

The application attached (the “**Application**”) and these terms and conditions constitute a contract for the establishment of a Fidelity Clearing Canada ULC Self-Directed Education Savings Plan - Family Beneficiary Plan (the “**Plan**”) between TSX Trust Company, a trust company existing under the laws of Canada (the “**Trustee**”), Fidelity Clearing Canada ULC, (the “**Promoter**”), and the subscriber(s) named in the Application as of the date of the Application (the “**Contract**”) under which the Promoter will pay educational assistance payments to further a beneficiary’s post-secondary education. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## 1. Some Definitions:

In this Contract, in addition to terms defined elsewhere herein,

- a) “**Accumulated Income Payment(s)**” means any amount paid out of this Plan, other than a payment described in any of paragraphs (a) and (c) to (e) of the definition of trust in subsection 146.1(1) of the Tax Act, to the extent that the amount so paid exceeds the fair market value of any consideration given to the Plan for the payment of the amount;
- b) “**Applicable Legislation**” means all provincial and federal legislation governing the Plan, the Plan Assets and the parties hereto including, without limitation, the *Income Tax Act* (Canada) (the “**Tax Act**”), the *Department of Employment and Social Development Act*, the *Canada Education Savings Act* (Canada) (the “**CES Act**”), and securities legislation. Any reference to Applicable Legislation shall be deemed to include all such statutes and any regulations, policies, rules, orders or other provisions thereunder, all as may be amended, re-enacted or replaced from time to time;
- c) “**Beneficiary(ies)**” means the individual or individuals validly designated in the Application by the Subscriber(s) to whom, or on whose behalf, Educational Assistance Payments are agreed to be paid, provided each such individual qualifies under the Applicable Legislation and the Plan at the time such payments are made;
- d) “**Canada Learning Bond**” means a Canada Learning Bond as described in the CES Act;
- e) “**Capital Investments**” at any time means an amount net of the amount of Government Funded Benefit refunds as provided in section 9, not exceeding the lesser of: (i) the value of the Plan Assets at that particular time; and (ii) the aggregate of all Contributions made to the Plan up to that time eligible for refund at that time under the Applicable Legislation;
- f) “**CES Grant**” means a Canada Education Savings Grant as described in the CES Act;
- g) “**Contribution(s)**” means any amount contributed to the Plan by or on behalf of each Subscriber in respect of a Beneficiary from time to time or by way of a lump sum payment, other than Government Funded Benefits, and subject to the RESP Lifetime Limit, and such minimum amounts permitted by the Promoter. Contribution(s) also include direct transfers from another registered education savings plan that has not made any Accumulated Income Payments prior to such transfers and subject to such other conditions imposed in accordance with the Applicable Legislation and the Plan. A Contribution does not include an amount paid into the Plan under or because of the CES 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 the amount paid into the Plan by a Public Primary Caregiver in its capacity as a Subscriber). For greater certainty, an amount may be contributed by payment of cash into the Plan as well as by way of transfer of securities acceptable to the Promoter, in its sole discretion, provided that the registered ownership of such securities has been changed to reflect ownership by the Plan;
- h) “**Designated Educational Institution**” means an educational institution in Canada that is a university, college or other educational institution designated by the Lieutenant Governor in Council of a province as a specified educational institution under the Canada Student Loans Act, designated by an appropriate authority under the Canada Student Financial Assistance Act, or designated by the Minister of Education of the Province of Quebec for the purposes of An Act Respecting Financial Assistance for Education Expenses, R.S.Q. c. A-13.3;
- i) “**Designated Provincial Program**” means a program administered pursuant to an agreement entered into under section 12 of the CES Act or a program established under the laws of a province to encourage the financing of children’s post-secondary education through savings in registered education savings plans;
- j) “**Educational Assistance Payment(s)**” means any amount, other than a Refund of Contributions, paid under this Plan in accordance with the Applicable Legislation, to or for a Beneficiary to assist that Beneficiary to further the Beneficiary’s education at a post-secondary school level;
- k) “**ESDC**” shall mean the Employment and Social Development Canada;
- l) “**Government Funded Benefits**” means collectively, CES Grants, Canada Learning Bonds, and any other payments made to the Plan under the CES Act or under a Designated Provincial Program;
- m) “**Grant**” means an amount paid or payable to the Plan under: (i) the CES Act, (ii) a provincial program administered under the CES Act, (iii) a designated provincial program, as defined under the Tax Act, or (iv) Part III.1 of the Department of Human Resources Development Act (Canada) as it read immediately before the coming into force of the CES Act.
- n) “**Minister**” means the Minister designated for the purposes of the CES Act;
- o) “**Plan Assets**” means all Contributions and Government Funded Benefits paid to the Plan in respect thereof, together with the income and gains derived from the investments and reinvestments thereof, less any losses of any investment or reinvestment,

less any fees and administration expenses of the Promoter and the Trustee paid out of the Plan, and less any Government Funded Benefit refunds required by the Applicable Legislation. For greater certainty, Plan Assets includes all investments held from time to time by or on behalf of the Trustee in accordance with the Plan as well as amounts transferred pursuant to Applicable Legislation from other registered education savings plans, if any;

- p) **“Post-Secondary Educational Institution”** has the meaning ascribed to such term in subsection 146.1(1) of the Tax Act which defines a post-secondary educational institution as:
  - (i) an educational institution in Canada that is a university, college or other educational institution designated by the Lieutenant Governor in Council of a province as a specified educational institution under the Canada Student Loans Act, designated by an appropriate authority under the Canada Student Financial Assistance Act, or designated by the Minister of Education of Quebec for the purposes of An Act respecting financial assistance for education expenses; or
  - (ii) an educational institution in Canada that is certified by the Minister of Employment and Social Development Canada (ESDC) 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
  - (iii) an educational institution outside Canada that is a university, college or other educational institution that provides courses at a post-secondary school level at which a beneficiary was enrolled in a course of not less than 13 consecutive weeks, or, with regard to Educational Assistance Payments made after 2010, a university at which a Beneficiary was enrolled on a full-time basis in a course of not less than 3 consecutive weeks;
- q) **“Public Primary Caregiver”** has the meaning ascribed to such term in subsection 21(6) of the CES Act, which defines a public primary caregiver of a beneficiary under an education savings plan in respect of whom a special allowance is payable under the Children's Special Allowances Act, as the department, agency or institution that maintains the beneficiary, or the public trustee or public curator of the province in which the beneficiary resides;
- r) **“Qualifying Educational Program”** has the meaning ascribed to such term in subsection 146.1(1) of the Tax Act which defines a qualifying educational program as a program at a post-secondary school level of not less than 3 consecutive weeks duration that requires that each student taking the program spend not less than 10 hours per week on courses or work in the program;
- s) **“Refund of Contributions”** at any time means:
  - (i) a refund of a Contribution that had been made at a previous time, if the Contribution was made:
    - (I) otherwise than by way of a transfer from another registered education savings plan; and
    - (II) into the Plan by or on behalf of a Subscriber under this Plan, or
  - (ii) a refund of an amount that was paid at a previous time into the Plan by way of a transfer from another registered education savings plan, where the amount would have been a refund of contributions under the other plan if it had been paid at the previous time directly to a subscriber under the other plan;
- t) **“RESP”** means an education savings plan that has been and, at the relevant time is, registered under the Tax Act;
- u) **“RESP Lifetime Limit”** means the lifetime limit for Contributions to all registered education savings plans in respect of a person designated as a beneficiary under such plans pursuant to subsection 204.9(1) of the Tax Act;
- v) **“Specified Educational Program”** has the meaning ascribed to such terms in subsection 146.1(1) of the Tax Act which defines a specified educational program as a program at a post-secondary level of not less than 3 consecutive weeks duration that requires each student taking the program to spend not less than 12 hours per month on courses in the program;
- w) **“Subscriber(s)” or “you”** means at any time either an individual (other than a trust) or an individual (other than a trust) and the spouse or common-law partner of such individual who is/are named as such in the Application, or the Public Primary Caregiver of a Beneficiary, and in particular:
  - (i) each individual or Public Primary Caregiver with whom the Promoter entered into the Plan;
  - (ii) another individual or another Public Primary Caregiver who, before that time, under a written agreement, acquired a Public Primary Caregiver's rights as a Subscriber under the Plan;
  - (iii) an individual who, before that time acquired a Subscriber's rights under the Plan pursuant to a decree, order or judgment of a competent tribunal, or under a written agreement, relating to a division of property between the individual and a Subscriber under the Plan in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership; or
  - (iv) after the death of a Subscriber under the Plan who is an individual described in (i) or (iii), any other person (including the estate of the Subscriber) who acquires the individual's rights as a Subscriber under the Plan or who makes Contributions into the Plan in respect of a Beneficiary;

