



## Municipal Finance Authority of BC

Information Regarding the Scotiabank Financial Services Agreement (the “Agreement”).

As part of the enrollment process to join the Scotiabank – Pooled High Interest Savings Fund (Scotiabank – PHISA), the Bank Act specifies that MFA disclose the Agreement to the Participants for review.

Please note, the relevant information contained in the Agreement that is applicable to the Participant is covered in Schedule “A – Terms and Conditions and Schedule “B” - Declaration of Trust to the Enrollment Agreement.

Any questions regarding either the Schedule “A” – or Schedule “B” of the Enrollment Agreement should be directed to the MFA at [invest@mfa.bc.ca](mailto:invest@mfa.bc.ca)

*\*\*\*The documents provided here are The Bank of Nova Scotia’s standard form documents as of the date of posting and are provided for informational purposes only. Neither the MFA nor The Bank of Nova Scotia make any representation that these documents are current or accurate. If you would like to see documents that are current, please contact the MFA.*

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# Scotiabank Financial Services Agreement (Canada)



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## 1. Your Agreement with Us

1.1 You acknowledge that this Agreement is entered into between you and us for valuable consideration and sets out the terms under which we will operate your accounts, carry out your instructions, and provide certain financial products and services to you.

1.2 **“You”, “your” and “Customer”** mean the customer who signs or otherwise agrees to be bound by this Agreement. **“We”, “our”, “us”, the “Bank” and “Scotiabank”** means The Bank of Nova Scotia. Please refer to Appendix A for other definitions used in this Agreement

1.3 When you sign the Scotiabank Financial Services Agreement Signature Form, you are bound by the terms and conditions of this Agreement in relation to all of your accounts with us and each instruction (including Payment Instructions) given on the account(s). When you sign any Service Agreement, you are bound by the terms and conditions of this Agreement in relation to the account(s) and service(s) described in the Service Agreement, including each instruction given on the account(s) or service(s). Each such account and service subject to the terms and conditions of this Agreement is a “Service”. This Agreement supersedes and replaces any previous Scotiabank Financial Services Agreement between you and us relating to the Services.

1.4 In the event of conflict or inconsistency between any provision of this Agreement and the corresponding provision in any Service Agreement or Service Materials, the applicable provision in this Agreement will always govern and prevail, unless the relevant Service Agreement or Service Material expressly states otherwise.

1.5 If you are a partnership, joint venture or other type of organization that is not incorporated, each individual or entity which is a member (but not the limited partners of a limited partnership) is responsible for all of your obligations, indebtedness and liability to us under this Agreement and each Service Agreement, even if the partnership, joint venture or other organization is dissolved or terminated or the membership or partners or constituting documents change. If you consist of more than one Person, each Person will be jointly and severally responsible for your obligations, indebtedness and liability to us.

## 2. The Services and Service Materials

2.1 Our agreement to provide any particular Service will be given by notice to you or signified by our starting to provide the requested Service.

2.2 You must: (i) promptly give us any information we reasonably request from you from time to time in connection with any Service or Service Agreement and (ii) immediately notify us of any changes to the information and documentation you give to us.

2.3 You agree not to use any of our Services or give any instructions for any unlawful or improper purpose, or otherwise in violation of applicable laws and rules, including Sanctions. You agree to perform your obligations under this Agreement and each Service Agreement in accordance with applicable laws and rules.

2.4 Except as contemplated in Section 2.5 below, you agree to make your own arrangements to provide the equipment and software you need to meet your desired levels of service, security and reliability. All equipment and software must meet our requirements and specifications for the Service we are providing. All purchase, installation and maintenance costs will be at your expense.

2.5 You agree to follow or use, as applicable, the most current procedures, forms, user guides, software, equipment and other

information and materials, whether in written or electronic form (collectively, the **“Service Materials”**) that we provide or make available to you for any Service. The following additional terms apply to the Service Materials:

(a) You will have a non-exclusive license to use the Service Materials solely for the Service(s) for which they are provided. You are not entitled to assign this license and the license for each Service Material will end immediately upon the termination of our provision of the relevant Service(s). You do not acquire any ownership or copyright interests or rights in the Service Materials.

(b) You will not disassemble or reverse engineer any software comprising any part of the Service Materials. You will not copy, remove, modify, transfer, adapt or translate the Service Materials without our consent.

(c) You will treat as confidential any software and written material forming part of the Service Materials and will not disclose them to any third party. This obligation will not apply to information that is in the public domain or that you can obtain from a third party without a breach of any obligation by that third party to us.

2.6 Except as expressly stated in this Agreement, each Service Agreement, and any related Service Materials, no representations, warranties and conditions of any kind, whether express, implied or statutory, are made by the Bank with respect to the Services. We expressly disclaim implied warranties of merchantability and fitness for a particular purpose. We do not warrant that the Services will operate error-free or without interruption or Disabling Codes.

2.7 You confirm that all credits to your account(s) are and will be beneficially owned by you and that the Services will not be used to conduct business on behalf of any Person other than the Customer (except as specified in a Service Agreement or as otherwise agreed in writing by the Bank).

2.8 Unless agreed by the Bank in a Service Agreement or otherwise in writing, amounts standing to the credit of any of your accounts will not bear interest payable to you.

## 3. Your Instructions and Authorizations

3.1 You authorize us to act on any instruction (including Payment Instructions) received from you or in your name, or on your behalf, or using your Authentication ID with respect to any Service or this Agreement, even if it differs in any way from any previous instruction sent to us, and to rely on such instruction as being valid, correct, authorized by, and binding on you.

3.2 We may at any time without prior notice refuse to act upon any instructions (including Payment Instructions) if: (i) to do so would cause you to exceed any daily processing limits or other restrictions to the applicable Service, (ii) there are not sufficient Cleared Funds in your account(s), (iii) the instructions are incomplete or inconsistent, illegible or do not comply with the rules of any applicable Clearing and Payment System or any other reasonable requirements for completion we specify to you, (iv) to do so may contravene a court order, garnishment, trust provision, or cause us to fail to comply with any laws and rules, or (v) otherwise for any proper or lawful reason.

