

*Nova Scotia Public Service
Long Term Disability Plan Trust Fund*

Plan Document

Amended December 31, 2015

1. In this Plan,

- (a) "administrator" means the Plan Administrator appointed by the Trustees to administer the Plan;
- (b) "disability"/"disabled" means the complete inability of an employee, because of illness or injury, to perform the regular duties of his/her occupation during the applicable elimination period and the next 30 months of any period of disability. Thereafter, an employee remains disabled if he/she is unable to engage in any occupation for remuneration or profit for which the employee is or may become fit through education, training, experience or rehabilitation, which occupation pays not less than 80% of the current rate of the position, class and step he/she held prior to disability;
- (ba) "disability"/"disabled" means, for employees whose elimination period commences on or after May 1, 2002 and who make a claim under the Plan, the complete inability of an employee, because of illness or injury, to perform the regular duties of his/her occupation during the applicable elimination period and the next 24 months of any period of disability. Thereafter, an employee remains disabled if he/she is unable to engage in any occupation for remuneration or profit for which the employee is or may become fit through education, training, experience or rehabilitation, which occupation pays not less than 75% of the current rate of the position, class and step he/she held prior to disability;
 - (a) (i) "elimination period" means 100 consecutive lost workdays due to the complete inability of an employee, because of illness or injury, to perform the regular duties of his/her occupation. Provided however, that a return to work shall not be considered a break in consecutive lost workdays if:
 - (b) within 30 consecutive workdays of returning to work, the employee becomes unable to work because of the same or related illness or injury; or,
 - (c) within 3 months of returning to work on a trial basis approved by the employer and, if applicable, the responsible employer/union committee, the employee becomes unable to work because of the same or related illness or injury, provided further that the days worked on a return shall not be counted as part of the 100 consecutive lost work days;
 - (ii) "elimination period" for part-time Civil Service bargaining unit employees and eligible part-time non- bargaining unit employees means twenty (20) consecutive calendar weeks of lost work due to the complete inability of an employee, because of illness or injury, to perform the regular duties of his/her occupation, and it will consist of a period of consecutive and continuous sick leave, paid and unpaid where applicable, due to the same or related causes. Provided however, that a return to work shall not be considered a break in consecutive lost work weeks if:
 - (a) within 6 consecutive work weeks of returning to work, the employee becomes unable to work because of the same or related illness or injury; or,
 - (b) within 3 months of returning to work on a trial basis approved by the employer and, if applicable, the responsible employer/union committee, the employee becomes unable to work because of the same or related illness or injury, provided further that the days worked on a return shall not be counted as part of the 20 consecutive calendar weeks of lost work;

1. In this Plan, (Continued)

- (c) “employee” means an insured under the Plan;
- (d) “employer” means the employer of the employee;
- (e) “normal salary” (for all employees other than relief employees) means an employee's regular bi-weekly salary, immediately prior to disability, including any educational premium or unit premium received by the employee;
- (fa) “normal salary” for relief employees means the average bi-weekly salary received in the twenty-six bi-weekly pay periods immediately preceding the date of disability plus any increments up to the last day of the elimination period;
- (f) “Plan” means the Nova Scotia Public Service Long Term Disability Plan;
- (g) “Plan Sponsors” means the Province of Nova Scotia and the Nova Scotia Government and General Employees Union;
- (h) “regular duties” means the duties that the employee was expected to perform immediately prior to the commencement of the elimination period;
- (i) “rehabilitation employment program” means a mandatory program, as contained in the Guidelines made pursuant to this Plan, for rehabilitation of a disabled employee so as to enable him/her to return to suitable productive employment;
- (j) “Trustees” means the Board of Trustees of the Nova Scotia Public Service Long Term Disability Plan;
- (k) “relief employee” means a relief employee as defined in a Memorandum of Agreement dated December 23, 2009 who pursuant to said Agreement has achieved term relief status or permanent relief status;
(Amended April 1, 2010)

2. In this Plan,

- (1) words importing male persons include female persons and corporations;
- (2) words in the singular include the plural, and words in the plural include the singular.

