

## APPENDIX 2: SUGGESTED TEMPLATE EXTERNAL AGREEMENT

### MEMORANDUM OF AGREEMENT

#### BETWEEN

\_\_\_\_\_ the “Sending Employer”

and

\_\_\_\_\_ the “Receiving Employer”

(collectively, the “Employer Organizations”)

and

\_\_\_\_\_ the “Sending Union”

and

\_\_\_\_\_ the “Receiving Union” [If applicable]

#### **Re: Voluntary Temporary Redeployment of Employees Between Employer Organizations Relating to COVID-19**

**WHEREAS**, in some Ontario communities, there is a critical and immediate need for staffing resources;

**WHEREAS**, in some Ontario sectors, due to closures of certain organizations, some employees have expressed a willingness to support their local communities on a voluntary basis during this time of crisis, by temporarily accepting new workplaces and new duties;

**WHEREAS** the Receiving Employer may require additional staff beyond its existing complement due to an escalation or change in service delivery requirements;

**WHEREAS** certain employees of the Sending Employer may choose to volunteer their services to the Receiving Employer subject to the terms and conditions set out herein; and

**WHEREAS** the Lieutenant Governor in Council has made certain Emergency Orders under the *Emergency Management and Civil Protection Act* applicable to and in order to facilitate the redeployment of employees under this Agreement;

**NOW THEREFORE** the parties hereto agree as follows:

1. This Memorandum of Agreement is unique to COVID-19 and has been entered into on a without precedent and without prejudice basis, having regard to the extraordinary circumstances created by the COVID-19 pandemic.
2. It is agreed that this Agreement shall become effective on \_\_\_\_\_ and will continue until there is no longer an emergency declaration under the *Emergency Management and Civil Protection Act* in effect that relates to COVID-19, unless otherwise agreed in writing by the parties (the “Term”).
3. Nothing in this Agreement alters or amends the Sending Union’s or Receiving Union’s collective agreements, bargaining rights, obligations or entitlements or any agreements or bargaining processes between the Unions and the Sending or Receiving Employers respectively, except as provided for in this Agreement (expressly or by necessary implication) and for the purposes of this Agreement.
4. At any time during the Term, the Receiving Employer may assign available work (the “Work”) to employees of the Sending Employer (the “Temporarily Redeployed Employees”) in accordance with this Agreement.
5. The Work will be assigned only to employees of the Sending Employer who have voluntarily agreed to a temporary redeployment to the Receiving Employer, subject to paragraphs 15 and 18 below.
6. The Work shall not be assigned to the Temporarily Redeployed Employee where employees of the Receiving Employer are available to perform the Work.
7. The Receiving Employer shall be responsible for the health, safety and welfare of Temporarily Redeployed Employees during their working hours with the Receiving Employer during the Term, and shall ensure compliance with all relevant legal obligations, including the *Occupational Health and Safety Act* and all other applicable laws as if it were the employer of the Temporarily Redeployed Employees.
8. Prior to any Temporarily Redeployed Employee’s first shift, the Sending Employer shall provide the Receiving Employer with,
  - (a) The name and contact information of the Temporarily Redeployed Employee; and

- (b) The name and contact information of the Sending Union's representative
9. Prior to the Temporarily Redeployed Employee's first shift, the Receiving Employer shall provide the Temporarily Redeployed Employee, the Sending Employer, the Sending Union and the Receiving Union (if any) with: The name and contact information of the Temporarily Redeployed Employee's supervisor;
    - (a) The name and contact information for the Health and Safety representatives of the Receiving Employer and Receiving Union (if applicable);
    - (b) The name and contact information of the Receiving Union's bargaining unit representative (if applicable); and,
    - (c) The employment contract or acknowledgement signed by the Temporarily Redeployed Employee.
  10. The Receiving Employer shall provide the Temporarily Redeployed Employee with the following prior to his or her first shift:
    - (a) Appropriate safety equipment, including personal protective equipment ("PPE"), for the position and as recommended or directed by the Chief Medical Officer of Health of Ontario to be maintained or replaced as necessary, for the entire duration of the temporary redeployment;
    - (b) Appropriate Infection Control and Prevention ("IPAC") training or guidance, commensurate with the circumstances and classification. The Receiving Employer confirms that they have appropriate IPAC procedures in place in compliance with applicable Infection Prevention and Control guidelines (during this training, the Temporarily Redeployed will be paid at their regular rate as modified by this Agreement); and
    - (c) Appropriate onboarding, orientation and training, including but not limited to familiarization with essential information such as policies and procedures regarding health and safety, job routines, location of supplies and equipment, fire and disaster plans, confidentiality obligations and any other obligations arising from their temporary role (during such orientation and training, the Temporarily Redeployed will be paid at their regular rate as modified by this Agreement).
  11. The Receiving Employer shall track and report hours and other payroll-related matters consistent with the Sending Employer's collective agreement and shall report those hours to the Sending Employer on a biweekly basis.
  12. In the course of performing the Work, Temporarily Redeployed Employees will be under the direction and supervision of the Receiving Employer in accordance with the policies, procedures and by-laws of the Receiving Employer, including with respect to scheduling, assignments, breaks and hours of work and, including the health and safety, the privacy and security and other applicable policies of the Receiving Employer.
  13. The Receiving Employer shall maintain oversight of the Temporarily Redeployed Employees' job duties and shall maintain regular and consistent contact with

