

## Summary of Changes to the HELOC Agreement

We revised the HELOC Agreement which governs your home equity line of credit (“HELOC”). The revised HELOC Agreement has an effective date of **July 1, 2019**, unless you recently opened a HELOC Account and received the revised HELOC Agreement at that time, in which case the revised agreement has already taken effect.

The majority of the revisions made are meant to clarify certain provisions in the HELOC Agreement. Additionally, the sections in the Agreement relating to Auto Rental Collision/Loss Damage Insurance and the Health and Legal Assistance Services, both of which will be discontinued as of September 1, 2019, have been removed. Please refer to the revised HELOC Agreement to familiarize yourself with the terms and conditions which are now applicable to your HELOC Account.

Should you have any questions relating to the revised HELOC Agreement, you may contact us toll-free at 1-855-407-4600 during our business hours of 8:30am to 5:00pm (Eastern Standard Time) Monday through Friday, excluding statutory holidays. Thank you for your business. We look forward to continuing to serve your HELOC needs.

**Introduction:** This HELOC Agreement sets out the terms and conditions of the secured line of credit we may extend to you, as amended from time to time. Your home equity line of credit shall be secured by a mortgage on the Property. You agree to pay back the money you borrow from us, and all interest owing on the money you borrow, according to the terms and conditions of this HELOC Agreement, the Commitment, the Mortgage, the Standard Charge Terms or any other agreement you have entered into with us that is applicable to your HELOC Account.

## **PART A: DEFINITIONS**

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**What the Words Mean:** *In this HELOC Agreement, and elsewhere in the documents provided to you, please remember that:*

**“Access Card”** and **“Visa Access Card”** mean the Equitable Bank™ Visa\* Access Card, which is issued by Peoples Trust Company.

**“Annual Cash Advance Plan Interest Rate”** means the annual interest rate applicable to cash advances and interest-bearing fees, and includes HELOC Cheque transactions made under the HELOC Account.

**“Annual Interest Rate”** and **“Interest Rate”** mean the applicable annual rate of interest (the Equitable Prime Rate plus an adjustment factor), expressed as a percentage, payable on this HELOC Account, as indicated on your HELOC Statement.

**“Annual Special Plan Interest Rate”** means the annual interest rate applicable to any Special Plans under the HELOC Account.

**“Annual Standard Plan Interest Rate”** means the annual interest rate applicable to purchases under the HELOC Account.

**“ATM”** means an automated teller machine.

**“Authorized Transaction”** means any use of the HELOC Account to purchase or lease goods and/or services, or make any other charges to the HELOC Account, including a Cash Advance.

**“Bank Account”** means your personal deposit account at a Canadian financial institution from which amounts owing under the HELOC Account may be withdrawn by us.

**“Business Day”** means a day other than a Saturday or a Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

**“Cash Advance”** means any initial cash advance you received when you first opened the HELOC Account, transactions made using HELOC Cheques and cash advances obtained through use of the Access Card including, but not limited to, cash advances from ATMs.

**“Commitment”** means a document signed by you and Equitable Bank in which Equitable Bank commits to providing you with this HELOC Account. This HELOC Agreement shall be read in conjunction with, and form part of, the Commitment.

**“Customer Service”** means assistance and customer care, available to resolve customer issues or answer questions or inquiries.

**“Equitable”, “Equitable Bank”, “we”, “our” and “us”** mean Equitable Bank.

**“Equitable Prime Rate”** means the annual rate of interest established from time to time by us as a reference rate then in effect for determining interest rates on Canadian dollar loans in Canada. The Equitable Prime Rate is posted on our website. If it is necessary for us to demonstrate the interest rate we charge you in effect at any time, you agree that a written certificate from us setting out the interest rate at that time is conclusive proof for that purpose.

**“HELOC”** and **“HELOC Account”** mean your home equity line of credit account with Equitable Bank.

**“HELOC Agreement”** means this agreement, including any attached Schedules, and each other agreement, notice or other document forming part of this agreement or that relates to the loans described under this agreement.

**“HELOC Cheques”** are the cheques issued by us to you to access your HELOC Account.

**“HELOC Credit Limit”** is the maximum amount you may borrow under this HELOC Agreement.

**“HELOC Statement”** and **“Account Statement”** mean the written statement of your HELOC that we send to you.

**“Minimum Payment Due”** means the minimum amount you must pay each month when you have an Outstanding Balance on your HELOC Account, as indicated on your HELOC Statement. This amount is subject to change from time to time and will be automatically debited from your Bank Account on the Payment Due Date each month.

**“Mortgage”** means the mortgage registered on the Property as security for the HELOC Account and, in certain circumstances, a Mortgage Loan. The Mortgage secures all borrowings made under this HELOC Agreement, the Mortgage Loan.

**“Mortgage Loan”** means a loan for a fixed term and a fixed amount that we may have made or may make to you that is secured by the Mortgage.

**“Mortgage Rate”** means the annual rate of interest, expressed as a percentage, payable in respect of a Mortgage Loan.

**“New Balance”** means your HELOC Account balance for any given billing period as set out on your HELOC Statement, taking into account your previous period’s balance, any transactions conducted on the HELOC Account in that period as well as interest, fees and charges incurred.

**“Outstanding Balance”** means the total amount that you have borrowed from us on your HELOC Account (including, but not limited to amounts you have borrowed by withdrawing funds) plus all accrued interest and fees that you owe us that have not yet been paid, less all amounts that you have repaid to us.

**“Payment Due Date”** means the date on which your Minimum Payment Due under the HELOC Account is due each month, as indicated on your HELOC Statement.

**“Property”** means the residential property that has or will be noted on the registered Mortgage.

**“Special Plan”** means any promotional, introductory or other offer we may extend to you from time to time, which you may accept, that temporarily lowers the interest rate applicable to certain portions of the amounts you owe under the HELOC Account. For example, if we offer a lower interest rate on certain eligible HELOC Cheques for three months, that is an example of a Special Plan.

**“Standard Charge Terms”** means those standard mortgage terms or optional mortgage covenants (as applicable) included or referenced in the registered charge/mortgage of land on the Property.

**“Statement of Disclosure”** means the disclosure we provided to you as required by the *Bank Act* (Canada) and its Regulations, which contains information about your cost of borrowing, including interest rates, other fees and payment amount and frequency.

**“Total Debt”** means the total amount you owe to us from time to time under this HELOC Agreement and all Mortgage Loans, including any amendments or renewals. It is made up of the (i) the principal amount outstanding from time to time on each Mortgage Loan, plus interest at the applicable Mortgage Rate; (ii) the Outstanding Balance on your HELOC Account; and (iii) all insurance premiums (if applicable), service fees and other fees, charges (including taxes) and amounts owing to us from time to time as described in this HELOC Agreement or in other documentation you sign with us.

