

# SmartFolio Client Agreements

Effective November 1, 2023

## Introduction

Thank you for choosing the BMO SmartFolio program for your investing needs. This package contains copies of agreements between you and BMO Nesbitt Burns Inc., and, where applicable, between you and BMO Trust Company. These documents will be available for your future reference, along with your Client Account Application and the other account related information on the BMO SmartFolio website or by contacting one of our representatives.

This package is divided into three Parts. You will find specific types of agreements in each Part. The agreements that apply to you depend on the types of accounts you have opened up with us.

Each Part contains separate agreements or trust documents. Unless an agreement or trust document indicates otherwise, the terms and definitions of a particular agreement or trust document apply only to it and not any other agreement or trust document.

Parts One and Two include headings and text boxes that explain certain sections in broad terms.

## **Part One: BMO SmartFolio Investment Management Agreement** **2**

This Part includes the investment management agreement that forms the foundation of your relationship with BMO Nesbitt Burns. This agreement constitutes the “terms and conditions” under which BMO Nesbitt Burns will operate your SmartFolio Account, as referred to in your Client Account Application.

## **Part Two: Joint Account Agreement** **20**

When you want to open a joint SmartFolio account with one or more other people, you and your co-applicants will enter into the joint investment management account agreement with BMO Nesbitt Burns found in this Part.

## **Part Three: BMO Trust Company Registered Accounts** **23**

Part A: BMO SmartFolio Retirement Savings Plan Declaration of Trust

Part B: BMO SmartFolio Retirement Income Fund Declaration of Trust

Part C: BMO SmartFolio Tax-Free Savings Account Declaration of Trust

Part D: BMO SmartFolio Education Savings Plan -Individual Plan

Part E: BMO SmartFolio Education Savings Plan - Family Plan

## Part One:

# BMO SmartFolio Investment Management Agreement

### 1.1 Investment Management Agreement

Once your Client Account Application is accepted by BMO Nesbitt Burns, a BMO SmartFolio investment management account (your “SmartFolio Account”) will be opened for you.

If you are opening up a joint account, you and your joint accountholders will be bound by the Account Agreement in Part One and the Joint Account Agreement in Part Two. If you are opening up a Registered Retirement Savings Plan, you and your joint accountholders (if any) will be bound by the trust document in Part Three.

BMO Nesbitt Burns’ duties, responsibilities and services and your obligations will be governed by the terms and conditions in this Part One and any of the agreements and documents in Parts Two and Three that relate to the type of SmartFolio Account you have opened.

In consideration of BMO Nesbitt Burns opening or maintaining one or more SmartFolio Accounts (defined below) for you, you understand and agree to the following terms and conditions for the operation of each SmartFolio Account.

You hereby represent and warrant that the information, instructions and consents contained in the Account Application (defined below) completed by you are true, complete and accurate. You hereby acknowledge that the Account Application and the SmartFolio Account Contracts (defined below) shall be read together and shall govern the conduct of you and the other parties to the SmartFolio Account Contracts.

### 1.2 Definitions

A glossary of the capitalized terms that are used throughout the agreements in Part One and Part Two are set out here. Please refer back to this section whenever one of these capitalized terms is used in one of the agreements in Parts One or Two. Unless an agreement or trust document indicates otherwise, the terms and definitions of a particular agreement or trust document apply only to that agreement or document and not to any other agreement or document.

For the purpose of the SmartFolio Account Contracts , the following words and phrases shall have the meanings set out below:

- (a) “Account Agreement” means this investment management agreement, as may be amended from time to time, between you and BMO Nesbitt Burns which governs your SmartFolio Account;
- (b) “Account Application” means the SmartFolio client account application which you completed and includes your responses to various questions asked concerning your investment objectives, investment knowledge, risk profile, time horizon, and personal and financial situation, in the SmartFolio Account opening process;
- (c) “Account Information” means the alerts, information and documents relating to your SmartFolio Account sent to you by BMO Nesbitt Burns and includes monthly, quarterly and annual account statements and reports and notices required to be sent to you in accordance with the SmartFolio Account Contracts, applicable law, or the Regulatory Authorities;
- (d) “Advisory Fees” means the fees that you agree to pay BMO Nesbitt Burns in respect of the management of your SmartFolio Account; the revenue earned on foreign currency conversion transactions (“spreads”), and expenses charged as applicable;
- (e) “Bank” means Bank of Montreal;
- (f) “BMO Financial Group” means Bank of Montreal and each of its subsidiaries, including BMO Nesbitt Burns;

- (g) "BMO Integrated Employee" means an individual who is employed by the Bank or an affiliate of the Bank who, as part of his or her normal duties, has access to confidential and proprietary information of BMO Nesbitt Burns or its clients;
- (h) "BMO Nesbitt Burns" means BMO Nesbitt Burns Inc., a registered investment dealer and member of the Investment Industry Association of Canada;
- (i) "BMO SmartFolio" means the SmartFolio program offered and managed by BMO Nesbitt Burns;
- (j) "Client" means you, the applicant and, if applicable, any joint co-applicant applying to open a SmartFolio Account with BMO Nesbitt Burns and who completes the Account Application;
- (k) "Collateral" means the Securities and cash held in your SmartFolio Account, which may now or hereafter be held by BMO Nesbitt Burns;
- (l) "Confidential Information" means information related to you, your SmartFolio Account, and includes any information relayed to BMO Nesbitt Burns that is not lawfully publically disseminated;
- (m) "Email Account" means your email account specified in the Account Application, as you may amend from time to time in accordance with the Account Agreement;
- (n) "Fee Schedule" means the BMO SmartFolio Fee Schedule first delivered upon account opening and as amended from time to time;
- (o) "Fund" means a mutual fund or an exchange traded fund;
- (p) "including" means including without limitation;
- (q) "Investment Objectives" means your investment objectives as documented in your Account Application;
- (r) "Investment Policy Statement" means the description of the investment mandate selected by BMO Nesbitt Burns that will govern the investments in your SmartFolio Account;
- (s) "Joint Account Agreement" means the joint account agreement, as may be amended from time to time, governing any Joint Account;
- (t) "Joint Account" means a SmartFolio Account with one or more joint accountholders, each of whom has signed the Account Application as co-applicants;
- (u) "Minimum Amount" has the meaning ascribed in section 1.4(j) of this Account Agreement;
- (v) "Notification" means the notice sent to your Email Account advising you that Account Information has been posted to your SmartFolio Portal;
- (w) "Receiving Entity" means a party that has received a referral in accordance with the Referral Agreement;
- (x) "Referral Agreement" means the referral agreement with BMO Nesbitt Burns Financial Services Inc., BMO Private Investment Counsel Inc., BMO InvestorLine Inc., BMO Trust Company, BMO Investments Inc. and the Bank, and such other parties thereto, if any, as may be amended from time to time;
- (y) "Referred Client" means a client that has been referred to a Receiving Entity by a Referring Entity in accordance with the Referral Agreement;
- (z) "Referring Employee" means an individual employee of a Referring Entity that made a referral in accordance with the Referral Agreement;
- (aa) "Referring Entity" means an entity that refers clients to Receiving Entity;
- (ab) "Registered Representative" means a registered representative of BMO Nesbitt Burns who is authorized to manage your SmartFolio Account;
- (ac) "Regulatory Authorities" means any relevant governmental authority, agency, securities commission, exchange, self-regulatory organization, market, clearing corporation or association of brokers or dealers, law enforcement, or similar authority whether domestic or foreign;
- (ad) "Right of Survivorship" means, in respect of a Joint Account, the surviving Client(s) right to the entire interest in the Joint Account upon the death of the other Client;

- (ae) "Securities" includes shares, share certificates, installment receipts, scrip certificates, deposit receipts, warrants, rights, bonds, debentures, notes, options, commodities and futures contracts and any other securities or financial instruments of any kind whatsoever;
- (af) "SmartFolio Account" means your investment management account which will be managed by BMO Nesbitt Burns on a discretionary basis in accordance with the SmartFolio Account Contracts;
- (ag) "SmartFolio Account Contracts", means:
  - (i) your Account Application,
  - (ii) your Investment Policy Statement,
  - (iii) your Account Agreement, and
  - (iv) any Joint Account Agreement, as applicable
  - (v) "SmartFolio Portal " means the online password protected client information centre provided by BMO Nesbitt Burns for your SmartFolio Account;
- (ah) "Standard of Care" has the meaning ascribed in section 1.6(a) of this Account Agreement
- (ai) "Sub-Adviser" means the investment management firm engaged by BMO Nesbitt Burns, as its sub- adviser, to provide securities investment advice to the SmartFolio Account(s) in accordance with the Investment Policy Statement;
- (aj) "Transaction" means the purchase, sale or exercise of, or otherwise dealing in, Securities in the SmartFolio Account by BMO Nesbitt Burns in accordance with the discretion granted to us and the Sub Adviser by the SmartFolio Account Contracts;
- (ak) "us" and "we" each mean BMO Nesbitt Burns; and
- (al) "you" means you, the Client, signing on your own behalf as an individual and includes, where you are a co-applicant for a Joint Account, you and each joint co-account holder.

### 1.3 Applicable by-laws, laws, rules, etc.

Your SmartFolio Account and each Transaction executed for your SmartFolio Account will be subject to, and we and you will abide by, the prevailing by-laws, laws, rules, regulations, policies and customs of the appropriate Regulatory Authorities.

### 1.4 Operation of Your SmartFolio Account

Your SmartFolio Account is a discretionary investment management account, which means that you have given us the authority to invest your portfolio according to your Investment Policy Statement. You also have given us the authority to engage a Sub-Adviser and to invest in Securities for your SmartFolio Account that include Securities of issuers, including Funds, that are related to us.

- (a) You hereby authorize BMO Nesbitt Burns to manage your investment portfolio in your SmartFolio Account on a discretionary basis on the terms set out in the SmartFolio Account Contracts. BMO Nesbitt Burns, in managing your SmartFolio Account, may engage the investment management services of one or more Sub-Advisers.
- (b) You consent, authorize and acknowledge that:
  - (i) the Sub-Adviser may be a portfolio management firm that is related to BMO Nesbitt Burns and the Securities held in your SmartFolio Account will include Securities, including Funds, that are managed or issued by BMO Nesbitt Burns, the Sub-Adviser, or parties related to either, which means the Securities will be of issuers who are "related or connected" to BMO Nesbitt Burns or the Sub-Adviser;
  - (ii) BMO Nesbitt Burns and the Sub-Adviser may share information relating to you and your SmartFolio Account for the purpose of servicing your SmartFolio Account;
  - (iii) BMO Nesbitt Burns and the Sub Adviser have full discretionary investment management power and authority to purchase, sell or otherwise deal in Securities for your SmartFolio Account in accordance with your Investment Policy Statement(s); and

- (iv) BMO Nesbitt Burns and the Sub-Adviser will make determinations on your behalf regarding all aspects of the Securities held in your SmartFolio Account, including the processing of class action claims and corporate actions and the voting on matters requiring a securityholder vote.
- (c) You acknowledge that:
  - you have completed, executed and delivered the Account Application to BMO Nesbitt Burns for review and acceptance; (ii) based on the information you provided in the Account Application, the Investment Policy Statement has been prepared, presented and accepted by you;
  - (i) the Account Application and the Investment Policy Statement has been provided to you;
  - (ii) upon review of your Account Application by BMO Nesbitt Burns, each recommended Investment Policy Statement(s) may be replaced with an Investment Policy Statement that BMO Nesbitt Burns believes is suitable for you; and
  - (iii) upon acceptance of the Account Application, including the Investment Policy Statement(s), by you and BMO Nesbitt Burns, each applicable Investment Policy Statement is incorporated by reference into this SmartFolio Account Agreement.
- (d) You confirm that the information contained in your Account Application, including your Investment Objectives is accurate and complete.
- (e) BMO Nesbitt Burns is entitled to rely on the information provided in your Account Application and you are responsible for advising BMO Nesbitt Burns promptly in writing of any changes in your circumstances or of any restrictions regarding trading in Securities for your SmartFolio Account or of any matter which would affect BMO Nesbitt Burns' management of your SmartFolio Account.
- (f) Although BMO Nesbitt Burns will use its best efforts in making investment decisions for your SmartFolio Account in accordance with your Investment Objectives, the Investment Policy Statement and its Standard of Care, neither BMO Nesbitt Burns nor the Sub-Adviser guarantee investment results and neither party will be liable for any failure of your SmartFolio Account to achieve investment results.
- (g) BMO Nesbitt Burns will credit to your SmartFolio Account:
  - (i) any interest, dividends or other monies received in respect of Securities held in your SmartFolio Account, and
  - (ii) any monies (net of all charges) received as proceeds from the sale or other disposition of Securities from your SmartFolio Account,
- (h) BMO Nesbitt Burns will debit from your SmartFolio Account any amounts owed by you to BMO Nesbitt Burns pursuant to your SmartFolio Account Contracts, in accordance with the Fee Schedule, including interest. BMO Nesbitt Burns will maintain a record of receipts and deliveries of Securities and your resulting positions in your SmartFolio Account. Any foreign currency deposited into your SmartFolio Account, including dividends, interest and proceeds from the sale of foreign securities, will be converted to Canadian dollars and BMO Nesbitt Burns (or parties related to us) will earn revenue from the foreign currency conversion. BMO Nesbitt Burns will act as principal for foreign currency conversions in your SmartFolio Account unless otherwise disclosed. When currency conversion is required, BMO Nesbitt Burns will convert the currency at rates established or determined by BMO Nesbitt Burns or related parties, in our sole discretion. Foreign currency conversion rates are subject to change without notice and may vary according to the market, type of currency and the value of the trade.
- (i) BMO Nesbitt Burns has the right to terminate, in its sole and unfettered discretion, the SmartFolio Account Contracts and close your SmartFolio Account by providing at least thirty (30) days written notice to you, of its intention to do so. If following such notice, you fail to take action to close your SmartFolio Account or transfer assets out of your SmartFolio Account, BMO Nesbitt Burns may take such action as is necessary to close your SmartFolio Account. Such action may include re-registering Securities in your name and, if applicable, mailing to you at your last known address, certificates representing Securities and cheques representing cash balances that remain in your SmartFolio Account. The liquidation of the Securities in your SmartFolio Account may have significant financial consequences for you, including but not limited to tax consequences for which you will be solely liable. BMO Nesbitt Burns is not liable in any way to you with respect to the termination, closure, transfer or liquidation of your SmartFolio Account. You

further agree and acknowledge that if your SmartFolio Account balance is \$0 for a period of at least 12 consecutive months, your SmartFolio Contracts are deemed terminated and BMO Nesbitt Burns will close your SmartFolio Account without prior notice to you. You may terminate the SmartFolio Account Contracts and request that your SmartFolio Account be closed by providing BMO Nesbitt Burns with notice in writing, effective upon receipt by BMO Nesbitt Burns, except with respect to Transactions entered into prior to receipt of your written instructions. BMO Nesbitt Burns will close your SmartFolio Account as soon as practicable after receipt of your termination instructions.

- (j) Initially, the minimum aggregate value of assets in your SmartFolio Account shall not be less than the minimum amount set forth in the Account Application (the "Minimum Amount"). BMO Nesbitt Burns shall have the right to change the Minimum Amount from time to time upon thirty (30) days prior written notice to you. BMO Nesbitt Burns shall have the right to terminate your SmartFolio Account Agreement should the value of the assets in your SmartFolio Account fall below the Minimum Amount.
- (k) Proceeds from the disposition of Securities in your SmartFolio Account are held in your SmartFolio Account as cash until re-invested as appropriate.
- (l) BMO Nesbitt Burns will not be liable for any loss however caused, whether directly or indirectly, by government restrictions, by exchange or market rulings, the suspension of trading, wars, strikes, disease, natural disaster or by reason of any other fact which will not have been caused by any of our employees or agents.

## 1.5 Advisory Fees

You agree to pay Advisory Fees in consideration for BMO Nesbitt Burns' management of the assets in your SmartFolio Account as well as the additional Fund management expenses and trading expenses paid by the Funds in which you invest. Some or all of the Funds will be managed by entities related to BMO Nesbitt Burns and the Sub- Adviser and such entities will receive Fund management fees in respect of their services to some or all of the Funds.

- (a) The Advisory Fees that are charged for management of the assets in your SmartFolio Account are specified in the Fee Schedule and are calculated and payable as set out in the Fee Schedule. BMO Nesbitt Burns is hereby authorized to sell or dispose of, in its discretion, sufficient Securities in your SmartFolio Account to pay any outstanding amounts which may be owing by you in connection with the services provided under the SmartFolio Account Contracts and to deduct any and all of the amounts when due from your SmartFolio Account.
- (b) In addition to Advisory Fees, you are obligated to pay all applicable taxes and fees levied by any applicable third party, government, regulatory authority or agency in connection with the operation of your SmartFolio Account, including, goods and services taxes and fees levied by market intermediaries or securities regulatory authorities in the applicable province or territory. The Advisory Fees relate only to the operation of your SmartFolio Account and are not inclusive of any other fees that may be payable by you to BMO Nesbitt Burns or its affiliates in connection with other accounts, agreements, transactions or otherwise.
- (c) BMO Nesbitt Burns may increase the Advisory Fees and the transaction fees set out in the Fee Schedule, or introduce a new fee from time to time upon sixty (60) days prior written notice to you.
- (d) You consent, authorize and acknowledge that:
  - (i) the Fund management expenses and trading expenses paid by the Funds in which you invest are in addition to the fees you pay in consideration for BMO Nesbitt Burns' management of the assets in your SmartFolio Account and transaction fees set out in the Fee Schedule or spreads charged to your SmartFolio Account;
  - (ii) the Sub-Adviser or companies associated or affiliated with it will, as manager of some or all of the Funds in your SmartFolio Account, receive Fund management fees, as disclosed in the Funds' offering documents; and
  - (iii) You will not be charged any additional fees in connection with model ETF portfolios in respect of which the Sub-Adviser has been appointed.

## 1.6 Duties of BMO Nesbitt Burns in Managing the SmartFolio Account and Conflicts of Interest

- (a) You understand that there are risks attached to BMO Nesbitt Burns and the Sub-Adviser's investment of your SmartFolio Account.
- (b) In carrying out its duties and responsibilities under this SmartFolio Account Agreement, BMO Nesbitt Burns will exercise the diligence, competence and skill as would be expected of a reasonably prudent person under similar circumstances and in similar market conditions (the "Standard of Care").
- (c) Neither BMO Nesbitt Burns, the Sub-Adviser, nor any of their respective officers, directors or employees shall have any liability to you for errors or omissions that occur in the course of, arise from or which are related to transactions by BMO Nesbitt Burns for your SmartFolio Account, unless such errors or omissions are caused by the failure by BMO Nesbitt Burns or the Sub-Adviser to meet the Standard of Care.
- (d) Orders placed on behalf of your SmartFolio Account may be pooled with orders placed on behalf of other accounts of BMO Nesbitt Burns. In allocating investment opportunities among BMO Nesbitt Burns' accounts, BMO Nesbitt will act with a view to the equitable allocation of such opportunities, generally on a pro rata basis based on order size. When orders for more than one account are entered as a combined order, BMO Nesbitt Burns will endeavour to treat all clients on a basis that is fair and reasonable in the context of the nature of the particular transaction and the transaction costs. This may include calculating a weighted average execution price to be attributed to all accounts having orders included in the combined order.
- (e) BMO Nesbitt Burns or any company affiliated with BMO Nesbitt Burns may act as principal or agent for others in the purchase or sale of Securities for your SmartFolio Account.