ADJUDICATION RIGHT OF REVIEW

3. (1) When the Administrator has ruled that an employee is not disabled, said decision may not be challenged by an action in the courts, and may only be appealed through the Board of Trustees of the Nova Scotia Public Service Long Term Disability Plan, who will be responsible to schedule an appeal hearing in accordance with Section 3(3); *(Amended, July 18, 2007)*
- (2) The decision resulting from the appeal hearing shall be final and not subject to further review;
- (3) An Appeal System has been established with the following provisions:
 - (a) the appeal will be limited to determining whether or not the employee is disabled, as defined herein; *(Amended, July 18, 2007)*
 - (b) the appeal will be heard by an Appeal Board established by the Board of Trustees; *(Amended, July 18, 2007)*
 - (c) the appeal will be conducted pursuant to the Guidelines established by the Board of Trustees pursuant to this Plan; *(Amended, July 18, 2007)*
 - (d) the employee shall bear his or her own costs of the appeal; however, if the appeal is successful, the employee shall receive costs as permitted by the Appeal Guidelines; *(Amended, July 18, 2007)*
 - (e) any appeal is to be initiated no later than 30 days following final denial of the employee's claim by the Administrator; *(Amended, July 18, 2007)*
- (4) No legal action for judicial review of an appeal decision pursuant to Sections 3 (1), (2) and (3) or for any other dispute relating to this Plan may be brought more than one year after benefits have been denied.

ELIGIBILITY FOR BENEFITS

4. (1) Subject to subsection (4), when illness or injury results in the disability of an employee, the employee shall be eligible for benefits from the first day following the elimination period;
- (2) If the Administrator determines that the employee is capable of participating in an approved rehabilitation employment program and if the employee participates in a program, he/she shall receive benefits as provided in Section 5(3);
- (3) An employee may be required by the Administrator to be assessed in accordance with the Guidelines made pursuant to this Plan, and may be required by the Administrator to participate in a Rehabilitation Employment Program in accordance with the Guidelines made pursuant to this Plan, while he/she receives Long Term Disability Benefits;

ELIGIBILITY FOR BENEFITS (CONTINUED)

4. (4) If there has been a return to work, successive periods of disability of an employee shall be considered as occurring in the same period of disability, unless:
- (a) the later disability is for causes unrelated to the prior disability; or,
 - (b) the later disability is for causes related to the prior disability, but the employee has returned to work and has served continuously for 60 consecutive workdays or more before the related disability recurred (12 consecutive calendar weeks for part-time and relief employees);
- (5) For greater certainty, where, pursuant to subsection 4(4), a successive period of disability is considered as occurring in the same period of disability, the benefits payable during the successive period shall be governed by the benefits payable under the Plan at the time the original disability was accepted;
- (6) No benefits shall be payable under the Plan because of:
- (a) disability suffered in the course of voluntarily participating in the commission of a crime;
 - (b) disability suffered as a result of an act of war or participation in a riot, except when carrying out the duties of his/her occupation;
 - (c) intentional self-inflicted disability, or attempted self-destruction;
 - (d) disability where the employee is not under the care of and following the treatment of a licensed physician or medical specialist;
 - (e) pregnancy related illness during the pregnancy exclusion period as defined in the applicable collective agreement or as prescribed by the applicable provincial statute;
 - (f) disability which arose out of and in the course of employment and is deemed to result in a total loss of earnings capacity by the Workers' Compensation Board;
 - (g) disability due to illness or injury which occurred after the employee was placed on layoff status;
 - (h) a disability commencing within the first 12 months of the effective date of coverage if the disability is directly or indirectly the result of an illness or injury for which medical treatment, services or supplies were received in the 90-day period prior to the effective date of coverage;
- (7) No benefits shall be payable under the Plan where:
- (a) the employee refuses to disclose medical information required by the Plan Administrator or specialists acting for the Plan Administrator;

ELIGIBILITY FOR BENEFITS (CONTINUED)

4. (7) (b) the employee refuses to be assessed in accordance with the Guidelines made pursuant to this Plan, or if the employee refuses to participate in a Rehabilitation Employment Program approved by the Administrator, unless the Administrator determines otherwise;
- (c) no benefits shall be payable under the Plan while the employee is incarcerated for a criminal offence.

