

**Elementary Teachers' Federation of Ontario  
EMPLOYEE LIFE AND HEALTH TRUST**

**AGREEMENT AND DECLARATION OF TRUST**

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THIS AGREEMENT AND DECLARATION OF TRUST made as of the 6 day of October, 2016.

BETWEEN:

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

OF THE FIRST PART

- and -

THE ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION ("OPSBA")

OF THE SECOND PART

- and -

THE ELEMENTARY TEACHERS' FEDERATION OF ONTARIO ("ETFO")

OF THE THIRD PART

**WHEREAS**, pursuant to the Letter of Agreement (forming part of the Central Collective Agreement for teachers executed on November 2, 2015 between the Crown, The Ontario Public School Boards' Association ("OPSBA") and The Elementary Teachers' Federation of Ontario ("ETFO")), and pursuant to a Letter of Agreement (forming part of the Central Collective Agreement for education workers executed on November 27, 2015 between the Crown, OPSBA and ETFO) it has been agreed that an employee life and health trust to be known as the "**Elementary Teachers' Federation of Ontario Employee Life and Health 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** the purpose of the Trust is to provide benefits to teachers and other education sector workers in the Province of Ontario on a sustainable, efficient and cost effective basis;

**AND WHEREAS** any employer bound by the terms and conditions of the Central Collective Agreement for teachers or the Central Collective Agreement for education workers must participate in the Trust in respect of employees covered by the Central Collective Agreement and successor collective agreements;

**AND WHEREAS** the Trust may also provide Benefits, as defined herein, on a fully segregated basis, to other employees in the publicly funded elementary and secondary education sector in Ontario on terms that are agreeable to the Trustees and permitted under the Central Collective Agreements;

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

**AND WHEREAS** the Trustees desire to declare the Trust's 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 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 for the Board of Trustees, who shall be, or in the case of a firm or corporation, a member of the staff shall be, a Fellow of the Canadian Institute of Actuaries;

- (b) **“Administrative Agent”** means a person or persons, including one or more employees, or a firm or corporation, selected by the Trustees to perform duties and responsibilities related to the administration of one or more Benefit Plans;
- (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 of Ontario, together with the regulations thereunder, as amended from time to time, which require compliance by a Plan or the Fund;
- (e) **“Authorized Investments”** means investments made by the Trustees in accordance with any investment policies or 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 an Employer does not deal at arm’s length;
- (f) **“Beneficiary”** means a Participating Employee and his or her eligible dependents and beneficiaries as defined in a Plan;
- (g) **“Benefits”** means health (including but not limited to vision and travel), life and dental benefits, including accidental death and dismemberment (AD&D), medical second opinion, navigational support benefits that qualify as “designated employee benefits” under s. 144.1(1) of the *Income Tax Act* (Canada), as amended from time to time;
- (h) **“Benefit Plan” or “Plan”** means a plan for the provision of Benefits to a group of Participating Employees covered by one or more Participation Agreements, which shall set out the Eligibility Requirements, rules, regulations and procedures for the payment or provision of Benefits to those Participating Employees from the Separate Account maintained in respect of the Benefit Plan;

- (i) **"ETFO-EW Plan"** means the Benefit Plan for the provision of Benefits to Participating Employees covered by the Central Collective Agreement for education workers, and such other Participating Employees as are permitted under a central or local collective agreement, including any Eligibility Requirements, as amended from time to time, funded by the ETFO-EW Separate Account;
- (j) **"ETFO Plan"** means the Benefit Plan for the provision of Benefits to Participating Employees covered by the Central Collective Agreement for teachers, and such other Participating Employees as are permitted under such Central Collective Agreement, including any Eligibility Requirements, as amended from time to time, funded by the ETFO Separate Account;
- (k) **"Central Collective Agreement"** means the Central Collective Agreement for teachers or the Central Collective Agreement for education workers, as applicable, and "Central Collective Agreements" means the Central Collective Agreement for teachers and the Central Collective Agreement for education workers;
- (l) **"Central Collective Agreement for teachers"** means the agreement on central terms between OPSBA and ETFO and agreed to by the Crown pursuant to the *School Boards Collective Bargaining Act, 2014* for the initial term of September 1, 2014 to August 31, 2017, inclusive, and including Letter of Agreement #6 to which the Crown is a party, together with any and all supplements, extensions and renewals thereof and successor agreements thereto;
- (m) **"Central Collective Agreement for education workers"** means the agreement on central terms between OPSBA, and ETFO and agreed to by the Crown pursuant to the *School Boards Collective Bargaining Act, 2014*, for the initial term of September 1, 2014 to August 31, 2017, inclusive, and including Letter of Agreement #15 to which the Crown is a party, together

with any and all supplements, extensions and renewals thereof and successor agreements thereto;

- (n) **"Cessation Date"** means the date as of which a person who was a Trustee ceases to be a Trustee;
- (o) **"Claims Fluctuation Reserve"** means a reserve held as part of a Separate Account, with respect to a Plan, to offset future adverse claims fluctuations;
- (p) **"Consultant"** means such person, firm or corporation as may be appointed from time to time by the Trustees for the purpose of consulting with and advising the Trustees with respect to a Plan;
- (q) **"Contributions"** means Employer Contributions and Employee Contributions;
- (r) **"Crown Claims Fluctuation Reserve Payments (Education workers)"** means the one-time contributions by the Crown to the ETFO-EW Separate Account in respect of the ETFO-EW Plan as set out in s. 16.1;
- (s) **"Crown Claims Fluctuation Reserve Payments (Teachers)"** means the one-time contributions by the Crown to the ETFO Separate Account in respect of the ETFO Plan as set out in s.16.1;
- (t) **"Education Sector Employee Life and Health Trusts"** means the ETFO ELHT, the Ontario Secondary School Teachers' Federation Employee Life and Health Trust, The Ontario English Catholic Teachers' Association Employee Life and Health Trust, Fiducie de soins de santé au bénéfice d'employés de l'AEFO and any other Employee Life and Health Trusts providing Benefits to employees employed by an Eligible Employer;
- (u) **"Eligible Employer"** means an employer of employees in the publicly funded elementary and secondary education sector in Ontario;

- (v) **"Eligibility Requirements"** means the rules, regulations and procedures for determining the eligibility, or the discontinuance of eligibility, for Benefits, as set out in a Plan, as amended from time to time;
- (w) **"Employee Contributions"** means any and all sums of money required to be paid by Participating Employees to the Trustees to provide Benefits in accordance with a Plan, as determined by the Trustees from time to time;
- (x) **"Employer Contributions"** means any and all sums of money required by:
  - (i) a last executed Central Collective Agreement; or
  - (ii) if a Central Collective Agreement does not apply to a group of Participating Employees, by the terms of a Participation Agreement;to be paid by a Participating Employer to the Trustees to provide Benefits to Participating Employees;
- (y) **"Fund"** means the Elementary Teachers' Federation of Ontario Employee Life and Health Trust fund established by this Trust Agreement and comprises all property or interests in property held by the Trustees from time to time under this Trust Agreement;
- (z) **"Funding Policy"** means the policy adopted by the Trustees pursuant to s. 16.4 or s. 17.2, as applicable, governing the financial basis upon which Benefits are provided to Beneficiaries and setting out the consequences of deficiencies or surpluses in relation to a Plan's liabilities and the consequences of Contribution shortfalls or excesses in relation to the costs of a Plan;
- (aa) **"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;
- (bb) **"Insurance Company"** means an insurance company licensed to carry on business in Canada;

- (cc) **"Participating Employee"** means a person who is or was employed by an Eligible Employer, who meets the Eligibility Requirements of a Plan and who has not opted out of coverage under a Plan, and for greater certainty, includes a Retired Employee who commenced participation in a Predecessor Benefit Plan before August 31, 2013;
- (dd) **"Participating Employer"** means any Eligible Employer who:
  - (i) in respect of employees covered by a Central Collective Agreement is, as of September 1, 2014, bound by a Central Collective Agreement; or
  - (ii) in respect of a group of employees who are not covered by a Central Collective Agreement, is bound by a Participation Agreement described in clause (ii) of s. 1(ee) that covers the group of employees;and shall include their successors and assigns;
- (ee) **"Participation Agreement"** means (i) with respect to a person, including a Retired Employee, whose participation in the Trust as a Beneficiary is provided for in a Central Collective Agreement, such Central Collective Agreement; and (ii) in the case of any other person, an agreement in writing between the Trustees and an Eligible Employer, in a form prescribed by the Trustees in accordance with section 7.1 that, among other things, provides that such person is eligible for Benefits coverage by the Trust, stipulates the Contribution requirements in respect of such person (or group of persons to which he or she belongs) and binds the Eligible Employer to this Agreement;
- (ff) **"Participation Date"** means, in relation to a Participation Agreement signed by a Participating Employer, the date on which a Participating Employer commences participation in the Trust for the group of employees covered by the Participation Agreement;
- (gg) **"Party"** means the Crown, OPSBA, or ETFO individually and **"Parties"** means the Crown, OPSBA, and ETFO collectively;

- (hh) **"Predecessor Benefit Plan"** means a benefit plan provided by a Participating Employer to either or both Participating Employees and Retired Employees immediately prior to the Participating Employer's Participation Date;
- (ii) **"Prime Rate"** means the rate of interest per annum from time to time publicly quoted by the Royal Bank of Canada, Main Branch, in Toronto, Ontario, as being the reference rate of interest (commonly known as its "prime rate") used by it to determine rates it will charge on loans to its commercial customers of varying degrees of creditworthiness;
- (jj) **"Remaining Start-up Costs"** means the unpaid portion, if any, of the percentage of estimated annual benefit costs to be provided by the Crown under the Central Collective Agreements in effect on the effective date of this Agreement as start-up costs for the Trust;
- (kk) **"Retired Employee"** means a person who was employed by a Participating Employer, and was, while employed, a member of ETFO, and who is eligible under a Central Collective Agreement to receive Benefits under the Trust;
- (ll) **"Separate Account"** means a segregated fund or segregated account within the Fund used for the provision of Benefits in accordance with the terms of a Plan, to a discrete and identifiable group of Participating Employees and, except in any provision relating to the pooled investment of Trust assets, includes any account maintained to receive contributions from Retired Employees in respect of a Voluntary Plan, and, for greater certainty, notwithstanding any other provision of this Agreement, the assets allocated to a Separate Account shall form part of the Fund;
- (mm) **"Termination Date"** means the earlier of:
  - (i) the date upon which the entirety of the Fund is transferred to the trustee of a successor trust; or

