

SCHEDULE

I hereby certify this to be a true copy of the Agreement. Dated at the City of Winnipeg in the Province of Manitoba this 6th day of March, 1958.

A. P. FLETT,  
Secretary, The Equitable Trust Company.

[SEAL]

AGREEMENT made as of the 21st day of February, in the year of OUR LORD ONE THOUSAND, NINE HUNDRED AND FIFTY-EIGHT:

BETWEEN:

THE EQUITABLE TRUST COMPANY,

Hereinafter called "The Vendor"

OF THE FIRST PART,

- and -

GUARANTY TRUST COMPANY OF CANADA,

Hereinafter called "The Purchaser"

OF THE SECOND PART.

WHEREAS the Vendor was incorporated by a special act of the Province of Manitoba and has been carrying on business as a Trust Company with head office at the City of Winnipeg, in the said Province, and subject to *The Companies Act* R.S.M. (1954) and amendments thereto has the power, amongst others, to sell and dispose of the business, rights and property of the company;

AND WHEREAS the Purchaser was incorporated by special Act of the Parliament of Canada, being Chapter 65 of the *Statutes of Canada (1925)* and has been and is carrying on business of a Trust Company under the provisions of *The Trust Companies Act* and under such Act may purchase the assets and assume the liabilities of another trust company;

AND WHEREAS pursuant to the said statutes and all other statutes, law and powers applicable to or vested in the parties hereto respectively, the Vendor and the Purchaser have agreed upon the sale and purchase of all the business, undertaking, property, rights and assets of the Vendor upon the terms and conditions hereinafter set out, subject to the ratification thereof by the shareholders of the respective parties hereto, subject to the approval of the Legislature of Manitoba, subject to the approval of such purchase by the Treasury Board of Canada and subject to the approval of such other Governmental authorities as may be requisite;

AND WHEREAS the Vendor represents that there are issued and outstanding as fully paid common shares of its capital stock, six thousand (6,000) said shares of the par value of One Hundred Dollars (\$100.000) each.

NOW THIS AGREEMENT WITNESSETH:

**1** The Vendor agrees to sell, transfer and assign to the Purchaser and the Purchaser agrees to buy from the Vendor as at the close of business on the 31st day of December, 1957, as a going concern all the business, undertaking, property, rights and assets of the Vendor, including without limiting the generality of the foregoing the following:

- (a) The goodwill of the business of the Vendor with whatever rights in connection therewith which are capable of being transferred, including the right to use the name of the Vendor in connection with the business of the Purchaser so purchased, and to hold out and represent the Purchaser as carrying on such business in continuation of the Vendor's business and in succession thereto, and in the discretion of the Purchaser to use the words "formerly The Equitable Trust Company" or such other words indicating that the business is carried on in continuation of or in succession of the Vendor;
- (b) All the freehold and leasehold properties, wherever situate, belonging to the Vendor;
- (c) All mortgages, stocks, shares, bonds, debentures and other securities for money owned by the Vendor;
- (d) All the book and other debts due or owing or to become due to the Vendor in connection with the said business, and the full benefit of all securities for such debts;
- (e) The full benefit of all contracts and engagements to which the Vendor is or may be entitled in connection with the said business;
- (f) All rights of action and things in action arising out of or incidental or pursuant to ownership of any assets and property hereby agreed to be sold or affecting the value thereof insofar as those rights of action are capable of being transferred;
- (g) All fees and compensation due to, accruing due to or earned by the Vendor in connection with any work or services rendered by the Vendor whether or not such fees and compensation have been fixed by agreement, by order of a competent Court, or otherwise;
- (h) All cash on hand and in any banks or other depositaries and all bills, notes, moneys, negotiable instruments and credits owned or held by the Vendor in connection with the said business; less an amount equivalent to income tax imposed by The *Income Tax Act* (Canada) upon the net profits of the Vendor for the period commencing upon the 1st day of January, 1958 and ending upon the date fixed for completion as hereinafter defined, and less any tax chargeable upon and payable by the Vendor under the provisions of paragraph 2.
- (i) All chattels, furniture, safety deposit equipment, fixtures and other like property belonging to the Vendor;
- (j) All other assets and property, rights, branches and effects of the Vendor whatsoever and wheresoever situate; all of which said foregoing are hereinafter referred to as "the purchased premises".

