

CIBC Higher Learning Education Savings Plan (Family) – Trust Agreement

1. **Definitions.** In this Trust Agreement, these terms have the following meaning (unless the context requires otherwise):
- a) **"Accumulated Income Payment"** means an "accumulated income payment" as defined in the Act and the provisions respecting the making of those payments are set out in section 13;
 - b) **"Act"** means the *Income Tax Act* (Canada);
 - c) **"Applicable Legislation"** means the Act, the *Canada Education Savings Act*, and any applicable provincial tax and education legislation, collectively, including any regulations under them, and may include provincial legislation which is not yet in force but which purports to establish a program that ESDC has stated it will treat as a Designated Provincial Program, even though that provincial legislation is not yet in force;
 - d) **"Application"** means the Higher Learning Education Savings Plan (Family) application form;
 - e) **"Beneficiary"** means a person:
 - i) named by the Subscriber on the Application or other form acceptable to the Promoter as a potential recipient of Educational Assistance Payments;
 - ii) connected to each living Subscriber (other than a Public Primary Caregiver), or who was connected to a deceased original Subscriber (other than a Public Primary Caregiver), by blood relationship or adoption (within the meaning of the Act);
 - iii) whose Social Insurance Number has been provided to the Promoter;
 - iv) who is resident in Canada when named as a Beneficiary under paragraph i); and
 - v) who is either less than 21 years of age or a beneficiary under another RESP that allows more than one beneficiary at any one time, when named as a Beneficiary under paragraph i).

The requirements of paragraphs iii) and iv) do not apply to a person designated as a Beneficiary before 2004. In addition, a non-resident person without a Social Insurance Number may be designated as a Beneficiary provided that the designation is made in conjunction with a transfer from another RESP under which the person was a beneficiary immediately before the transfer.
 - f) **"Canada Education Savings Grant"** means an amount paid to the Plan under section 5 of the *Canada Education Savings Act* or under Part III.1 of the *Department of Employment and Social Development Act*, as it read before the coming into force of section 5 of the *Canada Education Savings Act*;
 - g) **"Canada Learning Bond"** means an amount paid to the Plan under section 6 of the *Canada Education Savings Act*;
 - h) **"CIBC"** means Canadian Imperial Bank of Commerce;
 - i) **"CIBC Group"** means CIBC and its subsidiaries that currently offer deposits, loans, mutual funds, securities trading, mortgages, trust, and insurance services;
 - j) **"CIBC Trust"** means CIBC Trust Corporation, a trust company licensed under Canadian law to provide trustee services in Canada;
 - k) **"Contribution"** means an amount contributed into the Plan in cash or in kind by a Subscriber (or someone on the Subscriber's behalf) with respect to a Beneficiary in accordance with the terms of the Trust Agreement and limits in the Act, and does not include an amount paid into the Plan under or because of:
 - i) the *Canada Education Savings Act* or a Designated Provincial Program;
 - ii) 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);
 - l) **"Designated Educational Institution"** means the Post-Secondary Educational Institution named by a Subscriber on the Application or another form provided by the Promoter (or, if none is named, any designated educational institution, as defined in sub-paragraph 118.6(1)(a)(i) of the Act, chosen by the Promoter in its sole discretion) and which is allowed to receive payments under paragraph (d) of the definition of "trust" in subsection 146.1(1) of the Act;
 - m) **"Designated Provincial Program"** means:
 - i) a program administered pursuant to an agreement entered into under section 12 of the *Canada Education Savings Act*, or
 - ii) 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;
 - n) **"Educational Assistance Payment"** means any amount paid or payable under the Plan to or for a Beneficiary to assist the Beneficiary to further the Beneficiary's education at a post-secondary school level (but does not include a Refund of Contributions under section 14);
 - o) **"ESDC"** means Employment and Social Development Canada;
 - p) **"Estate Representative"** means the person or persons who has or have demonstrated, with evidence satisfactory to Us, (which may include letters probate or other court documentation), the death of the sole Subscriber, the death of a Joint Subscriber in Québec, or in the case of Joint Subscribers outside Québec, the death of the last of the Joint Subscribers, and that person, or those persons, is or are the legal representative of that deceased Subscriber's estate;
 - q) **"Former Plan"** means any other RESP entered into by a Subscriber;
 - r) **"Government Assistance"** means any Canada Education Savings Grant, Canada Learning Bond, or Provincial Program Assistance;
 - s) **"Joint Subscribers"** means the Subscribers set out in paragraph ii) of the definition of "Subscriber" being the individual (other than a trust) and the spouse or common-law partner of the individual, named as Subscribers in the Application;
 - t) **"Plan"** means the education savings plan set up under the Trust Agreement, the Application and the Applicable Legislation;
 - u) **"Plan Assets"** means all assets held by the Trustee under the Trust Agreement from time to time and consisting of any amounts or investments contributed, paid or transferred to the Plan, and the net earnings on them;
 - v) **"Plan Proceeds"** means Plan Assets, less:
 - i) any applicable taxes, interest or penalties that are or may become or have to be withheld or payable under the Tax Laws;
 - ii) costs of realization and any of Our fees, charges and expenses; and
 - iii) Government Assistance that is to be repaid under Applicable Legislation;
 - w) **"Post-secondary Educational Institution"** means an educational institution:
 - i) in Canada that is:
 - A. a university, college or other educational institution designated by the relevant authority under the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* or, in Québec, an Act respecting financial assistance for education expenses; or
 - B. certified by the Minister of Employment and Social Development Canada to be an educational institution providing courses, other than courses designed for university credit, that furnish a person with skills for, or improve a person's skills in, an occupation; or
 - ii) outside Canada that is an educational institution that provides courses at a post-secondary school level and that is:
 - A. a university, college or other educational institution at which a Beneficiary was enrolled in a course of not less than 13 consecutive weeks; or
 - B. a university at which a Beneficiary was enrolled on a full-time basis in a course of not less than three consecutive weeks;
 - x) **"Primary Caregiver"** means, with respect to the Beneficiary at the time the Application is signed, the individual who is eligible to receive the Canada Child Tax Benefit payment;
 - y) **"Promoter"** means CIBC World Markets Inc., the promoter of the Plan under the Act;
 - z) **"Provincial Program Assistance"** means an amount paid to the Plan under a Designated Provincial Program;
 - aa) **"Public Primary Caregiver"**, of a Beneficiary in respect to whom a special allowance is payable under the *Children's Special Allowances Act*, means the department, agency or institution that maintains the Beneficiary or the public trustee or public curator of the province in which the Beneficiary resides;
 - bb) **"Qualifying Educational Program"** means a program at a post-secondary school level of at least three (3) consecutive weeks duration that requires each student taking the program spend at least ten (10) hours per week on courses or work in the program;
 - cc) **"Refund of Contributions"** means any payment under subsection 14c) that is a refund of Contributions made at a previous time to this Plan or a Former Plan, excluding the repayment of Government Assistance, as required by the Applicable Legislation;
 - dd) **"RESP"** means a registered education savings plan, as defined in the Act;

