

BMO

EDUCATION SAVINGS PLAN (ADVISOR)

Individual Plan

Terms and Conditions

We, BMO Investments Inc. are the promoter of the **BMO Education Savings Plan (Advisor)** (the "**Plan**"). (The words "**us**" and "**our**" refer to BMO Investments Inc. unless otherwise indicated). You are the "**Subscriber**" or "**Subscribers**" to the Plan. If there is more than one subscriber to the Plan at the same time, "**you**" refers to each and every subscriber.

The Plan is an agreement between you and us on the following terms and conditions. The application on the other side of this document (the "**Application**") forms part of this agreement. The purpose of the Plan is to make Educational Assistance Payments to or for the Beneficiary. The Application becomes effective, and the Plan is entered into, at the time it is accepted by us.

As the promoter, we have ultimate responsibility for the Plan under the Applicable Tax Legislation and for the administration of the Plan. BMO Trust Company (the "**Trustee**") will be the trustee for the property of the Plan. The Trustee has ultimate responsibility for the administration of all applicable federal and provincial grants and incentives ("**Grants**").

You acknowledge and consent to the Trustee's appointment of us as its agent to perform any of the Trustee's administrative tasks, duties and responsibilities as the Trustee may determine. You also acknowledge and consent that we may further delegate the performance of any of these administrative tasks, duties and responsibilities directly or indirectly to one or more other parties as we may determine. References to "we", "us" or "our" in our capacity as agent of the Trustee include those parties to whom we so delegate. The Trustee will remain responsible for holding the property of the Plan in safekeeping.

1. **PROPERTY OF THE PLAN HELD IN TRUST.** The Trustee agrees to hold the property of the Plan (in the aggregate, the "**Fund**") irrevocably in trust, pursuant to the Plan, for any one or more of the following purposes as defined in section 146.1(2)(f) of the Act:

- the payment of Educational Assistance Payments to or for a Beneficiary of the Plan;
- the payment to (or to a trust in favour of) one or more Designated Educational Institutions (as defined in section 11 below);
- the refund of contributions and, if required, the repayment of amounts under the *Canada Education Savings Act* (the "**CES Act**") or a "**designated provincial program**" defined below;
- the payment of Accumulated Income Payments; or
- the transfer to another trust that irrevocably holds property under a "registered education savings plan" (an "**RESP**") within the meaning of the Act; or
- in the event that a trust governed by the plan is terminated, the property held by the trust is required to be used for any of the purposes described in the definition of "trust" in subsection 146.1(1) of the Act.

A "**designated provincial program**" means:

- a program administered pursuant to an agreement entered into under section 12 of the **CES Act**, or
- a program established under the laws of a province to encourage the financing of children's post secondary education through savings in registered education savings plans.

2. **REGISTRATION OF THE PLAN.** We will apply to register the Plan under the *Income Tax Act* (Canada) (the "**Act**") and, if required, under any income tax legislation of a province which applies to the Plan (together the "**Applicable Tax Legislation**"). We will ensure that the Plan complies at all times with the requirements of the Applicable Tax Legislation regarding RESPs. The promoter must be a resident of Canada as per paragraph 146.1(2)(c) of the Act.

3. **GRANTS.** Upon your request in the form required by the Minister of Employment and Social Development Canada (the "**Minister**"), we will apply to the Minister for any applicable Grants in respect of the Plan. We will apply for the Grants in accordance with the **CES Act**, regulations made under the **CES Act** (the "**CES regulations**") and any agreement concerning Grants between the Trustee and the Minister. Before we apply for any Grants, the Plan must be registered under the Act.

Grants, when received and held by the Trustee, form part of the property of the Plan. The Trustee will hold and account for Grants in accordance with the **CES Act**, the **CES regulations** and any agreement concerning Grants between the Trustee and the Minister. We will act in accordance with any agreement concerning Grants between us and the Minister.

The Trustee will be required under the **CES regulations** to repay part or all of the "**grant account**" (as that term is defined in the **CES regulations**) in certain circumstances. A Beneficiary who has received more than \$7,200 as the "grant portion" (as that term is defined in the **CES regulations**) of Educational Assistance Payments will be required to repay the excess to the Minister.

4. **WHO IS A SUBSCRIBER TO THE PLAN.** Any one individual (but not a trust), an individual and their spouse or common-law partner, or a public primary caregiver of a Beneficiary can become a subscriber to the Plan by being named in the Application as a subscriber and entering into the Plan. After the Plan has been entered into, the spouse or common-law partner of an individual who is a subscriber can become a subscriber (as well as the individual) by giving us instructions and agreeing to be bound by the terms and conditions of the Plan. The terms "common-law partner" and "public primary caregiver" are as defined in the Act.

After the Plan has been entered into, another individual or another public primary caregiver can become a subscriber to the Plan (and you cease to be a subscriber) by acquiring a public primary caregiver's right as a subscriber under the Plan under a written agreement. After the Plan has been entered into, an individual can become a subscriber to the Plan (and you cease to be a subscriber) by acquiring your rights as a subscriber under the Plan pursuant to a decree, order or judgment of a competent tribunal or under a written agreement in settlement of rights arising out of, or on the breakdown of, marriage or common-law partnership. To do this, you must give us instructions and the individual or public primary caregiver acquiring your rights must agree to be bound by the terms and conditions of the Plan.

After the death of the last surviving subscriber to the Plan (who is an individual), another person including the estate of the deceased subscriber, can become a subscriber to the Plan by acquiring the subscriber's rights under the Plan or by making a contribution to the Plan for a Beneficiary. To do this, the legal personal representative(s) of the last surviving subscriber must give us instructions and the person must agree to be bound by the terms and conditions of the Plan.

No one can become a subscriber to the Plan other than as described in this section. A subscriber may resign by giving us instructions (however if all the subscribers resign, the Plan will terminate under section 15).

To become a subscriber, you must provide us your address, Social Insurance Number and date of birth (or if you are a public primary caregiver, your Business Number) in the Application or in instructions. As a subscriber, you must inform us whether you are a resident of Canada (for the purpose of the Act) in the Application or by instructions and you must inform us whenever you become or cease to be resident in Canada by instructions.

5. **WHO IS A BENEFICIARY OF THE PLAN.** A "**Beneficiary**" of the Plan means any person to whom or for whom Educational Assistance Payments are to be made if the person qualifies under the Plan. You may designate an individual as the Beneficiary in the Application, by naming them and providing their address, Social Insurance Number, date of birth and relationship to you.

An individual may only be designated as the Beneficiary where the individual is resident in Canada (for the purpose of the Act) when the designation is made. However, if 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, the individual need not be resident in Canada (and in that case, if you are designating a non-resident individual, you need not provide the individual's Social Insurance Number if the individual was not assigned a Social Insurance Number before the designation is made).

You may change the Beneficiary by giving us instructions. When changing the Beneficiary, the requirements of the two paragraphs above must be met. (If the Beneficiary is removed, the Plan will terminate under section 15).

Within 90 days after an individual becomes a Beneficiary under the Plan, we will notify the individual (or, where the individual is under 19 years of age at that time and either ordinarily resides with a parent of the individual or is maintained by a public primary caregiver of the individual, that parent or public primary caregiver) in writing of the existence of the Plan and the name and address of the subscriber in respect of the Plan.

You must inform us, by instructions, whenever a Beneficiary ceases to be resident in Canada (for the purpose of the Act) or becomes a resident of Canada again.

You acknowledge and agree that there can only be one individual designated as the Beneficiary under the Plan at any one time.

6. **CONTRIBUTIONS.** All contributions to the Plan must be made by you or on your behalf as subscriber and must be made for the Beneficiary under the Plan.

You must provide us the Beneficiary's Social Insurance Number before a contribution is made for the Beneficiary (except where the Plan was entered into before 1999). The Beneficiary must be resident in Canada (for the purpose of the Act) when a contribution is made for the Beneficiary. However, if a contribution is made by way of a transfer from another RESP under which the Beneficiary was a beneficiary immediately before the transfer, you need not provide us with the Beneficiary's Social Insurance Number, and the Beneficiary need not be resident in Canada, before a contribution is made.

