

Locked-In Retirement Account Endorsement for British Columbia Pension Funds

Endorsement issued in accordance with the Pension Benefits Standards Act, British Columbia

SCHEDULE 1 (*section 99*) PENSION BENEFITS STANDARDS REGULATION LOCKED-IN RETIREMENT ACCOUNT ADDENDUM

PART 1 - DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1 (1) Subject to subsection (3), the following terms, used in this addendum, have the meanings given to them below, except where the context otherwise requires:

“Act” means the *Pension Benefits Standards Act*, S.B.C. 2012, c. 30;

“annuity” means a non-commutable life annuity contract that is issued or issuable by an insurance company to provide, on a deferred or immediate basis, a series of periodic payments for the life of the annuity holder or for the lives jointly of the annuity holder and the annuity holder’s spouse;

“designated beneficiary” has the same meaning as in the *Wills, Estates and Succession Act*;

“locked-in money” means

- (a) money the withdrawal, surrender or receipt of which is restricted under section 68 of the Act,
- (b) money to which paragraph (a) applies that has been transferred out of a pension plan
 - (i) to this locked-in retirement account or any other locked-in retirement account or life income fund, and any interest on that money, or
 - (ii) to an insurance company to purchase an annuity that is permitted under the Act,
- (c) money in this locked-in retirement account that was deposited into the locked-in retirement account under section 105 (1) of the Regulation or paid to the locked-in retirement account issuer under section 105 (2) or (3) (b) of the Regulation, and
- (d) money in a life income fund that was deposited into the life income fund under section 124 (1) of the Regulation or paid to the life income fund issuer under section 124 (2) or (3) (b) of the Regulation;

“locked-in retirement account issuer” means the issuer of this locked-in retirement account;

“member owner” means the owner of this locked-in retirement account if

- (a) the owner was a member of a pension plan, and
- (b) this locked-in retirement account contains locked-in money from that plan;

“owner”, in relation to this locked-in retirement account, means

- (a) the member owner of this locked-in retirement account, or
- (b) the spouse owner of this locked-in retirement account;

“Regulation” means the Pension Benefits Standards Regulation enacted under the *Pension Benefits Standards Act*, S.B.C. 2012, c. 30;

“spouse” means a person who is a spouse within the meaning of subsection (2);

“spouse owner” means the owner of this locked-in retirement account if this locked-in retirement account contains locked-in money from a pension plan and the owner is

- (a) the spouse or former spouse of a member of the pension plan or member owner whose entitlement to the locked-in money in this locked-in retirement account arose by virtue of a breakdown of the marriage or marriage-like relationship between the owner and the member or member owner, or
- (b) the surviving spouse of a deceased member of the pension plan or member owner whose entitlement to the locked-in money in this locked-in retirement account arose by virtue of the death of the member or member owner;

“this locked-in retirement account” means the locked-in retirement account to which this addendum applies.

(2) Persons are spouses for the purposes of this addendum on any date on which one of the following applies:

- (a) they
 - (i) are married to each other, and
 - (ii) have not been living separate and apart from each other for a continuous period longer than 2 years;

- (b) they have been living with each other in a marriage-like relationship for a period of at least 2 years immediately preceding the date.

(3) Terms used in this addendum that are not defined in subsection (1) but are defined in the Act or the Regulation have the meanings given to them in the Act or the Regulation.

PART 2 - TRANSFERS IN AND TRANSFERS AND PAYMENTS OUT OF LOCKED-IN RETIREMENT ACCOUNT

Limitation on deposits to this locked-in retirement account

2 The only money that may be deposited in this locked-in retirement account is

- (a) locked-in money transferred from a pension plan if
 - (i) this locked-in retirement account is owned by a member owner, or
 - (ii) this locked-in retirement account is owned by a spouse owner, or
- (b) money deposited by the locked-in retirement account issuer under section 105 (1) of the Regulation or paid to the locked-in retirement account issuer for deposit to this locked-in retirement account under section 105 (2) or (3) (b) of the Regulation.

