

**The Toronto-Dominion Bank**  
**Terms and Conditions for Correspondent Banks**

**Effective October 1<sup>st</sup>, 2008**

These Terms and Conditions form an agreement (the “Terms and Conditions”) between The Toronto-Dominion Bank (“TD”) and each customer (“Correspondent”) maintaining one or more demand deposit accounts with TD (all such accounts are herein called the “Account”). For the purpose of these Terms and Conditions, a Correspondent is defined as a bank or non-bank financial institution holding an Account. By accepting this documentation, or by using the Account, the Correspondent agrees to be legally bound by these Terms and Conditions, as amended from time to time. Other terms and conditions contained in a separate agreement (each called a “Service Schedule”) or instructions and user manuals (the “Guides”) between Correspondent and TD related to certain account services provided by TD shall also apply to the Account. All prior general terms and conditions are superseded by this document.

TD reserves the right to amend these Terms and Conditions, and shall provide the Correspondent with prior notice of such changes. Changes to these Terms and Conditions required by law or regulation may be implemented immediately, if so required, or otherwise upon reasonable notice to Correspondent.

**Accounts**

**Authorized Signatories**

Correspondent may provide TD with a written document, in form and substance satisfactory to TD, outlining the names, signatures and titles of persons who have authority to bind the Correspondent in all transactions involving the Account including but not limited to the signing of cheques (the “Authorized Signatories”). The Correspondent is responsible for notifying TD of any changes to the Authorized Signatories. TD will not be bound by any changes until receipt of an amended document setting out the new Authorized Signatories.

Alternatively, Correspondent may utilize authenticated SWIFT message formats or other agreed upon message formats to communicate with TD and TD shall be entitled to rely upon all such messages as authorized by the Correspondent. Correspondent agrees to comply with SWIFT rules and regulations or as otherwise may be agreed to between TD and Correspondent.

**Statements and Verification of Account Statements**

TD will periodically provide to Correspondent, Correspondent’s employee or agent, a statement of Account with detailed transaction and balance information electronically through SWIFT, telex, TD’s proprietary PC or web based systems or by courier or mail (each a “Statement”).

The Correspondent is responsible for carefully and promptly verifying the completeness and correctness of all transactions and balance information contained in such Statements and to immediately notify TD in writing of any alterations, irregularities, erroneous payments or credits, or other problems, which occur in connection with the Account. If TD does not receive written notice from Correspondent within thirty (30) days of the Statement date, Correspondent accepts

the Statement as correct, and TD will be released from any claim with respect to any and every item on the Statement and from any other claim for negligence, breach of trust, breach of fiduciary duty or otherwise.

### **Payment Terms**

Payment for the services shall be at the rates, which have been agreed to from time to time by TD and Correspondent in writing.

In any transaction in the Account involving foreign currency, the foreign currency will be converted to the currency of the Account at the exchange rate determined by TD on a date determined by TD, which may be different from the date of the transaction.

### **Cash Letter Deposit Service**

A Correspondent with an Account may send Cash Letters for items eligible for Canadian clearing to TD at the address provided herein under the Notice section or if agreed to between TD and Correspondent, to TD's designated processing centre (the "Designated Processing Centre"), located at the following address:

TD Bank Financial Group  
C/O Symcor Inc.  
8 Prince Andrew Place  
Toronto, Ontario  
M3C 2H4 CANADA

Items eligible for Canadian clearing are:

- Canadian Dollar or US Dollar commercial cheques drawn on banks in Canada;
- Canadian Dollar or US Dollar bank drafts payable in Canada;
- Canadian Dollar Travelers cheques drawn on institutions in Canada

This Cash Letter Service cannot be used to transport banknotes, coins or any type of negotiable securities. All deposited items are subject to final payment.

#### *Availability of Funds*

Correspondent will receive same day availability for all of the items for which CAD or USD Cash Letter's are received prior to processing cut-off deadlines established by TD, as advised to Correspondent from time to time, otherwise value will be for the next business day.

#### *Cash Letter Deposit Preparation*

Upon request, TD will forward pre-printed forms to the Correspondent bearing Correspondent's, address and Account number. Alternatively, the Correspondent may use Correspondent's own forms (TD's forms and Correspondent's own forms collectively referred to herein as the "Cash Letter Deposit Forms"). Cheques must be bundled, with tape totals with a maximum 250 cheques per bundle. Separate Cash Letter Deposit Forms must be used for each currency.

Correspondent must maintain appropriate records of the front and back of the cheques to enable prompt reconstruction of documents in the event of total loss in transit. TD is not responsible for any loss related to Cash Letters where Cash Letter Deposit Forms are missing or improperly completed.