- (ii) a future date determined under s.19.1 and occurring before the date specified in paragraph (i) above;
- (nn) **"Trust" and "ETFO ELHT"** means the "Elementary Teachers' Federation of Ontario Employee Life and Health Trust";
- (oo) **"Trustees"** means the Trustees and any additional and replacement trustees, and **"Board of Trustees"** shall mean all of the Trustees in office at the relevant time;
- (pp) **"ETFO-EW Separate Account"** means the Separate Account maintained by the Trustees within the ETFO ELHT with respect to the ETFO-EW Benefit Plan, and shall comprise:
  - (i) the Crown Claims Fluctuation Reserve Payment (Education workers) paid to the Trustees;
  - (ii) additional Claims Fluctuation Reserve payments made by Participating Employers;
  - (iii) Employer Contributions in accordance with the Central Collective Agreement for education workers, and such other Employer Contributions as provided for under a Participation Agreement;
  - (iv) Employee Contributions, as required by the Trustees;
  - (v) all other property which is acquired at any time by the Trustees; and
  - (vi) all capital accretions and income arising from all property referred to in paragraphs (i), (ii), (iii), (iv) and (v) above;less any authorized payments therefrom;
- (qq) **"ETFO Separate Account"** means the Separate Account maintained by the Trustees within the ETFO ELHT with respect to the ETFO Benefit Plan, and shall comprise:
  - (i) the Crown Claims Fluctuation Reserve Payments paid pursuant to the Central Collective Agreement for teachers to the Trustees;

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

less any authorized payments therefrom;

- (rr) **"Voluntary Plan"** means a Benefit Plan that is fully insured and funded through individual premiums paid by individuals.

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

- 2.1 **Settlement of Trust Fund.** The Trustees acknowledge receipt of the Crown Claims Fluctuation Reserve Payments (Teachers), Crown Claims Fluctuation Reserve Payments (Education workers) and Remaining Start-up Costs to be utilized in accordance with 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.

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

- 3.1 **Name and Title.** The Trust hereunder shall be known as the "Elementary Teachers' Federation of Ontario Employee Life and Health Trust." The title to all assets of the Fund shall be jointly vested in the Trustees. The Trustees shall jointly hold the property of the Fund and shall deal with it in accordance with the terms of this Agreement. The name of the Trust set out above may be used to refer to the

Trustees collectively, and all agreements and other instruments may be entered into and executed by or on behalf of the Trustees in such name.

- 3.2 **Manner of Payment.** All payments and Contributions may be made payable to the "Trustees of the Elementary Teachers' Federation of Ontario Employee Life and Health Trust" or to the "Elementary Teachers' Federation of Ontario Employee Life and Health Trust."
- 3.3 **Legal Sources of Payments.** The Trustees may accept money or property from sources other than those described in this Agreement provided that acceptance from any such other source is not contrary to the terms of this Agreement and does not cause the Trust to lose its status as an "employee life and health trust" within the meaning of the *Income Tax Act* (Canada).

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

- 4.1 **Purpose.** The Trust is established for the sole purpose of providing Benefits to the Beneficiaries.
- 4.2 **Employee Life and Health Trust.** The Trustees shall administer the Fund and the Plans as an employee life and health trust in compliance with s.144.1 of the *Income Tax Act* (Canada) as amended.
- 4.3 **Rights or Interest.** Neither the Parties hereto, nor any Participating Employer, 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 or any Separate Account, except as specifically provided by this Trust Agreement or a Plan and as may be permitted by Applicable Law; provided however that nothing in the Trust Agreement shall prevent a Contribution, made by a Participating Employer or Participating Employee by mistake of fact, from being returned by the Trustees to such person.
- 4.4 **Seizure or Attachment.** Subject to terms of any Plan and the laws of the Province of Ontario, no monies, property or equity of any nature whatsoever in the

Fund or in any Separate Account, or policies or benefits or monies payable therefrom, shall be subject in any manner by any 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 a Plan, the Trustees shall have the power to withhold payment of such benefit to such Beneficiary until such anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, garnishment, mortgage, lien, charge or seizure or other legal process is cancelled or withdrawn, and the Trustees shall have the right to use and apply the amount of such Benefit during such period as the Trustees may deem best for the support and maintenance of such Beneficiary.

4.5 **No Diversion.** Except as otherwise provided herein, at no time prior to the termination and wind-up of the Fund shall (i) any part of the corpus or income of the Fund, including the Separate Accounts, be used for or diverted to purposes other than the provision of Benefits for the exclusive benefit of Beneficiaries, and in connection therewith the payment of reasonable costs of establishment, amendment and administration of the Trust and Plans and the investment of the Fund including the compensation of the Trustees payable in accordance with the terms of this Agreement and all other disbursements reasonably made and expenses incurred in the performance of the duties of the Trustees hereunder or arising out of the Trust; and (ii) the assets credited to a Separate Account be used to meet the liabilities of or to subsidize the liabilities of, or defray the expenses attributable to another Separate Account.

4.6 **No Guarantee.** Nothing contained in the Trust or a Plan shall constitute a guarantee that the assets of any Separate Account will be sufficient to pay any Benefits offered from time to time under a Plan to any person throughout his or her

lifetime or make any other payment. The obligation of the Trustees to pay Benefits provided under a Plan is expressly conditioned on the sufficiency, in their judgment, of the assets and expected income and Contributions allocated and to be allocated in the future to the Separate Account maintained in respect of such Plan.

- 4.7 **Binding Effect.** It is hereby agreed that the Trust Agreement is binding on the Crown, OPSBA, ETFO, The Council of Trustees' Association, the Participating Employers, and all Beneficiaries and their respective heirs, executors, administrators, successors and assigns.
- 4.8 **Continued Application of Letters of Agreement.** Notwithstanding that a Board has become a Participating Employer in the ETFO ELHT, with respect to the obligations of a Board to continue to provide benefits to casual employees, term assignments and occasional teachers as stipulated in applicable Letters of Agreement ("LOAs") outside of the ETFO ELHT, participation in the ETFO ELHT for such employees does not negate the obligations provided under the applicable LOAs. For greater certainty, this means that, in the event a Board employee obtains coverage under the ETFO ELHT for a long-term occasional assignment, participation rights in the Board's benefits plan shall continue to apply prior to and at the cessation of the long-term occasional assignment.

## **ARTICLE 5 – ESTABLISHMENT OF THE ETFO PLAN AND ETFO-EW PLAN AND ONGOING TRUSTEE RESPONSIBILITIES**

- 5.1 **Establishment of the ETFO Plan and ETFO-EW Plan.** Subject always to the requirements of this Agreement, including s. 10.17, and the applicable Central Collective Agreements, the Trustees shall establish the ETFO Plan and the ETFO-EW Plan. The ETFO Plan shall define the Benefits to be provided to Participating Employees covered by the Central Collective Agreement for teachers and their eligible beneficiaries, and the ETFO-EW Plan shall define the Benefits to be provided to Participating Employees covered by the Central Collective Agreement for education workers, and their eligible beneficiaries.

- 5.2 **Amendment of the ETFO Plan and ETFO-EW Plan by Trustees.** Subject always to the requirements of the Funding Policy and the applicable Central Collective Agreements, and provided that the Trustees may not make any change, modification or alteration that could reasonably be expected to cause the Trust to cease to qualify as an “employee life and health trust” under section 144.1 of the *Income Tax Act* (Canada), the Trustees may change, modify, or otherwise alter the ETFO Plan and ETFO-EW Plan, in their sole and absolute discretion (including by way of changing, enhancing, reducing or eliminating any benefit or term or condition of eligibility and coverage for a Benefit). Any change, modification or alteration to the ETFO Plan or the ETFO-EW Plan may take effect retroactively or otherwise, provided that Benefits, once paid, may not be reclaimed. The ETFO Plan and ETFO-EW Plan may provide different Benefits for different groups of Participating Employees, including, without limitation, different groups of Participating Employees with the same Participating Employer, and may provide for different contributions for such groups.
- 5.3 **Amendment of the ETFO Plan and ETFO-EW Plan by the Parties.** The Parties may amend the ETFO Plan and/or the ETFO-EW Plan to provide other employee benefit programs.
- 5.4 **Establishment and Amendment of Other Plans.** The Trustees may:
- (a) establish one or more Benefit Plans in respect of some or all Participating Employees not covered by a Central Collective Agreement who participate in the ETFO ELHT pursuant to one or more Participation Agreements. The Trustees shall establish, for each such Plan, a corresponding Separate Account. The Trustees may change, modify, reduce, increase or otherwise alter such other Plan or Plans, in their absolute and unfettered discretion, to align, as much as possible, the assets in and Contributions to the Separate Account with the Benefits and liabilities of the Plan associated with the Separate Account. Any such alteration may take effect retroactively or otherwise, provided that Benefits, once paid, may not be reclaimed; and

- (b) establish, on their own or together with other Education Sector Employee Life and Health Trusts, one or more Benefit Plans for other Participating Employees who are entitled to Benefits from the Fund under a Central Collective Agreement but who are not eligible to participate in the ETFO Plan or the ETFO-EW Plan. The Trustees shall establish a corresponding Separate Account for each such Plan.