but does not include an individual or Public Primary Caregiver whose rights as a Subscriber under the Plan had, before that time, been acquired by an individual or Public Primary Caregiver in the circumstances described in paragraph (ii) or (iii) above; and

## 2. Purposes of the Plan:

- a) The Plan is offered by the Promoter to provide Educational Assistance Payments to the Beneficiary(ies) and to enable the Beneficiaries to benefit from the Government Funded Benefits. The Plan does not allow for the payment to a Beneficiary unless the Beneficiary meets the prerequisites as set forth in paragraph 146.1(2)(g.1) of the Tax Act and otherwise in the Applicable Legislation. Contributions are not deductible by the Subscriber from income for tax purposes and are not taxable when returned to the Subscriber (or as the Subscriber may direct pursuant to subsection 7(b)). Provided that the Plan qualifies as a registered education savings plan under the Applicable Legislation, net income and net realized capital gains (including capital appreciation) earned on investments of Contributions and Government Funded Benefits will not be included in computing the Subscriber's income. Educational Assistance Payments made, and Government Funded Benefits paid, to or on behalf of a Beneficiary are included in computing the Beneficiary's income. However, where a Subscriber directs, pursuant to subsection 7(b) that part or all of the Contributions be paid to some or all of the Beneficiaries, such payments are not included in computing the income of such Beneficiaries.
- b) In consideration of receipt by the Promoter of Contributions and the fees and charges set out in section 17, and subject to repayment of Government Funded Benefits as required by the Applicable Legislation, the Promoter agrees to pay, or cause to be paid, the Educational Assistance Payments and to arrange for the Plan Assets to be irrevocably held in trust by the Trustee pursuant to the Plan for one or more of the purposes set out in paragraphs 9(a)(i) to (vi).

## 3. Registration of the Plan:

The Promoter shall apply for registration of the Plan as a RESP under the Tax Act in prescribed form and containing prescribed information, and shall apply for registration of the Plan as a RESP under any other appropriate Applicable Legislation in the province in which each Subscriber resides. The Promoter shall provide each Subscriber with notification of such registration. Each Subscriber acknowledges that for the purposes of such registration the Promoter is relying on the correctness and completeness of all information provided in the Application signed by the Subscriber(s). The Promoter will also attend to the timely application for Government Funded Benefits on behalf of each Subscriber who has instructed the Promoter to apply for Government Funded Benefits on the application form referred to in subsection 5(c) and who has provided the Promoter with the requisite social insurance numbers and undertakings. The social insurance numbers obtained for a purpose related to an application for Government Funded Benefits will not be knowingly used, communicated or allowed to be communicated for any other purpose.

## 4. Social Insurance Number ("SIN"):

An individual is permitted to be designated as a Beneficiary under the Plan, and a Contribution to the Plan in respect of an individual who is a Beneficiary under the Plan is permitted to be made, only if:

- a) in the case of a designation, the individual's SIN is provided to the Promoter before the designation is made and the individual is resident in Canada when the designation is made, or the designation is made in conjunction with a transfer of property into the plan from another registered education savings plan under which the individual was a beneficiary immediately before the transfer (Subparagraph 146.1(2)(g.3)(i) of the Tax Act); and
- b) in the case of a Contribution, the individual's SIN is provided to the Promoter before the Contribution is made and the individual is resident in Canada, or where the Contribution is made by way of a transfer from another registered education savings plan under which the individual was a beneficiary immediately before the transfer (Subparagraph 146.1(2)(g.3)(ii) of the Tax Act).

Paragraph 146.1(2.3)(a) of the Tax Act does not require an individual's SIN to be provided in respect of a Contribution to the Plan, if the Plan was entered into before 1999. Such Contribution(s) continue to be ineligible for the CESG, and the SIN exception is relevant only for existing beneficiaries under such plans.

Paragraph 146.1(2.3)(b) of the Tax Act does not require an individual's SIN to be provided in respect of a designation of a non-resident individual as a Beneficiary under the Plan, if the individual was not assigned a SIN before the designation is made.

**Using Your SIN:** By law, the Promoter is required to use your SIN when submitting tax reports to the Canada Revenue Agency. The Promoter and the Trustee may use your SIN as an identifier for reasons such as consolidating your holdings so that fees associated with your account are reduced or are not charged more than once, or that your mailings are delivered in one envelope or are not duplicated. Also, The Promoter may share your SIN as a unique identifier for the purposes identified in this Notice to third parties such as your investment advisor, broker, dealer, group plan sponsor, and third party service providers.

## 5. Contributions:

- a) Each Subscriber may make Contributions in respect of each Beneficiary in such amounts and at such times as the Subscriber designates, subject to:
  - (i) any minimum amounts established by the Promoter from time to time by written notice to each Subscriber;
  - (ii) the RESP Lifetime Limit;

- (iii) no Contribution being made to the Plan by or on behalf of a Subscriber after the 31st calendar year following the calendar year in which the Plan is entered into; and
- (iv) such other restrictions as may be set out in the Applicable Legislation from time to time.

No Contributions may be made to the Plan in respect of Beneficiaries who are thirty-one (31) years old or older, other than Contributions made by way of, or following a, transfer from another registered education savings plan in accordance with the Applicable Legislation.

Each Subscriber agrees that he/she is responsible for ensuring that the total of all Contributions made in respect of a Beneficiary (including a replacement beneficiary who inherits the "contribution history" of the replaced beneficiary), other than contributions made to the Plan by way of transfer from other registered education savings plans, will not exceed the RESP Lifetime Limit imposed by the Applicable Legislation from time to time.

