

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**The Crown in Right of Ontario represented by Ministry of Health & Long-Term Care**

**“the Crown”**

**AND**

**The Ontario Agency for Health Protection and Promotion**

**“the Agency”**

**WHEREAS:**

The Crown will transfer the governance and management of the Ontario Public Health Laboratories (OPHL) to the Ontario Agency for Health Protection and Promotion (the Agency);

The Crown advised the Ontario Public Service Employees Union (OPSEU) on November 15, 2006 that the Ministry was planning the transfer of the OPHL to the Agency;

The Crown advised OPSEU that successor rights would apply to the transfer pursuant to Schedule “D” to Bill 158, of the *Public Service of Ontario Statute Law Amendment Act*;

The Crown and the Agency acknowledge that the program transfer is a sale of business for the purposes of the *Labour Relations Act*, and shall provide the bargaining agent a copy of this Agreement and shall comply with the requirements of the *Labour Relations Act*, as amended;

Subject to the transfer of the OPHL to the Agency on the changeover date, the Agency shall become the successor employer and shall assume all operations related to the transfer;

THE PARTIES therefore agree as follows:

## **ARTICLE 1 - PRINCIPLES**

- 1.1 It is agreed that it is an important goal of the parties to ensure the continuation of the best possible programs and services within available resources for the clients of the OPHL who will become clients of the Agency.
- 1.2 In achieving that goal, the parties agree that it is important to ensure a smooth transition in relation to human resource management issues.
- 1.3 The parties agree to provide fair treatment of all employees of the OPHL through this Memorandum of Agreement (the Agreement) and also to provide as much information and clarity as possible to current employees of the OPHL in an effort to create a level of morale among employees, which would be conducive to the provision of excellent programs and services.
- 1.4 Employees from the OPHL shall have the opportunity to follow their work as services transfer to the Agency.

## **ARTICLE 2 – DEFINITIONS**

- 2.1 “Agency”:- The Ontario Agency for Health Protection and Promotion and its Board of Directors.
- 2.2 “Ontario Public Health Laboratories”:- All health laboratories operated by the Ministry of Health & Long-Term Care in the province of Ontario.
- 2.3 “Changeover Date (transfer date)”:- The date that the Agency assumes the governance and management of the OPHL pursuant to the Minister of Health & Long-Term Care’s approval and that laboratory services and programs are transferred from the Ministry to the Agency.
- 2.4 “Program Transfer”:- The transference of programs and services and staff as per Schedule A from the OPHL to the Agency.
- 2.5 “Regular Employee(s)” (formerly known as “Classified Employee(s)”) means a public servant(s) who has been appointed under Section 32 of *The Public Service of Ontario Act, 2006*, other than for a fixed term, immediately prior to the changeover date and who is listed in Schedule A attached hereto.
- 2.6 “Fixed Term Employee(s)” (formerly known as “Unclassified Employee(s)”) means a public servant(s) who has been appointed under

Section 32 of *The Public Service of Ontario Act, 2006*, for a fixed term, immediately prior to the changeover date, and who is listed in Schedule A attached hereto.

- 2.7 "Employee(s)" includes both regular employee(s) and fixed term employee(s) as defined in this Article who are members of the OPSEU bargaining unit employed at the OPHL.