AMOUNT OF COVERAGE

5. (1) (a) the bi-weekly benefit for an employee covered by this agreement shall be 70% of his/her normal salary to a maximum benefit of \$2,000.00 bi-weekly;
- (b) for employees whose elimination period commences on or after May 1, 2002, the bi-weekly benefit for an employee covered by this agreement shall be 65% of the employee's normal salary to a maximum benefit of \$3,000.00 bi-weekly;
- (c) for employees whose elimination period commences on or after January 1, 2009, the bi-weekly benefit for an employee covered by this agreement shall be, for the first three years of benefits, 65% of the employee's normal salary to a maximum benefit of \$4,375.00 bi-weekly, and thereafter, 70% of the employee's normal salary to a maximum benefit of \$4,711.54 bi-weekly; *(Amended January 1, 2009)*
- (2) Employee and Employer contributions to the Fund shall be waived with respect to a disabled employee during the time the employee is in receipt of disability benefit payments under the Plan;
- (3) The benefit for an employee, who is receiving income under a recognized rehabilitation employment program, shall be reduced by an amount equal to 50% of the income received. Where the combination of benefits and income is in excess of the current rate of pay for the position, classification and step the employee held prior to disability, the benefits shall be reduced so as not to exceed 100% of that rate of pay;
- (a) for employees whose elimination period commences on or after January 1, 2009, the benefit for an employee who is receiving income under a recognized rehabilitation employment program shall be reduced by an amount equal to, for the first five years of benefits, 50% of the income received, and thereafter, 35% of income received. Where the combination of benefits and income is in excess of the current rate of pay for the position, classification and step the employee held prior to disability, the benefits shall be reduced so as not to exceed 100% of that rate of pay; *(Amended January 1, 2009)*
- (4) Increases to benefits under this Plan to reflect cost of living increases shall be determined as follows:
- (a) the Trustees may, or upon a written request from the Plan Sponsors, the Trustees shall, obtain an actuarial opinion as to the effect of a proposed increase in benefits on the financial viability of the Plan;

AMOUNT OF COVERAGE (CONTINUED)

5. (4) (b) upon receipt of the actuarial opinion, the Trustees shall provide a copy of the opinion to the Plan Sponsors, and may provide a recommendation to the Plan Sponsors as to any proposed amount of increase and an effective date for a proposed increase;
- (c) subject to clause (d), the Plan Sponsors shall provide a written direction to the Trustees as to the actual amount, if any, of an increase, and the effective date of any increase;
- (d) no increase in a year shall exceed the lesser of 6% per annum, and an amount equal to the average increase to the Consumer Price Index for Canada for preceding twelve-months period ending October 31st, based on the figures as published by Statistics Canada for that period;
- (5) The benefits shall cease at the earliest of:
- (a) the last day of the month in which the employee attains 65 years of age;
- (b) returning to work;
- (c) death of the employee;
- (d) the date the employee is no longer qualified as disabled as it is defined in this Plan;
- (e) the last day of the month in which the employee attains 60 years of age, if the employee elects to exercise early retirement provisions under the Public Service Superannuation Act;
- (6) For employees whose elimination period commences on or after May 1, 2002, the benefits shall cease at the earliest of:
- (a) the last day of the month during which the employee attains the age of 60 years;
- (b) the last day of the month in which the employee attains 35 years of pensionable service pursuant to the terms of the employee's pension plan; *(Deleted January 1, 2025)*
- (c) the date the employee returns to work;
- (d) the date of death of the employee;
- (e) the date the employee is no longer qualified as disabled as defined in this Plan;
- (7) For employees whose elimination period commences on or after January 1, 2009 and ends before or on the day they turn the age of 63 years, the benefits shall cease the earliest of:
- (a) the last day of the month during which the employee attains the age of 65 years;

