

## **TRANSFER ON DEATH ACCOUNT AGREEMENT AND DISCLOSURE DOCUMENT**

This agreement and disclosure document ("Agreement") is entered into by and between Penson Financial Services, Inc. ("Penson"), and the undersigned Owner ("Owner" or "Owners") and describes the items and conditions governing the Transfer on Death ("TOD") feature of the securities brokerage account ("Account") established by Owner with Penson Financial Services, Inc. This Agreement is intended to establish a TOD account for the Owner in accordance with the terms of this Agreement and the provisions of Uniform Transfer on Death Security Registration Act ("Act"). (Note: The account must be registered in the name of an individual or two or more joint owners as Joint Tenants with Rights of Survivorship or as Tenants by the Entireties. No other form of registration is permitted.)

**IMPORTANT NOTE TO CLIENTS:** The privilege of registering securities accounts in TOD form is created by state law and not all states have enacted such laws. Clients residing in non-TOD states may be unable to establish a TOD Account. While Penson Financial Services, Inc. will use its best efforts to inform clients of TOD Accounts availability, because of the complex legal and tax ramifications involved, Penson Financial Services, Inc. cannot advise whether the TOD designation is or is not an appropriate component of an individual client's tax and estate planning. Clients should always consult with their own legal and tax advisors before electing or revoking the TOD account designation.

- 1. TOD Account.** This Agreement shall establish the Account for the Owner pursuant to the Act. At the death of the Owner, or last surviving Owner if the Account is Jointly owned, any interest of the Owner in the Account shall be transferred by Penson Financial Services, Inc. to an established Penson Financial Services, Inc. account(s) for the Beneficiaries designated on the last page of this Agreement who survive the Owner ("Beneficiary" or "Beneficiaries"). Their percentage ownership shall be designated on the last page of this Agreement, or if no percentages are indicated, their ownership shall be in equal shares. If designated percentages equal less than 100%, the unapportioned percentage shall be distributed equally to surviving beneficiaries for whom no percentage is designated or, if none, then such unapportioned percentage of assets in the Account shall be distributed to the Estate of the Owner or last surviving owner.

If the Account is jointly owned, no distribution shall be made until the death of the last surviving Owner and then only to those Beneficiaries who are then surviving. Upon the death of any joint Owner, no distribution will be made to Beneficiaries and the surviving joint Owner will become the Owner of the Account. Upon the death of the last surviving Owner, the assets in the Account will be distributed unless this Agreement has been revoked or otherwise superseded. If one or more Beneficiaries has pre-deceased the Owner or last surviving Owner (or if a trust or other legal entity which is a Beneficiary has dissolved or terminated), the assets in the account will be distributed among the surviving Beneficiaries in proportion to each of their designated percentages. (Example: Assume an Account with the following Beneficiary percentages: John Doe 50%, Jane Doe 25%, Jack Doe 25%. If Jane Doe pre-deceased the Owner or last surviving Owner, John Doe would receive two-thirds of the assets in the Account and Jack Doe would receive one-third of the assets in the Account upon the death of the Owner or last surviving Owner.) If all Beneficiaries have pre-deceased the Owner or last surviving Owner, the assets shall be distributed to the estate of the Owner or last surviving Owner.

- 2. Incapacity of the Owner.** Should the Owner become incapacitated, a duly appointed guardian or conservator or an agent acting under a durable power of attorney may effect transactions within the TOD Account, but may not change the designation of Beneficiaries or revoke the TOD ownership. Likewise, no guardian, conservator or attorney in fact may establish a TOD Account for their principal or ward in the first instance; Penson Financial Services, Inc. will only establish TOD Accounts upon written request of the Owner personally.