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

- 6.1 **Separate Accounts.** The Trustees may establish any number of Separate Accounts within the Fund. The assets in each Separate Account shall be, for the purposes of this Agreement and for all other purposes, held as segregated funds and used for the provision of Benefits, in accordance with the terms of a Plan, to a discrete and identifiable group of Participating Employees, in accordance with the requirements of one or more Participation Agreements. Under no circumstances shall the assets in a Separate Account be used other than to provide Benefits and fund reserves related to the discrete and identifiable group of Participating Employees for whom the Separate Account is maintained. Notwithstanding the foregoing, the assets of a Separate Account may be used to pay administrative and investment costs incurred by the Trustees with respect to the Fund and the Plans generally, and may be commingled with the assets of other Separate Accounts for such purpose, to the extent that such costs are reasonably determined by the Trustees to relate, in whole or in part, to the Separate Account and the Participating Employees whose Benefits are provided through the Separate Account. For further clarity, the ETFO Separate Account and the ETFO-EW Separate Account are Separate Accounts for the purposes of this Agreement. Further, each Separate Account shall be maintained for so long as there remain assets credited thereto.
- 6.2 **Pooled Investments.** Notwithstanding s. 6.1, assets credited to the Trust and to each Separate Account may be pooled for investment purposes, provided that, except as provided in s. 6.1 with respect to the payment of administrative and investment costs, under no circumstances may the assets credited to a Separate

Account be available to meet the liabilities of or to subsidize the liabilities of, or defray the expenses attributable to another Separate Account. For greater clarity, costs associated with the investment of assets that have been pooled pursuant to this s. 6.2 may be payable from the pooled funds, but shall be allocated on a reasonable basis by the Trustees to the Separate Accounts from which such pooled funds derive.

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

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

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

- (a) Each Participating Employer described in s.1(dd)(i) shall promptly pay to the Trustees or to such person, firm or corporation as the Trustees may from time to time direct, all Employer Contributions in the amount and in the manner described in the applicable Central Collective Agreement, or such other agreements between the parties, until such amounts are varied by a successor Central Collective Agreement. Each Participating Employer described in s.1(cc)(ii) shall promptly pay to the Trustees or to such person, firm or corporation as the Trustees may from time to time direct, all Employer Contributions in the amount and in the manner described in the Participation Agreement to which the Employer is a party, until such

amounts are varied by a successor or amended Participation Agreement. All Employer Contributions shall be remitted in equal monthly instalments by the first business day of each month from and after the Participating Employer's Participation Date. Payment by a Participating Employer of Employer Contributions in accordance with the directions of the Trustees shall discharge the Employer of any obligations with respect to the payment or application of such Employer Contributions except as otherwise provided herein, or in the Central Collective Agreement where applicable.

- (b) The Participating Employers' absolute obligation to make Employer Contributions to the Fund shall not be subject to any set-off or counter-claim that a Participating Employer may have for any liability of any Beneficiary.

### 7.3 **Strikes and Lockouts**

- (a) During any periods of full withdrawal of service at a location where services are ordinarily provided to, or on behalf of, a Participating Employer, by some or all Participating Employees covered by a collective agreement with a Participating Employer or a third party who provides services to a Participating Employer, including, for greater certainty, the full withdrawal of services at different locations where services are ordinarily provided to, or on behalf of, a Participating Employer on a rotating basis (a "strike"), or a lock-out (within the meaning of the *Labour Relations Act, 1995* (Ontario) of Participating Employees, Employer Contributions to the Trust in respect of such Participating Employees will continue.
- (b) The Trustees shall, promptly following the end of the strike or lockout, advise the collective bargaining agent and the Participating Employer of the amount of Contributions paid by the Participating Employer in respect of a period of strike or lockout, and the collective bargaining agent shall reimburse the Participating Employer for such Contributions within 60 days of the last day of the strike or lockout.

- (c) For purposes of clarity, Participating Employers shall continue to make Employer Contributions and otherwise comply with this Agreement during labour disruptions and interruptions that are not a strike or a lockout within the meaning of s.7.3(a).
- (d) Notwithstanding 7.3(a) and (b), the parties to the strike or lock-out may agree to alternative arrangements.

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

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

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

participate in a Plan, changes in status of Participating Employees, and the determination of the Benefits to be provided under a Plan.

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

- (a) enter upon that Participating Employer's premises at any reasonable time or times, upon giving thirty (30) days written notice, for the purpose of carrying out an inspection, audit or examination of the books of account, documents, payrolls, records, and other materials relating directly to a Benefit Plan under which current or former employees of the Participating Employer participate or participated, or the obligations of the Participating Employer with respect to the Trust under this Agreement, a Benefit Plan or a Participation Agreement; and,
- (b) make inquiries of the Participating Employer or any persons employed or otherwise engaged by a Participating Employer, solely in respect of matters that may be the subject of such an inspection, audit or examination under s. 7.6(a), which persons shall cooperate and will produce all books of account, documents, payrolls, records, or any other material which are relevant to the said inspection, audit or examination;

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

accountant related to any such inspection, audit or examination shall be borne by the Fund unless it reveals a material breach by the Participating Employer of its obligations.

7.8 **Errors and Omissions.** Participating Employer errors and retroactive adjustments shall be the responsibility of the Participating Employer. If an error is identified by a Participating Employer, notification must be made to the Trustees within seven (7) days of identification of the error.

7.9 **Claims Support.**

- (a) A Participating Employer shall complete and submit the Waiver of Life Insurance Premium Statement to the Trustees for life waiver claims;
- (b) Each Participating Employer shall provide to the Trustees, within 30 days of their Participation Date, all beneficiary designations on behalf of Participating Employees current as of the Participating Employer's Participation Date;
- (c) Each Participating Employer shall encourage Participating Employees to update their beneficiary declarations via the Participating Employee portal.

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

## **ARTICLE 8 – ENFORCEMENT**

8.1 **Interest.** Whenever and so often as a Participating Employer fails to pay or remit Contributions on or before the date upon which such Contributions were due (subject to any grace period established pursuant to s. 7.10) to be paid, such Participating Employer will also pay, as liquidated damages, to the Trust interest at two (2) percentage points above the Prime Rate from the date the Contributions were due to be paid until the actual date of payment thereof both before and after judgement (if any) and the Trustees shall not seek any higher rate of interest in any

proceeding against the Participating Employer as liquidated damages or otherwise.

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

8.3 **Nature of Right of Action.** The right of action hereby conferred upon the Trustees will be in addition to and independent of any other procedure or remedy which may be available to the Trustees. No Participating Employer shall be entitled to have such action delayed, stayed or otherwise postponed on the ground that the claim of the Trustees in such action might also be a claim capable of being dealt with by a trade union or Participating Employer under a Central Collective Agreement or other collective agreement.

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

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

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

9.1 **Deducting and Remitting Employee Contributions.** A Participating Employer shall deduct from the wages of a Participating Employee in their employ the amount of Employee Contributions that the Participating Employee is required by the Trustees to make, and shall remit such Employee Contributions to the Trustees, on or before the last day of each month, from and after the Participating Employer's Participation Date.

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

#### **ARTICLE 10 – TRUSTEES**

10.1 **Board of Trustees.** The Board of Trustees of the ETFO ELHT shall consist of nine (9) voting Trustees to be appointed as follows:

- (a) Five (5) Trustees shall be appointed by ETFO (hereinafter referred to as "Employee Trustees");

- (b) Three (3) Trustees shall be appointed by either OPSBA or the Crown, as determined by OPSBA and the Crown (hereinafter referred to as "Employer Trustees");
- (c) One (1) Trustee shall be appointed by OPSBA and the Crown, , and shall be an Employer Trustee for purposes of this Agreement;
- (d) The Board of Trustees will include among its members two independent experts, one appointed by ETFO and one appointed by OPSBA and the Crown;
- (e) The appointed independent expert Trustees shall:
  - (i) not be currently employed or retained, or have been employed or retained at any time during the one (1) preceding year, by any of the ETFO ELHT , the shared services office supporting the ETFO ELHT, any federation or trade union that represents teachers or education workers, any School Board, School Board Association or the Crown;
  - (ii) have no systemic conflict of interest in their role as Trustee such that as a result of the person's employment, or other position, personal relationships or legal or financial interests, the person can reasonably be expected to have ongoing or frequent conflicts of interest acting as Trustee;
  - (iii) be accredited from one of the following fields: actuarial science, law, accounting, or be a Certified Employee Benefit Specialist; and
  - (iv) have demonstrated experience with employee benefit plans.

10.2 **Term of Office and Succession.** Each Trustee shall be appointed to serve an initial term of three (3) years. Trustees may be reappointed twice, subject to a maximum tenure of nine years. Notwithstanding, ETFO, and OPSBA and the Crown, may each determine to appoint one or more of their initial Trustees for a term of fewer than three (3) years.

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

- (a) be an individual;

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

10.4 **Acceptance of Trusts.** Each individual, upon signing and filing with the Trustees an Acceptance of Trust in the form set out in Schedule "D" hereto, is deemed to accept the trusts created and established by this Agreement, to have consented to act as a Trustee and to have agreed to administer the Fund and Trust as set out herein.

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

- (a) **Resignation.** A Trustee may resign by giving notice in writing to the remaining Trustees, the Crown, OPSBA and ETFO. Any such notice must state the date, not prior to the actual date of the notice, on which such resignation is to take effect. Such resignation will take effect on the date stated in the notice unless another Trustee has been appointed to and has accepted the appointment as a Trustee pursuant to subsection (h), below, in which event the resignation takes effect as of the date of acceptance by the successor Trustee.
- (b) **Removal.** A Trustee may be removed at any time by his or her appointing Party by that Party giving seven (7) days' written notice to the Trustees, the Administrative Agent, and the other Parties. The effective date of removal will be the day immediately following the expiry of the notice period.
- (c) **Automatic Removal.** A Trustee shall be automatically removed if a receiving order is made against him or her or if he or she makes an

assignment under the *Bankruptcy Act*, or ceases to meet any of the qualifications in 10.3.