Temporarily Redeployed Employees. Similarly, the Receiving Union shall act in the best interests of Temporarily Redeployed Employees, as it would for any member of its bargaining unit. For example, any situation that the union may object to for its own members, the redeployed employee can expect similar treatment. Nothing in this Agreement, however, prevents a Temporarily Redeployed Employee from filing any claim or action against the Receiving Employer under any applicable Ontario legislation, including but not limited to the Human Rights Code, the Employment Standards Act, 2000, the Occupational Health and Safety Act, and the Workplace Safety and Insurance Act, 1997.

14. Temporarily Redeployed Employees shall remain employees of the Sending Employer and shall continue to be covered by the terms of the Sending Employer's collective agreement or other terms and conditions of employment with respect to dues wages, benefits, sick leave, WSIB, seniority and service, except as modified by this Agreement. Specifically, Temporarily Redeployed Employees will be eligible for pandemic premium pay if matched to an eligible worksite and a qualifying role. Temporarily Redeployed Employees may access emergency child care services based on the Emergency Orders. The Sending Employer shall remain responsible for providing all compensation, benefits, and other employment entitlements to all Temporarily Redeployed Employees in accordance with the Sending Employer's collective agreement as modified in the applicable case by this Agreement. Disputes regarding these matters or arising from any circumstances surrounding the temporary deployment of Temporarily Redeployed Employee shall be resolved through the grievance process of the Sending Employer's collective agreement.
15. A temporary redeployment may be terminated at any time by a Temporarily Redeployed Employee, the Receiving Employer, or the Sending Employer for any reason. As much written notice as possible of this decision shall be provided to the other parties. There shall be no discipline or reprisal for a Temporarily Redeployed Employee for a) declining the opportunity of temporary redeployment, b) declining such employment once advised of the location and nature of the work to be assigned, or c) terminating the redeployment at any time after accepting the assignment except that in that case, every effort shall be made by a redeployed employee to provide notice to the other parties. Similarly, the termination of the redeployment by either the Receiving Employer or Sending Employer cannot be the subject of a grievance and is not arbitrable.
16. The Sending Employer is not entitled to receive compensation from the Receiving Employer for the services provided by Temporarily Redeployed Employee, unless agreed to separately in writing.
17. Nothing in this Agreement constitutes or should be construed as creating a partnership, joint venture, agency, dependent contractor, or employment relationship between the Employer Organizations. Neither of the Employer Organizations shall have the power or authority to bind the other or to assume or

create any obligation or responsibility, expressed or implied, on the other's behalf or in its name, nor shall it hold itself out to any third party as a partner, joint venturer, agent or employee of the other.

18. Each of the parties hereby agrees that it shall be responsible and liable for its own acts, omissions, negligence and willful misconduct, including that of its respective directors, officers, employees, contractors and agents, save and except that no party hereto shall be responsible for or liable solely for entering into or implementing this Agreement.
19. The Receiving Employer covenants and agrees to save harmless and indemnify the Sending Employer from all liabilities, obligations, claims, applications, grievances, demands, losses, actions and any resulting damages, penalties, charges, fines, judgments, costs, expenses or other remedies incurred as a result of or arising out of the Receiving Employer's and/or its employees' acts, omissions, negligence or misconduct relating to this Agreement or a temporary redeployment taking place under this Agreement. This indemnity shall survive the expiration of the term of any temporary deployment under this Agreement.
20. In the event of a dispute between the Employer Organizations arising from this Agreement, the Employer Organizations shall use their best efforts to resolve the dispute without recourse to litigation.
21. It is acknowledged that this Agreement has been prepared on an urgent basis and that it should be interpreted and applied in a manner that gives greatest effect to its purpose and principles.

**SIGNED THIS \_\_\_\_ DAY OF \_\_\_\_, 2020**

**(SIGNATORIES)**