

Memorandum of Understanding

Between

The President of the Treasury Board

And

Chair of the Ontario Pension Board

October 2021

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1. Purpose

- a. The purpose of this Memorandum of Understanding (MOU) is to:
 - Set out the accountability relationships between the President of the Treasury Board and the Chair of the Agency on behalf of the Agency;
 - Clarify the roles and responsibilities of the President of the Treasury Board, the Chair, the Deputy Minister, the Board and the CEO of the Agency; and
 - Set out the expectations for the operational, administrative, financial, staffing, auditing and reporting arrangements between the Agency and the Ministry.
- b. It is recognized that legislation and the common law impose on the Agency fiduciary duties to the members, former members and retired members of the Plan which cannot be compromised. This MOU, the legislation and common law governing the Agency should be used in conjunction to determine how the Agency should be governed.
- c. This MOU should be read together with the Public Service Pension Plan, which is Schedule 1 to the *Public Service Pension Act, 1989*, S.O. 1989, c.73, and the RCA and RCA Trust Fund Agreement. This MOU does not affect, modify or limit the powers of the Agency as set out in the PSPA, the Plan, the RCA and RCA Trust Fund Agreement, or interfere with the duties and responsibilities of any of its parties as established by law. In case of a conflict between this MOU and any act or regulation, the act or regulation prevails.

2. Definitions

In this MOU:

- a. “Agency” means the Ontario Public Service Pension Board, also known as the Ontario Pension Board;
- b. “AAD” means the Management Board of Cabinet Agencies & Appointments Directive;
- c. “Appointee” means a director or other member appointed to the Agency by the Minister or by the Lieutenant Governor in Council, but does not mean an individual employed/appointed by the Agency as staff;
- d. “Board” means the board of directors of the Agency;
- e. “Chair” means the chair of the Agency;
- f. “CEO” means the Chief Executive Officer of the Agency;
- g. “CRA” means the Canada Revenue Agency;

- h. "CRF" means the Consolidated Revenue Fund of the Province of Ontario;
- i. "Constituting Instrument" means the Plan;
- j. "Crown Agency Act" means *Crown Agency Act*, R.S.O. 1990, c. C.48;
- k. "Directive" means a directive issued by the TB and/or MBC and the Government under various statutory authorities;
- l. "Deputy Minister" means the Deputy Minister, Treasury Board Secretariat;
- m. "Employer" shall have the same meaning as defined in the Plan;
- n. "Fund" means the Public Service Pension Fund;
- o. "Government" means the Government of Ontario;
- p. "ITA" means the *Income Tax Act (Canada)*;
- q. "MBC" means Management Board of Cabinet;
- r. "Minister" means the President of the Treasury Board;
- s. "Ministry" means the Treasury Board Secretariat;
- t. "Parties" means the Minister and the Chair; "Party" means either one of them;
- u. "PBA" means the *Pension Benefits Act*, R.S.O. 1990, c. P.8;
- v. "Pension Regulator" means the Financial Services Commission of Ontario or its successor, the Financial Services Regulatory Authority of Ontario;
- w. "Plan" means the Public Service Pension Plan;
- x. "PSOA" means the *Public Service of Ontario Act*, 2006, S.O. 2006, c. 35, Sched. A;
- y. "PSPA" means the *Public Service Pension Act*, R.S.O. 1990, c. P.48;
- z. "RCA" means the Retirement Compensation Arrangement established pursuant to Order in Council 1298/2021;
- aa. "RCA Trust Fund Agreement" means the Retirement Compensation Arrangement Trust Fund Agreement between the Government and the Agency;
- bb. "RCA Trust Fund" means the Retirement Compensation Arrangement Trust Fund established pursuant to the RCA Trust Fund Agreement; and
- cc. "TB" means Treasury Board.

3. Agency's Legal Authority and Mandate

- a. The legal authority of the Agency is set out in the Public Service Pension Plan, which is Schedule 1 to the *Public Service Pension Act, 1989*, S.O. 1989, c.73.

- b. Under section 32 of the Plan, the Agency is given the powers and capacities of a natural person and the right to exercise such of those powers and capacities as it considers necessary or incidental to the carrying out of its responsibilities under the PSPA.
- c. The Agency has been prescribed as a public body under the *Public Service of Ontario Act, 2006*.
- d. The Agency is a corporation without share capital. The Agency is responsible for the administration of the Plan and for the prudent management of the Fund, all in accordance with the PSPA, the Plan, the PBA and the ITA. The Agency is also the trustee of the RCA Trust Fund and is responsible for the administration of the RCA and the administration and investment of the RCA Trust Fund, in accordance with the RCA, the RCA Trust Fund Agreement and the ITA. The RCA and the RCA Trust Fund are the successors to the Public Service Supplementary Plan and the Public Service Supplementary Benefits Account, with effect from January 1, 2022.

4. Crown Agent Status

- a. The Agency is a Crown agency within the meaning of Crown agency under the Crown Agency Act.
- b. Notwithstanding subsection 4(a) of this MOU and Section 2 of the Crown Agency Act, the Agency shall not be a Crown agency if the conditions under clause 4(b)(i) of this MOU are met.
 - i. The Agency declares in writing in an agreement, security or instrument that it is not acting as a Crown agency for the purposes of the agreement, security or instrument.
 - ii. If the Agency makes a declaration in accordance with clause (i) above, the Agency shall be deemed not to be a Crown agency for the purposes of the agreement, security or instrument and the Crown is not liable for any liability or obligation of the Agency under the agreement, security or instrument.

5. Agency Classification

- a. The Agency is classified as a Trust Agency (board-governed provincial agency) under the AAD.

6. Guiding Principles

The Parties agree to the following principles:

- a. The Minister acknowledges that the Agency is a statutory entity which exercises power and performs duties in accordance with its mandate under the PSPA.
- b. The Agency's decisions regarding the administration of the Plan and the RCA must be made and be seen by the members of the Plan to be made independently and impartially.
- c. The Minister acknowledges that the Agency operates at "arm's length" from the Government.
- d. The Chair acknowledges that accountability is a fundamental principle to be observed in the management, administration and operations of the Agency.
- e. As an agency of the Government, the Agency conducts itself according to the management principles of the Government. These principles include ethical behaviour; prudence; efficient and lawful use of public resources; fairness; high quality service to the public; and openness and transparency to the extent allowed under law.
- f. The Agency and the Ministry agree to avoid duplication of services wherever possible.