## 1.7 Indebtedness to BMO Nesbitt Burns

BMO Nesbitt Burns may at any time, and from time to time, take any monies or Securities in your SmartFolio Account and any proceeds from the sale or other disposition of such Securities to pay or cover any of your obligations to BMO Nesbitt Burns, including your obligations in respect of any other account with BMO Nesbitt Burns, whether or not such account is a joint account or is an account guaranteed by you.

## 1.8 Pledge of securities and use of Collateral by BMO Nesbitt Burns

If you are indebted to us, we can use the Securities, cash and other assets in your SmartFolio Account to cover that indebtedness.

- (a) As continuing collateral security for the payment of any indebtedness, which is now or may in the future be owing by you to BMO Nesbitt Burns, you hereby hypothecate and pledge to BMO Nesbitt Burns all of the Collateral, whether held in your SmartFolio Account or any other account in which you have an interest and whether or not such indebtedness relates to the Collateral hypothecated and pledged. With respect to any Collateral which is subject to the laws of Quebec, since the laws of such province require that the amount of the hypothec be specified, you hereby acknowledge that the hypothec and pledge granted in favour of BMO Nesbitt Burns as described herein are limited to a maximum amount of one hundred (100) million dollars. The interest rate applicable to the hypothec shall be a rate of interest expressed as a rate per annum, which is equal to the rate established by the Bank, as the reference rate of interest used by it to determine interest rates charged for demand loans in Canadian dollars to Canadian commercial borrowers, plus two per cent, and, in the event that the Bank does not publish such a rate, a substitute rate from any financial institution selected by BMO Nesbitt Burns.
- (b) So long as any indebtedness remains unpaid, you authorize BMO Nesbitt Burns to, without notice, use at any time and from time to time the Collateral in the conduct of BMO Nesbitt Burns' business, including the right to:
  - (i) combine any of the Collateral with the property of BMO Nesbitt Burns or other customers or both;
  - (ii) pledge any of the Collateral which is held in BMO Nesbitt Burns' possession as security for its own indebtedness;



- (iii) loan any of the Collateral to BMO Nesbitt Burns for its own purposes; or
- (iv) use any of the Collateral for making delivery against sale, whether a short sale or otherwise, and whether such sale is for your Smartfolio Account or for BMO Nesbitt Burns' own account or for any account in which BMO Nesbitt Burns, or any director thereof, is directly or indirectly interested, or for the account of any other BMO Nesbitt Burns customers.

## 1.9 Elimination or reduction of indebtedness by BMO Nesbitt Burns

BMO Nesbitt Burns may take action in order to ensure that it receives payment for any debt you owe us. For example, we may sell or take positions in any Security in your SmartFolio Account without notice to you if we don't consider the Collateral held by us to be enough.

- (a) BMO Nesbitt Burns in its sole and unfettered discretion may, with respect to any position in a Security in your SmartFolio Account, take such steps as BMO Nesbitt Burns considers necessary to protect itself against loss including entering into positions in any Security on your behalf if:
  - (i) you fail to pay any indebtedness when due;
  - (ii) BMO Nesbitt Burns deems, in its sole and unfettered discretion, the Collateral held by it to be insufficient for its protection;
  - (iii) there is any unsecured or potentially unsecured indebtedness in your SmartFolio Account;
  - (iv) you die, become bankrupt or insolvent or if any of the Collateral becomes subject to execution, attachment or other process; or
  - (v) you fail to comply with any requirement contained in this SmartFolio Account Agreement.
- (b) In addition to any other right or remedy to which BMO Nesbitt Burns is entitled, BMO Nesbitt Burns may, at any time and from time to time without notice or demand you:
  - (i) apply monies held to your credit in any other account with BMO Nesbitt Burns to eliminate or reduce indebtedness;
  - (ii) take the Securities in payment or sell, contract to sell or otherwise dispose of any or all of the Securities held by BMO Nesbitt Burns for you and apply the net proceeds therefrom to eliminate or reduce indebtedness.
- (c) Such rights may be exercised separately, successively or concurrently and without prior demand or notice to you by BMO Nesbitt Burns. BMO Nesbitt Burns shall not be required by this SmartFolio Account Agreement to exercise any such rights nor shall it be required to exercise any right prior to exercising any other right. The failure to exercise any or all of such rights or the granting of any indulgence shall not in any way limit, restrict or prevent BMO Nesbitt Burns from exercising such rights at any subsequent time and shall not limit, reduce or discharge any indebtedness or part thereof. Any such sales or purchases for your SmartFolio Account may be made upon any exchange or market or at a public or private sale upon such terms and in such manner as BMO Nesbitt Burns deems advisable. If demand is made or notice is given to you by BMO Nesbitt Burns, it shall not constitute a waiver of any of BMO Nesbitt Burns' rights to act hereunder without demand or notice. Any and all expenses (including any legal expenses) reasonably incurred by BMO Nesbitt Burns in connection with exercising any right pursuant to this Account Agreement may be charged to your SmartFolio Account. You acknowledge that you shall remain liable to BMO Nesbitt Burns for any deficiency remaining following the exercise by BMO Nesbitt Burns of any or all of the foregoing rights and that the rights which BMO Nesbitt Burns is entitled to exercise pursuant to this section are reasonable and necessary for BMO Nesbitt Burns' protection having regard to the nature of securities markets including, in particular, their volatility. The liquidation of Securities in your SmartFolio Account may have significant financial consequences for you, including but not limited to tax consequences for which you will be solely liable. BMO Nesbitt Burns will not be not liable in any way to you with respect to the elimination, reduction or discharge of your indebtedness.



## 1.10 Holding Securities

BMO Nesbitt Burns may hold your Securities at its head office or any of its branches or at any other location where it is customary for BMO Nesbitt Burns to keep Securities for the SmartFolio Account and BMO Nesbitt Burns' responsibilities to you for so holding the Securities in your SmartFolio Account shall be limited to the same degree of care exercised by BMO Nesbitt Burns in the custody of its own Securities.

## 1.11 Your information and changes to that information

Information you tell us about your Investment Objectives and financial needs must be accurate. You must tell us whenever the information we have about you changes.

- (a) You represent and warrant that the information provided by you in the Account Application and as you may provide from time to time to BMO Nesbitt Burns is true, complete and accurate to the best of your knowledge.
- (b) You will immediately advise BMO Nesbitt Burns if any information provided in the Account Application changes. This includes, but is not limited to, if you acquire a controlling interest in or otherwise become an insider and/or a reporting insider of any reporting issuer.

## 1.12 Account statements

We will send account statements and other documents to you and we will conclude that you agree that these documents are correct and approved and that you consent to the contents if you do not send us written notice within 45 days after we sent you the material. Please review all material you receive carefully and send us written notice if you do not agree with the contents.

BMO Nesbitt Burns will send you statements of account in the form and including the information required by the applicable Regulatory Authorities. Because the SmartFolio Account gives BMO Nesbitt Burns complete discretionary authority over your investments, unless you advise otherwise, you consent to not receive any trade confirmations or prospectuses (including Fund Facts Documents or ETF Summary Documents) for the Securities purchased for your SmartFolio Account. You will be deemed to have acknowledged the contents of every statement or other document sent to you by BMO Nesbitt Burns as correct, approved and consented to by you, unless you send us written notice to the contrary so that we receive it within forty-five days after the relevant statement or other document is sent to you.

## 1.13 Conflicts of Interest and Statement of Policies

A conflict of interest may arise where (i) the interests of BMO Nesbitt Burns, and the interests of its clients are inconsistent or different; (ii) clients may perceive BMO Nesbitt Burns to be influenced to put its interests ahead of its client's interests, or (iii) monetary or non-monetary benefits available to BMO Nesbitt Burns, or potential negative consequences for BMO Nesbitt Burns, may affect the trust its clients have in BMO Nesbitt Burns.

BMO Nesbitt Burns has adopted policies and procedures to identify and address the handling of material conflicts of interest. BMO Nesbitt Burns addresses existing or reasonably foreseeable material conflicts of interest with you in your best interest. If a conflict cannot be so addressed, it is avoided.

More information about BMO Nesbitt Burns' material conflicts of interest is set out in BMO Nesbitt Burns Conflicts of Interest Statement,], delivered to you at account opening. The current version of this Statement is available on our website at [https://www.bmo.com/assets/pdfs/nesbittburns/coistatement\\_en.pdf](https://www.bmo.com/assets/pdfs/nesbittburns/coistatement_en.pdf). Please ask your registered representative if you have any questions about conflicts of interest and how we address them in your best interest.

BMO Nesbitt Burns wishes to ensure that its clients understand the relationship between it and the Bank. Securities in your SmartFolio Account are:

- (a) not insured by the Canadian Deposit Insurance Corporation or any other government deposit insurer;
- (b) are not guaranteed by the Bank; and
- (c) are subject to fluctuations in market values.

Customers' accounts at CIRO Dealer Members are protected by the Canadian Investor Protection Fund within specified limits. A brochure describing the nature and limits of coverage is available upon request or at [www.cipf.ca](http://www.cipf.ca).

#### **1.14 Dual Registration**

As part of your account opening and ongoing maintenance of your account, you may be in contact with a Registered Representative who is dually licensed with BMO InvestorLine Inc. and BMO Nesbitt Burns Inc. Please note: BMO adviceDirect and Self-Directed products are offered through BMO InvestorLine Inc. and BMO SmartFolio is offered through BMO Nesbitt Burns Inc.

#### **1.15 Referral Disclosure Statement**

- (a) BMO Nesbitt Burns has entered into the Referral Agreement. The purpose of this Referral Agreement is to facilitate referrals of clients to other members of BMO Financial Group to better serve clients and prospective clients. Each Referring Entity that successfully refers Referred Client to a Receiving Entity may receive a referral fee from the Receiving Entity. A portion of this referral fee may be paid to the Referring Employee who initiated the referral. Clients of BMO Nesbitt Burns and BMO Financial Group do not pay additional charges or fees in connection with these referrals. More details on the referral fees that may be paid are outlined in the chart below.
- (b) All activity requiring registration under securities laws and regulations will be performed by an entity that is appropriately registered under Canadian securities laws to perform that activity.
- (c) For additional information about referrals, please consult with a Registered Representative by contacting the BMO SmartFolio client contact centre.
- (d) This disclosure is being provided in order to address any potential conflicts of interest as a result of the fact that the Referring Party may receive a fee for referring you to a Receiving Entity.

BMO InvestorLine Inc. ("BMO InvestorLine")	BMO Private Investment Counsel Inc. ("BPIC")	BMO Nesbitt Burns Inc. ("Nesbitt Burns")	BMO Trust Company ("Trustco")	BMO Estate Insurance Advisory Services Inc. ("BMO EIASI")  (formerly BMO Nesbitt Burns Financial Services Inc.)	BMO Capital Markets	Bank of Montreal
<b>Services Receiving Entity may provide to Referred Client</b>						
BMO InvestorLine may provide the following services to a referred client: • Self-directed/discount brokerage services • Brokerage services	BPIC may provide the following services to a referred client: • Discretionary portfolio management services • BPIC may engage in exempt market trading in relation to the provision of these services	Nesbitt Burns may provide the following services to a referred client: • Broker-dealer services • Portfolio management services	Trustco may provide the following services to a referred client: • Trust and estates services • Escrows	BMO EIASI may provide the following services to a referred client: • Estate and insurance related services • Alternative strategies for estate preservation • Tax deferral and tax minimization • Income replacement • Charitable donations	BMO Capital Markets may provide the following services to a referred client: • Capital raising • Mergers & acquisitions (M&A) advisory services • Acquisitions & divestitures (A&D) advisory services • Treasury services • Market risk management • Institutional investing • Investment products	Bank of Montreal may provide the following services to a referred client: • Banking and credit product and services • Mortgage and lending products
<b>Category(ies) of registration under Canadian Securities Laws</b>						
BMO InvestorLine is an investment dealer in all provinces and territories and is a member of CIRO	BPIC has the following categories of registration under Canadian securities laws: • Portfolio manager • Exempt market dealer • Investment fund manager • Commodity trading counsel • Commodity trading manager • Derivatives portfolio manager (Quebec)	Nesbitt Burns has the following categories of registration under Canadian securities laws: • Investment dealer in all provinces and territories; member of the Canadian Industry Regulatory Organization (CIRO) • Futures commission merchant • Investment fund manager	Trustco is not a registrant under Canadian securities laws	BMO EIASI is not a registrant under Canadian securities laws	BMO Capital Markets is an international dealer	Bank of Montreal is not a registrant under Canadian securities laws
<b>Activities permitted under Canadian Securities Registration</b>						
BMO InvestorLine is permitted to conduct the following activities under its Canadian securities registration: • Trading • Advising, including securities investment services	BPIC is permitted to conduct the following activities under its Canadian securities registration: • Advising, including discretionary account management and securities investment services • Trading securities that are exempt from the prospectus or dealer requirements under Canadian securities laws ("Exempt Securities") • Advising on trading in specific commodity futures contracts or commodity futures options ("Commodity Contracts") or giving continuous advice on trading in Commodity Contracts. • Managing trading in Commodity Contracts for customers through discretionary authority granted by one or more customers.	Nesbitt Burns is permitted to conduct the following activities under its Canadian securities registration: • Trading • Advising, including discretionary account management and securities investment services	Trustco may not engage in any activities requiring registration under Canadian securities laws	BMO EIASI may not engage in any activities requiring registration under Canadian securities laws	BMO Capital Markets may engage in activities reasonably necessary to facilitate a distribution (other than a sale) of securities	Bank of Montreal may not engage in any activities requiring registration under Canadian securities laws
<b>Activities not permitted under Canadian Securities Registration</b>						
BMO InvestorLine is not permitted to conduct the following activities under its Canadian securities registration: • Investment fund management	BPIC is not permitted to conduct the following activities under its Canadian securities registration: • Trading in securities that are not Exempt Securities		N/A	N/A	N/A	N/A

