

(ON LIF)

LIFE INCOME FUND FOR ONTARIO

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, 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 obtained the written consent of his or her Spouse prior to the Transfer, if the money to be transferred herein is derived, directly or indirectly, from a pension benefit provided in respect of any employment of the Annuitant;
- C. The Annuitant has established a National Bank Securities Inc. Mutual Funds Retirement Income Fund and wishes same to receive the Transfer;
- 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* (Ontario), 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) “**Declaration about a Spouse**” means any of the following documents:
 - i) A statement signed by the Annuitant's Spouse, if any, that the Spouse consents to the withdrawal from the Fund;
 - ii) A statement signed by the Annuitant attesting to the fact that he or she does not have a Spouse; or
 - iii) A statement signed by the Annuitant attesting to the fact that he or she is living separate and apart from his or her Spouse on the date the Annuitant signs the application to make the withdrawal from the Fund.

- d) **"Fiscal Year"** in connection with this Fund means a calendar year terminating on December 31, and will not exceed twelve months;
 - e) **"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;
 - f) **"LIF"** means a prescribed retirement savings arrangement, known as a life income fund, that is a RIF that meets the conditions set out in Schedule 1 of the Regulation;
 - g) **"Life Annuity"** means an insurance contract under which an annuity will be provided to the Annuitant or his Spouse that complies with the relevant provisions of the Tax Act and section 22 of the Regulation, provided that the annuity shall not differentiate on the basis of the sex of the beneficiary unless otherwise permitted under the Regulation;
 - h) **"LIRA"** means a prescribed retirement savings arrangement, known as a locked-in retirement account, that is a registered retirement savings plan (within the meaning in the Tax Act) that meets the requirements of subsection 21(2) of the Regulation relating to locked-in retirement accounts;
 - i) **"LRIF"** means a prescribed retirement savings arrangement, known as a locked-in retirement income fund, that is a RIF that meets the conditions set out in Schedule 2 of the Regulation;
 - j) **"Minimum Amount"** means the minimum amount that is required to be paid out of the Fund as determined under section 7 of the Declaration;
 - k) **"Maximum Amount"** means the maximum amount referred to in Section 6.d) hereof;
 - l) **"Regulation"** means *R.R.O. 1990, Regulation 909* adopted pursuant to the Act, as same may be amended from time to time;
 - m) **"RIF"** means a retirement income fund within the meaning of the Tax Act that is registered under that act;
 - n) **"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 a RIF;
 - o) **"Tax Act"** means the *Income Tax Act* (Canada) and the regulations adopted thereunder;
 - p) **"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 provide the Annuitant with periodic payments. The Fund must be purchased using all or part of the amount under clause 42(1)(b) of the Act or using all or part of the assets in a LIRA or LRIF.

3. **Value of the Fund:** The value of all assets in the Fund owned by the Annuitant when the Annuitant signs the application shall be determined in accordance with the most recent statement about each fund or account given to the Annuitant. Each such statement must be dated within one year of the execution of the application by the Annuitant.

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. The value of the assets in the Fund is subject to the division in accordance with the terms of an order under the *Family Law Act* (Ontario) or a domestic contract as defined in Part IV of that act.

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 and the regulation thereunder.
5. **Restrictions:** Except as permitted by the law, the Annuitant agrees not to assign, charge, anticipate or give as security money payable hereunder except as required by an order under the *Family Law Act* (Ontario) or by a domestic contract as defined in Part IV of that act.
6. **Payments:** Except as permitted by the law, payments to the Annuitant hereunder shall be determined under section 7 of the Declaration and shall comply with the following conditions:

- a) **Commencement of Payments:** Payments out of the Fund must begin:
- i) no earlier than the earliest date on which the Annuitant is entitled to receive a pension under any pension plan from which money was transferred into the Fund directly or indirectly, and
 - ii) no later than the end of the second Fiscal Year of the Fund.
- b) **Annual Payments:** The Annuitant must notify the Trustee of the amount (such amount being no lower than the Minimum Amount and no higher than the Maximum Amount) to be paid out of the Fund each year no later than January 1 of the year to which it relates. Such notice expires on December 31 of the year to which it relates. 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.
- c) **Division on Marriage Breakdown:** The payments are subject to the division in accordance with the terms of an order under the *Family Law Act* (Ontario) or a domestic contract as defined in Part IV of that act.
- d) **Maximum Amount:** The aggregate amounts paid during a year must not exceed the maximum amount permitted under the Act and the Regulation in respect of a LIF, being calculated in accordance with the following formula:

$$C/F = \text{Maximum Amount}$$

where

“C” = the value of the assets in the LIF at the beginning of the Fiscal Year; and

“F” = is the present value, at the beginning of the Fiscal Year, of an annuity of \$1 payable annually in advance over the period commencing at the beginning of the Fiscal Year and ending on December 31 of the year in which the Annuitant reaches 90 years of age (for greater certainty, the age of the Spouse may not be used).

