

TD Waterhouse  
Canada Inc.  
Custody Account and  
Services Agreement  
and Disclosure  
Documents



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Account Type	Applicable Agreement
Custody	Custody Account Agreement
Joint Custody Account	Custody Account Agreement,  Joint Account Agreement and other applicable Agreements

***The agreement in this booklet applies to your TD Waterhouse Canada Inc. Custody Account(s) opened in association with your TD Waterhouse Private Investment Counsel Inc. ("PIC") account (the "Custody Account"). The words "we", "us" and "our" refer to TD Waterhouse Canada Inc. as custodian ("TD Waterhouse"). The words "you", "your" and "yours" means the client and any other individuals with authority over the client's account.***

## Custody Account Agreement

When you open a Custody Account with us and we agree to act for you as custodian in relation to your managed account with PIC, you accept and confirm the following:

**1. Legal Capacity:** You have reached the age of majority. You are not an employee of a member of any stock exchange, the Canadian Investment Regulatory Organization ("CIRO"), or any business registered under any securities law or regulations. However, if you are or become employed by any of these exchanges, member firms or businesses, you will notify us immediately and provide written approval from your employer to open or maintain an account with us.

**2. Discretionary Authority of PIC:** You agree that in accordance with your managed account agreement with PIC, you have authorized us to permit PIC to buy securities for, and sell securities from, your Custody Account.

### **3. Services:**

(a) Under this Agreement we agree to:

- (i) take custody of your assets managed by PIC and any documents evidencing title to such assets and hold them for the account of, and on behalf, of you;
- (ii) hold your assets either in the name of TD Waterhouse or in the name of a sub-custodian, or in nominee name, or a securities depository (as appropriate) whereby the beneficial interest in your assets is held by you;
- (iii) subject to section 3(b) hold your assets separate and distinct from other assets held by TD Waterhouse in its own capacity or on behalf of any other client;
- (iv) credit all distributions, income and other payments due in respect of your assets to your Custody Account;
- (v) act on the instructions of PIC; and
- (vi) provide statements to you, in accordance with section 9.

(b) Whenever there is a credit balance in your account, the credit balance need not be segregated or held separately. A credit balance may be commingled with our general funds or deposited in trust and used for the general purposes or benefit of our business and/or that of any of our affiliates, including earning an interest rate spread. A credit balance will be considered an item in a debtor and creditor account between you and us. You will rely only on our liability in respect of the credit balance.

We can apply a positive (credit) balance in any of your accounts with us, The Toronto-Dominion Bank ("TD") and its affiliates (excluding registered accounts) against any debt or liability you owe to any of us, TD or any of its affiliates, however arising. We can set off any positive balance against any such debt or liability in any manner and at any time we consider necessary (unless we have specifically agreed not to do so) and we are not required to first give you any notice.

- (c) We may accept or reject securities submitted for your Custody Account at our discretion. If we elect to hold securities for you in safekeeping, our responsibility is limited to exercising the standard of care exercised by us in the custody of our own securities and no more. We will not be responsible as a guarantor for any loss.

Securities held for your account may be kept at our head office, any of our branch offices, at the office of our correspondent broker, at any securities depository or at any other acceptable location. We may fulfill our obligation to deliver your securities to you by delivering certificates or securities of the same kind or amount, although not the same certificates or securities deposited or delivered to us.

We cannot guarantee delivery of certificates or securities in any circumstances where a transfer agent or registrar of the securities is unable to provide a certificate or securities.

We are under no obligation to accept securities that are restricted from trading or transfer, but may do so at our discretion but at your sole risk. You agree that we are not liable regarding the processing of the restricted securities, including any market value movements that may occur during the processing period regardless of any delays, whether caused by our negligence or otherwise.

- (d) Subject to you indemnifying TD Waterhouse in accordance with section 3(e), upon receipt of a request in writing from you, and without limiting any other provision of this Agreement, TD Waterhouse will:
  - (i) institute or defend legal proceedings in connection with your assets, including without limitation taking action to recover distributions, income or payments;
  - (ii) assign to you the benefit of all actions, suits and claims available to TD Waterhouse in respect of any proceedings instituted or defended pursuant to section 3(d)(i).
- (e) You agree to indemnify TD Waterhouse for all costs, including TD Waterhouse's internal or administrative costs (including an allocation of overhead costs) incurred by TD Waterhouse in complying with any request by you under section 3(d) provided that this indemnity will not apply where the request by you arises (either directly or indirectly) from the default or negligence of TD Waterhouse.
- (f) You understand all transactions made for your account will be subject to the rules governing the exchanges or markets and clearing houses (if any)

where the orders are executed, and you agree to comply with these requirements.

- (g) You will be responsible for all obligations arising out of the account, including those authorized by any person you have appointed as your authorized agent, and all obligations under any related agreement or agreement for access to services provided by third parties available through any trading platform.
- (h) You acknowledge that it is your sole obligation to provide us or PIC, as your authorized agent, with updated personal information, including your telephone number(s), addresses, marital status, financial and employment information, tax status, and that until we receive and process it, we are entitled to rely on the information we have for your account in providing any custodial services to you.
- (i) Please be aware that we reserve the right to reject any transactions requested by you or your authorized agent.
- (j) Nothing in this Agreement is intended to or shall impose or confer by implication or otherwise any fiduciary duty on TD Waterhouse. TD Waterhouse shall have no duties to you or your Custody Account except as provided in this Agreement or as required by law.

**4. Joint Account:** If the Custody Account opened has more than one owner, all owners must agree that each (a) will be responsible for any obligations arising out of the Custody Account, regardless of which joint tenant (co-owner) has entered into those obligations or taken action with respect to the Custody Account, and (b) will have authority to act on the Custody Account as if they were the only owner. You agree that we may deliver securities, money or other property relating to the Custody Account and communications of any kind to any one of the joint tenants (co-owners) without notice to any of the others.

**5. Security Interest:** Any and all property, including credit balances held or carried in any of your accounts for any purpose, and including any property in which you have an interest (the "Collateral"), will be subject to a lien in favour of us. The Collateral will be held as security by us for repayment of your liabilities to us. We may transfer any of the Collateral in any of your accounts from or to any of your accounts. We may deliver all or any part of the Collateral when we consider it necessary for our protection. In enforcing our lien, we may close, without notice, transactions in your account: (a) if we consider there to be inadequate security for your liabilities to us, or (b) upon the occurrence of any event which in our opinion jeopardizes your ability to repay any liabilities owed to us.

**6. Payment:** PIC will be responsible for paying us our fees for the provision of services under this Agreement.

**7. Suitability:** You understand that PIC has responsibility for assessing the suitability of all assets held in, and trades conducted for, your Custody Account. TD Waterhouse acting solely as custodian for your Custody Account has no responsibility to perform any due diligence, investigation or other review of suitability, prudence, risk, tax consequence or merits of any investment held in your Custody Account.

**8. Trade Confirmation Waiver:** You understand that PIC will receive trade confirmations on your behalf from executing dealers and you hereby consent to TD Waterhouse not providing any trade confirmation to you for trades settled into or out of your Custody Account. If you wish to withdraw this consent, please advise us in writing at 3500 Steeles Avenue East, Tower 2, 2nd Floor, Markham, Ontario L3R 0X1.

**9. Statements and Reports:** We will provide you with a Custody Account statement on each occasion you receive a managed account statement from PIC. Each year we will provide you with tax information slips pertaining to transactions in your Custody Account. The security position values listed in your Custody Account statement may differ from the values listed on related PIC managed account statements.

**10. Communications:** Communications include reports and may include transaction confirmations, in the event you have opted to receive them. You agree that we: (a) may send communications to you at any address (including a mailing address, email address, internet address) or fax number that you give us in your application or thereafter in writing; and (b) may contact you by phone for communications not required to be in writing. All communications sent to you at any address or fax number that you give to us, regardless of how they are sent, will be considered to be delivered to you personally, whether you actually receive them or not.

Reports and transaction confirmations, if any, will be considered final if not objected to on the date you are notified by telephone or within 10 days of when we send them to you. Statements of your account will be considered final if not objected to within 45 days of when we send them to you.

**Please note:**

It is your obligation as the account holder to review these communications carefully when you receive them and notify us in writing immediately of any errors, omissions or objections to the information provided. This written notice must be delivered, mailed or faxed to: Wealth Cares team, 207 Queens Quay West, 5th Floor, Toronto, Ontario, M5J 1A7.

Where we require that you provide written communication, you may do so by delivery, mail or fax, unless we direct you otherwise.

If you do not notify us in writing of any errors, omissions or objections within 45 days after we send the written communication to you, you agree that the information and balances shown on the statement are correct and accepted by you. If you fail to give us this notice, we will be released from all claims by you in connection with the statement, any transactions shown or not shown on it and any actions taken or not taken by us regarding your account.

If you notify us outside the 45 day period of: (a) errors or discrepancies in any statement, or (b) any action taken or not taken by us regarding your account, and we undertake an investigation of your claim, we may charge you with our hourly investigation fee. You understand that there is a minimum charge for each employee engaged in the investigation. You agree to pay such fee to us immediately or we may charge the fee to your account.

It is important that when you give instructions to or receive information from us, that you record the date, the time, the instructions or information and the name of the representative, if applicable. If you do not do so, retrieval of information will be on a reasonable efforts basis.

**11. Exclusion of Liability:** We will not be responsible for any loss caused, directly or indirectly, by

- Government restrictions, exchange, securities commission or market rulings, trading suspensions or restrictions of trading
- Failure of any person to release and deliver any securities or make any payments to us for you
- Any cause beyond our reasonable control including: any act of God, fire, act of government or state, order of any court, war, civil commotion, insurrection, embargo, industrial action, act or regulation of any governmental or supranational bodies or authorities, prevention from or hindrance in obtaining any energy or other supplies, late or mistaken delivery or payment by any financial institution or counterparty, breakdown, malfunction or failure of transmission, communication or computer facilities, the failure of any relevant broker, custodian, agent, nominee, dealer, exchange, clearing house or regulatory or self-regulatory organization, for any reason, to perform its obligations
- Reason of any fact not caused by our bad faith, breach of regulation, negligence, willful default or fraud.

We shall not have any liability to you for any consequential, incidental or any similar damages. By agreement, you unconditionally waive any right you may have to claim or recover any such damages, even if you have informed us of the possibility or likelihood of such damages.

**12. Account Identification:** You understand that we will provide you with an identification number with an account number for each account you open. This number will be used to identify you when settling transactions.

**13. Amendments:** This Agreement may be amended at any time by us if we give you notice in writing of the amendment. The first transaction in your account following notice of an amendment to this Agreement will be considered your acceptance of the amendment as of the effective date set out in the notice. This Agreement will remain in force until terminated by you as acknowledged in writing by our officer or until written notice of termination by us has been mailed to you.

**14. Assignment and Account Closing:** You agree that you will not assign this Agreement or the Custody Account. We may assign the agreement or Custody Account to another party, including a company associated or affiliated with us, after notice to you. You agree to give us seven days notice of any intended cash withdrawal.

As of January 1, 2015, U.S. persons transferring accounts to U.S. addresses will not be able to transfer U.S. fixed income or option assets purchased on or after January 1, 2014. U.S. persons holding these assets prior to January 1, 2014 are able to transfer the assets as grandfathered or uncovered assets within the meaning of the Internal Revenue Service (IRS) legislation.

U.S. persons who move to the U.S. after January 1, 2014, and retain an account with TD Bank Group, will be required to sell U.S. fixed income or option assets purchased on or after this date before their move to the U.S. (Registered retirement accounts excepted).

We may, at our sole discretion, terminate your account agreement(s) with us and require that you close or transfer your account(s) to another broker within a limited time set by us. In the event that you fail to do so, we may, without further notice to you, deliver the assets to you or liquidate your account(s), pay all outstanding payments owed to us, TD and its affiliates and forward the net balance, if any, to you. The liquidation of your account(s) may have significant financial consequences for you, including tax consequences, for which you will be solely liable. You agree that we are not liable to you regarding the termination, closure, transfer or liquidation of your account(s).

In the event that your account remains inactive and has no assets or balances owing in the account for a period of at least one year, we may, close your account and terminate your account agreement(s) with us, without prior notice to you.

**15. Transactions Subject to Applicable Law:** All transactions in your accounts are subject to applicable legislation, regulations, and rulings, orders, rules and policies of any authority, including exchanges, securities commissions, markets and self-regulatory organizations.