3.3 You authorize us to record any telephone or other verbal communication, and that such recording may be used as conclusive evidence of the content of that communication in any legal proceeding.

3.4 We may, but are not obligated to, act on any oral instructions or any instruction (including Payment Instructions) that contains insufficient, inconsistent or incorrect information, does not comply with all requirements of the applicable Clearing and Payment System, or is otherwise not properly given.

3.5 You acknowledge and agree that, subject to Section 3.4 above, if the words and numbers of a Payment Instruction differ, the words shall prevail and be deemed to be correct. If there is a discrepancy between any Payment Instruction and the written confirmation of it or any such instruction is otherwise ambiguous, such instruction as we understood it will be taken as correct.

3.6 You must: (i) ensure that all your instructions to us meet our requirements with regard to form (and formatting requirements), signatures, verification and authorization, and (ii) give us specific authorization or additional information if reasonably required by us.

3.7 We are authorized to rely on any signature appearing on an instruction that is, or purports to be, a signature of the Customer or any Representative of the Customer, including any signature affixed by mechanical, electronic, or other non-manual means, as being valid, authorized by, and binding on, the Customer.

3.8 You shall be solely responsible for all instructions from, and actions of, your Representatives in relation to each Service.

#### **4. Your Payment Obligations**

4.1 You are responsible for settling payment of your Payment Instructions. Unless you have made specific arrangements with us, you will ensure that your accounts have sufficient Cleared Funds to settle any Payment Instructions at the time that you give us the instruction. The reported balances for your account may include amounts which are not Cleared Funds.

4.2 We may process your Payment Instructions and any charges to your accounts in any order we determine for efficient processing and that complies with applicable laws and rules. Where more than one Payment Instruction is presented for payment on your account, the order of processing may affect whether any such Payment Instruction is honoured if there are insufficient Cleared Funds in the account.

4.3 You acknowledge that we must clear Payment Instructions using one or more Clearing and Payment Systems and are bound by the rules of any Clearing and Payment Systems we use. These rules affect our ability to honour your request to Cancel Payment Instructions or stop payment on any such instructions and the procedures we must follow to settle your Payment Instructions and clear funds for you. You acknowledge and agree that these rules shall in no way whatsoever operate or be construed to impair or limit any rights and remedies we have against you.

4.4 We reserve the right to clear and transfer Payment Instructions through any financial institution, Clearing and Payment System, or other Person, and in any manner, we deem appropriate, whether they are drawn on your account or negotiated by you. You agree to grant us sufficient time to settle all instructions and acknowledge that we may, in our discretion, delay crediting your account or place a hold on any credit to your account until we receive the Cleared Funds for the Payment Instruction.

4.5 If we cannot charge a payment, chargeback, fee or expense to your account(s) with us because of insufficient funds or for any other

reason, or if we ask you to, you must immediately pay us any amounts you are required to pay under this Agreement or any Service Agreement, plus interest at the overdraft rate published in the Schedule of Rates or such other rate as may be agreed from time to time between you and us. Interest will be calculated on a daily basis and will be payable monthly or as we may otherwise require.

4.6 We may, but are not required to, confirm or obtain endorsements for Instruments. If a Service we provide involves accepting and processing unendorsed third party cheques, we may do so. You will reimburse us for any amount we cannot collect as a result of a problem in clearing an unendorsed third party cheque.

4.7 You waive presentment, notice of dishonour, protest, and notice of protest of any Instrument. You will be liable to us on any Instrument as if it had been duly presented, protested and notice of dishonour and protest had been given as provided by applicable laws and rules.

#### **5. Cancellation of Payment Instructions**

5.1 We may treat all Payment Instructions as final when given to us.

5.2 You may not reverse, change, recall, stop or cancel (collectively called "Cancel") any Payment Instruction without our consent. We will use commercially reasonable efforts to comply with your cancellation instructions, but you acknowledge that: (i) we must follow the rules of all applicable Clearing and Payment Systems and (ii) we will have no obligation to hold the affected funds or return the funds to you unless we are able to have the Payment Instruction cancelled and Cleared Funds are returned to us.

5.3 Each cancellation instruction must follow the procedures and forms set out in the Service Materials, or such other procedures or forms we may provide to you from time to time for this purpose, and must be received by us before final settlement.

5.4 You are responsible for any cost of a cancellation at the rates set out in the Schedule of Rates or such other rates as we may agree with you from time to time.

#### **6. Debits (including Chargeback and Set-Off)**

6.1 You irrevocably authorize us to charge and debit the following to, and against, any of your accounts with us:

- (a) the amount you ask us to pay in any Payment Instruction;
- (b) the amount of any Payment Instruction we have paid to you or credited to any of your accounts that is dishonored, rejected, returned or reversed (or otherwise not paid) in whole or in part for any reason (including fraud, loss or endorsement error) together with all related costs;
- (c) the amount of any counterfeit or otherwise invalid currency deposited or transferred to any of your accounts;
- (d) payment of any amount you owe us, including fees, charges, costs, expenses, and taxes; and
- (e) the amount of any deposit credited to any of your accounts in error or otherwise improperly.

6.2 We may at any time and from time to time, without notice to you, set-off and apply any credit balance you may have in any of your accounts with us or any other obligation of any kind that we or any of our affiliates may have to you (whether or not presently due), against any indebtedness, liability or obligation of any kind that you may have to us or to any of our affiliates (whether or not presently due) and you hereby irrevocably authorize us to do so. This right is in addition to any other rights that we may have with respect to set-off or combining accounts.



