

**NATIONAL BANK FINANCIAL INC. EDUCATION SAVINGS PLAN TERMS AND CONDITIONS  
(INDIVIDUAL PLAN)**

1. **Definitions.** For the purposes hereof, the words or terms set out below have the following meaning:
- a) **accumulated income payment:** means any amount paid out of an RESP, other than a payment described in any of paragraphs (a) and (c) to (e) of the definition “trust” under paragraph 146.1(1) of the *Income Tax Act* (Canada), to the extent that the amount so paid exceeds the fair market value of any consideration given to the RESP for the payment of the amount.
  - b) **applicable CES legislation:** includes
    - i) the provisions of the *Canada Education Savings Act* (Canada) and its regulations;
    - ii) the provisions of any savings grant legislation and related regulations of a province of Canada under a program administered through an agreement under section 12 of the *Canada Education Savings Act* (Canada);
    - iii) the provisions of any legislation applicable to a designated provincial program or applicable to a program with similar objectives and financed directly or indirectly by a province, and their regulations.
  - c) **applicable tax legislation:** means the *Income Tax Act* (Canada) and any provincial income tax legislation applicable in the province of residence of the subscriber, and their regulations.
  - d) **Application:** The application form for membership in the Plan completed and signed by the subscriber(s), as amended from time to time in accordance with this agreement.
  - e) **assets of the Plan:** means all property of any nature whatsoever which makes up the Plan, including assets transferred, contributions made to the Plan, CES amounts as well as any income and gains generated or realized thereby (less all promoter's and trustee's fees, out-of-pocket expenses and costs incurred in connection with the administration of the Plan, including any tax, interest or penalty payable), held in trust by the trustee in accordance with this agreement and the RESP legislation.
  - f) **beneficiary:** means the individual designated on the Application by the subscriber as a beneficiary to whom or for whom educational assistance payments may be paid if the requirements of the Plan and the RESP legislation are satisfied at the time the educational assistance payments are made.
  - g) **CES grant:** means a Canada Education Savings grant, as defined in the *Canada Education Savings Act* (Canada).
  - h) **CES amount:** means the amount of any CES grant and/or any Canada Learning Bond and/or any education savings grant, bond, incentive or other provided by a province of Canada under any applicable CES legislation.
  - i) **designated educational institution:** means
    - i) an educational institution located in Canada that is:
      - A) a university, college or other educational institution designated by the lieutenant governor in council of a province as a specified educational institution under the *Canada Student Loans Act*, designated by an appropriate authority under the *Canada Student Financial Assistance Act*, or designated for the purposes of *An Act respecting financial assistance for education expenses* by the Minister of the Province of Quebec responsible for the administration of that Act;
      - B) certified by the Minister of ESDC to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation;
    - ii) all other educational institution authorized under the RESP legislation.
  - j) **designated provincial program:** includes
    - i) a program administered pursuant to an agreement entered into under section 12 of the *Canada Education Savings Act*, or
    - ii) a program established under the laws of a province to encourage the financing of children's post-secondary education through savings in RESPs.
  - k) **educational assistance payment:** means any amount, other than a refund of payments, paid out of an RESP to or for a beneficiary to help finance the cost of post-secondary education.
  - l) **ESDC:** means Employment and Social Development Canada.
  - m) **Plan:** means the RESP established by the promoter at the subscriber's demand in accordance with the terms and conditions of the Application and this agreement, as they may be amended from time to time, under which the promoter agrees to pay or to cause to be paid educational assistance payments to or for one or more beneficiaries.
  - n) **post-secondary educational institution (PSEI):** means
    - i) an educational institution in Canada that is described in subparagraph 1i)j) above; or
    - ii) an educational institution outside Canada that provides courses at a post-secondary school level and that is:
      - A) a university, college or other educational institution at which a beneficiary was enrolled in a course of not less than 13 consecutive weeks; or
      - B) a university at which a beneficiary was enrolled on a full-time basis in a course of not less than three consecutive weeks.
  - o) **post-secondary school level:** includes a program of courses, at an institution described in subparagraph 1i)j)B) above, of a technical or vocational nature designed to furnish a person with skills for, or improve a person's skills in, an occupation.
  - p) **promoter:** designates National Bank Financial Inc., which also acts as the trustee's agent with regards to the Plan.
  - q) **public primary caregiver:** with regards to a beneficiary of an RESP for whom a special allowance is payable under the *Children's Special Allowances Act*, means the department, agency or institution that maintains the beneficiary or the public trustee or public curator of the province in which the beneficiary resides.
  - r) **qualifying educational program:** means a program at a post-secondary school level, of not less than 3 consecutive weeks duration that requires that each student taking the program spend not less than 10 hours per week on courses or work in the program.

- s) **qualified investment:** means a qualified investment for a trust governed by an RESP, as defined in subsection 146.1(1) of the *Income Tax Act* (Canada).
  - t) **RESP:** means, as the context requires, a registered education savings plan or an education savings plan as defined under section 146.1 of the *Income Tax Act* (Canada).
  - u) **RESP legislation:** means the applicable tax legislation and the applicable CES legislation.
  - v) **RESP lifetime limit:** means the maximum amount of total contributions that can be made to an RESP for a beneficiary as set out in subsection 204.9(1) of the *Income Tax Act* (Canada).
  - w) **RDSP:** means a registered disability savings plan as defined under section 146.4 of the *Income Tax Act* (Canada).
  - x) **RRSP:** means a registered retirement savings plan as defined under section 146 of the *Income Tax Act* (Canada).
  - y) **subscriber:** means
    - i) the individual or the public primary caregiver who subscribes to the Plan and whose name is indicated as subscriber in the Application, including the co-subscriber;
    - ii) another individual or another public primary caregiver who has before that time, under a written agreement, acquired a public primary caregiver's rights as a subscriber under the Plan;
    - iii) an individual who has before that time acquired a subscriber's rights under the Plan pursuant to a decree, order or judgment of a competent tribunal, or under a written agreement, relating to a division of property between the individual and a subscriber under the Plan in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership; or
    - iv) after the death of an individual described in any of paragraphs i) to iii), any other person (including the estate of the deceased individual) who acquires the individual's rights as a subscriber under the Plan or who makes contributions into the Plan in respect of a beneficiary.
- An individual or a public primary caregiver whose rights as a subscriber under the Plan had, before that time, been acquired by an individual or public primary caregiver in the circumstances described in paragraph ii) or iii) above is not a subscriber under the Plan.
- Unless otherwise required by RESP legislation, where the Plan has more than one subscriber:
- i) notices and other communications by the promoter or trustee hereunder take effect and bind all subscribers when sent to the main address entered in their registry;
  - ii) each subscriber authorizes any other subscriber to act on their behalf with respect to the Plan;
  - iii) the promoter, the trustee and their agents may act on instructions or requests from one subscriber without the need for instruction or confirmation from any other subscriber, including with respect to contributions to the Plan, beneficiary designations, investments, payments and refunds. If incompatible instructions or requests are received from co-subscribers, only the most recent will be considered;
  - iv) without limiting the generality of the foregoing paragraph, each subscriber confirms that a payment or a refund payable under the Plan to the subscribers may be paid to either of them or each of them separately in the proportion indicated by a subscriber, subject to the requirements for accumulated income payments under subsection 11d), and will be deemed to be a payment or refund to all subscribers;
  - v) the subscribers are jointly and severally (solidarily in Québec) liable for all amounts payable hereunder, including under sections 15 and 16.
- z) **specified educational program:** means a program at a post-secondary school level that lasts at least three consecutive weeks, and that requires a student to spend not less than 12 hours per month on courses in the program.
  - aa) **specified plan:** means an education savings plan:
    - i) that does not allow more than one beneficiary under the Plan at any one time;
    - ii) under which the beneficiary is an individual in respect of whom paragraphs 118.3(1)(a) to (b) of the *Income Tax Act* (Canada) apply for the beneficiary's taxation year that ends in the 31st year following the year in which the Plan was entered into; and
    - iii) that provides that, at all times after the end of the 35th year following the year in which the Plan was entered into, no other individual may be designated as a beneficiary under the Plan.
  - bb) **trustee:** means Natcan Trust Company, a trust company duly incorporated under the *Trust and Loan Companies Act* (Canada).
2. **Establishment of the Plan.** The subscriber establishes with the promoter and the trustee a trust arrangement where the assets of the Plan are irrevocably held for any or a combination of the following purposes:
- a) the payment of educational assistance payments;
  - b) the payment from 1998 of accumulated income payments;
  - c) the refund of payments, as defined in section 146.1 of the *Income Tax Act* (Canada);
  - d) the repayment of amounts (and the payment of amounts related to that repayment) under the *Canada Education Savings Act* or under a designated provincial program;
  - e) the payment to, or to a trust in favor of, designated educational institutions in Canada referred to in subparagraph 1i)j)A) above;
  - f) the payment to a trust that irrevocably holds property pursuant to an RESP for any of the purposes set out in paragraphs a) to e) above.
- The Plan constitutes a trust arrangement for the purposes of the applicable tax legislation only, excluding any other purpose whatsoever. The promoter, by inscribing its acceptance upon the Application, agrees to administer the Plan in the manner stipulated herein. Subject to registration of the Plan under the applicable tax legislation, the trust arrangement takes effect on the date of its acceptance by the trustee on the Application.
3. **Registration.** The promoter will apply for registration of the Plan as an RESP in the required form containing the required information in accordance with the RESP legislation. The promoter has the final responsibility for the Plan and its administration.
4. **Beneficiary.** Unless otherwise permitted by applicable tax legislation, an individual may be designated as a beneficiary by the subscriber only if his or

