

NOTICE OF SURPLUS WITHDRAWAL APPLICATION

TO: Certain Members and Former Members of The General Accident Indemnity Staff Pension Plan (Financial Services Commission of Ontario (“FSCO”) Registration No. 0689695) (the “Plan”) who were affected by the partial wind up of the Plan effective December 31, 1994

FROM: Aviva Canada Inc. (formerly The General Accident Indemnity Company)

DATE: January 8, 2009

1. As you know, the Plan was partially wound-up effective December 31, 1994 in relation to those members of the Plan whose termination of employment was determined to be directly attributable to the acquisition of the property and casualty business of The Prudential Assurance Company Limited by General Accident Holdings (Canada) Limited effective November 30, 1992 (the “1994 Partial Wind Up”).
2. On the effective date of the 1994 Partial Wind Up, the Plan sponsor was The General Accident Indemnity Company. The Plan sponsor has since been reorganized and renamed a number of times, and is currently Aviva Canada Inc. (the “Company”).
3. The purpose of this Notice is to advise you of the application of the Company to the Superintendent of Financial Services (the “Superintendent”) for his consent, pursuant to Section 78 of the *Pension Benefits Act* (Ontario) (the “PBA”), to a refund of a portion of surplus assets remaining in the Plan as more particularly described in paragraph 17 of this Notice (the “Surplus”).
4. A total of 166 members of the Plan were affected by the 1994 Partial Wind Up. It was determined initially that forty-six of the affected members accrued their pension benefits under the Plan based on their employment in the province of Quebec (the “Quebec Members”). Quebec law does not permit a surplus distribution on the partial wind up of a pension plan. Accordingly, assets and liabilities relating to the 46 Quebec Members have been returned to the ongoing portion of the Plan. The return of the assets and liabilities relating to the 46 Quebec Members to the Plan was approved by FSCO in a letter dated April 19, 2006. Two additional Quebec Members have been identified since that time, bringing the total number of Quebec Members to 48. The remaining 118 affected members are referred to herein as the “Eligible Members”. References to “Eligible Members” include the spouse, beneficiary or estate, as applicable, of any deceased Eligible Member.
5. This Notice is given in compliance with section 78(2) of the PBA and section 28(5) of Regulation 909, as amended, (Regulation 909) in respect of Eligible Members who last reported to work in the province of Ontario and in compliance with the following legislative requirements in respect of other Eligible Members, as applicable:
 - Alberta: *Employment Pension Plans Act*, s. 83; *Employment Pension Plans Regulation*, s. 67;

- British Columbia: *Pension Benefits Standards Act*, s. 61; Pension Benefits Standards Regulation, s. 42;
 - Manitoba: *Pension Benefits Act*, s. (2.1);
 - New Brunswick: *Pension Benefits Act*, s. 59; Pension Benefits Regulations, s.48; and
 - Nova Scotia: *Pension Benefits Act*, s. 83(2); Pension Benefits Regulations, s. 35(12).
6. The refund to the Company of a portion of the Surplus is part of a proposal that has been made to share the Surplus between the Eligible Members and the Company. Details concerning the surplus sharing proposal are set out in Part C of this Notice. Briefly, the proposal provides for a distribution of 50% of the Surplus, less Eligible Members' expenses, to the Eligible Members (the "Eligible Members Share") and 50% of the Surplus, less Company expenses, to the Company (the "Company Share").
 7. A significant number of Eligible Members (over 85%) retained Koskie Minsky LLP ("Koskie Minsky") to negotiate on their behalf the terms of a formal surplus sharing agreement with the Company (the "Surplus Sharing Agreement").
 8. Koskie Minsky executed the Surplus Sharing Agreement as of November 28, 2008 on behalf of those individuals who consented to the surplus sharing proposal and authorized Koskie Minsky to execute the Surplus Sharing Agreement on their behalf (the "Represented Members"), based on disclosure of the Plan documents and other information provided previously by the Company. Eligible Members who did not retain Koskie Minsky will be offered the opportunity to execute the Surplus Sharing Agreement individually. Such Eligible Members are referred to herein as the "Non-Represented Members".
 9. This formal Notice is being provided to Koskie Minsky in respect of all Represented Members. A copy of this Notice is being sent to the last known address, if any, for all Non-Represented Members.
- A. Partial Wind Up of the Plan**
10. On May 21, 2003, the Company declared a voluntary partial wind up of the Plan effective December 31, 1994 (defined above as the "1994 Partial Wind Up"). A partial wind up report was prepared as at that date by Robertson, Eadie & Associates (the "Plan Actuary") and was filed with the Superintendent for approval on December 10, 2003. The partial wind up report was revised and re-filed in July, 2004 (the revised partial wind up report is referred to herein as the "Partial Wind Up Report"). The Partial Wind Up Report estimated the assets attributable to the wound up portion of the Plan (including the Quebec Members) as at December 31, 1994 as approximately \$6,970,300.
 11. By letter dated January 6, 2005, the Superintendent authorized the distribution of benefit entitlements (excluding any surplus remaining in the partially wound up portion of the Plan) in accordance with the Partial Wind Up Report. A revised balance sheet was filed with the Superintendent on June 18, 2006 showing the financial position of the partially wound up portion of the Plan as at December 31, 1994 with the Quebec Members

