

Disability Plan Document

City of Vancouver

And

Canadian Union of Public Employees Local 1004

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1) Background

This Disability Plan Document represents a compilation of a number of separate plan documents, Short Term Disability, Long Term Disability and the City's sick leave provisions. It also reflects the parties' rights and obligations pursuant to the Collective Agreement. The purpose of drafting a single plan document to deal with the various disability issues is to simplify administration of the separate plans and to introduce a limited number of substantive changes to the plan. The City has consulted with the Union on issues involving administrative changes, and negotiated specific substantive changes where Union consent was required. This Disability Plan Document is not incorporated by reference into the Collective Agreement, although the Union acknowledges that the City's obligation as set out in the Collective Agreement and 2003-2006 Memorandum of Agreement has been satisfied with the provision of this Disability Plan.

The City agrees that with the exception of administrative changes which do not impact employee benefit levels or benefit entitlement, further changes to the Disability Plan Document shall be made only after consultation with and the consent of the Union. In the event of any dispute as to the meaning of this Disability Plan Document, the parties shall rely upon the plan text of the agreement failing which reference to notes, discussions and draft plan texts is permitted. It is agreed by the parties that so long as this agreement is in place, these appeal processes replace any existing or pre-existing appeal processes with respect to the administration, application or entitlement to Medium or Long Term Disability.

2) Definitions

The following are definitions of terms used in this document and for the purposes thereof, shall have the meaning set forth below.

- (a) "*Actively at Work*" and "*Active Work*" mean the Employee is performing all of the regular duties of the Employee's Normal Occupation, temporary assignment or acting assignment with the Employer, as applicable, for a full scheduled shift.
- (b) "*Collective Agreement*" means the agreement in writing between the Employer and the Union containing provisions as to rates of pay, hours of work, and other conditions of employment applicable to Employees. Collective Agreement means the agreement in effect on the date of Total Disability.
- (c) "*Date of Disability*" means the first day upon which the Employee becomes Totally Disabled but does not include a day where an Employee has worked at least five hours for the Employer. If an Employee has worked five or more hours for the Employer, the Employee shall be paid for a full day of work as if he had worked the full day; the following day will be considered the Date of Disability if the Employee remains Totally Disabled. If an Employee has worked less than five hours for the Employer, this will be considered the Date of Disability; the full day will be treated as the first day of Short Term Disability.
- (d) "*Employee*" means a regular full-time employee, regular part-time employee or temporary full-time employee of the Employer subject to the provisions of the Collective Agreement. For the purposes of this Plan, an employee shall not become an Employee until or unless:
 - (i) for regular full-time and regular part-time employees, the first day following the date such Employee has completed three months of continuous service with the Employer for Medium Term Disability and Long Term Disability, and the first day following the date such Employee has completed six months of continuous service with the Employer for Short Term Disability;
 - (ii) for temporary full-time employees, the first day following the date such Employee has worked continuously in a full-time capacity for six months and worked 1,200 hours in a temporary full-time, auxiliary and/or regular part-time capacity with the Employer.
 - (iii) the Employee is Actively at Work on the date he otherwise becomes eligible in accordance with (i) or (ii) above. If an employee is not Actively at Work on the date he otherwise becomes eligible, the employee shall only become an Employee after his return to employment with the Employer.

Temporary full-time employees who have previously qualified for benefits and are subsequently rehired within one year for a temporary full-time assignment greater than eight weeks shall immediately become an Employee.

An Employee who is a member of the Executive Board of the Canadian Union of Public Employees Local 1004 shall be eligible for coverage under this Plan for the period of time that he is a member of the Executive Board, providing leave of absence has first been approved by the Employer.

- e) "Employer" means the City of Vancouver including the Board of Parks and Recreation.
- f) "He", "his" and "him" refer to both genders.