7. Accountability Relationships

7.1 Minister

The Minister is accountable:

- a. To Cabinet and the Legislative Assembly for reporting and responding to the Legislative Assembly on the affairs of the Agency;
- b. For reporting and responding to TB/MBC on the Agency's performance and compliance with applicable Directives and Government policies;
- c. To Cabinet for the performance of the Agency and its compliance with applicable Government policies and broad policy directions; and
- d. For receiving and ensuring that the Agency's annual report regarding the Plan is made available to the public after tabling it in the Legislative Assembly.

7.2 Chair

- a. The Chair is accountable to the Minister for the performance of the Agency in fulfilling its mandate, and for carrying out the roles and responsibilities assigned to

the Chair by the PSPA, the Plan, the RCA, this MOU, applicable law, and applicable Directives and Government policies and broad policy directions.

7.3 Board of Directors

- a. The Board is accountable to the Minister, through the Chair, for the oversight and governance of the Agency, setting goals, objectives and strategic direction for the Agency within its mandate, and for carrying out the roles and responsibilities assigned to it by the PSPA, the Plan, the RCA, this MOU, applicable law, and applicable Directives and Government policies and broad policy directions.

7.4 Deputy Minister

- a. The Deputy Minister is accountable to the Secretary of the Cabinet and the Minister for the performance of the Ministry and for carrying out the roles and responsibilities assigned by the Minister, the PSPA, the Plan, the RCA, this MOU, applicable law, and applicable Directives and Government policies and broad policy directions.

7.5 Agency Chief Executive Officer (CEO)

- a. The CEO is accountable to the Board, through the Chair, for the management of the Agency's operations and staff and for carrying out the roles and responsibilities assigned by the Board, the PSPA, the Plan, the RCA, this MOU, applicable law, and applicable Directives and Government policies and broad policy directions.

8. Roles and Responsibilities

8.1 Minister

The Minister has the powers and responsibilities specified in the PSPA, the Plan and the RCA, and represents the Crown in right of Ontario as sponsor of the Plan and the RCA.

The Minister is responsible for:

- a. Monitoring the activities of the Agency to ensure that its mandate is being fulfilled and that it is in compliance with applicable Directives and Government policies, including accounting and financial policies, and broad policy directions;
- b. Reporting and responding to TB/MBC on the Agency's performance and its compliance with applicable Directives, and Government policies, including financial and accounting policies, and broad policy directions;

- c. Reporting and responding to the Legislative Assembly on the affairs of the Agency;
- d. Making recommendations to the Lieutenant Governor in Council respecting amendments to the Plan and the RCA;
- e. Using commercially reasonable efforts to ensure the Data the Ministry provides the Agency is Accurate, Secure and Timely (as those terms are defined in section 19.1 of this MOU);
- f. Making recommendations to the Lieutenant Governor in Council respecting the designation of employees of public bodies (other than Commission public bodies) or other persons for membership under the Plan;
- g. Making recommendations to the Lieutenant Governor in Council respecting the appointment of the members, the Vice-Chair, and the Chair of the Board, upon consultation with the Chair as appropriate;
- h. Making recommendations to the Lieutenant Governor in Council respecting the remuneration of the members, the Vice-Chair, and the Chair of the Board;
- i. Reviewing the actuarial valuations of the Plan and the RCA including the recommended contribution rates, and agreeing that actuarial valuations of the Plan may be filed with the Pension Regulator and the CRA;
- j. Approving the entry by the Agency into arrangements with the Crown respecting the purchase from the Crown of employee services, facilities or equipment of the Crown;
- k. Making recommendations to the Lieutenant Governor in Council respecting agreements into which the Agency enters to administer other pension plans, funds or benefit plans;
- l. Making recommendations to the Lieutenant Governor in Council to approve any reciprocal agreements for the transfer of pension credits that the Agency proposes to enter into, or to terminate, cancel, amend or renew reciprocal agreements;
- m. Where required, recommending to TB/MBC the merger of the Agency with any other entity, any change to the Agency's mandate or dissolution of the Agency;
- n. Recommending to TB/MBC the powers to be given to the Agency, or the powers of the Agency to be revoked, when a change to the Agency's mandate is proposed;
- o. Receiving the Agency's annual report regarding the Plan and tabling it in the Legislative Assembly in accordance with the Plan, and the timelines specified in applicable Directives and this MOU; if the Legislative Assembly is not in session, the annual report will be filed with the Clerk's Office;

- p. Informing the Chair of the Government's priorities and broad policy directions for the Agency;
- q. Providing the Chair with an annual Agency mandate letter in accordance with the timelines and exceptions established in the AAD;
- r. Consulting, as appropriate, with the Chair (and others) on significant new policy directions, or when the Government is considering regulatory or legislative changes, for the Agency;
- s. Developing the Agency's MOU with the Chair and signing it into effect after it has been signed by the Chair;
- t. Reviewing and approving the Agency's annual business plan;
- u. Determining at any time the need for a review or audit of the Agency, and recommending to TB/MBC any changes to the governance or administration of the Agency resulting from any such review or audit;
- v. Consulting the Chair as appropriate during any review or audit carried out under paragraph u above;
- w. When appropriate or necessary in the Minister's view, taking action or directing that corrective action be taken with respect to the Agency's administration or operations; and
- x. Directing the Chair to undertake reviews of the Agency on a periodic basis, and making recommendations to TB/MBC as may be required after such reviews are completed.

