

**Pension Plan for  
Faculty, Librarians and  
Senior Administrative Officers  
of  
Mount Allison University**

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**Consolidated to January 1, 2017**

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# Section 1

## Introduction

### 1.1 Establishment of the Plan

The Pension Plan for Faculty, Librarians and Senior Administrative Officers of Mount Allison University (the "Plan") was established by Mount Allison University effective January 1, 1972.

### 1.2 Restatement of the Plan

The Plan was amended and restated

- (a) to incorporate changes required under the Pension Benefits Act (New Brunswick) effective December 31, 1991, and
- (b) to incorporate changes required as a result of amendments to the Income Tax Act (Canada) effective January 1, 1992.

The Plan has been subsequently amended and restated to incorporate changes required under the Pension Benefits Act (New Brunswick) and Income Tax Act (Canada), and the wishes of the Employer.

### 1.3 Application of the Restated Plan

Unless the Plan provides otherwise in a specific case, the terms of the Plan as restated shall apply to Members who, on or after January 1, 1992, retire, terminate employment, die or transfer to a category of employment not covered by the Plan. The terms of the Plan in effect at the time of the event shall apply to Members who, prior to January 1, 1992, retired, terminated employment, died or were transferred to a category of employment not covered by the Plan.

## **Section 2**

### **Definitions**

In this Plan, the following words shall have the following meanings unless a different meaning is required by the context:

#### **2.1 Beneficiary**

"Beneficiary" means a beneficiary designated by a Member in accordance with Section 10.

#### **2.2 Common-law Partner**

"Common-law Partner" means, in relation to a Member or former Member, a person who, not being married to the Member or former Member, at the date a determination of spousal status is required, is cohabiting in a conjugal relationship with the Member or former Member and who has so cohabited for a continuous period of at least two years immediately before that time, provided that the person also qualifies as a common-law partner under the Income Tax Act at the relevant time for purposes of registered pension plans.

It is further provided that if there is a legally married Spouse, as defined in subsection 2.21, and a Common-law Partner, as defined above, in existence at the date a determination is required, except for purposes of pension division on relationship breakdown, the legally married Spouse shall be the "Spouse" for purposes of priority entitlement to spousal benefits under the Plan. Such priority entitlement shall apply unless there is a valid domestic contract, or a decree, order or judgment of a competent tribunal barring the Spouse's claim. In no circumstance will the Plan be responsible to pay benefits in an amount greater than would be payable if there were only one Spouse or Common Law Partner.

#### **2.3 Continuous Service**

"Continuous Service" means continuous employment by the Employer whether as an Employee as defined herein or not. A period of time on leave of absence authorized by the Employer shall not be an interruption of Continuous Service. A period of time in the active service of the Armed Forces of Canada shall be deemed to be such a leave of absence, provided

- (a) such military service either is required by law or is in time of war, and
- (b) the Employee returns to permanent full-time employment with the Employer within 90 days following the expiry of such military service or within the time protected by law, if any, whichever is the later.

## **2.4 Designated Employee**

“Designated Employee” means a Member who has been designated by the Board of Regents of the Employer to be eligible to participate in the Mount Allison University Supplemental Pension Plan.

## **2.5 Earnings**

"Earnings" means compensation paid to a Member by the Employer in connection with services rendered for the class of Employees eligible for membership in the Plan, but not including overtime pay, special allowances, bonuses or other special payments, all as determined by the Employer."

## **2.6 Effective Date**

"Effective Date" means January 1, 1972.

## **2.7 Employee**

“Employee” means any person who is a:

- (a) President, faculty member, librarian, or senior administrative officer employed by the Employer;
- (b) administrative officer or support staff member employed by the Employer, and who was a Member on January 1, 1992; or
- (c) Teaching Instructor as defined in the Collective Agreement with the Mount Allison University Faculty Association covering full-time employees and who was hired on or after January 1, 2012.

“Employee” shall also include a member of the Pension Plan for Non-Academic Employees of Mount Allison University who is not actively accruing benefits under that plan and who is in receipt of income replacement benefits from the long term disability plan sponsored by the Employer (“LTD Plan”).

## **2.8 Employer**

"Employer" means Mount Allison University.

## **2.9 Funding Agent**

"Funding Agent" means an insurance company authorized to carry on a life insurance business in Canada, a trust company or a group of at least three individuals resident in Canada at least one of whom is independent of the Employer, and includes any combination or successors thereof, appointed by the Employer to hold, administer and invest the Pension Fund.

## **2.10 Funding Agreement**

"Funding Agreement" means any agreement or agreements now or hereafter executed between the Employer and the Funding Agent, or between a Member and the Funding Agent, for purposes of this Plan.

