

THIS IS THE AGREEMENT BETWEEN THE UNIVERSITY OF VICTORIA AND THE HERINAFTER NAMED TRUSTEES AS REVISED AND ADOPTED ON MARCH 30<sup>th</sup>, 2016.

THIS AGREEMENT made in duplicate the 2nd day of March, A.D. 1992.

BETWEEN:

UNIVERSITY OF VICTORIA, a body corporate, pursuant to the Statutes of British Columbia, 1963, Chap. 52

(hereinafter called "the University"),

OF THE FIRST PART,

AND:

J. TREVOR MATTHEWS

WILLIAM E. PFAFFENBERGER

ROBERT W. MCQUEEN

ALFRED FISCHER

MARTIN MURENBEELD

KENNETH G. STEWART

S. ROBERT RUDD

DONOVAN W.M. WATERS

(hereinafter called the "Trustees"),

OF THE SECOND PART.

WHEREAS certain employees of the University have requested the University to establish a pension plan, a true copy of which is attached hereto and marked Schedule "A", including, but not necessarily limited to, Assistant Teaching Professors, Associate Teaching Professors, Teaching Professors and part-time and sessional members of the academic and administrative and academic professional staff of the University, which the University has agreed to do, upon the several terms and conditions hereinafter appearing; and

WHEREAS under such Plan money will be paid to the Trustees (by way of contributions as in the said Plan more particularly set forth) which monies when received by the Trustees will constitute a pension trust fund to be held and administered for the benefit of the Members of the Plan, or their properly designated Beneficiaries.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises the parties hereto agree as follows:

**NAME**

- I. This Trust Agreement establishes the Pension Fund and the Plan, which terms are defined in clause II hereafter.

## DEFINITIONS

II. The following words or phrases shall be as defined herein unless the context clearly indicates otherwise.

- (1) "Amendment" - means a supplementation, deletion, modification or any other alteration of the Trust Deed or the Plan, as the case may be, other than the termination or the revocation of the said Deed or Plan.
- (2) "Board of Governors" - means the Board of Governors of the University of Victoria.
- (3) "Combination Plan" - means the University of Victoria Combination Pension Plan.
- (4) "Combination Plan Pension Board" - means the Pension Board of the Combination Plan.
- (5) "Contributing Member" - means a Member of the Plan who is currently employed by the University in an employee group eligible for membership in the Plan.
- (6) "Earnings" – shall have the meaning set out in Section 1 of the Plan.
- (7) "Income Tax Act" -means the Income Tax Act, Statutes of Canada and the Regulations thereunder, as amended or replaced from time to time.
- (8) "Member" - means a person who is or who has been a contributor to the Plan and has not withdrawn from the Plan.
- (9) "Member Trustee" - bears meaning as defined in subclause IV.(1) of this Trust Deed.
- (10) "Pension Benefits Standards Act" - means the Pension Benefits Standards Act, Statutes of British Columbia and the Regulations thereunder, as amended or replaced from time to time.
- (11) "Pension Board" - means the Trustees charged with the general administration and trusteeship of the Plan under the terms of the Trust Deed.
- (12) "Pension Fund" - - means the fund established pursuant to the Trust Agreement to which all contributions under the Plan are made and from which benefits and other amounts payable under the Plan are to be paid.
- (13) "Plan" - means the "University of Victoria Money Purchase Pension Plan" established under this Trust Agreement and documented in the Plan text set out in Schedule "A" hereto, as amended from time to time, which provides benefits to certain Assistant Teaching Professors, Associate Teaching Professors, Teaching Professors, Part-time, Sessional, or Term members of the following groups: Faculty, Administrative and Academic Professional Staff, Librarians, Management Excluded and Executive Staff, Physicians, Sessional Lecturers, and
- (14) "Spouse" - shall have the meaning set out in Section 1 of the Plan.

- (15) "Staff Plan" - means the University of Victoria Staff Pension Plan.
- (16) "Trust" - means any obligation or duty created by the Trust Agreement and imposed upon the Trustees.
- (17) "Trust Agreement" - means the Trust Deed and the Plan, each as amended from time to time.
- (18) "Trust Deed" - means this trust instrument, as amended from time to time, but not including the Plan or any Amendment thereof.
- (19) "Trustee" - means a member of the Pension Board as such Board is from time to time constituted pursuant to the Trust Deed.
- (20) "University" - means the University of Victoria or the Board of Governors thereof, as the context requires.
- (21) "University Trustee" - bears meaning as defined in subclause IV.(1) of this Trust Deed.

Whenever the singular is used the same shall be construed as meaning the plural whenever the circumstances so require.