Contributions to the Plan do not include amounts paid into the Plan by the Minister under the **CES Act** or under a designated provincial program or any other program that has a similar purpose to a designated provincial program and that is funded directly or indirectly by a province (other than an amount paid into the plan by a public primary caregiver in its capacity as subscriber under the plan). Contributions may be made periodically or by lump sum payment to us, but a contribution must not be less than the minimum amount which we establish.

The total cumulative contributions made to the Plan for the Beneficiary cannot exceed the "**RESP lifetime limit**", as defined in subsection 204.9(1) of the Act.

It is your responsibility to ensure that the total contributions for a Beneficiary made to the Plan and to other RESPs, by yourself and by others as subscribers, do not exceed these limits. If either limit is exceeded, a penalty tax may apply. You have to determine whether a penalty tax applies and you have to pay the penalty tax if it applies. The calculation of the "excess amount" (if any) for the Beneficiary, your share of the excess amount and any penalty tax are determined under the Act. You may request a refund of contributions sufficient to stop the application of the penalty tax.

For the purpose of determining whether either limit has been exceeded, special rules apply where a Beneficiary is changed or where property is transferred from one RESP to another for a Beneficiary. Where a Beneficiary is changed, the new Beneficiary assumes the contribution history of the former Beneficiary, except where, at the time of transfer, the new Beneficiary is under 21 years of age and the new Beneficiary and former Beneficiary have a common parent, or where both the new Beneficiary and the former Beneficiary are under 21 years of age and are connected by blood relationship or adoption to an original Subscriber. Where there is a transfer from another RESP to the Plan, the contribution history of each Beneficiary of the other RESP is assumed by each Beneficiary of the Plan, except where, at the time of change, any Beneficiary under the Plan is also a Beneficiary under the other RESP, or where a Beneficiary of the Plan is under 21 years of age and that Beneficiary and a Beneficiary under the other RESP have a common parent.

Contributions cannot be made to the Plan after the 31st year following the year the Plan was entered into. If an amount is transferred to the Plan from another RESP and the other RESP was created before the Plan, then contributions cannot be made to the Plan after the 31st year following the year in which the other RESP was entered into.

6.1 **CONTRIBUTIONS WHERE DISABILITY TAX CREDIT APPLIES TO BENEFICIARY.** Notwithstanding section 6 above, contributions to the Plan can be made until the end of the 35th year following the year the Plan was entered into if the Beneficiary is an individual in respect of whom paragraphs 118.3(1)(a) to (b) of the Act apply for the Beneficiary's taxation year that ends in the 31st year following the year in which the plan was entered into. But at all times after the end of the 35th year following the year the Plan was entered into no other individual may be designated as a Beneficiary under the Plan.

7. **TRANSFERS FROM ANOTHER RESP.** You may transfer property to the Plan for the Beneficiary of the Plan from another RESP, in accordance with the Act, by giving instructions to us.

Property cannot be transferred to the Plan from another RESP after the other RESP has made an Accumulated Income Payment.

8. **INVESTMENT OF THE PROPERTY OF THE PLAN.** The property of the Plan shall be invested and reinvested by the Trustee exclusively on your instructions (or of a person authorized by you, in a form and manner satisfactory to the Trustee or us, to manage the investments of the Plan), only in such investments as may be made available for the Plan from time to time by us or the Trustee. The property of the Plan may be invested in investments which require delegation, such as mutual funds, pooled funds and segregated funds. The property of the Plan may be invested in investments which are issued by the Trustee, us or our affiliates.

Neither the Trustee nor we (acting in the capacity as administrative agent for the Trustee) shall have any duty or responsibility, fiduciary or otherwise (including, for greater certainty, under any legislation regarding trustee investment duties and powers) to make or choose any investment, to decide whether to hold or dispose of any investment or to exercise any discretion with regard to any investment of the property of the Plan, except as otherwise expressly provided in these terms and conditions. Other than our duties with respect to the property of the Plan expressly stated in these terms and conditions, neither the Trustee nor we shall be required or expected to take any action with regard to an investment without prior instructions from you. Where there is more than one subscriber at the same time, the instruction of any one subscriber (or a person authorized by them) will bind all subscribers.

You shall not sign any document or authorize any action for the Plan or the property of the Plan in the name of the Trustee or us, including permitting any property of the Plan to be used as security for a loan, without first having authorization from the Trustee or us.

We will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the Plan holds a non-qualified investment.

The Trustee, in its sole discretion, may deposit any uninvested cash in the Plan into an interest-bearing account at the Bank of Montreal (or another financial institution selected by the Trustee) and all interest earned on the cash will be retained by the Trustee.

9. **PAYMENTS FROM THE PLAN.** The Trustee will make payments, refunds or transfers out of the Plan for one or more of the purposes listed in section 1 above, according to your instructions, provided that the payments, refunds or transfers are permitted under the Plan and under the Applicable Tax Legislation and the property of the Plan is sufficient. (In the case of Educational Assistance Payments, the Trustee must first receive our direction.) The Trustee will not make any payment, refund or transfer out of the Plan to the extent that, after the payment, refund or transfer, the fair market value of the property of the Plan would be less than the balance of the grant account.

We have the final authority on whether a payment, refund or transfer you instruct the Trustee to make is permitted under the Plan and under the Applicable Tax Legislation. The decision made by us will be binding on you and the Beneficiary.

Before the first Educational Assistance Payment is made to or for the Beneficiary, you must confirm in writing to the Trustee whether the Beneficiary is at that time a resident or non-resident of Canada (for the purpose of the Act).

You may give the Trustee instructions telling the Trustee which property to sell if the Trustee is required to sell property of the Plan in order to make a payment, refund or transfer out of the Plan. If you do not give the Trustee instructions, the Trustee will sell the property that the Trustee in its sole discretion considers appropriate. Before making a payment, refund or transfer out of the Plan, the Trustee will deduct, as required, any costs, fees or charges related to the sale of property, any amount required to be withheld under the Applicable Tax Legislation and any taxes, interest or penalties that are or may become payable by the Plan. Once the Trustee has made a payment out of the Plan in accordance with this section, the Trustee will have no liability or duty to you for the property of the Plan which was sold.

10. **EDUCATIONAL ASSISTANCE PAYMENTS.** An "Educational Assistance Payment" means any amount, other than a refund of payments, paid out of the Plan to or for an individual enrolled as a student in a qualifying educational program or in a specified educational program at a post-secondary educational institution. Beneficiaries who cease to be enrolled in a qualifying educational program or a specified educational program at a post-secondary educational institution after 2007 are allowed to receive Education Assistance Payments for up to 6 months after ceasing enrolment, provided that the payments would have qualified as Education Assistance Payments if they had been made immediately before the student's enrolment ceased.

A "qualifying educational program" means a program at a post-secondary school level of not less than three consecutive weeks duration that requires that each student taking the program spend not less than ten hours per week on courses or work in the program. The total amount of Educational Assistance Payments paid to or for a Beneficiary (from BMO (Advisor) RESPs) where the Beneficiary has not been enrolled, during the preceding 12 months, for at least 13 consecutive weeks in a "qualifying educational program" at a post-secondary educational institution cannot exceed \$5,000. (unless a greater amount is approved in writing by the Minister designated for the purposes of the *Canada Education Savings Act*).

A "specified educational program" means a program at a post-secondary school level of not less than three consecutive weeks duration that requires each student, who has attained the age of 16 years, taking the program to spend not less than twelve hours per month on courses in the program. Where the beneficiary is enrolled in a "specified educational program" at a post-secondary educational institution, the total amount of Educational Assistance Payments paid to or for a Beneficiary (from BMO (Advisor) RESPs) in the 13 week period preceding the time of payment cannot exceed \$2,500 (unless a greater amount is approved in writing by the Minister designated for the purpose of the *Canada Education Savings Act*).