## **2.11 Income Tax Act**

"Income Tax Act" means the Income Tax Act, Statutes of Canada, and the Regulations thereunder, as amended or replaced from time to time, and where applicable includes the provisions of Information Circular 72-13R8 issued by the Canada Revenue Agency.

## **2.12 LTD Plan**

"LTD Plan" means the long-term disability program sponsored by the Employer.

## **2.13 Member**

"Member" means an Employee or a former Employee who became a Member of the Plan and who continues to be entitled to benefits under the Plan.

## **2.14 Member Account**

"Member Account" means the accumulated value of the Member contributions and Employer contributions made on behalf of the Member.

## **2.15 Normal Retirement Date**

"Normal Retirement Date" means the normal retirement date of a Member as determined under subsection 5.1.

## **2.16 Pension Benefits Act**

"Pension Benefits Act" means the Pension Benefits Act, Statutes of New Brunswick 1987, c. P-5.1, and the Regulations thereunder, as amended or replaced from time to time.

## **2.17 Pension Fund**

"Pension Fund" means the assets which are held, administered and invested from time to time by the Funding Agent, under the terms of the Funding Agreement.

## **2.18 Plan**

"Plan" means the Pension Plan for Faculty, Librarians and Senior Administrative Officers of Mount Allison University as amended and restated effective December 31, 1991, and as subsequently amended from time to time.

## **2.19 Plan Year**

"Plan Year" means the calendar year.

## **2.20 Postponed Retirement Date**

"Postponed Retirement Date" means in respect of a Member who retires under subsection 5.3, the earlier of the first of the month following the month in which the Member's Continuous Service ends or the latest date for pension commencement permitted under *Income Tax Act*.

## **2.21 Spouse**

"Spouse" means, in relation to a Member or former Member, a person who, at the date a determination of spousal status is required, meets one of the following eligibility requirements:

- (a) is married to the Member or former Member;
- (b) is married to the Member or former Member by a marriage that is voidable and has not been voided by a declaration of nullity; or
- (c) has, in good faith, gone through a form of marriage with the Member or former Member that is void and has cohabited with the Member or former Member within the preceding year,

provided that the person also qualifies as a spouse under the Income Tax Act at the relevant time for purposes of registered pension plans.

## **2.22 Total Disability**

“Total Disability” means a disability throughout which the Member is physically or mentally impaired so that he or she is prevented from performing the duties of employment in which he or she was engaged prior to the impairment and which is determined by the Employer to exist, based on a written report of a medical doctor licensed to practice in Canada or where the Member resides.



## **Section 3**

### **Membership**

#### **3.1 Eligibility**

An Employee who works at least 50% of full-time with an employment contract of at least ten months, or whose Earnings were at least 33% of the YMPE in the preceding calendar year may join the Plan as follows:

(a) Voluntary

Each such Employee who has not reached the maximum age for pension participation stipulated from time to time under the *Income Tax Act* is eligible to become a Member upon satisfying either of the above requirements for eligibility.

(b) Compulsory

Unless a collective agreement stipulates that Plan membership is voluntary, each eligible Employee, as defined in Section 3.1(a), shall become a Member on the first day of the month following the month in which the Employee completes one year of Continuous Service as an Employee.

(c) Retroactive

There shall be no retroactive participation.

(d) LTD Participation

An Employee who is a member of the Pension Plan for Non-Academic Employees of Mount Allison University who is not accruing benefits under that plan and who is in receipt of income replacement benefits from the LTD Plan shall become a Member on the effective day that benefits commence to be paid from the LTD Plan.

#### **3.2 Eligibility Condition**

Each Employee who is eligible to join the Plan shall become a Member thereof when he/she has signed and delivered to the Employer the form of application and authorization for payroll deduction, if any, prescribed by the Employer.

### **3.3 Termination of Participation Not Permitted**

A Member's participation in the Plan shall not be terminated while he/she remains in the employ of the Employer. However, if the Member remains in the employ of the Employer in a position not covered by the definition of Employee in this Plan, no contributions can be made to the Plan by the Member or by the Employer on behalf of the Member for so long as the Member is not covered by the definition of Employee in this Plan.

### **3.4 Re-Employment**

If a former Employee is subsequently rehired by the Employer, the Employee shall be treated as a new Employee for purposes of eligibility for membership under the Plan.

