

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

1. **Definitions** — For the purposes hereof, the words or terms set out herein below shall have the following meaning:
- a) **Application:** The application form for membership in the Plan attached hereof, completed and signed by each Subscriber, as amended from time to time in compliance with this agreement.
 - b) **Assets of the Plan:** means all property of any nature whatsoever which makes up the Plan, including assets transferred, contributions made to the Plan from time to time, CES Amount as well as any income, capital gains or other gains of any type whatsoever, generated or realized thereby (deduction made of all Promoter, Trustee and agent's fees, out-of-pocket expenses and costs incurred in connection with the administration of the Plan, including any tax, interest or penalty payable, which may be directly charged against and deducted from the Assets of the Plan) held in trust by the Promoter in compliance with this agreement and the RESP Legislation.
 - c) **Beneficiary:** means the individual designated on the Application by each Subscriber as a beneficiary to whom or for whom Educational Assistance Payments shall be paid if the requirements of the Plan and the RESP Legislation are satisfied at the time the Educational Assistance Payments are made.
 - d) **Designated Educational Institution:** means an educational institution located in Canada that is:
 - a) i) 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 by the Minister of Higher Education and Science of the Province of Quebec for the purposes of An Act respecting financial assistance for students of the Province of Quebec;
 - ii) certified by the Minister of HRSDC 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
 - b) all other educational institution authorized under the RESP Legislation.
 - e) **"Post-Secondary Educational Institution (PSEI)":** means:
 - a) an educational institution in Canada that is described in paragraph (a) of the definition "designated educational institution" in subsection 118.6(1) of the *Income Tax Act (Canada)*, or;
 - b) an educational institution outside Canada that is a university, college or other educational institution that provides courses at a post-secondary school level at which a beneficiary was enrolled in a course of not less than 13 consecutive weeks.
 - f) **Trustee:** means Natcan Trust Company, a trust company duly incorporated under the *Trust and Loan Companies Act (Canada)*.
 - g) **RESP Legislation:** means the Applicable Tax Legislation and the Applicable CES Legislation.
 - h) **Applicable CES Legislation:** means where relevant
 - i) the provisions of the *Canada Education Savings Act (Canada)* and its regulations,
 - ii) the provisions of the *Department of Human Resources Development Act (Canada)* before the repeal of Part III.1 and its relevant regulations,
 - iii) 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)* and its regulations,
 - iv) 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 there regulations.
 - i) **Applicable Tax Legislation:** means the *Income Tax Act (Canada)* and any provincial income tax legislation applicable in the province of residence of each Subscriber as mentioned in the Application, and all regulations related to these legislation.
 - j) **CES Amount:** means the amount of any Canada Education Savings 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.
 - k) **Post-secondary school level:** includes a program of courses, at an institution described in subparagraph (a)(ii) of the definition "designated educational institution" herein, of a technical or vocational nature designed to furnish a person with skills for, or improve a person's skills in, an occupation.
 - l) **Educational assistance payment:** means any amount, other than a refund of payments, paid out of an education savings plan to or for an individual to assist the individual to further its education at a post-secondary school level.
 - m) **Accumulated income payment:** means any amount paid out of the Plan, 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 plan for the payment of the amount.
 - n) **Qualified investment:** means a qualified investment for a trust governed by an education savings plan, as described under subsection 146.1(1) of the *Income Tax Act (Canada)*.
 - o) **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)*.
 - p) **Qualified educational program:** means a program of not less than 3 consecutive weeks duration that provides that each student taking the program spend not less than 10 hours per week on courses or work in the program.
 - q) **Specified educational program:** means a program at a post-secondary school level of not less than three consecutive weeks duration that requires each student taking the program to spend not less than 12 hours per month on courses in the program.
 - r) **Designated provincial program:** means
 - a) a program administered pursuant to an agreement entered into under section 12 of the *Canada Education Savings Act*, or
 - b) a program established under the laws of a province to encourage the financing of children's post-secondary education through savings in registered education savings plans.
 - s) **Promoter:** National Bank Financial Inc. as designated in the Application and also acting as the Trustee's agent with regards to the Plan.
 - t) **RESP and ESP:** means "registered education savings plan" and "education savings plan" as define under schedule 146.1 of the *Income Tax Act (Canada)*.
 - u) **RRSP:** means "registered retirement savings plan" as define under section 146 of the *Income Tax Act (Canada)*.
 - v) **Plan:** means the education savings plan established by the Promoter at the Subscribers' demand, in compliance with the terms and conditions of the Application and this agreement, as they may be amended from time to time.
 - w) **Specified Plan:** means an education savings plan:
 - a) that does not allow more than one beneficiary under the plan at any one time;
 - b) 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
 - c) 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.
 - x) **Public Primary Caregiver:** with regards to a beneficiary under an education savings plan in respect of 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;
 - y) **"HRSDC":** means the minister of Human Resources and Skills Development Canada.
 - z) **"Subscriber":** means:
 - a) each individual or the public primary caregiver with whom the promoter of the plan enters into the Plan and whose name is indicated as subscriber in the Application;
 - a.1) 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;
 - b) 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
 - c) after the death of an individual described in any of paragraphs (a) to (b), 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 the 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 (a.1) or (b) is not a Subscriber under the Plan;
- Where two individuals are identified as subscribers in the Application, each individual must be the spouse or common-law partner of the other within the meaning of the RESP Legislation. Unless other provisions are prescribed by the RESP Legislation or this agreement, each Subscriber is treated as a single subscriber.
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) Starting in 1998, the payment of accumulated income payments;
 - c) the refund of payments;
 - c.1) 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;
 - d) the payment to, or to a trust in favour of, designated educational institutions in Canada referred to in subparagraph (a)(i) of the definition of that expression in subsection 118.6(1); or
 - e) the payment to a trust that irrevocably holds property pursuant to a registered education savings plan for any of the purposes set out in paragraphs (a) to (d).
- The Plan shall constitute a trust arrangement for the purposes of 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 Tax Legislation, the trust arrangement shall take 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 a 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, the Subscriber may designate as Beneficiary only those person who's social insurance number is provided at the time of designation if they are resident in Canada when the designation is made or if the designation is made in conjunction with a transfer from another RESP under which they were beneficiaries 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 PPC) in writing of the existence of the Plan and of each Subscriber's name and address.
- The Subscriber may, by notice in writing to the Promoter, revoke the designation of a Beneficiary and designate another Plan Beneficiary. If more than one such instrument is delivered to the Promoter, the one dated most recently will apply.
- A newly designated Beneficiary may inherit the contribution history of the Beneficiary he replaces and Subscribers are the only responsible for the penalty tax which may then arise from RESP Legislation.
5. **Contributions** – Contributions in the Plan can only be made by or for a Subscriber towards the Beneficiary, including those made by transfer from another RESP.

