

# Individual education savings plan terms and conditions and declaration of trust

## 1. Introduction

This agreement contains the terms and conditions of the agreement between you, the Subscriber, and ATBSI, the promoter (a subsidiary of ATB Financial incorporated and operating in Alberta, Canada), to establish and operate the Plan and the declaration of trust under which CWT will hold the Plan Assets (the “**Agreement**”). To assist you in understanding the Agreement, when the following terms are used in the Agreement they have the following meanings:

- a. **Accumulated Income Payments** means any amount paid out of the Plan that is not an Educational Assistance Payment, a refund of Contributions, a payment into trust in favor of a Designated Educational Institution as described in j(i)(I) below only, a payment to another RESP, or a re-payment under CESA or a Designated Provincial Program.
- b. **Act** means the *Income Tax Act (Canada)*, as amended.
- c. **Applicable Tax Legislation** means the Act, any applicable provincial tax legislation, and CESA.
- d. **Application** means the attached application to establish an ATB Securities Inc. Individual Education Savings Plan.
- e. **ATBSI** means ATB Securities Inc.
- f. **CESA** means *Canada Education Savings Act* and the regulations thereunder, as amended.
- g. **CESG** means Canada Education Savings Grant.
- h. **Contribution** means an amount deposited to the Plan by or on behalf of the Subscriber or made by way of transfer from another RESP but does not include an amount paid into the Plan under or because of:
  - i. CESA or a Designated Provincial Program; or
  - ii. Any other program that has a similar purpose to a Designated Provincial Program and that is funded, directly or indirectly, by a province (other than an amount paid into the Plan by a Public Primary Caregiver in its capacity as Subscriber under the Plan).
- i. **CWT** means Canadian Western Trust Company.
- j. **Designated Educational Institution** means:
  - i. An educational institution in Canada that is:
    - I. A university, college, or other educational institution designated by the Lieutenant Governor in Council of a province as a specified educational institution under the *Canada Student Loans Act*, designated by an appropriate authority under the *Canada Student Financial Assistance Act*, or designated by the Minister of Higher Education and Science of the province of Quebec for the purposes of an Act respecting financial assistance for students of the province of Quebec; or
    - II. Certified by the Minister of Employment and Social Development to be an educational institution providing courses, other than courses designed

for university credit, that furnish an individual with skills for, or improve an individual's skills in an occupation.

- ii. A university outside Canada at which the individual was enrolled in a course, of not less than 3 consecutive weeks duration, leading to a degree; or
- iii. If the individual resided throughout the year in Canada near the boundary between Canada and the United States, an educational institution in the United States to which the individual commuted that is a university, college or other educational institution providing courses at a post-secondary school level.

### k. **Designated Provincial Program** means:

- i. A program administered pursuant to an agreement entered into under section 12 of CESA, or
- ii. A program established under the laws of a province to encourage the financing of children's post-secondary education through savings in registered education savings plans.

### l. **Disability** means a severe and prolonged disability of the Plan Beneficiary, certification of which has been or will be provided to the CRA as required under the Act in respect of the calendar year that ends in the 31 st year following the year in which the Plan was established or deemed to be established.

### m. **Educational Assistance Payments** means any amount, other than a refund of Contributions, paid out of the Plan to or for the Plan Beneficiary to assist the Plan Beneficiary to further his or her education in a Qualifying Educational Program at a Designated Educational Institution or if the Plan Beneficiary is at least 16 years of age and enrolled in a Specified Educational Program at a Post-Secondary Educational Institution.

### n. **Minimum Deposit Amount** means the minimum amount that ATBSI will accept for deposit to the Plan as set by ATBSI from time to time.

### o. **Plan** means the ATB Securities Inc. Individual Education Savings Plan being promoted by ATBSI that is created when ATBSI accepts this Application.

### p. **Plan Assets** means all the assets held in the Plan and consisting of any amounts contributed to the Plan, any amounts transferred to the Plan, and any income or gains on these amounts.

### q. **Plan Beneficiary** means the individual named by the Subscriber as a beneficiary of the Plan in the Application or under section 5 of this Agreement.

### r. **Post-Secondary Educational Institution** means Designated Educational Institutions as defined in j(i)

- i. Of the definition Designated Educational Institution above; or
- ii. An educational institution outside Canada that provides courses at a Post-Secondary School Level that is:

- I. A university, college, or other educational institution at which the Plan Beneficiary was enrolled in a course of not less than 13 consecutive weeks; or
- II. A university at which the Plan Beneficiary was enrolled on a full-time basis in a course of not less than 3 consecutive weeks.

**s. Post-Secondary School Level** includes a program of courses, at an institution described in subparagraph j(i)(II) of the definition Designated Educational Institution above, of a technical or vocational nature designed to furnish an individual with skills for, or improve an individual's skills in, an occupation.

**t. Public Primary Caregiver** of a Plan Beneficiary under an education savings plan in respect of whom a special allowance is payable under the *Children's Special Allowance Act* is the department, agency or institution that maintains the Plan Beneficiary, or the public trustee or public curator of the province in which the Plan Beneficiary resides.

**u. Qualifying Educational Program** means a program at a Postsecondary School Level of not less than 3 consecutive week's duration that provides that each student taking the program spend not less than 10 hours per week on courses or work in the program.

**v. RDSP** means a registered disability savings plan that satisfies the conditions in subsection 146.4(2) of the Act, but does not include one to which subsection 146.4(3) or (10) applies.

**w. RESP** means an education savings plan that has been registered under the Act.

**x. Specified Educational Program** means a program at a Postsecondary School Level of not less than 3 consecutive week's duration that requires each student taking the program to spend not less than 12 hours per month on courses in the program.

**y. Specified Plan** A specified plan is essentially a single beneficiary RESP (non family plan) under which the beneficiary is entitled to the disability tax credit for the beneficiary's tax year that includes the 31st anniversary of the plan. Furthermore, a specified plan cannot permit another individual to be designated as a beneficiary under the RESP at any time after the end of the year that includes the 35th anniversary of the plan, and the plan must be completed by the end of the year that includes the 40th anniversary of the plan.

**z. Subscriber** means the person identified as the subscriber on the Application and those persons included in the definition of subscriber in the Act and includes more than one subscriber.

## 2. The Plan trustee

CWT is resident in Canada and will act as the trustee for the Plan Assets. CWT reserves the right to appoint another party as trustee, provided that the change of trustee is not contrary to the Applicable Tax Legislation. CWT, or any successor, must hold the Plan Assets irrevocably in trust for the purposes of the Plan.

## 3. Registering the Plan

- a. The Subscriber requests that the Plan be registered under the Act. ATBSI will apply to register the Plan under the Act and any other income tax legislation of the province.
- b. ATBSI will ensure that a CESG is applied for if requested to do so by the Subscriber.
- c. Once received, the Plan will invest the CESG as the Subscriber has instructed ATBSI to invest the Plan Assets. CWT will make any grant repayment required under the provision of the legislation that governs the CESG from the Plan Assets. The Plan will comply with the conditions imposed by CESA or a provincial program administered under section 12 of CESA. The Subscriber agrees to provide any information that ATBSI and CWT may require that will enable them to apply for and administer the CESG as required by the relevant legislation.

## 4. The Plan's purpose

The Plan's purpose is to make Educational Assistance Payments.

## 5. Plan Beneficiary

- a. The Subscriber may appoint one Plan Beneficiary under the Plan. There must be one Plan Beneficiary at all times and there may not be more than one Plan Beneficiary at any time.
- b. Within 90 days after an individual becomes a Plan Beneficiary, ATBSI will send that individual (or if that individual is under 19 years of age at that time and either ordinarily resides with a parent of the individual or is maintained by a Public Primary Caregiver, that parent or Public Primary Caregiver) a written notice advising that the Plan exists. ATBSI will also give that individual the Subscriber's name and address. If the Plan Beneficiary is under the age of 19, the name and address of the Plan Beneficiary's parents or legal guardian must be provided by the Subscriber so that they may be notified by ATBSI.
- c. No individual may be designated as a Plan Beneficiary without a social insurance number being provided to ATBSI, and the individual being a resident of Canada for purposes of the Act, unless the individual is named as a Plan Beneficiary in conjunction with a transfer of property from another RESP under which the individual was the beneficiary.

## 6. Changing a Plan Beneficiary

The Subscriber may change the Plan Beneficiary by sending ATBSI written instructions to make the change and providing the information reasonably requested by ATBSI. The information to be provided includes, but is not limited to:

- a. A clear explanation of the requested change;
- b. The name, address, social insurance number, and age of the new Plan Beneficiary and, if the new Plan Beneficiary is under 19, the name and address of the new Plan Beneficiary's parents or legal guardian;
- c. Whether the new Plan Beneficiary has a Disability;
- d. The Plan's account number; and
- e. The date of the instructions.

The Subscriber must date and sign these instructions and provide them immediately to ATBSI. If ATBSI receives more than one set of instructions from the Subscriber, ATBSI will follow the instructions with the latest date.

## 7. Contribution amounts

Contributions to the Plan may only be made by a Subscriber. A Contribution must satisfy these rules:

- a. No Contributions can be made without a social insurance number being provided to ATBSI for the Plan Beneficiary, and the Subscriber being a resident of Canada;
- b. A Contribution must be greater than or equal to the Minimum Deposit Amount;
- c. The total Contributions to the Plan must not exceed the RESP lifetime limit determined by section 204.9(1) of the Act;
- d. Contributions must be made before the end of the 31st year following the year in which the Plan was established or deemed to be established unless the Plan Beneficiary has a Disability, in which case the Contribution is made before the end of the 35th year following the year in which the Plan was established or deemed to be established;
- e. The Contribution is not prohibited by this Agreement or Applicable Tax Legislation.

## 8. Transferring from another plan

If the Subscriber has entered into another RESP, the Subscriber can, if permitted by the Applicable Tax Legislation, transfer the assets of the other RESP into the Plan.

This transfer cannot be made if the other RESP has, prior to the proposed transfer, made Accumulated Income Payments.

## 9. The Subscriber's responsibilities

- a. The Subscriber is responsible for ensuring that the total amount contributed to the Plan for a Plan Beneficiary (or to any other RESPs for the same Plan Beneficiary), by the Subscriber or other Subscribers does not exceed the RESP lifetime limit permitted under the Act. If the Subscriber or other Subscribers exceed this limit, a penalty tax will be applied to the Plan.
- b. If the RESP lifetime limit is exceeded, the Subscriber may request a refund of Contributions that is sufficient to withdraw the Subscriber's share of the excess amount as that term is defined in the Act.

## 10. Investment of Plan Assets

ATBSI will invest and reinvest the Plan Assets in investments according to the Subscriber's written instructions and subject to any reasonable requirements of ATBSI. These investments will be made through ATBSI. ATBSI will not be restricted by the provision of the laws of any jurisdiction that limit investments that may be made by trustees, except Applicable Tax Legislation. ATBSI will invest any deposits transferred to the Plan according to the Subscriber's instructions. If ATBSI does not have specific instructions from the Subscriber, ATBSI will deposit the cash deposit in an interest bearing account with CWT. The cash deposit will earn interest at a rate established from time-to-time by

CWT. ATBSI may receive a fee for any cash deposited in this manner. All investments held by CWT must be qualified investments under the Act.

## 11. Withdrawing funds from the Plan

The Subscriber may send ATBSI written instructions requesting that money be withdrawn from the Plan as long as there are sufficient Plan Assets to make the payment and:

- a. Any reasonable requirements imposed by ATBSI have been satisfied; and
- b. The payment is:
  - i. For an Educational Assistance Payment;
  - ii. To a Designated Educational Institution as defined in j(i)(I) or to a trust in favor of the Designated Educational Institution as defined in j(i) (I);
  - iii. To a trust that irrevocably holds property under a RESP;
  - iv. Accumulated Income Payments so long as:
    - I. The payment is made to, or on behalf of, a Subscriber under the Plan who is resident in Canada when payment is made;
    - II. The payment is not made jointly to, or on behalf of, more than one Subscriber;
    - III. Any of one of the following:
      - A. The payment is made after the 9th year that follows the year in which the Plan was entered into and each individual (other than a deceased individual) who is or was a Plan Beneficiary has attained 21 years of age before the payment is made and is not, when the payment is made, eligible under the Plan to receive an Educational Assistance Payment;
      - B. The payment is made in the year the Plan must be terminated; or
      - C. Each individual who was a Plan Beneficiary is deceased when the payment is made.
- c. The Act provides that where a Plan Beneficiary suffers from a severe and prolonged mental impairment, as certified in accordance with the Act, and the Plan allows Accumulated Income Payments, then certain conditions limiting payments will not apply. On request, ATBSI will send a written request to the Minister of National Revenue to ask for an Accumulated Income Payment to be made due to that impairment;
- d. The maximum amount of Educational Assistance Payments that can be made to or for a Plan Beneficiary during the first 13 consecutive weeks of enrollment may not exceed \$5,000 without written approval of the Minister designated for the purpose of CESA. If the Plan Beneficiary has completed 13 consecutive weeks in the previous 12month period at a Qualifying Educational Program and as long as the amounts are justifiable, there is no limit on the amount of Educational Assistance Payments that can be paid out of the Plan. The amount and frequency of payments will be subject to the limitations imposed by Applicable Tax Legislation;

- e. Notwithstanding paragraph 11(d), if the Plan Beneficiary is at least 16 years old and is enrolled as a student in a Specified Educational Program at a Post-Secondary Educational Institution the maximum amount of Educational Assistance Payments that can be made to the Plan Beneficiary during the first 13 consecutive weeks of enrollment may not exceed \$2,500 without written approval of the Minister designated for the purpose of CESA;
- f. Payments will be made to or for the Plan Beneficiary as an Educational Assistance Payment during the 6 month period following the time when the Plan Beneficiary ceased to be enrolled as a student in a Qualifying Educational Program or a Specified Educational Program provided that ATBSI received satisfactory instructions and the other requirements for payment would have been satisfied if the payment had been made immediately before the Plan Beneficiary ceased to be enrolled.

Where there is more than one Subscriber at the same time, the instruction of any one Subscriber will bind all Subscribers.

## 12. Accumulated Income Payments to the Plan Beneficiary's RDSP

The Subscriber and the holder of an RDSP for the Plan Beneficiary may jointly elect in writing to have an Accumulated Income Payment under the Plan to be made to the Plan Beneficiary's RDSP, but only if, at the time the election is made the election contains the information prescribed by the Act and:

- a. The Plan Beneficiary has a severe and prolonged mental impairment that prevents, or can reasonably be expected to prevent, the Plan Beneficiary from enrolling in a Qualifying Educational Program at a Post-Secondary Educational Institution; or
- b. The payment is made after the 9th year that follows the year in which the Plan was entered into and the Plan Beneficiary has attained 21 years of age before the payment is made and is not, when the payment is made, eligible to receive an Educational Assistance Payment; or
- c. The payment is made in the year of the Plan's termination date.

## 13. Refund of Contributions

The Subscriber may send ATBSI written instructions at any time to pay a refund of Contributions. The refund amount cannot exceed the total of all Contributions to the Plan less any refunds previously made under this section. To pay a refund, ATBSI will sell any of the Plan Assets that the Subscriber specifies. If the Subscriber does not specify which of the Plan Assets are to be sold, then ATBSI, in its sole discretion, will sell Plan Assets that ATBSI considers appropriate. Once ATBSI has paid the Subscriber, ATBSI will have no liability or duty to the Subscriber, the Plan Beneficiary, or the Plan for the Plan Assets that were sold to pay the Subscriber. ATBSI will pay the Subscriber the refund requested after deducting any sale costs and other related fees or charges, including penalties within a reasonable period of time after receiving the Subscriber's instructions.

## 14. No assignment of the Subscriber's right to receive refunds

The Subscriber cannot assign his or her right to receive refunds of Contributions that the Subscriber made to the Plan.

## 15. Maintenance of the Subscriber's account

ATBSI will maintain an account in the Subscriber's name to record, at a minimum, the following information:

- a. All Contributions made to the Plan;
- b. The purchase and sale of investments made by the Plan;
- c. Refunds of Contributions;
- d. Income and capital gains from investments held in the Plan;
- e. Fees paid by the Plan;
- f. Amounts paid to or for a Plan Beneficiary as Educational Assistance Payments; and
- g. Amounts paid to Designated Educational Institutions or other trusts under section 11 of this Agreement. ATBSI will deal with the appropriate tax authorities in connection with the Plan or any amendments to the Plan.

## 16. Termination of the Plan

- a. The Subscriber may designate a date for the Plan to end (the termination date) by providing ATBSI with clear written instructions signed by the Subscriber as long as the Subscriber follows these rules:
  - i. The termination date cannot be later than the last day of the 35th year following the year the Plan was established or deemed to be established, unless the Plan Beneficiary has a Disability in which case the termination date cannot be later than the last day of the 40th year following the year in which the Plan was established or deemed to be established;
  - ii. If Contributions made to another RESP are transferred into the Plan and the other RESP was created before the Plan, the termination date cannot be later than the last day of the 35th year following the year in which the other RESP was created. The Subscriber undertakes to sign and send to the trustees notice in writing of the termination date; The termination date cannot be later than the last day of the 35th year following the year the Plan was established or deemed to be established, unless the Plan Beneficiary has a Disability in which case the termination date cannot be later than the last day of the 40th year following the year in which the Plan was established or deemed to be established
  - iii. If the Subscriber dies before the termination date, then the termination date will be the earlier of the termination date that the Subscriber specified and the 31st anniversary of the Subscriber's death;
  - iv. Under the terms of the Act, the termination date will be before March 1 of the year following the year in which the first Accumulated Income Payment is made out of the Plan.