Each Subscriber acknowledges that any failure to abide by RESP Lifetime Limit will give rise to penalties and/or taxes as provided in the Applicable Legislation, and each Subscriber agrees that he/she is solely responsible for the payment of such penalties and/or taxes and for the completion of all resulting required tax reporting.

- b) In the case of Contributions in kind, the value of such Contributions will be an amount equal to the fair market value of such Contributions at the time of payment into the Plan. Where such fair market value is not readily determinable, in the opinion of either the Promoter or the Trustee, a Subscriber shall provide written evidence satisfactory to the Promoter or Trustee, as applicable, establishing such fair market value and the Contribution shall only be accepted by the Promoter once such satisfactory evidence of fair market value has been so provided and the registered ownership of such property has been changed to reflect ownership by the Plan.
- c) In the event a Subscriber wishes to apply for Government Funded Benefits, the Subscriber shall make such application in a form and manner acceptable to the Minister and to the Promoter, which form the Promoter shall provide to the Subscriber(s) prior to, or immediately upon, completion of the Application. The Promoter shall ensure that Government Funded Benefits paid to the Plan are administered, invested and paid out of the Plan strictly in accordance with the terms of this Contract, the Applicable Legislation, and the agreements referred to in section 25. At the time a Contribution is made into the Plan, the Contribution will be allocated first to Beneficiaries who qualify to receive Government Funded Benefits, up to the amount eligible to receive the maximum Government Funded Benefits, then equally among the Beneficiaries eligible to receive Contributions.
- d) Each Subscriber undertakes to inform the Promoter of any change in circumstances of the Beneficiary(ies) (including any change of Beneficiary(ies) or in the residency status of the Beneficiary(ies)) upon the Subscriber making a Contribution or a request for an Educational Assistance Payment to be made to or on behalf of a Beneficiary.

Contributions to the Plan will be considered to have been made pro rata in respect of each Beneficiary unless otherwise stipulated by you. Any Contribution to the Plan made in respect of a former beneficiary under the Plan will be considered to have been made pro rata in respect of each current Beneficiary unless otherwise stipulated by you. Any amount may be transferred to the Plan from another RESP that allows more than one Beneficiary at a time provided that other RESP has never made an Accumulated Income Payment. Contributions transferred to the Plan shall be considered to have been made on your behalf pro rata in respect of each Beneficiary unless otherwise stipulated by you. If the other RESP was established before the Plan, the Plan will be deemed to be established on the day the other RESP was established or deemed to be established. Grants received by the Plan, whether directly from a government or by way of transfer from another RESP, shall not be considered to be a Contribution to the Plan.

## **6. Refund of Contributions:**

Upon written notice in the form required by the Promoter and subject to such reasonable requirements as the Promoter may impose and to the Applicable Legislation which requires the Promoter to repay Government Funded Benefits in certain circumstances, each Subscriber shall be entitled to:

- a) at any time, from time to time, receive a Refund of Contributions in an amount not exceeding the Capital Investments (less all applicable fees and charges); or
- b) direct, in the manner prescribed by the Promoter, that all or any part of the Refund of Contributions in an amount not exceeding the Capital Investments (less all applicable fees and charges) be paid to one or more of the Beneficiary(ies). The Promoter will identify to the Canada Revenue Agency the payments to Beneficiaries that are attributable to such Refunds of Contributions.

Where the Plan has two Subscribers, the written instructions must be signed by both Subscribers. When a Refund of Contributions is made, a corresponding refund of Government Funded Benefits will also be made pursuant to section 7. Each Subscriber acknowledges that such Refunds of Contributions may result in restrictions on future Government Funded Benefits in respect of Beneficiaries under the Plan.

## **7. Refund of Government Funded Benefits:**

Refunds of Government Funded Benefits will be made when and as required by the Applicable Legislation, including on:

- a) a withdrawal of Contributions for non-educational purposes;
- b) a payment pursuant to paragraphs 9(a)(iii) or (v);

- c) certain transfers from the Plan to another registered education savings plan;
- d) revocation of the Plan's registration, and on termination of the Plan; and
- e) certain replacements of a Beneficiary.

Refunds of Government Funded Benefits will also be made when the Government Funded Benefits were paid into the Plan in error.

#### 8. Investments:

- a) The Promoter shall ensure that the Plan Assets are held, invested and reinvested strictly in accordance with the instructions of the Subscriber received by the Promoter from time to time, industry standards, the terms and conditions of this Contract and the Applicable Legislation. When the Plan has two Subscribers, the Promoter may act upon the instructions received from either Subscriber. In the event that no direction is provided as to the immediate investment of any cash held as part of the Plan Assets, the Promoter shall, by the next business day following receipt thereof, place on deposit with the Trustee, all such cash, and the Trustee shall allow interest on such amounts on such terms and conditions as it may reasonably determine from time to time.
- b) Ownership of the Plan Assets shall, at all times, be vested solely in the Trustee in its capacity as trustee of the Plan and the Subscriber(s) shall have no interest in the Plan Assets other than as set forth herein. The Trustee (or its permitted agents) may exercise the rights and powers of an owner with respect to all securities held by it for the Plan, except that the right to vote and give proxies in respect thereof shall be exercised by the Subscriber(s). For this purpose the Subscriber(s) is hereby appointed as agent and attorney of the Trustee to execute and deliver proxies and/or other instruments mailed by the Trustee, or the Promoter on its behalf, to each Subscriber in accordance with the Applicable Legislation. Where the Plan has two Subscribers, the written instructions must be signed by both Subscribers.
- c) The Subscriber(s) shall be responsible for obtaining all necessary information concerning investments, including determining whether investments should be purchased, sold, or retained by the Promoter as part of the Plan and to ensure the eligibility and qualification of such investments as qualified investments for a registered education savings plan in accordance with the definition of "qualified investments" in subsection 146.1(1) of the Tax Act and under any other governing provision of the Applicable Legislation, and that such investments do not give rise to penalties and/or taxes of any kind. The Promoter 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 Tax Act) for a registered education savings plan. Each Subscriber acknowledges that such investments may produce losses of any nature whatsoever for the Plan and any failure to comply with the Applicable Legislation will result in penalties and/or taxes and each Subscriber agrees that he/she is solely responsible for such losses and for the payment of such penalties and/or taxes and for any resulting tax reporting relating thereto, whether or not the Promoter has communicated to the Subscriber(s) any information the Promoter may have received, or any judgment the Promoter may have formed, with respect to the forgoing at any particular time. Each Subscriber acknowledges that any failure to comply with the Applicable Legislation may also result in revocation of the Plan by the Canada Revenue Agency.

