

**AUGUST 26, 2021 WITHOUT PREJUDICE SETTLEMENT OFFER MADE VIA
MEDIATOR ELI GEDALOF, WITHDRAWN IF NOT ACCEPTED ON OR BEFORE
SEPTEMBER 3, 2021**

IN THE MATTER OF A MEDIATION
BEFORE MEDIATOR-ARBITRATOR ELI GEDALOF

B E T W E E N :

WESTERN UNIVERSITY
(the "University")

- and -

UNIVERSITY OF WESTERN ONTARIO FACULTY ASSOCIATION
(the "Association")

**Re: June 8, 2018 Policy Grievances re. Compensation and Benefits: Clauses 42
and 26 – Age Discrimination, Differential Benefit Entitlement (Policy
Grievances #76 and #77) (the "Policy Grievances")**

MEMORANDUM OF SETTLEMENT

WHEREAS the Human Rights Tribunal of Ontario released its decision in *Talos v. Grand Erie District School Board*, 2018 HRTO 680 ("*Talos*") on May 18, 2018;

AND WHEREAS following the release of *Talos* faculty members and librarians and archivists represented by the Association (collectively, the "Represented Members") raised with their sole and exclusive bargaining agent, the Association, an allegation that the discontinuation and/or reduction of benefits, including extended health, dental and vision care benefits, out-of-country coverage, basic life insurance, optional life insurance, accidental death and dismemberment insurance, critical illness and long term disability benefits (collectively, the "Benefits"), at the Normal Retirement Date (the "NRD" being the 1st day of July coinciding with or next following the Member's 65th birthday) or at the end of the year following attainment of age 69, as applicable (collectively the "Benefits Change Date"), constitutes prohibited discrimination based on age contrary to the faculty collective agreement, the librarians and archivists collective agreement and the Ontario *Human Rights*

Code (the “*Code*”), and that the sections of the *Code* which expressly permit age based distinctions in benefits breach section 15 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) and are not saved by section 1 of the *Charter*;

AND WHEREAS the Association filed the Policy Grievances on behalf of the Represented Members on June 8, 2018 wherein the Association alleges that:

- (a) the discontinuation and/or reduction of the Benefits at a Represented Member’s Benefits Change Date pursuant to Article 42 of the June 1, 2014 – June 30, 2018 faculty collective agreement, which Article remains identically worded in numbered Article 43 of the July 1, 2019 – June 30, 2022 faculty collective agreement, is a breach of the no discrimination on the basis of age provisions in the collective agreement and the *Code*;
- (b) that Article 26 of the June 1, 2015 – June 30, 2018 librarians and archivists collective agreement, which Article remains identically worded in the July 1, 2019 – June 30, 2023 librarians and archivists collective agreement, is a breach of the no discrimination on the basis of age provisions in the collective agreement and the *Code*; and
- (c) that Sections 25(2.1), (2.2) and (2.3) of the *Code* are contrary to section 15 of the *Charter* and cannot be saved by Section 1 of the *Charter*;

AND WHEREAS the parties with counsel met in mediation with Mediator-Arbitrator Gedalof on December 1 and 2, 2020 and June 17, 2021;

AND WHEREAS the parties wish to fully and finally settle any and all issues in any way related to the Grievances, including any and all issues in any way related to the reduction or discontinuation of the Benefits at a Represented Member’s Benefits Change Date;

AND WHEREAS the parties agree that the terms and conditions of this Memorandum of Settlement fully, fairly and appropriately deal with any and all issues with respect to the reduction or discontinuation of the Benefits at a Represented Member’s Benefits Change Date and do not constitute prohibited discrimination on the basis of age

contrary to the *Code* within the meaning of and for the purposes of Section 45.1 of the *Code* in that this mediation with the representation of counsel and the terms and conditions of this Memorandum of Settlement have appropriately dealt with any and all issues in any way related to the discontinuation and/or reduction of the Benefits on or after a Represented Members Benefits Change Date under the collective agreements or the *Code* or any claims in respect of same that ss. 25(2.1) to (2.3) of the *Code* breach section 15 of the *Charter* as it relates to benefits post NRD for current or future Represented Members and are not saved by section 1 of the *Charter*;

AND WHEREAS the Association confirms on behalf of both the Association and all current and future Represented Members for whom it is or becomes the sole and exclusive bargaining agent in respect of all matters touching upon their terms and conditions of employment, including any age based distinctions or differences in the Benefits post a Represented Member's Benefits Change Date, that with the implementation of the terms and conditions of this Memorandum of Settlement any age based distinctions in the Benefits post a Represented Member's Benefits Change Date do not perpetuate stereotypes or disadvantages of any nature or kind whatsoever to the Represented Members who continue to hold a full-time appointment post their Benefits Change Date and that in these circumstances there is no longer any claim by the Association that in respect of current or future Represented Members that ss. 25(2.1) to (2.3) breach section 15 of the *Charter* and are not saved by section 1 of the *Charter*;