The following interest rate assumptions are to be used to determine the amount “F”:

- i) If the Fiscal Year begins before January 1, 2001, the interest rate for each of the first 15 Fiscal Years of the period referred to in the definition of “F” is the greater of 6% and the nominal rate of interest on long-term bonds issued by the Government of Canada for December of the year before the beginning of the Fiscal Year, as determined from the Canadian Socio-Economic Information Management System (CANSIM) series V122487 compiled by Statistics Canada and available on the website maintained by the Bank of Canada;
- ii) If the Fiscal Year begins on or after January 1, 2001, the interest rate for each of the first 15 Fiscal Years of the period referred to in the definition of “F” is the greater of 6 % and the nominal rate of interest on long-term bonds issued by the Government of Canada for November of the year before the beginning of the Fiscal Year, as determined from the Canadian Socio-Economic Information Management System (CANSIM) series V122487 compiled by Statistics Canada and available on the website maintained by the Bank of Canada; and
- iii) For the 16th and each subsequent Fiscal Year of the period referred to in the definition of “F”, the interest rate is 6%.

e) Maximum Amount on Transfer from LIF or LRIF: Despite 6.d) above, the Maximum Amount payable for that Fiscal Year shall be equal to zero where all or any part of the money and assets held under this Fund is derived from money transferred directly or indirectly during a Fiscal Year of this Fund from another LIF or a LRIF of the Annuitant;

f) Maximum Amount for Short First Fiscal Year: If the first Fiscal Year of the Fund is not 12 months long, the Maximum Amount determined under 6.d) above shall be adjusted in proportion to the number of months in that Fiscal Year divided by 12, with any part of an incomplete month counting as one month;

g) Minimum Amount: The aggregate amounts paid during a year hereunder must be not less than the Minimum Amount. If the Minimum Amount is greater than the Maximum Amount determined in this Section 6, the Minimum Amount shall be paid out of the LIF during the Fiscal Year.

7. Permitted Transfers Prior to Conversion: The Annuitant may transfer all or part of the property held in connection with the Fund may, before the compulsory purchase of a Life Annuity under Section 8 hereof, to:

- a) another LIF;

- b) a LRIF;
- c) purchase an immediate Life Annuity; or
- d) a LIRA, only before December 31 of the year in which the Annuitant attains 69 years of age.

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

Such transfer shall be effected within a period of 30 days from the receipt of written instructions from the Annuitant in a form deemed satisfactory by the Trustee, or within a reasonable time with respect to the transfer of assets held as securities whose term of investment extends beyond the 30-day period.

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 Annuitant agrees that 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, either (i) delay the requested transfer, or (ii) where such investments consist of identifiable and transferable securities, effect the transfer by the remittance of such securities.

8. Compulsory Purchase of Life Annuity:

The Annuitant shall use any assets remaining in the Fund on December 31 in the year in which he or she reaches 80 years of age to purchase an immediate Life Annuity, in accordance with the written instructions from the Annuitant in a form deemed satisfactory by the Trustee. However, where the Annuitant fails to effect the purchase as aforesaid, on or before March 31 of the following year, the Trustee shall purchase an immediate Life Annuity for the Annuitant from such person and on such terms as the Trustee may select at its entire discretion. The Trustee shall not be liable for any losses incurred as a result of such purchase.

For the purpose of the Life Annuity purchased hereunder, a determination as to whether the Annuitant has a Spouse is to be made on the date the annuity is purchased.

Payments under a Life Annuity are subject to division in accordance with the terms of an order under the *Family Law Act* (Ontario) or a domestic contract as defined in Part IV of that act.

9. 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) **Withdrawal of Small Amount at 55:** The Annuitant may withdraw all of the money in the Fund, upon application by the Annuitant to the Trustee in accordance with section 9 of Schedule 1 of the Regulation and if the following conditions are met:

- i) at the time of execution of the application, the Annuitant has attained the age of 55 years;
 - ii) the value of all assets in all LIFs, LRIFs and LIRAs owned by the Annuitant is less than 40% of the Year's Maximum Pensionable Earnings for the calendar year in which the application is made; and
 - iii) the application is made on a form approved by the Superintendent, signed by the Annuitant, provided to the Trustee within 60 days of execution, and accompanied by one of the following documents:
 - (1) a Declaration about a Spouse; or
 - (2) a statement signed by the Annuitant within 60 days of receipt by the Trustee attesting to the fact that none of the money in the Fund is derived, directly or indirectly, from a pension benefit provided in respect of any employment of the Annuitant.
- b) Shortened Life Expectancy Withdrawal:** The Annuitant may withdraw all or part of the money in the Fund, upon application by the Annuitant to the Trustee in accordance with section 10 of Schedule 1 of the Regulation and if the following conditions are met:
- i) at the time of execution of the application, the Annuitant has an illness or physical disability that is likely to shorten the Annuitant's life expectancy to less than two years;
 - ii) the application is made on a form approved by the Superintendent, signed by the Annuitant, provided to the Trustee within 60 days of execution, and accompanied by the following documents:
 - (1) a statement signed by a physician who is licensed to practice medicine in a jurisdiction in Canada that, in the opinion of the physician, the Annuitant has an illness or physical disability that is likely to shorten the Annuitant's life expectancy to less than two years; and
 - (2) one of the following documents:
 - (a) a Declaration about a Spouse; or
 - (b) a statement signed by the Annuitant within 60 days of receipt by the Trustee attesting to the fact that none of the money in the Fund is derived, directly or indirectly, from a pension benefit provided in respect of any employment of the Annuitant.
- c) Excess Transfers Withdrawal:** Upon application by the Annuitant to the Trustee in accordance with the following conditions and section 22.2 of the Regulations, the Annuitant may withdraw an amount, calculated by the Trustee on the date of withdrawal, to be not greater than the sum of:
- i) the "**Excess Amount**", if any, by which the amount transferred under section 42(1)(b) of the Act, directly or indirectly, to this Fund from a

