

# BMO Nesbitt Burns

## Tax-free savings account (TFSA)

### Trust Agreement

Specimen # TFSA 05270012

BMO Trust Company (the “Trustee”) will act as trustee of an arrangement for a BMO Nesbitt Burns tax-free savings account (“TFSA”), as defined under the *Income Tax Act* (Canada) (the “Act”), with the holder named in the attached application or, at or after the death of the holder, with the spouse or common-law partner who is the holder’s survivor designated in accordance with the first paragraph of section 13 (referred to in section 13 as “Successor Account Holder”). The holder and, after the holder’s death, the survivor is known as the “Account Holder”. This arrangement for a TFSA is known as the “Account”. The Account is governed by the terms and conditions of this agreement (the “Trust Agreement”), the attached application and applicable law including, without limitation, the Act.

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

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

#### 1. Registration

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

#### 2. Account Holder

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

#### 3. Contributions and transfers in

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

#### 4. Investments

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

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

Neither the Trustee nor the Agent (in its capacity as Agent) shall have any duty or responsibility, fiduciary or otherwise (including, for greater certainty, under any legislation regarding trustee investment duties and powers), to make or choose any investment, to decide whether to hold or dispose of any investment or to exercise any discretion with regard to any investment of the Account, except as otherwise expressly provided in this Trust Agreement. Other than its duties with respect to the Account or its property as expressly stated in this Trust Agreement, the Trustee shall not be required or expected to take any action with regard to an investment without prior instructions from the Account Holder.

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

The Trustee will only accept funds in Canadian or U.S. currency. The acceptance of any other foreign currency is at the sole discretion of the Trustee. The Trustee may deposit any uninvested cash in the Account into an interest-bearing account at the Bank of Montreal (or another financial institution selected by the Trustee). The Trustee will credit interest earned on the cash to the Account at such time as the Trustee, in its sole discretion, may determine. The Trustee may retain all or such portion of the interest as it considers appropriate as a fee for services rendered in respect of the Account.

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

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

#### 5. Recordkeeping for the account

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

#### 6. Excess contributions

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

## 7. Contributions by non-resident

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

## 8. Non-qualified and prohibited investments

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

## 9. Advantage extended

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

## 10. No carrying on business

Account Holder agrees not to provide any instructions or series of instructions that could be constituted as using the Account to carry on a business for the purposes of the Act. For greater certainty, the Account Holder acknowledges that this includes, but is not limited to, using the Account for "day-trading" or other high volume trading that may constitute carrying on a business under the Act. If the Account is found to have been used to carry on a business, the Account Holder will be solely liable for any tax, penalties and interest in respect thereof.

## 11. No use of indebtedness

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

## 12. Distribution to Account Holder

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

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

## 13. Transfer to Account Holder

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

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

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

The Account Holder may at any time instruct the Trustee to make a transfer directly from the Account to another TFSA of which the holder is the spouse or common-law partner or former spouse or common-law partner of the Account Holder, if (a) the Account Holder and the Account Holder's spouse or common-law partner or former spouse or common-law partner are living separate and apart at the time of transfer; and (b) the transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the individuals in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership.

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

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

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

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

Where the Trustee, after making reasonable requests for instructions from the Account Holder's spouse or common-law partner or the beneficiary or beneficiaries or the legal personal representative(s), does not receive satisfactory instructions (as required under section 22 hereto) within a reasonable time, the Trustee may in its discretion distribute the Account to the spouse or common-law partner, beneficiary or beneficiaries or the legal personal representative(s) of the Account Holder. The Trustee may in its discretion liquidate all or any part of the Account before making any such distribution. Any such liquidation shall be made at such prices as the Trustee shall in its discretion determine to be the fair market value of the property at

the time. In the event the Trustee determines that it is advisable or desirable to pay part or all of the property of the Account into court, the Trustee shall be entitled to be indemnified out of the property of the Account for its costs and expenses, including legal costs, of doing so.