- b. The Subscriber may change the termination date by sending ATBSI written instructions. Those instructions must clearly explain the change requested and identify the Plan by its account number. The instructions must be signed by the Subscriber and dated. If ATBSI receives more than one set of instructions, ATBSI will follow the instructions with the later date.
- c. On or before the termination date, ATBSI must make payments under section 11 or 13 of this Agreement according to the Subscriber's written instructions. The Subscriber will provide instructions to ATBSI on which of the Plan Assets the Subscriber wants ATBSI to sell to make these payments. If the Subscriber fails to provide instructions on which Plan Assets to sell, ATBSI will sell any of the Plan Assets that ATBSI, in its sole discretion, considers appropriate. ATBSI will make the payments described in this paragraph after deducting:
  - i. Any sales costs and other related fees or charges, including penalties;
  - ii. Any taxes, including interest and penalties, that are or may become payable by the Plan;
  - iii. Any amount required to be withheld on account of the Subscriber's liability for income tax as a result of withdrawing funds from the Plan;
  - iv. Any fees under section 19 of this Agreement.
- d. If the Subscriber has not given ATBSI instruction by the termination date for making payments from the Plan, then ATBSI may deposit the amount, if any, which could be refunded under section 13 of this Agreement in an interest bearing account with CWT, ATBSI or an affiliate. CWT will pay any remaining amount to a Designated Educational Institution or to a trust in favor of a Designated Educational Institution, at ATBSI's discretion and according to Applicable Tax Legislation.

## 17. Death of the Subscriber

If the Subscriber dies before the Plan ends, any other person (including the estate of the deceased individual) who acquires the individual's rights as a Subscriber under the Plan, or who makes Contributions into the Plan in respect of the Plan Beneficiary, will become the new Subscriber. The Subscriber's heirs, executors, administrators, or other legal representatives may continue the Plan on the Subscriber's behalf.

## 18. Amending the Plan

ATBSI may amend the terms and conditions of the Plan as long as:

- a. ATBSI obtains approval from the authorities administering the Act and any Applicable Tax Legislation, if required;
- b. The amendment does not disqualify the Plan as a RESP within the meaning of the Act or it is being made to satisfy a requirement of Applicable Tax Legislation;
- c. ATBSI gives the Subscriber thirty days' written notice of any amendment.

## 19. Fees

ATBSI is entitled to the following compensation under the Plan:

- a. Any reasonable fees and other charges established by ATBSI from time-to-time for ATBSI's services;
- b. Reimbursement for all fees and other charges levied by CWT for the performance of services for the Plan;
- c. Reimbursement for all taxes imposed on ATBSI or CWT in respect of the Plan and for all costs and disbursements reasonably incurred by ATBSI and CWT in performing the duties under this Agreement as allowed under the Act.

ATBSI or CWT may change the fees or charges in the future as long as ATBSI or CWT gives the Subscriber thirty days' written notice of those changes. All amounts payable to ATBSI or CWT under this paragraph will be charged against and deducted from the Plan Assets, unless the Subscriber has paid these amounts in advance. ATBSI may sell any of the Plan Assets to pay the amounts described in this paragraph.

## 20. ATBSI's and CWT's responsibilities

ATBSI as Promoter has the ultimate responsibility for the Plan. ATBSI is responsible for administering the Plan according to Applicable Tax Legislation, and the terms of this Agreement. ATBSI will ensure that the Plan complies at all times with the RESP requirements of the applicable legislation. ATBSI will also:

- a. Process this Application;
- b. Apply for registration of the Plan;
- c. Pay Educational Assistance Payments to the Plan Beneficiary;
- d. Receive property that is being transferred into the Plan;
- e. Invest the Plan Assets according to the Subscriber's instruction and the terms of this Agreement;
- f. Keep the Plan Assets safe;
- g. Maintain the Subscriber's account as required by this Agreement;
- h. Provide the Subscriber with statements as required by this Agreement;
- i. Determine the proper form for instructions from the Subscriber;
- j. Collect and remit its charges and fees;
- k. Collect and remit CWT's charges and fees;
- l. Receive and execute instructions from the Subscriber in a timely manner; and
- m. Any other tasks that are required to administer the Plan.

CWT as trustee is responsible for holding the Plan Assets in accordance with the terms and conditions of the trust and in accordance with any and all requirements under the Act.

## 21. Liability of ATBSI and CWT

- a. Neither ATBSI nor CWT will be liable for any loss or damage suffered or incurred by the Plan, the Subscriber, the Plan Beneficiary or any assignee caused by:
  - i. Any loss or diminution of the Plan Assets;
  - ii. The purchase, sale, or retention of any investment by the Plan;
  - iii. Payments out of the Plan that are made according to this Agreement or Applicable Tax Legislation; or

- iv. Acting or declining to act on any instructions given to ATBSI by the Subscriber, an individual purporting to be the Subscriber, or an assignee unless the loss or damage was caused by ATBSI's or CWT's bad faith, willful misconduct, or gross negligence.
- b. The Trustee and ATBSI will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility of a non-qualified investment being held by the plan or fund under any applicable tax legislation, and shall not be liable for any losses to the plan or fund resulting from the liquidation of plan or fund assets to meet the payments required to be made under applicable tax legislation

## 22. Plan notices

- a. The Subscriber may give ATBSI notice by personal delivery or mail, postage prepaid, addressed to ATBSI at the address on this Application, or any other address that ATBSI may provide to the Subscriber in writing for the receipt of notices. Any notice delivered personally will be considered to have been received when it was delivered. If the Subscriber provides notice by mail, that notice will be considered to have been received on the day it is actually received by ATBSI.
- b. ATBSI or CWT may give the Subscriber or the Plan Beneficiary or any assignee any notice, statement or receipt by personal delivery or mail, postage prepaid, at the address the Subscriber gave on the Application. If the Subscriber has notified ATBSI of a new address for the Subscriber or the Plan Beneficiary, any notices, statements or receipts will be sent to the address of which ATBSI last received notice. Any notice given to the Subscriber by ATBSI or CWT will be considered to have been given to the Subscriber or a Plan Beneficiary at the time of the personal delivery, or if mailed, on the third day after it was mailed.
- c. Securities law permits the delivery of some documents by electronic means if the consent of the Subscriber to the means of delivery has been obtained. If the consent of the Subscriber has been obtained, the Subscriber acknowledges that documents delivered by electronic means are deemed to be delivered to the Subscriber on the day such document is delivered. The Subscriber acknowledges that ATBSI shall be under no further obligation to locate the Subscriber for the purpose of forwarding any such notices, demands, orders, documents or any other written communication.

## 23. Change of trustee

The trustee may resign by sending the Subscriber 30 days' notice of their intention to resign, provided that a new trustee has been appointed in writing prior to the expiration of the 30-day period. Any trustee or successor trustee must be a corporation that is authorized under federal or provincial law to offer trustee services in Canada. Upon resigning, the trustee will immediately transfer all records and Plan Assets to the successor trustee, as long as the Plan has been amended to name the successor trustee and the amended Plan complies with the Applicable Tax Legislation.

## 24. Laws governing this Agreement

The terms of the Plan and this Agreement will be interpreted, administered, and enforced according to the laws of the province of Alberta and the federal laws of Canada applicable in Alberta. The Promoter or Successor Promoter must be a resident of Canada as per paragraph 146.1(2)(c) of the *Income Tax Act*. Furthermore, as per subparagraph 146.1(2)(f) of the *Income Tax Act*, in the event that a trust governed by the plan is terminated, the property held by the trust is required to be used for any purposes described in the definition of the "Trust" as defined in subsection 146.1(1) of the *Income Tax Act*; additionally subparagraph 146.1(2)(g.2) of the *Income Tax Act* states the plan does not allow for any contribution into the plan, other than a contribution made by or on behalf of a subscriber under the plan in respect of a beneficiary under the plan or a contribution made by way of transfer from another registered education savings plan. The Promoter is ultimately responsible for the plan in accordance with the *Income Tax Act*.

## 25. Instructions

ATBSI is entitled to rely on instructions received from the Subscriber, any person the Subscriber designates to ATBSI in writing, and any person purporting to be the Subscriber or the person designated by the Subscriber. ATBSI may decline to act on any verbal or electronically transmitted instructions if ATBSI has any doubt that the instruction has been properly authorized or accurately transmitted.

## 26. Binding

The terms of the Agreement will be binding on the Subscriber's heirs, executors, administrators, and permitted assigns and on ATBSI's and CWT's successors and assigns.

# Family education savings plan terms and conditions and declaration of trust

## 1. Introduction

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    - II. certified by the Minister of Employment and Social Development to be an educational institution providing courses, other than courses designed

for university credit, that furnish an individual with skills for, or improve an individual's skills in an occupation.

- ii. A university outside Canada at which the individual was enrolled in a course, of not less than 3 consecutive weeks duration, leading to a degree; or
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- n. Minimum Deposit Amount** means the minimum amount that ATBSI will accept for deposit to the Plan as set by ATBSI from time to time.
- o. Plan** means the ATB Securities Inc. Family Education Savings Plan being promoted by ATBSI that is created when ATBSI accepts this Application.
- p. Plan Assets** means all the assets held in the Plan and consisting of any amounts contributed to the Plan, any amounts transferred to the Plan, and any income or gains on these amounts.
- q. Plan Beneficiary** means the individual or individuals named by the Subscriber as a beneficiary of the Plan in the Application or under section 5 of this Agreement.
- r. Post-Secondary Educational Institution** means Designated Educational Institutions as defined in j(i)
  - i. Of the definition Designated Educational Institution above; or
  - ii. An educational institution outside Canada that provides courses at a Post-Secondary School Level that is:

- I. A university, college, or other educational institution at which the Plan Beneficiary was enrolled in a course of not less than 13 consecutive weeks; or
- II. A university at which the Plan Beneficiary was enrolled on a full-time basis in a course of not less than 3 consecutive weeks;

- s. **Post-Secondary School Level** includes a program of courses, at an institution described in subparagraph 1(j) (i)(II) of the definition Designated Educational Institution above, of a technical or vocational nature designed to furnish an individual with skills for, or improve an individual's skills in, an occupation.
- t. **Public Primary Caregiver** of a Plan Beneficiary under an education savings plan in respect of whom a special allowance is payable under the *Children's Special Allowance Act* is the department, agency or institution that maintains the Plan Beneficiary, or the public trustee or public curator of the province in which the Plan Beneficiary resides.
- u. **Qualifying Educational Program** means a program at a Postsecondary School Level of not less than 3 consecutive week's duration that provides that each student taking the program spend not less than 10 hours per week on courses or work in the program.
- v. **RDSP** means a registered disability savings plan that satisfies the conditions in subsection 146.4(2) of the Act, but does not include one to which subsection 146.4(3) or (10) applies.
- w. **RESP** means an education savings plan that has been registered under the Act.
- x. **Specified Educational Program** means a program at a Postsecondary School Level of not less than 3 consecutive week's duration that requires each student taking the program to spend not less than 12 hours per month on courses in the program.
- y. **Subscriber** means the person identified as the subscriber on the Application and those persons included in the definition of subscriber in the Act and includes more than one subscriber.

## 2. The Plan trustee

CWT is resident in Canada and will act as the trustee for the Plan Assets. CWT reserves the right to appoint another party as trustee, provided that the change of trustee is not contrary to the Applicable Tax Legislation. CWT, or any successor, must hold the Plan Assets irrevocably in trust for the purposes of the Plan.

## 3. Registering the Plan

- a. The Subscriber requests that the Plan be registered under the Act. ATBSI will apply to register the Plan under the Act and any other income tax legislation of the province.
- b. ATBSI will ensure that a CESG is applied for if requested to do so by the Subscriber.
- c. Once received, the Plan will invest the CESG as the Subscriber has instructed ATBSI to invest the Plan Assets. CWT will make any grant repayment required under the provision of the legislation that governs the CESG from

the Plan Assets. The Plan will comply with the conditions imposed by CESA or a provincial program administered under section 12 of CESA. The Subscriber agrees to provide any information that ATBSI and CWT may require that will enable them to apply for and administer the CESG as required by the relevant legislation.

## 4. The Plan's purpose

The Plan's purpose is to make Educational Assistance Payments.

## 5. Plan Beneficiary

- a. The Subscriber may appoint one or more Plan Beneficiaries under the Plan. There must be at least one Plan Beneficiary at all times. A Plan Beneficiary must be under 21 years of age when designated and be related to the Subscriber by blood or adoption as permitted under the Act.
- b. Within 90 days after an individual becomes a Plan Beneficiary, ATBSI will send that individual (or if that individual is under 19 years of age at that time and either ordinarily resides with a parent of the individual or is maintained by a Public Primary Caregiver, that parent or Public Primary Caregiver) a written notice advising that the Plan exists. ATBSI will also give that individual the Subscriber's name and address. If the Plan Beneficiary is under the age of 19, the name and address of the Plan Beneficiary's parents or legal guardian must be provided by the Subscriber so that they may be notified by ATBSI.
- c. No individual may be designated as a Plan Beneficiary without a social insurance number being provided to ATBSI, and the individual being a resident of Canada for purposes of the Act, unless the individual is named as a Plan Beneficiary in conjunction with a transfer of property from another RESP under which the individual was the beneficiary.

## 6. Changing a Plan Beneficiary

The Subscriber may change the Plan Beneficiary by sending ATBSI written instructions to make the change and providing the information reasonably requested by ATBSI. The information to be provided includes, but is not limited to:

- a. A clear explanation of the requested change;
- b. The name, address, social insurance number, and age of the new Plan Beneficiary and, if the new Plan Beneficiary is under 19, the name and address of the new Plan Beneficiary's parents or legal guardian;
- c. The Plan's account number; and
- d. The date of the instructions.

The Subscriber must date and sign these instructions and provide them immediately to ATBSI. If ATBSI receives more than one set of instructions from the Subscriber, ATBSI will follow the instructions with the latest date.

## 7. Contribution amounts

Contributions to the Plan may only be made by a Subscriber. A Contribution must satisfy these rules:

- a. No Contributions can be made without a social insurance number being provided to ATBSI for the Plan Beneficiary, and the Subscriber being a resident of Canada;



- b. A Contribution must be greater than or equal to the Minimum Deposit Amount;
- c. The total Contributions to the Plan must not exceed the RESP lifetime limit determined by section 204.9(1) of the Act for each Plan Beneficiary;
- d. Contributions are not permitted after the earliest of:
  - i. The date the Plan Beneficiary turns 31 years of age (unless the Contribution is in conjunction with a transfer of property from another family RESP under which the individual was a beneficiary);
  - ii. The 31st year that follows the year in which the Subscriber opened the Plan; or
  - iii. If property was transferred to the Plan from another RESP, the 31st year that follows either the year in which the transferring plan was opened or the year in which the Plan was opened, whichever came first; and
- e. The Contribution is not prohibited by this Agreement or Applicable Tax Legislation.

## 8. Transferring from another Plan

If the Subscriber has entered into another RESP, the Subscriber can, if permitted by Applicable Tax Legislation, transfer the assets of the other RESP into the Plan. This transfer cannot be made if the other RESP has, prior to the proposed transfer, made Accumulated Income Payments.

## 9. The Subscriber's responsibilities

- a. The Subscriber is responsible for ensuring that the total amount contributed to the Plan for a Plan Beneficiary (or to any other RESPs for the same Plan Beneficiary), by the Subscriber or other Subscribers does not exceed the RESP lifetime limit permitted under the Act. If the Subscriber or other Subscribers exceed this limit, a penalty tax will be applied to the Plan.
- b. If the RESP lifetime limit is exceeded, the Subscriber may request a refund of Contributions that is sufficient to withdraw the Subscriber's share of the excess amount as that term is defined in the Act.

## 10. Investment of Plan Assets

ATBSI will invest and reinvest the Plan Assets in investments according to the Subscriber's written instructions and subject to any reasonable requirements of ATBSI. These investments will be made through ATBSI. ATBSI will not be restricted by the provision of the laws of any jurisdiction that limit investments that may be made by trustees, except Applicable Tax Legislation. ATBSI will invest any deposits transferred to the Plan according to the Subscriber's instructions. If ATBSI does not have specific instructions from the Subscriber, ATBSI will deposit the cash deposit in an interest bearing account with CWT. The cash deposit will earn interest at a rate established from time-to-time by CWT. ATBSI may receive a fee for any cash deposited in this manner. All investments held by CWT must be qualified investments under the Act.

## 11. Withdrawing funds from the Plan

The Subscriber may send ATBSI written instructions requesting that money be withdrawn from the Plan as long as there are sufficient Plan Assets to make the payment and:

- a. Any reasonable requirements imposed by ATBSI have been satisfied; and
- b. The payment is:
  - i. For an Educational Assistance Payment;
  - ii. To a Designated Educational Institution as defined in j(i)(I) or to a trust in favor of the Designated Educational Institution as defined in j(i)(I);
  - iii. To a trust that irrevocably holds property under a RESP;
  - iv. Accumulated Income Payments so long as:
    - I. The payment is made to, or on behalf of, a Subscriber under the Plan who is resident in Canada when payment is made;
    - II. The payment is not made jointly to, or on behalf of, more than one Subscriber;
    - III. Any of one of the following:
      - A. The payment is made after the 9th year that follows the year in which the Plan was entered into and each individual (other than a deceased individual) who is or was a Plan Beneficiary has attained 21 years of age before the payment is made and is not, when the payment is made, eligible under the Plan to receive an Educational Assistance Payment;
      - B. The payment is made in the year the Plan must be terminated; or
      - C. Each individual who was a Plan Beneficiary is deceased when the payment is made.
- c. The Act provides that where a Plan Beneficiary suffers from a severe and prolonged mental impairment, as certified in accordance with the Act, and the Plan allows Accumulated Income Payments, then certain conditions limiting payments will not apply. On request, ATBSI will send a written request to the Minister of National Revenue to ask for an Accumulated Income Payment to be made due to that impairment;
- d. The maximum amount of Educational Assistance Payments that can be made to or for a Plan Beneficiary during the first 13 consecutive weeks of enrollment may not exceed \$5,000 without written approval of the Minister designated for the purpose of CESA. If the Plan Beneficiary has completed 13 consecutive weeks in the previous 12 month period at a Qualifying Educational Program and as long as the amounts are justifiable, there is no limit on the amount of Educational Assistance Payments that can be paid out of the Plan. The amount and frequency of payments will be subject to the limitations imposed by Applicable Tax Legislation;
- e. Notwithstanding paragraph 11(d), if the Plan Beneficiary is at least 16 years old and is enrolled as a student in a Specified Educational Program at a Post-Secondary Educational Institution the maximum amount of Educational Assistance Payments that can be made to the Plan Beneficiary during the first 13 consecutive weeks of enrollment may not exceed \$2,500 without written approval of the Minister designated for the purpose of CESA;

- f. Payments will be made to or for the Plan Beneficiary as an Educational Assistance Payment during the 6 month period following the time when the Plan Beneficiary ceased to be enrolled as a student in a Qualifying Educational Program or a Specified Educational Program provided that ATBSI received satisfactory instructions and the other requirements for payment would have been satisfied if the payment had been made immediately before the Plan Beneficiary ceased to be enrolled.

