

NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement, (this “**Agreement**”) is dated as of _____, 2024 between _____, a _____ corporation (“**Company**”), with offices located at _____, and TD Bank, N.A., a U.S. national bank (“**TD**”), with offices located at 1701 Route 70 East, Cherry Hill, NJ 08034. Company and TD sometimes are collectively referred to herein as the “**Parties**” and individually as a “**Party.**”

RECITALS

A. In connection with the evaluation or implementation of mutually beneficial business opportunities that may include the provision of services or products by Company to TD and TD Affiliates (a “**Transaction**”) from time to time, Company and TD (or TD Affiliates) may disclose or provide access to valuable proprietary and confidential information to each other relating to their respective operations and businesses.

B. Each Party would like to protect the confidentiality of, maintain its and its affiliates’ rights in, and prevent the unauthorized use and disclosure of its proprietary and confidential information.

C. For the purpose of this Agreement, (i) “**TD Affiliates**” means The Toronto-Dominion Bank and its wholly-owned (directly or indirectly) subsidiaries and their successors and assigns, excluding TD, and (ii) “**TD Canadian Affiliates**” means all TD Affiliates located in Canada.

D. Company agrees that each TD Affiliate is a third party beneficiary of the rights and remedies contained in this Agreement and that each TD Affiliate will have the benefit of such rights and remedies and will be entitled to rely on and enforce, in proceedings brought in its own name, such rights and remedies against Company.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Company and TD hereby agree as follows:

1. Confidential Information. As used in this Agreement, “**Confidential Information**” of a Party means all information of a Party or its licensors, suppliers or affiliates (including, in the case of TD, TD Affiliates) that is not generally known to the public that is disclosed by such Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) or that is otherwise learned by or comes into the possession or knowledge of the Receiving Party in connection with, or as a result of a Transaction, and that has been identified as being proprietary or confidential or that by the nature of the circumstances surrounding the disclosure or receipt, or by the nature of the information itself, would be treated as proprietary and confidential by a reasonable person. Without limitation, Confidential Information of a Party includes any financial information in any form or medium, and all information of or about an identifiable officer, director, employee, customer or potential customer, and any customer lists or customer data (collectively, the “**Personal Information**”). Personal Information includes all information regarding customers of TD, regarding third party consumers having contact with TD, and TD’s employees, the confidentiality of which TD must maintain pursuant to applicable federal and state privacy laws, rules, and regulations, including Public Law 106-102, the Gramm-Leach Bliley Financial Services Modernization Act of 1999, federal Regulation P, and Massachusetts General Laws Chp. 93H and its implementing regulation, as amended.

2. Use and Disclosure of Confidential Information by Receiving Party Representatives.

- (a) The Receiving Party will not use Confidential Information of the Disclosing Party for any purpose other than (i) evaluating, implementing or, in the case of TD, receiving services or exercising contractual rights associated with the specific Transaction for which such information was disclosed, (ii) as otherwise approved in writing by the Disclosing Party, or (iii) as otherwise permitted by this Agreement or any agreement that incorporates this Agreement by reference (“**Transaction Document**”).

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- (b) The Receiving Party will not disclose or provide access to any Confidential Information except as permitted by this Agreement or any Transaction Document.
- (c) The Receiving Party will take appropriate steps to ensure Confidential Information is safeguarded: (i) in accordance with industry accepted best practices and standards used or observed by comparable companies in North America; and (ii) by adopting and complying with documented policies and procedures designed to protect against any anticipated threats or hazards to the security or integrity of Personal Information, and against any loss, theft, unauthorized access, use, disclosure, copying, or modification.
- (d) The Receiving Party will restrict access to: (i) Confidential Information to those employees, affiliates, agents, advisors, consultants and other representatives of Receiving Party (“**Representatives**”) who have a need to know for the purposes of the Transaction; and (ii) only the Confidential Information such Representatives need for such purpose and under obligations of confidentiality no less stringent than those contained in this Agreement. The Receiving Party will be liable for any failure by its Representatives to comply with the terms of this Agreement.
- (e) The Receiving Party will collect, use, store, disclose, dispose of, provide access to and otherwise handle Personal Information received, collected or accessible to the Receiving Party in accordance with all privacy laws applicable to such information.