AND WHEREAS the parties agree that any decision in any forum which would cause the University to continue any of the Benefits, in whole or in part, beyond a Represented Member's Benefits Change Date as agreed upon under the terms and conditions of this Memorandum of Settlement would constitute an undue hardship to the University within the meaning of and for the purposes of the *Code*;

NOW THEREFORE the parties agree as follows:

1. The above recitals are agreed to and form fundamental terms and conditions of this Memorandum of Settlement without which the University would not have agreed to the improvements to the Benefits set out herein.

2. Except as expressly set out herein the Benefits for all Represented Members both pre and post-NRD continue without modification or amendment.
3. The parties agree that effective September 1, 2021 Represented Members continuing to hold a full time appointment beyond the year in which they attain age 69 will continue to be covered by extended health and dental benefits available for active members, including any flexible credits allocated to a health care spending account or a wellness spending account, until the earlier of retirement or the December 31 end of the year in which the Represented Member attains age 71, except that out of country emergency travel benefit will be limited to trips of duration no longer than 60 days. This improvement to extended health and dental benefits shall have no retroactive effect of any nature or kind whatsoever prior to September 1, 2021. It is also understood and agreed that government programs (e.g. the Ontario Drug Plan) will continue to be the first payor for any benefits that such government programs cover.
4. The parties agree that effective September 1, 2021, Represented Members continuing to hold a full time appointment post-NRD may apply for long term disability benefits following the completion of 105 days of total disability, as determined by and in accordance with the terms of the University's long term disability insurance policy. The ability to apply for long term disability benefits shall be available until the earlier of retirement or the December 31 end of the year in which the Represented Member attains age 71. The benefit paid to approved applicants shall terminate on the earliest of:
 - (a) The date the Represented Member is determined by the insurance carrier to no longer be totally disabled. Total disability and totally disabled shall have the definition set out in the University's long term disability insurance policy.
 - (b) The end of the month prior to the date the Represented Member retires.
 - (c) The date of death of the Represented Member.

- (d) The December 31 of the year in which the Represented Member attains age 71.
 - (e) The end of the month following 60 calendar months of long term disability benefit payments.
- 5. The parties agree that Represented Members who had attained age 60 prior to their date of disability and have been approved to receive LTD benefits prior to September 1, 2021 shall continue to receive those benefits in accordance with the terms of the University's long term disability policy, extending to and potentially beyond their Normal Retirement Date. The benefit paid to the Represented Member shall terminate on the earliest of:
 - (a) The date the Represented Member is determined by the insurance carrier to no longer be totally disabled. Total disability and totally disabled shall have the definition set out in the University's long term disability insurance policy.
 - (b) The end of the month prior to the date the Represented Member retires.
 - (c) The date of death of the Represented Member.
 - (d) The December 31 of the year in which the Represented Member attains age 71.
 - (e) The end of the month following 60 calendar months of long term disability benefit payments.
- 6. For clarity, nothing in the above paragraphs 4 and 5 of this Memorandum of Settlement reduces or amends the current pre-existing entitlement of a Represented Member between the ages of 60 and NRD to long term disability benefits as it existed immediately prior to the execution of this Memorandum of Settlement.
- 7. UWOFA's financial advisors Eckler have provided cost estimates that the cost of extending the existing LTD benefits for faculty and librarians who continued in active

employment beyond their NRD until the December 31st in which the Represented Member attains age 71 would involve a rate increase of approximately 41% representing an estimated annual increase to premium costs of approximately \$251,000 for the University as the University currently pays 100% of the LTD premiums. In the event the University's total cost of extending LTD benefits as set out in paragraphs 4 and 5 above exceeds \$250,000, adjusted annually by the rate of CPI change and the change in number of UWOFA represented members with coverage under the University LTD program (the 'Relevant Amount') in any premium year (premium years being May 1 to April 30) it is understood and agreed that the Represented Members will be required to pay the LTD premiums in excess of the Relevant Amount necessary to fund the portion of the costs relating to claims made by post-NRD members in excess of the Relevant Amount in any premium year.

(a) For example, if in a premium year the total costs relating to claims made for post-NRD members was \$350,000, the rate of CPI change is 2% and the number of represented members covered has increased by 8%, the Relevant amount would be \$275,000 and the Represented Members would be required to pay premiums in the total amount of \$75,000. Evaluations for the purposes of this paragraph will be determined each year as of September 1, following the receipt and audit of the financial statements for the LTD program. For clarity, total costs of extending LTD benefits for post-NRD members shall be the Paid Premiums for post-NRD members plus/minus the deficit/surplus contributed by post-NRD members as outlined in the financial statements for the premium year. This definition of total costs is applicable as long as the LTD program is underwritten on a refund accounting basis. The University shall provide 90 days notice to the Association if it intends to change the method for underwriting the LTD program, confirming the revised method for determining total costs at that time.