- ee) **"Specified Educational Program"** means a program at a post-secondary level of at least three (3) consecutive weeks duration that requires each student taking the program to spend at least twelve (12) hours per month on courses in the program;
- ff) **"Subscriber"** means at any time:
- the individual (other than a trust) named as Subscriber in the Application;
 - the individual and the spouse or common-law partner of the individual, named as Joint Subscribers in the Application;
 - the Public Primary Caregiver named as Subscriber in the Application;
 - another individual (other than a trust) or another Public Primary Caregiver who has, under a written agreement, acquired a Public Primary Caregiver's rights as a Subscriber;
 - an individual who has 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 the division of property between the individual and a Subscriber in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership; or
 - after the death of a Subscriber, any other person (including the estate of the deceased Subscriber) who:
 - acquires the deceased Subscriber's rights as a Subscriber under the Plan; or
 - makes contributions into the Plan in respect of a Beneficiary with the written consent of the Promoter, and any other person (including the estate of the deceased Subscriber) who acquires the deceased Subscriber's rights under the Plan, but does not include an individual or a Public Primary Caregiver whose rights as a Subscriber under the Plan had been acquired by an individual or Public Primary Caregiver in the circumstances described in paragraph iv) or v);
- gg) **"Tax Laws"** means the Act and any applicable tax legislation of Your Canadian province of residence as recorded in Your Application, as amended from time to time on proper notice to Us, provided that if You become a non-resident of Canada, "Tax Laws" means the Act;
- hh) **"Termination Date"** means the earliest of the following:
- the Ultimate Termination Date;
 - if an Accumulated Income Payment is made from the Plan, the last day of February of the year after the year in which the first Accumulated Income Payment is made from the Plan;
 - such earlier date that the Promoter is directed in writing by the Subscriber to terminate the Plan; and
 - the date the Promoter determines to terminate the Plan under subsection 16;
- ii) **"Trust Agreement"** means this CIBC Higher Learning Education Savings Plan (Family) - Trust Agreement; Unless otherwise indicated, any reference to sections, subsections, paragraphs and subparagraphs mean those provisions in the Trust Agreement;
- jj) **"Trustee"** means CIBC Trust Corporation and any successor trustee of the Plan;
- kk) **"Ultimate Termination Date"** means the end of the 35th year following the year in which the Plan was entered into;
- ll) **"We", "Us", and "Our"** means the Trustee and the Promoter;
- mm) **"You", "Your", and "Yours"** refer to:
- for individual Subscribers, the person or persons who has or have signed the Application and will be the Subscriber of the Plan;
 - for a Public Primary Caregiver who is a Subscriber, the Public Primary Caregiver; and
 - any subsequent person who acquires rights as a Subscriber in accordance with the Trust Agreement and Applicable Legislation.
2. **Purpose of the Trust.** The Trustee will hold the Plan Assets irrevocably in trust (Subject to the terms of the Trust Agreement including payment of fees and other amounts under section 21 for any of these purposes:
- the payment of Educational Assistance Payments under section 11;
 - the payment of Refunds of Contributions under subsection 14c);
 - the payment to a Designated Educational Institution in Canada or a trust in its favour;
 - the payment to a trust that irrevocably holds property pursuant to another RESP in accordance with the Applicable Legislation;
 - the payment of Accumulated Income Payments under section 13;
 - the repayment of Government Assistance (and the payment of amounts related to those repayments) under the *Canada Education Savings Act* or under a Designated Provincial Program, as required by the Applicable Legislation; and
 - any other purpose set out in the definition of "trust" in subsection 146.1(1) of the Act.
3. **Appointment of Trustee.** CIBC Trust agrees to act as Trustee of the Plan and to be responsible for the trust fund created under the Trust Agreement.
4. **Role of Promoter.** The Promoter agrees to pay or cause to be paid Educational Assistance Payments to or for one or more Beneficiaries upon the direction of the Subscriber and otherwise in accordance with the Trust Agreement. The Promoter is ultimately responsible for Plan administration, including obtaining Canada Revenue Agency's approval of the Trust Agreement as a specimen plan and applying for registration of the Plan as an RESP under the Applicable Legislation. The Promoter must also ensure that the Plan complies at all times with the Applicable Legislation's requirements for RESPs. The Promoter may, if it wishes, delegate certain administrative duties to the Trustee or any other member of the CIBC Group. The Promoter may determine in its sole discretion whether or not the Plan accepts applications for and any payment or transfer of Government Assistance into the Plan.
5. **Joint Subscribers and Multiple Subscribers.**
- Where there are Joint Subscribers, the Joint Subscribers confirm that they are joint tenants with rights of survivorship (except for a Subscriber resident in Québec, where this right does not exist at law). Joint tenancy with right of survivorship means that if one Subscriber dies, the other Subscriber automatically will become the sole Subscriber and will assume all rights and obligations of the deceased Subscriber under the Plan including the right to receive a Refund of Contributions under subsection 14d) and an Accumulated Income Payment under section 13.
 - Where there are Joint Subscribers or multiple Subscribers who are not Joint Subscribers:
 - notices and other communications to be sent under the Trust Agreement by the Promoter or its agent to the Subscribers will be effective and binding on all Subscribers when sent to one Subscriber only in accordance with subsection 26b);
 - the Subscribers are jointly and severally (solidarily in Québec) liable for any amounts which may be payable under sections 21 or 22;
 - each Subscriber authorizes any other Subscriber to act on his or her behalf with respect to this Plan;
 - The Trustee, the Promoter, and any of their agents may act on instructions or requests received from any Subscriber with respect to the Plan, without any instructions or confirmation from any other Subscriber, including with respect to Plan Contributions, naming Beneficiaries, investments, payments, and refunds; and
 - each Subscriber authorizes and directs the Trustee, the Promoter, and their agents to so act and confirms that a payment or refund which is payable under this Plan to the Subscribers may be paid to either of them or each of them separately in the proportion as directed by a Subscriber, subject to the requirements regarding payment of Accumulated Income Payments as set out in section 13, and that payment or refund will be deemed to be payment or refund to all Subscribers.
6. **Beneficiaries.** The Subscriber must name one or more Beneficiaries on the Application. At any time, the Subscriber may change the Beneficiary, subject to Applicable Legislation, by notice to the Promoter on a form acceptable to it. Within ninety (90) days after an individual is named as a Beneficiary, the Promoter or its agent will send the individual written notice of the existence of the Plan and the Subscriber's name and address. If the Beneficiary is under 19 years of age at that time and ordinarily lives with a parent/legal guardian or is maintained by a Public Primary Caregiver, the notice will instead be sent to the parent/legal guardian or Public Primary Caregiver, as the case may be.

