

**Supplementary Agreement Establishing a locked-in retirement account under the NATIONAL BANK SAVINGS AND INVESTMENTS INC. SELF-DIRECTED RETIREMENT SAVINGS PLAN.**

**RECITALS:**

- A. The Annuitant is entitled, pursuant to *Pension Benefits Act* (Nova Scotia) and the *Pension Benefits Regulations* (Nova Scotia), to transfer the commuted value of pension entitlements he or she has accumulated under a pension plan governed by the provisions of the Act and the Regulations and registered under the *Income Tax Act* (Canada) (the "Transfer");
- B. The Annuitant has established a National Bank Savings and Investments Inc. self-directed Retirement Savings plan with the Trustee and wishes same to receive the Transfer;
- C. The Transfer cannot be made unless the conditions herein relating to locking-in are satisfied;
- D. The parties now wish to supplement the retirement savings plan in order to comply with the requisite locking-in conditions.

**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 Schedule 3 or as in the Declaration. In addition, the following terms shall have the meaning indicated below:

- 1.1 **"Account"** refers to the National Bank Savings and Investments Inc. self-directed Retirement Savings plan executed between the Annuitant and the Trustee, as supplemented and modified by this Agreement establishing a LIRA;
- 1.2 **"Act"** means the *Pension Benefits Act* (Nova Scotia);
- 1.3 **"Annuitant"** has the same meaning as in the Declaration and is also referred to as the "Owner" in Schedule 3.
- 1.4 **"Declaration"** means the Declaration of Trust of the National Bank Savings and Investments self-directed Retirements Savings plan executed between the Annuitant and the Trustee;
- 1.5 **"Excess amount"** means the portion of the amount transferable under clause 61(1 )(b) of the Act into a LIRA, or the amount transferable under clause 67(1)(b) of the Act into a registered retirement savings arrangement; that is greater than the amount prescribed for the Transfer under the Federal Income Tax Regulations.
- 1.6 **"LIF" or "life income fund"** means a registered retirement income fund that is a registered retirement savings arrangement as defined in clause 2(as) of the Act and meets the requirements in Sections 205 to 210 and Schedule 4: Nova Scotia LIF Addendum;
- 1.7 **"Locked-in retirement account" or "LIRA"** means a RSP that meets the conditions set out in the Schedule 3, and in the Act and the Regulations;
- 1.8 **"Regulations"** means the *Pension Benefits Regulations* (Nova Scotia);
- 1.9 **"RIF"** means a retirement income fund within the meaning of the Federal Income Tax Act, that is registered under that Act;
- 1.10 **"RSP"** means a retirement saving plan within the meaning of the Federal Income Tax Act, that is registered under that Act;
- 1.11 **"Schedule 3"** means the Pension Benefits Regulations (Nova Scotia)'s Schedule 3: Nova Scotia LIRA Addendum included herein after, as same may be amended from time to time;
- 1.12 **"Transfer"** means the transfer referred to in paragraph A of the Recitals hereto.
- 1.13 **"Trustee"** means Natcan Trust Company, 800 Saint-Jacques Street, Montreal, Quebec H3C 1A3 (also referred to as the "financial institution" in Schedule 3 below).

2. **Locking-in provisions:** The Annuitant shall not be allowed to make any contribution, and no money which is not locked-in may be transferred or otherwise held under this Account. The only money permitted to be transferred to this Account must be all or part of the following:

- (a) an amount transferred under clause 61(l)(b) of the Act;
- (b) an amount transferred as a result of a division of any pension benefit, deferred pension or pension under Section 74 of the Act;
- (c) assets in a LIRA;
- (d) assets in a LIF.

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. **Permitted transfers and withdrawals:** No transfer or withdrawal of the money or assets held under this Account is permitted unless such transfer is permitted under Schedule 3, the Act and the Regulations:

Such transfers or withdrawals shall be made after receipt by the Trustee of written instructions from the Annuitant to that effect, but shall be conditional upon the Trustee being satisfied that the conditions for transfer set out at Section 5 hereof are fulfilled. Once the transfer is completed in compliance with all conditions relating thereto, the Trustee 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, either (i) delay the requested transfer accordingly, or (ii) where such investments consist of identifiable and transferable securities, effect the transfer by the remittance of such securities.