**16. Disclosure of Transactions to Tax Authorities:** Where we determine that we are required by law to disclose information to taxation authorities pertaining to transactions or series of transactions, including information received from or about you or any tax benefits relating to such transactions or series of transactions, we will attempt to discuss and coordinate those disclosure obligations with you and your tax and / or other advisors. You agree to advise us immediately if you or any other party has reported, intends to report, is required to report, or has been advised to report, any transaction or series of transactions for which we have provided any assistance or advice in respect to creation, development, planning, organization, or implementation.

**17. Trusted Contact Person and Temporary Holds – applicable to individuals only**

- (a) You may provide us with the name of and contact information for a person whom you consider to be trustworthy and is familiar with your personal circumstances (the Trusted Contact Person).
- (b) You agree to immediately notify us of any change in the contact information of your Trusted Contact Person.
- (c) You may change your Trusted Contact Person at any time by contacting us and completing our Trusted Contact Person documentation.
- (d) You agree that we may disclose personal and confidential information about you and your account to your Trusted Contact Person when we have reasonable grounds to be concerned about your personal or financial well-being. This includes concerns about your mental capacity, concerns



that you may be the victim of fraud, exploitation or financial abuse or if we need help locating you or your legal representative.

- (e) We have the option to contact the Trusted Contact Person, but we are not obligated to do so. If we contact the Trusted Contact Person, we will disclose personal and confidential information about you and your account only as we consider necessary or helpful to secure assistance for you or to protect you from fraud, exploitation or financial abuse regarding your account.
- (f) If the Trusted Contact Person is your legal representative, you shall provide a copy of any Power of Attorney or other appointment document in respect of your legal representative, to us and you undertake to provide us with a copy of any future Powers of Attorney or other documentation that revokes the one so provided.
- (g) We shall rely on the most recent Trusted Contact Person information in our files. We have no obligation to confirm this information, but will update the Trusted Contact Person information when you notify us.
- (h) In providing us with the name and contact information of your Trusted Contact Person, you are confirming that your Trusted Contact Person is aware that you will give us this information and the Trusted Contact Person has agreed to act in this capacity.

#### **TEMPORARY HOLDS – applicable to individuals only**

We may place a temporary hold on your account or a particular transaction in circumstances permitted by law. Permitted circumstances include, but are not limited to, placing a temporary hold where we reasonably believe (a) you (including, as applicable, a joint holder of your account), are vulnerable and have been, are or will be the subject or target of financial exploitation or (b) you (including, as applicable, a joint holder of your account) are experiencing diminished mental capacity which may affect your ability to make financial decisions. We will provide you with verbal or written notice of the temporary hold and the reasons for placing the hold. We will regularly review the facts around placing the temporary hold to assess whether the temporary hold should continue. We may also contact your Trusted Contact Person and/or your legal representative(s) to discuss the circumstances around placing or lifting a temporary hold and you consent to us seeking additional information from your Trusted Contact Person and/or your legal representative(s) in respect of your capacity and any circumstances that have led or may lead to a temporary hold. We may consider whether temporary holds should be placed on other accounts that you have with us and may share any information with our affiliates. You acknowledge that we may place a temporary hold on your account.

**18. Privacy Policy:** You agree that we may handle your personal information as set out in the TD Privacy Policy. You can find the TD Privacy Policy online at [td.com/privacy](https://td.com/privacy).

**19. Contact by Telephone:** The Canadian Radio-Television and Telecommunications Commission (CRTC) has rules governing when we call you. We will ordinarily contact you by telephone between the hours of 9:00 a.m. and 9:30

p.m. local time on weekdays or 10 a.m. and 6:00 p.m. on weekends ("Ordinary Hours"). For the purposes of the CRTC rules, you authorize us to contact you by telephone outside Ordinary Hours with information about important developments or changes in the markets, particular securities, investment funds or other investment products relevant to your investment portfolio.

You understand this authorization does not alter the scope of custody services we will provide to you under this Agreement.

You may withdraw this authorization at any time by contacting us by telephone or in writing to advise us that you want us to only contact you with time-sensitive market information during Ordinary Hours, in which case, we will only contact you with time-sensitive information during Ordinary Hours.

### **Waiver of liability**

You release us from any and all claims and from all liability for financial losses or other damages you may sustain as a result of your decision to withdraw your authorization.

**20. Miscellaneous:** This Agreement applies to all Custody Accounts, in which you have any interest alone or with others, which have or will be opened with us for the purpose of your holdings subject to your managed account agreement with PIC.

Except as otherwise specifically provided in relation to an account:

- (a) If you are a resident of Canada, your account will be located in the province or territory of your current residence and the laws of the province or territory and Canada, will govern your account, this Agreement and our relationship in general. You accept and agree to the jurisdiction of the courts in your province or territory of residence. You also agree that any legal proceeding commenced by you related to your account will be in the courts in your province or territory of residence. Notwithstanding our agreement to submit to the applicable jurisdiction, pursuant to the requirements of the applicable Canadian securities regulatory body, we must disclose to you that, because we do not have an office in the territories listed below, if you are a resident in such territory, you may have difficulty in enforcing any legal rights you have against us. The address that should be used on our behalf for service of legal proceedings in the following territories, as applicable, is:

Northwest Territories:

#18, YK Centre, 4910-50th Avenue,  
Yellowknife, Northwest Territories X1A 3S5

Nunavut:

P.O. Box 11032, 1-4012 Anuri Street,  
Iqaluit, Nunavut X0A 1H0

Yukon:

200 Main Street & 2nd Avenue,  
Whitehorse, Yukon Y1A 2A9

- (b) If you are not a resident of Canada, your account will be located in the province of Ontario. The laws

of Ontario and Canada will govern your account, this Agreement and our relationship in general. You accept and agree to the jurisdiction of the courts in the province of Ontario. You accept and agree to the jurisdiction of the courts in the province of Ontario. You also agree that any legal proceeding commenced by you related to your account will be in the courts in the province of Ontario.

This Agreement is binding on your heirs, executors, administrators, successors and permitted assigns and upon our successors and assigns. If the account is joint, the singular includes the plural. If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability will only apply to such provision. The validity of the rest of the Agreement will not be affected. The Agreement will continue to be carried out as if such invalid or unenforceable provision were not in the Agreement. Headings do not form part of the Agreement. They are inserted for convenience only.

## Joint Custody Account Agreement

### **Not Applicable for Quebec Stock Savings Plan (QSSP) Accounts**

If we are directed to open a joint account for the Applicant and Co-Applicant, in return of our opening the account the Applicant(s) and Co-Applicant(s) (collectively referred to as the "Clients"), jointly and severally agree with us as follows:

**1. Other Agreements Apply:** All transactions for the account of the Clients will be subject to the terms and conditions of all other existing agreements (if any) between us and each of the Clients. Each of the agreements is incorporated by reference.

**2. Authority of Each Client:** Each of the Clients, acting alone, is authorized and empowered for, and on behalf of all of the Clients,

- (a) to buy and sell (including short sales) and otherwise deal in stocks, bonds and other securities on margin or otherwise through us;
- (b) to receive every communication regarding each account and transaction;
- (c) to receive and withdraw money, securities or other property without limitation in amount, in the Clients' individual name or in the name of any other person at the Clients' direction, and to dispose of the same without recourse to us by any one or more of the Clients;
- (d) to execute agreements relating to any of the foregoing matters and to terminate, modify or waive any of the applicable provisions; and
- (e) generally to act and deal with us in respect of an account as fully and with the same authority as though the Client alone were interested in the account, all without notice to any other Clients.

Each Client acknowledges that we may make deliveries of securities or payments to any one of the Clients or any other person upon, or pursuant to, instructions received from any

one of the Clients and in such event we will be under no duty or obligation to inquire into the purpose or propriety of any such instructions. We will not be bound to see to the application or disposition of the securities delivered or payments made.

The Clients jointly and severally agree to indemnify and hold us harmless from any loss, liability or expense resulting from our acting in accordance with the above authority. Without limiting the authority granted, we are authorized, in our absolute discretion, to require joint action by all of the Clients regarding any matter concerning an account, including the giving or cancellation of orders and the withdrawal of monies, securities or other property.

**3. Liability of Clients:** The Clients are jointly and severally liable to us for any debts, obligations or liabilities arising in connection with the account. For the purpose of securing the payment of such debts, obligations or liabilities, we will have a general lien upon all property belonging to the Clients, collectively or individually, which may be in our possession or under our control for any purpose, including safekeeping. This lien is in addition to, and not in substitution of the rights and remedies we otherwise would have.

#### **4. Rights and Obligations of Survivors:**

(not applicable to residents of Québec)

In the event of the death of any of the Clients:

- (a) the surviving Client or Clients will immediately give us written notice thereof;
- (b) we are authorized prior to the receipt of the written notice of the decedent's death to execute orders and deal with and for the account as though the death had not occurred;
- (c) we are authorized, prior to or after, the receipt of the written notice of the decedent's death, to take such proceedings, require such papers, retain such property or restrict transactions in the account as we may consider advisable to protect us against any tax, liability, penalty or loss under any present or future laws or otherwise; and
- (d) the estate of the decedent and each survivor will continue to be liable to us, jointly and severally, for any debts, obligations, liabilities or losses in respect of the account, including, without limitation, those resulting from the completion of transactions initiated prior to the receipt by us of the written notice of the decedent's death or incurred in the liquidation of the account or the adjustment of the interests of the Clients.

**5. Right of Survivorship:** (not applicable to residents of Québec). The Clients declare that their interests in the joint account are as joint tenants with full rights of survivorship and not as tenants-in-common. In the event of the death of any of the Clients the entire beneficial interest in the joint account will be vested in the surviving Client or Clients on the same terms and conditions as held, without in any way releasing the decedent's estate from the joint and several liability of the decedent Client provided for in this Agreement.

Your direction to open this joint account will constitute your irrevocable direction to us to pay the balance of the account to the surviving joint account holder(s) on your death on request without making any further inquiries as to any claims by any other party, including your heirs, executors, estate trustees, administrators, assigns of the decedent Client or any other third party and without any recognition of such claims.

## **6. Rights and Obligations of Survivors:**

(for residents of Québec only)

In the event of the death of any of the Clients:

- (a) the surviving Client or Clients will immediately give us written notice thereof;
- (b) we are authorized prior to or after the receipt of the written notice of the decedent's death, to take such proceedings, require such papers, retain such property or restrict transactions in the account as we may consider advisable to protect us against any tax, liability, penalty or loss under any present or future laws or otherwise; and
- (c) the estate of the decedent, which estate will be bound to the terms hereof, and each survivor, the heirs and assigns of each Client will continue to be liable to us, jointly and severally, for any debts, obligations, liabilities or losses in respect of the account, including, without limitation, those resulting from the completion of transactions initiated prior to the receipt by us of the written notice of the decedent's death or incurred in the liquidations of the account.

## **Client Problem Resolution Process**

We value the trust you place in us and are committed to providing the best possible service to our clients. If you have a concern with or about the service you have received, we want to work with you to resolve it quickly and effectively.

To address your concern, please provide the following information: the date(s) and time(s) plus any additional supporting documents to explain your concern, the name(s) of the employee(s) involved in the specifics of the concern and how we can help. Once this information is collected, please refer to Step 1 of the process outlined below. We will handle your complaint in a fair and timely manner and provide an appropriate escalation option if the response does not meet your expectations. If the resolution of your problem is delayed, we will provide regular updates on the progress being made.

**Step 1:** Talk to your representative as many concerns can be resolved at the time they occur. If they are unable to resolve the problem to your satisfaction, ask to speak with their Manager. The Manager has the decision-making authority to resolve most problems and will immediately escalate a concern to Step 2, if required.

**Step 2:** Contact the Wealth Cares team. If the Manager is unable to resolve the problem to your satisfaction, they will ask the Wealth Cares team to review the issue on your behalf. At this point, you may be asked to put your concerns in writing so they can be thoroughly investigated. You can send your written complaint by mail to the Wealth Cares

team, P.O. Box 5999, Station F, Toronto, Ontario, M4Y 2T1 or by email at [td.waterhouse@td.com](mailto:td.waterhouse@td.com). Where applicable, a Letter of Acknowledgement and a brochure entitled **“How to Make A Complaint”** will be sent to you within 5 business days of receipt of your complaint.

We are committed to reviewing your concerns thoroughly and we shall provide a written response within 90 calendar days of receiving your written complaint (60 calendar days in Québec). This response will include a summary of your complaint, the results of our investigation, and a decision as to the merits of your complaint. Where more time is required to complete our investigation, we shall provide you with a status update, which will include a new date for our decision.

