

**AMENDED AND RESTATED
AGREEMENT AND DECLARATION
OF TRUST**

SHARED RISK PLAN

FOR

CERTAIN BARGAINING EMPLOYEES

OF

NEW BRUNSWICK HOSPITALS

Amended and Restated as at the 23rd day of June, 2014

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AGREEMENT AND DECLARATION OF TRUST

PREAMBLE

This Agreement and Declaration of Trust made on the 29th day of August 2013, and amended and restated as at the 23rd day of June, 2014, by and between the undersigned Trustees.

WHEREAS, the New Brunswick Nurses' Union and the New Brunswick Union of Public and Private Employees (collectively, the "**Unions**") and Her Majesty the Queen in Right of the Province of New Brunswick (the "**Province**") as represented by the Minister of Finance are sponsors of a shared risk plan, known as the Shared Risk Plan for Certain Bargaining Employees of New Brunswick Hospitals (the "**CBE Shared Risk Plan**") created pursuant to Part 2 of the *Pension Benefits Act* (as defined herein);

WHEREAS, in accordance with a memorandum of understanding dated May 18, 2012 between the Unions and the Province, the CBE Shared Risk Plan, effective July 1, 2012, converted and replaced the Pension Plan for CBE Employees of New Brunswick Hospitals, Registration #38585 under the *Income Tax Act* (as defined herein established by the Treasury Board of the Province of New Brunswick by Treasury Board Minute 74-497 effective January 1, 1975) (the "**CBE Plan**");

WHEREAS, the Pension Committee of the CBE Hospital Plan (the "**CBE Plan Pension Committee**") is to act as the board of trustees for the CBE Shared Risk Plan until a Board of Trustees is newly constituted to act as trustees for the CBE Shared Risk Plan; and

WHEREAS, the Agreement and Declaration of Trust was entered into to newly constitute a Board of Trustees that shall be the administrator and shall maintain and administer the CBE Shared Risk Plan in accordance with the provisions of the CBE Shared Risk Plan, the *Pension Benefits Act* and the *Income Tax Act*.

NOW THEREFORE, in consideration of the premises, it is understood and agreed as follows:

ARTICLE I DEFINITIONS

As used herein, the following terms shall have the meaning specified in this Article:

- 1.1 "**Acceptance of Trusteeship**" means an instrument in writing executed by a Trustee whereby he or she accepts the trusteeship set forth in this Agreement substantially in the form of the attached Schedule A;
- 1.2 "**Actuary**" means a Fellow of the Canadian Institute of Actuaries, or a firm employing such a person, appointed by the Board of Trustees for the purposes of the CBE Shared Risk Plan;
- 1.3 "**Agreement**" means this Agreement and Declaration of Trust;

- 1.4 “**Board of Trustees**” or “**Trustees**” means the Board of Trustees of the CBE Shared Risk Plan and the individual members appointed in accordance with Article II;
- 1.5 “**CBE Plan**” has the meaning set forth in the Preamble;
- 1.6 “**CBE Plan Pension Committee**” has the meaning set forth in the Preamble;
- 1.7 “**CBE Shared Risk Plan**” has the meaning set forth in the Preamble and includes amendments of such plan from time to time in accordance with the terms thereof and the *Pension Benefits Act*;
- 1.8 “**Collective Agreements**” means the four collective agreements covering bargaining units in Part III of the public service of the Province of New Brunswick represented by the Unions, and being Nurses, Nurse Managers and Supervisors, Paramedical and Specialized Health Care Professionals;
- 1.9 “**Contributing Employer**” means those corporations listed under First Schedule, Part III of the *Public Service Labour Relations Act* (New Brunswick) and the Unions;
- 1.10 “**Conversion Date**” means July 1, 2012;
- 1.11 “**Effective Date**” means August 29, 2013;
- 1.12 “**Employee**” means:
- (a) any full-time or Part-Time employee who is a member of the bargaining unit of any of the Collective Agreements; or
 - (b) any employee of a Union who is eligible to join the CBE Shared Risk Plan under the terms of the CBE Shared Risk Plan; or
 - (c) the president of the New Brunswick Nurses Union while on leave to serve the Union; or
 - (d) the president of the New Brunswick Union of Public and Private Employees while on leave to serve the Union.
- 1.13 “**Employer**” with reference to any given Employee means the Contributing Employer by which the said Employee is employed at the date in question;
- 1.14 “**Facilitator**” means a person appointed by the Board of Trustees pursuant to Section 2.6(a);
- 1.15 “**Fund**” means the assets held in trust under the terms of the CBE Shared Risk Plan and the Funding Contract to provide for the payment of benefits as described in the plan to Members and their beneficiaries and which is also referred to herein as the “**CBE Shared Risk Plan Trust Fund**”;

