

This agreement and declaration of trust made as of the 23<sup>rd</sup> day of November, 1999.

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**YORK UNIVERSITY FACULTY ASSOCIATION**  
(hereinafter referred to as "YUFA")

WHEREAS YUFA is the collective bargaining agent for the employees of York University ("the University"); and

WHEREAS the University and YUFA have been, from time to time, and still are, bound by a collective agreement requiring, among other things, contributions to be made for the purpose of providing health, welfare, dental and related benefits to employees, Retirees and others; and

WHEREAS the University and YUFA were parties to a Collective Agreement requiring, among other things, payments by the University to be made to YUFA as a result of a suspension of contributions to a pension plan "the pension savings"; and

WHEREAS YUFA together with the Association of Retired Faculty of York University ("ARF") representing retirees have determined to use a portion of the pension savings to provide health and welfare benefits in addition or supplemental to any such benefits as specified in a Collective agreement for Retirees, from time to time; and

WHEREAS to give effect to that purpose, YUFA wishes to create a trust and establish a fund now known as York University Retired Faculty and Librarian Benefit Trust Fund ("the Fund"), which will be administered in conjunction with Retiree representatives; and

WHEREAS ARF currently acts as a representative of Retirees; and

WHEREAS YUFA contemplates that future Collective agreements will continue to contain similar provisions and that the Fund will be able to continue to provide additional or supplemental benefits and that this Agreement will enure to the benefit of current Retirees and future Retirees; and

WHEREAS YUFA agrees that there may be periods of time when no Collective agreement exists which imposes an obligation upon the University to provide benefits to Retirees and that shall not be deemed to vitiate the continuance of the Fund; and

WHEREAS YUFA intends that the benefits to be provided pursuant to this Agreement shall be in addition or supplemental to benefits to be provided to Retirees by the University and not in substitution therefore; and

WHEREAS the parties now wish to set out the terms of the trust and continue the Fund.

NOW THEREFORE, in consideration of these premises and mutual covenants contained herein, the parties do hereby agree as follows:

## **ARTICLE I - RECITALS**

### **1.01 Recitals**

The parties acknowledge and agree that the recitals contained herein are true in substance and in fact.

## **ARTICLE II - DEFINITIONS**

Unless the context or subject matter otherwise requires, the following definitions shall apply to this Agreement, in rules or regulations adopted pursuant thereto.

**"Acceptance of Trusts"** shall mean the instrument in the form attached hereto as Appendix "A".

**"Actuary"** means such person, firm or corporation as may, from time to time, be appointed by the Trustees, for the purpose of advising and assisting the Trustees in the implementation and maintenance of an actuarially sound benefit plan, provided that such person, or one of the members of such firm or corporation, is a Fellow of the Canadian Institute of Actuaries.

**"Administrator"** means such person, firm or corporation as may, from time to time, be appointed or hired by the Trustees, for the purpose of administration of the Fund and Benefit Plan, in accordance with the provisions of this Agreement. YUFA or ARF or a third party may be the Administrator.

**"Agreement and Declaration of Trust"** or **"Agreement"** means this instrument, including any amendments or modifications thereof.

**"Auditor"** means such person, firm or corporation as may, from time to time, be appointed by the Trustees as auditor of the Fund, provided that such person, or at least one principal of such firm or corporation, is a member of the Canadian Institute of Chartered Accountants.

**"Bank"** means a bank which may lawfully carry on business in Canada.

**"Benefits"** means health, welfare, life insurance and auxiliary benefits and shall, without limiting the generality of the foregoing, include such natural or accidental death benefits, disability or dismemberment benefits, weekly income for sickness or accident, hospital, surgical, medical, dental, eye glass, pharmaceutical, anaesthetic, diagnostic, and such other benefits, as may be provided from time to time by the Benefit Plan. Nothing herein shall require the provision of any specific benefit to any person except as adopted in the Benefit Plan.

**"Benefit Plan"** means the plan, rules and regulations and procedures established from time to time by the Trustees for the provision of or payment of Benefits from the Fund, for the requirement to make or the waiver of contributions by Retirees all of which must be approved by YUFA.

**"Collective Agreement"** means any written collective agreement by and between the University on the one hand, and YUFA on the other hand, which provides, among other things, for health, welfare, life insurance and auxiliary benefits, with any amendments, supplements, modifications

or renewals thereof.

"Consultant" means such person, firm or corporation as may, from time to time, be appointed by the Trustees, for the purpose of consulting with and advising the Trustees with respect to the Benefit Plan.

**"Contributions"** means payments to the Fund:

- (a) as initially allocated from the pension savings by YUFA for the benefit of retirees; and
- (b) as may be made by the University or a Retiree or other source permitted by this Agreement.

**"Eligibility Requirements"** means the rules, regulations and procedures established, from time to time, by the Trustees for determining the eligibility, or the discontinuance of eligibility, for Benefits and approved by YUFA.

