

**MASTER CONSTRUCTION TRADE UNION
BENEFIT PLAN**

**RESTATED TRUST AGREEMENT
EFFECTIVE JANUARY 1, 2019**

UNOFFICIAL CONSOLIDATION

Prepared December 8, 2021

Includes the following amendments:

- **Amending Agreement No. 1 made as of December 8, 2021 (effective January 1, 2021)**

While care has been taken in the preparation of this consolidation, if there is a discrepancy between this consolidated trust agreement and the trust agreement and amendment documents adopted by the Board of Trustees and the Association, the latter documents shall prevail.

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THIS AMENDED AND RESTATED TRUST AGREEMENT effective January 1, 2019

BETWEEN:

CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES UNION, LOCAL
378, doing business as MOVEUP

(the “**Union**”)

AND:

THE BOARD OF TRUSTEES OF THE MASTER CONSTRUCTION TRADE
UNION BENEFIT PLAN

(the “**Trustees**”)

WHEREAS:

- A. The Union’s predecessor, the Office and Technical Employees Union, Local 15, established the Master Construction Trade Union Benefit Plan (the “**Plan**”) pursuant to an Agreement and Declaration of Trust made February 24, 1993 with the original Trustees of the Plan which was amended on July 20, 2001 (the “**Prior Trust Agreement**”);
- B. Section 8.01 of the Prior Trust Agreement permits the Union and the Trustees to amend the Prior Trust Agreement, subject to the limitations provided in Section 8.01; and
- C. The Trustees and the Union wish to amend and restate the Prior Trust Agreement in accordance with Section 8.01 to modernize and clarify the basis on which the Trustees will administer the Plan,

NOW THEREFORE, with effect from January 1, 2019 (the “**Effective Date**”), the parties hereto agree to amend and restate the Prior Trust Agreement in its entirety as follows:

ARTICLE 1 – INTERPRETATION

1.1 Definitions

In this Trust Agreement, unless the context requires another meaning, the following defined terms have the following meanings.

“**Actuary**” means the actuary or firm of actuaries appointed by the Board pursuant to subsection 5.2(d) for the purposes of the Plan or the Trust Fund who is, or in the case of a firm of actuaries, at least one of the principals of which is, a Fellow of the Canadian Institute of Actuaries.

“**Administrative Agent**” means the corporation, firm, organization or person appointed by the Board pursuant to subsection 5.2(d) to assist in the administration of the Plan including, without limitation, accounting for Contributions, other payments, Benefits and expenses.

“Applicable Legislation” means the *Income Tax Act* (Canada), any applicable policies of the Canada Revenue Agency and such other provincial or federal legislation as may be applicable to the Trust Fund or the Plan, and any regulations prescribed thereunder, all as may be amended from time to time.

“Auditor” means a firm of chartered accountants appointed by the Board pursuant to subsection 5.1(f) or 5.2(d) to provide audit and other financial and consulting services to the Board.

“Benefits” means “designated employee benefits” within the meaning of section 144.1 of the *Income Tax Act* (Canada) and such other benefits as may be provided through an employee life and health trust pursuant to section 144.1 of the *Income Tax Act* (Canada), as determined by the Board.

“Board” means the board of trustees constituted hereunder, which consists of the individuals who from time to time are elected or appointed as Trustees in accordance with the terms of this Trust Agreement.

“Chair” means the chair of the Board appointed pursuant to subsection 4.2(a).

“Collective Agreement” means:

- (i) the Master Construction Trade Union Office Agreement;
- (ii) any other agreement in writing between the Union and an employer pursuant to which Contributions are payable to the Trust Fund; and
- (iii) a successor or replacement to any of the foregoing agreements.

“Contributions” means any contribution or payment of any kind made to the Trust Fund at any time from any source, including any contribution or payment made by an Employer and any contribution made by an individual to maintain self-payment coverage.

“Effective Date” means: January 1, 2019, regardless of the date on which this Agreement is signed by the parties.

“Employer” means:

- (i) any corporation, firm, organization or person who is bound to a Collective Agreement; and
- (ii) any corporation, firm, organization or person who is approved by the Board to participate in the Plan on the terms and conditions established by the Board.

“Legal Counsel” means a person or firm lawfully entitled to practice law in the Province of British Columbia as may, from time to time, be appointed pursuant to subsection 5.2(d) by the Board for the purpose of consulting with and advising the Board regarding the Plan or the Trust Fund.

“Master Construction Trade Union Office Agreement” means the collective agreement entered into January 1, 2017 to December 31, 2019 between the construction industry affiliated trade unions listed therein and the Canadian Office and Professional Employees Union, Local 378, and any successor or replacement thereto.

“MCT Members of the Union” means Members who are members in good standing with of the Union and whose employers are bound by the terms of the Master Construction Trade Union Office Agreement.

"Member" means:

- (a) any person employed by an Employer who:
 - (i) is a member of the Union;
 - (ii) on whose account an Employer is making or previously made Contributions;
 - (iii) at the time of reference, is eligible for Benefits from the Trust Fund; and
 - (iv) satisfies the membership criteria as may be established by the Board from time to time; or
- (b) any person employed by an Employer who meets the membership criteria for any other category of membership established by the Board from time to time.

“Plan” means the “Master Construction Trade Union Benefit Plan” constituted under this Trust Agreement, and documented in the manner determined by the Board which manner may include brochures, insurance policies and a formal text as determined by the Board.

“Secretary” means the Secretary of the Board appointed pursuant to subsection 4.2(b).

“Trust Fund” means the "Master Construction Trade Union Benefit Plan Trust Fund" created under this Trust Agreement.

“Trust Agreement” means this amended and restated Trust Agreement and all modifications and amendments thereof made in accordance with its terms.

“Trustees” means the initial persons elected or appointed pursuant to the terms of the Prior Trust Agreement to administer the Plan and manage the Trust Fund and those persons elected or appointed from time to time in accordance with the Prior Trust Agreement or this Trust Agreement as their successors.

“Union” means "Canadian Office and Professional Employees Union, Local 378 doing business as MoveUP" and any successors thereof.

1.2 Use of Plural or Gender Specific Terms

In this Trust Agreement and according to the context:

- (a) gender specific terms include all genders and include a corporation, partnership, society, association or union;
- (b) words in the singular include the plural and words in the plural include the singular; and
- (c) where a word or expression is defined, other parts of speech and grammatical forms of the same word or expression will have corresponding meanings.

1.3 Headings

The headings used in this Trust Agreement are for ease of reference only and form no part of this Trust Agreement.

1.4 Use of Certain Terms

The expressions “herein”, “hereof”, “hereto”, “above”, “below” and similar expressions used in any Article, Section, subsection or paragraph of this Trust Agreement refer and relate to the whole of this Trust Agreement and not to that Article, Section, subsection or paragraph only, unless otherwise expressly provided.

1.5 Statutory References

In this Trust Agreement, any reference to a statute includes the regulations promulgated under that statute with all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant to that statute.

1.6 Recitals and Schedules

The recitals and the various Schedules hereto form part of this Trust Agreement. However, unless the context or the terms of this Trust Agreement require otherwise, all references to “this Trust Agreement” will be interpreted as references to the main body of this Trust Agreement.

1.7 Conflict Between Plan Documents and Trust Agreement

If there is any conflict between the provisions of this Trust Agreement and the provisions of a document describing the terms of the Plan, the provisions of the main body of this Trust Agreement will prevail and govern.

ARTICLE 2 – CREATION, PURPOSE AND APPLICATION OF THE TRUST FUND

2.1 Maintenance of Trust Fund

The Trust Fund hereby maintained consists of all monies received by or on behalf of the Board as Contributions, all contracts (including dividends), interest, refunds, or other sums payable to the Board on account of such contracts, all investments made and held by the Board by reason of their acceptance of this Trust Agreement, and all monies or other payments received from time to time by or on behalf of the Board for any purpose of the trusts set forth herein, together with all increments, earnings and profits associated with the administration of the said Trust Fund less all authorized payments therefrom.

2.2 Purpose of the Trust Fund

The Trust Fund is created, established, continued, and will be maintained, and the Trustees agree to receive the assets of the Trust Fund, hold them in trust and administer them for the purpose of providing, to the extent the Trust Fund permits, an employee life and health trust to provide Benefits for the Members, their eligible dependents and eligible beneficiaries, and for no purpose other than those set forth in this Trust Agreement.