#### 9. Withdrawals:

- a) Upon receipt of a written direction from the Subscriber (jointly in the case of two Subscribers), in such form as the Promoter shall prescribe and subject to such reasonable requirements as the Promoter may impose and to the Applicable Legislation, the Promoter shall permit withdrawals from the Plan (to the extent of the Plan Assets after deducting any fees and expenses of the Promoter and Trustee or other amounts owing under section 17, any refunds of Government Funded Benefits as provided in section 7 and any withholding taxes under the Applicable Legislation):
  - (i) to make Educational Assistance Payments to or on behalf of a Beneficiary who is either:
    - (I) enrolled as a student in a Qualifying Educational Program at a Post-Secondary Educational Institution; or
    - (II) at least 16 years of age and enrolled as a student in a Specified Educational Program at a Post-Secondary Educational Institution; and
  - (III) either:
    - (A) has satisfied the condition in subparagraph (I) above; and
      - i. has satisfied such condition throughout at least 13 consecutive weeks in the 12-month period that ends at the time of such payment; or
      - ii. the total of the payment and all other educational assistance payments made under all registered education savings plans of the Promoter to or for the Beneficiary in the 12 -month period before the payment does not exceed \$5,000 or such greater amount as the Minister approves in writing with respect to the Beneficiary;;
    - or
    - (B) has satisfied the condition in subparagraph (II) above and the total of the payment and all other educational assistance payments made under all registered education savings plans of the Promoter to or for the Beneficiary in the 13 -week period before the payment does not



exceed \$2,500 or such greater amount as the Minister approves in writing with respect to the Beneficiary;

provided that the Subscriber(s) confirms in writing, as part of this written direction, the residency of the Beneficiary.

At the Subscriber's request (jointly, in the case of two Subscribers) and upon receipt of the requisite supporting documentation, the Promoter will apply to the Minister for an approval to pay a particular Beneficiary an amount higher than provided in subparagraph 9(a)(i)(III)(A) or (B).

When an Educational Assistance Payment is made to a Beneficiary, the payment will include Government Funded Benefits in accordance with, and up to a maximum amount permitted by, the Applicable Legislation.

- (i) as a Refund of Contributions (pursuant to section 6);
- (ii) to, or to a trust in favour of, a Designated Educational Institution in Canada referred to in subparagraph 118.6(1)(a)(i) of the Tax Act;
- (iii) for the repayment of Government Funded Benefits;
- (iv) to make Accumulated Income Payments if:
  - (I) the payment is made to, or on behalf of, a Subscriber who is resident in Canada when the payment is made;
  - (II) the payment is not made jointly to, or on behalf of, more than one Subscriber; and
  - (III) any of:
    - (A) the payment is made after the 9th year that follows the year in which the Plan was entered into and each individual (other than the deceased individual) who is or was a Beneficiary under the Plan 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;
    - (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.

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, at the Subscriber's request (jointly, in the case of two subscribers) and upon receipt of the requisite supporting documentation, the Promoter will apply to the Minister of National Revenue for approval to waive the requirements set out in clause 9(a)(v)(III)(A) hereof.

The Plan shall terminate before March 1 of the year following the year in which the first Accumulated Income Payment was made out of the Plan; and

- (v) to a trust that irrevocably holds property transferred to it pursuant to a registered education savings plan for any of the purposes set out in subsection 2(b) and paragraphs 9(a)(i) to (vi) as permitted by the Applicable Legislation. The effective date of such a transfer from the Plan to a registered education savings plan shall be determined in accordance with section 10.

For greater certainty, no payments will be made out of the Plan when the fair market value of the Plan Assets is less than the aggregate amount of all the Government Funded Benefits paid into the Plan less any Government Funded Benefits paid out of the Plan, unless the payment is an Educational Assistance Payment made to or on behalf of a Beneficiary and the whole payment is attributable to Government Funded Benefits.

The Promoter shall determine whether any condition precedent to the payment of an Educational Assistance Payment has been satisfied and such determination shall be final and binding on the Subscriber(s), the Beneficiary(ies) and any and all other persons who may be eligible to receive moneys pursuant to the Plan.

- b) Each Subscriber acknowledges and understands that the Applicable Legislation requires the repayment by a Beneficiary of any Government Funded Benefits received by such Beneficiary in excess of the maximum amount prescribed by the Applicable Legislation. An individual who is a beneficiary under more than one registered education savings plan shall be solely responsible for ensuring that any Government Funded Benefit payments he or she received in excess of the maximum amount prescribed by the Applicable Legislation is repaid as required. The Promoter shall provide the Beneficiary with notice of this obligation.
- c) Notwithstanding paragraph 9(a)(i) above, an Educational Assistance Payment to or on behalf of the Beneficiary may be made at any time in the six-month period following the particular time at which the Beneficiary ceases to be so enrolled if the payment would have complied with the requirements of paragraph 9(a)(i) had the payment been made immediately before such particular time. Further, an Educational Assistance Payment made in accordance with this subsection (c) but not in accordance with paragraph

9(a)(i) will be deemed, for the purposes of applying paragraph 9(a)(i) at and after that time, to have been made before the particular time referred to in this subsection (c).

#### 10. Transfers:

The Subscriber may, at any time, request in writing (jointly in the case of two Subscribers) that the Trustee, or the Promoter on the Trustee's behalf, transfer monies (including Government Funded Benefits) into and out of the Plan from and to another registered education savings plan. Transfers will be made even if they result in repayments of Government Funded Benefits or restrictions on future Government Funded Benefits in respect of Beneficiaries under the Plan.

In accordance with subsection 146.1(6.1) of the Tax Act, any registered education savings plan receiving a transfer will be deemed to have been entered into on the day that is the earlier of the day on which the registered education savings plan receiving the transfer (the "Transferee Plan") was entered into, and the day on which the registered education savings plan from which the transfer was made (the "Transferor Plan") was entered into. In accordance with paragraph 146.1(2)(i.2) of the Tax Act, the Plan will not accept a transfer from a registered education savings plan after the registered education savings plan has made an Accumulated Income Payment.

In accordance with subsection 204.9(5) of the Tax Act, each Contribution made to a Transferor Plan by or on behalf of a Subscriber prior to a transfer will be deemed to have been made by the Subscriber in respect of the beneficiary under the Transferee Plan, and the amount of the transfer will be deemed to have been withdrawn from the Transferor Plan, unless one of the following conditions is met:

- a) a beneficiary under the Transferee Plan was, immediately before the transfer, a beneficiary under the Transferor Plan, or
- b) a parent of the beneficiary under the Transferee Plan was a parent of an individual who was, at the time of the transfer, a beneficiary under the Transferor Plan and either
  - (i) the Transferee Plan allows more than one beneficiary under the plan at any one time, or
  - (ii) in any other case, the beneficiary under the Transferee Plan had not attained 21 years of age at the time the Transferee Plan was entered into.

If neither of the conditions set out in (a) and (b) above are met, the transfer may cause an over contribution to the Transferor Plan. Each Subscriber under the Transferor Plan will be deemed to be a Subscriber under the Transferee Plan for the purposes of the over contribution tax payable as a result of a transfer, in accordance with subsections 204.9(5) and 204.91(1) of the Tax Act.