A "post-secondary educational institution" means an education institution that is:

- a university, college or other educational institution in Canada and 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 for the Province of Québec for the purposes of *An Act respecting financial assistance for educational expenses*;
- in Canada and certified by the Minister of Employment and Social Development Canada to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation; or
- an educational institution outside Canada that provides courses at a post-secondary level and that is
 - a university, college or other educational institution at which the beneficiary was enrolled in a course of not less than 13 consecutive weeks, or
 - applicable after 2010, a university at which the beneficiary was enrolled on a full-time basis in a course of not less than three consecutive weeks.

"Post-secondary school level" includes a program of courses, at an institution described in subparagraph (b) of the definition "post-secondary educational institution" above, of a technical or vocational nature designed to furnish a person with skills for, or improve a person's skills in, an occupation.

11. **PAYMENTS TO DESIGNATED EDUCATIONAL INSTITUTIONS.** A "Designated Educational Institution" means an institution described in paragraph (a) of the definition of "post-secondary educational institution" in section 10, above. You may select one or more Designated Educational Institutions (or a trust for one or more Designated Educational Institutions) in Canada to which payments may be made in the Application or by giving instructions to us.

12. **REFUND OF CONTRIBUTIONS.** A refund of contributions cannot exceed the total of all contributions to the Plan less any refunds of contributions previously made.

13. **ACCUMULATED INCOME PAYMENTS.** "Accumulated Income Payments" are any payments out of the Plan other than Educational Assistance Payments, payments to (or to a trust in favour of) one or more Designated Educational Institutions in Canada, refunds of payments, repayments of amounts under the CES Act or under a designated provincial program or transfers to another RESP. A payment out of the Plan will only be recognized as an Accumulated Income Payment to the extent the payment exceeds the fair market value of all property at the time when it was contributed or paid into the Plan.

Accumulated Income Payments will be paid to you or, if you were a subscriber at the time of your death, to your estate. You or your estate must be resident in Canada at the time of payment.

If there is more than one subscriber at the same time, each Accumulated Income Payment can only be paid to one subscriber. You must give us instructions stating which subscriber is to receive each Accumulated Income Payment.

Accumulated Income Payments can be paid if at the time a payment is made:

- 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 not, when the payment is made, eligible under the Plan to receive an Educational Assistance Payment and the time is the 10th calendar year following the calendar year in which the Plan was entered into or later;
- the payment is made in the 35th year (or, if section 6.1 applies, in the 40th year) following the year in which the Plan is entered into; or
- each individual who was a Beneficiary under the Plan is deceased when the payment is made.

(For paragraph (a) above, if property is transferred to the Plan from another RESP, then the time must be the 10th calendar year or later following the calendar year in which either the Plan or the other RESP was entered into, whichever is earlier.)

Accumulated Income Payments may be made at any time if, on our written application, the Minister of National Revenue waives the conditions in clause 146.1(2)(d.1)(iii)(A) of the Act, as described in paragraph (a) above, where a Beneficiary suffers from a severe and prolonged mental impairment that prevents, or can reasonably be expected to prevent, the Beneficiary from enrolling in a qualifying educational program at a postsecondary educational institution.

The Plan will terminate under section 15 by the end of February of the year following the calendar year in which the first Accumulated Income Payment is made.

14. **TRANSFER TO ANOTHER RESP.** You may give us instructions at any time to pay some or all of the property of the Plan to another RESP. Once transferred, and the account is at a zero balance, the Trustee will treat the Plan as terminated on its books and records.

15. **TERMINATION OF THE PLAN.** You may designate the date the Plan is to terminate (the "Termination Date") in the Application. You may also designate or change the Termination Date by instructions to us.

On the Termination Date or in the event that the trust governed by the Plan is terminated, we will make payments, refunds or transfers out of the Plan or cause the Trustee to make payments, refunds or transfers out of the Plan for one or more of the purposes listed in section 1, above, according to your instructions to us regarding termination, provided that the payments, refunds or transfers are permitted under the Plan, the Applicable Tax Legislation and any applicable rules relating to Grants. We will give you written notice at least six months prior to the Termination Date.

The Termination Date cannot be later than the last day of the 35th year following the year in which the Plan was entered into. If property is transferred to the Plan from another RESP and the other RESP was entered into before the Plan, then the Termination Date cannot be later than the last day of the 35th year following the year in which the other RESP was entered into. However, if section 6.1 applies to the Plan, the latest Termination Date is the last day of the 40th year following the Plan was entered into. If you do not designate a Termination Date, the Termination Date will be the latest date possible.

The provisions of section 9 will apply to payments, refunds or transfers on termination. If you have not given the Trustee instructions regarding termination by the Termination Date, the Trustee will pay a refund of contributions, to the maximum extent possible, to you. (If you have not given the Trustee instructions regarding payment, the Trustee may deposit the refund of contributions in an interest-bearing account at Bank of Montreal.) The Trustee will pay any remaining amount to (or to a trust in favour of) a Designated Educational Institution in Canada selected by the Trustee. The Trustee will also deduct on termination any fees or other charges owing to us or to the Trustee under section 20.

16. **IF THE LAST SURVIVING SUBSCRIBER DIES.** If you are the last surviving subscriber and you die before the Termination Date, your legal personal representative(s) may continue to administer the Plan on your behalf. However, if the legal personal representative(s) give(s) us instructions, in accordance with section 4, to make another person or your estate the subscriber, then the legal personal representative(s) will cease to administer the Plan on your behalf.

17. **MAINTAINING YOUR ACCOUNT.** We will maintain an account to record: (1) contributions and transfers made to the Plan; (2) the Grants accounts; (3) purchases and sales of investments held in the Plan; (4) income, gains and losses on investments held in the Plan; (5) Educational Assistance Payments; (6) payments to (or to a trust in favour of) one or more Designated Educational Institutions; (7) refunds of contributions; (8) Accumulated Income Payments; (9) transfers to another RESP; (10) any costs, fees or charges related to the sale of property, any amount required to be withheld under the Applicable Tax Legislation and any taxes, interest or penalties that are or may become payable by the Plan; and (11) fees and other charges to the Plan and expenses of the Plan. We will provide you with periodic statements of your account.

18. **OWNERSHIP OF THE PROPERTY OF THE PLAN AND EXERCISE OF VOTING RIGHTS.** Ownership of the property of the Plan will be vested in the Trustee. You are the beneficial owner of the property of the Plan. The property of the Plan will be held in the Trustee's name or nominee name, bearer form or any other name that the Trustee determines. The voting rights attached to any securities held under the Plan and credited to your account may be exercised by you. For this purpose, you are hereby appointed as the Trustee's agent and attorney to execute and deliver proxies and/or other instruments mailed by us or the Trustee to you according to applicable laws.

19. **INSTRUCTIONS AND WRITTEN NOTICE.** Instructions may take any form, however any reasonable requirements regarding form, content, receipt and timing established by us or the Trustee must be satisfied. We and the Trustee will be entitled to rely upon instructions received from you (or by any person you designate to us to give instructions on your behalf) and any person purporting to be you (or purporting to be the person designated by you). We and the Trustee may decline to act upon instructions if there are doubts about their accuracy or whether they are from you (or a person designated by you) or if we or the Trustee do not understand them.

If there is more than one subscriber at the same time, instructions given by one subscriber will bind all subscribers. If you give us or the Trustee instructions more than once, we or the Trustee will follow the instructions with the latest date, even though they may be different from previous instructions.

We or the Trustee may give you or the Beneficiary any written notice, statement or receipt by personal delivery or by mail, postage prepaid, at the address you gave on the Application. If you give us or the Trustee instructions regarding a change of address for you or the Beneficiary, any written notice, statement or receipt will be sent to the new address. Any notice, statement or receipt from us or the Trustee will be considered to have been given to you or the Beneficiary at the time of personal delivery, or if mailed, on the third day after mailing.