2 The Vendor agrees to carry on and shall be deemed to have carried on its business from and after the said 31st day of December, 1957, for the account and benefit of the Purchaser until the completion of this sale and purchase, in the same manner as heretofore conducted, in order that the said business may be maintained as a going concern; it being understood and agreed that for such purpose the Vendor shall be entitled to deal with its property and assets in the usual and ordinary course of its business, but that from and after the 31st day of December, 1957, the Vendor acknowledges and declares that it has not and covenants and agrees that it will not make any unusual or extraordinary use or disposition of any of its assets or property which might have the effect of impairing the value thereof; neither shall it perform or do any act or thing which might have the effect of creating a substantial change in respect of any of the assets and property of the Vendor, except with the written consent of the Purchaser, and subsequent to the 31st day of December, 1957 the Vendor covenants and agrees not to declare or pay any dividends in respect of issued shares of its capital stock and shall not accept any subscriptions for or allot or issue any shares of its capital stock; provided, however, that notwithstanding the generality of the foregoing, the Purchaser acknowledges that the Vendor is entitled to elect under Section 105 of The *Income Tax Act* (Canada) to be assessed in respect of the amount of Twenty-seven Thousand Dollars (\$27,000.00) undistributed income on hand based on a dividend of the same amount paid to the shareholders of the Vendor in the year 1957 and to pay the tax chargeable thereon out of the Vendor's cash.

3 The Vendor shall forthwith produce and disclose to the Purchaser, all of its debts, liabilities, obligations, contracts and engagements whatsoever, and shall produce and make available to the Purchaser its books of account, records, title papers, mortgages, agreements for sale, records of money on deposit, bonds, stocks, other securities for money and all other information respecting all of its assets whatsoever. The Purchaser shall have the right forthwith to make an audit of the balance sheet as of the 31st day of December, 1957 of the affairs and business of the Vendor, and the Purchaser and the Vendor shall settle and agree upon a statement of the debts, liabilities and obligations of the Vendor, and such statement shall be the basis for the consideration set out herein. Should such production and audit disclose any material errors in the figures already submitted to the Purchaser, the purchase price may be adjusted at any time prior to the ratification of the Agreement by the shareholders of both companies by an amount to be mutually agreed upon by the Board of Directors of the parties hereto and the consideration payable as aforesaid adjusted accordingly, and failing such agreement, the parties hereto or either of them shall not be bound to proceed in accordance with the terms hereof, and this Agreement shall be null and void; provided such statement and audit or any agreement or failure of agreement arising out of such statement or audit shall be made or occur prior to the ratification of this Agreement by the shareholders of both companies, and that no change of any sort occurring subsequent to the ratification of this Agreement by the shareholders of both companies shall in any way alter, change or affect the amount of consideration to be paid by the Purchaser.

4 The consideration for the said sale by the Vendor shall be as follows:

(a) The Purchaser shall pay to the Vendor at Winnipeg, Manitoba, upon the date fixed for completion, the sum of One Million, Five Hundred Thousand Dollars (\$1,500,000.00) in lawful money of Canada, together with an amount equivalent to interest upon the said sum calculated at the rate of three and one-half per centum (3½%) from the date of execution of this Agreement to the date of payment of said purchase price.

(b) As a part of the consideration for the said sale and purchase, the Purchaser shall and hereby does undertake to pay, satisfy, discharge, perform and fulfil all the debts, liabilities and obligations of the Vendor whatsoever other than liabilities with respect to capital stock and surplus and any unpaid income tax prior to the date fixed for completion, and to adopt, perform and fulfil all contracts and engagements now binding upon the Vendor and shall at all times keep the Vendor and its shareholders and each and every one of them indemnified against such debts, liabilities, obligations, contracts and engagements, and against all actions, proceedings, costs, damages, claims, demands and other proceedings in respect thereof. Provided that nothing herein contained shall be deemed to alter or change the liability (if any) of each shareholder of the Vendor for such personal or corporate income tax as may be imposed under *The Income Tax Act* or the *Income War Tax Act* or for any debt or liability of any shareholder of the Vendor to the Vendor;

(c) The covenants of the Purchaser herein contained.