**“You”** and **“your”** mean each individual client, including any corporation, who is a borrower under this HELOC Agreement, and includes successors, heirs and/or beneficiaries.

## **PART B: TERMS AND CONDITIONS APPLICABLE TO THE HELOC AGREEMENT**

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### **1. Credit Limit for your HELOC Account and Available Credit**

Your HELOC Credit Limit is the maximum amount you may borrow under this HELOC Agreement. It is set out in your Commitment and in the Statement of Disclosure provided to you.

Every time you use your HELOC Account, the amount of money available to you under the HELOC Credit Limit decreases. We calculate how much is available under the HELOC Account by deducting the amount you owe us from the HELOC Credit Limit. We will advise you of your available credit under the HELOC Account as part of the HELOC Statement that we send to you for your HELOC Account.

You agree that we may, at our discretion, reduce or terminate your HELOC Credit Limit without prior notice to you. Any reduction or termination of your HELOC Credit Limit does not necessarily mean the termination of the HELOC Account or any Mortgage Loan. If your HELOC Credit Limit is decreased, all amounts owing to us in excess of the new HELOC Credit Limit will become immediately payable and must be repaid to us without delay. We will not increase your HELOC Credit Limit without your consent.

**To accommodate your future borrowing needs, or at your request, we may register the Mortgage in an amount that exceeds the amount of your HELOC Credit Limit.**

You may, subject to our approval, re-borrow amounts repaid by you on a Mortgage Loan, in an amount that does not exceed the HELOC Limit. You may have to sign a new agreement for the amount you re-borrow.

**You agree that if we let you borrow more than your HELOC Credit Limit, you are responsible for, and must pay on demand, the amount that exceeds the HELOC Credit Limit, plus interest and fees.**

**You acknowledge that any HELOC Account is made available to you in our sole discretion and we may terminate the HELOC Account and/or demand payment of all amounts owing by you under this HELOC Agreement or any amending agreement, at any time without prior notice to you, particularly, but without limiting our rights, upon a re-evaluation of your financial situation or if you are in default under this HELOC Agreement, any amending agreement, the Mortgage Loan or any other agreement with us.**

You agree that our books and records shall be conclusive evidence of the amounts owing under this HELOC Agreement and the Interest Rates applicable to the amounts owing.

## 2. Accessing and Using Your HELOC Account

You can use the credit available, up to the amount of the HELOC Credit Limit, to borrow from us by any method that we agree to, including:

- (i) Access Card;
- (ii) HELOC Cheques; or
- (iii) Any other method we authorize you to obtain an advance.

You must not use your HELOC Account in any way that would cause the Outstanding Balance to exceed the HELOC Credit Limit.

**If more than one borrower signs the Commitment which incorporates this HELOC Agreement (“Multiple HELOC Borrowers”), any one of you can borrow money up to the amount of your HELOC Credit Limit without the other’s consent. For further clarity, guarantors are not allowed to access the HELOC Account.**

You acknowledge that you will only use the HELOC Cheques, the Access Card and the HELOC Account generally, for personal, family or household purposes and only for valid and lawful Authorized Transactions. You will pay us for all transactions made using the HELOC Account, including transactions made by a person authorized by you or non-permissible transactions. We may decline some transactions or refuse to pay HELOC Cheques issued by you and we will not be liable for any losses suffered by you or any third person as a result of such denial or refusal. We will not be liable if a merchant, a business or an ATM does not accept your Access Card or any HELOC Cheque for any reason. Your use of the HELOC Account through the Access Card or HELOC Cheques is always subject to any legal restrictions or regulations that the government or other applicable authority may impose.

**Access Card:** You may be provided with an Access Card in order to access your HELOC Account. If you are provided with an Access Card, the Terms and Conditions, as amended from time to time governing the use of the Access Card set out in Schedule 1, will apply to your use of the Access Card. Your use of the Access Card will be further evidence that you acknowledge and agree to the Terms and Conditions set out in Schedule 1. **HELOC Cheques:** Once your HELOC Account is approved, we will provide you with an initial set of HELOC Cheques, free of charge. If you would like to request additional HELOC Cheques, you can do so by calling 1-855-407-4600. Please note that there is a fee associated with ordering additional HELOC Cheques after the initial order that we send you for free. Additionally, please note that you may only write HELOC Cheques in Canadian dollars. If there are Multiple HELOC Borrowers, any one of you may sign a HELOC Cheque without the other’s knowledge or consent.

We will issue HELOC Cheques to each borrower on the HELOC Account. You are responsible for safeguarding all HELOC Cheques and you acknowledge that you will surrender all unused HELOC Cheques immediately upon request from us.

It is your responsibility to notify us immediately if any HELOC Cheques are lost or stolen to avoid liability for any transactions unauthorized by you. If you wish to dispute any HELOC Cheque transaction or entry on your HELOC Statement, you must provide written notice to us at **Customer Service, Equitable Bank, 30 St. Clair Avenue West, Suite 700, Toronto, Ontario M4V 3A1** or call us at **1-855-407-4600** as soon as possible after you notice such error. Do not send the notice on or with your payment. We must receive your notice no later than thirty (30) days of the date of the HELOC Statement containing the disputed entry. We will acknowledge receipt of your written notice within thirty (30) days.

## 3. Charging You Interest on the HELOC

Interest is initially charged at the Interest Rate set out in the Statement of Disclosure that was provided to you. The current Interest Rate will also be set out on your HELOC Statement. Your Interest Rate will change automatically if and when the Equitable Prime Rate changes. Notice of any change to your Interest Rate will be provided in accordance with Section 15 of this HELOC Agreement entitled “Changing the HELOC Account”.

You must pay interest on all amounts you borrow under the HELOC Account at the applicable Interest Rate both before and after any of the following events, if they occur:

- We ask you to pay the total amount you owe on the HELOC Account;
- You fail to meet any of the terms of this HELOC Agreement;
- You become bankrupt or insolvent or any one of you dies;
- You have legal action taken against you or any of your property or assets; or
- We receive a court order instructing you to pay us the money you owe;

until all amounts owing are paid in full.

Note that we will not pay you any interest on any credit balances on your HELOC Account.

Interest will be charged on all Cash Advances, and on fees that do not arise from use of the Access Card, beginning on the applicable transaction date, at the Interest Rate shown on your HELOC Statement. Interest will be charged on all Access Card purchases at the Interest Rate shown on your HELOC Statement, subject to any applicable interest-free grace period, as further set out in Schedule 1.