- g) "Medical Examination" is an examination by a duly qualified Physician or medical practitioner and includes but is not limited to a functional capacity evaluation, occupational fitness assessment, or an independent medical examination.
- h) "Normal Occupation" means the regular occupation, job or work (apart from any temporary or acting assignment) an Employee was performing at the time he became Totally Disabled.
- i) "Qualifying Period" for Short Term Disability benefits is zero Scheduled Work Days of Total Disability. The Qualifying Period for Medium Term Disability benefits is three Scheduled Work Days of Total Disability. The Qualifying Period for Long Term Disability benefits is three Scheduled Work Days plus 26 weeks of Total Disability.
- j) "Physician" means a doctor of medicine (M.D.) legally licensed to practise medicine in the place where services are provided.
- k) "Plan" means this Disability Plan Document and all amendments to, replacements of, substitutions for and additions to any part, which the parties may, at any time hereafter, include or adopt as part of the Plan. Any amendments, replacements, substitutions and/or additions to the Plan shall be made after consultation with the Union and the consent of the Union. The Employer may make administrative changes to the Plan providing that such changes do not result in a general reduction in benefits levels or entitlements.
- l) "Pre-Disability Rate of Pay" means the posted and/or classified rate of pay for the Employee's Normal Occupation on the Date of Disability.

Effective January 1st, 2013 and each January 1st thereafter, for the term of this agreement, adjustments will be made annually to the pre-disability benefits as of January 1st of that year. Adjustments will reflect the general wage increase implemented in the prior calendar year and will not attract retroactivity.

"Pre-Disability Rate of Pay" for Medium Term Disability and Long Term Disability means the average rate of pay earned by the Employee for time worked for the Employer during the previous calendar year, updated for any negotiated wage increase(s), or the posted and/or classified rate of pay for the Employee's Normal Occupation on the Date of Disability, whichever is higher. Any period(s) of Short Term Disability, Medium Term Disability or Long Term Disability during the previous calendar year are calculated at the Employee's posted and/or classified rate of pay for the Employee's Normal Occupation. The Pre-Disability Rate of Pay will be re-calculated for all Employees on January 1st based on the previous calendar year.

The Pre-Disability Rate of Pay for new Employees whose employment with the Employer begins mid-way through a calendar year will be the posted and/or classified rate of pay for the Employee's Normal Occupation on the Date of Disability.

- m) "Rehabilitation Income" means income which the Employee receives for work performed under an approved Rehabilitation Program.
- n) "Rehabilitation Program" includes but is not limited to a graduated return to work program, transitional duties, temporary alternate work assignments, work hardening activities and retraining programs, or a combination thereof, approved by the Employer.
- o) "Scheduled Work Day" means a day on which the Employee is normally expected to work including a statutory holiday and any day during which an Employee is on an authorized paid leave of absence (including a paid vacation day).
- p) "Totally Disabled" and "Total Disability" mean the inability of the Employee, due to illness or injury, to physically or mentally perform the duties of the Normal Occupation for Short Term

Disability, Medium Term Disability, and the first two years of Long Term Disability benefits. Thereafter, an Employee is considered Totally Disabled if, due to illness or injury, the Employee is physically or mentally unable to perform the duties of any occupation or employment for wages or compensation, for which the Employee is reasonably qualified by education, training or experience, or may reasonably become so qualified, and for which the earnings are 60% or more of the Employee's Pre-Disability Rate of Pay.

- q) "Union" means the Canadian Union of Public Employees Local 1004 and any successor thereof in respect to the Collective Agreement.

3) Termination of Entitlement to Coverage Under this Plan

Coverage for disability benefits under this Plan will terminate on the earliest of the following:

- a) The date the Employee turns age 65.
- b) The date the Employee dies.
- c) Termination of employment, except as noted under Termination of Benefits for an Employee in receipt of Long Term Disability benefits.
- d) The date this Plan is discontinued or terminated.

4) Benefit Determination

The first three days of absence from work due to Total Disability are classified as Short Term Disability.