**"Employer"** means York University so long as it is bound by a Collective Agreement, or is a party to, or bound by, any memorandum of understanding, or memorandum of agreement, or similar instrument, with YUFA.

**"Insurance Company"** means an insurance company licensed to carry on business in Canada.

**"Investment Counsel"** means a person, firm or corporation to be appointed by the Trustees, to act in the capacity of financial adviser regarding the investment and management of the assets of the Fund.

**"Legal Counsel"** means a person or firm to be appointed by the Trustees for the purpose of consulting with and advising them with respect to the legal aspects of the Fund and Benefit Plan.

**"Retiree"** means any person formerly covered by a Collective Agreement who is in receipt of a pension provided by the University, and includes persons entitled to a pension at the effective date of this Agreement and persons who subsequently become so entitled.

**"Trust Company"** means a trust company which is licensed to carry on business in any province in Canada.

**"Trust Fund" or "Fund"** means all of the assets of the York University Retired Faculty and Librarians Benefit Trust Fund consolidated with all funds received, from time to time, by way of Contributions, together with all increments, earnings and profits from the administration of the said Fund.

**"Trustees", "Board" or "Board of Trustees"** means all persons designated from time to time as Trustees pursuant to the terms of the Agreement, who have executed the Acceptance of Trusts attached hereto as Appendix "A".

## **ARTICLE III PURPOSE AND CONTINUATION OF TRUST FUND**

### **3.01 Name and Title.**

There is hereby contained and maintained the fund known as "York University Retired Faculty and Librarian Benefit Trust Fund", and the Trustees shall jointly hold property, enter into contracts and act in all matters on behalf of the Fund under the name of "York University Retired Faculty and Librarian Benefit Trust Fund". The title to all assets of the Fund shall be jointly vested in and remain exclusively with the Trustees, except as otherwise provided herein.

### **3.02 Purpose**

The Fund is continued and maintained, and the Trustees agree to receive, hold and administer the Fund for the purpose of providing such Benefits, as may be appropriate in accordance with the Benefit Plan adopted from time to time by the Trustees and approved by YUFA after consultation with ARF.

### **3.03 Binding Effect**

It is hereby agreed that the Agreement is intended to be binding upon the Trustees, YUFA, ARF, the Retirees, their respective heirs, executors, administrators, successors and assigns.

### **3.04 Payments to the Fund**

All payments into the Fund made from time to time, together with the income therefrom, shall constitute on receipt by the Trustees, a trust fund to be administered by the Trustees in accordance with the term of this Agreement and the Benefit Plan.

### **3.05 Right or Interest**

No Retiree nor any other person, association, firm or corporation shall have any right, title or interest in or to the assets of the Fund, except as specifically provided by this Agreement.

### **3.06 Seizure or Attachment**

Subject to the provisions of the Benefit Plan, no monies, property or equity of any nature whatsoever, in the Fund, or policies or Benefits or monies payable therefrom, shall be subject in any manner by any Retiree or person claiming through such Retiree, or, otherwise, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, garnishment, execution, mortgage, lien or charge. If by reason of any seizure or sale or any attempted sale under any legal, equitable or other process or by way of any suit or proceeding, any Benefit or refund of Contributions becomes payable to any person other than the beneficiary for whom the same is intended, as provided in the Benefit Plan, the Trustees shall have the power to withhold payment of such Benefit or Contributions refund to such beneficiary until such anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, garnishment, mortgage, lien, charge or seizure or other legal process is cancelled or withdrawn, and the Trustees shall have the right to use and apply the amount of such Benefit or Contributions refund during such period, as the Trustees may deem best for the support and maintenance of such beneficiary.

### **3.07 Responsibility, Etc.**

Neither YUFA, nor ARF, nor or any Retiree, shall be liable or responsible for any debts, liabilities or obligations of the Fund, except as set out in the this Agreement and Benefit Plan.

### 3.08 ARF Ceasing to Represent Retirees

In the event ARF ceases to exist, or to be recognized by YUFA as the representative organization of retirees, or in the event ARF no longer wishes to discharge the powers and duties set out in this Agreement, then:

(a) in the event there is another organization which is recognized by YUFA as the representative organization of Retirees (the new Retiree organization"), YUFA shall request such new Retiree organization to act in the place of ARF.

Acceptance of such organization to replace ARF, and upon written notice to ARF to this effect, ARF shall cease having authority pursuant to this Agreement and it shall be replaced by the new Retiree organization which has all powers and duties as set out in this Agreement, including the right to appoint Trustees;

(b) if there is no new Retiree organization, or if such organization is unable or unwilling to carry out the powers and duties of ARF as set out in this Agreement, YUFA shall assume such powers and duties of ARF as set out in this Agreement, including the right to appoint Trustees, and this Agreement shall be read consistent with such assumption.

