

THE CANADA LIFE CANADIAN EMPLOYEES PENSION PLAN
FINANCIAL SERVICES COMMISSION OF ONTARIO AND CANADA REVENUE AGENCY
REGISTRATION NO. 0354563

SURPLUS SHARING AGREEMENT – AMENDMENT #2

Made as of the 1st day of February, 2013

A M O N G:

DAVID KIDD, ALEXANDER HARVEY and JEAN PAUL MARENTETTE (hereinafter the “**Plaintiffs**”)

-and-

WILBERT ANTLER, ED BARRETT, ALEXANDER HARVEY, DAVID KIDD, BRIAN LYNCH, JIM MARTIN, GARY NUMMELIN, and SHRIRAM MULGUND in their collective capacity as, and on behalf of, the Executive Committee of CLPENS (hereinafter the “**CLPENS Executive**”)

-and-

LIN YEOMANS, SHAUNA MURRAY and HEINZ SPUDIK in their capacity as the members of the Pelican Pension Committee (hereinafter the “**Pelican Committee**”)

-and-

JOCK FLEMING and SUSAN HENDERSON in their capacity as the members of the Indago Pension Committee (hereinafter the “**Indago Committee**”)

-and-

GARRY C. YIP and LOUIE NUSPL in their capacity as the members of the Adason Pension Committee (hereinafter the “**Adason Committee**”)

- and -

THE CANADA LIFE ASSURANCE COMPANY

- and –

Those individuals in the Class (as defined herein) who have retained Members’ Counsel to execute this Agreement on their behalf (hereinafter the “**Represented Participants**”, by their counsel)

- and -

Those individuals in the Class who have not retained Members' Counsel to execute this Agreement but who have provided their individual consents to this Agreement, as undersigned (hereinafter the "**Non-Represented Participants**")

(collectively, the "**Parties**" and individually a "**Party**")

WHEREAS the Parties entered into a Surplus Sharing Agreement (the "**Agreement**") as of September 1, 2011;

AND WHEREAS the Agreement may be amended by written agreement of the "MOU Parties" as defined therein, being the Plaintiffs, the CLPENS Executive, the Pelican Committee, the Indago Committee, the Adason Committee, and Canada Life;

AND WHEREAS the MOU Parties amended the Agreement as of January 1, 2012 to clarify what is included in the "Settlement Expenses" (as defined therein) that can be paid out of surplus pursuant to the Agreement;

AND WHEREAS the MOU Parties wish to amend the Agreement again, as set out below (the "**Amendment**");

AND WHEREAS the MOU Parties have instructed their counsel to execute this amendment to the Agreement on their behalf;

NOW, THEREFORE, IN CONSIDERATION OF their mutual covenants, and for other good and valuable consideration, the MOU Parties agree as follows:

1. Capitalized terms used in this Amendment shall have the meaning set out in the Agreement.
2. In the ninth recital to the Agreement, the concluding words "(the "Settlement")" are deleted.
3. Paragraph 1(e)(vi) of the Agreement (definition of "Agreement") is amended by adding the words ", as amended from time to time" at the end of the paragraph.
4. Paragraph 1(e)(liii) of the Agreement is deleted and replaced with the following:
 - (liii) "**Settlement**" means the terms agreed to by the Parties in settlement of the claims advanced in the Amended Statement of Claim, in addition to all claims relating to the Indago PWU, the Pelican PWU, and the Adason PWU, under an agreement based on the framework and terms of the Integration MOU and the Adason MOU, all as reflected in this Agreement, as amended.

5. Paragraph 1(e) of the Agreement is amended by adding the following paragraphs in the appropriate alphabetical position, with the existing paragraphs (including paragraph (liii) as amended above) re-numbered accordingly:

(xxxiii) "IPWG" means those Eligible PWU Group Members who were included in the Integration PWU.

...

(liv) "Segregated Portion" has the meaning set out in paragraph 7(e) of this Agreement.

6. In order to provide for additional flexibility in respect of the Quebec court proceedings contemplated under the Agreement, paragraph 6(c)(vii) of the Agreement is amended by adding the following to the end of that paragraph:

The provisions in this paragraph 6(c)(vii) related to Québec court proceedings are for the sole benefit of Canada Life, and may be waived by Canada Life in part or in whole in its sole discretion.

