

SUPPLEMENTAL AGENCY AGREEMENT

4 December 2014

**(supplemental to the Amended and Restated Agency Agreement
dated 24 September 2013)**

THE BANK OF NOVA SCOTIA

Issue of Australian Dollar Denominated Covered Bonds

under the

Global Registered Covered Bond Program

THIS SUPPLEMENTAL AGENCY AGREEMENT is made on 4 December 2014

BETWEEN:

- (1) **THE BANK OF NOVA SCOTIA** (ARBN 133 513 827) (the “**Issuer**”);
- (2) **SCOTIABANK COVERED BOND GUARANTOR LIMITED PARTNERSHIP** (the “**Guarantor**”); and
- (3) **BTA INSTITUTIONAL SERVICES AUSTRALIA LIMITED** (ABN 48 002 916 396) as Australian paying agent and registrar for the purposes of the Australian Covered Bonds (as defined below) (the “**Australian Agent**”).

WHEREAS:

- A. The Issuer proposes to issue Australian dollar denominated New South Wales law governed covered bonds (the “**Australian Covered Bonds**”) to be constituted by a deed Poll made on or about the date of this supplemental agreement (as the same may be amended, restated, supplemented or modified from time to time, the “**Australian Deed Poll**”) and cleared through the clearing and settlement system (“**Austraclear System**”) operated by Austraclear Limited (“**Austraclear**”).
- B. The Australian Covered Bonds will be issued under the Issuer’s Global Registered Covered Bond Program (the “**Program**”).
- C. The Issuer, the Guarantor, and the other parties named therein entered into an amended and restated agency agreement (the “**Agency Agreement**”) dated 24 September 2013 in respect of the Program.
- D. Pursuant to Article 26.6 of the Agency Agreement, the Issuer and the Guarantor may appoint additional agents in relation to any particular Series of Covered Bonds issued under the Program.
- E. The Issuer and the Guarantor wish to appoint BTA Institutional Services Australia Limited as the Australian paying agent and registrar in respect of the Australian Covered Bonds and BTA Institutional Services Australia Limited wishes to accept that appointment.

NOW IT IS HEREBY AGREED as follows:

1. Appointment

In accordance with Article 26.6 of the Agency Agreement, the Issuer and the Guarantor hereby appoint the Australian Agent, and the Australian Agent hereby agrees, to act as issuing and paying agent and registrar in Australia in relation to the Australian Covered Bonds and to carry out certain other functions in accordance with the standard market practices established for clearing and settlement of securities in the Austraclear System on the Australian Covered Bonds and, unless otherwise specified herein, such appointment shall be on the same terms and conditions as those set out in the Agency Agreement with respect to the appointment of the other Paying Agents and Registrars,

and the rights and obligations of the Australian Agent against the parties to the Agency Agreement and, conversely, the rights and obligations of the parties to the Agency Agreement against the Australian Agent, shall be the same as the rights and obligations owing among the parties to the Agency Agreement. This supplemental agreement supplements the Agency Agreement and, together, they form one agreement.

2. Capitalized Terms

Capitalized terms used and not defined herein have the same meaning given to such terms in the Agency Agreement.

3. Specific Provisions

For the purposes of the issue of the Australian Covered Bonds only, the following provisions shall apply.

(a) Definitions and Interpretation

- (i) All references to “**Paying Agents**” in the Agency Agreement shall include the Australian Agent, in its capacity as paying agent in respect of the Australian Covered Bonds.
- (ii) All references to “**Registrar**” or “**Registrars**” in the Agency Agreement shall include the Australian Agent, in its capacity as registrar in respect of the Australian Covered Bonds.
- (iii) All references to “**Terms and Conditions**” in the Agency Agreement are to the terms and conditions of the Australian Covered Bonds as set forth in the Australian Deed Poll, as supplemented, modified or replaced by the applicable Pricing Supplement.

(b) Issuing Duties

- (i) Notwithstanding anything to the contrary in the provisions of Article 3 of the Agency Agreement, the Australian Agent will upon receipt from the Issuer of instructions that Australian Covered Bonds are to be issued in a specified principal amount or amounts and to a specified person or persons:
 - (A) immediately (or as otherwise instructed by the Issuer) establish the Register (in the case of the initial issue of Australian Covered Bonds in a Series) and enter the specified person or persons in the Register (which, in the case of Australian Covered Bonds to be cleared through the Austraclear System, shall, unless otherwise notified by the Issuer or Austraclear, be Austraclear) as the holders of Australian Covered Bonds in the specified principal amount or amounts; and
 - (B) in the case of Australian Covered Bonds to be cleared through the Austraclear System, notify Austraclear of the details of the

proposed issue no later than the time that Austraclear requires those details and lodge the details of the proposed issue in the Austraclear System as soon as practicable thereafter, so as to facilitate the proposed issue in accordance with the Issuer's instructions.