3. Exceptions. The provisions of Section 2 will not apply to any information that:

- (a) the Receiving Party can establish, by documentary evidence, was already known by the Receiving Party at the time of initial disclosure by the Disclosing Party;
- (b) is or becomes publicly known through no wrongful act of the Receiving Party or its Representatives, or any other person subject to a confidentiality agreement in favour of the Disclosing Party;
- (c) is rightfully received from a third party without similar restriction provided that the third party did not come into possession of the Confidential Information as a result, directly or indirectly, of a breach of an obligation of confidentiality owed by any person to the Disclosing Party;
- (d) the Receiving Party can establish, by documentary evidence, was independently developed by or on behalf of the Receiving Party without reference to the Disclosing Party’s Confidential Information; or
- (e) is approved for release by written authorization of the Disclosing Party.

However, the foregoing exceptions are not applicable to any Personal Information.

4. Legal Obligation to Disclose. Unless otherwise prohibited by law, if the Receiving Party becomes legally obligated to disclose Confidential Information, the Receiving Party will give the Disclosing Party prompt written notice sufficient to allow the Disclosing Party to seek a protective order or other appropriate remedy, and will reasonably cooperate with the Disclosing Party’s efforts to obtain such protective order or other remedy at the Disclosing Party’s expense, and in the event the Receiving Party is unable to do so, the Receiving Party will (so long as not prohibited by law from doing so) advise the Disclosing Party immediately subsequent to such disclosure. The Receiving Party will disclose only such information as is required, in the opinion of its counsel, and will use commercially reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed.

5. Storage of Confidential Information. Receiving Party will keep Disclosing Party’s Confidential Information logically isolated from any data of its other customers or suppliers, so that: (i) Confidential Information is not commingled with third party data or disclosed in conjunction with any disclosure of third party data; and (ii) Receiving Party can readily locate and return

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Confidential Information in accordance with this Agreement. Except where authorized by TD in writing, Company will not collect, use, store, disclose, dispose of, provide access to or otherwise handle any TD Canadian Affiliate Personal Information outside Canada.

6. Additional Obligations for Personal Information. To the extent Company will be given access to or be provided with any Personal Information for purposes of the Transaction,

- a) Company will ensure that all Representatives engaged in the performance of the Transaction that may have access to Personal Information have been trained in privacy compliance and awareness, including regarding consequences for their failure to comply.
- b) Company will designate an employee who will be responsible for all Personal Information in Company's possession or under its control and for ensuring that Company complies with the provisions of this Agreement;
- c) Company will, unless prohibited from doing so by applicable law, refer to TD all requests for access to Personal Information and will respond to any such request only by making reference to such referral. If TD is required by any applicable law to provide TD's Personal Information that is in Company's possession or control to an individual, at TD's request, and provided that TD has provided Company with reasonable prior notice, Company will provide such Personal Information and will meet any deadlines for such provision required to enable TD to comply with any deadlines applicable under such law to the provision of TD's Personal Information; and
- d) Upon request by TD or a TD Affiliate, but not more than once in any calendar year during the term of the Transaction, Company will deliver a statement signed by a senior officer in the Company confirming to TD in writing that, in respect of the previous 12 month period: (i) Company has developed and implemented privacy compliance processes designed to ensure Company's compliance with this Agreement; and (ii) to the best of Company's knowledge, after reasonable inquiry, Company has complied with the requirements set forth in this Agreement, with the exception of those incidents of non-compliance communicated to TD in writing. TD or a third party authorized by it may, during normal business hours, from time to time on prior written notice, enter upon any premises of Company at which Personal Information is stored or used and audit the procedures, processes and information pertaining to Company's compliance with this Agreement.

