

(NB LIRA)

LOCKED-IN RETIREMENT ACCOUNT NEW BRUNSWICK

SUPPLEMENTARY AGREEMENT TO THE DECLARATION OF TRUST, ESTABLISHING A LOCKED-IN RETIREMENT ACCOUNT UNDER THE NATIONAL BANK SECURITIES INC. MUTUAL FUNDS RETIREMENT SAVINGS PLAN

RECITALS:

- A. The Annuitant is entitled pursuant to the Act and the Regulation to effect a transfer to the Account of amounts derived, 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 Savings Plan 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) “**Account**” refers to the National Bank Securities Inc. Mutual Funds Retirement Savings Plan established by the Declaration executed between the Annuitant, National Bank Securities Inc. and the Trustee, as supplemented and modified by this Agreement establishing a LIRA that will hold the locked-in money that is the subject of the Transfer;
 - c) “**Declaration**” means the Declaration of Trust of the National Bank Securities Inc. Mutual Funds Retirement Savings Plan;
 - d) “**LIF**” means a life income fund, that is a registered retirement income fund (within the meaning in the Tax Act), and that meets the conditions set out in section 22 of the Regulation;
 - e) “**Life Annuity**” means a life or deferred life annuity contract that conforms with section 23 of the Regulations, the Act and paragraph 146(1) of the Tax Act;

- f) “**LIRA**” means a locked-in retirement account, that is a RSP that meets the requirements of subsection 21 of the Regulation relating to locked-in retirement accounts;
 - g) “**Regulation**” means *Regulation 91-195* adopted pursuant to the Act, as same may be amended from time to time;
 - h) “**RSP**” means a retirement saving plan within the meaning of the Tax Act that is registered under that act;
 - i) “**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 RSP;
 - j) “**Tax Act**” means the *Income Tax Act* (Canada) and the regulations adopted thereunder;
 - k) “**Transfer**” means the transfer referred to in paragraph A of the Recitals hereto.
2. **Locking-in provisions:** Except as permitted by the Act and the Regulation, 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 Account, shall be used to provide or ensure a pension that would, but for the Transfer or for any previous transfers, be required or permitted by the Act. No money that is not locked-in may be transferred or otherwise held under this Account.
3. **Value of the Account:** The fair market value of the assets held under the Account as determined by the Trustee in good faith shall be used to calculate the balance of the money and assets held under this Account for any particular time, including on the death of the Annuitant or on a transfer of assets from the Account. Any such determination by the Trustee shall be conclusive for all purposes hereof.
4. **Investments:** The money and assets held under this Account shall be invested by the Trustee, either directly or through the Agent, in the manner provided at section 7 of the Declaration. All investments of money or assets held under this Account must comply with the rules for the investment of RSP 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 of this Section 5 is void.
6. **Contributions:** The only money that may be transferred to the Account are the sums originating, directly or indirectly, from:
- a) the fund of a pension plan that conforms with the Act and the Regulation or with similar legislation in another jurisdiction, if the money is being transferred under section 36 of the Act or under a similar provision in legislation in another jurisdiction, and the Tax Act;
 - b) another LIRA;
 - c) a LIF; or
 - d) a Life Annuity.

7. **Required Form of Pension:** Except as provided for elsewhere in the Regulation, the balance of the money in the Account, in whole or in part, may be converted at any time only into a Life Annuity.

No money, including interest, transferred to this Account shall subsequently be used to purchase a Life Annuity that differentiates on the basis of the Annuitant's sex, unless the commuted value of the deferred pension transferred from the plan into the Account was determined on transfer in a manner that differentiated, while the Annuitant was a member of the plan, on the basis of the sex of the Annuitant.

In the case of an Annuitant with a Spouse at the time the pension payments begin, the pension provided shall be a joint pension in the form prescribed under section 41 of the Act unless a spousal waiver has been completed by the spouse in the form and manner prescribed under the Act.

8. **Death of the Annuitant:** If the Annuitant dies before purchasing a Life Annuity pursuant to Section 7 hereof, the balance of the money in the account 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.