#### **4. How We Calculate Interest on the HELOC**

Interest is charged on your Outstanding Balance by multiplying the total Outstanding Balance on your HELOC Account at the end of each day, less any portion of the balance comprised of non-interest-bearing amounts, by the daily interest rate for the period in question. The daily interest rate is the Annual Interest Rate divided by 365 (366 in leap years). Interest is calculated daily and added to your balance on a monthly basis.

To determine the interest payable by you, the applicable portion of your Outstanding Balance at the end of each day of the statement period is multiplied by the applicable daily interest rate and the resulting daily interest charges are then added together to determine the total amount of interest charged in the statement period.

Any overdue interest will become subject to interest charges at the Annual Interest Rate beginning on the first day of the next month's statement period.

#### **5. Fees**

The fees applicable to your HELOC Account are contained in the documents that have been or will be provided to you before your HELOC Account is made available. Please note that fees are subject to change at any time and that you will be notified in advance of a fee change or the imposition of a new fee when there are changes. Any fee payable by you may be added to your Outstanding Balance.

#### **6. HELOC Statements**

We will send statements and other communications to you by ordinary mail to the most recent address that we have for you on our records. Any communications we mail to you are considered to be received by you five (5) business days after mailing.

We will send you a HELOC Statement each month unless there are no transactions for that statement period and you do not owe anything on the HELOC Account. If a HELOC Statement is returned to us because it cannot be delivered, until such time as you provide us with a current mailing address, no further statements will be mailed to you and access to your HELOC Account for purchases and Cash Advances will be blocked.

When you receive your HELOC Statement, you must examine it carefully. If you believe there are errors, omissions or irregularities, you must notify us within thirty (30) days of the statement date. If you do not notify us of any errors, omissions or irregularities within thirty (30) days, then you are deemed to have agreed that:

- All entries and balances on your HELOC Account are correct;
- All HELOC Cheques paid from the HELOC Account are genuine, duly authorized and properly endorsed;

- All amounts charged to your HELOC Account are properly chargeable to you;
- You are not entitled to be credited to your HELOC Account with any amount that is not shown on the HELOC Statement; and
- You release us from all claims in connection with the HELOC Account, including any claims for negligence. This release does not apply to claims for gross negligence or willful misconduct or intentional fault by us, in which case our liability will be limited to the lesser of:
  - The amount of the credit or charge to the HELOC Account; or
  - The direct damages you suffer. We will not be liable for any indirect, special or consequential damages.

If we credit an amount to your HELOC Account by mistake, we can correct that mistake at any time.

You will be bound by this Section 6 even if your HELOC Statement is delayed or lost in the mail.

You must tell us promptly if you have not received a HELOC Statement no later than ten (10) days after the date on which you normally receive it. For greater certainty, this date may be no later than fifteen (15) Business Days after the date on which we mailed you the statement. You must pay all amounts owing to us, even if you do not receive your HELOC Statement or if it has been delayed.

If we are unable to send you a HELOC Statement at any time for any reason, such as a mail strike, you must contact us at least once per month to get the information you need to continue making payments as required.

## **7. Report of Loss/Theft**

You must notify Equitable Bank immediately if your Access Card or any HELOC Cheques are lost or stolen or if you believe that your PIN or Access Card information may be known to a third party, or there are other circumstances from which one might reasonably infer that a fraud or unauthorized access may occur in connection with your HELOC Account. Subject to any other agreement you may have with us, you will not be liable for any unauthorized purchases made through the use of that Access Card or unauthorized withdrawals from the HELOC Account which occur after you have given us notice as required by this Section 7, or if your estate has given us immediate notice of your death.

## **8. Liability for Forgeries**

You acknowledge that we will not, under any circumstance, be liable to you for any loss, even if we are notified within the time periods required by this HELOC Agreement, arising from a forged or unauthorized endorsement, impersonation or any material alteration of an instrument or instruction we act on to draw from your HELOC Account unless you have established to our satisfaction that you are not responsible for the disputed item and that you took all reasonable steps to prevent the forgery or impersonation and the resulting loss, and that despite that fact, the loss was unavoidable. You agree to cooperate fully with us in any investigation that may be required including any police investigation. Any liability we may agree to will be limited by a maximum liability equal to the amount of the disputed item and rules established by the Canadian Payments Association in effect at the time applicable to the forgery or material alteration including a ninety (90) day limitation on disputes arising from material alterations.

## **9. Payments**

You promise to pay us all advances, interest and any fees associated with your HELOC Account. Your HELOC Statement will include instructions you must follow for making payments and will indicate the Payment Due Date for each period.

You agree to pay us amounts you owe by one of the methods indicated on your HELOC Statement. You must make your payments even if you do not receive a HELOC Statement and even if the normal mail service is disrupted. It is your responsibility to select a payment method which results in payments on your HELOC Account being received by us and credited to your HELOC Account by the Payment Due Date as shown on your HELOC Statement. If your Payment Due Date falls on a holiday or on a weekend, we will process your Minimum Payment Due on the following business day and will consider that payment as being made on time.

We will credit your payment to your HELOC Account as of the date of receipt, if your payment conforms to the payment requirements described on your HELOC Statement. For purposes of this paragraph only, the “date of receipt” means the date the payment instrument or other means of completing the payment reaches us.

Any payment received toward amounts owing under your HELOC Account shall be applied (i) first to pay charges and fees; (ii) then to pay interest; and (iii) lastly, to principal.

For any HELOC Statement where different Interest Rates apply to different amounts billed and owing on that statement (for example, because some of your balance is subject to an Annual Special Plan Interest Rate), any payment by you will be allocated among the different amounts starting with the amount being charged the highest Interest Rate first, and the amount being charged the lowest Interest Rate last. We reserve the right, subject to applicable law, to change the order in which we apply payments without prior notice to you.

If at any time you make a payment and you have some principal amounts owing that are being charged interest (such as from Cash Advances) and some principal amounts owing that are not being charged interest (such as from Access Card purchases that are still within the 21-day interest free grace period), we will allocate that payment first to the amounts that are not being charged interest, and second to the amounts that are being charged interest.

You may pay all or part of the amount owing on the HELOC Account at any time without notice, penalty or charge.

You must pay any amount owing that is more than the HELOC Credit Limit as soon as you are advised or become aware that you have exceeded your limit.

In addition, you acknowledge that we have the right to refuse any payment that we suspect is being made for illegal or fraudulent purposes.

**There is no maturity date for the HELOC Account; it will continue until terminated by you or us. Please note that the HELOC we extend to you is ‘on demand’. This means that upon demand by us, at any time and for any reason, you must pay us the total amount you owe under the HELOC Account immediately.**

## 10. Minimum Payment

Each HELOC Statement will set out a Minimum Payment Due. The Minimum Payment Due may vary each billing period depending on the amount of the Outstanding Balance, as well as the charges incurred and payments made on the HELOC Account during the billing period. You agree to pay at least the Minimum Payment Due by the Payment Due Date which will also be indicated on each HELOC Statement.