If Total Disability continues beyond three Scheduled Work Days, then the following 26 weeks of Total Disability are classified as Medium Term Disability. Each period of Medium Term Disability must be preceded by completion of three days of Short Term Disability, regardless of whether or not the Employee is in receipt of Short Term Disability benefits as specified under Amount of Benefit. An Employee must return to Active Work, and be physically and mentally able to perform the duties of their Normal Occupation, transitional modified work or temporary accommodation for 30 calendar days without absence due to illness or injury in order to replenish their Medium Term Disability coverage to 26 weeks.

If Total Disability continues beyond 26 weeks of Medium Term Disability, then Total Disability is classified as Long Term Disability.

5) Amount of Benefit

The Employer pays Short Term Disability benefits for a maximum of three Scheduled Work Days for each bona fide illness or injury to a maximum of 12 Scheduled Work Days per calendar year. The amount of Short Term Disability benefit is equal to 70% of the Employee's Pre-Disability Rate of Pay. After 12 days of Short Term Disability benefits have been paid by the Employer during a calendar year, all subsequent periods of Short Term Disability during the calendar year are unpaid.

Medium Term Disability benefits are paid at 80% of the Employee's Pre-Disability Rate of Pay, reduced by income as specified under items (a),(b), (c) and (i) under Other Income.

Long Term Disability benefits are paid at 65% of the Employee's Pre-Disability Rate of Pay, reduced by income as specified under items (a), (b), (c) and (i) under Other Income, and subject to the All Source Limitation.

The foregoing shall not apply to any benefit of income payable to the Employee from a personal insurance policy or to any other income or benefit the Employee was receiving prior to becoming disabled. It shall include any vacation pay received by the Employee during his benefit payment period and any benefit or income the Employee is entitled to receive regardless of whether the Employee applies to receive such benefit, except in the case of Canada Pension benefits while on Medium Term Disability.

It is understood that it is in the employee's best interest to apply for CPP Disability benefits; however the City agrees not to withhold benefits if an employee does not apply for CPP Disability benefits prior to eligibility for LTD. The Union and the employee agree not to hold the City harmless should an application not be made.

6) Payment of Benefit

A Totally Disabled Employee will receive the benefit specified under Amount of Benefit, subject to any provisions for reduction, termination or exclusion of benefits contained in this Plan.

Payments for Short Term Disability, Medium Term Disability and Long term Disability will be made by the Employer via normal payroll procedures.

***The Parties recognize that the current biweekly payment practice is appropriate and will make best efforts to incorporate this practice into the document at the earliest opportunity.*

7) All Source Limitation

If the Employee's Long Term Disability benefit, as calculated under Amount of Benefit, plus income from all of the sources specified under Other Income, exceed 80% of the Employee's Pre-Disability Rate of Pay, then the Employee's Long Term Disability benefit will be reduced by such excess amount.

If an Employee is participating in a Rehabilitation Program as specified under Rehabilitation, the All Source Limitation shall be calculated at 100% of the Employee's Pre-Disability Rate of Pay, taking into account the Employee's Medium Term or Long Term Disability benefit as calculated under Amount of Benefit, income from all of the sources specified under Other Income, plus income earned under the Rehabilitation provision of this Plan.

8) Other Income

The following benefits or payments will be considered Other Income. With the exception of (a), only those benefits or payments resulting from the Employee's Total Disability will be considered Other Income, if on or after the date the Employee became Totally Disabled, the Employee begins to receive such benefits or payments or would be entitled to receive them had the Employee made satisfactory application.

- (a) Earnings or payments from any employer, including severance payments and earnings from self-employment, but excluding earnings from an approved Rehabilitation Program as specified under Rehabilitation.
- (b) Benefits payable under any Workers' Compensation Act.
- (c) Disability benefits payable under a public pension plan (e.g., the Canada Pension Plan or Quebec Pension Plan), excluding those benefits payable to the Employee on behalf of his dependents.
- (d) Disability benefits payable to the Employee under a public pension plan (the Canada Pension Plan or Quebec Pension Plan) on behalf of his dependents.
- (e) Disability benefits payable under any other group, association or franchise insurance plan.