## **ARTICLE IV - TRUSTEES**

### 4.01 Board of Trustees

There shall be five (5) Trustees to administer the Benefit Plan in accordance with the terms of this Agreement. Two (2) Trustees shall be appointed in writing by ARF (hereinafter referred to as "ARF Trustees") and three (3) Trustees shall be appointed in writing by YUFA (hereinafter referred to as "YUFA Trustees"), one of whom shall be a senior member as designated in the YUFA Constitution.

### 4.02 Acceptance of Trusts

Each Trustee, after signing an Acceptance of Trusts in the form set forth in Appendix "A" attached hereto, shall be deemed to accept the trusts created and established by this Agreement and consent to act as a Trustee.

### 4.03 Duration of Office

Each Trustee shall continue to serve until his or her death, incapacity, resignation, expiry of any term of their appointment, or removal, as herein provided, provided however, a Trustee may not serve more than six (6) consecutive years.

### 4.04 Resignation, Incapacity or Death

In the event of the incapacity or resignation of a Trustee, such Trustee shall be fully discharged from all future duties and responsibilities in respect of the Agreement, upon notice in writing being sent by him or her, or on his or her behalf, to the Office of the Fund and to the remaining Trustees and to the party designating him or her. The notice shall state the date of such resignation or incapacity and shall be effective as of the later of that date and the date on which he or she ceases acting as a Trustee. In the event of the death of a Trustee, his or her heirs, administrators, executors and assigns shall be fully discharged from all future duties and responsibilities in respect of this Agreement as of the date of his or her death.

#### 4.05 Removal of ARF Trustees

ARF, after first sending written notice to an ARF Trustee, the remaining Trustees and to the Office of the Fund, may remove, at any time, any ARF Trustee for any reason. Such removed Trustee shall be deemed to no longer be a Trustee, effective as of the date the notice is mailed by prepaid registered mail to such Trustee.

#### 4.06 Removal of YUFA Trustees

YUFA, after first sending written notice to a YUFA Trustee, the remaining Trustees and to the Office of the Fund, may remove, at any time, any YUFA Trustee for any reason. Such removed Trustee shall be deemed to no longer be a Trustee, effective as of the date the notice is mailed by prepaid registered mail to such Trustee.

#### 4.07 Removal at Request of Trustees

A majority of the Trustees may request that the party appointing any Trustee remove such Trustee for just cause or incompetency. Such request shall be sent to ARF, YUFA and to the Trustee to be removed. In the event that the party does not remove such Trustee within fifteen (15) days of the receipt of such request, any of the other Trustees may make application to the Superior Court of Justice to effect such removal.

#### 4.08 Return of Records, Etc.

Any Trustee resigning or being removed and the personal representative of any deceased Trustee, shall forthwith turn over to his or her successor Trustee, or if no successor is immediately appointed, to the other Trustees, any and all records, books, documents, money and other property and assets in his or her possession, forming part of the Fund or incidental to his or her duties as a Trustee under this Agreement relating to the administration of the Fund.

#### 4.09 Replacement Trustee

In the event that any Trustee shall die, become incapacitated, resign or be removed, a successor Trustee shall immediately be designated by ARF in the case of an ARF Trustee, or designated by YUFA in the case of a YUFA Trustee. Any successor Trustee so designated, as the case may be, shall immediately, upon an Acceptance of Trust being filed in writing with the Trustees and with the Office of the Fund, become vested with all the rights, powers and duties of the other Trustees under this Agreement.

#### 4.10 Notice of Meetings

The Chair may call a meeting at any time, by giving at least five (5) days' written notice of the time and place thereof to each Trustee. Such notice may be delivered in person, by registered mail, by telegram or by facsimile transmission.

Meetings of the Trustees may be held at any time without notice, if all Trustees consent thereto. Unanimous concurrence of the Trustees in any decision, as evidenced in writing, signed by them, is effective without a meeting of the Trustees.

#### 4.11 Quorum

Four (4) Trustees, two (2) of whom are ARF Trustees and two (2) of whom are YUFA Trustees, shall constitute a quorum. The decision of the Trustees shall be determined by a majority vote, unless otherwise provided for herein.

#### 4.12 Trustees' Deadlock

(a) A deadlock shall be deemed to exist whenever a majority decision cannot be reached by the Trustees on a matter that requires a new resolution by the Trustees, rather than maintaining an existing practice or provision, or where no quorum is present at meetings of Trustees called in accordance with the provisions of this Agreement.

(b) In the event of a deadlock, a meeting of the Trustees shall be called for no later than ten (10) days after the deadlock has arisen, for the purpose of resolving the matter in dispute. If the matter is not resolved at such meeting, or if no quorum is present, the Trustees will agree upon an impartial arbitrator to whom the matter in dispute shall be referred for determination. If no arbitrator has been selected by a majority of the Trustees within thirty (30) days after the deadlock has arisen, then either the ARF Trustees or the YUFA Trustees may request that the Executive Committee of YUFA appoint an impartial arbitrator.