The Trust Deed is divided into clauses and subclauses and the Plan into sections and subsections.

## **FIRST TRUSTEES**

III. The University hereby appoints the following eight Trustees:

- |    |                          |                     |
|----|--------------------------|---------------------|
| 1. | J. TREVOR MATTHEWS       | University Trustee; |
| 2. | ROBERT W. MCQUEEN        | University Trustee; |
| 3. | MARTIN MURENBEELD        | University Trustee; |
| 4. | S. ROBERT RUDD           | University Trustee; |
| 5. | WILLIAM E. PFAFFENBERGER | Member Trustee;     |
| 6. | ALFRED FISCHER           | Member Trustee;     |
| 7. | KENNETH G. STEWART       | Member Trustee;     |
| 8. | DONOVAN W.M. WATERS      | Member Trustee;     |

all of whom shall constitute the first Trustees of the Trust Agreement until successors to the Trusteeship are appointed in the manner following, and the said Trustees do hereby accept the trusts therein; and do each declare that they jointly and severally will hold, invest and have invested, distribute and administer the Pension Fund and administer the Plan in accordance with the terms of this Trust Deed and of the terms of the Plan; and do agree that they will further have each successor Trustee likewise declare that such Trustee will then hold, invest, and have invested, distribute and administer the Pension Fund and administer the Plan in accordance with the terms of this Trust Deed and the terms of the Plan.

## **APPOINTMENT, RESIGNATION, REMOVAL AND TERMS OF OFFICE OF TRUSTEES**

- IV. (1) The Pension Board shall consist of eight Trustees appointed by the University. The eight persons appointed by the University as Trustees shall be the eight persons who hold office as trustees of the Pension Board of the Combination Plan. The four persons elected as member trustees to the Combination Plan Pension Board shall be called "Member Trustees" of the Pension Board, and the four persons appointed as University trustees to the Combination Plan Pension Board shall be called "University Trustees" of the Pension Board.
- (2) The eight Trustees shall hold office as trustees until such time as successor member trustees are elected or successor University trustees are appointed trustees to the Combination Plan Pension Board, at which time or times the University shall appoint these successors as the Member Trustees and University Trustees respectively to the Pension Board.
- (3) Anything to the contrary notwithstanding, should one or more vacancies occur in the Pension Board for any reason whatsoever, the remaining members of the Pension Board shall have the full power to act and carry out the duties and obligations of the Trust Agreement.

- V. A Trustee shall cease to act and shall be divested of any and all powers hereunder in the following instances:
- (1) if the Trustee resigns and upon the resignation being accepted by the remaining members of the Pension Board;
  - (2) if a successor Trustee is appointed;
  - (3) if a Trustee becomes of unsound mind;
  - (4) if by reason of illness or other cause the Trustee is unable properly to carry out the duties of trustee;
  - (5) if the Trustee becomes a bankrupt;
  - (6) if by unanimous vote of the remaining members of the Pension Board it is resolved that the Trustee is a person unfit to hold the office of trustee or that the Trustee has or is likely to bring the Pension Board, the Plan, the Trust Deed or the University into disrepute;
  - (7) if the Trustee fails to attend any meeting of the Pension Board during a period of three consecutive months.

- VI. (1) Upon ceasing to be a Trustee, the Trustee in question shall thereupon be discharged and released of all claims, demands and obligations arising hereunder or under the Plan, save and except for any liability or obligation for any debt or loss as a consequence of a wrongful act or omission, or negligence, on the part of the Trustee.
- (2) Each new Trustee, before assuming any duties or being vested with any rights or powers of Trusteeship hereunder, shall by instrument in writing confirm and declare that the Trustee accepts the Trusteeship and all obligations of the Trust Agreement, as if the Trustee had been an original appointee hereunder. All insurance companies, agencies and institutions and all persons connected with the administration of the Pension Fund and Plan shall be if necessary immediately notified.