**Step 3:** If you do not receive our response to your complaint within 90 days (60 days in Québec) or you are not satisfied with our response, below are additional resources for the resolution of your concerns:

- (a) the TD Senior Customer Complaints Office by mail at P.O. Box 1, TD Centre, Toronto, Ontario, M5K 1A2, by telephone at 416-982-4884 or toll-free at 1-888-361-0319, by fax at 416-983-3460, or by email at [td.scco@td.com](mailto:td.scco@td.com). The TD Senior Customer Complaints Office can only deal with your concern after you have completed Steps 1 and 2. Please note that the office of the TD Senior Customer Complaints Office is employed by and is an affiliate of TD Bank Group. While the TD Senior Customer Complaints Office does not report directly to any business areas in order to protect the office's impartiality, it is not an independent dispute resolution service. The mandate of the TD Senior Customer Complaints Office is to review your concerns and provide a response that is objective and unbiased. This service is voluntary and the estimated time that the TD Senior Customer Complaints Office takes to review and provide a response to matters is 90 days; however, complex investigations may take longer to resolve. Note that the time limit will continue to run during this review process; or
- (b) an external agency that can assist in the resolution of your concerns. The Ombudsman for Banking Services and Investments (OBSI) is an independent dispute-resolution service that is available at no charge to clients who are individuals or are non-individuals that are not “permitted clients” as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. You can contact the OBSI if you have brought your initial complaint to us within 6 years from the time you become aware of the event that caused the complaint and (i) you have waited more than 90 days for a resolution, or (ii) if you are not satisfied with our decision in Step 2, you have up to 180 days after being provided with our decision to take the complaint to OBSI. You may contact the OBSI by mail at 401 Bay Street, Suite 1505, PO Box 5, Toronto Ontario M5H 2Y4, by telephone toll-free at 1-888-451-4519, by fax toll free at 1-888-422-2865 or by email at [ombudsman@obsi.ca](mailto:ombudsman@obsi.ca). You must agree that the amount of any

compensation recommended by OBSI will not exceed \$350,000.

Any investigation by OBSI will be independent and informal. You do not require a lawyer. During its investigation, OBSI may interview you and our representatives. We are required to co-operate in OBSI's investigations. Once OBSI has completed its investigation, its recommendations will be provided to you and us. OBSI's recommendations are not binding.

Please note that the OBSI will not investigate any matters which have gone to arbitration or civil litigation. Please note that making a complaint to OBSI does not restrict your ability to take the complaint to a dispute resolution service of your choice, at your expense, or to take legal action. Note that there are time limits for taking legal action and that applicable statutory limitation periods continue to run while we and/or the TD Senior Customer Complaints Office is reviewing your complaint; or

- (c) the Canadian Investment Regulatory Organization (CIRO) at [ciro.ca](http://ciro.ca). CIRO provides for an arbitration program through two independent arbitration organizations. The arbitrator will make a final, legally-binding decision about your complaint, and can award up to \$500,000; or
- (d) Québec residents may consider free mediation services offered by the Autorité des marchés financiers (AMF), Québec's financial sector regulator. If you are not satisfied with the resolution provided in Step 2 and/or with the decision of the TD Senior Customer Complaints Office, you can ask your complaint file be transferred to the AMF. Following the transfer, the AMF will examine the complaint file and, if deemed appropriate, may offer dispute resolution services. The filing of a complaint with the AMF is voluntary and does not interrupt the prescriptive period of civil remedies. For more information on AMF mediation services, you may contact the AMF by telephone toll-free at 1-877-525-0337, by email at [renseignementsconsommateur@lautorite.qc.ca](mailto:renseignementsconsommateur@lautorite.qc.ca), or online at [lautorite.qc.ca](http://lautorite.qc.ca).
- (e) Where warranted by exceptional circumstances, or circumstances beyond our control, Québec residents will be provided with a final response within 90 calendar days of the receipt of their complaint instead of 60 calendar days. If such a situation arises, you will be sent a written notice within 60 calendar days containing the following: the circumstances which have made a final response within 60 calendar days impossible; the date by which a final response must be communicated; and a statement of your right to request to have the complaint record examined by the AMF as well as an explanation of how to make such a request.

You may also file a complaint with CIRO and it will review your complaint to determine whether any securities laws have been violated; however, CIRO cannot provide compensation to you.

For Registered Plans Only: Financial Consumer Agency of Canada (FCAC). If you have a concern regarding a

potential violation of a consumer protection law, a public commitment or an industry code of practice, you may contact the FCAC in writing at: Financial Consumer Agency of Canada, 6th Floor, Enterprise Building, 427 Laurier Avenue West, Ottawa, Ontario, K1R 1B9. The FCAC determines whether there is a problem with our compliance; however, this organization does not become involved in matters of redress or compensation.

## Governing Principles for the Operation of Your Custody Account by TD Waterhouse Canada Inc.

**Respect for the Law:** TD Waterhouse Canada Inc. ("TDWCI") and its officers and employees strive to scrupulously observe, in letter and spirit, all laws governing its business and securities activities.

**Focus on Clients:** TDWCI and its officers and employees seek to deal fairly, honestly and in good faith with clients. We handle our clients' business within the bounds of ethical conduct, consistent with just and ethical principles of trade, and in a manner that is not detrimental to the interests of the investing public and the securities industry. We take reasonable steps to ensure that all orders or recommendations for any account are within the bounds of good business practice. We strive towards a high standard of ethical business and personal conduct and professionalism through adherence to TD Bank's Code of Conduct & Ethics Policy. Our officers and employees are required to review and attest to this policy annually.

**Relationship Disclosure:** Please review the Client Relationship Disclosure Information for TD Waterhouse Private Investment Counsel Inc. and TD Waterhouse Canada Inc., which describes in more detail our relationship as your custodian and our relationship with PIC.

**Addressing Conflicts of Interest:** We address material conflicts of interest in the best interest of our clients and we tell clients about those conflicts and how we address them. We have adopted policies and procedures to assist us in identifying and addressing material conflicts of interest.

TDWCI's conflicts of interest as custodian are included in the consolidated TD Waterhouse Private Investment Counsel Inc. Conflicts of Interest Statement, including TD Waterhouse Canada Inc. Conflicts of Interest, as custodian. We will update this Conflicts of Interest Statement from time to time, including when we identify a material conflict of interest that has not been previously disclosed to you. Please visit the following link for the most recent version of the Conflicts of Interest Disclosure Statement: [td.com/picandtdwcicoi](http://td.com/picandtdwcicoi). We will provide you with notice if we have updated the Conflicts of Interest Statement.

**Account Opening:** Your Custody Account with us is in connection with your managed account with PIC. It is PIC's responsibility to ensure that the account is suitable for you.

**Discretionary Authority of PIC:** In accordance with your managed account agreement with PIC, PIC has discretionary authority to buy securities for, and sell securities from, your Custody Account. It is PIC's



responsibility to ensure that all investment actions taken with respect to your Custody Account put your interests first.

**Shared Premises:** TDWCI may have an office in a location that is shared with The Toronto-Dominion Bank or its subsidiaries, including TD Canada Trust branches where it conducts its activities. Transactions governed by this Custody Account and Services Agreement which you make at those locations are between you and TDWCI. By entering into this agreement with TDWCI, you are dealing with a separate organization whose products and services may differ from those associated with other entities, including TD Waterhouse Insurance Services Inc., The Toronto-Dominion Bank, The Canada Trust Company, TD Investment Services Inc. and/or TD Waterhouse Private Investment Counsel Inc.

**Confidentiality of Client Information:** Confidentiality of client information is a fundamental principle of our firm. TDWCI may release confidential client information only in accordance with the TD Privacy Policy. If you hold securities in your account that are issued by an entity resident within the European Union, we may be required to share contact information and information related to your holdings with the European issuer of those securities when requested to do so.

**Misuse of Confidential and Insider Information:** Our officers and employees are prohibited from misusing confidential information or any insider information that has not been generally disclosed, for personal gain or for the benefit of anyone else. If one of our employees breaches this prohibition, it will be grounds for immediate dismissal.

## TD Waterhouse Self-Directed Retirement Savings Plan Declaration of Trust

The Canada Trust Company, a trust company amalgamated under the laws of Canada and having its Head Office in the City of Toronto in the Province of Ontario (the “Trustee”), hereby declares that it accepts the office of administrative trustee for the account holder who is also the applicant named on the application, and who is the “annuitant” within the meaning of subsection 146(1) of the Income Tax Act (Canada) (the “Act”), named on the application (herein “you”, “your” and “yours”), under a Retirement Savings Plan (herein the “PLAN”), for the purpose of providing for you a retirement income. The Trustee accepts this office on the following terms:

**1. Administration:** The Trustee may delegate certain administrative duties to an affiliate of the Trustee (such affiliate herein referred to as “Agent”). Notwithstanding the duties delegated to the Agent, the ultimate responsibility for the administration of the PLAN remains with the Trustee.

**2. Registration:** The Trustee will apply for registration of the PLAN as a Retirement Savings Plan pursuant to the provisions of the Act and, if applicable, the provisions of any similar legislation of the Province in which you reside (the Act and such provincial legislation, including the regulations issued thereunder, collectively or individually referred to as the “Applicable Tax Legislation”).

**3. Your Account:** The Trustee will maintain an account for your exclusive benefit and in your name which will record the contributions made by you only or by you and/

or your spouse providing your PLAN is a spousal plan, and all investment transactions less applicable liabilities of the PLAN including fees and other amounts described herein and any applicable taxes including amounts in respect of tax assessments described in section 10. The Trustee may, at its discretion and without notice to you, sell or liquidate assets in the PLAN or realize upon such assets as it determines to be appropriate to pay any such liability or debit balance of the PLAN and its costs. You acknowledge that the Trustee will not be liable to you regarding any aspect of such liquidation, sale or realization. In addition, you acknowledge that the liquidation, sale or realization of assets in the PLAN may have significant financial consequences for you and the PLAN, including tax consequences, for which you are solely liable. You are jointly liable with the PLAN for the payment of any liability or debit balance owing within the PLAN and you are liable for any liability or debit balance remaining after liquidation of assets in the PLAN and the application of such liquidation against the liability or debit balance.

#### **4. Contributions:**

- (a) Contributions made by you or your spouse to the PLAN in such amounts as permitted by Applicable Tax Legislation and the income earned thereon, will be held in trust by the Trustee for the purpose of providing you with a retirement income in accordance with section 14 hereof. You are responsible to ensure that no contribution exceeds the maximum permitted under the Applicable Tax Legislation. The Trustee shall accept only such payments of cash and other transfers of property acceptable to it.
- (b) The Trustee will, on your written or oral directions, invest the property of the PLAN, provided that the Trustee may in its sole discretion decline to make any particular investment for any reason including, without limitation, if the proposed investment and related documentation do not comply with the Trustee's administrative requirements, which may be modified from time to time. You will have the right to designate a person or persons in a satisfactory form as may be determined by the Trustee, as your attorney for the purpose of giving any such directions and the Trustee will be released from any claims of or liability to you in acting pursuant to such directions unless it has received written notice that such person or persons is not or has ceased to be your attorney and the Trustee has acknowledged receipt of such notice in writing.
- (c) The Trustee or the Agent, as defined herein, may require you from time to time to provide such documentation in respect of any investment or proposed investment as the Trustee in its sole discretion deems necessary. Contributions to the PLAN may be invested and re-invested in any eligible securities and/or deposits, including securities issued or managed by, or deposits with the Trustee and its affiliates, as you may direct from time to time. The Trustee may, at its sole discretion, hold uninvested cash balances in any affiliate of the Trustee.