Where there is more than one Subscriber at the same time, the instruction of any one Subscriber will bind all Subscribers.

## 12. Accumulated Income Payments to the Plan Beneficiary's RDSP

The Subscriber and the holder of an RDSP for the Plan Beneficiary may jointly elect in writing to have an Accumulated Income Payment under the Plan to be made to the Plan Beneficiary's RDSP, but only if, at the time the election is made the election contains the information prescribed by the Act and:

- a. The Plan Beneficiary has a severe and prolonged mental impairment that prevents, or can reasonably be expected to prevent, the Plan Beneficiary from enrolling in a Qualifying Educational Program at a Post-Secondary Educational Institution; or
- b. The payment is made after the 9th year that follows the year in which the Plan was entered into and the Plan Beneficiary has attained 21 years of age before the payment is made and is not, when the payment is made, eligible to receive an Educational Assistance Payment; or
- c. The payment is made in the year of the Plan's termination date.

## 13. Refund of Contributions

The Subscriber may send ATBSI written instructions at any time to pay a refund of Contributions. The refund amount cannot exceed the total of all Contributions to the Plan less any refunds previously made under this section. To pay a refund, ATBSI will sell any of the Plan Assets that the Subscriber specifies. If the Subscriber does not specify which of the Plan Assets are to be sold, then ATBSI, in its sole discretion, will sell Plan Assets that ATBSI considers appropriate. Once ATBSI has paid the Subscriber, ATBSI will have no liability or duty to the Subscriber, the Plan Beneficiary, or the Plan for the Plan Assets that were sold to pay the Subscriber. ATBSI will pay the Subscriber the refund requested after deducting any sale costs and other related fees or charges, including penalties within a reasonable period of time after receiving the Subscriber's instructions.

## 14. No assignment of the Subscriber's right to receive refunds

The Subscriber cannot assign his or her right to receive refunds of Contributions that the Subscriber made to the Plan.

## 15. Maintenance of the Subscriber's account

ATBSI will maintain an account in the Subscriber's name to record, at a minimum, the following information:

- a. All Contributions made to the Plan;

- b. The purchase and sale of investments made by the Plan;
- c. Refunds of Contributions;
- d. Income and capital gains from investments held in the Plan;
- e. Fees paid by the Plan;
- f. Amounts paid to or for a Plan Beneficiary as Educational Assistance Payments; and
- g. Amounts paid to Designated Educational Institutions or other trusts under section 11 of this Agreement. ATBSI will deal with the appropriate tax authorities in connection with the Plan or any amendments to the Plan.

## 16. Termination of the Plan

- a. The Subscriber may designate a date for the Plan to end (the termination date) by providing ATBSI with clear written instructions signed by the Subscriber as long as the Subscriber follows these rules:
  - i. The termination date cannot be later than the last day of the 35th year following the year the Plan was established or deemed to be established;
  - ii. If Contributions made to another RESP are transferred into the Plan and the other RESP was created before the Plan, the termination date cannot be later than the last day of the 35th year following the year in which the other RESP was created. The Subscriber undertakes to sign and send to the trustees notice in writing of the termination date; The termination date cannot be later than the last day of the 35th year following the year the Plan was established or deemed to be established
  - iii. If the Subscriber dies before the termination date, then the termination date will be the earlier of the termination date that the Subscriber specified and the 31st anniversary of the Subscriber's death;
  - iv. Under the terms of the Act, the termination date will be before March 1 of the year following the year in which the first Accumulated Income Payment is made out of the Plan;
- b. The Subscriber may change the termination date by sending ATBSI written instructions. Those instructions must clearly explain the change requested and identify the Plan by its account number. The instructions must be signed by the Subscriber and dated. If ATBSI receives more than one set of instructions, ATBSI will follow the instructions with the later date.
- c. On or before the termination date, ATBSI must make payments under section 11 or 13 of this Agreement according to the Subscriber's written instructions. The Subscriber will provide instructions to ATBSI on which of the Plan Assets the Subscriber wants ATBSI to sell to make these payments. If the Subscriber fails to provide instructions on which Plan Assets to sell, ATBSI will sell any of the Plan Assets that ATBSI, in its sole discretion, considers appropriate. ATBSI will make the payments described in this paragraph after deducting:
  - i. Any sales costs and other related fees or charges, including penalties;



- ii. Any taxes, including interest and penalties, that are or may become payable by the Plan;
  - iii. Any amount required to be withheld on account of the Subscriber's liability for income tax as a result of withdrawing funds from the Plan;
  - iv. Any fees under section 19 of this Agreement;
- d. If the Subscriber has not given ATBSI instruction by the termination date for making payments from the Plan, then ATBSI may deposit the amount, if any, which could be refunded under section 13 of this Agreement in an interest bearing account with CWT, ATBSI or an affiliate. CWT will pay any remaining amount to a Designated Educational Institution or to a trust in favor of a Designated Educational Institution, at ATBSI's discretion and according to Applicable Tax Legislation.

## 17. Death of the Subscriber

If the Subscriber dies before the Plan ends, any other person (including the estate of the deceased individual) who acquires the individual's rights as a Subscriber under the Plan, or who makes Contributions into the Plan in respect of the Plan Beneficiary, will become the new Subscriber. The Subscriber's heirs, executors, administrators, or other legal representatives may continue the Plan on the Subscriber's behalf.

## 18. Amending the Plan

ATBSI may amend the terms and conditions of the Plan as long as:

- a. ATBSI obtains approval from the authorities administering the Act and any Applicable Tax Legislation, if required;
- b. The amendment does not disqualify the Plan as a RESP within the meaning of the Act or it is being made to satisfy a requirement of Applicable Tax Legislation;
- c. ATBSI gives the Subscriber thirty days' written notice of any amendment.

## 19. Fees

ATBSI is entitled to the following compensation under the Plan:

- a. Any reasonable fees and other charges established by ATBSI from time-to-time for ATBSI's services;
- b. Reimbursement for all fees and other charges levied by CWT for the performance of services for the Plan;
- c. Reimbursement for all taxes imposed on ATBSI or CWT in respect of the Plan and for all costs and disbursements reasonably incurred by ATBSI and CWT in performing the duties under this Agreement as allowed under the Act.
- d. ATBSI or CWT may change the fees or charges in the future as long as ATBSI or CWT gives the Subscriber thirty days' written notice of those changes. All amounts payable to ATBSI or CWT under this paragraph will be charged against and deducted from the Plan Assets, unless the Subscriber has paid these amounts in advance. ATBSI may sell any of the Plan Assets to pay the amounts described in this paragraph.

## 20. ATBSI's and CWT's responsibilities

ATBSI as Promoter has the ultimate responsibility for the Plan. ATBSI is responsible for administering the Plan according to Applicable Tax Legislation, and the terms of this Agreement. ATBSI will ensure that the Plan complies at all times with the RESP requirements of the applicable legislation. ATBSI will also:

- a. Process this Application;
- b. Apply for registration of the Plan;
- c. Pay Educational Assistance Payments to the Plan Beneficiary;
- d. Receive property that is being transferred into the Plan;
- e. Invest the Plan Assets according to the Subscriber's instruction and the terms of this Agreement;
- f. Keep the Plan Assets safe;
- g. Maintain the Subscriber's account as required by this Agreement;
- h. Provide the Subscriber with statements as required by this Agreement;
- i. Determine the proper form for instructions from the Subscriber;
- j. Collect and remit its charges and fees;
- k. Collect and remit CWT's charges and fees;
- l. Receive and execute instructions from the Subscriber in a timely manner; and
- m. Any other tasks that are required to administer the Plan.

CWT as trustee is responsible for holding the Plan Assets in accordance with the terms and conditions of the trust and in accordance with any and all requirements under the Act.

## 21. Liability of ATBSI and CWT

- a. Neither ATBSI nor CWT will be liable for any loss or damage suffered or incurred by the Plan, the Subscriber, the Plan Beneficiary or any assignee caused by:
  - i. Any loss or diminution of the Plan Assets;
  - ii. The purchase, sale, or retention of any investment by the Plan;
  - iii. Payments out of the Plan that are made according to this Agreement or Applicable Tax Legislation; or
  - iv. Acting or declining to act on any instructions given to ATBSI by the Subscriber, an individual purporting to be the Subscriber, or an assignee unless the loss or damage was caused by ATBSI's or CWT's bad faith, willful misconduct, or gross negligence.
- b. The Trustee and ATBSI will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility of a non-qualified investment being held by the plan or fund under any applicable tax legislation, and shall not be liable for any losses to the plan or fund resulting from the liquidation of plan or fund assets to meet the payments required to be made under applicable tax legislation

## 22. Plan notices

- a. The Subscriber may give ATBSI notice by personal delivery or mail, postage prepaid, addressed to ATBSI at the address on this Application, or any other address that ATBSI may provide to the Subscriber in writing for the receipt of notices. Any notice delivered personally will be considered to have been received when it was delivered. If the Subscriber provides notice by mail, that notice will be considered to have been received on the day it is actually received by ATBSI.
- b. ATBSI or CWT may give the Subscriber or the Plan Beneficiary or any assignee any notice, statement or receipt by personal delivery or mail, postage prepaid, at the address the Subscriber gave on the Application. If the Subscriber has notified ATBSI of a new address for the Subscriber or the Plan Beneficiary, any notices, statements or receipts will be sent to the address of which ATBSI last received notice. Any notice given to the Subscriber by ATBSI or CWT will be considered to have been given to the Subscriber or a Plan Beneficiary at the time of the personal delivery, or if mailed, on the third day after it was mailed.
- c. Securities law permits the delivery of some documents by electronic means if the consent of the Subscriber to the means of delivery has been obtained. If the consent of the Subscriber has been obtained, the Subscriber acknowledges that documents delivered by electronic means are deemed to be delivered to the Subscriber on the day such document is delivered. The Subscriber acknowledges that ATBSI shall be under no further obligation to locate the Subscriber for the purpose of forwarding any such notices, demands, orders, documents or any other written communication.

## 23. Change of trustee

The trustee may resign by sending the Subscriber 30 days' notice of their intention to resign, provided that a new trustee has been appointed in writing prior to the expiration of the 30-day period. Any trustee or successor trustee must be a corporation that is authorized under federal or provincial law to offer trustee services in Canada. Upon resigning, the trustee will immediately transfer all records and Plan Assets to the successor trustee, as long as the Plan has been amended to name the successor trustee and the amended Plan complies with the Applicable Tax Legislation.

## 24. Laws governing this agreement

The terms of the Plan and this Agreement will be interpreted, administered, and enforced according to the laws of the province of Alberta and the federal laws of Canada applicable in Alberta. . The Promoter or Successor Promoter must be a resident of Canada as per paragraph 146.1(2)(c) of the *Income Tax Act*. Furthermore, as per subparagraph 146.1(2)(f) of the *Income Tax Act*, in the event that a trust governed by the plan is terminated, the property held by the trust is required to be used for the purposes described in the definition of the "Trust" as defined in subsection 146.1(1) of the *Income Tax Act*; additionally subparagraph 146.1(2)(g.2) of the *Income Tax Act* states the plan does not allow for any contribution into the plan, other than a contribution made by or on behalf of a subscriber under the plan in respect of a beneficiary under the plan or a contribution made by way of transfer from another registered education savings plan. The Promoter is ultimately responsible for the plan in accordance with the *Income Tax Act*.

## 25. Instructions

ATBSI is entitled to rely on instructions received from the Subscriber, any person the Subscriber designates to ATBSI in writing, and any person purporting to be the Subscriber or the person designated by the Subscriber. ATBSI may decline to act on any verbal or electronically transmitted instructions if ATBSI has any doubt that the instruction has been properly authorized or accurately transmitted.

## 26. Binding

The terms of the Agreement will be binding on the Subscriber's heirs, executors, administrators, and permitted assigns and on ATBSI's and CWT's successors and assigns.

# Self-Directed Retirement Savings Plan declaration of trust

In this Declaration of Trust:

- a. **"Us", "our"** and **"we"** refer to Canadian Western Trust Company;
- b. **"You"** and **"your"** refer to the applicant, annuitant as defined in the *Income Tax Act*, named on the application for an ATB Securities Inc. Self-Directed Retirement Savings Plan;
- c. **"Application"** means your application for the Plan;
- d. Any reference in this Declaration of Trust or in the Application to:
  - i. **"Spouse"** means "spouse" or "common law partner" (as applicable); and
  - ii. **"marriage"** means "marriage" or "common-law partnership";
- e. References to designated Articles are to the designated Articles in this Declaration of Trust.

We agree with you to act as trustee for your ATB Securities Inc. Self-Directed Retirement Savings Plan (the **"Plan"**), upon the following terms and conditions:

## 1. Registration

We will apply for registration of the Plan under the provisions of the *Income Tax Act* (Canada) (the **"Act"**) and any applicable provincial income tax legislation relating to retirement savings plans (the Act and such provincial income tax legislation hereinafter collectively referred to as **"Applicable Tax Legislation"**).

## 2. Contributions

Only payments of cash and other transfers of property acceptable to us made by you or your spouse shall be accepted for the Plan, the same together with any income therefrom shall constitute a trust fund (the **"Trust Fund"**) to be used, invested and held subject to the terms of this Declaration of Trust.

## 3. Investment

The Trust Fund shall be invested and reinvested by us, on your direction. The Plan will not be limited to investments authorized by law governing the investment of property held in trust other than the investment rules imposed by the Applicable Tax Legislation for registered retirement savings plans. We will only act on your instructions if they are in a form acceptable to us and are accompanied by related documents as required by us in our sole discretion. We may accept and act on any investment instructions which we believe, in good faith, to be given by you. If you do not provide any direction to us regarding the investment of any cash balances or any other property forming part of the Trust Fund from time to time, we will allow interest on such balances at such rate and credited at such time as we may determine in our sole discretion.

## 4. Management and ownership

We may hold any investment in our name, in the name of our nominee, in bearer form or in such other name as we may determine. We may generally exercise the power of an owner with respect to all stocks, bonds, or other securities held by you for the Plan, including the right to vote or give proxies to vote in respect thereof and to pay an assessment, taxes or charges in connection therewith or the income or gains derived therefrom.

## 5. Account and statements

We shall maintain an account in your name showing all contributions made to the Plan and all investment transactions made at your direction in respect of the Plan. We shall forward to you, in respect of each year, statements for the Plan showing all contributions and investment transactions made and all income and expenses earned or incurred during such period. You agree to review each statement and must notify us in writing of any discrepancies, errors, or omissions with respect to any information contained in the statement or any entry or transaction posted to it within 30 days from the date of the statement, failing which the statement (except any amount that has been credited to the Plan) will be deemed to be conclusively correct and complete and will be binding upon you. In such case, we will be released by you from any claims in respect of the statement and no claim may be made by you against us for any item disclosed on the statement.

## 6. Delegation

You authorize us to, and we may, delegate to ATB Securities Inc. (our **"Agent"**), the performance of the following of our duties and responsibilities under the Plan:

- a. To receive you or your spouse's contributions under the Plan and any transfers of property to the Plan;
- b. To invest and reinvest the Trust Fund in accordance with your directions;
- c. To hold the assets forming the Trust Fund in safekeeping;
- d. To collect all interest, dividends, and other income relating to the assets of the Trust Fund;
- e. To maintain the accounting records of the Plan;
- f. To provide you with statements of account;
- g. To make payments out of the Plan pursuant to the provisions hereof; and
- h. Such other of our duties and responsibilities under the Plan as we may determine from time to time.

You also authorize us to pay our Agent all or a portion of the fees paid by you to us hereunder and may reimburse our Agent for its out-of-pocket expenses incurred in performing the duties and responsibilities delegated to it by us and charge your account therefor. You acknowledge that our Agent may earn brokerage commissions on investment and reinvestment transactions processed by them. We shall be entitled to employ such person or persons including but not limited to, lawyers and auditors, as we may determine and shall be entitled to pay their fees and expenses from

the Plan. We may rely and act upon information and advice furnished by such person and persons or refrain from acting thereon and shall not be liable to you as a result of acting or refraining from so acting. We shall, however, remain ultimately responsible for the administration of the Plan pursuant to the provisions of this Declaration of Trust.

## 7. Income tax receipts

We will provide you, or if applicable your spouse with receipts showing contributions made by you or your spouse to the Plan as may be required by Applicable Tax Laws.

## 8. Date of birth

The statement of your date of birth contained in the Application shall be deemed to be a certification by you of your age and an undertaking by you to provide any further evidence of proof of age that may be required for the provision of a retirement income.

## 9. Retirement income

The whole of the Trust Fund shall be invested, used, and applied by us only for the provision of a retirement income to you or, if applicable, to your spouse. You will, upon 90 days' written notice to us, specify the date for the commencement of retirement income, which shall not be later than the end of the calendar year in which you turn age 71 or such other age or date as may be set out in the Act from time to time (such date being referred to herein as "Maturity"). Such notice shall indicate the form of retirement income to be purchased by our Agent and shall, at your option be either:

- a. An annuity commencing at Maturity payable to you for your life or if you so designate to you for the lives of you and your spouse, jointly and then to the survivor of the two of you and with or without a guaranteed term not exceeding such period of time as specified in subsection 146(1) of the Act.
  - i. Any annuity so purchased;
  - ii. may be integrated with the Old Age Security Pension;
  - iii. may be increased in whole or in part in accordance with the Consumer Price Index or at such other rate not exceeding 4% per annum as may be specified under the terms of such annuity;
  - iv. shall, unless established as a variable annuity in accordance with subsection 146(3) of the Act, pay equal annual or more frequent periodic payments;
  - v. shall provide for full or partial commutation and shall provide for equal annual or more frequent periodic payments following any partial commutation;
  - vi. shall not provide for the aggregate of the periodic payments in a year after your death to exceed the aggregate of the payments in a year before your death;
  - vii. shall by its terms not be capable either in whole or in part of assignment; and
  - viii. shall provide for commutation if such annuity would otherwise become payable to a person other than you or your spouse; or,
- b. A retirement income fund subject to the rules specified in the Applicable Tax Legislation.