3. **TOD Overrides Will or Trust.** Upon the Death of the Owner, the Beneficiaries assume control of assets in the TOD Account even if the Owner's will or living trust provides for a contrary or inconsistent disposition. The only exception is if the Owner's will or trust specifically and expressly revokes the TOD Account designation, in which case the TOD Account assets become part of the Owner's estate. However, unless Penson Financial Services, Inc. receives timely actual notice of the TOD revocation, the TOD Account assets will be delivered to the TOD Beneficiaries.
4. **Change of Residence by Owner.** The TOD designation is created by state law and not all states have enacted TOD privileges for their residents. However, once a client has established a Penson Financial Services, Inc. TOD Account, Penson Financial Services, Inc. will continue to treat the Account as such in reliance on the continued effectiveness of this Agreement, without regard to subsequent changes in the Owner's state of residence, even if the Owner moves to a non-TOD Jurisdiction.
5. **Effect of Registration in Beneficiary Form.** The designation of a Beneficiary or multiple Beneficiaries under the TOD Account has no effect until the death of the Owner or last surviving Owner, and the registration as a TOD Account and the identity of the Beneficiaries can be canceled or changed by the Owner at any time prior to the death of the Owner or last surviving Owner, if more than one. Such cancellation or change shall be effective upon receipt by Penson Financial Services, Inc. of written notice of such cancellation or change on the form provided by Penson Financial Services, Inc. signed by all Owners living at the time of said notice.
6. **Method of Distribution.** Upon the death of Owner or last surviving Owner, in making distribution to Beneficiaries pursuant to this Agreement, Penson Financial Services, Inc. may sell any assets that cannot be divided into negotiable amounts and distribute the proceeds of such sale or may divided fractional shares in any manner it deems appropriate and distribute such assets or the proceeds of the sale of such assets to Beneficiaries, unless directed otherwise by unanimous written consent of all Beneficiaries and submitted to Penson Financial Services, Inc. at the time of filing of the Instruction for Execution of Non-Probate Transfer described below. Penson Financial Services, Inc. may, from time to time, establish administrative procedures to facilitate the distribution to Beneficiaries of assets in the Account or the sale of the assets and distribution of the proceeds of sale. No distribution of assets can be made until all necessary documents and information has been received by Penson Financial Services, Inc. after the death of the Owner or last surviving Owner and any change in value of such assets during the period from such death until said distribution shall not give rise to any liability on the part of Penson Financial Services, Inc. to any person or persons. Penson Financial Services, Inc. shall, in its sole discretion, determine a reasonable method for distribution or otherwise administering all assets, payments or dividends received into the Account after the death of Owner or last owner to die.

If any designated Beneficiary is a minor, or an incapacitated adult, Penson Financial Services, Inc. may require that assets shall be distributed only to a legally qualified custodian, conservator or guardian under the law of the state of residence of said minor or incapacitated adult. In the absence of such legally qualified custodian, conservator or guardian, after a reasonable lapse of time from the death of the Owner or last surviving Owner to die, Penson Financial Services, Inc. is authorized to make distribution to the Estate of said Owner and Penson Financial Services, Inc.'s obligations to said minor or incapacitated adult under this Agreement or otherwise, shall be fully discharged. Penson Financial Services, Inc. shall have no further responsibility to Owner or Owners (or the estates thereof). Any existing debt collateralized by or constituting a lien against assets in the Account or owed to Penson Financial Services, Inc. in connection with the Account or any other account(s) held by Penson Financial Services, Inc. for the Owner must be satisfied before a distribution to any Beneficiary may be made.

In making a distribution under this Agreement, Penson Financial Services, Inc. shall be entitled to receive and rely upon information provided in an Instruction for Execution of Non-Probate Transfer document in a form acceptable to Penson Financial Services, Inc., submitted for Beneficiary or personal representative of the Owner's estate when distributing or transferring assets under the terms of this Agreement. Penson Financial Services, Inc. shall not be held accountable to any Owner, Beneficiary or other person for making a distribution of assets in the Account based upon information contained in any Instruction for Execution of Non-Probate Transfer. Penson Financial Services, Inc. shall be entitled to receive said Instruction for Execution of Non-Probate Transfer, a certified death certificate, an inheritance tax waiver (for states requiring a waiver or consent to transfer), and such additional documentation deemed appropriate before making such distribution. If a personal representative signs the Instruction for Execution of Non-Probate Transfer, a certified court document (dated within 60 days of execution of the Instruction) evidencing appointment of the personal representative may be required.

7. **Penson Financial Services, Inc.'s Rights and Duties Concerning Beneficiaries.** Penson Financial Services, Inc. shall have no duty to locate Beneficiaries to determine the marital status of Owner or Owners at any time, or to determine any other fact which may affect a distribution called for under this Agreement. In the event Penson Financial Services, Inc. cannot determine the persons entitled to receive a distribution, or if prior to making a distribution, a dispute arises between any persons or with Penson Financial Services, Inc. as to the proper distribution, or any creditors of Owner or Owners or any other person shall make a claim upon the assets of the Account, Penson Financial Services, Inc. shall be entitled to require the parties to adjudicate (through arbitration or in any other manner acceptable to Penson Financial Services, Inc.) their respective rights in the assets in the Account, and Penson Financial Services, Inc. shall not be required to make any distribution until the rights of the disputants have been settled finally. Alternatively, Penson Financial Services, Inc. may require an indemnity bond in an amount and with a surety deemed sufficient by Penson Financial Services, Inc. for its protection prior to making any distribution. The preceding provisions of this paragraph shall not affect the rights of the persons as among themselves.
8. **Spousal Consent Required in Some Circumstances.** If, at the time of the Owner's death, the owner's spouse:
- (a) survives the Owner's death, and
  - (b) is not the sole joint tenant on the Account or the sole survivor Beneficiary hereunder;

the TOD features of the Account shall be void unless a completed Spousal Consent form, acceptable to Penson Financial Services, Inc., has been executed and filed with Penson Financial Services, Inc. by the surviving spouse and has not been revoked prior to the Owner's death.