7. In order to increase the surplus allocable to the Integration PWU, Canada Life shall waive a portion of the Settlement Expenses which would otherwise be payable to it under the Agreement, and also waive a portion of the interest accruing on the Plan expenses which it has incurred but for which it has not yet been reimbursed. Accordingly, paragraph 7(a) of the Agreement is amended by adding the following to the beginning of that paragraph:

Notwithstanding the provisions of paragraph 2(a)(iii), Canada Life shall waive its entitlement to reimbursement of a portion of its Settlement Expenses in the amount of \$500,000; in addition, notwithstanding the provisions of paragraphs 2(a)(i) and 10(e), Canada Life shall waive entitlement to reimbursement of an amount equal to the amount of interest that would accrue under such paragraphs from August 31, 2012 to December 31, 2013; and the foregoing amounts shall be added to the Final Partial Wind Up Surplus allocable to the Integration PWU, prior to the division described in this paragraph 7(a).

8. In order to increase the surplus payable to those Eligible PWU Group Members who were included in the Integration PWU (*i.e.*, the "IPWG"), as well as the amount of surplus payable to the Inactive Eligible Non-PWU Group Members, the CLPENS Executive shall waive its entitlement to reimbursement of the future legal fees (but not disbursements) approved by the Ontario Superior Court of Justice on January 27, 2012, which fees would otherwise be payable to it under the Agreement, and direct the resulting amount of increased surplus to those groups. Accordingly, paragraph 7(d) of the Agreement is amended by adding the following to the end of that paragraph:

Notwithstanding the provisions of paragraph 2(a)(iii), the CLPENS Executive shall waive its entitlement to reimbursement of a portion of its Settlement Expenses in the amount of \$250,000, less any Settlement Expenses that consist of disbursements incurred by its legal counsel after January 27, 2012 up to the Settlement Approval Date. Such amount shall be divided in the ratio set out in paragraph 7(c) – 57.22:12.44 – and the larger portion shall be added to that portion of the Eligible PWU Group Surplus Allocation that is payable to the

IPWG. The smaller portion shall be added to the Inactive Eligible Non-PWU Group Surplus Allocation.

9. In order to reflect recent events related to annuity markets, paragraph 7(e) of the Agreement is deleted and replaced with the following:

Portability – All PWU Group Members

The Parties agree that PWU Group Members shall be given their portability rights under section 73(2) of the *Pension Benefits Act* (Ontario) or under a similar provision in the pension standards legislation applicable to them.

Integration PWU members – Transfer to Ongoing Portion of Plan

For any member of the Integration PWU who elected to receive (or was deemed to have elected) a deferred or immediate pension, their portability rights have been satisfied by Canada Life transferring assets equal to such members' liabilities to the ongoing portion of the Plan effective August 31, 2012.

Integration PWU members – Segregation of Assets and Liabilities

The assets and related liabilities referred to in the previous sentence shall be notionally segregated (the “**Segregated Portion**”) until the completion of the second surplus distribution (if any) contemplated in paragraph 11.1 below (or until it is determined that such a surplus distribution will not be occurring). Canada Life shall not purchase annuities for any member of the Integration PWU in satisfaction of his or her Plan benefits before December 31, 2014 without the consent of the Plaintiffs and the CLPENS Executive, which consent shall not be unreasonably withheld.

Prior PWU members – Annuity Purchase or Transfer to Ongoing Plan

For any individual included in a Prior PWU who elects to receive (or is deemed to have elected) a deferred or immediate pension, Canada Life will either arrange for an annuity to be purchased, or will arrange for the pension to be provided from the ongoing portion of the Plan, as Canada Life may decide in its sole discretion. If an annuity is purchased for an individual included in a Prior PWU, the pension provided via such annuity, including indexation (if any), shall be determined in accordance with the terms of the Plan. Any annuities purchased for an individual included in a Prior PWU shall be insured annuities, and, subject to such reasonable administrative limits as may be imposed by Canada Life, shall only be purchased for an amount that on the date of purchase is within the Assuris limits. The Parties agree that any such annuities will be purchased following a competitive bidding process, which may include as potential annuity providers Canada Life and/or any of its affiliates.