20. **FEES FOR US AND THE TRUSTEE.** The Trustee may charge administration and transaction fees, in such amounts and at such times as may be fixed by the Trustee and/or us from time to time (the "Trustee Fees"), provided that the Trustee and/or us shall give prior written notice to the Subscriber of such Trustee Fees and any change in the amount of the Trustee Fees. The Trustee Fees may be paid for out of the Fund or recovered from the Fund, to the extent that they are not paid when due by the Subscriber.

The Subscriber acknowledges that we (or a affiliate) may charge fees, spreads, commissions and expenses to the Fund in its capacity as the investment advisory firm for the Subscriber (the "Advisory Fees"). The Subscriber acknowledges and agrees that the Advisory Fees do not constitute Trustee Fees and are governed by the terms of the Client Account Agreement as amended from time to time. If there are any inconsistencies between this Plan and the Client Account Agreement with respect to the Advisory Fees, the terms of the Client Account Agreement govern.

The Trustee and/or us may charge expenses incurred by the Trustee and/or us in the administration of the Plan. All such expenses will, unless paid directly to the Trustee and/or us, be paid out of or recovered from the Fund.

All taxes, penalties, and interest that may be imposed on the Trustee or Subscriber in respect of the Plan or any other charges related to the Plan may be paid out of or recovered from the Fund.

The Trustee may, without instructions from the Subscriber, apply any cash held in the Fund for the payment of fees (including the Trustee Fees and the Advisory Fees) or expenses or taxes, penalties and interest charged to the Plan. Where there is insufficient cash in the Fund at any time, the Trustee or us shall make reasonable requests for instructions from the Subscriber regarding which assets of the Fund to liquidate in order to realize sufficient cash to make the payment. If, after making reasonable requests from the Subscriber at the last address provided by the Subscriber, the Trustee or us do not receive satisfactory instructions from the Subscriber within a reasonable time, the Trustee may, in its discretion, liquidate part or all of the Fund in order to realize sufficient cash to make the payment. Neither the Trustee nor us shall be responsible for any loss occasioned by any such realization. Any such liquidation shall be made at such prices as the Trustee may in its discretion determine to be the fair market value of the assets at the time; in the case of assets which are illiquid or which have no readily ascertainable market value, the Trustee may in its discretion sell the assets to us for our own account, at such price as the Trustee considers fair and proper.

21. **OUR LIABILITY AND THE TRUSTEE'S LIABILITY.** Except for charges, taxes or penalties for which we and/or the Trustee are liable and that cannot be charged against or deducted from the Fund in accordance with the Act, if the Trustee or us are liable for:

- any tax, interest or penalty that may be imposed on us and/or the Trustee in respect of the Plan, or
- any other charges levied or imposed by any governmental authority on or related to the Plan as a result of the purchase, sale or retention of any investment including, without limitation thereof, nonqualified investments within the meaning of the Act,

the Trustee or us shall be reimbursed or may pay any of these taxes, interest, penalties or charges out of the Fund.

The Trustee and us will not be liable (including for greater certainty under any common law or equitable principles) for any cost incurred in the performance of their duties as set out herein or in the performance of their duties under the Act.

Unless caused by the Trustee's or our bad faith, willful misconduct or negligence, the Trustee and us will not be liable for any loss or damage suffered or incurred by the Plan, the Subscriber or any beneficiary under the Plan, caused by or resulting from:

- Any loss or diminution of the Fund;
- The purchase, sale or retention of any investment;
- Payments out of the Plan that are made in accordance herewith; or
- Acting or declining to act on any instructions given to the Trustee or Us by the Subscriber or an individual purporting to be the Subscriber.

For greater certainty, in no event shall either the Trustee or us have any liability to the Subscriber (or to the spouse or common-law partner of the Subscriber, or any beneficiary or legal personal representative of the Subscriber) for any special, indirect, reliance, incidental, punitive, consequential, economic or commercial loss or damage of any kind whatsoever (whether foreseeable or not), suffered or incurred by the Subscriber or any beneficiary under the arrangement (including without limitation, loss of profits or revenue, failure to realize expected savings or other economic losses and costs), howsoever arising, resulting or caused.

Except as otherwise prohibited by law, the Subscriber, his/her legal personal representatives and each beneficiary of this Plan will at all times indemnify and save harmless the Trustee and us in respect of any taxes, interest and penalties which may be imposed on the Trustee in respect of the Plan or any losses incurred by the Plan as a result of the acquisition, retention or transfer of any investment or as a result of payments or distributions out of the Plan made in accordance with these terms and conditions or as a result of the Trustee or us acting or declining to act upon any instructions given to us and/or the Trustee by the Subscriber and any costs or expenses of the Trustee and us related thereto (including legal fees).

Except as otherwise prohibited by law, in the event the Subscriber breaches this Trust Agreement, the Subscriber, his/her legal personal representatives and each beneficiary of this Plan will indemnify and save harmless the Trustee and us in respect of any loss, damage, or other expense (including legal fees) incurred by the Trustee or us related to such breach.

In all cases where the Trustee or us are entitled to be indemnified in accordance with the Tax Act, they shall be entitled to cause such indemnity to be paid from the Fund. If the Fund is insufficient to indemnify the Trustee and us fully, the Subscriber agrees to indemnify and hold the Trustee and us harmless for any such costs, expenses, charges or liabilities.

22. **AMENDMENT OF THE PLAN.** We and the Trustee may agree to amend the Plan as long as:

- we obtain approval from the Canada Revenue Agency or any government authority administering the Applicable Tax Legislation; and

- the amendment does not disqualify the Plan as an RESP within the meaning of the Act or the amendment is being made to satisfy a requirement of the Applicable Tax Legislation.

We and the Trustee may agree to make an amendment effective as of a date prior to the date when the amendment is made. We will give you thirty days written notice of any amendment and its effective date, provided that any amendment made to ensure that the Plan continues to comply with the Applicable Tax Legislation may take effect on a date that is prior to the date on which notice is given.

- 23. REPLACEMENT OF THE TRUSTEE.** The Trustee may resign by providing 60 days written notice to us or any shorter period that is acceptable to us. We may remove the Trustee from its position as trustee under the Plan by providing 60 days written notice to the Trustee or any shorter period that is acceptable to the Trustee. The Trustee's resignation or removal will be effective on the date we appoint another trustee (the "**Replacement Trustee**"). The Replacement Trustee must be a corporation which is resident in Canada, authorized under the laws of Canada or a province to offer trustee services to the public in Canada and which has entered into an agreement concerning Grants with the Minister. If we do not appoint a Replacement Trustee within 60 days after we have received notice of the Trustee's resignation or given notice to the Trustee of its removal, the Trustee may appoint a Replacement Trustee.

On the date the Trustee's resignation or removal becomes effective, the Trustee will sign and deliver to the Replacement Trustee all conveyances, transfers and further assurances that may be necessary or desirable to give effect to the appointment of the Replacement Trustee.

- 24. BINDING.** The Plan will be binding upon your heirs, executors, administrators and upon our successors and assigns.
- 25. GOVERNING LAW.** The Plan shall be governed by and interpreted in accordance with the laws of the jurisdiction in Canada in which the branch of the Promoter is located where the account is maintained.
- 26. ENGLISH LANGUAGE.** The parties have requested that the Plan and all documents related to it be established in English. Les parties ont demandé que ce contrat ainsi que tous les documents y afférents soit rédigé en anglais.

BMO EDUCATION SAVINGS PLAN (ADVISOR) Family Plan

Terms and Conditions

We, **BMO Investments Inc.**, are the promoter of the **BMO Education Savings Plan (Advisor)** (the "**Plan**"). (The words "**us**" and "**our**" refer to **BMO Investments Inc.** unless otherwise indicated). You are the "**Subscriber**" or "**Subscribers**" to the Plan. If there is more than one subscriber to the Plan at the same time, "**you**" refers to each and every subscriber.

