

## 403(b)(7) CUSTODIAL ACCOUNT AGREEMENT

### TERMS AND CONDITIONS

The Participant hereby requests that the Plan Provider establish a separate recordkeeping account (the "Account") on behalf of the Participant as part of a Custodial Account established on behalf of the Participant's Employer. The Plan Provider has agreed to establish a Custodial Account on behalf of the Participant's Employer with MG Trust Company, LLC, ("Custodian"), a trust company under the laws of the State of Colorado. The Plan Provider and Custodian agree to furnish system and account services to the Participant on the terms and conditions set forth below. The Custodian has no investment discretion and provides no investment advice with respect to the recordkeeping account or the Custodial Account.

### ARTICLE 1 – DEFINITIONS

As used in this Custodial Agreement, each of the following terms shall have the meaning for that term set forth in this Section unless a different meaning is provided or clearly required by the context in which the term is used.

- A. **Advisor** means any registered investment advisor agent or firm and any successor thereto, including by merger or acquisition that provides investment advice to the Employer or Employees regarding the Mutual Funds available in the Plan. The Advisor is authorized by Plan Provider to deliver enrollment materials, provide information, and respond to inquiries regarding the Plan to Participants and the Plan Provider, as well as performs such other duties as Plan Provider and Advisor may agree upon from time to time.
- B. **Alternate Payee** means a Participant's or former Participant's spouse or former spouse, child, or other dependent who is treated as a beneficiary under the Participant Account as a result of a Qualified Domestic Relations Order.
- C. **Beneficiary** means the person or persons, trust, estate, charitable organization, or other non-living entity designated to receive any payment of benefits pursuant to Article 9.
- D. **Code** means the Internal Revenue Code of 1986, as amended from time to time.
- E. **Custodial Account** means the custodial account established by the Custodian hereunder for the exclusive benefit of the Plan's Participants.
- F. **Custodial Agreement** means this document, as amended from time to time, and the Participant's Enrollment Form.
- G. **Custodian** means MG Trust Company, LLC and any successors or assigns.
- H. **Disability** means the inability to engage in any substantial gainful activity for purposes of Code Section 72(m)(7), by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of a long-continued or indefinite duration.
- I. **Employee** means any person who performs services or has performed services as an Employee of the Employer, provided that in the case of an Employer referred to in clause (ii) of the definition of an "Employer", the Employee performs services for an educational organization described in Code Section 170(b)(1)(A)(ii).
- J. **Employer** means an Employer who is (i) an organization described in Code Section 501(c)(3) which is exempt from tax under Code Section 501(a), or (ii) a State, a political subdivision of a State, or agency or instrumentality of a State or a political subdivision of a State.
- K. **Enrollment Form** means an Enrollment Form pursuant to which a Participant Account is established on behalf of a Participant, and the Participant agrees to the terms and conditions of the Custodial Agreement.
- L. **ERISA** means the Employee Retirement Income Security Act of 1974, as amended.
- M. **Fund** means all of the assets of the Plan that may be transferred, assigned, and delivered to the Custodian from time to time to be held in custody hereunder in the Custodial Account, together with the investments made with them, the proceeds received from them, and the gains and accumulations on them, and the portion thereof from time to time remaining, to be held and disposed of by the Custodian (without distinction between principal and interest) in accordance with the terms and provisions of this Agreement and proper directions received by the Custodian.
- N. **Hardship** means a present or pending financial need resulting from unusual costs or expenses, such as unexpected medical expenses, higher educational expenses or purchase of a residence within the meaning of Treasury Regulations Section 1.401(k)-1(d)(3).
- O. **Investment Direction** means the instruction of a Participant regarding the manner in which contributions or transfers to the Participant Account are

to be invested. These instructions may be changed from time to time effective for contributions received by the Plan Provider after receipt of the new direction.