# Section 4

## Contributions

### 4.1 Employee Contributions

- (a) Subject to subsection 4.1(b) each Member who is an Employee, who has not reached the Normal Retirement Date, and who has not commenced to receive a pension shall contribute to the Pension Fund as follows:
- 6.00% of his/her Earnings for service prior to March 1, 2017;
  - 6.25% of his/her Earnings for service between March 1, 2017 and February 28, 2018 (inclusive); and
  - 6.40% of his/her Earnings for service after February 28, 2018

A Member may also contribute such additional amounts from time to time as may be approved by the Employer. This Section 4.1(a) does not apply to an Employee who is in receipt of benefits under the LTD Plan.

- (b) The contributions made by the Member to the Pension Fund in any Plan Year shall not exceed the maximum amount that is permitted under the Income Tax Act for that Plan Year.
- (c) The contributions received by the Employer from a Member or deducted from a Member's pay shall be paid to the Pension Fund within 15 days following the month in which such contributions are received or deducted.

### 4.2 Employer Contributions

- (a) Subject to subsection 4.2(b) the Employer shall contribute to the Pension Fund on behalf of each Member who is making contributions under subsection 4.1, as follows:
- 8.00% of the Member's Earnings for service prior to March 1, 2017;
  - 8.25% of the Member's Earnings for service between March 1, 2017 and February 28, 2018 (inclusive); and
  - 8.40% of the Member's Earnings for service after February 28, 2018

Notwithstanding the above, subject to subsection 4.2(b), if a Member is in receipt of benefits under the LTD Plan, the Employer shall remit to the Pension Fund on behalf of the Member such amount(s) as specified in the LTD Plan for this purpose.

- (b) The contributions made by the Employer to the Pension Fund in any Plan Year shall not exceed the maximum amount that is permitted under the Income Tax Act for that Plan Year.
- (c) The contributions made by the Employer to the Pension Fund shall be paid within 30 days of the end of the month in respect of which the contributions are made.

### **4.3 Contributions During Sabbatical, Sick and Maternity Leaves**

While a Member is on sabbatical leave on partial salary, or while a Member is receiving payments under one of the Employer's Supplemental Benefit Plans for sickness or for maternity, both the Member and the Employer will continue contributions as if the member were on full salary.

### **4.4 Contributions During Leave of Absence**

During leave of absence, the Member and/or the Employer may continue to make contributions to the Plan based on actual salary or full salary as may be agreed between the Member and the Employer.

### **4.5 Contributions After the Normal Retirement Date**

Each Member who elects to postpone his/her retirement date under subsection 5.3 may, with the agreement of the Employer, and must, if the applicable collective agreement so requires, continue to contribute to the Pension Fund under subsection 4.1 or subsection 4.11, as applicable, while the Member is an Employee, but shall not contribute beyond the Postponed Retirement Date.

### **4.6 Return of Contributions**

- (a) On and after January 1, 1992, an amount contributed by a Member or the Employer may be refunded at any time to the Member or Employer as applicable where such action is required to avoid the revocation of registration of the Plan under the Income Tax Act.
- (b) Any part of a Member Account attributable to voluntary contributions may be refunded at the request of the Member subject to any conditions which may apply to amounts contributed under the provisions of subsection 4.7

### **4.7 Provision for Transfers from Other Plans**

A Member entitled to any lump sum cash amounts from any registered pension plan of a previous employer, or from a registered retirement savings plan, under such conditions as the tax

authorities may require, may, by arrangement with the Employer, have such amounts transferred to his/her credit under this Plan.

#### **4.8 Pension Adjustment**

In no event shall the contributions made to a Member's Account in a Plan Year under Section 4 result in a pension adjustment (as defined under the Income Tax Act) in excess of the limits prescribed by the Income Tax Act.

In determining whether a pension adjustment is in excess of the limits prescribed by the Income Tax Act, compensation shall include prescribed compensation as defined in the Income Tax Act.

#### **4.9 Contributions During Strike**

- (b) For the purposes of the strike commencing January 21, 1999 and ending at noon, February 15, 1999 ("Strike Period") involving some members of the Plan who are also members of the Mount Allison Faculty Association ("Striking Member(s)"), the Striking Member and/or the Employer may make contributions to the Plan for the Strike Period based on actual or full salary as may be agreed between the Striking Member and the Employer.
- (c) For the purposes of the strike commencing January 27, 2014 and ending February 16, 2014 ("Strike Period") involving some Members of the Plan who are also members of the Mount Allison Faculty Association ("Striking Member(s)"), the Striking Member and the Employer shall each make contributions to the Plan pursuant to subsections 4.1 and 4.2 for the Strike Period and based on actual or full salary of the Striking Member.