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<p>If the Bank of Montreal refers a client to BMO InvestorLine and an account is established at BMO InvestorLine, BMO InvestorLine will pay a referral fee equal to 25% of the gross commissions on the referred accounts in perpetuity.</p> <p>If BPIC refers a Client to BMO InvestorLine, BMO InvestorLine will pay BPIC a referral fee equal to</p> <p>(i) 50% of the first year trade commission revenue in respect of a self-directed account, and</p> <p>(ii) 20% of the first year account fees in respect of adviceDirect account.</p>	<p>If Bank of Montreal refers a client to BPIC, BPIC will pay Bank of Montreal 15% of the revenue generated on the referred accounts in perpetuity. In addition, if Bank of Montreal refers a client to BPIC that results in the client opening an investment account(s), then based on the asset value transferred, BPIC will pay a one-time referral fee up to 0.1% of the value of the investment account(s) to the Bank of Montreal.</p> <p>BPIC has an arrangement with BMO EIASI such that if BPIC refers a client that results in the sale of a new insurance product, EIASI will arrange to transfer a referral fee based on fifty percent (50%) of the gross value of commissions to BPIC.</p> <p>• If a BPIC employee makes a referral to BMO Nesbitt Burns or BMO InvestorLine, the employee may receive an annual discretionary short term incentive payment from BPIC which may take into consideration, among other factors, referrals to BMO affiliates.</p> <p>If the Canadian Commercial Banking ("CCB") division of Bank of Montreal refers a client to BPIC, BPIC will pay CCB a one-time referral payout based on the following revenue tiers:</p> <table border="1"> <thead> <tr> <th>Revenue Tier</th> <th>Referral Payout</th> </tr> </thead> <tbody> <tr> <td>\$10 - 25,000</td> <td>\$500</td> </tr> <tr> <td>\$25 - 50,000</td> <td>\$1,000</td> </tr> <tr> <td>\$50 - 100,000</td> <td>\$2,000</td> </tr> <tr> <td>\$100 - 250,000</td> <td>\$5,000</td> </tr> <tr> <td>\$250,000 +</td> <td>\$10,000</td> </tr> </tbody> </table> <p>If the Business Banking ("BB") division of Bank of Montreal refers a client to BPIC, BPIC will pay BB a one-time referral payout based on the following balance tiers:</p> <table border="1"> <thead> <tr> <th>Revenue Tier</th> <th>Referral Payout</th> </tr> </thead> <tbody> <tr> <td>\$1MM - 2.5MM</td> <td>\$500</td> </tr> <tr> <td>\$2.5MM - 10MM</td> <td>\$1,000</td> </tr> <tr> <td>\$10MM +</td> <td>\$2,500</td> </tr> </tbody> </table>	Revenue Tier	Referral Payout	\$10 - 25,000	\$500	\$25 - 50,000	\$1,000	\$50 - 100,000	\$2,000	\$100 - 250,000	\$5,000	\$250,000 +	\$10,000	Revenue Tier	Referral Payout	\$1MM - 2.5MM	\$500	\$2.5MM - 10MM	\$1,000	\$10MM +	\$2,500	<p>If Bank of Montreal (the "Bank") refers a client to Nesbitt Burns, Nesbitt Burns will pay the Bank 25% of the gross commission and client fees and revenues earned from those referred accounts for a period of 10 years, after which it will decrease to 12.5% of gross commission.</p> <p>If a Nesbitt Burns Investment Advisor refers a client to Bank of Montreal, Nesbitt Burns may pay the Investment Advisor up to 50% of the referral fee received</p> <p>If a Nesbitt Burns Investment Advisor refers a client to BPIC or BMO InvestorLine, Nesbitt Burns may pay the Nesbitt Burns Investment Advisor a referral fee representing 25% of the commission earned by that BMO entity from the referred accounts. The amount received will depend on the Nesbitt Burns Investment Advisor commission payable rate; up to a maximum of 50%.</p> <p>If the Canadian Commercial Banking ("CCB") division of Bank of Montreal refers a client to Nesbitt Burns, Nesbitt Burns will pay CCB a one-time referral payout based on the following revenue tiers:</p> <table border="1"> <thead> <tr> <th>Revenue Tier</th> <th>Referral Payout</th> </tr> </thead> <tbody> <tr> <td>\$10 - 25,000</td> <td>\$500</td> </tr> <tr> <td>\$25 - 50,000</td> <td>\$1,000</td> </tr> <tr> <td>\$50 - 100,000</td> <td>\$2,000</td> </tr> <tr> <td>\$100 - 250,000</td> <td>\$5,000</td> </tr> <tr> <td>\$250,000 +</td> <td>\$10,000</td> </tr> </tbody> </table> <p>If the Business Banking ("BB") division of Bank of Montreal refers a client to Nesbitt Burns, Nesbitt Burns will pay BB a one-time referral payout based on the following balance tiers:</p> <table border="1"> <thead> <tr> <th>Revenue Tier</th> <th>Referral Payout</th> </tr> </thead> <tbody> <tr> <td>\$1MM - 2.5MM</td> <td>\$500</td> </tr> <tr> <td>\$2.5MM - 10MM</td> <td>\$1,000</td> </tr> <tr> <td>\$10MM +</td> <td>\$2,500</td> </tr> </tbody> </table>	Revenue Tier	Referral Payout	\$10 - 25,000	\$500	\$25 - 50,000	\$1,000	\$50 - 100,000	\$2,000	\$100 - 250,000	\$5,000	\$250,000 +	\$10,000	Revenue Tier	Referral Payout	\$1MM - 2.5MM	\$500	\$2.5MM - 10MM	\$1,000	\$10MM +	\$2,500	<p>If Bank of Montreal refers a client to Trustco, Trustco will pay Bank of Montreal 15% of the revenue generated on the referred accounts in perpetuity.</p> <p>If the Canadian Commercial Banking ("CCB") division of Bank of Montreal refers a client to BMTC, BMTC will pay CCB a one-time referral payout based on the following revenue tiers:</p> <table border="1"> <thead> <tr> <th>Revenue Tier</th> <th>Referral Payout</th> </tr> </thead> <tbody> <tr> <td>\$10 - 25,000</td> <td>\$500</td> </tr> <tr> <td>\$25 - 50,000</td> <td>\$1,000</td> </tr> <tr> <td>\$50 - 100,000</td> <td>\$2,000</td> </tr> <tr> <td>\$100 - 250,000</td> <td>\$5,000</td> </tr> <tr> <td>\$250,000 +</td> <td>\$10,000</td> </tr> </tbody> </table> <p>If the Business Banking ("BB") division of Bank of Montreal refers a client to BMTC, BMTC will pay BB a one-time referral payout based on the following balance tiers:</p> <table border="1"> <thead> <tr> <th>Revenue Tier</th> <th>Referral Payout</th> </tr> </thead> <tbody> <tr> <td>\$1MM - 2.5MM</td> <td>\$500</td> </tr> <tr> <td>\$2.5MM - 10MM</td> <td>\$1,000</td> </tr> <tr> <td>\$10MM +</td> <td>\$2,500</td> </tr> </tbody> </table>	Revenue Tier	Referral Payout	\$10 - 25,000	\$500	\$25 - 50,000	\$1,000	\$50 - 100,000	\$2,000	\$100 - 250,000	\$5,000	\$250,000 +	\$10,000	Revenue Tier	Referral Payout	\$1MM - 2.5MM	\$500	\$2.5MM - 10MM	\$1,000	\$10MM +	\$2,500
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<p>If a Nesbitt Burns Investment Advisor refers a client to BMO EIASI, BMO EIASI will pay the Investment Advisor a referral fee. Investment Advisors must be insurance-licensed to receive any referral fees in Manitoba and Saskatchewan and must be insurance-licensed in all provinces to receive ongoing compensation.</p> <p>Nesbitt Burns has an arrangement with EIASI such that if Nesbitt Burns refers a client to EIASI that results in the sale of a new insurance product, EIASI will arrange to transfer a referral fee based on seventy percent (70%) of the value of first year commissions to Nesbitt Burns.</p> <p>BPIC has an arrangement with BMO EIASI such that if BPIC refers a client that results in the sale of a new insurance product, BMO EIASI will arrange to transfer a referral fee based on fifty percent (50%) of the gross value of commissions to BPIC. BPIC employees must be insurance-licensed to receive any referral fees in Manitoba and Saskatchewan and must be insurance-licensed in all provinces to receive ongoing compensation.</p> <p>BMO InvestorLine has an arrangement with BMO EIASI such that if BMO InvestorLine refers a Client that results in the sale of a new insurance product, excluding in Manitoba and Saskatchewan, BMO EIASI will arrange to transfer a referral fee based on ten percent (10%) of the first year commissions up to a \$100,000.00 maximum payout per policy.</p>	<p>If a Nesbitt Burns Investment Advisor refers a client to BMO Capital Markets' Investment and Corporate Banking Group ("BMO CM I&amp;CB"), BMO CM I&amp;CB will pay Nesbitt Burns a one-time referral fee of up to 10% of the gross BMO CM I&amp;CB revenue on the following basis:</p> <ul style="list-style-type: none"> <li>• BMO CM I&amp;CB and Nesbitt Burns management will consider each referral to determine the referral fee amount (which can be no more than 10%, as described above). The considerations will include the scope of the involvement of the Nesbitt Burns Investment Advisor;</li> <li>• BMO CM I&amp;B will pay the referral fee within 90 days of the transaction closing date for equity and debt transactions or invoice date for merger &amp; acquisition transactions; and</li> <li>• Nesbitt Burns may pay the Nesbitt Burns Investment Advisor an amount that will depend on the Nesbitt Burns Investment Advisor's commission payable rate; up to a maximum of 50%.</li> </ul> <p>The referral fee is subject to the following requirements:</p> <ul style="list-style-type: none"> <li>• The referral fee will only be paid where the Nesbitt Burns Investment Advisor has made an exclusive introduction of a Nesbitt Burns Investment Advisor client to a BMO CM I&amp;CB relationship manager and has played a role in influencing the securing of the transaction mandate for BMO CM I&amp;CB.</li> <li>• Once a referral fee has been paid to Nesbitt Burns regarding a specific client, any subsequent fees to BMO CM I&amp;CB from that client are ineligible for a referral fee, unless the transaction was identified in advance as requiring multiple tranches.</li> <li>• If BMO CM I&amp;CB receives a referral from a Nesbitt Burns Investment Advisor and the client in turn refers a different client, no referral fee will be provided to Nesbitt Burns for the subsequent client.</li> </ul>	<p>If Nesbitt Burns refers a client to Bank of Montreal and the referral results in a personal loan product of the Bank of Montreal, calculation of the respective referral fee based on the aggregate dollar value of the loan will be:</p> <ul style="list-style-type: none"> <li>• for residential mortgage and Homeowner ReadLine, 60 basis points</li> <li>• for personal loans in excess of \$15,000, 150 basis points</li> <li>• for personal lines of credit in excess of \$15,000, 150 basis points based on drawn amount</li> </ul> <p>If Nesbitt Burns refers a client to Bank of Montreal and the referral results in a commercial product or service (excluding the provision of such products and services by BMO Capital Markets) calculation of the respective referral fee will be based on 20% of first year revenue from full relationship, including M&amp;A advisory fee revenue, to a maximum of \$100,000.</p> <p>The total referral fee received by the Nesbitt Burns Investment Advisor will depend on the commission payable rate, up to a maximum of 50%.</p> <p>If the Canadian Commercial Banking ("CCB") division of Bank of Montreal refers a client to the Private Banking Division ("PB") of Bank of Montreal, PB will pay CCB a one-time referral payout out based on the following revenue tiers:</p> <table border="1"> <thead> <tr> <th>Revenue Tier</th> <th>Referral Payout</th> </tr> </thead> <tbody> <tr> <td>\$10 - 25,000</td> <td>\$500</td> </tr> <tr> <td>\$25 - 50,000</td> <td>\$1,000</td> </tr> <tr> <td>\$50 - 100,000</td> <td>\$2,000</td> </tr> <tr> <td>\$100 - 250,000</td> <td>\$5,000</td> </tr> <tr> <td>\$250,000 +</td> <td>\$10,000</td> </tr> </tbody> </table> <p>If the Business Banking ("BB") division of Bank of Montreal refers a client PB, PB, will pay BB a one-time referral payout out based on the following balance tiers:</p> <table border="1"> <thead> <tr> <th>Revenue Tier</th> <th>Referral Payout</th> </tr> </thead> <tbody> <tr> <td>\$1MM - 2.5MM</td> <td>\$500</td> </tr> <tr> <td>\$2.5MM - 10MM</td> <td>\$1,000</td> </tr> <tr> <td>\$10MM +</td> <td>\$2,500</td> </tr> </tbody> </table>	Revenue Tier	Referral Payout	\$10 - 25,000	\$500	\$25 - 50,000	\$1,000	\$50 - 100,000	\$2,000	\$100 - 250,000	\$5,000	\$250,000 +	\$10,000	Revenue Tier	Referral Payout	\$1MM - 2.5MM	\$500	\$2.5MM - 10MM	\$1,000	\$10MM +	\$2,500
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### Acknowledgements:

- (e) You acknowledge receipt and understanding of this referral disclosure statement, and further confirm your understanding and agree with the Referring Entity and the Receiving Entity that:
- (i) BMO Nesbitt Burns (or, if BMO Nesbitt Burns is not the Referring Entity, the Referring Entity) may disclose information about you to the Receiving Entity consisting of:
    - financial and financially-related information about you,
    - information to identify you or qualify you for products and services, or information needed for regulatory requirements in order to make the referral and allow for the ongoing administration of the referral.
  - (ii) All activity requiring registration resulting from the Referral Agreement will be provided by the Receiving Entity or outsourced to a party duly licensed or registered to carry on such activity. It is illegal for any party to the Referral Agreement to effect trades, advise in respect of certain securities or engage in investment fund management if it is not duly licensed or registered under applicable securities legislation as an investment dealer, an adviser or an investment fund manager.
  - (iii) The Referring Entity does not have authority to make any commitments for or on behalf of the Receiving Entity; you will deal directly with the Receiving Entity in respect of any products or services the Receiving Entity may provide to you.
  - (iv) The Referring Entity and its employees and officers are not and will not be deemed to be agents, employees or representatives of the Receiving Entity, and the Receiving Entity is not responsible for any acts, omissions, statements or negligence of the Referring Entity or any employee or officer of the Referring Entity.
  - (v) Referral Fees are paid by the Receiving Entity and may change from time to time.
  - (vi) You are under no obligation to purchase any product or service of the Receiving Entity.

## 1.16 SmartFolio Portal

The SmartFolio Portal is your online Client information centre. The SmartFolio Portal provides you with access to your SmartFolio Account, as well as news, charts, quotes and much more through a secure Internet site.

You hereby acknowledge that the security, integrity and privacy of any and all information exchanged between you and BMO Nesbitt Burns over the Internet cannot be guaranteed and that any such information may be viewed or tampered with in transit by a third party. You acknowledge and agree that BMO Nesbitt Burns may be required to provide information to certain exchanges and other service providers in connection with your use of the SmartFolio Portal.

## 1.17 Client conduct

- (a) The SmartFolio Portal contains copyrighted material, trademarks and other proprietary information, including, but not limited to: text, software, photos, video, graphics, music and sound, and the entire content of the SmartFolio Portal is copyrighted as a collective work under the copyright laws of Canada. BMO Nesbitt Burns owns a copyright in the selection, coordination, arrangement, structure, sequencing, organization and enhancement of such content. You may not modify, publish, transmit, participate in the transfer or sale, create derivative works, or in any way exploit, any of the content, in whole or in part except for personal purposes. You may download copyrighted material for your personal use only. Except as otherwise expressly permitted under copyright law, no copying, redistribution, retransmission, publication or commercial exploitation of downloaded material will be permitted without the express written permission of BMO Nesbitt Burns and the copyright owner. In the event of any permitted copying, redistribution or publication of copyrighted material, no changes in or deletion of author attribution, trademark legend or copyright notice shall be made. You acknowledge and agree that you do not acquire any ownership rights by downloading copyrighted material.

- (b) You will use the SmartFolio Portal for lawful purposes only. You will not post or transmit through the SmartFolio Portal any material that: (a) violates or infringes in any way upon the rights of others; (b) is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane or otherwise objectionable; (c) encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law; or (d) without BMO Nesbitt Burns' express prior approval, contains advertising or any solicitation with respect to products or services. Any conduct by you that in BMO Nesbitt Burns' discretion restricts or inhibits any other third-party from using or enjoying the SmartFolio Portal will not be permitted. You will not use the SmartFolio Portal to advertise or perform any commercial solicitation, including, but not limited to, the solicitation of users to become subscribers of other on-line information services competitive with the SmartFolio Portal.
- (c) The foregoing provisions are for the benefit of BMO Nesbitt Burns, its subsidiaries, affiliates and its third-party content providers and licensors and each shall have the right to assert and enforce such provisions directly or on its own behalf.

### 1.18 Limitation of liability and damages for Portal Use

The SmartFolio Portal is provided to you so you can monitor your account activity, track your investment goals, and review general educational materials.

The SmartFolio Portal's daily transaction, performance and balance information does not replace your Account Information (including the monthly account statements and annual performance and compensation reports posted on the SmartFolio Portal). The SmartFolio Portal has been provided to help you understand your SmartFolio Account and is not intended to provide you with investment advice for any other purpose.

This section does not change our Standard of Care or our liability in respect of the operation of your SmartFolio Account.

- (a) The limitation of liability and damages contained in this section 1.17 relates to your access and use of the SmartFolio Portal and does not affect our liability in respect of our management of your SmartFolio Account pursuant to section 1.6 of this Account Agreement.
- (b) You expressly agree that use of the SmartFolio Portal is at your sole risk. Neither BMO Nesbitt Burns, its affiliates nor any of their respective employees, agents, third party content providers or licensors warrant that the SmartFolio Portal will be uninterrupted or error free; nor do they make any warranty as to the results that may be obtained if you use the SmartFolio Portal, or as to the accuracy, reliability or content of any information, educational service, or merchandise provided through the SmartFolio Portal, other than Account Information provided to you in accordance with applicable law or the Regulatory Authorities.
- (c) The SmartFolio Portal is provided on an "as is" basis without warranties or conditions of any kind, either expressed or implied, including, but not limited to, warranties or conditions of title or implied warranties of merchantability or fitness for a particular purpose, other than those warranties which are implied by and incapable of exclusion, restriction or modification under the laws applicable to this Account Agreement.
- (d) This disclaimer of liability applies to any damages or injury (but only, to the extent permitted by applicable law) caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction or unauthorized access to, alteration of, or use of record, whether for breach of contract, tortious behaviour, negligence, or under any other cause of action. You specifically acknowledge that BMO Nesbitt Burns is not liable for the defamatory, offensive or illegal conduct of other users or third parties and that the risk of injury from the foregoing (but only, to the extent permitted by applicable law) rests entirely with you.
- (e) In no event will BMO Nesbitt Burns, or any person or entity involved in creating, producing or distributing the SmartFolio Portal be liable for any damages, including, without limitation, direct, indirect, incidental, special, consequential or punitive damages arising out of the use of or inability to use the SmartFolio Portal, unless due to a technology system malfunction within BMO Nesbitt Burns' control. You hereby acknowledge that the provisions of this section shall apply to all content on the SmartFolio Portal.

In addition to the terms set forth above, neither BMO Nesbitt Burns nor its affiliates, information providers or content partners shall be liable, regardless of the cause or duration, unless due to a technology system malfunction within BMO Nesbitt Burns' control, for any errors, inaccuracies, omissions, or other defects in, or untimeliness or inauthenticity of, the information contained with the SmartFolio Portal, or for any delay or interruption in the transmission thereof to you, or for any claims or losses arising therefrom or occasioned thereby. None of the foregoing parties shall be liable for any third-party claims or losses of any nature, including, but not limited to, lost profits, punitive or consequential damages.

- (f) The SmartFolio Portal is provided to you to give you access to: (i) general educational content that is not tailored to you; (ii) your Account Information posted on the SmartFolio Portal; and (iii) daily transactional information about your SmartFolio Account. You acknowledge and agree that daily transactional information and any information about the composition of the model portfolios that may be posted on the SmartFolio Portal are only in respect of your SmartFolio Account and cannot be used for any other purposes, including for any other investment purpose.

BMO Nesbitt Burns, its affiliates, information or content providers shall have no liability for any investment decisions based on the information provided on the SmartFolio Portal. Additionally, there are no warranties as to the results you obtain from your use of the information provided on the SmartFolio Portal for any other purpose other than in connection with understanding your SmartFolio Account.

### **1.19 Third-party content**

Any opinions, advice, statements, services, offers, or other information or content expressed or made available by third-parties, including information providers or any other user of the SmartFolio Portal, are those of the respective author(s) or distributor(s) and not of BMO Nesbitt Burns.

### **1.20 Service interruptions and termination of service**

BMO Nesbitt Burns shall have the right at any time to change or discontinue any aspect or feature of the SmartFolio Portal, including, but not limited to, content, hours of availability, and equipment needed for access or use. You agree that BMO Nesbitt Burns may suspend or terminate your access to the SmartFolio Portal for any reason and without prior notice to you.

### **1.21 Client inquiries**

If you have technical questions or difficulties with respect to the use of the SmartFolio Portal, you may contact the BMO SmartFolio client contact centre. You shall be responsible for obtaining and maintaining all telephone, Internet access, computer hardware and other equipment needed for access to and use of the SmartFolio Portal and all charges related thereto. Any inquiries regarding your SmartFolio Account information, investment advice or transactions should be referred to the BMO SmartFolio client contact centre. You hereby acknowledge and agree that employees of the Bank may be involved in providing you with technical assistance.

### **1.22 Password and your identification**

BMO Nesbitt Burns is under no obligation to confirm the actual identity or authority of any user of the password, User ID and account number that have been issued to you.

You are responsible for: (a) maintaining the confidentiality and security of your password, User ID and account number; and (b) any and all communications between you and BMO Nesbitt Burns over the internet and/or on the Toll-Free Number relating to the SmartFolio Portal.

BMO Nesbitt Burns will not be responsible for any damages arising out of the misuse of your password, your user ID, and SmartFolio Account number.

### **1.23 Miscellaneous**

You acknowledge that your use of the SmartFolio Portal may be monitored by BMO Nesbitt Burns and is subject to the SmartFolio Account Contracts and to all other agreements entered into with BMO Nesbitt Burns. This Account Agreement shall be binding upon your heirs, executors, administrators and personal representatives and upon the successors and assigns of BMO Nesbitt Burns.



## 1.24 Protection of personal information

To learn more about how we collect, use, disclose and safeguard your Personal Information, your choices, and the rights you have, please see our Privacy Code (available at [bmo.com/privacy](http://bmo.com/privacy), or from your Registered Representative).

### What is Personal Information?

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

### Why do we need your Personal Information?

We collect and use 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 or were pre-approved for)
- 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.

You understand that BMO Nesbitt Burns may be required to disclose your personal information to legal or Regulatory Authorities further to inquiries, audits or requests for information, and you hereby consent to such disclosure.

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

You or those acting on behalf of you will be entitled to access your personal information maintained in your file by sending a written request to the attention of the branch manager at the branch in which your SmartFolio Account is maintained.

### 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.

### Your Choices

**Sharing:** You may choose not to allow us to share account-specific information within BMO Financial Group, but you understand we will share your Personal Information where two or more BMO Financial Group affiliates provide you with jointly offered products or services. Within BMO Nesbitt Burns, the following categories of persons have the right of access to your information about your SmartFolio Account: the Registered Representatives of BMO Nesbitt Burns, the Sub-Adviser and administrative, management, audit, compliance and legal staff.

**Direct marketing:** You may choose not to allow us to use your contact information for direct marketing, such as mail, telemarketing or email informing you about products and services we think may be of interest and value to you.

Please see "Contact Us" in our Privacy Code for more details on how to opt out.