If you fail to notify us at least 90 days prior to December 31 in the year in which you turn age 71 or such other age or date as may be specified from time to time in the Act, then at our sole discretion, we may either:

- c. Transfer the assets of the Plan to an ATB Securities Inc. Self-Directed Retirement Income Fund or another retirement income fund selected by us in our sole discretion. We or our Agent will act as attorney to execute documents and make elections necessary to establish the ATB Securities Inc. Self-Directed Retirement Income Fund or other retirement income fund; or
- d. On reasonable prior notice to you, realize the assets comprising the Trust Fund, and subject to the deduction of all proper charges, including income tax required to be withheld, pay you the proceeds of such realization in a lump sum, and you shall be responsible for all reasonable expenses of administration charged by us or our Agent. Any realization shall be made at such price or prices as we may, in our sole discretion, determine and we shall not be responsible for any loss occasioned by any such realization.

## 10. Withdrawals

You may, by written application, at any time before the commencement of a retirement income, request that we pay to you all or any part of the assets held under the Plan, and we may liquidate any investments held under the Plan, to the extent deemed necessary for that purpose.

## 11. Refund of Contributions

We shall, upon written application by you or if applicable your spouse in form satisfactory to us, refund the amount established to be an amount as defined in paragraph 146(2) (c.1) of the Act and in any similar provisions of any provincial income tax legislation.

## 12. Death of annuitant

In the event of your death prior to providing for a retirement income, we shall, upon receipt of satisfactory evidence of such death and direction from your heirs, executors, administrators or legal representatives, realize your interest in the Plan, and subject to the deduction of all proper charges, including income tax, if any, required to be withheld, the proceeds of such realization shall be held by us for payment in a lump sum to the person or persons who may be entitled thereto pursuant to paragraph 13 upon receipt by we of such releases and other documents as we may require.

## 13. Designation of Beneficiary

If you are domiciled in a jurisdiction that we have designated as one in which a participant in a retirement savings plan may validly designate a beneficiary other than by will, then you may by instrument in writing in a form prescribed by us and delivered to us prior to your death, designate any person or persons as beneficiary to be entitled to receive your share of the Trust Fund on your death. Such person or persons shall be deemed to be your designated beneficiary for the purposes of the Plan, unless such person shall predecease you or unless you revoke such designation in writing in from prescribed by us and deliver it to us prior to your death. If no

beneficiary has been designated or if all such beneficiaries predecease you, the proceeds will be paid to your legal personal representatives.

#### **14. Splitting of assets on marriage breakdown**

We will, upon receiving written direction from you, pay or transfer, on your behalf, any property held in the Plan to a registered retirement savings plan or a registered retirement income fund under which your spouse or former spouse is the annuitant if, at the time of such transfer, the payment or transfer is being effected on the breakdown of your marriage, pursuant to and in accordance with paragraph 146(16)(b) of the Act. Any such requests may be subject to tax and fees or other costs. We will process your request within a reasonable period of time after we have received all completed documents as we may require.

#### **15. Locked-in retirement account**

If, due to Plan assets having been transferred into the Plan from a registered pension plan or other locked-in registered savings plan, you have duly completed, signed and delivered an instrument in the form of a locking-in addendum for a locked-in retirement account or locked-in retirement savings plan, approved by us, such locking-in addendum shall be deemed to be part of this Declaration of Trust. In the event of a conflict, the provisions of such locking-in addendum and the provisions of applicable pension laws referred to therein shall take precedence over any conflicting provisions hereof, or of any beneficiary designation made with respect to the Plan, provided that no provision of this Declaration of Trust shall be interpreted to be in conflict with the requirements of the Applicable Tax Legislation. You agree to be bound by the terms and conditions set out in the locking-in addendum forming part of this Declaration of Trust.

#### **16. Group RSP**

If the Plan is a Group retirement savings plan, you or your spouse are required to be an employee of the Employer named in the Application. You acknowledge that the Employer is acting as your agent.

If you cease to be an employee of the Employer, the following will apply following receipt of such notice from the Employer to us:

- a. We will accept no further contributions to this Plan;
- b. You shall direct us to amend the Plan to transfer the value of the Plan to another retirement savings plan (which is not a group plan and which may be with us). Should you fail to provide such written notice within 15 days, we are hereby directed to amend the Plan to transfer the investments to another retirement savings plan which is not a group plan, or alternatively and in our sole discretion, to a registered retirement income fund with us and to apply for registration of the said plan.

#### **17. Trustee fees and expenses**

We and our Agent shall each be entitled to such reasonable fees and other charges as we may establish from time to time for the Plan and to reimbursement for disbursements and expenses reasonably incurred by each of us in performing each of our duties hereunder. All such fees and other amounts (together with any goods and services tax or other taxes applicable thereto, other than penalties

and taxes for which we are liable under the Applicable Tax Legislation) shall be charged to your account, unless other arrangements have been made between you and our Agent in writing. You shall be provided with a minimum of 60 days notice of any change to such fees and other charges. If we or our Agent make a payment or transfer of all the assets of the Plan to a registered retirement savings plan or a registered retirement income fund, for which we are not the trustee, we shall be entitled to deduct a special service fee from any such transfer or additional payment amount. Notwithstanding anything herein contained, we are empowered to realize, at our sole discretion, sufficient assets forming part of the Trust Fund for payment of the fees and expenses referred to above. Any such realization shall be made at such price or prices as we may in our sole discretion determine and we shall not be responsible for any loss occasioned by any such realization.

#### **18. Amendment**

We may, from time to time at our sole discretion, amend this Declaration of Trust with the concurrence of the authorities administering the Applicable Tax Legislation by giving at least 60 days notice in writing to you; provided, however that any such amendments shall not have the effect of disqualifying the Plan as a registered retirement savings plan within the meaning of the Applicable Tax Legislation.

#### **19. Notice**

Any notices, demands, orders, document or any other written communication we may forward to you by mail, postage prepaid, to your address indicated on the Application (or subsequent written notification of a new address which we acknowledge received) shall be deemed to be received by you two business days after such mailing. You acknowledge that we shall be under no further obligation, except as may be required by applicable law, to locate you for the purpose of forwarding any such notices, demands, orders, documents or any other written communication.

#### **20. Limitation of liability**

- a. We will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility of a non-qualified investment (as defined in the Act in relation to a registered plan) being acquired or held by the Plan.
- b. Notwithstanding any other provisions hereof, we (including, for greater certainty, our Agent) will not be liable in our personal capacity for or in respect of:
  - i. Any taxes or interest which may be imposed on the Plan under the Applicable Tax Legislation (whether by way of assessment, reassessment or otherwise) or for any charge levied or imposed by any governmental authority upon or in respect of the Plan, as a result of the purchase, retention or sale of any investment including, without limiting the generality of the foregoing, non-qualified investments, other than taxes, interest and penalties imposed on us arising from our personal liability, including without limitation, arising from our administrative error, under Applicable Tax Legislation; or
  - ii. Any loss suffered or incurred by the Plan, you or any beneficiary under the Plan, caused by or resulting from us acting or declining to act upon any instruction

given to us by you, a person designated by you or any person purporting to be you, unless caused by our dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard.

- c. You, your legal personal representatives and each beneficiary under the Plan will at all times, indemnify and save us and our Agent harmless in respect of any taxes, interest, penalties or other governmental charges which may be levied or imposed on each of us in respect of the Plan or any losses (other than losses, taxes, interest and penalties for which we or our Agent are liable in accordance herewith) as a result of the purchase, retention or transfer of any investment or as a result of payments out of the Plan made in accordance with this Declaration of Trust or as a result of us acting or declining to act on any instruction you have given us. You, where required or requested, will provide our Agent with such information as it may require in order to value assets being acquired or held by the Plan.

## 21. Replacement of trustee

We may resign as trustee and we shall be discharged from all further duties and liabilities hereunder upon 90 days notice in writing to you or such shorter notice as you shall accept as sufficient. You in like manner, may terminate our services and may appoint a successor trustee, acceptable under the provisions of the Applicable Tax Legislation. In the event of a change of trustee, we shall transfer the balance of the Trust Fund to the successor trustee within thirty (30) days after the effective date of such change.

## 22. Governing law

This Declaration of Trust shall be governed by and construed in accordance with the laws of the Province of Alberta (and with respect to any locking-in addendum to the Plan containing provisions required by applicable pension legislation, in accordance with such pension legislation), the Applicable Tax Legislation and any other federal laws of Canada, which may be applicable.



# Self-Directed Retirement Income Fund declaration of trust

In this Declaration of Trust:

- a. **"Us", "our"** and **"we"** refer to Canadian Western Trust Company;
- b. **"You"** and **"your"** refer to the applicant, annuitant as defined in the *Income Tax Act*, named on the application for an ATB Securities Inc. Self-Directed Retirement Income Fund;
- c. **"Application"** means your application for the Fund;
- d. Any reference in this Declaration of Trust or in the Application to:
  - i. **"Spouse"** means "spouse" or "common law partner" (as applicable); and
  - ii. **"marriage"** means "marriage" or "common-law partnership";
- e. References to designated Articles are to the designated Articles in this Declaration of Trust.

We agree with you to act as trustee for your ATB Securities Inc. Self-Directed Retirement Income Fund (the **"Fund"**), upon the following terms and conditions:

## 1. Registration

We will apply for registration of the Fund under the provisions of the *Income Tax Act* (Canada) (the **"Act"**) and any applicable provincial income tax legislation relating to retirement income funds (the Act and such provincial income tax legislation hereinafter collectively referred to as **"Applicable Tax Legislation"**).

## 2. Fund property

Only property transferred from the following sources shall be accepted for the Fund:

- a. A registered retirement savings plan under which you are the annuitant;
- b. Another registered retirement income fund under which you are the annuitant;
- c. From you, to the extent only that the amount of the consideration was an amount described in subsection 60(l)(v) of the Act;
- d. A registered retirement income fund or registered retirement savings plan of your spouse or former spouse transferred due to the breakdown of your marriage, as set out in subparagraph 146.3(2)(f)(iv) of the Act;
- e. A registered pension plan of which you are a member (within the meaning assigned by subsection 147.1(1) of the Act);
- f. A registered pension plan in accordance with subsection 147.3(5) or (7) of the Act;
- g. A specified pension plan in circumstances to which subsection 146(21) of the Act applies; or
- h. Such other source as may be permitted under the Act from time to time, such transfers, together with any income therefrom, shall constitute a trust fund (the **"Trust Fund"**) to be used, invested and held subject to the terms of this Declaration of Trust.

## 3. Investment

The Trust Fund shall be invested and reinvested by us, on your direction. The Fund will not be limited to investments authorized by law governing the investment of property held in trust other than the investment rules imposed by the Applicable Tax Legislation for a tax free savings account. We will only act on your instructions if they are in a form acceptable to us and are accompanied by related documents as required by us in our sole discretion. We may accept and act on any investment instructions which we believe, in good faith, to be given by you. If you do not provide any direction to us regarding the investment of any cash balances or any other property forming part of the Trust Fund from time to time, we will allow interest on such balances at such rate and credited at such time as we may determine in our sole discretion.

## 4. Management and ownership

We may hold any investment in our name, in the name of our nominee, in bearer form or in such other name as we may determine. We may generally exercise the power of an owner with respect to all stocks, bonds, or other securities held by you for the Fund, including the right to vote or give proxies to vote in respect thereof and to pay an assessment, taxes or charges in connection therewith or the income or gains derived therefrom.

## 5. Account and statements

We shall maintain an account in your name showing all contributions made to the Fund and all investment transactions made at your direction in respect of the Fund. We shall forward to you, in respect of each year, statements for the Fund showing all contributions and investment transactions made and all income and expenses earned or incurred during such period. You agree to review each statement and must notify us in writing of any discrepancies, errors, or omissions with respect to any information contained in the statement or any entry or transaction posted to it within 30 days from the date of the statement, failing which the statement (except any amount that has been credited to the Fund) will be deemed to be conclusively correct and complete and will be binding upon you. In such case, we will be released by you from any claims in respect of the statement and no claim may be made by you against us for any item disclosed on the statement.

## 6. Delegation

You authorize us to, and we may, delegate to ATB Securities Inc. (our **"Agent"**), the performance of the following of our duties and responsibilities under the Fund:

- a. To receive transfers of property to the Fund;
- b. To invest and reinvest the Trust Fund in accordance with your directions;
- c. To hold the assets forming the Trust Fund in safekeeping;
- d. To collect all interest, dividends, and other income relating to the assets of the Trust Fund;
- e. To maintain the accounting records of the Fund;

- f. To provide you with statements of account; and
- g. Such other of our duties and responsibilities under the Fund as we may determine from time to time.

You also authorize us to pay our Agent all or a portion of the fees paid by you to us hereunder and may reimburse our Agent for its out-of-pocket expenses incurred in performing the duties and responsibilities delegated to it by us and charge your account therefor. You acknowledge that our Agent may earn brokerage commissions on investment and reinvestment transactions processed by them. We shall be entitled to employ such person or persons including but not limited to, lawyers and auditors, as we may determine and shall be entitled to pay their fees and expenses from the Fund. We may rely and act upon information and advice furnished by such person and persons or refrain from acting thereon and shall not be liable to you as a result of acting or refraining from so acting. We shall, however, remain ultimately responsible for the administration of the Fund pursuant to the provisions of this Declaration of Trust.

## 7. Date of birth

The statement of your date of birth contained in the Application shall be deemed to be a certification by you of your age and an undertaking by you to provide any further evidence of proof of age that may be required for the provision of a retirement income.

## 8. Payments

The whole of the Trust Fund shall be invested, used and applied by us only for the provision of payments to you or, if applicable, to your surviving spouse. In each year commencing not later than the first complete calendar year after the Fund is established, we shall make one or more payments the aggregate of which is not less than the minimum amount established in accordance with subsection 146.3(1) of the Act as amended from time to time, and not exceeding the value of the Trust Fund immediately before any payment. The minimum amount for the year in which the Fund commences is nil. No payment required to be made in accordance with the provisions hereof shall be capable of assignment in whole or in part. At your direction, we shall in the prescribed form and manner transfer all or a part of the then current value of the Trust Fund together with all information necessary for the continuance of the Fund to your registered retirement income fund held by another carrier, provided that the minimum amount, as defined under subsection 146.3(1) of the Act is paid to you and that we will retain an amount pursuant to paragraph 146.3(2)(e.1) or (e.2) of the Act. After effecting the transfer on such basis, we shall be discharged from all further duties and liabilities hereunder immediately following paying all amounts required hereunder.

## 9. Death of annuitant

In the event of your death prior to us paying all amounts required as described in section 8 of this Agreement, we shall, upon receipt of satisfactory evidence of such death, realize your interest in the Fund, and subject to the deduction of all proper charges including income tax, if any, required to be withheld, the proceeds of such realization shall be held by us for payment to the beneficiary, if any, designated pursuant to section 10 of this Agreement, or to your legal personal representatives, upon such beneficiary

or representatives furnishing us with such releases and other documents as we may require, unless your spouse has been designated specifically as your successor annuitant as provided for in section 10 of this Agreement, or by will, in which case we shall continue the payments to your spouse in accordance with the provisions of section 8 of this Agreement.

## 10. Designation of successor annuitant or beneficiary

If you are domiciled in a jurisdiction that we have designated as one in which a participant in a retirement income fund may validly designate a beneficiary or a successor annuitant other than by will, then you may, by instrument in writing in form prescribed by us and delivered to us prior to your death, designate your spouse as successor annuitant or any person or persons as beneficiary to be entitled to receive your share of the Trust Fund on your death. Such person(s) shall be deemed to be your successor annuitant or designated beneficiary, as the case may be, for the purposes of the Fund unless such person shall predecease you or unless you revoke such designation in writing in form prescribed by us and deliver it to us prior to your death.

## 11. Splitting of assets on marriage breakdown

We will, upon receiving written direction from you, pay or transfer on your behalf, any property held in the Fund to a registered retirement savings plan or a registered retirement income fund under which your spouse or former spouse is the annuitant if, at the time of such transfer, the payment or transfer is being effected on the breakdown of your marriage, pursuant to and in accordance with subsection 146.3(14) of the Act. Any such requests may be subject to tax and fees or other costs. We will process your request within a reasonable period of time after we have received all completed documents as we may require.

## 12. Life income fund

If, due to Fund assets having been transferred into the Fund from a registered pension plan, locked-in registered savings plan or other life income fund, you have duly completed, signed and delivered an instrument in the form of a locking-in addendum for a life income fund or locked-in retirement income fund, approved by us, such locking-in addendum shall be deemed to be part of this Declaration of Trust. In the event of a conflict, the provisions of such locking-in addendum and the provisions of applicable pension laws referred to therein shall take precedence over any conflicting provisions hereof, or of any beneficiary designation made with respect to the Fund, provided that no provision of this Declaration of Trust shall be interpreted to be in conflict with the requirements of the Applicable Tax Legislation. You agree to be bound by the terms and conditions set out in the locking-in addendum forming part of this Declaration of Trust.

## 13. Trustee fees and expenses

We and our Agent shall each be entitled to such reasonable fees and other charges as we may establish from time to time for the Fund and to reimbursement for disbursements and expenses reasonably incurred by each of us in performing each of our duties hereunder. All such fees and other amounts (together with any goods and services tax or other taxes applicable thereto, other than penalties

and taxes for which we are liable under the Applicable Tax Legislation) shall be charged to your account, unless other arrangements have been made between you and our Agent in writing. You shall be provided with a minimum of 60 days notice of any change to such fees and other charges. If we or our Agent make a payment or transfer of all the assets of the Fund or a transfer to a registered retirement savings plan or a registered retirement income fund, for which we are not trustee, we shall be entitled to deduct a special service fee from any such transfer or additional payment amount. Notwithstanding anything herein contained, we are empowered to realize, at our sole discretion, sufficient assets forming

part of the Trust Fund for payment of the fees and expenses referred to above. Any such realization shall be made at such price or prices as we may, in our sole discretion, determine and we shall not be responsible for any loss occasioned by any such realization.

#### 14. Amendment

We may, from time to time at our discretion, amend this Declaration of Trust with the concurrence of the authorities administering the Applicable Tax Legislation by giving at least 60 days notice in writing to you; provided, however that any such amendments shall not have the effect of disqualifying the Fund as a registered retirement income fund within the meaning of the Applicable Tax Legislation.

