



University  
of Victoria

**SUBMISSION TO THE UVIC BOARD OF GOVERNORS**

**FOR DECISION**

**To: EXECUTIVE AND GOVERNANCE COMMITTEE**

**From: VICE-PRESIDENT FINANCE AND OPERATIONS**

A handwritten signature in black ink, appearing to read "G. Hill".

**cc: President and Vice-Chancellor**

**Meeting Date: March 12, 2019**

**Subject: LONG TERM DISABILITY TRUST AGREEMENT UPDATE**

**Basis for Jurisdiction:** Committee's Terms of Reference 6.8

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**Strategic Relevance:**

*Strategy 1.1*

*One of the priorities of the strategic framework is to cultivate an extraordinary environment, which is achieved through a diverse workforce of exceptionally talented faculty and staff. Part of attracting and retaining faculty and staff is a strong benefits package, which includes a Long Term Disability plan. As such, good governance of the Long Term Disability plan is critical.*

**Recommendation:**

*THAT following the recommendation of the Board of Trustees of the Long Term Disability Trust and, on behalf of Board of Governors, the Executive and Governance Committee approve the enclosed update to the Long Term Disability Trust Agreement.*

**Background:**

In January 2019, the Board of Governors approved a broad set of amendments to the Long Term Disability Trust Agreement. In addition to catching up on some previously introduced changes to Trustee composition, these recent amendments increased the number of Trustees to six (6) and amended the appointment procedures to ensure that Board-appointed Trustees represent no more than fifty percent (50%) of the total number of Trustees.

The goal of the amendments was to more appropriately reflect the relative control over the LTD Trust assets by the university and to therefore appropriately exclude the annual financial results of the LTD Trust in the overall university financial statements.

As you will recall from the discussion in January, given the initial composition of the Trustees, with the majority of Trustees appointed by the UVic Board of Governors, the university was required to include the annual financial results of the LTD Trust in the overall university financial statements, even though these assets and their use are restricted for specific purposes (e.g., LTD benefits) and therefore are not available to support general operations<sup>1</sup>.

At the time, the university stated its intention to review the January amendments with the Office of the Auditor General to assess if the initial changes to the governance of the Trust sufficiently determined control for accounting purposes.

**Discussion:**

The university has now reviewed the January 2019 amendments with the Office of the Auditor General. On the advice of the Office, the Trustees have approved a small set of further amendments to the Trust Agreement to address the feedback received. Some of the more significant amendments include:

- Article VI subclause 7 (i) is amended to explicitly provide that Board of Governors must appoint the nominees of FA and PEA.
- Article VI subclause 7 (ii) is amended to allow the Trustees to appoint the Management Excluded Member Trustee (to serve temporarily) prior to the election of the first Management Excluded Member Trustee. This will eliminate the control issue prior to year-end. The provision mimics the provision in Article VI subclause 8(iii) for appointing a temporary Management Excluded Member Trustee when there is a resignation.
- Article VI subclause 10 is amended to restrict a majority of University Trustees from approving amendments to the Trust Agreement in the event of a vacancy amongst the Member Trustees.
- Article XIII subclause 2 is amended to provide that the university has no liability in the event of termination.

Attached are two versions of the recommended update to the Trust Agreement – a marked up version to illustrate the changes and a clean version of the fully amended Trust Agreement.

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<sup>1</sup> As required by Public Sector Accounting Standards. Includes the financial results of each of the University's 13 external entities as well as the staff pension plan and the long term disability trust.



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

I. NAME OF THE TRUST

This Trust Agreement is known as "the Long Term Disability Trust" (the "LTD Trust").

II. DEFINITIONS

The following words or terms shall be as defined hereunder unless the context clearly indicates otherwise.

- (1) "Adjudication" - means the assessment process approving or not approving benefit claims.
- (2) "Benefit carrier" - means the British Columbia Life & Casualty Company (BC LIFE), or any subsequent company providing claims adjudication and long term disability benefits to qualified employees.
- (3) "Board of Governors" - means the Board of Governors of the University of Victoria.
- (4) "Board of Trustees" - means all Trustees taken together of the LTD Trust.
- (5) "Chair" - means the chair person of the Board of Trustees.
- (6) "Contributions" - means moneys (i) that have been deducted by the University from the salary of each qualified employee, (ii) that as employee moneys have been remitted by the University to the Trustees, (iii) that are paid by the Trustees to a benefit carrier, (iv) that constitute in the carrier's hands reimbursement for benefit payments made by the carrier to those qualified employees who are approved claimants further to the terms of the Plan.
- (6.1) "Faculty Association" - means the University of Victoria Faculty Association.
- (7) "LTD Trust" - means this Long Term Disability Trust
- (7.1) "Management Excluded Employees" - means union excluded employees of the University covered by the Management Excluded Terms and Conditions of Employment.
- (8) "Plan" - means the Long Term Disability Plan contained in the British Columbia Life & Casualty Company (BC LIFE) Group Insurance Policy Index 11040.