(c) The impartial arbitrator shall proceed to hear the dispute between the Trustees within fourteen (14) days after the receipt by him or her of his or her said appointment and decide such dispute. The written ruling of this said impartial arbitrator shall be consistent with the provisions of this Agreement and the Benefit Plan and shall be binding on the Trustees.

(d) The reasonable compensation of such arbitrator and the costs and expenses (including without limitation reasonable counsel fees and reporters' fees) incidental to any proceedings instituted to break a deadlock shall be paid by the Fund. The arbitrator shall have jurisdiction to order that the reasonable costs of those parties appearing before him/her be paid by the Fund.

#### 4.13 Execution of Documents and Cheques

All documents, including cheques payable out of the Fund, shall be signed by two (2) Trustees, one (1) of whom is an ARF Trustee and one (1) of whom is a YUFA Trustee. The Board of Trustees may, however, delegate responsibility for the execution of cheques payable out of the Fund to named employees or agents of the Fund or the Administrator, provided that such named employees or agents report to the Trustees as required by them.

#### 4.14 Meetings

The Trustees shall hold at least one (1) meeting each year, which meeting shall be the Annual Meeting of the Trustees. The Chair shall call meetings on the request of a majority of Trustees by giving at least five (5) days' notice to each Trustee. The Chair shall ensure that notice for all meetings shall be given in accordance with Article 10.01 of this Agreement.

#### 4.15 Annual Meeting

At each Annual Meeting of the Trustees, among other things:

- (a) a financial statement from the Auditor shall be presented, covering the immediately preceding fiscal period of the Fund;
- (b) the Administrator shall submit its report relating to the period from the date of the last preceding Annual Meeting;
- (c) the Chair shall submit his or her report relating to the Fund for the period from the date of the last preceding Annual Meeting; and

(d) an Auditor shall be appointed.

#### 4.16 Chair and Vice Chair

The Trustees shall select from among the Trustees a Chair who shall preside at all meetings. The Trustees shall select a Vice Chair who shall act in the place and stead of the Chair in the absence of the Chair.

#### 4.17 Secretary

The Trustees shall appoint a Secretary who shall keep minutes or records of all meetings, proceedings and acts of the Trustees. Such Secretary need not necessarily be a Trustee.

#### 4.18 Fees and Expenses

Trustees shall not be entitled to any fee or payment on account of their holding office, but may be reimbursed by the Fund for all expenses which have been incurred by them in performance of their duties; provided, however, that the Board of Trustees determines that such expenses have been reasonable and necessary in the performance of such duties. For the purpose of payment of necessary expenses of Trustees, the Trustees may, from time to time, establish a schedule or tariff for expense payments to be allowed for any specific duty or duties performed, or to be performed by Trustees hereunder. The Trustees may, at the expense of the Fund, attend education conferences and seminars as are reasonably necessary to further their performance as Trustees.

### **ARTICLE V - POWERS, DUTIES AND RESPONSIBILITIES OF THE TRUSTEES**

#### 5.01 Operation and Administration of the Fund

The operation and administration of the Fund shall be the responsibility of the Trustees and they are hereby given the authorization and power so to do, subject always to the limitations and conditions contained in this Agreement.

#### 5.02 Collection of Contributions

The Trustees may use all reasonable means to collect and receive all Contributions due to the Fund, and shall, promptly after receipt, deposit such Contributions in a special Fund account, established in a Bank or Trust Company or other financial institution.

#### 5.03 Limitation of Liability of Trustees

The Trustees shall incur no liability, either collectively or individually, in acting upon any documents, data or information believed by them to be genuine and accurate and to have been made, executed, delivered or assembled by the proper parties.

#### 5.04 Persons Dealing with Trustees

All persons dealing with Trustees are released from inquiry into any decision or authority of the Trustees and from seeing to the application of any monies, securities or other property paid or delivered to the Trustees and may rely upon any document required to be executed by the Trustees which has been executed, as provided herein, as having been duly authorized.

#### 5.05 Liability and Indemnity

No Trustee shall be liable for the act or omission of any other Trustee. The Fund shall indemnify and save harmless the Trustees and each of them, of, from and against any loss,

expense, claim, demand, action or thing of any nature whatsoever, arising out of the performance or purported performance of their duties or responsibilities hereunder, except that the indemnity shall not, in any way, extend so as to protect any Trustee with respect to any matter or thing arising out of his own dishonesty, wilful misconduct or gross negligence.

