



## Terms of Reference for Permanent Capital Funds

*Adopted by Board Resolution July 9, 2015*

### **PREAMBLE**

The purpose of these terms of reference is to provide clear provisions to govern the administration of Permanent Capital Funds held by the Foundation, both to facilitate the Foundation to efficiently carry out its charitable activities and to improve transparency for donors and the public regarding the administration of such funds.

#### **1. Application**

These terms of reference apply to all Permanent Capital Funds established after the date these terms are adopted by the Foundation, and to every pre-existing Permanent Capital Fund held by the Foundation except to the extent that the documents for such pre-existing fund provide a contrary intention, expressly or by necessary implication.

When referenced in a deed of gift establishing or contributing to a Fund, these terms of reference, as amended, form part of the terms and conditions of such gift.

#### **2. Definitions**

In these terms of reference, the following definitions will apply, and in each case a term defined or used in the singular includes the plural form and vice-versa:

- (a) “**Advisor**” means the individual appointed in accordance with these terms to make recommendations to the Foundation regarding distributions from a Fund;
- (b) “**Contributor**” means a person or persons who make additional contributions to a Fund;
- (c) “**Deed**” means the deed of gift by which a gift from a Donor or Contributor is made to the Fund;
- (d) “**Donor**” means the person or persons who originally establish a Fund by gift to the Foundation;
- (e) “**Fund**” means a Permanent Capital Fund established by a Donor and held by the Foundation;
- (f) “**Foundation**” means the Ontario Credit Union Foundation;
- (g) “**Income of the Fund**” includes all interest, dividends and any realized increase in the capital of the Fund, including unspent income from previous years;
- (h) “**Minimum Required Distribution Amount**” means the proportional allocation of the Foundation’s total disbursement quota obligation, as determined in the



accordance with the *Income Tax Act* (Canada), attributed to the Fund by the Foundation; and

- (i) “**Recipient**” means a qualified donee, as defined by the *Income Tax Act* (Canada) who receives distributions from a Fund;

### **3. Capital Restriction**

Subject to the exceptions set out in these terms of reference, the capital of the Fund will be permanently held as an endowment and invested by the Foundation, and the Income of the Fund will be available for distribution in accordance with these terms of reference.

### **4. Designation of Advisor**

On establishing a Fund, the Donor must, by notice in writing signed by the Donor and delivered to the Foundation, designate an individual to be the Advisor.

A Donor who is capable may, from time to time, revoke a previous designation or designate a new Advisor, but no revocation or subsequent re-designation will have the effect of invalidating the recommendations received from a duly appointed Advisor or the actions of the Foundation in response to such recommendations.

### **5. Requirements and Eligibility for Advisors**

A Donor who is capable may designate him or herself as Advisor, or another individual of the Donor’s choosing, provided that an Advisor must be 18 years of age or older and have requisite legal capacity.

There may only be one designated Advisor at any given time, and the designation of a new Advisor will be deemed to revoke the previously designated Advisor.

All designations, revocations of designations and re-designations must be in writing, signed by the Donor and delivered to the Foundation.

### **6. Successor Advisor**

A Donor who is capable may, by notice in writing signed by the Donor and delivered to the Foundation, provide that the Advisor will have the right to designate a successor Advisor from time to time and such right will become effective either on the death of the Donor as otherwise expressly specified by the Donor in writing.

For as long as an Advisor has the right to designate a successor, the Donor’s right to designate successors is abrogated.

A capable Donor may revoke the right granted to the Advisor by notice in writing signed by the Donor and delivered to the Foundation, and such revocation will, absent a contrary intention, have the effect of revoking the designation of the Advisor and any individuals designated by the Advisor, but no revocation will have the effect of invalidating the recommendations received



from a duly appointed Advisor or the actions of the Foundation in response to such recommendations.

## **7. Resignation and Replacement of Advisor**

The Advisor may resign by providing notice to the Foundation and to the Donor, if he or she is still living.

If the Donor is capable, he or she may designate a replacement Advisor in accordance with section 4. If the Donor is deceased or otherwise incapable and the resigned Advisor has the right to appoint a successor Advisor, he or she may do so in accordance with section 6. If no replacement Advisor is appointed, the Foundation will administer the Fund without an Advisor in accordance with section 9.

## **8. Advisor Recommendations for Distributions**

A duly designated Advisor of a Fund may provide the Foundation with recommendations regarding one or more Recipients to receive a distribution or distributions from that Fund, as well as the amount of such distribution, subject to section 15, and provided that all such recommendations are in accordance with the provisions of these terms of reference and applicable law.

For greater certainty, a Recipient must be a qualified donee, as that term is defined by the *Income Tax Act*, at the relevant time in order to be eligible to receive a distribution from a Fund.

The Advisor may provide standing recommendations or one-time recommendations, provided that all recommendations must be made in writing and delivered to the Foundation sufficiently in advance of a distribution in order to be considered by the Foundation.

Standing recommendations will be deemed to remain in force until altered or revoked by the Advisor. One-time recommendations are effective only for the next distribution made from the Fund, and must be renewed or replaced in order to be considered at the following distribution cycle.