- (8.1) "Professional Employees Association" means the University of Victoria Chapter of the Professional Employees Association.
- (9) "Qualified employees" - means faculty, administrative and academic professional staff.
- (10) "Reserve" - means that part of the Trust fund that is not immediately required for reimbursement payments to the benefit carrier, and is available to meet future reimbursements of the benefit carrier.
- (11) "Resolution" - means a decision of the Board of Governors recorded in writing.
- (12) "Salary" - means the stipend or earnings of a qualified employee.
- (13) "Secretary" - means the recording officer to the Board of Trustees.
- (14) "Trust Agreement" - means this instrument creating the LTD Trust.
- (15) "Trust fund" - means the property forming at any time and from time to time the subject-matter of the LTD Trust.
- (16) "Trustee" or "Trustees" - means a Trustee or the Trustees of the LTD Trust.
- (17) "University" - means the University of Victoria.

### III. PURPOSES OF THE LTD TRUST

- (1) To hold as the Trust fund the contributions of qualified employees;
- (2) To make monthly payments from the Trust fund to the benefit carrier in reimbursement of its payments during the preceding month to qualified employees whose claims it has approved further to the terms of the Plan;
- (3) To build up a reserve of employee deductions in the Trust fund against future reimbursement liabilities to the benefit carrier; and to invest and re-invest the reserve component of the Trust fund.

### IV. THE LTD TRUST BENEFICIARIES

Subject to the terms of the Trust, qualified employees for the time being, as the persons for whose exclusive benefit the LTD Trust is designed are the beneficiaries of the Trust.

## V. FIRST TRUSTEES

The University has by resolution appointed the following three (3) Trustees:

1. MURRAY GRIFFITH - Executive Director, Financial Services
2. PETER SANDERSON - Associate Vice President, Human Resources
3. MARY ELLEN PURKIS - Dean, Human and Social Development

## VI. APPOINTMENT, RESIGNATION, REMOVAL AND TERMS OF OFFICE OF TRUSTEES

- (1) The Trustees shall consist of six persons:
  - (i) three of whom shall be appointed by the Board of Governors ("University Trustees");
  - (ii) one of whom shall be appointed by the Board of Governors following nomination by the executive of the University of Victoria Faculty Association;
  - (iii) one of whom shall be appointed by the Board of Governors following nomination by the executive of the University of Victoria chapter of the Professional Employees Association; and
  - (iv) one of whom shall be elected by a vote of the Management Excluded Employees of the University.

(Trustees appointed by the Board of Governors following nomination by the executive of the Faculty Association or the executive of the Professional Employees Association, or elected by the Management Excluded Employees are called "Member Trustees").

- (2) University Trustees shall be appointed or reappointed for terms not exceeding four years unless they are appointed Trustees by virtue of the University office they hold, in which case they shall hold office as Trustees at the pleasure of the Board of Governors.
- (3) The Board of Governors shall at any time by instrument in writing addressed to the particular University Trustee, have power to remove such University Trustee and appoint a new Trustee in such Trustee's place and stead. Such new Trustee shall all the powers, authorities and discretions and may in all respects act as if the Trustee had been originally appointed a Trustee hereunder.