Contributions made by 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. Each Subscriber must inform the Promoter immediately regarding all modification in the Beneficiary's address or residence.

Contributions can be made to the Plan until the end of the 31st year following the year in which the Plan was set up (or until the end of 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.

Each 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 under the RESP Legislation, notably if the Beneficiary is also the beneficiary of other RESP. The Promoter and the Trustee have no responsibility regarding the respect of this obligation.

In spite of 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 to the extent of the Assets of the Plan, deduction made of any fees and charges that may be applicable to the Plan and of all previous payment; the Subscriber request to the Promoter in a form deemed satisfactory by the Promoter:

- a) refund of a contribution made to the Plan, except a contribution made by way of transfer from another RESP;
- b) refund of a 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;

All such contribution refund made to one of the Subscriber or both, as the case may be, constitute for the Promoter and the Trustee a valid and sufficient release regarding the contribution refund paid out of the Plan

7. **Repayment of CES Amounts paid into the Plan.** The Promoter and the Trustee can not assess whether the Beneficiary is entitled 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 amounts in the name of the Beneficiary.

Each Subscriber is responsible for ensuring that the total of CES amounts received by a Beneficiary do not exceed the maximum amount prescribed by Applicable CES legislation, notably if the Beneficiary is also the beneficiary of other RESP. The Promoter and the Trustee are not liable with regards to CES amount receiving above the limits established.

Repayments of CES amounts paid into the Plan pursuant to an error will be made by the Promoter when required by the Minister of HRSDC 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 reasonable requirements set by the Promoter and when permitted by RESP Legislation, the Subscriber request in writing 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 under the Plan.

Once a transfer is completed in accordance with RESP Legislation, the Promoter and the Trustee no longer hold any responsibility towards the Assets of the Plan transferred

9. **Liquidation of Plan Assets.** For the purpose of making payments in this agreement, the Promoter will liquidate the investments that make up the Assets of the Plan according to each Subscriber's instructions. Failing instructions from Subscribers, the Promoter, shall liquidate such investments as it shall deem appropriate in the circumstances, at its sole discretion. Notwithstanding any other terms of this agreement, payment from the proceeds of a non-redeemable fixed term investment of the Plan will not be made until the investment has matured, except as may otherwise be permitted by the issuer.

10. **Investments.** The Assets in the Plan shall be invested in investments which are available 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 shall be made in compliance with RESP Legislation and it is solely the Holder's responsibility to ensure that each investment made by the Plan is a "qualified investment" for a RESP within the meaning of the Applicable Tax Legislation. The Trustee may reinvest all distributions of net income and net realized capital gains received by the Plan in respect of any particular investment 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 duties. The Trustee and the Promoter shall not be liable with regard to the investment of the Assets of the Plan, whether or not made pursuant to instructions given by the Holder.

It is the sole 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 fees, penalties and even in revocation of the Plan by the Minister of National Revenue. Failing instructions from Subscribers, the Promoter shall at its sole discretion liquidate any investments as it shall deem appropriate to pay any amount that must be paid by with regards to the Plan.