## 7. Foreign Currency

7.1 We may, in our discretion, accept payments or permit Payment Instructions to be given on your account in a currency other than the currency of the applicable account, but upon doing so, we may convert the incoming currency to the currency of the applicable account and in that regard, we may sell to you or purchase from you the amount of the other currency required to settle your instruction. The sale or purchase will be at our customer rate of exchange in effect at the time. Any costs for this exchange will be added to the sale amount payable by you or deducted from the purchase amount otherwise payable to you. We will charge the resulting total sale amount or credit the resulting net purchase amount to your account. We are not responsible for any loss you may incur due to changes in foreign currency exchange rates or funds not being available due to foreign currency restrictions.

## 8. Overdrafts

8.1 On occasion we may allow, in our discretion, one or more of your accounts with us to be overdrawn even though you do not have an overdraft facility. Interest is calculated daily on the closing overdrawn balance at the overdraft rate published in the Schedule of Rates. In addition, an overdraft handling fee applies for each Payment Instruction or other item which places your account in an overdrawn position and for each additional item that is paid while the account is overdrawn (normal transaction fees still apply). The overdraft handling fee is also published in the Schedule of Rates. Each such overdraft, together with accrued interest and related fees, will be immediately due and payable in full.

## 9. Verifying Your Accounts

9.1 We will provide you with periodic statements of your accounts in printed or electronic form.

9.2 You must review each statement carefully to check and verify all entries have been properly recorded. If you believe there are any errors, omissions or other discrepancies of any kind whatsoever, whether or not arising from unlawful or improper actions, you must tell us in writing within 30 days of the statement date. Except for errors, omissions and discrepancies that you identify to us in writing within that 30 day period (but in that case, subject to Section 16 of this Agreement), and except for amounts mistakenly or improperly credited to your account (which we may correct at any time), after that 30 day period it will be conclusively settled that:

- (a) all entries and the balance shown in your statement is correct;
- (b) all instructions affecting your account are authentic, duly authorized, properly issued and otherwise valid;
- (c) all amounts charged to your accounts are properly charged to you, including all interest and service charges, whether or not the statement discloses how interest and charges are calculated;
- (d) you are not entitled to be credited with any amount not shown on your statement; and
- (e) the use of any Service shown is correct.

9.3 After that 30 day period: (i) you cannot claim, for any purpose, that any entry on your statement is incorrect and will have no claim against us for reimbursement relating to an entry, even if the instruction charged to your account was forged, unauthorized or

fraudulent or was improperly charged for any other reason whatsoever, and (ii) we will be released from any claim whatsoever relating to your statement, including whether for negligence, breach of contract, or otherwise.

9.4 We will tell you in the Service Materials or by way of written or electronic notice if the nature of any Service requires more frequent statements, exchange of information, reports or verification than described generally for the account. The account verification conditions described above will apply regardless of the reporting frequency.

9.5 We will mail your statements of account to your latest address on our records or make them available for pick-up at the branch or electronically, as may be agreed in writing from time to time. You will notify us promptly, in writing, of any change of your address. If you do not receive a statement, or pick it up where this has been agreed, within 10 days after the end of the statement period, you must let us know within 15 days after the end of the statement period. If you do not let us know, you will be deemed to have received the statement 5 days after the end of the statement period, for all purposes, including the 30 day period to review the statement and advise us of any error.

## 10. Security Procedures

10.1 You agree to comply with all security procedures we communicate to you from time to time in relation to the Services, including those in this Agreement, each Service Agreement, and the Service Materials.

10.2 You agree to keep any tokens, keys, access codes, security devices, digital certificates, passwords, PIN, and verification procedures created or issued in relation to the Services (collectively, your “**Authentication ID**”) safe and confidential, and change them at least as often as specified in the security procedure.

10.3 We may, at our option, with no obligation to do so, establish and use procedures as we deem appropriate to verify the source and authenticity of instructions given to us, including contacting any of your authorized signatories, before acting on it.

10.4 You must immediately inform the Bank of any actual or suspected unauthorized use of any Service and if any of your Authentication ID becomes known to any third person who is not authorized to possess and use such Authentication ID, and you must promptly report to the Bank any other errors or irregularities in any Service. You agree to provide us with all information necessary for us to investigate any actual or suspected unauthorized use, error or irregularity in relation to any Service, including any documentation or testimony we may reasonably request.

10.5 You agree to maintain security systems, procedures and controls to effectively prevent and detect:

- theft of funds and Instruments;
- forged, fraudulent and unauthorized instructions (including Payment Instructions); and
- losses due to fraud, forgery, unauthorized access to any Service or other improper or unlawful actions (including unauthorized access to your Authentication IDs and equipment used in giving instructions).

Without limiting your agreement immediately above, you will:

- ensure that all Instruments are numbered sequentially;
- ensure that all Instruments are secured in the same way as large amounts of cash;

- ensure that cheque imprinters, facsimile signature devices, other equipment, and Authentication ID that might be used in giving instructions are effectively secured when not in authorized use;
- ensure that access to Authentication ID and related procedures required for giving instructions is limited to those who need access for their authorized duties on your behalf with us;
- conduct periodic audits of your systems, procedures and controls, and notify us promptly of all deficiencies and/or failures detected or identified as a result;
- ensure that those Persons responsible for reviewing the statements we provide you are not the same Persons responsible for preparation or security of Instruments, instructions and related matters; and
- diligently supervise and monitor the conduct and activities of all employees and other persons having any role in the preparation of instructions (including Payment Instructions), security relating to banking functions or other matters relating to your accounts.

10.6 The Customer is responsible for advising all applicable Persons of the delivery methods which may be used in connection with the Services. The Customer agrees with and assumes full responsibility for the risks associated with the communication methods used in connection with the Services, including the risks that the use of mail, courier, or unencrypted electronic communications (including fax and email): (i) may not be secure, private and confidential, (ii) may not be reliable and may not be received by the intended recipient promptly or at all, and (iii) may be subject to interception, loss and alteration.