The Plan is an agreement between you and us on the following terms and conditions. The application on the other side of this document (the "**Application**") forms part of this agreement. The purpose of the Plan is to make Educational Assistance Payments to or for the Beneficiary. The Application becomes effective, and the Plan is entered into, at the time it is accepted by us.

As the promoter, we have ultimate responsibility for the Plan under the Applicable Tax Legislation and for the administration of the Plan. **BMO Trust Company** (the "**Trustee**") will be the trustee for the property of the Plan. The Trustee has ultimate responsibility for the administration of all applicable federal and provincial grants and incentives ("**Grants**").

You acknowledge and consent to the Trustee's appointment of us as its agent to perform any of the Trustee's administrative tasks, duties and responsibilities as the Trustee may determine. You also acknowledge and consent that we may further delegate the performance of any of these administrative tasks, duties and responsibilities directly or indirectly to one or more other parties as we may determine. References to "we", "us" or "our" in our capacity as agent of the Trustee include those parties to whom we so delegate. The Trustee will remain responsible for holding the property of the Plan in safekeeping.

- 1. PROPERTY OF THE PLAN HELD IN TRUST.** The Trustee agrees to hold the property of the Plan (in aggregate, the "Fund") irrevocably in trust, pursuant to the Plan, for any one or more of the following purposes as defined in section 146.1(2)(f) of the Act:

- the payment of Educational Assistance Payments to or for a Beneficiary of the Plan;
- the payment to (or to a trust in favour of) one or more Designated Educational Institutions (as defined in section 11 below);
- the refund of contributions and, if required, the repayment of amounts under the *Canada Education Savings Act* (the "**CES Act**") or a "**designated provincial program**" defined below;
- the payment of Accumulated Income Payments; or
- the transfer to another trust that irrevocably holds property under a "registered education savings plan" (an "**RESP**") within the meaning of the Act; or
- in the event that a trust governed by the plan is terminated, the property held by the trust is required to be used for any of the purposes described in the definition of "trust" in subsection 146.1(1) of the Act.

A "**designated provincial program**" means:

1. a program administered pursuant to an agreement entered into under section 12 of the **CES Act**, or
2. a program established under the laws of a province to encourage the financing of children's post-secondary education through savings in registered education savings plans.

- 2. REGISTRATION OF THE PLAN.** We will apply to register the Plan under the *Income Tax Act* (Canada) (the "**Act**") and, if required, under any income tax legislation of a province which applies to the Plan (together the "**Applicable Tax Legislation**"). We will ensure that the Plan complies at all times with the requirements of the Applicable Tax Legislation regarding RESPs. The promoter must be a resident of Canada as per paragraph 146.1(2)(c) of the Act.

- 3. GRANTS.** Upon your request in the form required by the Minister of Employment and Social Development Canada (the "**Minister**"), we will apply to the Minister for any applicable Grants in respect of the Plan. We will apply for the Grants in accordance with the CES Act, regulations made under the CES Act (the "**CES regulations**") and any agreement concerning Grants between the Trustee and the Minister. Before we apply for any Grants, the Plan must be registered under the Act.

Grants, when received and held by the Trustee, form part of the property of the Plan. The Trustee will hold and account for Grants in accordance with the CES Act, the CES regulations and any agreement concerning Grants between the Trustee and the Minister. We will act in accordance with any agreement concerning Grants between us and the Minister.

The Trustee will be required under the CES regulations to repay part or all of the "**grant account**" (as that term is defined in the CES regulations) in certain circumstances. A Beneficiary who has received more than \$7,200 as the "**grant portion**" (as that term is defined in the CES regulations) of Educational Assistance Payments will be required to repay the excess to the Minister.

- 4. WHO IS A SUBSCRIBER TO THE PLAN.** Any one individual (but not a trust), an individual and their spouse or common-law partner, or a public primary caregiver of a Beneficiary can become a subscriber to the Plan by being named in the Application as a subscriber and entering into the Plan. After the Plan has been entered into, the spouse or common-law partner of an individual who is a subscriber can become a subscriber (as well as the individual) by giving us instructions and agreeing to be bound by the terms and conditions of the Plan. The terms "common-law partner" and "public primary caregiver" are as defined in the Act.

After the Plan has been entered into, another individual or another public primary caregiver can become a subscriber to the Plan (and you cease to be a subscriber) by acquiring a public primary caregiver's rights as a subscriber under the Plan under a written agreement. After the Plan has been entered into, an individual can become a subscriber to the Plan (and you cease to be a subscriber) by acquiring your rights as a subscriber under the Plan pursuant to a decree, order or judgment of a competent tribunal or under a written agreement in settlement of rights arising out of, or on the breakdown of, marriage or common-law partnership. To do this, you must give us instructions and the individual or public primary caregiver acquiring your rights must agree to be bound by the terms and conditions of the Plan.

After the death of the last surviving subscriber to the Plan (who is an individual), another person, including the estate of the deceased subscriber, can become a subscriber to the Plan by acquiring the subscriber's rights under the Plan or by making a contribution to the Plan for a Beneficiary. To do this, the legal personal representative(s) of the last surviving subscriber must give us instructions and the person must agree to be bound by the terms and conditions of the Plan.

No one can become a subscriber to the Plan other than as described in this section. A subscriber may resign by giving us instructions (however if all the subscribers resign, the Plan will terminate under section 15).

To become a subscriber, you must provide us your address, Social Insurance Number and date of birth (or if you are a public primary caregiver, your Business Number) in the Application or in instructions. As a subscriber, you must inform us whether you are a resident of Canada (for the purpose of the Act) in the Application or by instructions and you must inform us whenever you become or cease to be resident in Canada by instructions.

- 5. WHO IS A BENEFICIARY OF THE PLAN.** A "**Beneficiary**" of the Plan means any person to whom or for whom Educational Assistance Payments are to be made if the person qualifies under the Plan. You may designate one or more individuals as Beneficiaries in the Application, by naming them and providing their address, Social Insurance Number, date of birth and relationship to you.

An individual may only be designated as a Beneficiary where the individual is resident in Canada (for the purpose of the Act) when the designation is made. However, if 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, the individual need not be resident in Canada (and in that case, if you are designating a non-resident individual, you need not provide the individual's Social Insurance Number if the individual was not assigned a Social Insurance Number before the designation is made).

You may add, remove or change the Beneficiary by giving us instructions. When changing the Beneficiary, the requirements of the two paragraphs above must be met. (If all the Beneficiaries of the Plan are removed, the Plan will terminate under section 15.)

Every Beneficiary must be under the age of 21 at the time they are named in the Application, added or named in place of another Beneficiary (unless the Beneficiary being named or added is at the time a member of another RESP which allows more than one beneficiary at the same time). Each Beneficiary of the Plan must be connected to each subscriber, or have been connected to a deceased subscriber if a subscriber has died, by "blood relationship" or by "adoption", as those terms are defined in the Act. (But in order to qualify for certain additional Grants under the CES Act, Beneficiaries can only be brothers and/or sisters as defined under the CES regulations). As subscriber, you cannot be a Beneficiary of the Plan.

Within 90 days after an individual becomes a Beneficiary under the Plan, we will notify the individual (or, where the individual is under 19 years of age at that time and either ordinarily resides with a parent of the individual or is maintained by a public primary caregiver of the individual, that parent or public primary caregiver) in writing of the existence of the Plan and the name and address of the subscriber in respect of the Plan.

You must inform us, by instructions, whenever a Beneficiary ceases to be resident in Canada (for the purpose of the Act) or becomes a resident of Canada again. But in order to qualify for certain additional Grants under the CES Act, beneficiaries can only be brothers and/or sisters as defined under the CES regulations.

- 6. CONTRIBUTIONS.** All contributions to the Plan must be made by you or on your behalf as subscriber and must be made for a Beneficiary under the Plan. You must provide us the Beneficiary's Social Insurance Number before a contribution is made for the Beneficiary (except where the Plan was entered into before 1999). The Beneficiary must be resident in Canada (for the purpose of the Act) when a contribution is made for the Beneficiary. However, if a contribution is made by way of a transfer from another RESP under which the Beneficiary was a beneficiary immediately before the transfer, you need not provide us with the Beneficiary's Social Insurance Number, and the Beneficiary need not be resident in Canada, before a contribution is made.