#### 5.06 Liability of Trustees, ARF, YUFA, Retirees

Neither ARF, YUFA, any Retiree, nor any of the Trustees, shall be responsible or liable for:

(a) the validity of this Agreement; or

(b) any delay occasioned by any restriction or provision of this Agreement, the rules and regulations of the Trustees issued hereunder, any contract procured in the course of the proper administration of the Fund, or by any other proper procedure in such administration; or

(c) the making or retention of any deposit or investment of the Fund, or any portion thereof, or the disposition of any such investment, or the failure to make any investment of the Fund, or any portion thereof, or any loss or diminution of the Fund, except as to the particular person involved, such loss as may be due to the dishonesty, gross negligence or wilful misconduct of such person; or

(d) any of the obligations or acts of the Trustees because such Trustees are in any way associated with ARF or YUFA; or

(e) any Contributions required to be paid to the Fund, other than in the case of Retirees, their own Contributions. -21-

#### 5.07 Powers

The Trustees are hereby empowered, in addition to any other powers, as set forth or conferred by law, but subject to approval by YUFA where required by this Agreement:

(a) to adopt and administer, amend or replace the Benefit Plan for the benefit of Retirees, their beneficiaries or dependents, as the case may be, which Benefit Plan shall be set forth in writing and shall include the Eligibility Requirements, the terms of payment, Contributions to be made to the Benefit Plan by persons entitled to participate, and such other matters as the Trustees shall deem necessary to include;

(b) to adopt such procedures, by-laws, rules or regulations, as they deem necessary for the carrying out of their trusts, consistent with the provisions of this Agreement, the terms of the Benefit Plan and with the requirements of applicable provincial and federal legislation;

(c) enter into agreements with a bank, trust company, insurance company or Investment Counsel, selected by the Trustees, for the purpose of providing investment management or advice, or for the purpose of acting as a depository for safekeeping of assets of the Fund, or for any other purpose as the Trustees shall deem necessary;

(d) to pay or provide for the payment of Benefits to those persons eligible to receive the same;

(e) to pay from the Fund all reasonable expenses for collecting Contributions and administering the Fund including, but not limited to, all compensation and all reasonable and necessary costs and fees which may be incurred in connection with the employment of such legal, accounting, expert and clerical assistance as the Trustees, in their discretion, may find necessary or expedient in the performance of their duties, notwithstanding that such professional personnel or other personnel may have been, or are employed, or otherwise engaged by the Union. The Trustees shall be held completely and fully protected in acting and relying upon the opinions or advice of the aforementioned persons;

(f) to enter into any and all contracts and agreements for carrying out the terms of this Agreement for the administration of the Fund and to do all acts as they, in their discretion, may deem necessary and advisable;

(g) to compromise, settle, arbitrate and release claims or demands in favour of, or against the Fund, or the Trustees, on such terms and conditions as the Trustees may deem advisable;

(h) to establish and accumulate a part of the Fund, such reserve or reserves as, in the opinion of the Trustees, is in the best interest of the Fund;

(i) to establish procedures to be followed in filing applications for Benefits and for the furnishing and certification of evidence necessary to establish a right to such Benefits, including any medical or dental examinations by a qualified medical or dental practitioner approved by the Trustees;

(j) to pay out of the Fund, all real and personal property taxes, income taxes and other taxes of any and all kinds, levied or assessed under existing or future laws, upon or in respect to the Fund or any money, property or securities forming a part thereof;

(k) to receive payments from any source whatsoever, to the extent permitted by laws and this Agreement.

(l) to invest and re-invest such portion of the Fund, as is not required for current expenditures, in any type of investments that are permitted to Trustees by the applicable federal and provincial laws and regulations governing investments by trustees, and to take any and all action with respect to holding, buying, selling or exchanging such investments as they, in their sole discretion, may deem appropriate or necessary and, in particular, without limiting the generality of the foregoing:

(i) to exercise any of the powers of an owner with respect to stocks, bonds, government guaranteed debentures and mortgages, or other investments and property held in the Fund and, in particular, but without limiting the generality of the foregoing, to exercise any right there may be to vote in connection therewith; to give general or special proxies or powers of attorney with or without powers of substitution; to exercise any conversion privilege, subscription rights or other

options, and to make any payments incidental thereto; to consent to or otherwise participate in corporate reorganizations or other changes affecting shares and other securities; to delegate discretionary powers and pay any assessments and other charges in connection therewith; and to accept and hold any shares or securities which may be issued as a result of corporate reorganizations or changes affecting corporate shares or securities; and

(ii) to renew or extend or participate in the renewal or extension of any mortgage, upon such terms as may be deemed advisable, and to agree to a reduction in the rate of interest on any mortgage, or to any other modification or change in the terms of any mortgage, or of any guarantee pertaining thereto, in any manner and to any extent that may be deemed advisable for the protection of the Fund or the preservation of the value of an investment; to waive any default, whether in the performance of a covenant or condition in any mortgage, or in the performance of any guarantee, or to enforce any and all rights of foreclosure, with or without paying a consideration therefore, and in connection therewith to release any person or persons from their covenant or guarantee given in connection with such mortgage, and to exercise and enforce by any action, suit or proceeding at law or in equity, any rights or obligations or to take appropriate measures by way of proceedings at law or otherwise for the enforcement or realization of any investment.