## 11. Electronic Communications and Electronic Signatures

11.1 You authorize us to accept electronic communications and electronic signatures from you or on your behalf, and consent to receiving electronic communications from us, in relation to this Agreement, any Service Agreement, and the Services.

11.2 You agree that all electronic communications shall have the same legal effect as if in paper format with handwritten signatures and will constitute a “writing” for the purposes of all applicable laws and rules.

11.3 You acknowledge that (i) the form, format and delivery of each electronic communication will permit you to retain, store and subsequently access and retrieve such electronic communication without the requirement of any specialized or proprietary equipment or software from us and (ii) it is your responsibility to acquire and maintain the necessary computer equipment and software to deliver, receive, store, retain and subsequently access each electronic communication. You acknowledge that we may, but are not obligated to, store and maintain, and may delete, at our discretion, any electronic communication.

11.4 Our methods of storing, maintaining and retrieving any electronic communication, including any electronic signatures associated with such electronic communication, and our data systems, maintain the integrity of the electronic communication. You agree that electronic communications maintained by us will be admissible in any legal or other proceedings as conclusive evidence as to the contents of those electronic communications in the same manner as an original paper document. To the fullest extent

permitted by applicable laws and rules, you waive any defence, or waiver of liability, based on the absence of a written document in paper format, with handwritten signatures.

11.5 At our discretion, we may require: (i) electronic communications be delivered using technology acceptable to the Bank including the use of a secure electronic signature, and (ii) any electronic communication from you or on your behalf to be delivered to us in paper format or with handwritten signatures. If we require that you acknowledge your agreement by clicking the appropriate button, you will follow any instructions that we provide to indicate your agreement (which may include typing your name and/or clicking “I Agree” or similar button).

11.6 When your handwritten or electronic signature is delivered by facsimile, email or other electronic or digital transmission, such transmission shall constitute delivery of an executed copy of the document. If you use an electronic signature to indicate your agreement, you shall ensure that your electronic signature is attached to or associated with the relevant electronic communication.

11.7 In accordance with our internal documents retention policies as amended and replaced from time to time, we may retain a copy (in any form, including photocopy, electronic image, and CD-ROM) of any and all documents in respect of your Services, instead of any original paper copies. You agree that our records containing such copies will be considered to be conclusive evidence of the original documents and their contents for all purposes.

## 12. Our Service Obligations

12.1 Subject to Section 14, we are under no obligation to provide you with any Service. Each Service will be provided in our sole discretion.

12.2 You authorize us to retain the services of any financial institution, Clearing and Payment Services provider, delivery service, communications provider, or other third party service provider as we consider necessary or desirable in connection with the Services.

12.3 You acknowledge that our provision of each Service will be subject to applicable laws and rules and agree that we may comply with: (i) any lawful demand from a governmental or regulatory authority, Clearing and Payment System, or to the extent applicable to the provision of any Service to you, any other Person and (ii) any garnishment, attachment, levy, administrative order, subpoena, summons, or other legal or administrative process.

## 13. Fees and Charges

13.1 You agree to pay the fees, charges and interest promptly when due, as set out in the Schedule of Rates or any other agreed fee arrangement, any Service Agreement, and each statement relating to your accounts. You also agree to pay all taxes we must collect on the Services we provide to you. If any Service to you is cancelled in the first 15 days of a month, you will be charged, and you agree to pay, a prorated fee for that month equal to 50% of the average monthly billed amount for such Service over the prior 3 month period. If any Service to you is cancelled after the 15th day of a month, you will be charged and you agree to pay a monthly fee for that month equal to 100% of the average monthly billed amount for such Service over the prior 3 month period.

13.2 We may change any of our fees, charges or interest rates. If we do, we will give you notice at least 30 days before they go into effect.

13.3 We will advise you of fees, charges, interest and other amounts we deduct from your accounts.

13.4 You agree to pay us for any out-of-pocket or other expenses we incur at your request or in the course of providing a Service to you. These expenses include communication charges, transmission charges, and transportation or delivery charges incurred by us.

13.5 If the fees and charges you pay are based on your agreement to maintain a specified level of transaction volumes or deposits, you agree that:

- (a) we reserve the right to revise the fees and charges if actual transaction volumes during any 12 month period differ by more than 15% from the specified levels;
- (b) we reserve the right to revise the fees and charges if actual average deposit balances during any 12 month period (beginning 3 months after the contract starting date) differ by more than 15% from the specified levels; or
- (c) if you cancel the applicable Service under this arrangement before the first anniversary of the Service Agreement, we reserve the right to collect the full amount of fees and charges that you would have been expected to pay over the full 12 month period.

13.6 If we pay you interest on your deposit balances based on your agreement to maintain a specified level of transaction volumes or deposits, you agree that we reserve the right to revise the interest arrangement if:

- (a) actual transaction volumes during any 12 month period differ by more than 15% from the specified levels, or
- (b) actual average deposit balances during any 12 month period (beginning 3 months after the contract starting date) differ by more than 15% from the specified levels.

## 14. Holds, Changes, Suspensions and Termination

14.1 We have the right to make additions, deletions or other changes to any Service and to amend or replace any Service Materials. We will give you notice at least 30 days before making any such changes that materially alters the nature of a Service. Your continued use of the relevant Service after the effective date of the change is an acknowledgement by you that you agree to and accept such change.

14.2 We will give you at least 30 days' prior notice of any amendment we make to the terms of any Service Agreement or this Agreement. Your continued use any Service after the effective date of such amendment, you will be deemed to have accepted the amendment.

14.3 This Agreement and any Service Agreement may be terminated by you or us for any reason, upon at least 30 days' prior written notice to the other, subject to our overriding right of termination in Section 14.4. Any notice of termination of this Agreement will be deemed to also constitute written notice of termination of any outstanding Services and Service Agreements.