#### 11. Tax Treatment of Accumulated Income Payments:

There shall be included in computing a Subscriber's income for a taxation year each Accumulated Income Payment received in the year. Each Subscriber further understands that if the person receiving the Accumulated Income Payment:

- a) is an original Subscriber, or
- b) has acquired the rights of a Subscriber pursuant to a decree or order of a competent tribunal, or under a written agreement, relating to a division of property between the individual and a Subscriber under the Plan for the settlement of rights as a result of marriage or common-law partnership breakdown, all or part of such payment may be rolled over without the payment of tax to a registered retirement savings plan ("RRSP") of a Subscriber or a spousal or common-law partner's RRSP of a Subscriber, as permitted by the Applicable Legislation subject to the Subscriber's available RRSP contribution room and the limits set out in section 204.94 of the Tax Act.

#### 12. Beneficiaries:

- a) Each of the Beneficiaries must be related to a living Subscriber or have been related to a deceased original Subscriber by blood relationship or adoption as defined in the Applicable Legislation and be under the age of twenty-one (21) at the time they are designated as a Beneficiary or, immediately before his or her designation, the Beneficiary was a beneficiary under a registered education savings plan that allowed more than one beneficiary at any one time. A Subscriber may designate and revoke the designation of a Beneficiary and designate another person as a Beneficiary by written notice (jointly in the case of two Subscribers) in a form acceptable to the Promoter. If more than one such instrument is delivered to the Promoter the one bearing the latest execution date will govern.
- b) The Promoter shall, within 90 days after an individual becomes a Beneficiary under the Plan, notify the individual (or, where the individual is under 19 years of age at that time and 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 each Subscriber of the Plan.

#### 13. Subscriber's Account and Statements:

The Promoter shall maintain in accordance with the Applicable Legislation segregated trust account(s) registered in the name of the Trustee in trust for the Subscriber(s) (the "**Accounts**") which will record and reflect:

- a) Contributions to, and withdrawals from, the Plan, and the date the Promoter received the Contributions, as well as whether such payments attracted payment or repayment of Government Funded Benefits;
- b) the particulars of any investment transactions made and any investments held by the Plan;
- c) the value of the Plan Assets;
- d) fees, costs and charges paid from the Plan Assets;
- e) all CES Grants, Canada Learning Bonds and other Government Funded Benefits paid into and out of the Plan, as well as the portion of Educational Assistance Payments paid to or on behalf of the Beneficiary that is attributable to CES Grants, Canada Learning Bonds and other Government Funded Benefits paid into the Plan;
- f) all transfers received into and/or paid out of the Plan;
- g) all investment income, gains and losses, earned or incurred by the Plan and all Accumulated Income Payments made to each Subscriber;
- h) all the amounts paid to or on behalf of the Beneficiary as an Educational Assistance Payment, and the date of payment;
- i) all amounts paid to, or in trust in favour of Designated Educational Institutions, or any other amounts paid to each Subscriber or at the Subscriber's direction pursuant to paragraphs 9(a)(ii) and (v), the date of payment and the recipient; and
- j) any other information the Promoter or the Trustee may decide or may be required to keep by the Applicable Legislation and the agreements between the Promoter and the Trustee, respectively, and the Minister or ESDC, from time to time.

The Promoter will mail to each Subscriber a transaction statement indicating any transaction made during the previous month and, at least annually, will provide a statement of the Accounts which shall provide the information set out above as at the date of the statement. This and any other information related to the Plan will be provided to, and be open to inspection or audits by, the Minister of National Revenue, the Minister and ESDC, from time to time, as required by the Applicable Legislation and the agreements between the Promoter or the Trustee, respectively, and the Minister or ESDC, from time to time.

#### **14. Appointment of Trustee:**

The Promoter shall ensure that a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, pursuant to paragraph 146.1(2)(a) of the Tax Act, is appointed as Trustee of the Plan pursuant to Applicable Legislation to act as trustee of the Plan Assets and irrevocably hold the Plan Assets for the purposes set forth in subsection 2(b). The Promoter shall be ultimately responsible for the Plan and the payment of the Educational Assistance Payments.

#### **15. Delegation:**

The Trustee shall irrevocably hold the Plan Assets and the responsibility for the Plan Assets shall rest with the Trustee. The Trustee may, and each Subscriber expressly authorizes the Trustee to, delegate to the Promoter, its successors and assigns as the sole agent of the Trustee certain powers, authorities and duties in respect of the Plan Assets as the Promoter and the Trustee may determine from time to time. To the extent that the Trustee has delegated the performance of all or a portion of the activities of the trust regarding the Plan Assets to the Promoter, such delegation shall be deemed to be in the best interests of the trust, the Subscriber(s) and the Beneficiary(ies). The Trustee shall notify the Minister or ESDC of the appointment of an agent in accordance with the terms of the agreement between the Trustee and the Minister or ESDC, as applicable.

The Promoter may, and each Subscriber expressly authorizes the Promoter to, delegate certain Promoter responsibilities to an agent of the Promoter or third party.

#### **16. Replacement of Trustee:**

The Trustee may resign at any time as trustee upon 90 days' prior written notice to the Promoter, or such other period of notice as the Promoter may accept or the Applicable Legislation may dictate. The Promoter may request the resignation of the Trustee by providing 90 days' prior written notice to the Trustee, or such other period of notice as the Trustee may accept or the Applicable Legislation may dictate.

Upon issuing or receiving notice of removal or resignation of the Trustee, respectively, the Promoter shall within the notice period referred to herein appoint by instrument in writing a successor trustee (the "**Successor Trustee**") that is a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee, pursuant to paragraph 146.1(2)(a) of the Tax Act.

In the event that the Promoter fails to appoint a Successor Trustee within the applicable notice period, the Trustee may appoint a Successor Trustee that is a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee, pursuant to paragraph 146.1(2)(a) of the Tax Act.

The party appointing the Successor Trustee undertakes to require the Successor Trustee to enter into an agreement with the Minister or ESDC, as applicable, upon its appointment as Successor Trustee, or within a reasonable time thereafter.

The Trustee will notify the Canada Revenue Agency and the Minister or ESDC prior to its resignation or removal and prior to the appointment of a Successor Trustee in accordance with the terms of the agreement between the Trustee and the Minister or ESDC, as applicable. The Promoter will



notify the Minister prior to effecting the Trustee's removal hereunder in accordance with the terms of the agreement between the Promoter and the Minister or ESDC, as applicable.

Effective upon the resignation or removal of the Trustee in accordance with the foregoing terms, and subject to the Trustee's receipt of all fees and expenses then owing to the Trustee and the Trustee's receipt of such acknowledgments, assurances and receipts as may be reasonable for the Trustee to request with respect to the transfer of the Plan Assets to the Successor Trustee, the Trustee shall execute and deliver to the Successor Trustee all conveyances, transfers and further assurances as may be reasonable to give effect to the appointment of the Successor Trustee, and the Successor Trustee will thereupon agree to be bound by the terms hereof (in which case all references herein to "the Trustee" will include the Successor Trustee). However, the Trustee will not transfer any Government Funded Benefits in the Plan to the Successor Trustee until such time as Successor Trustee has entered into an agreement with the Minister or ESDC, as applicable, and the Trustee has been reimbursed for any costs arising from the retention by the Trustee of the Government Funded Benefits in the Plan.