(m) to hold in uninvested cash, without any liability for interest thereon, such sums as they deem necessary or advisable for the reasonably current cash requirements of the Fund;

(n) in their discretion and to the extent they deem it wise, beneficial or necessary, to appoint a bank, trust company or insurance company to be designated as "Corporate Trustee", and to enter into and execute an agreement or agreements with such bank, trust company or insurance company, to provide for the investment and re-investment of assets of the Fund, subject always to the terms of this Agreement and with such other limiting or regulatory provisions incorporated herein, as may be deemed by the Trustees desirable; and upon such execution, to convey and transfer to such Corporate Trustee, any assets of the Fund, together with as full or lesser power, to administer, invest and re-invest such assets as the Trustees themselves enjoy under the terms hereof. The Trustees shall be released and discharged from any responsibility or liability with respect to any assets which they may convey to such Corporate Trustee, unless and until such assets and any additions thereto are returned by the Corporate Trustee to the Trustees;

(o) to exercise all rights or privileges granted by the provisions of any contract entered into by the Trustees with any insurance company, bank, trust company or Investment Counsel, and to agree with such insurance company, bank, trust company or Investment Counsel to any alteration, modification, amendment or cancellation of such contract, or to take any other action respecting such contracts which they, in their discretion, may deem necessary or advisable;

(p) to do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder;

(q) to enter into reciprocal agreements with other like or similar funds or plans, in such manner and subject to such terms and conditions as the Trustees may deem desirable;

(r) to establish and allocate responsibilities and administrative duties, including the right to make decisions on behalf of the Trustees, to:

(i) committees, or sub-committees of the Trustees; or

(ii) other individuals or persons, in such manner and subject to such terms and conditions as the Trustees may deem necessary or appropriate;

provided that such committees, individuals or persons, as the case may be, report to the Trustees as may be required by them;

(s) to delegate any of their administrative powers or duties to any of their agents or employees, in such manner and subject to such terms and conditions as the Trustees may deem necessary or appropriate; provided that such agents or employees report to the Trustees as may be required by them;

(t) to lease or purchase such lands, premises, materials, supplies and equipment as the Trustees deem necessary or appropriate in the performance of their duties;

(u) to construe the provisions of this Agreement and the Benefit Plan and any related documents and any construction adopted by the Trustees, in good faith, shall be binding upon any person or entity making Contributions to the Fund, ARF, any Retiree and the family, dependents, beneficiaries and/or legal representatives of such Retirees.

(v) to use the monies available in the Fund to pay all reasonable expenses and to provide for the payment of Benefits;

#### 5.08 Monies

Notwithstanding anything in this Agreement to the contrary, the Trustees shall not handle any of the monies which are, at any time, a part of the Fund, except for payment of the expenses incurred by the Board of Trustees and authorized by the terms of this Agreement and for the provision of Benefits in accordance with this Agreement.

#### 5.09 Fidelity Bonds

The Trustees may procure fidelity bonds for themselves and such other persons authorized to receive, handle, deal with, or draw upon the monies in the Fund for any purpose whatsoever. Such persons may be bonded in such amounts and in such manner as the Trustees may determine. The cost of such bond may be paid out of the Fund.

#### 5.10 Errors and Omissions Insurance

The Trustees may purchase such errors and omissions insurance as they deem necessary. The cost of such insurance may be paid out of the Fund.

#### 5.11 Appointment of Auditor, Actuary, Consultant and Legal Counsel

The Trustees shall appoint an Auditor. When they deem it necessary, the Trustees may

appoint an Actuary, Consultant and Legal Counsel for the Fund, who shall serve until their respective successors are appointed.

#### 5.12 Requirements for Information

The Trustees may require a Retiree to submit to them, any information, data, report or documents, reasonably relevant to, and suitable for the purposes of administration of the Fund, and may request such information from any other person or entity.

#### 5.13 Records

The Trustees shall maintain suitable and adequate records of and for the administration of the Fund.

#### 5.14 Annual Audit

The books of account and records of the Trustees, including the books of account and records pertaining to the Fund, shall be audited at least once every year by the Auditor as of the fiscal year-end of the Fund. A statement of the results of the annual audit shall be available for inspection by interested persons at the principal office of the Fund and at such other suitable place as the Trustees may designate from time to time. Copies of such statement shall be delivered to each Trustees within sixty (60) days after that statement is prepared.