- (4) Member Trustees shall be appointed or elected (as the case may be) for periods of no more than four years from the first day of January, in such a manner that ordinarily the terms of no more than two Member Trustees expire each year. Provided that in each case the trusteeship of the Member Trustees may be sooner terminated in accordance with subclause (5) of this clause VI.
- (5) A Trustee shall cease to act and shall be divested of any and all powers hereunder in the following circumstances, and at the following dates:
- (i) the date the resignation of a Trustee is accepted in writing by the remaining Trustees;
  - (ii) the date when the term of office of the Trustee expires, or on the date the Board of Governors by resolution terminates the trusteeship of a University Trustee;
  - (iii) the Trustee is in writing certified as being of unsound mind;
  - (iv) if by unanimous vote of the remaining Trustees it is resolved that the Trustee is a person unfit, or unable properly, to discharge the duties of trustee or that the Trustee has or is likely to bring the Trustees, the LTD Trust or the University into disrepute; or
  - (v) the Trustee fails to attend any meeting of the Board of Trustees during a period of three consecutive meetings, and the remaining Trustees by resolution removes the Trustee.
- (6) Any vacancy occurring among the University Trustees shall be filled by the Board of Governors within 60 days of such vacancy occurring.
- (7) Any vacancy occurring among the Member Trustees shall be filled:
- (i) in the case of a Trustee nominated by the executive of the Faculty Association or by the executive of the Professional Employees Association, by nomination by the executive of the Faculty Association or the executive of the Professional Employees Association (as the case may be) and appointment of such nominee by the Board of Governors, which shall appoint the nominee presented by the Faculty Association or the Professional Employees Association (as the case may be)-within 60 days of such vacancy occurring; and
  - (ii) in the case of a Trustee elected by the Management Excluded Employees, ~~shall be filled~~ at any special or regular election of the such Member Trustee. Provided however that prior to the initial election of Member Trustee by the Management Excluded Employees the Trustees shall appoint a member of the Management Excluded Employees and such appointee shall hold the position of a Member Trustee until a successor has been confirmed pursuant to subclause 8 (ii) (h) herein

- (8) (i) All Management Excluded Employees currently contributing to the Plan are eligible to vote for the election of the Member Trustee elected by Management Excluded Employees and the list of such Members eligible to vote shall be as certified by the Associate Vice-President Human Resources of the University whose decision shall be final.
- (ii) The following provisions shall apply in respect to the election of the Member Trustee elected by Management Excluded Employees:
- (a) The Secretary shall determine the date upon which an election shall be held and give due notice thereof;
  - (b) No person shall be eligible for election unless that person is a Management Excluded Employee currently contributing to the Plan and unless a nomination in writing proposed by two other Management Excluded Employees and accompanied by the written consent of the nominee, has been filed with the Secretary at least forty days before such election;
  - (c) At least thirty-five days prior to an election the Secretary, in consultation with the Associate Vice-President Human Resources of the University, shall mail to each Management Excluded Employee eligible to vote a ballot paper containing thereon in alphabetical order the names of all persons duly nominated together with a plain envelope;
  - (d) Any Management Excluded Employee eligible to vote shall vote by placing the Management Excluded Employee's ballot paper, sealed in a plain envelope, and by delivering or posting the same to the Secretary in an envelope addressed to the Secretary, or by such other process approved by the Trustees;
  - (e) The ballots shall be counted by at least three members of the University Human Resources Department;
  - (f) The Trustees may prescribe such forms, rules and regulations for the conduct of such election as they deem necessary from time to time;
  - (g) All costs of holding any election as aforesaid shall be a charge against the LTD Trust; and
  - (h) The election of any Member Trustee shall be authenticated, confirmed and certified by the remaining

Trustees. The Trustees may, but shall not be bound to, enquire into or adjudicate upon the propriety or procedure followed in any election. The Trustees may, in their discretion, refuse to confirm the appointment of a new Member Trustee whose election is in dispute, or who in the opinion of the remaining Trustees has been improperly elected, and until a new Member Trustee has been confirmed by the remaining Trustees he or she shall not be empowered to act as a Trustee.

- (iii) Any vacancy occurring during a term of office of a Member Trustee elected by the Management Excluded Employees shall be filled within sixty days from the date of such vacancy occurring by the appointment of a member of the Management Excluded Employees by the Trustees and such appointee shall hold the position of a Member Trustee until a successor has been confirmed pursuant to subclause ~~(b)(viii)~~8(ii)(h) herein.
- (9) A Trustee shall give at least 30 days notice to the Secretary of his or her intention to resign the office of Trustee, or not seek or accept re-appointment.
- (10) On the resignation or removal of a Trustee, and prior to the appointment or election of a new Trustee, the remaining Trustees shall have the full power to act and carry out the duties and obligations of the Trust Agreement, and to exercise all Trustee powers either granted by the Trust Agreement or conferred by law. Provided however that while there is a vacancy among the Member Trustees, the Board of Trustees shall not amend this Trust Agreement.
- (11) 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.
- (12) 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 LTD Trust shall be, if necessary, immediately notified.

- (1) The first Trustees shall hold a meeting of the Board of Trustees and shall elect a Trustee as Chair. The Chair shall hold office for one year, and shall be eligible for re-election when the Board at an appropriate meeting elects a Chair for the ensuing year.
- (2) Meetings of the Board of Trustees shall be held at regular intervals, procedure for the summoning of meetings, provision of notice of meetings, and the conduct of meetings, being at the discretion of the Board of Trustees.
- (3) A quorum for the conducting of Trust business, for Trustee voting and for any other matter associated with the Trust shall consist of four Trustees, at least one of whom must be a University Trustee-~~holding an office in the University.~~
- (4) The Trustees shall appoint a Secretary who shall keep minutes or records of all meetings, proceedings and acts of the Board of Trustees. Such minutes need not be verbatim, except for the decisions of the said Board.