14.4 We may immediately cancel or suspend any or all Services and terminate any Service Agreement and this Agreement (including freezing or placing a hold on any funds in any account) at any time without notice if: (i) required by any laws and rules, (ii) you default on any obligations to us under this or any other agreement to which you and we are parties, and applicable grace periods (if any) in such agreement shall have lapsed, (iii) any representation or warranty made by you to us in this Agreement or any other

agreement is or becomes untrue, (iv) you become insolvent or bankrupt, (v) a receiver is appointed over a significant amount of your assets, (vi) we have reason to suspect that you are engaged in any improper or unlawful activity in connection with the Services, or are the victim of fraud or identity theft, (vii) we have notice of a possible claim or interest under any court order, statutory demand, or other governmental legislation, or (viii) we believe that it is necessary to terminate our relationship with you in order to protect our customers or employees from physical harm, harassment or other abuse, or any other circumstance or event which we believe has created or could create reputational risk or harm to the Bank.

14.5 If any Service is cancelled, you will be liable for all instructions (including Payment Instructions and pre authorized payments) issued before it was cancelled and for all payments required to be made by this Agreement and the relevant Service Agreement (if any).

14.6 If any Service is cancelled, you will promptly: (i) delete from your computer hardware any Service Materials for the Service consisting of software and (ii) return to us in good condition any keys, equipment and Service Materials which we have provided to you regarding the Service.

## 15. Inactive Accounts

15.1 We may elect not to send a statement to you regarding any account if there is no activity other than charges assessed or interest accrued, as applicable, in the account since either the date it was opened or the date of the last statement we have sent you.

15.2 If you have not had any contact with us concerning an account for at least one year, we may elect to designate the account as inactive. Inactive accounts cannot be accessed through any automated banking machine or similar Service. You will need to contact the Scotiabank branch where the account is located to reactivate access to an inactive account. We may charge reasonable service fees to maintain an inactive account. We may close an account if you have not had any contact with us concerning the account and there has been no activity in the account for at least one year, and the balance of the account is nil. We will comply with applicable laws and rules concerning abandoned accounts, which may require us to transfer balances to the federal government.

## 16. Limits of our Liability

**16.1 You acknowledge that our fees for Services may be small in relation to the value of your instructions from time to time and our willingness to provide the Services is based on the liability limitations contained in this Agreement and the Service Agreements. Without limiting the effect of any greater limitations on our liability provided elsewhere in this Agreement or in any Service Agreement, you agree that Scotiabank's liability for any Loss you suffer or incur in connection with the provision of any Service, or refusal to provide any Service, shall be limited exclusively to actual proven damages arising directly from Scotiabank's gross negligence or wilful misconduct. Under no circumstances will Scotiabank be liable for any indirect, consequential, incidental, special, punitive, aggravated, or exemplary Losses (including loss of data, lost profit, and opportunity costs), anticipated or actual, and whether or not the likelihood of such Loss was or ought to have been known to us at any time during the provision of the relevant Service. Any Loss for which we may be liable to you will be calculated from**



**the time we should have made the funds available to you until the time we did make them available, or until you should have reasonably have discovered their loss, whichever is earlier.**

**16.2 Notwithstanding the foregoing, Scotiabank will not be liable for, and is hereby released from, any Loss resulting (in whole or in part) from:**

- (a) the actions of, or failure to act by, you and your Representatives, including your failure to fulfil any of your obligations under this Agreement or any Service Agreement, or to comply with any instruction we may provide to you from time to time in connection with any Service;
- (b) the actions of, or failure to act by, correspondent banks, Clearing and Payment Systems, delivery service, utility or communications provider, or any other Person;
- (c) mistakes, errors, omissions, inaccuracies in or inadequacies of any information furnished to or obtained by Scotiabank in connection with the Services;
- (d) any Instrument or instruction that is forged (in whole or in part), has a material alteration or is otherwise fraudulent or unauthorized;
- (e) any cause beyond our control, including Force Majeure or electrical, computer, mechanical or telecommunications malfunction or failure;
- (f) a breach of any applicable laws and rules by you, or any Compliance Action taken by us, in relation to your use of any Services, including resulting from any instruction by you to us; and
- (g) the transmission of any Disabling Code and any related damage to your or any other Person's computer system.

## **17. Indemnity**

17.1 Except to the extent caused directly from our gross negligence or wilful misconduct, you agree to indemnify and hold Scotiabank harmless from any and all Losses suffered or incurred by Scotiabank arising out of or relating to the Services, including:

- (a) any Compliance Action;
- (b) any Payment Instruction honoured, processed, negotiated, settled, changed, cancelled, reversed or refused;
- (c) your failure to properly provide information or comply with this Agreement or any Service Agreement or any breach of a representation or warranty made by you to us; or
- (d) our compliance with any garnishment, attachment, levy, administrative order, subpoena, summons, or other legal or administrative process.

17.2 Scotiabank will notify you if any claim arises for which you have agreed to indemnify us. We will each cooperate in dealing with the claim, including making available all necessary information, documentation, and witnesses. You agree that any costs (including any legal fees, disbursements, third party costs, or monies paid as a result of judgment or settlement) will be at your expense. You may defend a claim on our behalf subject to the following conditions: (i) you obtain our prior written consent before commencing the defence, (ii) your interests must not conflict with ours, (iii) you will not cause us to be exposed to further possible Loss, and (iv) you will not agree to any settlement of the claim without our prior written consent.

## **18. Notices**

18.1 Except as otherwise provided in this Agreement or any Service Agreement, we may give you any notices by any means of written or

electronic communication, or by posting notice in our branches or on our website, and any of those will be adequate delivery of such notice. We will use your last contact information on our records and, except as otherwise provided by laws and rules, you will be deemed to receive such notice five days after mailing, or at the time of delivery of a personal delivery, the sending of an electronic communication, or the posting of the notice in our branches or on our website.