#### **4.10 Limitation for Periods of Unpaid Absence or Reduced Pay**

Notwithstanding any provisions of this Section 4, the maximum aggregate period for which contributions can be made to the Plan on account of periods of unpaid absence or reduced pay, except for periods during which the Member suffers from a Total Disability, is as follows:

- (a) in respect of periods before January 1, 1991, two (2) full-time equivalent years, or such other period as may be permitted under the Income Tax Act;
- (b) in respect of periods after December 31, 1990, five (5) full-time equivalent years, plus an additional three (3) full-time equivalent years in respect of absences that occur within the twelve (12) month period which commences at the time of birth or adoption of a child of the Member, or such other period as may be permitted under the Income Tax Act.

## **4.11 President and Designated Employees - Employer and Employee Contributions**

- (a) A Member who is an Employee and who is the President or a Designated Employee, who has not reached the Normal Retirement Date and who has not commenced to receive a Pension, shall, subject to subsection 4.11(c), contribute an amount equal to 6% of his Earnings to the Pension Fund. A Member who makes contributions under this subsection 4.11(a) shall not make contributions under subsection 4.1 of the Plan.
- (b) The Employer shall, subject to subsection 4.11(c), contribute to the Pension Fund on behalf of a Member who is an Employee and who is the President or a Designated Employee, as follows:
- 8.00% of the Member's Earnings for service prior to March 1, 2017;
  - 8.25% of the Member's Earnings for service between March 1, 2017 and February 28, 2018 (inclusive); and
  - 8.40% of the Member's Earnings for service after February 28, 2018

This is subject to the requirement that the total amount of contributions made under this subsection 4.11(b) in any Plan year, when combined with contributions made under subsection 4.11(a), shall not exceed the maximum amount that is permitted under the Income Tax Act for that Plan Year. Should the Employer make contributions on behalf of a Member under this subsection 4.11(b), the Employer shall not make contributions on behalf of the Member under subsection 4.2.

- (c) Notwithstanding the above, the Employer will contribute an amount equalling at least 1% of the Member's Earnings in any Plan Year, and where such contribution, when combined with the Member's contributions for that Plan Year, exceed the Income Tax Act limits, the Member's contributions shall be reduced by the amount by which the combined Employer and Member contributions exceed the maximum amount that is permitted under the Income Tax Act for that Plan Year.

## **Section 5**

### **Retirement Dates**

#### **5.1 Normal Retirement Date**

The Normal Retirement Date is the first day of July following the day the Member attains age 65.

#### **5.2 Early Retirement Date**

If, within ten years before his/her Normal Retirement Date, the Continuous Service of a Member with at least five years of Continuous Service terminates, or if such a Member elects to commence receiving his/her pension as permitted by the Pension Benefits Act, for the purposes of the Plan the Member shall be considered to have retired early on the day the pension commences or on the first day of the month following the month in which his/her Continuous Service ends, as the case may be, which day is his/her early retirement date.

#### **5.3 Postponed Retirement Date**

A Member whose Continuous Service continues after his/her Normal Retirement Date will still participate in the Plan and may elect to retire on the first day of any month following the Member's Normal Retirement Date but not earlier than the first day of the month following the month in which the Member's Continuous Service ends or later than the latest date for pension commencement under the *Income Tax Act*. Such date shall be his/her postponed retirement date.

## Section 6

### Retirement Benefits

#### 6.1 Pension

A Member who retires under the provisions of Section 5 shall be entitled to receive a pension to commence, at the Member's choice, on the first day of any month on or after his/her retirement date but not later than the latest date for pension commencement permitted under the *Income Tax Act*. The amount of this pension shall be the annual pension which can be purchased with the Member's Account at the date the pension commences.

#### 6.2 Transfer

In lieu of a pension under subsection 6.1, a Member who retires on or after the date his/her Continuous Service ends, may elect to have the Member's Account transferred in accordance with subsection 8.3.

#### 6.3 Refund

In lieu of a pension under subsection 6.1 in respect of the amount refunded under this subsection, any part of the Member Account attributable to voluntary contributions may at the request of the Member be refunded on retirement, subject to any conditions which may apply to any amounts contributed under the provisions of subsection 4.7.

At the Member's direction, a refund under subsection 6.3 shall be paid to the Member in cash or transferred to a registered retirement savings plan or registered retirement income fund, both as defined under the Income Tax Act and subject to eligibility for such transfer under the Income Tax Act.