#### 15. Notice

Any notices, demands, orders, document or any other written communication we may forward to you by mail, postage paid, to your address indicated on the Application (or subsequent written notification of a new address which we acknowledge received) shall be deemed to be received by you two business days after such mailing. You acknowledge that we shall be under no further obligation, except as may be required by applicable law, to locate you for the purpose of forwarding any such notices, demands, orders, documents or any other written communication.

#### 16. Limitation of liability

- a. We will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility of a non-qualified investment (as defined in the Act in relation to a registered plan) being acquired or held by the Fund.
- b. Notwithstanding any other provisions hereof, we (including, for greater certainty, our Agent) will not be liable in our personal capacity for or in respect of:
  - i. Any taxes or interest which may be imposed on the Fund under the Applicable Tax Legislation (whether by way of assessment, reassessment or otherwise) or for any charge levied or imposed by any governmental authority upon or in respect of the Fund, as a result of the purchase, retention or sale of any investment including, without limiting the generality of the foregoing, non-qualified investments, other than taxes, interest and penalties imposed on us arising from our personal liability, including without limitation, arising from our administrative error, under Applicable Tax Legislation; or

- ii. Any loss suffered or incurred by the Fund, you or any beneficiary under the Fund, caused by or resulting from us acting or declining to act upon any instruction given to us by you, a person designated by you or any person purporting to be you, unless caused by our dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard.
- c. You, your legal personal representatives and each beneficiary under the Fund will at all times, indemnify and save us and our Agent harmless in respect of any taxes, interest, penalties or other governmental charges which may be levied or imposed on each of us in respect of the Fund or any losses (other than losses, taxes, interest and penalties for which we or our Agent are liable in accordance herewith) as a result of the purchase, retention or transfer of any investment or as a result of payments out of the Fund made in accordance with this Declaration of Trust or as a result of us acting or declining to act on any instruction you have given us. You, where required or requested, will provide our Agent with such information as it may require in order to value assets being acquired or held by the Fund.

#### 17. Replacement of trustee

We may resign as trustee and we shall be discharged from all further duties and liabilities hereunder upon 90 days notice in writing to you or such shorter notice as you shall accept as sufficient. You in like manner, may terminate our services and may appoint a successor trustee, acceptable under the provisions of the Applicable Tax Legislation. In the event of a change of trustee, we shall transfer the balance of the Trust Fund to the successor trustee within thirty (30) days after the effective date of such change. Such a transfer will be subject to the requirements of Article 8 hereof and subsections 146.3(2)(e.1) or (e.2) of the Act.

#### 18. Governing law

This Declaration of Trust shall be governed by and construed in accordance with the laws of the Province of Alberta (and with respect to any locking-in addendum to the Fund containing provisions required by applicable pension legislation, in accordance with such pension legislation), the Applicable Tax Legislation and any other federal laws of Canada, which may be applicable.

# Self-Directed Disability Savings Plan declaration of trust

This Declaration of Trust, together with the Application, constitutes an arrangement entered into between Canadian Western Trust Company (CWT) as Issuer of the Plan and the Holder (as defined below) with whom the Issuer agrees to pay or to cause to be paid Disability Assistance Payments to a Beneficiary. Canadian Western Trust Company is a trust company incorporated under the laws of Canada. CWT agrees to act as trustee for the Holder's ATB Securities Inc. Self-Directed Disability Savings Plan created pursuant to the Application and this Declaration of Trust in accordance with the terms and conditions set out below:

## 1. Defined Terms

For the purposes of this arrangement the following terms will have the following meanings:

- a. Applicable Legislation** means the *Income Tax Act*, the *Canada Disability Savings Act* (the CDSA) and the *Canada Disability Savings Regulations* (the CDSR) that govern this Plan, the property in this Plan, and the parties involved in this arrangement.
- b. Application** means the application for the Plan.
- c. Assistance Holdback Amount** has the meaning assigned under the CDSR.
- d. Beneficiary** means the individual designated in the Application by the Holder(s) to whom Lifetime Disability Assistance Payments and Disability Assistance Payments shall be paid.
- e. Designated Provincial Program** means a program that supports savings in Registered Disability Savings Plans and that is established under the laws of a province.
- f. Disability Assistance Payment** means any payment from the Plan to the Beneficiary or to the Beneficiary's estate.
- g. Disability Savings Plan or Plan** of a Beneficiary means an arrangement between the Issuer and one or more of the following:
  - i.** The Beneficiary;
  - ii.** An entity who is a Qualifying Person in relation to the Beneficiary at the time the arrangement is entered into;
  - iii.** A Qualifying Family Member in relation to the Beneficiary, who was the holder of the Beneficiary's prior Registered Disability Savings Plan - if the Plan is opened as a result of a transfer from the prior Registered Disability Savings Plan; and
  - iv.** A legal parent of the Beneficiary who is not a Qualifying Person in relation to the Beneficiary at the time the arrangement is entered into but is a holder of another Registered Disability Savings Plan of the Beneficiary;

under which one or more contributions are to be made in trust to the Issuer to be invested, used, or applied by the Issuer for the purpose of making payments to the

Beneficiary and where the arrangement is entered into in a taxation year in respect of which the Beneficiary is a DTC Eligible Individual.

- h. DTC Election** means an election made by the Holder to keep the Plan open when the Beneficiary is not a DTC Eligible Individual. A DTC Election is valid until the earlier of the beginning of the first calendar year that the Beneficiary again becomes a DTC Eligible Individual and the end of the fifth calendar year of continuous DTC ineligibility.
- i. DTC Eligible Individual** means an individual who would be eligible for the disability tax credit if subsection 118.3(1) of the Act were read without reference to paragraph 118.3(1)(c) of the Act.
- j. Eligible Individual** means a child or grandchild of a deceased annuitant under a registered retirement savings plan or a registered retirement income fund, or of a deceased member of a pooled registered pension plan, a registered pension plan or a specified pension plan, who was financially dependent on the deceased for support, at the time of the deceased's death, by reason of mental or physical infirmity.
- k. Entity** includes an individual, the Beneficiary's estate, or a public department, agency or institution, as the context requires.
- l. Government Funded Benefits** means the Canada Disability Savings Grant and/or the Canada Disability Savings Bond.
- m. Holder** means one or more of the following:
  - i.** An entity that has entered into the Plan with the Issuer;
  - ii.** An entity who receives rights as a successor or assignee of an entity who entered into the Plan with the Issuer; and
  - iii.** The Beneficiary, if the Beneficiary has rights under the Plan to make decisions concerning the Plan, unless the Beneficiary's only right is to request that Disability Assistance Payments be made as detailed in section 9 (b).
- n. Issuer or CWT** means Canadian Western Trust Company.
- o. Legislated Maximum Formula Result** means the result of the formula described in paragraph 146.4(4)(l) of the Act.
- p. Lifetime Disability Assistance Payments** means Disability Assistance Payments that, after they begin to be paid, are payable at least annually until the earlier of the day on which the Beneficiary dies and the day on which the Plan is terminated.
- q. Plan Trust** means the trust governed by the Plan.
- r. Qualifying Family Member** means the Beneficiary's legal parent or the Beneficiary's spouse or common-law partner as long as the Beneficiary is not living separate and apart from their spouse or common-law partner because of a marriage or common-law partnership breakdown.

**s. Qualifying Person** means:

- i. If the Beneficiary has not reached the age of majority at or before the time the arrangement is entered into:
  - I. A legal parent of the Beneficiary;
  - II. A guardian, tutor, curator or other individual who is legally authorized to act on behalf of the Beneficiary; or
  - III. A public department, agency, or institution that is legally authorized to act on behalf of the Beneficiary.
- ii. If the Beneficiary has reached the age of majority at or before the time the arrangement is entered into but is not contractually competent to enter into the arrangement, Qualifying Person will mean an entity as described in section i(II) or i(III) of this definition;
- iii. Other than for the purpose of acquiring successor or assignee rights as described in section 4 of this agreement, an individual who is a Qualifying Family Member in relation to the Beneficiary is a Qualifying Person if the following conditions are met:
  - I. The Qualifying Family Member opens the Plan for the Beneficiary before January 1, 2019;
  - II. At the time the Plan is opened, the Beneficiary is not the beneficiary of another Registered Disability Savings Plan;
  - III. The Beneficiary attained the age of majority before the Plan was entered into;
  - IV. No entity that is legally authorized to act on behalf of the Beneficiary exists; and
  - V. After reasonable enquiry, the Issuer determines that the Beneficiary is not contractually competent to enter into this Plan with the Issuer.
- t. **Registered Disability Savings Plan** means a Disability Savings Plan that satisfies the conditions of section 146.4 of the Act.
- u. **Specified Maximum Amount** means the greater of the Legislated Maximum Formula Result and the sum of:
  - i. 10% of the Plan's fair market value; and
  - ii. All periodic payments from locked-in annuity contracts.

The fair market value does not include amounts held in locked-in annuity contracts. Also, if the Plan disposes of a locked-in annuity contract during the calendar year, the periodic payment amount will contain a reasonable estimate of amounts that would have been paid from the annuity into the Plan in that year.

- v. **Specified Minister** means the Minister as designated in the CDSA.
- w. **Specified RDSP Payment** means a payment that is made to the Plan under which the Eligible Individual is the Beneficiary that is designated in prescribed form, by the Holder and the Eligible Individual as a Specified RDSP Payment at the time the payment is made. The payment is an amount that originated from the registered retirement savings plan, registered retirement income fund, specified pension plan, pooled registered pension

plan or registered pension plan of the Beneficiary's deceased parent(s) or grandparent(s). The amount was paid as a refund of premiums, an eligible amount, or a payment (with exception to a payment that is part of a series of periodic payments or payments that relate to an actuarial surplus) because of the parent(s) or grandparent(s) death and the Beneficiary was financially dependent on the parent or grandparent because of a mental or physical infirmity at the time of their death.

- x. **Specified Year** means the particular calendar year in which a medical doctor, who is licensed to practice under the laws of a province (or the place where the Beneficiary resides), certifies in writing that, in their professional opinion, the Beneficiary is not likely to live more than five years, and each of the following five calendar is provided to the Issuer.

## 2. Purpose of the Plan

The Plan will be operated exclusively for the benefit of the Beneficiary under the Plan. The Beneficiary's designation is irrevocable and no right of the Beneficiary to receive payments from the Plan is capable of surrender or assignment.

## 3. Registration of the Plan

The Plan is considered registered if the Beneficiary is a DTC Eligible Individual in the taxation year the Plan is established and all the following conditions of subsection 146.4(2) of the Act have been met:

- a. Before the Plan is entered into, the Issuer must receive written notification from the Minister of National Revenue that provides approval of the specimen plan under which the arrangement is based;
- b. At or before the time the Plan is entered into, the Issuer must be provided with the social insurance numbers of the Beneficiary and every entity who enters into the Plan with the Issuer (in the case of an entity that is a business, their business number); and
- c. At the time the Plan is entered into, the Beneficiary must be resident in Canada unless the Beneficiary is currently a Beneficiary under another Registered Disability Savings Plan.

The Plan will not be considered registered unless the Issuer notifies the Specified Minister of the Plan's existence in prescribed form containing prescribed information within 60 days after this arrangement is entered into. The Plan will not be considered registered if the Beneficiary of the Plan is also the Beneficiary of another Registered Disability Savings Plan that has not been terminated within 120 days, or any later day that the Specified Minister considers reasonable in the circumstances, of entering into the Plan.

## 4. Holder and changes in Holder

If the Beneficiary is under the age of majority, a Qualifying Person as described in section 1(s) of the Qualifying Person definition may open the Plan and become the Holder. If the Beneficiary has reached the age of majority and is contractually competent to enter into a Plan, the Beneficiary must be the Holder. Notwithstanding the foregoing, if the Plan is opened by the legal parent of the Beneficiary when the Beneficiary is under the age of majority:

- a. The legal parent may continue as Holder of the Plan after the Beneficiary has reached the age of majority; and
- b. The Beneficiary may be added to the Plan as a joint Holder (provided the Beneficiary is contractually competent to enter into the Plan).

If the Beneficiary has reached the age of majority but is not contractually competent to enter into a Plan, a Qualifying Person as described in section 1(s) of the Qualifying Person definition may open the Plan and become the Holder. Notwithstanding the foregoing, if the Plan is opened by the legal parent of the Beneficiary when the Beneficiary is under the age of majority, the legal parent may continue as Holder of the Plan after the Beneficiary has reached the age of majority but is not contractually competent to enter into a Plan. A Holder who is not the Beneficiary of the Plan does not have to be a resident of Canada but must have a valid social insurance number or business number, as the case may be, to open the Plan. Where an entity (other than a Qualifying Family Member in relation to the Beneficiary) that is the Holder of the Plan ceases to be a Qualifying Person in relation to the Beneficiary, the entity ceases at that time to be a Holder of the Plan and must be replaced with an entity who is eligible to be the Holder (for example, if the Beneficiary's legal parent is the Holder of the Plan and the legal parent is deceased, the Beneficiary or the Beneficiary's subsequent legal guardian will need to replace the deceased legal parent as the new Holder of the Plan). An entity may only become a successor or assignee of a Holder if the entity is:

- c. The Beneficiary (provided that the Beneficiary has reached the age of majority and is contractually competent);
- d. The Beneficiary's estate;
- e. A Holder of the Plan at the time rights are acquired (for example, if two legal parents enter into the Plan together and one parent is deceased, the other parent receives the deceased parent's rights and becomes the sole Holder of the Plan);
- f. A Qualifying Person in relation to the Beneficiary at the time rights under the Plan are acquired; or
- g. A legal parent of the Beneficiary who was previously a Holder of the Plan.

There must be at least one Holder of the Plan at all times. If on the Application no entity has been added to the Plan as the successor or assignee of a Holder, the Beneficiary or the Beneficiary's estate, as the case may be, will automatically acquire rights as successor or assignee of a Holder in order to comply with this requirement. An entity may not exercise their rights as a successor or assignee of a Holder until the Issuer is advised that the entity has become a Holder of the Plan. Before exercising their rights as a successor or assignee of a Holder, the Issuer must be in receipt of the entity's social insurance number or business number, as the case may be. A Qualifying Family Member (who is a Qualifying Person solely because of conditions in section 1(s)(iii) under the Qualifying Person definition) will cease to be Holder of the Plan if the Beneficiary notifies the Issuer that they wish to become the Holder and either the Issuer, after reasonable enquiry determines the Beneficiary to be

contractually competent, or a competent tribunal or other provincial authority has declared the Beneficiary to be contractually competent.

A Qualifying Family Member (who is a Qualifying Person solely because of conditions in section 1(s)(iii) under the Qualifying Person definition) will cease to be Holder of the Plan if an entity described in section 1(s)(i)(II) or (III) of the Qualifying Person definition is given legal authority to act on behalf of the Beneficiary. The entity will promptly notify the Issuer of their appointment, at which time the entity will replace the Qualifying Family Member as Holder. If there is a dispute over a Qualifying Family Member's status as Holder, the Qualifying Family Member (who is a Qualifying Person solely because of conditions in section 1(s)(iii) under the Qualifying Person definition) must attempt to avoid a reduction in the fair market value of the Plan Trust's property. The Qualifying Family Member must apply this requirement until the dispute is settled or a new entity is named as Holder.

## 5. Retirement savings rollover

Retirement savings may be paid into this Plan, as set out in this section. In order to qualify:

- a. The Beneficiary of the Plan must be an Eligible Individual;
- b. The payment complies with conditions under subsection 146.4(4)(f) to (h) of the Act;
- c. The payment originates from a refund of premiums from a registered retirement savings plan, an eligible amount from a registered retirement income fund, or a lump sum payment (other than a payment that is part of a series of periodic payments or a payment that relates to an actuarial surplus) from a pooled registered pension plan, a registered pension plan, or a specified pension plan of the Beneficiary's deceased parent(s) or grandparent(s); and
- d. The Holder of the Plan and the Eligible Individual must designate, in the prescribed form, the payment as a Specified RDSP Payment at the time the payment is made.

A Specified RDSP Payment is not eligible for any payment under the CDSA.

## 6. Education savings rollover election

An accumulated income payment from a registered education savings plan of which the Beneficiary is the beneficiary (the RESP) may be paid into this Plan, as set out in this section. The subscriber of the RESP and the Holder must jointly elect to apply subsection 146.1(1.2) of the Act in respect of the Beneficiary, and

- a. The Beneficiary must have a severe and prolonged mental impairment that prevents, or can reasonably be expected to prevent the Beneficiary from enrolling in a qualifying educational program at a post-secondary educational institution; or
- b. The RESP meets the conditions described in clause 146.1(2)(d.1)(iii)(A) or (B) of the Act to make an accumulated income payment.

If the election is made under subsection 146.1(1.1) of the Act and is filed by the promoter of the RESP with the Minister of National Revenue without delay, then notwithstanding

paragraph 146.1(2)(d.1) of the Act and any terms of the RESP required by that paragraph, an accumulated income payment under the RESP may be made to this Plan.

## 7. Contributions

Only the Holder may make contributions to the Plan unless they have given written consent on the Application to allow another entity to make contributions into the Plan. A contribution may not be made into the Plan if the:

- a. Beneficiary is not a DTC Eligible Individual in respect of the taxation year in which the contribution is made;
- b. Beneficiary died before that time;
- c. Beneficiary is not resident in Canada at that time;
- d. Beneficiary turns 59 years of age before the calendar year that includes that time; or
- e. Total of the contribution and all other contributions made (other than as a transfer in accordance with section 10) at or before that time to the Plan or to any other Registered Disability Savings Plan of the Beneficiary would exceed \$200,000 or the maximum permitted amount under the Applicable Legislation.

A contribution does not include the following:

- f. Government Funded Benefits;
- g. Amounts from a Designated Provincial Program;
- h. Amounts from another program that has a similar purpose to a Designated Provincial Program and is funded directly or indirectly by a province (other than an amount paid by an entity described in section 1(s)(i)(III) of the Qualifying Person definition);
- i. An amount transferred to the Plan in accordance with section 10); or
- j. Other than for the purposes of this section and for the purposes of sections 9 of this agreement,
  - i. A Specified RDSP Payment; or
  - ii. An accumulated income payment from a RESP.

## 8. Payments from the Plan

No payments will be made from the Plan other than:

- a. The payment of Disability Assistance Payments to the Beneficiary;
- b. The transfer of an amount to another trust that irrevocably holds property under a Registered Disability Savings Plan of the Beneficiary, as detailed in section 10; and
- c. Repayments of amounts under the CDSA, the CDSR or under a Designated Provincial Program.