- (d) **Incapacity.** In the case of a Trustee becoming incapable of acting as a Trustee, the appointment of the Trustee may be terminated by notice from the Trustee, or his or her personal representatives, to the Party that appointed the Trustee and the remaining Trustees.
- (e) **Death.** In the event of the death of a Trustee, his or her heirs, administrators, executors and assigns shall be fully discharged from all duties, responsibilities and liabilities in respect of the Trust Agreement arising after the date of death.
- (f) **Remaining Trustees.** In the event of the death, resignation, incapacity or removal of any one or more of the Trustees, the remaining Trustees shall have jointly all the powers, rights, estates and interests of the Trustees as provided hereunder and shall be charged with all duties of the Trustees hereunder.
- (g) **Status.** Any Trustee resigning or being removed and the personal representatives of any deceased Trustee shall forthwith turn over to his or her successor Trustee, or if no successor is immediately appointed, to the other Trustees, any and all records, books and documents in any form, in the possession of the Trustee incidental to his or her duties as a Trustee under this Agreement or relating to the administration of the Fund.
- (h) **Appointment of Replacement Trustees.** When a Trustee dies, resigns, is removed or reaches the end of his or her term and is not re-appointed, a successor Trustee will be 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 "D", 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 11.8 of this Agreement.

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

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

- (a) are entitled to receive Benefits under a Plan; or
- (b) except in the case of independent expert trustees appointed under s.10.1, are an officer or employee of the Crown, OPSBA, another employer

association, an Ontario school board, the ETFO or its constituent local unions.

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

- 10.8 **Validity of Actions of the Trustees.** Notwithstanding that it is subsequently discovered or determined that there existed some defect in the appointment, removal or qualifications of any Trustee, or, that at the time a decision or action of the Trustees was taken there was not appointed the required number of Trustees, all acts and proceedings taken by the Trustees in good faith at any time while any such defect existed will nevertheless be valid and effective.
- 10.9 **Fees and Expenses.** Trustees shall not be entitled to any fee or payment from the trust on account of their holding office , except in accordance with s. 10.10 or in accordance with a policy adopted by the Board, as applicable. However, subject to the approval of the Trustees, a Trustee may be reimbursed from the Fund for his or her actual expenses incurred in attending each meeting of the Trustees at which the Trustee is physically present, the reasonable expenses incurred for attending educational conferences or courses for which attendance the prior approval of the Trustees has been obtained and the actual expenses in carrying out any other duty in connection with the Trust, all in accordance with policies to be established from time to time by the Trustees.
- 10.10 **Appointed Independent Expert Trustees' Compensation.** To the extent permitted by law, the two independent expert Trustees appointed in accordance with s.10.1(d) shall be entitled to reasonable compensation for the performance of their duties hereunder. They shall receive an annual retainer as determined by the Trustees, payable in equal quarterly instalments in arrears, and a meeting fee as determined by the Trustees for each meeting of the Trustees in which the appointed independent expert trustee participates, provided, however, that the combination of retainer and meeting fees shall not exceed a limit of \$40,000,

adjusted annually for changes in the Consumer Price Index, per calendar year. In the event that an appointed independent expert Trustee's tenure as a trustee ends on a day other than the last day of the quarter for which a quarterly instalment of his or her annual retainer is due, he or she shall be paid for the pro rata portion of such quarter that coincides with his or her tenure as a Trustee. For purposes of a meeting fee, participation by telephone or other simultaneous communication device shall qualify for participation fee only if the meeting is scheduled and anticipated to last at least one (1) hour. Participation in telephonic conferences to address ad hoc issues does not qualify an appointed independent expert Trustee for a participation fee.

- 10.11 **Chair.** The Trustees shall, from among their number, appoint a Chair of the Board of Trustees for a term of at least one (1) year and not longer than three (3) years, which term shall be renewable at the discretion of the Trustees. The Chair shall act as the chair of all meetings of the Trustees and perform the duties set out in this Agreement or assigned to the Chair by the Board. The Trustees may terminate a trustee's appointment as Chair at any time, and may replace the Chair as circumstances require. Notwithstanding the foregoing, in the event the Chair is unable to attend a meeting of the Trustees for which there is a quorum, the Trustees attending such meeting shall, from among their number, appoint a Chair for purposes of that meeting and such meeting Chair shall perform the duties assigned to the Chair of the Board solely for that meeting.
- 10.12 **Minutes of Meetings.** The Trustees shall keep minutes or records of all meetings, proceedings and acts of the Trustees. Such minutes shall be accurate and complete in all material respects, but need not be verbatim.
- 10.13 **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 any two (2) Trustees or by such other persons as the Trustees may by resolution appoint.

**10.14 Meetings.**

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

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

**10.16 Meetings by Conference Call or Consent in Writing.** Any meeting of the Trustees may be held by means of a conference telephone call or such other electronic means as deemed appropriate by the Trustees. Any decision is

effective without a meeting of the Trustees if evidenced by instrument in writing signed by all the Trustees, which may be signed in counterparts.

#### 10.17 **Quorum and Voting.**

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

#### 10.18 **Trustees' Deadlock.**

- (a) **Deadlock.** A deadlock shall be deemed to exist wherever a proposal, motion or resolution made by any Trustee is neither adopted nor rejected by a majority vote, or where a proposal, motion, or resolution is unable to be made at a meeting due to lack of a quorum at two (2) consecutively called meetings. In the event of a deadlock, a meeting of the Trustees shall be held at least ten (10) days after the deadlock has arisen for the purpose of either resolving the matter in dispute or agreeing upon the designation of a mediator to assist in the resolution of the matter in dispute. In the event a

meeting is not held within ten (10) days after the deadlock has arisen, the dispute shall proceed to arbitration in accordance with s. 10.19(c);

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

- 10.19 **Meetings with the Crown, OPSBA and ETFO.** The Trustees shall convene an annual meeting with representatives of the Crown, OPSBA and ETFO to discuss matters of interest to the Trustees, the Crown, the OPSBA, or the ETFO.

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

- 11.1 **Administration of the Trust Fund.** The administration of the Fund shall be the responsibility of the Trustees. The Board of Trustees are responsible for the operational and financial sustainability of the Trust, and they shall administer the Fund in accordance with the express powers given to them pursuant to this Trust Agreement and the Plans. The terms of this Trust Agreement and the Plans shall be construed and administered so as to comply with the requirements to be an employee life and health trust under subsection 144.1(2) of the *Income Tax Act* (Canada). Any term of this Trust Agreement or the Plans that would otherwise be inconsistent with the requirements of such provisions shall be modified to the extent necessary to comply with such requirements.
- 11.2 **Trustee Responsibilities.** The Trustees are responsible for the operational and financial sustainability of the Trust, in accordance with the Central Collective Agreement, including, but not limited to:
- (a) review of the design of the ETFO Plan and ETFO-EW Plan at regular, periodic intervals and such other times as the Trustees determine to be prudent;
  - (b) the validation of the sustainability of the ETFO Plan and ETFO-EW Plan design at regular, periodic intervals and such other times as the Trustees determine to be prudent;
  - (c) setting and revising Employee Contribution rates or premium requirements and deductibles with respect to the ETFO Plan and the ETFO-EW Plan at regular, periodic intervals and such other times as the Trustees determine to be prudent;

- (d) delivery of annual reports of Trust actuaries and auditors to the Parties, including reports regarding recommendations on sustainability and any subsequent changes to Plan design;
- (e) on an ongoing basis identifying efficiencies that can be achieved in the administration and investment of the ETFO ELHT;
- (f) design, adoption and implementation of a Funding Policy or Policies and an investment policy or policies with respect to the ETFO Plan, the ETFO-EW Plan, and with respect to other Plans;
- (g) compliance with all applicable statutory requirements, including all applicable tax statutes; and
- (h) procurement of adjudicative, administrative, insurance, consultative and investment services.

11.3 **Shared Services.** The Trustees may enter into shared service arrangements with the trustees of other Employee Life and Health Trusts covering employees in Ontario's education sector, or with other entities, and may delegate to such shared service entities any responsibilities or powers that the Trustees consider appropriate. Shared administrative services will be provided by the Administrative Agent. The Ontario Teachers Insurance Plan ("OTIP") or an entity designated by OTIP shall be the Trust's Administrative Agent for a period of three years from the first Participation Date and the role of Administrative Agent will be competitively procured within 4 years from the last Participation Date of a Participating Employer but not later than August 31, 2021. The Trustees shall monitor the performance of the Administrative Agent, and shall require that the Administrative Agent, insofar as it performs duties or discharges responsibilities in relation to the ETFO Plan, ETFO-EW Plan and any other Plans, comply with Applicable Legislation, act solely and exclusively in the best interests of the Beneficiaries, and, where receiving or having access to personal information of Beneficiaries, establish a privacy policy based on and in compliance with Applicable Legislation.

- 11.4 **Collection of Contributions.** The Trustees may use all reasonable means to collect and receive all Contributions due to the Fund, and shall, promptly after receipt, deposit such Contributions in a Trust Fund account, established in a reputable bank, trust company, or other financial institution.
- 11.5 **Participation Agreements - Separate Accounts.** The Trustees may enter into Participation Agreements that provide for the participation of Eligible Employers on a segregated basis, such that the assets and Contributions related to the Eligible Employer(s) will be held in a Separate Account and used for the provision of Benefits in accordance with the terms of a Plan, to a discrete and identifiable group of Participating Employees. For greater certainty, Article 6 will apply to any Separate Account established for a discrete and identifiable group of Participating Employees pursuant to a Participation Agreement and the Trustees shall separately account for the assets and liabilities of each Separate Account, including, without limitation:
- (a) deposits, contributions, remittances, subsidies, investment and other income from whatever source to each Separate Account; and
  - (b) Benefits to Participating Employees from each respective Separate Account, and the investment, administrative, and other expenses attributable to the maintenance of each Separate Account and the administration of the Plan to which the Separate Account relates.
- 11.6 **Authority of Trustees.** All persons dealing with the Trustees are released from inquiry into any decision or authority of the Trustees and from seeing to the application of any monies, securities or other property paid or delivered to the Trustees and may rely upon any document required to be executed by the Trustees which has been executed as provided herein, as having been duly authorized.
- 11.7 **Liability of Trustees.** The Trustees shall incur no liability, either collectively or individually, in acting in accordance with this Agreement, data or information

believed by them to be genuine and accurate and to have been made, executed, delivered or assembled by the proper parties. No Trustee shall be liable for the act or omission of any other Trustee. No Trustee shall incur any liability as a result of acting in good faith on (i) the actions, opinion or advice of the Administrative Agent as provided in s. 11.3 or, (ii) provided reasonable care was used by the Trustees in the engagement and continued retention of any Administrative Agent appointed after the initial term or any person referred to in s. 11.10(o) or (q), the actions, opinion or advice of any such Administrative Agent or person, in respect of any matter relating to the administration, or investment, as applicable of the Trust, the Fund or a Plan. No Trustee shall be liable for any honest error of judgment nor shall any Trustee be personally liable for any obligations of the Trust or a Plan, except for obligations arising out of his or her own dishonesty, willful misconduct or gross negligence.