#### 5.15 Administrator

The Administrator shall assume the responsibility of accounting for payments and such duties and responsibilities, as may be delegated to it, or from time to time, by the Trustees. Without limiting the generality of the foregoing, the rights, duties and obligations of the Administrator may be:

- (a) to submit a report to the Trustees as soon as possible after the end of the fiscal year and on such interim basis as the Trustees may order, of the status of the Fund, financial or otherwise;
- (b) to attend such meetings of the Trustees, or committees thereof, as required by order of the Trustees, and to execute such instructions, as may be given to him, and to attend such meetings in connection with the Fund, as required by order of the Trustees;
- (c) to keep such records as may be necessary to determine each Retiree's rights to Benefits under the Benefit Plan and to determine the amount of such Benefits as they become due;
- (d) to deal with all communications from Retirees and others, with respect to the Fund and the terms of the Agreement;
- (e) to validate all claims against the Fund and obtain all necessary declarations, certificates or other evidence required for the proper administration of the Fund; and

#### 5.16 Designation of Trustees

The name of the Fund may be used to designate the Trustees collectively, and all instruments may be executed by or for the Trustees in such name.

#### 5.17 Legal Proceedings

The Trustees may commence such legal proceedings as they deem necessary and appropriate in connection with the enforcement of the Agreement and the administration of the Fund, as well as defending any legal proceedings which may be brought against them. The reasonable expenses for such legal proceedings shall be paid by the Fund, except with respect to any proceedings brought against any Trustee in relation to any matter or thing arising out of his or her dishonesty, willful misconduct or gross negligence.

#### 5.18 Trust Fund Borrowing

The Trustees may, from time to time, borrow money on a short term basis from any bank or trust company, on such terms and conditions as may be necessary and appropriate in the circumstances; provided that such borrowing shall only be for the purposes of:

- (a) providing for the payment of any Benefit authorized by the Trustees; or
- (b) permitting the orderly disposition of investments and the acquisition of new investments during the planned conversion of any investments;
- (c) in order to avoid a distress sale of investments of the Fund that would otherwise be necessary to pay such Benefits or acquire new investments.

#### 5.19 Advice of Court

The Trustees may seek the advice, opinion or direction of an appropriate court on any matter pertaining to this Agreement or the administration of the Fund or Benefit Plan.

#### 5.20 Approval by YUFA to Adoption of Changes to Benefit Plan

- (a) The powers of the Trustees set out in this Agreement relating to the adoption of and changes to the Benefit Plan are subject to the approval by YUFA in accordance with this section.
- (b) The Trustees shall initially propose a Benefit Plan to YUFA, and may subsequently propose amendments thereto to YUFA. The Benefit Plan and any amendment shall be set out in writing, shall be fully described, and shall include a calculation of estimated costs to provide the Benefits. If the Benefit Plan requires Contributions to be made by participants, the amount of and basis for any such Contributions shall be set out.
- (c) As soon as practicable, but in any event no more than one hundred and twenty (120) days after delivery of the proposal by the Trustees, YUFA shall advise the Trustees if the proposal is acceptable. In so doing, YUFA may approve a part of the proposal and may require amendments, deletions or additions to the proposal.
- (d) The Trustees shall not provide Benefits from the Fund, or incur any costs other than those set out in the Benefit Plan or amendment as approved by YUFA. The Benefit Plan shall be at all times administered in accordance with its terms. In the event the Trustees propose a new Benefit Plan or amendment to it, the Trustees may not act in accordance with the proposal until approved by YUFA.

## **ARTICLE VI - CONTRIBUTIONS TO THE FUND**

### **6.01 Initial Contribution**

The initial Contribution to the Fund shall consist of a portion of the pension savings to be paid over by YUFA and any income or interest earned thereon, less expenses incurred by YUFA in the establishment of the Fund.

### **6.02 Additional Contributions**

The Trustees may require that participants in the Benefit Plan remit Contributions in order to be eligible for some or any Benefits thereunder. The amounts and requirement to pay shall be subject to prior approval by YUFA after consultation with ARF.

### **6.03 Non-Payment by One Contributor**

Non-payment by any one required to make Contributions to the Fund shall not relieve any other person or their obligations to make such payments. The Trustees may take any action necessary to enforce payment of Contributions and damages due hereunder including, but not limited to, proceedings at law or equity.

## **ARTICLE VII - AMENDMENT OF TRUST AGREEMENT**

### **7.01 Amendment**

This Trust Agreement may be amended in any respect from time to time by YUFA after consultation with ARF evidenced in writing except that no amendment shall:

- (a) divert the Fund or any part thereof as constituted immediately prior to such amendment to a purpose other than the provision of Benefits as herein defined; or
- (b) eliminate the requirement of an annual audit and interim audits.

### **7.02 Notification of Amendment**

The Trustees, Auditors and Legal Counsel shall be immediately notified by mail of any amendments adopted in accordance with this Article and copies of all amendments shall be kept in the minute book of the Fund.