- P. **Mutual Fund or Mutual Fund Share(s)** means one or more shares issued by a "regulated investment company," as that term is defined in Code Section 403(b)(7)(C).
- Q. **Participant** means an Employee who has established a Participant Account and Enrollment Form has been accepted by the Plan Provider.
- R. **Participant Account** means the individual record established and maintained by the Plan Provider hereunder for the exclusive benefit of a Participant and the Participant's Beneficiary(ies), as applicable.
- S. **Plan** means the plan that is made available or maintained by the Participant's Employer, is subject to the requirements of Code Section 403(b)(7), including a salary reduction agreement, if applicable, under which the Employee's rights are non-forefeitable (except for failure to pay future contributions) to the extent required by Code Sections 403(b)(1)(C) and 403(b)(6) and the regulations promulgated thereunder, and with respect to which some or all of the assets are held by the Custodian pursuant to the terms of this Agreement.
- T. **Plan Document** means the written document by which the Employer adopts and maintains a Section 403(b) Plan with respect to which this Custodial Account Agreement is a part. After the effective date of final Treasury Regulations issued under Code Section 403(b), the Employer shall be required to maintain the Plan pursuant to a written Plan Document.
- U. **Plan Provider** means 401k ASP, Inc. d/b/a 403b ASP and any successor thereto, including by merger or acquisition that makes accounts available to qualifying Participants. The Plan Provider is authorized by the Custodian to establish and maintain the Custodial Account in the Employer's name, accept contributions, make payments or distributions to the Participant or their Beneficiaries, prepare and mail to the Participant periodic account statements.
- V. **Qualified Domestic Relations Order (QDRO)** means a domestic relations order issued by a State court which creates, recognizes, or assigns to an Alternate Payee(s) the right to receive all or part of a Participant's benefit held in the Participant Account which meets the requirements of Code Section 414(p) and other applicable law.
- W. **Required Beginning Date** means the Date on which the Participant is required to take his first minimum distribution under this agreement.
- X. **Rollover Contribution** means a contribution made by a Participant of an amount distributed to such Participant from another Section 403(b) plan, custodial account, or annuity; or from an Individual Retirement Account which had received such amounts from another Section 403(b) plan, account, or annuity.
- Y. **Salary Reduction Agreement** means an agreement between the Participant and the Employer pursuant to which the Participant's compensation is reduced or a compensation increase is foregone in an amount which the Employer is to contribute to the Participant Account.
- Z. **Salary Reduction Contribution** means a contribution made by the Employer pursuant to a Salary Reduction Agreement.

### ARTICLE 2 – ESTABLISHMENT OF CUSTODIAL ACCOUNTS

The Participant hereby requests that the Plan Provider establish a separate recordkeeping account (Participant Account). The Plan Provider hereby requests that the Custodian establish a Custodial Account for and in the name of the Participant's Employer to hold the combined assets of all the Participant Accounts of that Employer established by the Plan Provider. A Participant may establish a Participant Account by completing the Enrollment Form and delivering it to the Plan Provider. Plan Provider and the Participant each represent to Custodian that all necessary action has been taken for such appointment and that this Agreement constitutes a legal, valid, and binding obligation of the Plan Provider, the Participant, and the Participant's Employer.

All contributions made by or on behalf of the Participant shall be applied by the Plan Provider, in accordance with the instructions of the Participant, to the purchase of Mutual Fund shares. The Custodian shall not be obligated to provide detailed accounting for the recordkeeping account or for any individual investment option, such as with respect to contributions, distributions, loan activity, and rollovers. Participant agrees to look solely to the Plan Provider or other recordkeeper that Employer has retained for all such detailed information.

## ARTICLE 3 – APPOINTMENT, ACCEPTANCE AND ROLE OF CUSTODIAN

**3.1 Appointment; Acceptance.** The Custodian, in consideration of the deposit by the Plan Provider of funds into the Custodial Account, and other valuable consideration, hereby agrees to act as custodian of the Account on the terms and conditions of this Agreement. The Participant, in consideration of the agreement by the Custodian to perform the duties of a custodian under this Agreement, hereby designates and appoints the Custodian as the custodian of the Account.

