

**SUPPLEMENTARY AGREEMENT TO THE DECLARATION OF TRUST, ESTABLISHING A LIFE INCOME FUND
UNDER THE NATIONAL BANK INVESTMENTS INC. 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 Investments Inc. Retirement Income Fund and wishes same to receive the Transfer;
- C. The Annuitant has obtained the written consent of his or her Spouse prior to the Transfer, if the Annuitant was a member or former member of the pension plan;
- 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, the Act, the Regulation and the Directive. In addition, the following terms shall have the following meaning:
 - a) “**Act**” means the *Pension Benefits Act, 1997* (Newfoundland and Labrador), as same may be amended from time to time;
 - b) “**Declaration**” means the Declaration of Trust of the National Bank Investments Inc. Retirement Income Fund;
 - c) “**Directive**” means Directive no. 17 entitled “Locked-In Retirement Income Fund Requirements”, issued under the Act, effective December 13, 2001;
 - d) “**Fiscal Year**” in connection with this Fund means a calendar year terminating at midnight on December 31st, and will not exceed 12 months;
 - e) “**Fund**” refers to the National Bank Investments Inc. Retirement Income Fund established by the Declaration executed between the Annuitant, National Bank Investments Inc. and the Trustee, as supplemented and modified by this Agreement establishing a LRIF that will hold the locked-in money that is the subject of the Transfer;
 - f) “**LIF**” means a life income fund, being a RIF that meets the requirements set out in Directive no. 5 and the Regulation;
 - g) “**Life Annuity Contract**” means a life annuity that complies with the relevant provisions of the Tax Act and is an agreement made to purchase through a person authorized under the laws of Canada or a province to sell annuities as defined in the Tax Act, a non-commutable pension, in accordance with Directive no. 6, that will not commence before that person attains the age of 55 years, or, if that person provides evidence to the satisfaction of the Trustee that the plan or any of the plans from which the money was transferred provided for payment of the pension at an earlier age, that earlier age;
 - h) “**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 Directive no. 4 and the Regulation;
 - i) “**LRIF**” means a locked-in retirement income fund, being an RIF that meets the requirements set out in the Directive and the Regulation;
 - j) “**Minimum Amount**” means the amount referred to 6.c);
 - k) “**Maximum Amount**” means the amount referred to in 6;
 - l) “**Regulation**” means *Newfoundland and Labrador Regulation 114/96* 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 of “principal beneficiary” assigned to such term under the Directive, 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;
 - 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 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. **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, and will not be invested directly or indirectly in any mortgage in respect of which the mortgagor is the Annuitant or the parent, brother, sister or child of the Annuitant or the Spouse of any of those persons. 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.
4. **Restrictions:** Money in the Fund will not be assigned, charged, anticipated or given as security except as permitted by section 37 of the Regulation and any transaction purporting to assign, charge, anticipate or give the money in the Fund as security will be void.
5. **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, on the establishment of a Life Annuity Contract or on a transfer of assets from the Fund. Any such determination by the Trustee shall be conclusive for all purposes hereof.
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 Contract shall be determined under section 7 of the Declaration and shall comply with the following conditions:
 - a) **Commencement of payments.** Payment out of the Fund must not begin before the earlier of age 55 or the earliest date on which

Annuitant could receive a pension benefit under the Act or the originating pension plan from which money was transferred and not later than the last day of the second fiscal year;

- 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 decided by the Annuitant each year by notifying the Trustee of the amount no later than January 1st of such Fiscal year. Such notice expires on December 31st 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) Minimum Amount.** The aggregate amounts paid during a year hereunder must be not less than the Minimum Amount which 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;
- d) Maximum Amount.** The aggregate amount of income paid out of the Fund during a Fiscal Year must not exceed "maximum" (the "Maximum Amount"), being the greatest of:
- the income, gains and losses earned from the time the Fund was established to the end of the most recently completed Fiscal Year and, with respect to any money in the Fund that is derived directly from money transferred from a LIF, the income, gains and losses earned in the final complete Fiscal Year of the LIF under the LIF, less the sum of all income paid to the Annuitant from the Fund;
 - the income, gains and losses earned in the immediately previous Fiscal Year; and
 - if the payment is being made in the Fiscal Year in which the Fund was established or in the Fiscal Year immediately following its establishment, 6% of the fair market value of the Fund at the beginning of that Fiscal Year.
- e) Maximum Amount for First Fiscal Year.** For the initial Fiscal Year of the Fund, the Maximum Amount determined in Paragraphs 6.d) and 7 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;
- f) Maximum Amount on Transfer from another LRIF or LIF.** If a part of the Fund purchased at the beginning of a Fiscal Year corresponds to sums transferred directly or indirectly during the same year from another LRIF or LIF of the Annuitant, the Maximum Amount determined Paragraphs 6.d) and 7 shall be deemed to be zero.

7. Additional Temporary Income:

- a) Entitlement.** An Annuitant is entitled to receive additional temporary income where:
- the total pension income received by the Annuitant for the calendar year in which the application is made, calculated as "B" hereunder, is less than 40% of the year's maximum pensionable earnings ("YMPE") under the *Canada Pension Plan* ("CPP") for the calendar year in which the application is made; and
 - the Annuitant has not reached his or her 65th birthday at the beginning of the Fiscal Year in which the Annuitant makes application for additional temporary income.
- b) Maximum Temporary Income.** The amount of the additional temporary income paid out of the Fund in a Fiscal Year must not exceed the "Maximum Temporary Income" in the following formula:
- $$\text{Maximum Temporary Income} = A - B$$
- in which
- "A" = 40% of the YMPE under the CPP for the calendar year in which an application is made; and

"B" = the total pension income to be received by the Annuitant for the calendar year in which the application is made from all LIFs, LRIFs, Life Annuity Contracts and pension plans governed by Newfoundland pension benefits legislation or established by or governed by an Act of Canada or a Province, except income from a pension under the Canada Pension Plan.