11.8 **Trustee Indemnity.** The Fund shall indemnify and save harmless the Trustees, 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.

11.9 **Liability of the Crown, OPSBA, and ETFO.** None of the Crown, OPSBA, nor ETFO is a fiduciary with respect to any Plan or the Fund, and none shall be responsible or liable for:

- (a) the validity of the Trust Agreement;
- (b) any delay occasioned by any restriction or provision in this Trust Agreement, the rules and regulations of the Trustees issued hereunder, or any contract to which the Trustees are party;
- (c) any act or omission of the Trustees;

- (d) any investment of the Fund, including the making or retention of any deposit or investment of the Fund, or any portion thereof, or the disposition of any such investment, or the failure to make any investment of the Fund, or any portion thereof, or any loss or diminution of the Fund;
- (e) any of the obligations or acts of the Trustees notwithstanding that such Trustees may be associated with OPSBA or ETFO or any Participating Employer;
- (f) any Contributions required to be paid to the Fund, other than its own Contributions as may be required by a Central Collective Agreement or other collective agreement, if applicable, or a Participation Agreement;
- (g) any losses, expenses, claims, demands or actions in connection with the establishment of the Fund;
- (h) the insufficiency of the Fund or any Separate Account to provide Benefits under any Plan;
- (i) the provision or failure to provide any Benefits.

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

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

the Trustees may provide Benefits in accordance with a Benefits Plan that 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 applicable Funding Policy and may make such arrangements and agreements, including insurance arrangements, on behalf of the Trust with

corporations, firms or persons to provide the Benefits required to be provided pursuant to a Plan and this Agreement from time to time; and in addition the Trustees shall have the power to design and administer supplemental Benefits, or make other payments as may be permissible under Applicable Legislation, for Participating Employees that belonged to a predecessor benefit plan of a Participating Employer that transferred surplus assets to the ETFO Trust;

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

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

(c) **Legal Action by Trustees**

the Trustees may, if they deem it necessary, seek a judicial determination or declaratory judgement on any questions of the construction of this Agreement or a Plan, or to obtain directions as to any action hereunder. Except as otherwise determined by the court, (a) the Parties will each have standing to participate in any judicial proceeding initiated by the Trustees under this Section 11.10(c) and; (b) any such determination or judgment is binding on the Crown, OPSBA, ETFO, Participating Employers, Participating Employees and Beneficiaries;

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

the Trustees may make, revise from time to time and enforce such policies, rules and regulations consistent with the provisions of this Agreement as the Trustees consider advisable for the effective administration of the Trust;

(e) **Power to Determine Evidence**

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

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

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

(g) **Power to Sell**

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

(h) **Power to Incorporate**

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

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

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

(j) **Power to Retain**

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

(k) **Power to Invest**

the Trustees shall have unlimited discretion in the investment and management of the Fund or a Separate Account with respect to particular investments and schemes of investment, notwithstanding that any investment or investments may not be authorized by law for trustees and whether any investment is within or without Canada, including without restricting the generality of the foregoing, investments in mutual funds, common trust funds and pooled funds, and shall have the power to engage in transactions ancillary to any such investments, including, without restricting the generality of the foregoing, hedging, derivatives and securities lending transactions;

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

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

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

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

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

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

(o) **Investment Advice**

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

(p) **Power to Commingle**

to commingle all or part of the Fund or a Separate Account with assets of other trust funds for the purpose of making joint, collective or participating

investments with respect to such commingled assets, if separate accounts reflecting the share of the Trust are maintained;

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

to engage such persons as they consider advisable to assist in the management or administration of the Trust or a Plan including, without limitation, an agent, Administrative Agent, custodian, lawyer, accountant, actuary, financial or investment advisor or benefits consultant, manager, broker, surveyor, valuation expert and appraiser. The Trustees may delegate to such persons to the extent deemed advisable by the Trustees from time to time, including without limitation the authority to subdelegate any such authority, and pay to such persons out of the Fund any fees or charges thereby incurred;

(r) **Power to Hire and Terminate Benefits Coordinator, Employees**

to hire, by themselves or collectively with one or more other Education Sector Employee Life and Health Trusts, directly or indirectly, and terminate a Benefits Coordinator, and such other employees, as they see fit, to determine their duties and responsibilities and other terms of employment and to pay such employees' compensation from the Fund;

(s) **Power to Delegate**

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

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

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

(u) **Power to Borrow**

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

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

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

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

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

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

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

(y) **Power to Insure**

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

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

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

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

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

(bb) **Banking Arrangements**

- (i) to appoint from time to time any credit union, bank, trust company or other company to be the banker or one of the bankers for the purposes of the Fund or a Separate Account and from time to time may revoke any such appointment. 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:

- (ii) sign, endorse, make, draw or accept any cheques, promissory notes, bills of exchange or other negotiable instruments;
- (iii) 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
- (iv) negotiate with, deposit with or transfer to the said banker any cheques, promissory notes, bills of exchange or other negotiable instruments and orders for the payment of money and for the said purpose to draw, make, sign, endorse all or any of the foregoing, and such signatures will be binding upon all the Trustees;

(cc) **Taxes, Etc.**

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

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

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

- (i) costs of collection and disbursement of funds pursuant to the provisions of this Agreement, a Plan or any other agreement;
- (ii) salaries of office and supervisory staff;
- (iii) cost of office equipment, supplies and incidental material;
- (iv) costs of computer equipment and facilities and computer maintenance;
- (v) rent of office space, furnishings, fixtures and office equipment;

- (vi) cost of producing Participating Employer lists and addresses;
- (vii) professional, consulting, advisory, and audit fees; and
- (viii) such other costs that in the opinion of the Trustees may be shared;

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

(ee) **Power to Indemnify**

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

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

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

- (a) establish and maintain accounts for the Fund and for each Separate Account, in accordance with this Agreement;

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

11.13 **Employees and Services.** The Trustees may hire, employ and terminate employees on such terms and conditions as the Trustees deem necessary and appropriate. Services provided by the ETFO ELHT are to be available in both official languages, English and French.

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

11.15 **Annual Audits.** The books of account and records of the Trustees, including the books of account and records pertaining to the Fund and the Separate Accounts, shall be audited at least once every year by the auditor of the Fund, as of the fiscal year end of the Fund. A statement of the results of the annual audit shall be available for inspection by interested persons at the principal office of the Fund and at such other suitable place as the Board of Trustees may designate from time to time. Copies of such statement shall be delivered to each Trustee within sixty (60) days after that statement is prepared.

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

## **ARTICLE 12 – PARTICIPATION**

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

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

- 12.2 **Membership in the ETFO ELHT.** Subject to any requirements or restrictions in the Central Collective Agreements, the ETFO Plan and ETFO-EW Plan shall define the persons eligible to participate in each Plan, and the terms and conditions of their eligibility for Benefits.

- 12.3 **Other Employees.** Subject to applicable law, ETFO ELHT coverage may be extended to other active employee groups employed by Eligible Employers, through Separate Accounts and separate Plans, with the consent of their

bargaining agents and employers or, for non-union groups, in accordance with an agreement between the Trustees and the applicable Participating Employer. Any such group must request inclusion in the Trust, and must agree to comply with the Trust's financial, data, and administrative requirements, and will be provided with generic branding for their benefit plan.

- 12.4 **Retired Employees as of August 31, 2013.** Retired Employees who commenced participation in a Predecessor Benefit Plan before August 31, 2013 are eligible to participate in the Trust and the ETFO or ETFO-EW Plan, as the case may be, based on prior arrangements with their employer.
- 12.5 **Retired Employees Post August 31, 2013.** Retired Employees who ceased employment between September 1, 2013 and a Participating Employer's Participation Date are eligible to participate in the Trust through a Voluntary Plan and Separate Account on such terms as may be prescribed by the Trustees.

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

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

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

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

- 13.2 **Quarterly Financial Information.** On a quarterly basis the Trustees shall provide the following information to the Crown, OPSBA and the ETFO with respect to the ETFO ELHT and its Separate Account, and to the Crown, OPSBA, and the ETFO with respect to the ETFO-EW Separate Account:

- (a) total Employer and Employee Contributions received from each Participating Employer, and Employee Contributions received directly from Participating Employees;
- (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.

13.3 **Annual Information.** On an annual basis the Trustees shall provide the following information to the Crown, OPSBA and the ETFO with respect to the ETFO Plan and its Separate Account, and to the Crown, OPSBA, and the ETFO with respect to the ETFO-EW Plan and its Separate Account:

- (a) audited financial statements;
- (b) actuarial valuation report, including projections regarding the adequacy of contributions to cover projected benefit and related costs for a period of not less than three (3) years into the future;
- (c) a summary of the annual investment performance of each Separate Account; and
- (d) a discussion and analysis of the material issues affecting the ETFO ELHT and each Separate Account and Plan.