2.3 Plan

- (a) The Board is hereby authorized, empowered and directed to establish and maintain the Plan.
- (b) It is intended that on and after January 1, 2021 the trust terms hereof will meet the requirements of subsection 144.1(2) of the *Income Tax Act* (Canada), with the result that on and after January 1, 2021, the Trust Fund and the Plan will be administered, invested and maintained in order to qualify as an “employee life and health trust” as that term is defined in the *Income Tax Act* (Canada).
- (c) The terms of the Plan will be as set out in the documents approved by the Board from time to time. The provisions of the documents setting out the terms of the Plan must not be inconsistent with the provisions of this Trust Agreement and must:
 - (i) define the Benefits to be provided to Members (and their eligible dependents and eligible beneficiaries where applicable) through the Trust Fund;
 - (ii) contain the conditions of eligibility for such Benefits, the methods of determining and fixing the amount and method of payment of such Benefits; and
 - (iii) contain such other terms and provisions as the Board in its sole discretion sees fit to include.
- (d) Pursuant to subsection 5.2(d), the Board may employ an Administrative Agent, an Actuary, Legal Counsel and any other agents and advisors to the extent it deems necessary to administer the Plan.

- (e) The terms of the Plan and the Plan are subject to modification and/or amendment from time to time by the Board, both retroactively and otherwise, on such terms and conditions as may be provided in the documents setting out the terms of the Plan. For greater certainty, subject to the terms of the Collective Agreement, the Board will have the discretion to determine what constitutes a Benefit and to determine how to use the Trust Fund to provide Benefits.

2.4 Application of the Trust Fund

Without limiting any other powers of the Board specified in this Trust Agreement, the Board has power to use and apply the Trust Fund as follows:

- (a) to pay all fees, charges, costs, expenses and disbursements, as are reasonably necessary and approved by the Board, that are incurred in connection with the establishment, maintenance, operation and administration of the Trust Fund and Plan, including, without in any way limiting the generality of the foregoing, the fees, charges and disbursements of such actuarial, legal, custodial, accounting, administrative and other assistance as the Board in its discretion deems necessary or appropriate for the proper performance of its duties, the cost of obtaining fiduciary liability insurance for the Trustees, and any expenses incurred by a Trustee in attending or participating in any program of trustee education as permitted under this Trust Agreement, provided that no part of the Trust Fund may be used for the compensation of a Trustee, except as provided in Section 4.10;
- (b) to pay or provide for the payment of all real and personal property taxes, income tax, excise tax and other taxes, or assessments of any and all kinds levied or assessed under existing or future laws upon or with respect to the Trust Fund, or any money or property forming a part thereof;
- (c) to establish and accumulate such reserve funds as may be necessary to provide for administrative expenses and other obligations of the Trust Fund, including the proper maintenance and operation of the Plan; and
- (d) to invest and re-invest, or cause to be invested or re-invested, the principal and income of the Trust Fund, without distinction between principal and income, in such investments that at the time of investment are not inconsistent with the provisions of Applicable Legislation.

2.5 Limitation of Right to the Trust Fund

The following limitations apply to the rights or interests in or use of the Trust Fund:

- (a) the Union, an Employer, a Member, or any other person, firm, association, corporation or organization does not have any right, title or interest in or to the Trust Fund, save as expressly provided by this Trust Agreement or Applicable Legislation, provided, however, that nothing in this Trust Agreement impairs or derogates from the rights of a Member (and his or her eligible dependents or eligible beneficiaries where applicable), nor prevents a Contribution which is made by mistake, together with any income earned

thereon, from being returned by the Board to its maker or from being credited by the Board against other obligations of the maker to the Board.

- (b) the Union, an Employer, a Trustee, a Member, or any other person, firm, association, corporation or organization may not take or receive directly or indirectly any profit, commission, rebate, discount or benefit in connection with the operation of the Plan and the Trust Fund or the placing of insurance pursuant thereto, and any such amount shall be deemed to be received in trust for the purposes of the Plan and the Board shall have the right to recover the same and such amount will form part of the Trust Fund;
- (c) except as otherwise provided in this Trust Agreement, no part of the capital or income of the Trust Fund may be used for or diverted to purposes other than for the exclusive benefit of the Members or their eligible dependents and eligible beneficiaries unless specifically permitted in this Trust Agreement in accordance with Applicable Legislation; and
- (d) no money, property, equity or interest of any nature whatsoever in the Trust Fund or in any benefits or monies payable therefrom may be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, lien, or charge by any Member or eligible dependent, eligible beneficiary or person claiming through any of them, and any attempt to cause the same to be subject thereto is null and void.

2.6 Fiscal Year End

The fiscal year end of the Trust Fund is the 31st day of December in each and every year during the continuance of the trusts set forth in this Trust Agreement. Despite the foregoing, the Board may, if it deems it advisable to do so, change the fiscal year of the Trust Fund, subject to the obtaining of any consent required to be obtained from any applicable governmental authority.

ARTICLE 3– ELECTION AND REPLACEMENT OF TRUSTEES

3.1 Board of Trustees

The Plan and the Trust Fund will be administered by a Board comprised of five Trustees, who are elected in accordance with Section 3.2.

3.2 Trustee Election Process

Trustees will be elected by the MCT Members of the Union in accordance with the process set out in the Union's Constitution, provided that such process must include the requirements that (i) only MCT Members of the Union may vote to elect a Trustee and (ii) in accordance with subsection 3.3(a), a person may not be elected as a Trustee unless he or she is a MCT Member of the Union. If the Union's Constitution does not impose such requirements on the Trustee election process the Trustees may initiate and administer a Trustee election process provided that process does include those requirements.

3.3 Trustee Eligibility

- (a) A person must be a MCT Member of the Union to be elected or appointed as a Trustee.
- (b) A Trustee may serve consecutive terms as a Trustee if so elected or appointed.
- (c) A person who has formerly served as a Trustee may be re-elected or appointed as a Trustee.

3.4 Trustees' Terms of Office

- (a) As of the date this Trust Agreement is signed the identity of the Trustees are as follows:
 - (i) Catherine Bobenic: term expires in July of 2024;
 - (ii) Shona Dion: term expires in July of 2022;
 - (iii) Colleen Morlan: term expires in July of 2022;
 - (iv) Kelly Persaud: term expires in July of 2024.
- (b) Each successor Trustee will serve a term of four years from the effective date of his or her election or until an earlier cessation of trusteeship pursuant to subsection 3.5(a).

3.5 Cessation of Trusteeship

- (a) A Trustee will cease to be a Trustee in the following circumstances:
 - (i) **Expiration of Term:** The Trustee's term expires and he or she is not re-elected to another term. The effective date of his or her cessation of trusteeship will be the date the Trustee's term expires or such later date as agreed to between the Board and the Union.
 - (ii) **Voluntary Resignation:** The Trustee voluntarily resigns in accordance with Section 3.9. The effective date of such resignation is the date specified in the notice of resignation provided pursuant to Section 3.9, failing which it will be the date when the Administrative Agent receives such notice of resignation.
 - (iii) **Ceases Employment with an Employer:** The Trustee ceases to be employed by an Employer for any reason other than (i) a discharge for just cause or (ii) employment with the Union. The effective date of such cessation of trusteeship will be the date that is the earlier of:
 - (A) the date upon which his or her hour bank reaches zero; and
 - (B) the date he or she commences employment with an employer that is not an Employer.

For clarity, if the Trustee becomes employed by an Employer before the earlier of (A) and (B), he or she will continue to serve as a Trustee.