#### 6.4 Small Benefit Commutation

- (a) If the Member's Account adjusted as required under the Pension Benefits Act would be less than 40% of the Year's Maximum Pensionable Earnings in the year the Member terminates employment or retires, or such greater amount as may be permitted under Pension Benefits Act, the Employer may pay an amount equal to the Member's Account in full discharge of all obligations under the Plan, provided that the Member and the Member's Spouse or Common-law Partner, if any, complete the required waiver under the Pension Benefits Act.



- (b) If the Member's Account is less than 10% of the Year's Maximum Pensionable Earnings in the year the Member terminates employment or retires, or such greater amount as may be permitted under Pension Benefits Act, the Employer may require that the Member transfer the Member's Account in full discharge of all obligations under the Plan to a prescribed arrangement in accordance with subsection 8.3(a).

## **Section 7**

### **Form of Pension Benefits**

#### **7.1 Pension Calculation According to Normal Form**

The amount of pension provided under subsection 6.1 or 8.2 is calculated according to the normal form of pension as defined in subsection 7.2 and is payable in that normal form of pension unless the Member elects an optional form of pension.

#### **7.2 Normal Form of Pension**

The normal form of pension for a Member with a Spouse or Common-law Partner is an annuity payable in monthly instalments for the life of the Member and payable after the Member's death to the Member's Spouse or Common-law Partner for her/his life in monthly instalments equal to two-thirds of the amount of each monthly instalment paid during the life of the Member.

The normal form of pension for a Member without a Spouse or Common-law Partner is an annuity payable in monthly instalments for the life of the Member and in any event for a period of not less than 120 months.

#### **7.3 Waiver of Normal Form of Pension**

A Member who has a Spouse or Common-law Partner may elect any form of pension under subsection 7.4 or 7.5 which provides no benefit to the Spouse or Common-law Partner or a benefit to the Spouse or Common-law Partner that is less than 60% of the benefit paid to the Member if

- (a) the Member delivers to the Employer, within the 12-month period immediately preceding the date upon which payment of the pension is to commence, the written waiver of the Member and the Member's Spouse or Common-law Partner in the form prescribed under the Pension Benefits Act, and
- (b) this waiver is not revoked by the Member or his/her Spouse or Common-law Partner prior to the commencement of the pension.

#### **7.4 Election of Optional Forms**

In lieu of the normal form of pension payable according to subsection 7.2, and subject to the restriction under subsection 7.3, a Member may elect, before pension commencement, to receive his/her pension benefit in one of the optional forms of pension offered by the Employer.

## **7.5 Optional Forms of Pension**

Notwithstanding the provisions of subsection 7.4, a Member may not elect an optional form of pension which offends the rules set out in regulations under the Income Tax Act.

## **7.6 Spouses for the Purposes of Pension Benefits**

- a) If a Member is lawfully married to a person who has not received a division of the Member's benefits under this Plan pursuant to section 44 of the Pension Benefits Act, that person and only that person is the Member's Spouse for the purposes of this section 7, unless there is a valid domestic contract, or a decree, order or judgment of a competent tribunal barring that person's claim.
- b) Notwithstanding subsections 2.2 and 2.21 of this Plan, a person who has received pursuant to section 44 of the Pension Benefits Act a division of the Member's benefits under this Plan is not a Spouse or Common-law Partner for the purposes of this section 7.

## Section 8

### Termination Benefits

#### 8.1 Refund or Deferred Pension

(a) Termination after December 30, 1991 and before January 1, 1997

(i) Termination before Five Years of Continuous Service

A Member whose Continuous Service ends, for any reason other than death or retirement after December 30, 1991 but before January 1, 1997, and before the Member completes five years of Continuous Service

(1) is entitled to a refund of that part of his/her Member Account attributable to voluntary contributions, subject to any conditions which may apply to any amounts contributed under the provisions of subsection 4.7, and is entitled to a refund of that part of his/her Member Account attributable to required contributions made to the Plan on and after January 1, 1992,

(2) but is not entitled to a refund of that part of his/her Member Account attributable to required contributions made to the Plan prior to January 1, 1992, and, in lieu thereof, is entitled to receive a deferred pension.

(ii) Termination after Five Years of Continuous Service

A Member whose Continuous Service ends, for any reason other than death or retirement after December 30, 1991 but before January 1, 1997, and after the Member completes five years of Continuous Service

(1) is entitled to a refund of that part of his/her Member Account attributable to voluntary contributions, subject to any conditions which may apply to any amounts contributed under the provisions of subsection 4.7,

(2) but is not entitled to a refund of that part of his/her Member Account attributable to required contributions and, in lieu thereof, is entitled to receive a deferred pension.