8.2 Chair

The Chair is responsible for:

- a. Directing the affairs of the Board within its mandate as defined by the PSPA and the Plan and providing leadership to the Board in carrying out its responsibilities under this MOU;
- b. Reporting to the Minister, as requested, on the Agency's activities within agreed upon timelines, including a letter confirming the Agency's compliance with applicable Directives and Government policies, including accounting and financial policies, and broad policy directions;
- c. Ensuring timely communication with the Minister regarding any issues or events that may concern, or can reasonably be expected to concern the Minister in the exercise of the Minister's responsibilities relating to the Agency;
- d. Providing leadership to the Agency and Board;

- e. Recommending policy to the Minister, and seeking strategic policy direction for the Agency from the Minister where appropriate;
- f. Consulting with the Minister in advance regarding any activity which may have an impact on TB/MBC and Government Directives, policies or procedures, or on the Agency's mandate, powers or responsibilities as set out in the Agency's Constituting Instrument;
- g. Monitoring the performance of the Agency, and ensuring an effective performance measurement and management system is in place for assessing the Agency's performance;
- h. Developing the Agency's MOU with the Minister and signing it on behalf of the Board;
- i. Submitting the Agency's business plan, budget, annual report regarding the Plan and financial reports to the Minister in accordance with the timelines specified in the applicable Directives, and this MOU;
- j. Providing both the Minister and the Deputy Minister with a copy of every financial audit report (presented as a Memorandum of Recommendations to the Agency from its external auditor), a copy of the Agency's response to each report, and any recommendations in the report. Advising the Minister annually on any outstanding financial audit recommendations;
- k. Receiving the Agency mandate letter from the Minister and providing it to the CEO for posting on the Agency website in accordance with the timelines and exceptions established in the AAD;
- l. Making sure that an appropriate framework is in place for Board members to receive adequate orientation and training;
- m. Taking appropriate steps to ensure that Agency staff and Board members comply with applicable legislation, Directives, and Government policies, including accounting and financial policies, issued by TB/MBC and broad policy directions;
- n. Carrying out effective public communications and relations for the Agency as its chief spokesperson;
- o. Cooperating with any review or audit of the Agency directed by the Minister or TB/MBC;
- p. Fulfilling the role of ethics executive for Appointees. Promoting ethical conduct and ensuring that all members of the Agency are familiar with the ethical requirements of the PSOA, and the regulations and Directives made under that Act, including in respect of conflict of interest, political activity and the protected disclosure of wrongdoing;

- q. Fulfilling the role of expenses officer for Appointees as prescribed by the *Public Sector Expenses Review Act, 2009*, S.O. 2009, c. 20 (the “Public Sector Expenses Review Act”);
- r. Reviewing and approving claims for per diems and expenses of Appointees;
- s. Notifying the Minister of appointment vacancies and making recommendations to the Minister on appointments and reappointments of Board members in accordance with the Board’s “Member Skills/Needs Analysis” and “New Board Member Appointment Process” and pursuant to the process for public appointments established by legislation; and
- t. Evaluating the performance of the CEO in consultation with the Board and pursuant to performance criteria established by the Board and the Chair.

8.3 Board of Directors

The Board is responsible for:

- a. Setting the goals, objectives, and strategic directions for the Agency consistent with its mandate, as defined by the PSPA, the Plan, and the RCA, and Directives and Government policies, including Minister’s directions where appropriate;
- b. Directing the affairs of the Agency and setting overall priorities so as to fulfill its mandate;
- c. Taking appropriate steps to ensure that the Agency:
 - i. implements actions that support the goals, objectives, and strategic directions of the Agency;
 - ii. delivers high quality and timely information and service to the members and former members of the Plan and the Employers;
 - iii. carries out the responsibilities assigned to the Agency under the PSPA, the Plan and the RCA;
 - iv. manages the Fund and the RCA Trust Fund in a fiduciary, responsible and prudent manner seeking to achieve long-term investment returns within an appropriate risk tolerance;
 - v. manages the Plan and the Fund, and the RCA and the RCA Trust Fund, prudently and at the lowest, reasonable cost consistent with its obligations;

- vi. uses commercially reasonable efforts to ensure that the Data in its possession is Accurate and Secure (as those terms are defined in section 19.1 of this MOU); and
 - vii. establishes and maintains a Code of Conduct that Agency staff and Board members abide by and observe and that is consistent with applicable Directives.
- d. Directing the development of, and approving the Agency's business plans and budgets for submission to the Minister within the timelines agreed upon with the Ministry or as laid out within the AAD;
 - e. Directing the preparation of, and approving, the Agency's annual report regarding the Plan for submission to the Minister within the timelines established by the Agency's Constituting Instrument or the AAD, as applicable;
 - f. Making decisions consistent with the business plan approved for the Agency and ensuring that the Agency operates within its approved budget allocations;
 - g. Taking appropriate steps to ensure that the Agency manages its affairs in compliance with applicable Directives and Government policies, including accounting and financial policies, and broad policy directions;
 - h. Ensuring that Agency funds are used with integrity, honesty, fairness and effective controllership;
 - i. Establishing such Board committees or oversight mechanisms as may be required by the Board to advise on the effective management, governance or accountability procedures for the Agency, including financial and human resource management, compensation, ethics and succession planning;
 - j. Approving the MOU for the Agency in a timely manner and authorizing the Chair to sign it on behalf of the Agency;
 - k. Approving the Agency's reports and reviews that may be requested by the Minister from time to time for submission to the Minister within agreed upon timelines;
 - l. Directing the development of an appropriate risk management framework and a risk management plan and arranging for risk-based reviews and audits of the Agency as needed;
 - m. Ensuring that the conflict of interest rules required to be followed as set out in Ontario Regulation 381/07 made under the PSOA (or as have been approved and published by the Integrity Commissioner) are in place for the members of the Board and employees of the Agency;

- n. Establishing performance measures, targets, objectives, and ensuring appropriate management systems are in place (financial, information technology, human resource) for monitoring and assessing the Agency's performance;
- o. Making sure a process for responding to and resolving complaints from the public and Agency stakeholders is in place;
- p. Directing corrective action on the functioning or operations of the Agency, if needed;
- q. Cooperating with and sharing any relevant information on any risk-based or periodic review directed by the Minister or TB/MBC;
- r. Consulting, as appropriate, with stakeholders on the Agency's goals, objectives and strategic directions;
- s. Providing advice to the Government, through the Chair, on issues within or affecting the Agency's mandate and operations; and
- t. Attending Appointee training programs coordinated through the Public Appointments Secretariat.