11. **Educational Assistance and Other Payments.** Subject to conditions established by the RESP Legislation and any reasonable requirements that the Promoter may set, each Subscriber may request a payment out of the Assets of the Plan 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 is

- (A) enrolled as a student in a qualifying educational program at a postsecondary educational institution, or,

- (B) the individual has, before that time, attained the age of 16 years and is, at that time, enrolled as a student in a specified 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 a RESP of the Promoter to or for the Beneficiary in the 12-month period that ends at that time does not exceed \$5,000 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 a RESP of the Promoter to or for the Beneficiary in the 13-week period that ends at that time does not exceed \$2,500 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;

Notwithstanding paragraph 11 a) hereof, 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 of paragraph 146.1(2)g.1) of the *Income Tax Act* (Canada) had the payment been made immediately before that time.

- b) a payment to, or to a trust in favour of, a Designated Educational Institution;

- c) a payment to a trust that irrevocably holds property pursuant to a RESP as long Accumulated income payment as 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 following the opening of the Plan and the individual (other than a deceased individual) who is or was a Beneficiary, has attained 21 years of age before the payment and, at the time when the payment is made, is not eligible 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 the schedule 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 division 11d)iii)A) herein if the 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 in a post-secondary educational institution.

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

- a) the date the Subscriber or Subscribers designate from time to time;

- 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 or Subscribers may change the designated termination date to a date that is not later than the earlier of the dates set out in sub-paragraphs b), c) and d) of this section by giving instructions in a form 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 we or the Trustee receive the designation notice, we will give notice 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 the definition "trust" in subsection 146.1(1) of the *Income Tax Act* (Canada).

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 paragraph 5 or 6 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 to the trusts or a designated educational institution in Canada, at the Promoter's sole discretion and under 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 Subscriber's heirs, executors, administrators or other legal representatives or to the beneficiary or his legal representative.

When a Subscriber dies at the time where the Plan has two Subscribers:

- a) Outside of Quebec, if the deceased Subscriber has designated the co-Subscriber as "joint tenant with right of survivorship", the later shall assume 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 shall have no rights under the Plan; or

- b) In the Province of Quebec, the Civil Code of Quebec and other applicable laws will apply.

14. **Statements and Tax information.** The Promoter shall maintain a separate account for the Plan and keep the information regarding each Subscriber and Beneficiary, the total of all contributions made and refund, the CES amount received, the total of all payments, fees, cost and other withdrawal as well as all other transaction with regards to the Plan, in compliance with the RESP Legislation.

The Promoter shall provide the Subscriber with a RESP statement of account annually (or more frequently at the Promoter's sole discretion), and shall also

provide the competent authorities with information returns, slips, notices and other documents required under the Tax Legislation.

- 15. Fees and Expenses.** The Promoter and the Trustee shall be paid 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 shall be entitled to charge fees and administrative charges upon the termination of the Plan, at the transfer or withdrawal of Assets of the Plan or any other circumstance which they may reasonably determine.

These fees and charges are disclosed to the Subscriber in accordance with the applicable laws. The Promoter and the Trustee shall 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 any tax, interest or penalty payable, which may be directly charged against and deducted from the Assets of the Plan.

The Subscriber shall 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 notifying the Subscriber, dispose of 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 shall not be liable for any losses incurred as a result of such disposition.

- 16. Limitation of Liability.** Each Subscriber is solely responsible of all taxes, interest, penalties, contributions, fees, expenses, cost as well as all claims relating to the administration of the Plan, including those that may rise from the transfer or custody in the Plan of all amount, grant or investment. Each Subscriber jointly and severally undertakes to indemnify the Promoter, the Trustee and their representatives, agents and correspondent from all of the foregoing, except in case of gross negligence or willful misconduct from the Promoter or Trustee.

Without limiting the scope of any other provision hereof, neither the Trustee nor any of its representatives, agents or correspondents shall be liable for any loss incurred by the Plan, by a Subscriber or a Beneficiary, as a result of:

- a) the refund of contributions receipt and time of receipt of any contribution, transfer, CES amount paid into the Plan;
- b) any contribution refund or repayment of CES amounts paid into the Plan that may be required under the RESP Legislation;
- c) any taxes or penalties which may be imposed on a Subscriber, the Promoter and/or the Trustee under the RESP Legislation concerning the Plan (including those resulting from the custody in the Plan of a nonqualified investment under the Applicable Tax Legislation);
- d) any expenses or costs incurred regarding the Plan, the Assets of the Plan, under this agreement or under applicable legislation;
- e) any loss, damages suffered or incurred by the Plan, a Subscriber or a Beneficiary under the Plan due notably, following:
 - i) the acquisition, retention or transfer of any investment;
 - ii) a breach of an agreement between the Promoter and/or the Trustee respectively, and the Minister of HRSDC, under the RESP Legislation;
 - iii) payments or distributions out of the Plan made in accordance with these terms and conditions;
 - 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 annual limit and/or RESP lifetime limit; or
 - v) the Promoter or the Trustee acting or declining to act on any instructions given by a Subscriber or any person claiming to be a Subscriber.