- (iv) **Fired from Employment with an Employer:** The Trustee is discharged for just cause from his or her employment with an Employer and does not subsequently commence employment with another Employer before the effective date of the cessation of trusteeship as determined in this subsection (iv). The effective date of such cessation of trusteeship will be the date that a final decision is rendered pursuant to any grievance procedure commenced by the Union, provided that if no grievance is commenced, the effective date will be the date of discharge from employment.
 - (v) **Commencing Employment with the Union:** The Trustee commences employment with the Union. The effective date of such cessation of trusteeship will be the date on which the Trustee commences employment with the Union.
 - (vi) **Removed:** The Trustee is removed from office in accordance with Section 3.10. The effective date of such removal is the date specified in the notice of removal provided pursuant to Section 3.10, but no earlier than the date upon which the Trustee concerned is in receipt of the notice of removal.
 - (vii) **Death:** The Trustee dies. The effective date of such cessation of trusteeship will be the date of death.
- (b) A Trustee who ceases to be a Trustee pursuant to subsection (a) or the personal representatives of a deceased Trustee, as the case may be, must forthwith turn over to the Administrative Agent any and all records, books, documents, money and other property and assets in his or her possession, forming part of the Trust Fund or incidental to his or her duties as Trustee under this Trust Agreement or relating to the administration of the Plan. In addition, any such individual is deemed to have conveyed, assigned or transferred to the then remaining Trustees any or all rights or property in the Trust Fund and must, if necessary, convey, assign or transfer to the remaining Trustees any or all rights or property in the Trust Fund as the remaining Trustees may direct.

3.6 Successor Trustee

- (a) Prior to the expiration of a Trustee's term, the Union will hold an election in accordance with Section 3.2.
- (b) If a Trustee ceases to be a Trustee pursuant to subsection 3.5(a) for any reason other than the expiration of his or her term and such cessation of trusteeship occurs:
 - (i) within the first two years of the Trustee's term, the Union will hold an election in accordance with Section 3.2 to elect a successor Trustee to serve the remainder of the former Trustee's term (but not for a four year term despite subsection 3.4(b); or

- (ii) after the first two years of the Trustee's term, the Union will appoint a Trustee that meets the eligibility criteria set out in Section 3.3 to serve the remainder of the former Trustee's term.
- (c) If the Union fails to elect or appoint a successor Trustee pursuant to subsection (a) or (b) within 90 days of the Trustee ceasing to be a Trustee pursuant to subsection 3.5(a), then the remaining Trustees may give notice in writing to the Union that such remaining Trustees intend to appoint such successor Trustee. Upon the expiration of the 90 day period without such election being made by the Union, such remaining Trustees may meet and appoint, by resolution passed by a majority of the Trustees present at the meeting, a successor Trustee to fill the vacant position. Such appointment will be as valid and effective as if it had been made by the Union. For the purposes of a meeting of the Trustees held pursuant to this subsection and notwithstanding any provisions in this Trust Agreement to the contrary, the majority of Trustees in office on the date of such meeting will constitute a quorum.

3.7 Acceptance of Trust by Trustee

- (a) A Trustee who has signed this Trust Agreement is deemed to accept the trusts created and established under this Trust Agreement, to consent to act as Trustee and to agree to administer the Trust Fund as provided herein.
- (b) A Trustee who has signed an acceptance of trust in the form set out in Schedule "A" (or any other form adopted by the Board) is deemed to accept the trusts created and established under this Trust Agreement, to consent to act as Trustee and to agree to administer the Trust Fund as provided herein and is vested with all of the rights, powers and duties of a Trustee under this Trust Agreement as if such person had signed this Trust Agreement and without the necessity of the execution of any conveyance, assignment, transfer or other documentation.

3.8 Trustee Vacancy

Subject to the quorum requirements of Section 4.6, if a Trustee position is vacant, the power of the remaining Trustees to administer the Plan and the Trust Fund and carry out the terms of this Trust Agreement will not be impaired and they shall have the power to continue to act and administer the Plan and the Trust Fund until a successor Trustee is elected or appointed pursuant to Section 3.6.

3.9 Resignation of Trustee

A Trustee may resign by giving written notice of such resignation to the Administrative Agent, which notice must state the date of resignation. Upon receipt of such notice, the Administrative Agent will promptly notify all the other Trustees and the Union. The resignation will become effective on the date set out in paragraph 3.5(a)(ii).

3.10 Removal of Trustee

The Trustees may agree to remove a Trustee, with or without the agreement of the MCT Members of the Union, if that Trustee has materially failed to meet his or her obligations under this Trust Agreement including, without limitation, because the Trustee has failed to attend two consecutive duly called meetings of the Board without a legitimate reason. The Board or the Union, as appropriate, will promptly provide notice of such removal to the Trustee and the Union. The removal will become effective on the date set out in paragraph 3.5(a)(v).

3.11 Responsibility/Discharge of Trustee

- (a) No Trustee is responsible for any act or omission of the Board or any Trustee that occurred prior to his or her election or appointment.
- (b) If a Trustee ceases to be a Trustee pursuant to subsection 3.5(a), he or she is fully discharged from any future duties and responsibilities in respect of this Trust Agreement as of the date of such resignation or removal. Subject to the limitation of liability provisions in Article 7, such an individual is not discharged from, and remains liable for, any of his or her duties and responsibilities arising hereunder prior to the effective date of his or her resignation, removal or the expiry of his or her term, as the case may be.
- (c) If a Trustee dies, his or her heirs, administrators, executors and assigns are fully discharged from all future duties and responsibilities in respect of this Trust Agreement as of the date of such Trustee's death. Subject to the limitation of liability provisions in Article 7, a deceased Trustee's estate is not discharged from, and remains liable for, any of the deceased's duties and responsibilities arising hereunder prior to the date of death.

3.12 Former Trustee Purporting to Act

If a Trustee ceases to be a Trustee pursuant to subsection 3.5(a) but purports to continue to act as a Trustee, any of the remaining Trustees may do such things and take such action at law or equity as such Trustees determine to cause such person to cease to purport to act as a Trustee including, without limitation, making application to a court of competent jurisdiction for such relief (including, without limitation, injunctive relief) as may be appropriate in the circumstances.

3.13 Validity of Action of the Board

Despite a discovery or determination that there existed some defect in the election, appointment, removal or qualifications of any Trustee, all acts and proceedings of the Board done and carried on in good faith at any time while any such defect existed will be valid and effective upon resolution of the Board to such effect.

3.14 Independence of Trustees

A Trustee is not an agent of any Employer or the Union.

ARTICLE 4– BOARD OPERATION

4.1 Formal Name of the Board

The formal name of the Board is the “Board of Trustees of the Master Construction Trade Union Benefit Plan”, in which name the Board may enter into agreements or commence legal proceedings.

4.2 Offices of the Board

- (a) The Trustees will appoint one of their number as Chair every two years.
- (b) The Trustees will appoint a Secretary who may, but need not, be a Trustee.
- (c) The Trustees may establish other offices of the Board and elect such persons (whether Trustees or not) to occupy such offices for such respective terms as determined by the Board from time to time subject to the death, resignation or removal by the Board of such persons as the case may be. Any person occupying any such office may be removed by the Board at any time.
- (d) If the Chair is not present at any meeting of the Board, the Trustees present may select another of their number in his or her place for the purpose of such meeting. If the Secretary is not present at any meeting of the Board, the Chair may select another of their number in his or her place and stead for the purpose of such meeting.
- (e) The Board will keep accurate minutes or records of all meetings, proceedings and acts of the Board. Such minutes need not be verbatim. The Board may assign to the Secretary (if one has been appointed) the obligation to provide such minutes to the Board for verification at the next meeting of the Board where it is practical to approve of such minutes.

4.3 Frequency of Meetings

- (a) The Board will meet no less frequently than three times per year. The Chair is responsible for setting the date and location of each meeting. If the office of Chair is vacant, or the Chair is incapacitated or otherwise unable to discharge his or her responsibilities as Chair, any two Trustees may exercise the powers otherwise given to the Chair to set the date and location of a meeting, and give notice of it to the other Trustees, either directly or through the Administrative Agent.
- (b) Despite subsection 4.3(a):
 - (i) any three Trustees may, by providing notice in writing to the other Trustees (either directly or through the Administrative Agent), call a special meeting of the Board without involvement of the Chair in setting meeting details;
 - (ii) the Union may, by providing the request in writing to the Administrative Agent, call a special meeting of the Board without involvement of the Chair or the

Trustees. If such a request is received by the Administrative Agent a special meeting will be held within 15 business days of the receipt of the request.

- (c) The Union may request that one or more representatives attend a meeting of the Board as a guest, subject to such limitations that the Board determines are necessary to comply with applicable law (including personal information protection law) or to maintain the Board's solicitor-client privilege in respect of a matter. For clarity, a representative of the Union who attends a Board meeting as a guest is not entitled to vote on any matter.