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

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

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

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

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

## **ARTICLE 16 – FUNDING OF THE ETFO PLAN AND ETFO-EW PLAN**

- 16.1 **Claims Fluctuation Reserve.**
- (a) The Crown shall pay:
    - (i) a one-time contribution to the ETFO Separate Account equal to 15% of annual benefits costs, determined in accordance with the Central Collective Agreement for teachers, to establish a Claims Fluctuation Reserve ("CFR") on or before September 1, 2016; and
    - (ii) a one-time contribution to the ETFO-EW Separate Account equal to 15% of annual benefits costs, determined in accordance with the Central Collective Agreement for education workers, to establish a Claims Fluctuation Reserve ("CFR") on or before September 1, 2016;
  - (b) On a day that a Participating Employer commences participation in the ETFO ELHT, or as soon as reasonably and feasibly possible thereafter, all eligible and available surpluses in Participating Employer-owned defined benefit plans will be transferred, pursuant to and in accordance with a

Central Collective Agreement, to the Trust by the applicable Participating Employer.

**16.2 Negotiated/Ongoing Funding.**

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

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

- (a) The first actuarial report shall be prepared and provided to the Trustees no sooner than six months and no later than twelve months following the implementation of the ETFO Plan and the ETFO-EW Plan;
- (b) If the actuarial report with respect to the ETFO Plan or the ETFO-EW Plan projects the CFR balance to be less than 8.3% of Plan expenses over a projected three year period, then a Plan design change must be made to address the projected shortfall in the CFR. If a motion to adjust the Plan design is not adopted by the Board of Trustees, the Trustees will increase Employee Contributions to restore the CFR balance to above 8.3% of Plan expenses.

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

- (a) the actuarial methods and assumptions to be used in actuarial valuations of the ETFO Plan and ETFO-EW Plan;
- (b) the margins or explicit reserves, if any, to be used in the actuarial valuations of the ETFO Plan and ETFO-EW Plan;
- (c) the consequences of any excess or deficiency of assets relative to the ETFO Plan or ETFO-EW Plan's liabilities as may be disclosed in any actuarial valuation, subject to the following conditions:
  - (i) Surpluses in a Separate Account may not be refunded or distributed in cash, but may be used, as determined by the Trustees for any or all of the following:
    - (A) CFR or other reserves;
    - (B) enhance Benefits or reduce Eligibility Requirements;
    - (C) expand eligibility for the ETFO Plan and the ETFO-EW Plan;  
or
    - (D) reduce Participating Employee Contributions.
  - (ii) Actual and projected funding deficiencies of the ETFO Plan and ETFO-EW Plan will be addressed by no later than the next regular Plan renewal by one or more of the following methods:
    - (A) use of the CFR or other reserves;
    - (B) increased Participating Employee Contributions;
    - (C) amendment of the ETFO Plan and/or ETFO-EW Plan or termination of Benefits (other than life insurance benefits);
    - (D) adoption of measures to decrease administration or delivery costs or Fund investment costs;
    - (E) restriction of eligibility in the ETFO Plan and/or ETFO-EW Plan;

- (iii) the Funding Policy shall require that the Trustees take the necessary actions or decisions with respect to the ETFO Separate Account and ETFO-EW Separate Account during a period in which the CFR is less than 8.3% of annual ETFO Plan or ETFO-EW Plan expenses over a projected three year period. If the motion to amend the ETFO Plan and/or ETFO-EW Plan is not adopted, the Trustees will increase Participating Employee Contributions to restore the balance to at least 8.3% of the total annual expenses.

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

16.6 **ETFO Plan and ETFO-EW Plan Amendments.** The Trustees:

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

## **ARTICLE 17 – FUNDING OF PLANS (OTHER THAN THE ETFO AND ETFO-EW PLAN)**

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

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

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

documents and instruments and do or cause to be done such other acts as may be required to carry out any such amalgamation.

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

19.1 **Termination.** The Parties may terminate this Trust Agreement by instrument in writing, in which case the Trustees shall wind up and terminate the Fund within twelve (12) months of such date of termination as follows (provided that the Trustees may extend such period for completing the wind up of the Fund where they determine that it is advisable to do so):

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

19.2 **Notification of Termination.** Upon termination of the Fund in accordance with this 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 20 – TRUSTEES' ACCOUNTS**

- 20.1 **Trustees' Accounts.** The Trustees shall keep such books, records and accounts as are necessary and appropriate to document the assets and transactions of the Fund and Separate Accounts.
- 20.2 **Audit Requirement.** The Trustees shall cause the Fund and each Separate Account to be audited on an annual basis. The auditor's report will be shared with the Crown, OPSBA and ETFO.

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

- 21.1 **Notices.** Any notice under the terms and conditions of this Agreement may be given to a person by any of the following methods and, in respect of the following methods, will be deemed to be duly given as follows:
- (a) upon receipt, if delivered personally;
  - (b) on the seventh day after the date of sending, if sent by regular mail to the last known address of the person entitled to receive such notice as shown in the records of the Trustees and whether or not actually received; or
  - (c) at the time when the appropriate confirmation is received, if sent by telecopier, facsimile sending machine, or electronic mail to the last known telecopier number, facsimile number or electronic mail address of the person entitled to receive such notice as shown in the records of the Trustees.
- 21.2 **Notice to the Trustees.** Notwithstanding section 19.1, a notice hereunder to a Trustee will only be effective as and when actually received by such Trustee.
- 21.3 **Change in Notice Period.** Notwithstanding any other provision of this Agreement, any notice period required to be given under the terms of this Agreement may be reduced or dispensed with by agreement between the person required to give such notice and the person(s) entitled to receive it.

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

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

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

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

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

22.1 **Review of the Trust Agreement.** The Parties shall review this Agreement in 2020 and every five years thereafter.

## **ARTICLE 23 – MISCELLANEOUS**

23.1 **Illegality.** If any provision of the Trust Agreement or the rules and regulations made pursuant hereto, or any steps in the administration of the Fund, are held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the Trust Agreement, the Plan, or the said rules and regulations, unless such illegality or invalidity prevents accomplishment of the

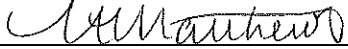
objectives and purposes of the Central Collective Agreements, this Trust Agreement or the Plan.

- 23.2 **Fiscal Year.** The fiscal year of the Fund shall end on the 31st day of December, in each year.
- 23.3 **Situs.** The Province of Ontario shall be deemed to be the situs of the Fund and all questions pertaining to the validity, construction and administration of the Trust Agreement, the Plan and the fund shall be determined in accordance with the laws of the Province of Ontario. The Trust shall be administered such that throughout each taxation year it is resident in Canada for purposes of the *Income Tax Act* (Canada) determined without reference to 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

Crown

Per: 

Name: Nancy Matthews

Title: Deputy Minister

I/We have the authority to bind the  
Crown

OPSBA

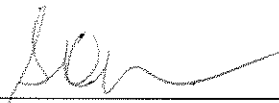
Per: 

Name:

Title: Executive Director

I/We have the authority to bind  
OPSBA

ETFO

Per: 

Name:

Title: General Secretary

I/We have the authority to bind ETFO

**Schedule "A"**

**ETFO EMPLOYEE LIFE AND HEALTH TRUST  
PARTICIPATION AGREEMENT  
(FOR UNIONIZED EMPLOYEES WHO DO NOT BARGAIN CENTRALLY)**

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

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

\_\_\_\_\_  
(the "Board")  
- and -

**ETFO ELHT BY ITS TRUSTEES  
(the "Trustees")**

In consideration of the Board becoming a participating employer ("Participating Employer") in the ETFO ELHT (the "Trust") in respect of certain of its employees ("Participating Employees"), commencing \_\_\_\_\_ ("Participation Date"), and making contributions to the Trust in accordance with this Participation Agreement; and in consideration of the Trustees making health and welfare benefits available to the employees of the Participating Employer covered by the ETFO ELHT in accordance with this Participation Agreement, the Trustees and the Participating Employer agree as follows:

1. The Trustees shall administer a Benefits Plan, referred to herein as the '● Benefit Plan' for the Participating Employees covered by this Participation Agreement. A copy of the ● Benefit Plan is attached as Appendix A.
2. Contributions by the Participating Employer and Participating Employees shall be held in a Separate Account, referred to herein as the '● Separate Account'. The assets of the ● Separate Account, together with earnings thereon, shall be the exclusive source of funding for the ● Benefit Plan.
3. The Participating Employees covered by this Participation Agreement are described in Appendix "B". [NTD: there may be complexity to this description – full time, part-time and casual employees may or may not be covered].
4. In consideration of the provision of the ● Benefit Plan by the Trustees, the Participating Employer shall make the following contributions and payments to the Trustees:
  - (a) an amount of \$\_\_\_\_\_ on before [DATE] on account of the Trustees' costs related to the creation and establishment of the ● Benefit Plan;

- (b) an amount of \$\_\_\_\_\_ on or before [DATE] that shall be available to the Trustees to offset administration and benefits costs under the ● Benefit Plan;
  - (c) a monthly Participating Employer contribution of \$\_\_\_\_\_, effective [DATE], to be remitted by the Participating Employer to the Trustees within ten (10) days of the end of each month on account of the ongoing costs of benefits and administration of the ● Benefit Plan (the "Monthly Employer Contribution"); and
  - (d) a monthly deduction and remittance of Employee Contributions in the amount of \$\_\_\_\_\_, to be remitted by the Participating Employer to the Trustees within ten (10) days of the end of each month on account of the ongoing costs of benefits and administration of the ● Benefit Plan (the "Monthly Employee Contribution").
5. Monthly Contributions shall be added to the ● Separate Account, and benefit costs and all related expenses in respect of Participating Employees shall be deducted from the ● Separate Account.
6. The Trustees shall ensure that all monies paid in accordance with this Participation Agreement by the Participating Employer or the Participating Employees are segregated and held in the ● Separate Account, so that such funds, as well as earnings, gains or increments on such funds shall be used to provide benefits under the ● Benefit Plan. It is understood and agreed that the assets of the ETFO ELHT Fund, including the assets of other Separate Accounts, shall not be used to provide benefits to Participating Employees hereunder or to pay expenses related to them, nor shall the assets in the ● Separate Account be available to provide benefits to members of other Benefit Plans sponsored by the Trust. In the event that funding provided with respect to the ● Benefits Plan is not sufficient, in the Trustees' opinion, to sustain the Benefits offered under the ● Benefit Plan, the Trustees may, in their exclusive discretion, amend and reduce the Benefits under the ● Benefits plan or otherwise alter the ● Benefits Plan to align the funding with the cost of Benefits.
7. In the event that the Participating Employer fails to comply with any of the requirements set out in this Participation Agreement, the Trustees may take legal proceedings to enforce this Agreement, including the collection of such amounts owing by the Participating Employer pursuant to this Participation Agreement. If the Participating Employer is delinquent in remitting Monthly Participating Employer of Employee Contributions, the Participating Employer shall pay the Trustees for any related losses or costs, including interest, liquidated damages and costs in accordance with the provisions of this Participation Agreement and the Agreement and Declaration of Trust dated [date] as amended ("Trust Agreement") which established the ETFO ELHT.