10. Canada Life has agreed to fund certain payments under the Agreement, if necessary, related to the minimum surplus amounts that are payable to Eligible PWU Group Members. Accordingly, paragraph 7(g) is amended by adding the following to the end of that paragraph:

For Eligible PWU Group Members who were included in a Prior PWU, in order to make the minimum \$1,000 payment to any individual who otherwise would receive less than that amount, surplus payments to the rest of the individuals in the Prior PWU in question will be reduced on a proportionate basis. Should there not be sufficient surplus allocable to the Prior PWU in order for all

Eligible PWU Group Members included in that Prior PWU to receive at least \$1,000, Canada Life will pay the individuals the additional amount needed such that each individual receives \$1,000.

For members of the IPWG, in order to make the minimum \$1,000 payment to any individual who otherwise would receive less than that amount, surplus payments to the rest of the individuals in the IPWG will not be reduced; instead, Canada Life will pay the individual the additional amount needed such that he or she receives \$1,000.

11. Canada Life has agreed to fund certain payments under the Agreement, if necessary, related to the minimum surplus amounts that are payable to Inactive Eligible Non-PWU Group Members. Accordingly, paragraph 8(d) is amended by adding the following to the end of that paragraph:

In order to make the minimum \$1,000 payment to any Inactive Eligible Non-PWU Group Member (or to the surviving spouse, beneficiary, or estate if applicable) who otherwise would receive less than that amount, surplus payments to the rest of the Inactive Eligible Non-PWU Group Members will be reduced on a proportionate basis. Should the Inactive Eligible Non-PWU Group Surplus Allocation not be sufficient in order for all Inactive Eligible Non-PWU Group Members (or the surviving spouse, beneficiary, or estate if applicable) to receive at least \$1,000, Canada Life will pay the individuals (or estates) the additional amount needed such that each individual (or estate) receives \$1,000. For certainty, if the Inactive Eligible Non-PWU Group Member had named multiple beneficiaries, and surplus is payable to them, the \$1,000 payment will be divided among the beneficiaries.

12. The MOU Parties have agreed that the assets and liabilities transferred to the ongoing portion of the Plan in respect of members of the Integration PWU who elected to receive (or were deemed to have elected) a deferred or immediate pension shall be notionally segregated (*i.e.*, the "Segregated Portion"), and have agreed that should surplus arise in that Segregated Portion as of December 31, 2014, and provided certain other conditions are satisfied, then a portion of such surplus shall be distributed to the IPWG and to Inactive Eligible Non-PWU Group Members. Accordingly, a new paragraph 11.1 is added to the Agreement as set out below.

11.1. SEGREGATED PORTION – POTENTIAL SECOND SURPLUS DISTRIBUTION

- (a) Canada Life's Plan actuaries will determine whether a surplus exists in the Segregated Portion as at December 31, 2014, either on a going concern or wind-up basis, as set out in paragraph 11.1(b). If the going concern or wind-up calculation (or both) disclose no surplus, then no further action will be required and the Segregated Portion need no longer be notionally segregated.
- (b) For purposes of the calculation of surplus under paragraph 11.1(a), the calculation of the liabilities on a going concern basis will be based on the following:
 - (i) Assumptions and methods consistent with acceptable actuarial standards and economic conditions as at December 31, 2014, and not necessarily the same assumptions and methods used for the December 31, 2011 funding valuation of the Plan;

and the calculation of the liabilities on a wind-up basis will be based on the following:

- (ii) Annuity purchase and/or commuted value assumptions applicable as at December 31, 2014;
- (iii) Accepted actuarial standards of practice as at December 31, 2014.

For certainty, no smoothing of assets and/or liabilities will be used in calculating either the going concern or wind-up financial position of the Segregated Portion, and no excludable benefits will be excluded in calculating the liabilities. The Plan actuaries' determination of the surplus position of the Segregated Portion shall be set out in a report certified by them (which will not be a full valuation report of the Plan for funding purposes), and shall be final and binding.