- 1.16 “**Funding Agency**” means a trust or insurance company, designated by the Board of Trustees to hold the whole or a portion of the assets of the Fund at any time under the terms of the Funding Contract;
- 1.17 “**Funding Contract**” means a contract between the Funding Agency and the Board of Trustees relating to the management, investment and administration of the Fund;
- 1.18 “**Funding Policy**” means the funding policy for the CBE Shared Risk Plan, as amended from time to time, in accordance with the CBE Shared Risk Plan and the *Pension Benefits Act*.
- 1.19 “**Income Tax Act**” means the *Income Tax Act*, R.S.C. 1985 c.1 (5th supplement), as amended from time to time, together with any relevant regulations and administrative rules made thereunder from time to time;
- 1.20 “**Investment Policy**” means the investment policy established by the Board of Trustees for the CBE Shared Risk Plan in accordance with Article XVI of the CBE Shared Risk Plan and the *Pension Benefits Act*, as amended from time to time;
- 1.21 “**Member**” means an individual who has joined the CBE Shared Risk Plan in accordance with the terms thereof (or was entitled to a benefit entitlement under the CBE Plan as at the Conversion Date) and who remains contingently or absolutely entitled to a benefit entitlement under the CBE Shared Risk Plan;
- 1.22 “**Part-Time**” has the meaning set forth in the CBE Shared Risk Plan.
- 1.23 “**Party**” or “**Parties**” means a Union or Unions and/or the Province as the context requires;
- 1.24 “**Pension Benefits Act**” means the *Pension Benefits Act*, R.S.N.B. ch. P-5.1, as amended from time to time, together with any relevant regulations and administrative rules made thereunder from time to time;
- 1.25 “**Plan Year**” means the calendar year;
- 1.26 “**Province**” has the meaning set forth in the Preamble;
- 1.27 “**Provincial Appointee**” means a Trustee appointed by the Province in accordance with Article II;
- 1.28 “**Superintendent**” has the meaning set forth in the *Pension Benefits Act*;
- 1.29 “**Trustees Act**” means the *Trustees Act* R.S.N.B. 1973, T-15, as amended from time to time, together with any relevant regulations and administrative rules made thereunder from time to time;
- 1.30 “**Unions**” has the meaning set forth in the Preamble and “**Union**” means one of the Unions as appropriate to the context; and

- 1.31 “**Union Appointee**” means a Trustee appointed by a Union in accordance with Article II.

ARTICLE II BOARD OF TRUSTEES

2.1 COMPOSITION OF BOARD

- (a) The Board of Trustees under this Agreement, who shall be the Trustees of the Fund, shall consist of ten (10) Trustees, (including, for greater certainty, such successor Trustees as may be designated from time to time as hereinafter provided).
- (b) The New Brunswick Nurses’ Union shall appoint three (3) Trustees. The New Brunswick Union of Public and Private Employees shall appoint two (2) Trustees. The secretary of the Board of Management of the Province shall appoint five (5) Trustees.
- (c) The initially appointed ten (10) Trustees shall take office on the Effective Date, at which time the CBE Plan Pension Committee shall cease to act as trustees for the CBE Shared Risk Plan.

2.2 APPOINTMENTS TO THE BOARD

- (a) Appointments to the Board of Trustees shall be for a term of not less than three (3) years, and not greater than five (5) years, as determined by the Party appointing the Trustee. Such appointments to the Board of Trustees may be renewed.
- (b) The members of the Board of Trustees shall act independently of the Party who appointed him or her.
- (c) In order to qualify as a Trustee, a Trustee shall not be a non-resident of Canada for purposes of the *Income Tax Act*. Each Union Appointee shall be a member of the Union that appointed him or her.
- (d) Each Trustee shall agree to accept the trusteeship and to act in that capacity strictly in accordance with the provisions of this CBE Shared Risk Plan and to either execute this Agreement or to sign an Acceptance of Trusteeship upon their appointment as a Trustee.
- (e) A Trustee may be removed by the Superintendent in accordance with the *Pension Benefits Act*. In these circumstances the Party that appointed the removed Trustee shall appoint a replacement Trustee within sixty (60) days, failing which a replacement Trustee may be appointed by the Superintendent in accordance with the *Pension Benefits Act*.
- (f) Each Trustee shall continue to serve until his or her resignation, incapacity, removal by the Superintendent, death, or termination of his or her term as a Trustee on the Board of Trustees.

- (g) Any Trustee may resign at any time upon giving notice to the chairperson of the Board of Trustees. In the event of a Trustee ceasing to act whether by incapacity, resignation, inability to serve, death, removal by the Superintendent, or termination of his or her term as a Trustee on the Board of Trustees, the Trustee shall be replaced by the Party that originally appointed the said Trustee.
- (h) In the event of the incapacity or resignation of a Trustee, such Trustee shall be fully discharged from all future duties, responsibilities and liabilities, except as set out in Article VII of this Agreement, upon notice in writing being received from him or her or an agent, personal representative or power of attorney for personal care on his or her behalf by the chairperson. The notice shall state the date of such resignation or incapacity and shall be effective as of that date. In the event of the death of a Trustee, his or her heirs, administrators, estate trustees, executors and assigns shall be fully discharged from all future duties and responsibilities in respect of the CBE Shared Risk Plan as of the date of the death.
- (i) In the event of the inability, refusal, or incapacity of a Trustee to act as a Trustee, the remaining Trustees representing the Party that appointed the said Trustee shall possess and may exercise any and all the powers of such Trustee for a reasonable time pending the return of the Trustee, or until the assumption of his or her powers, duties, and obligations by his or her successor.
- (j) Any successor Trustee shall become vested with all the property, rights, powers, duties and obligations of a Trustee hereunder immediately upon his or her designation as a successor Trustee and upon his or her execution of an Acceptance of Trusteeship. All the Trustees then in office as well as other appropriate persons shall be notified immediately. No Trustee shall be responsible for any act or omission of the Trustees, the CBE Plan Pension Committee, or any of them, which occurred prior to his or her appointment.
- (k) Upon expiration of the term of any Trustee, a successor, who may be the same or another person, shall be appointed in the manner set forth in this Section 2.2. If no other successor to a Trustee has been appointed as described in this Section 2.2 prior to the end of the Trustee's term, then such Trustee shall be deemed to have been appointed for a further term.
- (l) When a Trustee ceases to act as a Trustee for any reason he or she shall forthwith turn over to the other Trustees any records, books, documents, monies and other properties and assets in his or her possession forming part of the Fund or incidental to his or her duties as a Trustee under this Agreement or relating to the administration of the Fund.