18.2 You designate electronic mail and the internet banking services to which you have subscribed or will subscribe (each a "**Designated Information System**") as information systems through which we can deliver notices, documents and other information that we are required by applicable laws and rules to provide to you in relation to the Services, including product and service features, rates, fees, and our policies, procedures and practices ("**Regulatory Notices**"). With immediate effect, you consent to receiving Regulatory Notices through the Designated Information System. You may revoke your consent at any time. You are responsible for informing us of any changes to your contact information related to the Designated Information System. It may take up to 10 Banking Days for your revocation or notice of change to take effect. Regulatory Notices through a Designated Information System will be retained by us and made available to you for 7 years. You are responsible for printing or downloading a copy of each Regulatory Notice.

18.3 Unless otherwise specified in an applicable Service Agreement, you must deliver any notices or communications concerning this Agreement or any Service to the branch where your applicable account is located.

## **19. No Assignment**

19.1 You may not assign this Agreement or any Service Agreement without our prior written consent.

19.2 The terms and conditions in this Agreement and each Service Agreement are binding on you and your heirs, executors, administrators and other legal representatives, successors and permitted assigns, as applicable.

## **20. Collection, Use, Disclosure and Retention of Information**

20.1 You authorize us to collect, use, disclose and retain information about you from time to time for any purpose relating to our relationship with you, including:

- to open and operate your account(s) and provide other Services to you;
- to comply with regulatory requirements (including "know your customer" requirements);
- to verify the information you have given from time to time;
- to comply with valid requests for information about you from regulators, government agencies, public bodies, auditors, and other Persons who have a right to issue such requests;
- identifying products and services of our affiliates or subsidiaries that may be of interest to you;
- to prevent or protect against any fraud or illegality, or as otherwise required or permitted by applicable laws and rules;
- to comply with legal process or subpoena;
- in response to credit enquiries from financial institutions or any other Persons with whom you have or propose to have financial or other business dealings;

- to maintain the accuracy and integrity of information held by credit reporting agencies;
- if it is otherwise reasonably necessary to protect our interest under this Agreement or any Service; and
- as otherwise set out in the Scotiabank Privacy Agreement.

You also authorize any Person we may contact in connection with the above purposes to provide us with such information.

20.2 If you have dealings with any of our affiliates or subsidiaries, you authorize us and such affiliates and subsidiaries to (where not prohibited by applicable laws and rules) share information about you in our respective records with each other so that we may each consolidate information about you for use by each of us for any of the purposes described in Sections 20.1.

20.3 You request and authorize us and our affiliates and subsidiaries to each communicate with you directly, including via electronic communications, with information and offers on products or services we or they offer from time to time that may be of interest to you. You may choose not to receive such communications from us, or our affiliates and subsidiaries, by notifying the branch at which your account with us is maintained or as otherwise instructed in the communication. You will not be refused any Services or other benefits if you withdraw your consent.

20.4 You represent and warrant to us that, to the extent any information we obtain about you from time to time consists of personal information of your employees, officers, directors, authorized signatories or other Representatives, you have obtained the consent of such individuals for the collection, use and disclosure by us and our affiliates and subsidiaries of their personal information for the purposes you have authorized in this Section 20, including their consent to receive communications set out in Section 20.3.

20.5 You may obtain more information about our privacy practices, including how we collect, use and disclose personal information, by contacting the branch at which you maintain an account with us or by reading the Scotiabank Privacy Agreement available at [www.Scotiabank.com](http://www.Scotiabank.com).

## 21. Your Representations and Warranties

21.1 You represent and warrant to us on a continuing basis for the term of this Agreement:

- you are duly organized, validly existing and in good standing under the laws of the jurisdiction of your incorporation or organization, are duly qualified to do your business and in good standing in each jurisdiction where qualification is necessary for your business, and you have not commenced any dissolution or reorganization proceedings;
- you have all necessary power and authority and obtained all consents, authorizations, registrations, and approvals required to enter into and perform your obligations this Agreement and each Service Agreement, and this Agreement and each Service Agreement have been duly authorized, executed and delivered by you;
- the execution, delivery and performance by you of this Agreement and each Service Agreement: (i) does not contravene any provision of your constating or other charter documents, by-laws, resolutions of directors or shareholders, or any shareholder agreement (as may be applicable), (ii) does not contravene or violate any laws and rules of your jurisdiction of incorporation or formation (as applicable) or

any other legal requirement applicable to you, and (iii) will not constitute, or result in any breach of, or default under, or be in conflict with, any deed, indenture, franchise, licence, judgment, agreement or instrument to which you are a party or by which you are bound;

- all written information and data you have provided to us in connection with this Agreement or in any Service Agreement (as updated from time to time) are true and correct in all material respects and do not omit to state a material fact necessary in order to make the statements contained in such information and data, taken as a whole, not misleading;
- the Customer and each Person using a Service on the Customer's behalf possess the necessary signing authority and other power and authority to bind the Customer; and
- to the best of your knowledge, neither you nor any of your subsidiaries, directors, officers, employees, agents, or affiliates is a Sanctioned Person nor do you, nor any such other entity or individual, operate, possess, own, charter, or use a vessel that is listed, designated or sanctioned under any Sanctions.

## 22. Compliance Action – Sanctions

22.1 You acknowledge and agree that:

- we and our affiliates and subsidiaries and third party service providers are required to act in accordance with, and it is our policy to comply with, the laws and rules of various jurisdictions, including those which relate to Sanctions and the prevention of money laundering, terrorist financing, bribery, corruption and tax evasion; and
- we may take any action (a "**Compliance Action**") that we, in our sole discretion, consider appropriate to act in accordance with Sanctions or other laws and rules. Such Compliance Action may include the interception and investigation of any payment, communication or instruction, or other information; the making of further enquiries as to whether a Person is subject to any Sanctions; and the refusal to process any transaction or instruction that does not conform with Sanctions.