A Disability Assistance Payment may not be made from the Plan if the fair market value of the property held by the Plan Trust, immediately after the payment is made, would be less than the Assistance Holdback Amount in relation to the Plan. Lifetime Disability Assistance Payments will begin no later than the end of the calendar year in which the Beneficiary turns 60 years of age. In such a case where the Plan is established after the Beneficiary turns 60 years of age, Lifetime Disability Assistance Payments will begin in the calendar year immediately following the calendar year in which the Plan is established. If the Beneficiary reached

59 years of age before the current year, the total amount of all payments that are made from the Plan in the year must be at least equal to the Legislated Maximum Formula Result. Lifetime Disability Assistance Payments for a calendar year are limited to the amount determined by the Legislated Maximum Formula Result. Disability Assistance Payments that are not Lifetime Disability Assistance Payments may be made from the Plan.

## 9. Disability Assistance Payments

If the total amount of all Government Funded Benefits paid into this Plan and any other Registered Disability Savings Plan of the Beneficiary before the beginning of the calendar year exceeds the total amount of contributions (other than as a transfer in accordance with section 10) paid into this Plan and any other Registered Disability Savings Plan of the Beneficiary before the beginning of the calendar year then the following conditions must be adhered to:

- a. If the calendar year is not a Specified Year for the Plan, the total amount of Disability Assistance Payments made in the year from the Plan will not exceed the Specified Maximum Amount. When calculating the total amount, a transfer as detailed in section 10 is to be disregarded if payments are made in lieu of those that should have been made under the prior Registered Disability Savings Plan of the Beneficiary as described in paragraph 146.4(8)(d) of the Act. A transfer as detailed in section 10 is to be disregarded if the transfer is made in lieu of a payment that would have been permitted to be made from the other Registered Disability Savings Plan in the calendar year if the transfer had not occurred;
- b. If the Beneficiary has reached 27 years of age but not 59 years of age before the particular calendar year, the Beneficiary may direct that one or more Disability Assistance Payments be made from the Plan in the year provided that the total of all Disability Assistance Payments made from the Plan in the year do not exceed the amount imposed by the constraints of paragraph (a) of this section. These payments may not be made from the Plan if the fair market value of the property held by the Plan Trust, immediately after the payment is made, would be less than the Assistance Holdback Amount in relation to the Plan;
- c. If the Beneficiary has reached 59 years of age before the particular calendar year, the total of all Disability Assistance Payments made from the Plan in the year, will not be less than the Legislated Maximum Formula Result. If the property in the Plan Trust is insufficient to make available the required amount, a lesser amount may be paid.

## 10. Transfers

At the direction of the Holder(s) of the Plan, the Issuer will transfer all property held by the Plan Trust directly to another Registered Disability Savings Plan of the Beneficiary. The Issuer will provide the issuer of the new Registered Disability Savings Plan with all information in their possession that was not previously provided to the Specified Minister, which is necessary for the new issuer to comply with the requirements of the Applicable Legislation. The Issuer will terminate the Plan immediately following the transfer to the new Registered Disability Savings Plan and the transfer

will be completed within 120 days of the effective date of the Beneficiary's new Registered Disability Savings Plan. In addition to any other Disability Assistance Payments that are required to be paid to the Beneficiary in the year, if the Beneficiary is transferring an amount from another Registered Disability Savings Plan and the Beneficiary attained the age of 59 years before the calendar year in which the transfer occurs, the Plan will make one or more Disability Assistance Payments to the Beneficiary whose total will be equal to the amount by which:

- a. The total amount of Disability Assistance Payments that would have been made from the Plan in the year if the transfer had not occurred exceeds;
- b. The total amount of Disability Assistance Payments made from the Plan in the year.

## 11. Termination of the Plan

After taking into consideration the Assistance Holdback Amount and Designated Provincial Program repayments, any remaining amount in the Plan will be paid to the Beneficiary or to his or her estate. This amount will be paid by the end of the calendar year following the earlier of:

- a. If the calendar year in which the Beneficiary dies; and
- b. If the Plan remains open because of a DTC election, the first calendar year under which the DTC election ceases to be valid, and in any other case the first calendar year throughout which the Beneficiary has no severe and prolonged impairment as described in paragraph 118.3(1) (a.1) of the Act.

The Plan must be terminated by the end of the calendar year following the earlier of:

- c. The calendar year in which the Beneficiary dies; and
- d. If the Plan remains open because of a DTC election, the first calendar year under which the DTC election ceases to be valid, and in any other case the first calendar year throughout which the Beneficiary has no severe and prolonged impairment as described in paragraph 118.3(1) (a.1) of the Act.

## 12. Non-compliance of the Plan

The Plan will be considered non-compliant and will cease to be a Registered Disability Savings Plan when it fails:

- a. To comply with any of the conditions under subsection 146.4(4) of the Act (excluding the condition where the Plan must be operated solely for the benefit of the Beneficiary);
- b. To comply with any requirements of the CDSA or the CDSR; or
- c. To be administered in accordance with the terms of the Plan.

At the time the Plan ceases to be registered, a Disability Assistance Payment will be deemed to have been made from the Plan to the Beneficiary or, if the Beneficiary is deceased, to their estate, that is equal to the amount by which the fair market value of the property held by the Plan Trust exceeds the Assistance Holdback Amount. If the Plan ceases to be registered because a Disability Assistance Payment is made that results in the fair market value of the property in the Plan being less than the Assistance

Holdback Amount, an additional Disability Assistance Payment will also be deemed to be made from the Plan to the Beneficiary at that time which is equal to the amount by which the lesser of the Assistance Holdback Amount in relation to the Plan and the fair market value of the property held by the Plan Trust at the time of payment exceeds the fair market value of the property held by the Plan Trust immediately after the payment. The non-taxable portion of this payment will be deemed to be nil. If the requirements of the Applicable Legislation are not met, the Plan will cease to be a Registered Disability Savings Plan unless the Minister of National Revenue waives such requirements.

## 13. Obligations of the Issuer

The Issuer will forward notification of any change in Holder under the Plan to the Specified Minister in prescribed form containing prescribed information on or before the day that is 60 days after the later of:

- a. The day on which the Issuer is advised of the change in Holder; and
- b. The day on which the Issuer is provided with the social insurance number or business number of the new Holder.

The Minister of National Revenue must approve amendments to the specimen plan under which this Plan is based before the Issuer can amend the Plan terms and conditions. If the Issuer discovers that the Plan is or will likely become non-compliant, the Issuer will notify both the Minister of National Revenue and the Specified Minister of this fact within 30 days after the Issuer becomes aware of possible or factual non-compliance. The Issuer will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that a Holder of the Plan may become liable to pay tax under Part XI of the Act in connection with the Plan. If a Qualifying Family Member (who is a Qualifying Person solely because of conditions in section 1(s)(iii) under the Qualifying Person definition) opens this Plan and becomes Holder, the Issuer will promptly notify the Beneficiary of this fact in writing. The notification will include the information in section 4 of this agreement that describes how the Qualifying Family Member can be replaced by another entity as the Plan Holder. The Issuer will collect and use all information provided by the Holder that is required to administer and operate the Plan. If the Issuer fails to comply with these obligations, the Issuer is liable to penalties as set out in subsection 162(7) of the Act. The issuer will not be held liable for entering into this Plan with a Qualifying Family Member if at the time the Plan was entered into, the Issuer had made a reasonable enquiry into the Beneficiary's contractual competence and it was the Issuer's opinion that the Beneficiary's contractual competence was in doubt.

## 14. Responsibility for the Plan and the Plan Trust

The Issuer has ultimate responsibility for the administration of the Plan and the Plan Trust. Therefore, the Issuer shall ensure that the Plan and the Plan Trust are administered in compliance with the requirements of the Applicable Legislation.

## 15. Delegation of duties

Without limiting responsibility as Issuer and trustee of the Plan, the Issuer appoints ATB Securities Inc. (the Agent) as its agent to perform administrative and other duties required



under the Plan and this Declaration of Trust. The Issuer may replace the Agent or may terminate having any Agent at any time. The Issuer or the Agent may engage accountants, brokers, lawyers or others for their advice and services and may rely on them for the same. The Issuer or the Agent may pay to any agent or advisor a fee under the provisions of this Declaration of Trust but the Issuer will not be liable for any acts, omissions or negligence of any of their agents or advisors so long as the Issuer has acted in good faith. The Issuer acknowledges that the ultimate responsibility for the Plan and the Plan Trust remains with the Issuer as detailed in section 14. The Issuer is responsible for the payment of any penalties resulting from non-compliance as detailed in section 13 of this agreement.

## 16. Ownership and voting rights

The property held in the Plan Trust will be held in the Issuer's name, their nominee's name, bearer form or any other name that the Issuer determines. The voting rights attached to the property held in the Plan Trust and credited to the Holder's account may be exercised by the Holder and for this purpose, the Holder is hereby appointed as the Issuer's agent and attorney to execute and deliver proxies and/or other instruments mailed by the Issuer to the Holder according to applicable laws.

## 17. Notices

Any notices, demands, orders, documents or any other written communication the Issuer may forward to the Holder by mail, postage paid, to the Holder's address indicated on the Application (or subsequent written notification of a new address which the Issuer acknowledges received) shall be deemed to be received by the Holder 3 days after such mailing. Securities law permits the Issuer to deliver some documents by electronic means if the consent of the Holder to the means of delivery has been obtained. If the consent of the Holder has been obtained, the Holder acknowledges that documents delivered by electronic means are deemed to be delivered to the Holder on the day such document is delivered. The Holder acknowledges that the Issuer shall be under no further obligation to locate the Holder for the purpose of forwarding any such notices, demands, orders, documents or any other written communication.

## 18. Restrictions and security for indebtedness

No advantage that is conditional in any way on the existence of the Plan may be extended to the Holder or any person with whom the Holder does not deal at arm's-length, other than the benefits and advantages specifically permitted under Applicable Legislation. The Plan is prohibited from borrowing money or other property for purposes of the Plan. The property held in the Plan Trust may not be pledged as security for indebtedness in whole or in part or assigned in any way.

## 19. Issuer fees and expenses

The Issuer and the Agent shall each be entitled to such reasonable fees and other charges as they may establish from time to time for the Plan and to reimbursement for disbursements and expenses reasonably incurred by each of them in performing each of their duties hereunder. All such fees and other amounts (together with any goods and services tax or other taxes applicable thereto, other

than penalties and taxes for which they are liable under the Applicable Legislation) shall be charged to the Plan, unless other arrangements have been made between the Holder and the Agent in writing. The Holder shall be provided with a minimum of 60 days written notice of any change to such fees and other charges. If the Issuer or the Agent transfers all property held by the Plan Trust directly to another Registered

Disability Savings Plan of the Beneficiary, for which CWT is not the Issuer, the Issuer and the Agent shall be entitled to deduct a special service fee from any such transfer. Notwithstanding anything herein contained, the Issuer is empowered to realize, at their sole discretion, sufficient property of the Plan for payment of the fees and expenses referred to above. Any such realization shall be made at such price or prices as the Issuer may, in their sole discretion, determine and the Issuer shall not be responsible for any loss occasioned by any such realization.

## 20. Amendments

The Issuer may from time to time, in their sole discretion, amend the terms of the Plan and this Declaration of Trust, providing that such amendments shall not disqualify the Plan as a Registered Disability Savings Plan within the meaning of the Applicable Legislation. The Issuer will obtain approval from the necessary provincial and federal authorities if any amendments are made and as required. The Issuer will provide the Holder with 30 days written notice of any amendments.

## 21. Limitation of liability

- a. The Issuer will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility of a non-qualified investment (as defined in the Act in relation to a registered plan) being acquired or held by the Plan.
- b. Notwithstanding any other provisions hereof, the Issuer (including, for greater certainty, the Agent) will not be liable in their personal capacity for or in respect of:
  - i. Any taxes or interest which may be imposed on the Plan under Applicable Legislation (whether by way of assessment, reassessment or otherwise) or for any charge levied or imposed by any governmental authority upon or in respect of the Plan, as a result of the purchase, retention or sale of any investment including, without limiting the generality of the foregoing, non-qualified investments, other than taxes and penalties imposed on the Issuer arising from their personal liability, including without limitation, arising from their administrative error, under Applicable Legislation; or
  - ii. Any loss suffered or incurred by the Plan, the Holder or the Beneficiary under the Plan caused by or resulting from the Issuer acting or declining to act upon any instruction given to them, whether by the Holder, a person designated by the Holder or any person purporting to be the Holder, unless caused by the Issuer's dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard.
- c. The Holder, their legal personal representative, and the Beneficiary under the Plan will at all times, indemnify and save the Issuer and the Agent harmless in respect of

any losses (other than losses for which the Issuer or the Agent is liable in accordance herewith) as a result of the purchase, retention or transfer of any investment or as a result of payments out of the Plan made in accordance with this Declaration of Trust or as a result of the Issuer or the Agent acting or declining to act on any instruction of the Holder. The Holder, where required or requested, will provide the Issuer or the Agent with such information as they may require in order to value the property held by the Plan. The Trustee and ATBSI will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility of a non-qualified investment being held by the plan or fund under any applicable tax legislation, and shall not be liable for any losses to the plan or fund resulting from the liquidation of plan or fund assets to meet the payments required to be made under applicable tax legislation

## **22. Successor Issuer**

CWT may resign as the Issuer and trustee of the Plan and be discharged from all duties and liabilities under this Declaration of Trust by giving 30 days written notice to the Holder. If the Holder does not appoint a successor Issuer/trustee within 10 days of CWT's written notice, CWT may appoint a successor Issuer/trustee for the Plan. Upon CWT's resignation CWT will provide the successor Issuer/trustee with all conveyances, transfers and further assurances that may be required to give effect to the appointment of the successor Issuer/trustee.

## **23. Governing law**

The terms of the Plan and this Declaration of Trust will be construed, administered and enforced according to the laws of the Province of Alberta, the Applicable Legislation, and the federal laws of Canada applicable in Alberta.

## **24. Binding**

The terms of this Declaration of Trust will be binding on the Holder's heirs, executors, administrators or legal representatives and permitted assigns and the Issuer's successors and assign.

# Tax Free Savings Account declaration of trust

In this Declaration of Trust:

- a. **"Us", "our" and "we"** refer to Canadian Western Trust Company;
- b. **"You" and "your"** refer to the applicant, the holder defined in the *Income Tax Act*, named on the application for an ATB Securities Inc. Tax Free Savings Account (TFSA);
- c. **"Application"** means your application for the TFSA;
- d. **"Survivor"** means an individual who was your spouse or common-law partner immediately prior to your death;
- e. Any reference in this Declaration of Trust or in the Application to:
  - i. **"Spouse"** means "spouse" or "common law partner" (as applicable); and
  - ii. **"marriage"** means "marriage" or "common-law partnership";
- f. References to designated Articles are to the designated Articles in this Declaration of Trust.

We agree with you to act as trustee for your ATB Securities Inc. Tax Free Savings Account (the **"TFSA"**), upon the following terms and conditions:

## 1. Registration

We will file an election to register the TFSA under the *Income Tax Act* (Canada) (the **"Act"**) and any applicable provincial income tax legislation relating to tax-free savings accounts (the Act and such provincial income tax legislation hereinafter collectively referred to as **"Applicable Tax Legislation"**).

## 2. Purpose of the TFSA

The primary purpose of the TFSA is to accumulate and invest funds for savings and investment purposes. The TFSA will be maintained for your exclusive benefit. No one, other than you or us, is permitted to have any rights under the TFSA relating to the amount and timing of distributions and the investing of funds.

## 3. Contributions

Only payments of cash or transfers of other property acceptable to us, including securities and mutual funds, made by you shall be accepted for the TFSA (**"Contributions"**). The Contributions, together with any income or gains therefrom and funds transferred to the TFSA pursuant to section 11 of this agreement shall constitute a trust fund (the **"TFSA Assets"**) to be used, invested and held subject to the terms of this Declaration of Trust. We are not responsible for determining whether the aggregate of all Contributions made by you to the TFSA in respect of a year exceeds the maximum amount that is permitted to be contributed to the TFSA under the Applicable Tax Legislation.

## 4. Investment

TFSA Assets shall be invested and reinvested by us on your direction. Your TFSA will not be limited to investments authorized by law governing the investment of property held in trust other than the investment rules imposed by the Applicable Tax Legislation for a tax-free savings account. We will only act on your instructions if they are in a form acceptable to us and are accompanied by related documents as required by us, in our sole discretion. We may accept and act on any investment instructions, which we believe, in good faith, to be given by you. If you do not provide any direction to us regarding the investment of any cash balances or any property forming part of the TFSA Assets from time to time, we will allow interest on such balances at such rate and credited at such time as we determine in our sole discretion.

## 5. Management and ownership

We may hold any investment in our name, in the name of our nominee, in bearer form or in such other name as we may determine. We may generally exercise the power of an owner with respect to all stocks, bonds, or other securities held by you for the TFSA, including the right to vote or give proxies to vote in respect thereof and to pay an assessment, taxes or charges in connection therewith or the income or gains derived therefrom.

## 6. Account and statements

We shall maintain an account in your name showing all Contributions to the TFSA and all investment transactions made at your direction in respect of the TFSA. We shall forward to you, in respect of each year, statements for the TFSA (or more frequently as determined by us) showing all Contributions and investments transactions made and all income and expenses earned or incurred during such period. Should there occur full or partial nonpayment of fees payable, we may, in our sole discretion, cease the issue of statements for the TFSA. You agree to review each statement and must notify us in writing of any discrepancies, errors or omissions with respect to any information contained in the statement or any entry or transaction posted to it within 30 days from the date of the statement, failing which the statement (except any amount that has been credited to the TFSA) will be deemed to be conclusively correct and complete and will be binding upon you. In such case, we will be released by you from any claims in respect of the statement and no claim may be made by you against us for any item disclosed on the statement.

## 7. Delegation

You authorize us to, and we may, delegate to ATB Securities Inc. (our **"Agent"**) the performance of the following of our duties and responsibilities relating to the TFSA:

- a. To receive your Contributions, and any transfers of property, to the TFSA;

- b. To invest and reinvest the TFSA Assets in accordance with your directions;
- c. To hold the assets forming the TFSA Assets in safekeeping;
- d. To collect all interest, dividends, and other income relating to the assets of the TFSA;
- e. To maintain the accounting records of the TFSA;
- f. To provide you with statements of account;
- g. To process withdrawals, transfers and any other payments from the TFSA; and
- h. Any such other of our duties and responsibilities under the TFSA as we may determine from time to time.