- (f) Disability benefits payable under any other government plan.
- (g) Maternity/parental benefits payable under the Employment Insurance benefit.
- (h) Retirement benefits provided by an employer and/or a government.
- (i) Income replacement indemnity payable under any automobile insurance plan or policy to the extent permitted by law.
- (j) Earnings recovered through a legally enforceable cause of action against some other person or corporation in accordance with the provisions under Third Party Liability.

When determining the amount of Other Income, the following will apply:

- (a) Any benefits not payable on a monthly basis will be converted to a monthly basis.
- (b) Any government awards that are not payable solely due to incomplete application by the Employee, or the Employee's failure to complete an application, will be estimated and taken into account.
- (c) For disability benefits payable under a public pension plan, the only changes which are taken into account are those resulting from a change in dependent status or an error in determining the original benefit amount.
- (d) Any changes due to a cost of living increase will be excluded.

9) Claims Submission

The Employer recognizes that where it has a legitimate basis to insist that employees provide satisfactory medical verification for their absences and/or fitness to return to work, its right is not absolute. Therefore, medical verification may be required by the Employer, on a case by case basis, for Short Term Disability benefits if the employee has a record of excessive illness and/or injury time off, or there is sufficient evidence to cast doubt on the need for such time off. Medical verification may include a Physician's note and/or completion of the Employer's Occupational Fitness Assessment form by the Employee's attending Physician.

The Employee is responsible for any charges related to the completion of the Physician's note and/or Employer's Occupational Fitness Assessment form. Short Term Disability benefits may be withheld by the Employer until medical verification is submitted.

An Employee is required to complete an Application for Disability Benefits form for Medium Term Disability benefits. The Employee is required to attend a Physician within eight calendar days of the Date of Disability and have the Physician complete the "Attending Physician's Initial Statement" included in the Application for Disability Benefits form for Medium Term Disability benefits. If the Physician is seen beyond the eighth day of disability, this date will become the date of eligibility for Medium Term Disability benefits. The Employee is responsible for any charges assessed by a Physician for the completion of the Application for Disability Benefits form.

Proof of disability through completion of the Application for Disability Benefits form for Medium Term Disability benefits must be provided to the Employer's designated disability claims adjudicator within:

- (a) 15 calendar days of the Date of Disability or the date the Employee is advised in writing by the Workers' Compensation Board that his claim has been rejected or terminated, or
- (b) on the date the Employee returns to work,

whichever occurs first.

Failure to furnish such proof within this time will not invalidate nor reduce any claim if it is shown that it was not reasonably possible to furnish such proof, and that such proof was furnished as soon as reasonably possible, but under no circumstances will a claim for Medium Term Disability benefits be processed if the Application for Disability Benefits form is not provided to the Employer's designated disability claims adjudicator within 30 calendar days of the Date of Disability.

During Medium Term Disability and Long Term Disability, the Employer may request or require additional medical verification, such as an occupational fitness assessment, functional capacity evaluation and/or independent medical examination to support continued eligibility for or continuation of benefits under this Plan. The charges for this additional medical verification will be paid by the Employer.

An Employee who is in receipt of Long Term Disability benefits will be required to immediately apply for Canada Pension Plan disability benefits as directed by the Employer or the Employer's designated disability claims adjudicator of the Plan. If the initial application for Canada Pension Plan Disability benefits is not successful, the Employee must exhaust Step 1 of the appeal process by filing a request to Social Development Canada for reconsideration of the decision. The Employee is responsible for any charges assessed by a Physician for completing and supplying the medical information required to support their Canada Pension Plan application. The Employer is responsible for any charges assessed by a Physician for completing and supplying the medical information required for Step 1 of the appeal process. The Employee shall provide proof of acceptance or declination of their application for Canada Pension Plan disability benefits to the Employer. If the Employee fails to apply for Canada Pension Plan disability benefits, refuses to exhaust Step 1 of the appeal process, or does not supply the Employer or the Employer's designated disability claims adjudicator with proof of acceptance or declination, the Employer may estimate the Employee's Canada Pension Plan disability award and reduce the Employee's Long Term Disability benefit by such estimate.