- c) Application form.** An application for additional temporary income shall be:
- on a form approved by the Superintendent;
 - where the Annuitant is a former member of a pension plan, accompanied by the written consent of the Spouse of the Annuitant; and
 - submitted to the Trustee at the beginning of the Fiscal Year of the Fund, unless otherwise permitted by the Trustee.
- 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 withdraw all or part of the money in the Fund as a lump-sum or series of payments, in accordance with section 9 of the Directive, if the following conditions are met:
- if a medical practitioner certifies that due to mental or physical disability the life expectancy of the Annuitant is likely to be shortened considerably; and
 - if the Annuitant is a former member of a pension plan such payment may only be made if the Spouse of the Annuitant has waived the joint and survivor pension entitlement in the form and manner required by the Superintendent.
- b) Withdrawal of Small Amount.** The Annuitant may withdraw in a lump sum payment equal to the value of the entire Fund, upon application by the Annuitant to the Trustee in accordance with sections 10 and 11 of the Directive, if the following conditions are met:
- the value of all assets in all LIFs, LRIFs and LIRAs owned by the Annuitant and governed by Newfoundland pension benefits legislation is less than 10% of the year's maximum pensionable earnings under the *Canada Pension Plan* for that calendar year; or
 - the Annuitant has reached the earlier of age 55 or the earliest date on which the Annuitant would have been entitled to receive a pension benefit under the plan from which money was transferred, and the value of the Annuitant's assets in all LIFs, LRIFs and LIRAs governed by Newfoundland pension benefits legislation is less than 40% of the year's maximum pensionable earnings under the *Canada Pension Plan* for that calendar year; and
 - in either case, such application shall be made on a form approved by the Superintendent, and if the Annuitant is a former member of a pension plan, such application shall be accompanied by waiver by Spouse of the Annuitant of the joint and survivor pension entitlement in the form and manner required by the Superintendent.
- 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. Permitted transfers:** The Annuitant may transfer all or part of the balance of the LRIF:
- to a LIF;
 - to another LRIF;
 - to purchase an immediate Life Annuity Contract that meets the requirements of the Superintendent; or

d) before December 31st in the year in which the purchaser reaches the maximum age prescribed under the Tax Act, to a LIRA.

The Annuitant may at any time request, in a form deemed satisfactory by the Trustee, that the Trustee effect such a permitted transfer.

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 this Section 9 shall be effected within 30 days from the Annuitant's application for transfer. 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 this Section 9 may, at the option of the Trustee, be effected by the remittance to the Annuitant of the investment securities respecting the Fund with the consent of the Annuitant.

10. Marriage Breakdown: This Agreement is subject, with any necessary modifications, to the division of pension benefits on marriage breakdown provisions in Part VI of the Act.

11. Death of the Annuitant: On the death of the Annuitant who was a former member who has a Spouse, the surviving Spouse, or where there is no surviving Spouse or the surviving Spouse had waived entitlement in the form and manner required by the Superintendent, a designated beneficiary, or where there is no designated beneficiary, the estate of the Annuitant is entitled to receive a lump sum payment of the full value of the contract. Where the Annuitant is not a former member, the full value of the contract shall be paid to the designated beneficiary or, where there is no designated beneficiary, to the owner's estate. Such payment is subject to paragraph 60(l) of the Tax Act.

12. Amendment: The Trustee shall not amend this Agreement except where the Trustee has given the Annuitant at least 90 days notice of a proposed amendment. When making an amendment, the Trustee shall, notify the Annuitant of the nature of the amendment; and allow the Annuitant at least 90 days after the notice is given to transfer all or part of the balance in the Fund. Notices hereunder shall be sent by registered mail to the Annuitant's address as set out in the records of the Trustee. An amendment that would result in a reduction in the Annuitant's benefits under this Agreement is permitted only where:

- a) the Trustee is required by law to make the amendment; and
- b) the Annuitant is entitled to transfer the balance in the LRIF under the terms of this Agreement that existed before the amendment is made.

13. Statements

- a) At the beginning of each Fiscal Year, the following information must be provided to the Annuitant:
 - i) the sums deposited, the accumulated earnings, the payments made out of the Fund and the fees charged against it during the previous Fiscal Year;
 - ii) the balance in the Fund;
 - iii) the Minimum Amount that must be paid out of the Fund to the Annuitant during the current Fiscal Year; and
 - iv) the Maximum Amount that may be paid out of the Fund to the Annuitant during the current Fiscal Year.
- b) If the balance of the Fund is transferred as described in Section 9 hereof, the Annuitant must be given the information described in section 13.a) determined as of the date of the transfer;
- c) If the Annuitant dies, the person entitled to receive the balance must be given the information described in section 13.a), determined as of the date of the Annuitant's death.

14. Differentiation Based on Sex: Where the commuted value of a pension benefit which was transferred to the Fund was determined in a manner that did not differentiate on the basis of sex, the Life Annuity Contract purchased with the money in the Fund shall not differentiate on the basis of the sex of the recipient. The commuted value of the pension benefit that was the subject of the Transfer was differentiated on the basis of sex of the Annuitant, unless otherwise indicated in writing to the Trustee.

15. 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 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; 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.

16. Governing law: This Agreement shall be governed by the laws of the Province of Newfoundland and Labrador.