## 1.25 Electronic Communications

- (a) Any notice or communication, including all Account Information, will be delivered to you by making electronic versions available to you on the SmartFolio Portal. Account Information will be deemed to be delivered to you for your SmartFolio Account via the SmartFolio Portal, whether or not you elect to open the documents. It is your responsibility to visit the SmartFolio Portal on a regular basis (at least monthly) to read Account Information and you will immediately contact the BMO SmartFolio client contact centre if you are unable to access the SmartFolio Portal or if you are unable to access, read, download or print your Account Information.
- (b) We will send a Notification advising you that Account Information about your SmartFolio Account has been posted to the SmartFolio Portal. Notifications will be sent to your Email Account and posted to your SmartFolio Portal. You will ensure that your Email Account is and remains at all times operational and able to receive Notifications and other communications from BMO Nesbitt Burns, and you will immediately inform us of any changes to your email address by contacting the BMO SmartFolio client contact centre. You agree you have received the Notification when it is posted to the SmartFolio Portal, regardless of whether your Email Account received the Notification, is operational or accessible by you.
- (c) We are not obligated to deliver Account Information to you by any means other than making the Account Information accessible to you on the SmartFolio Portal. Nevertheless, we may in our discretion deliver Account Information and other communications to you by other means, such as by email, postal mail or facsimile transmission, to your Email Account or postal address or fax number specified in your Account Application.
- (d) Posting Account Information to the SmartFolio Portal is an electronic delivery method. Should you revoke your consent to electronic delivery, we may either, in our sole discretion:
  - (i) charge you an additional fee; or
  - (ii) request that you close your SmartFolio Account and transfer your SmartFolio Account to another institution, in accordance with section 1.4(i) of this Account Agreement.
- (e) Account Information made accessible to you on the SmartFolio Portal will be deemed to be delivered to and received by you when they are first made accessible to you on the SmartFolio Portal, regardless of whether or when you actually access, read, download or print the Account Information or related Notifications. Notifications and Account Information sent to your Email Account will be deemed to be delivered to and received by you when they are sent, regardless of whether and when you actually receive, access, retrieve, or read the Notifications and Account Information.
- (f) Your Account Information and Documents, other than alerts and notices, will be available on the SmartFolio Portal for a period of not less than 18 months after first published.
- (g) You hereby agree that SmartFolio Portal and the Email Account have been furnished for the purpose of receiving electronic versions of Account Information and Notifications. All Account Information and Notifications delivered or deemed to be delivered to you as set forth above will constitute original, written documents signed by BMO Nesbitt Burns for the purposes of all applicable laws. In any legal proceedings, our records will be conclusive proof, in the absence of evidence to the contrary, of the date on which:
  - (i) Account Information was first made accessible to you on the SmartFolio Portal;
  - (ii) you accessed the SmartFolio Portal or particular Account Information; and
  - (iii) email messages and attachments (including Notifications and other documents and information) were sent to your Email Account.
- (h) You hereby agree to release, hold harmless, defend and indemnify BMO Nesbitt Burns and its agents, contractors and employees from any and all claims, losses, suits or damages which may in any manner arise out of the transmission through the internet of Confidential Information, any inaccuracies contained in such Confidential Information, or any subsequent use of such Confidential Information, whether authorized or unauthorized, by the intended or unintended recipient or your access to or use of Confidential Information related to your SmartFolio Account.

## 1.26 Credit report

You hereby authorize BMO Nesbitt Burns to obtain any credit reports concerning you required by BMO Nesbitt Burns for identity verification in connection with the establishment or operation of your SmartFolio Account.

## 1.27 Electronic Notifications from BMO SmartFolio

- (a) (BMO Nesbitt Burns will send you Notifications to your Email Account, and in some circumstances also by posting the Notifications on your SmartFolio Portal, alerting you to matters related to your SmartFolio Account. Notifications may include:
  - (i) alerts advising you of information required to manage and administer your SmartFolio Account;
  - (ii) corporate actions that need your attention;
  - (iii) market, stock and news alerts related to your SmartFolio Account;
  - (iv) alerts advising you that Account Information has been posted to the SmartFolio Portal;
  - (v) alerts reminding you to update your information related to your SmartFolio Account; and
  - (vi) alerts reminding you take steps required to maintain your SmartFolio Account.
- (b) You consent and acknowledge that receipt of Notifications at your Email Account and posting of Account Information to your SmartFolio Portal are a mandatory and integral part of your SmartFolio Account.
- (c) Any notice or communication to you by BMO Nesbitt Burns not described above may be given by email to your Email Account, prepaid mail or facsimile to any address of record associated with your SmartFolio Account; or delivered via the SmartFolio Portal or personally to you (including by commercial courier) to any such address of record.
- (d) Any notice or communication to you by BMO Nesbitt Burns shall be deemed to have been received, if:
  - (i) mailed, on the second business day after mailing;
  - (ii) sent by email, facsimile, or posted on the SmartFolio Portal, on the day sent or,
  - (iii) delivered, when delivered.

If there is more than one Client, notice may be given to any one or more of them and any notice so given shall bind all of the Clients. Nothing in this section shall be interpreted as requiring BMO Nesbitt Burns to give any notice to the Client which is not otherwise required to be given by BMO Nesbitt Burns.

## 1.28 Capacity

You represent that you have the power and capacity to enter into the SmartFolio Account Contracts and perform your obligations hereunder.

## 1.29 Not a broker, etc.

You hereby represent that unless so indicated on the Account Application, you are not:

- (a) an employee of BMO Nesbitt Burns;
- (b) a BMO Integrated Employee, or
- (c) a partner, director or employee of a member, member firm or member corporation of any stock exchange or a non-member broker or investment dealer.

## 1.30 General

- (a) The SmartFolio Account Contracts shall be construed in conjunction with any other agreements between BMO Nesbitt Burns and you in connection with your SmartFolio Account, provided that, to the extent necessary, the terms and provisions of the SmartFolio Account Contracts shall supersede the terms and provisions of such other agreements, and provided further that the SmartFolio Account Contracts shall in no way limit or restrict any rights of BMO Nesbitt Burns under any such other agreements. You may not waive or change any of the terms and conditions of the SmartFolio Account Contracts without the prior written approval of a duly authorized officer of BMO Nesbitt Burns.

- (b) If any statute or any statutory regulation or any bylaw, rule, regulation, policy or custom of the Regulatory Authorities is enacted, made, amended or otherwise changed with the result that any term or condition of the SmartFolio Account Contracts is, in whole or in part, invalid, then such term or condition will be deemed to be varied or superseded to the extent necessary to give effect to such statute, statutory regulation, by-law, rule, regulation, policy or custom.
- (c) Notwithstanding anything to the contrary herein, the SmartFolio Account Contracts may be amended at any time by BMO Nesbitt Burns upon providing you with thirty (30) days' notice. BMO Nesbitt Burns will notify you of any changes by posting notice of such changes on the SmartFolio Portal or by sending a notice to your Email Account.
- (d) No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any proceeding or subsequent breach or default.
- (e) The SmartFolio Account Contracts shall enure to the benefit of, and shall be binding upon, BMO Nesbitt Burns and you and our respective personal representatives, heirs, liquidators, successors and assigns. The SmartFolio Account Contracts will continue in full force and effect notwithstanding your death, disability or incompetency, in which case the SmartFolio Account will continue to be administered in accordance with the Investment Policy Statement in effect as of the date of the your death, disability or incompetency, and elsewhere until such time as BMO Nesbitt Burns receives instructions from, or this SmartFolio Account Contract is terminated by, your authorized estate representative or legal representative. BMO Nesbitt Burns has the right to refuse to act upon any instructions of your authorized estate representative or legal representative without evidence satisfactory to BMO Nesbitt Burns regarding your death, disability or incompetency and/or the authorized estate representative or legal representative authority to act. The SmartFolio Account Contracts shall survive and remain in effect notwithstanding any incidental, temporary or intermittent closing out, reopening or renumbering of any SmartFolio Account.
- (f) In the SmartFolio Account Contracts where the singular is used, it shall include the plural.
- (g) It is the express wish of the parties that the SmartFolio Account Contracts and all documents, notices and other communications relating to the operation of your SmartFolio Account be in English. Il est de la volonté expresse des parties que ce contrat et tous les documents, avis et autres communications qui concernent l'opération du Compte soient rédigés en langue anglaise.
- (h) The headings and text boxes used in the SmartFolio Account Contracts are for convenience of reference only and shall not in any way affect the interpretation of the SmartFolio Account Contracts.
- (i) The SmartFolio Account Contracts shall, with respect to each separate SmartFolio Account, be governed by and interpreted in accordance with the laws of the jurisdiction in which the branch is located where the SmartFolio Account is serviced and the federal laws of Canada applicable therein.
- (j) Whenever the SmartFolio Account Contracts entitle BMO Nesbitt Burns to alternative courses of action, BMO Nesbitt Burns shall be entitled to choose any, none or all of such alternatives in its sole and unfettered discretion.
- (k) You shall do all acts or things and execute and deliver all documents or instruments as are necessary or desirable to give effect to all Transactions in Securities for the SmartFolio Account executed by BMO Nesbitt Burns pursuant to the SmartFolio Account Contracts.
- (l) Each of the provisions contained in the SmartFolio Account Contracts is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part of thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

### **1.31 Effective time**

The SmartFolio Account Contracts will be effective and binding upon you and BMO Nesbitt Burns from the time at which BMO Nesbitt Burns approves the Account Application.

## Part Two:

### Joint Account Agreement

This Joint Account Agreement applies to SmartFolio Accounts opened by one or more Clients as co-applicants. You have indicated on your Account Application whether this Joint Account grants the other joint accountholders a Right of Survivorship. As joint accountholders have equal rights to control the Joint Account, you should carefully review this Joint Account Agreement.

#### 1.0 Joint Account Agreement

In consideration of BMO Nesbitt Burns opening or maintaining the Joint Account or Joint Accounts for each Client, each Client understands and agrees to the following terms and conditions for the operation of the Joint Account.

Except as otherwise provided in this Joint Account Agreement, all terms defined in the Account Agreement at Part One shall have the same meaning herein.

#### 2.0 Power and Authority of the Client

Each Client shall have full power and authority, acting individually or collectively, without notice to any other Client, as if such Client was the only person interested in the Joint Account, to operate the Joint Account on behalf of the other Clients, and to deposit to or withdraw from the Joint Account any cash or Securities.

#### 3.0 Reliance on Clients

BMO Nesbitt Burns may act upon any instructions of or actions by the Clients, acting individually or collectively, without instituting any further investigations into the propriety of such instructions or actions or the authority of the Client or Clients to give such instructions or to take such actions.

#### 4.0 Opening, Reclassifying or Modifying Joint Account

No Joint Account will be opened pursuant to this Joint Account Agreement or reclassified by BMO Nesbitt Burns until all of the Clients have executed and delivered any further agreement or agreements required by BMO Nesbitt Burns for the opening or reclassification of the Joint Account. Any Client acting alone has full power and authority to modify or waive any of the terms or provisions relating to the Joint Account.

#### 5.0 Liability

Each Client shall be jointly and severally and solidarily liable, without the benefits of discussion or division, for the full and timely settlement of each and all Transactions in Securities for the Joint Account, for any debit balances in the Joint Account and for any indebtedness, interest, commissions, debts, charges, expenses or other liabilities incurred by BMO Nesbitt Burns as a result of any failure by the Clients to give any notice required herein.

#### 6.1 Death or Departure of a Client

- (a) In the event of the death or departure of a Client, the surviving or remaining Clients shall immediately cause notice in writing of such death or departure to be delivered to BMO Nesbitt Burns head office in Toronto. Such Client and the estate, heirs and liquidators of such Client shall continue to be jointly and severally and solidarily liable to BMO Nesbitt Burns for any liabilities under Section 5.0 of the Joint Account Agreement incurred, on or before the notice under Section 6.0 of the Joint Account Agreement is received by BMO Nesbitt Burns.
- (b) BMO Nesbitt Burns may take such proceedings, require such documents or retain such portion of, or restrict such Transactions in Securities for, the Joint Account as BMO Nesbitt Burns may deem necessary to protect itself against any liabilities, penalties or losses in relation to the Joint Account. Unless otherwise indicated in section 17.0 of this Joint Account Agreement, upon the death or departure of a Client other than provided in this paragraph 6.0 herein, the Right of Survivorship will apply and the surviving Client(s) will continue to assume ownership of the Joint Account, including all of the rights, interests and obligations in respect of the Joint Account.

## **7.0 Alternative Courses of Action**

Whenever this Joint Account Agreement entitles BMO Nesbitt Burns to alternative courses of action, BMO Nesbitt Burns shall be entitled to choose any, none or all of such alternative courses of action in its sole unfettered discretion.

## **8.0 Organization of Joint Account**

The Clients represent that (a) each Client is entitled to receive, on demand or within a specified time period after demand, an amount equivalent to his or her proportionate interest, in whole or in part, of the value of the net assets of the Joint Account; and (b) each Client is required to make contributions in proportion to the interest each Client holds in the Joint Account for the purpose of financing the operations of the Joint Account.

## **9.0 Communications to the Clients**

BMO Nesbitt Burns may send to any one or more of the Clients communications of any kind relating to the Joint Account, including, without limitation, demands, notices, confirmations, reports and statements of account, all without notice to any other Client. Any notice or communication to the Client relating to the Joint Account will be provided by BMO Nesbitt Burns in the same ways as set out in the Account Agreement. Nothing in this Section 9.0 shall be interpreted as requiring BMO Nesbitt Burns to give any notice to any Client which is not otherwise required to be given by BMO Nesbitt Burns.

## **10.0 Headings and Plural**

The headings and text boxes used in this Joint Account Agreement are for convenience of reference only and shall not in any way affect its interpretation. In this Joint Account Agreement, where the singular is used it shall include the plural and vice versa.

## **11.0 Other Agreements**

Each client has signed and delivered to BMO Nesbitt Burns certain other agreements with BMO Nesbitt Burns in relation to the Joint Account, which agreements shall be construed in conjunction with this Joint Account Agreement in determining the terms of the Joint Account, provided that, to the extent necessary, the terms and provisions of this Joint Account Agreement shall supersede the terms and provisions of all other agreements with BMO Nesbitt Burns whether or not referred to herein, except that this Joint Account Agreement in no way limits or restricts any other rights which BMO Nesbitt Burns may have under any other agreement or agreements with any of the Clients.

## **12.0 Severability**

In the event any term or provision of this Joint Account Agreement, as amended from time to time, shall be deemed invalid or void, in whole or in part, by any Court of competent jurisdiction, the remaining terms and provisions of this Joint Account Agreement shall remain in full force and effect.

## **13.0 Successors and Assigns**

This Joint Account Agreement shall enure to the benefit of and shall be binding upon BMO Nesbitt Burns and the Clients, and their respective heirs, executors, liquidators, administrators, successors and assigns, as the case may be.

## **14.0 Governing Law**

This Joint Account Agreement shall be governed with respect to each SmartFolio Account in all respects by the laws of the jurisdiction where the BMO Nesbitt Burns' office is located that services that particular SmartFolio Account, except, where applicable in the case of a Joint Account maintained in a branch located in Quebec for a Canadian non-resident of Quebec who has designated the provincial/territorial law of his or her residence as the governing law with respect to the Right of Survivorship.

## 15.0 For Quebec Clients Only

The client acknowledges receipt of the French version of this agreement. It is the express wish of the parties, who hereby accept, that this agreement and all related documents, notices and other communications between the parties be in English. Le client reconnaît avoir reçu la présente convention en français ([https://www.bmo.com/img/smartfolio/pdf/fr/Terms\\_Fr.pdf](https://www.bmo.com/img/smartfolio/pdf/fr/Terms_Fr.pdf)). Les parties aux présentes ont expressément exigé, et acceptent, que la présente convention, tous les documents qui y sont afférents et tous les avis et autres communications entre les parties soient rédigés en langue.

## 16.0 Counterparts

This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

## 17.1 Right of Survivorship

### (a) Residents in all Provinces except Québec

With the exception of accounts operating in the Province of Quebec, the each of the surviving Client(s) of a Joint Account has a Right of Survivorship upon the death of the other Client. Where one or more of the Clients is a Quebec resident; "No Right of Survivorship" is deemed to apply to all parties. Subject to Section 6.0 of the Joint Account Agreement, upon the death of a Client, all of that Client's interest in and to any cash or Securities on the Account shall pass to the surviving Clients, and surviving Clients, or any one of them, may operate the Account in the names provided herein.

### (b) Canadian Non-Residents of Québec with a Joint Account Serviced in Québec

The Client hereby designates the provincial / territorial laws of the jurisdiction of his or her residence as the governing law with respect to the Right of Survivorship in the event of death as stipulated above.

### (c) Québec Residents and Clients deemed to have "No Rights of Survivorship"

For residents of Quebec, and where the Clients have been deemed to have "No Rights of Survivorship", upon the death of a Client, the surviving Client(s), and the estate of the deceased shall not be permitted to continue dealing with the Joint Account save for conservatory acts, until BMO Nesbitt Burns has received any and all such waivers, consents or releases required by BMO Nesbitt Burns and applicable law.

## 18.0 Acknowledgement

Each Client hereby acknowledges having received a copy of this Agreement and having read and understood this Agreement.



## Part Three

### Part A: BMO Nesbitt Burns Inc. Retirement Savings - Plan Declaration of Trust

(Specimen 527-010)

BMO Trust Company (the “**Trustee**”) will act as Trustee of a BMO Nesbitt Burns Retirement Savings Plan (the “**Plan**”) for the account holder named in the attached application (the “**Planholder**”), on the following terms and conditions. The Plan comprises the attached application and this Declaration of Trust (the “**Trust Agreement**”), and includes any locked-in or other addenda which may be added.

The Trustee may delegate the performance of any of the Trustee’s duties and responsibilities under the Plan to BMO Nesbitt Burns Inc. (the “**Agent**”). The Trustee shall, however, remain ultimately responsible for the administration of the Plan.

The terms “**spouse**” and “**common-law partner**” in the Plan have the same meanings as defined or used under the Income Tax Act (Canada) as the same maybe altered or amended from time to time (the “**Act**”). The terms Planholder, Applicant and Beneficial Owner as they appear in the Application Form or this Trust Agreement are referred to as the “**annuitant**” in the Act.

#### 1.0 Registration and purpose

The Trustee will apply for registration of the Plan under the Act and any applicable provincial legislation relating to retirement savings plans. The purpose of the Plan is to provide a retirement income for the Planholder commencing at the maturity of the Plan (as described in paragraph 7), or alternatively to transfer the assets of the Plan to a registered retirement income fund before maturity.

#### 2.0 Contributions and transfers in

Contributions and transfers of cash and other property acceptable to the Trustee may be made to the Plan by the Planholder or by the Planholder’s spouse or common-law partner. Any dishonoured cheques or other amounts that cannot be processed or are otherwise not accepted by the Trustee will not be considered to be a contribution to the Plan. The assets of the Plan (in the aggregate, the “**Fund**”) shall consist of such contributions and transfers, together with any income or gains earned or realized, and shall be held, invested and applied in accordance with this Trust Agreement. No contribution or transfer may be made after the maturity of the Plan.

#### 3.0 Contribution receipt

The Trustee shall provide the Planholder or the Planholder’s spouse or common-law partner with contribution receipts as required under the Act.

#### 4.0 Excess contributions

It is the responsibility of the Planholder or the Planholder’s spouse or common-law partner to determine whether contributions made to the Plan are deductible and do not exceed the maximum permitted without a penalty under the Act. The Trustee shall, on the instructions of the Planholder or the Planholder’s spouse or common-law partner, refund an amount to a taxpayer where the amount is paid to reduce the amount of tax otherwise payable under Part X.1 of the Act by the taxpayer.

#### 5.0 Investments

The Fund shall be invested and reinvested by the Trustee exclusively on the instructions of the Planholder (or of a person authorized by the Planholder, in a form and manner satisfactory to the Trustee, to manage the investments of the Fund), only in such investments as may be made available for the Plan from time to time by the Agent or the Trustee. The Fund may be invested in investments which require delegation, such as mutual funds, pooled funds and segregated funds. The Fund may be invested in investments which are issued by the Trustee, the Agent or their affiliates. Neither the Trustee nor the Agent (in its capacity as Agent) shall have any duty or responsibility, fiduciary or otherwise (including, for greater certainty, under any legislation or common law principles 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 Plan, except as otherwise expressly provided in this Trust Agreement. Other than its duties with

respect to the Fund expressly stated in this Trust Agreement, the Trustee shall not be required or expected to take any action with regard to an investment without prior instructions from the Planholder. The Planholder shall not sign any document or authorize any action for the Plan in the name of the Trustee or the Agent, including permitting any asset in the Fund to be used as security for a loan, without first having authorization from the Trustee. The Trustee will only accept funds in Canadian or U.S. currency. The acceptance of any other foreign currency is at the sole discretion of the Trustee. 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.