If there is more than one Beneficiary at the same time, you must give us instructions telling us how much of each contribution is for each Beneficiary. Contributions to the Plan do not include amounts paid into the Plan by the Minister under the CES Act or under a designated provincial program or any other program that has a similar purpose to a designated provincial program and that is funded directly or indirectly by a province (other than an amount paid into the plan by a public primary caregiver in its capacity as subscriber under the plan). Contributions may be made periodically or by lump sum payment to us, but a contribution must not be less than the minimum amount that we establish. The total cumulative contributions made to the Plan for the Beneficiary cannot exceed the "**RESP lifetime limit**", as defined in subsection 204.9(1) of the Act. It is your responsibility to

ensure that the total contributions for a Beneficiary made to the Plan and to other RESPs, by yourself and by others as subscribers, do not exceed these limits. If either limit is exceeded, a penalty tax may apply. You have to determine whether a penalty tax applies and you have to pay the penalty tax if it applies. The calculation of the "excess amount" (if any) for the Beneficiary, your share of the excess amount and any penalty tax are determined under the Act. You may request a refund of contributions sufficient to stop the application of the penalty tax. For the purpose of determining whether either limit has been exceeded, special rules apply where a Beneficiary is changed or where property is transferred from one RESP to another for a Beneficiary. Where a Beneficiary is changed, the new Beneficiary assumes the contribution history of the former Beneficiary, except where, at the time of change, the new Beneficiary is under 21 years of age and the new Beneficiary and former Beneficiary have a common parent, or where both the new Beneficiary and the former Beneficiary are under 21 years of age and are connected by blood relationship or adoption to an original Subscriber. Where there is a transfer from another RESP to the Plan, the contribution history of each Beneficiary of the other RESP is assumed by each Beneficiary of the Plan, except where, at the time of transfer, any Beneficiary under the Plan is also a Beneficiary under the other RESP, or where a Beneficiary of the Plan and a Beneficiary under the other RESP have a common parent.

Contributions cannot be made to the Plan for a Beneficiary who was 31 years old or older before the time that the contribution was made, unless the contribution is by transfer from another RESP which allows more than one beneficiary at the same time.

Contributions cannot be made to the Plan after the 31st year following the year the Plan was entered into. If an amount is transferred to the Plan from another RESP and the other RESP was created before the Plan, then contributions cannot be made to the Plan after the 31st year following the year in which the other RESP was entered into.

7. **TRANSFERS FROM ANOTHER RESP.** You may transfer property to the Plan for the Beneficiary of the Plan from another RESP, in accordance with the Act, by giving instructions to us. If there is more than one Beneficiary of the Plan, you must give us instructions telling us how much of the property transferred is for each Beneficiary. Property cannot be transferred to the Plan from another RESP after the other RESP has made an Accumulated Income Payment.

8. **INVESTMENT OF THE PROPERTY OF THE PLAN.** The property of the Plan shall be invested and reinvested by the Trustee exclusively on your instructions (or of a person authorized by you, in a form and manner satisfactory to the Trustee or us, to manage the investments of the Plan) only in such investments as may be made available for the Plan from time to time by us or the Trustee. The property of the Plan may be invested in investments which require delegation, such as mutual funds, pooled funds and segregated funds. The property of the Plan may be invested in investments which are issued by the Trustee, us or our affiliates. Neither the Trustee nor we (acting in the capacity as administrative agent for the Trustee) shall have any duty or responsibility, fiduciary or otherwise (including, for greater certainty, under any legislation regarding trustee investment duties and powers) to make or choose any investment, to decide whether to hold or dispose of any investment or to exercise any discretion with regard to any investment of the property of the Plan, except as otherwise expressly provided in these terms and conditions. We will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the Plan holds a non-qualified investment.

The Trustee, in its sole discretion, may deposit any uninvested cash in the Plan into an interest-bearing account at the Bank of Montreal (or another financial institution selected by the Trustee) and all interest earned on the cash will be retained by the Trustee.

9. **PAYMENTS FROM THE PLAN.** The Trustee will make payments, refunds or transfers out of the Plan for one or more of the purposes listed in section 1 above, according to your instructions, provided that the payments, refunds or transfers are permitted under the Plan and under the Applicable Tax Legislation and the property of the Plan is sufficient. (In the case of Educational Assistance Payments, the Trustee must first receive our direction.) The Trustee will not make any payment, refund or transfer out of the Plan to the extent that, after the payment, refund or transfer, the fair market value of the property of the Plan would be less than the balance of the grant account.

We have the final authority on whether a payment, refund or transfer you instruct the Trustee to make is permitted under the Plan and under the Applicable Tax Legislation. The decision made by us will be binding on you and the Beneficiary. Before the first Educational Assistance Payment is made to or for the Beneficiary, you must confirm in writing to the Trustee whether the Beneficiary is at that time a resident or non-resident of Canada (for the purpose of the Act). You may give the Trustee instructions telling the Trustee which property to sell if the Trustee is required to sell property of the Plan in order to make a payment, refund or transfer out of the Plan. If you do not give the Trustee instructions, the Trustee will sell the property that the Trustee in its sole discretion considers appropriate. Before making a payment, refund or transfer out of the Plan, the Trustee will deduct, as required, any costs, fees or charges related to the sale of property, any amount required to be withheld under the Applicable Tax Legislation and any taxes, interest or penalties that are or may become payable by the Plan. Once the Trustee has made a payment out of the Plan in accordance with this section, the Trustee will have no liability or duty to you for the property of the Plan which was sold.

10. **EDUCATIONAL ASSISTANCE PAYMENTS.** An "Educational Assistance Payment" means any amount, other than a refund of payments, paid out of the Plan to or for an individual enrolled as a student in a qualifying educational program or in a specified educational program at a post-secondary educational institution. Beneficiaries who cease to be enrolled in a qualifying educational program or a specified educational program at a post-secondary educational institution after 2007 are allowed to receive Education Assistance Payments for up to 6 months after ceasing enrolment, provided that the payments would have qualified as Education Assistance Payments if they had been made immediately before the student's enrolment ceased.

A "qualifying educational program" means a program at a post-secondary school level of not less than three consecutive weeks duration that requires that each student taking the program spend not less than ten hours per week on courses or work in the program. The total amount of Educational Assistance Payments paid to or for a Beneficiary (from BMO (Advisor) RESPs) where the Beneficiary has not been enrolled, during the preceding 12 months, for at least 13 consecutive weeks in a "qualifying educational program" at a post-secondary educational institution cannot exceed \$5,000. (unless a greater amount is approved in writing by the Minister designated for the purposes of the Canada Education Savings Act).

A "specified educational program" means a program at a post-secondary school level of not less than three consecutive weeks duration that requires each student, who has attained the age of 16 years, taking the program to spend not less than twelve hours per month on courses in the program. Where the beneficiary is enrolled in a "specified educational program" at a post-secondary educational institution, the total amount of Educational Assistance Payments paid to or for a Beneficiary (from BMO (Advisor) RESPs) in the 13 week period preceding the time of payment cannot exceed \$2,500 (unless a greater amount is approved in writing by the Minister designated for the purpose of the Canada Education Savings Act).

A "post-secondary educational institution" means an education institution that is:

- a university, college or other educational institution in Canada and 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 for the Province of Québec for the purposes of An Act respecting financial assistance for education expenses;
- in Canada and certified by the Minister of Employment and Social Development Canada to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation; or
- an educational institution outside Canada that provided courses at a post-secondary level and that is
 - a university, college or other educational institution at which a beneficiary was enrolled in a course of not less than 13 consecutive weeks, or

- applicable after 2010, a university at which a beneficiary was enrolled on a full-time basis in a course of not less than three consecutive weeks.