(b) Termination after December 31, 1996 but before December 1, 2003

(i) Termination before Five Years of Continuous Service

A Member whose Continuous Service ends, for any reason other than death or retirement, after December 31, 1996 but before December 1, 2003, and before the Member completes five years of Continuous Service is entitled to a refund of

his/her Member Account, subject to any conditions which may apply to any amounts contributed under the provisions of subsection 4.7.

(ii) Termination after Five Years of Continuous Service

A Member whose Continuous Service ends after December 31, 1996 but before December 1, 2003, for any reason other than death or retirement, and after the Member completes five years of Continuous Service

- (1) is entitled to a refund of that part of his/her Member Account attributable to voluntary contributions, subject to any conditions which may apply to any amounts contributed under the provisions of subsection 4.7,
- (2) but is not entitled to a refund of that part of his/her Member Account attributable to required contributions and, in lieu thereof, is entitled to receive a deferred pension.

(c) Termination on or after December 1, 2003

(i) Termination before Completion of Five Years of Continuous Service or Two Years of Continuous Membership in the Plan

A Member whose Continuous Service ends, for any reason other than death or retirement, on or after December 1, 2003, and before the Member's completion of five years of Continuous Service or two years of continuous membership in the Plan is entitled to a refund of his/her Member Account, subject to any conditions which may apply to any amounts contributed under the provisions of subsection 4.7.

(ii) Termination after Five Years of Continuous Service or Two Years of Continuous Plan Membership

A Member whose Continuous Service ends, for any reason other than death or retirement, on or after December 1, 2003 and after the Member completes five years of Continuous Service or two years of continuous membership in the Plan

- (1) is entitled to a refund of that part of his/her Member Account attributable to voluntary contributions, subject to any conditions which may apply to any amounts contributed under the provisions of subsection 4.7,
- (2) but is not entitled to a refund of that part of his/her Member Account attributable to required contributions and, in lieu thereof, is entitled to receive a deferred pension.

## 8.2 Commencement and Amount of Deferred Pension

A Member entitled under Section 8 to a deferred pension may elect to commence receiving this pension on the first day of any month within the period that starts ten years before the Normal Retirement Date and ends on the latest date for pension commencement permitted under the *Income Tax Act*. The amount of this pension shall be the annual pension which can be purchased with the Member's Account at the date the pension commences.

## 8.3 Transfers of Member Accounts

- (a) Subject to subsection 8.3(b) and (d), a Member entitled to a deferred pension whose Continuous Service ends, for any reason other than death, on or after January 1, 1992, may elect to have the portion of the Member's Account associated with the deferred pension
- (i) transferred to another pension plan registered in New Brunswick or a jurisdiction designated under the Pension Benefits Act to which the Former Member's current employer is making contributions on the Former Member's behalf,
  - (ii) transferred to a locked-in retirement account as prescribed in the Pension Benefits Act,
  - (iii) transferred to a life income fund as prescribed in the Pension Benefits Act, or
  - (iv) transferred to purchase a deferred or immediate life annuity from an insurance company licensed to transact business in Canada provided payment of the annuity will not commence before the earliest date on which the Member was entitled to retire under the Plan.

Upon such a transfer, the Member will cease to be a Member and will have no further entitlement under the Plan.

- (b) The Employer shall not permit a transfer under subsection 8.3(a) unless the Employer is satisfied that
- (i) the transfer is in accordance with the Pension Benefits Act, and
  - (ii) the transfer complies with the requirements of the Income Tax Act.
- (c) At the Member's direction, a refund payable under section 8 shall be paid to the Member in cash or transferred to a registered retirement savings plan or registered retirement income fund, both as defined under the Income Tax Act and subject to eligibility for such transfer under the Income Tax Act.
- (d) Notwithstanding subsection 8.3(a), but subject to subsection 8.3(b), the Member may receive a refund of the Member's Account if the following conditions are met:

- (i) the Member and his Spouse or Common-law Partner, if any, are not Canadian citizens;
- (ii) the Member and his Spouse or Common-law Partner, if any, are not resident in Canada for purposes of the Income Tax Act; and
- (iii) if the Member has a Spouse or Common-law Partner, the Spouse or Common-law Partner provides the waiver prescribed for this purpose in accordance with Pension Benefits Act.

#### **8.4 Small Benefit Commutation**

Subsection 6.4 applies to a deferred pension under Section 8.

## Section 9

### Death Benefits

#### 9.1 Death Benefits

If a Member dies before pension commencement, a death benefit is payable equal to the Member's Account.

#### 9.2 Payment of Death Benefit

(a) Death Benefit Payable to Spouse or Common-law Partner

The death benefit payable under subsection 9.1 is payable to the Member's Spouse or Common-law Partner.

