

(NB LIF)

LIFE INCOME FUND FOR NEW-BRUNSWICK

SUPPLEMENTARY AGREEMENT TO THE DECLARATION OF TRUST, ESTABLISHING A LIFE INCOME FUND UNDER THE NATIONAL BANK SECURITIES INC. MUTUAL FUNDS RETIREMENT INCOME FUND

RECITALS:

- A. The Annuitant is entitled pursuant to the Act and the Regulation to effect a transfer to the Fund of amounts derived from, directly or indirectly from, a pension plan governed by the provisions of the Act, or any other source acceptable under the Act and the Regulation (the “**Transfer**”);
- B. The Annuitant has established a National Bank Securities Inc. Mutual Funds Retirement Income Fund and wishes same to receive the Transfer;
- C. The Annuitant has duly completed and signed **Form 3.2** (attached herein) in Part I under the “Owner Transfer Information” section **AND** the pension plan administrator or financial institution effecting the Transfer has duly completed and signed **Form 3.2** in Part II under the “Transferor Information and Agreement” section;
- D. The Transfer cannot be made unless the conditions herein are satisfied;
- E. The parties now wish to supplement the Declaration with the provisions of this Agreement in order to comply with the requisite locking-in conditions. In the event of any conflict between the provisions of the Declaration and this Agreement, the provisions of this Agreement shall prevail.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements contained herein, the Parties hereto agree as follows:

- 1. **Definitions.** In this Agreement, all capitalized terms not otherwise defined herein shall have the same meaning as in the Declaration. In addition, the following terms shall have the following meaning:
  - a) “**Act**” means the *Pension Benefits Act* (New Brunswick), as same may be amended from time to time;
  - b) “**Declaration**” means the Declaration of Trust of the National Bank Securities Inc. Mutual Funds Retirement Income Fund;
  - c) “**Fiscal Year**” in connection with this Fund means a calendar year terminating at midnight on December 31, and will not exceed 12 months;
  - d) “**Fund**” refers to the National Bank Securities Inc. Mutual Funds Retirement Income Fund established by the Declaration executed between the Annuitant, National Bank Securities Inc. and the Trustee, as supplemented and modified by this Agreement establishing a LIF that will hold the locked-in money that is the subject of the Transfer;
  - e) “**LIF**” means a life income fund, being an RIF that meets the requirements set out in section 22 of the Regulation;

- f) **“Life Annuity”** means a life or deferred life annuity contract that conforms with section 23 of the Regulations, the Act and paragraph 60(l) of the Tax Act;
  - g) **“LIRA”** means a locked-in retirement account, being a registered retirement savings plan (within the meaning in the Tax Act) that meets the requirements set out in section 21 of the Regulation;
  - h) **“Minimum Amount”** means the amount referred to in 6.c), but shall not be lower than the amount that is required to be paid out of the Fund under the Tax Act as determined under section 7 of the Declaration;
  - i) **“Maximum Amount”** means the amount referred to in 6.c);
  - j) **“Regulation”** means *Regulation 91-195* adopted pursuant to the Act, as same may be amended from time to time;
  - k) **“RIF”** means a retirement income fund within the meaning of the Tax Act that is registered under that act;
  - l) **“Spouse”** shall have the meaning assigned to such term under the Act but does not include any person who is not recognized as a spouse or a common-law partner for the purposes of any provision of the Tax Act respecting RIF;
  - m) **“Tax Act”** means the *Income Tax Act* (Canada) and the regulations adopted thereunder;
  - n) **“Transfer”** means the transfer referred to in paragraph A of the Recitals hereto.
2. **Purpose of the Fund:** Except as permitted by the law, all money that is the subject of the Transfer, including all investment earnings thereon and gains realized thereof, but excluding all fees, charges, expenses and taxes charged to this Fund, shall be used to pay the Annuitant an income, the amount of which may vary annually, until the day on which the entire balance of the money in the Fund is converted into a Life Annuity. No money that is not locked-in may be transferred or otherwise held under this Fund.
3. **Value of the Fund:** The fair market value of the assets held under the Fund as determined by the Trustee in good faith shall be used to calculate the balance of the money and assets held under this Fund for any particular time, including on the death of the Annuitant or on a transfer of assets from the Fund. Any such determination by the Trustee shall be conclusive for all purposes hereof.
4. **Investments:** The money and assets held under this Fund shall be invested by the Trustee, either directly or through the Agent, in the manner provided at section 5 of the Declaration. All investments of money or assets held under this Fund must comply with the rules for the investment of RIF money contained in the Tax Act.
5. **Restrictions:** No money transferred, including interest, shall be assigned, charged, anticipated, given as security or subjected to execution, seizure, attachment or other process of law except under section 44 of the Act or subsection 57(6) of the Act; a transaction in contravention this Section 5 is void.
6. **Payments:** Payments to the Annuitant until the day on which the entire balance of the money in the Fund is converted into a Life Annuity shall be determined under section 7 of the Declaration and shall comply with the following conditions:

- a) **Commencement of payments.** Payments shall commence not later than the last day of the second Fiscal Year of the Fund;
- b) **Annual Payments.** The amount of the income (which must be between the Minimum Amount and the Maximum Amount) paid to the Annuitant during a Fiscal Year must be set by the Annuitant each year by notifying the Trustee of the amount no later than January 1 of such Fiscal year. Such notice expires on December 31 of such Fiscal year. If the Annuitant does not thereby notify the Trustee, the Annuitant will be deemed to have decided to receive the Minimum Amount with respect to such year and the Trustee will thereby pay the Minimum Amount out of the Fund in such year. For greater certainty, the Trustee does not agree to any interval of more than a year;
- c) **Maximum and Minimum Amount.** Subject to 6.d) and 6.e) below, the amount of income paid during a Fiscal Year of the LIF will not be more than “M” (“**Minimum Amount**”) or less than “m” (“**Maximum Amount**”), where “M” and “m” are calculated using the following formulas:

$$M = \frac{C}{F}$$

and

$$m = \frac{C}{H}$$

and where

C = the balance of the money in the Fund on the first day of the Fiscal Year;

F = the value, on the first day of the Fiscal Year, of a guaranteed pension, the annual payment of which is \$1 payable on the first day of each Fiscal Year between the 1st day of the Fiscal Year and the 31st day of December, inclusive, of the year in which the Annuitant attains the age of 90 years; and

H = the number of years between the 1<sup>st</sup> day of January of the year in which the calculation is made and the 31<sup>st</sup> day of December of the year in which the Annuitant attains the age of 90 years, inclusive.

The value of “F” shall be established at the beginning of each Fiscal Year using:

- i) an interest rate of not more than 6% per year; or
- ii) for the first 15 years after the date of the valuation of the Fund, an interest rate exceeding 6% per year if that rate does not exceed the interest rate obtained on long-term bonds issued by the government of Canada for the month of November preceding the calendar year in which the calculation is made, as published in the Bank of Canada Review as CANSIM Series B14013 and using an interest rate not exceeding 6% in subsequent years.
- d) **Maximum Amount for First Fiscal Year.** In calculating “m” for the first Fiscal Year, “m” shall be equal to zero;

- e) **Maximum Amount on Transfer from another LIF.** If the money in the Fund is derived from money transferred directly or indirectly during the first Fiscal Year of the Fund from another LIF of the Annuitant, "M" shall be equal to zero.

7. **Permitted transfers:** Prior to using the balance of the Fund to purchase an immediate Life Annuity, the Annuitant may transfer all or part of the balance of the LIF:

- a) to the fund of a pension plan that conforms with the Act and the Regulations, or similar legislation in another jurisdiction, and the Tax Act, where permitted by the terms of such pension plan. However, the Annuitant shall not be entitled to make a transfer to a pension plan that is not registered in the Province unless the pension plan is registered for persons employed in a designated jurisdiction, and the Annuitant is employed in that jurisdiction by an employer who is making contributions on behalf of the Annuitant to the pension fund that is to receive the amount to be transferred;
- b) to another LIRA;
- c) to a LIF, provided that the minimum amount as defined under subsection 146.3(1) of the Tax Act is retained before transferring the balance of the LIF in accordance with paragraph 146.3(2)(e) of the Tax Act;
- d) to purchase a Life Annuity;
- e) to a registered RIF (that is not a LIF), provided that the Trustee receives the consent of the Superintendent pursuant to subsection 22(6.1) of the Regulation (upon application of the Annuitant to the Superintendent in accordance with the Act and the Regulation). Such approval may be obtained by filing with the Superintendent documentation in the form and manner prescribed by the Regulations, and the Superintendent shall approve the transfer if:
  - i) an amount has never previously been transferred under this paragraph or under subsection 22(6.1) of the Regulations on behalf of the Annuitant; and
  - ii) the amount to be transferred is not greater than the lesser of:
    - (1) 3 times the Maximum Amount; and
    - (2) 25% of the balance in the Fund on the first day of the Fiscal Year in which the transfer hereunder is to be made.

The Annuitant may at any time request, in a form deemed satisfactory by the Trustee, that the Trustee effect such a permitted transfer. Subsections 21(8.1) to 21(11) of the Regulation shall apply to any transfer hereunder, with necessary modifications, including any necessary modification to Form 3.2.

The Trustee may deduct from the property being transferred all amounts to be retained in application of paragraphs 146.3(2)(e.1) or 146.3(2)(e.2) of the Tax Act, as applicable, as well as any fees and disbursements to which the Trustee is entitled.

The transfer pursuant to paragraphs 7.a), 7.b) and 7.c) shall be effected within 30 days from the Annuitant's application for transfer. A transfer pursuant to paragraph 7.d) shall be effected within a reasonable time. Once the transfer is completed in compliance with

all conditions relating thereto, the Trustee and the Agent shall be released from any liability in connection with this Fund to the extent of the transfer.

Notwithstanding the above, the Trustee shall never be obliged to refund in advance the investments held under the Fund for purposes of transfer and may, at its entire discretion, delay the requested transfer accordingly. A transfer pursuant to paragraphs 7.a), 7.b) and 7.c) may, at the option of the Trustee, be effected by the remittance to the Annuitant of the investment securities respecting the Fund.

**8. Permitted withdrawals:** No withdrawal, commutation or surrender of money, in whole or in part, held under this Fund is permitted and will be void, except in the following circumstances:

- a) Shortened Life Expectancy Withdrawal.** The Annuitant may replace in whole or in part the deferred pension under an annuity by a payment or a series of payments and the amount of the payment or the present value of the series of payments, as the case may be, shall not be less than the present value of the deferred pension if the following conditions are met before the commencement of payments under the annuity:
  - i) a physician certifies in writing to the Trustee that the Annuitant suffers from a significant physical or mental disability that considerably reduces life expectancy; and
  - ii) if the Annuitant has a Spouse, the Annuitant delivers to the Trustee a completed spousal waiver on Form 3.01.
- b) Marriage breakdown.** In accordance with section 44 of the Act.
- c) Execution, seizure or attachment.** In accordance with subsection 57(6) of the Act.
- d) Non-resident.** The Annuitant may withdraw the balance of the money in the Fund if:
  - i) the Annuitant and his or her Spouse, if any, are not Canadian citizens;
  - ii) the Annuitant and his or her Spouse, if any, are not resident in Canada for the purposes of the Tax Act; and
  - iii) the Annuitant 's Spouse, if any, waives, on Form 3.5, any rights that he or she may have in the Fund under the Act, this Regulation or the contract.

The Trustee may rely upon the information provided by the Annuitant in any application made pursuant to this Section 8 and such application shall constitute sufficient authorization to the Trustee to pay the Annuitant from the Fund in accordance thereof. The Trustee shall make the payment within a reasonable time of receipt by the Trustee of a completed application form and accompanying documentation.