- (c) If the certified report prepared by Canada Life's Plan actuaries identifies a surplus in the Segregated Portion as at December 31, 2014, then, subject to the limit set out in paragraph 11.1(e) below, the surplus in the Segregated Portion calculated on either a going concern or wind-up basis, whichever is less, shall be distributed to the IPWG and to Inactive Eligible Non-PWU Group Members subject to the following adjustments:
 - (i) 10% of such surplus shall be deducted off the top; and
 - (ii) The remaining surplus will be reduced to take into account any contributions and other payments (such as special payments), together with interest at the fund rate of return, that are made by Canada Life into the Plan after August 31, 2012 and that are notionally allocated to the Segregated Portion, all as calculated by Canada Life's Plan actuaries, before determining the amount, if any, of surplus to be distributed.
- (d) 57.22% of the surplus remaining after the adjustments described in paragraph 11.1(c), net of any allocation made pursuant to paragraph 11.1(h), will be paid to the IPWG, and 12.44% will be paid to the Inactive Eligible Non-PWU Group Members, allocated to individuals as set out in paragraphs 11.1(g) and 11.1(i).
- (e) The total of the amounts distributed under paragraph 11.1(d) above and paragraph 11.1(h) below shall not exceed \$15,000,000.
- (f) Any payment of surplus under the second distribution to Plan members subject to Quebec jurisdiction will not be made; instead, the surplus share otherwise payable to such members will remain in the Plan, and Canada Life will pay such amount directly to the Quebec members. In addition, notwithstanding the foregoing provisions of this paragraph 11.1(f), Canada Life reserves the right in its sole discretion to leave the surplus share otherwise payable to all other individuals eligible to participate in the second distribution in the Plan, and to pay amounts otherwise payable to such individuals directly to them.

Individual Surplus Allocation – IPWG

- (g) The amount of surplus calculated as set out above in this paragraph 11.1 that is payable to IPWG members shall be allocated to individual members as follows.

Step 1: Calculate the share of surplus each IPWG member would have received in the first distribution under this Agreement, if surplus were equal to the sum of the following amounts:

- (i) The amount of the Eligible PWU Group Surplus Allocation allocable to the IPWG under the first surplus distribution; plus
- (ii) The cost to Canada Life of funding the minimum \$1,000 payment to the IPWG under the first distribution (as set out in paragraph 7(g) above); plus
- (iii) The amount of surplus to be distributed to the IPWG from the Segregated Portion (as calculated above, including the limit under paragraph 11.1(e)).

Surplus in Step 1 shall be allocated to members *pro rata* to the liabilities set out in the Partial Wind Up Report as at the effective date of the Integration PWU, excluding any statutory grow-in benefits, subject to a minimum distribution of \$1,000, with any top-up required to make the minimum \$1,000 surplus payment effected through a reduction of the surplus otherwise payable to other members of the IPWG.

Step 2: The amount payable to each member of the IPWG under the second distribution equals the amount calculated in Step 1, less the amount paid or payable to the individual in the first distribution of surplus under this Agreement.

Step 3: If the amount payable to any member of the IPWG as determined in Step 2 is less than \$100, the member's payment shall be reduced to zero. The amount of surplus to be distributed to the IPWG from the Segregated Portion (including amounts that would otherwise have been payable to members whose allocation under Step 2 was less than \$100) will be distributed to those IPWG members (if any) whose allocation under Step 2 was greater than \$100, *pro rata* to the liabilities set out in the Partial Wind Up Report as at the effective date of the Integration PWU, excluding any statutory grow-in benefits.

Quebec Members Who Would Have Been IPWG Members – Surplus Allocation

- (h) A portion of the surplus that is payable to IPWG members as set out in paragraph 11.1(d) above shall be allocated to:
- (i) those Inactive Eligible Non-PWU Group Members who otherwise would have been included in the Integration PWU, but for the fact that they were employed in a Canadian jurisdiction that at the relevant time did not recognize partial pension plan wind ups in its pension legislation; and to
 - (ii) any former members of the Plan who otherwise would have been included in the Integration PWU, but for the fact that

they were employed in a Canadian jurisdiction that at the relevant time did not recognize partial plan wind ups in its pension legislation, who were not inactive members of the Plan on April 12, 2005 and who are not Opt-Outs

so that each such individual receives a total amount of surplus under this paragraph 11.1 which, after taking into account the amount (if any) they receive under paragraph 11.1(i), is equal to the amount they would have received had they been treated as IPWG members.

Individual Surplus Allocation -- Inactive Eligible Non-PWU Group Members

- (i) The amount of surplus calculated as set out above in this paragraph 11.1 that is payable to Inactive Eligible Non-PWU Group Members shall be allocated to individual members as follows.