excluded (the "Financial Update"). The Financial Update estimated that, as at December 31, 1994, the assets attributable to the wound up portion of the Plan were approximately \$6,548,200. Updated to December 31, 2007, the market value assets attributable to the wound up portion of the Plan are estimated to be \$9,091,500.

12. All lump sum payments to which the Eligible Members are entitled pursuant to the provisions of the Plan have been paid or distributed from the Plan in accordance with the Partial Wind Up Report. The benefits of those Eligible Members who have elected to take their benefit entitlement in the form of a pension are currently being paid from the assets remaining in the wound up portion of the Plan. Prior to the distribution of the Surplus, annuities will be purchased for Eligible Members who are in receipt of a pension or who elected a deferred pension. The ad hoc increase (the "Ad Hoc Increase") Aviva has agreed to pay to the Eligible Members under the Surplus Sharing Agreement will also be paid from the assets remaining in the wound up portion of the Plan prior to the distribution of the Surplus.
13. The precise amounts of the Eligible Member Share and the Company Share cannot be determined until the date or dates of the distribution of the Surplus (the "Distribution Date"). The amount of Surplus available for distribution will depend on several factors, including the cost of the Ad Hoc Increase, interest payable on basic benefits paid to members and annuity purchase rates in effect at the time basic benefits under the Plan are settled. The Surplus will also be adjusted for any income or losses on the investment of Plan assets and each of the Eligible Members Share and the Company Share will be adjusted for actual expenses incurred by the Eligible Members and the Company, respectively, through to the Distribution Date.

B. Surplus Sharing Proposal

14. The Company proposes to share the Surplus between the Company and the Eligible Members in accordance with the Surplus Sharing Agreement, the principal terms of which were negotiated by the Company and a committee comprised of Eligible Members (the "Member Committee") with the assistance of their respective advisors. The Member Committee is currently composed of Douglas Craib, Clif Dobson, Al Hodgson, Barry Kennedy and Arthur Denis Morin.
15. An agreement in principle was reached on October 30, 2007 and reflected in a term sheet outlining the principal terms of the surplus sharing proposal executed by the Member Committee and the Company (the "Term Sheet"). The Member Committee and the Company subsequently negotiated the Surplus Sharing Agreement which implements the terms of the Term Sheet. Attached hereto as Exhibit "A" is a copy of the Surplus Sharing Agreement.
16. On July 18, 2008 information packages (the "Information Packages") were transmitted to all Eligible Members. The Information Packages described the surplus sharing proposal set out in the Term Sheet, provided an estimate of each individual Eligible Member's Ad Hoc Increase and surplus share under the Term Sheet proposals, and provided Eligible Members with an opportunity to accept or reject the surplus sharing proposal. Koskie Minsky advises that, as of December 5, 2008, 102 of 118 (or 86.44%) of the Eligible Members have returned forms approving the surplus sharing proposal as presented in the

Information Package and authorizing Koskie Minsky to act on their behalf in settling and implementing the Surplus Sharing Agreement, including signing the Surplus Sharing Agreement on their behalf.

