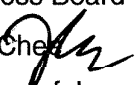




University of Toronto

OFFICE OF THE VICE-PRESIDENT, BUSINESS AFFAIRS

Memorandum to: Business Board
From: Felix Chee 
For: Meeting of January 21, 2002 Agenda Item: 3(a)

Item Identification: **Amendment to the Service Agreement between the Governing Council of the University of Toronto and the University of Toronto Asset Management Corporation (UTAM)**

Sponsor: Felix Chee, Vice-President, Business Affairs

Jurisdictional Information

The Business Board, pursuant to section 4.1(b) of its terms of reference, is responsible for "approval of the conditions for the delegation of authority to a University-controlled asset management corporation for the management of the investment of University funds and pension funds"

Previous Action Taken

Business Board recommended, and (on November 4, 1999) the Governing Council approved, the establishment of UTAM, By-Law Number 1 of that Corporation and the Service Agreement between the University of Toronto and UTAM.

Action Sought

That the proposed Amended and Restated Service and UTAM Personnel Agreement between the Governing Council of University of Toronto and the University of Toronto Asset Management Corporation be approved

Highlights

The Restated Agreement would: (a) clarify the extent of UTAM's authority to act as agent for the University and (b) clarify the language stating the terms of employment applicable to former University employees who have become UTAM employees.

Attached is a copy of the proposed agreement. Deletions to the original agreement are struck-through and additions are bolded and underlined.

**SERVICE-AMENDED AND RESTATED SERVICE AND UTAM PERSONNEL
AGREEMENT made as of the • 1st day of • May, 2000, 2002**

B E T W E E N:

THE GOVERNING COUNCIL OF THE UNIVERSITY
OF TORONTO
(hereinafter called the "University")

OF THE FIRST PART

and

UNIVERSITY OF TORONTO ASSET MANAGEMENT
CORPORATION
(hereinafter called "UTAM")

OF THE SECOND PART

WHEREAS UTAM was incorporated pursuant to the Corporations Act
(Ontario) by Letters Patent dated April 25, 2000, for the following objects, inter alia:

"(a) to manage, or see to and supervise the management of, the money, investments, investment funds and pension funds that come into the hands or are under the administration of The Governing Council of the University of Toronto, subject to and in accordance with the applicable policies from time to time approved by or on behalf of the Council; **and**

(b)(e) to carry out such other duties and responsibilities on behalf of the said Council as may be properly delegated or assigned to the Corporation;"

AND WHEREAS UTAM and the University entered into a service agreement dated the 1st day of May, 2000 (the "Original Agreement"), pursuant to which the University appointed UTAM to be its investment manager in accordance with the terms therein set out;

AND WHEREAS UTAM and the University wish to execute this amended and restated agreement (the "Agreement") in order to (i) clarify the nature of the relationship between UTAM and the University and the extent of UTAM's authority to act as agent for the University; and (ii) set out certain terms of employment applicable to personnel employed by UTAM.

WITNESSETH that in consideration of the premises and the mutual agreements and covenants herein contained, the parties hereto agree with each other as follows:

1. **This Agreement amends, restates and replaces in its entirety the Original Agreement (which is of no further force and effect), and constitutes the entire agreement between the parties with respect to the subject matter hereof.**

2. The University hereby appoints UTAM to be **as its agent to act on its behalf as** the sole and exclusive manager **(subject to any permitted subdelegation hereunder)** of such of the money, investments, investment funds and pension funds that come into the hands or are under the administration of the University as it determines to place under the management of UTAM **(the "Managed Assets")**, upon and subject to the terms and conditions of this Agreement and for an indefinite term, terminable by the University (i) forthwith upon any material breach of this Agreement by UTAM; or (ii) upon three month's prior written notice to UTAM.

~~A table listing the funds currently under the management of the University and to which this appointment applies (until altered by the University) is attached hereto as Schedule "A".~~ **3. In acting as agent for the University in providing investment management services (the "Services") hereunder, subject to the terms and conditions hereof (including, UTAM's obligations in section 7 hereof to act in accordance with the Investment Policies (as hereinafter defined)), UTAM shall have the power and authority to take all such actions and execute all such documents as may be necessary or desirable in order for it to properly manage the Managed Assets, including without limitation, the power and authority to:**

- (a) ~~2. It is understood that the money, investments and investment funds to which this appointment relates will include funds held in the Consolidated Investment Pool and Expendable Funds Investment Pool of the University, or any successor pool or pools, which have been placed or invested therein by other entities which are associated or affiliated with the University and by trustees whose funds are to be held or devoted, in whole or in part, for the benefit or in the interests of the~~

~~University. As at the date hereof, such other funds include, inter alia, those of the Trustees of the estate of J. Edgar McAllister, deceased, the Trustee of the estate of Edwin Robert MacGregor, deceased, the Trustee of the Toro Trust, The Canadian Institute for Advanced Research and The Associates of the University of Toronto Inc.~~ **invest and re-invest the Managed Assets and the proceeds thereof in accordance with the Investment Policies (as hereinafter defined);**