You also authorize us to pay our Agent all or a portion of the fees paid by you to us hereunder and may reimburse our Agent for its out-of-pocket expenses incurred in performing its duties and responsibilities delegated to it by us and charge your account therefor. You acknowledge that the Agent may earn normal brokerage commissions on investment and reinvestment transactions processed by the Agent. We shall be entitled to employ such person or persons including, but not limited to, lawyers and auditors as we may determine and shall be entitled to pay their fees and expenses from the TFSA. We may rely and act upon information and advice furnished by such person and persons or refrain from acting thereon and shall not be liable to you as a result of acting or refraining from so acting. We shall, however, remain ultimately responsible for the administration of the TFSA pursuant to the provisions of this Declaration of Trust.

#### 8. Social Insurance Number

The social insurance number that you provide on the Application shall be deemed a certification by you of its truth and you give us your undertaking to provide additional evidence if we require the proof of its validity.

#### 9. Withdrawals

Upon receipt of your written instructions to withdraw all or a part of the TFSA Assets, we will pay you an amount less any applicable fees and other costs. Prior to us processing your written instructions, you will ensure sufficient cash is in the TFSA to cover the amount requested or you will withdraw an investment(s) in-kind equal to the fair market value at the time of the transaction. We will issue notice to you as prescribed under the Act in respect of any such transaction.

#### 10. Refunds of excess contributions

You may send us written instructions to refund an amount to reduce the taxes otherwise payable under Part XI.01 of the *Income Tax Act* (Canada) relating to Contributions that exceed the limits permitted under Applicable Tax Legislation. Prior to us processing your written instructions, you will ensure sufficient cash is in the TFSA to cover the amount requested or we will refund an investment in-kind equal to the fair market value at the time of the transaction. We will issue notice to you as prescribed under the Act in respect of any such transaction.

#### 11. Death of a TFSA Holder

In the event of your death, we shall upon receipt of satisfactory evidence of such death and direction from your heirs, executors, administrators or legal representatives, realize your interest in the TFSA, and subject to the deduction of all proper charges, including income tax, if any, required to be withheld the proceeds of such realization shall be held by us for payment to the beneficiary, if any, designated pursuant to section 12 of this agreement, or to your legal personal representatives, upon such beneficiary or representatives furnishing us with such releases and other documents as we may require, unless your spouse has been designated specifically as your successor holder as provided for in section 12 of this agreement.

#### 12. Designation of Successor Holder / Beneficiary

Where applicable provincial law permits, you may designate one or more beneficiaries to receive the TFSA Assets or the proceeds from the sale of the TFSA Assets on or after your death in accordance with section 11 of this agreement, and the following:

- a. Successor Holder: You may at any time designate your Survivor to receive all of your rights in the TFSA after your death, in which case, he or she will become the holder of the TFSA and will acquire all of the holder's rights as the holder of the arrangement, and the unconditional right to revoke any beneficiary designation made; or
- b. Beneficiary of the TFSA Assets: You may designate one or more individuals to be your beneficiary to receive the TFSA Assets, less any applicable taxes and any fees and other expenses payable under this Declaration of Trust.

You may make, change or revoke a beneficiary designation by providing us with a written instruction in a form prescribed by us and delivered to us prior to your death.

#### 13. Transfers to the TFSA

You may request a transfer of amounts to the TFSA from another tax free savings account of which you are the holder, or from any other source permitted under Applicable Tax Legislation or other applicable law. We may, in our sole discretion, refuse to accept the property into the TFSA for any reason whatsoever and you authorize us to transfer out of the TFSA, without notice, any property held in the TFSA that we believe is not or may not be a qualified investment as defined in the Applicable Tax Legislation in relation to tax free savings accounts. The transfer will also be subject to any additional terms or conditions to comply with Applicable Tax Legislation.

#### 14. Transfers from the TFSA

You may request a transfer of all or part of the TFSA Assets to another tax free savings account of which you are the holder. Transfer requests may be subject to tax, fees and other costs. We will process your transfer request within a reasonable period of time after we have received all completed documents that we may require.

## 15. Transfers for division of property

We will, upon receiving written direction from you, pay or transfer on your behalf any property held in the TFSA to a tax free savings account under which your spouse or former spouse is the holder if, at the time of such payment or transfer, the payment or transfer is effected on the breakdown of your marriage, pursuant to and in accordance with subsection (b) of the definition of qualifying transfer in subsection 207.01(1) of the Act. Any such requests may be subject to tax and fees or other costs. We will process your request within a reasonable period of time after we have received all completed documents as we may require.

## 16. Trustee fees and expenses

We and our Agent shall each be entitled to such reasonable fees and other charges as we may establish from time to time for the TFSA and to reimbursement for disbursements and expenses reasonably incurred by each of us in performing our duties hereunder. All such fees and other amounts (together with any goods and services tax or other taxes applicable thereto, other than penalties and taxes for which we are liable under the Applicable Tax Legislation) shall be charged to your account unless other arrangements have been made between you and us in writing. You will be provided with a minimum of 60 days notice of any change in such fees and other amounts. Notwithstanding anything contained herein, we are empowered to realize, at our sole discretion, sufficient assets forming part of the TFSA Assets for payment of the fees and expenses referred to above. Any such realization shall be made at such price or prices as we may in our sole discretion determine and we shall not be responsible for any loss occasioned by any such realization.

## 17. Notices

Any notices, demands, orders, documents or any other written communication we may forward to you by mail, postage paid, to your address indicated on the Application (or subsequent written notification of a new address which we acknowledge received) shall be deemed to be received by you 2 days after such mailing. You acknowledge that we shall be under no further obligation, except as may be required by applicable law, to locate you for the purpose of forwarding any such notices, demands, orders, documents or any other written communication.

## 18. No benefit or loan

No benefit or loan that is conditional in any way on the existence of the TFSA may be extended to you or any person with whom you do not deal at arm's-length, other than any benefit or loan which may be permitted from time to time under the Act. The trust is prohibited from borrowing money or other property for purposes of the TFSA.

## 19. Restrictions and security for indebtedness

No advantage that is conditional in any way on the existence of the TFSA may be extended to the Holder or any person with whom the Holder does not deal at arm's-length, other than the benefits and advantages specifically permitted under Applicable Tax Legislation. The trust is prohibited from borrowing money or other property for purposes of the TFSA. In accordance with subsection 146.2(4) of the Act, the Holder may use the Holder's interest or right in the TFSA as security for a loan or other indebtedness if paragraphs 146.2(4)(a) and 146.2(4)(b) of the Act are met. Where the Holder uses his or her interest or right in the TFSA as security for a loan or other indebtedness, the Holder is 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 TFSA.

## 20. Amendments

We may, from time to time at our discretion, amend this Declaration of Trust with the concurrence of the authorities administering the Applicable Tax Legislation, by giving you at least 30 days notice in writing to you; provided however that any such amendments shall not have the effect of disqualifying the TFSA as a qualifying arrangement within the meaning of Applicable Tax Legislation.

## 21. Limitation of liability

- a. We will exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility of a non-qualified investment (as defined in the Act in relation to a registered plan) being acquired or held by the TFSA.
- b. Notwithstanding any other provisions hereof, we (including, for greater certainty, our Agent) will not be liable in our personal capacity for or in respect of:
  - i. Any taxes or interest which may be imposed on the TFSA under Applicable Tax Legislation (whether by way of assessment, reassessment or otherwise) or for any charge levied or imposed by any governmental authority upon or in respect of the TFSA, as a result of the purchase, retention or sale of any investment including, without limiting the generality of the foregoing, nonqualified investments, other than taxes and penalties imposed on us arising from our personal liability, including without limitation, arising from our administrative error, under Applicable Tax Legislation; or

- ii. Any loss suffered or incurred by the TFSA, you or any beneficiary under the TFSA caused by or resulting from us acting or declining to act upon any instruction given to us, whether by you, a person designated by you or any person purporting to be you, unless caused by our dishonesty, bad faith, willful misconduct, gross negligence or reckless disregard.
- c. You, your legal personal representative, and each beneficiary under the TFSA will at all times, indemnify and save us and our Agent harmless in respect of any taxes, interest, penalties or other governmental charges which may be levied or imposed on us in respect of the TFSA or any losses (other than losses, taxes, interest, penalties or other government charges for which we are liable in accordance herewith) as a result of the purchase, retention or transfer of any investment or as a result of payments out of the TFSA made in accordance with this Declaration of Trust or as a result of us acting or declining to act on any instruction you have given us. You, where required or requested, will provide us or our Agent with such information as we may require in order to value assets being acquired or held by the TFSA.

## **22. Replacement of trustee**

We may resign as the trustee and we shall be discharged from all further duties and liabilities hereunder upon 30 days notice in writing to you. If you do not appoint a successor trustee within ten (10) days of our written notice, we may appoint a successor trustee for the TFSA. Upon our resignation we will provide the successor trustee with all conveyances, transfers and further assurances that may be required to give effect to the appointment of the successor trustee.

## **23. Governing law**

This Declaration of Trust shall be governed by and construed in accordance with the laws of the Province of Alberta, the Applicable Tax Legislation and any other federal laws of Canada, which may be applicable.

## **24. Binding**

The terms of this Declaration of Trust will be binding on you, your heirs, executors, administrators or legal representatives and permitted assigns and our successors and assigns.

## **25. Compliance**

The TFSA shall, at all times, comply with all relevant provisions of Applicable Tax Legislation. You are bound by the terms and conditions and prescribed conditions imposed under Applicable Tax Legislation.

# Self-Directed First Home Savings Account declaration of trust

We, Canadian Western Trust Company, a trust company existing under the laws of Canada, agree to act as trustee for the ATB Securities Inc. Self-Directed First Home Savings Account (the "FHSA") created pursuant to the Application and this Declaration of Trust (the "Declaration") in accordance with the terms and conditions set out below:

**Some Definitions: In this Declaration, in addition to terms defined elsewhere herein,**

- "Act" means the *Income Tax Act (Canada)*, and the regulations promulgated thereunder;
- "Agent" refers to the "agent for the trustee";
- "applicable legislation" means all provincial and federal legislation governing the FHSA, the FHSA Assets and the parties hereto including, without limitation, privacy and securities legislation. Any reference to applicable legislation shall be deemed to include all such statutes and any regulations, policies, rules, orders or other provisions thereunder, all as may be amended, re-enacted or replaced from time to time;
- "Applicable Tax Legislation" has the meaning set forth in paragraph 1;
- "Application" refers to the application form to which this Declaration is attached;
- "Closing Date" has the meaning set forth in paragraph 12;
- "Contributions" has the meaning set forth in paragraph 4;
- "Purpose" has the meaning set forth in paragraph 2;
- "qualifying arrangement" between a holder and an issuer that is registered with the Canada Revenue Agency
- "qualifying home" means a housing unit located in Canada, or a share of the capital stock of a cooperative housing corporation, the holder of which is entitled to possession of a housing unit located in Canada, except that, where the context so requires, a reference to a share with a right to possession of a housing unit described means the housing unit to which the share relates;
- "qualifying individual", at a particular time, means an individual who
  - a. is a resident of Canada;
  - b. is at least 18 years of age; and
  - c. did not, at any prior time in the calendar year or in the preceding four calendar years, inhabit as a principal place of residence a qualifying home (or what would be a qualifying home if it were located in Canada) that was owned, whether jointly with another person or otherwise, by
    - i. the individual, or
    - ii. a person who is the spouse or common-law partner of the individual at the particular time;
- "qualifying withdrawal" of an individual means an amount received at a particular time by the individual as a benefit out of or under an FHSA if
  - a. the amount is received as a result of the individual's written request in prescribed form in which the individual sets out the location of a qualifying home that the individual has begun, or intends not later than one year after its acquisition by the individual to begin, using as a principal place of residence;
  - b. the individual
    - i. is a resident of Canada throughout the period that begins at the particular time and ends at the earlier of the time of the individual's death and the time at which the individual acquires the qualifying home, and
    - ii. does not have an owner-occupied home within the meaning of paragraph 146.01(2)(a.1) of the Act in the period
      - a. that begins at the beginning of the fourth preceding calendar year that ended before the particular time, and
      - b. that ends on the 31st day before the particular time;
  - c. the individual entered into an agreement in writing before the particular time for the acquisition or construction of the qualifying home before October 1 of the calendar year following the year in which amount was received; and
  - d. the individual did not acquire the qualifying home more than 30 days before the particular time;
- "RRIF" means a registered retirement income fund, as defined in the Act;
- "RRSP" means a registered retirement savings plan, as defined in the Act;
- "Successor Holder" your spouse or common-law partner, the survivor as defined in the Income Tax Act
- "Survivor" a spouse or common-law partner of the deceased holder before their death
- "We", "us", "our" and "Trustee" refer to Canadian Western Trust Company; and
- "You", "your" and "yours" refer to
  - a. until the death of the individual who has signed the Application, the individual; and
  - b. after the death of the individual who has signed the Application, the individual's survivor, if the survivor is designated under the Application to become a successor of the individual and is a qualifying individual and in each case, will be the "Holder" of the FHSA.

## 1. Registration

We will file an election to register the qualifying arrangement as an FHSA under the provisions of the Act and any applicable income tax legislation of a province of Canada (collectively, “**Applicable Tax Legislation**”). If registered, the FHSA will be a qualifying arrangement as defined in the Act and you will be known for the purposes of the Applicable Tax Legislation as the “Holder” of the FHSA.

## 2. Purpose of the FHSA

The primary purpose of the FHSA is for qualifying individuals to accumulate and invest funds to save for a down payment (the “Purpose”). The FHSA will be maintained for the exclusive benefit of you as the Holder, except as provided under paragraphs 20 as applicable.

## 3. Compliance

The FHSA shall, at all times, comply with all relevant provisions of Applicable Tax Legislation. You are bound by the terms and conditions imposed under Applicable Tax Legislation.

## 4. Contributions

Deposits to the FHSA made by you according to this Declaration and the Applicable Tax Legislation will be called the “Contributions”. Only you may make Contributions to the FHSA. Any dishonored cheques or other amounts that cannot be processed or are otherwise not accepted by the Trustee will not be considered to be Contributions to the FHSA. You will be solely responsible for determining the maximum limits for Contributions in any taxation year as well as any lifetime maximum limits as permitted by the Applicable Tax Legislation and for determining the taxation years, if any, in which such Contributions are deductible for tax purposes. We will hold the Contributions and any income or gains from them, in trust for you. We will invest and reinvest such income or gains accumulated in accordance with the instructions provided by you. These amounts, together with any amounts transferred to the FHSA under paragraph 13 hereto, will be called the “FHSA Assets”. The Trustee is not responsible for determining whether the aggregate of all Contributions made by you to the FHSA in respect of a year exceeds the maximum amount that is permitted to be contributed to the FHSA in respect of the year. No Contributions to the FHSA may be made after the Closing Date.

## 5. Investments

FHSA Assets will be invested and reinvested from time to time in accordance with your investment instructions or those of your assigns subject to paragraph 25 hereto. Investment instructions must comply with requirements imposed by us in our sole discretion. Your FHSA will not be limited to investments authorized by law governing the investments of property held in trust other than the investment rules imposed by the Applicable Tax Legislation for a FHSA. We will only act on your instructions if they are in a form acceptable to us and are accompanied by related documents as required by us, in our sole discretion. We may accept and act on any investment instructions, which we believe, in good faith, to be given by you. At any time, it is your responsibility to ensure all investments held in the FHSA are qualified investments under the Applicable Tax Legislation. We may be entitled to a fee for any cash deposited in an account at Canadian Western Bank or for any investments made with Canadian Western Bank or, if requested by you, another financial institution, and if so, such a fee shall accrue to us. If we do not have any instructions from you at the time we receive a cash Contribution, we will deposit your cash Contribution in an interest-bearing account with us or Canadian Western Bank. 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 FHSA. 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.

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 of the FHSA Assets, except as otherwise expressly provided in this Declaration. Other than its duties with respect to the FHSA Assets expressly stated in this Declaration, the Trustee shall not be required or expected to take any action with regard to an investment without your prior instructions.

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

## 6. Non-qualified investments and excess contributions

You are responsible for any tax, interest or penalties (collectively, the “Charges”) imposed under Applicable Tax Legislation or by any other provincial or federal regulatory authorities as it pertains to the Contributions and investments in the FHSA except for the Charges and Income Tax that the Trustee is liable under the Act and that cannot be deducted from the FHSA Assets. If the FHSA



becomes liable for any Charges, you will be deemed to have authorized us to sell or withdraw any of the FHSA Assets and obtain a fair market value that we, in our sole discretion, consider appropriate to pay any Charges to the FHSA and we will issue notice to you as prescribed under the Act in respect of any such transaction. We will not be liable for any loss or income taxes incurred as it pertains to the collection of unpaid Charges. It is your sole responsibility to provide appropriate documents supporting the fair market value of FHSA Assets not publicly traded on a recognized stock exchange within the meaning of Applicable Tax Legislation. Furthermore, we may deem FHSA Assets as worthless and remove them from the FHSA if you cannot provide documents supporting their fair market valuation as we may impose. We will not be liable for any Charges imposed on you or the FHSA under Applicable Tax Legislation or by any provincial or federal regulatory authorities related to the removal of FHSA Assets from the FHSA.

## 7. Accounting

We will maintain records relating to the FHSA reflecting the following:

- a. Contributions to the FHSA;
- b. Name, amount and cost of investments purchased or sold by the FHSA;
- c. Purchases and sales of investments we hold for you in the FHSA;
- d. Any income or loss earned or incurred by the FHSA;
- e. Withdrawals, transfers and any other payments from the FHSA; and
- f. The balance of the FHSA.

## 8. Income Tax Receipt

On or before March 31 of each year, we will send to you a receipt showing Contributions made by you during the preceding year. You will be solely responsible for ensuring that any deductions claimed for income tax purposes do not exceed the permitted deductions under the Applicable Tax Legislation.

## 9. Statements

We will issue statements for the FHSA at least once annually or more frequently as determined by us, in our sole discretion. Should there occur full or partial nonpayment of fees referred to in paragraph 16 hereof, we may, in our sole discretion, cease the issue of statements for the FHSA.