We will determine your Minimum Payment Due for each billing period as follows: if your New Balance shown on a HELOC Statement is less than \$10.00, your Minimum Payment Due will be equal to your New Balance. If your New Balance is equal to or greater than \$10.00, your Minimum Payment Due will be \$10.00 or an amount equal to the interest outstanding on your HELOC, whichever is greater. Unless your balance is \$10.00 or less, if you continue to only pay the Minimum Payment Due, you will never pay off your outstanding principal balance.

You agree that once a month on the applicable Payment Due Date we will debit your Bank Account for the Minimum Payment Due. You will sign whatever agreements may be required to process these pre-authorized debits and agree to waive any pre-notification requirements in respect of variable payment amounts.

Payment in excess of your Minimum Payment Due does not affect your obligation to make subsequent Minimum Payments Due.

If you do not make the Minimum Payment Due on the Payment Due Date or do not comply with any other terms or conditions of this HELOC Agreement, you acknowledge that we may, in our sole discretion, deduct money from any other account you have with us and use it to pay the amount you owe.



**11. Hold on Funds**

We have the right to hold any payment on the HELOC Account and to defer any transactions you wish to make until we receive payment for the cheque, instrument or other method of payment that you used.

**12. Default and Cross-Default**

**Total Debt Due:** We may, at our option and without prior notice or demand, terminate this HELOC Agreement if any of the following events occur, each of which will be considered a default by you:

- (i) You fail to:
  - a) pay the Minimum Payment Due on your HELOC Account on its due date; or
  - b) make a payment on a Mortgage Loan on its due date;
- (ii) You fail to meet any of the terms or conditions of this HELOC Agreement; or
- (iii) You become insolvent or bankrupt or any one of you dies.

At our option, any default under the terms and conditions of this HELOC Agreement or under the Mortgage Loan will be a default under all credit (both the HELOC Account and the Mortgage Loan) we may extend to you. In that case, all amounts owing to us under all of the loans, including principal, interest and other costs and charges, shall, at our option, be immediately due and payable.

Any costs or expenses recoverable under the Mortgage shall be added first to your Mortgage Loan(s), if any, and then to the HELOC Account. Until fully paid, you shall pay interest on such costs or expenses at the interest rate applicable to the loan to which those costs or expenses have been added. If you are in default under this HELOC Agreement, or if we terminate the HELOC Account or demand payment of the amounts due under this HELOC Agreement, you agree to be liable to pay one or more of the following amounts, as applicable:

- The costs and expenses, including legal fees and disbursements, resulting from any legal action that we may take or which would be taken on our behalf to recover any unpaid amount or to take any other legal action under the terms of this HELOC Agreement, including in realizing on the Property or any other security interest taken under this HELOC Account or a Mortgage Loan or in protecting such security interest;
- Interest, calculated on any such costs or expenses charged to you under this HELOC Agreement;
- Administrative fees for a preauthorized debit for which payment is refused.

If we choose to terminate the HELOC Account, we may exercise our rights under any other security we may hold in order to secure your obligations under this HELOC Agreement.

**Applying Moneys on Default:** Any money we obtain from enforcing our rights under the Mortgage shall be used first to pay amounts owing under any Mortgage Loan(s), insured with default insurance (starting with the insured Mortgage Loan with the smallest Outstanding Balance), and once all insured Mortgage Loans are paid, then to amounts owing under any other Mortgage Loan (starting with the Mortgage Loan with the smallest Outstanding Balance), then to amounts owing under any HELOC Account (starting with the HELOC Account with the smallest Outstanding Balance). You waive any right of set-off or deduction you may have relating to any loan. Amounts owing under a Mortgage Loan or a HELOC Account include any costs incurred by us in connection with the exercise of our rights under this HELOC Agreement and any other agreements relating to your HELOC Agreement, including but not limited to the Mortgage.

**13. Communications**

**Our Communications with You:** We will deliver notices and other communications to the mailing address we have on record for you. Communication sent to you via regular mail will be deemed to have been received by you five (5) business days after we mail it.

If more than one borrower signed the Commitment and all of the borrowers consented to the provision of disclosures to one of the borrowers on their behalf (the "**Designated Borrower**"), then all of our communications and

disclosures, including HELOC Statements, will be sent only to the Designated Borrower. If two or more but not all borrowers have consented to the provision of disclosures to the Designated Borrower on their behalf, we will send all communications and disclosures to the Designated Borrower on behalf of the borrowers who consented, and separately to each other borrower who has not consented.

#### **14. Updated Information**

It is your responsibility to notify us of any change to the address of the Designated Borrower and any other borrower who has requested separate disclosure. If you do not advise us of your change of address, you agree that your last known address will be your current address for the purpose of notice and service.

You agree, upon our request, to give us up-to-date credit and financial-related information about yourself. You also agree to promptly tell us about any unfavourable change in your financial position that may weaken your ability to perform your obligations to us under this HELOC Agreement. Until you do so, we may assume that all information you supply to us about your financial position is true and complete at the time you give it to us and any change in your financial position after that time is not an unfavourable one. You must also give us any other information we may request that is relevant to your HELOC Account and to this HELOC Agreement.

#### **15. Changing the HELOC Account**

You acknowledge that from time to time we may make certain changes to the terms and conditions applicable to your HELOC Account. We may at any time and in our discretion: (i) decrease your HELOC Credit Limit, (ii) change your Interest Rate and/or the Equitable Prime Rate, and (iii) change any charge or fee applicable to your HELOC Account, which may include adding a new fee. Subject to applicable law, we will let you know of such changes within thirty (30) days of the change. Notice to you may be provided as part of your HELOC Statement or otherwise in writing.

Upon thirty (30) days' prior written notice to you, we may also amend any other terms and conditions of your HELOC Account, including, but not limited to, increasing monthly payments or non-interest charges. We will not increase your HELOC Credit Limit without your consent.

#### **16. Changing the HELOC Agreement**

You acknowledge that from time to time we may make certain changes to this HELOC Agreement. Notice to you of these changes may be provided as part of your HELOC Statement or otherwise in writing and also by posting a notification on our website. Subject to applicable law, we will let you know of any change that we make to this HELOC Agreement at least thirty (30) days before the change comes into effect.

Any change to this HELOC Agreement is made without prejudice, that is, without impairing our rights, without creating a new agreement, and without detracting from our rights, security and recourses.