her social insurance number is provided at the time of designation and either the individual is resident in Canada when the designation is made, or the designation is made in conjunction with a transfer of property into the Plan from another RESP under which the individual was a beneficiary immediately before the transfer.

The promoter must, within 90 days of an individual becoming a beneficiary under the Plan, notify that individual (or, where the individual is under 19 years of age at that time and ordinarily resides with a parent or is maintained by a public primary caregiver, that parent or public primary caregiver) in writing of the existence of the Plan and of the subscriber's name and address.

The subscriber may, by written notice to the promoter, revoke the designation of a beneficiary and designate another beneficiary for the purposes of the Plan. A newly designated beneficiary inherits the contribution history of the beneficiary he replaces and the subscriber is fully responsible for the penalties which may then arise from RESP legislation.

**5. Contributions.** Contributions in the Plan can only be made by or for a subscriber towards a beneficiary under the Plan or by way of transfer from another RESP.

Contributions made by direct transfer from another RESP are not permitted if an accumulated income payment has already been paid out from the other RESP.

The beneficiary for whom the contributions are made must be resident in Canada and must have a valid social insurance number at the time each contribution is made. The subscriber must inform the promoter immediately in the event of a change in the beneficiary's residency status.

No contribution (other than a contribution made by way of a transfer from another RESP) may be made into the Plan after the 31st year following the year in which the Plan was set up (or after the 35th year following the year in which the Plan was set up if the Plan is a specified plan) whatever the age of the beneficiary.

The subscriber is responsible for ensuring that the total of all contributions made in a year for the beneficiary does not exceed the RESP lifetime limit, notably if the beneficiary is also the beneficiary of another RESP. The promoter and the trustee have no responsibility in that respect.

Despite the foregoing paragraph, the promoter may at its sole discretion, but without being held to it, refuse a contribution made by a subscriber for any reason.

A contribution does not include an amount paid into the Plan under or because of (a) the *Canada Education Savings Act* or a designated provincial program or (b) any other program that has a similar purpose to a designated provincial program and that is funded, directly or indirectly, by a province, other than an amount paid into the Plan by a public primary caregiver in its capacity as subscriber under the Plan.

**6. Contribution refund.** Subject to reasonable requirements set by the promoter, to RESP legislation and insofar as the assets of the Plan are sufficient, deduction made of any fees and charges that may be applicable to the Plan and of all previous refunds, the subscriber may request from the promoter, in a form and manner satisfactory to the promoter:

- a) the refund of a contribution made to the Plan, except a contribution made by way of transfer from another RESP;
- b) the refund of an amount that was paid by way of a transfer from another RESP, where the amount would have been a refund of payments under the other plan if it had been paid at that time directly to the subscriber under the other RESP.

Any such contribution refund made to the subscriber constitute for the promoter and the trustee a valid and sufficient release regarding the contribution refund made.

**7. Repayment of CES amounts paid into the Plan.** It is not up to the promoter and the trustee to assess whether a beneficiary is eligible to a CES amount. Upon request from a subscriber, and presentation of all forms required under applicable CES legislation duly completed and signed, the promoter may present an application for the Plan to receive CES amount in respect of the beneficiary.

The subscriber is responsible for ensuring that the total of CES amounts paid for the beneficiary does not exceed the maximum amount prescribed by applicable CES legislation, notably if the beneficiary is also the beneficiary of another RESP. The promoter and the trustee assume no liability whatsoever in this respect.

Any CES amount paid into the Plan pursuant to an error will be repaid by the promoter when required by the government in accordance with applicable CES legislation. Such repayment of CES amount will be withdrawn directly from the assets of the Plan.

**8. Transfers.** Subject to conditions established by the RESP legislation and any reasonable requirements set by the promoter, the subscriber may request a total or partial transfer of the assets of the Plan (including CES amounts) into another RESP.

Neither the promoter nor the trustee are liable for the transfers made upon the subscriber's request, notably if they give rise to adverse tax consequences or result in repayment of CES amounts paid into the Plan or limitations on future payments of CES amounts into the Plan for the beneficiary.

**9. Liquidation of the assets in the Plan.** In order to make the payments provided for herein, the promoter will liquidate the investments that make up the assets of the Plan according to the subscriber's instructions. Failing instructions from the subscriber, the promoter may liquidate such investments as it may deem appropriate in the circumstances, at its sole discretion. No fixed term investment will be liquidated before maturity, except as may otherwise be permitted by the issuer.

**10. Investments.** The assets in the Plan will be invested in investments which are available or accepted from time to time for investment in the Plan, in accordance with instructions given by the subscriber from time to time in a form deemed satisfactory by the promoter.