(c) Paying Duties

- (i) Notwithstanding anything to the contrary in the provisions of Article 8 of the Agency Agreement, but subject to the provisions of this supplemental agreement, the Australian Agent will pay all amounts due in respect of the Australian Covered Bonds on the due dates for such payments in accordance with the Terms and Conditions.
- (ii) The Australian Agent's obligations under clause 3(c)(i) with respect to any payment due on the Australian Covered Bonds on any date are subject to the Issuer or the Guarantor, as applicable, paying or causing to be paid to the Australian Agent and the Australian Agent receiving in cleared funds an amount sufficient (together with any funds then held by the Australian Agent on behalf of the Issuer or the Guarantor) to pay the full amount due not later than 10.00 am (local time in Sydney) on the due date for payment of that amount.
- (iii) If the Issuer or the Guarantor does not satisfy the conditions specified in clause 3(c)(ii) in respect of any payment but nonetheless pays the required amount to the Paying Agent, the Paying Agent must pay or arrange to be paid the amounts due on the Australian Covered Bonds in accordance with clause 3(c)(i) on the due date or, if the amounts are received by the Paying Agent at a later time, as soon as reasonably practicable after the Paying Agent confirms receipt of the required amount.
- (iv) The Australian Agent is under no obligation to make or arrange to be made payments on the Australian Covered Bonds except as provided by this clause 3(c).
- (v) The Australian Agent will notify by email communication each of the Bond Trustee and the Issuer if it has not received, or if the Issuer notifies it that it will not receive, unconditionally the full amount payable on the Australian Covered Bonds by the relevant due date for payment of that amount.
- (vi) The Australian Agent must hold all moneys paid to it under this supplemental agreement in its trust account for the benefit of (or on such other terms as may be specified by) the Issuer (in the case of money paid by the Issuer) or the Guarantor (in the case of money paid by the Guarantor) pending application towards payment of the relevant amount due on the Australian Covered Bonds. If so directed by the Issuer or the Guarantor (as the case may be) prior to such application, the Australian

Agent must repay the relevant amount to the Issuer or the Guarantor (as the case may be).

(vii) Section 3.4 of the Agency Agreement shall not apply with respect to Australian Covered Bonds.

(d) Registrar Duties

(i) Notwithstanding anything to the contrary in the provisions of Article 11 of the Agency Agreement, the Australian Agent will establish the Register for, and enter therein the issue details of, each Series of Australian Covered Bonds and maintain the Register in accordance with the Terms and Conditions in Sydney (or in such other place as the Issuer may approve) so as to show at all times in respect of those Australian Covered Bonds:

(A) a copy of the applicable Pricing Supplement;

(B) the principal amounts of the Australian Covered Bonds;

(C) the dates of issue of the Australian Covered Bonds and all subsequent transfers and changes of ownership;

(D) the names and addresses of the holders of the Australian Covered Bonds;

(E) the date on which any Australian Covered Bonds are redeemed or purchased by the Issuer and cancelled; and

(F) such other details as may be required under the Terms and Conditions, the Australian Deed Poll or the Trust Deed or as are reasonably requested by the Issuer.

(ii) Subject to the Terms and Conditions, this supplemental agreement and the Austraclear Regulations, the Registrar must upon receipt of any valid application for any transfer of Australian Covered Bonds made in accordance with the Terms and Conditions and the Austraclear Regulations record the transfer in the Register. All transfers must be made subject to, and the Australian Agent must comply with, the regulations set out in schedule 1 or such other regulations as the Issuer may from time to time with the approval of the Registrar make concerning the carrying out of transfers of Australian Covered Bonds and the forms and evidence to be provided in connection with any transfer of Australian Covered Bonds.

(iii) The Australian Agent must at all reasonable times during office hours make the Register available to the Issuer, the Bond Trustee, the other Agents, the holders of any Australian Covered Bond or any person authorised by any of them for inspection, copying or taking extracts.