7. **Contributions and Transfers into the Plan.**

- a) **Contributions.** The Subscriber is responsible for deciding when and how much to contribute to the Plan and ensuring that the RESP lifetime limit imposed by subsection 204.9(1) of the Act in respect of a Beneficiary is not exceeded (\$50,000 for 2007 and later years). Contributions will be considered to have been made pro rata in respect of each Beneficiary unless otherwise stipulated by a Subscriber. Contributions may be in cash or, in the Promoter's or its agent's sole discretion, in kind (which means that the Promoter may accept the transfer of actual investments if they are permitted under section 8). The Promoter or its agent may set a minimum amount or value for each Contribution. However, for Contributions after 2003, a Contribution in respect of a Beneficiary is permitted only if:
 - i) the Beneficiary's Social Insurance Number is provided to the Trustee before the Contribution is made (unless the Plan was entered into before 1999) and the Beneficiary is resident in Canada when the Contribution is made; or
 - ii) the Contribution is made by way of transfer from another RESP under which the Beneficiary was a Beneficiary immediately before the transfer.
- b) **Deadline on Contributions.** Contributions cannot be made more than 31 years following the year in which the Plan is entered into.
- c) **Limit on Amount of Contributions.** If the RESP lifetime limit referred to in subsection 8a) is exceeded, the Subscriber is entirely responsible for requesting a large enough refund under paragraph 14c) to withdraw the "Subscriber's share of the excess amount" (as that phrase is defined in subsection 204.9(1) of the Act).
- d) **Contribution Age Limit.** A Contribution may be made in respect of a Beneficiary only if the Beneficiary is less than 31 years of age at the time of the Contribution.
- e) **Transfers from Other RESPs.** The Promoter or its agent in its sole discretion reserves the right to accept or decline transfers. Amounts or investments may be transferred from a Former Plan into this Plan (if they are permitted investments under section 8) in accordance with subsections 146.1(6.1) and 204.9(5) of the Act, as long as no Accumulated Income Payments were made from the Former Plan before the transfer and the transfer is otherwise allowed by the Applicable Legislation. To the extent that the transferred amount was paid into the Former Plan by a subscriber in respect of a Beneficiary under the Former Plan, it will be deemed to be a Contribution made in respect of each Beneficiary of the Plan, and at the same time and in the same amount as it was paid into the Former Plan, unless a Beneficiary of this Plan was also a beneficiary of the Former Plan immediately before the transfer or a Beneficiary of this Plan is a sibling of a beneficiary of the Former Plan. After that transfer of assets from a Former Plan to the Plan, for all purposes of the Trust Agreement, the Plan will be deemed to be entered into on the earlier of the day on which the Plan was entered into and the day on which the Former Plan was entered into.