5. **Conditions for transfer:** Before transferring any money from this Account to another financial institution, the Trustee shall advise the transferee financial institution in writing that the amount transferred must be administered in accordance with the Act and the Regulations. The transferee financial institution must also agree to administer the amount transferred in accordance with the Act and the Regulations.
6. **Investments:** Before transferring any money from this Account to another financial institution, the Trustee shall advise the transferee financial institution in writing that the amount transferred must be administered in accordance with the Act and the Regulations. The transferee financial institution must also agree to administer the amount transferred in accordance with the Act and the Regulations.
7. **Criteria of commuted value transferred:** The commute value of the pension benefits transferred into this Account is not determined in a manner that differentiates on the basis of sex, unless the commute value of all the pension benefits transferred hereto where also determined on a basis that differentiates so.
8. **Compulsory transfer:** The moneys and assets held under this Account shall be affected to a permitted transfer as provided at Section 3 hereof before the end of the calendar year in which the Annuitant attains the age limit set in the Federal Income Tax Act, at the choice of the Annuitant as specified in writing.

However, if the Trustee has not received from the Annuitant the necessary documentation to start a pension or effect such transfer, within 90 days prior to the end of the calendar year in which the Annuitant attains the age the age limit set in the Federal Income Tax Act, the Trustee shall, at his entire discretion, either purchase a life annuity for the Annuitant, in compliance with Schedule 3 hereof, or transfer the balance of this Account to a Life Income Fund selected by the Trustee for the Annuitant.

9. **Death of the Annuitant:** Upon the Annuitant's death, the money and assets held under this Account shall be payable in accordance with the Regulations. Such payment shall be effected after receipt by the Trustee of satisfactory evidence of the Annuitant's death and of entitlement to the funds in question.
10. **Statement:** The Trustee agrees to provide the information described in Section 4 of Schedule 3 to the persons indicated in that Section.
11. **Amendment:** The Trustee agrees not to amend this Account except as provided in Schedule 3 and the Regulations. A 90 days prior written notice must be given by the Trustee to the Annuitant of any proposed amendment to the Account, except if any of the following conditions are met:

- (a) the Trustee is required by law to make the amendment;
- (b) the Annuitant is entitled to transfer the assets of the Account under the terms of the contract as they exist before the amendment takes effect.

12. **Representation and warranties of the Annuitant:** The Annuitant represents and warrants to the Trustee the following:

- 12.1 that an entitlement to receive a pension under a pension plan governed by the Act is vested in him(her);
- 12.2 that he(she) is entitled to effect a transfer of his(her) pension entitlements pursuant to the Act;
- 12.3 that the funds transferred herein are locked-in funds resulting directly or indirectly from the commuted value of the Annuitant's pension entitlements and are transferred herein pursuant to the Act or the Regulations; and
- 12.4 that the provisions of the pension plan do not prohibit the Annuitant from entering in 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.
- 12.5 that the Trustee is entitled to rely upon the information provided by the Annuitant in order to purchase this locked-in retirement account.

- 12.6 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.

13. **Governing terms:** The money which is the object of the transfer shall be held by the Trustee in accordance with the terms of the retirement savings plan and the provisions of this Agreement, provided that in the event of any conflict between the provisions of the retirement savings plan on the one hand and this Agreement on the other, the provisions of this Agreement shall prevail.

14. **Governing law:** This Agreement is to be governed by and construed in accordance with the laws applicable in the Province of Nova Scotia.

15. **Assigns:** This Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

16. **Effective date:** This Agreement takes effect on the date of transfer.
- (v) not being married to each other, are cohabiting in a conjugal relationship with each other, and have done so continuously for at least

(A) 3 years, if either of them is married, or

(B) 1 year, if neither of them is married;
- 1.7 “Superintendent”, means the Superintendent of Pensions, as defined in the Act.

Schedule 3: Nova Scotia LIRAAddendum (*Pension Benefits Regulations*)

Note: This document is Schedule 3 to the *Pension Benefits Regulations* (Nova Scotia). It forms part of the regulations and must be read, construed and interpreted in conjunction with the *Pension Benefits Act* and its regulations.