Limitation on payments and transfers from this locked-in retirement account

3 (1) Money in this locked-in retirement account, including investment earnings, is for use in the provision of retirement income.

(2) Despite subsection (1), money may be paid or transferred from this locked-in retirement account in the following circumstances:

- (a) by way of a transfer to another locked-in retirement account on the applicable conditions set out in this addendum;
- (b) by way of a transfer to purchase an annuity in accordance with section 6 (3);
- (c) by way of a transfer to a pension plan if the plan text document of the plan allows the transfer;
- (d) by way of a transfer to a life income fund in accordance with Division 3 of Part 9 of the Regulation;
- (e) in accordance with Part 4 of this addendum.

(3) Without limiting subsections (1) and (2) of this section and in accordance with section 70 of the Act, money in this locked-in retirement account must not be assigned, charged, alienated or anticipated and is exempt from execution, seizure or attachment.

(4) The locked-in retirement account issuer must comply with any applicable requirements of the Act and the Regulation before allowing a payment or transfer of any of the money in this locked-in retirement account.

General liability for improper payments or transfers

4 If the locked-in retirement account issuer pays or transfers money from this locked-in retirement account contrary to the Act or the Regulation,

- (a) subject to paragraph (b), the locked-in retirement account issuer must,
 - (i) if less than all of the money in this locked-in retirement account is improperly paid or transferred, deposit into this locked-in retirement account an amount of money equal to the amount of money that was improperly paid or transferred, or
 - (ii) if all of the money in this locked-in retirement account is improperly paid or transferred, establish a new locked-in retirement account for the owner and deposit into that new locked-in retirement account an amount of money equal to the amount of money that was improperly paid or transferred, or
- (b) if
 - (i) the money is transferred out of this locked-in retirement account to an issuer (the “transferee issuer”) that is authorized under the Regulation to issue locked-in retirement accounts,
 - (ii) the transfer is contrary to the Act or the Regulation in that the locked-in retirement account issuer failed to advise the transferee issuer that the money is locked-in money, and
 - (iii) the transferee issuer deals with the money in a manner that is contrary to the manner in which locked-in money must be dealt with under the Act or the Regulation,

the locked-in retirement account issuer must pay to the transferee issuer, in accordance with the requirements of the Act and the Regulation relating to transfers of locked-in money, an amount equal to the amount dealt with in the manner referred to in subparagraph (iii).

Remittance of securities

5 (1) If this locked-in retirement account holds identifiable and transferable securities, the transfers referred to in this Part may, unless otherwise stipulated in the contract to which this is an addendum, be made, at the option of the locked-in retirement account issuer and with the consent of the owner, by the transfer of those securities.

(2) There may be transferred to this locked-in retirement account identifiable and transferable securities, unless otherwise stipulated in the contract to which this is an addendum, if that transfer is approved by the locked-in retirement account issuer and consented to by the owner.

Retirement income

6 (1) Subject to subsections (2) and (3), this locked-in retirement account may be converted to a life income fund or annuity any time after the owner of the locked-in retirement account reaches 50 years of age, and must be converted to retirement income on or before the last date on which a person is allowed under the *Income Tax Act* (Canada) to start receiving a pension from a registered pension plan.

(2) The money in this locked-in retirement account must not be transferred to a life income fund unless

- (a) the member owner or spouse owner, within the meaning of paragraph (a) of the definition of “spouse owner”, as the case may be, is at least 50 years of age, and
- (b) if the owner is a member owner and the member owner has a spouse, one of the following has been provided to the locked-in retirement account issuer:
 - (i) a consent in Form 3 of Schedule 3 of the Regulation signed by the spouse in the presence of a witness and outside the presence of the member owner not more than 90 days before the date of the transfer;
 - (ii) confirmation, in a form and manner satisfactory to the locked-in retirement account issuer, that section 145 of the *Family Law Act* applies.