The Trustee/Agent will not allow any self-directed mortgages to be held in the Plan and the Planholder shall not attempt to hold self-directed mortgages in the Plan.

The Trustee reserves the right to refuse instructions with respect to making any investment in its absolute discretion and reserves the right to require that the Planholder provide in a manner satisfactory to it, information to establish the market value of the assets included in the investment (including but not limited to any shareholders' agreements and any audited financial statements) and information required in the Trustee's reasonable discretion to ensure compliance with the Act, applicable laws, regulations, and other rules with respect to investments (including, but not limited to, anti-money laundering legislation). The Planholder agrees not to provide any instructions or series of instructions that would cause the Plan to contravene the Act. For greater certainty, Planholder agrees not to provide any instructions or series of instructions that are contrary to its responsibilities or that would cause the Trustee to act contrary to its responsibilities as set out in this Trust Agreement. The Trustee/Agent reserve the right to refuse any investing by means of private placement. On the occasions where the Trustee/Agent permits a private placement, the Trustee/Agent must receive satisfactory information from the Planholder to establish the market value of the assets. The Trustee/Agent reserves the right to request an independent valuation of such assets, and any other details and documents of the company offering the private placement, including but not limited to any shareholders' agreements and any audited financial statements. The Trustee/Agent reserves the sole discretion to refuse to deregister assets associated with any private placement. The Planholder is responsible for any costs associated with this refusal.

To the fullest extent provided by law and despite any other provision of this Agreement, the Trustee excludes all liability arising out of or in connection with the Plan for indirect, incidental, special, or consequential damages and damages for loss of profits, revenue or savings (actual or anticipated), economic loss, loss of data or loss of goodwill (whether or not either party knew of the possibility of such damage or such damage was otherwise foreseeable).

## **6.0 Account**

The Trustee will maintain an account for the Fund showing all contributions and transfers made to the Fund, all investment transactions and investment earnings, gains and losses and all transfers and withdrawals made from the Fund. The Agent shall prepare periodic statements of the account for the Planholder in accordance with the rules, regulations and practices of the Canadian Industry Regulatory Organization.

## **7.0 Retirement income at maturity**

The Planholder may, by instructions given to the Trustee, specify the date for the maturity of the Plan and the commencement of a "retirement income" (as defined in subsection 146(1) of the Act) to be paid to the Planholder from the Plan. Such date for maturity shall not be later than the end of the calendar year in which the Planholder attains age 71 (or such other time for maturity as may be required by the Act). Any purchase of an annuity is subject to the terms of the investments under the Plan and the deduction of all proper fees, expenses, commissions and other charges. Payment of a retirement income to the Planholder must be by way of equal annual or more frequent periodic payments until such time as there is a payment in full or partial commutation of the retirement income and, where that commutation is partial, equal annual or more frequent periodic payments thereafter. The total of periodic payments made in a year under an annuity after the death of the Planholder to a successor annuitant (who was the spouse or common-law partner of the Planholder) may not exceed the total of the payments made under the annuity in a year before the death. Each annuity payable under the Plan that would otherwise become payable to a person other than the Planholder or a successor annuitant (who was the spouse or common-law partner of the Planholder) after the death of the Planholder is required to be commuted. A retirement income under the Plan may not be assigned in whole or in part. If the Planholder fails to instruct the Trustee at least 60 days prior to the end of the calendar year in which the Planholder attains age 71 (or such other time for maturity as may be required by the Act), the Trustee may in its discretion transfer the Fund to a

BMO Nesbitt Burns Inc. Registered Retirement Income Fund under which the Planholder is the annuitant. Any beneficiary designations, and/or any other pertinent information will be carried over with such transfer. It remains the responsibility of the Planholder to verify beneficiary designations and/or any other information that has been carried over with such transfer. The Trustee may in its discretion liquidate all or part of the Fund before such transfer. Any such liquidation shall be made at such prices as the Trustee shall 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 the Agent for the Agent's own account, at such price as the Trustee considers fair and proper. In the case of an RSP with a nominal balance, when the Planholder turns 71, the Trustee may liquidate and close the Plan and provide the funds to the Planholder. The statement of the Planholder's date of birth on the attached application or otherwise shall constitute a certification by the Planholder and an undertaking to furnish such further evidence of proof of age as may be required concerning the maturity of the Plan.

### **8.0 Non-qualified and prohibited investments**

The Trustee will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the Plan holds a non-qualified investment (as defined under the Act) for an RRSP. However, if the Plan acquires an investment that is a non-qualified investment or a prohibited investment (as defined under the Act) for a RRSP, or if property held in the Plan becomes a non-qualified investment or a prohibited investment for an RRSP, it is the responsibility of the planholder to file an Individual Return for Certain Taxes for RRSPs or RRIF for Tax Year 20\_\_ (Form RC339) and any other form required under the Act and pay the applicable tax under Part XI.01 of the Act.

### **9.0 Advantage extended**

If an advantage (as defined under the Act) in relation to an RRSP is extended to the Planholder or to a person who does not deal at arm's length with the Planholder, it is the responsibility of the Planholder to file an income tax return and pay the tax under Part XI.01 of the Act; except that if the advantage is extended by the Trustee (or by the Agent acting as the agent of the Trustee) or by a person with whom the trustee is not dealing at arm's length, it is the responsibility of the Trustee to file a T3GR, Group Income Tax and Information Return for RRSP, RRIF, RESP or RDSP Trusts [or any other form that is required under Act] and pay the applicable tax under Part XI.01 of the Act.

### **10.0 Withdrawals and transfers before maturity**

At any time before the maturity of the Plan, the Planholder may instruct the Trustee to make a withdrawal from the Plan or to pay or transfer on behalf of the Planholder all or part of the Fund, in accordance with subsection 146(16) of the Act, to another registered retirement savings plan, a registered retirement income fund or a registered pension plan. Any withdrawal or transfer is subject to the terms of the investments under the Plan, the withholding of any applicable tax and the deduction of all proper fees, expenses, commission and other charges. In the case where the Planholder transfers the Plan to another financial institution, or to another line of business within BMO, the Planholder is solely responsible for ensuring the new Agent is aware of any designation of beneficiaries. Further, when the minimum payment amount is determined based on the age of the Planholder's spouse, the Planholder is solely responsible for ensuring the new agent is aware of this election. In the event the Planholder seeks to transfer some, but not all, of the assets in the Plan in accordance with the provisions herein, the Trustee reserves the right to require that all assets or certain assets other than those requested by the Account Holder be transferred.

### **11.0 Breakdown of marriage or common-law partnership before maturity**

At any time before the maturity of the Plan, the Planholder may instruct the Trustee to pay or transfer on behalf of the Planholder all or part of the Fund, in accordance with subsection 146(16) of the Act, to a registered retirement savings plan or registered retirement income fund under which the Planholder's spouse or common-law partner or former spouse or common-law partner is the Planholder, where

- a) the Planholder and the Planholder's spouse or common-law partner or former spouse or common-law partner are living separate and apart; and
- b) the payment or transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the Planholder and the Planholder's spouse or common-law partner or former spouse or common-law partner in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership.

### **12.0 a) Death of Planholder before maturity (applies to Provinces & Territories except Quebec)**

The Planholder may designate (and may add, change or delete) beneficiaries of the Plan in accordance with, and in the form and manner provided by, applicable law. Where the Planholder dies before the maturity of the Plan, the Trustee shall pay or transfer the Fund in accordance with applicable law to any beneficiaries of the Plan so designated or, where no beneficiary has been so designated or the Trustee has not been notified of any beneficiary in accordance with applicable law, to the legal personal representative(s) of the Planholder. Before making such a payment or transfer, the Trustee must receive satisfactory evidence of death and such satisfactory instructions, releases, indemnities and other documents as may be required. It is the Planholder's responsibility to update any beneficiary designations should there be any changes in personal circumstances.

Where the Trustee, after making reasonable requests for instructions from the beneficiary or the legal personal representative(s), does not receive satisfactory instructions within a reasonable time, the Trustee may in its discretion pay or transfer the Fund to the beneficiary or the legal personal representative(s). The Trustee may in its discretion liquidate all or any part of the Fund before making any such payment or transfer. Any such liquidation shall be made at such prices as the Trustee shall in its discretion determine to be the fair market value of the asset 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 the Agent for the Agent's own account, at such price as the Trustee considers fair and proper. In the event the Trustee determines that it is advisable or desirable to pay the Fund into court, the Trustee shall be entitled to be indemnified out of the Fund for its costs and expenses, including legal costs, of doing so.

### **b) Death of Planholder before maturity (applies to Quebec only)**

If the Planholder wishes to name a successor account holder and/or a beneficiary (or beneficiaries), the Planholder should do so in a will or other written document that meets the requirements of the applicable legislation. On the death of the Planholder, and upon receipt of official documentation, the Trustee will distribute the property of the Plan to the legal personal representative(s) of the Planholder. The Trustee and the Agent will be fully discharged by such payment or transfer. The Planholder acknowledges that it is his/her sole responsibility to ensure that a designation or revocation is valid under the applicable legislation. Before making such a payment or transfer, the Trustee must receive satisfactory evidence of death and such satisfactory instructions, releases, indemnities and other documents as may be required. Where the Trustee, after making reasonable requests for instructions from the beneficiary or the legal personal representative(s), does not receive satisfactory instructions within a reasonable time, the Trustee may in its discretion pay or transfer the Fund to the beneficiary or the legal personal representative(s). The Trustee may in its discretion liquidate all or any part of the Fund before making any such payment or transfer. Any such liquidation shall be made at such prices as the Trustee shall in its discretion determine to be the fair market value of the asset 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 the Agent for the Agent's own account, at such price as the Trustee considers fair and proper. In the event the Trustee determines that it is advisable or desirable to pay the Fund into court, the Trustee shall be entitled to be indemnified out of the Fund for its costs and expenses, including legal costs, of doing so.

### **13.0 Transferring from another Plan**

Where amounts are transferred to the Plan from a registered pension plan or from another plan under the Act or other applicable legislation, the terms of this Plan may be subject to additional terms required under the applicable pension legislation or the Act or other applicable legislation. Such additional terms will be described in a locked-in or other addendum which will be attached to and form part of this Plan. To the extent that there is any conflict or inconsistency between the additional terms described in the addendum and this Trust Agreement and the application form, the additional terms will govern; provided always that the Plan will not be disqualified as a retirement savings plan acceptable for registration under the Act and any applicable provincial legislation.

### **14.0 Third party orders or demands**

The Trustee shall be entitled to be indemnified out of the Fund in respect of any costs, expenses, charges or liabilities whatsoever that may arise out of the Trustee's good faith compliance with any law, regulation, judgment, seizure, execution, notice or similar order or demand which lawfully imposes on the Trustee a duty to take or refrain from taking any action concerning the Plan or the Fund, or to issue payment from the Fund, with or without instructions from the

Planholder or in contradiction of instructions of the Planholder. The Trustee/Agent retains the ability to restrict trading upon receipt of an order or demand. The Trustee/Agent will not be liable for any decreases in account value during the restriction period. In order for any related restriction to be removed from the Planholder's account, the Planholder must provide proof satisfactory to the Trustee in its sole discretion, that it is no longer applicable. The Trustee may permit any duly authorized party to have access to and the right to examine and make copies of any records, documents, paper and books involving any transaction of the Plan or related to the Plan and shall similarly be entitled to indemnity out of the Fund for so doing. In the event the assets of the Fund shall be insufficient to indemnify the Trustee fully in any such regard, by establishing the Plan the Planholder agrees to indemnify and hold the Trustee harmless for any such costs, expenses, charges or liabilities.

#### **15.0 Ownership and voting rights**

The Trustee may hold any investment of the Plan in its own name, in the name of its nominee, in bearer form or in such other name as the Trustee may determine. The voting or other ownership rights attached to any investments held in the Plan may be exercised by the Planholder and the Planholder is appointed as the Trustee's agent and attorney for this purpose, to execute and deliver proxies and/or other instruments, in accordance with applicable laws.

#### **16.0 Restrictions on benefits or loans**

No advantage or loan that is conditional in any way on the existence of the Plan may be extended to the Planholder or to a person with whom the Planholder was not dealing at arm's length, other than in accordance with subsection 207.01(1) of the Act.

#### **17.0 Fees, expenses, taxes, interest and penalties**

The Trustee may charge administration and transaction fees, in such amounts and at such times as may be fixed by the Trustee and/or the Agent from time to time (the "**Trustee Fees**"), provided that the Trustee and/or the Agent shall give prior written notice to the Planholder 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 Planholder.

The Planholder acknowledges that the Agent (or an affiliate) may charge fees, spreads, commissions and expenses to the Fund in its capacity as the investment advisory firm for the Planholder (the "**Advisory Fees**"). The Planholder 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 the Agent may charge expenses incurred by the Trustee and/or the Agent in the administration of the Plan. All such expenses will, unless paid directly to the Trustee and/or Agent, be paid out of or recovered from the Fund.

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

The Trustee may, without instructions from the Planholder, 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 the Agent shall make reasonable requests for instructions from the Planholder 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 Planholder at the last address provided by the Planholder, the Trustee or the Agent does not receive satisfactory instructions from the Planholder 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 the Agent 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 the Agent for the Agent's own account, at such price as the Trustee considers fair and proper.

## 18.0 Instructions

The Trustee and the Agent shall be entitled to rely upon instructions received from the Planholder or from any person designated in writing, in accordance with applicable laws, by the Planholder to give instructions on behalf of the Planholder or from any person purporting to be the Planholder or such designated person, as if they were from the Planholder. The Trustee or the Agent may, without incurring any liability to the Planholder or any other person, decline to act upon any instruction if the instruction is not given in a timely manner, is not in writing where the Trustee or Agent requires it, is not in a form or format which the Trustee or Agent requires, or in the opinion of the Trustee or Agent is not complete; or if either of them has any doubt that the instruction has been properly authorized or accurately transmitted.

## 19.0 Amendment

The Trustee may from time to time in its discretion amend this Trust Agreement or the application form or any locked-in or other addenda which comprise the Plan by giving 30 days prior notice to the Planholder; provided however that any amendment shall not disqualify the Plan as a retirement savings plan acceptable for registration under the Act and any applicable provincial legislation.

## 20.0 Replacement of trustee

The Trustee may resign and be released and discharged from all further duties and liabilities under the Plan upon 60 days' prior written notice given to the Agent (or such shorter notice as the Agent may accept). The Agent may terminate the Trustee as trustee, and the Trustee will be released from all further duties and liabilities under the Plan, upon 60 days prior written notice given to the Trustee (or such shorter notice as the Trustee may accept). Upon the resignation or termination of the Trustee, the Agent shall appoint a successor trustee, provided that the successor trustee is acceptable under the Act. The Agent shall give the Planholder written notice of the successor trustee within 30 days of the appointment.

## 21.0 Documentation

Notwithstanding anything to the contrary herein, the Trustee may require such satisfactory instructions, releases, indemnities, tax clearance certificates, death certificates and other documents as the Trustee in its discretion deems appropriate.

## 22.0 Limitation of Liability and Indemnity

**Except for charges, taxes or penalties for which the Trustee** is liable and that cannot be charged against or deducted from the Fund in accordance with the Act, if the Trustee or the Agent is liable for:

- a) any tax, interest or penalty that may be imposed on 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 Agent shall be reimbursed or may pay any of these taxes, interest, penalties or charges out of the Fund.

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

- a) Any loss or diminution of the assets of the Plan;
- 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 Agent by the Planholder or an individual purporting to be the Planholder.



For greater certainty, in no event shall either the Trustee or its Agent have any liability to the Planholder (or to the spouse or common-law partner of the Planholder, or any beneficiary or legal personal representative of the Planholder) 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 Planholder 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 Planholder, his/her legal personal representatives and each beneficiary of this Plan will at all times indemnify and save harmless the Trustee and its Agent 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 its Agent acting or declining to act upon any instructions given to it by the Planholder and any costs or expenses of the Trustee and the Agent related thereto (including legal fees).

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

In all cases where the Trustee or the Agent 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 the Agent fully, the Planholder agrees to indemnify and hold the Trustee and the Agent harmless for any such costs, expenses, charges or liabilities.

### **23.0 Unclaimed balances**

The property of the Plan may be deemed to be abandoned or unclaimed as per the definitions of any applicable legislation. In addition to any timelines prescribed by legislation, the Trustee may, at its sole discretion, deem an account to be abandoned and any property to be unclaimed. The Trustee may, after making reasonable efforts to contact the Planholder, withdraw the abandoned amounts and may, in its discretion, liquidate part or all of the abandoned property. 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 property at the time. In the case of investments which are illiquid, or which have no readily ascertainable market value, the Trustee may in its discretion sell the investments to the Agent for the Agent's own account, at such prices as the Trustee considers fair and proper. The property, and/or the proceeds of liquidation may be remitted to the appropriate government agency. In the alternative, the Trustee may, in its sole discretion, allocate the property or proceeds of liquidation to a pooled account for dormant amounts. The terms, jurisdiction, and other details of this account will be determined by the Trustee, and in the Trustee's sole discretion. The Trustee may also, in its sole discretion, allocate the property or proceeds of liquidation to an existing account in the Planholder's name, or to a new account which would be opened on the Planholder's behalf. The Planholder may at any time, or as prescribed in any applicable legislation, instruct the Trustee to return the property/proceeds of liquidation to the Planholder's control and/or possession. The Trustee and/or the Agent may charge reasonable expenses incurred in the administration of this process as set out in section 17, hereto. As part of the Trustee's program to manage unclaimed property, the Trustee may engage a third party in order to contact the Planholder. The Planholder authorizes the Trustee to take this action and share the personal information of the Planholder reasonably required to contact the Planholder.

### **24.0 Foreign pension transfers**

The acceptance of any foreign pension transfer is at the sole discretion of the Trustee. Where the Planholder transfers a foreign pension to an account with the Trustee/Agent, the Planholder is solely responsible for ensuring the transfer qualifies and adheres to any applicable legislation, including the Income Tax Act (Canada). Any amounts transferred may, in accordance with the applicable foreign legislation, be locked-in for a prescribed period of time. The Planholder acknowledges that he/she is solely responsible for any foreign and domestic tax consequences in relation to the transferred amounts. The Planholder is responsible for determining eligibility for these transfers and for consulting with their pension manager and a qualified international tax advisor. In the case of a UK pension transfer, if the Planholder has a 'relevant transfer fund' (as defined by HM Revenue & Customs), the Planholder will not be allowed to transfer-in said relevant transfer fund until their 55<sup>th</sup> birthday.



### **25.0 Notice**

Any notice given by the Trustee to the Planholder regarding the Plan (including this Trust Agreement) shall be sufficiently given if it is delivered to the Planholder personally, or if it is mailed, postage prepaid, to the Planholder at the address set out in the attached application or the last address provided by the Planholder. If mailed, any such notice shall be deemed to have been delivered by the tenth business day following the day of mailing.