- (b) 3 acquire hold, manage, lease, repair, improve, alter, demolish, dispose of and otherwise deal with lands, buildings and other interests in real estate on behalf of and for the benefit of the University;**
- (c) employ and retain the services of investment managers, counsellors, advisers and other investment professionals and experts and delegate investment powers to such persons;**
- (d) provide directions to, oversee any administration by and otherwise correspond with duly appointed trustees, custodians and subcustodians of the Managed Assets;**
- (e) establish investment mandates, policies, guidelines and procedures (including determining asset allocations and performance benchmarks) in accordance with the University's Investment Policies;**
- (f) buy, sell, assign, transfer, exchange, convert or convey shares, stocks, bonds, debentures, rights, warrants, options or other securities;**
- (g) borrow money to purchase securities, purchase securities on margin or short-sell securities;**
- (h) exercise any proxy or voting rights and give any consents or waivers associated with any securities in which the Managed Assets are invested;**
- (i) open accounts with banks, trust companies and other financial institutions and give instructions with respect to such accounts as may be necessary in order to invest the Managed Assets;**

(j) enter into agreements relating to synthetic investment products including debt, equity, commodity, interest rate and currency futures, options, swaps and forward contracts, agreements relating to securities lending, investment and indemnity agreements and other agreements of every nature whatsoever related to the investment of the Managed Assets; and

(k) take any action contemplated by or incidental to implementing the Investment Policies.

4. Any matter with respect to which UTAM is authorized to act as the University's agent in providing the Services hereunder may be undertaken by such officer or officers of UTAM as are authorized to take such action in accordance with a resolution of the directors of UTAM. All agreements and other documents executed by UTAM as agent for the University shall be executed by such officer or officers of UTAM as are authorized to execute same in accordance with resolutions of the directors of UTAM (in force from time to time) in the following manner, and if so executed, the University acknowledges that such agreement or document is binding upon the University:

"UNIVERSITY OF TORONTO
ASSET MANAGEMENT CORPORATION
as agent on behalf of the
GOVERNING COUNCIL OF
THE UNIVERSITY OF TORONTO

Per: _____"

[Note to draft: a new resolution should be passed which is broader than the May 30, 2000 resolution and which authorizes certain officer(s) to take all actions and

sign all agreements to be taken or signed by UTAM as agent for the University under this Agreement].

5. Intentionally deleted [Note to draft: Not required. See note at end of section 2. The 1st sentence of section 2 states all that is required.]

6. Subject to the prior approval of the senior officer of the University responsible for financial matters as so designated by the President of the University of Toronto (the "CFO") on behalf of the University in each instance, and upon such terms and conditions as the CFO may prescribe, UTAM may also, as provided in its said Letters Patent, and provided that the quality, level and timeliness of the Services provided to the University are not impaired in any way:

- (i) manage, or see to and supervise the management of, the money, investments, investment funds and pension funds that come into the hands or are under the administration of any university, college or institution that is federated or affiliated with the University of Toronto; and
- (ii) manage, or see to and supervise the management of, the money, investments, investment funds and pension funds that come into the hands or are under the administration of other charitable or non-charitable, philanthropic and not-for-profit organizations, institutes and associations.

Examples of institutions falling under (i) above are the universities federated and colleges affiliated with the University, its affiliated teaching hospitals and The Toronto School of Theology and its member institutions. Examples of organizations falling under (ii) above are other universities, community colleges and educational and research institutes. ~~It is not intended that UTAM will act as agent for other institutions and organizations under this clause at its inception but it may be permitted to do so in the longer term, where economies of scale could be achieved.~~ The services provided under (i) and (ii) above are referred to as "Other Services".

4 7. UTAM will be subject to and act in accordance with relevant investment policies of, or approved by, the University or its Business Board (the "Business Board"), as amended from time to time, (the "Investment Policies") including without limitation, the following:

University Funds Investment Policy and regulations thereunder

Expendable Fund Investment Pool Background Paper

Pension Fund Master Trust Investment Policy

~~Pension Fund Investment Policy and regulations thereunder~~

~~OISE Pension Fund Investment Policy and regulations thereunder~~

Long-Term Capital Appreciation Pool Policy and regulations thereunder

~~Consolidated Investment Pool Policy and regulations thereunder~~

Policy for the Preservation of Capital of Endowment Funds and regulations thereunder

Social and Political Issues with respect to University Investment

and such other policies as are declared by the University or its Business Board (~~"Business Board"~~) to be applicable to UTAM. In addition, UTAM will be subject to and act in accordance with other policies and instructions that may be approved from time to time by the University or the Business Board. Those instructions may relate, without limitation, to pooling or not pooling certain University funds for investment purposes, steps aimed at the preservation of the capital of University funds, and social and political criteria governing investments.