The investments must be made in accordance with RESP legislation and the subscriber is responsible for ensuring that investments in the Plan are and remain qualified investments within the meaning of the applicable tax legislation. The promoter must exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that a trust governed by the Plan holds a non-qualified investment. The investments are not limited to ones authorized by law for trustees. The promoter may reinvest all distributions of net income and net realized capital gains in additional investments of the same type unless otherwise instructed by the subscriber.

From time to time, the promoter may authorize additional investments available for investment by the Plan notwithstanding that such investments may not be authorized by law for trustees or may be considered a delegation of the trustee's investment powers.

It is the responsibility of the subscriber to choose from the investments that are available for investment in the Plan and to determine whether any investment should be bought, sold or retained as part of the Plan. The subscriber acknowledges that any failure to comply with applicable tax legislation may result in fees, penalties and even in revocation of the Plan by the Minister of National Revenue.

Failing instructions from the subscriber, the promoter may at its sole discretion liquidate any investments as it may deem appropriate to pay any amount payable with regards to the Plan.

**11. Educational assistance payment and other payments.** Subject to conditions established by the RESP legislation and any reasonable requirements set by the promoter, the subscriber may request a payment out of the assets of the Plan of such amount or amounts needed for either:

- a) educational assistance payment for a beneficiary that meets the following requirements:
  - i) at that time of the payment, he or she is:
    - A) enrolled as a student in a qualifying educational program at a post-secondary educational institution; or
    - B) at least 16 years old and is, at that time, enrolled as a student in a qualifying educational program at a post-secondary educational institution; and
  - ii) either facts below are satisfied:
    - A) the beneficiary satisfies, at that time, the condition set out in clause i)A) above, and
      - (I) he satisfied that condition throughout at least 13 consecutive weeks in the 12-month period that ends at that time; or
      - (II) the total of the payment and all other educational assistance payments made under an RESP of the promoter to or for the beneficiary in the 12-month period that ends at that time does not exceed the maximum amount prescribed by the *Income Tax Act* (Canada) or any greater amount that the Minister designated for the purpose of the *Canada Education Savings Act* approves in writing with respect to the beneficiary; or
    - B) he satisfies, at that time, the condition set out in clause i)B) above and the total of the payment and all other educational assistance payments made under an RESP of the promoter to or for the beneficiary in the 13-week period that ends at that time does not exceed the maximum amount prescribed by the *Income Tax Act* (Canada) or any greater amount that the Minister designated for the purpose of the *Canada Education Savings Act* approves in writing with respect to the beneficiary.

Despite the above, an educational assistance payment may be paid to or for the beneficiary at any time in the six month period immediately following the time at which the beneficiary ceases to be enrolled as a student in a qualifying educational program or a specified educational program, as the case may be, if the payment would have complied with the requirements set out above had the payment been made immediately before that time.

- b) a payment to, or to a trust in favor of, a designated educational institution referred to in subparagraph 1i)i)A);
- c) a payment to a trust that irrevocably holds money or property transferred to it pursuant to an RESP as long as no accumulated income payment has been made;
- d) an accumulated income payment from the Plan provided that:
  - i) the payment is made to or for a subscriber who is resident in Canada at the time of the payment;
  - ii) the payment is not made jointly to or for more than one subscriber; and
  - iii) either:
    - A) the payment is made after the 9th year that follows the year in which the Plan was entered into and each individual who is or was a beneficiary under the Plan has attained 21 years of age before the payment and is not, when the payment is made, eligible under the Plan to receive an educational assistance payment;
    - B) the payment is made in the year in which the Plan is required to be terminated in accordance with section 12 below;
    - C) the beneficiary is deceased at the time of the payment.

At the subscriber's request and on receipt of the required supporting documentation, the promoter will apply to the Canada Revenue Agency to waive the conditions set in subparagraph 11d)iii)A) herein if a beneficiary suffers from a severe and prolonged mental impairment that prevents, or can reasonably be expected to prevent, the beneficiary from enrolling in a qualifying educational program at a post-secondary educational institution.

In addition, if the requirements set out in subparagraph 11d)iii)A) or 11d) iii)B) hereof are met, the subscriber of the RESP and the holder of a RDSP make a joint election on the prescribed form and that the RESP beneficiary and the RDSP beneficiary are the same, an accumulated income payment under the RESP will be made to the RDSP.

**12. Termination date.** The termination date of the Plan will be the earliest of:

- a) the date the subscriber determines;
- b) the last day of February in the year following the year in which the first accumulated income payment is made under the terms of the Plan;
- c) the last day of the 35th year following the year in which the Plan is set up;
- d) the 40th year following the year in which the Plan is set up if the Plan is a specified plan.

The subscriber may change the designated termination date to a date that is not later than the earlier of the dates set out in paragraphs b), c) and d) above by giving instructions in a form and manner satisfactory to the promoter.

Except when the termination date of the Plan has been changed to a date that is less than a year from the time it receives the designation notice, the promoter will give notice to the subscriber of the termination date of the Plan not less than six months prior to that date.

At the termination date, the assets of the Plan must be used for one of the purposes described in section 2 hereof.

On or before the termination date of the Plan, the promoter will make payments in accordance with the instructions of the subscriber, net of any withholding taxes, any applicable fees and other charges applicable under this agreement, and any repayment of CES amounts.

Failing instructions regarding some or all of the assets of the Plan, the promoter will:

- a) invest any portion refundable under section 6 or 7 of this agreement in an account in the name of the subscriber. If the Plan has two subscribers, the investment will be made jointly in the names of both subscribers;



