

# Individual Plan Terms and Conditions

The Application and these Terms and Conditions constitute an agreement between the Promoter and Trustee, and the Subscriber pursuant to which, in consideration of payments made by the Subscriber hereunder, we agree to pay or cause to be paid to or for a Beneficiary Educational Assistance Payments in accordance with this Agreement.

## 1. DEFINITIONS

**"Accumulated Income Payment"** means any amount paid out of the Plan, other than a payment described in any of paragraphs (a) to (d) and in paragraph (f) of Section 3 hereof, 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;

**"Agreement"** means the Application together with these Terms and Conditions;

**"Applicable Tax Legislation"** means the *Income Tax Act* (Canada) ("Tax Act") and any applicable provincial income tax legislation, as amended from time to time;

**"Application"** means your application for a Scotia Self-directed Education Savings Plan;

**"Beneficiary"** means an individual who has been designated by you as a beneficiary to receive Educational Assistance Payments, if he or she qualifies under the Plan;

**"Deemed Canadian Resident"** means an individual deemed by Section 250 of the Tax Act to be resident in Canada;

**"Designated Educational Institution"** means:

- (a) an educational institution in Canada that is (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 Education of the Province of Quebec for the purposes of the *Act respecting financial assistance for education expenses* (Quebec), or (ii) certified by the Minister of Human Resources & Skills Development to provide non-university credit courses that furnish or improve an individual's skills for an occupation,
- (b) a university outside Canada at which a Deemed Canadian Resident is enrolled for at least 13 consecutive weeks, leading to a degree, or
- (c) if the Deemed Canadian Resident lives near the Canada-U.S. border, an educational institution in the United States to which the individual commutes that is a university, college, or the educational institution providing courses at a post-secondary school level.

A formal definition is set out in subsection 118.6(1) of the Tax Act;

**"Educational Assistance Payment"** means any amount, other than a refund of Subscriber contributions, paid under the Plan in accordance with Applicable Tax Legislation to or for a Beneficiary to assist the Beneficiary to further his or her post-secondary education;

**"Plan"** means the Scotia Self-directed Education Savings Plan set up with your Application;

**"Plan Property"** means all of the property of the Plan, consisting of all payments in or transfers to the Plan by you or on your behalf and all amounts allowed to be paid into the Plan under the *Canada Education Savings Act* together with any income earned on and gains realized in respect of such property less any losses sustained on the realization of any investment, fees and disbursements deducted from the Plan Property pursuant to Section 17 hereof and any amounts paid out of the Plan as provided for herein;

**"Post-secondary Educational Institution"** means (a) an educational institution in Canada that is described in paragraph (a) of the definition "Designated Educational Institution", 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 the Beneficiary is enrolled for at least 13 consecutive weeks;

**"Promoter"** means Scotia Capital Inc.;

**"Public Primary Caregiver"** means, in respect of a Beneficiary, the department, agency or institution that maintains the Beneficiary or the public trustee or public curator of the province in which the Beneficiary resides;

**"Qualifying Educational Program"** means a program of not less than three consecutive weeks duration that provides that each student taking the program spend not less than ten hours per week on courses or work in the program and, in respect of a program at a Designated Educational Institution (other than an institution described in subparagraph(a)(ii) of the definition Designated Educational Institution) that is a program at a post-secondary level but, in relation to any particular student, does not include any such program if it is taken by the student during a period in which the student receives income from an office or employment and in connection with, or as a part of the duties of, that office or employment;

**"RESP"** means a registered educational savings plan as defined by Applicable Tax Legislation;

**"RRSP"** means a registered retirement savings plan as defined by Applicable Tax Legislation;

**"Subscriber"** means the individual(s) identified as the subscriber(s) in the Application or an individual who has acquired the 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 on breakdown of marriage or common-law partnership.

If there are joint Subscribers, they must be spouses or common-law partners of each other as defined in the Tax Act. A Subscriber does not include an individual who has disposed of his or her rights under the Plan in the circumstances described in paragraph (b) of the definition of "subscriber" in subsection 146.1(1) of the Tax Act;

**"Trustee"** means The Bank of Nova Scotia Trust Company ("Scotiabank");

**"we"**, **"our"** and **"us"** refer to the Promoter; and

**"you"** and **"your"** refer to the Subscriber.

## 2. RESPONSIBILITY FOR AND REGISTRATION OF THE PLAN

We agree that we have ultimate responsibility for the Plan and its administration in accordance with these Terms and Conditions and will apply for registration of the Plan with the relevant taxation authorities pursuant to Applicable Tax Legislation.