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

- a) **Shortened Life Expectancy Withdrawal.** The Annuitant may withdraw, in whole or in part, the balance of the money in the Account, upon application by the Annuitant to the Trustee in accordance with paragraph 21(2)(d) of the Regulation and if the following conditions are met:
 - 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) **Excess Amount.** The Annuitant may withdraw an amount from the Account, upon application by the Annuitant to the Trustee in accordance with paragraph 21(2)(e) of the Regulation and if the following conditions are met:
 - i) the amount is withdrawn to reduce the amount of tax that would otherwise be payable pursuant to Part X.1 of the Tax Act by the Annuitant; and

- ii) the Trustee, notwithstanding section 20 of the Regulation, establishes a sub-account, that is not a RSP, of the LIRA, and the Annuitant deposits the amount withdrawn, less any amount required to be withheld by the Trustee under the Tax Act, into the sub-account.
- c) **Marriage breakdown.** In accordance with section 44 of the Act.
- d) **Execution, seizure or attachment.** In accordance with subsection 57(6) of the Act.
- e) **Small Benefit.** The Annuitant may withdraw the balance of the Account, upon application by the Annuitant to the Trustee in accordance with subsections 21(15) and 21(16) of the Regulation and if the following conditions are met:
 - i) the Annuitant requests that the balance be withdrawn by delivering a completed Form 3.6, and a completed Form 3.7 where applicable, to the Trustee;
 - ii) the total assets held by the Annuitant in all LIRAs, LIFs, and Life Annuities would be commutable upon termination of employment if they were held in a pension fund under a pension plan that permitted payment of the commuted value of the pension benefit in accordance with section 34 of the Act;
 - iii) the total of the pension adjustments reported to the owner by the Canada Revenue Agency for the 2 taxation years immediately preceding the request for withdrawal is zero; and
 - iv) the Trustee is satisfied, based upon the information provided in Forms 3.6 and 3.7 and any other information that has been requested by the financial institution, that the reported present distribution of assets transferred from pension funds connected with employment in the Province is consistent with the amounts reported to have been transferred from such pension funds, and the requested withdrawal is permitted under the Regulation.
- f) **Non-resident.** the Annuitant may withdraw the balance of the money in the account 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 account 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 10 and such application shall constitute sufficient authorization to the Trustee to pay the Annuitant from the Account 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.

10. Permitted transfers: No transfer of all or any part of the money or assets held under this Account, and after the Maturity Date, is permitted unless the balance of the money in the Account, in whole or in part, is transferred to one of the following:

- a) before a conversion under Section 7 hereof, 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) before a conversion under Section 7 hereof, to another LIRA;
- c) before a conversion under Section 7 hereof, to a LIF; or
- d) to convert the balance of the money in the Account, to purchase a Life Annuity.

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 transfer pursuant to paragraphs 10.a),10.b) and 10.c) shall be effected within 30 days from the Annuitant's application for transfer. A transfer pursuant to paragraph 10.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 Account to the extent of the transfer.

Notwithstanding the above, the Trustee shall never be obliged to refund in advance the investments held under the Account for purposes of transfer and may, at its entire discretion, delay the requested transfer accordingly. A transfer pursuant to paragraphs 10.a), 10.b) and 10.c) may, at the option of the Trustee, be effected by the remittance to the Annuitant of the investment securities respecting the Account.

11. Marriage Breakdown: Notwithstanding any contrary provision of this Agreement, the amounts in the Account 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 this Account shall be determined in accordance with the Act and this Regulation if it is divided under section 44 of the Act;

12. Amendments: an amendment to this Agreement shall not be made:

- a) that would result in a reduction of the benefits arising from the Account unless the Annuitant is entitled, before the effective date of the amendment, to transfer the balance of the money in the Account in accordance with Section 10 hereof and, unless a notice is delivered to the owner at least 90 days before the effective date, describing the amendment and the date on which the owner 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.
13. **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.
14. **Governing law:** This Agreement shall be governed by the laws of the Province of New Brunswick.