AMOUNT OF COVERAGE (CONTINUED)

5. (7) (b) the last day of the month in which the employee attains 35 years of pensionable service pursuant to the terms of the employee's pension plan; (*Deleted January 1, 2025*)
- (c) the date the employee returns to work;
- (d) the date of death of the employee;
- (e) the date the employee is no longer qualified as disabled as defined in this Plan; (*Amended January 1, 2009*)
- (8) For employees whose elimination period commences on or after January 1, 2009 and ends after they turn the age of 63 years, the benefits shall cease at the earliest of:
- (a) the last day of the month two years after the end of the elimination period;
- (b) the last day of the month in which the employee attains 35 years of pensionable service pursuant to the terms of the employee's pension plan; (*Deleted January 1, 2025*)
- (c) the date the employee returns to work;
- (d) the date of death of the employee;
- (e) the date the employee is no longer qualified as disabled as defined in this Plan; (*Amended January 1, 2009*)
- (9) Despite subsection (3) in the case of employees:
- (a) covered by the Interim Memorandum of Agreement between the Employer and the NSGEU effective April 18, 1998, and pertaining to certain employees in the Departments of Justice and Community Services who have been under investigation by the Internal Investigation Unit of the Department of Justice, as well as by any final memorandum of agreement that subsequently takes the place of the Interim Memorandum of Agreement; and,
- (b) who are not members of NSGEU but who are, by agreement by the Plan Sponsors, in the same situation as those referred to in (a); and in respect of a period or periods of disability to which the Interim Memorandum of Agreement is applicable or would be applicable in the case of employees identified in (b), the following applies:
- (i) part-time employment shall be deemed to be employment under a recognized rehabilitative employment program; and,

AMOUNT OF COVERAGE (CONTINUED)

5. (9) (b) (ii) benefits shall not be reduced by an amount equal to 50% of the income received, or by any other percentage of the income received, but benefits shall be reduced by whatever amount is necessary to ensure that benefits plus the income received does not exceed 100% of the rate of pay applicable to the employee prior to the commencement of short term illness benefits;
6. The benefit to which an employee is entitled under this section shall be reduced by:
- (1) the amount of disability benefit entitlement under the Canada Pension Plan, excluding children's benefits and excluding the indexing added to the said entitlement after December 31, 2005; (*Amended May 24, 2006, effective January 1, 2006*)
 - (2) the amount of benefits payable from any other group disability plan or pension plan, sponsored by the Employer;
 - (3) the amount of income received from rehabilitative employment in accordance with subsection (3) or (3) (a) of Section 5; (*Amended January 1, 2009*)
 - (4) the amount of Workers' Compensation payments, where an employee is deemed to have a partial loss of earnings capacity by the Workers' Compensation Board, except permanent partial disability awards that are not included in the Earnings Replacement Benefit calculation;
 - (5) the amount of benefits payable from any disability plan sponsored by any employer in relation to the same employment covered under this Plan;
 - (6) the amount of income received by an employee from any employment including self-employment;
 - (7) the amount of earnings (including earnings capacity) recovered through a legally enforceable cause of action against some other person or corporation, including the employee's motor vehicle insurer under the Section D or SEF 44 coverage;
7. For employees whose elimination period commences on or after January 1, 2009, if the employee's bi-weekly benefit, plus his income from all sources specified under Section 6, for the first five years of benefits herein, exceeds 80% of his pre-disability earnings (indexed at the same rate as the bi-weekly benefit), and thereafter, exceeds 90% of his pre-disability earnings (indexed at the same rate as the bi-weekly benefit) his benefit will be reduced by such excess amount. (*Amended June 22, 2017*)