(e) General duties

- (i) The Australian Agent must perform the duties required of it by the Terms and Conditions, the Trust Deed, the Agency Agreement, the Australian Deed Poll and this supplemental agreement and do such other things as may be necessary to give effect to the duties required of it in Terms and Conditions, the Trust Deed, the Agency Agreement, the Australian Deed Poll and this supplemental agreement.
- (ii) The Australian Agent must (except as ordered by a court of competent jurisdiction or as required by law or otherwise instructed by the Issuer, with the approval of the Bond Trustee) treat the registered holder of any Australian Covered Bond as the absolute owner of the Australian Covered Bond for all purposes (whether or not overdue and notwithstanding any notice of ownership or writing on the relevant Australian Covered Bond or any notice of previous loss or theft or of trust or other interest in the relevant Australian Covered Bond).
- (iii) The Australian Agent shall make available to holders of any Australian Covered Bond for issue or inspection at all reasonable times during office hours sufficient copies of all documents required by the Australian Deed Poll, the Terms and Conditions or as stated in any offering or information memorandum, prospectus or Pricing Supplement to be available from the Australian Agent and, as required, forms of proxy, together with instructions as to how to complete, deal with and record the issue of such forms.
- (iv) If requested by the Issuer, the Australian Agent must at the expense of the Issuer arrange for publication of all notices (in a form approved by the Trustee and the Issuer) required or desired by the Issuer to be given to holders of the Australian Covered Bonds in accordance with the Terms and Conditions.

4. Calculation Agent

- (a) The Issuer and Guarantor appoint the Australian Agent as Calculation Agent in relation to each Series of Australian Covered Bonds in respect of which it is named as such in the applicable Pricing Supplement for the purposes specified in this supplemental agreement and in the Terms and Conditions and all matters incidental thereto.
- (b) The Australian Agent accepts its appointment as Calculation Agent in relation to each Series of Australian Covered Bonds in respect of which it is named as such in the applicable Pricing Supplement and shall perform all matters expressed to be performed by it in, and otherwise comply with, the Terms and Conditions and the provisions of this supplemental agreement and, in connection therewith, shall take all such action as may be incidental thereto. The Australian Agent acknowledges and agrees that it shall be named in the applicable Pricing Supplement as Calculation Agent in respect of each Series of Australian Covered Bonds unless the Dealer (or one of the Dealers) through whom such Australian Covered Bonds are issued has agreed with the Issuer to act as Calculation Agent or the Issuer

otherwise agrees to appoint another institution as Calculation Agent or a Calculation Agent is not required in respect of such Series.

- (c) The terms of this supplemental agreement relating to indemnification, restrictions on liability and the other rights and protections afforded herein to BTA Institutional Services Australia Limited in its capacity as Australian Agent shall apply equally when it performs its duties as Calculation Agent hereunder.

5. Calculation Duties

- (a) Notwithstanding anything to the contrary in the provisions of Article 9 of the Agency Agreement, the Australian Agent shall in respect of each Series of Australian Covered Bonds in relation to which it is appointed as such:
 - (i) by no later than 7 calendar days before the relevant date on which payment is due on an Australian Covered Bond, advise the Issuer of the amount due in respect of each Australian Covered Bond payable by the Issuer on that date;
 - (ii) as soon as practicable after the relevant time on such date as the relevant Terms and Conditions or the relevant Pricing Supplement may require, obtain all quotes to be obtained and make all determinations and calculations to be made in respect of the Australian Covered Bonds;
 - (iii) notify the Issuer of each calculation made under sub-paragraph (a)(ii) as soon as practicable after its determination, and in any event not later than 12.00 noon Sydney time one Business Day after such calculation is made;
 - (iv) provide the Issuer with reasonable details of the manner of arriving at each calculation made under sub-paragraph (a)(ii) not later than 12.00 noon Sydney time one Business Day after such calculation is made; and
 - (v) unless otherwise specified in the relevant Pricing Supplement:
 - (A) round all percentages in such calculations to the nearest one hundred-thousandth of a percentage point (with halves being rounded up);
 - (B) round all figures in such calculations to five significant figures (with halves being rounded up); and
 - (C) round all amounts that fall due and payable in such calculations to the nearest cent (with halves being rounded up).
- (b) For each Series of Australian Covered Bonds, the Issuer must:
 - (i) specify in the Pricing Supplement the rate to be quoted, from which Bloomberg or Reuters page it is to be sourced (if applicable), the relevant time (if applicable) and the number of calendar days prior to the

commencement of any interest period that the determination is to be made (the “**Determination Date**”); and

- (ii) provide to the Australian Agent such documents and other information as the Australian Agent reasonably requires in order for the Australian Agent to properly fulfil its duties as calculation agent under this document.
- (c) If the Australian Agent at any time has not been provided with the requisite information to make any determination or calculation or take any action that it is required to pursuant to this clause 5, it shall be released from its obligations to make such calculation. The Australian Agent must notify the Issuer as soon as practicable on any Determination Date if it lacks sufficient information to make a calculation.