Penson Financial Services, Inc. may rely upon statements or information contained in the Instruction for Execution of Non-Probate Transfer or any other documents made available to it prior to the distribution to the Beneficiaries including any representations made by, or on behalf of the surviving spouse and shall not be liable to the surviving spouse or any other party in its reliance upon such statements or information in making distribution of the assets. A Spousal Consent may be revoked by the spouse signing and filing with Penson Financial Services, Inc. a revocation form satisfactory to Penson Financial Services, Inc. prior to Owner's death.

This provision shall not operate to void the TOD features of the Account if Penson Financial Services, Inc. has been provided with a written opinion acceptable to Penson Financial Services, Inc. from legal counsel for the Owner that such Spousal Consent form is not required under the laws of the applicable Jurisdiction(s).

**9. Death of Joint or Individual Owner.** Upon the death of a joint Owner, this Agreement shall continue as to the assets in the Account for the surviving Owner unless the Agreement is changed or revoked by such Owner or additional Joint Owners are added. Upon the death of the individual Owner or last surviving Owner, Penson Financial Services, Inc., subject to receiving the required documents, and consistent with this Agreement, will distribute the assets as directed by the Owner in this Agreement.

**10. Revocation.** This Agreement may be revoked or changed by the Owner or last surviving Owner, at any time prior to death, by filing a new Agreement with Penson Financial Services, Inc. or by submitting a Letter of Revocation in a form approved by Penson Financial Services, Inc., if such new agreement or Letter of Revocation is received by Penson Financial Services, Inc. prior to death of the Owner or last surviving Owner. Except as provided in paragraph 3 above, this Agreement cannot be revoked or changed by testamentary disposition of the Owner nor by a personal representative, attorney-in-fact or conservator of the Owner without court order of a court having proper jurisdiction of the subject matter. However, a conservator or attorney-in-fact acting on behalf of the Owner may, within the scope of their authority, authorize the sale, purchase or transfer of securities or assets for the Account.

This Agreement shall not affect any other Penson Financial Services, Inc. account document executed in connection with the Account by Owner, except to the extent such other Penson Financial Services, Inc. account documents, or any provisions thereof, are inconsistent with the provisions of this Agreement.

**11. Eligible Assets.** Only eligible assets in the Account at Penson Financial Services, Inc. held in street name comprising all or a portion of the assets in individual or joint survivorship account as herein above provided in this Agreement, may be distributed pursuant to the terms of this Agreement. Eligible assets include cash, money market funds, listed and OTC stocks and publicly traded bonds, mutual funds and unit trusts. Assets not eligible for a TOD Account include, but are not limited to fixed and variable annuities, precious metals, options, commodities, limited partnership interests and mutual funds not held by Penson Financial Services, Inc. and any assets held by Penson Financial Services, Inc. in customer name in certificate form.

**12. Fees for TOD.** The fees due to Penson Financial Services, Inc. under this Agreement are as follows:

- a. \$200 processing fee upon filing an Instruction for Execution of Non-Probate Transfer signed by a Beneficiary or personal representative of Owner's estate or estate of a last Owner to die;
- b. Such other or additional fees as Penson Financial Services, Inc. may impose for transactions or activity with respect to the Account, including but not limited to set-up fees;
- c. The fees provided for herein shall be in addition to any other fees or charges applicable to the Account under the provisions of any other Penson Financial Services, Inc. document and in addition to Penson Financial Services, Inc.'s commissions or other compensation for effecting and/or executing transactions in securities in the Account.

**13. Law Governing this Agreement.** The validity and effect of this Agreement will be governed by the provisions of the Act as enacted in the State of Texas without regard to conflicts of laws. Penson Financial Services, Inc. reserves the right to refuse to open or continue a TOD Account in any

circumstances where, in its sole opinion, there may be doubt as to validity or effective status of the Act as applicable to such Account.

**14. Acceptance of Agreement.** In order to be effective, this Agreement must be received and accepted by Penson Financial Services, Inc. at its home office in Dallas, Texas. Once accepted, this Agreement will be effective as of the date of execution by Owner or Owners, notwithstanding the death of the Owner or Owners subsequent to such execution but prior to such acceptance. This Agreement is made subject to the rules and procedures established by Penson Financial Services, Inc. with respect to the opening, administration and termination of TOD Accounts existing both at origination of this Account or at any time subsequent thereto. If the Agreement does not bear a date of execution when received by Penson Financial Services, Inc., unless otherwise indicated, it will be deemed executed by Owner or Owners on the date it is accepted by Penson Financial Services, Inc.