TERMINATION OF AN EMPLOYEE'S COVERAGE

8. The coverage of an employee, who is not receiving benefits under the Plan, terminates on the earliest of the following dates:
- (1) the date the employee occupies a position that is not eligible for coverage;
 - (2) the date of the employee's termination of employment;
 - (3) one hundred days prior to the last day of the month during which the employee attains 35 years of pensionable service pursuant to the terms of the employee's pension plan;
(Amended January 1, 2009) (Deleted January 1, 2025)
9. An employee on authorized leave shall be eligible to be covered under the Plan, providing the employee continues to make his/her required contributions. Where the employee does not make his/her required contributions, coverage will be suspended during the period of authorized leave and all terms, conditions and exclusions applicable to a new employee will apply when the employee returns to work, with the first day worked being deemed as the date of hire for the purpose of interpreting this Plan.

AMENDMENTS

10. (1) This Plan may be amended from time to time by the Plan Sponsors, after consultation with the Trustees;
- (2) The Administrator shall consistently apply the Plan in accordance with the Guidelines made pursuant to the Plan;
- (3) The Trustees shall make guidelines for the purpose of administration of the Plan respecting:
- (a) rehabilitation employment programs;
 - (b) medical assessments;
- and may make guidelines respecting such other matters as are necessary, in the opinion of the Trustees, to administer the Plan;

The Guidelines made pursuant to this subsection will come into effect upon the date determined by the Trustees.

TERMINATION OF THE PLAN

11. In the event that the Plan is terminated, all contributions or benefits shall cease and the Fund will be disposed of in the following manner:
- (a) all employees who are on short term illness and are deemed to be disabled by the Administrator and all employees who are then disabled and receiving benefits in accordance with Sections 4 & 5 will have their benefits, at the level in force at the time of Plan termination, purchased from an insurance company under a single premium non participating closed group long term disability contract, if such a contract is then available from an insurance company;
 - (b) if the fund is not sufficient to provide the full benefits to the employee then totally disabled, then the fund will be allocated to purchase for each such employee a reduced benefit in the same proportion that the cost of the full benefit for such employee bears to the total cost of the full benefits for all such employees;
 - (c) if a single premium non participating closed group Long Term Disability Contract is not available then, based on a valuation of the liabilities underlying payment of each employee receiving benefits under Sections 4 & 5, the fund shall then be allocated in a manner acceptable to the Trustees, to each employee to the extent of the liabilities established by the valuation;
 - (d) if the fund is of a lesser amount than the amount of the liabilities, the fund shall be allocated to each employee receiving benefits under Sections 4 & 5 in the same proportion as the value of the full benefit for each such employee bears to the total value of the liabilities determined under (c) above;
 - (e) any fund established under (c) or (d) above shall be operated in accordance with the terms and conditions of the Plan except that the recovery of a disabled employee receiving benefit under Section 4 shall terminate his/her entitlement to such benefit;
 - (f) any fund remaining after having made the allocation in (a) and (c) above shall be paid to the Employer for distribution for the benefit of the employees through negotiation with the Nova Scotia Government and General Employees Union.

SUBROGATION

12. (1) Where a long term disability benefit is payable for an injury or illness for which any third party, including the employee's motor vehicle insurer under the Section D or SEF 44 coverage, is, or may be, legally liable, the Trustees will be subrogated to all rights and remedies of the employee, including the Estate of the employee, against the third party, to recover damages in respect of the injury or death, and may maintain an action in the name of such employee, or the Estate of the employee, against any person against whom such action lies, and any amount recovered by the Trustees shall be applied to:

SUBROGATION (CONTINUED)

12. (1) (a) payment of the costs actually incurred in respect of the action, and reimbursement to the Trustees of any disability benefits paid, and the balance, if any shall be paid to the employee whose rights were subrogated;
- (b) any settlement or release does not bar the rights of the Trustees under subsection (1) unless the Trustees have concurred therein;
- (c) an employee will fully cooperate with the Trustees in order to allow the Trustees to do what is reasonably necessary to assert the Trustees' rights to subrogation, including but not limited to entering into subrogation agreements prescribed by the Guidelines made pursuant to this Plan.