## 3. PURPOSES FOR WHICH PLAN PROPERTY HELD

Subject to the payment of applicable fees and disbursements as provided in Section 17 hereof, the Trustee agrees to irrevocably hold the Plan Property in trust in accordance with this Agreement for any one or more of the following purposes:

- (a) the payment of Educational Assistance Payments;
- (b) the payment to, or to a trust in favor of, a Designated Educational Institution referred to in subparagraph (a)(i) of the definition of that expression in Section 1 hereof;
- (c) the repayment of amounts (and the payment of amounts related to that repayment) under the *Canada Education Savings Act*;
- (d) the refund of Subscriber contributions;
- (e) the payment of Accumulated Income Payments; and
- (f) the payment to a trust that irrevocably holds property pursuant to a RESP transferred to it for any of the foregoing purposes.

## 4. SUBSCRIBER ACCOUNT

On registration, we will set up an ESP in your name, and we will keep a record of:

- (a) the amount contributed with your Application;
- (b) all other funds contributed or transferred to the Plan;
- (c) number and value of any investments held for the Plan;
- (d) any interest, dividends or other investment earnings;
- (e) proceeds from any sale of your investments in the Plan;
- (f) any fees or transaction costs charged to the Plan;
- (g) the amount, the date of payment by the Promoter, and recipient of each Educational Assistance Payment made hereunder;
- (h) the amount, the date of payment by the Promoter, and recipient, of any amounts described in paragraphs (d) to (f) of Section 3 hereof paid hereunder; and
- (i) such other information as we may decide from time to time.

We will forward to the Subscriber at least quarterly statements of the Plan showing all of the above information for the period from the date of the last statement to the date of the current statement.

## 5. CONTRIBUTIONS TO THE PLAN

The only contributions which are permitted are those made by you or on your behalf for a Beneficiary or by way of a transfer from another RESP and does not include amounts paid into the Plan under the *Canada Education Savings Act*. A contribution for a Beneficiary is permitted to be made only if

- (a) the individual's Social Insurance Number is provided to us before the contribution is made and the individual is resident in Canada when the contribution is made, or
- (b) the contribution is made by way of transfer from another RESP under which the individual was a beneficiary immediately before the transfer.

Special rules apply where property is transferred from one RESP to another. If amounts are transferred from another RESP which has an earlier effective date than this ESP, the earlier effective date will prevail. In addition, a transfer made from another RESP to this ESP may result in an overcontribution, and such an overcontribution may have adverse tax consequences.

Contributions may be made periodically or by way of a lump sum payment in money or other property. We may set a minimum amount or value for each contribution. The total

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contributions made to the Plan for a Beneficiary for a calendar year cannot exceed the RESP annual limit for the year as set out in subsection 146.1(1) of the Tax Act. The total cumulative contributions made to the Plan for a Beneficiary cannot exceed the RESP lifetime limit as set out in subsection 204.9(1) of the Tax Act. You shall be responsible for ensuring that these limits are not exceeded. No payment may be made to the Plan by you or on your behalf after the 21st year following the year in which the Plan is entered into.

## 6. CANADA EDUCATION SAVINGS GRANT (CESG)

The contributions to the Plan may attract a CESG based on a percentage of your contributions, subject to the maximums set out in the applicable legislation. Payment of a CESG into the Plan will not reduce your contribution limit. We will apply for the basic CESG periodically when appropriate. However, we will not apply for the additional CESG for which the Beneficiary may be eligible.

We will keep a record of any CESG funds paid into the Plan and may provide to the government body which grants such funds any information about the Plan required by such government body in connection with the administration of the CESG.

Any CESG amounts paid into the Plan must be repaid to the Government of Canada if not used as an Educational Assistance Payment and in such other circumstances as the law requires.

## 7. INVESTMENTS

We will tell you what investment options are available. In turn, you must tell us how you want the contributions invested. We may change the available investment options from time to time, but they will always be qualified investments for an RESP under Applicable Tax Legislation.