## 10. Withdrawals

You may, by written instructions or by other manner of communication acceptable to us, for any reason other than the Purpose, request that we pay you all or any part of the FHSA Assets. In order to make such payment, we may sell all or part of any of the investments, to the extent we deem appropriate. We will withhold any income taxes or other taxes and charges required on the withdrawal of funds and pay you the balance, after deducting any applicable fees and expenses. We will have no liability to you in respect of any sold FHSA Assets or for any losses that may result from such sales. In the event that you seek a withdrawal of

some, but not all, of the FHSA Assets, in accordance with the provisions herein, the Trustee reserves the right to require that all assets or certain assets other than those requested by you be distributed.

## 11. Refunds of Excess Contributions

You may send us written instructions to refund an amount to reduce the taxes otherwise payable under Part XI.01 of the Act relating to Contributions that exceed the limits permitted under Applicable Tax Legislation. We will not be responsible for determining the amount of any such refund. Prior to us processing your written instructions, you will ensure sufficient cash is in the FHSA to cover the amount requested or we will refund an investment in-kind equal to the fair market value at the time of the transaction. We will issue notice to you as prescribed under the Act in respect of any such transaction. Once the refund is issued and the notice provided, we no longer have any further liability or duty to you for the FHSA Assets that have been refunded.

## 12. Closing the FHSA

Your FHSA will cease to be an FHSA at the earliest of the following times:

- a. the end of the year following the year in which the earliest of the following events occur:
  - i. the 14th anniversary of you first opening an FHSA;
  - ii. you turn 70 years of age; or
  - iii. you make your first qualifying withdrawal; or
- b. the end of the year following the year of the death of the last holder;
- c. the time at which the FHSA ceases to be a qualifying arrangement; or
- d. the time at which the FHSA is not administered in accordance with the conditions imposed under Applicable Tax Legislation.

(the "Closing Date").

You must notify us in writing at least 90 days prior to the Closing Date. This notice must also give us your instructions to either transfer the FHSA Assets on or before the Closing Date to a RRSP or RRIF.

If we do not receive your notice and instructions, we will sell the FHSA Assets, subject to the requirements of the Act, and, if the cash in the FHSA, less any sale costs and other related fees and charges (the "FHSA Proceeds") exceeds \$10,000 (or such other amounts as we may in our sole discretion determine), we will prior to the end of that year transfer the FHSA Proceeds to a RRSP or RRIF for you and you hereby appoint us (and/or the Agent) as your attorney(s) in fact to execute all such documents and make elections as are necessary to establish the RRSP or RRIF. You will be deemed, as applicable, (i) to have elected to use your age to determine the minimum amount payable under the RRIF; (ii) not to have elected to designate your spouse or common law partner to become the successor annuitant of the RRSP or RRIF on your death; and (iii) not to have designated any beneficiary of the RRSP or RRIF. We will administer such RRSP or RRIF as trustee in accordance with the provisions

of the Act. If the amount of the FHSA Proceeds is less than \$10,000 (or such other amounts as we may in our sole discretion determine), we will deposit the same, net of any required withholding, in a non-registered interest-bearing deposit account on your behalf and we will be entitled to collect administration fees directly from that account.

### 13. Transfers to the FHSA

You may request a transfer of amounts to the FHSA from another "FHSA" or any other source permitted under Applicable Tax Legislation or other applicable legislation. The Trustee may, in its sole discretion refuse to accept the property into the FHSA for any reason whatsoever and authorizes to transfer out of the FHSA to the Holder, without notice, any property of the FHSA the Trustee believes is not or may not be a Qualified Investment. The terms and conditions of the FHSA will be subject to any additional terms or conditions that may be required to complete the transfer according to applicable legislation.

### 14. Transfers from the FHSA

You may request a transfer of all or part of the FHSA Assets to an FHSA, RRSP or RRIF that is registered under Applicable Tax Legislation under which you are the Holder or annuitant. All transfer requests may be subject to tax under Applicable Tax Legislation and any other related fees or costs. We will process your transfer request within a reasonable period of time after we have received all completed documents as required by us and applicable legislation. Once the transfer is issued, we no longer have any further liability or duty to you for the FHSA Assets transferred.

### 15. Transfers for Division of Property

You may request a transfer of all or part of the FHSA Assets to an FHSA or under which your spouse or common-law partner (within the meaning of Applicable Tax Legislation) is the Holder if the transfer is made under the terms of a decree, order or judgment of a competent tribunal, or of a written separation agreement, that relates to the division of property between you and your spouse or common-law partner or former spouse or common-law partner in settlement of rights arising out of or on the breakdown of your marriage or common-law partnership. Any transfer requests may be subject to any tax under Applicable Tax Legislation and any other related fees or costs (including fees charged by the Trustee, the Agent, or any third party payable to you). We will process your request within a reasonable period of time after we have received all completed documents as required by applicable legislation and us. Once the transfer is issued, we no longer have any further liability or duty to you for the FHSA Assets transferred.

### 16. Fees

We may charge you or the FHSA fees for services we provide to you or the FHSA from time to time in accordance with our current fee schedule. We will give you a minimum of 60 days notice of any change in our fees. We are entitled to reimbursement from you or the FHSA for all Trustee fees, mortgage foreclosure fees, disbursements, expenses and any other charges reasonably incurred by us in connection with the FHSA. We are entitled to deduct our unpaid fees, disbursements, expenses and any other charges from the

FHSA Assets and where insufficient cash is available, you authorize us to sell or withdraw any of the FHSA Assets and obtain a fair market value that we, in our sole discretion, consider appropriate to collect unpaid fees, disbursements, expenses and any other charges. We will issue notice to you as prescribed in the Act in respect of any withdrawals from the FHSA Assets and we will not be liable for any loss or income tax incurred as such loss or tax pertains to the collection of any unpaid fees, disbursements, expenses and any other charges.

### 17. Social Insurance Number

The social insurance number that you provide on the Application shall be deemed a certification by you of its truth and you give us your undertaking to provide additional evidence if we require the proof of its validity.

### 18. Proof of Age

Your statement of your date of birth in your application will be deemed to be a certification of your age and your undertaking to provide any further evidence or proof of age that may be required for the purpose of determining the Closing Date.

### 19. Designation of Beneficiary

Where applicable legislation permits, you may designate one or more beneficiaries to receive the FHSA Assets or the proceeds from the sale of the FHSA Assets on or after your death. You may make, change or revoke a beneficiary designation by providing us with a written instruction in a form acceptable to us. When the FHSA Assets or the proceeds from the FHSA Assets have been distributed to your designated beneficiary, even though the designation may be invalid as a testamentary instrument, we will be fully discharged of any liability under this Declaration.

### 20. Death of an FHSA Holder

Upon verification of a benefit entitlement under Applicable Tax Legislation, we will require, in our sole discretion, satisfactory evidence of your death and any other documents as it pertains to your death prior to proceeding with a request to distribute the FHSA Assets or the proceeds from the FHSA Assets less any tax under the Applicable Tax Legislation and any other related fees or costs. If you have designated more than one beneficiary under your FHSA, we will distribute FHSA Assets as designated by you. If we cannot establish a valid designation of beneficiary or beneficiaries, we will distribute the FHSA Assets to your estate. Once the FHSA Assets are transferred or the proceeds of the sale of the FHSA Assets are paid, we no longer have any further liability or duty to your heirs, executors, administrators or legal representatives.

### 21. Ownership and Voting Rights

We may hold any investment in our own name, in the name of our nominee or agent, in bearer form or in such other name or form, or with any such custodian, clearing corporation or depository, as we may determine. We may generally exercise the power of an owner with respect to the FHSA Assets, including the right to vote or give proxies to vote in respect thereof, or to sell assets to pay any taxes, assessments or charges in connection with the FHSA (other than those taxes, assessments and charges that the Trustee is liable for

under the Act and that can't be paid out of the FHSA Assets). You authorize us or the Agent, if the FHSA at any time has a cash deficit in one or more currencies, to charge against the FHSA interest on the cash deficit until such deficit is eliminated and to sell any of the FHSA Assets to eliminate the cash deficit and to select which FHSA Assets to sell. In exercising our rights and carrying out our responsibilities hereunder, we may employ agents and advisors, including legal counsel, and may act or not act on the advice or information of any such agent or advisor.

## 22. 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.

## 23. Instructions

The Trustee and the Agent shall be entitled to rely upon instructions in writing, received from you or from any person legally authorized in writing, in accordance with applicable legislation, by you to give instructions on behalf of you or from any person purporting to be you or such designated person, as if they were from you. Without limiting the generality of the foregoing, the Trustee and the Agent are hereby authorized to rely upon instructions sent by e-mail, facsimile, web applications, and other similar unsecured electronic methods ("Electronic Methods") by persons believed by the Trustee and Agent to be authorized to give instructions on behalf of you. Subject to applicable legislation, the Trustee or the Agent may, without incurring any liability to you or any other person, decline to act upon any instruction.

## 24. Notices

Any notices, demands, orders, documents or any other written communication we may forward to you by i) mail, postage paid, to your address indicated on the Application (or subsequent written notification of a new address which we acknowledge received) shall be deemed to be received by you three days after such mailing; and ii) any of the Electronic Methods shall be deemed to be received by you when directed to an electronic mail address at which you have consented to receive notice. You acknowledge that we shall be under no further obligation to locate you for the purpose of forwarding any such notices, demands, orders, documents, or any other written communication.

## 25. Restrictions and Security for Indebtedness

No advantage that is conditional in any way on the existence of the FHSA may be extended to you or to a person with whom you do not deal at arm's length, other than the benefits and advantages permitted under Applicable Tax Legislation. The Trust is prohibited from borrowing money or other property for purposes of the FHSA. The FHSA interests may be pledged or assigned as security for indebtedness in whole or in part in accordance with the provisions of subsection 146.6(11) of the Act. While there is a holder of the FHSA, anyone, other than you or us, is prohibited from having any rights under the FHSA relating to the amount and timing of distributions and investing of funds.

## 26. Amendments

We may from time to time, in our sole discretion, amend the terms of the FHSA and this Declaration, providing that such amendments shall not disqualify the FHSA as a qualifying arrangement within the meaning of Applicable Tax Legislation. We will obtain approval from the necessary provincial and federal authorities if any amendments are made and as required. We will provide you with 30 days' notice of any amendments.

## 27. Delegation of Duties

Without limiting our responsibility as Trustee of the FHSA, we may appoint agents and may delegate to our agents the performance of administrative and any other duties required under the FHSA and Declaration. We may engage accountants, brokers, lawyers or others for their advice and services and may rely on them for the same. We may pay to any agent or advisor a fee under the provisions of this Declaration, but we will not be liable for any acts, omissions or negligence of any of our agents or advisors, nor our reliance on our agents or advisors, so long as we have acted in good faith. We acknowledge that we are ultimately responsible for the administration of the FHSA.

## 28. Liability of Canadian Western Trust Company

The Trustee will exercise the care, diligence, and skill of a reasonably prudent person to minimize the possibility that the FHSA holds a non-qualified investment or a prohibited investment (as defined under the Act) for an FHSA. However, the Trustee is not responsible for determining whether any investment made on your instructions is or remains a "qualified investment" for your FHSA (as defined under the Act), and the Trustee is not responsible for any losses incurred by the FHSA as a result of any loss or diminution of the FHSA assets to be in compliance with Subsection 207.01(5) of the Income Tax Act. We are entitled to act upon any instrument, certificate, notice or other writing believed by us to be genuine and properly signed or presented. We shall be entitled to accept same as conclusive evidence of the truth and accuracy of the statements contained therein. When the FHSA is terminated and all of the FHSA Assets are paid out, we will be released and discharged from all responsibility or obligation in connection with the FHSA.

We, our officers, employees, and agents will accept investment instruction made in good faith by you or your authorized agent, dealer, or representative. We will not be liable for any expense, liability, claim, demands, taxes, damages, losses or penalties imposed on us or the FHSA as a result of us acting in good faith on your authority or the authority of your authorized agent, dealer or representative except for those taxes the Trustee is liable under the Act and that cannot be deducted from the FHSA Assets. We will not be liable for any Charges incurred in performing our duties under the FHSA, the Declaration or any additional terms and conditions which may apply to the FHSA under applicable legislation in connection with any transfers by the FHSA, unless caused by willful misconduct, reckless disregard or gross negligence by us, our officers, employees, or agents.

## 29. Indemnification

You, your heirs, executors, administrators, legal representatives or assigns and each beneficiary under the FHSA will at all times indemnify the Trustee, its directors, officers, employees and agents and their respective heirs, executors, administrators, personal representatives, successors, assigns and agents directly and out of the FHSA Assets for or any and all (i) expenses, liabilities, claims, demands, taxes, penalties or charges levied or imposed on us in respect of the FHSA and the FHSA Assets (except for those taxes and penalties the Trustee is liable under the Act and that can't be deducted from the FHSA Assets); (ii) costs incurred by us in performing our duties under this Declaration; or (iii) any losses incurred by us as a result of any, purchases, sales, or retention of any investments, payments or distributions out of the FHSA made according to these terms and conditions, or acting or declining to act on any instructions given to us, whether by you, a person designated by you or any person purporting to be you or the person designated by you.

The Trustee shall be indemnified out of the FHSA Assets 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 FHSA or the FHSA Assets, or to issue payment from the FHSA Assets, with or without instructions from you or in contradiction of your instructions. The Trustee or the Agent retains the ability to restrict trading, withdrawals and transfers upon receipt of an order or demand. The Trustee or the Agent will not be liable for any decreases in account value during the restriction period. In order for any related restriction to be removed from your account, you must provide proof satisfactory to the Trustee in its sole discretion, that it is no longer applicable. The Trustee may permit any duly authorized party to have access to and the right to examine and make copies of any records, documents, paper and books involving any transaction of the FHSA or related to the FHSA and shall similarly be entitled to indemnity out of the FHSA Assets for so doing. In the event the FHSA Assets shall be insufficient to indemnify the Trustee fully in any such regard, by establishing the FHSA you agree to indemnify and hold the Trustee harmless for any such costs, expenses, charges or liabilities.

## 30. Replacement of Trustee

We may at any time resign as trustee of the FHSA by giving you and the Agent 60 days written notice, or such shorter period of notice as the Agent may accept.

The Agent may remove us as trustee by giving you and us 30 days written notice, or such shorter notice as we may accept. Upon giving or receiving any such notice of our removal or resignation, the Agent will within the notice period appoint a successor trustee authorized under the Applicable Tax Legislation and any other applicable legislation (the "**Successor Trustee**"). If a Successor Trustee is not found within such notice period, we and/or the Agent may apply to a court of competent jurisdiction for the appointment of a Successor Trustee. Any costs incurred by us in securing the appointment of a Successor Trustee will constitute a charge against the assets of the FHSA and will be reimbursed from

the FHSA Assets unless borne personally by the Agent. Our resignation or removal will not be effective until a Successor Trustee is appointed.

In the event of a change of trustee, we will transfer the FHSA to the Successor Trustee within 30 days after the effective date of such change. Such a transfer will be subject to the requirements of paragraph 14 hereof.

## 31. Unclaimed Balances

The FHSA Assets may be deemed to be abandoned or unclaimed as per the definitions of any applicable 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 you, 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 your name, or to a new account which would be opened on your behalf.

You may at any time, or as prescribed in any applicable legislation, instruct the Trustee to return the property or proceeds of liquidation to your control and/or possession. Unless prescribed by applicable legislation, you have no further claim on amounts removed from your accounts, when such accounts are closed by the Trustee.

The Trustee and/or the Agent may charge reasonable expenses incurred in the administration of this process as set out in paragraph 16, hereto.

As part of the Trustee's program to manage unclaimed property, the Trustee may engage a third party in order to contact you. You authorize the Trustee to take this action and share your personal information reasonably required to contact you.

## 32. Amendments to this Declaration of Trust

We may from time to time amend this Declaration with the approval, if required, of the applicable taxation authorities as long as the amendment will not disqualify the FHSA such under the Applicable Tax Legislation. We will give you 30 days written notice of any amendment unless it is made for the purpose of satisfying a requirement imposed by the Applicable Tax Legislation, in which case we may or may not notify you within that period, or at all.

### 33. Governing Law

The terms of the FHSA will be construed, administered and enforced according to the laws of the Province of British Columbia and the federal laws of Canada applicable in British Columbia.

### 34. Reference to Statutes

All references herein to any statute, regulation or any provision thereof will mean such statute, regulation or provision as the same may be re-enacted, amended, or replaced from time to time.

### 35. Access to File (Applicable in Quebec Only)

You understand that the information contained in your application will be maintained in a file at the Agent's place of business. The object of this file is to enable us and the Agent, and our respective agents or representatives, to access your application, answer any questions you may have regarding the application and your Plan, and manage your Plan and your instructions on an ongoing basis. Subject to applicable legislation, personal information contained in this file may be used by us or by the Agent to make any decision relevant to the object of the file and no one may have access to the file except us, the Agent, our respective employees, agents and representatives, any other person required for the execution of our or the Agent's duties and obligations, you and any other person that you expressly authorize in writing. You are entitled to consult your file and to have anything in it corrected. In order to exercise these rights, you must notify us in writing.

### 36. Group FHSA

If the FHSA is part of a Group FHSA. You are required to be an employee or member, or the spouse or common-law partner of the employee or member, of the sponsoring organization of the Group FHSA named in the Application (the "Group Sponsor"). You accept the Group Sponsor as your Agent for the purposes of constituting the FHSA. Upon your ceasing to be an employee or member of the Group Sponsor and upon notification from the Group Sponsor being received by us, the following will apply:

- a. We will not accept any further contributions to this FHSA; and
- b. You shall provide us with written notice to transfer the FHSA to a self-directed FHSA with us or another financial institution which is not part of the Group FHSA. If we do not receive your written instructions within fifteen (15) days from the date we receive notice from the Group Sponsor, you will be deemed to have instructed us to transfer FHSA Assets and to act as your attorney to execute documents and make elections necessary to establish another FHSA, selected by us in our sole discretion and to apply for registration of such FHSA under Applicable Tax Legislation.

### 37. Binding:

The terms of this Declaration will be binding on your heirs, executors, administrators, or legal representatives and permitted assigns and our successors and assigns.