## **ARTICLE VIII - TERMINATION**

### **8.01 Termination**

This Agreement may be terminated at any time by YUFA after consultation with ARF evidenced in writing, in which case the Trustees shall wind up and terminate the Fund within six (6) months thereafter, as follows:

- (a) provide for a final audit and accounting for the purposes of the termination of the Fund;
- (b) provide for payment out of the Fund of all expenses, claims and obligations, including the expenses incidental to the termination of the Fund; and

(c) use the balance, if any, of the Fund to purchase Benefits or for any other purpose that is for the exclusive benefit of the Retirees and their beneficiaries.

**8.02 Notice of Termination**

Upon termination of the Fund in accordance with this Article, the Trustees shall forthwith notify each Retiree and any other necessary parties; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

**8.03 Merger or Transfer**

In lieu of termination, the Trustees may, subject to the consent of YUFA after consultation with ARF, elect to effect a merger or transfer of the Fund within a reasonable period with an existing fund with similar objects, to provide similar benefits for some or all of the Retirees under this Agreement and to do all such acts and things and execute such documents as may be necessary for this purpose.

**ARTICLE IX - EFFECTIVE DATE**

**9.01 Effective Date**

The Agreement is to be in full force and effect as of the date and year first above written.

**ARTICLE X - MISCELLANEOUS PROVISIONS**

**10.01 Notices**

All notices, requests, demands or other communications provided for herein to be given, shall be in writing and shall be effectively given if delivered personally or by telegram, courier, facsimile transmission or by prepaid registered mail or regular mail:

(a) if to the Trustees, ARF, YUFA or any Retiree at:  
their last known addresses as may appear on the records of the Administrator or the Fund from time to time;

(b) if to the Fund at:  
the address of the Administrator of the Fund from time to time;

or at such other address as the Administrator may be advised in writing from time to time. Such notices, requests, demands and other communications shall be deemed to have been received when delivered, or if mailed, on the fifth (5th) business day after the mailing thereof; provided that in the event of a strike or other interruption in the normal delivery of the mail after the mailing of any notice, request, demand or other communication hereunder, but before the deemed receipt thereof as provided herein, such notice, request, demand or other communication shall be deemed to have been received by the party for whom the same is intended, unless the same is actually delivered to such party as contemplated herein.

**10.02 Illegality**

If any provision of this Agreement, the Benefit Plan, the rules and regulations made pursuant thereto, or any steps in the administration of the Fund, are held to be illegal or invalid for

any reason, such illegality or invalidity shall not affect the remaining portions of this Agreement, the Benefit Plan or the said rules and regulations, unless such illegality or invalidity prevents accomplishment of the objectives and purposes of a Collective Agreement or this Agreement.

10.03 Interpretation

Wherever the singular and/or masculine and/or neuter is used throughout this Agreement the same shall be construed as meaning the plural and/or feminine or a body corporate where the context or the parties hereto so requires.

10.04 Headings

The headings used herein are for ease of reference only and shall not be deemed to form part of this Agreement.

10.05 Fiscal Year

The fiscal year of the Fund shall end of the 31 st day of December, in each year.

10.06 Further Co-operation

Each of the parties hereto shall from time to time and at any time hereafter upon each reasonable written request to do so, make, do, execute and deliver, or cause to be made, done, executed and delivered, all such further acts, deeds, assurances, things and written instruments as may be necessary in the opinion of any party, for more effectively implementing and carrying out the intent of this Agreement.

10.07 Situs

The Province of Ontario shall be deemed to be the situs of the Fund and all questions pertaining to the validity, construction and administration of this Agreement shall be determined in accordance with the laws of the Province of Ontario.

10.08 Execution in Counterparts

This Agreement may be executed in counterparts.

IN WITNESS WHEREOF YUFA executed this Trust Indenture, as of the date and year first above written.

SIGNED, SEALED AND DELIVERED)  
York University Faculty Association  
in the presence of:    )

(Signed by Lorna Erwin, M. Louise Ripley, Penni Stewart and Pat Bradshaw)

APPENDIX "A"  
ACCEPTANCE OF TRUSTS

The undersigned, having been designated to serve as a(n) -----Trustee  
in accordance with the Agreement and Declaration of Trust effective as of the

-----day of-----, 1999, relating to the York University Retired Faculty and Librarians Benefit Trust Fund does hereby accept the trusts created and established by the aforesaid Trust Fund, consents to act as a Trustee hereunder and agrees to administer the Trust Fund in accordance with the terms hereof.

Dated at-----this-----day of----- 1999.

*NOTE: This reduced-format copy is scanned from a photocopy of the original signed legal form, and has been re-formatted to conserve space, but it remains an accurate and complete transcription of the original document. February 9, 2004.*

(Web version without signatures prepared April 9, 2007)