- (d) Pending the investment of any uninvested cash in the PLAN, the Trustee or the Agent will hold such cash in a segregated account and may pay interest thereon on such terms and at such rate or rates as it may from time to time establish, provided that such cash has been deposited with the Trustee or its Agent. Until the PLAN is terminated as provided herein, the Trustee's sole obligation relating to investments of the PLAN will be confined to:
- (i) executing your directions with respect to the investment and reinvestment of monies contributed by you or your spouse and of the proceeds of any sales of such investments or reinvestments and any income named thereon; and
  - (ii) maintaining legal ownership and possession of the investments which from time to time form part of the property of the PLAN or maintaining such investments in bearer form or in the name of a nominee or in such other name as the Trustee may determine.
- (e) Without restricting the generality of the foregoing, it will be your sole responsibility to choose the investments of the PLAN, and to determine whether any investment should be purchased, sold or retained by the Trustee as part of the PLAN. The Trustee shall exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the PLAN holds a non-qualified investment. Other than as heretofore stated, it will be your responsibility to determine whether any investment is or remains a qualified investment within the meaning of Applicable Tax legislation. Neither the Trustee nor the Agent, as defined herein, will be liable to you if:
- (i) any investment in the PLAN results in additional taxes or penalties imposed by Applicable Tax Legislation on you or the PLAN,
  - (ii) any such investment produces losses of any nature whatsoever for the PLAN whether or not the Trustee or Agent has communicated to you any information the Trustee or Agent may have received, or any judgment the Trustee or Agent may have formed, with respect to the foregoing at any particular time, or (iii) the Trustee takes action because an investment in the PLAN is or has become a non-qualified or prohibited investment for purposes of the Applicable Tax Legislation or there is a material risk thereof including because you have not provided information requested by the Trustee.
- (f) Should the PLAN become liable for any taxes, interest or other penalties under Applicable Tax Legislation or for any such taxes, interest and penalties for which the Trustee is jointly liable with the PLAN to pay or for which the Trustee has paid on behalf of the PLAN and is entitled to recover from the PLAN as tax, such Taxes shall be paid out of the assets of the PLAN and you authorize the Trustee to redeem sufficient securities and/or deposits, as required, in the PLAN to pay for such liability. Notwithstanding the above, the

Trustee is not entitled to charge against and deduct from the assets in the PLAN any charges, taxes or penalties imposed on the Trustee under Applicable Tax Legislation other than any such charges, taxes and penalties for which the Trustee is jointly liable with the PLAN to pay or for which the Trustee has paid on behalf of the PLAN and is entitled to recover from the PLAN as tax.

Notwithstanding any of the above, if the Trustee determines, at its sole discretion, that any investment in the PLAN is or has become a non-qualified or prohibited investment for purposes of the Applicable Tax Legislation or that there is a material risk thereof including because you have not provided information requested by the Trustee, the Trustee may, at its sole discretion, deal with such investment as it in its sole discretion determines including to withdraw such investment from the PLAN in-kind subject to all applicable withholdings being made, grant releases of any rights associated with the investment, provide consents to terminate or modify the investment sell the investment for cash or realize on the investment for cash. You acknowledge that the valuation of an investment shall be determined by the Trustee in its sole discretion, provided that it is your obligation to provide the Trustee with such independent evidence of the value of the investment as the Trustee at any time requests. Should you fail to provide evidence of the value of the investment upon the request of the Trustee, the Trustee, at its sole discretion, may obtain a valuation from a third party selected by the Trustee at its sole discretion. You agree that the PLAN shall reimburse the Trustee for the cost incurred by the Trustee for any such valuation by a third party immediately upon the request of the Trustee failing which you shall do so personally forthwith after demand. Notwithstanding the above, in the event that you do not provide to the Trustee a valuation of an investment upon a request by the Trustee, the Trustee may, at its sole discretion, withdraw such investment from the PLAN in-kind, subject to all applicable withholdings being made, grant releases of any rights associated with the investment, provide consents to terminate or modify the investment, sell the investment for cash or realize on the investment for cash. You authorize the Trustee to take any such actions and you irrevocably consent to them. You further acknowledge that you are responsible for all consequences (whether foreseeable or not), including tax consequences, of any of the above.

**5. Withdrawals:** The property of the PLAN may not be withdrawn, transferred, assigned or surrendered, in whole or part, except where property of the PLAN is paid or transferred:

- (a) to you as a full or partial commutation of retirement income under the PLAN;
- (b) to you pursuant to paragraph 7 hereof;
- (c) to a registered pension plan, RRSP or RRIF pursuant to paragraph 146(16)(a) of the Act;
- (d) upon marriage breakdown pursuant to paragraph 17 hereof;

- (e) upon your death pursuant to paragraph 15 hereof; or
- (f) as otherwise permitted by the Act.

**6. Assets Received Outside the PLAN:** You agree that, if you receive any amounts in respect of an asset or right belonging to the PLAN, you shall forthwith pay over such amount to the PLAN.

**7. Refunds:** Subject to Applicable Tax Legislation, the Trustee shall, upon receipt of your written request and authorization, refund to you or your spouse as directed in the request an amount paid to reduce the amount of tax otherwise payable under Part X.1 of the Act. The Trustee will not have any responsibility whatsoever for determining the amount as stated in the previous paragraph in respect of any registered retirement savings plan.

**8. Income Tax Receipts:** On or before March 31 in each year, the Trustee shall forward to your registered address a receipt(s) for income tax purposes with respect to contributions received by the Trustee under the PLAN for the preceding taxation year. It is the sole responsibility of the contributor to your PLAN to ensure that the deductions claimed for income tax purposes do not exceed the permitted deductions under the Applicable Tax Legislation.

**9. Fees:** The Agent and the Trustee may levy fees and charge expenses which will be disclosed to you when you open your account, and the Agent and the Trustee reserve the right to change the fees at any time subject to 60 days' notice in writing to you and to reimburse itself out of the assets of the PLAN for disbursements and expenses reasonably incurred by it in performing its duties hereunder. Notwithstanding anything herein contained, the Trustee is empowered to retain in cash such portion of the contributions and/or investment income earned as the Trustee may in its sole discretion deem advisable for the payment of any fee introduced in accordance with section 9 hereof or other reimbursement hereunder, and any liability including for applicable taxes. All such amounts will, unless paid directly to the Trustee, be charged against and deducted from the assets of the PLAN in such manner as the Trustee determines, and the Trustee may realize upon assets of the PLAN in its sole discretion for the purposes of such amounts. Any such realization shall be made at such price or prices as the Trustee or the Agent at its sole discretion may determine and neither the Trustee nor the Agent shall be responsible for any loss occasioned by any such realization.

Neither the Trustee nor the Agent shall be liable for any taxes, assessments or other charges levied or imposed by any governmental authority upon or in respect of the PLAN except for those taxes, assessments or other charges for which the Trustee or the Agent is liable on behalf of the PLAN in accordance with Applicable Tax Legislation other than any such charges, taxes and penalties for which the Trustee is jointly liable with the PLAN to pay or for which the Trustee has paid on behalf of the PLAN and is entitled to recover from the PLAN as tax.

**10. Tax Matters and Assessments:**

- (a) Withholdings: Where required by Applicable Tax Legislation, the Trustee will withhold tax from payments made from the PLAN.

- (b) No withdrawal shall be made until all applicable liabilities of the PLAN, including for applicable taxes of the PLAN and for fees and other amounts described herein have been paid or a reasonable amount in the sole discretion of the Trustee has been retained in the PLAN to satisfy such amounts. No withdrawal shall be made if the Trustee has requested information necessary for it to determine the amount of or potential liability for any applicable liabilities and you have not provided information satisfactory to the Trustee to be able to make a determination that no applicable liability exists. It is your responsibility to ensure that the PLAN has sufficient cash to pay any applicable withholding tax associated with a withdrawal and no withdrawal shall be made unless and until the PLAN has such cash. Neither the Trustee nor the Agent shall be liable for any losses or damages arising from any delay to make a withdrawal as a result of any of the above.
- (c) If an assessment of taxes is made against the PLAN, or the PLAN files a return reporting taxes payable, the Trustee shall pay the amount of such taxes out of the assets of the PLAN to the applicable governmental authority unless arrangements satisfactory to the Trustee are made with you regarding any objection to such taxes, including arrangements for the payment of fees and expenses to make such objection and arrangements to ensure that the PLAN will have the ability to be able to pay such taxes.
- (d) Neither the Trustee nor the Agent will be liable to you or the PLAN in respect of any amount paid to any relevant tax authority in compliance with or intended compliance with Applicable Tax Legislation.

**11. Date of Birth:** Your statement of your date of birth contained in your application for the PLAN shall be deemed to be your certification of your age upon which the Trustee may rely and your undertaking to provide any further evidence of proof of age that may be required when a retirement income is to be provided.

**12. Designation of Beneficiary:** If permitted by applicable law, you may designate one or more beneficiaries in accordance with this paragraph to receive the proceeds payable under the PLAN in the event of your death. A valid beneficiary designation can only be made, changed or revoked by a written instrument which adequately identifies the PLAN signed by you in a form reasonably acceptable to the Trustee and received by the Trustee prior to any payment hereunder. If more than one instrument has been so lodged, the Trustee shall make payment only in accordance with the instrument in its possession bearing the latest execution date. An instrument shall be valid for the purposes of this section even though it does not meet the applicable provincial requirements for a testamentary disposition. An instrument shall not be valid for the purposes of this section when the Trustee has actual notice of a valid will or codicil that specifically designates a beneficiary which postdates the latest instrument filed with the Trustee. In the event of your death, unless your spouse has become the annuitant of the PLAN under the terms hereof or with the consent of your legal representative, the Trustee will, upon receipt of satisfactory evidence of your death and

all other documentation which it may reasonably require, distribute the proceeds of the PLAN, after deduction of all proper charges including any applicable income tax, in accordance with the beneficiary designation on the latest valid instrument filed with the Trustee. If there is no valid instrument filed with the Trustee or if all of your beneficiaries predecease you, this amount will be paid to your legal personal representative. On making any such payment, the Trustee shall be released from all further obligations under the PLAN.

### **13. Retirement Income:**

- (a) Your PLAN will mature on a date (“maturity date”) which must not be later than December 31 of the year in which your 71st birthday (or such other age as prescribed by the Act) occurs. You will, upon at least 90 days’ written notice to the Trustee or upon such shorter period of notice as the Trustee may in its sole discretion permit:
  - (i) specify the date of maturity of the PLAN and the commencement of a retirement income as defined under subsection 146(1) of the Act (which date will be no later than the last day in the calendar year in which you attain 71 years of age (or such other age as prescribed by the Act)).
  - (ii) provide any necessary documentation required by the Trustee; and
  - (iii) provide written instructions to the Trustee to apply the property of the PLAN to the provision of a retirement income as defined under subsection 146(1) of the Act by means of:
    - (A) an annuity payable to you for your life (or, if you so designate, to you for the lives jointly of yourself and your spouse and to the survivor of them for his or her life) commencing at the maturity date and with or without a guaranteed term not exceeding the period of time calculated according to the formula in paragraph (B) below; or
    - (B) an annuity commencing on the maturity date payable to you, or to you for your life and to your spouse after your death, for a term of years equal to 90 minus either your age in whole years at the maturity of the Plan, or where your spouse is younger than you and you so elect, the age in whole years of your spouse at the maturity of the PLAN;
    - (C) the purchase of a registered retirement income fund in accordance with the Act; or
    - (D) any combination thereof.

It is your sole responsibility to ensure that your PLAN liquidates its assets to permit the property of the PLAN to be applied as you have instructed.

- (b) On the maturity date chosen by you, not to exceed December 31 of the year in which your 71st birthday (or such other age as prescribed by the Act) occurs, unless the PLAN has otherwise liquidated its assets in accordance with your instructions, the Trustee

shall liquidate the assets in your account and use the proceeds to purchase your retirement income as defined under subsection 146(1) of the Act, subject to the following conditions:

- (i) the retirement income shall be provided by a company qualified under the Applicable Tax Legislation to provide a retirement income;
  - (ii) any annuity shall be payable in equal annual or more frequent periodic payments to you until such time as there is a payment in full or partial commutation of the retirement income and, where such commutation is partial, equal annual or more frequent periodic payments thereafter;
  - (iii) any annuity shall not be capable, either in whole or in part, of assignment;
  - (iv) where any annuity has a guaranteed term, that guaranteed term may not exceed the number of years equal to 90 minus your age in whole years at the maturity date or, if you so choose and your spouse is younger than you, your spouse's age in whole years at the maturity date
  - (v) any annuity so acquired may be integrated with any Old Age Security pension;
  - (vi) any annuity so acquired may be increased in whole or in part to reflect increases in the Consumer Price Index (as defined in Applicable Tax Legislation), or increases at a rate specified in the annuity, not exceeding 4% per annum;
  - (vii) any annuity will, subject to subparagraphs 13(b)(v) and (vi), provide for equal annual or more frequent periodic payments until there is a payment in full or partial commutation of the annuity, and, where there is partial commutation, provide for equal annual or more frequent periodic payments thereafter;
  - (viii) any annuity will not provide for the aggregate of the periodic payments in a year after your death which exceed the aggregate of the payments in a year before your death;
  - (ix) will provide for commutation if the annuity would become payable to a person other than yourself or, upon your death, to your spouse.
- (c) In the event that you do not instruct the Agent or the Trustee within 90 days of the last day of the year in which your 71st birthday (or such other age as prescribed by the Act) occurs (or within such lesser period of time as the Trustee may in its sole discretion determine from time to time) (the "Wind-up Period") as to the maturity date and to provide written instructions to purchase a retirement income for you, the Agent or the Trustee shall within the Wind-Up Period, liquidate the PLAN assets, and thereafter may, at its discretion, use the PLAN proceeds to obtain a retirement income for you under the provisions of this section. In this regard:



- (i) the Trustee will not transfer the property in the Plan to a Registered Retirement Income Fund for which you shall be the annuitant and for which the Trustee will act as carrier in compliance with Applicable Tax Legislation unless the value of the property in the PLAN is equal to or exceeds \$10,000 (or such greater or lesser amount as the Trustee may in its sole discretion determine from time to time), and if the Trustee exercises its discretion to purchase a Registered Retirement Income Fund, you hereby appoint the Agent as your attorney in fact to execute all such documents and make elections as are necessary to establish and operate the Registered Retirement Income Fund. In such event, any beneficiary that you have designated in the PLAN will be designated as the beneficiary of such Registered Retirement Income Fund; and
- (ii) where the value of the property in the PLAN is less than \$10,000 (or such greater or lesser amount as the Trustee may in its sole discretion determine from time to time), the fair market value of the property of the PLAN will be included in your taxable income as of January 1 of the year in which your 72nd birthday (or, where a maturity age other than 71 years has been prescribed by the Act, of the year after you have reached such maturity age) occurs, the Trustee will distribute all amounts held in the PLAN subject to any required withholding therefrom in respect of taxes or other charges which shall be remitted to you as soon as is practicable following January 1 in such year.

