

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

SURPLUS SHARING AGREEMENT – AMENDMENT #3

Made as of the 1st day of October, 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 amended the Agreement as of February 1, 2013 to reflect their agreement to revise the terms of the Settlement (as defined herein);

AND WHEREAS the February 1, 2013 amendment to the Agreement was expressly made subject to the approval of the Ontario Superior Court of Justice pursuant to section 29 of the Ontario *Class Proceedings Act, 1992*;

AND WHEREAS the Ontario Superior Court of Justice refused to approve the February 1, 2013 amendment, and released a judgment to that effect dated March 28, 2013, and therefore that amendment is of no force and effect;

AND WHEREAS the MOU Parties have agreed to further revisions to the terms of the Settlement;

AND WHEREAS the MOU Parties therefore 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. The February 1, 2013 amendment to the Agreement is revoked.

3. In the ninth recital to the Agreement, the concluding words “(the “Settlement”)” are deleted.
4. 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.
5. Paragraph 1(e)(xvi) of the Agreement (definition of “Court Approval”) is amended by adding the words “(unless waived by Canada Life)” immediately following the words “Court having jurisdiction over the issue in question and includes”.
6. Paragraph 1(e)(liii) of the Agreement (definition of “Settlement”) 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.
7. Paragraph 1(e) of the Agreement is amended by adding the following paragraph 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.
8. Paragraph 6(a)(i) of the Agreement is amended by renumbering paragraph 6(a)(i) as paragraph 6(a)(i)(A), adding the word “and” at the end, and adding the following new paragraph 6(a)(i)(B) immediately following it:

(B) the Settlement can be implemented on the basis that the distributable surplus related to the Integration PWU has been determined based on the liabilities of those members who exercised their portability rights having been calculated using the methodology and assumptions in the partial wind-up report dated March 31, 2006 as approved by the Superintendent of Financial Services on April 14, 2011;
9. 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.
10. 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).

11. 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 a portion of its legal fees 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 and their counsel shall waive their entitlement to reimbursement of a portion of the Settlement Expenses as follows:

- (iii) Settlement Expenses incurred prior to January 27, 2012 shall be waived in the amount of \$800,000;
- (iv) Of the \$250,000 in Settlement Expenses approved by the Ontario Court of Justice on January 27, 2012 for services rendered by counsel to the CLPENS Executive on and after that date, reimbursement of the entire amount shall be waived, except for disbursements up to a maximum of \$50,000.

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.

12. 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, the requirement to distribute plan assets related to the Integration PWU members' benefits has been satisfied by Canada Life transferring assets equal to such members' liabilities to the ongoing portion of the Plan effective August 31, 2012.

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.

13. Canada Life has agreed to guarantee the amount that eligible Integration PWU members receive under the Agreement. Accordingly, the following amendments to the Agreement are made:

- (a) Paragraph 7(h) is amended by deleting “[intentionally left blank]” and adding the following:

Notwithstanding the foregoing provisions of this paragraph 7, Canada Life shall make such payments to individuals in the IPWG as are necessary such that, when added to the amounts otherwise payable under this Agreement, they receive the greater of the following two amounts:

- (i) 56% of the surplus estimate shown on the individual’s personal information statement contained in the roadshow communications mailed in or about March 2011;
- (ii) \$1,000.

- (b) Paragraph 7(l)(i) is amended by adding new paragraph (F) at the end:

(F) Notwithstanding the foregoing provisions of this paragraph 7(l)(i), Canada Life shall make such payments to any Subsequent Consenter who is a member of the IPWG, and to any Subsequent Consenter described in paragraph 7(j) whose entitlement relates to an individual included in the Integration PWU, as are necessary such that, when added to the amounts otherwise payable under this paragraph 7(l)(i), they receive the greater of the following two amounts:

- (1)** 56% of the surplus estimate shown on the individual’s personal information statement contained in the roadshow communications mailed in or about March 2011;
- (2)** \$1,000.

- (c) Paragraph 7(l)(v) is amended by adding new paragraph (E) at the end:

(E) Notwithstanding the foregoing provisions of this paragraph 7(l)(v), Canada Life shall make such payments to any Subsequent Consenter who is a member of the IPWG, and to any Subsequent Consenter described in paragraph 7(j) whose entitlement relates to an individual included in the Integration PWU, as are necessary such that, when

added to the amounts otherwise payable under this paragraph 7(l)(v), they receive the greater of the following two amounts:

- (1) 56% of the surplus estimate shown on the individual's personal information statement contained in the roadshow communications mailed in or about March 2011;
- (2) \$1,000.

14. Canada Life has agreed to guarantee the amount that Inactive Eligible Non-PWU Group Members receive under the Agreement. Accordingly, paragraph 8(d) of the Agreement is amended by adding the following new paragraph following the existing paragraph:

Notwithstanding the foregoing provisions of this paragraph 8(d), Canada Life shall make such payments to Inactive Eligible Non-PWU Group Members (or their surviving spouse, beneficiary, or estate described in paragraph 8(f) below, if applicable) as are necessary such that, when added to the amounts otherwise payable under this Agreement, they receive the greater of the following two amounts:

- (i) 56% of the surplus estimate shown on the individual's personal information statement contained in the roadshow communications mailed in or about March 2011;
- (ii) \$1,000.

15. The MOU Parties have agreed that only those fees and expenses incurred by counsel to the CLPENS Executive that were approved by the Ontario Superior Court of Justice on January 27, 2012, and no more, shall be paid under the Agreement, subject to the waiver described above. Accordingly, the following sentence is added to the end of paragraph 9(a):

Notwithstanding the foregoing, and subject to paragraph 7(d), no Settlement Expenses incurred by the CLPENS Executive and their counsel, other than those already approved by the Ontario Superior Court of Justice on January 27, 2012, shall be paid under this Agreement.

16. In order to provide flexibility with respect to the payment process under the Agreement, the following paragraph (f) is added to paragraph 10 of the Agreement:

- (f) Notwithstanding any other provision of this Agreement, in order to satisfy any obligation it may have under this Agreement to make payments to an individual or estate, Canada Life may (in its sole discretion) forego part or all of the amounts otherwise payable to it under this Agreement, and any such foregone amounts shall instead be used to make part or all of the payments Canada Life would otherwise have had to make hereunder.

17. In order to reflect recent changes to the Ontario *Pension Benefits Act*, paragraph 11 of the Agreement is amended to add the words "or section 77.4(2)" immediately following the words "arising out of the Partial Wind Up applicable to them, whether under section 70(6)".

18. 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.
19. 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.
20. 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.

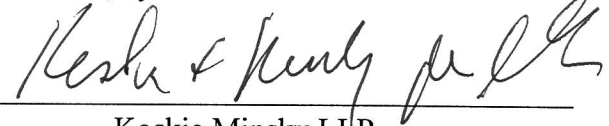
Executed as of the date first written above.

CLPENS EXECUTIVE, by their counsel




Koskie Minsky LLP

PLAINTIFFS, by their counsel



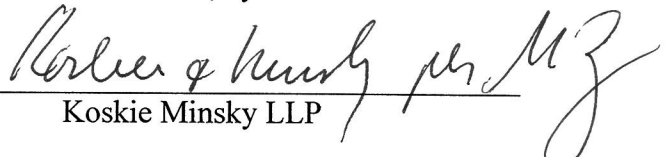
Koskie Minsky LLP

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

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Executed as of the date first written above.

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PLAINTIFFS, by their counsel

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PELICAN COMMITTEE, by their counsel

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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