**5** This Agreement is conditional upon receiving the ratification and assents required by the laws of the Province of Manitoba, including the enactment of a private act by the Legislature of the Province of Manitoba ratifying this Agreement and subject thereto the sale and purchase hereby agreed to be made shall be completed upon the date fixed for completion and on such date possession of all the real and personal property hereby agreed to be sold shall so far as practicable be given, sold and transferred to the Purchaser. The Vendor, its officers, directors and other necessary parties (if any), over whom the Vendor has control, shall execute all such transfers, assignments, bills of sale, deeds, conveyances and other assurances, and do all such things as shall reasonably be required for transferring the real and personal property hereby agreed to be sold and vesting it in the Purchaser and giving to the Purchaser the full benefit of this Agreement.

**6** This Agreement shall come into effect upon the date the said private Act of the Legislature of the Province of Manitoba is assented to (herein called "the date for completion") and if for any reason the said private Act has not been assented to before the conclusion of the latest session of the Legislature convened in the year 1958, this Agreement shall be null and void at the election of the Vendor.

**7** The obligations of the Purchaser to pay the purchase moneys above mentioned shall be subject to the following conditions:

(a) That before payment of the purchase price the directors and shareholders of the Vendor shall pass the requisite resolution for the winding-up of the Vendor and shall obtain and produce to the Purchaser for its inspection a clearance certificate of the Taxation Division of the Department of National Revenue up to the 31st day of December 1957.

(b) That upon the date fixed for completion the Vendor will deliver to the Purchaser all deeds, instruments, certificates and documents in its possession or power evidencing the title of the Vendor to the purchased premises, and all books of account of the Vendor and all other records, papers and documents belonging to the Vendor or in its possession or under its control; Provided that all titles and Certificates of title (which shall be transferred by the Vendor to the Purchaser) shall be deemed prima facie valid and sufficient.

**8** It is understood and agreed that any right of action transferred or assigned to the Purchaser hereunder by the Vendor may be exercised or enforced, and any proceedings which may have been commenced by the Vendor in connection therewith prior to the date of the winding-up resolution by the directors and/or shareholders of the Vendor may be continued at the request of the Purchaser in the name of the Vendor for the benefit of the Purchaser, or in the name of the Purchaser, provided that nothing in this agreement shall derogate from or extinguish any right of action now vested in the Vendor in connection with the business of the Vendor prior to the date of the winding-up and any such right of action shall remain in and be enforceable by the Vendor and at the request of the Purchaser the Vendor shall take any proceedings to enforce, exercise and realize upon such rights of action in its own name but for the full benefit and advantage of the Purchaser and at the expense of the Purchaser.

**9** The Vendor covenants and agrees to execute and deliver to the Purchaser all such conveyances, transfers, assignments and other documents and assurances as may be necessary or by the Purchaser deemed expedient for the due vesting in the Purchaser of the title to any of the assets and property of the Vendor, and the Vendor and Purchaser mutually covenant and agree each with the other to make any required petitions and applications or join in the making of any required petitions and applications to any Governmental or constituted authority or otherwise to vest in the Purchaser the title to all assets and property of the Vendor wheresoever situate.

**10** This Agreement shall be forthwith submitted to the shareholders of the Vendor and of the Purchaser, respectively, at meetings of such respective shareholders duly called for that purpose, in order to obtain such confirmation, ratification, approval and assent to this Agreement as may be required by law, and forthwith upon such ratification and assent being given by the shareholders of the Vendor and Purchaser, respectively, this Agreement shall be submitted by the Purchaser to the Treasury Board of Canada and to such other Governmental or constituted authority as may be necessary for assent and approval in order to give this Agreement full force and effect.

**11** The Vendor covenants and agrees that forthwith after compliance with the conditions set out in paragraph 7 hereof and on receipt by it of the purchase moneys, it shall make distribution of the purchase moneys to its shareholders.

**12** IN THIS AGREEMENT, words in the singular may include the plural and words in the plural may include the singular, and words imparting the masculine gender shall include females.

IN WITNESS WHEREOF THE EQUITABLE TRUST COMPANY and GUARANTY TRUST COMPANY OF CANADA, have hereunto caused their corporate seals to be affixed duly attested by the hands of their proper officers in that behalf, the day and year first above written.

THE EQUITABLE TRUST COMPANY,

Per:

"A.B. Flett"

[SEAL]

"A.P. Flett"

GUARANTY TRUST COMPANY OF CANADA,

Per:

"J.W. Berry"

[SEAL]

"J.A. Thompson"

**NOTE: This Act replaces S.M. 1958 (1st sess.), c. 106.**