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

- 17. Notices.** Any notice, statement or receipt by the Promoter or the Trustee to a Subscriber, the Beneficiary or a representative authorized to receive them under terms of the Plan, will be sufficiently given if delivered or mailed by prepaid postage 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.

Any notice to the Promoter or the Trustee under this agreement will be sufficiently given if delivered or mailed by prepaid postage 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 in a form deemed satisfactory by the Promoter and in accordance with the applicable laws

- 18. Instructions.** The Promoter and the Trustee shall be empowered to follow the instructions received from a Subscriber or any other person designated in writing by the Subscriber, whether transmitted by mail, facsimile machine, by telephone or other electronic means. All instruction, demand or information given to the Promoter or the Trustee will be considered valid only if presented in a form deemed satisfactory by the Promoter.

If the Plan has many Subscribers at the same time, instructions given by one Subscriber shall bind all the Subscribers. If many instructions are received by the Promoter and/or Trustee, the most recent instruction will be executed even if different than the previous one

- 19. Proof of Information.** The Subscriber certifies that the information provided in the Application is correct 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 undertakes also to give to the Promoter an immediate notice of all changes regarding the information provided in the Application.

- 20. Plan Amendments.** The Promoter may from time to time, with the consent of the Trust, of the relevant taxation authorities and other regulatory authorities with regards to the Plan, amend the terms and conditions of the Plan

- i) to comply with the terms of an applicable law, or
- ii) by sending a thirty (30) days' notice in writing to each Subscriber, as long as any such amendments do not disqualify the Plan as an RESP under applicable RESP Legislation. If the Plan must be amended to maintain compliance with RESP Legislation, no prior notice to the Subscriber is required and any these amendments will be immediately effective thereafter

- 21. Delegation.** The Trustee may, and each 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 of the trust regarding the Assets of the Plan to the Promoter, such delegation shall be deemed in the best interest of the trust, the Subscriber and the Beneficiary. The Trustee has notified the Minister of HRSDC of the appointment of an agent in accordance with the terms of the trustee agreement(s) between the Trustee and the Minister of HRSDC.

- 22. Replacement of Trustee.** The Trustee may resign from its office under this agreement by giving ninety (90) days' written notice of resignation to the Subscriber, or such other period of notice that the RESP Legislation may stipulate. Resignation of the Trustee shall 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 each 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 shall notify the Minister of HRSDC of its resignation under this agreement and of the appointment of a replacement trustee in accordance with the terms of the trustee agreement(s) between the Trustee and the Minister of HRSDC

- 23. Replacement of Promoter.** With Prior notification to the Trust, the relevant taxation authorities and other regulatory authorities with regards to the Plan, the Promoter may transfer all rights pertaining to the Plan in favour of another company residing in Canada in the extent that it is authorized by HRSDC to act as a RESP Promoter.

The replacement Promoter shall give the Subscriber a prior notice concerning the transfer of the Plan, as well as any amendment to this agreement following the replacement of the promoter, in compliance with schedule 20 hereof

- 24. Miscellaneous Provisions.**

- a) **Cash.** All the sums of money payable hereunder shall be payable in money which is legal tender in Canada.
- b) **Binding.** The terms and conditions hereof will be binding upon the Subscribers' and beneficiary's' heirs and legal personal representatives and upon any successors and assigns of the Promoter and Trustee.
- c) **Declaration of Non-Residence.** Each 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 shall include the feminine or neuter and vice versa, and the singular number shall include the plural and vice versa.
- e) **Applicable Legislation.** The Plan shall be governed and construed in accordance with the laws of the province in which the Subscriber resides, as shown in the Application, and with the RESP Legislation.

The Plan shall not in any way constitute a trust within the meaning of the *Civil Code of Québec*. Given the special nature hereof and the administrative rules created hereby, the rules of Title VII of Book IV of the *Civil Code of Québec* relating to the administration of the property of others shall not apply to Assets of the Plan.

- 25. Language Clause.** The parties have requested that this agreement and any notices or other documents related hereto be drawn up in the English language. Les parties confirment leur volonté que la présente convention et tout avis ou autre document qui s'y rapporte soient rédigés en langue anglaise.