The Spouse or Common-law Partner may elect to receive this benefit in either of the following forms:

- (i) a lump sum payment, or
- (ii) an annuity payable for the Spouse or Common-law Partner's lifetime, as may be provided by the amount in (i), commencing on the first day of any month on or before the latest date that the payment of the death benefit can commence under the *Income Tax Act*.

(b) Death Benefit Payable to Non-Spouse or Common-law Partner Beneficiary

If the Member does not have a Spouse or Common-law Partner at the date of death, the death benefit payable under subsection 9.1 is payable in a lump sum to the Member's Beneficiary.

#### 9.3 Small Benefit Commutation

Subsection 6.4 applies to an annuity under Section 9 as if the Spouse or Common-law Partner retired on the date the Member died and the annuity were a pension or deferred pension to a Member.



## **9.4 Death Benefit After Commencement of Pension**

Any death benefit payable upon the death of a Member who has commenced to receive his/her pension is determined in accordance with the form of the pension being paid to the Member pursuant to Section 7.

## **9.5 Spouses for the Purposes of Death Benefits**

- a) If a Member is lawfully married to a person who has not received a division of the Member's benefits under this Plan pursuant to section 44 of the Pension Benefits Act, that person and only that person is the Member's Spouse for the purposes of this section 9, unless there is a valid domestic contract, or a decree, order or judgment of a competent tribunal barring that person's claim.
- b) Notwithstanding subsections 2.2 and 2.21 of this Plan, a person who has received pursuant to section 44 of the Pension Benefits Act a division of the Member's benefits under this Plan is not a Spouse or Common-law Partner for the purposes of this section 9.

## **Section 10**

### **Designation of Beneficiary**

#### **10.1 Designation of Beneficiary**

A Member may designate a Beneficiary by written notice delivered to the Employer and the Funding Agent. A Member may revoke or amend such designation in the same manner at any time, subject to any applicable laws governing the designation of beneficiaries.

#### **10.2 No Beneficiary**

If a Member fails to validly designate a Beneficiary, or if the Beneficiary predeceases the Member, any benefits payable to the Member's Beneficiary shall be paid in a lump sum to the Member's estate.

#### **10.3 Death of Beneficiary**

If a Beneficiary is entitled to payments under the Plan, and if the Beneficiary dies before receiving any or all of the payments due to him/her, the remainder of the payments will be paid to the Beneficiary's estate.

#### **10.4 Spouse's or Common-law Partner's Entitlement**

A designation of a Beneficiary under the Plan does not affect the entitlement of a Spouse or Common-law Partner to receive benefits under the Plan in the event of the Member's death.

# **Section 11**

## **Administration**

### **11.1 Responsibility for Administration**

The administrator of the Plan shall be the Employer which shall be responsible for all matters relating to the administration of the Plan and may delegate such matters as it deems appropriate to be performed by one or more agents. The Employer shall decide conclusively all matters relating to the operation, interpretation and application of the Plan.

### **11.2 Regulations for Administration**

The Employer may enact regulations relating to the administration of the Plan to carry out the terms hereof and may amend such regulations from time to time. Such regulations shall not conflict with any provision of this Plan.

### **11.3 Plan Summary**

The Employer shall provide each Employee with a written explanation of the terms and conditions of the Plan and amendments thereto applicable to him/her, together with an explanation of the rights and duties of the Employee with reference to the benefits available to him/her under the terms of the Plan.

### **11.4 Notice of Amendment**

The Employer shall provide a notice and written explanation of an amendment to the Plan to each Member, and to any other person entitled to payment from the Pension Fund, who is affected by the amendment, within the applicable time period prescribed under the Pension Benefits Act.

### **11.5 Annual Statement**

The Employer shall provide annually to each active Member a written statement containing the information prescribed under the Pension Benefits Act in respect of the Member's benefits under the Plan.

## **11.6 Statement on Termination of Employment or Membership**

When a Member's Continuous Service terminates, the Employer shall give to the Member, or to any other person who becomes entitled as a result of the termination to a benefit under the Plan, a written statement setting out the information prescribed under the Pension Benefits Act in respect of the benefits of the Member or other person.

## **11.7 Inspection of Documents**

The Employer shall make available for inspection by eligible individuals the documents and information concerning the Plan and the Pension Fund, all as prescribed under the Pension Benefits Act.