8. **Investments.**

- a) All investment management authority is solely Your responsibility. This means any statutory rules regarding authorized trustee investments or trustee's duty with regard to investment where the trustee is charged with managing the investments, do not apply to this trust. We will hold, invest and sell the Plan Assets according to Your instructions. We may require any instructions to be in writing.
- b) Notwithstanding anything in the Trust Agreement, We may decline to accept any particular Contribution or transfer or to make or continue to hold any particular investment, in Our sole discretion or for any reason, including any asset if it does not comply with Our administrative requirements or policies in place from time to time. We may also need You to provide special supporting documentation as a condition to Our making certain investments for the Plan.
- c) Any cash balance, including Contributions received by Us and not immediately invested by You, will be held as a deposit with the Trustee under the *Trust and Loan Companies Act (Canada)*, payable on demand. The Trustee may pay interest on the deposit at a rate and to be credited at a time as it in its sole discretion determines.
- d) It will be solely Your responsibility to determine whether any transfer, contribution or investment is or remains a "qualified investment" and is not a "prohibited investment" for RESPs pursuant to the Tax Laws. The Promoter shall exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the Plan holds a non-qualified investment. The Plan will bear any taxes, penalties and/or related interest imposed under the Tax Laws. If the Plan Assets are insufficient to pay any taxes, penalties or related interest incurred, or if taxes, penalties or related interest are imposed after the Plan has ceased to exist, You must pay or reimburse Us directly for any such taxes, penalties or related interest other than for charges, taxes or penalties imposed on the Trustee and/or Promoter under the Act. It is also solely Your responsibility for any taxes, interest and/or penalties imposed on You under the Tax Laws for acquiring or holding either non-qualified investments or prohibited investments. Should an investment no longer be a qualified investment for an RESP under the Act, We may, in our sole discretion, withdraw that investment from the Plan and deliver it to You in kind, or sell it and retain the proceeds in the Plan. We shall determine the fair market value of the investment for tax reporting purposes in such manner as we determine in our sole discretion.
- e) We will not be responsible for any loss or tax resulting from the sale or other disposition or any valuation of any investment forming part of the Plan Assets, for any purposes of the Plan.

9. **Your Account and Statements.** We will maintain an account in Your name showing all Contributions, transfers, investments, withdrawals and payments. We will provide You account statements as required under securities regulations. We will prepare returns and file reports as may be required from time to time by the Tax Laws and Applicable Legislation.

10. **Management and Ownership.** We may hold any investment in Our own name, in the name of Our nominee or agent, in bearer form or in another name or form, or with any custodian, clearing corporation or depository, as We may determine. We may generally exercise the power of an owner with respect to the Plan Assets, including the right to vote or give proxies to vote, however, We may decline to act or as a condition to acting may require You to sign documents related to subscriptions, voting, proxies or other corporate actions, as We in Our sole discretion determine and We will have no liability for acting or declining to act. We may sell assets to pay any assessments, taxes or charges in connection with Your or the Plan's liability. In exercising Our rights and carrying out Our responsibilities, We may employ agents and advisors, including legal counsel, and may act or not act on the advice or information of any agent or advisor.

11. **Educational Assistance Payments.** Educational Assistance Payments will be composed of Government Assistance and earnings on Plan Assets and will be otherwise payable in accordance with Applicable Legislation. Upon direction from the Subscriber, in written form or other manner as authorized by the Promoter, the Promoter agrees to pay or cause to be paid Educational Assistance Payments to or for a Beneficiary. An Educational Assistance Payment can be made to or for a Beneficiary only where:

- a) one of the following applies:
 - i) the Beneficiary is at the time of the payment enrolled as a student in a Qualifying Educational Program at a Post-secondary Educational Institution; or
 - ii) the Beneficiary is at the time of the payment at least 16 years of age and is enrolled as a student in a Specified Educational Program at a Post-secondary Educational Institution; or
 - iii) the Beneficiary has, within six months prior to the time of payment, ceased to be enrolled as a student in a Qualifying Educational Program or a Specified Educational Program, as the case may be; and
- b) either:
 - i) the Beneficiary satisfies the condition set out in subparagraph 11a) i) and:
 - A. has satisfied that condition throughout at least 13 consecutive weeks in the 12-month period preceding the time of the payment; or
 - B. the total of the Educational Assistance Payment and all other prior Educational Assistance Payments made under an RESP of the Promoter to or for the Beneficiary in the 12-month period that ends at the time of the payment does not exceed \$5,000 or any greater amount that the Minister designated for the purpose of the *Canada Education Savings Act* has approved in writing with respect to the Beneficiary; or
 - ii) the Beneficiary satisfies the condition set out in subparagraph 11a) ii) and the total of all the Educational Assistance Payments and all other prior Educational Assistance Payments made under an RESP of the Promoter to or for the Beneficiary in the 13-week period that ends at the time of the payment does not exceed \$2,500 or any greater amount as the Minister designated for the purpose of the *Canada Education Savings Act* has approved in writing with respect to the Beneficiary.