**9. Statements**

- a)** The Trustee undertakes to provide the Annuitant, at the beginning of each Fiscal Year, until the date on which all the money in the Fund is converted into a Life Annuity or transferred to a LIRA or LIF that conforms to the Act and the

Regulations, or to similar legislation in another jurisdiction, a statement indicating the following information:

- i) the amount of money deposited, its source, the accumulated earnings of the Fund and the withdrawals from the Fund during the immediately preceding Fiscal Year;
  - ii) any fees deducted since the preparation of the previous such statement and the balance of money in the Fund at the beginning of each Fiscal Year;
  - iii) the Maximum Amount; and
  - iv) the Minimum Amount.
- b)** If the Annuitant dies before the purchase of a Life Annuity, the Trustee shall provide to the Annuitant's Spouse, beneficiary, administrator or executor, as the case may be, a statement containing the information listed in subparagraphs 9.a)i) and 9.a)ii) hereof, determined as of the date of the Annuitant's death.
- c)** If the balance of the money in the Fund is converted to a Life Annuity or transferred to another LIF or LIRA that conforms to the Act and the Regulations or to similar legislation in another jurisdiction, the Trustee shall provide to the Annuitant a statement containing the information listed in subparagraphs 9.a)i) and 9.a)ii) hereof, as of the date of the conversion or transfer.

**10. Differentiation Based on Sex**

- a)** No money, including interest, in the Fund shall be used to purchase a life or deferred Life Annuity that differentiates on the basis of sex unless the commuted value of the deferred pension transferred from the plan into the Fund was determined on transfer in a manner that differentiated, while the Annuitant was a member of the plan, on the basis of the sex.
- b)** If the information provided on the prescribed transfer form indicates that the commuted value of the Benefits transferred into the Fund was determined in a manner that differentiated, while the Annuitant was a member of the plan, on the basis of sex, only money that is differentiated on the same basis may subsequently be transferred into the Fund.

**11. Marriage Breakdown:** Notwithstanding any contrary provision of this Agreement, the amounts in the Fund shall be subject, with any necessary modification, to the division on spousal relationship breakdown provisions prescribed under section 27 to section 33 of the Regulations, and section 44 of the Act, in compliance with the Tax Act. The commuted value of the Annuitant's benefits provided under the Fund shall be determined in accordance with the Act and this Regulation if it is divided under section 44 of the Act.

**12. Death of the Annuitant:** If the Annuitant dies before purchasing a Life Annuity, the balance of the money in the Fund shall be paid:

- a)** to the Annuitant's Spouse;
- b)** if the Annuitant does not have a Spouse but has designated a beneficiary on death, to the beneficiary; or

- c) if the Annuitant does not have a Spouse and has not designated a beneficiary on death, to the estate of the Annuitant.

No such payment shall be made unless and until the Trustee receives releases and other documents as it may reasonably require. Such payment is subject to paragraph 60(l) of the Tax Act.

13. **Amendments:** an amendment to this Agreement shall not be made:
- a) that would result in a reduction of the benefits arising from the Fund unless the Annuitant is entitled, before the effective date of the amendment, to transfer the balance of the money in the Fund in accordance with Section 7 hereof and, unless a notice is delivered to the Annuitant at least 90 days before the effective date, describing the amendment and the date on which the Annuitant may exercise the entitlement to transfer;
  - b) unless the Agreement as amended remains in conformity with the Act and this Regulation; or
  - c) except to bring this Agreement into conformity with requirements under an Act of the Legislature or other legislation in another jurisdiction.
14. **Representations and warranties of the Annuitant:** The Annuitant represents and warrants to the Trustee the following:
- a) That the pension legislation applicable and governing the Transfer at such time is the Act and Regulation;
  - b) That the amounts transferred herein are locked-in amounts resulting directly or indirectly from the commuted value of the Annuitant's pension entitlements and the Annuitant is entitled to effect a transfer of his or her pension entitlements pursuant to the Act or the Regulation;
  - c) That the provisions of the pension plan do not prohibit the Annuitant from entering into this Agreement and, in the event that such prohibition does exist, the Trustee shall not be liable for the consequences to the Annuitant of executing this Agreement nor for anything done by the Trustee in accordance with the provisions hereof; and
  - d) That the commuted value of the pension benefits that were transferred herein was not determined on a basis that differentiated on the basis of sex, unless otherwise indicated on Form 3.2.
15. **Governing law:** This Agreement shall be governed by the laws of the Province of New Brunswick.