6. Sub-Agents

The Australian Agent shall remain responsible pursuant to the provisions hereof for any sub-agents, sub-custodians and/or depositories which are related bodies corporate (as defined in the *Corporations Act 2001* (Commonwealth of Australia) of the Australian Agent appointed by the Australian Agent in respect of its rights, duties and/or obligations hereunder. The Australian Agent may (only upon prior written notice to the Issuer) appoint sub-agents, sub-custodians and/or depositories which are not related bodies corporate of the Australian Agent in respect of the Australian Agent’s rights, duties and/or obligations hereunder; provided, however, that notwithstanding any such appointment, the Australian Agent shall remain liable hereunder with respect to any such rights, duties and/or obligations.

7. Disapplication and amendments to Agency Agreement

- (a) Notwithstanding anything to the contrary in the Agency Agreement, for purposes of determining the liability of the Australian Agent or the Calculation Agent pursuant to the following specified Sections of the Agency Agreement:
 - (i) The representations and warranties set forth in Sections 2.10(c) and (d) of the Agency Agreement shall not apply with respect to the Australian Agent.
 - (ii) Section 22.1 of the Agency Agreement shall be deemed to be amended by deleting the words “except for any Losses resulting from the breach by it of the terms of this Agreement or from its own dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard hereunder or that of its officers, directors, employees or agents” and replacing them with “except for any Losses resulting from its failure to pay to the Austraclear System or such other operator of a clearing and settlement system as may be used from time to time in connection with Australian Covered Bonds (subject to Section 3(c)(ii) of this supplemental agreement and to the extent that any such failure was not caused by a Force Majeure Event which excuses the failure to pay in accordance with Section 7(d) of this supplemental agreement) an amount owed pursuant to the Terms and

Conditions or from its own dishonesty, bad faith, willful misconduct or gross negligence hereunder or that of its officers, directors, employees or agents”;

- (iii) Section 22.2 of the Agency Agreement shall be deemed to be amended by deleting the words “as a result of the dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard of that Agent or of its officers, directors, employees or agents or the breach by it of the terms of this Agreement” and replacing them with “as a result of its failure to pay to the Austraclear System or such other operator of a clearing and settlement system as may be used from time to time in connection with Australian Covered Bonds (subject to Section 3(c)(ii) of this supplemental agreement and to the extent that any such failure was not caused by a Force Majeure Event which excuses the failure to pay in accordance with Section 7(d) of this supplemental agreement) an amount owed pursuant to the Terms and Conditions or the dishonesty, bad faith, willful misconduct or gross negligence of that Agent or of its officers, directors, employees or agents;
 - (iv) Section 22.4 of the Agency Agreement shall be deemed to be amended by deleting the words “dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard” and replacing them with “dishonesty, bad faith, willful misconduct or gross negligence” wherever they appear in that Article;
 - (v) Article 22.3 of the Agency Agreement shall be deemed to include the words “or the removal or retirement of the Agent” in respect of the application of such section to the Australian Agent or the Calculation Agent; and
 - (vi) Article 23.1 of the Agency Agreement shall be deemed to be amended by deleting the words “dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard” and replacing them with “dishonesty, bad faith, willful misconduct or gross negligence”.
- (b) Any reference in the Agency Agreement to Article 3, 8, 9 or 11 thereof shall be construed to mean such Articles as modified by this supplemental agreement.
- (c) **“Force Majeure Event”** means an extraordinary event or circumstance beyond the Australian Agent’s control and without the fault or negligence of the Australian Agent, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, strike or labour dispute, the implementation of any laws, ordinances or regulations which restrict or prohibit the providing of the services contemplated by this supplemental agreement or the Agency Agreement, or the failure or interruption of communications or computer facilities, and other events or circumstances beyond the Australian Agent’s control whether or not of the same class or kind as specifically named above.

- (d) The existence or occurrence of a Force Majeure Event shall excuse the Australian Agent's failure to pay only for such period of time that the Force Majeure Event remains in existence and only to the extent that such Force Majeure Event has caused in whole or in part the Australian Agent's failure to pay. The existence of a Force Majeure Event which has caused in whole or in part the Australian Agent's failure to pay shall not prevent any other party to this supplemental agreement from asserting and acting upon a failure to pay by the Australian Agent which has not been caused in whole or in part by a Force Majeure Event.