8. The Participating Employer agrees to be bound by Trust Agreement. The Trustees will provide to the Participating Employer, at its request, a copy of the Trust Agreement and any subsequent amendments as they are made.
9. The Participating Employer acknowledges it has no right to appoint or participate in the appointment of employer trustees under the Trust Agreement.
10. The Participating Employer acknowledges that it has no right, claim or interest in or to any moneys held in the ABC Separate Account.
11. The Trustees may deliver services related to the ● Benefit Plan through a third party (the "Administrator") in conjunction with the services it provides to other beneficiaries of the ETFO ELHT or other Separate Accounts, or pursuant to any shared service arrangements with other Employee Life and Health Trusts.
12. **Provision of Data.** The Participating Employer agrees to provide to the Trustees, or, in the Trustees' discretion, the ● Plan administrator, all information which they may reasonably require in order to properly record and process Contributions and to establish and maintain benefit records for each eligible employee, without charge or compensation. All data shall be provided by the Participating Employer electronically, in a format acceptable to the ● Plan administrator.
13. **Initial Transfer of Data.** Without limiting section 12, upon 60 calendar days written notice, the Participating Employer agrees to provide to the Trustees, or in the Trustees' discretion, the ● Plan administrator, all information which they may reasonably require in order to establish initial records for each eligible employee, in a format acceptable to the ● Plan administrator. Such information may be obtained directly from the Participating Employer's records or the Participating Employer may direct the current carrier to provide such information.

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

- Employee information for each eligible employee (name, address, identification number, birth date, gender, salary, status etc.);
- Current Insurance information for each covered employee (insurance effective date, current amounts of Life and Accidental Death and Dismemberment coverage including any optional amounts of employee, spouse or dependents coverage, and single or family coverage level for Health and Dental etc.);
- Information on each covered dependent (name, birth date, gender, details on whether the dependent is covered under any other group plan etc.);
- Benefit history (pre-authorized drug or dental treatments, certain dollar amounts claimed and the associated dates that the expenses were claimed);
- A listing of all employees not actively at work on the Participation Date including:

- Employees currently covered for life benefits under the waiver of premium provision;
- Disabled employees whose life insurance is being maintained on a premium paying basis;
- Employees on an approved leave of absence

The information details and format for the initial transfer of data is outlined in Appendix ETFO. The required information and format of the data may be subject to change from time to time on 30 days advance notice to the Participating Employer.

14. **Ongoing Data Requirements.** On a weekly basis from and after a Participating Employer's Participation Date, or within such other time as requested by the Trustees, the Participating Employer shall provide all relevant data updates for Participating Employees to the ● Plan administrator, in an electronic format compatible with the ● Plan administrator's systems. The information details and format for ongoing data requirements are outlined in Appendix OPSBA. The required information and format of the data may be subject to change from time to time.
15. **Leaves of Absence.** Administration of all leaves of absence, including long-term disability where applicable, will be the responsibility of the ● Plan administrator. During such leaves of absence, the Participating Employer shall continue to provide HRIS information and updates as defined in subsection 10. The Participating Employer shall provide electronic updates of Participating Employees' work status to the Trustees (or, at their direction, the ● Plan administrator), including changes in types of leaves of absence, at least two (2) weeks in advance of the leave.
16. **Incompatible Electronic Systems.** Where a Participating Employer cannot provide information in an electronic format compatible with the administrator's systems, the Participating Employer shall enter the required employment information into the ● Plan administrator's benefit site (Plan portal) in advance of a new Participating Employee's commencement of active employment. The Participating Employer shall enter any subsequent demographic or employment changes as specified by the Plan's Administrator on the Plan administrator's benefit site within one week of the change occurring. Where a Participating Employer does not have an electronic system that is compatible with the ● Plan administrator, a written member coverage report shall be used as an interim solution until the electronic system required is in place. The Trustees may levy a charge on any Participating Employer, and the Participating Employer shall pay the charge, whose electronic system is not compatible the Plan Administrator's benefit administration systems, in an amount determined by the Trustees to compensate the Trustees for incremental administrative costs arising from the incompatibility.

**17. Information on Plan Enrollment:**

- (a) The Participating Employer shall distribute benefit communication material as provided by the ● Plan administrator to existing Participating Employees within 10 days of receipt of such material; and
- (b) The Participating Employer shall distribute benefit communication material as provided by the ● Plan administrator to all new Participating Employees within 10 days from the date of hire.

18. All personal information about employees provided to the Administrator of the Trust pursuant to section 12 of this Agreement and the provisions of the Collective Agreement will be treated as Confidential Information. Except as required by law, Confidential Information will only be disclosed to the Trustees, employees of the Administrator, a service provider retained by the Trustees, the individual to whom the Confidential Information pertains or a representative of that individual who has been authorized in writing. The Confidential Information is also subject to the provisions of the Trust's Privacy Statement. The Trustees will provide to the Participating Employer, at its request, a copy of the Trust's Privacy Statement.

19. This Participation Agreement may be terminated by the Participating Employer only with the consent of the Trustees on a date ("Termination Date") and on such terms as are mutually agreed. It may also be terminated by the Trustees as of a Termination Date, specified in a written notice, which is at least 90 days after the day of the notice. In the event of a termination, the Trustees shall prepare a terminal accounting statement and provide it to the Participating Employer within [time] after the Termination Date [NTD: to discuss content and timing of terminal accounting statement]. The Trustees shall have no liability for any benefit claims incurred after the Termination Date by Participating Employees, and the Participating Employer shall indemnify the Trustees in respect of any such claims and any costs, including legal costs, related to such claims.

**PARTICIPATING EMPLOYER:**

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

**ETFO TRUST, BY ITS TRUSTEES**

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

20. On behalf of [name of union], the undersigned consents to the terms of this Participation Agreement between the Board and the ETFO Employee Life and Health Trust. I confirm that [name of union], though providing consent to this Participation Agreement, is not a party to this Participation Agreement and is not bound by the Agreement and Declaration of Trust dated [insert date] establishing the ETFO Employee Life and Health Trust.
21. The Trustees may consult with the [name of union] in the event that the Trustees conclude, in good faith, that benefit levels or other terms of the Participating Employees' Benefit Plan should be reduced or otherwise altered. In the event of such a consultation, the [name of union] shall respond to the Trustees within the time limits set by the Trustees. The [name of union] understands and agrees that the Trustees may from time to time amend the Participating Employees' Benefit Plan (including by way of changing, enhancing, reducing or eliminating any benefit or term or condition of eligibility and coverage for a benefit) where the Trustees conclude, in good faith, that the financial circumstances of the Participating Employees' Benefit Plan warrant such adjustments, notwithstanding the absence of any consultation and notwithstanding any contrary views that may be expressed by the [name of union]. Further, the ● Benefit Plan may provide for different benefit structures for different groups of Participating Employees, including, without limitation, different groups of Participating Employees covered by the this Participation Agreement.
22. The Trustees may contact the [name of union] as follows:

Name of Contact:

Address:

Phone:

Fax:

Email:

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

[name of union]

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

Authorized Officer

Appendix "A" - ● Benefit Plan  
Appendix "B" – Employees Covered by ● Benefit Plan  
Appendix "ETFO" – Required Information and Format of Initial Transfer of Data  
Appendix "OPSBA" – Required Information and Format of Ongoing Data

## **SCHEDULE "B"**

**1. Provision of Data – General.** The Participating Employer agrees to provide to the Trustees, or, in the Trustees' discretion, the Administrative Agent, all information they may reasonably require in order to properly record and process Contributions and to establish and maintain benefit records for each eligible employee, without charge or compensation. All data shall be provided by the Participating Employer electronically, at the time or time(s) required by the Administrative Agent, in a format acceptable to the Administrative Agent using a system that is compatible with the system used by the Administrative Agent.

**2. Initial Transfer of Data.** No later than **XX** days prior to their Participation Date, a Participating Employer shall provide to the Trustees, or in the Trustees' discretion, the Administrative Agent, all information which they may reasonably require in order to establish initial records for each eligible employee, in a format acceptable to the Administrative Agent. Such information may be obtained directly from the Participating Employer's records or the Participating Employer may direct the current carrier to provide such information.

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

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

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

**3. Ongoing Data Requirements.** On the last day of each month from and after a Participating Employer's Participation Date, the Participating Employer shall provide all updates to Participating Employee data to the Administrative Agent, in an electronic format acceptable to the Administrative Agent. The information details and format for ongoing data requirements are outlined in Appendix YY. The required information and format of the data may be subject to change from time to time in accordance with section 7.4 of the Agreement.

**4. Leaves of Absence.** Administration of all leaves of absence, including long-term disability where applicable, will be the responsibility of the Administrative Agent. During such leaves of absence, the Participating Employer shall continue to provide HRIS information and updates as defined in section 3. The Participating Employer shall provide electronic updates of Participating Employees' work status to the Trustees (or, at their direction, the Administrative Agent), including changes in types of leaves of absence, at least two (2) weeks in advance of the leave.