2.3 ACCEPTANCE OF TRUST

A Trustee referred to in the preceding sections of this Article, who shall be a natural person, upon signing this Agreement, or upon written Acceptance of Trusteeship filed with the Board of Trustees in the case of any successor additional Trustee, shall be deemed to accept the trusts

referred to in Article III and to consent to act as Trustee and agree to administer the Fund as provided herein.

2.4 COMPENSATION OF TRUSTEES

Subject to Section 3.4(b), the Trustees shall not be remunerated for the service that they render in carrying out the duties of the Board of Trustees.

2.5 MEETINGS

- (a) Within sixty (60) days of the Effective Date of this Agreement, the Trustees shall meet at a time and place designated by the acting chairperson. At the first meeting of the Trustees, the Trustees shall elect from amongst themselves a chair and a vice-chair. If the chairperson is a Union Appointee, the vice-chair shall be a Provincial Appointee or vice versa. The positions of the chair and vice-chair shall be held for two (2) years from the date of such election. Upon the expiry of the term of the chair and vice-chair, the Trustees may hold a new election if they desire. If no election is held, the original chair and vice-chair shall continue for a further two (2) years. No chair or vice-chair shall remain in office for more than four (4) consecutive years. Upon the expiry of the term of the chair and vice-chair, a new election shall be held amongst the Trustees. If the original chair was a Union Appointee, the new chair shall be a Provincial Appointee and likewise for the vice-chair. In the event of the resignation of the chair during his or her term, the vice-chair shall automatically become the chair and a new vice-chair shall be elected by all the Trustees from amongst the available Trustees. In the event of the resignation of the vice-chair, the available Trustees shall elect among themselves a new vice-chair at the first meeting after the vacancy of the vice-chair. For greater certainty, at all times one of the chair and the vice-chair shall be a Union Appointee and the other shall be a Provincial Appointee. The Board of Trustees may appoint a secretary or such other officers as determined by the Board of Trustees, in its discretion, from time to time. A secretary appointed by the Board of Trustees does not need to be a Trustee.
- (b) All meetings shall be held in person. However, if consented to by the chair and vice chair, any or all of the Trustees may participate in a meeting of the Board of Trustees by means of such telephone, electronic or other communication facilities as to permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and any Trustee participating in such a meeting by such means is deemed to be present at the meeting. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the Board of Trustees held while the Trustee holds office.
- (c) The Trustees shall meet as frequently as they determine, but not fewer than four times per year at such time and place as the Trustees may agree upon.
- (d) Any eight (8) Trustees may call a special meeting of the Trustees at a place so specified by those calling the meeting. Such notice shall either be delivered in

person to all Trustees and to all Parties or transmitted to an electronic address of such persons as provided in Section 7.3, in each case, at least five (5) days prior to the meeting.

- (e) Within nine (9) months of the end of the Plan Year, there shall be held a meeting of the Trustees which shall be the annual meeting at which time the Trustees shall ensure that all reports, procedures and policies required to be reviewed and/or filed by the Trustees, such as audited financial statements, funding policy, investment policy, risk management procedures and any investment management reports, actuarial reports and other reports, procedures and policies have been reviewed and/or filed in accordance with the *Pension Benefits Act*. The Trustees shall invite representatives of the Parties to attend the annual meeting for purposes of observing the tabling of the aforementioned reports, procedures and policies, but such representatives shall have no voice or vote.
- (f) Regular meetings of the Trustees shall be called by the chairperson by giving notice in accordance with Section 7.3 at least ten (10) clear days before the date of the meeting to the Trustees and to the Parties.
- (g) Up to two (2) representatives of each of the Parties may attend any meeting of the Trustees only for the purpose of observing.
- (h) Any notice to the Trustees may be validly given if delivered in accordance with Section 7.3. No notice of meeting shall be necessary when a quorum is present and those comprising the quorum consent to the transaction of business, and the Trustees, if any, who are not present waive notice, in writing.
- (i) In order to transact any business at a meeting, a quorum shall be present. A quorum shall be a least six (6) Trustees. In the event that there is an unequal number of Trustees present for the purpose of any vote there shall be deemed to be an equal number of Trustees appointed by each Sponsoring Party regardless of the actual number of Trustees present. Trustees appointed by the Sponsoring Party with the greater number of appointed Trustees in attendance shall only vote in the number of Trustees appointed by the other Sponsoring Party who are in attendance.
- (j) The decisions of the Trustees shall be a consensus. However, when a consensus cannot be reached, a vote may be held upon the request of any Trustee and the chair shall have the right to vote in any vote. A tie vote results in a dead lock. In the event of a dead lock, a meeting of the Trustees shall be held no later than ten (10) clear days after the dead lock has arisen for the purpose of resolving the issue or such later dates as may be agreed upon by the Trustees. In the event the dispute is not resolved at such meeting, the matter must be referred to the Facilitator.
- (k) Unless otherwise agreed by the Trustees by resolution, policy or written instrument, Roberts' Rules of Order will be used in the conduct of the meetings of the Trustees.