## **9. Lack of Advisor or Recommendations**

If there is no Advisor for a Fund, or if the Foundation does not receive effective recommendations from the designated Advisor, the Foundation will continue to administer the Fund and make distributions as and when required in its discretion.

In the absence of recommendations, the Foundation may determine to make a distribution from a Fund to a previous Recipient, if still a qualified donee, or to another Recipient determined by the Foundation in its discretion, provided that the Foundation will strive, to the extent reasonable, to determine and give effect to the intentions of the Donor, and may consider and take into account the following factors:



- (a) any express written or oral wishes from the Donor regarding the Fund or the Donor's charitable intentions;
- (b) Recipients supported by the Fund since its creation; and
- (c) other registered charities or qualified donees supported by the Donor.

#### **10. Foundation Discretion**

Notwithstanding the recommendations of the Advisor, the Foundation will have the discretion to administer the Fund in furtherance of its purposes and in accordance with the deed of gift, these terms of reference as amended from time to time and applicable law.

#### **11. Investment**

The Fund will be invested in accordance with the policies established by the Foundation, as amended from time to time. For greater certainty, the Foundation may in its absolute discretion:

- (a) invest the Fund as part of its pooled investments and the Foundation will not be liable for any loss which may result (directly or indirectly) from such pooling;
- (b) co-mingle the Fund with other restricted funds of the Foundation, provided that it maintains separate accounts for the Fund; and
- (c) deduct or pay from the Income of the Fund all necessary expenses incurred by the Foundation in investing the Fund including, without limitation, any fees or charges for services of agents engaged by the Foundation in connection with the management and administration of the Fund, such fees not to exceed 5% of the Income of the Fund.

#### **12. Expenses**

The Foundation will, from time to time, deduct from the Fund reasonable administrative expenses in accordance with the policies established by the Foundation, as amended from time to time.

#### **13. Additional Contributions**

Unless the Donor, by the original deed of gift, or Advisor, by notice in writing provided to the Foundation, has expressly requested the Foundation to decline additional contributions to the Fund, the Foundation may, from time to time in its sole discretion:

- (a) accept additional contributions to a Fund from any individual or body; or
- (b) contribute an amount from the general funds of the Foundation to the Fund.



#### **14. Distributions from Fund**

Each year, the Foundation must distribute from the Fund an amount or amounts, the total of which is not less than the Minimum Required Distribution Amount.

For greater certainty, but not limiting the generality of the foregoing, the Foundation will distribute an amount from the Fund to Recipients, annually or more frequently as determined by the Foundation in its sole discretion, having regard to the recommendations of the Advisor to the extent such recommendations are not contrary to or inconsistent with these terms of reference and the legal obligations of the Foundation.

The Advisor may recommend that the Foundation make a distribution other than during the regular distribution cycle and the Foundation will give reasonable consideration to such recommendation.

#### **15. Amount of Distribution**

The Advisor may recommend to the Foundation the amount to be distributed from the Fund to one or more selected Recipients.

The amount recommended for distribution by the Advisor may be in one of the following categories:

- (a) the Minimum Required Disbursement Amount; or
- (b) to the extent that the following amount exceeds the Minimum Required Disbursement Amount in a given year:
  - i) the annual Income of the Fund; or
  - ii) a fixed dollar amount.

If the amount for distribution is less than the Income of the Fund for that year, the Foundation may hold the remaining Income of the Fund, and such undistributed income does not lose its character as Income of the Fund.

The Advisor may, from time to time, alter the recommended category of distribution amount by notice in writing provided to the Foundation.

Where no amount is specified by the Advisor, the Foundation will annually distribute from the Fund an amount equal to:

- (a) the Income of the Fund for the previous year; or
  - (b) the Minimum Required Disbursement Amount,
- whichever is greater.



## **16. Encroachment on Capital**

The Foundation will only encroach on the capital of the Fund to the extent necessary to disburse the amount determined under sections 15 or 20.

## **17. Reporting**

The Foundation will annually report to the Advisor regarding the balance of the Fund, the Minimum Required Disbursement Amount and the distributions made from the Fund in the previous year.

## **18. Recognition**

The Foundation will provide appropriate recognition to Donors and Contributors to a Fund in accordance with the policies established by the Foundation, as amended from time to time.

## **19. Policies**

Information on current policies referred to in these terms of reference will be made available to a Donor, Advisor or Contributor on request, however, the Foundation is not required to inform Donors, Advisors or Contributors of a change to its policies.

## **20. Termination of the Fund**

If the balance of assets in the Fund falls below \$1000 and the Foundation determines that it is no longer practical for the Foundation to continue to maintain the Fund, the Foundation may, with the written approval of the Board:

- (a) distribute the remaining assets of the Fund to Recipients;
- (b) transfer the assets of the Fund to another permanent capital fund held by the Foundation to be administered in accordance with the terms of that other Fund;  
or
- (c) wind-up the Fund and transfer the balance remaining in the Fund to the Foundation's general fund.

The Foundation will make reasonable efforts to communicate any action to be taken under this section to the Donor, if living and capable, and the Advisor.

## **21. Amendment**

These terms of reference may be amended by the Foundation from time to time in its sole discretion.