10) Exclusions and Limitations

Benefits will not be paid when any of the following situations occurs:

- (a) The Employee is not under continuing medical supervision and treatment appropriate for the nature of disability.
- (b) Total Disability is due to bodily injury resulting directly or indirectly from insurrection, war, service in the armed forces of any country or participation in a riot.
- (c) Total Disability is due to an injury sustained while engaged in any occupation or employment for wage or profit, unless the Employee's claim has been denied by Workers' Compensation.
- (d) Total Disability is due to participation in or a consequence of having participated in the commission of an offence under the Criminal Code of Canada.
- (e) The Employee is incarcerated in a penitentiary or jail.
- (f) Total Disability is due to cosmetic surgery or treatment, unless such surgery or treatment is attributable to an injury or illness.
- (g) The Employee is on maternity leave of absence or could be placed on such leave by the Employer according to any maternity leave provisions in the relevant government legislation. An Employee who becomes Totally Disabled due to any cause prior to such maternity leave of absence is eligible for benefits. However, once such disability extends into the maternity leave of absence, benefits are suspended for the duration of the maternity leave.

Any portion of the maternity leave of absence subsequent to the onset of Total Disability will be applied towards completing the Qualifying Period.

An Employee who is unable, because of Total Disability, to return to work as scheduled after a maternity leave of absence, whether such disability arose prior to or during the maternity leave of absence, will become eligible for commencement or continuation of disability benefit payments on her intended date of return to work, provided she is otherwise eligible for benefits.

If an Employee fails to qualify for maternity leave of absence because of a failure to meet the length of service requirements in the relevant government legislation, benefits will not be payable for Total Disability due to any cause during any leave of absence agreed upon by the Employer and Employee.

- (h) Total Disability occurs while the Employee is on leave of absence or suspension. Benefits for an Employee who becomes Totally Disabled while on leave of absence or suspension will commence on the first day the Employee would otherwise have returned to work with the Employer except for reason of the disability.
- (i) The Employee is on strike or locked-out by the Employer, except when the Employee has completed the Qualifying Period prior to 12:01 a.m. on the date that such strike or lock-out commences. Benefits for an Employee who becomes Totally Disabled while on strike or locked-out by the Employer will commence on the first day the Employee would otherwise have returned to work with the Employer except for reason of the disability.
- (j) The Employee resides outside Canada for more than six months of the calendar year.

11) Termination of Benefits

Disability benefits terminate on the earliest of the following situations:

- (a) The Employee is no longer Totally Disabled.
- (b) The date the Employee reaches age 65.
- (c) The date the Employee dies.
- (d) Termination of the Employee for cause, unless the Employee is in receipt of, or eligible for, Medium Term Disability benefits immediately prior to the termination of employment. An Employee terminated for cause will be eligible for Medium Term Disability benefits only, subject to all other provisions of this Plan.
- (e) The date the Employee fails to take a Medical Examination requested by the Employer.
- (f) After 8 weeks of Total Disability only, the date the Employee refuses to, or ceases to, actively and co-operatively participate in a Rehabilitation Program approved and recommended by the Employer.
- (g) For temporary full-time Employees only, following exhaustion of Short Term Disability and Medium Term Disability benefits.
- (h) The date the Employee reaches the maximum unreduced retirement pension benefit, defined as the earlier of 35 years of contributory service or upon reaching age 65, under the Municipal Pension Plan, providing the maximum unreduced retirement pension benefit is equal to or greater than the disability benefit under this Plan.