17. The formal sharing proposal is set out in the Surplus Sharing Agreement. Outlined below is a summary description of that proposal. Subject to the approval of the Superintendent, Canada Revenue Agency and any other applicable regulatory approvals or other conditions specified in the Surplus Sharing Agreement, the Eligible Members Share and the Company Share shall be determined by deducting from the assets remaining in the wound up portion of the Plan after payment of the basic benefits to which Eligible Members are entitled, the expenses of the 1994 Partial Wind Up and the cost of the Ad Hoc Increase. The assets remaining in the wound up portion of the Plan after these deductions, adjusted for investment gains and losses, is the Surplus. Under the Company's proposal, the Surplus will be shared between the Eligible Members and the Company on a 50/50 basis. The costs actually incurred by each of the Member Committee and the Company in connection with the negotiation and implementation of the Surplus Sharing Agreement will be deducted from each party's share before the final distribution is made.
18. The Eligible Members Share shall be allocated among each of the Eligible Members based on the proportion of the Plan liabilities for each Eligible Member's benefits to the total of the Plan liabilities for all Eligible Member's benefits as at December 31, 1994, subject to a minimum distribution for each Eligible Member in the amount of \$500. Such amounts are to be paid as a lump sum cash payment net of applicable withholding taxes, or, on the appropriate direction of the Eligible Members who qualify, directed to a non-locked-in RRSP. Eligible Members whose distribution is \$10,000 or more also have the option of taking a portion of their share in the form of an increased benefit.
19. Subject to compliance with applicable law and the receipt of all necessary regulatory approvals, the Company shall amend the Plan to provide for an ad hoc increase of 5% (defined above as the Ad Hoc Increase) beginning at the time of the distribution of the Eligible Member Share. In lieu of indexing, each terminated paid-out Eligible Member will receive a lump sum payment equal to 5% of his/her benefit entitlement under the Plan as at December 31, 1994, at the time of the distribution of the Eligible Members Share, all as more particularly described in the Surplus Sharing Agreement. The value of the Ad Hoc Increase is estimated to be approximately \$368,000 at December 31, 2007.
20. The above proposal (including the Ad Hoc Increase) will not be implemented unless written consent is received on behalf of at least two-thirds of the Eligible Members and the Superintendent (and any other applicable governmental authority) consents to the refund of surplus to the Company in accordance with the terms of the above proposal. As of the date of this Notice, the first requirement has been satisfied.
21. The Plan Actuary estimated that as at December 31, 2007 the Eligible Members Share was approximately \$2,231,750, or approximately 50% of the Partial Wind Up Surplus (without taking into account surplus sharing expenses). The Plan Actuary estimated that as at December 31, 2007 the Company Share was approximately \$2,231,750, or approximately 50% of the Partial Wind Up Surplus (without taking into account surplus sharing expenses). However, the actual amount of the Eligible Members Share and the

Company Share cannot be determined until the ultimate Distribution Date. As indicated above, the Eligible Members Share and the Company Share will be adjusted for any income or losses on the investment of Plan assets and for expenses incurred by the Eligible Members and the Company, respectively, through to the Distribution Date.

C. Plan Contributions & Surplus Attribution

22. At the effective date of the Partial Wind Up, the Plan was a contributory defined benefit pension plan.
23. Pursuant to subsection 28(5) of Regulation 909, this Notice must set out “the surplus attributable to employee and employer contributions.” The Plan Actuary has determined that approximately 79% of the Partial Wind Up Surplus is attributable to contributions made by the Company and approximately 21% of the Partial Wind Up Surplus is attributable to contributions attributable to members and former members of the Plan.
24. There is no generally accepted interpretation of “surplus attributable to employee and employer contributions.” In fact, interpretations other than that employed by the Plan Actuary for this purpose are possible, and could lead to different results. Also, there is no one method generally accepted within the actuarial profession of calculating the amount of surplus attributable to employer and employee contributions. The Plan Actuary has prepared a description of the method used to determine the surplus attributable to employee and employer contributions, which will be filed with the Superintendent and which is available by writing to the Plan Actuary at the address set out below.

D. Plan Provisions Relating to Surplus Entitlement

25. The Plan language relating to amendment and entitlement to surplus on wind up (as it read on December 31, 1994) is contained in Section 7.1 of the Plan which provides as follows:

7.1 PERMANENCE OF THE PLAN

The Employer hopes and intends that the Plan will be permanent but reserves the right to terminate it at any time.

Subject to the following paragraph, in the event of plan termination, each Member (whether active, inactive or retired) will be provided with the full pension and death benefit entitlement earned to the date of plan termination. If there should remain any assets in the Plan, the value of such excess assets shall be paid to the Employer after receiving approval from provincial authority. However, the Employer may instruct the Pension Committee to apply part or all of such excess assets to increase the Members' benefits; should the Employer choose to do so, the total benefit in respect of any Member shall not exceed the maximum benefit then permitted under the administrative procedures of Revenue Canada for registration of pension plans. Further, no settlement on termination shall be such as to contravene any applicable legislation in Canada respecting pension plans or any administrative rule of Revenue Canada in effect at the date of termination.

If, on termination of the Plan, a reduction in benefits becomes necessary due to insufficient assets, such reduction will be made only upon receipt of

authorization from such governmental authorities as have jurisdiction to regulate the operation of the Plan.