**14. Death Prior to Maturity Date:** In the event of your death prior to the commencement of a retirement income, the Trustee shall, upon receipt of satisfactory evidence of your death and all other legal documents that the Agent or the Trustee may reasonably require, liquidate the assets held in your account and, subject to the deduction of all proper charges including any applicable income tax, make a lump-sum payment to the person legally entitled thereto pursuant to section 13 hereof.

**15. Amendments to PLAN:** The Trustee may from time to time amend this Declaration of Trust with the concurrence of the Minister of National Revenue, if required, and the concurrence of provincial tax authorities, if applicable:

- (a) without notice to you or without your consent, provided that the amendment is made for the purpose of satisfying a requirement imposed by the Applicable Tax Legislation or at its effective date the amendment will not in the Trustee's sole opinion adversely affect your rights under the PLAN; and
- (b) in all other cases, by giving 30 days' notice in writing to you, provided that in all cases no such amendment will have the effect of disqualifying the PLAN as a registered retirement savings plan within the meaning of the Applicable Tax Legislation. Prior to the maturity date, the PLAN may also be amended according to the provisions of the Applicable Tax Legislation upon 30 days written notice to the Trustee to provide for the payment or transfer of the assets held by the Trustee

in your PLAN to another registered retirement savings plan, registered pension plan or registered retirement income fund.

**16. Payments Upon Marriage Breakdown:** To the extent and in the manner permitted by Applicable Tax Legislation, the Trustee will make a payment or payments out of the PLAN to effect a division of property provided such payment is made pursuant to decree, order or judgment of a competent tribunal or under a written separation agreement in the settlement of rights arising out of or on the breakdown of your marriage or other conjugal relationship.

**17. Notices:** Any notice given to the Trustee hereunder shall be sufficiently given if delivered to, or mailed, postage prepaid, addressed to the Agent or the Trustee at its head office in Toronto, Canada and shall be considered to have been given on the day that it is received by the Agent or the Trustee. Any notice, statement or receipt given by the Agent or the Trustee to you will be sufficiently given if (i) sent to you electronically or (ii) mailed, postage prepaid, addressed to you at your last address known to the Agent or the Trustee in connection with this PLAN and such notice shall be deemed to have been given on the day of delivery if sent electronically or third business day following the day of mailing.

**18. Indemnity:** You, your successors, executors and administrators shall at all times indemnify and save harmless the Agent and the Trustee in respect of any taxes, assessments or other charges levied or imposed by any governmental authority upon or in respect of the PLAN or on the Trustee for which the Trustee is jointly liable with the PLAN to pay or for which the Trustee has paid on behalf of the PLAN and is entitled to recover from the PLAN as tax. The Trustee and the Agent shall be entitled to and shall be fully protected in acting upon any instrument, certificate, notice or other writing believed by the Trustee or the Agent to be genuine and to be signed or presented by the proper person(s). The Trustee and the Agent shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but shall be entitled to accept the same as conclusive evidence of the truth and accuracy of the statement therein contained. When the PLAN is terminated and the proceeds thereon are withdrawn, the Trustee and the Agent shall be released and discharged from any further responsibility or obligation in connection herewith. Except as otherwise provided herein, the Trustee shall not be liable for any loss incurred by the PLAN, by you or by any beneficiary under the PLAN unless due to the negligence, misconduct or lack of good faith of the Trustee.

**19. Applicable Laws:** This agreement will be governed by and construed in accordance with the laws of the Province of Ontario. Any reference to "spouse" contained herein or in the application means "spouse or common-law partner" and any reference to "marriage" herein or in the application means "marriage or common-law partnership."

**20. Successor Trustee:**

- (a) Subject to paragraph (c) the Trustee or any successor trustee of the PLAN may resign as trustee by appointing a replacement trustee as provided in paragraph (b) and by giving 30 days prior notice in writing to you advising you of its resignation and the

name and address of the replacement trustee to be appointed. The Trustee shall resign at the request of the Agent subject to the appointment of a successor trustee as provided in paragraphs (b) and (c).

- (b) A resigning Trustee may, by writing, appoint another party to be trustee in its place, provided that such party is a corporation licensed or otherwise authorized under the laws of Canada or a province thereof to carry on in Canada the business of offering to the public its services as trustee and is acceptable to the Agent.
- (c) The Trustee or any successor trustee shall not resign as trustee of the PLAN
  - (i) unless a replacement trustee described in paragraph (b) is appointed and accepts the appointment to replace the resigning trustee, or
  - (ii) if the replacement trustee described in paragraph (b) will result in the PLAN ceasing to be a registered retirement savings plan under Act.
- (d) A retiring trustee shall transfer to the replacement trustee all property of the trust and all records related to its duties as trustee and shall do all acts and execute all deeds necessary for the proper vesting of the trust property in the replacement trustee.
- (e) Notwithstanding anything herein before contained, a trustee shall continue as trustee of the PLAN until such time as a replacement trustee shall become vested with all the rights and obligations of the retiring trustee hereunder.
- (f) Any corporation into which the Trustee may be merged, consolidated or amalgamated, or any corporation resulting from any merger, consolidation or amalgamation to which the Trustee is a party, or any corporation succeeding to the trust business of the Trustee or to which substantially all of the trust assets of the Trustee may be transferred shall be the successor trustee of the PLAN, provided such corporation is authorized by law to be the trustee of the PLAN, without the execution of any further instrument.

**21. Heirs, Executors and Assigns:** The terms and conditions of this Declaration of Trust shall be binding upon your heirs, executors, administrators and assigns and upon the respective successors and assigns of the Trustee and the Agent.

**22.** In the event that, at any time, there are no assets held in the PLAN, the Trustee may, in its sole discretion, close the PLAN.

# TD Waterhouse Self-Directed Retirement Income Fund Declaration of Trust

The Canada Trust Company, a trust company incorporated under the laws of Canada and having its Head Office in the City of Toronto in the Province of Ontario (the “Trustee”), in consideration of the transfer of qualified property hereby declares that it accepts the office of administrative trustee and agrees to hold the property and make payments from a Retirement Income Fund (herein the “FUND”) to the account holder who is also the applicant named on the application (herein called “you”, “your” and “yours”), and who is the “annuitant” within the meaning of subsection 146.3(1) of the Income Tax Act (Canada) (the “Act”), and if you so elect, to your spouse after your death. The Trustee accepts this office on the following terms:

**1. Registration:** The Trustee will apply for registration of the FUND under your Social Insurance Number as a Retirement Income Fund under the provisions of the Act and, if applicable, the provisions of any similar legislation of the Province in which you reside (the Act and such provincial legislation, including the regulations issued thereunder, collectively or individually referred to as the “Applicable Tax Legislation”).

**2. Administration:** The Trustee may delegate certain administrative duties to an affiliate of the Trustee (such affiliate herein referred to as “Agent”). Notwithstanding the duties delegated to the Agent, the ultimate responsibility for the administration of the FUND remains with the Trustee.

**3. Purpose of the FUND:** The Trustee undertakes to hold such property (including cash) in trust and to pay to you and, if you so elect, to your spouse after your death, in each year commencing not later than the first complete calendar year after the year this agreement is entered into, an amount (herein called a “retirement income”) calculated according to the terms of the Act.

**4. Transfers to the FUND:** No qualified investment will be accepted by the Trustee as consideration for the payment of a retirement income other than property transferred by direct transfers from:

- (a) a Registered Retirement Savings Plan under which you are the annuitant;
- (b) a Registered Retirement Income Fund under which you are the annuitant;
- (c) you to the extent that the property is an amount described in paragraph 60(1)(v) of the Act;
- (d) a Registered Retirement Savings Plan or Registered Retirement Income Fund of you or your spouse or former spouse pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement relating to a division of property between you and your spouse or former spouse in settlement of rights arising out of your marriage on or after the breakdown of your marriage;
- (e) a Registered Pension Plan under which you are a member within the meaning assigned under subsection 147.1(1) of the Act;

- (f) a Registered Pension Plan in accordance with subsections 147.3(5) and (7) of the Act; or
- (g) a specified pension plan in circumstances to which subsection 146(21) of the Act applies.
- (h) a First Home Savings Account under which you are the annuitant as permitted by subsection 146.6 (7) of the Act; or
- (i) as otherwise permitted by the Act

## **5. Investments:**

- (a) The Trustee will, on your written or oral directions, invest the Property of the FUND, provided that the Trustee may in its sole discretion decline to make any particular investment for any reason including, without limitation, if the proposed investment and related documentation do not comply with the trustee's administrative requirements, which may be modified from time to time. You will have the right to designate a person or persons in a satisfactory form as may be determined by the Trustee, as your attorney for the purpose of giving any such directions and the Trustee will be released from any claims of or liability to you in acting pursuant to such directions unless it has received written notice that such person or persons is not or has ceased to be your attorney and the Trustee has acknowledged receipt of such notice in writing.
- (b) The Trustee or the Agent, as defined herein, may require you from time to time to provide such documentation in respect of any investment or proposed investment as the Trustee in its sole discretion deems necessary. The FUND may be invested and reinvested in any eligible securities and/or deposits, including securities issued or managed by or deposits with the Trustee and its affiliates as you may direct from time to time. The Trustee may, at its sole discretion, hold uninvested cash balances in any affiliate of the Trustee.
- (c) Pending the investment of uninvested cash in the FUND, the Trustee or the Agent will hold such cash in a segregated account and may pay interest thereon on such terms and at such rate or rates as it may from time to time establish, provided that such cash has been deposited with the Trustee or its Agent. Until the FUND is terminated as provided herein, the Trustee's sole obligation relating to investments of the FUND will be confined to: (i) executing your directions with respect to the investment and reinvestment of monies in the FUND and of the proceeds of any sales of such investments or reinvestments and any income earned thereon; and (ii) maintaining legal ownership and possession of the investments that from time to time form part of the property of the FUND or maintaining such investments in bearer form or in the name of a nominee or in such other name as the Trustee may determine.
- (d) Without restricting the generality of the foregoing, it will be your sole responsibility to choose the investments of the FUND, and to determine whether any investment should be purchased, sold or retained

by the Trustee as part of the FUND. The Trustee shall exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the FUND holds a non-qualified investment. Other than as heretofore stated, it will be your responsibility to determine whether any investment is or remains a qualified investment within the meaning of Applicable Tax Legislation. Neither the Trustee nor the Agent, as defined herein, will be liable to you if: (i) any investment in the FUND results in additional taxes or penalties imposed by Applicable Tax Legislation on you or the FUND, (ii) any such investment produces losses of any nature whatsoever for the FUND whether or not the Trustee or Agent has communicated to you any information the Trustee or Agent may have received, or any judgment the Trustee or Agent may have formed, with respect to the foregoing at any particular time, or (iii) the Trustee takes action because an investment in the FUND is or has become a non-qualified or prohibited investment for purposes of the Applicable Tax Legislation or there is a material risk thereof including because you have not provided information requested by the Trustee.