5 8. It shall be the duty of UTAM and its President and ~~chief executive officer~~ **Chief Executive Officer** to achieve the maximum possible rate of return on each fund under its management **Managed Asset**, consistent with (i) applicable law, (ii) the policies **Investment Policies** referred to in the preceding clause hereof, (iii) a prudent standard of care for the safety of the capital and due attention to the special purposes and needs of each fund, and (iv) general good and prudent investment practices.

~~6~~ 9. UTAM will observe and comply with all applicable laws and regulations of the Province of Ontario and of Canada that apply to its operations (**"Applicable Laws"**) and will make on behalf of itself and the University, or assist the University in making, any necessary returns to and filings with the Ontario Securities Commission as required by the Securities Act and Regulations thereunder and the Financial Services Commission of Ontario as required by the Pension Benefits Act and Regulations thereunder **or with any other applicable regulator. The University shall not be liable for, and UTAM shall indemnify and save the University harmless from any liability, loss or damages arising from (i) any action taken by UTAM which is outside the scope of its authority hereunder including any breach by UTAM of Applicable Laws; (ii) UTAM's provision of Other Services or (iii) any other activity or business undertaken by UTAM other than as agent for the University.**

10.

7. The University reserves the right to determine from time to time the annual payout from the earnings of its ~~Consolidated Investment~~ **Long-Term Capital Appreciation** Pool or any successor pool or pools and UTAM will not have any authority or responsibility whatsoever with respect to decisions regarding such payout or regarding the management, use or disposition of the monies, including surpluses, in the University's Pension ~~Funds~~ **Plans**. In addition, UTAM will not have any authority or responsibility whatsoever with respect to decisions concerning the amortization of any unfunded liability in the University's ~~pension plans~~ **Pension Plans**. The University may from time to time seek the advice of UTAM and UTAM may from time to time offer its advice to the CFO regarding these matters but the provision of such advice will be the extent of UTAM involvement in these decisions. Similarly, UTAM may from time to time provide advice to the CFO with respect to the establishment of ~~applicable policies as referred to in clause 4 hereof~~ **Investment Policies** and to changes in those policies, and the CFO may accept such advice and make a recommendation to the Business Board accordingly. Once a policy or policies are established for ~~University funds~~ **Managed Assets** and for other funds under its administration, UTAM will invest and manage the investment of such funds precisely in accordance with such policies.

~~8~~ **11.** The securities representing the investments of the funds of the University **Managed Assets** from time to time under the management of UTAM shall be held on behalf of the University in the name(s) of such trustee(s) or nominee(s) as may be directed by the CFO, but not in the name of UTAM.

~~9. As provided in By-law No. 1 of UTAM, its directors shall be elected by the voting members of UTAM at the annual meeting thereof, and each director so elected shall have been approved and nominated for election by the Executive Committee of the University on the recommendation of the President of the University of Toronto ("President of the University"). The Chair of the Board, the President and/or the Board of UTAM may submit recommendations to the President of the University of persons to be nominated for election as directors of UTAM.~~ **12. Intentionally deleted. [Note to draft: Merely a repetition of By-law No. 1.]**

~~10~~ **13.** Although elected annually, it is anticipated, as an operating guideline, that directors **of UTAM** other than ex officio directors will serve for a three-year term, which term may be renewed for a further three years on the recommendation of the Board of UTAM but at the option of the President of the University. The intention of this guideline is to ensure an appropriate balance between continuity and renewal, but exceptions thereto may be made from time to time on the recommendation of the President of the University. As a further operating guideline, the election and retirement of directors should be in rotation so that the normal three-year terms of office would be staggered and one-third of the elected directors would retire from office in each year (subject to re-election). It is further anticipated that the director who is a member or retired member of the faculty or staff of the University would be expected to serve for a three-year term, renewable for a further three years, but would not be affected by the rotation of elected directors.

~~11~~ **14.** The University will pay UTAM for its services **the Services** an amount which will enable it to recover the appropriate costs of its operations, on the basis of a service fee expressed in terms of a stated number of basis points to be applied to the market value of the investments in each University fund under the management of UTAM **Managed**

Assets, determined as at the immediately preceding September 30, such rate to be determined annually by the CFO, acting reasonably, following consultation with the President of UTAM and with a view to ensuring that UTAM is able to provide its services **the Services** at an acceptable standard. UTAM will charge such fee against and recover it from each such managed fund **fund forming part of the Managed Assets** at the rate of one-twelfth thereof monthly during its ensuing financial year. **To the extent that UTAM provides Other Services and recovers a portion of the costs of its operations from fees charged for such Other Services, the fee paid by the University for Services shall be reduced by a corresponding amount to be determined by the CFO in his/her discretion.**

15 12. UTAM will prepare an annual operating budget based upon the projected revenue of UTAM from the service fees determined in accordance with the process described in the preceding clause hereof and will submit the same in November of each year for approval to the CFO.