The Employer also reserves the right to alter the Plan provided that any change which may be made will not reduce any benefit earned in respect of a Member up to the effective date of such change.

26. A summary of the relevant historical Plan language and related documentation concerning the issue of surplus entitlement has been prepared by the Company through its legal counsel (Osler, Hoskin & Harcourt LLP) and is attached hereto as Exhibit "B". As required under FSCO Policy S900-511, a legal analysis of the historical Plan language relevant to surplus entitlement, prepared by the Company's legal counsel on behalf of the Company, is attached hereto as Exhibit "C".

E. Superintendent Review

27. An application will be made to the Superintendent for his consent to withdraw and distribute the surplus to the Company and the Eligible Members in accordance with the proposed Surplus Sharing Agreement and applicable regulatory requirements (the "Application"). The date on which the Application will be submitted to the Superintendent may be obtained by contacting the Plan Actuary at the address or telephone number provided below.
28. This Notice is provided in compliance with the provisions of the regulatory requirements set out in paragraph 5. Receipt of the Notice will not, in itself, confer upon such person any right to the Surplus nor will it ensure participation in the distribution of the Surplus if approval is received.
29. Copies of the Partial Wind Up Report, proposed Surplus Sharing Agreement and related certificates filed with the Superintendent in support of the Application, together with any other information to which members are by law entitled in relation to the Plan, are available for review at the offices of the Plan Actuary at the following address:
- Robertson Eadie & Associates Ltd.
481 Morden Road
Suite 210
Oakville, Ontario
L6K 3W 6
30. To arrange an appropriate time to view these documents, you should contact Lawrence Contant at 905-337-3359 or toll-free at 1-866-444-4082. Copies of the Partial Wind Up Report and proposed Surplus Sharing Agreement are available on request from Lawrence Contant by calling the number noted above.
31. Submissions in respect of this Application may be made in writing to the Superintendent within 30 days after you receive this Notice. Such submissions should be made to the Superintendent of Financial Services, 5160 Yonge Street, 4th Floor, Toronto, Ontario M2N 6L9. We are required to notify you that the Superintendent will provide copies of all submissions to the Company.

32. If you have any questions relating to this Notice or the Application, you are advised to contact Lawrence Contant at the number noted above or Koskie Minsky, by telephone at 1-866-545-9920 or by email at aviva.gai@kmlaw.ca.

F. Non-Represented Members

33. Any Non-Represented Member receiving this Notice who wishes to consent to the surplus sharing proposal may do so by contacting Lawrence Contant at the number and address noted above to receive a consent form or by retaining Koskie Minsky who can be reached at the number or email address noted above.
34. It is recommended that any Non-Represented Member receiving this Notice seek independent legal counsel with respect to the surplus sharing proposal. You may retain Koskie Minsky or another legal counsel as your independent legal counsel. Pursuant to the proposed Surplus Sharing Agreement, Koskie Minsky's costs will be paid out of the Eligible Members Share of the Surplus. The costs of any Eligible Member retaining legal counsel other than Koskie Minsky will not be paid out of the Surplus and will be at the expense of the Eligible Member.

G. Specific Information for Alberta Members

35. Eligible Members who last reported to work for the Company in the province of Alberta are hereby notified that, pending all required regulatory and court approval, assets of the Plan will be distributed no earlier than 90 days from the date of this Notice.

H. Specific Information for British Columbia Members

36. Eligible Members who last reported to work for the Company in the province of British Columbia are hereby notified that, pending all required regulatory and court approval, assets of the Plan will be distributed no earlier than 60 days from the date of this Notice.
37. Notice of any dispute respecting the allocation, payment or transfer of surplus assets must be provided to the Company within 60 days from the date of this Notice. Any dispute respecting the payment or transfer of surplus assets will be resolved in accordance with section 62 of the *Pension Benefits Standards Act* (British Columbia).

EXHIBIT "A"

THE GENERAL ACCIDENT INDEMNITY STAFF PENSION PLAN

(REGISTRATION NO. 0689695)

1994 PARTIAL WIND UP

SURPLUS SHARING AGREEMENT

THIS AGREEMENT made as of the 28th day of November, 2008.