8.4 Deputy Minister

The Deputy Minister is responsible for:

- a. Advising and assisting the Minister regarding the Minister's responsibilities for the Agency;
- b. Advising the Minister on the requirements of the AAD, and any other Directives applicable to the Agency;
- c. Advising the Minister on the operation of the Agency or its consolidation or elimination;
- d. Advising the Minister on documents submitted by the Agency to the Minister for review or approval, or both;
- e. Recommending to the Minister, as may be necessary, the evaluation or review, including a risk-based review, of the Agency or any of its programs, or changes to the management framework or operations of the Agency;
- f. Facilitating regular briefings and consultations between the Chair and Minister, and between Ministry staff and Agency staff;
- g. Attesting to TB/MBC, as required, to the Agency's compliance with the mandatory requirements set out in the AAD, based on the letter of compliance from the Chair to the Minister;

- h. Ensuring that the Ministry and the Agency have the capacity and systems in place for on-going risk-based management, including appropriate oversight of the Agency;
- i. Supporting the Ministry's quarterly reporting to TB/MBC on the Agency's high risks and the management plan for each risk;
- j. Undertaking timely risk-based or periodic reviews of the Agency, its management or operations, as may be directed by the Minister or TB/MBC;
- k. Establishing a framework for reviewing and assessing the Agency's business plans and other reports;
- l. Submitting to the Minister, as part of the annual planning process, a risk assessment and management plan for each risk category;
- m. Supporting the Minister in reviewing the performance targets, measures and results of the Agency on behalf of the Minister while respecting the Agency's authority, identifying needs for corrective action where warranted, and recommending to the Minister ways of resolving any issues that might arise from time to time;
- n. Negotiating a draft MOU with the Chair as directed by the Minister;
- o. Consulting with the Chair or the CEO, as needed, on matters of mutual importance including services provided by the Ministry and compliance with applicable Directives and Government policies, including accounting and financial policies, and broad policy directions;
- p. Meeting with the Chair as needed or as directed by the Minister;
- q. Informing the Chair, in writing, of new Directives and Government policies, and any exceptions to or exemptions in whole or in part from Directives or Government policies; and
- r. When required, submitting a report to the secretaries of TB/MBC on the wind-down of the Agency, disposition of any assets, completion of any outstanding responsibilities by the Agency, and the termination of any appointments.

8.5 Agency Chief Executive Officer

The Chief Executive Officer is responsible for:

- a. Keeping the Board, through the Chair, informed with respect to implementation of policy and the operations of the Agency;
- b. Preparing annual reports regarding the Plan, other financial reports and business plans for the Agency for approval by the Board;

- c. Ensuring the Agency's annual report regarding the Plan is posted on the Agency's website within 30 days of tabling in the legislature;
- d. Ensuring the Agency's MOU and business plan are posted on the Agency's website within 30 days of approval by the Minister;
- e. Ensuring that the Agency mandate letter is posted on the Agency's website in accordance with the timelines and exceptions established in the AAD;
- f. Ensuring quarterly expense information for Appointees and senior executives of the Agency are posted on the Agency's website, once any required review by the Integrity Commissioner is completed;
- g. Translating the goals, objectives and strategic directions of the Board into operational plans and activities in accordance with the Agency's approved business plan;
- h. Ensuring that the Agency has the oversight capacity and an effective oversight framework in place for monitoring its management and operations, including in-year monitoring of the agency's performance and reporting on the results to the Chair, to ensure that the Agency fulfils its mandate and operates within its approved business plan;
- i. Establishing and applying a financial management framework for the Agency in accordance with applicable Directives and Government policies, and broad policy directions to ensure that public funds are used effectively and efficiently, and for their intended purpose;
- j. Managing the day-to-day operations of the Agency in accordance with the mandate of the Agency, applicable legislation, and applicable Directives and Government policies, including accounting and financial policies, the AAD, this MOU, and broad policy directions;
- k. Providing leadership, guidance and management to Agency staff, including human and financial resources management;
- l. Making sure that an appropriate framework is in place for Agency staff to receive adequate orientation and training;
- m. Preparing, for approval by the Board, a performance review system for staff and, upon approval, implementing the system;
- n. Recommending, for approval by the Board, the adoption of prudent investment practices and funding policies;
- o. Advising the Chair on the requirements of and compliance with the AAD and any other applicable Directives and Government policies, and Agency by-laws and policies including attesting to the Chair on the agency's compliance with mandatory requirements;

- p. Ensuring that the Agency has an appropriate risk management framework and risk management plan in place as directed by the Board through the Chair to help provide the proper level of assurance that program or service delivery objectives are met;
- q. Supporting the Chair and the Board in meeting their responsibilities;
- r. Keeping the Ministry and the Chair advised on issues or events that may concern the Minister, the Deputy Minister and the Chair in the exercise of their responsibilities;
- s. Seeking support and advice from the Ministry, as appropriate, on Agency management issues;
- t. Establishing a system for the retention of Agency documents and for making such documents publicly available when appropriate, for complying with the *Archives and Recordkeeping Act, 2006*, S.O. 2006, Chapter 34, Schedule A (the “Archives and Recordkeeping Act”), where applicable;
- u. Undertaking timely risk-based reviews of the Agency’s management and operations;
- v. Consulting with the Deputy Minister as needed, on matters of mutual importance, including services provided by the Ministry, and on Directives and Government policies;
- w. Cooperating with a periodic review directed by the Minister or TB/MBC;
- x. Fulfilling the role of ethics executive for public servants, other than Government Appointees, who work in the Agency. Promoting ethical conduct and ensuring that all members of the Agency are familiar with the ethical requirements of the PSOA and the regulations and directives made under that Act, including in respect of conflict of interest, political activity, and the protected disclosure of wrongdoing;
- y. Fulfilling the role of expenses officer for designated employees of the Agency as prescribed by the Public Sector Expenses Review Act; and
- z. Ensuring indemnities provided by the Agency to its Appointees are in compliance with the AAD and section 28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12.

8.6 Delegation and Performance of Functions

- a. Staff of the Ministry and the staff of the Agency are delegated to perform many of the functions that enable the Minister, the Chair, the Board, the Deputy Minister and the CEO respectively, to fulfill their responsibilities under this MOU.