TD requires Correspondent to properly endorse all items specifically to the order of The Toronto-Dominion Bank. The endorsement should be placed in black or dark ink on the back of each cheque.

The items contained in each Cash Letter should be segregated into Encoded, Unencoded and Unqualified items. Encoded and Unencoded items must be separated by tape listings and Cash Letter Deposit Forms should be included for both.

*“Encoded”*: Means items that are fully encoded and meet all the requirements for high speed MICR capture.

*“Unencoded”*: Means items that do not meet all of the requirements for high speed MICR capture and require further encoding.

*“Unqualified”*: Including, but not limited to, attachments, mutilated (torn/damaged), collections and photocopies of postal money orders and travelers cheques.

After processing, Correspondent’s Statement will be Correspondent’s advice of credit, unless other arrangements are agreed to between TD and Correspondent.

#### *Errors and Adjustments*

Cash Letters will be credited for the original amount indicated on Correspondent’s Cash Letter Deposit Form.

Errors such as incorrectly listed, unlisted items or free items will be automatically adjusted by debiting or crediting the Account. An advice, together with a photocopy of any free items, will be forwarded to Correspondent. Should an item be missing from Correspondent’s remittance processed at TD, TD will notify Correspondent by facsimile or SWIFT.

TD will assume responsibility for each Cash Letter and its contents only after physical receipt by TD or by TD’s Designated Processing Centre. TD assumes no liability for Cash Letters with respect to pick-up or while en route to the Designated Processing Centre. TD is not responsible for the actions, omissions and/or negligence of the courier regarding failure to pick up the Cash Letter or loss of the Cash Letter or damage to its contents while in possession of the courier, or any late or non-delivery of the package.

#### *Returned Items Processing*

All items deposited by Correspondent with TD, which are returned unpaid for any reason will be returned to Correspondent as soon as possible. Correspondent’s Account will be debited for the face value of the return item, plus any applicable fees regardless of whether the Account has sufficient funds. Correspondent is liable for all return items and drawee bank claims whether Correspondent’s Account is open or has been closed. TD shall not redeposit any returned item.

#### **Fast Forward Cheque Collection**

TD’s Fast Forward Cheque Collection Service provides a guaranteed collection service and is covered under a separate agreement.

#### **Correspondent Web Access**

On-line Account access provided by TD is covered under a separate Correspondent Web Access Agreement.

## **Cheque Collections**

TD provides cheque collection services in accordance with International Chamber of Commerce Publication Number 522, Uniform Rules for Collections (1995 Revision) and the *Canadian Bills of Exchange Act*.

## **Cheque or Draft Services**

Drafts or cheques drawn on the Account will be debited on the date the item is presented to TD for payment. It is strongly recommended that drafts or cheques drawn on the Account meet the Canadian Payments Association Standard 006 specifications, Part A. TD shall not be responsible for delays in posting of any item that is not compliant with the Canadian Payments Association Standard 006 specifications.

Unless the Correspondent and TD have expressly agreed in writing that this requirement does not apply to the Correspondent's Account, TD requires that the Correspondent notify it whenever cheques or drafts are drawn on the Account. If a failure to notify TD of an issuance of a cheque or draft results in a loss, TD shall not be liable for such loss.

This notification is required to be in the form of a SWIFT MT 110 and must include the following details about the cheque or draft being issued by the Correspondent:

- (i) the drawer bank, if the drawer bank is a branch of the sender or a bank other than the sender of the message;
- (ii) the date of the cheque or draft;
- (iii) the currency and amount of the cheque or draft;
- (iv) the name of the payee indicated on the cheque or draft; and
- (v) the cheque or draft number indicated on the cheque or draft.

Cheques or drafts drawn on the Account may be returned by TD unpaid for reasons such as insufficient funds, uncollected funds, attachments or for any other reason permitted by law and/or applicable regulations. TD may also return a cheque or draft if no appropriate notification was received from Correspondent. In the case of insufficient or uncollected funds, TD may at its sole discretion return the item or elect to pay such items and overdraw the Account. TD may pay drafts drawn on Correspondent's Account in any order TD may choose.

### *Stop Payments*

The Correspondent may request TD to stop payment on cheques or drafts drawn on Correspondent's Account if TD has not paid the item. The Correspondent can request stop payments on cheques drawn on the Account by authenticated SWIFT message MT111, which message must include the following details:

- (i) the drawer bank, if the drawer bank is a branch of the sender or a bank other than the sender of the message;
- (ii) account number and name on which the cheque or draft is issued;
- (iii) the date of the cheque or draft;
- (iv) the currency and amount of the cheque or draft;
- (v) the name of the payee indicated on the cheque or draft; and
- (vi) the cheque or draft number indicated on the cheque or draft.