#### VIII. DUTIES OF THE TRUSTEES

The Trustees shall:

- (1) Ensure at intervals to be agreed with the University that an actuarial valuation is made in order to determine for the ensuing interval the appropriate contribution rate that is to be applied in calculating the mandatory deduction to be made from the salary of each qualified employee.
- (2) The Trustees shall determine the contribution rate in light of the latest actuarial valuation or valuations, and inform the Board of Governors of the rate upon which they have decided for the ensuing interval.
- (3) Receive from the University all long term disability deductions from Qualified employee salaries, and pay the same into an account separate from all University accounts pending the expenditure or investment by the Trustees of those monies.
- (4) Put in place an administrative services only contract, not insured, with the benefit carrier to the effect that the said carrier will provide adjudication of all claims and make payment of Plan benefits to all qualified employees whose claims have been approved in the adjudication process.
- (5) Authorize and direct monthly payment to the benefit carrier from the Trust fund for the indemnification of the said carrier consequent upon

the said carrier establishing to the satisfaction of the Trustees that it has provided benefits to all qualified employees during the previous month under the terms of the Plan.

- (6) Keep true and accurate accounts of all monies that they receive as Trustees, and of all transactions into which the Trustees enter, which money and transaction accounts are to be kept separate from all University accounts and monies, and during regular business hours made available for the inspection of any Trustee at any time.

- (7) Arrange for an audit of the Trust fund to be carried out at least annually by a qualified member in good standing of a recognized professional accounting association selected by the Trustees.
- (8) Obtain bonding of each Trustee by an authorized surety corporation at such sum as the Board of Governors from time to time determines, the cost of premiums for such bonds being paid from the Trust fund, and ensure that such bonding is also obtained for any person employed by the Trustees in the administration of the LTD Trust with access to the Trust fund.
- (9) Make an annual accounting to the Board of Governors, or as the said Board shall require, and within regular business hours following written application to the Trustees provide to qualified employees, or their professional association representatives, the right to inspect the current accounting once it has been provided to the Board of Governors, or the accounting of any past Trust year. The inspection is to be made at a place determined by the Trustees, and copies of any accounting are to be available only at the cost of the employee or representative requesting a copy or copies.
- (10) Register the Trust Agreement with the Canada Revenue Agency. From the Trust fund the Trustees shall make such payments of tax as are required of the Trustees under the terms of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), as amended, or otherwise, whether the tax be federal or levied under the law or regulations of British Columbia.
- (11) Establish rules for the administration of the business of the Trust, within the terms of the Trust and of the Plan, including the discharge of the Trustees' duties and the exercise of the Trustees' powers.

#### IX. POWERS OF THE TRUSTEES

The Trustees shall have the following powers:

- (1) To invest and re-invest the Trust fund monies remaining after the reimbursement of the benefit carrier, otherwise known as reserve monies, and payments authorized by sub-clause 3 of this clause IX, in such manner as a prudent investor would invest, and thereto in accordance with the *Trustee Act*, R.S.B.C. 1996, c. 464, as amended.

- (2) To retain such investment, legal, actuarial or other expertise or assistance as they consider necessary or appropriate in the performance of their duties.
- (3) To pay or provide for the payment of all reasonable and necessary expenses, costs and fees incurred by them in connection with the maintenance and administration of the Trust fund, and make such payment or provision from the Trust fund.
- (4) To maintain an adequate reserve for the payment of future reimbursement sums to the benefit carrier, and for future administration expenses reasonably anticipated as likely to be incurred.
- (5) To enter into any contract or agreement, or to make such rules and regulations, as they consider necessary or appropriate for the purpose of the administration of the LTD Trust, or the protection of the Trust fund.
- (6) To appoint or employ any person they consider necessary or appropriate for the discharge of any clerical or administrative function, such person or persons being subject to the direction and supervision of the Trustees.
- (7) To make such decisions and to carry out such acts as they consider appropriate for the administration of the LTD Trust and the discharge of its object as set out in clause III hereof, provided that any such decision or act is not contrary to or inconsistent with the provisions of the LTD Trust instrument or of the Plan.
- (8) Decisions of the Trustees, acting within their powers and not inconsistent with the provisions of the Trust Agreement and the Plan, shall be binding and conclusive.