- (l) Decisions may also be made at any time by the Board of Trustees without a meeting provided that both the chair and vice chair so agree, by obtaining the written approval of all Union Appointees and all Provincial Appointees then in office. Written approval may be obtained by means of execution and delivery of original counterparts or by means of executed counterparts delivered electronically in accordance with Section 7.3. Such decision shall be deemed to have been taken as of the date the last member approving the decision signs such approval.
- (m) In the event that a Trustee finds himself or herself in a position whereby he or she (or any person related to him or her within the meaning of the *Income Tax Act*) will personally benefit directly or indirectly from the CBE Shared Risk Plan, excepting the provision of benefits under the CBE Shared Risk Plan, the Trustee shall declare the nature and extent of such benefit immediately upon becoming aware of it, and shall not partake in any decisions affecting the matter.

2.6 FACILITATOR

- (a) In the event of a tie vote among the Trustees, the Trustees shall appoint a Facilitator by unanimous vote. The Facilitator shall not be a member of the Board of Trustees.
- (b) The powers and duties of the Facilitator shall be to decide the matter that has been referred to him or her in accordance with Section 2.5(j). The Facilitator's decision shall be binding on the Board of Trustees.

The Facilitator shall not be obliged to decide immediately a matter that is the subject of a tied vote, and may decide to reserve his or her decision or to carry the matter forward for further discussion at one or more subsequent meetings of the Board of Trustees. Following the decision, the Facilitator's appointment shall terminate.

- (c) If the matter is not resolved in accordance with Section 2.6(a) and 2.6(b) within the time prescribed by the *Pension Benefits Act*, the Superintendent may determine the dispute resolution process to be followed and may appoint such person or persons as he or she considers necessary to resolve the dispute.
- (d) The Trustees may authorize the payment from the Fund to the Facilitator of an honorarium in such reasonable amount as the Trustees may from time to time determine, in addition to an amount equal to reasonable transportation expenses from the Facilitator's principal place of business or residence, plus an allowance for other reasonable out-of-pocket expenses for attending meetings of the Board of Trustees.

2.7 TRUSTEE EDUCATION

The Trustees shall participate regularly in education programs, provided such programs are designed to enhance the knowledge base of the Trustee related to pensions and the administration and investment thereof.

ARTICLE III TRUST AND TRUST FUND

3.1 CONFIRMATION OF TRUST

The trust that was in existence on the conversion of the CBE Hospital Plan to the CBE Shared Risk Plan as administered by the CBE Plan Pension Committee is hereby confirmed to continue notwithstanding the replacement of the CBE Plan Pension Committee by the Board of Trustees.

3.2 TRUST PROPERTY

The Trustees are hereby confirmed to be vested with all right, title and interest in and to the Fund for the uses, purposes and duties set forth in this Agreement. The Trustees shall jointly hold the Fund and act in all matters on behalf of the Fund under the name of the "Trustees of the CBE Shared Risk Plan Trust Fund".

3.3 PURPOSE OF TRUST

The Fund has been continued and the Trustees agree to administer it for the purpose of providing retirement and related benefits for Members and their beneficiaries in accordance with the CBE Shared Risk Plan, the *Pension Benefits Act* and the Funding Policy and for no other purpose.

3.4 APPLICATION OF THE TRUST FUND

To effect the purpose of the Trust, the Board of Trustees shall have the power to use and apply the Fund in the manner set forth in this Agreement including as follows:

- (a) The Board shall cause the Fund to be invested and to be utilized for the payment of retirement and related benefits pursuant to the CBE Shared Risk Plan.
- (b) The Board shall pay or provide for the payment of all reasonable and necessary expenses, costs and fees incurred by the Board of Trustees in connection with the maintenance of the Fund, including for greater certainty expenses related to the administration and investment of the CBE Shared Risk Plan. All reasonable expenses incurred with respect to training and education of Trustees referred to in Section 2.7 both inside and outside of the Province of New Brunswick shall be borne by the Fund. All expenses of the Trustees shall be approved by the Trustees and shall be paid for by the Fund provided such expenses are reasonable as determined by the Trustees and are incurred as a result of attending to the administration and investment of the CBE Shared Risk Plan and the Fund. All expenses must be accompanied by a receipt. In the event that a Trustee is not

paid salary or wages while attending to the affairs of the Trust during regular working hours, the Trustees shall reimburse from the Fund the Trustee his or her lost salary or wages. In the event that a Trustee is not employed, the Trustees may authorize a reasonable per diem amount, in accordance with guidelines set by the Province from time to time, to be paid to such Trustee from the Fund for attendance at meetings of the Board of Trustee or attending to other affairs of the Trust, where deemed to be reasonable by the Trustees.