**15. Arbitration.** This provision relates to the arbitration of disputes.

- a. Arbitration is final and binding on the parties;
- b. The parties are waiving their right to seek remedies in court, including the right to jury trial;
- c. Pre-arbitration discovery is generally more limited than and different from court proceedings;
- d. The arbitrator's award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification or rulings by the arbitrators is strictly limited;
- e. The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

The undersigned and Penson Financial Services, Inc. agree that all controversies between the undersigned and Penson Financial Services, Inc. (or any of Penson Financial Services, Inc.'s present or former officers, directors, agents or employees) which may arise from any account or related to any matter in dispute between the undersigned and Penson Financial Services, Inc., shall be determined by arbitration. An arbitration under this agreement shall be before the National Association of Securities Dealers, Inc. or an arbitration forum acceptable to the National Association of Securities Dealers, Inc. or provided by any other securities exchange or organization of which Penson Financial Services, Inc. is a member, and in accordance with the rules of such organization.

This arbitration provision shall apply to any controversy or claim or issue in any controversy arising from events which occurred prior to, on or subsequent to the execution of this arbitration agreement. The award of the arbitrators, or of the majority of them, shall be final and judgement upon the award rendered may be entered in any court, state or federal, having jurisdiction.

Notwithstanding anything in this agreement to the contrary, no person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until:

- a. the class certification is denied; or
- b. the class is decertified; or

- c. the customer is excluded from the class by the court.

Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.

This arbitration provision is to be binding on the undersigned and his or her heirs, beneficiaries, assigns or successors.

**BENEFICIARIES**

<b>Beneficiary</b>	<b>%</b>	<b>Name of Beneficiary</b>	<b>SSN or EIN</b>	<b>Birth/Trust Date</b>
<b>A</b>				
<b>B</b>				
<b>C</b>				
<b>D</b>				

**THIS IS A BINDING CONTRACT, READ IT CAREFULLY BEFORE SIGNING.**

**Acknowledgment**

I acknowledge that I have been furnished with Penson Financial Services, Inc.'s Transfer of Death Account Agreement and Disclosure Document. I understand that the TOD features of my account have certain legal and tax implications, and, to be fully advised, I should seek independent legal and tax service prior to executing this Agreement. I acknowledge that neither Penson Financial Services, Inc. nor any of its agents has furnished such advice.

**THIS CONTRACT CANNOT BE ENTERED INTO BY ANY RESIDENT OF THE FOLLOWING STATES:  
Louisiana & Texas**

By signing this agreement, Owner acknowledges that:

- a. Owner has received a copy of this Agreement and Disclosure Document;
- b. This Agreement contains a binding and enforceable arbitration provision in Section 15, on page 6.

**SIGNATURE(S):** X \_\_\_\_\_ Date: \_\_\_\_\_  
 X \_\_\_\_\_ Date: \_\_\_\_\_  
 X \_\_\_\_\_ Date: \_\_\_\_\_  
 X \_\_\_\_\_ Date: \_\_\_\_\_

Penson Financial Services, Inc. Account Number:

\_\_\_\_\_

**PENSON FINANCIAL SERVICES, INC.**

**INSTRUCTION FOR EXECUTION OF NON-PROBATE TRANSFER**

Penson Financial Services TOD Account Number	Account Holder

The undersigned, under oath and under penalty of perjury, states that he/she is a personal beneficiary or the personal representative of the estate of the account owner who died on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_; that a certified copy of the death certificate of the account owner is attached hereto; that if the undersigned is the personal representative of the estate of the account owner a certified copy of the court order appointing him or her as the personal representative is attached hereto; that an inheritance tax waiver from states that require it is attached hereto; that there are no known disputes as to the persons entitled to a distribution or the amount of their distribution, and that there are no known claims that would affect the distribution; that the account of the deceased account owner shall be divided and distributed in the manner designated by him/her in the Non-Probate Transfers (Transfer on Death) Agreement (the "Agreement") filed with Penson Financial Services, Inc., Dallas, Texas, and that if any beneficiary designated in the agreement has predeceased the account owner, the name of such predeceased beneficiary is set forth below.

The undersigned agrees to indemnify and hold Penson Financial Services, Inc. and each of its agents, officers, directors and employees harmless from any claim, dispute or loss alleged to be associated with the above referenced account or the transfer of assets, relating thereto, including any costs or expenses and attorneys fees incurred by Penson Financial Services, Inc.

The foregoing affirmation is made under oath and under penalty of perjury and the representations made herein are true and correct to the best knowledge and belief of the undersigned.

\_\_\_\_\_ Date

\_\_\_\_\_ Signature

\_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Names(s) of Pre-Deceased Beneficiary(ies):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Name of Beneficiary	



Beneficiaries:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date of Birth SS#

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date of Birth SS#

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date of Birth SS#

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date of Birth SS#