#### X. EXECUTION OF INSTRUMENTS

All cheques, drafts, vouchers or other withdrawals of money from the Trust fund, and the payment or transfer of any money or security of the Trust fund, shall be executed or signed by such persons as the Trustees may by general or specific resolution decide, and failing a resolution shall be signed by the Chair and the Secretary.

#### XI. TRUSTEE LIABILITY

- (1) A Trustee shall not be personally liable for any act or omission in the discharge of the Trust duties, or the exercise of Trust powers, unless the act or omission of the Trustee or Trustees charged with breach of trust is without authority of the Trust instrument, the Plan or the law, or is wrongful or negligent on the part of the Trustee or Trustees.

- (2) The costs and expenses, including counsel fees, of any legal action or proceeding brought by or against the Trustees or any one of them shall be paid from the Trust fund, unless it is adjudged in an action or proceeding that the Trustees or Trustee had acted wrongfully or negligently in the discharge of their duties or the exercise of their powers.
- (3) A retiring or removed Trustee or the estate of a deceased Trustee shall be indemnified by the Trust fund against all liability for the said Trustee's acts or omissions in the discharge of the Trustee's duties and the exercise of the Trustee's powers, unless it is later adjudged in court action or proceeding that loss or harm was caused to the Trust fund by the wrongful or negligent act of the said Trustee.

## XII. THIRD PARTIES AND THE LTD TRUST

No person, partnership or association dealing with the Trustees shall be obligated to see to the application of any funds or assets of the LTD Trust, or to determine whether the Trustees have complied with the terms of the Trust Agreement, or to enquire into the necessity or appropriate character of any act of the Trustees.

## XIII. AMENDMENT AND TERMINATION

- (1) With the written approval of the Board of Governors the Trustees may amend this Trust Agreement at any time and from time to time, provided that no amendment may be made to clause III (Purposes of the Trust) of the Trust Agreement, and no amendment shall require or authorize any asset or assets of the Trust fund to be transferred or otherwise made available to the University.
- (2) The Board of Governors, together with the affirmative vote of the majority of the Qualified employees who, in a vote supervised by the Trustees, vote, upon thirty days notice first given by mail to each Qualified employee, may terminate the LTD Trust at any time 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 Board of Trustees. Provided however that no such termination of the Trust Agreement shall result in any part of the assets of the Trust fund being paid to the University, or otherwise use or diverted, for purposes other than the exclusive benefit of Qualified employees. And further provided that if such a termination occurs the University shall not have any liability for any losses or liabilities of the Trust.
- (3) The LTD Trust shall terminate, should ~~it the Board of Governors~~ not have been earlier terminated ~~act~~ under sub-clause 2 of this clause XIII, upon the anniversary of eighty (80) years from the date of this Trust Agreement being executed.



SIGNED, SEALED AND DELIVERED )  
in the presence of: )

\_\_\_\_\_) )  
Signature )

\_\_\_\_\_) )  
Name )

\_\_\_\_\_) )  
Address )

\_\_\_\_\_) )  
Occupation )

\_\_\_\_\_) )  
MURRAY GRIFFITH )

SIGNED, SEALED AND DELIVERED )  
in the presence of: )

\_\_\_\_\_) )  
Signature )

\_\_\_\_\_) )  
Name )

\_\_\_\_\_) )  
Address )

\_\_\_\_\_) )  
Occupation )

\_\_\_\_\_) )  
PETER SANDERSON )

SIGNED, SEALED AND DELIVERED )  
in the presence of: )

\_\_\_\_\_) )  
Signature )

Occupation )

\_\_\_\_\_) )  
Name )

)

\_\_\_\_\_) )  
MARY ELLEN PURKIS )

\_\_\_\_\_) )  
Address )

\_\_\_\_\_) )



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

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- (2) To make monthly payments from the Trust fund to the benefit carrier in reimbursement of its payments during the preceding month to qualified employees whose claims it has approved further to the terms of the Plan;
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### IV. THE LTD TRUST BENEFICIARIES

Subject to the terms of the Trust, qualified employees for the time being, as the persons for whose exclusive benefit the LTD Trust is designed are the beneficiaries of the Trust.

## V. FIRST TRUSTEES

The University has by resolution appointed the following three (3) Trustees:

1. MURRAY GRIFFITH - Executive Director, Financial Services
2. PETER SANDERSON - Associate Vice President, Human Resources
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  - (iii) one of whom shall be appointed by the Board of Governors following nomination by the executive of the University of Victoria chapter of the Professional Employees Association; and
  - (iv) one of whom shall be elected by a vote of the Management Excluded Employees of the University.