If a Totally Disabled Employee is in receipt of Long Term Disability benefits and is terminated for non-culpable reasons, the Employee can continue to access Long Term Disability in accordance with the provisions of this Plan.

12) Third Party Liability

Where an Employee becomes Totally Disabled and has a cause of action against a third party for income lost as a result of the disability, the Employee shall repay, out of any recovery for lost income from the third party, all monies paid out by this Plan on account of such Total Disability, up to but not exceeding the full amount of any such recovery from the third party or the amount of benefits received by the Employee under this Plan, whichever is less. If in the final disposition of such claim against the third party, whether by judgment or negotiated settlement of such claim, there is found or determined to be a division of liability between the Employee and third party, the Employee shall only be obliged to repay to the Employer the same percentage of the lesser of such recovery or the amount of benefits as a percentage of fault ascribed to the third party.

If a lump sum payment is made under judgment or settlement for loss of future income or earning capacity, the Employer will be entitled to make a determination of the amount of compensation this represents on a monthly basis and to reduce the benefits payable under this Plan for each month after the judgment or settlement by the amount of the Employee's overcompensation.

Where an Employee's Total Disability arises out of an accident where a third party is responsible, and where, in the opinion of the Employer's legal counsel, a valid claim exists, the Employer shall be subrogated to the Employee's claim and the Employee will enter into and execute an assignment of all right of action, sufficient for the Employer to carry on the suit or action in the Employee's place and stead, and the Employee shall give such evidence and render such assistance at the trial or otherwise as may be necessary to prosecute the action successfully. As a condition of benefit entitlement, an Employee must sign a reimbursement agreement with the Employer within 21 calendar days from date the request is received by the Employee.

Upon full reimbursement to the Employer of all monies paid as a result of Total Disability, the Employer will ensure the Employee has all rights and entitlements under this Plan and under the Gratuity Plan of the City of Vancouver as though the absence had not occurred.

13) Rehabilitation

Rehabilitation shall be deemed to include graduated return to work programs, transitional duties, temporary alternate work assignments, work hardening activities and retraining programs, or a combination thereof, which the Employee is medically capable of performing.

Rehabilitation Programs may be developed and/or recommended by the Employer, Union, Physician or Employee. The Program must be approved by the employee's physician and will be subject to final approval by the Employer. After an Employee has been Totally Disabled for 8 weeks, participation in a recommended Rehabilitation Program is mandatory; prior to 8 weeks of Total Disability, a Rehabilitation Program is possible subject to the mutual agreement of the Employer, Union, Physician and Employee.

The maximum period of a Rehabilitation Program will be one year, unless the Employer specifically authorizes extensions. Rehabilitation Programs may span periods of Medium Term Disability and Long Term Disability.

If an Employee's disability prevents them from substantially fulfilling the requirements of a Rehabilitation Program, the program may be adjusted with the approval of the Employer. If an Employee is unable to participate in a Rehabilitation Program for medical reasons, or if there is no approved Rehabilitation Program available for the Employee, the Employee will be eligible for Medium Term Disability or Long Term Disability benefits as described under this Plan. However, the Employee may be required to participate in retraining or work hardening in order to facilitate their return to work, providing they are medically able to do so.

After 8 weeks of Total Disability, if an Employee refuses to participate in a recommended Rehabilitation Program or if an Employee is not actively and cooperatively participating in a recommended Rehabilitation Program for which the Employee is medically able to do so, Medium Term Disability and Long Term Disability benefits will terminate and the Employee's coverage under this Plan will terminate.