9. Conflict of Interest

- a. All members of the Board, including the Chair and Vice-Chair, all officers of the Agency and all employees of the Agency are required to comply with Regulation 381/07 made under the PSOA in respect of Conflict of Interest Rules for Public Servants and former Public Servants with such modifications as are necessary.
- b. The Chair is responsible for ensuring that Appointees and employees of the Agency are informed of the ethical rules to which they are subject, including the rules on conflict of interest, political activity and protected disclosure of wrongdoing that apply to the Agency.

10. Reporting Requirements

10.1 Business Plan

- a. The Chair will submit to the Minister for approval the Agency's annual business plan covering a minimum of three years from the current fiscal year.
- b. The business plan must meet the requirements of the AAD and include:
 - i. a risk assessment and risk management plan to assist the Ministry in developing its risk assessment and risk management plan information, in accordance with the requirements of the AAD, for reporting to TB/MBC;
 - ii. performance measures (including both outcome and output-based measures) and targets over the life of the business plan; and
 - iii. a financial budget over the life of the business plan.
- c. The Chair will submit the business plan to the Ministry's Chief Administrative Officer or designated Executive Lead for provincial agencies three months prior to the beginning of the Agency's fiscal year. Ministry staff will review and recommend the business plan for Minister approval no later than one month prior to the start of the Agency's fiscal year.
- d. The Minister will review the Agency's business plan and will promptly advise the Chair whether or not the Minister concurs with the directions proposed by the Agency. The Minister may advise the Chair where and in what manner the Agency's plans vary from Government policy or priorities as may be required, and the Agency will revise its plan accordingly.
- e. In addition, TB/MBC may require the Minister to submit the Agency's business plan to TB/MBC for review at any time.

10.2 Annual Reports

- a. The Chair will submit the Agency's annual report regarding the Plan to the Minister for tabling in the Legislative Assembly. The Chair will submit the annual report to the Minister within 120 days of the Agency's fiscal year end.
- b. The Minister will receive the Agency's annual report and approve it within the timeframe required by Government policies.
- c. In accordance with the Plan, the Ministry will table the Agency's annual report in the Legislative Assembly within the timeframe required by Government policies; if the Legislative Assembly is not in session, the Ministry will file the report with the Clerk's Office.

10.3 Provision of Actuarial and Statistical Information to the Minister

The Minister may ask the Agency to, and the Agency shall:

- a. Subject to applicable laws and fiduciary duties, provide to the Minister information, including statistical reports based on Data (as defined in section 19.1 of this MOU) in its possession; or
- b. Where applicable, have the actuary retained by the Agency provide to the Minister through the Board such information that the Minister considers helpful in discussing changes to the Plan. Where the information requested by the Minister is for evaluating or negotiating changes to the Plan, and where the provision of such information to the Minister is consistent with the Agency's fiduciary obligation, the cost of the actuary and any other cost incurred by the Agency will be paid out of the Fund.

11. Communications

11.1 Communications Principles

The Parties recognize that:

- a. The timely exchange of information on the operations and administration of the Agency is essential for the Minister to meet the Minister's responsibilities for reporting and responding to the Legislative Assembly on the affairs of the Agency; and
- b. It is essential for the Chair to be kept informed of the Government's initiatives, Directives, policies and broad policy directions that may affect the Agency's mandate and functions.

11.2 Communications Arrangements

The Parties, therefore, agree as follows:

- a. The Chair will keep the Minister advised, in a timely manner, of all planned events and issues that concern or can be reasonably expected to concern the Minister in the exercise of the Minister's responsibilities.
- b. The Minister may consult with the Chair on initiatives proposed to amend the PSPA, the Plan and the RCA, as appropriate, including consultation on any review of the Agency's mandate or assessment of the continuing need for its services.
- c. The Minister will consult, as appropriate, with the Chair (and others, as necessary) on significant new Agency policy directions, or when the Government is considering regulatory or legislative changes involving the Agency;
- d. The Agency will continue to:
 - i. make recommendations to the Minister respecting amendments to the PSPA, the Plan and the RCA;
 - ii. provide draft amendments to the PSPA, the Plan and the RCA for consideration by the Minister; and
 - iii. respond to the Minister's requests for comments respecting proposed changes to the PSPA, the Plan and the RCA in a timely manner.
- e. The Minister and the Chair will consult with each other on public communications strategies and publications and will keep each other informed of the results of stakeholder and other public consultations and discussions.
- f. The Minister and the Chair will meet as needed to discuss issues relating to the fulfillment of the Agency's mandate, management and operations.
- g. The Deputy Minister and the Chair will meet as needed to discuss issues relating to the efficient operation of the Agency.
- h. The Agency and Ministry will adhere to the Public Communications Protocol set out as Appendix 1 to this MOU.

12. Administrative Arrangements

12.1 Applicable Treasury Board/Management Board of Cabinet and Government Directives

The Chair is responsible for ensuring that:

- a. The Agency and the Board operate in accordance with all applicable Directives and Government policies, including accounting and financial policies, and broad policy directions. Appendix 2 to this MOU provides a list of applicable Directives and policies; and
- b. The legal, financial and other interests of the Government in intellectual property are protected in any contract that the Agency may enter into with a third party that involves the creation of intellectual property.

12.2 Administrative Support Services

- a. The Agency manages its own administrative support.

12.3 Legal Services

- a. The Agency retains a General Counsel and will solicit such further legal advice, internally or externally, as required.

12.4 Freedom of Information and Protection of Privacy

- a. The Agency is not subject to FIPPA.

12.5 Records Management

The Chair will take appropriate steps to ensure that:

- a. A system is in place for the creation, collection, maintenance, and disposal of records;
- b. The Agency complies with the MBC Management and Use of Information and Information Technology (I&IT) Directive, in conjunction with the Corporate Policy of Recordkeeping, as applicable; and
- c. The Agency complies with the Archives and Recordkeeping Act.

12.6 Client/Customer Service

The Agency will ensure that:

- a. Its services are delivered at a quality standard that reflects the principles of the OPS Service Directive;
- b. It has in place a formal process for responding to complaints about the quality of services received by clients of the Agency; and
- c. Its annual business plan includes performance measures and targets for client service and any plans for service improvements in response to complaints.

12.7 Contracts with Third Party Suppliers

- a. The Agency has all the powers and capacities of a natural person necessary or incidental to its duties and responsibilities and may contract and be contracted with, transact in real property and participate in partnerships.