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

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

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

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

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

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

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

**16. Other conditions**

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

**17. Ceasing to be a TFSA**

The Account will cease to be a TFSA immediately before the earliest of the following times: (i) the time at which the last Account Holder dies; (ii) the time

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

**18. Failure to be a TFSA**

The Account will not qualify as a TFSA until it is registered under the Act. An Account that is not registered will not qualify for tax benefits. Contributions will be held in an interest bearing unregistered account and all interest earned will be taxed in the hands of the Account Holder (and the Trustee shall be indemnified in relation to any expenses incurred with respect thereto in accordance with section 24).

In the event that the Account fails to attain registered status, or becomes unregistered, the Trustee may, in its sole discretion, transfer the account property to a new (non-registered) account opened on the Account Holder's behalf or to a non-registered account which the Account Holder already has in place. The Trustee shall be entitled to place a hold on some or all of the assets in the new or existing account until the documentation required in accordance with section 23 is received and may use such funds to satisfy the indemnities set out in sections 19 and 24 hereto.

The Trustee may also, in its sole discretion, close the account and return the account property to the Account Holder. This may require the Trustee to liquidate or redeem the account property. Any such liquidation shall be made at such prices as the Trustee may in its discretion determine to be the fair market value of the property at the time. The Account Holder will be responsible for any fees, penalties or loss of value that may occur as a result. The Account Holder is solely responsible for ensuring that the information provided to the Trustee upon account opening is consistent with the information on file with the Canada Revenue Agency. The Account Holder is solely responsible for contacting the Canada Revenue Agency to rectify any inconsistencies in this information.

The Account Holder is solely responsible for any income tax implications that may arise as a result of the original account failing to attain registered status. It remains the Account Holder's responsibility to reapply for registered status and to report any income. The Trustee will not resubmit an application for registration. This remains the responsibility of the Account Holder.

**19. Third party orders or demands**

The Trustee shall be entitled to be indemnified out of the property of the Account in respect of any costs, expenses, charges or liabilities whatsoever that may arise out of the Trustee's good faith compliance with any law, regulation, judgment, seizure, execution, notice or similar order or demand which lawfully imposes on the Trustee a duty to take or refrain from taking any action concerning the Account or part or all of its property, or to issue payment from the Account, with or without instructions from the Account Holder or in contradiction of instructions of the Account Holder. The Trustee may permit any duly authorized person to have access to and the right to examine and make copies of any records, documents, paper and books involving any transaction of the Account or related to the Account and shall similarly be entitled to indemnity out of the property of the Account for so doing. In the event the property of the Account shall be insufficient to indemnify the Trustee fully in any such regard, by establishing the Account the Account Holder agrees to indemnify and hold the Trustee harmless for any such costs, expenses, charges or liabilities.

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

## 20. Ownership and voting rights

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

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

The Trustee and/or the Agent may charge administration and transaction fees, in such amounts and at such times as may be fixed by the Trustee and/or the Agent from time to time, provided that the Trustee and/or the Agent will give reasonable prior written notice to the Account Holder of a change in the amount of such fees. Such fees may be paid for out of, or recovered from, the property of the Account, to the extent that they are not paid when due by the Account Holder.

The Account Holder acknowledges that BMO Nesbitt Burns Inc. (or an affiliate) may charge fees, commissions and expenses to the property of the Account in its capacity as the investment advisory firm for the Account Holder.

The Trustee and/or the Agent may charge expenses incurred by the Trustee and/or the Agent in the administration of the Account. Such expenses may be paid out of, or recovered from, the property of the Account, to the extent that they are not paid when due by the Account Holder.

All taxes, penalties, and interest applicable to the Account (for greater certainty this does not include amounts that may be imposed under Part XI.01 of Act on the holder or the issuer of the Account (as defined in the Act)) such as with regard to nonqualified investments, shall be charged to the Account Holder. Such taxes, interest and penalties will be paid for by, or recovered from the Account Holder.