- b) pay the amount remaining after the investment under paragraph a) above, less applicable fees and charges, to a trust or a designated educational institution, at the promoter's sole discretion and in accordance with the applicable tax legislation.
- 13. Subscriber's death.** If a subscriber dies prior to the termination of the Plan, the promoter and the trustee may, at their sole appreciation, disclose any information regarding the Plan to the successors or assigns of the subscriber or to any authorized legal representative.
- When a subscriber dies at the time where the Plan has two subscribers:
- a) if the Plan was opened outside of the Province of Québec and the assets of the Plan are held jointly with right of survivorship, the survivor subscriber assumes all rights, privileges and obligations of the deceased subscriber in the Plan, and the subscriber's heirs, executors, administrators or other legal representatives of the deceased subscriber have no rights under the Plan; or
- b) if the Plan was opened in the province of Québec, the *Civil Code of Quebec* and other applicable laws applies.
- 14. Statements and tax information.** The promoter must maintain an account for the Plan in which are recorded the information regarding each subscriber and the beneficiary, the total of all contributions made and refunds, the CES amounts received, the total of all payments, fees, costs and other withdrawals as well as all other transactions with regards to the Plan, in accordance with the RESP legislation.
- The promoter must provide the subscriber with an RESP statement of account annually (or more frequently at the promoter's sole discretion), and must also provide the competent authorities with information returns, slips, notices and other documents required under the applicable tax legislation.
- 15. Fees and expenses.** The promoter and the trustee are entitled to the fees and other charges they prescribe from time to time, which may be directly charged against and deducted from the assets of the Plan. Among others, the promoter and the trustee are entitled to charge fees and administrative charges upon the termination of the Plan, at the transfer or withdrawal of assets of the Plan or in any other circumstance they may reasonably determine. These fees and charges are disclosed to the subscriber in accordance with the applicable laws. The promoter and the trustee are entitled to be reimbursed for all fees, out-of-pocket expenses and costs incurred by them or their agents in connection with the administration of the Plan, including, but only to the extent not prohibited by the applicable tax legislation, any tax, interest or penalty payable, which may be directly charged against and deducted from the assets of the Plan.
- The subscriber must reimburse the promoter for any overdraft resulting from the payment of such fees, out-of-pocket expenses and costs within 30 days from the date the subscriber is thereby notified. Should the subscriber fail to timely make such reimbursement, the promoter or the trustee may, without further notice, dispose of the assets of the Plan, in whole or in part, on such conditions as it may determine and apply the proceeds of such disposition to the payment of such fees, out-of-pocket expenses, costs and overdrafts. The promoter and the trustee will not be liable for any losses incurred as a result of such disposition.
- The subscriber is accountable to the promoter and trustee for all fees, expenses and other amounts payable that exceed the assets of the Plan.
- 16. Limitation of liability.** Except in case of bad faith, wilful misconduct, gross negligence or, in Quebec, gross or intentional fault of the promoter or trustee, the subscriber is responsible of all taxes, interest, penalties, contributions, fees, expenses, cost as well as all claims relating to the Plan or its administration, to the extent not prohibited by the applicable tax legislation. The subscriber undertakes to indemnify the promoter, the trustee and their representatives, agents and correspondents from all of the foregoing.
- Without limiting the scope of any other provision hereof, neither the promoter nor the trustee nor any of their representatives, agents or correspondents will be liable for any loss incurred by the Plan, by the subscriber or a beneficiary, as a result of:
- a) a loss of value of the assets of the Plan
- b) the receipt and time of receipt of any contribution, transfer or CES amount paid into the Plan;
- c) any contribution refund or repayment of CES amounts paid into the Plan that may be required under the RESP legislation;
- d) any taxes or penalties which may be imposed on the subscriber, the promoter or the trustee under the RESP legislation concerning the Plan (including those resulting from the custody in the Plan of a non-qualified investment under the applicable tax legislation);
- e) any expenses or costs incurred regarding the Plan or the assets of the Plan, under this agreement or under applicable laws;
- f) any loss or damages suffered or incurred by the Plan, a subscriber or a beneficiary under the Plan, and resulting in particular from the following:
- i) the acquisition, retention or disposition of an investment;
- ii) a breach of an agreement between the promoter and/or the trustee, on the one hand, and the Minister of ESDC, on the other, or of the RESP legislation;
- iii) any payment out of the Plan or any liquidation, withdrawal, transfer or distribution of assets;
- iv) contributions in respect of a beneficiary who is also a beneficiary under other RESPs (including a replacement beneficiary who inherits the contribution history of the beneficiary he replaces) made to such plans which, in total, exceed the RESP lifetime limit;
- v) the promoter or the trustee acting or declining to act on any instructions given by the subscriber or any person claiming to be the subscriber; or
- g) any particular, indirect, punitive, incidental or consequential loss or damages, regardless of the cause.

The foregoing indemnification and limitations of liability survive the termination or revocation of the Plan.

- 17. Notices.** Any notice, statement or receipt by the promoter or the trustee to the subscriber, the beneficiaries or a person authorized to receive them under the terms of the Plan, may be mailed to the address recorded in the promoter's or trustee's registry with regards to the Plan. Such notice, statement or receipt will be considered given and received on the fifth day after mailing or on the day of transmission if sent by electronic means.
- Any notice to the promoter or the trustee under this agreement will be sufficiently given if delivered or mailed to the promoter's address indicated on the Application or to any other address that the promoter may indicate in writing from time to time. Such notice will be considered given on the day that the notice is actually delivered to or received by the promoter.
- 18. Instructions.** The promoter and the trustee are empowered to follow the instructions received from a subscriber or any other person designated by the subscriber, whether transmitted by mail, facsimile machine, telephone or other electronic means. All instructions, demands or information given to the promoter or the trustee will be considered valid only if presented in a form they deem satisfactory.
- 19. Proof of information.** The subscriber certifies that the information provided in the Application is accurate and undertakes to provide, at his own expense, to the promoter and/or the trustee further proof of any information relating to the Plan that they may reasonably require. The subscriber also agrees to immediately notify the promoter of any changes to the information provided in the Application.
- 20. Plan amendments.** The promoter may from time to time, with the consent of the trustee, of the relevant taxation authorities and other regulatory authorities as applicable, amend the terms and conditions of the Plan a) to comply with the requirements of an applicable law, or b) in other cases, by sending a thirty (30) days' prior notice in writing to the subscriber, as long as any such amendments do not disqualify the Plan as an RESP under RESP legislation. For greater certainty, if the Plan must be amended to remain compliant with RESP legislation, no prior notice to the subscriber is required and any of these amendments take effect as soon as they are made.
- 21. Delegation.** The trustee may, and the subscriber expressly authorizes the trustee to, delegate certain powers or duties in respect of the assets of the Plan. To the extent that the trustee has delegated the performance of all or a portion of the activities, duties and responsibility regarding the assets of the Plan to the promoter, such delegation will be deemed in the best interest of the trust, the subscriber and the beneficiaries. The Trustee must notify the Minister of ESDC of the appointment of an agent in accordance with the terms of the trustee agreement(s) entered between them.
- 22. Replacement of trustee.** The trustee may resign from its duties under this agreement by giving thirty (30) days' written notice of resignation to the subscriber, or such other period of notice provided for in the RESP legislation. Resignation of the trustee will be effective upon the appointment of a replacement trustee who has accepted to act as the Plan's trustee.
- The replacement trustee must be a corporation resident in Canada and licensed or otherwise authorized, under the laws of the subscriber's province of residence indicated in the Application, to carry on in Canada the business of offering to the public its services as a trustee, in accordance with paragraph 146.1(2)a) of the *Income Tax Act* (Canada).
- The trustee must notify the Minister of ESDC of its resignation and of the appointment of a replacement trustee in accordance with the terms of the trustee agreement(s) entered between them.
- 23. Replacement of promoter.** With prior notification to the trustee, the relevant taxation authorities and other regulatory authorities, the promoter may transfer all rights pertaining to the Plan to another corporation residing in Canada to the extent that it is authorized by ESDC to act as an RESP promoter.
- The replacement promoter must give the subscriber a prior notice concerning the transfer of the Plan, as well as of any amendment to this agreement following the replacement of the promoter, in accordance with section 20 hereof.
- 24. Miscellaneous provisions.**
- a) **Currency.** All the sums of money payable hereunder are payable in money which is legal tender in Canada.
- b) **Binding.** The terms and conditions hereof will be binding upon the subscriber's and beneficiaries' heirs and legal personal representatives and upon any successors and assigns of the promoter and trustee.
- c) **Declaration of non-residence.** The subscriber is required to and undertakes to notify the promoter immediately if he or she is or becomes a non-resident of Canada.
- d) **Interpretation.** Wherever the context so requires, a word used in the masculine gender includes the feminine or neuter, and the singular includes the plural and vice versa.
- e) **Governing laws.** The Plan is to be governed and construed in accordance with the laws applicable in the province in which the subscriber resides, as shown in the Application, and with the RESP legislation.
- The Plan does not in any way constitute a trust within the meaning of the *Civil Code of Québec*. Given the special nature hereof, the rules of Title VII of Book IV of the *Civil Code of Québec* relating to the administration of the property of others do not apply to assets of the Plan.