Notice of the replacement of the Trustee hereunder will be given by the Promoter to each Subscriber.

In the event that a trust governed by the Plan is terminated and a new trust is established, the Plan Assets shall be used for one or more of the purposes set out in subsection 2(b).

Notwithstanding any other provision of this Agreement, any trust company resulting from the merger, amalgamation or continuation of the Trustee or succeeding to substantially all of the trusteeship business of the Trustee (whether by sale of such business or otherwise) shall thereupon automatically become the Successor Trustee hereunder without further act or formality.

#### **17. Fees, Charges and Expenses:**

- a) The Trustee and the Promoter shall be entitled to reasonable fees and other charges in such amounts as may be fixed by the Trustee and/or Promoter, as applicable, from time to time, provided that the Promoter shall give at least sixty (60) days prior notice to each Subscriber of a change in the amount of such fees and charges.
- b) In addition to the foregoing, the Promoter and the Trustee shall also be entitled to reasonable fees for any exceptional services that either is required to perform hereunder, commensurate with the time and responsibility involved.
- c) In addition to the foregoing, if the Plan has a cash deficit at any time, the Promoter will be entitled to charge interest on the cash deficit until it is eliminated. Such interest charges will be calculated and payable monthly, based on an annual interest rate (divided by 365, or 366 in a leap year) and the average daily cash deficit during the calculation period. Any unpaid interest will be included in the calculation of the average daily cash deficit. The rate of interest payable on the cash deficit will be determined by the Promoter from time to time in its sole discretion. The rate of interest and method of calculation is available from the Promoter upon request and such rate shall be shown on the statements sent to the Subscriber(s).
- d) All fees of the Promoter and the Trustee shall be either charged to the Accounts or if a Subscriber has so instructed the Promoter in writing, billed to the Subscriber directly. All out-of-pocket expenses reasonably incurred by the Promoter and the Trustee in the administration of the Plan and the Plan Assets (such as certificate fees, postage, delivery charges, faxes, etc.) and other disbursements and expenses (including all taxes and Government Funded Benefit refunds) shall be charged to the Accounts.
- e) Fees related to the Plan are not deductible to the Subscriber(s). Fees related to the Plan Assets, such as broker commissions are considered expenses of the Plan, and as such reduce the Plan Assets available under the Plan for Refund of Contributions, Educational Assistance Payments, Accumulated Income Payments and payments to, or to a trust in favour of, a designated educational institution in Canada referred to in paragraph 118.6(1)(a)(i) of the Tax Act.
- f) Notwithstanding anything contained herein, the Promoter, upon receiving the agreement of the Trustee, is empowered to realize or cause to be realized from time to time, sufficient investments to permit it to pay any amounts which a Subscriber or the Plan is required to pay (including pursuant to the Plan or court order), or which is levied or assessed pursuant to the Applicable Legislation, or for payment of the fees and administration expenses of the Promoter and the Trustee. Any such sale shall be made at such price or prices as the Promoter may, in its sole discretion, determine and the Promoter shall not be responsible for any loss occasioned thereby.

#### **18. Liability of the Promoter and the Trustee:**

Unless caused by or resulting from the dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard on the part of the Promoter or the Trustee, the Promoter and the Trustee, and their respective employees, officers and directors shall have no liability hereunder in respect of (i) any taxes, interest or penalties that may be imposed under the Applicable Legislation in respect of the Plan; (ii) the receipt and time of receipt of any Government Funded Benefits; (iii) any refunds of Government Funded Benefits which may be required by the Applicable Legislation; (iv) any costs that the Promoter or the Trustee incur in the performance of their duties hereunder or under the Applicable Legislation; or (v) any loss or damages or tax liability suffered or incurred by the Plan, by a Subscriber or by any Beneficiary under the Plan as a result of a breach of the agreement between the Promoter or the Trustee, respectively, and the Minister or ESDC or the Applicable Legislation or payments or distributions out of the Plan made in accordance with these terms and conditions. In this regard, the Promoter and the Trustee may reimburse themselves for, or may pay, any such

Government Funded Benefit refunds, taxes, or costs out of the capital or the income, or partly out of the capital and partly out of the income, of the Plan (where permitted under the Tax Act) as the Promoter or the Trustee in their absolute discretion deem expedient. The Subscriber will at all times indemnify the Promoter and the Trustee and save them harmless in respect of any Government Funded Benefit refunds, taxes interest or penalties that may be imposed in respect of the Plan or costs incurred by the Promoter or the Trustee in respect of the Plan or any losses incurred by the Plan (other than losses for which the Promoter or the Trustee are liable in accordance herewith) as a result of a breach of the agreement between the Promoter or the Trustee, respectively, and the Minister or ESDC, the Applicable Legislation, or payments or distributions out of the Plan made in accordance with these terms and conditions.

Except as otherwise provided in the Tax Act, the Trustee and Promoter are not responsible for determining whether any investment made on your instructions is or remains a "prohibited investment" for your Plan, as that term is defined in the Tax Act. The Trustee or Promoter shall not be liable for any income tax, charge or tax that the Subscriber may be required to pay on a non-qualified investment or payments from the Plan or for any loss or shortfalls resulting from the investment or reinvestment of the assets of the Plan, the sale or other disposition of assets held in the Plan. None of us, our officers, employees and agents will be liable for and are indemnified by you and the Plan from and against all expenses, liabilities, claims, losses and demands of any nature arising out of the holding of the assets of the Plan; the dealing with the assets of the Plan in accordance with instructions which we, our officers, employees or agents believe in good faith to be given by you or other agent; making financial arrangements to settle trades; and the sale, transfer or release of assets of the Plan in accordance with this Contract, unless caused by or resulting from our dishonesty, bad faith, willful misconduct or gross negligence.

If the Plan becomes liable for tax, interest or penalties under the Tax Act or provincial legislation, the Trustee may sell any investment of the Plan to pay the liability. The Trustee may, but is not obliged to, sell or otherwise dispose of any investment of the Plan to avoid or minimize the imposition of tax, interest or penalties on you or the Plan. The Trustee will not be liable for any tax, interest or penalty imposed on you or the Plan or for any loss resulting from the disposition or failure to dispose of any investment held by the Plan.

Each Subscriber acknowledges and agrees that all investments of the Plan Assets are held at the risk of the Subscriber(s), and that the Promoter and the Trustee shall not be responsible for any damages, loss or decrease in the value thereof.

The Promoter may rely upon any statement or writing received from a Subscriber believed by the Promoter to be genuine and shall be under no duty to make any investigation or enquiry with respect thereto.

The foregoing indemnification of the Promoter and the Trustee and the limitations of liability of the Promoter and the Trustee shall survive the termination of the Plan.

#### **19. Amendment of the Plan:**

Upon at least sixty (60) days written notice to each Subscriber, with the written consent of the Trustee and in accordance with Applicable Legislation, the Promoter may from time to time amend the Plan with the concurrence of relevant taxation and other regulatory authorities having jurisdiction over the Plan, provided that such amendment does not have the effect of disqualifying the Plan for acceptance as a registered education savings plan within the meaning of the Applicable Legislation or disqualifying the Beneficiaries as recipients of Government Funded Benefits according to the Applicable Legislation. However, if the Plan must be amended to ensure the Plan continues to comply with the Applicable Legislation as amended from time to time, the Promoter is not required to give the Subscriber(s) prior notice of such amendments to the Plan and such amendments will be effective immediately after they have been made.