- (c) The Board of Trustees shall pay or provide for the payment of all taxes or assessments of any kind levied or assessed under existing or future laws upon or in respect of the Fund or any money or property forming a part thereof.
- (d) The following limitations shall apply to the rights to, interests in, or use of, the Fund:
 - i. No Trustee shall, except when acting as a Trustee and in concert with other Trustees as permitted hereunder, receive or otherwise have control over any of the monies or property which at any time form part of the Fund, except for as described in Section 3.4(b).
 - ii. Neither the Province, Unions, Employers, Members, nor any other person, association or corporation shall have any right, title or interest in or to the Fund.
 - iii. Except as otherwise expressly provided herein, no part of the corpus or income of the Fund shall be used for or diverted to purposes other than the exclusive benefit of Members and their beneficiaries.
 - iv. No money, property, equity, or interest of any nature whatsoever in the Fund or in any benefits or monies payable therefrom, shall be subject in any manner by any participant, or person claiming through a Member, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void.
 - v. The assets of the Fund shall be invested in accordance with the Investment Policy and shall be invested only in investments permissible under applicable laws.

3.5 **CONFIRMATION**

The Board of Trustees hereby confirms the adoption of the CBE Shared Risk Plan and the Funding Policy.

3.6 **BINDING EFFECT**

It is hereby agreed that this Agreement is binding upon the Unions, the Province, the Employers and Trustees.

**ARTICLE IV
ADMINISTRATION**

4.1 GENERAL POWERS AND DUTIES OF THE BOARD

The responsibility for the administration, investment and operation of the Fund and the CBE Shared Risk Plan shall be vested in the Board of Trustees, and for such administration, investment and operation the Board of Trustees shall, consistent with the purposes of the Fund subject to the *Pension Benefits Act* and the *Income Tax Act*, have the power, duty and responsibility to:

- (a) Administer, invest and operate the Fund and the CBE Shared Risk Plan in accordance with the terms of this Agreement to ensure that the Fund is used for providing pension and related benefits to Members and beneficiaries.
- (b) Attend to:
 - i. all measurements and reporting required by the *Pension Benefits Act*, including regular actuarial valuations and stochastic modelling of the assets and liabilities of the CBE Shared Risk Plan;
 - ii. administering and investing the CBE Shared Risk Plan, in accordance with the *Pension Benefits Act*, the Investment Policy and the Funding Policy. For greater clarity, this includes the power to increase or decrease contributions and benefits in accordance with the Funding Policy; and
 - iii. all other requirements of an administrator under the *Pension Benefits Act*.
- (c) Enact rules and regulations relating to the administration of the CBE Shared Risk Plan to carry out the terms hereof and may amend such rules and regulations from time to time. Such rules and regulations shall not conflict with any provision of the CBE Shared Risk Plan, the *Pension Benefits Act* or the *Income Tax Act*.
- (d) Construe the provisions of this Agreement, the Funding Policy and the CBE Shared Risk Plan and the terms used therein, and any construction or interpretation adopted by the Board of Trustees in good faith shall be binding and conclusive on all persons affected thereby.
- (e) Except as otherwise provided in the CBE Shared Risk Plan or this Agreement, and notwithstanding the generality of the foregoing, have the following powers:
 - i. to enter into any and all contracts and agreements, either with private individuals, corporations, or with any government department or agency, which can, directly or indirectly, assist in the purposes of carrying out the terms of the CBE Shared Risk Plan;
 - ii. to authorize persons to invest, reinvest and divest the monies of the Fund; and, for greater certainty including, to write, issue, purchase, hold, sell and exchange derivative products and enter into derivative contracts and

transactions, to enter and settle foreign exchange transactions, to engage in securities lending, and to incorporate corporations, establish trusts or to create any other type of investment vehicle for purposes of administering the Fund, making investments of the Fund or holding any investment; however, notwithstanding the generality of the foregoing, the Board of Trustees may direct investment counsellors as to the particular nature and type of investment that, in the absolute discretion of the Board of Trustees, meets the objectives of the Fund;

- iii. to collect, compromise, settle, submit to arbitration and release claims or demands in favour of or against the Fund on such terms and conditions as the Trustees may deem advisable;
- iv. in accordance with the Funding Policy, to establish and accumulate as part of the Fund a reserve;
- v. to pay out of the Fund all real and personal property taxes, income taxes and any other taxes of any kind levied or assessed upon the Fund or the Trustees (acting in their capacity as Trustees);
- vi. to pay from the Fund all reasonable and necessary expenses, costs and fees in connection with the collection of contributions;
- vii. to pay from the Fund such monies as required to hire on a permanent basis or contract basis, or on a fee for service basis such administrators, investment managers, actuaries, legal counsel, accountants, medical experts, pre-retirement experts, clerical assistants and such other experts as the Trustees may, in their absolute discretion determine, notwithstanding that such professional personnel or other personnel may have been in the past or presently employed by any Party and to monitor the performance of all of the above;
- viii. to receive and co-mingle all contributions and monies received by them;
- ix. to authorize borrowings at a chartered bank, trust company or credit union, when necessary for the effective operation of the Fund, subject to the *Income Tax Act* and the *Pension Benefits Act*, provided that:
 - (1) any borrowing shall not exceed a term of 90 days, be a part of series of loans or other transactions or repayments and none of the property of the CBE Shared Risk Plan may be held as security for the borrowed money except where the borrowing is necessary to provide funds for the current payment of benefits or the purchase of annuities under the CBE Shared Risk Plan without resort to a distressed sale of property of the CBE Shared Risk Plan; or