4.4 Notice of Meeting

- (a) The Chair, or any other member of the Board or other person delegated to do so by the Chair, as the case may be, will give written notice of each meeting of the Board to the Trustees and the Union, either directly or through the Secretary or Administrative Agent, no less than five days prior to the date of such meeting unless such notice is waived pursuant to subsection 4.4(c) below.
- (b) The notice of a meeting must specify the date, time and location of the meeting (or if the meeting is to be held by telephone or other means of communication, such information as may be necessary for the Trustees to join the meeting), and must include an agenda of matters to be addressed at such meeting. The agenda for each meeting must be distributed with the notice of meeting. Whenever possible, the Secretary or Administrative Agent will provide any reports or other documentation to be considered at such meeting to the Trustees prior to the commencement of the meeting, preferably with the notice of meeting.
- (c) Any notice of meeting is sufficient if sent by ordinary mail, facsimile transmission or by email addressed to the Administrative Agent or to a Trustee at his or her last address shown in the records of the Board. Any meeting for which no such notice has been given is a valid meeting of the Board if either all Trustees are present without objection or all Trustees have waived such notice of in writing.
- (d) The Board will provide the Union with a copy of each meeting's agenda, minutes and any reports or other documentation considered at the meeting, subject to any redactions of personal information required by law and to maintain the Trustees' solicitor-client privilege.

4.5 Telephone Meetings

Board meetings may be held, or a Trustee may participate in a Board meeting, by means of telephone or such other communication facilities which permit all persons participating in the meeting to speak to and hear each other, and a Trustee participating in a meeting by that means is deemed to be present at the meeting and will be counted in determining whether a quorum is present.

4.6 Quorum

- (a) To constitute a quorum at any meeting of the Board, there must be present at least three Trustees either in person or by means of communication whereby all persons can hear and speak to one another. The Trustees forming quorum at a meeting of the Board are deemed present for all other purposes of the meeting including, without limitation, voting.
- (b) If quorum is not achieved at a meeting of the Board, for the purposes of the next duly called and constituted meeting of the Board, quorum will consist of the number of Trustees present at that meeting.
- (c) If a quorum is not present within one hour of the time specified for a meeting of the Board, the Trustees present may adjourn the meeting to a fixed time and place but may not transact any other business. The Trustees present must cause notice of such adjourned meeting to be given to all Trustees in accordance with Section 4.4.
- (d) If during a meeting a quorum is lost, the Trustees remaining at the meeting must not transact any business except to fix a time and place for a continuation of the meeting. The Trustees present must cause notice of such continued meeting to be given to all Trustees in accordance with Section 4.4.
- (e) If the Board meets when a Trustee position is vacant, the meeting is validly constituted as long as a quorum is present.
- (f) No proxies are permitted at any time.

4.7 Rules

Except as otherwise set forth herein and subject to any procedural rules adopted by the Board, the rules governing conduct and procedures at Board meetings and at committee meetings are those rules specified in the current edition of *Robert's Rules of Order Newly Revised*.

4.8 Voting/ Decisions of the Board

- (a) At any duly called and constituted meeting of the Board, each Trustee present is entitled to one vote. Unless otherwise provided in this Trust Agreement, all decisions of the Board are made by majority vote of the Trustees present at the meeting at which such vote is taken, or by unanimous vote of all Trustees in writing without a meeting.
- (b) Every Trustee present at a duly called and constituted meeting of the Board is required to cast a vote in favour of or against a proposal, motion or resolution properly made at such meeting. With the exception of an abstention by a Trustee due to a conflict of interest, any purported abstention by a Trustee will, unless otherwise determined by a majority vote of the Trustees present at that meeting, be deemed a vote against such proposal, motion or resolution.

- (c) The Chair presiding at a meeting is entitled to vote on all motions and in the event of a deadlock has a second or casting vote.

4.9 Breaking Deadlock

- (a) Subject to subsection 4.9(d) below, a deadlock exists whenever, despite section 4.8(c), a proposal, motion or resolution made by a Trustee and seconded by another 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 consecutively called meetings.
- (b) In the event of a deadlock, the matter in dispute will be placed on the agenda of the next meeting of the Board.
- (c) If the issue referred to in subsection (b) is not resolved at the next meeting of the Board, it must be submitted to an arbitrator selected by the Board in accordance with the *Arbitration Act* (British Columbia). If the Board cannot agree upon an arbitrator, any two Trustees will, on notice to the other Trustees, apply to a Judge of the Supreme Court of British Columbia to appoint a person to decide the matter in dispute and submit the matter to such person for a decision. The scope of the arbitration is limited to the provisions of this Trust Agreement and the Plan but does not extend to Collective Agreements between a Union and an Employer nor does such arbitrator have power or authority to change or modify any provision of such Collective Agreements between the Union and an Employer, nor does he have power or authority to change or modify any provisions of this Trust Agreement or of the Plan. The cost and expenses incidental to any proceedings needed to break a deadlock will be borne by the Trust Fund.
- (d) Despite subsection 4.9(a), subsections 4.9(b) and 4.9(c) do not apply to a proposal, motion or resolution to amend this Trust Agreement. For greater clarity, if a deadlock exists in respect of such a proposal, motion or resolution it will not proceed to the resolution stage set out in subsections 4.9(b) and 4.9(c) and the proposal, motion or resolution will simply not be approved.

4.10 Compensation and Reimbursement of Trustees

A Trustee may be reimbursed from the Trust Fund for his or her actual expenses incurred in attending each meeting of the Board at which he or she is present and in the performance of his or her duties, provided that such expenses are reasonable and necessary to the performance of such duties. Except as otherwise provided in this Trust Agreement, no Trustee may be paid or receive any compensation out of the Trust Fund for the performance of his or her duties as a Trustee.

4.11 Execution of Documents and Instruments

- (a) All agreements and other documents to be executed by the Board after being approved by the Board by resolution must be signed by the Chair and another Trustee, or by such other persons as the Board may direct.

- (b) All cheques payable out of the Trust Fund, or other instruments that have the effect of withdrawing money from the Trust Fund, must be signed by two Trustees, provided that such Trustees, or such Trustee and Administrative Agent, have first been duly authorized by the Board.
- (c) The Board may, by resolution, adopt a policy for the execution of agreements, documents and cheques that differs from the foregoing, and such policy supersedes the terms of this Section 4.11.

ARTICLE 5 – DUTIES AND POWERS OF THE BOARD

5.1 Duties of the Board

The Board must:

- (a) operate, administer and interpret the Plan in accordance with this Trust Agreement, the Plan and Applicable Legislation;
- (b) exercise and discharge its rights, duties and responsibilities under this Trust Agreement in accordance with Applicable Legislation;
- (c) administer the Trust Fund in accordance with this Trust Agreement;
- (d) keep a complete and accurate set of accounts for the Trust Fund;
- (e) appoint, regularly monitor, terminate and replace, if necessary, a custodian or funding agent or agents to hold, administer and invest the Trust Fund; and
- (f) appoint an Auditor and submit the accounts and financial statements to the Trust Fund for examination, checking and audit in accordance with this Trust Agreement.