## 23. Tax Status

Customer represents and certifies that it is a Canadian resident for tax purposes, unless it has advised Scotiabank otherwise in writing. If Customer becomes a non-resident of Canada for Canadian tax purposes, Customer will notify Scotiabank promptly (but in any event within 30 days of becoming a non-resident) and advise of its new country of residence.

23.2 If the Customer is a non-resident of Canada, Customer acknowledges that transactions outside Canada may have tax consequences in Canada. Prior written advice should be obtained for such transactions from qualified tax advisors in Customer's domicile. A copy of such advice may be requested by Scotiabank prior to opening of accounts, permitting a transaction, or anytime thereafter. Scotiabank will withhold taxes only where required to do so by law, otherwise Customer is responsible for any taxation that may be incurred on accounts or transactions.

23.3 Unless the Customer informs Scotiabank otherwise in writing, Customer represents and warrants that it is not a US Person for the purposes of the US Federal income tax and Customer is not acting for, or on behalf of, a US Person. Customer acknowledges that a false statement or misrepresentation of tax status by a US Person could lead to penalties under US law. If Customer is or becomes a

US Person, Customer agrees to notify Scotiabank promptly but in any event within 30 days of becoming a US person and file such additional forms and take all other steps as Scotiabank shall requests, including providing Scotiabank with a completed IRS Form W-9.

23.4 You acknowledge that the information you may have provided regarding your tax jurisdiction and Tax Identification Number (TIN) is true and complete and that you undertake to advise Scotiabank immediately of any change in circumstance that causes the information provided to be incorrect. This information may be reported to the Canada Revenue Agency who may in turn provide the information to the appropriate tax authorities of any additional country in which you have tax filing obligations.

## 24. Intellectual Property

24.1 Unless otherwise indicated, all trademarks, logos and other intellectual property rights in or relating to the Services are the property Scotiabank. Except as provided in this Agreement or any Service Agreement and related Service Materials, you shall not reproduce, transmit, sell, display, distribute, establish any hyperlink to, provide access to, modify, or commercially exploit in whole or in part any part of a Service or Service Material, without our prior written consent.

24.2 Neither party will use the other's name, trademarks or other intellectual property in any advertisement, marketing or other public message without the other party's prior written consent.

## 25. Other General Terms

25.1 This Agreement and each Service Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

25.2 In this Agreement and each Service Agreement: (i) the words "include", "includes", and "including" will be interpreted to mean "including, without limitation", (ii) headings of particular sections are inserted only for convenience and will not be applicable to the interpretation of the section, (iii) where the context requires, words and phrases written in the singular will be construed to include the plural and vice versa, and (iv) when the laws of the Province of Quebec are applicable, the words "joint and several" shall mean "solidarily".

25.3 If any provisions of this Agreement or any Service Agreement is unlawful or unenforceable for any reason, each such will be without force or effect without invalidating or affecting the validity and enforceability of the remaining provisions of this Agreement or the Service Agreement, as applicable. To the extent permitted by applicable law, each of you and we hereby waive any provision of law that renders any provision in this Agreement or any Service Agreement unenforceable.

25.4 You acknowledge and agree that nothing in this Agreement or any Service Agreement creates any agency, fiduciary, joint venture or partnership relationship between us and you or any other Person. This Agreement and each Service Agreement is only for the benefit of Scotiabank and the Customer, and is not intended to confer any legal rights, benefits, or remedies on any other Person except to the extent otherwise provided in this Agreement or any Service Agreement.

25.5 To the extent that you have or hereafter acquire any immunity (including sovereign, crown or similar immunity) from jurisdiction of any court, suit or legal process (whether from service of notice, injunction, attachment, execution or enforcement of any judgment or otherwise), you irrevocably waive and agree not to claim such immunity.

25.6 You agree to do, execute, acknowledge and deliver such acts, deeds and agreements as may be reasonably necessary or desirable to give effect to the terms of this Agreement and each Service Agreement as we may request from time to time.

25.7 We retain all our rights under any law respecting loans, set-off, deposits and banking matters, even if they are not described in this Agreement or any Service Agreement.

25.8 Our rights under this Agreement, each Service Agreement, and applicable law are cumulative, and we can exercise any right without losing any other right. We can delay enforcing any right without losing that right. We can also waive any right on one occasion, or on multiple occasions, without losing our ability to exercise that right in the future.

25.9 Notwithstanding any termination of this Agreement, Sections 13, 14.5, 14.6, 16, 17, 18, 19.2, 20, and 25 (together with the related definitions in Appendix A) shall survive and remain in full force and effect.

25.10 This Agreement and each Service Agreement (including any signature forms, schedules, or other related documents) may be executed in one or more counterparts, each of which when taken together shall comprise one and the same agreement. This Agreement and each Service Agreement, once signed by you and accepted by us, shall be a binding agreement between us.

25.11 It is the express wish of the parties that this Agreement, and every Service Agreement, and any supplemental documents be drawn up and executed in English. C'est la volonté expresse des parties que cet accord et chaque contrat de Service et tout document complémentaire être élaboré et exécuté en anglais.

## Appendix A - Definitions

As used in this Agreement, the following words and phrases have the following meanings:

**"Agreement"** means this Financial Services Agreement (including this Appendix A), as amended, extended, restated or otherwise modified from time to time.

**"Authentication ID"** has the meaning ascribed to it in Section 10.2.

**"Banking Day"** means any day that is not a Saturday, Sunday, statutory or civic holiday (federal or provincial), or any other day on which banks are required or permitted to be closed in the Province(s) or Territory(ies) where the applicable account(s) is located and/or Service is provided.

**"Cancel"** has the meaning ascribed to it in Section 5.2 and "cancellation" has the comparable meaning.

**"Cleared Funds"** means cash or any funds from any deposit which have been finally settled through the Clearing and Payments System that we use for settling payments in connection with Payment Instructions.