(Trustees appointed by the Board of Governors following nomination by the executive of the Faculty Association or the executive of the Professional Employees Association, or elected by the Management Excluded Employees are called "Member Trustees").

- (2) University Trustees shall be appointed or reappointed for terms not exceeding four years unless they are appointed Trustees by virtue of the University office they hold, in which case they shall hold office as Trustees at the pleasure of the Board of Governors.
- (3) The Board of Governors shall at any time by instrument in writing addressed to the particular University Trustee, have power to remove such University Trustee and appoint a new Trustee in such Trustee's place and stead. Such new Trustee shall all the powers, authorities and discretions and may in all respects act as if the Trustee had been originally appointed a Trustee hereunder.

- (4) Member Trustees shall be appointed or elected (as the case may be) for periods of no more than four years from the first day of January, in such a manner that ordinarily the terms of no more than two Member Trustees expire each year. Provided that in each case the trusteeship of the Member Trustees may be sooner terminated in accordance with subclause (5) of this clause VI.
- (5) A Trustee shall cease to act and shall be divested of any and all powers hereunder in the following circumstances, and at the following dates:
- (i) the date the resignation of a Trustee is accepted in writing by the remaining Trustees;
  - (ii) the date when the term of office of the Trustee expires, or on the date the Board of Governors by resolution terminates the trusteeship of a University Trustee;
  - (iii) the Trustee is in writing certified as being of unsound mind;
  - (iv) if by unanimous vote of the remaining Trustees it is resolved that the Trustee is a person unfit, or unable properly, to discharge the duties of trustee or that the Trustee has or is likely to bring the Trustees, the LTD Trust or the University into disrepute; or
  - (v) the Trustee fails to attend any meeting of the Board of Trustees during a period of three consecutive meetings, and the remaining Trustees by resolution removes the Trustee.
- (6) Any vacancy occurring among the University Trustees shall be filled by the Board of Governors within 60 days of such vacancy occurring.
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  - (ii) in the case of a Trustee elected by the Management Excluded Employees, at any special or regular election of the such Member Trustee. Provided however that prior to the initial election of Member Trustee by the Management Excluded Employees the Trustees shall appoint a member of the Management Excluded Employees and such appointee shall hold the position of a Member Trustee until a successor has been confirmed pursuant to subclause 8 (ii) (h) herein
- (8) (i) All Management Excluded Employees currently contributing to

the Plan are eligible to vote for the election of the Member Trustee elected by Management Excluded Employees and the list of such Members eligible to vote shall be as certified by the Associate Vice-President Human Resources of the University whose decision shall be final.

- (ii) The following provisions shall apply in respect to the election of the Member Trustee elected by Management Excluded Employees:
  - (a) The Secretary shall determine the date upon which an election shall be held and give due notice thereof;
  - (b) No person shall be eligible for election unless that person is a Management Excluded Employee currently contributing to the Plan and unless a nomination in writing proposed by two other Management Excluded Employees and accompanied by the written consent of the nominee, has been filed with the Secretary at least forty days before such election;
  - (c) At least thirty-five days prior to an election the Secretary, in consultation with the Associate Vice-President Human Resources of the University, shall mail to each Management Excluded Employee eligible to vote a ballot paper containing thereon in alphabetical order the names of all persons duly nominated together with a plain envelope;
  - (d) Any Management Excluded Employee eligible to vote shall vote by placing the Management Excluded Employee's ballot paper, sealed in a plain envelope, and by delivering or posting the same to the Secretary in an envelope addressed to the Secretary, or by such other process approved by the Trustees;
  - (e) The ballots shall be counted by at least three members of the University Human Resources Department;
  - (f) The Trustees may prescribe such forms, rules and regulations for the conduct of such election as they deem necessary from time to time;
  - (g) All costs of holding any election as aforesaid shall be a charge against the LTD Trust; and
  - (h) The election of any Member Trustee shall be authenticated, confirmed and certified by the remaining Trustees. The Trustees may, but shall not be bound to, enquire into or adjudicate upon the propriety or procedure followed in any election. The Trustees may,

in their discretion, refuse to confirm the appointment of a new Member Trustee whose election is in dispute, or who in the opinion of the remaining Trustees has been improperly elected, and until a new Member Trustee has been confirmed by the remaining Trustees he or she shall not be empowered to act as a Trustee.