**3.2 Role.** The Custodian, as agent of the Participant, but not as fiduciary, shall take, hold, invest, and distribute all of the assets of the Fund in accordance with the terms of this Agreement. The Custodian will serve as a non-discretionary, directed custodian of the Custodial Account. The Custodian is responsible for maintaining custody of the assets held in the Custodial Account, and for investing those assets as directed by the Plan Provider on behalf of the Participant.

The Custodian (in its capacity as such) will not be an administrative or investment fiduciary of the Plan, and nothing in this Agreement is to be interpreted as causing the Custodian to be responsible for the administration of investment of the Fund other than as directed by the Advisor or Plan Provider hereunder, or as performing other than ministerial duties. The Custodian may refuse to exercise any power that it believes, in its sole judgment, could cause it to become a "fiduciary" or "plan administrator" as defined under ERISA, or cause it to be exercising trust powers in contravention of any State or Federal law to which it may be subject.

The Custodian shall have no responsibility to draft or amend a plan document for the Plan, to administer the Plan, or to assist the Employer or any Plan Provider in such drafting, amendment, administration, or maintenance, or to ascertain or provide advice with respect to the legal requirements applicable thereto except to the extent of any responsibility imposed upon the Custodian pursuant to the terms of this Agreement. The Plan Provider represents and warrants to the Custodian that the Participant's Employer shall maintain the Plan in compliance with applicable regulations issued under Code Section 403(b), including but not limited to the universal availability requirement and applicable nondiscrimination rules and other applicable law.

**3.3 Direction to the Custodian.** Except as provided herein, the Plan Provider or Advisor shall provide direction to the Custodian on behalf of the Employer and Participants. The Custodian shall have no duty to take any action other than as specified in this Agreement unless the Plan Provider provides the Custodian with Instructions. However, each direction is contingent upon the determination by the Custodian that the Instruction can be administered by the Custodian. The Custodian may conclusively rely upon and be protected in acting in good faith upon any Instruction from the Plan Provider or the Advisor, or any other notice, request, consent, certificate, or other instrument or paper believed by the Custodian to be genuine and properly executed, or any instrument or paper if the Custodian believes the signature thereon to be genuine.

**3.4 Designation of Plan Provider.** Participant hereby designates and authorizes the Plan Provider to provide Instructions to the Custodian on behalf of the Participant, including placing orders for the purchase and sale of securities, and authorizes the Custodian to disburse funds on behalf of the Employer or Participant upon Instruction from such Plan Provider. Employer and Participant hereby also authorizes and directs the Custodian to pay for securities and receive payment from the sale of securities or other investment transactions arising out of Instructions of the Plan Provider. Designation of a Plan Provider is subject to the following provisions:

Participant and Employer agree that the Custodian may rely on Instructions from the Plan Provider, and Participant agrees that the Custodian shall be under no duty to make an investigation with respect to any instructions received from the Plan Provider;

Participant is solely responsible for managing the investment of the Participant Account and for the direction provided to the Plan Provider. All instructions, directions, and/or confirmations received by the Custodian from the Plan Provider shall be deemed to have been authorized by the Participant;

Participant agrees that the Plan Provider and Advisor are not agents of the Custodian.

**3.5 Compliance.** Participant agrees that the Custodian may execute, as custodian, any declarations or certificates pertaining to the Account that may be required under any tax law(s) or governmental regulation(s) now or hereafter without prior approval of the Participant, and may withhold from any distribution to a Plan Participant or beneficiary, made at the direction of the Participant, Employer or Plan Provider, all income taxes required by law to be withheld, and pay such withheld amounts to the appropriate taxing authorities. Participant, Employer, or its Plan Provider shall provide the Custodian all information necessary for the Custodian to file all required returns, reports, or other documents to the applicable taxing authorities with respect to

distributions by the Custodian to Participants and beneficiaries and amounts withheld thereon.