### **26.0 Binding**

The terms of this Trust Agreement shall be binding upon the beneficiaries, heirs, executors, administrators and assigns of the Planholder and upon the respective successors and assigns of the Trustee and the Agent.

### **27.0 Governing law**

This Trust Agreement shall be governed by and interpreted in accordance with the laws of the jurisdiction in Canada in which the branch of the Agent (or an affiliate) is located where the account is maintained. If any provision of legislation referred to in this Agreement is renumbered due to a change in law, then that reference is to be considered to be to the provision as renumbered.

## Part Three

### Part B: BMO Nesbitt Burns Inc. Retirement Income Fund - Declaration of Trust

(Specimen 089)

BMO Trust Company (the “**Trustee**”) will act as trustee of a BMO Nesbitt Burns Retirement Income Fund (the “**Plan**”) for the applicant named in the attached application (the “**Planholder**”), on the following terms and conditions. The Plan comprises the attached application and this Declaration of Trust ( the “**Trust Agreement**”), and includes any locked-in or other addenda which may be added.

The Trustee may delegate the performance of any of the Trustee’s duties and responsibilities under the Plan to BMO Nesbitt Burns Inc. (the “**Agent**”). The Trustee shall, however, remain ultimately responsible for the administration of the Plan. The terms “**spouse**” and “**common-law partner**” in the Plan have the same meanings as defined or used under the Income Tax Act (Canada), as the same may be altered or amended from time to time (the “**Act**”). The terms Planholder, Applicant and Beneficial Owner as they appear in the Application Form or this Trust Agreement are referred to as the “**annuitant**” in the Act.

#### 1.0 Registration and purpose

The Trustee will apply for registration of the Plan under the Act and any applicable provincial legislation relating to retirement income funds. The purpose of the Plan is to make payments from the Plan, in accordance with paragraph 5, to the Planholder and, where it is elected, to the Planholder’s spouse or common-law partner after the Planholder’s death. For every year after the year in which the Plan is established, a payment at least equal to the minimum amount must be made, until the Plan is fully paid out.

#### 2.0 Transfers to the Plan

The Trustee will accept only transfers of cash and other property acceptable to the Trustee, made by the Planholder or by the Planholder’s spouse or common-law partner, from:

- a) a registered retirement savings plan or another registered retirement income fund under which the Planholder is the annuitant;
- b) a registered pension plan of which the Planholder is a member (within the meaning assigned by subsection 147.1(1) of the Act) or a deferred profit-sharing plan of which the Planholder is a member;
- c) the Planholder to the extent only that the amount of the consideration was an amount described in subparagraph 60(l) (v) of the Act;
- d) a registered retirement income fund or a registered retirement savings plan of the Planholder’s spouse or common-law partner or former spouse or common-law partner under a decree, order or judgment of a competent tribunal or under a written separation agreement, relating to a division of property between the Planholder and the Planholder’s spouse or common-law partner or former spouse or common-law partner in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership; or
- e) a registered pension plan in accordance with subsection 147.3(5) or (7) of the Act or a specified pension plan in circumstances to which subsection 146(21) of the Act applies; or a pooled registered pension plan in accordance with subsection 147.5(21) of the Act.

The assets of the Plan (in the aggregate, the “**Fund**”) shall consist of such transfers, together with any income or gains earned or realized, and shall be held, invested and applied in accordance with this Trust Agreement.

#### 3.0 Investments

The Fund shall be invested and reinvested by the Trustee exclusively on the instructions of the Planholder (or of a person authorized by the Planholder, in a form and manner satisfactory to the Trustee or the Agent, to manage the investments of the Fund), only in such investments as may be made available for the Plan from time to time by the Agent or the Trustee. The Fund may be invested in investments which require delegation, such as mutual funds, pooled funds and segregated funds. The Fund may be invested in investments which are issued by the Trustee, the Agent or their affiliates.

To the fullest extent provided by law and despite any other provision of this Agreement, the Trustee excludes all liability arising out of or in connection with the Plan for indirect, incidental, special or consequential damages and damages for loss of profits, revenue or savings (actual or anticipated), economic loss, loss of data or loss of goodwill (whether or not either party knew of the possibility of such damage or such damage was otherwise foreseeable). Neither the Trustee nor the Agent (in its capacity as Agent) shall have any duty or responsibility, fiduciary or otherwise (including, for greater certainty, under any legislation or common law principles 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 Plan, except as otherwise expressly provided in this Trust Agreement. The Trustee shall not be required or expected to take any action with regard to an investment without prior instructions from the Planholder. The Planholder shall not sign any document or authorize any action for the Plan in the name of the Trustee or the Agent, including permitting any asset in the Fund to be used as security for a loan, without first having authorization from the Trustee. 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.

The Trustee reserves the right to refuse instructions with respect to making any investment in its absolute discretion and reserves the right to require that the Planholder provide in a manner satisfactory to it, information to establish the market value of the assets included in the investment (including but not limited to any shareholders' agreements and any audited financial statements) and information required in the Trustee's reasonable discretion to ensure compliance with the Act, applicable laws, regulations, and other rules with respect to investments (including, but not limited to, anti-money laundering legislation). The Planholder agrees not to provide any instructions or series of instructions that would cause the Plan to contravene the Act. For greater certainty, Planholder agrees not to provide any instructions or series of instructions that are contrary to its responsibilities or that would cause the Trustee to act contrary to its responsibilities as set out in this Trust Agreement. The Trustee/Agent reserve the right to refuse any investing by means of private placement. On the occasions where the Trustee/Agent permits a private placement, the Trustee/Agent must receive satisfactory information from the Planholder to establish the market value of the assets. The Trustee/Agent reserves the right to request an independent valuation of such assets, and any other details and documents of the company offering the private placement, including but not limited to any shareholders' agreements and any audited financial statements. The Trustee/Agent reserves the sole discretion to refuse to deregister assets associated with any private placement. The Planholder is responsible for any costs associated with this refusal.

#### **4.0 Account**

The Trustee will maintain an account for the Fund showing all transfers made to the Fund, all investment transactions and investment earnings, gains and losses and all transfers and payments made from the Fund. The Agent shall prepare periodic statements of the account for the Planholder in accordance with the rules, regulations and practices of the Canadian Industry Regulatory Organization.

#### **5.0 Payments**

Payments must begin no later than the first year after the calendar year in which the Plan is established. For every year following the calendar year in which the Plan is established, the minimum amount is calculated by multiplying the fair market value of the Fund at the beginning of the year by a factor prescribed under the Act which corresponds to the Planholder's age in whole years at the beginning of the year (or the age the Planholder would have been if he or she had been alive then). However, until the first payment has been made from the Plan, the Planholder may elect to use a factor prescribed under the Act which corresponds to the age of the Planholder's spouse or common-law partner in whole years at the beginning of the year (or the age the spouse or common-law partner would have been if he or she had been alive then). For the calendar year in which the Plan is established, the minimum amount is zero. The amount and frequency of the payment or payments in respect of any year shall be as instructed by the Planholder on the application form or otherwise. The Planholder may change the amount and frequency of the payment or payments or request additional payments by instructing the Trustee. If the Planholder does not give instructions regarding the payment or payments to be made in a year or if the payment or payments as instructed are less than the minimum amount for the year, the Trustee shall make such payment or payments as are necessary so that the minimum amount for that year is paid to the Planholder. If the Planholder provided instructions regarding the amount and frequency of payments in a prior year, the Trustee or the Agent may continue to apply these instructions to the payment of future amounts (assuming that these instructions remain acceptable under the applicable legislation and that the Planholder does not

provide any new instructions). A payment cannot be greater than the value of the Fund immediately before the time of the payment. Where there is insufficient cash in the Fund at any time to make a payment, the Trustee or the Agent shall make reasonable requests for instructions from the Planholder 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 Planholder at the last address provided by the Planholder, the Trustee or the Agent does not receive satisfactory instructions from the Planholder 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. 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 the Agent for the Agent's own account, at such price as the Trustee considers fair and proper. No payment from the Plan may be assigned in whole or in part. The statement of the date of birth of the Planholder and/or the Planholder's spouse or common-law partner on the attached application or otherwise shall constitute a certification by the Planholder and an undertaking to furnish such further evidence of proof of age as may be required.

### **6.0 Electing spouse or common-law partner as successor annuitant**

At any time, the Planholder may elect for his or her spouse or common-law partner to continue to receive the payments in accordance with paragraph 5 after the Planholder's death, until the Plan is fully paid out. The Planholder may make this election under a will or by naming his or her spouse or common-law partner as the successor annuitant under the Plan. If the Planholder has not made this election, the Trustee may continue to make the payments to the Planholder's spouse or common-law partner as successor annuitant after the Planholder's death, as long as the Planholder's legal representative(s) requests it and gives the Trustee satisfactory evidence of consent and gives such satisfactory instructions, releases, indemnities and other documents as may be required.

### **7.0 Transfers from the Plan**

The Planholder may at any time give the Trustee instructions, together with all information necessary for the continuance of the Fund, to transfer all or part of the Fund to another carrier of a registered retirement income fund of the Planholder, provided that in the event the Planholder seeks to transfer some, but not all, of the assets in the Fund in accordance with the provisions herein, the Trustee reserves the right to require that all assets or certain assets other than those requested by the Planholder be transferred and the Trustee shall retain an amount equal to the lesser of:

- a) the fair market value of such portion of the Fund as would, if the fair market value does not decline after the transfer, be sufficient to ensure that the minimum amount under the Fund for the year in which the transfer is made may be paid to the Planholder in the year, and
- b) the fair market value of the Fund.

In the case where the Planholder transfers the Plan to another financial institution, or to another line of business within BMO, the Planholder is solely responsible for ensuring the new Agent is aware of any designation of beneficiaries. Further, when the minimum payment amount is determined based on the age of the Planholder's spouse, the Planholder is solely responsible for ensuring the new agent is aware of this election.

### **8.0 Non-qualified and prohibited investments**

The Trustee will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the Plan holds a non-qualified investment (as defined under the Act) for a RRIF. However, if the Plan acquires an investment that is a non-qualified investment or a prohibited investment (as defined under the Act) for a RRIF, or if property held in the Plan becomes a non-qualified investment or a prohibited investment for a RRIF, it is the responsibility of the holder to file an Individual Return for Certain Taxes for RRSPs or RRIFs for Tax Year 20 (Form RC339) [or any other form that is required under the Income Tax Act Canada] and pay the applicable tax under Part XI.01 of the Act.

### **9.0 Advantage extended**

If an advantage (as defined under the Act) in relation to a RRIF is extended to the Planholder or to a person who does not deal at arm's length with the Planholder, it is the responsibility of the Planholder to file an income tax return and pay the tax under Part XI.01 of the Act; except that if the advantage is extended by the Trustee (or by the Agent) or by a person with whom the Trustee is not dealing at arm's length, it is the responsibility of the Trustee to file a T3GR, Group Income Tax and Information Return for RRSP, RRIF, RESP or RDSP Trusts [or any other form that is required under the Income Tax Act Canada] and pay the applicable tax under Part XI.01 of the Act.

## **10.0 Breakdown of marriage or common-law partnership**

The Planholder may instruct the Trustee, at any time, to transfer all or part of the Fund, in accordance with paragraph 146.3(14)(b) of the Act, to a registered retirement income fund or registered retirement savings plan of the Planholder's spouse or common-law partner or former spouse or common-law partner, under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the Planholder and the Plan holder's spouse or common-law partner or former spouse or common-law partner in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership.

### **11.0 a) Death of Planholder (applies to Provinces & Territories except Quebec)**

The Planholder may designate (and may add, change or delete) beneficiaries of the Plan in accordance with, and in the form and manner provided by, applicable law. In the event of the death of the Planholder, the Trustee shall pay or transfer the Fund in accordance with applicable law to any beneficiaries of the Plan so designated or, where no beneficiary has been so designated or the Trustee has not been notified of any beneficiary in accordance with applicable law, to the legal personal representative(s) of the Planholder. Before making such a payment or transfer, the Trustee must receive satisfactory evidence of death and such satisfactory instructions, releases, indemnities and other documents as may be required. Where the Trustee, after making reasonable requests for instructions from the beneficiary or the legal personal representative(s), does not receive satisfactory instructions within a reasonable time, the Trustee may in its discretion pay or transfer the Fund to the beneficiary or the legal personal representative(s). The Trustee may in its discretion liquidate all or any part of the Fund before making any such payment or transfer. Any such liquidation shall be made at such prices as the Trustee shall 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 the Agent for the Agent's own account, at such price as the Trustee considers fair and proper. In the event the Trustee determines that it is advisable or desirable to pay the Fund into court, the Trustee shall be entitled to be indemnified out of the Fund for its costs and expenses, including legal costs, of doing so.

### **11.0 b) Death of Planholder (applies to Quebec only)**

If the Plan Holder wishes to name a successor account holder and/or a beneficiary (or beneficiaries), the account holder should do so in a will or other written document that meets the requirements of the applicable legislation. On the death of the Plan Holder, and upon receipt of official documentation, the Trustee will distribute the property of the Plan to the legal personal representative(s) of the Plan Holder. The Trustee and the Agent will be fully discharged by such payment or transfer. The Plan Holder acknowledges that it is his/her sole responsibility to ensure that a designation or revocation is valid under the applicable legislation. Before making such a payment or transfer, the Trustee must receive satisfactory evidence of death and such satisfactory instructions, releases, indemnities and other documents as may be required. Where the Trustee, after making reasonable requests for instructions from the beneficiary or the legal personal representative(s), does not receive satisfactory instructions within a reasonable time, the Trustee may in its discretion pay or transfer the Fund to the beneficiary or the legal personal representative(s). The Trustee may in its discretion liquidate all or any part of the Fund before making any such payment or transfer. Any such liquidation shall be made at such prices as the Trustee shall 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 the Agent for the Agent's own account, at such price as the Trustee considers fair and proper. In the event the Trustee determines that it is advisable or desirable to pay the Fund into court, the Trustee shall be entitled to be indemnified out of the Fund for its costs and expenses, including legal costs, of doing so.

## **12.0 Transferring from another Plan**

Where amounts are transferred to the Plan from a registered pension plan or from another source as permitted under the Act, in accordance with paragraph 2, the terms of this Plan may be subject to additional terms required under the applicable pension legislation or the Act or other applicable legislation. Such additional terms will be described in a locked-in or other addendum which will be attached to and form part of this Plan. To the extent that there is any conflict or inconsistency between the additional terms described in the addendum and this Trust Agreement, the additional terms will govern; provided always that the Plan will not be disqualified as a retirement income fund acceptable for registration under the Act and any applicable provincial legislation.

### 13.0 Third party orders or demands

The Trustee shall be entitled to be indemnified out of the Fund in respect of any costs, expenses, charges or liabilities whatsoever that may arise out of the Trustee's good faith compliance with any law, regulation, judgment, seizure, execution, notice or similar order or demand which lawfully imposes on the Trustee a duty to take or refrain from taking any action concerning the Plan or the Fund, or to issue payment from the Fund, with or without instructions from the Planholder or in contradiction of instructions of the Planholder. The Trustee/Agent retains the ability to restrict trading upon receipt of an order or demand. The Trustee/Agent will not be liable for any decreases in account value during the restriction period. In order for any related restriction to be removed from the Planholder's account, the Planholder must provide proof satisfactory to the Trustee in its sole discretion, that it is no longer applicable. The Trustee may permit any duly authorized party to have access to and the right to examine and make copies of any records, documents, paper and books involving any transaction of the Plan or related to the Plan and shall similarly be entitled to indemnity out of the Fund for so doing. In the event the assets of the Fund shall be insufficient to indemnify the Trustee fully in any such regard, by establishing the Plan the Planholder agrees to indemnify and hold the Trustee harmless for any such costs, expenses, charges or liabilities.

### 14.0 Ownership and voting rights

The Trustee may hold any investment of the Plan in its own name, in the name of its nominee, in bearer form or in such other name as the Trustee may determine. The voting or other ownership rights attached to any investments held in the Plan may be exercised by the Planholder and the Planholder is appointed as the Trustee's agent and attorney for this purpose, to execute and deliver proxies and/or other instruments, in accordance with applicable laws.

### 15.0 Fees, expenses, taxes, interest and penalties

The Trustee may charge administration and transaction fees, in such amounts and at such times as may be fixed by the Trustee and/or the Agent from time to time (the "**Trustee Fees**"), provided that the Trustee and/or the Agent shall give prior written notice to the Planholder 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 Planholder.

The Planholder acknowledges that the Agent (or an affiliate) may charge fees, spreads, commissions and expenses to the Fund in its capacity as the investment advisory firm for the Planholder (the "**Advisory Fees**"). The Planholder 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 the Agent may charge expenses incurred by the Trustee and/or the Agent in the administration of the Plan. All such expenses will, unless paid directly to the Trustee and/or Agent, be paid out of or recovered from the Fund, except for taxes, interest and penalties imposed on the Trustee under the Act.

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

The Trustee may, without instructions from the Planholder, 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 the Agent shall make reasonable requests for instructions from the Planholder 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 Planholder at the last address provided by the Planholder, the Trustee or the Agent does not receive satisfactory instructions from the Planholder 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 the Agent 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 the Agent for the Agent's own account, at such price as the Trustee considers fair and proper.

## 16.0 Instructions

The Trustee and the Agent shall be entitled to rely upon instructions received from the Planholder or from any person designated in writing, in accordance with applicable laws, by the Planholder to give instructions on behalf of the Planholder or from any person purporting to be the Planholder or such designated person, as if they were from the Planholder. The Trustee or the Agent may, without incurring any liability to the Planholder or any other person, decline to act upon any instruction if the instruction is not given in a timely manner, is not given in writing where the Trustee or Agent requires it, is not in a form or format which the Trustee or Agent requires, or in the opinion of the Trustee or Agent is not complete; or if either of them has any doubt that such instruction has been properly authorized or accurately transmitted.

## 17.0 Limitation of Liability and Indemnity

Except for charges, taxes or penalties for which the Trustee is liable and that cannot be charged against or deducted from the Fund in accordance with the Act, if the Trustee or the Agent is liable for:

- a) any tax, interest or penalty that may be imposed on 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 Agent shall be reimbursed or may pay any of these taxes, interest, penalties or charges out of the Fund.

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

- a) Any loss or diminution of the assets of the Plan;
- 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 Agent by the Planholder or an individual purporting to be the Planholder.

For greater certainty, in no event shall either the Trustee or its Agent have any liability to the Planholder (or to the spouse or common-law partner of the Planholder, or any beneficiary or legal personal representative of the Planholder) 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 Planholder 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 Planholder, his/her legal personal representatives and each beneficiary of this Plan will at all times indemnify and save harmless the Trustee and its Agent 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 its Agent acting or declining to act upon any instructions given to it by the Planholder and any costs or expenses of the Trustee and the Agent related thereto (including legal fees).

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



In all cases where the Trustee or the Agent 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 the Agent fully, the Planholder agrees to indemnify and hold the Trustee and the Agent harmless for any such costs, expenses, charges or liabilities.

### **18.0 Documentation**

Notwithstanding anything to the contrary herein, the Trustee may require such satisfactory instructions, releases, indemnities, tax clearance certificates, death certificates and other documents as the Trustee in its discretion deems appropriate.