12.8 Supply Contracts with the Crown

- a. The Agency and the Crown may enter into agreements respecting the purchase, lease or other ongoing supply of data, equipment, facilities, or services of the Crown.

12.9 Contracts with the Crown respecting Benefits Provided to Employees of the Agency

- a. The Agency and the Crown have entered into agreements respecting the extension of certain benefits provided to public servants employed under Part III of the PSOA to employees of the Agency (who are not employed under Part III of PSOA) and the Minister shall cause the Crown to continue to facilitate the Agency's access to the supply of such benefits at rates similar to those paid by the Crown.

12.10 Services Agreements

- a. The Ministry and the Agency have entered into agreements respecting the administration of the Public Service Supplementary Benefit Account (before January 1, 2022), RCA (from and including January 1, 2022), the Supplementary Pension Plan for Justices of the Peace, the Provincial Judges Pension Plan, the Associate Judges Supplemental Pension Plan and the provision of services pertaining to insured benefits for retirees of the Public Service Pension Plan.
- b. The costs associated with the administration of the services agreements noted in paragraph (a) immediately above are not payable out of the Fund. The services agreements must appropriately account for the payment of their associated costs, and such costs will be subject to periodic review in order to ensure that they are recovered from the appropriate counterparty to the applicable service agreement or as otherwise stated in such service agreement, as applicable, on a cost recovery basis..
- c. Where the Agency is responsible for the administration of the funds associated with the agreements noted in paragraph (a) above, the Agency will maintain those funds separate and apart from the Fund. For greater certainty, the Agency shall administer and invest the RCA Trust Fund separately from the Fund.

12.11 Ownership of Realty, Fixed and Moveable Assets

- a. The Agency will continue to acquire such realty, fixed and moveable assets as are necessary to fulfill its mandate. These will not be acquired, maintained or disposed of through the procurement processes of the Government. Such assets shall, at all times, remain assets of the Fund.

13. Financial Arrangements

13.1 The Fund and the RCA Trust Fund

- a. The Agency, in accordance with the Plan and the RCA, will continue to receive assets into the Fund and the RCA Trust Fund and will continue to make payments out of the Fund and the RCA Trust Fund in respect of the liabilities of the same. The assets received into the Fund and the RCA Trust Fund will include contributions from Plan members and Employers, and investment income and capital gains. The assets of the RCA Trust Fund include any refundable tax held by the CRA in respect of the RCA Trust Fund.
- b. Payments made out of the Fund and the RCA Trust Fund will include those for investments, pensions, refunds, transfers and the Agency's operating and capital expenses. Expenses in relation to the RCA are charged to and paid by the RCA Trust Fund.
- c. The Agency calculates, collects and remits to the CRA the refundable tax in respect of the RCA as agent for the Employer.

13.2 Expenses and Budget

- a. As provided for in section 35 of the Plan, the Fund shall pay all allowable expenses associated with the operation of the Agency, the administration of the Plan and the management of the Fund, and is not funded out of the CRF.
- b. As provided in section 7.4 of the RCA, expenses in relation to the RCA are charged to and paid by the RCA Trust Fund.
- c. The Agency prepares its own annual budget. The Agency shall provide annually a copy of the budget approved by the Board to the Minister as part of the Business Plan. The Agency's Board may approve in-year revisions to its budget as necessary to accommodate priority needs (such as implementation of legislative amendments) which otherwise cannot be accommodated without jeopardizing either the fulfilment of OPB's mandate or completion of critical business activities.

- d. The Agency will comply with the Public Sector Expenses Review Act, including any requirement to submit certain expenses for review by the Integrity Commissioner.

13.3 Investment of Fund

- a. The Agency manages the Fund and the RCA Trust Fund in compliance with the PSPA and any other applicable provincial and federal laws. In accordance with the Regulations under the PBA, a Statement of Investment Policies and Procedures (“SIP&P”) in respect of the Plan has been adopted by the Board and is reviewed annually and updated as required. When amended, the SIP&P is presented to the Minister for the Minister’s information. The Agency will take appropriate steps in order to ensure that all investments are made in accordance with the SIP&P.
- b. A separate SIP&P for the RCA has been adopted by the Board. The SIP&P for the RCA is not required under the PBA but will be provided to the Minister for the Minister’s information when amended.

13.4 Funding Policies

- a. The Ministry and the Agency have prepared and adopted a Funding Policy for the Plan with a view to achieving the following funding objectives of the Plan:
 - i. Protect the security of accrued benefits;
 - ii. Preserve future benefit stability and security;
 - iii. Maintain contribution affordability and stability; and
 - iv. Manage intergenerational equity.
- b. A separate RCA Funding Policy sets out funding targets for the RCA.
- c. The Ministry and the Agency commit to following the Funding Policies, as amended from time to time. However, the Funding Policies do not establish any legal rights or responsibilities on the part of either of the Agency, the Ministry or any other stakeholder in the Plan or the RCA. Further, the Funding Policies do not and shall not alter or affect, in any way, the legal rights and responsibilities or the mandate, authority or independence of the Agency or the Ministry.
- d. The Ministry and the Agency will review the Funding Policies at least once every three years. Refinements derived from experience can and will be brought forward by either Party at any time.

13.5 Financial Reports

- a. The Chair will provide to the Minister audited annual financial statements in respect of the Plan and will include them as part of the Agency’s annual report

regarding the Plan. The statements will be provided in a format that is in accordance with Canadian accounting standards for pension plans.

- b. The Agency will prepare annual financial statements in respect of the RCA, which shall be audited by the same auditor that audits the annual financial statements in respect of the Plan. Such annual financial statements shall be provided to the Minister annually.
- c. The Agency will submit to the Treasury Board Secretariat its salary information according to the *Public Sector Salary Disclosure Act*, 1996, S.O. 1996, c. 1, Sched. A.

13.6 Taxation Status: Harmonized Sales Tax (HST)

- a. The Agency is listed in Schedule A to the Reciprocal Tax Agreement between Ontario and Canada and is entitled to a rebate of HST paid.