You may transfer funds from one investment to another, provided this is permitted by the terms of the investment and by us. To do so, you must provide us instructions in writing. We may also accept your oral instructions if we choose to. You must invest the contributions in investments permitted by the Applicable Tax Legislation and permitted by us. We will not be responsible for determining whether any investment is a qualified investment for an RESP. If we need information about any investment, you agree to give it to us. We may, however, decline to make any particular investment for any reason.

You may appoint an agent, satisfactory to us, to give us your investment directions, which we may act on without incurring liability to us or the Trustee. We will stop following the instructions of your agent when you notify us in writing that this party is no longer your agent.

You are solely responsible for any additional taxes or penalties under Applicable Tax Legislation, if your investment choices cause such taxes or penalties to be imposed.

Scotiastrust will keep legal ownership and possession of the investment in your ESP in whatever form it determines. You authorize us or Scotiastrust to place uninvested cash balances in the Plan in deposits of The Bank of Nova Scotia or any of its affiliates and interest in these balances will be credited to your ESP.

We may calculate interest and credit it to your Plan more often than we tell you when you complete the Application. All interest and income earned by your investments, as well as any bonus we may declare, will be credited to your ESP.

## 8. BENEFICIARIES

You shall provide in the Application the name of one Beneficiary in respect of the Plan.

An individual is permitted to be designated as a Beneficiary under the Plan only if:

- (a) the individual's Social Insurance Number is provided to us before the designation is made and the individual is resident in Canada when the designation is made; or
- (b) the designation is made in conjunction with a transfer of property into the Plan from another RESP under which the individual was a beneficiary immediately before the transfer and either
  - (i) the individual's Social Insurance Number is provided to us before the designation is made, or
  - (ii) the individual is not a resident in Canada and was not assigned a Social Insurance Number before the designation is made.

Within 90 days after being notified in writing by you that an individual has become a Beneficiary hereunder and of the address of the individual, we shall provide written notice to the Beneficiary at such address of the existence of the Plan and your name and address. If the Beneficiary is under 19 years of age at the time of such notification and either ordinarily resides with a parent or is maintained by a Public Primary Caregiver, we will provide such notice to that parent or Public Primary Caregiver.

## 9. PAYMENTS OUT OF THE PLAN

Upon receipt of a written direction from you in the form we require, subject to applicable legislation, we shall transfer or otherwise realize the Plan Property to the extent necessary to make any of the following payments:

- (a) Educational Assistance Payments to or for the Beneficiary who is
    - (i) enrolled as a full-time or part-time student in a Qualifying Educational Program at a Post-secondary Educational Institution, or
    - (ii) a student in a Qualifying Educational Program at a Post-secondary Educational Institution who has at that time a mental or physical impairment the effects of which on the individual have been certified in writing, by a person described in paragraph 118.3(1)(a.2) of the Tax Act, to be such that the individual cannot reasonably be expected to be enrolled as a full-time student.
- In addition, either the Beneficiary must have satisfied the conditions set out in paragraph (a) above for at least 13 consecutive weeks in the 12-month period that ends at the time for the proposed payment, or the total payment made to or for the Beneficiary, including the proposed one, from all RESPs of the Promoter will not exceed \$5,000 for the 12-month period that ends at that time, or such greater amount that the Minister designated for the purpose of the *Canada Education Savings Act* approves in writing with respect to that Beneficiary.
- (b) payments to, or to a trust in favour of, a Designated Educational Institution referred to in subparagraph (a)(i) of the definition of that expression in Section 1 hereof.
  - (c) payments to a trust that irrevocably holds money or property pursuant to a RESP transferred to it for any of the purposes set out in Section 3 hereof.
  - (d) payments to the original Subscriber, other than a refund of Subscriber contributions, or to a RRSP of the original Subscriber or the original Subscriber's spouse or common-law partner, as permitted by the Applicable Tax Legislation. This rollover is limited by Section 204.94 of the Tax Act and the Subscriber's RRSP room.
  - (e) an Accumulated Income Payment to you, if you are a resident of Canada and
    - (i) the Plan has been in existence for at least ten years and each individual (other than a deceased individual) who is or was a beneficiary under the Plan has attained 21 years of age before the payment is made and is ineligible to receive an Educational Assistance Payment, or
    - (ii) the payment is made in the 25th year following the year in which the Plan is entered into, or
    - (iii) each individual who was a beneficiary under the Plan is deceased when the payment is made.