### **19.0 Unclaimed balances**

The property of the Plan may be deemed to be abandoned or unclaimed as per the definitions of any applicable provincial legislation. In addition to any timelines prescribed by legislation, the Trustee may, at its sole discretion, deem an account to be abandoned and any property to be unclaimed. The Trustee may, after making reasonable efforts to contact the Planholder, withdraw the abandoned amounts and may, in its discretion, liquidate part or all of the abandoned property. 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 property at the time. In the case of investments which are illiquid or which have no readily ascertainable market value, the Trustee may in its discretion sell the investments to the Agent for the Agent's own account, at such prices as the Trustee considers fair and proper. The property, and/or the proceeds of liquidation may be remitted to the appropriate government agency. In the alternative, the Trustee may, in its sole discretion, allocate the property or proceeds of liquidation to a pooled account for dormant amounts. The terms, jurisdiction, and other details of this account will be determined by the Trustee, and in the Trustee's sole discretion. The Trustee may also, in its sole discretion, allocate the property or proceeds of liquidation to an existing account in the Planholder's name, or to a new account which would be opened on the Planholder's behalf. The Planholder may at any time, or as prescribed in any applicable legislation, instruct the Trustee to return the property/proceeds of liquidation to the Planholder's control and/or possession. The Trustee and/or the Agent may charge reasonable expenses incurred in the administration of this process as set out in section 15, hereto. As part of the Trustee's program to manage unclaimed property, the Trustee may engage a third party in order to contact the Planholder. The Planholder authorizes the Trustee to take this action and share the personal information of the Planholder reasonably required to contact the Planholder.

### **20.0 Amendment**

The Trustee may from time to time in its discretion amend this Trust Agreement or the application form or any locked-in or other addenda which comprise the Plan by giving 30 days prior notice to the Planholder; provided however that any amendment shall not disqualify the Plan as a retirement income fund acceptable for registration under the Act and any applicable provincial legislation.

### **21.0 Replacement of Trustee**

The Trustee may resign and be released and discharged from all further duties and liabilities upon 60 days' prior written notice given to the Agent (or such shorter notice as the Agent may accept). The Agent may terminate the Trustee as trustee of the Plan upon 60 days prior written notice given to the Trustee (or such shorter notice as the Trustee may accept). Upon the resignation or termination of the Trustee, the Agent shall appoint a successor trustee, provided that the successor trustee is acceptable under the Act. The Agent shall give the Planholder written notice of the successor trustee within 30 days of the appointment.

### **22.0 Notice**

Any notice given by the Trustee to the Planholder regarding the Plan (including this Trust Agreement) shall be sufficiently given if it is delivered to the Planholder personally, or if it is mailed, postage prepaid, to the Planholder at the address set out in the attached application or the last address provided by the Planholder. If mailed, any such notice shall be deemed to have been delivered by the tenth business day following the day of mailing.

### **23.0 Binding**

The terms of this Trust Agreement shall be binding upon the beneficiaries, heirs, executors, administrators and assigns of the Planholder and upon the respective successors and assigns of the Trustee and/or the Agent.

#### **24.0 Governing law**

This Trust Agreement shall be governed by and interpreted in accordance with the laws of the jurisdiction in Canada in which the branch of the Agent (or an affiliate) is located where the account is maintained. If any provision of legislation referred to in this Agreement is renumbered due to a change in law, then that reference is to be considered to be to the provision as renumbered.

## Part Three

### Part C: BMO Nesbitt Burns Tax-Free Savings Account Declaration of Trust

(Specimen #TFSA 05270012)

BMO Trust Company (the “**Trustee**”) will act as trustee of an arrangement for a BMO Nesbitt Burns tax-free savings account (“**TFSA**”), as defined under the Income Tax Act (Canada) (the “**Act**”), with the holder named in the attached application or, at or after the death of the holder, with the spouse or common law partner who is the holder’s survivor designated in accordance with the first paragraph of section 15 (referred to in section 15 as “**Successor Account Holder**”). The holder and, after the holder’s death, the survivor is known as the “**Account Holder**”. This arrangement for a TFSA is known as the “**Account**”. The Account is governed by the terms and conditions of this Declaration of Trust (the “**Trust Agreement**”), the attached application and applicable law including, without limitation, the Act.

The Trustee may delegate the performance of any of the Trustee’s tasks, duties and responsibilities in respect of the Account to BMO Nesbitt Burns Inc. (the “**Agent**”). References to “**Trustee**” herein shall also refer to the Agent where the Agent is acting as delegate of the Trustee, except that the Trustee shall, however, remain ultimately responsible for the administration of the Account.

The terms spouse, common-law partner and survivor have the same meanings as defined or used under the Act, as it may be altered or amended from time to time. The Account Holder is referred to as the “**holder**” in the Act.

#### 1. Registration

The Trustee will file an election to register this qualifying arrangement as a TFSA under the Act and any applicable provincial legislation relating to the TFSA. The Minister of National Revenue may decline to register the Account for any reason, including but not limited to, the filing of incorrect or incomplete personal information. The Account Holder has up to **February 14** in the year following enrollment to provide any missing or incomplete information. If the Account Holder fails to do so, the arrangement will be considered an unregistered account and dealt with in accordance with section 18 hereof.

#### 2. Account Holder

The Account Holder must be an individual (and not a trust), who is at least 18 years of age. The statement of the Account Holder’s date of birth on the attached application or otherwise shall constitute a certification by the Account Holder and an undertaking to furnish such further evidence of proof of age as may be required by the Trustee.

#### 3. Contributions and transfers in

Contributions and transfers (from another TFSA) of cash and other property accepted by the Trustee may be made to the Account by the Account Holder (but no one other than the Account Holder may make a contribution). Any dishonoured cheques or other amounts that cannot be processed or are otherwise not accepted by the Trustee will not be considered to be a contribution to the Account. The property of the Account (in the aggregate, the “**Fund**”) shall consist of such contributions and transfers, together with any income or gains earned or realized, and shall be held in trust by the Trustee and used, invested or otherwise applied, in accordance with this Trust Agreement, for the purpose of the Trustee making distributions out of or under the Account (in accordance with section 12) to the Account Holder.

#### 4. Investments

The Account shall be invested and reinvested by the Trustee exclusively on the instructions of the Account Holder (or of a person authorized by the Account Holder, in a form and manner satisfactory to the Trustee, to manage the investments of the Account). The Account may be invested in investments which require delegation, such as mutual funds, pooled funds and segregated funds. The Account may be invested in investments which are issued by the Trustee, the Agents or any of their affiliates.

To the fullest extent provided by law and despite any other provision of this Trust Agreement, the Trustee excludes all liability arising out of or in connection with the TFSA for indirect, incidental, special, or consequential damages and damages for loss of profits, revenue or savings (actual or anticipated), economic loss, loss of data or loss of goodwill (whether or not either party knew of the possibility of such damage or such damage was otherwise foreseeable).

BMO Nesbitt Burns Inc. (or an affiliate) will be the investment advisory firm for the Account Holder. In its capacity as investment advisory firm for the Account Holder, BMO Nesbitt Burns Inc. (or an affiliate) will be governed by the BMO Nesbitt Burns Inc. Client Account Agreement entered into with the Account Holder and by the applicable laws, rules and regulations of the applicable securities regulatory authorities, including the Canadian Industry Regulatory Organization and the Toronto Stock Exchange.

Neither the Trustee nor the Agent (in its capacity as Agent) shall have any duty or responsibility, fiduciary or otherwise (including, for greater certainty, under any legislation or common law principles 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 Account, except as otherwise expressly provided in this Trust Agreement. Other than its duties with respect to the Account or its property as expressly stated in this Trust Agreement, the Trustee shall not be required or expected to take any action with regard to an investment without prior instructions from the Account Holder.

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

The Trustee will only accept funds in Canadian or U.S. currency. The acceptance of any other foreign currency is at the sole discretion of the Trustee. 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.

The Trustee reserves the right to refuse instructions with respect to making any investment in its absolute discretion and reserves the right to require that the Account Holder provide in a manner satisfactory to it, information to establish the market value of the assets included in the investment (including but not limited to any shareholders' agreements and any audited financial statements) and information required in the Trustee's reasonable discretion to ensure compliance with the Act, applicable laws, regulations, and other rules with respect to investments (including, but not limited to, anti-money laundering legislation).

The Account Holder agrees not to provide any instructions or series of instructions that would cause the Account to contravene the Act. For greater certainty, Account Holder agrees not to provide any instructions or series of instructions that are contrary to its responsibilities or that would cause the Trustee to act contrary to its responsibilities as set out in sections 6, 7, 8, 9, 10, and 11 hereto.

#### **5. Recordkeeping for the account**

The Trustee will record all contributions and transfers made to the Account, all investment transactions and investment earnings, gains and losses and all distributions and transfers made from the Account. The Agent will prepare periodic statements of the Account in accordance with the rules, regulations and practices of the Canadian Industry Regulatory Organization.

#### **6. Excess contributions**

It is the responsibility of the Account Holder to determine whether there is an excess TFSA amount (as defined under the Act) of the Account Holder at any time in a year. If there is an excess TFSA amount, it is the responsibility of the Account Holder to file a Tax-Free Savings Account Return (Form RC243) and any other form required under the Act and pay the applicable tax under Part XI.01 of the Act.

#### **7. Contributions by non-resident**

It is the responsibility of the Account Holder to determine whether he/she makes a contribution to the TFSA at a time when he/she is a non-resident of Canada for income tax purposes. If a contribution is made by an individual when he/she is non-resident, it is the responsibility of the individual to file a Tax-Free Savings Account Return (Form RC243) and any other form required under the Act and pay the applicable tax under Part XI.01 of the Act.

## **8. Non-qualified and prohibited investments**

The Trustee will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the Account holds a **non-qualified investment** (as defined under the Act) for a TFSA. However, if the Account acquires an investment that is a non-qualified investment or a **prohibited investment** (as defined under the Act) for a TFSA, or if property held in the Account becomes a non-qualified investment or a prohibited investment for a TFSA, it is the responsibility of the Account Holder to file a Tax-Free Savings Account Return (Form RC243) and any other form required under the Act and pay the applicable tax under Part XI.01 of the Act.

## **9. Advantage extended**

If an **advantage** (as defined under the Act) in relation to a TFSA is extended to the Account Holder or to a person who does not deal at arm's length with the Account Holder, it is the responsibility of the Account Holder to file a TFSA Return (Form RC243) and pay the tax under Part XI.01 of the Act; except that if the advantage is extended by the Trustee (or by the Agent, acting as the agent of the Trustee) or by a person with whom the Trustee is not dealing at arm's length, it is the responsibility of the Trustee to file an Advantage Tax Return For TFSA Issuers (Form RC298) and any other form required under the Act and pay the applicable tax under Part XI.01 of the Act.

## **10. No carrying on business**

The Account Holder agrees not to provide any instructions or series of instructions that could be constituted as using the Account to carry on a business for the purposes of the Act. For greater certainty, the Account Holder acknowledges that this includes, but is not limited to, using the Account for "**day-trading**" or other high-volume trading that may constitute carrying on a business under the Act.

## **11. No use of indebtedness**

The trust is prohibited from borrowing money or any other property for the purposes of the Account, provided that the Account Holder shall not provide any instructions to borrow or instructions or series of instructions that would result in the Trustee having borrowed funds for the purposes of the Account under the Act. For greater certainty, Account Holder acknowledges that this includes, but is not limited to, having borrowed due to purchasing assets prior to the settlement of the sale of the other assets. The Account Holder will be solely liable for any tax, penalties and interest arising in respect of any indebtedness arising in connection with the Account.

## **12. Distribution to Account Holder**

The Account Holder may at any time instruct the Trustee to make a payment out of or under the Account, in satisfaction of all or part of the Account Holder's interest in the Account. The Account Holder may at any time instruct the Trustee to make distributions to reduce the amount of tax otherwise payable by the Account Holder under section 207.02 or 207.03 of Part XI.01 of the Act.

In the event the Account Holder seeks distribution of some, but not all, of the assets in the Account in accordance with the provisions herein, the Trustee reserves the right to require that all assets or certain assets other than those requested by the Account Holder be distributed.

## **13. Transfer to Account Holder**

The Account Holder may at any time instruct the Trustee to make a transfer of all or any part of the property of the Account (or an amount equal to its value) directly from the Account to another TFSA of which the Account Holder is the holder.

In the event the Account Holder seeks to transfer some, but not all, of the assets in the Account to another TFSA in accordance with the provisions herein, the Trustee reserves the right to require that all assets or certain assets other than those requested by the Account Holder be transferred.

## **14. Transfer upon breakdown of marriage or common-law partnership**

The Account Holder may at any time instruct the Trustee to make a transfer directly from the Account to another TFSA of which the holder is the spouse or common-law partner or former spouse or common-law partner of the Account Holder, if (a) the Account Holder and the Account Holder's spouse or common law partner or former spouse or common-law partner are living separate and apart at the time of transfer; and (b) the transfer is made under a decree,

order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the individuals in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership.

**15. a) Death of Account Holder (applies to Provinces & Territories except Quebec).**

The holder named in the attached application (in this section 15, the “**Initial Account Holder**”) may appoint his or her spouse or common-law partner as a Successor Account Holder of the trust constituted pursuant to this Trust Agreement and the Account Holder (in this section 15, the “**Successor Account Holder**”) in the event of the death of the Initial Account Holder. Such appointment shall be made using a form provided by the Agent, and shall be effective on the death of the Initial Account Holder provided the individual who is appointed is the Initial Account Holder’s survivor.

A Successor Account Holder shall, at and after the death of the Initial Account Holder, have all of the Initial Account Holder’s rights as the holder of the Account, provided the individual so appointed is the Initial Account Holder’s survivor. The Account Holder may change or revoke such an appointment. The rights acquired by the individual so appointed include the unconditional right, at and after the death of the Account Holder, to revoke any beneficiary designation made (or similar direction imposed) by the Account Holder under the paragraph below or relating to the property held in connection with the Account.

The Account Holder may designate (and may add, change or delete) a beneficiary or beneficiaries of the Account in accordance with, and in the form and manner provided by, applicable law. A beneficiary so designated may be or include the Account Holder’s spouse or common-law partner. After the death of the Account Holder, the Trustee will distribute the property of the Account in accordance with applicable law to any beneficiaries of the Account so designated (except that, if the Account Holder’s survivor is appointed under the paragraph above, the provision of the paragraph above will take precedence). Where no beneficiary has been so designated or the Trustee has not been notified of any beneficiary in accordance with applicable law, the Trustee will distribute the property of the Account to the legal personal representative(s) of the Account Holder.

Where the Trustee, after making reasonable requests for instructions from the Account Holder’s spouse or common-law partner or the beneficiary or beneficiaries or the legal personal representative(s), does not receive satisfactory instructions (as required under section 22 hereto) within a reasonable time, the Trustee may in its discretion distribute the Account to the spouse or common-law partner, beneficiary or beneficiaries or the legal personal representative(s) of the Account Holder. The Trustee may in its discretion liquidate all or any part of the Account before making any such distribution. Any such liquidation shall be made at such prices as the Trustee shall in its discretion determine to be the fair market value of the property at the time. In the event the Trustee determines that it is advisable or desirable to pay part or all of the property of the Account into court, the Trustee shall be entitled to be indemnified out of the property of the Account for its costs and expenses, including legal costs, of doing so.

**b) Death of Account Holder (applies to Quebec only).**

The holder named in the attached application (in this section 15, the Initial Account Holder) may appoint his or her spouse or common-law partner as a Successor Account Holder of the trust constituted pursuant to this Trust Agreement and the Account Holder (in this section 15, the Successor Account Holder) in the event of the death of the Initial Account Holder. Such appointment shall be made using a form provided by the Agent, and shall be effective on the death of the Initial Account Holder provided the individual who is appointed is the Initial Account Holder’s survivor.

If the Account Holder wishes to name a successor account holder and/or a beneficiary (or beneficiaries), the account holder should do so in a will or other written document that meets the requirements of the applicable legislation.

On the death of the Account Holder, and upon receipt of official documentation, the Trustee will distribute the property of the Account to the legal personal representative(s) of the Account Holder. The Trustee and the Agent will be fully discharged by such payment or transfer.

The Account Holder acknowledges that it is his/her sole responsibility to ensure that a designation or revocation is valid under the applicable legislation.

Before recognizing the acquisition of all of the Account Holder's rights under the first paragraph, or before making a distribution to a beneficiary or beneficiaries or the legal personal representative(s) under the second paragraph, the Trustee must receive satisfactory evidence of death and such satisfactory instructions, releases, indemnities and other documents as the Trustee may require.

Where the Trustee, after making reasonable requests for instructions from the Account Holder's spouse or common-law partner or the beneficiary or beneficiaries or the legal personal representative(s), does not receive satisfactory instructions within a reasonable time, the Trustee may in its discretion distribute the Account to the spouse or common-law partner, beneficiary or beneficiaries or the legal personal representative(s) of the Account Holder. The Trustee may in its discretion liquidate all or any part of the Account before making any such distribution. Any such liquidation shall be made at such prices as the Trustee shall in its discretion determine to be the fair market value of the property at the time. In the event the Trustee determines that it is advisable or desirable to pay part or all of the property of the Account into court, the Trustee shall be entitled to be indemnified out of the property of the Account for its costs and expenses, including legal costs, of doing so.

#### **16. Other conditions**

The Account will be maintained for the exclusive benefit of the Account Holder (determined without regard for the right of a person to receive a payment out of or under the Account only on or after the death of the Account Holder, in accordance with section 15). While there is an Account Holder, no one other than the Account Holder or the Trustee has rights under the Account relating to the amount and timing of distributions and the investing of funds. The Account Holder may use his/her interest or, for civil law, right in the Account as security for a loan or other indebtedness, but the Account Holder will not sign any document or authorize any action for the Account in the name of the Trustee or the Agent, including using his/her interest or, for civil law, right in the Account (or permitting any property of the Account to be used) as security for a loan or other indebtedness, without first having authorization from the Trustee.

#### **17. Ceasing to be a TFSA**

The Account will cease to be a TFSA immediately before the earliest of the following times: (i) the time at which the last Account Holder dies; (ii) the time the Account ceases to be a **qualifying arrangement** (as defined under the Act); or (iii) the earliest time at which the Account is not being administered in accordance with the conditions in subsection 146.2(2) of the Act. If the Account ceases to be a TFSA, the arrangement will nevertheless continue as a trust for the benefit of the Account Holder governed by this Trust Agreement and the attached application, except that no further contributions or transfers may be made to the Account under section 3 and no transfers or distributions may be made under sections 13 or 14. The trust ends, and this Trust Agreement terminates, at the time when all the property of the Account has been disbursed, whether as a distribution to the Account Holder, spouse, common-law partner, beneficiary and/or legal personal representative of the Account Holder or paid or charged on account of fees, commissions, expense, taxes penalties and interest.

#### **18. Failure to be a TFSA**

The Account will not qualify as a TFSA unless and until it is registered under the Act, and once registered, will be a TFSA from the date it was opened. The Account Holder is solely responsible for any income tax implications that may arise as a result of the account failing to attain registered status or becoming unregistered.

The Account Holder is solely responsible for ensuring that the information provided to the Trustee upon account opening is consistent with the information on file with the Canada Revenue Agency. If the Canada Revenue Agency requests additional information about the Account Holder, the Account Holder is solely responsible for contacting the Canada Revenue Agency to rectify any inconsistencies in its information. The Trustee will not resubmit an application for registration. The Account Holder is responsible to reapply for registered status and to report any income.

