

# DESJARDINS FUNDS AND GUARANTEED INVESTMENT RETIREMENT INCOME FUND

## Declaration of Trust

**WHEREAS** the Annuitant wishes to establish a Desjardins Funds and Guaranteed Investment Retirement Income Fund (the "Fund"), which shall be a registered retirement income fund in accordance with the *Income Tax Act* (Canada) and the income tax legislation, if applicable, of the province designated in the address of the Annuitant (herein collectively referred to as the "Applicable Tax Legislation");

**WHEREAS** Desjardins Trust Inc., (the "Trustee"), a legally incorporated trust company having its head office in Montréal, Province of Québec, is authorized to offer its services to the public as Trustee;

**WHEREAS** for the purposes hereof, the term "spouse" shall refer to the spouse or common-law partner within the meaning assigned to those terms under the *Income Tax Act* (Canada);

**NOW THEREFORE**, the Trustee hereby accepts the office of Trustee of the Fund, subject to the following terms and conditions:

**Clause 1.** The terms "property held", "minimum amount", "annuitant" and "retirement income fund" shall have the meanings assigned to them in section 146.3 of the *Income Tax Act* (Canada) and, if applicable, in any such similar sections of the income tax legislation of the province designated in the address of the Annuitant.

**Clause 2.** The Fund complies with the requirements of the *Income Tax Act* (Canada), and the Trustee undertakes the ultimate responsibility to administer the Fund and to register the Fund with the Canada Revenue Agency and, if applicable, of the province designated in the address of the Annuitant.

**Clause 3.** The Trustee shall make no payments other than those provided for in paragraphs 146.3(2) (d) and (e), in the definition "retirement income fund" in subsection 146.3(1) and in subsections 146.3(14) and 146.3(14.1) of the *Income Tax Act* (Canada) and, if applicable, in any such similar provisions of the income tax legislation of the province designated in the address of the Annuitant. If the Fund does not have sufficient liquidity to make a payment as provided for above, the Trustee shall be entitled to sell the investments held in the Fund and is hereby specifically authorized to realize the said investments on such terms and conditions as it shall deem advisable without, however, being specifically bound to do so.

The Annuitant shall be solely responsible for choosing the maturity of the investments in the Fund and the amount of liquidity required to make the payments. If the Fund does not have sufficient liquidity at the time a payment as provided for above is made, the Trustee shall have the right to redeem investments held in the Fund before maturity and is hereby specifically authorized to redeem investments in the Fund prior to maturity on such terms and conditions as it shall deem advisable including, more specifically, all fees, penalties and any other replacement costs that the Trustee may apply in such case and which the Annuitant acknowledges.

**Clause 4.** No payment under this Fund may be assigned in whole or in part.

**Clause 5.** No benefit or loan (except as provided for in Applicable Tax Legislation) that is conditional on the existence of the Fund shall be granted to the Annuitant or to a person with whom he or she was not dealing at arm's length, as defined in the Applicable Tax Legislation.

**Clause 6.** Except where the spouse or common-law partner of the Annuitant becomes the Annuitant hereunder or pursuant to the provisions of the will of the deceased Annuitant, the Trustee shall distribute the property held in connection with the Fund at the time of his or her death or an amount equal to the value of such property at that time.

**Clause 7.** Where the Annuitant so directs, the Trustee shall transfer to the person who has agreed to be a carrier of another registered retirement income fund under which the Annuitant becomes the Annuitant, all or part of the property held in connection with the Fund, or an amount equal to the value of such property at the time of such direction, together with all information necessary for the continuance of the Fund.

However, before undertaking such a transfer, the Trustee shall hold back an amount sufficient to guarantee that the minimum amount, as part of the Fund for the year in which the transfer occurs, can be paid to the Annuitant in the year, up to the fair market value of the Fund assets.

**Clause 8.** The Trustee shall not accept property as consideration other than property transferred from:

- (i) a registered retirement savings plan under which the individual is the Annuitant;
- (ii) another registered retirement income fund under which the individual is the Annuitant;
- (iii) the individual, to the extent that the amount of the consideration is an amount described in subparagraph 60 (1) (v) of the *Income Tax Act* (Canada) and, if applicable, in any such similar provisions of the income tax legislation of the province designated in the address of the Annuitant; or
- (iv) a registered retirement savings plan or a registered retirement income fund where the spouse or former spouse of the Annuitant is the annuitant pursuant to a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to the division of property between the Annuitant and his or her spouse or former spouse in settlement of rights arising out of, or on the breakdown of, their marriage or their common-law partnership,
- (v) a registered pension plan of which the individual is a member (within the meaning of paragraph 147.1(1) of the *Income Tax Act* (Canada);
- (vi) a registered pension plan in accordance with paragraph 147.3(5) or (7) of the *Income Tax Act* (Canada);
- (vii) a specified pension plan under the circumstances established in paragraph 146(21) of the *Income Tax Act* (Canada);
- (viii) a pooled registered pension plan in accordance with subsection 147.5(21) of the *Income Tax Act* (Canada).

**Clause 9.** An Annuitant who signs the application form with respect to the present Declaration of Trust must declare his or her age and social insurance number, which declaration shall be considered an undertaking by such Annuitant to provide further information or documents that may be subsequently required.

**Clause 10.** The Trustee guarantees repayment of the investments in the Fund in lawful money of Canada at the maturity date indicated with interest at the rate specified. These investments may not be redeemed prior to maturity, except in the event of death or if there is a cash shortfall in the Fund, as provided for hereunder.