1. Definitions for this Schedule

In this Schedule,

- 1.1. “Act” means the *Pension Benefits Act*;
- 1.2 “domestic contract”, as defined in Section 2 of the regulations, means a written agreement referred to in and for the purpose of Section 74 of the Act or Section 14 of the *Pooled Registered Pension Plans Act*, that provides for a division between spouses of any pension benefit, deferred pension, pension, LIRA or LIF, and includes a marriage contract as defined in the *Matrimonial Property Act*;
- 1.3 “federal *Income Tax Act*”, as defined in Section 2 of the regulations, means the *Income Tax Act* (Canada) and, unless specified otherwise, includes the regulations made under that Act;
- 1.4 “owner” means any of the following persons, as set out in subsection 200(2) of the regulations, who has purchased a LIRA:

(i) a former member who is entitled to make a transfer under clause 61(1)(b) of the Act,

(ii) a spouse of a person who was a member, and who is entitled to make transfer under clause 61(1)(b) of the Act,

(iii) a person who has previously transferred an amount under clause 61(1)(b) of the Act into a LIRA or LIF,

(iv) a person who has previously transferred an amount into a LIRA as a result of a division of any pension benefit, deferred pension or pension under Section 74 of the Act,

(v) a spouse who is entitled to transfer a lump sum as a result of a division of any pension benefit, deferred pension or pension under Section 74 of the Act,

(vi) if the funds in the account of a pooled registered pension plan are used for the purchase, a person who transfers the amount in accordance with the *Pooled Registered Pension Plans Act* and the *Pooled Registered Pension Plans Regulations*,

(vii) a former member of the Public Service Superannuation Plan under the *Public Service Superannuation Act* who is entitled to make a transfer in accordance with the Public Service Superannuation Plan,

(viii) a spouse of a person who was a member of the Public Service Superannuation Plan under the *Public Service Superannuation Act* who is entitled to make a transfer in accordance with the Public Service Superannuation Plan,

(ix) a former member of the Teachers’ Pension Plan who is entitled to make a transfer in accordance with subclause 24(11)(b)(ii) or 24(12)(b)(ii) of the *Teachers’ Pension Plan Regulations*,

(x) a spouse of a person who was a member of the Teachers’ Pension Plan who is entitled to make a transfer in accordance with clause 41(4)(b) of the *Teachers’ Pension Plan Regulations*;
- 1.5 “regulations” means the *Pension Benefits Regulations* made under the Act;
- 1.6 “spouse”, as defined in the Act, means either of 2 persons who

(i) are married to each other,

(ii) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity,

(iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or, if they have ceased to cohabit, have cohabited within the 12-month period immediately preceding the date of entitlement,

(iv) are domestic partners within the meaning of Section 52 of the *Vital Statistics Act*, or
- Note Re Requirements of the *Pension Benefits Act* and *Regulations* and the *Pooled Registered Pension Plans Act* and its regulations Prohibitions on transactions from Section 91 of Act
- Under Section 91 of the Act and Section 12 of the *Pooled Registered Pension Plans Act*, money held in a LIRA must not be commuted or surrendered in whole or in part except as permitted by this Schedule and the regulations including, without limiting the generality of the foregoing, the following Sections of the regulations:
- Sections 211 through 230, respecting withdrawal in circumstances of financial hardship

• Section 231, respecting withdrawal in circumstances of considerably shortened life expectancy

• Section 232, respecting withdrawal in circumstances of non- residency

• Section 233, respecting withdrawal of small amounts at age 55

• Section 198, respecting the transfer of an excess amount, as defined in that Section.
- Pursuant to subsection 91(2) of the Act and subsection 12(2) of the *Pooled Registered Pension Plans Act*, any transaction that contravenes Section 91 of the Act or Section 12 of the *Pooled Registered Pension Plans Act* is void.
- Value of assets in LIRA subject to division
- The value of the assets in a LIRA is subject to division in accordance with all of the following:
- an order of the Supreme Court of Nova Scotia that provides for a division of a pension benefit, deferred pension or pension under Section 74 of the Act, or a division of the funds in a pooled registered pension plan account under Section 14 of the *Pooled Registered Pension Plans Act*

• a domestic contract that provides for the division of a pension benefit, deferred pension or pension under Section 74 of the Act, or a division of the funds in a pooled registered pension plan account under Section 14 of the *Pooled Registered Pension Plans Act*

• the regulations
- Money held in LIRA
- The following requirements are set out in the *Pension Benefits Act* and are applicable to LIRAs governed by this Schedule:
- Money held in a LIRA must not be assigned, charged, or given as security except as permitted by subsection 88(3) of the Act, Section 90 of the Act, subsection 12(3) of the *Pooled Registered Pension Plans Act* or Section 13 of the *Pooled Registered Pension Plans Act*, and any transaction purporting to assign, charge, anticipate or give the money in the LIRA as security is void.
- Money held in a LIRA is exempt from execution, seizure or attachment except for the purpose of enforcing a maintenance order as permitted by Section 90 of the Act or Section 13 of the *Pooled Registered Pension Plans Act*.
2. Transferring assets from LIRAs
- (1) An owner of a LIRA may transfer all or part of the assets in the LIRA to any of the following:

(a) the pension fund of a pension plan registered under the pension benefits legislation in any Canadian jurisdiction or to the pension fund of a pension plan provided by a government in Canada;

(b) a LIRA held by another financial institution;

(c) a LIF;

(d) a life annuity;

(e) a pooled registered pension plan.