5.2 Discretionary Powers of the Board

In addition to any powers conferred by law, the Board is vested, when acting under this Trust Agreement, with all necessary power and authority to administer the Trust Fund and Plan fully and effectively, including without in any way limiting the generality of the foregoing, the following:

Administration

- (a) **Construe Trust Agreement and Plan:** construe the provisions of this Trust Agreement and the Plan and the terms used herein, and any construction adopted by the Board in good faith is binding upon the Union, Employers, Members and their eligible dependents;
- (b) **Policies, etc. Generally:** adopt such policies, procedures, rules and regulations as the Board deems necessary for the carrying out of trusts and duties imposed upon it by this Trust Agreement and the efficient operation of the Plan and Trust Fund, provided that

they are not inconsistent with the purposes of the Trust Fund and the terms of this Trust Agreement;

- (c) **Governance Plan:** design and implement a governance plan to ensure the good governance of the Plan and the Trust Fund;
- (d) **Retain Agents:** subject to Section 6.4, employ or retain an Administrative Agent, Legal Counsel, instructors, directors, educators, clerical assistance, investment managers, investment management measurement services, governance auditors, accountants, Auditors, Actuaries, and any other professional person as the Board deems necessary or appropriate to carry out its duties and responsibilities under this Trust Agreement, administer the Plan or invest the Trust Fund. The Board may utilize the services of professional persons employed by an Employer or the Union hereunder and may appropriately pay such legitimate fees as determined by the Employer of the said employee. The Board may retain a member of the Union to serve as the Administrative Agent for the Plan;
- (e) **Delegate:** subject to Sections 6.3 and 6.4, delegate any of its administrative powers or duties to any of its agents, including the Administrative Agent, or employees or a committee, in such manner and subject to such terms and conditions as the Board deems necessary or appropriate; provided that such agents, employers or committee report to the Board in a timely fashion as directed by the Board;
- (f) **Obtain Information:** obtain from any association, employee, Member, Employer, former Member, former Employer, government agency, regulatory body or other person or organization (including the Union or a local thereof) such information as necessary for the proper administration of the Trust Fund;
- (g) **Statistical and Actuarial Data:** to obtain and evaluate all statistical and actuarial data that may be reasonably required with respect to the administration of the Plan;

Provision of Benefits

- (h) **Insurance and Contracts:** obtain policies of insurance and enter into any and all contracts and agreements, either with private individuals, corporations, or any third party supplier, or with any government department or agency, which can, directly or indirectly, assist in the purposes of carrying out the terms of the Plan, including for the purpose of providing Benefits;
- (i) **Self-Insuring Fund:** in addition, or as an alternative to the insurance policies contemplated in subsection (h), create a self-insuring fund to provide the Benefits, provided that such fund is administered in a manner that does not require licensing of the Plan or the Trustees under the *Insurance Act* (British Columbia) or the *Financial Institutions Act* (British Columbia);

Trust Fund Property

- (j) **Appoint Custodian:** appoint a financial institution and/or insurance company as custodian for the Trust Fund, for the purpose of acting as a depository and providing for the safekeeping of all or any portion of the Trust Fund, and to authorize the custodian to commingle any money deposited with it in a pooled investment fund administered or managed by any custodian appointed pursuant to this subsection subject to the Board's policies adopted from time to time;
- (k) **Invest:** authorize the investment manager(s) to invest, reinvest and divest the monies of the Trust Fund; however, notwithstanding the generality of the foregoing, the Board may issue directions as to the particular nature and type of investment that, in the absolute discretion of the Board, meets the objectives of the Plan;
- (l) **Register Investments:** register any investments held in the Trust Fund in the name of the Board, in the name of a financial institution acting as custodian of the Trust Fund for the Board (or the nominee, subcustodian or other person acting for such financial institution), in the name of a domestic or foreign depository or clearing agency authorized to operate a book based system (or a nominee of same), or bearer form if the investment cannot be registered or registration would not be in the Trust Fund's best interest;
- (m) **Retain Monies:** retain monies and other properties of the Trust Fund on deposit or for safekeeping at any bank listed in Schedule I or II of the *Bank Act* (Canada) or licensed trust company or credit union and enter into arrangements and contracts with such bank, trust company or credit union for purposes of the trusts set forth in this Trust Agreement;
- (n) **Hold Cash:** hold in uninvested cash, without any liability for interest thereon, such sums as the Board deems necessary or advisable for the current cash requirements of the Trust Fund;
- (o) **Commingle:** commingle all Contributions and other monies received from whatever source;
- (p) **Execute Documents:** execute all documents of transfer and conveyance that may be necessary or appropriate to carry out the duties and powers under this agreement;
- (q) **Deal with Property:** deal with any property forming part of the Trust Fund and execute and deliver any document in connection therewith;
- (r) **Power to Sell:** sell for cash or on credit, convert, redeem, exchange for other securities or other properties, or otherwise dispose of and deal with any securities or other properties at any time held by the Board for the purposes of the Trust Fund and generally to act as owner and exercise all rights incidental to ownership thereof;
- (s) **Property and Personnel:** rent, lease or purchase premises, purchase supplies and equipment and employ such personnel as required for the administration of the Plan;

- (t) **Taxes:** pay out of the Trust Fund all real and personal property taxes, income taxes and any other taxes of any kind levied or assessed upon the Trust Fund or the Trustees (acting in their capacity as Trustees);
- (u) **Establish Reserves:** establish and accumulate as part of the Trust Fund a reserve adequate, in the opinion of the Board, to carry out the purposes of the Trust Fund and Plan and to utilize the reserve from time to time as the Board deems appropriate;
- (v) **Power to Incorporate:** incorporate corporations, the shares of which are held by or on behalf of the Board, for the purposes of administering the Trust Fund and operating the Plan, making investments of the Trust Fund or holding any investment;

Contributions

- (w) **Receive Contributions and Income:** receive for the purposes of and on behalf of the Trust Fund, Contributions, payments or any other income from any source whatsoever to the extent permitted by law;
- (x) **Rules for Contributions:** prescribe rules and procedures for any Employer to follow for purposes of remitting and reporting Contributions to the Plan;
- (y) **Self-Payment:** put into effect a self-payment program pursuant to which persons may be permitted to make such Contributions as the Board requires for the purpose of participating in the Plan, provided that the Board may in its sole and absolute discretion, at any time and in any manner whatsoever, modify or cancel any such program;

Benefits & Eligibility

- (z) **Plan Eligibility:** determine the eligibility of employees or other persons or groups of persons who may wish to participate in the Plan in the future and to determine the conditions of such participation;
- (aa) **Rules for Benefits:** prescribe rules and procedures to be followed in the application for Benefits including the proof required for same and any consents required to collect, use and disclose personal information in order to provide the Benefits from the Plan;
- (bb) **Benefit Payments:** authorize and make Benefit payments from the Trust Fund in accordance with the Plan;

Claims, etc.

- (cc) **Settle Claims:** determine, enforce, compromise, settle, submit to arbitration and release claims or demands in favour of or against the Trust Fund on such terms and conditions as the Board may deem advisable;
- (dd) **Determination of Rights:** make determinations as to the rights of any Member and any dependent to benefits, including any rights an individual may have to request a hearing

with respect to such determination, which determinations are final and binding upon all parties;

- (ee) **Seek Judicial Advice:** seek the advice, opinion or direction of a court of competent jurisdiction on any matter pertaining to the Trust Agreement, the administration of the Trust Fund or the operation of the Plan;

Other Plans

- (ff) **Reciprocal Agreements:** enter into reciprocal agreements with other authorities responsible for administration of an employee life and health trust or other similar plans;
- (gg) **Cost-Sharing Arrangements:** enter into cost-sharing arrangements with the Union or the board of trustees of a similar employee life and health trust or pension plan, including in respect of the coordination of its activities in the administration of the Trust Fund with the administrative activities of the trustees of the other funds, to permit the Board to share expenses related to the administration of the Plan;
- (hh) **Coordinate Administration:** coordinate its activities in the administration of the Trust Fund and the Plan with the administrative activities of the trustees of other trust funds;
- (ii) **Merger:** merge, join, jointly administer, or in any manner, to combine the assets of the Trust Fund with those of another trust when, in the opinion of the Board, such merger, transfer or disposition is in the best interests of the beneficiaries; and

Other

- (jj) **All Acts Necessary:** do all acts and incur any obligations or liabilities (and discharge such obligations and liabilities out of the Trust Fund) that the Board deems necessary or appropriate to carry out its duties and responsibilities hereunder, protect the property of the Trust Fund and to accomplish the general objectives of enabling Members (and their eligible dependents or eligible beneficiaries where applicable) to obtain Benefits in the most efficient and economical manner.

5.3 Legal Proceedings

- (a) The Board may commence such legal proceedings as it deems necessary or appropriate in connection with this Trust Agreement, the administration of the Trust Fund or the operation of the Plan, as well as defend any legal proceedings which may be brought against the Board or any of the Trustees. The reasonable expenses (including legal fees and disbursements on a solicitor-and-own-client basis) incurred by the Board or any Trustee in doing so will be paid out of the Trust Fund, except with respect to any proceedings brought against the Board or any Trustee in relation to any matter or thing arising out of the bad faith, wilful misconduct or gross negligence of a Trustee or the Board.
- (b) Without limiting the generality of subsection (a), the Board may seek judicial protection by any action or proceedings it may deem necessary to settle accounts, or may obtain a

judicial determination or declaratory judgment as to any question of construction of this Trust Agreement or the Plan or instruction as to any action hereunder. Any such determination is binding upon all parties to or claiming under this Trust Agreement and the Plan.