#### **20. Assignment by the Promoter:**

The Promoter may assign its rights and obligations hereunder to any other entity resident in Canada to carry out the duties and obligations of the Promoter under the Plan provided that the assignee agrees to enter and enters into an agreement with the Minister or ESDC, as applicable (in which case all references herein to "the Promoter" will include the assignee), and, prior to effecting the assignment, the Promoter notifies the Minister or ESDC in accordance with the terms of the agreement between the Promoter and the Minister or ESDC, as applicable, and the Promoter advises the Canada Revenue Agency of the assignment of the Promoter's rights and obligations to another entity, and further provided that an assignment of this Contract may not be made without prior written consent of the Trustee, which consent may not be unreasonably withheld. Notice of this assignment will be given by the Promoter to each Subscriber. However, the Promoter shall remain ultimately responsible for the administration of the Plan and paying, or causing to be paid, the Education Assistance Payments. The Promoter shall continue to perform such administrative services in respect of the Plan as are required hereunder and as it determines necessary from time to time.

#### **21. Successors:**

Subject to any provision herein to the contrary, the Plan shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, administrators, and personal representatives. For greater certainty and subject to the provisions of the Applicable Legislation, the entity resulting from an amalgamation, merger or reorganization of the Promoter shall become the Promoter hereunder.

Notwithstanding the aforementioned, prior to the effective date of any amalgamation, merger or reorganization, as the case may be, the Promoter shall notify the Canada Revenue Agency and make any amendments to the Plan that may be required by the Canada Revenue Agency as a result of the amalgamation, merger or reorganization of the Promoter.

**22. Notices:**

Any notice, statement or receipt given by the Promoter or the Trustee to a Subscriber or a Beneficiary shall be considered sufficient if delivered personally, by mail postage prepaid and addressed to the Subscriber or the Beneficiary at the address shown on the Application or to such other address as the Subscriber or the Beneficiary may designate in writing to the Promoter from time to time for such purpose, by electronic mail or other form of electronic transmission addressed to a Subscriber at the address indicated on the Application or such other address as the Subscriber or the Beneficiary may designate in writing to the Promoter from time to time for such purpose. Notice the Trustee or the Promoter gives you will be deemed to have been made on the day the notice is sent or transmitted. Any notice you give to the Trustee or the Promoter must be in writing in a form satisfactory to the Trustee or the Promoter, as applicable. The Trustee or the Promoter may, in its sole discretion, accept notice by means of electronic transmission. The Trustee may for any reason refuse to act on any notice, request or other communication from you and will not be liable for any resulting loss. Any notice given by a Subscriber to the Promoter or the Trustee shall be considered sufficient if delivered personally or mailed postage prepaid to the Promoter, or the Trustee, respectively at its office, and shall be deemed to have been received by the Promoter or the Trustee, respectively when actually received by it.

In addition to other notices required hereunder, the Promoter shall notify each Subscriber forthwith upon receipt by the Promoter of any assignment or notice of involuntary assignment, seizure, garnishment or any process of law or execution or notice in respect of any of the Plan Assets.

**23. Termination Date:**

The Subscriber(s) shall designate in the Application the termination date of the Plan (the “**Termination Date**”), which shall not be later than the last day of the 35th year following the year in which the Plan is entered into. The Plan may be terminated at such earlier date as agreed upon in writing by the Subscriber(s) and the Promoter and, shall terminate on an earlier date as prescribed by the Applicable Legislation from time to time. The Promoter shall provide each Subscriber with notice of the Termination Date not less than 3 months prior to the Termination Date, except when the Termination Date of the Plan has been changed by the Subscriber(s) to a date that is less than 6 months from the time the designation notice is received by the Promoter.

At the Termination Date, subject to Applicable Legislation and the terms of any direction from the Subscriber (jointly, in the case of two Subscribers) given to the Promoter prior to the Termination Date pursuant to section 10 hereof, the Promoter shall pay to, or to a trust in favour of, the educational institution designated by the Subscriber(s) an amount equal to the Plan Assets less any Contributions remaining in the Plan, less any unpaid taxes, penalties or other charges imposed under Applicable Legislation, less any Government Funded Benefits and less any unpaid fees, charges and/or expenses of the Trustee or Promoter hereunder (the “Designated Educational Institution Payment Amount”). The Promoter shall liquidate any Contributions remaining in the Plan and place the proceeds on deposit with the Trustee in the name of the Subscriber (or, where the Plan has two Subscribers, in the name of both Subscribers jointly) and the Trustee shall allow interest on such amount on such terms and conditions as it may reasonably determine from time to time, until it receives such direction. The Trustee shall be entitled to collect fees for the administration of the deposit account directly from the account. If no educational institution was designated by the Subscriber(s), the Trustee, in its sole discretion, shall designate the educational institution and the Promoter shall pay the Designated Educational Institution Payment Amount to, or to a trust in favour of, such Designated Educational Institution.

**24. Designation of Educational Institution:**

You may designate a Designated Educational Institution as the institution entitled to receive payments from the Plan. You may make, change or revoke the Designated Educational Institution by providing notice to the Promoter.

**25. Responsibilities of the Subscriber(s):**

The Subscriber(s) is/are responsible for:

- a) selecting investments for the Plan and assessing the merits of those investments, obtaining appropriate advice in respect of these matters or authorizing another party to do these things on your behalf;
- b) ensuring that Contributions to the Plan do not exceed the maximum Contribution limits permitted by the Tax Act;
- c) the truth and accuracy of the information provided by you to the Promoter or the Trustee and for notifying the Promoter and the Trustee of any change in the information provided;
- d) providing the information and documentation required to apply for and administer the Grants;
- e) ensuring that the investments held in the Plan are at all times qualified investments for the Plan under the Tax Act and immediately notifying the Promoter and the Trustee if an investment held in the Plan is or becomes a non-qualified investment for the Plan under the Tax Act; and
- f) paying any tax on excess Contributions to the Plan and requesting a refund of any excess Contributions.

You acknowledge and accept sole responsibility for these matters and undertake to act in the best interest of the Plan. You confirm that the Trustee is not responsible for any of these matters or for any loss in the value of the Plan. You acknowledge that any person from whom you obtain investment, tax or other advice is your agent and when acting (or representing that it acts) as your advisor is not the agent of the Promoter or the Trustee or the agent of any of their affiliates.

## **26. The Promoter's Responsibilities:**

The Promoter will:

- a) apply to register the Plan as an RESP under the Tax Act;
- b) receive Contributions to the Plan;
- c) apply for Grants as agent of the Trustee on behalf of the Plan at any time the Beneficiary is eligible for the Grant and the Promoter is eligible to apply for the Grant, after the Promoter receives:
  - (i) your instructions to apply for the Grant;
  - (ii) satisfactory evidence that the Beneficiary is eligible for the Grant; and
  - (iii) any information or document that the Promoter or a government authority may require in connection with the Grant application.