The Trustee may, without instructions from the Account Holder, apply any cash held in the Account for the payment of fees or expenses charged to the Account. Where there is insufficient cash in the Account at any time, the Trustee or the Agent shall make reasonable requests for instructions from the Account Holder regarding which investments of the Account to liquidate in order to realize sufficient cash to make the payment. If, after making reasonable requests from the Account Holder at the last address provided by the Account Holder, the Trustee or the Agent does not receive satisfactory instructions from the Account Holder within a reasonable time, the Trustee may, in its discretion, liquidate part or all of the property of the Account in order to realize sufficient cash to make the payment. Any such liquidation shall be made at such prices as the Trustee may in its discretion determine to be the fair market value of the property at the time; in the case of investments which are illiquid or which have no readily ascertainable market value, the Trustee may in its discretion sell the investments to the Agent for the Agent's own account, at such price as the Trustee considers fair and proper.

## 22. Instructions

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

## 23. Documentation

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

## 24. No liability

Except as otherwise provided in the Act, neither the Trustee nor the Agent is responsible for determining whether an investment made under the Account, according to the Account Holder's directions is or remains a qualified investment within the meaning of the Act.

If the Trustee or the Agent is liable for:

- i. any tax, interest or penalty that may be imposed on the Trustee in respect of the Account, or
- ii. any other charges levied or imposed by any governmental authority on or relating to the Account,

as a result of the purchase, sale or retention of any investment including, without limitation thereof, nonqualified investments within the meaning of the Act, the Trustee or Agent shall be reimbursed out of the Assets of the Account therefor, or may pay any of these taxes, interest, penalties or charges out of the Assets of the Account.

Except as otherwise provided in the Act, the Trustee and the Agent will not be liable for any cost incurred in the performance of their duties as set out herein or in the performance of their duties under the Act. Unless caused by the Trustee's or the Agent's bad faith, wilful misconduct or gross negligence, the Trustee and the Agent will not be liable for any loss or damage suffered or incurred by the Account, the Account Holder or any beneficiary under the TFSA, caused by or resulting from:

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

For greater certainty, in no event shall either the Trustee or its Agent have any liability to the Account Holder (or to the spouse or common-law partner of the Account Holder, or any beneficiary or legal personal representative of the Account Holder) for any special, indirect, reliance, incidental, punitive, consequential, economic or commercial loss or damage of any kind whatsoever (whether foreseeable or not), suffered or incurred by the Account Holder or any beneficiary under the Arrangement (including without limitation, loss of profits or revenue, failure to realize expected savings or other economic losses and costs), howsoever arising, resulting or caused.

Except as otherwise prohibited by law, the Account Holder, his legal personal representatives and each beneficiary of this Account will at all times indemnify and save harmless the Trustee and its Agent in respect of any taxes, interest and penalties which may be imposed on the Trustee in respect of the Account or any losses incurred by the Account as a result of the acquisition, retention or transfer of any investment or as a result of payments or distributions out of the Account made in accordance with these terms and conditions or as a result of the Trustee or its Agent acting or declining to act upon any instructions given to it by the Account Holder and any costs or expenses of the Trustee and the Agent related thereto (including legal fees).



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

In all cases where the Trustee or the Agent are entitled to be indemnified, they shall be entitled to cause such indemnity to be paid from the Assets of the Account.

#### **25. Unclaimed balances**

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

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

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

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

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

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

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

#### **26. Amendment**

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

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

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

#### **28. Notice**

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

#### **29. Binding**

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

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

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

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

BMO Wealth Management is the brand name for a business group consisting of Bank of Montreal and certain of its affiliates, including BMO Nesbitt Burns Inc., in providing wealth management products and services. ® "BMO (M-bar roundel symbol)" is a registered trademark of Bank of Montreal, used under licence. ® "Nesbitt Burns" is a registered trademarks of BMO Nesbitt Burns Inc. BMO Nesbitt Burns Inc. is a wholly owned subsidiary of Bank of Montreal.

BMO Nesbitt Burns Inc. is a Member-Canadian Investor Protection Fund. Member of the Investment Industry Regulatory Organization of Canada.