Step 1: The share of surplus each Inactive Eligible Non-PWU Group Member would have received in the first distribution under this Agreement, if surplus were equal to sum of the following amounts, shall be determined:

- (i) The amount of the Inactive Eligible Non-PWU Group Surplus Allocation under the first surplus distribution; plus
- (ii) The amount of surplus to be distributed to the Inactive Eligible Non-PWU Group Members from the Segregated Portion (as calculated above, including the limit under paragraph 11.1(e)).

Surplus in Step 1 shall be allocated to members *pro rata* to the wind up liabilities of such Inactive Eligible Non-PWU Group Members as of June 30, 2005 (or the date immediately preceding death or cash out, for those individuals whose liabilities under the Plan were reduced or paid out due to death or cash out between April 12, 2005 and June 30, 2005), subject to a minimum distribution of \$1,000, with any top-up required to make the minimum \$1,000 surplus payment effected through a reduction of the surplus otherwise payable to other Inactive Eligible Non-PWU Group Members.

Step 2: The amount payable to each Inactive Eligible Non-PWU Group Member under the second distribution equals the amount allocated in Step 1, less the amount paid or payable to the individual in the first distribution of surplus under this Agreement.

Step 3: If the amount payable to any Inactive Eligible Non-PWU Group Member as determined in Step 2 is less than \$100, the member's payment shall be reduced to zero. The amount of surplus to be distributed to the Inactive Eligible Non-PWU Group Members from the Segregated Portion (including amounts that would otherwise have been payable to members whose allocation under Step 2 was less than \$100) will be distributed to those Inactive Eligible Non-PWU Group Members (if any) whose allocation under Step 2 was greater than \$100, *pro rata* to the wind up liabilities of such Inactive Eligible Non-PWU Group Members as of June 30, 2005 (or the date immediately preceding death or cash out, for those individuals whose liabilities under the Plan were reduced or paid out due to death or cash out between April 12, 2005 and June 30, 2005).

- (j) Should any IPWG member or Inactive Eligible Non-PWU Group Member die before receiving a payment of surplus under this paragraph 11.1, the amount of surplus that would have been payable to such individual will instead be payable as follows:
 - (i) Where the individual is survived by a spouse or former spouse who at the time of the individual's death is entitled to a pension or other death benefit under the Plan, the surplus shall be paid to that spouse or former spouse;
 - (ii) If there is no such spouse or former spouse, if the individual designated a beneficiary or beneficiaries under the Plan, the surplus shall be paid to that beneficiary or those beneficiaries; or
 - (iii) If there is no such spouse or former spouse, and no beneficiary had been designated by the individual, surplus shall be paid to the individual's estate.
 - (k) Any distribution of surplus under this paragraph 11.1 may be combined with the first distribution of surplus contemplated under this Agreement, as Canada Life may determine appropriate in its sole discretion.
 - (l) Individuals included in the Prior PWUs will not share in any second surplus distribution as contemplated in this paragraph 11.1.
 - (m) Any second surplus distribution as contemplated in this paragraph 11.1 will be subject to applicable regulatory approvals, if any.
13. This Amendment shall be subject to the approval of the Ontario Superior Court of Justice pursuant to section 29 of the Ontario *Class Proceedings Act, 1992*. Unless and until the Ontario Superior Court of Justice approves this Amendment, it shall be of no force or effect.
14. This Amendment to the Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.
15. The Parties have required that this Amendment to the Agreement and all deeds and documents relating to this Agreement be drawn up in the English language. Les Parties aux présentes ont exigé que le présent contrat et tous autres contrats et documents afférents aux présentes soient rédigés en langue anglaise.

Executed as of the date first written above.

CLPENS EXECUTIVE, by their counsel



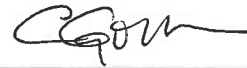
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PLAINTIFFS, by their counsel



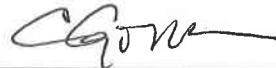
Koskie Minsky LLP

PELICAN COMMITTEE, by their counsel



Koskie Minsky LLP

INDAGO COMMITTEE, by their counsel



Koskie Minsky LLP

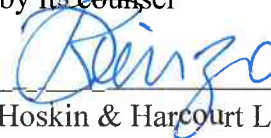
ADASON COMMITTEE, by their counsel



Sack Goldblatt Mitchell LLP

THE CANADA LIFE ASSURANCE COMPANY, by its counsel

By:



Osler, Hoskin & Harcourt LLP