An Accumulated Income Payment will not be paid jointly to joint Subscribers. If an Accumulated Income Payment is made to you, the Plan must be terminated by March of the year after the year in which the payment is made. You may not transfer funds from another RESP to this Plan after an accumulated income payment has been made to you under the other plan.

We shall determine whether any conditions precedent to the payment of any amount pursuant to this Section 9 have been satisfied and such determination shall be final and binding on you and the Beneficiary. All payments of any kind made from the Plan will be net of any applicable withholding taxes and fees and charges payable hereunder.

## 10. REFUND OF CONTRIBUTIONS

Upon receipt of written notice by us in the form required by us and subject to the Applicable Tax Legislation and the terms hereof, you shall be entitled to:

- (a) receive a refund from the Plan at any time and from time to time in an amount not exceeding the lesser of the following amounts: (i) the value of the Plan Property held at that time, net of any applicable fees and charges hereunder, and (ii) the difference between the aggregate of all Subscriber contributions made to the Plan prior to that time and all refunds of Subscriber contributions made from the Plan prior to that time (the "**Capital Investment Amount**"); or
- (b) direct, in the manner prescribed by us, that all or any part of the Capital Investment Amount as at the time of payment be paid to the Beneficiary to supplement Educational Assistance Payments made to the Beneficiary.

Notwithstanding any other terms hereof, except as may otherwise be permitted by us, a refund or payment of contributions invested in a fixed term investment will not be made until the investment has matured (except when the Plan matures). Processing of a refund can take up to 12 business days from the date the request is received. Please allow additional time for the funds to reach their destination.

## 11. METHOD OF PAYING EDUCATIONAL ASSISTANCE PAYMENTS

Educational Assistance Payments (EAPs), as set out in paragraph 9(a) of this Agreement, will be paid to or for the Beneficiary on application to the Promoter by you. The first

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EAP may not be more than the amount permitted by the Tax Act. The Promoter will require satisfactory proof of the Beneficiary's qualification for the EAP. The Promoter may also pay out EAPs on a pre-arranged schedule of payments, subject to satisfactory proof of the Beneficiary's continuing eligibility.

### 12. PROMOTER'S POWER TO LIQUIDATE PROPERTY

The Trustee may retain in cash such portion of the Plan Property as it in its sole discretion determines is advisable for the administration of the Plan. Without limiting the generality of the foregoing, the Promoter may liquidate investments of the Plan to provide for payment of any taxes (including interest and penalties) applicable in respect of the Plan, payment of its fees and reimbursement of disbursements and payment of other reasonable charges. If you fail to direct the Promoter as to which investments of the Plan to liquidate, the Promoter may sell such investments of the Plan as it in its sole discretion determines is appropriate. If the Promoter is required to exercise such discretion, it may make an additional charge against the Plan. If the Plan Property is not sufficient to fully make any such payment or reimbursement, you and the Beneficiary shall be responsible for any shortfall as provided in Section 20 hereof.

### 13. VOTING RIGHTS

If you have an ESP that contains securities investments with voting rights, we will not exercise them unless you tell us to do so in writing.

### 14. TERMINATION DATE

Notwithstanding anything herein to the contrary, the termination date of the Plan shall be the date designated by you from time to time (the "Termination Date") provided that the Termination Date must be not later than the last day of the 25th year following the year in which the Plan is entered into. You may change the Termination Date to a date not later than such day by written instruction in the manner required by the Promoter.

Not less than six months prior to the Termination Date, the Promoter shall give notice thereof to you and, subject to the terms of any direction given to the Promoter prior to the Termination Date as provided in Section 9 hereof, the Promoter shall liquidate the Plan Property and pay on the Termination Date an amount equal to the difference between the aggregate amount of the liquidation proceeds less applicable fees and charges hereunder and any other amounts required by law to be deducted from such proceeds, and the Capital Investment Amount as at the time of the payment, either (a) to the Designated Educational Institution that has been designated by you (or, if no such designation has been made, approved by us), or (b) as an Accumulated Income Payment.

If we have not received prior to the Termination Date written notice with respect to a refund of Subscriber contributions as provided in Section 10 hereof, we shall hold the balance of such liquidation proceeds, net of any applicable fees and charges hereunder, for you and in your name in a non-registered account and pay interest thereon on such terms and at such rate or rates as it may from time to time establish, until such direction is received by it.

Once the Plan is terminated, the funds will only be used for any one or more of the purposes set out in Section 3 hereof.