## MEETINGS AND PROCEDURES OF THE PENSION BOARD

- VII. (1) The first Trustees shall hold a meeting of the Pension Board upon their appointment and shall elect a Trustee as Chair. Subsequently and prior in each year to the mailing of annual statements to Members the Trustees shall hold an annual general meeting of the Pension Board and at such meeting they shall elect a Trustee who shall hold the office of Chair until the next annual general meeting.
- (2) Meetings of the Pension Board shall be held at regular intervals as determined from time to time by the Pension Board. A meeting of the Pension Board may be summoned by the Chair or by any two Trustees acting jointly upon seven days' notice to the Trustees. Notices may be effectively given if delivered to any Trustee or mailed by regular prepaid post to the Trustee at the Trustee's usual mailing address. The Trustees may waive regular notice of any meeting and convene at any time by unanimous consent.
- (3) At any duly constituted meeting of the Pension Board a quorum shall consist of four Trustees, of whom at least one shall be a University Trustee and at least one shall be a Member Trustee, all of whom shall be in office at the time such meeting is held. Any motion, moved at any duly constituted meeting of the Pension Board, at which a quorum is present, shall be decided by a majority vote. In the event of a tie vote occurring in the course of a meeting of the Pension Board, the motion before the Pension Board shall fail. A resolution signed by all Trustees shall be as effective and binding as if passed at a duly convened meeting of the Trustees.
- (4) The Trustees shall appoint a Secretary who shall keep minutes or records of all meetings, proceedings and acts of the Pension Board and such minutes need not be verbatim.
- (5) Without limiting the generality of the foregoing, and subject to the limitations of the terms of the Plan, the Pension Board shall from time to time establish rules for the conduct of its meetings, the performance of its functions and the administration of the Plan, and control the Plan's operations according to its terms and the terms of this Trust Deed, including the power:
- (a) to apply the provisions of the Plan in respect to policy as it relates to an individual according to the true intent and meaning of the Plan and to determine any questions arising in connection with the administration or operation thereof;
  - (b) to compute the amount of retirement benefit or other sum payable under the Plan to any person;
  - (c) to authorize and direct the disbursement of retirement benefits or other sums under the Plan; and
  - (d) to employ such counsel and agents and to obtain such clerical and medical and legal and actuarial services it may deem necessary or appropriate in carrying out the provisions of the Trust Deed and the Plan.
- (6) Decisions and determinations of the Pension Board, within its powers and not inconsistent with the provisions of the Trust Agreement, shall be binding and conclusive in relation to all interested persons.



## **ANNUAL MEETING OF MEMBERS**

- VIII. The Trustees shall call and convene annually a general meeting of the Members of the Plan at least fifteen, but no more than sixty days, from the distribution of annual statements to Members. The Chair shall act as the chair of the said meeting. In the absence of the Chair a Trustee selected by the Trustees present shall act as chair of the meeting.

## **POWERS OF THE PENSION BOARD**

- IX. (1) The Pension Board shall cause to be invested and re-invested all the principal and income of the Pension Fund without distinction between principal and income in such investments as the Pension Board shall from time to time in its discretion decide and which at the time of investment are not inconsistent with the investment requirements of the Income Tax Act and the Pension Benefits Standards Act.
- (2) The Pension Board shall have and is hereby vested with all and every power, right and authority to enable it to administer and invest the Pension Fund and carry out its obligations and rights under the Trust Agreement, including but without restricting the generality of the foregoing, full power to use and apply the Pension Fund for the following purposes:
- (a) To pay or provide for the payment of all reasonable and necessary expenses, costs and fees incurred by the Trustees in connection with the maintenance and administration of the Pension Fund, and the Plan, including the employment of such legal, actuarial and other expert assistance as the Pension Board in its discretion deems necessary or appropriate in the performance of its duties. PROVIDED however that no part of the Pension Fund shall be used for the personal expenses or compensation of the Trustees except when such expenses are incurred by a Trustee on the business of and approved by the Pension Board.
  - (b) To pay or provide for the payment of all real and personal property taxes, income taxes and other taxes and assessments of any and all kinds, levied or assessed under existing or future laws upon or in respect of the Pension Fund or any money or property forming a part thereof, and to withhold from payments out of the Pension Fund all taxes required by any law to be so withheld.
  - (c) To maintain a reserve for expected administration expenses reasonably anticipated to be incurred.
  - (d) To demand, collect and receive contributions for the purposes of the Plan, including the right to sue in any court of competent jurisdiction and to impose a reasonable penalty upon delinquency in payment of contributions, limited however to such sum as shall reimburse the Pension Fund for the amount of loss incurred by reason of such delinquency together with interest, costs and expenses.