14. Audit and Review Arrangements

14.1 Audits

- a. The Agency is subject to periodic review and value-for-money audit by the Auditor General of Ontario under the *Auditor General Act* or by the Ontario Internal Audit Division.
- b. The Ontario Internal Audit Division may also carry out an internal audit, if approved to do so by the Ministry's Audit Committee or by the Agency's Audit Committee.
- c. Regardless of any annual external audit, the Minister may direct that the Agency be audited at any time at the expense of the Crown.
- d. The Chair will promptly provide a copy of every financial audit report (presented as a Memorandum of Recommendations to the Agency from its external auditor) to the Minister and the Deputy Minister along with a copy of its response to the audit report and to any recommendations therein. The Chair will advise the Minister at least annually on any outstanding audit recommendations.
- e. The Chair may request an external audit of the financial transactions or management controls of the Agency at the Agency's expense.
- f. The Board shall appoint an external auditor through periodic tender and shall engage the same auditor to audit the financial statements in respect of the Plan and the RCA.

- g. The Agency will continue to conduct internal audits respecting its internal controls and organizational efficiencies, using employees or external professionals who report to the Audit Committee of the Board.
- h. If the Chair believes that an internal audit conducted for the Board may be of interest to the Minister, the Chair shall notify the Minister of the audit being undertaken and shall provide a copy of the audit report to the Minister upon request.

15. Staffing and Appointments

15.1 Appointment of Board Members

As provided for under section 29 of the Plan:

- a. Members of the Board, including the Chair and Vice-Chair are appointed and reappointed by the Lieutenant Governor in Council;
- b. The Board is composed of at least four (4) members, at least one of whom shall be representative of the members of the Plan who are represented by a union with whom the employer has a collective agreement, and that they may be selected for their expertise in the management, investment or administration of pension plans, or in order to represent on the Board, subject to the requirements of the PBA, the concerns of the Crown, of the members who contribute to the Fund or of persons receiving pensions under the Plan;
- c. The Lieutenant Governor in Council may designate a Chair, and one or more Vice-Chairs from among the members of the Board;
- d. The Board shall, in the absence of a designation by the Lieutenant Governor in Council within one month after the position of Chair or Vice-Chair becomes vacant, elect a Chair from among its members, or the Board may elect one or more Vice-Chairs from among its members, as the circumstances require;
- e. Each appointment, or reappointment, shall be for a period not exceeding three years; and
- f. The Board shall forthwith advise the Minister in writing whenever the position of Chair or Vice-Chair becomes vacant. The Board may recommend to the Minister one of its members as its nominee for the vacancy, such recommendation shall be in accordance with the Board's "Member Skills/Need Analysis" and "New Board Member Appointment Process". Where the Minister does not respond to the Board within one month from the date the position of Chair or Vice-Chair becomes vacant, the Board will elect one of its members on an interim basis. The Board agrees to refrain from electing a permanent Chair or a Vice-Chair for 90 days from the date the vacancy occurred.

15.2 Staff Selection

- a. The Agency may appoint or employ such officers, employees, advisers, experts and other persons as are required to carry out its duties and responsibilities.
- b. The Agency may contract with these persons for their services, and may determine the rate of remuneration, the employee benefits, the perquisites and the conditions of employment under which employees are employed.
- c. In determining whether to engage officers, employees, advisers, experts and other persons to provide services, the Agency, (consistent with its obligations under the PSPA, the Plan, the RCA, the PBA and the ITA), considers whether the most efficient, cost-effective, and appropriate means to deliver the services required is to engage or contract employees, or to contract with another person to supply the services required.
- d. The Agency does not have staff appointed under Part III of the PSOA.

15.3 Compensation of Board Members

- a. The Lieutenant Governor in Council shall establish the remuneration or range of remuneration paid to members of the Board, and the Chair and Vice-Chair. No salaried employee in the public service of Ontario who is a member of the Board shall be entitled to remuneration other than for expenses.

16. Liability Protection and Insurance

- a. The Crown indemnifies members of the Board under Order in Council O.C. 362/90 dated February 9, 1990.
- b. The Agency indemnifies employees of the Agency in accordance with Section 39 of the Plan.
- c. The Agency and its employees are also indemnified by the Crown under the RCA Trust Fund Agreement and in accordance with the provisions of the services agreements contemplated in section 12.10 of this MOU.
- d. The Agency maintains Directors and Officers errors and omissions insurance coverage on normal commercial terms to protect the Board members and the Agency's officers from liability for acts of negligence.

17. Effective Date, Duration and Periodic Review of the MOU

17.1 Effective Date of MOU and Duration

- a. This MOU becomes effective on the date of its signature by the Parties and continues in effect until it is revoked or a new MOU is signed by the Parties.

17.2 Process for Review and Amendment

- a. Upon a change in Minister or Chair, the Parties must either sign a letter of affirmation that is attached to the MOU or sign a new MOU within six months of the change.
- b. The MOU may be reviewed:
 - i. by written request of either Party to the other;
 - ii. at the discretion and direction of TB/MBC or the Minister;
 - iii. as a result of a review of the Agency's mandate, which is required at least every seven years; or
 - iv. immediately in the event of a significant change to the Agency's mandate, powers or governance structure as a result of an amendment to the PSPA, the Plan or the RCA.
- c. A copy of the signed letter of affirmation or MOU must be provided to the Secretary, Management Board of Cabinet by the Ministry.

18. Actuarial Arrangements

18.1 Actuarial Valuations

- a. The PBA requires the Agency as Plan administrator to prepare and file actuarial valuations in respect of the Plan with a review date not more than three years from the review date of the last report filed. If the Plan is amended such that contributions are changed or the amendment creates or changes a going concern unfunded liability or solvency deficiency, an earlier report may be requested by the Pension Regulator.
- b. The Agency is required to prepare an actuarial valuation in respect of the RCA at least once every four years, and such additional valuations as requested by the Minister. Actuarial valuations in respect of the RCA are not filed with the Pension Regulator or the CRA.

18.2 Permission of Minister for filing

- a. The filing of an actuarial valuation related to the Plan with the Pension Regulator and the CRA shall only be done when the Minister advises the Agency in writing that the Minister agrees that the valuation may be filed.

18.3 Appointment of External Actuary

- a. The Board will continue to appoint an external actuary to conduct these valuations through periodic tender.