16 13. UTAM will provide the following reports:

- (a) to the CFO, for forwarding to the President and senior officers of the University, a quarterly investment report which shall include at least the following information:
 - (i) the actual rate of return for each managed fund **fund forming part of the Managed Assets** for the latest quarter, year to date, last twelve months and last four years;
 - (ii) qualitative commentary on results;
 - (iii) the asset mix for each fund **forming part of the Managed Assets**, including the proportion of equity investments in Canada, the U.S. and elsewhere, the proportion of each asset class managed actively and in index funds, and the proportion of each foreign asset class subject to currency risk;

- (iv) investment returns of each major fund **forming part of the Managed Assets** compared to benchmarks and also to the performance of comparable funds, as reported by a performance measurement service;
 - (v) investment returns of each asset class relative to benchmark indices and to the performance of the asset class in comparable funds;
 - (vi) the portfolio managers employed for each fund **forming part of the Managed Assets** with an assessment of their investment performance compared to benchmark indices and the returns relative to other managers of comparable assets;
 - (vii) UTAM's economic and investment outlook and strategies planned in the light of that outlook;
 - (viii) if and as requested by the CFO, copies of quarterly reports from some or all external portfolio managers;
 - (ix) any significant changes in UTAM's key investment personnel and significant developments in its organization;
 - (x) any other material matter that the management of UTAM, in its reasonable judgment, decides should be brought to the attention of the CFO; and
 - (xi) such other information and material as may be requested by the CFO acting reasonably;
- (b) to the CFO, at least annually or more frequently as the Business Board may from time to time determine, for forwarding to the President of the University and the Business Board together with the CFO's concurrence and/or advice, a full and extensive investment report which shall include at least the following information:

- (i) investment performance as measured against the rate-of-return objectives and benchmarks established in the applicable ~~investment policies~~ **Investment Policies**, and the reasons for the results;
 - (ii) portfolio risk compared to the risk tolerances established in the applicable ~~investment policies~~ **Investment Policies**;
 - (iii) the costs of managing each fund **forming part of the Managed Assets**;
 - (iv) UTAM's own investment decisions (in contrast to the decisions made by any external portfolio managers);
 - (v) an appropriate statement to indicate that UTAM is in compliance with all applicable University ~~policies~~; **and Business Board policies (including, without limitation, Investment Policies)**;
 - (vi) any other material matter that the management of UTAM, in its reasonable judgment, decides should be brought to the attention of the CFO, President of the University and the Business Board; and
 - (vii) such other information and material as may be requested by the CFO acting reasonably; and
- (c) to the CFO, for forwarding to the President of the University and the Business Board, the annual audited financial statements of UTAM, within two months of the end of its financial year.

44 **17.** UTAM will make its Chair of the Board, President and chief executive officer and other senior officers and personnel, as appropriate, available to:

- (i) the Business Board at least annually, for a full and extensive review of UTAM's investment reports;

- (ii) the President of the University and his or her associates, at least quarterly;
- (iii) the Connaught Committee of the University, at least annually, and semi-annually if so requested by the CFO;
- (iv) the President and another representative of The University of Toronto Faculty Association and of any other University employee group designated for this purpose by the CFO, at least semi-annually in order to provide appropriate information; and
- (v) any other interested University of Toronto group or individual, as directed by the CFO;

and UTAM will give due consideration to any concerns raised by any such body, group or individual.

~~15. The Secretary of the Business Board shall be appointed as the first Secretary of UTAM and any subsequent appointment to that office shall be subject to the approval of the CFO.~~ **18. UTAM agrees to maintain, or cause to be maintained (as applicable) accurate books and records in accordance with generally accepted accounting principles, including accurate and complete records of all of investments of Managed Assets and all other activities undertaken by it as agent on behalf of the University in providing the Services hereunder, and to provide the University, on reasonable notice during regular business hours, with access thereto for purposes of inspecting, auditing or copying same.**

~~16~~ **19. Intentionally deleted. [Note to draft: Somewhat redundant now and otherwise adequately addressed by section 15 of By-law No. 1.]**

20. UTAM will pay the remuneration and compensation of its directors, officers and employees, including the Chair of the Board, subject to and in accordance with clause 22 of its By-law No. 1 and the University's Policy on Appointments and Remuneration, as amended from time to time. In addition, the specific compensation arrangements for

the President and ~~chief executive officer~~ **Chief Executive Officer** of UTAM shall be subject to the approval of the President of the University.