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

1. **Définitions** — For the purposes hereof, the words or terms set out herein below shall have the following meaning:
- a) **Application:** The application form for membership in the Plan attached hereof, completed and signed by each Subscriber, as amended from time to time in compliance with this agreement.
 - b) **Assets of the Plan:** means all property of any nature whatsoever which makes up the Plan, including assets transferred, contributions made to the Plan from time to time, CES Amount as well as any income, capital gains or other gains of any type whatsoever, generated or realized thereby (deduction made of all Promoter, Trustee and agent's fees, out-of-pocket expenses and costs incurred in connection with the administration of the Plan, including any tax, interest or penalty payable, which may be directly charged against and deducted from the Assets of the Plan) held in trust by the Promoter in compliance with this agreement and the RESP Legislation.
 - c) **Beneficiary or Beneficiaries:** means the individual or individuals designated on the Application by each Subscriber as a beneficiary to whom or for whom Educational Assistance Payments shall be paid if the requirements of the Plan and the RESP Legislation are satisfied at the time the Educational Assistance Payments are made.
 - d) **Designated Educational Institution:** means an educational institution located in Canada that is:
 - a) i) 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 by the Minister of Higher Education and Science of the Province of Quebec for the purposes of an Act respecting financial assistance for students of the Province of Quebec;
 - ii) certified by the Minister of HRSDC 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;
 - b) all other educational institution authorized under the RESP Legislation.
 - e) **Post-Secondary Educational Institution:** means:
 - a) an educational institution in Canada that is described in paragraph (a) of the definition "designated educational institution" in subsection 118.6(1) of the *Income Tax Act (Canada)*, or
 - b) an educational institution outside Canada that is a university, college or other educational institution that provides courses at a post-secondary school level at which a beneficiary was enrolled in a course of not less than 13 consecutive weeks.
 - f) **Trustee:** means Natcan Trust Company, a trust company duly incorporated under the *Trust and Loan Companies Act (Canada)*.
 - g) **RESP Legislation:** means the Applicable Tax Legislation and the Applicable CES Legislation.
 - h) **Applicable CES Legislation:** means where relevant
 - i) the provisions of the *Canada Education Savings Act (Canada)* and its regulations,
 - ii) the provisions of the *Department of Human Resources Development Act (Canada)* before the repeal of Part III.1 and its relevant regulations,
 - iii) 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)* and its regulations,
 - iv) 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 there regulations.
 - i) **Applicable Tax Legislation:** means the *Income Tax Act (Canada)* and any provincial income tax legislation applicable in the province of residence of each Subscriber as mentioned in the Application, and all regulations related to these legislation.
 - j) **CES Amount:** means the amount of any Canada Education Savings 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.
 - k) **Post-secondary school level:** includes a program of courses, at an institution described in subparagraph (a)(ii) of the definition "designated educational institution" herein, of a technical or vocational nature designed to furnish a person with skills for, or improve a person's skills in, an occupation.
 - l) **Educational assistance payment:** means any amount, other than a refund of payments, paid out of an education savings plan to or for an individual to assist the individual to further its education at a post-secondary school level.
 - m) **Accumulated income payment:** means any amount paid out of the Plan, 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 plan for the payment of the amount.
 - n) **Qualified investment:** means a qualified investment for a trust governed by an education savings plan, as described under subsection 146.1(1) of the *Income Tax Act (Canada)*.
 - o) **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)*.
 - p) **Qualifying educational program:** means a program of not less than 3 consecutive weeks duration that provides that each student taking the program spend not less than 10 hours per week on courses or work in the program.
 - q) **Specified educational program:** means a program at a post-secondary school level of not less than three consecutive weeks duration that requires each student taking the program to spend not less than 12 hours per month on courses in the program.
 - r) **Designated provincial program:** means
 - a) a program administered pursuant to an agreement entered into under section 12 of the *Canada Education Savings Act*, or
 - b) a program established under the laws of a province to encourage the financing of children's post-secondary education through savings in registered education savings plans.
 - s) **Promoter:** National Bank Financial Inc. as designated in the Application and also acting as the Trustee's agent with regards to the Plan.
 - t) **RESP and ESP:** means "registered education savings plan" and "education savings plan" as define under schedule 146.1 of the *Income Tax Act (Canada)*.
 - u) **RRSP:** means "registered retirement savings plan" as define under section 146 of the *Income Tax Act (Canada)*.
 - v) **Plan:** means the education savings plan established by the Promoter at the Subscribers' demand, in compliance with the terms and conditions of the Application and this agreement, as they may be amended from time to time.
 - w) **Public Primary Caregiver:** with regards to a beneficiary under an education savings plan in respect of 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;
 - x) **"HRSDC":** means the minister of Human Resources and Skills Development Canada.
 - y) **Subscriber:** means
 - a) each individual or the public primary caregiver with whom the promoter of the plan enters into the Plan and whose name is indicated as subscriber in the Application;
 - a.1) 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;
 - b) 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
 - c) after the death of an individual described in any of paragraphs (a) to (b), 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 (a.1) or (b) is not a Subscriber under the Plan;
- Where two individuals are identified as subscribers in the Application, each individual must be the spouse or common-law partner of the other within the meaning of the RESP Legislation. Unless other provisions are prescribed by the RESP Legislation or this agreement, each Subscriber is treated as a single subscriber.
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) Starting in 1998, the payment of accumulated income payments;
 - c) the refund of payments;
 - c.1) 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;
 - d) the payment to, or to a trust in favour of, designated educational institutions in Canada referred to in subparagraph (a)(i) of the definition of that expression in subsection 118.6(1); or
 - e) the payment to a trust that irrevocably holds property pursuant to a registered education savings plan for any of the purposes set out in paragraphs (a) to (d).
- The Plan shall constitute a trust arrangement for the purposes of 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 Tax Legislation, the trust arrangement shall take 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 a 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. **Beneficiaries** – 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 designation.
- Unless otherwise permitted by Applicable Tax Legislation, the Subscriber may designate as Beneficiary only those person who's social insurance number is provided at the time of designation if they are resident in Canada when the designation is made or if the designation is made in conjunction with a transfer from another RESP under which they were beneficiaries 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 PPC) in writing of the existence of the Plan and of each Subscriber's name and address.
- The Subscriber may, by notice in writing to the Promoter, revoke the designation of a Beneficiary and designate other Plan Beneficiaries. If more than one such instrument is delivered to the Promoter, the one dated most recently will apply.
- A newly designated Beneficiary may inherit the contribution history of the Beneficiary he replaces and Subscribers are the only responsible for the penalty tax 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, including those made by transfer from another RESP.
- Contributions made by 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. Each Subscriber must inform the Promoter immediately regarding all modification in a Beneficiary's address or residence.