**NATIONAL BANK FINANCIAL INC. EDUCATION SAVINGS PLAN TERMS AND CONDITIONS  
(FAMILY PLAN)**

1. **Definitions.** For the purposes hereof, the words or terms set out below have the following meaning:
- a) **accumulated income payment:** means any amount paid out of an RESP, other than a payment described in any of paragraphs (a) and (c) to (e) of the definition “trust” under paragraph 146.1(1) of the *Income Tax Act* (Canada), to the extent that the amount so paid exceeds the fair market value of any consideration given to the RESP for the payment of the amount.
  - b) **applicable CES legislation:** includes
    - i) the provisions of the *Canada Education Savings Act* (Canada) and its regulations;
    - ii) the provisions of any savings grant legislation and related regulations of a province of Canada under a program administered through an agreement under section 12 of the *Canada Education Savings Act* (Canada);
    - iii) the provisions of any legislation applicable to a designated provincial program or applicable to a program with similar objectives and financed directly or indirectly by a province, and their regulations.
  - c) **applicable tax legislation:** means the *Income Tax Act* (Canada) and any provincial income tax legislation applicable in the province of residence of the subscriber, and their regulations.
  - d) **Application:** The application form for membership in the Plan completed and signed by the subscriber(s), as amended from time to time in accordance with this agreement.
  - e) **assets of the Plan:** means all property of any nature whatsoever which makes up the Plan, including assets transferred, contributions made to the Plan, CES amounts as well as any income and gains generated or realized thereby (less all promoter’s and trustee’s fees, out-of-pocket expenses and costs incurred in connection with the administration of the Plan, including any tax, interest or penalty payable), held in trust by the trustee in accordance with this agreement and the RESP legislation.
  - f) **beneficiary:** means the individual designated on the Application by the subscriber as a beneficiary to whom or for whom educational assistance payments may be paid if the requirements of the Plan and the RESP legislation are satisfied at the time the educational assistance payments are made.
  - g) **CES grant:** means a Canada Education Savings grant, as defined in the *Canada Education Savings Act* (Canada).
  - h) **CES amount:** means the amount of any CES grant and/or any Canada Learning Bond and/or any education savings grant, bond, incentive or other provided by a province of Canada under any applicable CES legislation.
  - i) **designated educational institution:** means
    - i) an educational institution located in Canada that is:
      - A) a university, college or other educational institution designated by the lieutenant governor in council of a province as a specified educational institution under the *Canada Student Loans Act*, designated by an appropriate authority under the *Canada Student Financial Assistance Act*, or designated for the purposes of *An Act respecting financial assistance for education expenses* by the Minister of the Province of Quebec responsible for the administration of that Act;
      - B) certified by the Minister of ESDC to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person’s skills in, an occupation;
    - ii) all other educational institution authorized under the RESP legislation.
  - j) **designated provincial program:** includes
    - i) a program administered pursuant to an agreement entered into under section 12 of the *Canada Education Savings Act*, or
    - ii) a program established under the laws of a province to encourage the financing of children’s post-secondary education through savings in RESPs.
  - k) **educational assistance payment:** means any amount, other than a refund of payments, paid out of an RESP to or for a beneficiary to help finance the cost of post-secondary education.
  - l) **ESDC:** means Employment and Social Development Canada.
  - m) **Plan:** means the RESP established by the promoter at the subscriber’s demand in accordance with the terms and conditions of the Application and this agreement, as they may be amended from time to time, under which the promoter agrees to pay or to cause to be paid educational assistance payments to or for one or more beneficiaries.
  - n) **post-secondary educational institution (PSEI):** means
    - i) an educational institution in Canada that is described in subparagraph 1i)) above; or
    - ii) an educational institution outside Canada that provides courses at a post-secondary school level and that is:
      - A) a university, college or other educational institution at which a beneficiary was enrolled in a course of not less than 13 consecutive weeks; or
      - B) a university at which a beneficiary was enrolled on a full-time basis in a course of not less than three consecutive weeks.
  - o) **post-secondary school level:** includes a program of courses, at an institution described in subparagraph 1i))B) above, of a technical or vocational nature designed to furnish a person with skills for, or improve a person’s skills in, an occupation.
  - p) **promoter:** designates National Bank Financial Inc., which also acts as the trustee’s agent with regards to the Plan.
  - q) **public primary caregiver:** with regards to a beneficiary of an RESP for whom a special allowance is payable under the *Children’s Special Allowances Act*, means the department, agency or institution that maintains the beneficiary or the public trustee or public curator of the province in which the beneficiary resides.
  - r) **qualifying educational program:** means a program at a post-secondary school level, of not less than 3 consecutive weeks duration that requires that each student taking the program spend not less than 10 hours per week on courses or work in the program.
  - s) **qualified investment:** means a qualified investment for a trust governed by an RESP, as defined in subsection 146.1(1) of the *Income Tax Act* (Canada).