~~17~~ **21.** In order to meet the requirements of the University's Policy on Appointments and Remuneration, UTAM will prepare and submit to the President of the University for his or her recommendation to and approval by the Senior Salary Committee of the University, a statement dealing with the proposed senior executive compensation policy and core pay principles for UTAM. The proposal should identify clearly the senior officer and senior staff positions, the holders of which would be governed by the proposed principles, and should include provision for the submission by UTAM of an annual report to the Senior Salary Committee as to the compensation paid for each named position and for each compensated director. Similar to the private sector model, UTAM shall report the compensation of its five most highly remunerated executives in its annual report and, similar to the public sector model, shall disclose the amounts of salary and benefits paid in the previous year to or in respect of its employees to whom UTAM paid at least \$100,000 as salary.

~~18. The University will provide UTAM with office space now occupied by the University's Treasury Department on the third floor of 215 Huron Street, as determined by the CFO, at a rent and for a term to be negotiated between the parties. It is anticipated that the operations of UTAM will be carried on initially from those offices but that eventually, UTAM may decide to move to an office location off campus in the Greater Toronto Area if in the determination of its Board, this would better serve the interests of the parties.~~

~~Any such decision to move and the leasing of office space~~ **22. Any decision by UTAM to change its office location and to lease office space (or additional space)**

~~other than from the University shall be subject to the approval of the CFO, and in the~~ **any such** event ~~of such a move~~, the University will expect UTAM to obtain and maintain offices of a quality similar to that occupied by senior administrators of the University and not of a grandiose or extravagant nature.

~~19~~ **23.** UTAM will be responsible for providing all services, facilities and equipment necessary for its operations, including without limitation, telephone, print management,

photocopying, facsimile, computer printing and scanning and computing equipment and special application software systems. UTAM may, at its option, lease some or all of such services, facilities and equipment from the University or may acquire its own.

~~20~~ **24.** UTAM may utilize the accounting, bookkeeping, payroll, purchasing, insurance and risk management, environmental, health and safety, consultation, pension administration, benefits administration and similar administrative services of the University in connection with the operations of UTAM, including without limitation, use of the University's AMS system and services of the office of ~~its~~ **the University's** Controller, at rates of compensation comparable to those charged to the University's other ancillaries, to be agreed upon between the parties. ~~Each~~ **At the request of either party, each** such service so utilized shall be the subject of an addendum to this Agreement.

~~21~~ **25.** The University recognizes that it may be appropriate at some future time for UTAM to have its own separate payroll administration for its staff, in which event such a change shall be subject to the approval of the CFO.

~~22~~ **26.** To the extent permitted by the Canadian Universities Reciprocal Insurance Exchange or other insurance carrier or carriers, the University will make available to UTAM access to the University's insurance coverages for direct physical loss to physical property, comprehensive general liability, directors' and officers' errors and omissions liability, automobile and such other coverages as the parties may agree upon from time to time. UTAM will pay its appropriate share of premiums for any such insurance. At its option, if it is advantageous to do so, UTAM may obtain any insurance coverage other than through the University, subject to the approval of the CFO.

~~23. Unless satisfactorily provided by 27. If~~ the University's insurers **do not make available to UTAM coverage for directors' and officers' liability** pursuant to the preceding clause hereof, UTAM will arrange for appropriate directors' and officers' errors and omissions liability insurance coverage, in amounts and upon terms to be approved by the CFO. As provided in By-law No. 1 of UTAM, the directors and officers of UTAM will be indemnified ~~out of its funds~~ to the extent set out in clause 56 thereof.

To the extent that the proceeds of such insurance and the any funds of UTAM are not sufficient to satisfy the indemnity provided for in that clause, the University will indemnify the directors and officers of UTAM to the same extent as therein provided and will pay for the legal and other defence costs in the event of an action against indemnified directors and officers, all with the exception of claims, actions, costs, charges and expenses occasioned by the wilful neglect or wilful default of the officer or director.

~~24~~ **28.** ~~The following provisions shall be implemented with respect to those University employees, currently working in the University's Treasury Department, who are to become employees of UTAM and are named in Schedules "B" and "C" to be appended hereto. These provisions shall be implemented upon a date to be agreed by the parties, hereinafter described as the personnel transition date. Because the personnel transition date will follow the effective date of this Agreement, UTAM will reimburse the University for its costs for the salaries and benefits of employees who become UTAM employees for the period of time between the effective date and the personnel transition date.~~
apply to those employees of UTAM named in Schedules "A" and "B" appended hereto (the "Scheduled Employees"). [Note to draft: Schedules "A" and "B" should include the names of all University employees listed in the Original Agreement who accepted employment with UTAM, whether or not they have since ceased to be UTAM employees.] For clarity, it is understood that the following provisions are not intended to apply to individuals ~~offered employment by UTAM who were not, prior to the effective date hereof, employees of the University and working in its Treasury Department.~~ employed by UTAM who are not Scheduled Employees.