No Contributions can be made to the Plan after the end of the 31st year following the year in which the Plan was set up, other than Contributions that are made of transfers from another RESP.

No Contributions can be made to the Plan for a Beneficiary who is 31 years of age or older, other than Contributions that are made of transfers from another RESP that allows more than one beneficiary at a time, in accordance with Applicable Tax Legislation.

Each 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 under the RESP Legislation, notably if a Beneficiary is also the beneficiary of another RESP. The Promoter and the Trustee have no responsibility in that respect.

In spite of 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 to the extent of the Assets of the Plan, deduction made of any fees and charges that may be applicable to the Plan and of all previous payment; the Subscriber request to the Promoter in a form deemed satisfactory by the Promoter:

- refund of a contribution made to the Plan, except a contribution made by way of transfer from another RESP;
- refund of a 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;

All such contribution refund made to one of the Subscriber or both, as the case may be, constitute for the Promoter and the Trustee a valid and sufficient release regarding the contribution refund paid out of the Plan.

7. **Repayment of CES Amounts paid into the Plan.** The Promoter and the Trustee can not assess whether a Beneficiary is entitled 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 amounts in the name of a Beneficiary.

Each Subscriber is responsible for ensuring that the total of CES Amounts received by 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 are not liable with regards to CES amount receiving above the limits established.

Repayments of CES amounts paid into the Plan pursuant to an error will be made by the Promoter when required by the Minister of HRSDC 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 reasonable requirements set by the Promoter and when permitted by RESP Legislation, the Subscriber request in writing 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 under the Plan.

Once a transfer is completed in accordance with RESP Legislation, the Promoter and the Trustee no longer hold any responsibility towards the Assets of the Plan transferred.

9. **Liquidation of Plan Assets.** For the purpose of making payments in this agreement, the Promoter will liquidate the investments that make up the Assets of the Plan according to each Subscriber's instructions. Failing instructions from Subscribers, the Promoter, shall liquidate such investments as it shall deem appropriate in the circumstances, at its sole discretion.

Notwithstanding any other terms of this agreement, payment from the proceeds of a non-redeemable fixed term investment of the Plan will not be made until the investment has matured, except as may otherwise be permitted by the issuer.

10. **Investments.** The Assets in the Plan shall be invested in investments which are available 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 shall be made in compliance with RESP Legislation and it is solely the Holder's responsibility to ensure that each investment made by the Plan is a "qualified investment" for a RESP within the meaning of the Applicable Tax Legislation. The Trustee may reinvest all distributions of net income and net realized capital gains received by the Plan in respect of any particular investment 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 duties. The Trustee and the Promoter shall not be liable with regard to the investment of the Assets of the Plan, whether or not made pursuant to instructions given by the Holder.

It is the sole 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 fees, penalties and even in revocation of the Plan by the Minister of National Revenue. Failing instructions from Subscribers, the Promoter shall at its sole discretion liquidate any investments as it shall deem appropriate to pay any amount that must be paid by with regards to the Plan.