- (e) Should the FUND become liable for any taxes, interest or other penalties under Applicable Tax Legislation or for any such taxes, interest and penalties for which the Trustee is jointly liable with the Account to pay or for which the Trustee has paid on behalf of the FUND and is entitled to recover from the FUND as tax, such Taxes shall be paid out of the assets of the FUND and you authorize the Trustee to redeem sufficient securities and/or deposits, as required, in the FUND to pay for such liability. Notwithstanding the above, the Trustee is not entitled to charge against and deduct from the assets in the FUND any charges, taxes or penalties imposed on the Trustee under Applicable Tax Legislation other than any such charges, taxes and penalties for which the Trustee is jointly liable with the FUND to pay or for which the Trustee has paid on behalf of the FUND and is entitled to recover from the FUND as tax.

Notwithstanding any of the above, if the Trustee determines, at its sole discretion, that any investment in the FUND is or has become a non-qualified or prohibited investment for purposes of Applicable Tax Legislation or that there is a material risk thereof including because you have not provided information requested by the Trustee,, the Trustee may, at its sole discretion, deal with such investment as it in its sole discretion determines including to withdraw such investment from the FUND in-kind, subject to all applicable withholdings being made, grant releases of any rights associated with the investment, provide consents to terminate or modify the investment, sell the investment for cash or realize on the investment for cash. You acknowledge that the valuation of an investment shall be determined by the Trustee in its sole discretion, provided that it is your obligation to provide the Trustee with such independent evidence of the value of the investment as the Trustee at any time requests. Should you fail to provide evidence of the value of the investment upon the request of the Trustee, the

Trustee, at its sole discretion, may obtain a valuation from a third party selected by the Trustee at its sole discretion. You agree that the FUND shall reimburse the Trustee for the cost incurred by the Trustee for any such valuation by a third party immediately upon the request of the Trustee failing which you shall do so personally forthwith after demand. Notwithstanding, the above, in the event that you do not provide to the Trustee a valuation of an investment upon a request by the Trustee, the Trustee may, at its sole discretion, withdraw such investment from the FUND in-kind, subject to all applicable withholdings being made, grant releases of any rights associated with the investment, provide consents to terminate or modify the investment, sell the investment for cash or realize on the investment for cash. You authorize the Trustee to take any such actions and you irrevocably consent to them. You further acknowledge that you are responsible for all consequences (whether foreseeable or not), including tax consequences, of any of the above.

**6. Your Account(s):** The Trustee will send to you statements at least annually, setting forth the particulars of each transaction within your account(s) and the balance then standing to your credit. Notwithstanding anything herein contained, the Trustee is empowered to retain in cash or realize upon such portion of your account(s) as the Trustee may in its discretion deem advisable for the payment of your retirement income or applicable liabilities of the FUND including fees and other amounts described herein and any applicable taxes including amounts in respect of tax assessments described in section 13.

The Trustee may, at its discretion and without notice to you, sell or liquidate assets in the FUND or realize upon such assets as it determines to be appropriate to pay any such liability or debit balance of the FUND and its costs. You acknowledge that the Trustee will not be liable to you regarding any aspect of such liquidation, sale or realization. In addition, you acknowledge that the liquidation, sale or realization of assets in the FUND may have significant financial consequences for you and the FUND, including tax consequences, for which you are solely liable. You are jointly liable with the FUND for the payment of any liability or debit balance owing within the FUND and you are liable for any liability or debit balance remaining after liquidation of assets in the FUND and the application of such liquidation against the liability or debit balance.

**7. Retirement Income:** Commencing not later than the first calendar year after the year in which the FUND is established, the retirement income payable each year will be one or more amounts the aggregate of which is not less than the minimum amount as defined below, but in no event will the retirement income exceed the fair market value of the FUND immediately before the time of payment. If the Trustee agrees, you may elect to receive in any year any amount between the minimum amount and the fair market value of the property in the FUND.

The minimum amount will be the minimum amount as defined in subsection 146.3(l) of the Act. If, at the time that the Trustee is to make payment to you of the minimum amount and the only property remaining in the FUND cannot be partially liquidated to fund such payment, the Trustee

may, at its sole discretion, make such payment by transfer in-kind of all such remaining property to you or to a non-registered account in your name, even though such transfer exceeds the amount of the required payment, regardless of any tax consequences to you.

If you elect to have your minimum amount determined using your spouse's age, you must complete the appropriate area on the face of this form before the Trustee makes any payment out of the FUND to you. At the end of the year in which the last payment is made, an amount equal to the value of the property must be paid out. No assignment will be made of any amount payable to you or, if applicable, to your spouse, out of or under the FUND.

**8. Payments Received outside FUND:** You agree that, if you receive any amounts in respect of an asset or right belonging to the FUND, you shall forthwith pay over such amount to the FUND.

**9. Your Death:** If you die during the term of the FUND, the Trustee will, unless your spouse has become the annuitant of the FUND under the terms of the agreement or with the consent of the carrier of the FUND and your legal representative, and upon receipt of satisfactory evidence of your death and all other legal documents that it may reasonably require, distribute all the property in your account, after deduction of all proper charges including any applicable income tax, to the person legally entitled thereto pursuant to section 10 hereof.

**10. Designation of Beneficiary:** If permitted by applicable law, you may designate one or more beneficiaries in accordance with this paragraph to receive the proceeds payable under the FUND in the event of your death. A valid beneficiary designation can only be made, changed or revoked by a written instrument that adequately identifies the FUND signed by you in a form reasonably acceptable to the Trustee and received by the Trustee prior to any payment hereunder. If more than one instrument has been so lodged, the Trustee shall make payment only in accordance with the instrument in its possession bearing the latest execution date. An instrument shall be valid for the purposes of this section even though it does not meet the applicable provincial requirements for a testamentary disposition. An instrument shall not be valid for the purposes of this section when the Trustee has actual notice of a valid Will or codicil that specifically designates a beneficiary which postdates the latest instrument filed with the Trustee. In the event of your death, unless your spouse has become the annuitant of the FUND under the terms hereof or with the consent of the carrier and your legal representative, in which case the Trustee shall continue the payment to your spouse in accordance with the terms hereof, the Trustee will, upon receipt of satisfactory evidence of your death and all other documentation which it may reasonably require, distribute the proceeds of the FUND, after deduction of all proper charges including any applicable income tax, in accordance with the beneficiary designation on the latest valid instrument filed with the Trustee. If there is no valid instrument filed with the Trustee or if all of your beneficiaries predecease you, this amount will be paid to your legal personal representative. On making any such payment, the Trustee shall be released from all further obligations under the FUND.



**11. Income Tax Information Slips:** On or before, the end of February in each year, the Trustee will give you a T4 RIF information slip with respect to retirement income paid to you under the FUND for the preceding taxation year. It is your sole responsibility to ensure that the amount of your retirement income under the FUND is properly reported on your income tax return as required under the Applicable Tax Legislation.

**12. Fees:** The Trustee and the Agent may levy fees that will be disclosed to you when you open your account, and the Agent or the Trustee reserves the right to change the fees at any time subject to 60 days' notice in writing to you and to reimburse itself out of the assets of the FUND for disbursements and expenses reasonably incurred by it in performing its duties hereunder.

Notwithstanding anything herein contained, the Trustee is empowered to retain in cash such portion of the investment earned as the Trustee may, at its sole discretion, deem advisable for the payment of any fee introduced in accordance with section 12 hereof or any other reimbursement hereunder and any liability, including for applicable taxes, all such fees and other charges will, unless paid directly to the Trustee, be charged against and deducted from the assets of the FUND in such manner as the Trustee determines, and the Trustee may realize assets of the FUND in its sole discretion for the purposes of paying such amounts. Any such realization shall be made at such price or prices as the Trustee or the Agent at its sole discretion may determine and neither the Trustee nor the Agent shall be responsible for any loss occasioned by any such realization.

Neither the Trustee nor the Agent shall be liable for any taxes, assessments or other charges levied or imposed by any governmental authority upon or in respect of the FUND except for those taxes, assessments or other charges for which the Trustee or the Agent is liable on behalf of the FUND in accordance with Applicable Tax Legislation other than any such charges, taxes and penalties for which the Trustee is jointly liable with the FUND to pay or for which the Trustee has paid on behalf of the FUND and is entitled to recover from the FUND as tax.

**13. Tax Matters and Assessments:**

- (a) Withholdings: Where required by Applicable Tax Legislation, the Trustee will withhold tax from payments made from the FUND.
- (b) No payment above the minimum amount shall be made until all applicable liabilities of the FUND, including for applicable taxes of the FUND and for fees and other amounts described herein have been paid or a reasonable amount in the sole discretion of the Trustee has been retained in the FUND to satisfy such amounts.) No such payment shall be made if the Trustee has requested information necessary for it to determine the amount of or potential liability for any applicable liabilities and you have not provided information satisfactory to the Trustee to be able to make a determination that no applicable liability exists. It is your responsibility to ensure that the FUND has sufficient cash to pay any applicable withholding tax associated with such a payment and no such

payment shall be made unless and until the FUND has such cash. Neither the Trustee nor the Agent shall be liable for any losses or damages arising from any delay to make such a payment as a result of any of the above.

- (c) If an assessment of taxes is made against the FUND, or the FUND files a return reporting taxes payable, the Trustee shall pay the amount of such taxes out of the assets of the FUND to the applicable governmental authority unless arrangements satisfactory to the Trustee are made with you regarding any objection to such taxes, including arrangements for the payment of fees and expenses to make such objection and arrangements to ensure that the FUND will have the ability to be able to pay such taxes.
- (d) Neither the Trustee nor the Agent will be liable to you or the FUND in respect of any amount paid to any relevant tax authority in compliance with or intended compliance with Applicable Tax Legislation.

**14. Your Certification:** Your statement of your date of birth and, if applicable, your spouse's date of birth contained in your application for the FUND will be deemed to be your certification of your age and, if applicable, your spouse's age upon which the Trustee may rely and your undertaking to provide any further evidence of proof of age that may be required.

**15. Amendments to FUND:** The Trustee may from time to time amend this Declaration of Trust with the concurrence of the Minister of National Revenue, if required, and the concurrence of provincial tax authorities, if applicable:

- (a) without notice to you or without your consent, provided that the amendment is made for the purpose of satisfying a requirement imposed by the Applicable Tax Legislation or at its effective date the amendment will not in the Trustee's sole opinion adversely affect your rights under the FUND; and
- (b) in all other cases, by giving 30 days' notice in writing to you, provided that in all cases no such amendment will have the effect of disqualifying the FUND as a registered retirement income fund within the meaning of the Applicable Tax Legislation.

**16. Transfer from FUND:** Subject to the terms and the maturity of the qualified investment(s) you have chosen for the FUND, pursuant to section 5 hereof, the Trustee or the Agent will, within 10 business days of receipt of your written notice, transfer as directed, pursuant to the provisions Applicable Tax Legislation and subject to paragraph 146.3(2)(e) of the Act, all or part of the property of the FUND to another registered retirement income fund after all applicable liabilities of the FUND including for fees and other amounts described herein have been paid together with all applicable taxes.

Where the minimum amount for the year has not yet been withdrawn, the Trustee will retain a sufficient portion of the FUND to allow it to make a payment sufficient to ensure that the minimum amount is paid to you for the year.

The Trustee accepts no responsibility for the establishment and validity of any new retirement income fund arrangement between you and any other carrier or for the investment or payment of any funds after the payment or transfer provided for herein.

**17. Notices:** Any notice given to the Trustee hereunder will be sufficiently given if delivered to or mailed, postage prepaid, addressed to the Agent or the Trustee at its Head Office in Toronto, Canada and will be considered to have been given on the day that it is received by the Agent or the Trustee. Any notice, statement or receipt given by the Agent or the Trustee to you will be sufficiently given if (i) sent to you electronically or (ii) mailed, postage prepaid, addressed to you at your last address known to the Agent or the Trustee in connection with this FUND and such notice will be deemed to have been given on the day of delivery if sent electronically or third business day following the day of mailing.

**18. Indemnity:** You, your successors, executors and administrators shall at all times indemnify and save harmless the Agent and the Trustee in respect of any taxes, assessments or other charges levied or imposed by any governmental authority upon or in respect of the FUND.

The Trustee and the Agent shall be entitled to and shall be fully protected in acting upon any instrument, certificate, notice or other writing believed by the Trustee or the Agent to be genuine and to be signed or presented by the proper person(s). The Trustee and the Agent shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but shall be entitled to accept the same as conclusive evidence of the truth and accuracy of the statement therein contained. When the FUND is terminated and the proceeds thereon are withdrawn, the Trustee and the Agent shall be released and discharged from any further responsibility or obligation in connection herewith. Except as otherwise provided herein, the Trustee shall not be liable for any loss incurred by the FUND, by you or by any beneficiary under the FUND unless due to the negligence, misconduct or lack of good faith of the Trustee.