BETWEEN:

AVIVA CANADA INC., a corporation governed by the laws of
Canada
(the "Company")

- and -

KOSKIE MINSKY LLP, on behalf of those Eligible Members
(as defined herein) who have retained Koskie Minsky LLP to
execute this Agreement on their behalf
(the "Represented Members")

RECITALS:

- A.** The Company is the sponsor (employer) and the administrator of The General Accident Indemnity Staff Pension Plan (the "Plan"). The Plan is registered in Ontario with the Financial Services Commission of Ontario ("FSCO"). The Plan was partially wound up through a Board Resolution dated May 21, 2003 and effective December 31, 1994 (the "1994 Partial Wind Up") in respect of certain Plan members whose employment was terminated as a direct result of the integration of the businesses of The General Accident Indemnity Company and The Prudential Assurance Company of England Property and Casualty (Canada) (the "Affected Members"). There were a total of 159 Affected Members. Seven additional former Plan members subsequently established to the Company's satisfaction that they were part of the 1994 Partial Wind Up and thus among the Affected Members, bringing the total number of Affected Members as of the date of the Agreement to 166.

- B.** The Affected Members included Plan members who were employed by the Company (or its predecessors) in the Province of Quebec (the “Quebec Members”). Quebec law does not permit the distribution of surplus on a partial wind up. Based on the Plan records, it was determined that there were 46 Quebec Members. Accordingly, assets and liabilities attributable to the 46 Quebec Members were subsequently returned to the ongoing portion of the Plan. It subsequently came to the Company’s attention that there were two additional Quebec Members, bringing the total number of Quebec Members as of the date of this Agreement to 48. The decision to return of the assets and liabilities relating to the original 46 Quebec Members to the Plan was approved by the Financial Services Commission of Ontario (“FSCO”) by letter dated April 19, 2006.
- C.** Affected Members in all Provinces other than Quebec are eligible to participate in the surplus sharing. The Affected Members who are eligible to participate in the surplus sharing are referred to in the Agreement as the “Eligible Members”. At the date of the execution of this Agreement, there are 118 Eligible Members.
- D.** The Plan assets attributable to the Eligible Members (the “Plan Assets”) updated to December 31, 2005 were determined by the Plan Actuary to be \$8,817,057. Effective June 30, 2006, a separate account (the “PWU Account”) was established within the Plan fund and the Partial Wind Up Assets (adjusted for benefit payments, expense payments and investment gains and losses between December 31, 2005 and June 30, 2006) were transferred into the PWU Account and have since been separately invested.
- E.** A committee representing the Eligible Members (the “Member Committee”) was established in June 2006 to negotiate an arrangement whereby assets remaining in the PWU Account after all payment of all benefits and expenses would be shared between the Company and the Eligible Members. The current members of the Member Committee are Douglas Craib, Clif Dobson, Al Hodgson, Barry Kennedy and Arthur Denis Morin. The law firm of Koskie Minsky LLP (“KM”) was retained to provide legal advice and representation to the Member Committee in discussions and negotiations with the Company.

- F. An initial letter was sent to the Eligible Members on September 19, 2006 containing information about the negotiation process and seeking authorization from the Eligible Members for KM to represent them in the negotiations with the Company. Over 85% of the Eligible Members retained KM to act on their behalf in the negotiation of a surplus sharing arrangement (the "Represented Members" as more particularly defined below).
- G. As a result of negotiations between the Member Committee and the Company (including their respective professional advisors), a term sheet dated as of October 30, 2007, setting out the principal terms of the agreement reached between the Member Committee and the Company on the arrangements for sharing the Surplus (the "Term Sheet"), was executed by the Member Committee and the Company.
- H. On or about July 18, 2008, information packages explaining the principle terms of the agreement reflected in the Term Sheet were transmitted to all of the Eligible Members. As of November 28, 2008, 102 of 118 or 86.44% of the Eligible Members have returned forms approving the agreement as presented in the information package and authorizing KM to act on their behalf in negotiating, settling and implementing this Agreement, including signing this Agreement on their behalf.
- I. The purpose of this Agreement is to document the formal terms that will govern the surplus sharing arrangement between the Company and Eligible Members, subject to the regulatory approvals contemplated herein. For greater certainty, this Agreement supersedes the Term Sheet.

THEREFORE, the parties agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

Whenever used in this Agreement the following words and terms shall have the meanings set out below:

"1994 Partial Wind Up" has the meaning given in the Recitals;

“**Affected Members**” has the meaning given in the Recitals;

“**Applicable Withholdings**” means any withholdings or source deductions required by law;

“**Calculation Date**” has the meaning given in Section 4.2;

“**Company**” has the meaning given in the Recitals;

“**Company Share**” has the meaning given in Article 6;

“**Court Proceeding**” means any action, application or other proceeding brought in a court of law or administrative tribunal regarding the surplus distribution discussed herein, including any proceeding to approve this Agreement and/or make it binding on a class of persons and includes any variation of trust proceedings;

“**Distribution Date**” means the effective date or dates at which the Eligible Member Share is distributed to the Eligible Members from the Plan pursuant to this Agreement;