12. **Payment of Government Assistance.** For a Beneficiary who is 16 or 17 years of age in a given year to be eligible to receive Canada Education Savings Grant or applicable Provincial Program Assistance, at least one of the following conditions must be met:
- Contributions totaling at least \$2,000 must have been made to, and not withdrawn from, RESPs for the benefit of the Beneficiary before the calendar year in which the Beneficiary reaches age 16; or
 - At least \$100 must have been contributed to, and not withdrawn from, RESPs for the Beneficiary in any four calendar years prior to the year in which the Beneficiary reaches 16 years of age.
- Where applicable, certain residency requirements must be met by the Beneficiary for payment of Provincial Program Assistance to or for the Beneficiary.
13. **Accumulated Income Payments.** Upon direction from the Subscriber, in written form or other manner as authorized by the Promoter, the Promoter agrees to pay or cause to be paid an Accumulated Income Payment to the Subscriber only if:
- the payment is made to, or on behalf of, a Subscriber who is resident in Canada when the payment is made;
 - the payment is not made jointly to, or on behalf of, more than one Subscriber. Where section 17 applies and an Accumulated Income Payment is to be made to the Estate Representative of a deceased Subscriber, if there are multiple Estate Representatives, unless all Estate Representatives agree and otherwise instruct the Promoter in writing to whom an Accumulated Income Payment is to be made, and payment under that instruction would be in accordance with Applicable Legislation, the Accumulated Income Payment will be made in the name of the estate of the deceased Subscriber; and
 - any of:
 - at the time of the payment, it is after the ninth (9th) year that follows the year in which the Plan was entered into and each individual (other than a deceased individual) who is or was a Beneficiary has attained 21 years of age before the payment is made and is not eligible under the Plan to receive an Educational Assistance Payment;
 - the payment is made in the 35th year following the year in which the Plan was entered into; or
 - each individual who was a Beneficiary is deceased when the payment is made.The requirements in paragraph 13c) i) are deemed to be met in respect of a Beneficiary if that Beneficiary suffers from a severe and prolonged mental impairment and the Promoter has received written authorization from the Minister of National Revenue to waive the conditions set out in clause 146.1(2)(d.1)(iii)(A) of the Act. On the request of a Subscriber, the Promoter will make a written application to the Minister of National Revenue to request the Minister's authorization in this regard.
14. **Payments Out of the Plan; Refunds of Contributions.**
- Payments Out.** Before making a payment, the Promoter may determine whether any conditions precedent as required under the Trust Agreement and/or the Applicable Legislation are satisfied; its determination will be final and binding on the Subscriber, the Beneficiary and all other persons who may be eligible to receive money from the Plan. The Promoter may establish a limit on the number of payments allowed from the Plan each year. If allowed under the Applicable Legislation, the Promoter will make any of these payments out of the Plan's net earnings, Government Assistance and/or the Contributions (for payments to another RESP under subparagraph (iii) below only), when the Subscriber asks the Promoter to do so in the form and manner provided by the Promoter and the Subscriber provides any documentation required by the Applicable Legislation or as required by the Trustee in its discretion:
 - Educational Assistance Payments under section 11;
 - payments to, or to a trust in favour of, a Designated Educational Institution;
 - payments to a trust that irrevocably holds property pursuant to another RESP; or
 - Accumulated Income Payments under section 13.
 - Taxes.** Tax information return slips will be issued and taxes will be withheld from any payment out of this Plan, as required by the Applicable Legislation.
 - Refunds of Contributions.** At any time, the Subscriber may ask for a Refund of Contributions to be paid to the Subscriber. The Promoter will pay the Refund of Contributions as directed as long as the Refund of Contributions:
 - is requested on the form provided by the Promoter and all requested information is provided by the Subscriber;
 - complies with the terms of the Plan, including the Applicable Legislation; and
 - does not exceed the lesser of total Contributions (less any previous refunds) and the value of the Plan Assets at the time of the Refund of Contributions (less any repayment of Government Assistance, as required by the Applicable Legislation).
 - Government Assistance.** If required by the Applicable Legislation, Government Assistance will be refunded from the Plan Assets to the appropriate government authority.
15. **Payments, Transfers and Asset Liquidation Generally.** The following applies to any withdrawals, transfers or any other payments required under the Trust Agreement including fees and expenses under section 21, all referred to in this section as "Payment" or "Payments", and any other time assets are liquidated:
- It is solely Your responsibility to ensure that there is sufficient cash in the Plan to make Payments. We are not required to make any Payment in kind.
 - In order to make any Payment, to the extent We deem appropriate, We may, without notice to You, sell all or convert part of any of the Plan Assets at the price or prices as We, in Our sole discretion, may determine, and We will deduct any applicable fees and expenses. We will have no liability to You in respect of any sold or converted Plan Assets or for any losses that may result from those sales or conversions.
 - We will withhold and remit any income taxes as required.
 - A Payment or asset liquidation will only take effect in accordance with the Tax Laws and any other applicable law. No withdrawal or transfer will be made until all liabilities (including for all fees, charges and taxes) have been paid or provided for.
 - Where a transaction is carried out or an entitlement on Plan Assets (such as dividends) is received in a foreign currency, it will be converted to Canadian currency. Any exchange required between Canadian and foreign currency will be carried out by CIBC or a member or associate of the CIBC Group (any of which is referred to in this paragraph as "CIBC"). In performing any actual currency conversion in or for the Plan, CIBC will act as principal in buying and selling currency from and to You and CIBC will earn spread-based revenue determined by the difference between the rates at which CIBC buys and sells the currency, the rates determined by CIBC in its sole discretion at the time of the buy and sell without having to obtain rates that limit the spread-based revenue. The spread-based revenue will be in addition to any commission, fee or revenue otherwise payable by You to CIBC on the transaction giving rise to the conversion of currency or otherwise payable to the Trustee of the Plan. The spread-based revenue will be in addition to any commission, fee or revenue otherwise payable by You on the payment out or on the account or otherwise payable to the Trustee or Promoter.
 - We will be discharged from all further duties and liabilities in respect of any Payment of Plan Assets.
 - We are not required to make a Payment from the Plan at any time if We determine that We may suffer legal and/or reputational risk, or that We may be in violation of any law, rule, regulation, agreement or internal policy applicable to us. Without limiting the generality of the previous statement, this includes the *Special Economic Measures Act* (Canada), or any other regulatory sanctions.
16. **Plan Termination.**
- You may terminate the Plan by giving Us written notice.
 - We may terminate the Plan at any time without notice, including:
 - if Your account with the Promoter is terminated or closed as provided in any account agreement with the Promoter;
 - if the Plan contains a zero balance or a small amount and has remained at a zero balance or below that small amount level for a period of time, that small amount and period as determined by Us in Our sole discretion; or
 - You have terminated the Plan or the Promoter has terminated your account with the Promoter, but You have not directed a withdrawal or transfer of all of the Plan Proceeds.