A payment will be made from the Plan as a Grant repayment in circumstances required by the CES Act or other Applicable Legislation. The Plan will comply with all relevant conditions and limitations imposed on it by the CES Act or other Applicable Legislation in connection with the Grants;

- d) invest and reinvest the assets of the Plan according to your instructions;
- e) provide you with the statements of the account;
- f) provide you and any Beneficiary with information or notice as required by the CES Act or other Applicable Legislation;
- g) receive from you any change in a Beneficiary, a Designated Educational Institution or any other matter which requires notification by you to the Promoter or the Trustee according to the provisions of this Contract;
- h) make payments from the Plan pursuant to the provisions of this Contract;
- i) to the extent required, deal with the appropriate taxation authorities in connection with the Plan or any amendment of the provisions of this Contract;
- j) ensure compliance with all relevant provisions of the CES Act and other Applicable Legislation relating to Grants; and
- k) perform such other duties as the Promoter and the Trustee from time to time considers appropriate.

The Promoter is ultimately responsible for the administration of the Plan. Pursuant to this Contract, as between the Promoter and you, you acknowledge that the foregoing does not detract from your duties and responsibilities under the Plan. This means, for example, that neither the Promoter nor the Trustee is authorized to select investments for the Plan and neither will assess the merits of any investment selected by you. Neither the Promoter nor the Trustee is responsible for providing any investment, tax or other advice to you or are responsible for any advice that you obtain from any source. Notwithstanding any other provision of this Contract, neither the Promoter nor the Trustee will be liable for any loss or penalty suffered as a result of any act done by them in reliance of your authority, the authority of your agent or legal representatives. Neither the Promoter nor the Trustee is under any obligation to verify that any person is properly authorized to act as your agent or legal representative or is otherwise authorized to act on your behalf.

## **27. Assignment by Subscriber:**

If you are a Public Primary Caregiver, you may assign your interest in this Contract to an individual or another Public Primary Caregiver who has agreed in writing to acquire your interest. If you are an individual, you may assign your interest in this Contract to your spouse, common law partner, former spouse or former common law partner (as recognized by the Tax Act) following a relationship breakdown to effect a division of property pursuant to marital property legislation. An assignment will not be effective until an executed copy of the assignment has been delivered to the Trustee. The assignor will have no rights or entitlements as subscriber under the Plan after the effective date of the assignment.

## **28. Non-Qualified and Prohibited Investments:**

The Promoter 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 Tax Act) for a registered education savings plan.

However, if the Plan acquires an investment that is a non-qualified investment or a prohibited investment (as defined under the Tax Act) for an RESP, or if property held in the Plan becomes a non-qualified investment or a prohibited investment for an RESP, it is the responsibility of the Subscriber(s) to file an Individual Return for Certain Taxes for RRSPs, RRFs, RESPs or RDSPs, and any other form required under the Tax Act and pay the applicable tax the Tax Act.

## **29. Advantage Extended:**

If an advantage (as defined under the Tax Act) in relation to an RESP is extended to the Subscriber or to a person who does not deal at arm's length with the Subscriber, it is the responsibility of the Subscriber to file an income tax return and pay the tax under Part XI.01 of the Tax Act; except if the advantage is extended by the Trustee or by the Promoter or by a person with whom the Trustee is not dealing at arm's length.

## **30. Truth of Information and Undertaking:**

You warrant that all information on the Application or subsequently provided by you or other person to the Promoter or to the Trustee (whether it relates to you, a Beneficiary, a Beneficiary's parents or guardians, or another) is true and accurate and undertake to provide proof thereof if requested.

You acknowledge that the Promoter and the Trustee are relying on the truth and accuracy of the information provided by you or other person. You undertake to provide all information and documentation relating to you, the Beneficiaries and the Beneficiaries' parents or guardians as may reasonably be requested by the Promoter or Trustee in connection with the administration of the Plan and the application for grants on behalf of the Plan. You undertake to notify the Promoter and the Trustee of any change in the information provided by you or other person.

**31. Agreement to be Bound/Priority:**

The Subscriber has signed the Application and Contract for the Plan agreeing to be bound by the terms thereof. The Subscriber agrees to be bound by the terms of any addendums to the Plan (the "Addendum"). If there is a conflict between the provisions of this Contract and those of any Addendum, the latter shall prevail to the extent necessary to resolve the conflict, so long as the Tax Act is not contravened. If there is a conflict between any Addendum and this Contract and the Applicable Legislation, the latter shall prevail to the extent necessary to resolve the conflict, so long as the Tax Act is not contravened. The Tax Act shall prevail, in the case of conflict with any of the foregoing.

**32. Borrowing:**

The Plan may not borrow money, unless: (a) the money is borrowed for a term of 90 days or less; (b) the money is not borrowed as part of a series of loans or other transactions and repayments; (c) no assets of the Plan are used as security for the borrowed money; and (d) the Promoter consents to the borrowing.

**33. Valuation:**

The Promoter will determine the value of the Plan Assets from time to time in accordance with applicable industry practices and such valuation shall be conclusive for all purposes hereof.

**34. Promoter and Trustee Agreements:**

The Promoter and the Trustee may, and each Subscriber expressly authorizes the Promoter and the Trustee, respectively, to enter into, amend, extend and terminate an agreement between the Promoter and the Trustee, respectively, and the Minister and ESDC, as applicable, in order to provide each Subscriber with access to the Government Funded Benefits pursuant to the Applicable Legislation.

**35. Information Slips:**

The Promoter will provide each Subscriber, each Beneficiary and other applicable persons with such information regarding amounts paid to or from the Plan and other transactions of the Plan as are required to be provided under the Applicable Legislation to enable such persons to complete their respective income tax returns. The Promoter will also file with the Minister of National Revenue any returns required by the Applicable Legislation such as an information return regarding the investments of the Plan.

**36. Proof of Information:**

Each Subscriber certifies that the information provided to the Promoter in respect of the Plan is correct and undertakes to provide the Promoter with further proof of any information relating to the Plan as may be required.

**37. Governing Law:**

The Plan shall be governed, construed and administered in accordance with the laws of the Province of Ontario and of the federal laws of Canada applicable therein. If a conflict arises between the provisions of the Ontario and those of the Tax Act, the provisions of the Tax Act shall govern.

**38. Access to File (for use in Quebec only):**

The Subscriber(s) understands that the information contained in the Application shall be maintained in a file at the Promoter's place of business. The object of this file is to enable the Trustee, the Promoter and their respective agents or representatives to access the Application, answer any questions a Subscriber or Beneficiary may have regarding the Application and the file in general, manage the account and follow any instructions received by a Subscriber on an ongoing basis. Subject to Applicable Legislation, the personal information contained in this file may be used by the Trustee or the Promoter to make any decision relevant to the object of the file and only the Trustee's or Promoter's employees, agents, representatives and any other persons required for the execution of the Trustee's or Promoter's duties and obligations or any other persons expressly authorized in writing by the Subscriber(s) may have access to the file.