While participating in a Rehabilitation Program, the Employee will have access to the following Plan enhancements:

- (a) An Employee who is engaged in a Rehabilitation Program that involves actively returning to work will be eligible to receive their full Pre-Disability Rate of Pay or the posted rate for the position, whichever is greater, for all hours worked in the Rehabilitation Program, regardless of the type of work assigned. The balance of time in the Rehabilitation Program where the Employee is not actively at work will be paid the applicable prorated Medium Term Disability or Long Term Disability benefit, as specified under Amount of Benefit.
- (b) The period of Medium Term Disability (normally 26 weeks) and/or the own occupation period of Long Term Disability will be extended by an amount equal to the time worked by the Employee under an approved Rehabilitation Program while in receipt of Medium Term Disability or Long Term Disability benefits.
- (c) An Employee who has completed a Rehabilitation Program and has been permanently placed in a lower paid position will have their Pre-Disability Rate of Pay protected while in the position for the remaining balance of the period of Medium Term Disability and the own occupation period of Long Term Disability, to a maximum of one year. At the end of the rate protection period, the Employee will revert to the normal classified rate of pay for the position occupied.

14) Successive Disability

If a Totally Disabled Employee is in receipt of Medium Term Disability benefits, subsequently returns to work in their Normal Occupation or other assignment unrelated to the Employee's disability or accommodation for the disability as assigned by the Employer, for less than 30 calendar days and suffers a relapse of the previous illness or injury or a new illness or injury, the first three Scheduled Work Days of absence will be considered Short Term Disability and will be paid according to the Amount of Benefit provision. If the successive disability continues beyond three Scheduled Work Days, then the Employee will have access to the unused portion of the 26 week Medium Term Disability period, followed by Long Term Disability.

If a Totally Disabled Employee is in receipt of Long Term Disability benefits, subsequently returns to work in their Normal Occupation or other assignment unrelated to the Employee's disability or accommodation for the disability as assigned by the Employer, for less than 30 calendar days and suffers a relapse of the previous illness or injury or a new illness or injury, the Employee will have access to the unused portion of the two year own occupation definition of disability under Long Term Disability, and will continue to receive Long Term Disability benefits if they satisfy the any occupation definition of disability under the Plan.

15) Rights Under the Plan

This Plan shall not give any Employee any right to be retained in the employment of the Employer.

16) Recourse

No person shall have any recourse under any provision of this Plan against any officer or Employee of the Employer, and all such officers and employees shall be free from all liability under the Plan.

17) Misstatements

If the age of any Employee is found to be incorrectly stated, the Employer is empowered to make or cause to be made adjustments to disability benefits paid or payable to the Employee under this Plan, including recovery of any benefits overpaid to the Employee.

18) Appendix A

Dispute Resolution Process

The Dispute Resolution Process will deal with both administrative issues and medical issues, arising out of a particular claim for benefits under Medium Term Disability or Long Term Disability, as detailed below. In the event there is a dispute as to whether an issue is administrative or medical, this dispute will be settled under the Administrative Disputes process.

Administrative Disputes

Administrative disputes arise when the Union feels that through the administration and interpretation of this Plan document, benefits have either been rejected, suspended, or terminated pursuant to a particular claim for benefits as a result of non-medical findings.

Each dispute (Admin Dispute) must be communicated in writing to the Employer within 30 calendar days of the Employee being made aware of a decision on the application for disability benefits in writing. In an attempt to agree on a joint statement of facts, a pre-hearing will take place within 10 calendar days of the Admin Dispute being communicated in writing to the Employer. The primary focus of the pre-hearing meeting is to discuss possible resolutions and, if not successful, to agree on the facts, the evidence, and to exchange documents and particulars prior to the hearing date. The Admin Dispute will then be scheduled for a hearing in front of an industry trouble-shooter within 30 calendar days of the pre-hearing meeting.

All presentations at the hearing will be short and concise and will include a comprehensive opening statement. The Employer and Union will make limited use of authorities during their presentation. The Employer and Union will also attempt to agree on a joint brief of documents and statement of facts and only call evidence where necessary.