If the information provided by Correspondent is not correct or if Correspondent does not provide TD with reasonable information requested about the cheque or draft, TD will not be responsible to effect the stop payment.

Stop payment orders are valid for a period of six months. Stop payments will not be placed on drafts or cheques that are more than 6 months old.

### **Payment Orders**

Correspondent may instruct that TD debit Correspondent's Account and transfer funds for its own account, to other financial institutions, or pay third parties at other financial institutions. All payment orders will be transmitted to TD in compliance with SWIFT authentication procedures and in accordance with the SWIFT User Handbook as amended from time to time.

#### *Cancellation and Amendments of Payment Orders*

When TD accepts a payment order it cannot thereafter be cancelled or amended. Notwithstanding the foregoing, if Correspondent requests cancellation or amendment of an accepted payment order, TD may, but is not required to, attempt to cancel or amend, but this may require the consent of third parties.

#### *Cut-off Times*

For same day delivery, payment orders must be received before the cut-off time for the funds transfers on a business day as established by TD from time to time. Payment orders received after the cut-off time or on a non-business day will be treated as received by TD on TD's next funds transfer business day. TD will make reasonable efforts to execute all payment orders received prior to the cut-off deadlines.

### **Overdraft**

Unless TD agrees or unless otherwise permitted herein, Correspondent may not overdraw the Account. Correspondent will repay the amount of any overdraft plus interest immediately without notice from TD. Unless otherwise agreed, TD will charge Correspondent interest at TD's standard rate charged from time to time for overdrafts. Should Correspondent request, and TD agree, to Correspondent's overdrawing of the Account for a longer period, TD will send Correspondent written notice thereof. Correspondent agrees to any terms, conditions and fees set out in such notice, including the term for which the overdraft is available. Upon expiry of such term, Correspondent will repay the amount of overdraft plus interest immediately without notice from TD.

### **Other Cash Management Services**

If Correspondent wishes to utilize TD's other cash management services, Correspondent's selection and use of TD's other cash management services are subject to these Terms and Conditions. The specific terms of certain cash management services (the "Services") that TD will provide Correspondent are set out in separate Service Schedules, and in any Guides. The Service Schedule and the Guides, together with the Business Services Master Agreement or the Business Banking and Services Agreement, whichever is applicable, if executed in connection with the Service, constitute the "Service Terms". Correspondent will use the Services only as set out in the Service Terms. The agreement between Correspondent and TD for the Services TD is providing to Correspondent at any time will consist of these Terms and Conditions and all applicable Service Terms as amended from time to time. These Terms and Conditions and the applicable

Service Terms as amended replace any existing agreement between Correspondent and TD for any of the Services. Correspondent agrees that if any terms and conditions of the Service Terms conflict with the terms of these Terms and Conditions, the terms and conditions of the Service Terms shall control.

TD has the right to modify Services, require minimum balances or security, or terminate Services at TD's sole discretion and/or in accordance with the Service Terms, in the event that Correspondent breaches or fails to honor any provisions of these Terms and Conditions or the Service Terms, or there occurs a material adverse change in the business or financial condition of the Correspondent.

TD may engage third parties to provide any part of a Service, including the Canadian Payments Association for clearing arrangements, without responsibility for any loss occasioned thereby.

### **Access to Services**

Unless permitted by TD, no customer of the Correspondent shall have direct access to the services, or any other Service, provided by the Bank to the Correspondent. If so permitted, Correspondent will provide TD with evidence satisfactory to TD, of its "Know Your Customer" policies and any other information, including customer identification data, as may be requested by TD at any time and from time to time in connection with such service(s)/Service.

### **Setoff and Security Interest**

If Correspondent is ever indebted or liable to pay money to TD or any of TD's subsidiaries or affiliates, acting in any capacity whether as a depositor, borrower, guarantor, judgement debtor or in connection with any trade payment or otherwise, including any obligation owed to a financial institution acquired by TD, and it becomes due, TD has the right under these Terms and Conditions to use the money from Correspondent's Account to pay the indebtedness or liability. If the indebtedness or liability and the Account are in different currencies, Correspondent agrees that TD may use the funds in the Account to purchase the currency of the indebtedness or liability at TD's then spot rate to setoff. Correspondent grants TD a continuing lien and security interest in and right of setoff on all of the Correspondent's right, title and interest in and to all deposits and Accounts. The security interest and right of setoff granted by these Terms and Conditions are in addition to any other security interest or right of setoff that TD may have. Any pledge or assignment by Correspondent to third parties of deposits and other accounts for security purposes remains subject to TD's right of setoff and security interest.