5.4 Books and Records / Audit of the Trust Fund

- (a) The Board must, directly or through the Administrative Agent, keep complete and accurate books of account and records of all proceedings of the Board and of all transactions with respect to the Trust Fund and Plan, which must be open to the inspection of any Trustee at all times.
- (b) The Board may provide any records that relate to the Trust Fund and the Plan to the Union, Employers or Members as the Board determines appropriate. Upon the Union's request, the Board will provide the Union with a copy material related to the Plan to the extent that such material exists including the Plan text or brochures, policies, procedures, rules, regulations and communication material provided to Members.
- (c) The Plan must be audited at least annually by a qualified Auditor. As part of such Plan audit, the Auditor must submit the financial statements to the Board for the preceding Plan year within six months of the end of that Plan year.
- (d) The Board must provide copies of such statements to the Union and each Trustee within 60 days after the statement of the results of the audit is prepared.

5.5 Borrowing

The Board may, from time to time, borrow money on a short term basis on such terms and conditions as may be necessary and appropriate in the circumstances, provided that such borrowing may only be for the purposes of:

- (a) the payment of Benefits under the Plan; or
- (b) permitting the orderly disposition of investments of the Trust Fund during the planned conversion of any investments,

in order to avoid a distress sale of investments of the Trust Fund that would otherwise be necessary to pay such Benefits or acquire new investments.

5.6 Self-Administration

If the Board decides to directly employ an individual (rather than a third-party corporation, firm or organization) to perform the duties of an Administrative Agent, it will first post the position with the Union, provided that any hiring decision remains subject to the Trustees' standard of care set out in Section 6.1 and the Trustees' duties in respect of the use of agents and employees in Section 6.4.

ARTICLE 6 – FIDUCIARY RESPONSIBILITIES

6.1 Standard of Care

- (a) In administering the Plan and Trust Fund, each Trustee must:
 - (i) act honestly, in good faith and in the best interests of the Members and any other persons to whom a fiduciary duty is owed; and
 - (ii) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person.
- (b) Each Trustee acknowledges that he or she has a fiduciary obligation towards all of the Trust Fund's beneficiaries and must comply with such fiduciary obligation in all actions taken and decisions made as a Trustee.

6.2 No Conflict of Interest

- (a) No Trustee or member of a committee established by the Board may knowingly permit his or her other interests to conflict with his or her powers, duties and responsibilities in respect of the Plan.
- (b) The Board may develop a process to address conflicts of interest which may be set out in a policy.

6.3 Committees

- (a) The Board may establish such committees and their respective procedures as it deems necessary from time to time, and delegate powers or duties to them in accordance with subsection 5.2(e). Such committees must conduct themselves in accordance with the rules and procedures made by the Board pursuant to Section 4.7. Committee members may include Trustees and non-Trustees with particular expertise in the subject matter of the committee.
- (b) If the Board appoints a person to a committee under this Section 6.3, the Board must personally select that person and be satisfied of the person's qualifications and ability to perform the duties for which the person is appointed, and the Board must carry out such supervision of the committee members as is prudent and reasonable. A person appointed to a committee under this Section 6.3 is subject to the same duty of care as the Board, and, in particular, is subject to the restrictions in Sections 6.1 and 6.2, and is not entitled to any payment from the Trust Fund other than the usual and reasonable fees and expenses for services provided by the committee member in respect of the Plan and Trust Fund.

6.4 Use of Agents and Employees

The Board may employ or appoint employees or agents to carry out any act required to be done in the administration of the Plan or in the administration and investment of the Trust Fund. If the

Board employs or appoints an employee or an agent, the Board must personally select the employee or agent and be satisfied of the employee's or agent's qualifications and suitability to perform the duties for which the employee or agent is employed or appointed, and the Board must supervise these employees and agents. Any agent or employee so appointed or employed is subject to the same duty of care as the Board and, in particular, each agent and employee is subject to the restrictions in Sections 6.1 and 6.2, and is not entitled to any payment from the Trust Fund other than Benefits provided in accordance with the Plan and the usual and reasonable fees, expenses or compensation for the services provided by the agent or employee in respect of the Plan and Trust Fund.

6.5 Restrictions on Benefits Payable to Trustees

No Trustee is entitled to any benefit from the Plan other than (i) a Benefit provided for in the Plan and (ii) any reimbursement of amounts related to the administration of the Plan or the administration and investment of the Trust Fund that is permitted by the common law or provided for in this Trust Agreement or the documents setting out the terms of the Plan.

ARTICLE 7 – LIMITATION OF LIABILITY

7.1 Indemnification

A Trustee or an employee or former employee of the Board must be indemnified out of the Trust Fund against all costs, charges and expenses actually and reasonably incurred by that person in carrying out his or her duties pursuant to this Trust Agreement, including without limitation an amount paid to settle an action or satisfy a judgment in a civil, criminal or administrative action or proceeding to which the person is made a party because of being or having been a Trustee or an employee of the Board and a deductible payable in respect of any insurance policy that may apply in respect of the proceeding, and including an action brought by the Board, if:

- (a) the individual acted in good faith and carried out his or her fiduciary responsibilities under this Trust Agreement; and
- (b) in the case of a criminal action or proceeding, the individual had reasonable grounds for believing that his or her conduct was lawful.

Despite the generality of the foregoing, nothing exempts any Trustee or employee or former employee of the Board from liability arising out of his or her own bad faith, willful misconduct or gross negligence, or entitle such individual to indemnification for any amounts paid or incurred as a result thereof, including the costs of litigation.

7.2 Liability of Trustees Generally

- (a) The Trustees, individually or collectively, are not liable for the making, retention or sale of any investment or reinvestment made by them in accordance with this Trust Agreement or in accordance with any other legal duties nor for any error of judgment nor loss to or diminution of or insufficiency of the Trust Fund, or any consequent reduction or cessation of Benefits, except a loss, diminution or insufficiency that resulted from a Trustee's bad faith, willful misconduct or gross negligence.

- (b) An individual Trustee is not liable for any loss, diminution or insufficiency of the Trust Fund, or any consequent reduction or cessation of Benefits, as set out in subsection (a) resulting from another Trustee or Trustees' bad faith, willful misconduct or gross negligence provided that he or she (i) acted in accordance with the standard of care set out in Section 6.1 and (ii) was not party to the bad faith, willful misconduct or gross negligence that resulted in such loss, diminution or insufficiency of the Trust Fund or consequent reduction or cessation of Benefits.

7.3 Liability for Other Matters

The Trustees, individually or collectively, are not responsible or liable for:

- (a) any matter, cause or thing arising due to the invalidity of all or any part of this Trust Agreement or the Plan;
- (b) any delay occasioned by any restriction or provision in:
 - (i) this Trust Agreement;
 - (ii) the documents setting out the terms of the Plan;
 - (iii) any contract procured in the course of the administration of the Plan or Trust Fund; or
 - (iv) any other procedure; or
- (c) any Contributions required to be paid to the Trust Fund.

7.4 Liability of Other Parties to this Trust Agreement

Neither the Union nor any Employer is liable for the payment of any Benefits nor for the failure of the Board to secure the Benefits contemplated herein or in the Plan for any Member (or his or her eligible dependent or eligible beneficiary where applicable), nor for any default or neglect of the Board, provided, however, that nothing in this Section 7.4 exempts or relieves any Employer from its obligation to pay Contributions.

7.5 Reliance on Documents and Information Supplied

The Trustees incur no liability, either collectively or individually, in acting upon any documents, data or information reasonably believed by them to be genuine and accurate and to have been made, executed, delivered or assembled by the appropriate parties.

7.6 Reliance on Advisors or Agents

So long as the Board exercises reasonable care in the selection, instruction and supervision of an agent (including the custodian of the Trust Fund) or a professional advisor, then subject to Section 6.4, the Trustees incur no liability, either collectively or individually, in acting and relying upon the opinions or advice of the agent or professional advisor.

7.7 Further Assurances Regarding Indemnity

The Board must do such things and execute and deliver such documents in order that any and all funds required to be paid out of the Trust Fund by way of indemnity as herein set forth are paid as required from time to time.