8. General Provisions

- (a) None of the parties to this supplemental agreement shall be liable in respect of the acts or omissions of any of the other parties to this supplemental agreement.
- (b) Notwithstanding anything to the contrary under the Agency Agreement or this supplemental agreement, the Australian Agent is not required to risk or expend its own funds (including, without limitation, for legal fees, disbursements and any publication, advertising, communication, courier, postage and other out of pocket expenses) incurred in connection with its services or obligations hereunder.
- (c) Each of the parties hereto represents and warrants that:
 - (i) it has the power to enter into and has duly authorized the execution and delivery of this supplemental agreement; and
 - (ii) its obligations hereunder constitute its legal, valid and binding obligations.
- (d) Notwithstanding anything to the contrary in the Agency Agreement, the parties hereto waive any right to trial by jury in any proceeding arising out of or relating to this supplemental agreement, whether now or existing or hereafter arising, and whether arising in contract, tort or otherwise. The parties agree that any of them may file a copy of this sub-clause with any court as written evidence of the knowing, voluntary and bargained for agreement between the parties irrevocably to waive trial by jury, and that any proceeding whatsoever between them relating to this supplemental agreement shall be tried in a court of competent jurisdiction by a judge sitting without a jury.
- (e) For the avoidance of doubt, the parties hereto hereby agree that the Australian Agent shall not be responsible or liable for any action that may be required to be taken under applicable law for the preparation or effectiveness of any financing statements or similar filings, or for the effectiveness of the validity, priority or perfection of any related liens or security interests to be maintained pursuant to the terms hereof or the Agency Agreement.
- (f) The Australian Agent confirms that it is acting through its specified office set out below and agrees that all notices and communications to the Australian Agent shall be delivered in the manner set out in Article 31 of the Agency Agreement to:

Level 2
45 Clarence Street
Sydney, NSW 2000
Australia
Fax: (61 2) 9551 5009
Attention: Relationship Manager Group

- (g) For the avoidance of doubt, this supplemental agreement relates only to the Australian Covered Bonds.
- (h) This supplemental agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument.
- (i) This supplemental agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada.
- (j) Notwithstanding anything to the contrary under the Agency Agreement or this supplemental agreement, the Australian Agent will not be liable for any right or cause of action in favour of any person, other than the parties to the Agency Agreement and this supplemental agreement.
- (k) This supplemental agreement may not be amended or modified except in writing by each of the parties to this supplemental agreement. No waiver of this supplemental agreement will be effective unless it is in writing and signed by (or by some Person duly authorized by) each of the parties. No single exercise of, or failure or delay in exercising, any right under this supplemental agreement will constitute a waiver or preclude any other or further exercise of that or any other right.
- (l) Each proposed amendment, variation or waiver of rights under this supplemental agreement that is considered by the Guarantor to be a material amendment, variation or waiver, will be subject to satisfaction of the Rating Agency Condition. The Guarantor and/or the Issuer will deliver notice to the Rating Agencies from time to time of any amendment, variations or waivers with respect to which satisfaction of the Rating Agency Condition is not required, provided that failure to deliver such notice will not constitute a breach of the obligations of the Guarantor under this supplemental agreement. The Guarantor and/or the Issuer will deliver notice to CMHC from time to time of any amendment, variation or waiver with respect to which notice to CMHC is required by the CMHC Guide, provided that failure to deliver such notice will not constitute a breach of the obligations of the Guarantor under this supplemental agreement.

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IN WITNESS WHEREOF this supplemental agreement has been entered into the day and year first before written.

The Bank of Nova Scotia (ARBN 133 513 827)

By: /s/ Ian A. Berry

Name: Ian A. Berry

Title: Managing Director & Head, Funding

Scotiabank Covered Bond Guarantor Limited Partnership

by its managing general partner **Scotiabank Covered Bond GP Inc.**

By: /s/ Christy Bunker

Name: Christy Bunker

Title: Vice-President

[Additional signature page follows]

BTA INSTITUTIONAL SERVICES AUSTRALIA LIMITED (ABN 48 002 916 396)

By: /s/ Andrea Ruver

Name: Andrea Ruver

Title: Vice President

cc:

The Bank of Nova Scotia, London Branch

The Bank of Nova Scotia - New York Agency

Computershare Trust Company of Canada