**19. Applicable Law:** This agreement will be governed by and construed in accordance with the laws of the Province of Ontario. Any reference to "spouse" contained herein or in the application means "spouse or common-law partner" and any reference to "marriage" herein or in the application means "marriage or common-law partnership."

**20. Successor Trustee:**

- (a) Subject to paragraph (c) the Trustee or any successor trustee of the FUND may resign as trustee by appointing a replacement trustee as provided in paragraph (b) and by giving 30 days prior notice in writing to you advising you of its resignation and the name and address of the replacement trustee to be appointed. The Trustee shall resign at the request of the Agent subject to the appointment of a successor trustee as provided in paragraphs (b) and (c).
- (b) A resigning Trustee may, by writing: appoint another party to be trustee in its place, provided that such party is a corporation licensed or otherwise authorized under the laws of Canada or a province thereof to

carry on in Canada the business of offering to the public its services as trustee and is acceptable to the Agent.

- (c) The Trustee or any successor trustee shall not resign as trustee of the FUND
  - (i) unless a replacement trustee described in paragraph (b) is appointed and accepts the appointment to replace the resigning Trustee, or
  - (ii) if the replacement trustee described in paragraph (b) will result in the FUND ceasing to be a registered retirement income fund plan under Applicable Tax Legislation.
- (d) A retiring Trustee shall transfer to the replacement trustee all property of the FUND and all records related to its duties as trustee and shall do all acts and execute all deeds necessary for the proper vesting of the FUND property in the replacement trustee.
- (e) Notwithstanding anything herein before contained, a Trustee shall continue as Trustee of the FUND until such time as a replacement Trustee shall become vested with all the rights and obligations of the retiring Trustee hereunder.
- (f) Any corporation into which the Trustee may be merged, consolidated or amalgamated, or any corporation resulting from any merger, consolidation or amalgamation to which the Trustee is a party, or any corporation succeeding to the trust business of the Trustee or to which substantially all of the trust assets of the Trustee may be transferred shall be the successor trustee of the FUND, provided such corporation is authorized by law to be the trustee of the FUND, without the execution of any further instrument.

**21. Heirs, Executors and Assigns:** The terms and conditions of this Declaration of Trust shall be binding upon your heirs, executors, administrators and assigns and upon the respective successors and assigns of the Trustee and the Agent.

**22. Transfer Upon Marriage Breakdown:** To the extent and in the manner permitted by Applicable Tax Legislation, the Trustee will make a transfer out of the FUND on behalf of an individual who is your spouse and who is entitled to the amount of the transfer under a decree, an order or a judgment of a competent tribunal, or under a written agreement, that relates to a division of property between you and the individual in settlement of rights that arise out of, or on a breakdown of, your marriage.

**23.** In the event that, at any time, there are no assets held in the FUND, the Trustee may in its sole discretion close the FUND.

# TD Waterhouse Tax-Free Savings Account Declaration of Trust

The Canada Trust Company, a trust company amalgamated under the laws of Canada (the “**Trustee**”), hereby declares that it agrees to act as administrative trustee for the individual named in the application (the “**Application**”) on the face hereof (the “**Holder**”) as defined in the Income Tax Act (Canada) (the “**Act**”) for the TD Waterhouse Tax-Free Savings Account (the “**Account**”). The Trustee accepts this office on the following terms:

**1. Registration:** Subject to the Holder having attained the age of majority, the Trustee will elect, in the form and manner prescribed by the Act and any applicable provincial income tax legislation relating to tax-free savings accounts as designated from time to time in writing by the Holder (the Act and such provincial income tax legislation being hereinafter collectively referred to as “Applicable Tax Legislation”), to register the qualifying arrangement governed by this Declaration of Trust as a tax-free savings account under the Social Insurance Number of the Holder. For greater certainty, unless the Holder has attained at least 18 years of age at the time that this arrangement is entered into, it shall not constitute a qualifying arrangement, as that term is defined in subsection 146.2(1) of the Act, susceptible of being registered as a tax-free savings account.

**2. Spouse and Common-Law Partner:** Any reference to “Spouse” contained in this Declaration of Trust or in the Application means spouse or common-law partner.

**3. Survivor:** Any reference to “successor holder” in this Declaration of Trust or in the Application means a Survivor, as that term is defined in subsection 146.2(1) of the Act, and who is the spouse of the Holder immediately before the Holder’s death.

**4. Holder:** Any reference to “Holder” or “applicant” in the Declaration of Trust or in the Application means the Holder or Successor Holder.

**5. Account:** The Trustee will maintain the Account for the exclusive benefit and in the name of the Holder, showing all contributions made to the Account and all investment transactions made at the direction of the Holder less applicable liabilities of the Account including fees or other amounts described herein and any other applicable taxes applicable liabilities of the Account including fees and other amounts described herein and any applicable taxes including amounts in respect of tax assessments described in section 16.

The Trustee may, at its sole discretion and without notice to you, sell or liquidate assets in the Account or realize upon such assets as it determines to be appropriate to pay any such liability or debit balance of the Account and its costs. You acknowledge that the Trustee will not be liable to you regarding any aspect of such liquidation, sale or realization. In addition, you acknowledge that the liquidation, sale or realization of assets in the Account may have significant financial consequences for you and the Account, including tax consequences, for which you are solely liable. You are jointly liable with the Account for the payment of any liability or debit balance owing within the Account and you

are liable for any liability or debit balance remaining after liquidation of assets in the Account and the application of such liquidation against the liability or debit balance.

**6. Contributions:** Only the Holder may make contributions to the Account, and the Trustee shall accept only such payments of cash and other transfers of property acceptable to it, pursuant to any minimum contribution requirement identified in the Application or other notice given under the terms of this Declaration of Trust or otherwise, the same together with any income therefrom constituting a trust to be used, invested and held subject to the terms hereof. It is the responsibility of the Holder to ensure that no contribution exceeds the maximum permitted under the Applicable Tax Legislation.

**7. Investment:** The Trustee will, on the written or oral directions of the Holder, invest the property of the Account, provided that the Trustee may in its sole discretion decline to make any particular investment for any reason including, without limitation, if the proposed investment and related documentation do not comply with the Trustee's administrative requirements, which may be modified from time to time. The Holder will have the right to designate a person or persons in a satisfactory form as may be determined by the Trustee, as his or her attorney for the purpose of giving any such directions and the Trustee will be released from any claims or liability to the Holder in acting pursuant to such directions unless it has received written notice that such person or persons is not or has ceased to be the Holder's attorney and the Trustee has acknowledged receipt of such notice in writing.

The Trustee, or TD Waterhouse Canada Inc. or its affiliates (the "Agent"), may require the Holder from time to time, to provide such documentation in respect of any investment or proposed investment as the Trustee in its sole discretion deems necessary. Contributions and transfers to the Account may be invested and reinvested in any eligible securities and/or deposits, including securities issued or managed by, or deposits with the Trustee and any of its affiliates, as the Holder may direct from time to time. The Trustee may, at its sole discretion, hold uninvested balances in the Trustee or in any affiliate of the Trustee.

Pending the investment of any uninvested cash in the Account, the Trustee or the Agent will hold such cash in a segregated account and may pay interest thereon on such terms and at such rate or rates as it may from time to time established, provided that such cash has been deposited with the Trustee or its Agent.

Without restricting the generality of the foregoing, the Holder is solely responsible to choose investments of the Account, and to determine whether any investment should be purchased, sold or retained by the Trustee as part of the Account. The Holder shall be responsible for ensuring that an investment is and continues to be a Qualified Investment, and determining whether any such investment is not and continues not to be a Prohibited Investment.

The Trustee shall exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the Account holds a non-Qualified Investment. Neither the Trustee nor the Agent, as defined herein, will be liable to you if: (i) any investment in the Account results in additional

taxes or penalties imposed by Applicable Tax Legislation on the Holder or the Account, (ii) any such investment produces losses of any nature whatsoever for the Account whether or not the Trustee or Agent has communicated to the Holder any information the Trustee or Agent may have received, or any judgment the Trustee or Agent may have formed, with respect to the foregoing at any particular time, or (iii) the Trustee takes action because an investment in the Account is or has become a non-qualified or prohibited investment for purposes of the Applicable Tax Legislation or there is a material risk thereof including because the Holder has not provided information requested by the Trustee.

Should the Account become liable for any taxes, interest or other penalties under Applicable Tax Legislation or for any such taxes, interest and penalties for which the Trustee is jointly liable with the Account to pay or for which the Trustee has paid on behalf of the Account and is entitled to recover from the Account as tax, such Taxes shall be paid out of the assets of the Plan and the Holder authorizes the Trustee to redeem sufficient securities and/ or deposits, as required, in the Account to pay for such liability. Notwithstanding the above, the Trustee is not entitled to charge against and deduct from the assets in the Account any charges, taxes or penalties imposed on the Trustee under Applicable Tax Legislation other than any such charges, taxes and penalties for which the Trustee is jointly liable with the Account to pay or for which the Trustee has paid on behalf of the Account and is entitled to recover from the Account as tax.

Notwithstanding any of the above, if the Trustee determines, in its sole discretion, that any investment in the Account is or becomes a non- Qualified Investment for purposes of the Applicable Tax Legislation, or that there is a material risk thereof including because you have not provided information requested by the Trustee, the Trustee may, at its sole discretion, withdraw such investment from the Account in-kind subject to all applicable withholdings being made, grant releases of any rights associated with the investment, provide consents to terminate or modify the investment, sell the investment for cash or realize on the investment for cash. The Holder acknowledges that the valuation of an investment shall be determined by the Trustee in its sole discretion, provided that it is the Holder's obligation to provide the Trustee with such independent evidence of the value of the investment as the Trustee at any time requests. Should the Holder fail to provide evidence of the value of the investment upon the request of the Trustee, the Trustee, at its sole discretion, may obtain a valuation from a third party selected by the Trustee at its sole discretion. The Holder agrees that the Account shall reimburse the Trustee for the cost incurred by the Trustee for any such valuation by a third party immediately upon the request of the Trustee failing which you shall do so personally forthwith after demand. Notwithstanding the above, in the event that the Holder does not provide to the Trustee a valuation of an investment upon a request by the Trustee, the Trustee may, at its sole discretion, withdraw such investment from the Account in-kind, subject to all applicable withholdings being made, grant releases of any rights associated with the investment, provide consents to terminate or modify the investment, sell the investment for cash or realize on the investment for cash. The Holder authorizes the Trustee to take any such actions and the Holder irrevocably consents to them. The

Holder further acknowledges that the Holder is responsible for all consequences (whether foreseeable or not), including tax consequences, of those actions, and, in such event, the Holder acknowledges that he or she is liable for the tax consequences of any of these.

“Prohibited Investment” means property (other than prescribed excluded property as that term is defined in the Act) that is:

- (a) a debt of the Holder
- (b) a share of the capital stock of, an interest in or a debt of:
  - (i) a corporation, partnership or trust in which the Holder has a significant interest;
  - (ii) a person or partnership that does not deal at arm's length with the Holder or with a person or partnership described in subparagraph (i);
- (c) an interest in, or right to acquire, a share, interest or debt described in paragraph (a) or (b); or
- (d) prescribed property (as that term is defined in the Act).

“Qualified Investment” means any investment which is a qualified investment for a tax-free savings account according to the Act.

**8. Distributions:** Subject to the terms of any investment, the Holder may request that the Trustee pay to the Holder all or any part of the assets held in the Account in satisfaction of all or part of the Holder's interest therein (a “Distribution”) except that no Distributions shall be made until all applicable liabilities of the Account, including for fees and other amounts described herein have been paid or a reasonable amount in the sole discretion of the Trustee has been retained in the Account to satisfy such amounts. No withdrawal shall be made if the Trustee has requested information necessary for it to determine the amount of or potential liability for any applicable liabilities and the Holder has not provided information satisfactory to the Trustee to be able to make a determination that no applicable liability exists. Neither the Trustee nor the Agent shall be liable for any losses or damages arising from any delay to make a Distribution as a result of any of the above. Notwithstanding the terms of any investment, or any limit on the frequency of Distributions or any minimum Distribution requirement identified in the Application or other notice given under the terms of this Declaration of Trust, the Trustee may make Distributions in order to reduce the amount of tax otherwise payable by the Holder as a result of excess contributions made contrary to Applicable Tax Legislation. No one other than the Holder and the Trustee shall have rights under the Account relating to the amount and timing of Distributions and the investing of funds held in the Account.