(3) The money in this locked-in retirement account must not be transferred to an insurance company to purchase an annuity unless

- (a) payments under the annuity do not begin until the member owner or spouse owner, within the meaning of paragraph (a) of the definition of “spouse owner”, as the case may be, has reached 50 years of age,
- (b) payments under the annuity begin on or before the last date on which a person is allowed under the *Income Tax Act* (Canada) to start receiving a pension from a registered pension plan.
- (c) there is no differentiation among the annuitants on the basis of gender, and
- (d) if the owner is a member owner who has a spouse,
 - (i) the annuity is in the form of a joint and survivor pension referred to in section 80 (2) of the Act, or
 - (ii) one of the following has been provided to the locked-in retirement account issuer:
 - (A) a waiver in Form 2 of Schedule 3 of the Regulation signed by the spouse in the presence of a witness and outside the presence of the member not more than 90 days before the date that payments are to begin;
 - (B) confirmation, in a form and manner satisfactory to the locked-in retirement account issuer, that section 145 of the *Family Law Act* applies.

(4) A transfer under subsection (2) or (3) must be made within 60 days after the receipt by the locked-in retirement account issuer of all records that are necessary for the issuer to make the transfer.

PART 3 - DEATH OF OWNER

Transfer or payment on death of member owner

7 (1) Subject to subsection (2), if this locked-in retirement account is owned by a member owner who has died and he or she is survived by a spouse, the locked-in retirement account issuer must transfer the money in the locked-in retirement account to whichever of the following the surviving spouse elects:

- (a) a pension plan, if the plan text document of the plan allows the transfer;
- (b) another locked-in retirement account;
- (c) a life income fund;
- (d) an insurance company to purchase an annuity in accordance with section 6 (3) of this addendum.

(2) If this locked-in retirement account is owned by a member owner who has died and

- (a) he or she is not survived by a spouse, or
- (b) he or she is survived by a spouse and one of the following has been provided to the locked-in retirement account issuer:
 - (i) a waiver in Form 4 of Schedule 3 of the Regulation signed by the spouse before the member owner's death in the presence of a witness and outside the presence of the member owner;
 - (ii) confirmation, in a form and manner satisfactory to the locked-in retirement account issuer, that section 145 of the *Family Law Act* applies, the locked-in retirement account issuer must pay the money in this locked-in retirement account to the member owner's designated beneficiary or, if there is no living designated beneficiary, to the personal representative of the member owner's estate.

(3) If a waiver or confirmation has been provided under subsection (2) (b) to the locked-in retirement account issuer, the surviving spouse is not entitled to receive money from this locked-in retirement account under subsection (2) (b) (i) as the member owner's designated beneficiary.

(4) A transfer under subsection (1) or a payment under subsection (2) must be made within 60 days after the receipt by the locked-in retirement account issuer of all records that are necessary for the issuer to make the transfer or payment.

Payment on death of spouse owner

8 (1) If this locked-in retirement account is owned by a spouse owner who has died, the locked-in retirement account issuer must pay the money in this locked-in retirement account to the spouse owner's designated beneficiary or, if there is no living designated beneficiary, to the personal representative of the spouse owner's estate.

(2) A payment under subsection (1) must be made within 60 days after the receipt by the locked-in retirement account issuer of all records that are necessary for the issuer to make the payment.

PART 4 - APPLICATIONS TO UNLOCK ALL OR PART OF LOCKED-IN RETIREMENT ACCOUNT

Lump-sum payment of small account balance

9 (1) On application by the owner of this locked-in retirement account, the locked-in retirement account issuer will pay to the owner the lump-sum amount referred to in section 69 (2) of the Act and section 107 of the Regulation if, on the date of the application,

- (a) the balance of the locked-in retirement account does not exceed 20% of the Year's Maximum Pensionable Earnings (YMPE) under the Canada Pension Plan for the calendar year in which the application is made, or
- (b) the owner is at least 65 years of age and the balance of this locked-in retirement account does not exceed 40% of the YMPE for the calendar year in which the application is made.