If the Account fails to attain registered status, or becomes unregistered, the Account will not qualify for tax benefits and will be considered to be an unregistered account (from the date it was opened, if it fails to attain registered status, and otherwise from the time it becomes unregistered) and all income earned will be taxed in the hands of the Account Holder (and the Trustee shall be indemnified in relation to any expenses incurred with respect thereto in accordance with section 24).



If the Account fails to attain registered status, or becomes unregistered, the Trustee may, (i) in its sole discretion, transfer the account property to a new (non-registered) account opened on the Account Holder's behalf or to a non-registered account which the Account Holder already has in place, or (ii) the Trustee may also, in its sole discretion, close the account and return the account property to the Account Holder. This may require the Trustee to liquidate or redeem the account property. 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 property at the time. The Account Holder will be responsible for any fees, penalties or loss of value that may occur as a result.

The Trustee shall be entitled to place a hold on some or all of the assets in the new or existing account until the documentation required in accordance with section 23 is received and may use such funds to satisfy the indemnities set out in section 24 hereto.

### **19. Third party orders or demands**

The Trustee shall be entitled to be indemnified out of the property of the Account in respect of any costs, expenses, charges or liabilities whatsoever that may arise out of the Trustee's good faith compliance with any law, regulation, judgment, seizure, execution, notice or similar order or demand which lawfully imposes

on the Trustee a duty to take or refrain from taking any action concerning the Account or part or all of its property, or to issue payment from the Account, with or without instructions from the Account Holder or in contradiction of instructions of the Account Holder. The Trustee may permit any duly authorized person

to have access to and the right to examine and make copies of any records, documents, paper and books involving any transaction of the Account or related to the Account and shall similarly be entitled to indemnity out of the property of the Account for so doing. In the event the property of the Account shall be insufficient to indemnify the Trustee fully in any such regard, by establishing the Account the Account Holder agrees to indemnify and hold the Trustee harmless for any such costs, expenses, charges or liabilities.

The Trustee/Agent retains the ability to restrict trading upon receipt of an order or demand. The Trustee/Agent will not be liable for any decreases in account value during the restriction period.

### **20. Ownership and voting rights**

The Trustee may hold any property or investment of the Account in its own name, in the name of its nominee, in bearer form or in such other name as the Trustee may determine. The voting or other ownership rights attached to any investments held in the Account may be exercised by the Account Holder and the Account Holder is appointed as the Trustee's agent and attorney for this purpose, to execute and deliver proxies and/or other instruments, in accordance with applicable laws.

### **21. Fees, expenses, taxes, interest and penalties**

The Trustee may charge administration and transaction fees, in such amounts and at such times as may be fixed by the Trustee and/or the Agent from time to time (the "**Trustee Fees**"), provided that the Trustee and/or the Agent shall give prior written notice to the Account Holder 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 Account Holder.

The Account Holder acknowledges that the Agent (or an affiliate) may charge fees, spreads, commissions and expenses to the Fund in its capacity as the investment advisory firm for the Account Holder (the "**Advisory Fees**"). The Account Holder 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 Trust Agreement and the Client Account Agreement with respect to the Advisory Fees, the terms of the Client Account Agreement govern.

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

All taxes, penalties, and interest that may be imposed on the Trustee or Account Holder in respect of the Account or any other charges related to the Account may be paid out of or recovered from the Fund, except for taxes, interest and penalties imposed on the Trustee under the Act.

The Trustee may, without instructions from the Account Holder, 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 Account. Where there is insufficient cash in the Fund at any time, the Trustee or the Agent shall make reasonable requests for instructions from the Account Holder 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 Account Holder at the last address provided by the Account Holder, the Trustee or the Agent does not receive satisfactory instructions from the Account Holder 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 the Agent 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 the Agent for the Agent's own account, at such price as the Trustee considers fair and proper.

## **22. Instructions**

The Trustee and /or the Agent shall be entitled to rely upon instructions received from the Account Holder or from any person designated in writing, in accordance with applicable laws, by the Account Holder to give instructions on behalf of the Account Holder or from any person purporting to be the Account Holder or such designated person, as if they were from the Account Holder. The Trustee and/or the Agent may, without incurring any liability to the Account Holder or any other person, decline to act upon any instruction if the instruction is not given in a timely manner, is not in writing where the Trustee and/or Agent require it, is not in a form or format which the Trustee and/or Agent requires, or in the opinion of the Trustee and/or Agent is not complete or otherwise does not comply with the Trustee's and/or Agent's other requirements at such time; or if any of them has any doubt that the instruction has been properly authorized or accurately transmitted.

## **23. Documentation**

Notwithstanding anything to the contrary herein, the Trustee may require such satisfactory instructions, releases, indemnities, tax clearance certificates, death certificates and other documents as the Trustee in its discretion deems appropriate prior to accepting a contribution or transfer in accordance with section 3, acting on investment instructions in accordance with section 4, making a distribution in accordance with section 12, making a transfer in accordance with section 13, making a transfer in accordance with section 14, recognizing the acquisition or making the distribution under section 15, or taking any other action resulting in the transfer of assets to or from the Account.

## **24. Limitation of Liability and Indemnity**

Except for charges, taxes or penalties for which the Trustee is liable and that cannot be charged against or deducted from the Fund in accordance with the Act, if the Trustee or the Agent is liable for:

- a. any tax, interest or penalty that may be imposed on the Trustee in respect of the Account, or
- b. any other charges levied or imposed by any governmental authority on or related to the Account 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 Agent shall be reimbursed or may pay any of these taxes, interest, penalties or charges out of the Fund.

The Trustee and the Agent 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 the Agent's bad faith, willful misconduct or negligence, the Trustee and the Agent will not be liable for any loss or damage suffered or incurred by the Account, the Account Holder or any beneficiary under the Account, caused by or resulting from:

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

For greater certainty, in no event shall either the Trustee or its Agent have any liability to the Account Holder (or to the spouse or common-law partner of the Account Holder, or any beneficiary or legal personal representative of the Account Holder) 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 Account Holder 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 Account Holder, his/her legal personal representatives and each beneficiary of this Account will at all times indemnify and save harmless the Trustee and its Agent in respect of any taxes, interest and penalties which may be imposed on the Trustee in respect of the Account or any losses incurred by the Account as a result of the acquisition, retention or transfer of any investment or as a result of payments or distributions out of the Account made in accordance with these terms and conditions or as a result of the Trustee or its Agent acting or declining to act upon any instructions given to it by the Account Holder and any costs or expenses of the Trustee and the Agent related thereto (including legal fees).

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

In all cases where the Trustee or the Agent are entitled to be indemnified in accordance with the 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 the Agent fully, the Account Holder agrees to indemnify and hold the Trustee and the Agent harmless for any such costs, expenses, charges or liabilities.

## **25. Unclaimed balances**

The property of the Account may be deemed to be abandoned or unclaimed as per the definitions of any applicable provincial legislation. In addition to any timelines prescribed by legislation, the Trustee may, at its sole discretion, deem an account to be abandoned and any property to be unclaimed.

The Trustee may, after making reasonable efforts to contact the Account Holder, withdraw the abandoned amounts and may, in its discretion, liquidate part or all of the abandoned property. 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 property at the time. In the case of investments which are illiquid or which have no readily ascertainable market value, the Trustee may in its discretion sell the investments to the Agent for the Agent's own account, at such prices as the Trustee considers fair and proper.

The property, and/or the proceeds of liquidation may be remitted to the appropriate government agency. In the alternative, the Trustee may, in its sole discretion, allocate the property or proceeds of liquidation to a pooled account for dormant amounts. The terms, jurisdiction, and other details of this account will be determined by the Trustee, and in the Trustee's sole discretion.

The Trustee may also, in its sole discretion, allocate the property or proceeds of liquidation to an existing account in the Account Holder's name, or to a new account which would be opened on the Account Holder's behalf.

The Account Holder may at any time, or as prescribed in any applicable legislation, instruct the Trustee to return the property/proceeds of liquidation to the Account Holder's control and/or possession.

The Trustee and/or the Agent may charge reasonable expenses incurred in the administration of this process as set out in section 21, hereto.

As part of the Trustee's program to manage unclaimed property, the Trustee may engage a third party in order to contact the Account Holder. The Account Holder authorizes the Trustee to take this action and share the personal information of the Account Holder reasonably required to contact the Account Holder.

#### **26. Amendment**

The Trustee may from time to time in its discretion amend this Trust Agreement or the attached application which comprise the Account by giving 30 days prior notice to the Account Holder; provided however that any amendment shall not disqualify the Account as a TFSA acceptable for registration under the Act or any applicable provincial legislation.

#### **27. Replacement of Trustee**

The Trustee may resign upon 60 days' prior written notice given to the Agent (or such shorter notice as the Agent may accept). The Agent may terminate the Trustee as trustee upon 60 days prior written notice given to the Trustee (or such shorter notice as the Trustee may accept). Upon the resignation or termination of the Trustee, the Trustee shall be released and discharged from all duties and liabilities under this Trust Agreement. Where the Trustee resigns or is terminated, the Agent shall appoint a successor trustee who is permitted to be the issuer of a TFSA under the Act. The Agent shall give the Account Holder written notice of the successor trustee within 30 days of the appointment.

#### **28. Notice**

Any notice given by the Trustee to the Account Holder regarding the Account (including this Trust Agreement) shall be sufficiently given if it is delivered to the Account Holder personally or if it is mailed, postage prepaid, to the Account Holder at the address set out in the attached application or the last address provided by the Account Holder. If mailed, any such notice shall be deemed to have been delivered by the tenth business day following the day of mailing.

#### **29. Binding**

The terms of this Trust Agreement shall be binding upon the survivor, beneficiaries, heirs, executors and administrators of the Account Holder and upon the respective successors and assigns of the Trustee and the Agent. This Trust Agreement may be assigned by the Trustee at any time to a person who is permitted to be the issuer of a TFSA under the Act; however the Account Holder may not assign this Trust Agreement.

#### **30. Governing law**

This Trust Agreement shall be governed by and interpreted in accordance with the laws of the jurisdiction in Canada in which the branch of the Agent (or an affiliate) is located where the Account is maintained.

If any provision of legislation referred to in this Trust Agreement is renumbered due to a change in law, then that reference is to be considered to be to the provision as renumbered.

## Part Three

### Part D: BMO Nesbitt Burns Investor-directed Education Savings Plan - (Individual)

#### Individual Plan (Specimen 1012003)

We, **BMO Nesbitt Burns Inc.**, are the promoter of the BMO Nesbitt Burns Investor-directed Education Savings Plan - (Individual) (the "**Plan**"). (The words "us" and "our" refer only to **BMO Nesbitt Burns Inc.**). 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 is responsible for the administration of all applicable federal and provincial grants and incentives ("**Grants**").

#### 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:

- a. the payment of Educational Assistance Payments to or for a Beneficiary of the Plan;
- b. the payment to (or to a trust in favour of) one or more Designated Educational Institutions in Canada;
- c. 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;
- d. the payment of Accumulated Income Payments; or
- e. the transfer to another trust that irrevocably holds property under a "registered education savings plan" (an "**RESP**") within the meaning 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 RESP's. 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 applies 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, a public primary caregiver of a Beneficiary, or an individual (other than a trust), who is a legal parent of a Beneficiary, and the individual's former spouse or common-law partner, who is also the legal parent 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.

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.

#### 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 a Beneficiary by giving us instructions. When adding or changing a 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 an education savings plan does not include an amount paid into the plan under or because of the Canada Education Savings Act or 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 this limit. If this 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 the 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 transfer, 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 Plan 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.

### **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. 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. 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. To the fullest extent provided by law and despite any other provision, the Trustee excludes all liability arising out of or in connection with the Plan for indirect, incidental, special, or consequential damages and damages for loss of profits, revenue or savings (actual or anticipated), economic loss, loss of data or loss of goodwill (whether or not either party knew of the possibility of such damage or such damage was otherwise foreseeable). 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 shall exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that a trust governed by the registered 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 to assist the individual to further the individual’s education at a post-secondary school level. Beneficiaries who cease to be enrolled in a Qualifying Post Secondary Educational Program 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. Where the Beneficiary has a mental or physical impairment, and it has been certified as required under the Act that the effects of the impairment are such that the Beneficiary cannot reasonably be expected to be enrolled as a fulltime student, Educational Assistance Payments can be paid where the Beneficiary is not a full-time student.

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. A program is not a qualifying educational program for a particular student if the student is enrolled in the program in connection with, or as part of, the duties of employment and the student is receiving employment income while enrolled in the program. The total amount of Educational Assistance Payments paid to or for a Beneficiary (from BMO Nesbitt Burns Inc. RESPs) where the Beneficiary has not been enrolled, during the preceding 12 months, for at least 13 consecutive weeks in a “qualifying educational program” cannot exceed the amount provided by the Act (unless a greater amount is approved in writing by the Minister designated for the purposes of the Canada Education Savings Act).

Where a Beneficiary has attained the age of 16 years and is enrolled in a “specified educational program”, the total amount of Educational Assistance Payments paid to or for the Beneficiary (from all BMO InvestorLine Inc. RESPs) in the 13 week period that ends with the payment cannot exceed the amount provided by the Act (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 or work in the program. Where the Beneficiary is enrolled in a “specified educational program”, the total amount of Educational Assistance Payments paid to or for a Beneficiary (from BMO Nesbitt Burns Inc. 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

- a. an educational institution in Canada that is (i) a university, college or other educational institution designated by the lieutenant governor in council of a province as a specified educational institution under the Canada Student Loans Act, or designated, for the purposes of An Act respecting financial assistance for education expenses, R.S.Q., c A-13.3, by the Minister of the Province of Quebec responsible for the administration of that act, or (ii) certified by the Minister of Employment and Social Development 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
- b. an educational institution outside of Canada that provides courses at a post-secondary school level and that is (i) a university, college or other educational institution at which a beneficiary was enrolled in a course of not less than 13 consecutive weeks, or (ii) 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**” must be a post-secondary educational institution as defined in paragraph (a) of 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 program administered pursuant to an agreement

entered under section 12 of that Act 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:

- a. 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;
- b. the payment is made in the 35th year following the year in which the Plan is entered into; or
- c. 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. In the event that you wish to transfer some, but not all, of the assets in the Fund in accordance with the provisions herein, We and the Trustee reserve the right to require that all assets or certain assets other than those requested be transferred.

#### **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 and under the Applicable Tax Legislation. 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 year 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 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 assets of the Plan;
- 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.

## **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 will be interpreted, administered and enforced according to the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario. 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.



## Part Three

### Part E: BMO Nesbitt Burns Investor-directed Education Savings Plan - (Family)

#### Family Plan (Specimen 1012002)

We, **BMO Nesbitt Burns Inc.**, are the promoter of the BMO Nesbitt Burns Investor-directed Education Savings Plan (Family) (the “**Plan**”). (The words “us” and “our” refer only to **BMO Nesbitt Burns Inc.**). 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**”).

#### 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:

- a. the payment of Educational Assistance Payments to or for a Beneficiary of the Plan;
- b. the payment to (or to a trust in favour of) one or more Designated Educational Institutions in Canada;
- c. 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;
- d. the payment of Accumulated Income Payments; or
- e. the transfer to another trust that irrevocably holds property under a “registered education savings plan” (an “**RESP**”) within the meaning 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 RESP’s. 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, a public primary caregiver of a Beneficiary, or an individual (other than a trust), who is also a legal parent of a Beneficiary, and the individual's former spouse or common-law partner, who is also the legal parent 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.

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.

#### 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 a Beneficiary by giving us instructions. When adding or changing a 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 an education savings plan does not include an amount paid into the plan under or because of the Canada Education Savings Act or 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 this limit. If this 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 the 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 transfer, 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 Plan 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. 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. To the fullest extent provided by law and despite any other provision, the Trustee excludes all liability arising out of or in connection with the Plan for indirect, incidental, special, or consequential damages and damages for loss of profits, revenue or savings (actual or anticipated), economic loss, loss of data or loss of goodwill (whether or not either party knew of the possibility of such damage or such damage was otherwise foreseeable). 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 shall exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that a trust governed by the registered plan holds a non-qualified investment. The Trustee 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). The Trustee will credit interest earned on the cash to the Plan at such time as the Trustee, in its sole discretion, may determine. The Trustee may retain all or a portion of the interest as a fee for services rendered in respect of the Plan.

### **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 to assist the individual to further the individual’s education at a post-secondary school level. Beneficiaries who cease to be enrolled in a Qualifying Post Secondary Educational Program 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. Where the Beneficiary has a mental or physical impairment, and it has been certified as required under the Act that the effects of the impairment are such that the Beneficiary cannot reasonably be expected to be enrolled as a fulltime student, Educational Assistance Payments can be paid where the Beneficiary is not a full-time student.

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. A program is not a qualifying educational program for a particular student if the student is enrolled in the program in connection with, or as part of, the duties of employment and the student is receiving employment income while enrolled in the program. The total amount of Educational Assistance Payments paid to or for a Beneficiary (from BMO Nesbitt Burns Inc. RESPs) where the Beneficiary has not been enrolled, during the preceding 12 months, for at least 13 consecutive weeks in a “qualifying educational program” cannot exceed

the amount provided by the Act. (unless a greater amount is approved in writing by the Minister designated for the purposes of the Canada Education Savings Act).

Where a Beneficiary has attained the age of 16 years and is enrolled in a “specified educational program”, the total amount of Educational Assistance Payments paid to or for the Beneficiary (from all BMO InvestorLine Inc. RESPs) in the 13 week period that ends with the payment cannot exceed the amount provided by the Act (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 or work in the program. Where the Beneficiary is enrolled in a “specified educational program”, the total amount of Educational Assistance Payments paid to or for a Beneficiary (from BMO Nesbitt Burns Inc. 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

- a. an educational institution in Canada that is (i) a university, college or other educational institution designated by the lieutenant governor in council of a province as a specified educational institution under the Canada Student Loans Act, or designated, for the purposes of An Act respecting financial assistance for education expenses, R.S.Q., c A-13.3, by the Minister of the Province of Quebec responsible for the administration of that act, or (ii) certified by the Minister of Employment and Social Development 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
- b. an educational institution outside of Canada that provides courses at a post-secondary school level and that is (i) a university, college or other educational institution at which a beneficiary was enrolled in a course of not less than 13 consecutive weeks, or (ii) 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**” must be a post-secondary educational institution as defined in paragraph (a) of 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 program administered pursuant to an agreement entered under section 12 of that Act 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:

- a. 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;
- b. the payment is made in the 35th year following the year in which the Plan is entered into; or
- c. 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. In the event that you wish to transfer some, but not all, of the assets in the Fund in accordance with the provisions herein, We and the Trustee reserve the right to require that all assets or certain assets other than those requested be transferred.

#### **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 and under the Applicable Tax Legislation. 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 assets of the Plan;
- 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.

### **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 will be interpreted, administered and enforced according to the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario. 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. For Quebec Clients Only**

The client acknowledges receipt of the French version of this agreement. It is the express wish of the parties, who hereby accept, that this agreement and all related documents, notices and other communications between the parties be in English. Le client reconnaît avoir reçu la présente convention en français ([https://www.bmo.com/img/smartfolio/pdf/fr/Terms\\_Fr.pdf](https://www.bmo.com/img/smartfolio/pdf/fr/Terms_Fr.pdf)). Les parties aux présentes ont expressément exigé, et acceptent, que la présente convention, tous les documents qui y sont afférents et tous les avis et autres communications entre les parties soient rédigés en langue.