“**Eligible Member Share**” has the meaning given in Article 6;

“**Eligible Members**” has the meaning given in Recital C and the term “**Eligible Member**” has a corresponding meaning;

“**FSCO**” has the meaning given in Recital B;

“**Indexing Cost**” means the amount allocated from the Surplus to provide the Indexing Payments as described more particularly in Article 4;

“**Indexing Payment**” has the meaning given in Section 4.1;

“**Individual Surplus Allocation**” means the portion of the Eligible Member Share to which an individual Eligible Member is entitled pursuant to Article 8;

“**KM**” has the meaning given in Recital E;

“**Member Committee**” has the meaning given in the Recitals;

“Minimum Surplus Allocation” means \$500;

“Net Surplus” has the meaning given in Article 5.1;

“Partial Wind Up Assets” has the meaning given in Recital D;

“Partial Wind Up Date” means December 31, 1994, the effective date of the 1994 Partial Wind Up;

“Partial Wind Up Expenses” means the actuarial, administrative, legal, custodial and investment expenses incurred in connection with the 1994 Partial Wind Up, including the categories of expenses listed on Schedule A;

“Partial Wind Up Reports” means the Revised Report on the Actuarial Valuation on the Partial Wind-up of the Partial Wind-Up of the General Accident Indemnity Staff Pension Plan as at December 31, 1994 filed in July 2004 and updated on July 21, 2005 and June 18, 2006;

“PBA” means the *Pension Benefits Act* (Ontario) and the regulations thereunder, as amended from time to time;

“Plan” has the meaning given in the Recitals;

“Plan Actuary” means the firm of actuaries Robertson, Eadie & Associates Ltd.;

“Post-Retirement Benefit Plans” means the post-retirement group health benefits to which qualified Eligible Members are currently entitled;

“Pro Rata Surplus Allocation” means the collective individual Eligible Member allocations out of the remaining Eligible Member Share, after adjustment for payment of the Minimum Surplus Allocation to each Eligible Member, as allocated among Eligible Members in proportion to their Plan liabilities determined as of the Partial Plan Wind Up Date and as reported in the Partial Wind Up Reports;

“PWU Account” means the separate account within the Plan fund established by the Company to hold the Partial Wind Up Assets;

“Quebec Members” has the meaning given in Recital B;

“Regulator” means the Superintendent of Financial Services or another applicable provincial pension regulator or Canada Revenue Agency, if applicable, and Regulators has a corresponding meaning;

“Regulatory Approval” means the approval granted to the Company’s applications by the Regulators to the distribution of the Surplus as contemplated by this Agreement;

“Represented Members” has the meaning given in Recital F and includes all of the Eligible Members who execute and return the authorization and retainer form in the information package referred to in Recital H;

“Surplus” means any excess assets remaining in the PWU Account after payment of basic benefits required under the Plan and the PBA (including the cost of purchasing annuities for Eligible Members who elect to receive their benefit in the form of a pension), adjusted to reflect investment gains and losses;

“Surplus Sharing Expenses” has the meaning given in Article 7;

“Term Sheet” has the meaning given in Recital G;

“Trustee” means CIBC Mellon Trust Company.

1.2 Paragraphs and Headings for Convenience Only

The division of this Agreement into paragraphs and the inclusion of headings is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.3 Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

1.4 Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof, and any such invalid or unenforceable provisions shall be deemed to be severable.

1.5 Entire Agreement

This Agreement, together with the Indemnity Agreement dated March 11, 2008 and the Agency and Confidentiality Agreement dated March 11, 2008, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. There are no oral warranties or representations or other agreements between the parties in connection with the subject matter, except as specifically set forth or referred to herein. No amendment, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

1.6 Canadian Currency

All amounts stated herein are in Canadian currency.

ARTICLE 2

EXECUTION

2.1 Parties to Be Bound

The execution of this Agreement by KM on behalf of the Represented Members shall, upon a copy or copies of such signed Agreement being delivered to the Company, constitute the agreement of each Represented Member to be bound by this Agreement and thereby evidence of his or her irrevocable consent to the terms and conditions herein. KM is signing this Agreement on behalf of the Represented Members, and not on its own behalf. For greater certainty, any subsequent action, consent or agreement by KM pursuant to this Agreement shall likewise be binding on the Represented Members.

ARTICLE 3

PARTIAL WIND UP EXPENSES

3.1 Payment of Partial Wind Up Expenses

Partial Wind Up Expenses shall be paid from the Surplus prior to the determination of the Net Surplus as contemplated in Section 5.1.