7. Unauthorized Disclosure of Confidential Information. If there is any unauthorized access to, disclosure or loss of, or inability to account for, any Confidential Information of the Disclosing Party, the Receiving Party will promptly, and in the case of Personal Information no later than five days after becoming aware thereof, (i) notify the Disclosing Party; (ii) take and document such actions as may be necessary or reasonably requested by the Disclosing Party to minimize the disclosure or loss; (iii) cooperate in all reasonable respects with the Disclosing Party to minimize the impact of the disclosure or loss and any damage resulting therefrom; and (iv) in the case of Personal Information, conduct a post-incident review to determine if any changes are necessary to its information security policies and procedures described in Section 2(c) above.

8. Ownership of Confidential Information. All Confidential Information will remain the exclusive property of the Disclosing Party, and the Receiving Party will have no rights, by license or otherwise, to use the Confidential Information except as expressly provided herein or in a Transaction Document.

9. Indemnity. Each Party hereby covenants and agrees that it (the "Indemnifying Party") will indemnify and save the other Party and its affiliates including for TD, TD Affiliates (the "Indemnified Party") harmless from and against any and all liability, loss, damages, claims, costs and expenses (including legal fees) that the Indemnified Party may at any time incur, suffer or be required to pay arising out of or in any way related to a breach of this Agreement by the Indemnifying Party or those for which it is responsible.

10. No Warranty. Except as otherwise agreed in writing in respect of a specific Transaction, no warranties of any kind are given by either Party with respect to the accuracy, appropriateness or completeness of information provided to the other.

11. Return or Destruction of Confidential Information. Subject to the provisions of a Transaction Document, upon the Disclosing Party's written request, the Receiving Party will promptly return or destroy, and verify in writing its destruction of, all material, in any form, embodying Confidential Information of the Disclosing Party. In carrying out any destruction, the Receiving Party will protect Confidential Information in accordance with the terms of this Agreement. Notwithstanding the foregoing, TD may

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retain (a) any minutes of meetings, copies of notes, internal analyses, records and other materials that contain or reflect Confidential Information; (b) Confidential Information stored on its computer systems, e-mails, or other forms of electronic information retention; and (c) Confidential Information required for regulatory, legal and compliance purposes. For greater certainty, the terms of this Agreement continue to apply to any such retained Confidential Information.

12. Injunctive Relief. The Receiving Party acknowledges that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to the Disclosing Party for which monetary damages may be difficult to ascertain or be an inadequate remedy. The Receiving Party therefore agrees that the Disclosing Party will have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of this Agreement.

13. Limited Relationship. This Agreement will not create a joint venture, partnership or other formal business relationship or entity of any kind, or an obligation to form any such relationship or entity. Each Party will act as an independent contractor and not as an agent of the other Party for any purpose, and neither will have the authority to bind the other.

14. Cumulative Obligations. Each Party's obligations hereunder are in addition to, and not exclusive of, any and all of its other obligations and duties to the other Party, whether express, implied, in fact or in law.

15. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties relating to the matters to which it pertains and may be amended or modified only with the mutual written consent of the Parties.

16. Scope; Termination. This Agreement is intended to apply to all Confidential Information that is disclosed by the Disclosing Party to the Receiving Party or that is otherwise learned by or comes into the possession or knowledge of the Receiving Party, whether prior to, on or subsequent to the date hereof. Either party may terminate this Agreement by providing written notice to the other. Notwithstanding the termination of this Agreement, (i) the obligations set out herein will continue to apply with respect to Confidential Information disclosed prior to receipt of such written notice for as long as the exceptions in Section 3 do not apply to such information.; and (ii) this Agreement will continue to apply to any Transaction Document in accordance with the terms of the Transaction Document.

17. Nonwaiver. Any failure by either Party to enforce the other Party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

18. Governing Law; Etc. This Agreement will be governed by and construed in accordance with the laws in force in the State of New Jersey, without regard to its principles regarding conflict of laws. The Parties attorn to the nonexclusive jurisdiction of the courts of the state of New Jersey. This Agreement may be executed in counterparts and each such counterpart will constitute an original document and such counterparts, taken together, will constitute one and the same instrument. This Agreement may not be assigned by either Party. This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction.

In witness whereof, the Parties have executed this Agreement on the date first written above and the undersigned are duly authorized to sign this Agreement.

Company: **TD Bank, N.A.**

Signature: **Signature:**

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____

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