### 15. SUBSCRIBER'S DEATH

If the Subscriber dies prior to the Termination Date, the Plan may be continued by any other person, excluding a public primary caregiver (as defined in the Tax Act), who acquires the Subscriber's rights under the Plan or who makes contributions into the Plan.

### 16. AGENTS

You authorize us to delegate the performance of our duties under this Agreement to an agent or agents that we choose. We acknowledge, however, that the primary responsibility for the administration of your ESP is ours.

### 17. FEES AND EXPENSES

We and the Trustee will be entitled to compensation for services hereunder in accordance with the fee schedule provided to you under the Plan, as such schedule may from time to time be amended and for all reasonable expenses for the administration of your ESP. Notice of amendments to the fee schedule will be given to you and will take effect no earlier than 60 days from the date of such notice. All fees and reimbursement of disbursements provided for under the Plan may be charged to you directly at such time or times during each year as the Promoter may, in its absolute discretion, determine.

### 18. AMENDMENTS

We may change this Agreement from time to time with the agreement of regulatory authorities, if required. If we do so, we will give you 30 days' notice in writing. If we have to amend this Agreement because of changes to the Applicable Tax Legislation or other applicable legislation, we will do so automatically, and we will not be required to tell you about

the change before it becomes effective. No amendments, however, will disqualify the Plan as an RESP.

### 19. NOTICE AND INSTRUCTIONS

To tell us about anything concerning the Plan or this Agreement, write to us at your branch of account. We consider that we have received your letter on the day it is delivered to us.

If we send you or a Beneficiary a letter, statement, tax form or receipt, we consider that you or the Beneficiary, as the case may be, received it 48 hours after we mailed it to you at the last address we have in our records for you or the Beneficiary, as applicable.

If there are joint Subscribers under this Plan, we can accept instructions from either one of the Subscribers with respect to all matters regarding the Plan, including the naming of a beneficiary, transfers, investments, and the making of payments out of the Plan.

In addition, we will not be required to take instructions from the Beneficiary, even though the Beneficiary may have reached the age of majority.

### 20. LIMITATION ON LIABILITY

You and the Beneficiary will at all times indemnify and save harmless the Promoter and the Trustee and their respective agents in respect of any taxes (including interest and penalties) which may be imposed on any of them under Applicable Tax Legislation in respect of the Plan or any losses incurred by the Plan, each as a result of: (i) the investment, re-investment, sale or other transfer of Plan Property, or the liquidation of investments in the Plan; or (ii) any payment of any kind made from the Plan.

The Promoter and the Trustee may reimburse themselves for or may pay any such taxes out of the Plan Property. Where such property is not sufficient to fully reimburse us or the Trustee for such taxes or to pay such taxes, as the case may be, you will at all times indemnify and save harmless the Promoter and the Trustee for the amount of any shortfall.

### 21. RESIGNATION OF TRUSTEE

The Trustee, upon giving you and us at least 60 days' written notice, may resign, and we, upon giving you and the Trustee at least 60 days' written notice, may require the Trustee to retire as the trustee of the Plan, provided that a successor Trustee has been appointed in writing. This successor trustee shall be a corporation licensed in Canada to act as a trustee. The Trustee will appoint the successor trustee designated by us but, if we fail to designate a successor trustee within 60 days after we have received notice of the Trustee's intended resignation, the Trustee may designate its successor trustee. The Trustee will transfer all books and records and investments of the Plan to the successor trustee in order to permit the orderly administration of the Plan.

### 22. INFORMATION SLIPS

The Promoter shall provide you, the Beneficiary and other applicable persons with such information regarding amounts paid to or from the Plan and other transactions of the Plan as is required to be provided under the Applicable Tax Legislation to enable such persons to complete their respective income tax returns.

### 23. HEIRS, EXECUTORS AND ASSIGNS

This Agreement will be binding upon your heirs, executors and administrators and upon the successors and assigns of the Trustee and us.

### 24. INFORMATION

You certify that all the information you have given us in the Application, including birth dates, is accurate, and you agree to give us any further information or proof that we may need.

### 25. ENGLISH LANGUAGE

The parties hereto have requested that this Agreement be established in English - les parties ont demandé que le régime soit rédigé en anglais.

### 26. GOVERNING LAW

This Agreement is governed by the applicable laws of the jurisdiction in Canada where you live and the Tax Act. It is to be interpreted according to these laws.