3.2 Approval of Partial Wind Up Expenses by Member Committee

The Member Committee shall be entitled to review and approve all Partial Wind Up Expenses incurred prior to the date of this Agreement but not yet charged to the PWU Account and all Partial Wind Up Expenses incurred after January 1, 2008. Such approval right shall be exercised in good faith and in a timely manner. Partial Wind Up Expenses invoices shall be submitted to KM to be reviewed on the Member Committee's behalf and, provided no objections or issues are raised, they shall be deemed to be approved by the Member Committee 30 days after having been submitted.

3.3 Estimate of Partial Wind Up Expenses Prior to the Determination of the Net Surplus

Prior to the final calculation of the Net Surplus in accordance with Article 5 below, the Company will cause its advisors to provide a reasonable estimate of any remaining Partial Wind Up Expenses to complete the 1994 Partial Wind Up to the Member Committee for its review and approval as contemplated in Section 3.2, which amount shall be included in the Partial Wind Up Expenses.

ARTICLE 4

INDEXING

4.1 Indexing Payments

Subject to, and conditional upon receipt of all necessary Regulatory Approvals and the final resolution of any Court Proceeding, the Company will amend the Plan to provide a one-time (ad hoc indexing) increase (the "Indexing Payment"). The Indexing Payment will be calculated in the manner described in Section 4.2 (the "Indexing Payment") and

will be effective on the first of the month coincident with or next following receipt of all necessary Regulatory Approvals.

In lieu of indexing, each terminated paid-out Eligible Member will receive a lump sum payment calculated in the manner described in Section 4.2. The Indexing Payments to paid-out Eligible Members will be made in cash, subject to withholding taxes and will be paid on the Distribution Date.

4.2 Calculation of the Indexing Payment

The value of the Indexing Payment will be calculated as set out below. For purposes of this Section 4.2, the "Calculation Date" is a date selected by the Plan actuary for calculating the Indexing Payment that is as close to the receipt of all necessary Regulatory Approvals as is reasonably possible.

- (a) An Eligible Member who elected a lump-sum transfer of his/her benefit from the Plan will receive a payment equal to 5% of the lump sum amount transferred out of the Plan on such Eligible Member's behalf, adjusted with interest to the Partial Wind-Up Date.
- (b) An Eligible Member in receipt an immediate pension on the Calculation Date will receive an ad hoc increase equal to 5% of the pension actually being paid to the Eligible Member at the Calculation Date reflecting the Eligible Member's actual status on the Calculation Date (such that if the Eligible Member has died and there is a survivor pension in pay on the Calculation Date, the increase will be 5% of the survivor's pension).
- (c) An Eligible Member entitled to receive a deferred vested pension on the Calculation Date will receive an ad hoc increase equal to 5% of the pension payable to such Eligible Member determined as of the Calculation Date reflecting the Eligible Member's actual status on the Calculation Date.
- (d) Beneficiaries/estates (if any) will receive an amount equal to 5% of the value of the benefit owing to the deceased Eligible Member as per (a), (b) or (c) above, as

if the Eligible Member had not died. If the Eligible Member was in receipt of pension benefits from the Plan on the date of death, and no survivor pension is payable from the Plan on the Calculation Date, the increase shall be based on 60% of the value of the Eligible Member's pension benefit as of the Calculation Date, calculated as if the Eligible Member had not died and was in receipt of such pension.

4.3 Allocation of Indexing Cost.

For greater certainty, the Indexing Cost will be allocated out of the PWU Account prior to the determination of Net Surplus.

ARTICLE 5

NET SURPLUS

5.1 Method for Determining Net Surplus

The Net Surplus is the amount of assets available to pay Surplus Sharing Expenses and for distribution to the Company and the Eligible Members and is equal to the Surplus minus (i) the Partial Wind Up Expenses (including any estimated Partial Wind Up Expenses as contemplated in Section 3.3) and (ii) the Indexing Cost, all determined as at the Distribution Date. For greater certainty, all regular benefits and all benefits arising out of the application of Article 4 must be settled out of the PWU Account prior to the determination of Net Surplus.

ARTICLE 6

SHARING OF THE NET SURPLUS

6.1 Surplus Split

The Net Surplus shall be divided equally between the Eligible Members and the Company, with 50% being paid to the Eligible Members (the "Eligible Member Share") and 50% being paid to the Company (the "Company Share"). The Eligible Member Share shall be allocated among the Eligible Members in accordance with Article 8 below.