## ARTICLE 4 – CONTRIBUTIONS AND TRANSFERS

**4.1 General.** The initial contribution or transfer with respect to each Participant shall be accompanied or preceded by a properly executed Enrollment Form and an Investment Direction Form. The Custodian shall accept and hold in the Custodial Account each contribution on behalf of the Participant which it receives from the Employer as well as any rollover contribution or other transfer contribution which it may receive from the Participant or previous custodian, subject to compliance by the Employer and Plan Provider with applicable Code Sec. 403(b) regulation transfer requirements. Each contribution shall be in a form acceptable to the Custodian. If a Custodial Account to which a contribution is to be credited has not yet been established, or if in the opinion of the Plan Provider or the Custodian the documents received by either of them are not clear with respect to any contribution, the Custodian may invest such contribution in a money market Mutual Fund, as selected by the Plan Provider, without liability, pending establishment of the Participant Account or completion or clarification of the information necessary for proper credit to the Participant Account, as the case may be.

**4.2 Contributions.** The Participant or the Employer may make contributions to the Custodial Account consistent with Code Section 403(b)(7), including contributions in accordance with a salary reduction agreement ("Salary Reduction Contributions"). Annual contributions to the Participant Account may not exceed the applicable limitations and adjustments under Code Section 402(g)(1), as indexed periodically for cost-of-living increases, except to the extent permitted under Code Sections 402(g)(7) and 414(v), and Code Section 415, taking into consideration any other Employer contributions made on the Participant's behalf under any Section 403(b) Plan of the Employer. Neither the Custodian, Plan Provider, nor the Advisor have any obligation to verify the correctness of the computation regarding the maximum Salary Reduction Contribution that may be made to a Participant Account, nor shall the Custodian be obligated to determine that any limit applicable to contributions has been exceeded. The Custodian has no duty or authority to require any contributions or transfers to be made under the Plan to the Custodian, compute any amount to be contributed or transferred under the Plan to the Custodian, determine whether amounts received by the Custodian comply with the Plan, the Code, ERISA, if applicable, or any other applicable law, or enforce contribution amounts for sufficiency under the Code or ERISA, if applicable. The Custodian will not be responsible for any transferred asset until it receives such asset.

**4.3 Receipt of Assets (Transfers).** The Participant may transfer assets in any form acceptable to the Custodian from another custodial account qualified under Section 403(b)(7) of the Code and/or from an annuity contract qualified under Code Section 403(b) to the Custodial Account if the Participant or Plan Provider certifies that the transaction meets the requirements for a tax-free transfer of annuity contracts under treasury regulations issued under Code Section 403(b) and any other applicable laws or rulings, or is a rollover contribution described in Sections 403(b)(8) or 408(d)(3)(A)(iii) of the Code. Once transferred, such assets shall be treated as a contribution on behalf of such Participant for purposes of this Custodial Agreement and shall be invested, distributed and otherwise dealt with as such. Transferred assets shall only be received pursuant to written directions, as the Plan Provider and Custodian deem acceptable. Transferred assets shall be considered as contributions hereunder to which the then current Investment Directions of the Participant involved is to apply. Any transferred amounts (whether cash or in-kind) shall be subject to the restrictions on early distributions under Code Section 403(b)(7)(A)(ii) or Code Section 403(b)(11) as set forth in IRS Revenue Ruling 90-24 to ensure that the transfer is not an actual distribution within the meaning of Code Section 403(b)(1). The Custodian has no duty to inquire into the source of any assets transferred to it or the right of the transferor to make such transfer.

**4.4 Location of Evidence of Ownership.** Except as permitted by ERISA, the Custodian will not maintain the indicia of ownership of any assets of the Custodial Account outside the jurisdiction of the district courts of the United States.

**4.5 Unidentified Assets.** If the Plan Provider receives any money, securities or other property from a source other than the Participant or Employer and has not received appropriate notification that such assets are to be accepted for the Custodial Account, the Plan Provider is authorized to return such assets to the Person from whom they were received. Neither the Plan Provider, the Advisor, nor the Custodian will be liable for any assets returned in such circumstances.