### **Indemnification**

Correspondent agrees to indemnify and hold TD, TD's successors, assigns, correspondents, directors, officers, employees and agents harmless from and against any and all claims, losses, damages, liabilities and expenses of any nature, including legal expenses and attorneys fees: (1) suffered or incurred by TD by reason of the performance of the services, or any other Service hereunder, (2) arising from any claim attributable to any act or omission taken by TD based upon reliance on any Authorized Signatories and/or any other individual indicated to be authorized to act on behalf of Correspondent in any document (or otherwise authorized by Correspondent) provided by Correspondent to TD, and (3) arising from any claim or demand based in whole or in part on an action or omission of TD resulting from a request, direction, or instruction from Correspondent. This indemnity will not be effective to relieve and indemnify TD from and against loss which is directly caused by TD's own gross negligence or willful misconduct.

## **Liability**

TD's liability, if any, shall be limited to those actual damages, which are the direct result of TD's willful misconduct or gross negligence. TD may decline to process any item or affect any transaction in any circumstance where the processing of the item or the transaction would result in undue risk to TD in TD's judgment. TD is not responsible for any claim arising from non-payment of any item or for loss or delay in any clearing system unless it occurs as a result of willful misconduct or gross negligence by TD or its employees.

In no event shall TD be liable regardless of whether any claim is based on contract or tort, for any consequential, special, or indirect losses or damages Correspondent may incur or suffer arising from or in connection with these Terms and Conditions, whether or not the likelihood or possibility of such losses or damages was known to TD in advance.

TD shall not be responsible for any loss or damage resulting from Acts of God, war, riots, terrorism, strikes, civil or industrial disturbance, malfunctions of equipment or other cause beyond TD's control.

TD processes cheques and other items by automated means and does not visually examine or verify signatures on all cheques or other items. Correspondent agrees that TD is not negligent because TD uses these automated procedures. Correspondent also agrees that TD is not negligent if the items were forged or altered in such manner (as by unauthorized use of a facsimile machine, photocopy machine, computer equipment or otherwise) that a reasonable person would not detect the forgery or alteration.

## **Correspondent's Representations, Warranties and Covenants**

Correspondent represents and warrants to TD that:

- (1) All information, including financial information, whenever provided by Correspondent to TD, shall be true, correct and complete. Information relating to Correspondent's financial condition accurately reflects Correspondent's financial condition as of the date(s) thereof;
- (2) Correspondent is not insolvent and no proceeding has been commenced by or against Correspondent under any bankruptcy, insolvency or winding up statute.
- (3) Correspondent is in compliance with all laws and regulations applicable to Correspondent's properties, operations, business and finances, including, but not limited to, anti-money laundering and anti-terrorist financing laws and regulations;
- (4) Where a customer of the Correspondent has direct access to any of the services/Services, the Correspondent has met, and will continue to meet, requirements that are consistent with the record-keeping, client identification and measures for identification requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c.17*, as amended from time to time, with respect to that particular customer;
- (5) Correspondent does not have, directly or indirectly, correspondent banking relationships with shell banks;
- (6) Correspondent is duly organized and in good standing under the laws of the jurisdiction of Correspondent's organization and Correspondent has all

- powers, licenses, authorizations and approvals to operate Correspondent's business as now conducted;
- (7) Correspondent will promptly notify TD of the existence of any condition or event which may constitute a breach of or default under these Terms and Conditions;
  - (8) Correspondent will promptly notify TD in writing of (a) any material change in Correspondent's financial condition or business; (b) any change in Correspondent's name, address or business structure, ownership or organization; and (c) any material litigation or regulatory action affecting the Correspondent;
  - (9) Upon TD's request therefore, Correspondent will promptly deliver to TD true and correct copies of Correspondent's annual report and such other information regarding Correspondent's business affairs and operations including, but not limited to, income statements, balance sheets and statements of cash flows.

### **Termination**

Either TD or Correspondent may close the Account and terminate these Terms and Conditions, and any Service by giving the other written notice, unless specified otherwise in the applicable Service Schedule. TD may terminate these Terms and Conditions or any Service or remove any Account from participation in any Service, or close any Account, without notice if:

- (a) Correspondent default's on any obligation under these Terms and Conditions or on any other agreement or instrument with TD;
- (b) TD is served with any demand, attachment, garnishment or other order that requires TD to pay any funds that TD would have otherwise paid or advanced to Correspondent or on Correspondent's behalf, or a receiver or receiver manager is appointed for any of Correspondent's property, or Correspondent is bankrupt or insolvent, or any proceeding is commenced by or against Correspondent under any bankruptcy, insolvency or winding up statute, or
- (c) TD reasonably believes that there has been or may be improper, unauthorized or unlawful use of any Service.