ARTICLE 7

SURPLUS SHARING EXPENSES

7.1 Allocation of Surplus Sharing Expenses

Expenses associated with the sharing of the surplus (the "Surplus Sharing Expenses", as defined more specifically in Section 7.2) shall be paid as follows:

- (a) Surplus Sharing Expenses incurred by the Company shall be paid from the Company Share.
- (b) Surplus Sharing Expenses incurred by the Member Committee shall be paid from the Eligible Member Share.

7.2 Expenses to be included in Surplus Sharing Expenses

Surplus Sharing Expenses shall be all expenses incurred by the Company and the Member Committee in connection with the distribution of surplus as a result of the 1994 Partial Wind Up that are not Partial Wind Up Expenses, including:

- (a) all legal and administrative expenses incurred by the Company or the Member Committee with respect to the review, assessment, negotiation and implementation of this Agreement and the Term Sheet;
- (b) all legal and actuarial expenses associated with obtaining Regulatory Approval;
- (c) all legal and actuarial expenses incurred in connection with any Court Proceeding;
- (d) all other expenses incurred by the Company with respect to the surplus sharing process.

7.3 Payment of Member Committee Surplus Sharing Expenses

The Company will pay the Member Committee Surplus Sharing Expenses from the Surplus as incurred and submitted for payment on an ongoing basis as long as the parties are working co-operatively to implement the principles outlined in this Agreement and unless and until the Agreement is terminated in accordance with Section 11.1(b). Prior to

the final calculation of the Individual Surplus Allocations as contemplated in Article 8 below, KM will provide the Plan Actuary with the amount of all Member Committee Surplus Sharing Expenses incurred to the date the information is provided and a reasonable estimate of any remaining Member Committee Surplus Sharing Expenses. Prior to the final calculation of the Individual Surplus Applications in accordance with Section 8.1, the total amount of Surplus Sharing Expenses incurred by the Member Committee (including the Member Committee Surplus Sharing Expenses paid from the Surplus prior to the actual Surplus distribution) will be deducted from the Eligible Member Share.

ARTICLE 8

ALLOCATION OF THE ELIGIBLE MEMBER SHARE

8.1 Allocation of the Eligible Member Share

The Eligible Member Share shall be distributed by providing each Eligible Member with an Individual Surplus Allocation as follows:

- (a) The Individual Surplus Allocation for each Eligible Member shall be the greater of:
 - (i) the Minimum Surplus Allocation; and
 - (ii) the Pro Rata Surplus Allocation for the given Eligible Member determined as at the Distribution Date.

- (b) For greater certainty and notwithstanding anything to the contrary in this Agreement, the sum of all Individual Surplus Allocations shall not exceed the total value of the Eligible Member Share minus the Surplus Sharing Expenses as contemplated in Section 7.1

8.2 Additions to the Eligible Members

Additional members or former members of the Plan, including the seven members indicated in Recital A, who establish an entitlement to be included as an Eligible Member, as determined by the Company acting reasonably and in good faith, will be

included in the Eligible Members. Assets from the ongoing portion of the Plan fund, as calculated by the Plan Actuary, will be added to the Surplus, in respect of any individuals who are added to the Eligible Members. In determining the additional share of assets to be added to the Surplus, the Plan Actuary shall use the same methods and assumptions as adopted for these purposes by the Plan Actuary to determine the allocated assets at December 31, 2005.

8.3 Deletions to the Eligible Members

Members or former members of the Plan who are included as an Eligible Member, including the two members indicated in Recital B, who are found not to be entitled to be included as an Eligible Member, as determined by the Company acting reasonably and in good faith, will be excluded from the Eligible Members. Assets will be removed from the Surplus, as calculated by the Plan Actuary, in respect of any individuals who are excluded from the Eligible Members and returned to the ongoing Plan fund. In determining the assets to be removed from the Surplus, the Plan Actuary shall use the same methods and assumptions as adopted for these purposes by the Plan Actuary to determine the allocated assets at December 31, 2005.

8.4 Allocation of the Eligible Member's Surplus Share Not Otherwise Contemplated

Notwithstanding the foregoing sections of this Article 8, should any situation arise involving the allocation of the Eligible Member Share to an Eligible Member that is not expressly dealt with in this Article 8, then the Individual Surplus Allocation for such Eligible Member shall be allocated as is reasonably and in good faith determined by the Company upon the advice of the Plan Actuary, and subject to the agreement of KM, to be appropriate within the spirit and intent of this Agreement.

8.5 Cut-off Date

The cut-off date for the identification of Eligible Members for purposes of the allocation process contemplated in this Article 8 is the Distribution Date. Any further allocations will take place in accordance with the procedures described in Section 9.6.