"Post-secondary school level" includes a program of courses, at an institution described in subparagraph (b) of the definition "post-Secondary educational institution" above, of a technical or vocational nature designed to furnish a person with skills for, or improve a person's skills in, an occupation.

11. **PAYMENTS TO DESIGNATED EDUCATIONAL INSTITUTIONS.** A "Designated Educational Institution" means an institution described in paragraph (a) of the definition of "post-secondary educational institution" in section 10 above. You may select one or more Designated Educational Institutions (or a trust for one or more Designated Educational Institutions) in Canada to which payments may be made in the Application or by giving instructions to us.

12. **REFUND OF CONTRIBUTIONS.** A refund of contributions cannot exceed the total of all contributions to the Plan less any refunds of contributions previously made.

13. **ACCUMULATED INCOME PAYMENTS.** "Accumulated Income Payments" are any payments out of the Plan other than Educational Assistance Payments, payments to (or to a trust in favour of) one or more Designated Educational Institutions in Canada, refunds of payments, repayments of amounts under the CES Act or under a designated provincial program or transfers to another RESP. A payment out of the Plan will only be recognized as an Accumulated Income Payment to the extent the payment exceeds the fair market value of all property at the time when it was contributed or paid into the Plan. Accumulated Income Payments will be paid to you or, if you were a subscriber at the time of your death, to your estate. You or your estate must be resident in Canada at the time of payment. If there is more than one subscriber at the same time, each Accumulated Income Payment can only be paid to one subscriber. You must give us instructions stating which subscriber is to receive each Accumulated Income Payment. Accumulated Income Payments can be paid if, at the time a payment is made:

- 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 not, when the payment is made, eligible under the Plan to receive an Educational Assistance Payment and the time is the 10th calendar year following the calendar year in which the Plan was entered into or later;
- the payment is made in the 35th year following the year in which the Plan is entered into; or
- each individual who was a Beneficiary under the Plan is deceased when the payment is made.

(For paragraph (a) above, if property is transferred to the Plan from another RESP, then the time must be the 10th calendar year or later following the calendar year in which either the Plan or the other RESP was entered into, whichever is earlier).

Accumulated Income Payments may be made at any time if, on our written application, the Minister of National Revenue waives the conditions in clause 146.1(2)(d.1)(iii)(A) of the Act, as described in paragraph (a), above, where a Beneficiary suffers from a severe and prolonged mental impairment that prevents, or can reasonably be expected to prevent, the Beneficiary from enrolling in a qualifying educational program at a post-secondary educational institution. The Plan will terminate under section 15 by the end of February of the year following the calendar year in which the first Accumulated Income Payment is made.

14. **TRANSFER TO ANOTHER RESP.** You may give us instructions at any time to pay some or all of the property of the Plan to another RESP. Once transferred, and the account is at a zero balance, the Trustee will treat the Plan as terminated on its books and records.

15. **TERMINATION OF THE PLAN.** You may designate the date the Plan is to terminate (the "Termination Date") in the Application. You may also designate or change the Termination Date by instructions to us. On the Termination Date or in the event that the trust governed by the Plan is terminated, we will make payments, refunds or transfers out of the Plan or cause the Trustee to make payments, refunds or transfers out of the Plan for one or more of the purposes listed in section 1 above, according to your instructions to us regarding termination, provided that the payments, refunds or transfers are permitted under the Plan, the Applicable Tax Legislation and any applicable rules relating to Grants. We will give you written notice at least six months prior to the Termination Date. The Termination Date cannot be later than the last day of the 35th year following the year in which the Plan was entered into. If property is transferred to the Plan from another RESP and the other RESP was entered into before the Plan, then the Termination Date cannot be later than the last day of the 35th year following the year in which the other RESP was entered into. If you do not designate a Termination Date, the Termination Date will be the latest date possible. The provisions of section 9 will apply to payments, refunds or transfers on termination. If you have not given the Trustee instructions regarding termination by the Termination Date, the Trustee will pay a refund of contributions, to the maximum extent possible, to you. (If you have not given the Trustee instructions regarding payment, the Trustee may deposit the refund of contributions in an interest-bearing account at Bank of Montreal.) The Trustee will pay any remaining amount to (or to a trust in favour of) a Designated Educational Institution in Canada selected by the Trustee. The Trustee will also deduct on termination any fees or other charges owing to us or to the Trustee under section 20.

16. **IF THE LAST SURVIVING SUBSCRIBER DIES.** If you are the last surviving subscriber and you die before the Termination Date, your legal personal representative(s) may continue to administer the Plan on your behalf. However, if the legal personal representative(s) give(s) us instructions, in accordance with section 4, to make another person or your estate the subscriber, then the legal personal representative(s) will cease to administer the Plan on your behalf.

17. **MAINTAINING YOUR ACCOUNT.** We will maintain an account to record: (1) contributions and transfers made to the Plan; (2) the Grant accounts; (3) purchases and sales of investments held in the Plan; (4) income, gains and losses on investments held in the Plan; (5) Educational Assistance Payments; (6) payments to (or to a trust in favour of) one or more Designated Educational Institutions; (7) refunds of contributions; (8) Accumulated Income Payments; (9) transfers to another RESP; (10) any costs, fees or charges related to the sale of property, any amount required to be withheld under the Applicable Tax Legislation and any taxes, interest or penalties that are or may become payable by the Plan; and (11) fees and other charges to the Plan and expenses of the Plan. We will provide you with periodic statements of your account.

18. **OWNERSHIP OF THE PROPERTY OF THE PLAN AND EXERCISE OF VOTING RIGHTS.** Ownership of the property of the Plan will be vested in the Trustee. You are the beneficial owner of the property of the Plan. The property of the Plan will be held in the Trustee's name or nominee name, bearer form or any other name that the Trustee determines. The voting rights attached to any securities held under the Plan and credited to your account may be exercised by you. For this purpose, you are hereby appointed as the Trustee's agent and attorney to execute and deliver proxies and/or other instruments mailed by us or the Trustee to you according to applicable laws.

19. **INSTRUCTIONS AND WRITTEN NOTICE.** Instructions may take any form, however any reasonable requirements regarding form, content, receipt and timing established by us or the Trustee must be satisfied. We and the Trustee will be entitled to rely upon instructions received from you (or by any person you designate to us to give instructions on your behalf) and any person purporting to be you (or purporting to be the person designated by you). We and the Trustee may decline to act upon instructions if there are doubts about their accuracy or whether they are from you (or a person designated by you) or if we or the Trustee do not understand them. If there is more than one subscriber at the same time, instructions given by one subscriber will bind all subscribers. If you give us or the Trustee instructions more than once, we or the Trustee will follow the instructions with the latest date, even though they may be different from previous instructions. We or the Trustee may give you or the Beneficiary any written notice, statement or receipt by personal delivery or by mail, postage prepaid, at the address you gave on the Application. If you give us or the Trustee instructions regarding a change of address for you or the Beneficiary, any written notice, statement or receipt will be sent to the new address. Any notice, statement or receipt from us or the Trustee will be considered to have been given to you or the Beneficiary at the time of personal delivery, or if mailed, on the third day after mailing.

20. **FEES FOR US AND THE TRUSTEE.** The Trustee may charge administration and transaction fees, in such amounts and at such times as may be fixed by the Trustee and/or us from time to time (the "**Trustee Fees**"), provided that the Trustee and/or us shall give prior written notice to the Subscriber of such Trustee Fees and any change in the amount of the Trustee Fees. The Trustee Fees may be paid for out of the Fund or recovered from the Fund, to the extent that they are not paid when due by the Subscriber.

The Subscriber acknowledges that we (or an affiliate) may charge fees, spreads, commissions and expenses to the Fund in its capacity as the investment advisory firm for the Subscriber (the "**Advisory Fees**"). The Subscriber acknowledges and agrees that the Advisory Fees do not constitute Trustee Fees and are governed by the terms of the Client Account Agreement as amended from time to time. If there are any inconsistencies between this Plan and the Client Account Agreement with respect to the Advisory Fees, the terms of the Client Account Agreement govern.