19. Data

19.1 Interpretation

In this section and in sections 8.1, 8.3 and 10.3 of this MOU:

“Accurate” with respect to Data, means, subject to immaterial omissions or errors, complete and correct Data and “Accuracy” has a similar meaning, and “Inaccurate” means with respect to Data, Data that is not Accurate and “Inaccuracy” has a similar meaning.

“Data” means information which the Employers are required to provide to the Agency for the purpose of administering the Plan and the Fund, the RCA and the RCA Trust Fund or any other pension or benefits plan administered by the Agency under an agreement between the Agency and the Minister or an Employer.

“Secure” means maintained and processed where necessary, in a manner consistent with the requirements under the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and other data protection legislation, as applicable.

“Timely” means that Data is provided sufficiently early, and within timelines provided by the Agency, to support compliance by the Agency with standards established by the PBA, the PSPA and other applicable legislation and Directives. “Timeliness” has a similar meaning.

19.2 Accuracy of Data and Information Practices

- a. The Accuracy and Timeliness of Data is of paramount concern and importance to each of the Minister, the Employers and the Agency. The Agency will use commercially reasonable efforts to ensure the Data in its possession is Accurate. The Minister will provide support to the Agency in its efforts to ensure that Employers provide to the Agency Data that is Accurate and Timely.

19.3 Discovery of Inaccuracies

- a. Each of an Employer and the Agency shall promptly notify the other of any Inaccuracies which it may discover in the course of reviewing and using the Data, and shall furnish the other with reasonably detailed documentation of such Inaccuracies
- b. The Minister shall cause the Ministry to promptly notify the Agency, and the Agency shall promptly notify the Minister and the applicable Employer, of any Inaccuracies which it may become aware and shall furnish the other with reasonably detailed documentation of such Inaccuracies. Subject to applicable laws and fiduciary duties, on request by one party, the other shall provide a copy of all corrections to Inaccuracies made by or on behalf of such party.

19.4 Use of Data

- a. The Agency shall use Data provided by an Employer solely for the purpose of administering the Plan and the Fund, the RCA and the RCA Trust Fund or any other pension or benefits plan administered by the Agency under an agreement between the Agency and the Minister or an Employer, and to meet other legal and statutory obligations associated with this administration.

20. General

20.1 Complaints and Inquiries

- a. The Chair and the Minister will endeavour to advise each other of complaints and inquiries received respecting the other's area of responsibility.

20.2 Ombudsman

- a. The Agency will continue to deal directly with the Ombudsman. The Chair will keep the Minister informed of inquiries being made by the Ombudsman.

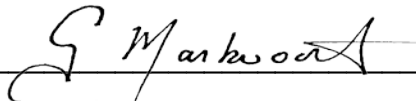
20.3 Litigation

- a. The Agency has and will continue to act on its own behalf and in its own name with respect to litigated matters. The Chair will advise the Minister of ongoing material litigation.

21. Legislation

- a. The Agency will comply with the *Ontario Human Rights Code*, the *Employment Standards Act* (in part), the *French Language Services Act* and any other applicable legislation.

22. Signatures



Gerri Markvoort

Chair, Ontario Pension Board

October 21, 2021

Date



The Hon. Prabmeet Singh Sarkaria
President of the Treasury Board

November 9, 2021

Date

Appendix 1: Public Communications Protocol

1. Definitions

- a. "Public Communications" means any material that is communicated to the public, either directly or through the media in:
 - Oral form, such as a speech or public presentation;
 - Printed form, such as a hardcopy report; or
 - Electronic form, such as a posting to a website.
 - b. A "Contentious Issue" is a matter that is, or may reasonably be expected to be, of concern to the Legislative Assembly or the public, or is likely to result in inquiries being directed to the Minister or Government. Contentious issues may be raised by:
 - Members of the Legislative Assembly;
 - The public;
 - Media;
 - Stakeholders; and
 - Service delivery partners.
2. While the Agency is not subject to the TB/MBC Visual Identity Directive, it will identify itself in all Public Communications covered by this protocol as an Agency of the Government.
 3. The Ministry and the Agency will appoint persons to serve as Public Communications "leads".
 - The Ministry lead is the Director of Communications.
 - The Agency lead is the Executive Vice President and Chief Pension Officer.
 4. For the purpose of this protocol, Public Communications are divided into two categories:
 - a. Public Communications where provincial or ministerial messaging on Government priorities would enhance the Agency's or the Government's profile.
 - The Agency lead will notify the Ministry lead of upcoming Public Communications fifteen days in advance for all non-contentious items that might generate media interest.
 - For non-contentious items which provide Government messaging opportunities or which involve funding announcements, the Agency must also request

approval of Public Communications messaging seven days prior to the release date.

- Final approval is required from the Minister's office. If the Agency were not to receive comments or approval from the Minister's office or Ministry lead within forty-eight hours of the date on which the item is to be released, the Agency can proceed accordingly.

b. Contentious Issues.

- For all Contentious Issues, the Agency lead will notify the Ministry lead immediately upon becoming aware of the issue and will notify the Minister's office simultaneously. The Ministry lead may also advise the Agency of Contentious Issues that require attention. The Agency will provide all required background information on the issue to the Ministry lead, who will arrange to have a Contentious Issues note prepared.
- The Agency lead will provide the Public Communications messaging to the Ministry lead who will initiate the approval process within the Ministry.
- Final approval is required from the Minister's office. If the Agency were not to receive comments or approval from the Minister's office or Ministry lead within forty-eight hours of the date on which the item is to be released, the Agency can proceed accordingly.

Appendix 2: Applicable TB/MBC and Government Directives

1. The following Directives apply, in whole or in part, to the Agency:
 - Agencies & Appointments Directive;
 - Accountability Directive;
 - Digital and Data Directive;
 - Governance and Management of Information and Data Assets Directive;
 - Governance and Management of Information Technology Directive; Ontario Public Service Procurement Directive; and
 - Travel, Meal and Hospitality Expenses Directive.
2. The Ministry will inform the Agency of amendments or additional directives, policies and guidelines issued by TB/MBC or Government Ministries that apply to the Agency; however, the Agency is responsible for complying with all Government directives, policies and guidelines to which it is subject.
3. Any Directives that do not apply directly to the Agency must be adhered to in principle by the Agency to the best of its ability.