## RIGHTS TO THE PENSION FUND

- X. The following provisions shall apply to the rights or interests of any natural person, corporation, or other association in or to the use of the Pension Fund:
- (1) Neither the University, the Members, nor any other persons, any associations or corporations, shall have any right or interest in or to the Pension Fund or any part thereof, save as by this instrument and by the Plan expressly provided, nor shall any persons, associations or corporations have any right to demand payment of any portion of the Pension Fund, save as by the Trust Deed and by the Plan provided. PROVIDED however that nothing herein contained shall impair or derogate from the right of any Member or any person properly claiming by, through or under such Member, to the benefits or rights, specifically provided in the Trust Agreement.
  - (2) Notwithstanding anything contained in the Trust Agreement to the contrary, no part of the corpus or income of the Pension Fund shall be used or diverted to purposes other than for the exclusive benefit of the Members and other Beneficiaries, except as follows:
    - (a) costs and expenses directly attributable to the administration of the Plan and the Pension Board; or
    - (b) a contribution returned to the contributor where such return is required to avoid the revocation of the Plan under the Income Tax Act; or
    - (c) the execution of a matrimonial property order under the applicable provincial property law to settle the entitlements of a Member's Spouse or former Spouse.

## ADMINISTRATION OF THE PENSION FUND

- XI. (1) The administration of the Pension Fund shall be vested wholly in the Pension Board, and for such administration the Pension Board shall, consistent with the purpose of the Pension Fund, have the power to make such arrangements and agreements with persons or corporations as the Pension Board in its sole and complete discretion deems most advantageous.
- (2) The Pension Board is to administer the Plan and in so doing is authorized to appoint from time to time such agents, or such employees of the Plan, as the Pension Board deems necessary to assist in the day-to-day handling of the management of the Pension Fund and administration of the Plan. The Pension Board may appoint or employ any such persons to carry out clerical or administration functions, but always under the direction of the Pension Board.
- (3) In addition to such other powers as are set forth herein or confirmed by law:
- (a) To sell, exchange, lease, convey, grant options or dispose of any property at any time forming a part of the Pension Fund, or the whole thereof, upon such terms as it may deem proper, and to effectuate and deliver any and all instruments of conveyance and transfer in connection therewith;
  - (b) To enter into any and all contracts and agreements, including insurance contracts with insurance companies, and trust or agency agreements with Trust Companies, for carrying out the terms of the Trust Agreement and for the administration of the Pension Fund, and to do all acts as it in its discretion may deem necessary or advisable, and such contracts, agreements and acts shall be conclusively binding upon the Members and all other Beneficiaries;
  - (c) To do all acts according to the true intent and purpose of the Trust Agreement whether or not expressly authorized herein which the Pension Board may deem necessary or proper for the protection of the Pension Fund, and thereto its judgment shall be final;
  - (d) To promulgate such rules and regulations as may in its discretion be deemed proper and necessary for the sound and efficient administration of the Pension Fund and the Plan, provided that such rules and regulations shall not be inconsistent with this Trust Deed or the Plan and which effectuate the provisions of the Plan;
  - (e) To keep true and accurate books of account and records of all transactions of the Pension Board; thereto, transactions involving the Pension Fund shall be open for the inspection of any Trustee at any time, and the said Pension Fund shall be audited at least annually by a qualified member in good standing of a recognized professional accounting association selected by the Pension Board;

- (f) To administer the Pension Fund and the Plan in conformity with the Trust Agreement, as from time to time amended, and in conformity with the Income Tax Act and the Pension Benefits Standards Act.
- (4) The Pension Fund shall be administered and pooled for investment purposes with the Pension Fund of the Combination Plan.

## **EXECUTION OF INSTRUMENTS**

- XII. All cheques, drafts, vouchers or other withdrawals of money from the Pension Fund, and the transfer of any property or security of the Pension Fund, shall be executed or signed by such persons as the Pension Board may by general or specific resolution decide, and failing a resolution specifying the signatories, shall be signed by the Chair and the Secretary, or any two Trustees.

## **LIMITATION OF LIABILITY**

XIII. The Trustees shall not be liable for any loss arising out of any error of judgment or any act or omission in the administration of the Pension Fund; nor shall they be personally liable for any liability or debt of the Pension Fund contracted by them in pursuance of the powers contained in the Trust Agreement, or for the non-fulfillment of any contract; nor shall they be liable for any application of any part of the Pension Fund, or for any liability arising in connection with the administration or the existence of the Pension Fund. PROVIDED however that nothing herein contained shall exempt the Trustees or any Trustee for any liability that would otherwise have been incurred by the Trustees or Trustee consequent upon a wrongful or negligent act or omission on the part of the Trustees or any Trustee.

The University shall not be liable for the failure of the Trustees to secure the benefits contemplated herein for any Member or any other beneficiary or for any default or neglect of the Trustees.