~~(a) UTAM will extend offers of employment to those University employees named in Schedules "B" and "C" to be appended hereto. Employees receiving offers of employment from UTAM will have one month to consider the offer. The employment offered shall be as follows:~~

~~(i) For employees~~**(a)** **(i) For Scheduled Employees** who are represented by the United Steelworkers of America (hereinafter called the ~~union~~)**"union"**), compensation, benefits and the terms and conditions of employment until

June 30, 2002, shall be those provided in the Memoranda of Settlement for First Collective Agreements between the University and the union dated the 18th day of December 1999, which collective agreements remain in force until June 30, 2002. Those employees **Scheduled Employees** are identified as such on Schedule "B" to be "**A**" appended hereto.

- (ii) For employees **Scheduled Employees** who are not represented by a trade union, compensation and benefits ~~until June 30th, 2000 shall be the same as those they received as University employees. Compensation and benefits effective July 1st, 2000 shall be subject to at least the same increment as that approved by the Business Board on March 27th, 2000 for non-unionized University employees.~~ Those employees **Scheduled Employees** are identified on Schedule "~~C~~" to be "**B**" appended hereto. **Scheduled** Employees shall begin **on Schedule "B" continue** their employment with UTAM with the same service they had as employees of the University. ~~UTAM will establish its~~ **and are subject to UTAM's** own staff policies for non-unionized employees.
 - (iii) **Scheduled** Employees shall retain any remaining vacation entitlements, and entitlements for time off for overtime, which they had as employees of the University, subject to the limits contained in clauses 22.05 and 24.08 of the Collective Agreement for the "Staff Appointed" Bargaining Unit between the University and the union, or subject to the vacation and overtime carry-forward provisions in the University's current policies for non-union staff or the Senior Management Group, as applicable to the UTAM staff members before ~~the effective date of this Agreement~~ **May 1, 2000.**
- (b) UTAM will indemnify and hold harmless the University from any liabilities, expenses, costs, damages, suits, actions, claims or demands arising **which**

arose as a result of the failure of UTAM to make offers of employment on the terms set out herein in the Original Agreement.

- (c) Employees of the University who are were offered employment in accordance with sub clause (a) the Original Agreement and who ~~do~~ did not accept such offer ~~shall~~ remain the responsibility of the University. The University ~~will absorb~~ assumes all liabilities and costs associated with the continuation or termination of the employment of such employees.
- (d) ~~Any individuals who accept employment with UTAM shall, on the personnel transition date, become~~ Scheduled Employees are the exclusive responsibility of UTAM and UTAM ~~will assume~~ assumes and ~~absorb~~ absorbs all liabilities and costs associated with the continuation or termination of the employment of such employees Scheduled Employees. UTAM will indemnify and hold the University harmless from any liabilities, expenses, costs, damages, suits, actions, claims or demands relating to the employment of such employees Scheduled Employees with either the University or UTAM, or the termination of such employment.
- (e) ~~With respect to the employees listed on Schedule "B" to be appended hereto, from and after the personnel transition date, UTAM will assume~~ Scheduled Employees listed on Schedule "A" hereto, UTAM assumes all of the rights and obligations of the University under (i) the applicable collective agreements ~~with union~~; and (ii) the Labour Relations Act.
- (f) ~~UTAM will provide notice to all appropriate statutory authorities that UTAM has become the lawful employer of those employees identified in Schedules "B" and "C" to be appended hereto who accept its offer of employment, and after the personnel transition date, UTAM will be~~ is responsible for payment of all statutory deductions, remittances and assessments in respect of its employees. UTAM ~~will, by the personnel transition date, enter into~~ has an agreement with the University to provide payroll services, through which UTAM ~~will make~~ the

University makes payments of the statutory deductions, remittances and assessments in respect of its UTAMs employees.

- (g) The University will provide group life insurance and survivor income benefit, long-term disability insurance, extended health care, semiprivate hospital and dental and vision care plans for UTAM employees that are the same as those provided for participating or covered regular employees of the University and from the same carriers that provide those benefits for regular University employees, and UTAM will pay to the University the amount required to pay the employer share of cost of those benefits. UTAM may, at its option and at a time of its choosing, but upon reasonable notice, establish and administer separate benefit plans for its own employees.
- (h) Except as described below, all employees ~~who accept employment with UTAM and~~ Scheduled Employees, who are members of the University of Toronto Pension Plan ~~will~~, continue as members of the Plan and ~~will be~~ are subject to the same terms and conditions of and entitled to the same benefits under that Plan as if they continued to be regular employees of the University, and their University service ~~will be~~ is included for the purposes of determining their entitlement upon retirement from employment with UTAM. UTAM will pay to the University such amounts as may be determined by the University in consultation with the actuaries of the Plan to be necessary to properly fund the liability under the Plan in respect of members employed by UTAM who are Scheduled Employees.