## **11.8 Incompetent Persons**

If the Employer and the Funding Agent jointly determine that a person entitled to receive a benefit under this Plan is a minor or is mentally incompetent, then the payments becoming due to such person may be made to the duly and legally appointed tutor, curator, guardian, trustee or other representative of such person or if no tutor, curator, guardian, trustee or other representative of such person has been duly and legally appointed then, in the sole discretion of the Employer, the payments becoming due to such person may be made to the person or institution from time to time having the custody and control of or maintaining such person without responsibility to the Employer to see to the application of such payments. Payments so made shall operate as a valid and complete discharge of the Employer and the Funding Agent.

## **11.9 Investment Earnings of Pension Fund**

Investment earnings on the Pension Fund are credited to the Members' Accounts not less than annually.

## **Section 12**

### **Pension Fund**

#### **12.1 Pension Fund Administration**

The Pension Fund shall be administered by the Funding Agent in accordance with the Funding Agreement.

#### **12.2 Fees and Expenses**

All reasonable fees and expenses of the Funding Agent related to the administration of the Pension Fund and the Plan may be paid from the Pension Fund.

#### **12.3 Investments**

The Employer shall direct the investment of the Pension Fund in accordance with the provisions of the Pension Benefits Act.

## **Section 13**

### **Future of the Plan**

#### **13.1 Continuation of the Plan**

The Employer intends to maintain the Plan indefinitely, but reserves the right to amend or discontinue the Plan either in whole or in part.

#### **13.2 Amendment to the Plan**

No amendment shall operate to reduce the pension benefits which have accrued to any Member before the date of such amendment.

#### **13.3 Termination of the Plan**

- (a) If the Plan is wound up, in whole or in part, the assets of the Pension Fund shall first be allocated for provision of benefits in accordance with the terms of the Plan, the Pension Benefits Act, the Income Tax Act and any other applicable legislation.
- (b) If the Plan is wound up, in whole or in part, the Employer shall not make further contributions to the Pension Fund in respect of the Plan or the portion of the Plan being wound up, as applicable, except for amounts due or that have accrued up to the effective date of the wind-up.

# **Section 14**

## **General Provisions**

### **14.1 Non-Alienation**

Except as specified in subsections 6.4 or 14.2, and in accordance with the terms of the Pension Benefits Act, money payable under the Plan is subject to the following restrictions:

(a) **Non-Enforceable Transactions**

Any transaction that purports to assign, charge, anticipate, surrender or give as security any right of a person under the Plan or money payable under the Plan shall not be enforceable against the Plan; and

(b) **Exemption from Seizure**

Money payable under the Plan is exempt from execution, seizure, attachment or other process of law.

### **14.2 Alienation of Benefits for Support or on Marriage Breakdown**

(a) **Support**

Payments under the Plan are subject to execution, seizure, attachment or other process of law in satisfaction of an order for support or maintenance enforceable in New Brunswick to the extent permitted by the Pension Benefits Act.

(b) **Marriage Breakdown**

Upon the breakdown of a spousal relationship, a Member's benefits under the Plan may be divided with the Member's Spouse or Common-law Partner or former Spouse or Common-law Partner to the extent and in the manner permitted by the Pension Benefits Act.

### **14.3 Non-Commutation of Pensions**

A pension or deferred pension payable under this Plan shall not be capable of being commuted, except as specifically permitted by the Plan, or as permitted in accordance with the Pension Benefits Act by reason of mental or physical disability of the Member.

## **14.4 No Right to Employment**

The Plan shall not be construed to create or enlarge any right of any person to remain in the employment of the Employer, nor shall it interfere in any manner with the right of the Employer to discharge any person.

## **14.5 Information to be Provided Before Employer Pays Benefits**

Payment of benefits shall not be made until the person entitled to payment of the benefit delivers to the Employer

- (a) satisfactory proof of his/her age and of the age of any other persons who may become entitled to payment of the benefit and such other information as may be required to calculate and pay the benefit, and
- (b) a signed declaration of marital status,

provided that after late delivery of the required documents and information, payment shall be made retroactively to the date of entitlement.

## **14.6 Employer Records**

Wherever the records of the Employer are used for the purposes of the Plan, such records shall be conclusive proof of the facts with which they are concerned, unless and until they are proven to be in error.

## **14.7 Severability**

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

## **14.8 Captions and Headings**

The captions, headings and table of contents of this Plan are included for convenience of reference only and shall not be used in interpreting the provisions of this Plan.

## **14.9 Construction**

- (a) The Plan is intended to constitute an employees' pension plan qualified for registration under the Pension Benefits Act and the Income Tax Act.



- (b) Any provision of the Funding Agreement that is inconsistent with the terms of the Plan shall, to the extent of the inconsistency, be of no force or effect.
- (c) The Plan shall be governed and construed in accordance with the laws of the Province of New Brunswick.