## MISCELLANEOUS

- XIV. (1) No person, partnership, corporation or association dealing with the Trustees shall be obligated to see to the application of any funds or property of the Pension Fund or to see that the terms of the Trust Agreement have been complied with or be obliged to enquire into the necessity or expedience of any act of the Trustees.
- (2) The Trustees may seek judicial protection by any action or proceeding they may deem necessary to settle their accounts, and may obtain a judicial determination or declaratory judgment as to any question of construction of the Trust Agreement or direction as to any matter thereunder. Any such determination, declaration or direction shall be binding upon all parties to or claiming under the Trust Agreement.
- (3) The costs and expenses of any action, suit or proceeding brought by or against the Trustees or any of them (including counsel fees) shall be paid from the Pension Fund, except in relation to matters as to which it may be adjudged in such action, suit or proceeding that a Trustee or the Trustees were liable for a wrongful act or omission, or negligence in the performance of their duties hereunder.
- (4) Each person employed by the Trustees, as well as the Trustees themselves, who may be engaged from time to time in handling the monies of the Pension Fund shall be bonded by a duly authorized surety company for such sum as the Trustees from time to time shall determine. The cost of premiums for such bonds shall be paid out of the Pension Fund.
- (5) The Trustees may purchase for and on behalf of each Trustee liability insurance so as to provide a reasonable and adequate coverage in respect of the duties and obligations imposed upon the Trustee by the Trust Agreement. The cost of such premiums shall be paid out of the Pension Fund.
- (6) The fiscal year of the Pension Fund shall end on the 31st day of December in each year.
- (7) The Trustees, within one hundred and fifty days following the end of the fiscal year, shall account and issue a statement of the Pension Fund, a copy of which shall be sent to the Board of Governors.
- (8) As and when required by the Pension Benefits Standards Act, the Trustees shall send out statements to Members and any other individuals who are entitled to such information under the Pension Benefits Standards Act.



## AMENDMENT AND TERMINATION

### XV. (1) Amendment:

The Pension Board may, with the written consent of the Board of Governors, at any time and from time to time amend the Trust Agreement or either part thereof, PROVIDED that no such Amendment of the Trust Agreement or part thereof shall result in any part of the assets of the Pension Fund being paid to the University, or otherwise used or diverted, for purposes other than the exclusive benefit of Members and other Beneficiaries under the Plan. And PROVIDED further that no Amendment shall be made to increase a Member's contribution over the rates of 3% of Earnings up to the YMPE plus 5% of Earnings in excess of the YMPE provided for in the Plan without an affirmative vote of a majority of Members voting, upon thirty days' notice given for such purpose by mail, together with the specific consent of the University.

### (2) Termination:

The Board of Governors, together with the affirmative vote of the majority of Members who vote, upon thirty days' notice first given by mail to each Member may thereupon terminate the Trust Agreement or either part thereof in such manner as may have been set forth in the thirty days' notice and such termination shall take effect upon written notice of the resolution of the Board of Governors and the said affirmative vote being given by the University to the Pension Board, PROVIDED that no such termination of the Trust Agreement or part thereof shall result in any part of the assets of the Pension Fund being paid to the University, or otherwise used or diverted, for purposes other than the exclusive benefit of Members and other Beneficiaries under the Trust Agreement. In the event of termination the Trustees shall:

- (a) Make provision out of the Pension Fund for the payment of expenses incurred up to the date of termination of the Trust Agreement and the expenses incident to such termination;
- (b) Pay to any insurance or trust company the balance, if any, of the assets of the Pension Fund remaining in the hands of the Trustees, which assets are due to said insurance or trust company under the provisions of the Trust Agreement;
- (c) Arrange for a final audit and report of their transactions and accounts for the purpose of terminating their trusteeship;
- (d) Make final determinations as to the amounts owing to the Members and all other Beneficiaries as required under the Plan that is in existence at the date of termination of the Trust Agreement; and
- (e) Pay and distribute according to the provisions of the Plan.

- (3) Upon termination of the Trust Agreement, the Board of Governors being fully satisfied that all matters relevant to the termination of the Plan have been done shall

grant to the Trustees a release and discharge which shall be binding upon all or any person or persons having any interest under the Trust Agreement.

## **EFFECTIVE DATE AND COUNTERPARTS**

XVI. This instrument, being the Trust Agreement, and an Amendment to the agreement and Schedule A thereto (the Plan) dated the second day of March, 1992, between the University and the Trustees,

- (1) shall have effect as of September 30, 2015; and
- (2) may be executed in one or more counterparts, each of which upon execution is to be deemed an original, and all such counterparts together with the true original shall constitute one and the same instrument.

IN WITNESS WHEREOF the University of Victoria has caused this instrument to be executed by its officers thereunto duly authorized and its seal to be hereunto affixed, and the Trustees have hereunto set their hands and seals, as of the day and year first above written.