Similarly, any employee(s) ~~who accept employment with UTAM and~~ Scheduled Employees who are entitled to benefits pursuant to the University's Supplemental Retirement Arrangement (S.R.A.) ~~will~~ retain their qualification for those supplemental retirement benefits. UTAM will pay to the University such amounts as may be determined by the University in consultation with the University's actuaries to be necessary to cover the cost of providing

supplemental retirement benefits in respect of ~~University staff members employed by UTAM~~ **Scheduled Employees** who are eligible for the S.R.A.

Notwithstanding the above, UTAM may decide to establish its own pension or retirement arrangements for its senior professional employees. If it does so, any employee **Scheduled Employee** who qualifies for the new UTAM retirement arrangements may, at his or her option, remain a member if ~~of~~ the University of Toronto Pension Plan and retain eligibility for payments under the S.R.A, or that employee may choose instead to adopt the new UTAM retirement arrangements.

~~(i) The University and UTAM will use their efforts to seek arrangements with the Athletic Centre, the Faculty Club and Hart House whereby University employees who become employees of UTAM will be able to continue their memberships under the terms of the joint membership plan. UTAM will be responsible for payment of the employer share of the joint membership fee.~~
[Note to draft: paragraph (i) below of the Original Agreement was deleted because the provisions are now redundant.]

~~Employees of UTAM may, subject to availability, rent parking spaces from the University at rates determined by the University from time to time, which are identical to rates charged to University employees.~~

~~(j) With respect to an employee~~ **(i) With respect to a Scheduled Employee**, or a dependent (as defined in the University's Policy on Tuition Waiver for Dependents in force immediately prior to the ~~personnel transition date~~) of an employee, listed in Schedules "B" and "C" to be appended hereto who accepts employment with UTAM and whose dependents were **May 1, 2000**) of a **Scheduled Employee, who was** covered by the University's policies on tuition waiver and tuition waiver for dependents, as the case may be, immediately prior to the ~~personnel transition date~~, **May 1, 2000** the University will **continue to** extend the benefit of such policies to such employee **Scheduled Employee** or dependent, as the case may be, to the same extent as if such employee **Scheduled Employee** had continued in the employment of the University, so

long as such employee **Scheduled Employee** continues in the employment of UTAM.

~~(k) Any employee working in the University's Treasury Department who is offered employment but who does not accept employment with UTAM will be dealt with in accordance with applicable University policies, but the University has only limited opportunities for the relocation of such employees and it is understood that they will therefore be subject to articles 12.05 (d) and (e) of the collective agreement with the union, or in accordance with the University's policies on release for reasons of organizational change. No new or changed employment arrangements with those employees will be entered into by the University between the date of this Agreement and the personnel transition date without the consent of UTAM.~~

~~(j)~~**(i)** The University will charge to UTAM and UTAM will pay an amount to be determined by the University (consistent with the determination of its share with respect to its own employees) as UTAM's share of the costs of such benefits as are provided to the employees of UTAM under the University employee benefit plans, including without limitation, the proper share of UTAM of unfunded liabilities under the University of Toronto Pension Plan, adjusted for any surplus or deficit in respect of such employees against future contributions by UTAM, and an appropriate share of out-of-pocket costs. The last-mentioned liabilities shall be calculated and allocated to UTAM in such manner as the actuaries of the Pension **that** Plan determine.

~~(m)~~**(k)** The Staff Housing Loan Program of the University will be available to employees of UTAM.

~~(n) Forthwith after the personnel transition date, the University will make available to UTAM all such~~**(l) At any time when the University no longer administers the payroll of UTAM, it will deliver all** documents, books, records and

information as relate to those employees listed on Schedules "B" and "C" to be appended hereto who accept UTAM's offer of employment, and at any time when the University no longer administers the payroll of UTAM, it will deliver all of the same relating to the payroll of UTAM's employees to UTAM, subject to a right of access thereto at all reasonable times by or for the benefit of the University, for the purposes of inspection and copying.

~~25~~ **29.** UTAM will appoint the University's auditors auditors, approved in advance by the University, to perform all required auditing services and will retain the University's solicitors for all legal matters except that UTAM may retain legal counsel having specialized knowledge or experience for investment transactions, subject to the approval of the CFO.

~~26~~ **30.** Until otherwise directed by the President of the University, the CFO is designated as the University's officer for the purposes of administering this Agreement on behalf of the University and of liaison with UTAM.

31. Nothing contained in this Agreement shall be construed to give UTAM or any of its officers, directors or employees the power to take any action on behalf of the University which is outside the scope of its authority hereunder, or shall constitute the parties as joint venturers, partners, co-owners or otherwise as participants in a joint undertaking.

32. For the purposes of this Agreement, the term "Confidential Information" shall mean any and all data and non-public information, written or oral, provided by one party hereto (the "Disclosing Party") to the other party hereto (the "Receiving Party") which relates in any way to the Disclosing Party or any elements of its business, including any and all technical information, compilations, programs, methods, designs, know-how, notes, memoranda, information relating to marketing, promotion, business practices, policies and strategies, proprietary investment products, financial models or analyses or other documents or records which are generated by the Receiving Party's review of any of the foregoing.