- t) **RESP:** means, as the context requires, a registered education savings plan or an education savings plan as defined under section 146.1 of the *Income Tax Act* (Canada).
  - u) **RESP legislation:** means the applicable tax legislation and the applicable CES legislation.
  - v) **RESP lifetime limit:** means the maximum amount of total contributions that can be made to an RESP for a beneficiary as set out in subsection 204.9(1) of the *Income Tax Act* (Canada).
  - w) **RDSP:** means a registered disability savings plan as defined under section 146.4 of the *Income Tax Act* (Canada).
  - x) **RRSP:** means a registered retirement savings plan as defined under section 146 of the *Income Tax Act* (Canada).
  - y) **subscriber:** means
    - i) the individual or the public primary caregiver who subscribes to the Plan and whose name is indicated as subscriber in the Application, including the co-subscriber;
    - ii) another individual or another public primary caregiver who has before that time, under a written agreement, acquired a public primary caregiver’s rights as a subscriber under the Plan;
    - iii) an individual who has before that time acquired a subscriber’s rights under the Plan pursuant to a decree, order or judgment of a competent tribunal, or under a written agreement, relating to a division of property between the individual and a subscriber under the Plan in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership; or
    - iv) after the death of an individual described in any of paragraphs i) to iii), any other person (including the estate of the deceased individual) who acquires the individual’s rights as a subscriber under the Plan or who makes contributions into the Plan in respect of a beneficiary.
- An individual or a public primary caregiver whose rights as a subscriber under the Plan had, before that time, been acquired by an individual or public primary caregiver in the circumstances described in paragraph ii) or iii) above is not a subscriber under the Plan.
- Unless otherwise required by RESP legislation, where the Plan has more than one subscriber:
- i) notices and other communications by the promoter or trustee hereunder take effect and bind all subscribers when sent to the main address entered in their registry;
  - ii) each subscriber authorizes any other subscriber to act on their behalf with respect to the Plan;
  - iii) the promoter, the trustee and their agents may act on instructions or requests from one subscriber without the need for instruction or confirmation from any other subscriber, including with respect to contributions to the Plan, beneficiary designations, investments, payments and refunds. If incompatible instructions or requests are received from co-subscribers, only the most recent will be considered;
  - iv) without limiting the generality of the foregoing paragraph, each subscriber confirms that a payment or a refund payable under the Plan to the subscribers may be paid to either of them or each of them separately in the proportion indicated by a subscriber, subject to the requirements for accumulated income payments under subsection 11d), and will be deemed to be a payment or refund to all subscribers;
  - v) the subscribers are jointly and severally (solidarily in Québec) liable for all amounts payable hereunder, including under sections 15 and 16.
- z) **specified educational program:** means a program at a post-secondary school level that lasts at least three consecutive weeks, and that requires a student to spend not less than 12 hours per month on courses in the program.
- aa) **trustee:** means Natcan Trust Company, a trust company duly incorporated under the *Trust and Loan Companies Act* (Canada).
2. **Establishment of the Plan.** The subscriber establishes with the promoter and the trustee a trust arrangement where the assets of the Plan are irrevocably held for any or a combination of the following purposes:
- a) the payment of educational assistance payments;
  - b) the payment from 1998 of accumulated income payments;
  - c) the refund of payments, as defined in section 146.1 of the *Income Tax Act* (Canada);
  - d) the repayment of amounts (and the payment of amounts related to that repayment) under the *Canada Education Savings Act* or under a designated provincial program;
  - e) the payment to, or to a trust in favor of, designated educational institutions in Canada referred to in subparagraph 1i))A) above;
  - f) the payment to a trust that irrevocably holds property pursuant to an RESP for any of the purposes set out in paragraphs a) to e) above.
- The Plan constitutes a trust arrangement for the purposes of the applicable tax legislation only, excluding any other purpose whatsoever. The promoter, by inscribing its acceptance upon the Application, agrees to administer the Plan in the manner stipulated herein. Subject to registration of the Plan under the applicable tax legislation, the trust arrangement takes effect on the date of its acceptance by the trustee on the Application.
3. **Registration.** The promoter will apply for registration of the Plan as an RESP in the required form containing the required information in accordance with the RESP legislation. The promoter has the final responsibility for the Plan and its administration.
4. **Beneficiary.** Unless otherwise permitted by applicable tax legislation, an individual may be designated as a beneficiary by the subscriber only if his or her social insurance number is provided at the time of designation and either the individual is resident in Canada when the designation is made, or the designation is made in conjunction with a transfer of property into the Plan from another RESP under which the individual was a beneficiary immediately before the transfer.
- The promoter must, within 90 days of an individual becoming a beneficiary under the Plan, notify that individual (or, where the individual is under 19 years of age at that time and ordinarily resides with a parent or is maintained by a public primary caregiver, that parent or public primary caregiver) in writing of the existence of the Plan and of the subscriber’s name and address.
- The subscriber may, by written notice to the promoter, revoke the designation of a beneficiary and designate another beneficiary for the purposes of the Plan. A newly designated beneficiary inherits the contribution history of the



beneficiary he replaces and the subscriber is fully responsible for the penalties which may then arise from RESP legislation.

Beneficiaries must be related by blood or adoption to a living subscriber or have been related in the same way to a deceased original subscriber.

An individual who is 21 years of age or older cannot be designated as beneficiary under the Plan, unless the individual was the beneficiary of another family RESP immediately before his or her designation.

5. **Contributions.** Contributions in the Plan can only be made by or for a subscriber towards a beneficiary under the Plan or by way of transfer from another RESP.

Contributions made by direct transfer from another RESP are not permitted if an accumulated income payment has already been paid out from the other RESP.

The beneficiary for whom the contributions are made must be resident in Canada and must have a valid social insurance number at the time each contribution is made. The subscriber must inform the promoter immediately in the event of a change in the beneficiary's residency status.

No contribution (other than a contribution made by way of a transfer from another RESP) may be made into the Plan after the 31st year following the year in which the Plan was set up.

No contribution (other than a contribution made by way of a transfer from another family RESP) may be made into the Plan in respect of a beneficiary unless the beneficiary is under 31 years of age at the time the contribution is made.

The subscriber is responsible for ensuring that the total of all contributions made in a year for a beneficiary does not exceed the RESP lifetime limit, notably if a beneficiary is also the beneficiary of another RESP. The promoter and the trustee have no responsibility in that respect.

Despite the foregoing paragraph, the promoter may at its sole discretion, but without being held to it, refuse a contribution made by a subscriber for any reason.

A contribution does not include an amount paid into the Plan under or because of (a) the *Canada Education Savings Act* or a designated provincial program or (b) any other program that has a similar purpose to a designated provincial program and that is funded, directly or indirectly, by a province, other than an amount paid into the Plan by a public primary caregiver in its capacity as subscriber under the Plan.

6. **Contribution refund.** Subject to reasonable requirements set by the promoter, to RESP legislation and insofar as the assets of the Plan are sufficient, deduction made of any fees and charges that may be applicable to the Plan and of all previous refunds, the subscriber may request from the promoter, in a form and manner satisfactory to the promoter:

- a) the refund of a contribution made to the Plan, except a contribution made by way of transfer from another RESP;
- b) the refund of an amount that was paid by way of a transfer from another RESP, where the amount would have been a refund of payments under the other plan if it had been paid at that time directly to the subscriber under the other RESP.

Any such contribution refund made to the subscriber constitute for the promoter and the trustee a valid and sufficient release regarding the contribution refund made.

7. **Repayment of CES amounts paid into the Plan.** It is not up to the promoter and the trustee to assess whether a beneficiary is eligible to a CES amount. Upon request from a subscriber, and presentation of all forms required under applicable CES legislation duly completed and signed, the promoter may present an application for the Plan to receive CES amount in respect of a beneficiary.

The subscriber is responsible for ensuring that the total of CES amounts paid for a beneficiary does not exceed the maximum amount prescribed by applicable CES legislation, notably if a beneficiary is also the beneficiary of another RESP. The promoter and the trustee assume no liability whatsoever in this respect.

Any CES amount paid into the Plan pursuant to an error will be repaid by the promoter when required by the government in accordance with applicable CES legislation. Such repayment of CES amount will be withdrawn directly from the assets of the Plan.

8. **Transfers.** Subject to conditions established by the RESP legislation and any reasonable requirements set by the promoter, the subscriber may request a total or partial transfer of the assets of the Plan (including CES amounts) into another RESP.

Neither the promoter nor the trustee are liable for the transfers made upon the subscriber's request, notably if they give rise to adverse tax consequences or result in repayment of CES amounts paid into the Plan or limitations on future payments of CES amounts into the Plan for a beneficiary.

9. **Liquidation of the assets in the Plan.** In order to make the payments provided for herein, the promoter will liquidate the investments that make up the assets of the Plan according to the subscriber's instructions. Failing instructions from the subscriber, the promoter may liquidate such investments as it may deem appropriate in the circumstances, at its sole discretion. No fixed term investment will be liquidated before maturity, except as may otherwise be permitted by the issuer.

10. **Investments.** The assets in the Plan will be invested in investments which are available or accepted from time to time for investment in the Plan, in accordance with instructions given by the subscriber from time to time in a form deemed satisfactory by the promoter.

The investments must be made in accordance with RESP legislation and the subscriber is responsible for ensuring that investments in the Plan are and remain qualified investments within the meaning of the applicable tax legislation. The promoter must exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that a trust governed by the Plan holds a non-qualified investment. The investments are not limited to ones authorized by law for trustees. The promoter may reinvest all distributions of net income and net realized capital gains in additional investments of the same type unless otherwise instructed by the subscriber.

