Employer;
  - (b) any person who is or may be in any way interested hereunder or referred to herein;

- (c) the Fund or any part thereof (which will include any corporation, company, partnership or other entity, and the assets and affairs thereof, whose shares or other ownership interests are comprised directly or indirectly in the Fund); 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 requisite or desirable in the performance of Trustees' functions as Trustees, or if so ordered by a court of competent jurisdiction.

## **ARTICLE 20 – MISCELLANEOUS**

- 20.1 **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 Collective Agreement, this Trust Agreement or the Plan.
- 20.2 **Fiscal Year.** The fiscal year of the Fund shall end on the 31st day of December, in each year.
- 20.3 **Situs.** The Province of British Columbia 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 British Columbia. The Trust shall be administered such that throughout each taxation year it is resident in Canada for purposes of the *Income Tax Act* (Canada) determined without reference to section 94 of that Act.

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

APRIL 8, 2015



**ANTHONY GLAVIN**  
Barrister & Solicitor  
1650 - 409 GRANVILLE STREET  
VANCOUVER, B.C. V6C 1T2

HSPBA

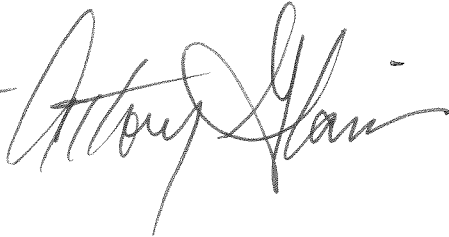
Per: 

Name:

Name **Jeanne Meyers, Barrister & Solicitor**  
Health Sciences Association of BC  
Title: 180 East Columbia St.  
New Westminster, BC V3L 0G7  
Tel: 604-517-0994

I/We have the authority to bind the HSPBA

APRIL 8, 2015



**ANTHONY GLAVIN**  
Barrister & Solicitor  
1650 - 409 GRANVILLE STREET  
VANCOUVER, B.C. V6C 1T2

HEABC

Per: 

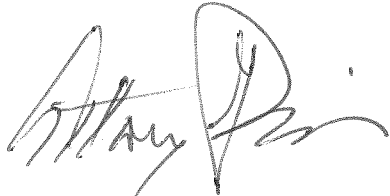
Name:

Name **Adrienne Hook**  
Title: **Executive Director**  
**HEABC**

Title

I/We have the authority to bind HEABC

APR 19, 2015



**ANTHONY GLAVIN**  
Barrister & Solicitor  
1650 - 409 GRANVILLE STREET  
VANCOUVER, B.C. V6C 1T2

Original Trustee

Per: 

Name:

Name

Title:

Title

Sept. 7, 2015 *Cathy Fraser*  
CATHY FRASER  
EXECUTIVE ASSISTANT  
200 - 1333 WEST BROADWAY  
VANCOUVER, B.C.

Original Trustee

Per: *Bruce Meek*

Name: BRUCE MEEK

Name

Title:

Title

Aug 19, 2015 *Anthony Glavin*

**ANTHONY GLAVIN**  
Barrister & Solicitor  
1650 - 409 GRANVILLE STREET  
VANCOUVER, B.C. V6C 1T2

Original Trustee

Per: *Pier Moynour*

Name: PIER MOYNEUR

Name

Title:

Title

Aug. 19, 2015 *Anthony Glavin*

**ANTHONY GLAVIN**  
Barrister & Solicitor  
1650 - 409 GRANVILLE STREET  
VANCOUVER, B.C. V6C 1T2

Original Trustee

Per: *Adrienne Hook*

Name: ADRIENNE HOOK

Name

Title:

Title

Aug 19, 2015 *Anthony Glavin*

**ANTHONY GLAVIN**  
Barrister & Solicitor  
1650 - 409 GRANVILLE STREET  
VANCOUVER, B.C. V6C 1T2

Original Trustee

Per: *Jeanne Meyers*

Name: JEANNE MEYERS

Name

Title:

Title

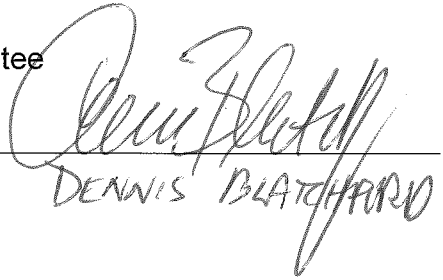
AG 19/2015 

**ANTHONY GLAVIN**  
Barrister & Solicitor  
1650 - 409 GRANVILLE STREET  
VANCOUVER, B.C. V6C 1T2

Original Trustee

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


Name:

  
DENNIS BLATCHFORD

Name

Title:

Title

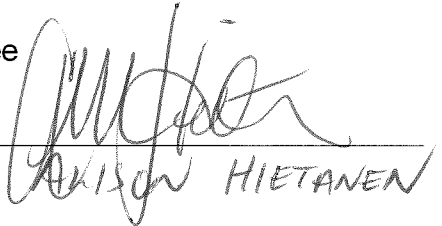
AG 19/2015 

**ANTHONY GLAVIN**  
Barrister & Solicitor  
1650 - 409 GRANVILLE STREET  
VANCOUVER, B.C. V6C 1T2

Original Trustee

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

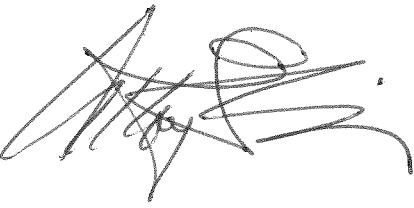
Name:

  
ANISON HIETANEN

Name

Title:

Title

AG 19/15 

**ANTHONY GLAVIN**  
Barrister & Solicitor  
1650 - 409 GRANVILLE STREET  
VANCOUVER, B.C. V6C 1T2

Original Trustee

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

Name:

  
TROY CLIFFORD

Name

Title:

Title

**SCHEDULE A**  
**JOINT HEALTH SCIENCE BENEFITS TRUST**  
**EMPLOYER PARTICIPATION AGREEMENT**

BETWEEN:

The Trustees of the Joint Health Science Benefits Trust  
(the "Board")

AND:

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

1. The Employer acknowledges receipt of copies of the Agreement and Declaration of Trust for the Joint Health Science Benefits Trust (the "Trust Agreement") and the Joint Health Science Benefits Trust Plan (the "Plan").
2. Capitalized terms used in this Participation Agreement and not defined in this Participation Agreement have the meanings given to them in the Trust Agreement.
3. For clarity, in this Participation Agreement, "Parties" means, the Health Employers' Association of British Columbia and the Health Science Professionals Bargaining Association, collectively.
4. The Employer is required to participate in the Joint Health Science Benefits Trust (the "Trust") as a "Participating Employer."
5. By the Employer executing this Participation Agreement, it:

- 5.1 warrants and represents that it has full and sufficient authority to enter into this Participation Agreement;
- 5.2 agrees to provide to the Board such information and documentation reasonably required to verify the truth and accuracy of the foregoing warranty and representation;
- 5.3 further agrees to:
  - (a) pay and remit Contributions to the Trustees in accordance with the terms of the Trust Agreement and Plan;
  - (b) furnish the Board promptly with reports, payroll records, timesheets, accounting information and any other information as the Board may from time to time reasonably require;
  - (c) be bound by all the terms and provisions of the Trust Agreement and the Plan, as each is amended from time to time; and
  - (d) duly perform all of the obligations and duties, and accept all the liabilities, imposed upon Participating Employers by the Trust Agreement and the Plan; and
  - (e) that this Participation Agreement, when approved and accepted by the Board, will be binding on the Employer and the Employer's successors.

SIGNED, SEALED AND DELIVERED  
in the presence of



The Employer

Per:

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

Title:

I/We have the authority to bind the  
Employer



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

SIGNED, SEALED AND DELIVERED  
in the presence of



The Board

Per:

\_\_\_\_\_

Name:

Title:


I/We have the authority to bind the Board

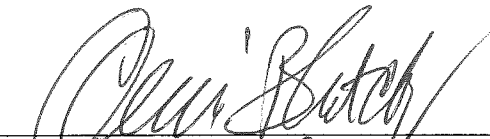
**SCHEDULE B**  
**JOINT HEALTH SCIENCE BENEFITS TRUST**  
**ACCEPTANCE OF TRUST**

TO: The Trustees of the Joint Health Science Benefits Trust

The undersigned, having been appointed to serve as a Trustee of the Joint Health Science Benefits Trust (the "Trust") in accordance with the Agreement and Declaration of Trust dated <sup>APRIL 8, 2015</sup> ▼ (the "Agreement") hereby accepts the trusts created and established by the Agreement and consents to act as a Trustee thereunder, and agrees to administer the Plan and the Fund in accordance with the provisions of the Agreement.