The Receiving Party acknowledges and agrees that all Confidential Information of the Disclosing Party is the property of the Disclosing Party and that the Disclosing Party owns all right, title and interest in and to such Confidential Information regardless of whether any of the Confidential Information was created, generated, developed, produced or prepared by the Disclosing Party and regardless of whether any of the Confidential Information came into being before or after the execution of this Agreement. The Receiving Party agrees on its behalf, and agrees to cause its directors, officers and employees, to keep secret and maintain the confidentiality of the Confidential Information and not to use the Confidential Information except in connection with carrying out its obligations or exercising its rights hereunder. Notwithstanding the foregoing, UTAM shall have the right to disclose Confidential Information to its investment managers, professional consultants and other authorized delegates described in paragraph 3(c) of this Agreement, who have a need to know such information in order to assist in the provision of the Services hereunder and who agree to be bound by the terms of this paragraph 32.

Notwithstanding the foregoing, the term Confidential Information shall not include information which:

- (a) at the time of disclosure is in the public domain;
- (b) the Receiving Party can prove was independently developed or known by it on a non-confidential basis or was lawfully disclosed to it by a third party which, to the best of its knowledge, had a legal right to disclose the same; or
- (c) is required to be disclosed by the Receiving Party in accordance with applicable law or any order of any court of competent jurisdiction, after notice to the Disclosing Party.

33. Each party hereto hereby grants to the other party a non-exclusive licence to use and reproduce the other party's name and any trademarks (including any

logos and/or symbols related thereto) associated therewith in connection with the provision of the Services hereunder.

~~34~~ 27. This Agreement shall come into force and be effective as at and from the opening of business on the 1st day of May, 2000. date first written above.

~~28~~ 35. The University, in consultation with UTAM, will conduct a review of the terms of this Agreement after it has been in effect for three years.

~~29~~ 36. This Agreement expresses the entire understanding between the parties with respect to the subject matter and there are no representations, warranties or collateral terms and conditions with respect thereto except as expressly provided herein.

~~30~~ 37. Except as herein otherwise expressly provided, no modification or amendment of this Agreement shall be binding unless in writing and executed by the parties hereto.

~~34~~ 38. This Agreement is not assignable and shall enure to the benefit of and be binding upon the parties hereto and their respective successors.

~~32~~ 39. The invalidity of any particular provision of this Agreement shall not affect the validity of any other provision and in such event, the Agreement shall be construed as if the invalid provision had been omitted.

~~33~~ 40. No waiver, condonation, excusing, overlooking or forgiving of any breach or non-observance or non-performance of any of the terms and conditions hereof by one party shall be binding on that party unless evidenced or confirmed as such by a writing, nor shall the same prejudice the rights of the waiving party with respect to any future breach, non-observance or non-performance.

~~34. Wherever in or under this Agreement any consent, approval, determination designation or direction of the University, the President or the CFO is necessary, the same may be given or withheld in its, his or her sole discretion and must be in writing in order to be effective.~~ 41. Intentionally deleted.

35 **42.** This Agreement shall be construed and interpreted in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

36 **43.** Any notice required or permitted to be given hereunder by one party to the other shall be in writing and hand-delivered, in the case of notice to the University, to it in care of the Office of the Chief Financial Officer, Simcoe Hall, 27 King's College Circle, Toronto, **M5S 1A1**, marked for the attention of that officer, and in the case of notice to UTAM, to it at its ~~head office for the time being~~ **480 University Avenue, Suite 210, Toronto, M5G 1V2**, marked for the attention of its President, with a copy similarly delivered and marked for the attention of its Chair of the Board. and any notice so delivered shall be deemed to have ~~been~~ received **been**

HB Draft: January 8, 2002

received and become effective on the second business day following the day of delivery.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed under the hands of their respective officers, duly authorized, and their respective corporate seals.

THE GOVERNING COUNCIL OF THE
UNIVERSITY OF TORONTO

President

Chief Financial Officer

UNIVERSITY OF TORONTO ASSET
MANAGEMENT CORPORATION

Chair of the Board

President

~~Funds currently under the management of the University to be managed by the University of Toronto Asset Management Corporation, pursuant to Clause 1 of the Service Agreement between the University of Toronto and the University of Toronto Asset Management Corporation.~~

~~University of Toronto Consolidated Investment Pool~~

~~University of Toronto Expendable Funds Investment Pool~~

~~University of Toronto Pension Plan~~

~~University of Toronto Pension Plan for OISE/UT Employees~~

~~University of Toronto Supplemental Retirement Arrangement~~

~~Various specific non-discretionary endowed funds~~

~~Various specific non-discretionary expendable funds~~

~~Various specific discretionary estates~~

~~University of Toronto Long Term Disability Plan T:\WICKENS\UofT\General\Amended Service Agr 004.doc~~