#### **17. Special Offers and Promotional Rates**

We may make Special Plans available to you from time to time and other offers which may temporarily lower the Interest Rate applicable to certain portions of your outstanding HELOC Account balance. If we make a special offer available to you, we will explain its scope and duration and any additional terms that apply to it. If you accept the Special Plan, or such other offer, your HELOC Statement will set out the Special Plans or other offers which may apply to your outstanding balances, including but not limited to, any remaining balances associated with those rates, and when the promotion expires.

#### **18. Subsequent Encumbrances**

Other than the Mortgage on the Property, you will not further encumber, hypothecate or otherwise charge the Property in any way without first obtaining our prior written consent, and such further encumbering without our written consent will constitute a default under this HELOC Agreement. In addition to all other rights we have under this HELOC Agreement, your failure to comply with this Section 18 will result in our ability to, at our option, refuse to

advance you amounts under the HELOC Account without regard to any availability under your HELOC Credit Limit.

#### **19. Due on Sale**

In the event that you wish to sell or transfer the Property or upon your entering into any agreements of sale or transfer for the Property, we may, at our option, require that all amounts under this HELOC Agreement immediately become due and all principal and outstanding interest on such loans will immediately become due and payable upon such sale or transfer and we may demand immediate payment under the HELOC Account. You agree that no sale, transfer or other dealing with the Property shall in any way relieve you of your obligations under the HELOC Account, and for payments owing under the HELOC Account, or in respect of the Total Debt.

#### **20. Foreign Currency Transactions**

We will bill you in Canadian currency. Please note that you cannot use HELOC Cheques outside Canada. Please refer to Schedule 1 Access Card - Terms and Conditions for information regarding foreign currency transactions completed with the Access Card.

#### **21. Termination of this HELOC Agreement**

You may terminate this HELOC Agreement by providing ten (10) days' prior notice in writing. If this HELOC Agreement is terminated, your obligations to us under this HELOC Agreement will remain in effect until you pay us the Total Debt you owe.

You also acknowledge that we may decide to cancel this HELOC Agreement at any time without providing you prior notice. Upon cancellation by us, you must pay all amounts you owe to us and immediately stop using the Access Card and HELOC Cheques.

#### **22. Non-Waiver**

Any failure by us to exercise any right arising from a default under this HELOC Agreement or Mortgage shall not constitute a waiver of such right.

#### **23. Applicable Law**

This HELOC Agreement will be interpreted in accordance with the laws of the province or territory in which the Property is located and all laws of Canada applicable therein. In the event of a dispute, you agree that the courts of the province or territory where the Property is located shall hear the dispute and you agree to be bound by any judgment of such court.

#### **24. Conflict**

If there is a conflict between this HELOC Agreement and the provisions of the Commitment, the provisions of the Commitment shall prevail but only to the extent of the conflict.

#### **25. Costs Relating to the HELOC Account**

You agree that you shall be responsible for paying all legal, property valuation, appraisal, survey and other fees and insurance premiums, if applicable, related to the HELOC Account. Where permitted by law, you shall also pay any fees and costs, including discharge and administrative fees we charge in the event we agree to release the HELOC Account. You also agree to pay the registration fee if we register the discharge of the HELOC Account.

#### **26. Applicable Interest Rates if Rate Differs on the Mortgage**

The Interest Rate indicated on the Mortgage may contain an Interest Rate that differs from the rate applicable to the HELOC Account or a Mortgage Loan made to you. You acknowledge and agree that in that case the Interest Rate that will apply to the HELOC Account will be the most recent Interest Rate communicated to you as indicated on the Commitment or as communicated to you from time to time according to Section 15 of this HELOC Agreement.

**27. Liability**

**Individual and Joint Liability:** If more than one borrower signs the Commitment incorporating this HELOC Agreement, each borrower is individually and jointly liable with the other(s) for all amounts owing under this HELOC Agreement, inclusive of all amounts owing through the use of the HELOC Account, and by any other authorized person or signatory. You acknowledge that we are authorized to rely on instructions from any one of you, or anyone acting on your behalf.

**28. Collecting and Using Your Personal Information**

You agree to the collection, use and sharing of your Personal Information, including with, but not limited to, our service providers, in accordance with the terms of our Privacy Agreement and federal privacy legislation. A copy of our Privacy Agreement has been or will be provided to you and can be obtained at any of our offices or on our website. This Privacy Agreement may be amended from time to time.

The term "Personal Information" used in this HELOC Agreement, including Schedule 1, shall have the meaning set out in the Privacy Agreement. For greater certainty, Personal Information includes information relating to your account details and any transactions involving your HELOC Cheques and Access Card.

**29. Assignment**

You agree we may sell, transfer and assign all or any part of our rights and obligations under this HELOC Agreement to any other third party or issue securities backed by this HELOC Agreement or obtain mortgage/loan default insurance (if not already obtained). You also agree that we may disclose any information relating to this HELOC Agreement, and your application for credit, including any financial information contained in support of that application or contained in this HELOC Agreement, to a proposed purchaser or assignee of the HELOC Account, a mortgage/loan default insurer or a trustee of a securitization and that we, or our agent, may obtain a credit report on you in connection with these transactions.

**30. Partial Invalidity**

If any provision of this HELOC Agreement is found to be invalid or unenforceable, the validity and enforceability of all other provisions in the HELOC Agreement will not be affected.

**31. Electronic Instructions**

You acknowledge that the transmission of data or instruction from you to us via facsimile, electronic mail or any other means, is subject to the likelihood of human and machine errors, omissions, delays, and losses (including but not limited to viruses or inadvertent loss of data or instructions, or damage to media) that may give rise to loss or damage. You agree that we are authorized to act on instructions we receive from you, or from instructions we reasonably believe to be from you, and will not be liable for any such errors, omissions, delays, or losses, except to the extent caused by our gross negligence or willful misconduct (and subject to all other terms and conditions of this HELOC Agreement).

**32. Credit Bureau**

You agree that we may obtain a credit report on you in connection with any application, and on an annual basis or as frequently as we deem necessary, from Equifax Canada or Trans Union of Canada Inc., or any other credit reporting agency. If you wish to review your credit bureau file, contact Equifax Canada, Consumer Relations Department, P.O. Box 190, Station Jean Talon, Montreal, Quebec, H1S 2Z2, 1-800-465-7166 and/or Trans Union of Canada Inc., consumer Relations Centre, P.O. Box 338 LCD1, Hamilton, Ontario L8L 7W2, 1-877-713-3393 (Quebec) or 1-800-663-9980 (all other provinces). If you have provided us with your social insurance number, you agree that we may share it with credit reporting agencies as an aid to identify you.

### 33. Contacting Us

If you wish to communicate with us for:

- General questions or inquiries or complaints regarding your HELOC Account;
- You suspect there are unauthorized transactions on your HELOC Account; or
- For any other reason;

you can do so by calling our toll-free number of **1-855-407-4600** during our business hours of **8:30am – 5:00pm (Eastern Standard Time)**. Please note that your call may be monitored and/or recorded to ensure accuracy, security, service quality and for training purposes.