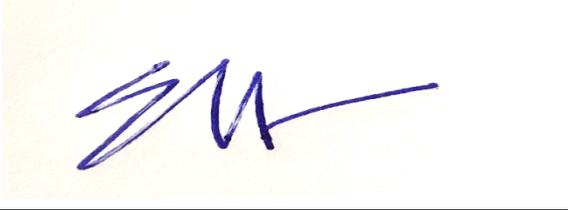
8. The parties agree that effective September 1, 2021 section 7.3.3 (c) of the Retirement and Resignation article and section 46.5 of the Compensation and Benefits article of the collective agreement for Faculty, the corresponding provisions of the collective agreement for Librarians and Archivists, and the corresponding provisions of the Pension Plan for the Academic Staff will be amended to read:

- c) the date of termination of a Member's employment, and in any case at the end of the Calendar Year a Member turns age **71**.
9. Effective September 1, 2021 the \$15,000 life insurance benefit for members who continue to hold a full-time appointment after their NRD will be increased to \$50,000. This increase shall end on the earlier of the Represented Member's retirement or the December 31 of the year in which the Represented Member attains age 71 at which point the life insurance benefit shall be \$15,000 consistent with the Retired Group Benefit Plan.
 10. Attached hereto as Appendix "A" are the mutually agreed amendments to the Faculty collective agreement between the University and the Association consistent with the terms and conditions of this Memorandum of Settlement and attached hereto as Appendix "B" are the mutually agreed amendments to the Librarians and Archivists collective agreement between the University and the Association consistent with the terms and conditions of this Memorandum of Settlement, which amendments to these collective agreements shall be effective on September 1, 2021.
 11. The Grievances, including any and all claims that in respect of Represented Members' Benefits ss. 25(2.1) to (2.3) of the *Code* breach section 15 of the *Charter* and are not saved by section 1 of the *Charter*, are withdrawn and shall not be re-filed in whole or in part. The Association agrees that it will not file any grievance in any way related to the mutually agreed age based distinctions in the Benefits post a Represented Member's Benefits Change Date as set out in this Memorandum of Settlement nor shall the Association refer to arbitration any individual or group grievance of any Represented Member in this regard unless or until the parties have agreed to changes in the relevant terms of the collective agreement for Faculty or the collective agreement for Librarians and Archivists or ss. 25(2.1) to (2.3) of the *Code* are revoked, amended in a material way, or struck down by a court of competent jurisdiction and it is understood and agreed that issues related to age based distinctions in the Benefits post a Represented Member's Benefits Change Date set out in this Memorandum of Settlement do not constitute a difference between the parties regarding the interpretation, application, administration or

alleged violation of the Collective Agreements and it is the intention of the parties that an arbitrator would have no jurisdiction to hear or decide any grievance in this regard or grant any remedies of any kind whatsoever, in whole or in part.

12. The Association, on behalf of all current and future Represented Members, acknowledges that the parties have discussed or otherwise canvassed any and all potential human rights complaints, concerns or issues arising out of or in respect to the Benefits at a Represented Member's Benefits Change Date and that the terms and conditions of the Memorandum of Settlement constitutes a full and final settlement of any existing, planned or possible complaint or complaints based on similar allegations against the University under the *Code*.
13. This settlement is made without prejudice or precedent to the rights of the University or the Association in any other matter and shall not be referred to or relied on in any other matter for any purpose whatsoever other than the enforcement of and/or adherence to its terms and conditions.
14. Nothing in this Memorandum of Settlement is nor shall it be construed as any admission by the University of any breach of the collective agreement or the *Code* or any breach of the *Charter* in respect of any provisions of the *Code* as alleged in the Grievances, all of which has been and is denied by the University.
15. Eli Gedalof shall be seized as mediator-arbitrator of any issues concerning the interpretation, application, administration or alleged violation of the terms and conditions of this Memorandum of Settlement.
16. By the signature of authorized representatives hereunder the University and the Association confirm their agreement to the terms and conditions set out herein.
17. This Memorandum of Settlement may be signed in any number of counterparts with the same effect as if all parties had signed the same document. All counterparts, including facsimile or email pdf signatures shall be construed together and shall constitute one and the same agreement.

FOR THE UNIVERSITY



Per: _____

August 26, 2021

Date _____

FOR THE ASSOCIATION

Kathleen Fraser

Per: _____

26 August 2021

Date _____