registered pension plan of which the Annuitant was a member exceeds the amount prescribed for such transfer pursuant to Part X.1 of the Tax Act; and

- ii) any subsequent investment earnings, including any unrealized capital gains or losses, attributable to the Excess Amount;

provided that the application is made on a form approved by the Superintendent, signed by the Annuitant, submitted to the Trustee and is accompanied by one of the following documents:

- (1) a written statement from the administrator of the registered pension plan from which the moneys transferred to the Fund originated, setting out the Excess Amount that was transferred; or
- (2) a written statement from the Canada Revenue Agency setting out the Excess Amount that was transferred into the Fund.

d) Financial Hardship Withdrawal: If the Trustee receives the consent of the Superintendent pursuant to subsection 67(5) of the Act (upon application of the Annuitant to the Superintendent in accordance with the Act and the Regulation), which has been signed by the Superintendent within 12 months of its receipt by the Trustee, the Trustee will pay within 30 days after receiving such consent and in accordance with such consent:

- i) the specified amount, net of any withholding tax and fee, to the Annuitant as a lump sum payment, on a monthly instalment basis, or a combination thereof; and
- ii) the amount of any related fee approved by the Minister, net of withholding tax, to the Minister.

The Trustee will give the Annuitant a receipt for the documents accompanying an application made pursuant to paragraphs 9.a) and 9.b). The Trustee may rely upon the information provided by the Annuitant in any application made pursuant to this Section 9 and such application shall constitute sufficient authorization to the Trustee to pay the Annuitant from the Fund in accordance thereof. The Trustee will make the payment within 30 days of receipt by the Trustee of a completed application form and accompanying documentation.

10. Death of the Annuitant: Upon receipt of evidence satisfactory to the Trustee in respect of the death of the Annuitant and the right of entitlement of the following beneficiary, the Trustee shall dispose of the assets of the Fund, and subject to paragraph 60(l) of the Tax Act and after deducting any applicable tax, costs of such disposition, fees or any other amounts payable hereunder, the Trustee shall pay in a lump sum the net proceeds of such disposition to:

- a) the Spouse of the Annuitant (other than a Spouse that is living separate and apart from the Annuitant on the date of his or her death), to the extent that the Annuitant was a member or former member of a pension plan from which assets were transferred directly or indirectly to purchase the Fund. The determination as to whether the Annuitant has a Spouse is made on the date of the Annuitant's death;

- b) if the Annuitant does not have a Spouse pursuant to 10.a) above, to the beneficiary lawfully designated to receive such death benefits; or
- c) if the Annuitant does not have a Spouse pursuant to 10.a) above, nor a designated beneficiary pursuant to 10.b) above, 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.

11. **Amendments:** The Trustee must send a notice to the Annuitant by registered mail at the last address known to the Trustee, indicating the nature of an amendment to this Agreement and within 90 days of the effective date of the proposed amendment.

An amendment to this Fund may not be made if it would result in a reduction of the Annuitant's rights hereunder, unless such amendment is necessary to conform with any law and the Annuitant is entitled to transfer the assets in the Fund under the terms of this Supplemental Agreement existing before the amendment is made. The Annuitant has 90 days after the notice is given to transfer all or part of the assets in the Fund.

12. **Statements:** The Trustee shall provide to the Annuitant, at the beginning of each Fiscal Year of the Fund, a statement containing the following information:

- a) The sums deposited, any accumulated investment earnings including any unrealized capital gains or losses, the payments made out of the Fund and the fees charged against it during the previous Fiscal Year;
- b) The value of the assets in the Fund as of the beginning of the Fiscal Year;
- c) The Minimum Amount and Maximum Amount that must be paid out of the Fund to the owner during the current Fiscal Year.

If the assets in the Fund are transferred pursuant to Section 7 hereof, the Trustee shall provide the information described in 12.b) determined as of the date of the transfer. Upon the death of the Annuitant, Trustee shall provide to the person entitled to receive the death benefits under Section 10 the information described in 12.b) determined as of the date of the Annuitant's death.

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 was transferred herein was not determined on a basis that differentiated on the basis of sex, unless otherwise indicated in writing to the Trustee in respect of pension benefits accrued before 1987.
- 14. **Governing law:** This Agreement shall be governed by the laws of the province of Ontario.