From time to time, the promoter may authorize additional investments available for investment by the Plan notwithstanding that such investments may not be authorized by law for trustees or may be considered a delegation of the trustee's investment powers.

It is the responsibility of the subscriber to choose from the investments that are available for investment in the Plan and to determine whether any investment should be bought, sold or retained as part of the Plan. The subscriber acknowledges that any failure to comply with applicable tax legislation may result in fees, penalties and even in revocation of the Plan by the Minister of National Revenue.

Failing instructions from the subscriber, the promoter may at its sole discretion

liquidate any investments as it may deem appropriate to pay any amount payable with regards to the Plan.

11. **Educational assistance and other payments.** Subject to conditions established by the RESP legislation and any reasonable requirements set by the promoter, the subscriber may request a payment out of the assets of the Plan of such amount or amounts needed for either:

- a) educational assistance payment for a beneficiary that meets the following requirements:
  - i) at that time of the payment, he or she is:
    - A) enrolled as a student in a qualifying educational program at a post-secondary educational institution; or
    - B) at least 16 years old and is, at that time, enrolled as a student in a qualifying educational program at a post-secondary educational institution; and
  - ii) either facts below are satisfied:
    - A) the beneficiary satisfies, at that time, the condition set out in clause i)A) above, and
      - (I) he satisfied that condition throughout at least 13 consecutive weeks in the 12-month period that ends at that time; or
      - (II) the total of the payment and all other educational assistance payments made under an RESP of the promoter to or for the beneficiary in the 12-month period that ends at that time does not exceed the maximum amount prescribed by the *Income Tax Act* (Canada) or any greater amount that the Minister designated for the purpose of the *Canada Education Savings Act* approves in writing with respect to the beneficiary; or
    - B) he satisfies, at that time, the condition set out in clause i)B) above and the total of the payment and all other educational assistance payments made under an RESP of the promoter to or for the beneficiary in the 13-week period that ends at that time does not exceed the maximum amount prescribed by the *Income Tax Act* (Canada) or any greater amount that the Minister designated for the purpose of the *Canada Education Savings Act* approves in writing with respect to the beneficiary.

Despite the above, an educational assistance payment may be paid to or for a beneficiary at any time in the six month period immediately following the time at which the beneficiary ceases to be enrolled as a student in a qualifying educational program or a specified educational program, as the case may be, if the payment would have complied with the requirements set out above had the payment been made immediately before that time.

- b) a payment to, or to a trust in favor of, a designated educational institution referred to in subparagraph 1i)i)A);
- c) a payment to a trust that irrevocably holds money or property transferred to it pursuant to an RESP as long as no accumulated income payment has been made;
- d) an accumulated income payment from the Plan provided that:
  - i) the payment is made to or for a subscriber who is resident in Canada at the time of the payment;
  - ii) the payment is not made jointly to or for more than one subscriber; and
  - iii) either:
    - A) the payment is made after the 9th year that follows the year in which the Plan was entered into and each individual who is or was a beneficiary under the Plan has attained 21 years of age before the payment and is not, when the payment is made, eligible under the Plan to receive an educational assistance payment;
    - B) the payment is made in the year in which the Plan is required to be terminated in accordance with section 12 below;
    - C) each beneficiary is deceased at the time of the payment.

At the subscriber's request and on receipt of the required supporting documentation, the promoter will apply to the Canada Revenue Agency to waive the conditions set in subparagraph 11d)iii)A) herein if a beneficiary suffers from a severe and prolonged mental impairment that prevents, or can reasonably be expected to prevent, the beneficiary from enrolling in a qualifying educational program at a post-secondary educational institution.

In addition, if the requirements set out in subparagraph 11d)iii)A) or 11d) iii)B) hereof are met, the subscriber of the RESP and the holder of a RDSP make a joint election on the prescribed form and that the RESP beneficiary and the RDSP beneficiary are the same, an accumulated income payment under the RESP will be made to the RDSP.

12. **Termination date.** The termination date of the Plan will be the earliest of:
- a) the date the subscriber determines;
  - b) the last day of February in the year following the year in which the first accumulated income payment is made under the terms of the Plan;
  - c) the last day of the 35th year following the year in which the Plan is set up.

The subscriber may change the designated termination date to a date that is not later than the earlier of the dates set out in paragraphs b) and c) above by giving instructions in a form and manner satisfactory to the promoter.

Except when the termination date of the Plan has been changed to a date that is less than a year from the time it receives the designation notice, the promoter will give notice to the subscriber of the termination date of the Plan not less than six months prior to that date.

At the termination date, the assets of the Plan must be used for one of the purposes described in section 2 hereof.

On or before the termination date of the Plan, the promoter will make payments in accordance with the instructions of the subscriber, net of any withholding taxes, any applicable fees and other charges applicable under this agreement, and any repayment of CES amounts.

Failing instructions regarding some or all of the assets of the Plan, the promoter will:

- a) invest any portion refundable under section 6 or 7 of this agreement in an account in the name of the subscriber. If the Plan has two subscribers, the investment will be made jointly in the names of both subscribers;
- b) pay the amount remaining after the investment under paragraph a) above, less applicable fees and charges, to a trust or a designated educational institution, at the promoter's sole discretion and in accordance with the applicable tax legislation.

13. **Subscriber's death.** If a subscriber dies prior to the termination of the Plan, the promoter and the trustee may, at their sole appreciation, disclose any information regarding the Plan to the successors or assigns of the subscriber or to any authorized legal representative.

When a subscriber dies at the time where the Plan has two subscribers:

- a) if the Plan was opened outside of the Province of Québec and the assets of the Plan are held jointly with right of survivorship, the survivor subscriber assumes all rights, privileges and obligations of the deceased subscriber in the Plan, and the subscriber's heirs, executors, administrators or other legal representatives of the deceased subscriber have no rights under the Plan; or
  - b) if the Plan was opened in the province of Québec, the *Civil Code of Quebec* and other applicable laws applies.
- 14. Statements and tax information.** The promoter must maintain an account for the Plan in which are recorded the information regarding each subscriber and the beneficiaries, the total of all contributions made and refunds, the CES amounts received, the total of all payments, fees, costs and other withdrawals as well as all other transactions with regards to the Plan, in accordance with the RESP legislation.

The promoter must provide the subscriber with an RESP statement of account annually (or more frequently at the promoter's sole discretion), and must also provide the competent authorities with information returns, slips, notices and other documents required under the applicable tax legislation.