**4.6 Return of Amounts to the Plan Provider.** The Custodian will return contributions to the Participant or Employer through the Plan Provider if the Participant, Employer, or Plan Provider provides an Instruction to the Custodian to do so. The Plan Provider is solely responsible for ensuring that any Instruction to return any amount to the Participant or Employer meet all applicable legal requirements, including those of

ERISA, if applicable. The Custodian has no duty or responsibility to question, and may conclusively rely upon, any such Instruction.

## ARTICLE 5 – INVESTMENTS

### 5.1 Investment Control.

**5.1.1 General.** Each contribution to the Custodial Account shall be applied by the Plan Provider to the purchase of Mutual Fund shares in accordance with the applicable Investment Direction by the Participant for whom or by whom the contribution is made. Investment of the Mutual Fund(s) shall be made in accordance with the current prospectus of the applicable Mutual Fund and subject to any limitations or restrictions contained therein. The investment of all assets in the Custodial Account must be made solely in “regulated investment companies” (within the meaning of Code Section 403(b)(7)) made available through the Custodian. All dividends, including capital gain dividends, paid by any Mutual Fund shall be reinvested in full and fractional shares of the Mutual Fund paying the dividend in the manner specified in the prospectus of that Mutual Fund, and such dividends shall be credited to the Participant Account. The Participant may direct the Plan Provider to redeem any or all of the Mutual Fund shares held in the Participant Account and to invest the proceeds in any other Mutual Fund to be held in that Account; subject, however, to the applicable terms and conditions of the prospectus for each Mutual Fund involved.

**5.1.2 Investment Directions.** All investment directions and other Instructions must be delivered to the Custodian in such manner as the Custodian may reasonably require.

### 5.2 Role of Custodian.

**5.2.1 Processing Transactions.** No investment transaction for the Custodial Account that is to be processed by the Custodian at the direction of the Participant, Advisor, or Plan Provider will be processed until the Custodian receives the Instruction in proper form. Investment transactions will be processed either as soon as administratively practicable thereafter or, if later, on the scheduled date for processing. The Custodian may rely conclusively on all Instructions given by the Plan Provider and Advisor which the Custodian believes to be genuine. The Custodian’s records of a transaction will be conclusive as the content of any Instructions. Unless otherwise agreed, Instructions shall generally be taken from the Plan Provider.

The Custodian will have no responsibility to see that any investment directions comply with the terms of the Plan. However, if the Custodian receives any direction from the Plan Provider that appears to the Custodian in its sole judgment to be incomplete or unclear, the Custodian will not be required to act on such directions and may hold any asset un-invested without liability until proper directions are received from the Plan Provider. If investment directions are incomplete or unclear, the Custodian must notify the Plan Provider within a reasonable period of time. In the absence of proper investment directions, the Custodian will not be liable for interest, market gains, or losses on any cash balances maintained in the Custodial Account.

**5.2.2 Legitimate Delay.** The Custodian may delay the processing of any investment transaction due to a force majeure (cause or event outside the reasonable control of the parties or that could not be avoided by the exercise of due care, such as an act of God or any mechanical, electronic or communications failure), government or NSCC restrictions or changes, exchange, market or NSCC rulings, strikes, interruptions of communications or data processing services, or disruptions in orderly trading on any exchange or market.

**5.2.3 Other Limitations.** Except as may otherwise be required by ERISA, the Custodian will invest the Custodial Account as directed by the Plan Provider, and the Custodian will have no discretionary control over, nor any other discretion regarding, the investment or reinvestment of any asset of the Custodial Account. The Custodian has no duty or authority to provide investment advice with respect to the assets of the Custodial Account, monitor investment performance or the diversification of assets, question any investment direction the Custodian receives in proper form, or inquire into the authority or right of the Plan Provider to make any investment direction which the Custodian receives in proper form. The Custodian will not be liable for any loss of any kind which may result from any action taken by it in accordance with an Instruction it receives in proper form or from any action omitted because no such Instruction is received.