- (2) where the money is borrowed for the purpose of acquiring real property that may reasonably be considered to be acquired for the purpose of producing income from property, the aggregate of all amounts borrowed for the purpose of acquiring the property and any indebtedness incurred as a consequence of the acquisition of the property shall not exceed the cost to the property, and no property of the CBE Shared Risk Plan, other than the real property being acquired, shall be used as security for the borrowed money;
- x. to apply for any waiver related to employee contributions under the *Income Tax Act* (provided that the Trustees shall be obliged to apply for such waiver if the application of the Funding Policy requires an increase in employee contributions and a waiver is necessary under the *Income Tax Act* in order to increase such employee contributions);
- xi. to obtain from the Contributing Employers such information as may be deemed necessary for the proper administration and investment of the CBE Shared Risk Plan and Fund; and
- xii. to the extent not hereinbefore enumerated, all powers under the *Trustees Act*.
- (f) In addition to such other powers as are set forth herein or conferred by law, to do all acts whether or not expressly authorized herein which the Board of Trustees may deem necessary or proper for the administration, investment and operation of the CBE Shared Risk Plan and the Fund held hereunder, subject to the *Income Tax Act* and the *Pension Benefits Act*.

4.2 APPOINTMENT OF AGENTS AND DELEGATION OF POWERS

- (a) The Board of Trustees may appoint one or more agents to carry out any act or transaction required for the administration, investment and management of the CBE Shared Risk Plan and Fund (including, without limitation, a Funding Agency) or may retain advisors. Every agent appointed by the Board of Trustees shall report to and be subject to the direction and continuing supervision of the Board of Trustees.
- (b) The Board of Trustees may, in its discretion, delegate to committees of the Board of Trustees such functions as, in the judgment of the Board of Trustees, may appropriately be performed by such committees.
- (c) The Board of Trustees shall be entitled to rely upon all statements and reports furnished by the Actuary, an accountant, an appraiser, a lawyer or other professional advisor retained by the Board of Trustees.

4.3 **BOOKS AND RECORDS, EXECUTION OF INSTRUMENTS**

- (a) The Trustees shall keep true and accurate books of account and records of all their transactions, meetings and any action taken at such meetings or by informal action of the Trustees and such other data as may be necessary for the proper administration of the CBE Shared Risk Plan and Fund.
- (b) The books, accounts and records shall be audited annually or more often by an independent professionally designated accountant as selected by the Trustees. Copies of such audit shall be available at all times upon reasonable notice for inspection by representatives of the Parties and to Members at the principal office of the Fund.
- (c) The Trustees shall prepare, execute, file and retain records of all reports required by law or deemed by them to be necessary or appropriate for the proper administration of the CBE Shared Risk Plan and Fund. The Trustees shall also maintain on a current basis all information necessary for the actuarial studies required to be made from time to time in connection with the CBE Shared Risk Plan and Fund.
- (d) The Board of Trustees shall provide an annual report to the Province, the Contributing Employers, the Unions and the Members in accordance with the requirements of the *Pension Benefits Act*.
- (e) The Board of Trustees shall furnish to Members all information required to be disclosed pursuant to Article XV of the CBE Shared Risk Plan and the *Pension Benefits Act*.
- (f) The Trustees may authorize a Trustee, the Actuary or other agent, to execute a notice or instrument in writing on behalf of the Trustees. Unless specifically authorized, all notices or other written instruments, signed on behalf of the Trustees, shall be signed by two of the chair, vice-chair and the director of corporate services at the Province. The Trustees may also specifically authorize a Trustee, the Actuary or other agent, to execute a notice or instrument in writing on behalf of the Trustees.
- (g) Unless specifically authorized, all conveyances, mortgages, discharges of mortgage, assignments of mortgages, transfers of stocks, debentures, bonds and other securities, agreements and other documents relating to the CBE Shared Risk Plan, the Fund or to any investment thereof required to be executed by the Trustees shall be signed by two of the chair, vice-chair and the director of corporate services at the Province. The Trustees may also specifically authorize such documents to be executed on behalf of the Trustees by such persons or corporations or in any other such manner as the Trustees may from time to time provide.

- (h) The name of the Fund may be used to designate the Trustees collectively and all instruments may be executed by or for the Trustees as provided hereunder in such name.
- (i) The Trustees and any appointees of the Trustees who are empowered and authorized to sign cheques as outlined above, shall be bonded by a surety company in such amounts as may be determined by the Trustees. The cost of the bonds shall be paid by the Fund.
- (j) All monies received by the Trustees shall be deposited by them in an account maintained in one or more Canadian chartered banks, trust companies or credit unions as the Trustees may designate for that purpose. All accounts shall be drawn upon only by cheques signed by the Trustees who are, from time to time, authorized in writing by resolution of the Trustees to sign such cheques. No cheques signed by the Trustees shall be valid unless signed by two Trustees, one signature from a Union Appointee and one signature from a Provincial Appointee. Notwithstanding the foregoing, the Trustees may, in their absolute discretion, specifically authorize such other persons as the Trustees deem necessary, to sign cheques on behalf of the Trustees and to deal with banks, trust companies, or credit unions on behalf of the Trustees.