7.8 Recourse Solely Against Trust Fund

A Member or former Member or a person claiming through a Member or former Member has recourse solely to the Trust Fund for any Benefit or other payment under the Plan.

7.9 Financial Responsibility for the Plan

None of the Union, the Members or the Employers are liable or responsible for any debts, liabilities, obligations or deficiencies of the Board, the Plan or the Trust Fund.

7.10 No Liability for Trustees

Neither the Union nor any Employer is liable for any of the acts or obligations of a Trustee solely because the Trustee is or was an officer or employee of the Union or of the Employer, as the case may be.

7.11 Extended Meaning of Trustee, etc.

- (a) Any reference in this Trust Agreement to the indemnification or other protection of a Trustee includes, unless the context clearly indicates otherwise, a person appointed to a committee under Section 6.3.
- (b) Any reference in this Trust Agreement to the indemnification or other protection of a Trustee or a person appointed to a committee under Section 6.3 applies, unless the context clearly indicates otherwise, to individuals who formerly held those positions, and to the personal representatives of any such individuals.

7.12 Fiduciary Liability and Other Insurance

The Board may purchase and maintain the errors and omissions insurance or fiduciary liability insurance, or such other insurance of a similar nature or description, it considers necessary for the Board, any Trustee or anyone else engaged in the administration or operation of the Plan or Trust Fund. The cost of this insurance must be paid from the Trust Fund. For greater certainty and despite Section 7.1, any deductible relating to such insurance will be paid from the Trust Fund, including in respect of a claim due to a breach of a Trustee's fiduciary duties.

7.13 Liability Fund

Without limiting the Board's rights to use the Trust Fund as set out in this Trust Agreement or in Applicable Law, the Board may in its discretion establish a fund for the payment of any claims or expenses of any Trustee or an employee or former employee of the Board arising out of any error in judgement, act or omission, provided that:

- (a) the Trustee, employee or former employee acted in accordance with the standard of care set out in Section 6.1 and Applicable Law; and
- (b) nothing exempts any Trustee or employee or former employee of the Board from liability arising out of his or her own bad faith, willful misconduct or gross negligence.

ARTICLE 8 – CONTRIBUTIONS

8.1 Contributions

- (a) The Board will require Contributions to the Trust Fund to be paid in accordance with the applicable Collective Agreement then in existence. Despite anything contained in a Collective Agreement, the Board may enforce the payment or delivery of any payments or other amounts owing to it in connection with Contributions by action in any court in the name of the Board as a debt due to the Board. All amounts paid to the Board must be held by the Board in the Trust Fund.
- (b) If an Employer fails to make Contributions as required, the Board will provide the Union with a copy of any written correspondence that the Board sends to that Employer directly or through its agent, in respect of the delinquency.
- (c) The Union will take such steps as are necessary to cause the amounts allocable to Contributions under each Collective Agreement to be paid to the Board by the Employers in respect of the employment services provided by Members. Without limitation, the Union will take such steps available to it under the grievance and arbitration provisions of each Collective Agreement as are reasonable in the circumstances to ensure such amounts are remitted to the Board by or on behalf of the Employers.

8.2 Form of Payment to the Trust Fund

All Contributions and other payments to the Trust Fund will be made payable to the Trust Fund or as the Board may direct from time to time, together with any reports or data as the Board may request so as to efficiently process and verify such Contributions or other payments.

8.3 Audit Rights

The Board may request an audit, examination or inspection of the relevant records of an Employer if the Board is of the opinion that it is necessary to determine if the Employer has complied with this Trust Agreement, documents setting out the Plan or insurance contracts for the Plan as applicable or any other agreement binding on the Employer, including, without limitation, complying with its obligations under a Collective Agreement to make Contributions to the Trust Fund and any participation agreement. Each Employer must furnish to the Board, in a timely manner, such information, records or reports as are required to properly conduct such audit, examination or inspection.

8.4 Effect of Non-Payment of Contributions

- (a) Non-payment by anyone required to make Contributions to the Trust Fund does not relieve any other person of his, her or its obligations to make such payments. The Board may take any action necessary to enforce payment of such payments to the Trust Fund and damages due hereunder including, but not limited to, proceedings at law and in equity in a court of competent jurisdiction. Any person who fails to pay Contributions that are due and have not been paid must reimburse the Board on a full indemnity basis for, and indemnify the Board against all legal, audit and other costs actually incurred by the Board (including, without limitation, legal fees on a solicitor and his or her own client basis) in collecting the unpaid amounts.
- (b) If an Employer fails to make the Contributions to the Plan in respect of a Member as required, the Member is not entitled to receive the Benefits he or she would otherwise have been entitled to had the Contributions been received, and no Member will have a claim in respect of the Board's decision in that regard.

8.5 Trust of Employer Contributions

Any sum required to be paid to the Board by an Employer pursuant to a Collective Agreement is deemed to be held by the Employer in trust for the payment of same to the Board, whether or not the amount thereof has been kept separate and apart by the Employer, and the Employer must not appropriate or convert any part of the amount required to be paid to the Board to its own use.

8.6 Grace Period

The Board may establish a reasonable and lawful grace period by which Contributions must be received subject to the provisions of the Applicable Legislation without prejudicing the Board. If Contributions or any other amounts owing to the Board pursuant to this Trust Agreement or a Collective Agreement are not received on their due date (as extended by any grace period granted by the Board), the unpaid amounts bear interest at an effective annual rate specified by the Board from such due date to the date of payment. Interest is calculated and compounded as of the last day of each month and is payable to the Trust Fund by the delinquent contributor on demand. The Board may, in its discretion, waive, in whole or in part, the requirement to pay interest.

8.7 Self-Payment Program

- (a) The Board may, in its absolute discretion, implement a self-payment program by which persons employed by an Employer who do not meet the eligibility requirements for the Plan, may make such Contributions as the Board requires, directly to the Trust Fund for the purpose of participating in the Plan on such terms as are determined by the Board.
- (b) Without limiting the generality of subsection (a), the Board may, in its absolute discretion and at any time or from time to time and in any manner whatsoever, modify or cancel any self-payment program created including modifying the amounts required to be paid for coverage. Those participating in the self-payment program have no right, title or interest in the Trust Fund other than as specifically provided for in this Section 8.7 and subject to

any terms and conditions established by the Board and no part of the Trust Fund will revert to any person participating under the self-payment program. The Trust Fund or Contributions made pursuant to the self-payment program will not in any manner be liable for or subject to the debts, contracts or liabilities of any person under the self-payment program.

ARTICLE 9 – AMENDMENT, MERGER AND TERMINATION

9.1 Amendment to Trust Agreement

This Trust Agreement may be amended at any time by the Board and the Union by instrument in writing, provided that such amendment or modification:

- (a) is consistent with the intent of this Trust Agreement;
- (b) is in good financial and business practice in every respect;
- (c) eliminates the requirement of an annual audit; and
- (d) does not have the effect of directing the Trust Fund or any part thereof to a purpose other than as set out in this Trust Agreement.

This power of amendment is to be construed as being subject to no restrictions other than as set out herein and imposed by Applicable Legislation.

9.2 Retroactive Amendment

Any amendment to this Trust Agreement may take place retroactively, provided that no amendment may be made which retroactively increases the duty of care required of a present or former Trustee or retroactively diminishes their right to indemnity under this Trust Agreement.

9.3 Amendment to Comply with Law

Despite any other provision of this Trust Agreement the Board has the power to and must amend this Trust Agreement to the extent necessary to comply with Applicable Legislation or as is otherwise necessary to comply with any other applicable law. Without limiting the foregoing, the Board will make reasonable efforts to discuss any such amendment with the Union and obtain the Union's consent therefor in advance of making any amendments pursuant to this Section 9.3.

9.4 Amendment to the Plan

The Plan may be amended at any time by the Board.

9.5 Board's Power and Authority to Transfer and Receive

The Board may, with the consent of the Union, merge, consolidate or divide all or part of the Plan (and any trust arising thereunder) or the Trust Fund with or into any one or more other employee life and health plans and trust funds, including any trusts arising thereunder, or any

other similar arrangements. Such merger, consolidation or division will be on such terms and conditions as the Board may determine appropriate and may be adopted on a retroactive basis.