**5. Incompatible Electronic Systems.** Where a Participating Employer cannot provide information in an electronic format acceptable to the Administrative Agent, the Participating Employer shall enter the required employment information into the Administrative Agent's benefit site (Plan portal) in advance of a new Participating Employee's commencement of active employment. The Participating Employer shall enter any subsequent demographic or employment changes as specified by the Administrative Agent on the Administrative Agent's benefit site within one week of the change occurring. Where a Participating Employer does not have an electronic system that is acceptable to the Administrative Agent, a written member coverage report shall be used as an interim solution until an acceptable electronic system required is in place.

**6. Information on Plan Enrollment:**

**Participation Date:** The Administrative Agent shall provide communication material to Participating Employers prior to their Participation Dates, and each Participating Employer shall distribute benefit communication material as provided by the Administrative Agent to existing Participating Employees within 5 days of receipt of such material.

**New Employees:** The Participating Employer shall distribute benefit communication material as provided by the Administrative Agent to all new Participating Employees within 5 days from the date of hire.

**7. Data in Regard to Contributions.** The Participating Employer shall remit its Employer Contributions to the XX ELHT together with its contributions to other Education Sector Employee Life and Health Trusts to the Administrative Agent, and, at the same time shall provide an information advice in a form acceptable to the Administrative Agent, accounting for the full amount of the contributions so remitted and allocating them between all of the Education Sector Employee Life and Health Trusts.

**8. Confidentiality.** All personal information about employees provided to the

Administrator of the Trust pursuant to section 12 of this Agreement and/or the provisions of the Collective Agreement will be treated as Confidential Information. Except as required by law, Confidential Information will only be disclosed to the Trustees, employees of the Administrator, a service provider retained by the Trustees, the individual to whom the Confidential Information pertains or a representative of that individual who has been authorized in writing. The Confidential Information is also subject to the provisions of the Trust's Privacy Statement. The Trustees will provide to the Participating Employer, at its request, a copy of the Trust's Privacy Statement.

**SCHEDULE "C"**

**ETFO EMPLOYEE LIFE AND HEALTH TRUST  
TRUSTEE ATTESTATION**

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

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Name of Witness

**SCHEDULE "D"**  
**ETFO EMPLOYEE LIFE AND HEALTH TRUST**  
**ACCEPTANCE OF TRUST**

TO: The Trustees of the ETFO Employee Life and Health Trust

The undersigned, having been appointed to serve as a Trustee of the ETFO Employee Life and Health Trust (the "Trust") in accordance with the Agreement and Declaration of Trust dated \_\_\_\_\_ (the "Trust 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 \_\_\_\_\_, Ontario, this     day of \_\_\_\_\_, 20\_\_.

_____	)	
	)	
	)	
	)	
	)	
_____ Signature of Witness	)	_____
_____ Name of Witness	)	
_____ Address	)	
_____ Occupation	)	
	)	

Receipt is hereby acknowledged this     day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[determine and insert correct title]

**THIS ELEMENTARY TEACHERS FEDERATION OF ONTARIO'S EMPLOYEE LIFE AND HEALTH AND DECLARATION OF TRUST AMENDING AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2021 (the "**Amending Agreement**")

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

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

**OF THE FIRST PART**

– and –

**THE ONTARIO PUBLIC SCHOOL BOARDS ASSOCIATION ("OPSBA")**

**OF THE SECOND PART**

– and –

**THE ELEMENTARY TEACHERS' FEDERATION OF ONTARIO ("ETFO")**

**OF THE THIRD PART**

**(collectively, referred to herein as the "Parties")**

**WHEREAS** pursuant to a Letter of Agreement (forming part of the Central Collective Agreement for teachers executed on November 2, 2015 between the Parties), and pursuant to a Letter of Agreement (forming part of the Central Collective Agreement for education workers executed on November 27, 2015 between the Parties), an employee life and health trust, known as the "Elementary Teachers' Federation of Ontario Employee Life and Health Trust" (ETFO ELHT) was established pursuant to an Agreement and Declaration of Trust made as of October 6, 2016 (the "Trust Agreement");

**AND WHEREAS** pursuant to Article 14 of the Trust Agreement, the parties may amend the Trust Agreement in whole or in part, provided that no amendment shall authorize or permit any part of the income or corpus of the fund maintained pursuant to the Trust Agreement to be used or diverted for purposes other than the exclusive benefit of the Beneficiaries (as defined in the Trust Agreement) and as permitted under section 144.1 of the Income Tax Act (Canada);

**AND WHEREAS** the parties wish to amend the Trust Agreement to update Articles impacted by the outcome of the most recent round of Central Collective Bargaining among the parties, and as required under Article 22 of the ETFO ELHT Trust Agreement.

**NOW THEREFORE**, effective May 1, 2020, the Parties agree to amend the Trust Agreement as follows:

**1. AMENDMENTS:**

**i) A new definition is added to section 1 as follows:**

**1(ss) “Zero Funding Year”** has the meaning set out in s. 16.4.

**ii) Section 7.2 b) is deleted and replaced with the following:**

The Employer Contributions to be remitted monthly under s. 7.2(a) shall be based on average full-time equivalent staffing estimates reported by each Participating Employer in its staffing schedules as of October 31<sup>st</sup> and as of March 31<sup>st</sup> each year. The average full-time equivalent staffing estimates shall be reconciled with each Participating Employer's actual average full-time equivalent staffing levels in respect of a school year based on the final actual average full-time equivalent staffing information reported by the Participating Employer for the school year. If, as a result of such reconciliation, the Participating Employer has contributed more or less than required based on such Participating Employer's actual full-time equivalent staffing levels in such school year, any additional amounts to be contributed for such school year or any amount to be refunded to the Participating Employer, as applicable, shall be paid in a lump sum by no later than 240 days of the date the Participating Employer submits final, actual full-time equivalent staffing information. In the event of a dispute regarding the full-time equivalent number used to determine the Participating Employer's Contributions, the dispute shall be resolved between the Participating Employer and the local union represented by ETFO.

**iii) Section 11.3 is deleted and replaced with the following:**

**11.3 Shared Services:** The Trustees may enter into shared service arrangements with the trustees of other Employee Life and Health Trusts covering employees in Ontario's education sector, or with other entities, and may delegate to such shared service entities any responsibilities or powers that the Trustees consider appropriate. Shared administrative services will be provided by the Administrative Agent. The Ontario Teachers Insurance Plan ("OTIP") or an entity designated by OTIP shall be the Trust's Administrative Agent until the role of Administrative Agent is competitively procured, no later than by June 30, 2024. The Trustees shall monitor the performance of the Administrative Agent, and shall require that the Administrative Agent, insofar as it performs duties or discharges responsibilities in relation to the ETFO Plan, the ETFO-EW Plan and any other Plans, to comply with Applicable Legislation, act solely and exclusively in the best interests of the Beneficiaries, and, where receiving or having access to personal information of Beneficiaries, establish a privacy policy based on and in compliance with Applicable Legislation. The Trustees shall complete a structural review of the Administrative Agent to be completed no later than June 30, 2021.

The Trustees shall provide the written report to the Parties setting out the parameters and results of the structural review promptly upon completion of the review.

iv) **Section 16.3 is deleted and replaced with the following:**

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

v) **A new section is added following the existing section 16.3 as follows:**

**Article 16.4 Zero Funding Years:** Where an annual actuarial report required under s.16(3) covers a year that is not subject to a Central Collective Agreement that is in effect on the date of the report, the actuarial report shall presume that the negotiated funding increase in Employer Contributions in respect of that year under 7.2(a) is zero, and that year is to be known as a "Zero Funding Year".

vi) **A new section is added following the new section 16.4 above as follows:**

**Article 16.5 – Projected CFR Shortfalls:**

- (a) If the actuarial report with respect to ETFO Plan or the ETFO-EW Plan projects the CFR balance to be less than 8.3% of Plan expenses in any year of the projected three year period, other than a Zero Funding Year, then a Plan design change must be made to address the projected shortfall in the CFR. If a motion to adjust the Plan design is not adopted by the Board of Trustees, the Trustees will increase Employee Contributions to restore the CFR balance to above 8.3% of projected Plan expenses.
- (b) If the actuarial report with respect to the ETFO Plan or the ETFO-EW Plan projects the CFR balance to be less than 8.3% of Plan expenses during a Zero Funding Year, then the Trustees shall either:
  - (i) Adopt a Plan design change to address the projected shortfall in the CFR to restore the projected CFR balance to above 8.3% of projected Plan expenses for the year, or
  - (ii) Prepare a contingency plan that meets the requirements in clause (c) below and disclose the contingency plan to the

Parties.

- (c) The contingency plan described in clause b(ii) above shall address the event that the amount of Employer Contributions negotiated under the Central Collective Agreement is not projected to restore the CFR to at or above 8.3% of Plan expenses and shall include, but is not limited to, the following:
- (i) Preparation of funding scenarios including (1) no increase in Employer Contributions, (2) increases in Employer Contributions consistent with the annual change in the Consumer Price Index, and (3) increases in Employer Contributions equal to the average percentage increase in the prior three years;
  - (ii) Preparation of cost scenarios, for example inflationary trend increases and changes to demographics;
  - (iii) Proposed actions to be taken by the Trustees for each funding and cost scenario, such as benefit reductions and administrative efficiencies.

## 2. GENERAL:

The provisions of the Trust Agreement are renumbered in accordance with the deletions and additions described above.

## 3. COUNTERPARTS

This Amending Amendment may be executed [electronically?] and delivered in any number of counterparts, each of which shall be deemed to be an original, and all such respective counterparts shall together constitute one and the same instrument.

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

SIGNED, SEALED AND  
DELIVERED in the presence of


**Crown**

Per: Original signed by

Name: Nancy Naylor

Title: Deputy Minister

I have the authority to bind the Crown



**OPSBA**

Per: W. R. (Tracy) Hick  
Name:  
Title: Executive Director  
I have the authority to bind the  
OPSBA

**ETFO**

Per:



Name: Sharon O'Halloran  
Title: General Secretary  
I have the authority to bind ETFO