- (iii) Any vacancy occurring during a term of office of a Member Trustee elected by the Management Excluded Employees shall be filled within sixty days from the date of such vacancy occurring by the appointment of a member of the Management Excluded Employees by the Trustees and such appointee shall hold the position of a Member Trustee until a successor has been confirmed pursuant to subclause 8(ii)(h) herein.
- (9) A Trustee shall give at least 30 days notice to the Secretary of his or her intention to resign the office of Trustee, or not seek or accept re-appointment.
- (10) On the resignation or removal of a Trustee, and prior to the appointment or election of a new Trustee, the remaining Trustees shall have the full power to act and carry out the duties and obligations of the Trust Agreement, and to exercise all Trustee powers either granted by the Trust Agreement or conferred by law. Provided however that while there is a vacancy among the Member Trustees, the Board of Trustees shall not amend this Trust Agreement.
- (11) 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.
- (12) 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 LTD Trust shall be, if necessary, immediately notified.

## VII. MEETINGS AND PROCEDURES OF THE BOARD OF TRUSTEES

- (1) The first Trustees shall hold a meeting of the Board of Trustees and shall elect a Trustee as Chair. The Chair shall hold office for one year, and shall be eligible for re-election when the Board at an appropriate

meeting elects a Chair for the ensuing year.

- (2) Meetings of the Board of Trustees shall be held at regular intervals, procedure for the summoning of meetings, provision of notice of meetings, and the conduct of meetings, being at the discretion of the Board of Trustees.
- (3) A quorum for the conducting of Trust business, for Trustee voting and for any other matter associated with the Trust shall consist of four Trustees, at least one of whom must be a University Trustee.
- (4) The Trustees shall appoint a Secretary who shall keep minutes or records of all meetings, proceedings and acts of the Board of Trustees. Such minutes need not be verbatim, except for the decisions of the said Board.

#### VIII. DUTIES OF THE TRUSTEES

The Trustees shall:

- (1) Ensure at intervals to be agreed with the University that an actuarial valuation is made in order to determine for the ensuing interval the appropriate contribution rate that is to be applied in calculating the mandatory deduction to be made from the salary of each qualified employee.
- (2) The Trustees shall determine the contribution rate in light of the latest actuarial valuation or valuations, and inform the Board of Governors of the rate upon which they have decided for the ensuing interval.
- (3) Receive from the University all long term disability deductions from Qualified employee salaries, and pay the same into an account separate from all University accounts pending the expenditure or investment by the Trustees of those monies.
- (4) Put in place an administrative services only contract, not insured, with the benefit carrier to the effect that the said carrier will provide adjudication of all claims and make payment of Plan benefits to all qualified employees whose claims have been approved in the adjudication process.
- (5) Authorize and direct monthly payment to the benefit carrier from the Trust fund for the indemnification of the said carrier consequent upon the said carrier establishing to the satisfaction of the Trustees that it has provided benefits to all qualified employees during the previous month under the terms of the Plan.
- (6) Keep true and accurate accounts of all monies that they receive as Trustees, and of all transactions into which the Trustees enter, which money and transaction accounts are to be kept separate from all

University accounts and monies, and during regular business hours made available for the inspection of any Trustee at any time.

- (7) Arrange for an audit of the Trust fund to be carried out at least annually by a qualified member in good standing of a recognized professional accounting association selected by the Trustees.
- (8) Obtain bonding of each Trustee by an authorized surety corporation at such sum as the Board of Governors from time to time determines, the cost of premiums for such bonds being paid from the Trust fund, and ensure that such bonding is also obtained for any person employed by the Trustees in the administration of the LTD Trust with access to the Trust fund.
- (9) Make an annual accounting to the Board of Governors, or as the said Board shall require, and within regular business hours following written application to the Trustees provide to qualified employees, or their professional association representatives, the right to inspect the current accounting once it has been provided to the Board of Governors, or the accounting of any past Trust year. The inspection is to be made at a place determined by the Trustees, and copies of any accounting are to be available only at the cost of the employee or representative requesting a copy or copies.
- (10) Register the Trust Agreement with the Canada Revenue Agency. From the Trust fund the Trustees shall make such payments of tax as are required of the Trustees under the terms of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), as amended, or otherwise, whether the tax be federal or levied under the law or regulations of British Columbia.
- (11) Establish rules for the administration of the business of the Trust, within the terms of the Trust and of the Plan, including the discharge of the Trustees' duties and the exercise of the Trustees' powers.

#### IX. POWERS OF THE TRUSTEES

The Trustees shall have the following powers:

- (1) To invest and re-invest the Trust fund monies remaining after the reimbursement of the benefit carrier, otherwise known as reserve monies, and payments authorized by sub-clause 3 of this clause IX, in such manner as a prudent investor would invest, and thereto in accordance with the *Trustee Act*, R.S.B.C. 1996, c. 464, as amended.