9.6 No Reversion

Under no circumstances may any portion of the corpus or income of the Trust Fund directly or indirectly revert or accrue to the benefit of any Employer, any employer association, the Union or any of its members, or any Trustee, other than for purposes of the Trust Fund.

9.7 Complete Termination of Trusts and Plan

The Plan and the trusts created under this Trust Agreement may be terminated at any time by the Union after:

- (a) conducting a duly called referendum of the MCT Members of the Union which must pass by an affirmative vote of at least a two-thirds majority of such MCT Members of the Union who cast their ballots; and
- (b) giving at least six months written notice to the Board of its intention to require such termination.

9.8 Duties of the Board on Termination

In the event of termination, the Board must:

- (a) make provisions out of the Trust Fund for the payment of all expenses, claims and obligations related to the Plan, including the expenses incidental to termination of the Trust Fund and the Plan;
- (b) arrange for a final audit, accounting and report of their transactions and accounts; and
- (c) having in mind the extent of the Trust Fund at the date of termination, make a final determination for the distribution of the Trust Fund in accordance with Section 9.12 and provide such Benefits to such persons all in accordance with Applicable Legislation.

9.9 Board's Powers Continue

Upon the termination of the Plan and the trusts created under this Trust Agreement as aforesaid, the Trustees will continue as Trustees for the purpose of winding up the affairs of the Plan and the trusts created under this Trust Agreement.

9.10 No Further Contributions

In no event are Contributions required to be made after the Plan is terminated except for amounts due, or that have accrued up to the effective date of the termination and have not been paid to the Board to hold in the Trust Fund.

9.11 Disposition of Trust Fund on Completion of Final Audit

After completion of the final audit contemplated by subsection 9.9(b), the Board will apply or distribute the assets of the Trust Fund, to the extent that assets are available, in accordance with the following order of priority:

- (a) first, in the payment of all reasonable and necessary expenses, including those incurred in winding up the Plan and all outstanding premiums for insurance policies then in effect;
- (b) second, and with the clear intent of winding up the business of the Plan, in payment of such premiums for insurance policies as the Board may in its discretion select for the purpose of extending the operation of all or any part of such insurance plans or welfare plans as will best effectuate the purpose of this Trust Agreement; and
- (c) third, any balance remaining after payment of the foregoing will be used for the purpose of funding Benefits in any manner selected by the Union in its absolute discretion, as permitted by Applicable Legislation, and provided that no Contributions or any part thereof and no portion of the Trust Fund may be paid or repaid to any Employer.

9.12 Completion of Termination

Once all assets of the Trust Fund have been properly disbursed and all the obligations of the Plan and the trusts created under this Trust Agreement have otherwise been satisfied, the Plan, this Trust Agreement and the Trust Fund will be considered terminated.

ARTICLE 10– MISCELLANEOUS PROVISIONS

10.1 Dealings with the Board

No person, partnership, corporation, association or organization dealing with the Board is obligated to see to the application of any funds or property of the Trust Fund, or to see that the terms of this Trust Agreement have been complied with, nor be obliged to inquire into the necessity for or the expediency of any act of the Board.

10.2 No Duty to Inquire

All persons dealing with the Board do not have to inquire into any decision or authority of the Board or into the ability of the Board to receive any monies, securities or other property paid or delivered to the Board and may rely upon any document required to be executed by the Board which has been executed as provided herein, as having been duly authorized.

10.3 The Board's Discretion

The resolution of any questions arising in connection with the carrying out of the terms and provisions of this Trust Agreement and the Plan not specifically provided for herein will be left to the sole discretion of the Board.

10.4 Interests of MCT Members of the Union

In exercising its rights and privileges and fulfilling its obligations pursuant to this Trust Agreement, the Union will act only in the interest of the MCT Members of the Union.

10.5 Union's Obligation to Furnish Information

Upon the Board's request, the Union will furnish to the Board any of its records respecting Members provided that: (i) the Board reasonably requires such information for the administration of the Trust Fund and for no other purpose; (ii) the Union has such information; and (iii) the Union is permitted by Applicable Law to release such information. This information may include, without limitation, classification of Members, their names, amount of wages paid and hours worked, and any other payroll records and information in connection therewith.

10.6 Notices

Except as otherwise provided herein any notice, statement, document or other writing must be given or delivered in writing and is effectively given or delivered if personally delivered, or if sent by prepaid first class mail, or by facsimile or email transmission, addressed to the intended recipient, to the last mailing address, facsimile number or email address shown for the intended recipient in the records of the Board. If so mailed, receipt of same by the intended recipient is deemed to have occurred on the fifth business day following the date of mailing, provided that if between the time of mailing and the time of deemed receipt there is a postal strike or lockout, such notice will not be deemed to have been given until actually received. If sent by facsimile or email transmission, receipt is deemed to have occurred on the first business day following the date of the sending thereof, provided the sender did not receive a failure of transmission notice. The date of receipt of any notice, statement, document or other writing which is personally delivered is the date of such delivery.

10.7 Further Assurances

Each party hereto must from time to time and at any time hereafter, upon each reasonable written request to do so, make, do, execute and deliver or cause to be made, done, executed and delivered all further acts, deeds, assurances, things and written instruments as may be necessary in the opinion of any party, for more effectively implementing and carrying out the intent of this Trust Agreement.

10.8 Survival of Provisions

Those provisions of this Trust Agreement which by their context are meant to survive the termination of this Trust Agreement will so survive the termination of this Trust Agreement.

10.9 Severance of Illegal Provisions

If any provision of this Trust Agreement or the documents setting out the terms of the Plan is held to be illegal or invalid for any reason, the illegality or invalidity will not affect the remaining portions of this Trust Agreement or Plan documents unless the illegality or invalidity materially prevents the accomplishment of the respective objectives and purposes of the Plan or

this Trust Agreement as determined by the Board. In the latter circumstances, the Board together with the Union must forthwith adopt a new provision to take the place of the illegal or invalid provision so as to permit the Plan or Trust Agreement, as the case may be, to continue.

10.10 Binding Effect of Trust Agreement

This Trust Agreement and any amendments thereto are binding upon the Board, the Union, the Employers, the Members (including former Members) and their respective beneficiaries, dependents, estates, heirs, executors, administrators, successors and assigns.

10.11 Governing Law

The Province of British Columbia is the location for legal purposes of the Trust Fund. All questions pertaining to the validity, construction and administration of this Trust Agreement or the Plan are determined in accordance with the laws of the Province of British Columbia. Any litigation that arises pursuant to or in connection with this Trust Agreement or the Plan will be referred to the courts in the Province of British Columbia unless the parties to such litigation agree otherwise.

10.12 Counterpart Execution

This Trust Agreement and any document prepared in connection with the Plan or the Trust Fund may be signed in counterparts.

IN WITNESS WHEREOF the parties have executed this Trust Agreement as of the date first written below.

**CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES
UNION, LOCAL 378, doing business as MOVEUP**

By: _____ Date: _____

Its: _____

**ON BEHALF OF THE BOARD OF TRUSTEES OF THE
MASTER CONSTRUCTION TRADE UNION BENEFIT
PLAN**

By: _____ Date: _____
Trustee authorized on behalf of the Board

SCHEDULE "A"

ACCEPTANCE OF TRUST

TO: THE BOARD OF TRUSTEES OF THE MASTER CONSTRUCTION TRADE UNION BENEFIT PLAN

The undersigned acknowledges receipt of a copy of the Master Construction Trade Union Benefit Plan Trust Agreement (the "**Trust Agreement**") pursuant to which the Master Construction Trade Union Benefit Plan (the "**Plan**") and the Master Construction Trade Union Benefit Trust Fund (the "**Trust Fund**") are established.

The undersigned consents to act as a Trustee of the Plan and Trust Fund pursuant to the terms of the Trust Agreement.

The undersigned hereby accepts the trusts created and established by the Trust Agreement, and agrees to administer the Plan and Trust Fund in accordance with the provisions of the Trust Agreement.

The undersigned agrees that until further notice communications may be sent to the undersigned at the following addresses or number appropriate to the communication:

[Street address, City, Postal Code]

[Facsimile number]

[E-mail address]

DATED this ____ day of _____, 20__.

Trustee

Witness