If these Terms and Conditions are terminated, all Services are automatically terminated. If any Service is terminated, these Terms and Conditions will remain in effect for all other Services. Upon termination of a Service, Correspondent will cease to use the Service and TD will cease to perform any Service transactions and TD may recall any instructions given to third parties.

Correspondent will remain responsible to TD for any indebtedness or liability owed to TD despite termination and the closing of any Accounts in relation thereto. After termination or closing of any Accounts by TD, any net funds remaining on deposit may be paid to Correspondent or to Correspondent's legal representative and TD will have no further liability in respect of such funds. Obligations which by their nature would continue beyond the termination of these Terms and Conditions shall survive the termination of these Terms and Conditions and closing of the Account.

### **Miscellaneous**

#### **Assignment**

These Terms and Conditions are binding on TD, TD's successors and assigns and on the Correspondent, the Correspondent's heirs, executors, administrators and other legal



representatives, successors and assigns. Correspondent must obtain the prior written consent of TD to assign these Terms and Conditions to another party.

#### **Conflicts/Disputes Involving the Account**

If TD receives an actual or potential claim from a third party regarding Correspondent's Account, or conflicting instructions or claims from Authorized Signatories, TD may, at TD's discretion and without liability to Correspondent, choose not to pay out any money from Correspondent's Account until TD receives consistent instructions from all parties or a court order. TD may also, without liability to Correspondent, close the Account and issue a cheque made payable to Correspondent or TD may interplead the funds into court. Correspondent agrees to reimburse TD for any loss, costs or expenses including, without limitation, attorneys' reasonable fees and the costs of litigation (to the extent permitted by law) that TD incurs as a result of any dispute involving Correspondent's Account, and Correspondent authorizes TD to deduct any such loss, costs, or expenses from Correspondent's Account. This obligation includes any dispute between Correspondent and TD involving the Account and situations where TD becomes involved in any dispute between Correspondent and an Authorized Signatory, another joint owner, or a third party claiming an interest in the Account. It also includes any situation where Correspondent, an Authorized Signatory, another joint owner, or a third party takes action with respect to the Account that causes TD, in good faith, to seek the advice of counsel, whether or not TD actually becomes involved in the dispute.

#### **Confidentiality**

Correspondent agrees to keep confidential all information concerning TD, which may be made known to Correspondent solely as a result of using any Service, which is not generally available to the public. Correspondent shall not release any such confidential information without the prior written consent of TD. TD shall treat Correspondent's information with confidence and discretion, but absent any agreement specifically to the contrary, TD and its subsidiaries and affiliates reserve the right to exchange among themselves information about Correspondent and its Accounts, to disclose such information to service providers of TD, and to report any relevant information to credit reporting agencies. TD may be required to disclose such information as required by legal and regulatory process or to prevent illegal or fraudulent activities.

#### **Applicable Laws**

These Terms and Conditions shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. TD and Correspondent hereby submit to the non-exclusive jurisdiction of the courts of the Province of Ontario.

#### **Dormant (Abandoned) Accounts**

Correspondent acknowledges and agrees that Accounts, which are inactive for a specified period of time may be considered abandoned under federal law. Dormant accounts may be subject to reasonable service charges, which may be charged on Accounts which are inactive and which are presumed to be abandoned. If there are insufficient funds in Correspondent's Account to cover the service charges which are payable by Correspondent, Correspondent authorizes TD to close the Account.

#### **Severability**

In the event any one or more of the provisions of these Terms and Conditions shall for any reason, including under any applicable statute or rule of law, be held to be invalid, illegal or unenforceable, the remaining provisions of these Terms and Conditions shall remain in full force and effect.

**Waiver**

TD may waive any of these Terms and Conditions but any such waiver shall apply only to the Term or Condition waived and only to that occasion and shall not constitute a waiver of any other Term or Condition.

**Entire Terms and Conditions**

These Terms and Conditions and the documents to which it refers constitute Correspondent's and TD's entire agreement and understanding and supersedes all prior terms and conditions.

**Notice**

Any notices which may be required from Correspondent or which may be provided by Correspondent shall be directed to TD at the address below:

TD Bank Financial Group, Head Office  
Global Business Services  
222 Bay St.  
15th floor  
Toronto, Ontario  
Canada, M5K 1A2

SWIFT Address: TDOMCATTOR  
Telephone: 416.982.2441  
Facsimile: 416.982.5671