- c) The Plan must be terminated on or before the Termination Date. If the Plan has not been terminated by no later than six months before the Ultimate Termination Date, the Promoter will advise the Subscriber that the Ultimate Termination Date is approaching. On the Termination Date, the Plan Assets must be used for one or more of the purposes set out in section 2. Unless the Promoter receives a proper payment or refund direction under section 14 at any time before the Termination Date that results in the termination of the Plan, on Termination Date, the Promoter will pay:
 - i) an Accumulated Income Payment to the Subscriber, if an Accumulated Income Payment is permitted by section 13 or the Act; or
 - ii) if an Accumulated Income Payment is not allowed by the Act to any Subscriber, an equivalent payment to the Designated Educational Institution.
 - d) The Trustee or the Promoter will be entitled to sell Plan Assets to provide for any payment in connection with Plan termination and neither the Trustee or Promoter will be liable for any losses, expenses or taxes You or any other person incurs as a consequence arising from the sale. Subsequent to such sale and payment, any remaining Plan Assets will be distributed to the Subscriber as a Refund of Contributions in cash or in kind as the Promoter or the Trustee will decide in its sole discretion.
 - e) Any termination will not affect the liabilities or obligations under the Trust Agreement incurred prior to the termination and provisions regarding liability, limitation of liability and indemnity will survive termination of the Plan.
17. **Death of a Subscriber.** This provision does not apply to a Public Primary Caregiver.
- a) Where there are Joint Subscribers with right of survivorship, on death of the first of Joint Subscribers, the deceased Subscriber's rights in the Plan pass by right of survivorship to the surviving Subscriber. After the death of any Joint Subscriber, on request of the Estate Representative of the deceased Joint Subscriber, We will provide the Estate Representative with any documents and other information about the Plan that the deceased Subscriber would have been entitled to while alive, for a Plan that is joint with right of survivorship, up to and including the date of death, for any other joint Plan, as long as the Estate Representative has rights to the Plan. This includes, among other things, Plan forms, correspondence, transactions, statements, vouchers and balances.
 - b) On death of a sole Subscriber, death of a Joint Subscriber where there is no right of survivorship, or in the case of Joint Subscribers with right of survivorship, death of the last of Joint Subscribers;
 - i) the Promoter will deal with the deceased Subscriber's Estate Representative regarding the deceased Subscriber's interest in the Plan;
 - ii) No person may become successor Subscriber of the Plan until the Estate Representative so directs Us in writing as required by Us, and that person signs the documentation and takes the steps required by the Promoter to become successor Subscriber to the Plan;
 - iii) We are entitled to rely on the written direction of the Estate Representative as to who shall become successor Subscriber and are expressly absolved of any responsibility to see to the application of the Plan Assets, how the Plan may be operated by the successor Subscriber or with respect to any terms of Your estate or the Estate Representative's obligations to Your estate and no Beneficiary or person claiming through Your estate shall have any recourse against Us.
18. **Access to the Court.** If there is a dispute or conflict about:
- a) not making any payment or transfer from the Plan as set out in subparagraph 15g);
 - b) who is legally authorized to instruct on or entitled to the Plan and direct payments during Your life or on Your death; or
 - c) in Our view, a failure of persons entitled on Your death to properly instruct Us regarding the Plan,
- We are entitled to either apply to the courts for directions or pay the Plan Proceeds or portion of Plan Proceeds into court and be discharged on that payment, and, in any such case, fully recover any legal costs We incur in this regard in accordance with section 21. This is in addition to any right at law of a trustee to pay trust assets into court. Neither the Promoter nor the Trustee will have any liability for any taxes or repayment of Government Assistance resulting from any payment into court.
19. **Delegation by Trustee.** You authorize Us to delegate to the Promoter and any others, the performance of administrative, custodial and any other duties relating to the Plan as We may determine appropriate from time to time. You acknowledge that We may pay the Promoter all or any portion of Our fees and reimburse the Agent for its out-of-pocket expenses in performing its delegated duties. You also acknowledge that the Promoter will earn normal brokerage commissions on investment transactions processed by Us or the Promoter. You agree that the Promoter or its affiliates may act as principal or market maker on the other side of a transaction or as part of larger transactions for the Plan, including options, fixed income and currency conversion transactions, and You agree to pay the Promoter the applicable commissions on these transactions. You acknowledge and agree that all protections, limitations of liability and indemnifications given to Us under the Trust Agreement, are also given to and are for the benefit of the Promoter.
20. **Delegation by You.** You may, by way of a duly executed power of attorney, in a form acceptable to Us, appoint an agent to give investment instructions, or otherwise deal with the Plan as Your agent, however We reserve the right to require proof satisfactory to Us, including requiring court documentation to that effect of the agent's authority, including with respect to any specific transaction, and also to refuse to deal with Your agent. You release Us from any claim or liability when acting upon the instructions of Your agent. Unless Your power of attorney specifically states otherwise, Your agent appointed under the power of attorney may provide Us and the Agent with information necessary for the "Know Your Client" regime under securities regulation and We may rely on that information.
21. **Fees and Expenses.** We are entitled to receive and may charge against the Plan reasonable fees and other charges specifically referred to in the Trust Agreement and any other published fees and charges that We establish from time to time in conjunction with the Promoter. We will give You notice of a change in the amount of any published fees as required by securities regulation. We are also entitled to reimbursement for all taxes, penalties and interest, legal fees and for all other costs and out-of-pocket expenses incurred by Us in connection with the Plan other than for charges, taxes or penalties imposed on the Promoter and/or Trustee under the *Tax Act*. Without limiting the generality of the previous statement, We are specifically entitled to recover any legal fees and expenses incurred by Us in connection with any dispute, conflict or uncertainty arising:
- a) as a result of not making any Payment from the Plan as set out in subparagraph 15g);
 - b) during Your lifetime, regarding who is legally authorized to instruct on the Plan or direct payment of Plan Proceeds;
 - c) from the disposition of the Plan or Plan Proceeds on Your death;
 - d) out of a third-party demand made upon the Plan; or
 - e) Your or any other person's interest or alleged interest in the Plan, including any issues involving marriage or common-law partnership breakdown.
22. **Our Liability.** We are entitled to act upon any instrument, certificate, notice or other writing believed by Us to be genuine and properly signed or presented. When the Plan is terminated and all of the Plan Proceeds are paid out, We will be released and discharged from any further responsibility or obligation in connection with the Plan. We will not be liable for or in respect of any tax, penalty, interest, loss or damages suffered or incurred by the Plan, You or any other person in connection with the Plan, as a result of:
- a) the acquisition, holding or transfer of any investment, or as a result of payments out of the Plan, made in accordance with instructions given to Us, or pursuant to any direction by You to terminate the Plan or as a required by Applicable Legislation;
 - b) as a result of Us acting or declining to act in accordance with instructions given to Us; or
 - c) otherwise in accordance with the terms of the Trust Agreement,