- (2) To retain such investment, legal, actuarial or other expertise or assistance as they consider necessary or appropriate in the performance of their duties.
- (3) To pay or provide for the payment of all reasonable and necessary expenses, costs and fees incurred by them in connection with the maintenance and administration of the Trust fund, and make such payment or provision from the Trust fund.
- (4) To maintain an adequate reserve for the payment of future reimbursement sums to the benefit carrier, and for future administration expenses reasonably anticipated as likely to be incurred.
- (5) To enter into any contract or agreement, or to make such rules and regulations, as they consider necessary or appropriate for the purpose of the administration of the LTD Trust, or the protection of the Trust fund.
- (6) To appoint or employ any person they consider necessary or appropriate for the discharge of any clerical or administrative function, such person or persons being subject to the direction and supervision of the Trustees.
- (7) To make such decisions and to carry out such acts as they consider appropriate for the administration of the LTD Trust and the discharge of its object as set out in clause III hereof, provided that any such decision or act is not contrary to or inconsistent with the provisions of the LTD Trust instrument or of the Plan.
- (8) Decisions of the Trustees, acting within their powers and not inconsistent with the provisions of the Trust Agreement and the Plan, shall be binding and conclusive.

#### X. EXECUTION OF INSTRUMENTS

All cheques, drafts, vouchers or other withdrawals of money from the Trust fund, and the payment or transfer of any money or security of the Trust fund, shall be executed or signed by such persons as the Trustees may by general or specific resolution decide, and failing a resolution shall be signed by the Chair and the Secretary.

#### XI. TRUSTEE LIABILITY

- (1) A Trustee shall not be personally liable for any act or omission in the discharge of the Trust duties, or the exercise of Trust powers, unless the act or omission of the Trustee or Trustees charged with breach of trust is without authority of the Trust instrument, the Plan or the law, or is wrongful or negligent on the part of the Trustee or Trustees.

- (2) The costs and expenses, including counsel fees, of any legal action or proceeding brought by or against the Trustees or any one of them shall be paid from the Trust fund, unless it is adjudged in an action or proceeding that the Trustees or Trustee had acted wrongfully or negligently in the discharge of their duties or the exercise of their powers.
- (3) A retiring or removed Trustee or the estate of a deceased Trustee shall be indemnified by the Trust fund against all liability for the said Trustee's acts or omissions in the discharge of the Trustee's duties and the exercise of the Trustee's powers, unless it is later adjudged in court action or proceeding that loss or harm was caused to the Trust fund by the wrongful or negligent act of the said Trustee.

## XII. THIRD PARTIES AND THE LTD TRUST

No person, partnership or association dealing with the Trustees shall be obligated to see to the application of any funds or assets of the LTD Trust, or to determine whether the Trustees have complied with the terms of the Trust Agreement, or to enquire into the necessity or appropriate character of any act of the Trustees.

## XIII. AMENDMENT AND TERMINATION

- (1) With the written approval of the Board of Governors the Trustees may amend this Trust Agreement at any time and from time to time, provided that no amendment may be made to clause III (Purposes of the Trust) of the Trust Agreement, and no amendment shall require or authorize any asset or assets of the Trust fund to be transferred or otherwise made available to the University.
- (2) The Board of Governors, together with the affirmative vote of the majority of the Qualified employees who, in a vote supervised by the Trustees, vote, upon thirty days notice first given by mail to each Qualified employee, may terminate the LTD Trust at any time 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 Board of Trustees. Provided however that no such termination of the Trust Agreement shall result in any part of the assets of the Trust fund being paid to the University, or otherwise use or diverted, for purposes other than the exclusive benefit of Qualified employees. And further provided that if such a termination occurs the University shall not have any liability for any losses or liabilities of the Trust.
- (3) The LTD Trust shall terminate, should it not have been earlier terminated under sub-clause 2 of this clause XIII, upon the anniversary of eighty (80) years from the date of this Trust Agreement being executed.



SIGNED, SEALED AND DELIVERED )  
in the presence of: )

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Signature )

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Name )

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Address )

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Occupation )

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MURRAY GRIFFITH )

SIGNED, SEALED AND DELIVERED )  
in the presence of: )

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Signature )

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Name )

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Occupation )

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PETER SANDERSON )

SIGNED, SEALED AND DELIVERED )  
in the presence of: )

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Signature )

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Name )

\_\_\_\_\_) )  
Address )

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Occupation )

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MARY ELLEN PURKIS )