### **ARTICLE 3 – JOB OFFERS ON TRANSFER DATE**

- 3.1 Prior to the changeover date, the Agency agrees that every employee of the OPHL listed in Schedule A attached hereto will receive an offer of employment from the Agency, that is consistent with the terms of the current collective agreement between Management Board of Cabinet and OPSEU. Schedule A is to be mutually agreed to by the parties and to include names, home position title, salary/hourly rate, hours of work, seniority/continuous service dates, severance credit dates, home position and location of home position. The offer will be conditional on the program transfer taking place.
- 3.2 The offers of employment to the employees will be for employment with the Agency at the OPHL sites.
- 3.3 The detail of the job offers to be made to employees on Schedule A, shall include position title, salary/hourly rate, hours of work, seniority/continuous service date, severance credit date, home position and location of home position, provided the Agency has received the necessary information from the Crown in time to add that degree of detail in the offer.
- 3.4 The employees will receive job offers from the Agency for the home positions they held immediately prior to the changeover date. The "home position" is the position to which the employee has been permanently appointed and does not include any position to which the employee is assigned on an "acting basis". However, this provision does not prohibit the Agency from providing a job offer to an employee, that will continue his or her acting assignment after the changeover date, provided the acting assignment is in an OPHL position, and provided such offer is consistent with the collective agreement.
- 3.5 The employee status of the employees accepting such job offers with the Agency will be the same as their employee status immediately prior to the changeover date (e.g. full-time to full-time, part-time to part-time, regular to regular, fixed term to fixed term). In this respect, no employee should be in a better or worse employee status position as a result of the transfer.

- 3.6 The terms of this Agreement with respect to job offers shall apply to all employees of the OPHL listed on Schedule A.
- 3.7 An employee who refuses an offer of employment from the Agency will remain an employee of the Crown. The Agency, having discharged its agreement to provide a job offer under this agreement, has no further obligation to such employee.

**ARTICLE 4 – LONG TERM INCOME PROTECTION (LTIP)/WORKPLACE SAFETY AND INSURANCE BOARD (WSIB)**

- 4.1 An employee who has been in receipt of Long Term Income Protection for two (2) years or more at the changeover date will remain an employee of the Crown.
- 4.2 An employee who is in receipt of LTIP benefits at the time of the changeover date, and has been for less than two (2) years, will remain an employee of the Crown. If such employee is deemed fit to return to work by the appropriate medical authority(s), prior to the expiry of the two (2) year period, the Agency will make an offer of employment to that employee at that time. If the employee is not fit for work within this two (2) year period, the employee will remain an employee of the Crown.
- 4.3 An employee who is off work and in receipt of Workplace Safety and Insurance Board benefits for two and a half (2 1/2) years or more at the changeover date will remain an employee of the Crown.
- 4.4 An employee who is in receipt of WSIB benefits at the time of the changeover date, and has been for less than two and one half (2 1/2) years, will remain an employee of the Crown. If such employee is deemed fit to return to full-time or modified work by the appropriate medical authority(s), prior to the expiry of the two and one half (2 1/2) year period, the Agency will make an offer of employment to that employee at that time. If the employee is not fit for work within this two and one half (2 1/2) year period, the employee will remain an employee of the Crown.
- 4.5 An employee who is at work receiving partial WSIB benefits at the changeover date, will receive an offer of employment from the Agency consistent with the modified work program in place for that employee at that time.

## **ARTICLE 5 – ACCUMULATED CREDITS**

- 5.1 Employees who accept an offer to join the Agency shall be entitled to carry over any earned but unused accumulated credits (vacation credits, attendance credits, compensating time off (overtime), or holidays in lieu) earned with the Ministry, to the maximum allowable under the collective agreement.
- 5.2 The Ministry shall reconcile unused accumulated credit information as of the changeover date and confirm this information in writing to the Agency immediately following the date of appointment.

## **ARTICLE 6 – LEAVES OF ABSENCE**

- 6.1 An employee who accepts an offer to join the Agency and who at the time of the changeover date is on a leave of absence or is on a maternity or parental leave, will transfer employment on the changeover date and will be allowed to complete the balance of his or her leave with the Agency.

## **ARTICLE 7 – SHORT TERM SICK PLAN**

- 7.1 An employee who accepts an offer to join the Agency and who at the time of the changeover date is on short term sick leave, will transfer employment on the changeover date and will be allowed to complete his or her leave with the Agency.

If the employee, who was on short term sick leave at the time he or she transferred to the Agency, subsequently is not able to return to work and becomes eligible for OPS LTIP benefits, he or she will transfer employment back to the Crown.

If the employee is fit to return to work within a two (2) year period from the date the employee was first in receipt of the LTIP benefits, the employee will commence employment with the Agency. If the employee is not fit for work within this two (2) year period, the employee will remain an employee of the Crown.