We will do our best to resolve your concern or inquiry over the telephone without requiring you to take any further action. Our Customer Complaint Handling Procedures (CCHP) set out full details of Equitable Bank's dispute resolution process and are available on our website in our offices, or by calling us toll free at **1-855-407-4600**.

**Financial Consumer Agency of Canada** – If you have a complaint regarding a potential violation of a consumer protection law, you can contact the Financial Consumer Agency of Canada (FCAC) in writing at 6th Floor, Enterprise Building, 427 Laurier Ave. West, Ottawa, Ontario K1R 1B9. The FCAC can also be contacted by telephone at 1-866-461-3222 or through its website at [www.fcac-acfc.gc.ca](http://www.fcac-acfc.gc.ca). Please note that the FCAC does not become involved in matters of redress or compensation.

### 34. Additional Rights

The failure by us to require performance by you of any provision of this HELOC Agreement shall in no way affect our right to enforce any such provision. Further, any such action or inaction on our part shall not be construed as a waiver of a breach of any provision.

### 35. Telephone Monitoring and Recording

We, and if applicable, our agents, may listen to and record your telephone calls with us for service accuracy, security, quality assurance and training purposes. You agree that we, and if applicable, our agents, may do so whether you or we initiate the telephone call.

### 36. Binding Nature

This HELOC Agreement is binding upon you and your heirs, executors, administrators and personal representatives. Additionally, it is acknowledged that the provisions of this HELOC Agreement are incorporated into and form part of the mortgage/charge used by us in the province where the land subject to the Mortgage is located.

### 37. Legal Tender

Unless we otherwise agree, all payments must be made in Canadian funds. Please note that we will not accept payments in cash so please do not mail or otherwise provide cash to us.

PLEASE RETAIN THIS DOCUMENT FOR YOUR RECORDS.  
ADDITIONAL COPIES MAY BE SUBJECT TO A NOMINAL FEE.

\*Visa Int./Peoples Trust Company, Licensed User.

## **SCHEDULE 1**

### **Access Card – Terms and Conditions**

This Schedule sets out the Terms and Conditions applicable to your Equitable Bank Visa\* Access Card which are binding on you, Equitable Bank, and Peoples Trust Company with respect to the use of the Access Card.

Please read this document carefully and retain a copy for your records.

**Your use of the Access Card will be further evidence that you acknowledge and agree to be bound by the Terms and Conditions herein, as amended from time to time.**

Peoples Trust is the Issuer of your Access Card. The Access Card is provided to you in order for you to access your HELOC Account as long as you continue to act in accordance with these Terms and Conditions.

We will be using the following **definitions** in these Terms and Conditions. If a term is not defined below, it has the meaning given to it in the Definitions section of the HELOC Agreement or within the section in which it is referenced.

**“Applicable Law”** means any statute, regulation or operating rule of any Governmental Authority or any other regulatory authority that Peoples Trust and Equitable Bank are subject to, or any bylaw, operating rule or regulation of Visa.

**“Governmental Authority”** means any Canadian federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority (including the Office of the Superintendent of Financial Institutions), government organization, commission, board, professional agency, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, in each case to the extent it has jurisdiction over Peoples Trust and/or Equitable Bank or any Person, property, transaction, activity, event or other matter related to these Terms and Conditions. The above definition is deemed to include any interim or permanent transferee or successor of a Government Authority’s underlying mandate, function or activity.

**“Issuer”** and **“Peoples Trust”** mean Peoples Trust Company, the issuer of the Access Card.

**“Person”** means an association, a corporation, an individual, a partnership, a trust, an unincorporated organization or any other entity or organization.

**“PIN”** means the personal identification number that you will use to authenticate yourself when withdrawing cash at an ATM and when making a transaction at a chip-enabled merchant terminal.

**“Terms and Conditions”** means these terms and conditions applicable to your Access Card as outlined in this Schedule.

**“We”, “us”, or “our”** all mean both Equitable Bank and Peoples Trust, including any affiliated service providers and third parties required to fulfill and manage your Access Card.

**“You”, “your” or “yours”** all mean you, the Access Card cardholder.

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## Ownership of the Access Card

The Access Card is owned by Peoples Trust Company and will remain the property of Peoples Trust. You agree that upon demand, you will return the Access Card to us or destroy the Access Card as instructed by us, immediately upon such request. The Access Card is provided for your sole use. You may not sell, transfer or assign the Access Card to a third party. You are restricted to one Access Card per borrower.

### 1. Using Your Access Card

You must sign the back of your Access Card in the indicated signature area immediately upon receipt. You are required to activate your Access Card before you use it. You may use your Access Card only to access your HELOC Account, by making purchases or obtaining cash advances at an ATM with the Visa and/or Plus logos. You may not use your Card to commit or facilitate illegal activity. Any purchase or cash advance you make using your Access Card will be a transaction on your HELOC Account and will reduce the credit available on your HELOC Account. This amount will include any fees charged by, for example, ATM operators for their services. We may, in our sole discretion, cancel or suspend any features or services of the Access Card at any time, with or without cause, with thirty (30) days' notice to you or as otherwise required by Applicable Law.

You may use the Access Card for any legal transaction wherever Visa is accepted, and where such transaction would not put you over your HELOC Credit Limit. Your Access Card may not be used for any illegal purpose, including transactions for goods or services prohibited by Applicable Law. We may, at our sole discretion, deny any transaction.

If you choose to set up a pre-authorized debit (“**PAD**”) transaction, that is where you authorize an organization to withdraw funds from your HELOC Account using your Access Card number, you agree that you are responsible for providing that organization with adequate and up-to-date information, including advising any such organization should your Access Card expiry date or card number change. If you decide to discontinue any PAD transaction, you agree that it is your responsibility to provide written notice to the organization that you are cancelling your authorization for any further PAD transactions, and then to check your HELOC Statements to ensure that the transactions in question are discontinued once the organization receives your notice. You agree that it is your responsibility to settle any disputes regarding pre-authorized debit transactions directly with such organization. We are not liable if a PAD transaction cannot be posted to your HELOC Account.

You understand and agree that some merchants (including, but not limited to, restaurants, hotels, and car rental companies) may pre-authorize an Access Card transaction for a security deposit or a purchase amount plus an allowance (up to 20% or more of the purchase amount to allow for items such as tips or incidental expenses) to ensure there are sufficient funds available on your HELOC Account to cover the final purchase amount. Any transaction that would put you over your HELOC Credit Limit will be declined. A pre-authorized transaction will place a “hold” on those funds until the merchant sends us the final purchase amount or releases the security deposit. Once the final purchase amount is received, the pre-authorization amount on hold in excess of that final purchase amount will be released. It may take several days for a pre-authorization to be released or removed. You will not have access to any pre-authorized amount during a hold period.