The Trustee and/or us may charge expenses incurred by the Trustee and/or us in the administration of the Plan. All such expenses will, unless paid directly to the Trustee and/or Us, be paid out of or recovered from the Fund.

All taxes, penalties, and interest that may be imposed on the Trustee or Subscriber in respect of the Plan or any other charges related to the Plan may be paid out of or recovered from the Fund.

The Trustee may, without instructions from the Subscriber, apply any cash held in the Fund for the payment of fees (including the Trustee Fees and the Advisory Fees) or expenses or taxes, penalties and interest charged to the Plan. Where there is insufficient cash in the Fund at any time, the Trustee or us shall make reasonable requests for instructions from the Subscriber regarding which assets of the Fund to liquidate in order to realize sufficient cash to make the payment. If, after making reasonable requests from the Subscriber at the last address provided by the Subscriber, the Trustee or us does not receive satisfactory instructions from the Subscriber within a reasonable time, the Trustee may, in its discretion, liquidate part or all of the Fund in order to realize sufficient cash to make the payment. Neither the Trustee nor us shall be responsible for any loss occasioned by any such realization. Any such liquidation shall be made at such prices as the Trustee may in its discretion determine to be the fair market value of the assets at the time; in the case of assets which are illiquid or which have no readily ascertainable market value, the Trustee may in its discretion sell the assets to us for our own account, at such price as the Trustee considers fair and proper.

21. **OUR LIABILITY AND THE TRUSTEE'S LIABILITY.** Except for charges, taxes or penalties for which we and/or the Trustee are liable and that cannot be charged against or deducted from the Fund in accordance with the Act, if the Trustee or us are liable for:

- a. any tax, interest or penalty that may be imposed on us and/or the Trustee in respect of the Plan, or
- b. any other charges levied or imposed by any governmental authority on or related to the Plan as a result of the purchase, sale or retention of any investment including, without limitation thereof, nonqualified investments within the meaning of the Act,

the Trustee or Us shall be reimbursed or may pay any of these taxes, interest, penalties or charges out of the Fund.

The Trustee and us will not be liable (including for greater certainty under any common law or equitable principles) for any cost incurred in the performance of their duties as set out herein or in the performance of their duties under the Act.

Unless caused by the Trustee's or our bad faith, willful misconduct or negligence, the Trustee and us will not be liable for any loss or damage suffered or incurred by the Plan, the Subscriber or any beneficiary under the Plan, caused by or resulting from:

- a. Any loss or diminution of the Fund;
- b. The purchase, sale or retention of any investment;
- c. Payments out of the Plan that are made in accordance herewith; or
- d. Acting or declining to act on any instructions given to the Trustee or Us by the Subscriber or an individual purporting to be the Subscriber.

For greater certainty, in no event shall either the Trustee or us have any liability to the Subscriber (or to the spouse or common-law partner of the Subscriber, or any beneficiary or legal personal representative of the Subscriber) for any special, indirect, reliance, incidental, punitive, consequential, economic or commercial loss or damage of any kind whatsoever (whether foreseeable or not), suffered or incurred by the Subscriber or any beneficiary under the arrangement (including without limitation, loss of profits or revenue, failure to realize expected savings or other economic losses and costs), howsoever arising, resulting or caused.

Except as otherwise prohibited by law, the Subscriber, his/her legal personal representatives and each beneficiary of this Plan will at all times indemnify and save harmless the Trustee and us in respect of any taxes, interest and penalties which may be imposed on the Trustee in respect of the Plan or any losses incurred by the Plan as a result of the acquisition, retention or transfer of any investment or as a result of payments or distributions out of the Plan made in accordance with these terms and conditions or as a result of the Trustee or us acting or declining to act upon any instructions given to us and/or the Trustee by the Subscriber and any costs or expenses of the Trustee and us related thereto (including legal fees).

Except as otherwise prohibited by law, in the event the Subscriber breaches this Trust Agreement, the Subscriber, his/her legal personal representatives and each beneficiary of this Plan will indemnify and save harmless the Trustee and us in respect of any loss, damage, or other expense (including legal fees) incurred by the Trustee or us related to such breach. In all cases where the Trustee or us are entitled to be indemnified in accordance with the Tax Act, they shall be entitled to cause such indemnity to be paid from the Fund. If the Fund is insufficient to indemnify the Trustee and us fully, the Subscriber agrees to indemnify and hold the Trustee and us harmless for any such costs, expenses, charges or liabilities.

22. **AMENDMENT OF THE PLAN.** We and the Trustee may agree to amend the Plan as long as:

- a. we obtain approval from the Canada Revenue Agency or any government authority administering the Applicable Tax Legislation; and
- b. the amendment does not disqualify the Plan as an RESP within the meaning of the Act or the amendment is being made to satisfy a requirement of the Applicable Tax Legislation.

We and the Trustee may agree to make an amendment effective as of a date prior to the date when the amendment is made. We will give you thirty days written notice of any amendment and its effective date, provided that any amendment made to ensure that the Plan continues to comply with the Applicable Tax Legislation may take effect on a date that is prior to the date on which notice is given.

23. **REPLACEMENT OF THE TRUSTEE.** The Trustee may resign by providing 60 days written notice to us or any shorter period that is acceptable to us. We may remove the Trustee from its position as trustee under the Plan by providing 60 days written notice to the Trustee or any shorter period that is acceptable to the Trustee. The Trustee's resignation or removal will be effective on the date we appoint another trustee (the "**Replacement Trustee**"). The Replacement Trustee must be a corporation which is resident in Canada, authorized under the laws of Canada or a province to offer trustee services to the public in Canada and which has entered into an agreement concerning Grants with the Minister. If we do not appoint a Replacement Trustee within 60 days after we have received notice of the Trustee's resignation or given notice to the Trustee of its removal, the Trustee may appoint a Replacement Trustee.

On the date the Trustee's resignation or removal becomes effective, the Trustee will sign and deliver to the Replacement Trustee all conveyances, transfers and further assurances that may be necessary or desirable to give effect to the appointment of the Replacement Trustee.

24. **BINDING.** The Plan will be binding upon your heirs, executors, administrators and upon our successors and assigns.

25. **GOVERNING LAW.** This Plan shall be governed by and interpreted in accordance with the laws of the jurisdiction in Canada in which the branch of the Promoter is located where the account is maintained.

26. **ENGLISH LANGUAGE.** The parties have requested that the Plan and all documents related to it be established in English. Les parties ont demandé que ce contrat ainsi que tous les documents y afférents soit rédigé en anglais.

PRIVACY DISCLOSURE AND CONSENT

Your Personal Information

BMO Financial Group is committed to respecting and protecting the privacy and confidentiality of your Personal Information and wants to help you understand how we collect, use and share it. Please see our Privacy Code (available at bmo.com/privacy) for details.

What is Personal Information?

Your Personal Information includes information you provided to us or information we collected from other sources about you, such as your name, address, age, financial data, Social Insurance Number, or employment records, and other information that could be used to identify you.

Why do we need your Personal Information?

We collect your Personal Information to:

- verify your identity;
- ensure we have accurate information about you;
- understand your financial needs (including your eligibility for products and services you requested or accepted) and to manage our relationship;
- protect against fraud and manage other risks;
- communicate with you regarding products and services that may be of interest;
- understand our customers, including through analytics, and to develop and tailor our products and services;
- comply with legal or regulatory requirements, or as permitted by law; and
- respond to questions you may have.

If we use your Personal Information for a different purpose, we will identify that purpose.

Sharing your Personal Information

BMO Financial Group consists of Bank of Montreal and its affiliates. Your Personal Information, including information about your authorized representatives and beneficiaries, is shared within BMO Financial Group, to the extent permitted by law, to:

- ensure we have accurate information about you, and your authorized representatives and beneficiaries,
- manage our total relationship,
- provide a better customer experience,
- meet your needs as they change and grow, and
- manage our business.

Please see our Privacy Code for details.



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