(2) A payment under subsection (1) must be made within 60 days after the receipt by the locked-in retirement account issuer of all records that are necessary for the issuer to make the payment.

No splitting of contract

10 If this locked-in retirement account is not eligible for the lump-sum payment option referred to in section 9 of this addendum, money in this locked-in retirement account must not be divided and transferred to 2 or more locked-in retirement accounts, life income funds, pension plans or annuities or any combination of them if that transfer would make the money in anyone or more of them eligible for a lump-sum payment option under section 9 of this addendum or section 69 (1) or (2) of the Act,

Shortened life

11 (1) On application by the owner of this locked-in retirement account, the locked-in retirement account issuer will pay to the owner the payment, or series of payments for a fixed term, referred to in section 69 (4) (a) of the Act of all or part of the money held in this locked-in retirement account if

- (a) a medical practitioner certifies that the owner has an illness or a disability that is terminal or likely to shorten the owner's life considerably, and
- (b) this locked-in retirement account is owned by a member owner and the member owner does not have a spouse, or, if the member owner does have a spouse, one of the following has been provided to the locked-in retirement account issuer:
 - (i) a waiver in Form 1 of Schedule 3 of the Regulation signed by the spouse in the presence of a witness and outside the presence of the member owner not more than 90 days before the date of the withdrawal;
 - (ii) confirmation, in a form and manner satisfactory to the locked-in retirement account issuer, that section 145 of the *Family Law Act* applies.

(2) A payment under subsection (1) must be made, or a series of payments under subsection (1) must begin, within 60 days after the receipt by the locked-in retirement account issuer of all records that are necessary for the issuer to make the payment or begin the series of payments.

Non-residency for tax purposes

12 (1) On application by the owner of this locked-in retirement account, the locked-in retirement account issuer will pay to the owner the lump-sum amount referred to in section 69 (4) (b) of the Act and section 109 of the Regulation if

- (a) the owner includes in the application
 - (i) a statement signed by the owner that the owner has been absent from Canada for 2 or more years, and
 - (ii) written evidence that the Canada Revenue Agency has confirmed that the owner is a non-resident for the purposes of the *Income Tax Act* (Canada), and
- (b) this locked-in retirement account is owned by a member owner and the member owner does not have a spouse, or, if the member owner does have a spouse, one of the following has been provided to the locked-in retirement account issuer:
 - (i) a waiver in Form I of Schedule 3 of the Regulation signed by the spouse in the presence of a witness and outside the presence of the member owner not more than 90 days before the date of the withdrawal;
 - (ii) confirmation, in a form and manner satisfactory to the locked-in retirement account issuer, that section 145 of the *Family Law Act* applies.

(2) A payment under subsection (1) must be made within 60 days after the receipt by the locked-in retirement account issuer of all records that are necessary for the issuer to make the payment.

Financial hardship

13 (1) On application by the owner of this locked-in retirement account in accordance with section 110 of the Regulation, the locked-in retirement account issuer will pay to the owner the lump-sum amount referred to section 69 (4) (c) of the Act, up to the amount prescribed under section 110 (5) of the Regulation, if

- (a) the owner meets the requirements of the financial hardship exception set out in section 110 (4) of the Regulation, and
- (b) this locked-in retirement account is owned by a member owner and the member owner does not have a spouse, or, if the member owner does have a spouse, one of the following has been provided to the locked-in retirement account issuer:
 - (i) a waiver in Form I of Schedule 3 of the Regulation signed by the spouse in the presence of a witness and outside the presence of the member owner not more than 90 days before the date of the withdrawal;
 - (ii) confirmation, in a form and manner satisfactory to the locked-in retirement account issuer, that section 145 of the *Family Law Act* applies.

(2) A payment under subsection (1) must be made within 60 days after the receipt by the locked-in retirement account issuer of all records that are necessary for the issuer to make the payment.