unless caused by Our gross negligence, bad faith or wilful misconduct, or in Quebec, unless caused by Our intentional or gross fault. Without limiting the generality of that statement, You will have no claim whatsoever against Us in relation to any losses, diminution, damages, charges, costs, taxes, assessments, levies, interest, demands, fines, claims, penalties, fees or expenses incurred directly or indirectly with respect to the administration or trusteeship of the Plan or the Plan Assets ("Liabilities"), except Liabilities directly caused by Our gross negligence, bad faith or wilful misconduct, or in Quebec, unless caused by Our intentional or gross fault. You specifically acknowledge that We will not be responsible for Liabilities caused by any action or inaction of the Trustee or the Promoter in each one's personal capacity.

The Trustee shall have only the obligations and liabilities provided in the Trust Agreement and for greater certainty, shall not have any of the duties, obligations, or liabilities of an administrator of the property of others within the meaning of the Civil Code of Quebec.

You, Your heirs and Estate Representative and each beneficiary under the Plan agree to and by this Trust Agreement do indemnify and save harmless Us, Our associates and affiliates and each of Our and their respective directors, officers, custodians, agents (including the Promoter) and employees from and against all Liabilities of any nature whatsoever (including all expenses reasonably incurred in Our or their defence) which may at any time be incurred by any of Us or them, or be brought against any of Us or them by any person, regulatory authority or government authority, and which may in any way whatsoever arise out of or be connected in any way with the Plan. (This indemnity does not apply with respect to charges, taxes or penalties imposed solely on the Promoter and/or Trustee under the Act.) If We or any of them are entitled to and make any claim under this indemnity, We may pay the claim from the Plan Assets other than Government Assistance as provided in Applicable Legislation. If the Plan Assets other than Government Assistance as provided in Applicable Legislation are insufficient to cover the claim, or if the claim is made after the Plan has ceased to exist, You agree to personally pay the amount of the claim and We may apply monies held for You in any other account with any member of the CIBC Group, including the Promoter, other than a registered retirement savings plan or registered retirement income fund, to eliminate or reduce the claim.

The provisions of this section 22 shall survive the termination of the Plan.

23. **Replacement of Trustee.** We may retire as trustee of the Plan upon sending You sixty (60) days prior notice, provided that a successor trustee has been appointed in writing by the Promoter and the successor trustee has accepted the appointment. We will transfer all records and investments of the Plan to the successor trustee immediately upon retirement. Any trust company resulting from a merger, amalgamation or continuation to which We are party, or succeeding to substantially all of RESP trusteeship business (whether by sale of the business or otherwise), will, if authorized, become the successor trustee of the Plan without further act or formality.
24. **Change of Promoter.** The Promoter may assign its rights and obligations under the Trust Agreement to any corporation resident in Canada, provided that the assignee corporation executes any agreement which is necessary or advisable for the purposes of assuming the rights and obligations under this Trust Agreement and further provided that an assignment of this Trust Agreement may not be made without prior written consent of the Trustee, which consent may not be unreasonably withheld.
25. **Amendments.** We may propose to change, either permanently or temporarily, any term of the Trust Agreement (including fees, charges or other amounts required to be paid by you under the Trust Agreement) or replace the Trust Agreement with another trust agreement, at any time. We will give You written notice of a proposed change and any other information required by law, at least thirty (30) days before the change is stated to come into effect in the notice in accordance with subsection 26b), the "Notice to You" provision. You may refuse the change by terminating the Plan without cost, penalty or cancellation indemnity (other than taxes or penalties imposed under the Tax Laws or any third party as a result of your termination of the Plan, which will remain Your responsibility, and subject to Applicable Legislation with respect to Government Assistance) by notifying Us within thirty (30) days of the effective date of the change. You can obtain a copy of the current CIBC Higher Learning Education Savings Plan (Family) - Trust Agreement at any CIBC branch or through our website.
26. **Notice.**
 - a) **Notice By You:** Any notice or instructions given by You to Us shall be given by personal delivery or by mail (postage prepaid) to the Trustee, care of, CIBC Investor Services Inc., 22 Front Street West, Basement Level, Toronto, Ontario M5J 2W5 or at another address that We may from time to time specify in writing. The notice or instruction shall be deemed to have been given on the day that it is actually delivered to or received by Us.
 - b) **Notice to You:** We can communicate with you about the Plan in any manner permitted by law, including (as applicable), by mail, telephone, fax, email or other electronic means at any address or number you provide or any other relevant channels (including branch, website or mobile app notices), and You agree that We may send You confidential information by these means. We will consider that You have received written communications as follows (whether You actually receive them or not):
 - i) if We send the communication by prepaid mail, on the third business day after the date on the postmark; or
 - ii) in any other case, on the day the communication or notice is displayed or provided to You.We may contact You outside of business hours for time-sensitive matters. You are responsible for making sure We have Your current address. If something We send You cannot be delivered and is returned to Us, We will not send anything else until You give us a current address.
 - c) **Notice to Us by Third Party:** While any legal notice or document issued by a third party in respect of the Plan will be effectively served if served on us at the address in subsection 26a) service may be accepted, at Our discretion, at any location of the Trustee, Promoter, or any member of the CIBC Group. If We or any member of the CIBC Group incurs any expenses in responding to any third-party legal notice or document, We may charge those expenses to the Plan as out-of-pocket expenses under section 21. We may, but are not required to, notify You of the receipt of any legal notice or document before We comply with it. We may serve You with any legal notice or document by mailing it to You by ordinary mail in accordance with subsection 26b). Any payment made by Us to a third-party claimant under any legal process, if the payment is made in good faith, is a discharge of the Trustee's trust obligations with respect to the Plan Assets and the Plan, to the extent of the amount paid.
27. **Assignment by Subscriber.** A Subscriber cannot during the Subscriber's lifetime assign the Subscriber's rights as a Subscriber in respect of the Plan, unless the Promoter has consented to the assignment in writing and the assignee qualifies as a Subscriber under the definition of "Subscriber" in the Trust Agreement. Any assignment on death is governed by section 17.