- 15. Fees and expenses.** The promoter and the trustee are entitled to the fees and other charges they prescribe from time to time, which may be directly charged against and deducted from the assets of the Plan. Among others, the promoter and the trustee are entitled to charge fees and administrative charges upon the termination of the Plan, at the transfer or withdrawal of assets of the Plan or in any other circumstance they may reasonably determine. These fees and charges are disclosed to the subscriber in accordance with the applicable laws. The promoter and the trustee are entitled to be reimbursed for all fees, out-of-pocket expenses and costs incurred by them or their agents in connection with the administration of the Plan, including, but only to the extent not prohibited by the applicable tax legislation, any tax, interest or penalty payable, which may be directly charged against and deducted from the assets of the Plan.
- The subscriber must reimburse the promoter for any overdraft resulting from the payment of such fees, out-of-pocket expenses and costs within 30 days from the date the subscriber is thereby notified. Should the subscriber fail to timely make such reimbursement, the promoter or the trustee may, without further notice, dispose of the assets of the Plan, in whole or in part, on such conditions as it may determine and apply the proceeds of such disposition to the payment of such fees, out-of-pocket expenses, costs and overdrafts. The promoter and the trustee will not be liable for any losses incurred as a result of such disposition.
- The subscriber is accountable to the promoter and trustee for all fees, expenses and other amounts payable that exceed the assets of the Plan.
- 16. Limitation of liability.** Except in case of bad faith, wilful misconduct, gross negligence or, in Quebec, gross or intentional fault of the promoter or trustee, the subscriber is responsible of all taxes, interest, penalties, contributions, fees, expenses, cost as well as all claims relating to the Plan or its administration, to the extent not prohibited by the applicable tax legislation. The subscriber undertakes to indemnify the promoter, the trustee and their representatives, agents and correspondents from all of the foregoing.

Without limiting the scope of any other provision hereof, neither the promoter nor the trustee nor any of their representatives, agents or correspondents will be liable for any loss incurred by the Plan, by the subscriber or a beneficiary, as a result of:

- a) a loss of value of the assets of the Plan;
- b) the receipt and time of receipt of any contribution, transfer or CES amount paid into the Plan;
- c) any contribution refund or repayment of CES amounts paid into the Plan that may be required under the RESP legislation;
- d) any taxes or penalties which may be imposed on the subscriber, the promoter or the trustee under the RESP legislation concerning the Plan (including those resulting from the custody in the Plan of a non-qualified investment under the applicable tax legislation);
- e) any expenses or costs incurred regarding the Plan or the assets of the Plan, under this agreement or under applicable laws;
- f) any loss or damages suffered or incurred by the Plan, a subscriber or a beneficiary under the Plan, and resulting in particular from the following:
  - i) the acquisition, retention or disposition of an investment;
  - ii) a breach of an agreement between the promoter and/or the trustee, on the one hand, and the Minister of ESDC, on the other, or of the RESP legislation;
  - iii) any payment out of the Plan or any liquidation, withdrawal, transfer or distribution of assets;
  - iv) contributions in respect of a beneficiary who is also a beneficiary under other RESPs (including a replacement beneficiary who inherits the contribution history of the beneficiary he replaces) made to such plans which, in total, exceed the RESP lifetime limit;
  - v) the promoter or the trustee acting or declining to act on any instructions given by the subscriber or any person claiming to be the subscriber; or
- g) any particular, indirect, punitive, incidental or consequential loss or damages, regardless of the cause.

The foregoing indemnification and limitations of liability survive the termination or revocation of the Plan.

- 17. Notices.** Any notice, statement or receipt by the promoter or the trustee to the subscriber, the beneficiaries or a person authorized to receive them under the terms of the Plan, may be mailed to the address recorded in the promoter's or trustee's registry with regards to the Plan. Such notice, statement or receipt will be considered given and received on the fifth day after mailing or on the day of transmission if sent by electronic means.

Any notice to the promoter or the trustee under this agreement will be sufficiently given if delivered or mailed to the promoter's address indicated on the Application or to any other address that the promoter may indicate in writing from time to time. Such notice will be considered given on the day that the notice is actually delivered to or received by the promoter.

- 18. Instructions.** The promoter and the trustee are empowered to follow the instructions received from a subscriber or any other person designated by the subscriber, whether transmitted by mail, facsimile machine, telephone or other electronic means. All instructions, demands or information given to the promoter or the trustee will be considered valid only if presented in a form they deem satisfactory.
- 19. Proof of information.** The subscriber certifies that the information provided in the Application is accurate and undertakes to provide, at his own expense, to the promoter and/or the trustee further proof of any information relating to the Plan that they may reasonably require. The subscriber also agrees to immediately notify the promoter of any changes to the information provided in the Application.
- 20. Plan amendments.** The promoter may from time to time, with the consent of the trustee, of the relevant taxation authorities and other regulatory authorities as applicable, amend the terms and conditions of the Plan a) to comply with the requirements of an applicable law, or b) in other cases, by sending a thirty (30) days' prior notice in writing to the subscriber, as long as any such amendments do not disqualify the Plan as an RESP under RESP legislation. For greater certainty, if the Plan must be amended to remain compliant with RESP legislation, no prior notice to the subscriber is required and any of these amendments take effect as soon as they are made.
- 21. Delegation.** The trustee may, and the subscriber expressly authorizes the trustee to, delegate certain powers or duties in respect of the assets of the Plan. To the extent that the trustee has delegated the performance of all or a portion of the activities, duties and responsibility regarding the assets of the Plan to the promoter, such delegation will be deemed in the best interest of the trust, the subscriber and the beneficiaries. The Trustee must notify the Minister of ESDC of the appointment of an agent in accordance with the terms of the trustee agreement(s) entered between them.
- 22. Replacement of trustee.** The trustee may resign from its duties under this agreement by giving thirty (30) days' written notice of resignation to the subscriber, or such other period of notice provided for in the RESP legislation. Resignation of the trustee will be effective upon the appointment of a replacement trustee who has accepted to act as the Plan's trustee. The replacement trustee must be a corporation resident in Canada and licensed or otherwise authorized, under the laws of the subscriber's province of residence indicated in the Application, to carry on in Canada the business of offering to the public its services as a trustee, in accordance with paragraph 146.1(2)a) of the *Income Tax Act* (Canada). The trustee must notify the Minister of ESDC of its resignation and of the appointment of a replacement trustee in accordance with the terms of the trustee agreement(s) entered between them.
- 23. Replacement of promoter.** With prior notification to the trustee, the relevant taxation authorities and other regulatory authorities, the promoter may transfer all rights pertaining to the Plan to another corporation residing in Canada to the extent that it is authorized by ESDC to act as an RESP promoter.

The replacement promoter must give the subscriber a prior notice concerning the transfer of the Plan, as well as of any amendment to this agreement following the replacement of the promoter, in accordance with section 20 hereof.

- 24. Miscellaneous provisions.**
- a) **Currency.** All the sums of money payable hereunder are payable in money which is legal tender in Canada.
  - b) **Binding.** The terms and conditions hereof will be binding upon the subscriber's and beneficiaries' heirs and legal personal representatives and upon any successors and assigns of the promoter and trustee.
  - c) **Declaration of non-residence.** The subscriber is required to and undertakes to notify the promoter immediately if he or she is or becomes a non-resident of Canada.
  - d) **Interpretation.** Wherever the context so requires, a word used in the masculine gender includes the feminine or neuter, and the singular includes the plural and vice versa.
  - e) **Governing laws.** The Plan is to be governed and construed in accordance with the laws applicable in the province in which the subscriber resides, as shown in the Application, and with the RESP legislation.

The Plan does not in any way constitute a trust within the meaning of the *Civil Code of Québec*. Given the special nature hereof, the rules of Title VII of Book IV of the *Civil Code of Québec* relating to the administration of the property of others do not apply to assets of the Plan.