**"Clearing and Payment Systems"** means the payment and clearing settlement systems applicable to any of the Services, including the Payments Canada, NACHA, S.W.I.F.T., and CDS Clearing and Depository Services Inc.

**"Compliance Action"** has the meaning ascribed to it in Section 22.1(b).

**"Designated Information System"** has the meaning ascribed to it in Section 18.2.

**"Disabling Code"** means any contaminating or other destructive code, design, routine or other mechanism (including clock, timer, counter, virus, worm, software lock, drop dead device, Trojan horse routine, trap door, or time bomb) that may be used to access, modify, replicate, distort, delete, damage or disable any electronic or other digital channel, including any related hardware or software.



**“electronic communication”** means any agreement, transaction, instruction, document, information, disclosure, notice, confirmation, inquiry, request, response, or other communication that is sent or stored by means of any electronic or other digital transmission.

**“electronic signature”** means a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an electronic communication and includes a secure electronic signature as may be prescribed by applicable law or otherwise required by us.

**“Force Majeure”** means any event, act or omission beyond the reasonable control of such party (exercising reasonable foresight and diligence), including labour dispute, act of God, flood, fire, lightening, severe weather, earthquake, act of terrorism, war, revolution, civil commotion, act of public enemies, blockade, embargo, pandemic disease, or the application of any laws or rules.

**“instructions”** means a request, direction, or other instruction with respect to any Service or this Agreement, and includes where the context applies, any Payment Instruction.

**“Instrument”** means any document evidencing or that can be used to evidence a Payment Instruction, including cheques, money orders, promissory notes and other bills of exchange and other orders (written or electronic) for the payment of money, clearing item or other value item (including any image or reproduction).

**“laws and rules”** means as to any Person or Service: (a) the laws, statutes, codes, acts, ordinances, orders, regulations, directives, guidelines, and other requirements of all domestic and foreign governmental and regulatory authorities having jurisdiction over the Person or Service (including the Office of the Superintendent of Financial Institutions (Canada) and any Province, Territory or other government of Canada) and (b) the rules, standards, conditions, and other requirements of any Clearing and Payment Systems applicable to the Person or Service (including Rule H-1 and Rule F-1 of the Payments Canada applicable to cash management pre-authorized debits); each as may be amended or replaced from time to time. You can access the rules of Payments Canada available to the public on the internet at [www.Payments.ca](http://www.Payments.ca).

**“Losses”** means all liabilities, losses, damages, claims and demands (including third party claims and demands), fines, damages, penalties, expenses incurred (including legal expenses based on the solicitor's fees charged) and other costs claimed against or sustained or incurred by any Person.

**“OFAC”** means the Office of Foreign Assets Control (of the US Department of the Treasury).

**“Payment Instruction”** means a request to transfer funds to or from, or receive funds in, any of your accounts with us, whether in Canadian dollars or other currency agreed to by us, whether pursuant to Instruments, endorsements, pre-authorized payments, deposits, electronic transfers, electronic data transmissions, or any other orders for the payment or receipt of money, including transfers between accounts and which may have the signature electronically or mechanically produced or imprinted as an alternative to handwritten signature but in all cases must be given by a method that is acceptable to us, in our discretion, at the time they are given.

**“Person”** means, as the context requires, any individual, firm, partnership, company, corporation or other body corporate, government, governmental body, agency, trust, instrumentality, unincorporated body of persons or association.

**“Regulatory Notices”** has the meaning ascribed to it in Section 18.2.

**“Representatives”** in relation to the Customer, includes the Customer's employees, officers, directors, co-ordinators, users, cardholders, contacts, delegates, and agents.

**“Sanctioned Country”** means at any time a country, region or territory which itself is the subject or target of any Sanctions.

**“Sanctioned Person”** means a Person that is, or is directly or indirectly owned or controlled by a Person or Persons that is, listed, designated or sanctioned under any Sanctions or any Person operating, organized or resident in a Sanctioned Country.

**“Sanctions”** means any trade, economic or financial sanctions laws, regulations, executive orders, embargoes or restrictive measures imposed, administered or enforced by a Sanctions Authority.

**“Sanctions Authority”** means any one or a combination of: (a) the United Nations; (b) the United States of America; (c) Canada; (d) the United Kingdom and each respective member of the European Union; and (e) the governments and official institutions or agencies of any of (a) to (d) above, including the Security Council of the United Nations, OFAC, the United States Department of State, Global Affairs Canada and Her Majesty's Treasury of the United Kingdom.

**“Schedule of Rates”** means the schedule, guide or other document we deliver to you or otherwise make available to you in our branches or on Scotiabank's website (as updated from time to time) setting out the standard fees, interest, and other charges applicable to the Services, which document shall be deemed to comprise part of this Agreement.

**“Service”** has the meaning ascribed to it in Section 1.3.

**“Service Materials”** has the meaning ascribed to it in Section 2.5.

**“Service Agreement”** means each offer letter or agreement (including each Cash Management and Payment Services Agreement and the service schedules attached thereto, or otherwise comprising a part thereof, from time to time) from time to time signed by you, or otherwise accepted by the Bank from you, for the provision of one or more financial products or services to you and made subject to the terms and conditions of this Agreement; each as may be amended, extended, restated or otherwise modified from time to time.

**“US Person”** means a US person as defined under the US Internal Revenue Code, including as applicable: (i) a US citizen (including persons with dual citizenships), (ii) US lawful permanent resident (e.g., a person who has obtained a green card or who has been granted the right to lawful permanent residence in the US), (iii) persons who meet the substantial presence test for US residency for US tax purposes, (iv) US corporation, (v) US partnership, and (vi) any trust (revocable or irrevocable) of which one or more US persons have the authority to control all substantial decisions and a US court can exercise primary supervision over the administration.