11. **Educational Assistance and Other Payments.** Subject to conditions established by the RESP Legislation and any reasonable requirements that the Promoter may set, each Subscriber may request a payment out of the Assets of the Plan such amount or amounts needed for either:

- Educational assistance payment for a Beneficiary that meets the following requirements:
 - at that time of the payment he is
 - enrolled as a student in a qualifying educational program at a postsecondary educational institution, or,

- the individual has, before that time, attained the age of 16 years and is, at that time, enrolled as a student in a specified educational program at a post-secondary educational institution, and

(ii) either facts below are satisfied

- the Beneficiary satisfies, at that time, the condition set out in clause (i)(A) above, and

- He satisfied that condition throughout at least 13 consecutive weeks in the 12-month period that ends at that time, or

- the total of the payment and all other educational assistance payments made under a RESP of the Promoter to or for the Beneficiary in the 12-month period that ends at that time does not exceed \$5,000 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

- 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 a RESP of the Promoter to or for the Beneficiary in the 13-week period that ends at that time does not exceed \$2,500 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;

Notwithstanding paragraph 11 a) hereof, 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 of paragraph 146.1(2)g.1) of the *Income Tax Act* (Canada) had the payment been made immediately before that time.

- a payment to, or to a trust in favour of, a Designated Educational Institution;
- a payment to a trust that irrevocably holds property pursuant to a RESP as long Accumulated income payment as been made.
- an Accumulated Income Payment from the Plan provided that:
 - the payment is made to or for a Subscriber who is resident in Canada at the time of the payment;
 - the payment is not made jointly to or for more than one Subscriber; and
 - either:
 - the payment is made after the 9th year following the opening of the Plan and each individual (other than a deceased individual) who is or was a Beneficiary, has attained 21 years of age before the payment and, at the time when the payment is made, is not eligible to receive an Educational assistance payment;
 - the payment is made in the year in which the Plan is required to be terminated in accordance with the schedule 12 below.
 - Each Beneficiary was 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 division 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 in a post-secondary educational institution.

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

- the date the Subscriber or Subscribers designate from time to time;
- 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;
- the last day of the 35th year following the year in which the Plan is set up.

The Subscriber or Subscribers may change the designated termination date to a date that is not later than the earlier of the dates set out in sub-paragraphs b) and c) of this section by giving instructions in a form 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 we or the Trustee receive the designation notice, we will give notice 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 the definition "trust" in subsection 146.1(1) of the *Income Tax Act* (Canada).

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:

- invest any portion refundable under paragraph 5 or 6 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;
- pay the amount remaining after the investment under paragraph a) above to the trusts or a designated educational institution in Canada, at the Promoter's sole discretion and under 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 Subscriber's heirs, executors, administrators or other legal representatives or to a Beneficiary or his legal representative.

When a Subscriber dies at the time where the Plan has two Subscribers:

- Outside of Quebec: If the deceased Subscriber has designated the co-Subscriber as "joint tenant with right of survivorship", the later shall assume 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 shall have no rights under the Plan, or
- In the Province of Quebec: The Civil Code of Quebec and other applicable laws will apply.