**5.3 Nondiscretionary Investment Authority.** Subject to ERISA, if applicable, and Section 5.4:

**5.3.1** Participant hereby authorizes and directs the Custodian, in accordance with the provisions of this Agreement, to pay for securities and receive payment from securities or other investment transactions arising out of the Instruction of the Plan Provider. Participant understands that it is solely the Participant’s responsibility to direct the Plan

Provider to execute trades or other investments for the Participant Account, and all Instructions, directions, and/or confirmations received from the Plan Provider shall be deemed to have been authorized by Participant. Participant agrees that the Custodian shall not supervise the investment of, advise, or make recommendations to the Participant with respect to the purchase, sale, or other disposition of any assets of the Fund.

**5.3.2** The Custodian will act solely as agent for the Participant, subject to the Instructions of the Plan Provider. The Custodian shall have no obligation to place orders for the purchase of securities if there are insufficient funds in the Participant Account. Participant authorizes the Plan Provider and Custodian to charge the Participant Account for the cost of all securities purchased or received against a payment and to credit the Participant Account with the proceeds received from the securities sold or delivered against payment. In the event of any trades not settled immediately upon placement, the Plan Provider or the Custodian will have the right, without notice, to sell securities in a reasonably prudent fashion from the Fund sufficient to recover any funds advanced.

**5.3.3** Participant and the Employer authorize and instruct the Custodian to register all assets of the Fund in the name of the Custodian or of a nominee. Unless otherwise agreed to in writing by the parties, registered securities shall be held in the name of: **MG Trust Company, LLC, Custodian For 403b ASP**  
**FBO: (Name of Employer)**

**5.3.4** All proxies received by the Custodian with respect to securities owned by the Fund and other reports to stockholders issued by any issuer will be forwarded to the Plan Provider. The Custodian shall have no responsibility to vote proxies or to deliver reports to the Participant or the Employer.

**5.4 Investment Restrictions.** The Plan Provider shall direct the Custodian to purchase or sell only securities that comply with the Custodian’s and/or its affiliate’s policies and procedures relating to acceptable securities, and that comply with all applicable rules, regulations, customs and uses of any exchange, market, clearinghouse or self-regulatory organization and applicable State and Federal laws and regulations. The Custodian will hold only those categories of assets mutually agreed to between the Plan Provider and the Custodian. The Plan Provider or Employer may add or remove types, categories, or classes of assets or investments only with the consent of the Custodian. Further, the Plan Provider or Employer may limit the available investment options under the Plan, and may impose separate limitations for different Custodial Accounts or for terminated participants. Nothing in this Article shall be construed to impose investment discretion on the Custodian or its affiliates.

## ARTICLE 6 – ADMINISTRATIVE MATTERS

**6.1 Participant Account Records.** The Plan Provider shall maintain such accurate and detailed records of the Participant Account, including all contributions, other receipts, investments, distributions, other disbursements, and all other transactions in each Custodial Account on behalf of the Participant. The Plan Provider shall provide a written confirmation to the Participant of each transaction in the Participant Account as required by applicable law. The Custodian’s accounting will be at the Employer level rather than the Participant level, and the Custodian will not be responsible for Participant-level reporting unless it agrees to do so in a separate written agreement with the Participant. The Plan Provider shall regularly furnish to the Custodian, on an agreed upon schedule and format, detailed statements of the Employer and Participant Accounts, showing contributions, investment earnings, redemption, or distributions made from the Account for any reason, and any fees, benefits, or withdrawals paid therefrom.

The Plan Provider shall mail to each Participant, at least once during each quarter in the calendar year, a report of all transactions with respect to the Participant Account during the period since that covered by the previous report to the Participant with respect to their Account, if any; and, if required by applicable law or requested by the Participant, a statement showing the assets held in the Participant Account as of the end of the calendar year. Upon the expiration of sixty (60) days after such report or statement is rendered, the Plan Provider shall be forever released and discharged from all liability and accountability to anyone with respect to transactions shown in or reflected by such report or statement except with respect to any such acts or transaction as to which the Participant shall have filed a written objection with the Plan Provider within such sixty (60) day period.