No legal counsel or an external third party will be used, other than a representative from CUPE National providing the CUPE National representative is not a lawyer or legally trained. The industry trouble-shooter may attempt to mediate the Admin Dispute. If unable to do so, then a decision as contemplated herein will follow:

- (i) the decision shall be rendered in 24 hours;
- (ii) if requested by either the Employer or Union, a written decision shall be rendered within ten days of the hearing with reasons of the decision.

The decision of the industry trouble-shooter will be without prejudice and precedent, and not used or introduced in any other proceedings. The decision or award of the industry trouble-shooter is final and conclusive and is not open to question or review in any administrative tribunal/board or court on any grounds whatsoever.

The Employer and Union will equally share the costs of the fees and expenses of the industry trouble-shooter.

Medical Disputes

A medical dispute (Medical Dispute) arises when the Employee and Union dispute the decision of the Employer's designated disability claims adjudicator regarding a rejection, suspension or termination of benefits pursuant to a particular claim, where the decision of the Employer's designated disability claims adjudicator is based on medical facts as they relate to the Employee being Totally Disabled.

Disputes will be advanced and scheduled on a first-in basis. Medical Disputes must be communicated in writing to the other party within 20 calendar days of the Employer's designated disability claims adjudicator's written decision.

Step 1

The Medical Review Committee will be composed of three Physicians; one designated by the Union, one by the Employer, and a third agreed to by the first two Physicians. It is understood that the Medical Dispute shall be finally and conclusively determined by the Medical Review Committee.

Decisions rendered by the Medical Review Committee shall not be subject to any recourse through the grievance procedure, and are binding on the parties as it relates to the circumstances and/or question before the Medical Review Committee.

It will be the responsibility of all parties to forward their respective information to the Medical Review Committee no later than 20 calendar days before the review is scheduled to commence. Information submitted after this date may not be given full consideration or any consideration by the Medical Review Committee.

All parties are urged to work toward an agreed statement of facts, and/or an agreed framed question for the Medical Review Committee. Either party may also submit information pertaining to the file, provided such information has been disclosed to the other party prior to its submission to the Medical Review Committee. The Medical Review Committee will conduct a review of all medical information on the file and may require the Employee to attend a Medical Examination. The Medical Review Committee will communicate their decision in writing, with reasons, to both parties as quickly as possible.

The Employer and the Union will jointly and equally fund the cost of the Medical Review Committee (the Costs), and will be billed separately, however the unsuccessful party shall reimburse the successful party of their share of the Costs within 30 calendar days of the determination.

Step 2

The step 1 decision of the Medical Review Committee will be final and binding, but it is understood that the step 1 decision may be reviewed at this step 2 following a period of 6 months providing such review is initiated by the Union by submitting a request in writing to the Employer within 18 months following the date of the step 1 decision. Grounds for this step 2 review (Review) are limited to changes in the Employee's medical condition that change the prognosis for the Employee's return to work or level of benefit entitlement.

Additional information will be provided by the Employee's and/or Employer's Physician for further consideration within 30 calendar days of the Review being initiated. This information should include employee capabilities and limitations and details around the physical demands of the job. This information will be reviewed by the Physician agreed to by the Union and Employer from the original Medical Review Committee at step 1, or an agreed to alternate Physician in the event the agreed to Physician from the original Medical Review Committee is unable to act, and a written decision will be issued.

The cost for this Review by the agreed to Physician from the original Medical Review Committee, or the agreed to alternate Physician, will be shared equally between the Employer and Union, and will be billed separately; however the unsuccessful party shall reimburse the successful party of their share of the Costs within 30 calendar days of the determination.


Each particular claim for benefits is limited to one appeal at the Step 2 Review level.

The Step 2 Review is final and binding and is not open to question or review in any administrative tribunal/ board or court on any grounds whatsoever.

Signed December 11, 2015.

ON BEHALF OF THE EMPLOYER:

ON BEHALF OF CUPE LOCAL 1004:



Kevin Jeske