- 14. Statements and Tax information.** The Promoter shall maintain a separate account for the Plan and keep the information regarding each Subscriber and the Beneficiaries, the total of all contributions made and refund, the CES amount received, the total of all payments, fees, cost and other withdrawal as well as all other transaction with regards to the Plan, in compliance with the RESP Legislation.
- The Promoter shall provide the Subscriber with a RESP statement of account annually (or more frequently at the Promoter's sole discretion), and shall also provide the competent authorities with information returns, slips, notices and other documents required under the Tax Legislation.
- 15. Fees and Expenses.** The Promoter and the Trustee shall be paid 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 shall be entitled to charge fees and administrative charges upon the termination of the Plan, at the transfer or withdrawal of Assets of the Plan or any other circumstance which they may reasonably determine. These fees and charges are disclosed to the Subscriber in accordance with the applicable laws.
- The Promoter and the Trustee shall 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 any tax, interest or penalty payable, which may be directly charged against and deducted from the Assets of the Plan.
- The Subscriber shall 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 notifying the Subscriber, dispose of 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 shall not be liable for any losses incurred as a result of such disposition.
- 16. Limitation of Liability.** Each Subscriber is solely responsible of all taxes, interest, penalties, contributions, fees, expenses, cost as well as all claims relating to the administration of the Plan, including those that may rise from the transfer or custody in the Plan of all amount, grant or investment. Each Subscriber jointly and severally undertakes to indemnify the Promoter, the Trustee and their representatives, agents and correspondent from all of the foregoing, except in case of gross negligence or willful misconduct from the Promoter or Trustee.
- Without limiting the scope of any other provision hereof, neither the Trustee nor any of its representatives, agents or correspondents shall be liable for any loss incurred by the Plan, by a Subscriber or a Beneficiary, as a result of:
- the refund of contributions receipt and time of receipt of any contribution, transfer, CES amount paid into the Plan;
 - any contribution refund or repayment of CES amounts paid into the Plan that may be required under the RESP Legislation;
 - any taxes or penalties which may be imposed on a Subscriber, the Promoter and/or the Trustee under the RESP Legislation concerning the Plan (including those resulting from the custody in the Plan of a nonqualified investment under the Applicable Tax Legislation);
 - any expenses or costs incurred regarding the Plan, the Assets of the Plan, under this agreement or under applicable legislation;
 - any loss, damages suffered or incurred by the Plan, a Subscriber or a Beneficiary under the Plan due notably, following:
 - the acquisition, retention or transfer of any investment;
 - a breach of an agreement between the Promoter and/or the Trustee respectively, and the Minister of HRSDC, under the RESP Legislation;
 - payments or distributions out of the Plan made in accordance with these terms and conditions;
 - 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 annual limit and/or RESP lifetime limit; or
 - the Promoter or the Trustee acting or declining to act on any instructions given by a Subscriber or any person claiming to be a Subscriber.
- The foregoing indemnification and limitations of liability shall survive the termination or revocation of the Plan.
- 17. Notices.** Any notice, statement or receipt by the Promoter or the Trustee to a Subscriber, the Beneficiaries or a representative authorized to receive them under terms of the Plan, will be sufficiently given if delivered or mailed by prepaid postage 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.
- Any notice to the Promoter or the Trustee under this agreement will be sufficiently given if delivered or mailed by prepaid postage 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 in a form deemed satisfactory by the Promoter and in accordance with the applicable laws.
- 18. Instructions.** The Promoter and the Trustee shall be empowered to follow the instructions received from a Subscriber or any other person designated in writing by the Subscriber, whether transmitted by mail, facsimile machine, by telephone or other electronic means. All instruction, demand or information given to the Promoter or the Trustee will be considered valid only if presented in a form deemed satisfactory by the Promoter.
- If the Plan has many Subscribers at the same time, instructions given by one Subscriber shall bind all the Subscribers. If many instructions are received by the Promoter and/or Trustee, the most recent instruction will be executed even if different than the previous one.
- 19. Proof of Information.** The Subscriber certifies that the information provided in the Application is correct 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 undertakes also to give to the Promoter an immediate notice of all changes regarding the information provided in the Application.
- 20. Plan Amendments.** The Promoter may from time to time, with the consent of the Trust, of the relevant taxation authorities and other regulatory authorities with regards to the Plan, amend the terms and conditions of the Plan
- to comply with the terms of an applicable law, or
 - by sending a thirty (30) days' notice in writing to each Subscriber, as long as any such amendments do not disqualify the Plan as an RESP under applicable RESP Legislation. If the Plan must be amended to maintain compliance with RESP Legislation, no prior notice to the Subscriber is required and any these amendments will be immediately effective thereafter.
- 21. Delegation.** The Trustee may, and each 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 of the trust regarding the Assets of the Plan to the Promoter, such delegation shall be deemed in the best interest of the trust, the Subscriber and the Beneficiaries. The Trustee has notified the Minister of HRSDC of the appointment of an agent in accordance with the terms of the trustee agreement(s) between the Trustee and the Minister of HRSDC.
- 22. Replacement of Trustee.** The Trustee may resign from its office under this agreement by giving ninety (90) days' written notice of resignation to the Subscriber, or such other period of notice that the RESP Legislation may stipulate.
- Resignation of the Trustee shall 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 each 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 shall notify the Minister of HRSDC of its resignation under this agreement and of the appointment of a replacement trustee in accordance with the terms of the trustee agreement(s) between the Trustee and the Minister of HRSDC.
- 23. Replacement of Promoter.** With Prior notification to the Trust, the relevant taxation authorities and other regulatory authorities with regards to the Plan, the Promoter may transfer all rights pertaining to the Plan in favour of another company residing in Canada in the extent that it is authorized by HRSDC to act as a RESP Promoter.
- The replacement Promoter shall give the Subscriber a prior notice concerning the transfer of the Plan, as well as any amendment to this agreement following the replacement of the promoter, in compliance with schedule 20 hereof.
- 24. Miscellaneous Provisions.**
- Cash.** All the sums of money payable hereunder shall be payable in money which is legal tender in Canada.
 - Binding.** The terms and conditions hereof will be binding upon the Subscribers' and Beneficiaries' heirs and legal personal representatives and upon any successors and assigns of the Promoter and Trustee.
 - Declaration of Non-Residence.** Each Subscriber is required to and undertakes to notify the Promoter immediately if he or she is or becomes a non-resident of Canada.
 - Interpretation.** Wherever the context so requires, a word used in the masculine gender shall include the feminine or neuter and vice versa, and the singular number shall include the plural and vice versa.
 - Applicable Legislation.** The Plan shall be governed and construed in accordance with the laws of the province in which the Subscriber resides, as shown in the Application, and with the RESP Legislation.
- The Plan shall not in any way constitute a trust within the meaning of the *Civil Code of Québec*. Given the special nature hereof and the administrative rules created hereby, the rules of Title VII of Book IV of the *Civil Code of Québec* relating to the administration of the property of others shall not apply to Assets of the Plan.
- 25. Language Clause.** The parties have requested that this agreement and any notices or other documents related hereto be drawn up in the English language. Les parties confirment leur volonté que la présente convention et tout avis ou autre document qui s'y rapporte soient rédigés en langue anglaise.