ARTICLE V MODIFICATION AND AMENDMENT

5.1 PERMITTED MODIFICATIONS

This Agreement may be modified or amended in any respect from time to time by the Board of Trustees, in such manner as the Board of Trustees deems advisable in carrying out the purposes of this Agreement and the CBE Shared Risk Plan, subject to the restrictions set forth in Section 5.4.

5.2 METHOD OF MODIFICATION

Any proposed modifications of this Agreement shall be submitted in writing to each member of the Board of Trustees not less than ten (10) days before the date of the meeting at which the modification will be considered. Modifications shall be approved in accordance with Section 2.5.

5.3 NOTIFICATION TO UNIONS AND PARTICIPATING EMPLOYERS

The Board of Trustees shall furnish to the Unions, Province and each Contributing Employer a copy of each modification of this Agreement not later than thirty (30) days after the end of the calendar year in which such modification is made.

5.4 **PROHIBITED MODIFICATIONS**

Despite anything in this Agreement to the contrary, no modification of this Agreement may be made which would:

- (a) divert the Fund to a purpose other than as set forth herein; or
- (b) except as provided in Section 3.4(b), provide any compensation from the Fund for any member of the Board of Trustees; or
- (c) be inconsistent with the *Pension Benefits Act*, the *Income Tax Act*, the CBE Shared Risk Plan (including, without limitation, Section 23.2 thereof, which specifies matters requiring approval of the Unions and the Province) or the Funding Policy.

ARTICLE VI TERMINATION OF TRUST

6.1 **TERMINATION OF TRUST**

This Agreement and the Trust shall remain in effect until terminated by action of the Province and the Unions. In the event of termination, the Board of Trustees shall:

- (a) Make provision out of the Fund for the payment of expenses incurred up to the date of termination of the Trust and the expenses incident to such termination.
- (b) Provide for distribution of the assets of the Fund in accordance with the terms of the CBE Shared Risk Plan.
- (c) Arrange for a final audit and report of its transactions and accounts, for the purpose of terminating its trusteeship.
- (d) Arrange for a final audit and report from the Funding Agency.

ARTICLE VII MISCELLANEOUS

7.1 **LIMITATION OF LIABILITY**

- (a) Neither the Board of Trustees nor any Trustee shall be liable for any error of judgment or for any loss arising out of any act or omission in the administration or investment of the CBE Shared Risk Plan and Fund, including, without limitation, with respect to any of the following:
 - i. liability or debt of the Fund that they contract or incur;
 - ii. the non-fulfillment of any contract;
 - iii. the improper application of any part of the Fund; or

- iv. any other liability arising in connection with the administration or investment of the CBE Shared Risk Plan and Fund;
- (b) Notwithstanding the generality of subsection 7.1(a) above, nothing shall exempt any Trustee from liability arising out of his or her own wilful misconduct or bad faith, or entitle such Trustee to indemnification for any amounts paid or incurred as a result thereof, including the costs of litigation.
- (c) The Trustees, any individual or successor Trustee shall have in their favour a first lien and charge against the Fund for his, her or their security and indemnification against any liability of any kind which the Trustees or any of them incur, including the costs of defence of litigation on a solicitor client basis.
- (d) The Trustees and each individual Trustee shall not be liable for any error of judgment or loss arising out of any act or omission in the execution of their duties so long as they, she or he acts in good faith, nor shall any Trustee, in the absence of his or her own wilful misconduct or bad faith, be personally liable for the acts or omissions of himself, herself or any other Trustee or any agent, Actuary or attorney of the Trustee or Trustees.
- (e) No Trustee shall be liable or responsible for any act or default of any other Trustee whether acting singly or jointly unless such Trustee acted in collusion with such other Trustee in a wilful manner or with bad faith, or for any losses or expenses resulting from or occasioned by anything done or neglected to be done in the administration and investment of the CBE Shared Risk Plan and Fund prior to his or her becoming a Trustee.
- (f) The Trustees shall be fully protected in acting upon any instrument, application, notice, request, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons and shall be under no duty to make any investigation or inquiry as to any statement contained in any writing but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.
- (g) The Fund shall indemnify and save harmless the Trustees and each of them, their heirs, executors, administrators, estate trustees and other personal representatives 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 in relation to matters as to which it is determined by a court of competent jurisdiction that the Board of Trustees or Trustee was acting in bad faith or with wilful misconduct in the performance of his, her or their duties hereunder.
- (h) The Province and the Unions (including their respective employees, directors, officers and agents) shall not be liable with respect to any acts, omissions or obligations of the Fund, or of any Trustees, individually or collectively. The Fund shall bear sole liability for the actions of the Trustees as outlined herein and the Fund shall indemnify the Province and the Unions (including their respective

employees, directors, officers and agents) for any and all liability, which may be found against them by any court of competent jurisdiction.

- (i) The Trustees may insure the Trustees by purchasing such errors and omissions insurance and such fiduciary liability insurance as they deem necessary. The Trustees may also insure the property of the Fund against loss (whether due to fire or other causes) by purchasing such insurance as they deem necessary. All insurance premiums shall be paid out of the Fund.
- (j) For greater certainty, this Section 7.1 shall apply to any former Trustee.