## **ARTICLE 8 – PENSION PLAN ARRANGEMENTS**

- 8.1 Pension plan arrangements are subject to the *Pension Benefits Act*, the Public Service Pension Plan, the OPSEU Pension Plan and the Hospitals of Ontario Pension Plan.

- 8.2 The Agency is a participating employer in the Hospitals of Ontario Pension Plan and has secured from the Board of Trustees of that plan a waiver of mandatory enrolment in respect of all former Ontario public service employees it employs in OPSEU bargaining unit positions pursuant to offers of employment under this agreement.
- 8.3 The Agency agrees to participate in the OPSEU Pension Plan with respect of employees in 8.2.

#### **ARTICLE 9 – SEVERANCE PAY**

- 9.1 The employment of employees who are transferred to the Agency is not terminated or severed and the service and seniority of such employees shall be carried over to the Agency. The Crown shall not be liable to any employees who are transferred to the Agency for any payment of termination or severance pay.

#### **ARTICLE 10 – PERSONNEL FILES**

- 10.1 The Crown agrees to provide the Agency with the Human Resources File (e.g. corporate Personnel File) and Payroll File for each employee as soon as possible as the parties may agree.
- 10.2 All WSIB documents relating to employees in the possession of the Crown shall be consolidated in single employee WSIB files which shall remain the property and in possession of the Crown and shall not be transferred.
- 10.3 Employee Health files will be provided to the Agency's Occupational Health Service upon establishment and only to the extent permissible by law. The Agency will create and implement Occupational Health policies and agrees to manage these files in accordance with these newly formed policies.

#### **ARTICLE 11 – ARBITRATION**

- 11.1 A dispute arising out of the interpretation, application or administration of this Agreement between the Crown and the Agency shall be resolved as follows. The party raising the issue shall do so in writing within ten (10) days of becoming aware of its existence. The parties will meet within ten (10) days thereafter, with a view to resolving the issue. Should the parties be unable to resolve the issue within ten (10) days of such meeting, it will be referred to arbitration in accordance with the *Arbitration Act, 1991*. The arbitrator will be agreed upon by the parties, failing which, the arbitrator will be appointed by the Ontario Superior Court of Justice, upon application by one party with notice to the other. The costs of the

arbitration will be divided equally between the parties to the arbitration, unless otherwise allocated by the arbitrator. The decision of the arbitrator shall be final and binding on the parties and not subject to appeal.

#### **ARTICLE 12 – OUTSTANDING GRIEVANCES/COMPLAINTS**

- 12.1 The Crown shall retain responsibility with respect to any outstanding grievances, complaints, arbitrations or other proceeding or cause of action related to the OPHL employees which are outstanding as of the employees' effective date of employment at the Agency.
- 12.2 In dealing with any grievance, complaint, arbitration or other proceeding or cause of action described in subsection 12.1 which may potentially create liabilities for the Agency, the Crown shall, on an ongoing basis, consult with and take into account the views of the Agency and shall, if so requested by the Agency, provide all relevant information respecting such matters to the Agency.
- 12.3 The Agency will cooperate with the Crown in releasing witnesses from work or providing other reasonable assistance in the event that a proceeding occurs after the effective date of employment, provided that the Crown will reimburse the Agency for any reasonable cost associated therewith.

#### **ARTICLE 13 – GENERAL**

- 13.1 The parties agree that this Agreement and its application is contingent upon the parties agreeing, pursuant to a separate agreement, on all financial issues and other matters relating to the transfer of OPHL to the Agency and executed by the duly authorized officers.

HR Agreement (OPHL) - OPSEU

The parties acknowledge that this Agreement will form part of a comprehensive agreement governing all matters related to the transfer of the OPHL to the Agency and such comprehensive agreement is subject to ratification by the Agency and the Crown.

Dated in Toronto this 30<sup>th</sup> day of September, 2008.

**For the Crown**

Ronald S. Gagnon

[Signature]

**For the Ontario Agency for Health  
Protection and Promotion**

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