DATED at VANCOUVER, British Columbia, this <sup>19<sup>th</sup></sup> day of AUGUST, 2015 ▼

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

  
\_\_\_\_\_  
DENNIS BLATCHFORD

\_\_\_\_\_  
Name of Witness **ANTHONY GLAVIN**  
**Barrister & Solicitor**  
\_\_\_\_\_  
Address **1650-409 GRANVILLE STREET**  
**VANCOUVER, B.C. V6C 1T2**  
\_\_\_\_\_  
Occupation

Receipt is hereby acknowledged this <sup>19<sup>th</sup></sup> day of AUGUST, 2015 ▼

▼ [determine and insert correct title]

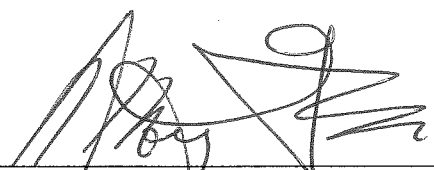


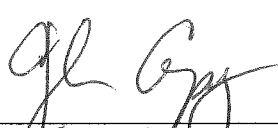
**SCHEDULE B  
JOINT HEALTH SCIENCE BENEFITS TRUST  
ACCEPTANCE OF TRUST**

TO: The Trustees of the Joint Health Science Benefits Trust

The undersigned, having been appointed to serve as a Trustee of the Joint Health Science Benefits Trust (the "Trust") in accordance with the Agreement and Declaration of Trust dated <sup>APRIL 8, 2015</sup> ▼ (the "Agreement") hereby accepts the trusts created and established by the Agreement and consents to act as a Trustee thereunder, and agrees to administer the Plan and the Fund in accordance with the provisions of the Agreement.

DATED at VANCOUVER, British Columbia, this <sup>19<sup>th</sup></sup> day of AUGUST, 20<sup>15</sup>▼

  
\_\_\_\_\_  
Signature of Witness )  
)  
)  
)  
)  
)  
)  
Name of Witness )  
**ANTHONY SEAVIN** )  
Barrister & Solicitor )  
Address )  
1650 - 409 GRANVILLE STREET )  
VANCOUVER, B.C. V6C 1T2 )  
)  
Occupation )  
)  
)

  
\_\_\_\_\_  
▼ GLEN COPPING

Receipt is hereby acknowledged this <sup>19<sup>th</sup></sup> day of AUGUST, 20<sup>15</sup>▼.

▼ [determine and insert correct title]





**SCHEDULE B**  
**JOINT HEALTH SCIENCE BENEFITS TRUST**  
**ACCEPTANCE OF TRUST**

TO: The Trustees of the Joint Health Science Benefits Trust

The undersigned, having been appointed to serve as a Trustee of the Joint Health Science Benefits Trust (the "Trust") in accordance with the Agreement and Declaration of Trust dated <sup>APRIL 8, 2015</sup> ▼ (the "Agreement") hereby accepts the trusts created and established by the Agreement and consents to act as a Trustee thereunder, and agrees to administer the Plan and the Fund in accordance with the provisions of the Agreement.

DATED at VANCOUVER, British Columbia, this <sup>7<sup>th</sup></sup> <sup>September</sup> day of ~~AUGUST~~, 2015

)  
)  
)  
)  
Cathy Fraser  
Signature of Witness )  
CATHY FRASER )  
Name of Witness )  
200-1333 WEST BROADWAY, VANCOUVER )  
Address )  
EXECUTIVE ASSISTANT )  
Occupation )

Bruce Meek  
▼ BRUCE MEEK

Receipt is hereby acknowledged this <sup>7<sup>th</sup></sup> day of <sup>September</sup> ~~AUGUST~~, 2015

▼ [determine and insert correct title]