28. **Collection, Use and Disclosure of Information.** We may collect information during the course of Your relationship with Us from credit bureaus, other financial institutions, mutual fund companies, and references You provide to Us. We may disclose information to credit bureaus, other financial institutions, mutual fund companies and other issuers, law enforcement agencies, regulators and self-regulatory organizations. (The word "Information" means financial and financially related information about You, including information to identify You or qualify You for products and services, or information that We need for regulatory requirements.) We may use Information to identify You, protect You, and Us from fraud and error, understand Your needs and eligibility for services, recommend particular products and services to meet Your needs, provide ongoing service, administer referral arrangements that You have agreed to, facilitate tax and other reporting by mutual fund companies and other issuers, and to comply with legal, regulatory and self-regulatory requirements. We may also collect, use and disclose Information for any purpose required or permitted by law, a regulator or a self-regulatory organization. We may share information within the CIBC Group for legal and regulatory purposes, to manage risk and to update Your information as described in the CIBC privacy brochure, "Your Privacy Is Protected". This policy brochure describes how the CIBC Group collects, uses, discloses, and retains information about You and the products and services You use and is available at any CIBC branch or www.cibc.com. In addition upon Your death, for the purposes of administration of the Plan or where the information is reasonably necessary for the administration of Your estate, We may share information about the Plan, including information contained in the Application, with Your Estate Representative. In addition to any other consent You may have given with respect to the collection and use of personal information, You hereby consent and agree to allow the Promoter, the Trustee, and their agents (the "Parties") to collect personal information about a Beneficiary (including personal information provided in any forms required for the purposes of the Plan and/or Government Assistance) ("Information") and to use that Information to administer the Plan, or as required by law or regulatory policy, and as otherwise required under the Applicable Legislation or other law including information contained in the Application and any supplementary documents, as well as the amount of any Contribution and the amount of the Plan, with the Beneficiary, with the parent/legal guardian/Public Primary Caregiver of the Beneficiary and ESDC in connection with the administration of the Plan. If You provide personal information about a third party (such as Your spouse or common-law partner or a Beneficiary), You shall have first obtained appropriate consent from such third party to the collection, use, and disclosure of his or her personal information by the Parties in the course of the administration of the Plan and for the purpose for which it was provided by any of the Parties. The Parties may keep Information in their records for as long as needed for the purposes described above and as required by law.
29. **Electronic writing and signature.** Where writing or signature are required, in Our sole discretion and subject to applicable law, these may be in electronic form.
30. **Reference to Statutes.** All references in the Trust Agreement to any statute, regulation or any provision of them will mean the statute, regulation or provision as it may be re-enacted or replaced from time to time. If any provision of the Act which is referred to in the Trust Agreement is renumbered because of an amendment to the Act, then the reference in the Trust Agreement is considered to be a reference to the renumbered provision.
31. **Binding.** The terms and conditions of the Application and the Trust Agreement will be binding upon Your heirs and Estate Representative and upon Our successors and assigns. However, if the Plan or the Plan Assets are transferred to a successor trustee, then the terms of such successor trustee's trust agreement will govern from then on.
32. **Governing Law.** This Trust Agreement will be construed, administered and enforced in accordance with the laws of the Canadian province or territory in which You live or if You do not live in Canada, with the laws of Ontario. If there is more than one Subscriber, the applicable province or territory will be that of the Subscriber whose name appears first on the Application as amended on proper notice to the Promoter from time to time. If any Subscriber is not a resident of Canada, the applicable province or territory will be that of the majority of Subscribers who are resident in Canada. If no Subscriber is resident in Canada, the applicable province will be Ontario.
33. **Québec Only.** You confirm that you have requested that this document, and any other documents relating to it, be in English.
Vous reconnaissez avoir exigé que ce document, ainsi que tout document s'y rattachant soient rédigés en langue anglaise.