Desjardins Trust Inc. is authorized to invest and loan the money of the Annuitant, either separately or together with the moneys of Desjardins Trust Inc. or of other persons, in such securities as Desjardins Trust Inc. shall deem expedient, without being restricted to fiduciary investments under applicable legislation or to investments belonging to others, such investments to be made in the name of Desjardins Trust Inc. which shall hold them for the benefit of the Annuitant to the extent of the latter's interest in such investments. The Trustee reserves the right to modify such investments or loans from time to time at its discretion.

**Clause 11.** The Trustee is entitled to be reimbursed from Fund assets for all charges and expenses incurred in connection to the Fund, including any taxes, interest or other penalties required to be paid out of the Fund for any reason whatsoever (not including any taxes, interest, or penalties to be paid by the Trustee, which cannot be taken from Fund assets according to the Applicable Tax legislation). The Trustee is also entitled to collect its customary fees, which the Annuitant acknowledges and which shall be deducted from the assets held on the Annuitant's behalf. Such fees may be modified from time to time, but the Trustee undertakes to advise the Annuitant in writing of any new fee schedule thirty (30) days prior to the schedule taking effect.

**Clause 12.** Should the Annuitant fail to pay the fees, charges, overdraft, taxes, etc., referred to in the preceding clause, the Trustee shall, upon sixty (60) days' prior written notice, be entitled to dispose of the assets held in the Fund and is hereby specifically authorized to realize the said investments at such price and on such conditions as it shall deem advisable, without however, being obliged to do so. The Annuitant shall be accountable to the Trustee for all fees, charges, expenses, overdraft, etc. that exceed the assets of the Fund.

**Clause 13.** All the assets held in the Fund of the Annuitant, as well as the interest, benefits or gains relating thereto, shall be invested by the Trustee in accordance with the instructions of the Annuitant and/or his or her attorney. All proposed investments and documents pertaining thereto must be in accordance with the requirements of the Trustee, and may be modified from time to time. However, the Annuitant shall be solely responsible for the said investments and their liquidity.

**Clause 14.** Should the Annuitant expressly waive to provide instructions or, without waiving, should he or she be unable to state his or her wishes in the event of an emergency, the Trustee may, but shall not be required to:

- (a) sell, alienate or otherwise dispose of all assets entered to the credit of the Annuitant, on such conditions and at such price as it shall deem advisable;
- (b) invest, as it shall deem appropriate, all moneys entered to the credit of the Annuitant in any kind or class of investment, notwithstanding the laws of all jurisdictions governing the investment of the assets of a third party.

**Clause 15.** The Trustee, unless otherwise instructed, may but shall not be obliged to:

- (a) exercise the voting rights attaching to the securities held on behalf of the Annuitant;
- (b) seek advice from any professional or financial consultant, when it deems it appropriate, and pay the consultant's fees from the assets held on behalf of the Annuitant.

**Clause 16.** Except in the event of negligence on its part, the Trustee shall not be liable for any act or omission, nor for any loss or depreciation in the value of the investments.

**Clause 17.** Without limiting the general nature of the preceding paragraph, it is the responsibility of the Annuitant to select the investments of the Fund and to determine if the Trustee should acquire, sell, or retain a specific investment for the Fund. The Trustee shall exercise the care, diligence and skill of a reasonably prudent person to minimize the possibility that the Fund holds a non-qualified investment. The Annuitant is responsible for tax consequences resulting from the liquidation of some or all of the assets in the Fund, or from any loss due to the sale or assignment of any investment forming part of the Fund, including all penalties resulting from redemption prior to maturity.

**Clause 18.** The Trustee may resign as trustee and be discharged from all obligations and responsibilities hereunder, upon giving three (3) months' prior written notice to the Annuitant, or upon shorter notice as deemed acceptable by the Annuitant. The Trustee may appoint as successor, under the terms hereof, any corporation qualified to act as trustee in accordance with the provisions of the *Income Tax Act* (Canada) and, if applicable, of any provincial income tax legislation. Such appointment shall take effect on the date specified in the instrument of appointment whereby the said corporation is appointed successor trustee and accepts the appointment, such date to be fixed no later than the sixtieth (60<sup>th</sup>) day after written notice of the appointment has been sent to the Annuitant.

On the effective date of the appointment, the Trustee shall transfer the moneys or securities of the Fund to its successor. It is, however, understood that the Trustee shall not be obliged to effect the prepayment of the said securities before transferring them. Furthermore, the Trustee shall provide all the information and documents required for its management and registration, in accordance with the provisions of the *Income Tax Act* (Canada) and, if applicable, of any provincial income tax legislation.

Effective on the date of such appointment, the successor Trustee shall assume all the functions and responsibilities of the Trustee, which shall be discharged from all obligations and responsibilities of Trustee hereunder. The Annuitant may, in the same manner, relieve the Trustee of its functions and name a qualified successor in accordance with the provisions of the *Income Tax Act* (Canada) and, if applicable, of any provincial income tax legislation. In such a case, the Trustee must transfer the moneys and securities in the Fund to its successor. It is, however, understood that the Trustee shall not be obliged to effect the prepayment of the said securities before transferring them.

**Clause 19.** The Trustee may amend the present Declaration of Trust to ensure that the Fund complies at all times with the conditions of registration under the Applicable Tax Legislation.

Furthermore, the Trustee may, at its option, amend the terms and conditions of the present Declaration of Trust from time to time, but undertakes to send thirty (30) days' prior written notice thereof to each Annuitant before applying said amendment(s).

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