7.2 **DEALINGS WITH THE BOARD OF TRUSTEES**

No person, partnership, corporation or association dealing with the Board of Trustees shall be obliged to see that the terms of this Agreement have been complied with, or be obliged to inquire into the necessity or expedience of any act of the Board of Trustees. Every instrument effected by the Board of Trustees in accordance with the terms hereof shall be conclusive in favour of any person, partnership, corporation or association relying thereon that:

- (a) At the time of delivery of said instrument, this Agreement was in full force and effect, and
- (b) Said instrument was effected in accordance with the terms and conditions of this Agreement, and
- (c) The Board was duly authorized and empowered to execute such instrument.

7.3 **NOTICES**

Notice given to a Trustee, Party or any other person shall, unless specified herein, be sufficient if in writing and delivered or sent by post paid first class mail or prepaid telegram to the last address as filed with the Board of Trustees or sent by any means of prepaid transmitted or recorded communication or provided as an electronic document to the last electronic address as filed with the Board of Trustees provided an electronic notice of receipt is received by the sender. For greater certainty, an electronic notice of receipt includes an e-mail from the recipient to the sender indicating he or she has received the communication. Except as herein otherwise provided, the delivery of any statement or document required hereunder to be made to a Trustee or Party shall be sufficient if delivered in person or if sent by post paid first class mail to the last address as filed with the Board of Trustees or if sent by any means of transmitted or recorded communication or provided as an electronic document when dispatched by the sender's own facilities or information system or when otherwise delivered to the appropriate communication company or agency for such dispatch. Notices delivered shall be deemed to have been received on the fifth (5th) day after deposit in a post office or public letter box. Notices sent by any means of transmitted or recorded communication or provided as an electronic document shall be deemed to have been received on the business day on

which electronic notice of receipt of notice is received by the sender, or on the next business day if received on a day other than a business day.

7.4 DISCRETION OF THE BOARD OF TRUSTEES

Any questions arising in connection with the discharge of this Agreement not herein specifically provided for shall be left to the sole discretion of the Board of Trustees and its independent judgment and acting upon such advice as to it seems necessary or proper.

7.5 ADVICE OF COUNSEL

The Board of Trustees may, when necessary, employ legal counsel upon a legal question arising out of the administration of this Agreement, and shall be held completely harmless and fully protected in acting and relying upon the advice of such counsel.

7.6 COSTS OF SUIT

The costs and expenses of any action, suit, or proceeding brought by or against the Board of Trustees or any Trustee or former Trustee (including counsel fees) shall be paid from the Fund, except in relation to matters as to which it shall be adjudged in such action, suit, or proceeding that the Board of Trustees or Trustee or former Trustee was acting in bad faith or with wilful misconduct in the performance of their duties hereunder.

7.7 INVALIDITY

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, its invalidity or unenforceability shall not affect any other provision of this Agreement and the Agreement shall be construed and enforced as if such provision had not been included therein.

7.8 SITUS AND CONSTRUCTION OF TRUST

This Trust is accepted by the Trustees in the Province of New Brunswick and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of the Province of New Brunswick and the laws of Canada applicable therein.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the Parties and the Trustees have affixed their signatures.

HER MAJESTY THE QUEEN in Right of the
Province of New Brunswick as Represented by the
Minister of Finance

NEW BRUNSWICK NURSES' UNION

Per: Blaine Higgs

Name: Minister Blaine Higgs
Title: Minister of Finance

Date: July 15, 2014

Per: Marilyn Quinn

Name: Marilyn Quinn
Title: President

Date: June 23, 2014

NEW BRUNSWICK UNION OF PUBLIC
AND PRIVATE EMPLOYEES

Per: Susie Proulx-Daigle

Name: Susie Proulx-Daigle
Title: President

Date: June 23, 2014

Marilyn Quinn

Marilyn Quinn, Trustee

June 23 2014

Date

Christell Vega

Witness

Janet Walker

Janet Walker, Trustee

June 23, 2014

Date

Christell Vega

Witness

Shelley Duggan

Shelley Duggan, Trustee

June 23, 2014

Date

Christell Vega

Witness

Susie Proulx-Daigle

Susie Proulx-Daigle, Trustee

June 23, 2014

Date

Christell Vega

Witness

Lydia Jaillet

Lydia Jaillet, Trustee

June 23/2014

Date

Christell Vega

Witness

Tom Maston

Tom Maston, Trustee

June 23 2014

Date

Christell Vega

Witness

Vicki Squires

Vicki Squires, Trustee

June 23, 2014

Date

Christell Vega

Witness

Mark Thompson

Mark Thompson, Trustee

June 23, 2014

Date

Christell Vega

Witness

Gisèle Beaulieu
Gisèle Beaulieu, Trustee

2014-07-07
Date

Marianne Orenette
Witness

Richard Luton
Richard Luton, Trustee

2014-06-23
Date

Christel Van
Witness

SCHEDULE A

ACCEPTANCE OF TRUSTEESHIP

THE UNDERSIGNED having been appointed to serve as a Trustee in accordance with the Agreement and Declaration of Trust dated as of the 23rd day of June, 2014, relating to the CBE Shared Risk Plan does hereby accept the trusts confirmed by the aforesaid Agreement and Declaration of Trust, consents to act as a Trustee thereunder and agrees to administer the CBE Shared Risk Plan Trust Fund and the CBE Shared Risk Plan in accordance with the terms thereof.

Dated at Fredericton, NB this 23rd day of June, 2014

Witness

Name