(2) The date of a transfer under subsection (1) must not be later than 30 days after the owner requests it, unless any of the following apply:

(a) the financial institution providing the LIRA does not have all the information necessary to complete the transaction, in which case the 30-day period begins to run from the date the financial institution has all the necessary information;

(b) the transfer is in respect of assets held as securities whose term of investment extends beyond the 30-day period.

(3) If assets in a LIRA consist of identifiable and transferable securities, the financial institution providing the LIRA may transfer the securities with the consent of the owner of the LIRA.
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25278R-442 (2025-05-16)

Page 2 of 3

- (4) A financial institution providing a LIRA must advise the financial institution to which the assets of the LIRA are transferred

(a) that the assets were held in a LIRA in the current year; and

(b) whether the assets were determined in a manner that differentiated on the basis of sex.

3. Information to be provided by financial institution on transfers of assets of LIRAs

If the assets in a LIRA are transferred, the financial institution providing the LIRA must give the owner the information required by Section 4 of this Schedule, determined as of the date of the transfer.

4. Information to be provided annually by financial institution

At the beginning of each fiscal year of a LIRA, a financial institution providing the LIRA must provide all of the following information to the owner about their LIRA as of the end of the previous fiscal year:

(a) with respect to the previous fiscal year,

(i) the sums deposited,

(ii) any accumulated investment earnings, including any unrealized capital gains or losses,

(iii) the payments made out of the LIRA,

(iv) any withdrawals from the LIRA,

(v) the fees charged against the LIRA;

(b) the value of the assets in the LIRA at the beginning of the fiscal year of the LIRA.

5. Death benefits

(1) If the owner of a LIRA dies, the following are entitled to receive a benefit equal to the value of the assets in the LIRA, subject to subsections (4) and (5):

(a) the owner's spouse;

(b) if there is no spouse or if the spouse is disentitled under subsection (4) or (5), the owner's named beneficiary;

(c) if there is no named beneficiary, the personal representative of the owner's estate.

(2) For the purposes of subsection (1), a determination as to whether an owner of a LIRA has a spouse must be made as of the date the owner dies.

(3) For the purposes of subsection (1), the value of the assets in a LIRA includes all accumulated investment earnings, including any unrealized capital gains and losses, of the LIRA from the date of death until the date of payment.

(4) A spouse is not entitled to receive the value of the assets in a LIRA under clause (1)(a) if the owner of the LIRA was not

(a) a member or former member of a pension plan from which the assets were transferred, directly or indirectly, to purchase the LIRA; or

(b) a member of a pooled registered pension plan from which the assets were transferred, directly or indirectly, to purchase the LIRA.

(5) A spouse who, as of the date the owner of a LIRA dies, is living separate and apart from the owner without a reasonable prospect of resuming cohabitation, is not entitled to receive the value of the assets in the LIRA under clause (1)(a) if any of the following conditions apply

(a) the spouse delivered a written waiver to the financial institution in accordance with Section 6 of this Schedule;

(b) the terms of a written agreement respecting the division of the LIRA that was entered into before the date of the owner's death disentitle, or do not expressly or impliedly entitle, the spouse to receive an amount under the LIRA;

(c) the terms of a court order issued before the owner's death disentitle, or do not expressly or impliedly entitle, the spouse to receive an amount under the LIRA.

(6) The benefit described in subsection (1) may be transferred to a registered retirement savings arrangement in accordance with the federal *Income Tax Act*.

6. Waiver of entitlement to death benefits by spouse

(1) A spouse of an owner of a LIRA may waive their entitlement to receive a benefit described in Section 5 of this Schedule from the LIRA, by delivering, any time before the death of the owner, a written waiver in an approved form to the financial institution providing the LIRA.

(2) A spouse who delivers a waiver under subsection (1) may cancel it by delivering a written and signed notice of cancellation to the financial institution before the date the owner of the LIRA dies.

7. Information to be provided by financial institution on death of owner

If the owner of LIRA dies, the financial institution providing the LIRA must give the information required by Section 4 of this Schedule, determined as of the date of the owner's death, to any person who is entitled to receive the assets in the LIRA under subsection 5(1) of this Schedule.

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25278R-442 (2025-05-16)

Page 3 of 3