**9. Transfers Out:** All or a part of the property in the Account may be transferred to another tax-free savings account of the Holder, and the Trustee may liquidate any investments held in the Account to the extent deemed necessary to transfer the amount requested, subject to the terms of such investments.



All or a part of the property in the Account may be transferred to a tax-free savings account of the Spouse or former Spouse where the Holder and the Spouse or former Spouse are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal or under a written separation agreement that relates to a division of property in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership, and the Trustee may liquidate any investments held in the Account to the extent deemed necessary to transfer the amount requested all applicable liabilities of the Account including for fees and other amounts described herein have been paid together with all applicable taxes.

**10. Transfers In:** Property may be transferred to the Account from another tax-free savings account of the Holder or of the Spouse or former Spouse of the Holder where:

- (a) the Holder and Spouse or former Spouse are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal or under a written separation agreement that relates to a division of property in settlement of rights arising out of, or on the breakdown of their marriage or common-law partnership; or
- (b) the Holder is the Spouse's survivor and the transfer occurs as a result of an exempt contribution as that term is defined in subsection 207.01(1) of the Act.

**11. Assets Received Outside the Account:** The Holder agrees that if any amount is received in respect of an asset or right belonging to the Account, the Holder shall forthwith pay over such amount to the Account.

**12. Death of the Holder:** Subject to Applicable Tax Legislation, where there is a Survivor and the Holder has validly designated the Survivor as successor holder, the Survivor shall become the Holder. In the event of the death of the Holder where there is no Survivor or the Survivor has not been designated as a successor holder, the Trustee shall, upon receipt of satisfactory evidence thereof, realize the interest of the Holder in the Account. Subject to Applicable Tax Legislation and to the deduction of all proper charges, including taxes, if any, required to be withheld, the proceeds of such realization shall be paid by the Trustee, as the case may be, to the estate of the Holder or to the Holder's designated beneficiary upon furnishing the Trustee with such releases and other documents as may be required or as counsel may advise.

If more than one designation has been lodged, the Trustee shall rely on the instrument in its possession bearing the latest execution date.

**13. Ownership:** The Trustee must hold any investment in its own name, in the name of its nominee, in bearer form or in such other name as the Trustee may determine. The Trustee may generally exercise the power of an owner with respect to all property held by it for the Account, including the right to vote or to give proxies to vote in respect thereof, and to pay any assessment, taxes or charges in connection therewith or the income or gains derived therefrom.

#### **14. Delegation:**

- (a) The Holder authorizes the Trustee to perform, and the Trustee may delegate to the Agent the performance of, the following duties and responsibilities of the Trustee:
  - (i) to receive the Holder's contributions and transfers to the Account;
  - (ii) to make Distributions and transfers from the Account;
  - (iii) to invest and reinvest in the Account in accordance with the directions of the Holder;
  - (iv) to hold the assets forming the Account in safekeeping;
  - (v) to maintain the Account;
  - (vi) to provide statements to the Holder of the Account; and
  - (vii) to perform such other duties and responsibilities of the Trustee as the Trustee may determine from time to time, in accordance with the Applicable Taxation Act.
- (b) The Trustee shall, however, remain ultimately responsible for the administration of the Account pursuant to the provisions of this Declaration of Trust. The Holder also authorizes the Trustee to, and the Trustee may, pay the Agent all or a portion of the fees paid by the Holder to the Trustee hereunder and may reimburse the Agent for its out-of-pocket expenses in performing the duties and responsibilities delegated to the Agent by the Trustee, as agreed upon between the Agent and the Trustee. To the extent applicable, the Holder acknowledges that the Agent may earn normal brokerage commissions on investment and reinvestment transactions processed by the Agent.

**15. Trustee Fees and Taxes:** The Trustee will be entitled to such reasonable fees and other charges as it may establish from time to time for the Account and to reimbursement for disbursements and expenses reasonably incurred by it in performing its duties hereunder. Notwithstanding anything herein contained, the Trustee is empowered to retain in cash such portion of the assets in the Account as the Trustee may, at its sole discretion, deem advisable for the payment of any fee introduced in accordance with section 15 hereof or any other reimbursement hereunder and any liability including for any applicable taxes. All such amounts will, unless paid directly to the Trustee, be charged against and deducted from the assets of the Account in such manner as the Trustee determines, and the Trustee may realize assets of the Account in its sole discretion for the purposes of paying such amounts. Any such realization shall be made at such price or prices as the Trustee or the Agent at its sole discretion may determine and neither the Trustee nor the Agent shall be responsible for any loss occasioned by any such realization.

Neither the Trustee nor the Agent shall be liable for any taxes, assessments or other charges levied or imposed by any governmental authority upon or in respect of the Account except for those taxes, assessments or other

charges for which the Trustee or the Agent is liable on behalf of the Account in accordance with Applicable Tax Legislation other than any such taxes, assessments and other charges for which the Trustee is jointly liable with the Account to pay or for which the Trustee has paid on behalf of the Account and is entitled to recover from the Account as tax.

## **16. Tax Matters and Assessments:**

- (a) No withdrawal shall be made until all applicable liabilities of the Account, including for applicable taxes of the Account and for fees and other amounts described herein have been paid or a reasonable amount in the sole discretion of the Trustee has been retained in the Account to satisfy such amounts. No withdrawal shall be made if the Trustee has requested information necessary for it to determine the amount of or potential liability for any applicable liabilities and the Holder has not provided information satisfactory to the Trustee to be able to make a determination that no applicable liability exists. Neither the Trustee nor the Agent shall be liable for any losses or damages arising from any delay to make a withdrawal as a result of any of the above.
- (b) If an assessment of taxes is made against the Account, or the Account files a return reporting taxes payable, the Trustee shall pay the amount of such taxes out of the assets of the Account to the applicable governmental authority unless arrangements satisfactory to the Trustee are made with you regarding any objection to such taxes, including arrangements for the payment of fees and expenses to make such objection and arrangements to ensure that the Account will have the ability to be able to pay such taxes.
- (c) Neither the Trustee nor the Agent will be liable to the Holder or the Account in respect of any amount paid to any relevant tax authority in compliance with or intended compliance with Applicable Tax Legislation.

**17. Amendment:** The Trustee may, from time to time at its discretion, amend this Declaration of Trust, with the concurrence of the authorities administering the Applicable Tax Legislation if required, and:

- (a) without notice provided that the amendment is made for the purpose of satisfying a requirement imposed by the Applicable Tax Legislation or at its effective date the amendment will not in the Trustee's sole opinion adversely affect the Holder's rights under the Account;
- (b) in all other cases, by giving 30 days' notice to the Holder; provided, however, that any such amendments shall not have the effect of disqualifying the Account as a tax-free savings account within the meanings of the Applicable Tax Legislation.

**18. Notice:** Any notice given by the Trustee to the Holder shall be sufficiently given if (i) sent to the Holder electronically or (ii) mailed, postage prepaid, to the Holder at the address set out in the Application or at any subsequent address of which the Holder shall have notified the Trustee, and any such notice shall be deemed to have

been given on the day of delivery if sent electronically or on the day of mailing.

**19. Liability:** Neither the Trustee nor the Agent shall be liable for the making, retention or sale of any investment or reinvestment as herein provided or for any loss or diminution of the assets comprising the Account.

The Holder and his or her successors, executors and administrators shall at all times indemnify and save harmless the Trustee and the Agent in respect of any taxes, assessments or other charges levied or imposed by any governmental authority upon or in respect of the Account except for those taxes, assessments or other charges for which the Trustee is liable in accordance with the Act.

Neither the Trustee nor the Agent shall be liable for any taxes, assessments or other charges levied or imposed by any governmental authority upon or in respect of the Account except for those taxes, assessments, or other charges for which the Trustee is liable on behalf of the Account in accordance with Applicable Tax Legislation other than any such charges, taxes and penalties for which the Trustee is jointly liable with the Account to pay or for which the Trustee has paid on behalf of the Account and is entitled to recover from the Account as tax. For greater clarity, neither the Trustee nor the Agent shall be liable for any loss incurred by the Account, by the Holder or by any beneficiary designated for the purposes of the Account resulting from the Holder ceasing to be a Canadian tax resident.

The Trustee and the Agent shall be entitled to and shall be fully protected in acting upon any instrument, certificate, notice or other writing believed by the Trustee or the Agent to be genuine and to be signed or presented by the proper person(s). The Trustee and the Agent shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but shall be entitled to accept the same as conclusive evidence of the truth and accuracy of the statement therein contained.

When the Account is terminated and the proceeds thereon are distributed, the Trustee and the Agent shall be released and discharged from any further responsibility or obligation in connection herewith.

Except as otherwise provided herein, neither the Trustee nor the Agent shall be liable for any loss incurred by the Account, by the Holder or by any beneficiary designated for the purposes of the Account unless due to the negligence, misconduct or lack of good faith of the Trustee or the Agent.

**20. Proof of Age:** The statement of the Holder's date of birth on the Application shall constitute a certification by the Holder and an undertaking to furnish such further evidence of proof of age as may be required.

**21. Security for a Loan:** Where the Holder uses his or her interest or right in the Account as security for a loan or other indebtedness, the Holder shall be responsible for ensuring that the terms and conditions of the loan or other indebtedness are terms and conditions that persons dealing at arm's length with each other would have entered into, and it can be reasonably concluded that none of the main purpose for that use is to enable a person, other than the Holder, or a partnership to benefit from the exemption for tax of any amount under the Account.

**22. Loans:** The trust is prohibited from borrowing money or other property for the purposes of the Account.

**23. Replacement of Trustee:** The Trustee, upon giving the Agent at least 30 days' written notice (or immediately if the Agent is for any reason incapable of acting in accordance with this Declaration of Trust), may resign, and the Agent, upon giving the Trustee at least 90 days' written notice (or immediately if the Trustee is for any reason incapable of acting as Trustee hereunder), may remove the Trustee as the trustee of the Account, provided that a successor trustee has been appointed by the Agent in writing. If the Agent fails to designate a successor trustee within 60 days after it has received notice of the Trustee's intended resignation, the Trustee may appoint its successor trustee. Such successor trustee shall, within 90 days of its appointment, give written notice of its appointment to the Holder. A successor trustee shall have the same power, rights and obligations as the Trustee. The Trustee shall execute and deliver to the successor trustee all conveyances, transfers and further assurances as may be necessary or desirable to give effect to the appointment of the successor trustee. Any successor trustee shall be a corporation resident in Canada and authorized under the laws of the province of residence of the Holder indicated in the Application to carry out its duties and responsibilities as trustee under the Account. Subject to the requirements of Canada Revenue Agency, any corporation resulting in the merger, consolidation or amalgamation to which the Trustee is a party or which purchases all or substantially all of the trust business of the Trustee shall be the successor trustee hereunder without the execution of any other instrument or document except notice to the Agent and to the Holder.

**24. Assignment by Agent:** The Agent may assign its rights and obligations hereunder to any other corporation resident in Canada, approved by the Canada Revenue Agency and any other applicable authority, and authorized to assume and discharge the obligations of the Agent under the Account, provided that such corporation shall execute any agreement which is necessary or advisable for the purpose of assuming such rights and obligations and further provided that no such assignment may be made without prior written consent of the Trustee, which consent may not be unreasonably withheld.

**25. Heirs, Executors and Assigns:** The terms of this Declaration of Trust shall be binding upon the heirs, executor, administrators and assigns of the Holder and upon the respective successors and assigns of the Trustee and Agent.

**26. Proper Law:** This Declaration of Trust will be governed by and construed in accordance with the laws of Ontario, the Applicable Tax Legislation and any other laws of Canada, which may be applicable.

**27. No Carrying on Business:** The Holder agrees not to provide any instructions or series of instructions that could be constituted as using the Account to carry on a business for the purposes of the Act. For greater certainty, the Holder acknowledges that this includes, but is not limited to, using the Account for "day-trading" or other high volume trading that may constitute carrying on a business under the Act. If the Account is found to have been used to carry on a

business, the Trustee and the Holder will be jointly and severally liable for any tax, penalties and interest in respect thereof but such liability of the Trustee will be limited to the property held in the Account as of the date of the notice of the assessment of such liability and the amount of all distributions of property from the Account on or after the date that the notice of assessment is sent.

**28. English Language:** The parties hereto have requested that this Declaration of Trust and all related documents be written, and the Account be established, in English. Les parties ont demandé que la déclaration de fiducie et tous documents y afférents soit rédigés, et le compte soit établi, en anglais.

**29.** In the event that, at any time, there are no assets held in the Account, the Trustee may, in its sole discretion, close the Account.



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