**Transactions Made In Foreign Currencies:** Access Card transactions made in a foreign currency will be converted and posted to your HELOC Account in Canadian currency. The exchange rate is determined by Visa\* International on our behalf on the date that the transaction is settled with Visa International. This exchange rate may be different from the rate in effect on the transaction date. When the transaction is posted to your HELOC Account, in addition to the exchange rate, a foreign currency conversion mark-up equal to 2.50% will apply to each foreign currency transaction. For any reversal of these transactions, the exchange rate will be determined in the same manner as of the date that the transaction is reversed and as such will in most cases differ from, and may be less than, the amount that was originally charged for that transaction.

## 2. Interest-Free Grace Period For Access Card Purchases

There will be an interest-free grace period on new Access Card purchases if you pay the entire New Balance shown on your monthly Account Statement by the Payment Due Date. If you do not pay the entire New Balance by the Payment Due Date, you will be responsible for paying interest on those new purchases at the rate shown on the front of your Account Statement from the first day of the next month's statement period.

There is **no** interest-free grace period on Cash Advances. Interest will be charged on all Cash Advances beginning on the transaction date of the Cash Advance, at the Interest Rate shown on your HELOC Statement.

## 3. Cancellation of Your Access Card

If you terminate your HELOC Account, your Access Card will automatically be cancelled and you must destroy the card. If you would like to cancel your Access Card without terminating your HELOC Account, you may do so by notifying us in writing or via telephone and destroying the card. Your obligations under these Terms and Conditions continue after the destruction of your Access Card and your notice of cancellation. You are responsible for notifying any individual or entity you have pre-authorized to make charges to your HELOC Account using your Access Card number. If such individual or entity continues to make charges on your HELOC Account and we have reason to believe that you are attempting to use your Access Card number after cancellation of the card, we may or may not allow the transaction to be posted to your HELOC Account.

We may terminate your Access Card or these Terms and Conditions at any time and without prior notice to you if fraud is suspected, or for any other reason.

If these Terms and Conditions or the Access Card are terminated, you will continue to be liable for payment of outstanding transaction amounts, interest, and fees as of the date of such termination, or which are made on or prior to the date of termination, but which are posted to your HELOC Account after the termination date. If you have PAD payment transactions which are authorized on or before the termination date, and they are posted to your HELOC Account after that date, you will be liable for payment of such transactions and associated fees and interest.

If you are in default under the HELOC Agreement we may, at our discretion, cancel your Access Card and require that you return the card to us or destroy it. If we have to reclaim any Access Cards following a default and we incur any costs in doing so, you agree to pay our costs, to the extent permitted by Applicable Law.

## 4. Security of Access Card and Personal Identification Number (PIN)

For security purposes, your PIN will be mailed to you separately from your Access Card. You agree to keep your PIN absolutely confidential and for your use alone.

In order to keep your Access Card and PIN secure, we recommend at a minimum:

- (a) Keep possession of your Access Card at all times;
- (b) Do not keep a written record of your PIN;
- (c) Never share your PIN information with a third party (including family members, merchants or your financial institution), and take all reasonable precautions to ensure that no one finds out your PIN;
- (d) Do not leave receipts behind at an ATM or merchant; and
- (e) Ensure that you keep a note of your Access Card number and the Customer Service telephone number in a location separate from your Access Card in case of loss or theft.

## 5. Lost or Stolen Access Card and Unauthorized Use

You are responsible for all uses of the Access Card with the PIN at an ATM, whether initiated by you or anyone else using your Access Card and PIN. Be aware that if lost or stolen, your Access Card may be used without the PIN for transactions at retail locations and for online or telephone transactions.

If you become aware that your Access Card has been lost or stolen, or you believe that your PIN or Access Card information may be known to a third party, you agree to notify us **immediately** by calling the toll-free **Customer**



**Service number 1-877-338-4659** or from outside Canada or USA, call collect (727) 570-4899, and providing all pertinent information requested to aid in the recovery of your Access Card. If we are notified by you of a lost or stolen Access Card, you will have no liability for unauthorized purchases made through the use of that Access Card which occur after we have been duly notified.

With the Visa Zero Liability policy, you must establish that you are not responsible for the disputed transactions. Some of the factors we consider in determining if you are responsible for the disputed transaction are: (a) whether you have used reasonable care to safeguard your Access Card and PIN against loss and theft; (b) whether you have reported multiple frauds related to your Access Card in the last twelve (12) months; and/or (c) whether you have been grossly negligent or have engaged in fraud.

Verification of a Zero Liability claim for a disputed transaction can take up to one hundred and twenty (120) days, once all paperwork has been received and confirmed by us, and may require a police investigation. You agree to cooperate fully with us in any such investigation that may be required.

You acknowledge that if you do not comply with these Terms and Conditions, or the HELOC Agreement, including the PIN security rules described above, other persons may be able to obtain information about you or the Access Card.

## 6. Disputes

You agree that we will not be liable in any way for any dispute arising out of the purchase of merchandise or services using the Access Card, the failure of any retailer to honour the Access Card, or the failure of an ATM machine to dispense cash. We are not responsible for any failure to supply, lack of suitability or quality of any goods or services purchased from retailers through the use of the Access Card. We are not liable for any action or failure to act of a retailer or a refusal by a retailer to honour the Access Card whether or not such failure or refusal is a result of any error or malfunction of equipment used to effect an authorization of the Access Card. We will not be liable for any damage, loss or inconvenience you may incur if you are unable to use the Access Card as a result of any failure, error, malfunction or technical problem with or at our service providers' systems or equipment, or with an ATM.

If you identify an error with a transaction, you must address it with the applicable merchant in addition to contacting us. You are still liable for payment of a disputed transaction. In the event of a merchant issuing a credit to your HELOC Account, we will credit your HELOC Account upon receipt of the credit voucher.

If you wish to dispute any transaction or entry made with your Access Card, please contact us immediately by calling the toll-free **Customer Service number 1-877-338-4659**. If Customer Service is unable to resolve the matter, disputes will be referred to a senior level within Equitable Bank. Our Customer Complaint Handling Procedures (CCHP) set out full details of Equitable Bank's dispute resolution process and are available on our website, [www.equitablebank.ca](http://www.equitablebank.ca), in our offices, or by calling us toll free at **1-855-407-4600**.

If you are not satisfied with Equitable Bank's decision, you may also contact the Access Card issuer, Peoples Trust Company, at 1-855-694-6214 or submit your complaint or inquiry through the form found on the Peoples Trust's website (<http://www.peoplestrust.com/en/about-us/contact/>). Our complaints policy can be found online at: <http://www.peoplestrust.com/en/about-us/resolving-your-concerns/>.

If for some reason Peoples Trust is unable to resolve your inquiry or concern, you may refer your inquiry or concern to the Ombudsman for Banking Services and Investments at 1-888-451-4519. You may also contact the Financial Consumer Agency of Canada (FCAC) in writing at 427 Laurier Ave. West, 6<sup>th</sup> Floor, Ottawa, ON K1R 1B9. The FCAC can also be contacted by telephone at 1-866-461-3222 or through its website at [www.fcac-acfc.gc.ca](http://www.fcac-acfc.gc.ca).

## 7. Notice of Data Protection and Privacy Policy

Both Equitable Bank and Peoples Trust are committed to protecting your privacy. In delivering the services to you related to your Access Card, we each maintain physical, organizational and technical measures to safeguard your cardholder

information.

As the issuer of the Access Card, Peoples Trust's Personal Information Protection Policy may be obtained online at <http://www.peoplestrust.com/en/legal/privacy-security/privacy/> or by calling 1-855-694-6214. And as a reminder, Equitable Bank's Privacy Agreement may be obtained online at [equitablebank.ca](http://equitablebank.ca) or by calling 1-855-407-4600.

Each of Equitable Bank and Peoples Trust may collect Personal Information (e.g. your name, address, telephone number and date of birth) about you and your use of the Access Card and related services, including information about your Access Card transactions (e.g. the date, amount and place of each transaction) and also share that Personal Information with each other and with our respective or joint service providers to issue and administer your Access Card, including, but not limited to, processing Access Card transactions, providing Customer Service, processing claims for lost or stolen Access Cards and helping to protect against fraud.

We may use and store your Personal Information at facilities in various countries (including, but not limited to Canada and the United States of America). The personal information protection laws of those countries might be different from the laws of the jurisdiction in which you are located, and might permit courts, government, law enforcement and regulatory agencies and security authorities to access your personal information without notice.

If you consent to Equitable Bank or any other party collecting and using your Personal Information for their own purposes (not as a service provider to Peoples Trust), including to send marketing and promotional messages to you, then Peoples Trust will not have any control over, and will not be responsible or liable for, the collection, use, disclosure and retention of your personal information by Equitable Bank or a third party, the marketing or promotional messages that they send to you, or any other wrongful act or omission by such party.

Should you wish to withdraw your consent for the collection or use of your Personal Information as it relates to your Access Card, you must cancel your Access Card by contacting Customer Service at 1-877-338-4659, return the Access Card to Equitable Bank, and request that we discontinue any further use of your Personal Information in connection with your Access Card.

## **8. Amendments to Schedule 1 Access Card - Terms and Conditions**

You acknowledge that from time to time we may amend the Schedule 1 Access Card -Terms and Conditions. Notice to you of these changes may be provided as part of your HELOC Statement or otherwise in writing and also by posting a notification on our website, Subject to Applicable Law, we will let you know of any amendment that we make to the Terms and Conditions at least thirty (30) days before the amendment comes into effect.

## **9. Emergency Card and Cash Replacement**

If you need an emergency cash advance or a replacement Access Card, call Visa at 1-800-847-2911 (Canada and USA) or 1-800-847-2113 worldwide.

## **10. No Warranty of Availability or Uninterrupted Use**

From time to time Customer Services may be inoperative, and when this happens, you may be unable to use your Access Card or obtain information about the Outstanding Balance on your HELOC Account. Please notify us if you have any problems using your Access Card or HELOC Account. You agree that we are not responsible for any interruption of service.

## **11. Disclaimer of Warranties**

**Except as expressly otherwise provided in this HELOC Agreement, we make no representations or warranties of any kind to you, whether express or implied, regarding any subject matter of this HELOC Agreement, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose or those arising by statute or otherwise in law or from a course of dealing or usage of trade.**

**Limitation of Liability: We will not be liable in any way for any dispute arising out of the purchase of**

merchandise or services using the Access Card or the failure of any retailer to honour the Access Card or the failure of an ATM machine to dispense cash. We are not responsible for any failure to supply, lack of suitability or quality of any goods or services purchased from retailers through use of the Access Card. We will not be liable for any action or failure to act of a retailer or refusal by a retailer to honour the Access Card, whether or not such failure or refusal is a result of any error or malfunction of equipment used to effect an authorization of the Access Card. We will not be liable for any damage, loss or inconvenience you may incur if you are unable to use the Access Card as a result of any failure, error, malfunction or technical problem with or at our distributors or with our service providers' systems or equipment, or with an ATM.

Except as expressly required by this HELOC Agreement or Applicable Law, we will not be liable to you for performing or failing to perform any obligation under this HELOC Agreement unless we have acted in bad faith. Without limiting the foregoing, we will not be liable to you for delays or mistakes resulting from circumstances beyond our control, including, without limitation, acts of governmental authorities, national emergencies, insurrection, war, riots, failure of merchants to honour the Access Card, failure of communication systems, or failures of or difficulties with our equipment or systems. Not in limitation of the foregoing, we will not be liable to you for any delay, failure or malfunction attributable to your equipment, any Internet service, any payment system or any Customer Service function. In the event that we are held liable to you, you will only be entitled to recover your actual direct damages. In no event shall you be entitled to recover any indirect, consequential, exemplary or special damages (whether in contract, tort or otherwise), even if you have advised us of the possibility of such damages.

## **12. Website and Availability**

Although considerable effort is expended to make certain websites and other operational and communications channels available, we do not warrant these channels to be available and error free at all times. You agree that we will not be responsible for temporary or extended interruptions in service due to maintenance or website changes or failures, or failures beyond our control, including but not limited to, the failure of interconnecting and operating systems, computer viruses, forces of nature, labour disputes or armed conflicts. We shall not bear any liability, whatsoever, for any damage or interruptions caused by any computer viruses that may affect your computer or other equipment.

## **13. Entire Agreement**

This HELOC Agreement sets out the entire agreement between the parties with respect to the use of the Access Card. This HELOC Agreement replaces all prior agreements and understandings between the parties with respect to the Access Card.

## **14. Section Headings**

Section headings in this HELOC Agreement are for convenience of reference only, and shall not govern the interpretation of any provision of this HELOC Agreement.

## **15. Severability**

If any part of this HELOC Agreement is found to be invalid or unenforceable by any court or government agency of competent jurisdiction, that invalidity or unenforceability shall not affect the remainder of this HELOC Agreement, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

\* \* \* \*

\*Visa Int./Peoples Trust Company, Licensed User.