**6.2 Custodial Account Records.** The Custodian will keep accurate and detailed records and accounts of all receipts, investments, disbursements and other transactions as required by law with respect to the Custodial Account. All records, books and accounts relating to the Custodial Account will be open to inspection by the Plan Provider or Employer, provided the Custodian is given reasonable advance

written notice of such inspection. The Custodian may provide annual or interim accountings, valuations, or other reports concerning the assets of the Custodial Account subject to payment of all required additional fees for such reports. An accounting will be deemed to have been approved by the Employer and Plan Provider unless either objects to the contents of an accounting within sixty (60) days of its mailing or electronic transmission by the Custodian. Any objections must set forth the specific grounds on which they are based. Upon approval, the Custodian shall be forever released from any and all liability with respect to the Custodial Account.

**6.3 Valuation of Assets.** The assets of the Custodial Account and the Participant Account will be valued at the most recent fair market value.

## ARTICLE 7 – COMPENSATION AND EXPENSES

The Custodian, the Plan Provider and the Advisor will be entitled to receive compensation for services provided hereunder as may be agreed upon in writing with the Employer. The Plan Provider will be responsible for collecting the compensation by deducting the amounts from the Participant Account on a periodic basis as agreed upon in writing with the Employer. The Participant and Employer have been informed of such fee schedule and agree to be bound thereby. The fee schedule may be revised from time to time upon at least thirty days prior written notice to the Employer for whom a Custodial Account is maintained.

The Custodian shall be compensated for its services in accordance with the Custodian's applicable fee arrangement with the Plan Provider, which arrangement may be revised from time to time. The Custodian will be entitled to reimbursement for all reasonable and necessary costs, expenses, and disbursements incurred by it in the performance of such services, including, without limitation, attorneys' fees. All fees, taxes and expenses charged to a Custodial Account may be collected by the Custodian from the amount of any contribution, transfer or dividend credited or to be credited to a Fund or by redeeming Mutual Fund shares credited to that Custodial Account. The Custodian may also retain any earnings credited on any funds in the Custodial Account pending investment direction and pending distribution ("float") as part of its compensation for services provided.

## ARTICLE 8 – LOANS

**8.1 General Rules.** Loans to Participants are permitted unless otherwise restricted by the Plan. If permitted, the following rules, terms and conditions shall apply with respect to the loans to Participants from their Participant Accounts, unless modified by the Plan:

**8.1.1** Loans shall be authorized in written form acceptable to the Plan Provider.

**8.1.2** Loans must be adequately secured. Although it is the intention that loans to Participants shall be repaid, the collateral for each loan shall be the assignment of 50% of the Participant's entire right, title, and interest in and to Participant Account, evidenced by his promissory note for the amount of the loan (including interest), payable to the order of the Custodian, and such other security as the Custodian or Plan Provider shall require.

**8.1.3** Any loan shall bear interest at a reasonable rate as of the time of application, as determined in a uniform nondiscriminatory method by the Plan Provider or their authorized representative.

**8.1.4** No Participant loan shall exceed 50% of the present value of the Participant's vested interest in the Participant Account.

**8.1.5** In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event as defined at Article 9 occurs under the Custodial Agreement.

**8.1.6** The Custodian or Plan Provider shall not have any duty to determine whether a loan authorized to the Participant meets the requirements of this Section or any other requirements of this Section or any other requirements of the Code and shall not be liable to the Employer or Participant for any failure of the loan to meet such requirements.

### 8.2 Loan Limits

**8.2.1** No loan to any Participant can be made to the extent that such loan when added to the outstanding balance of all other loans to the Participant would exceed 50% of the vested account balance reduced by any outstanding collateral agreement relating to same, or \$50,000 less the excess (if any) of the highest outstanding loan balance during the 1-year period ending on the day before the date on which the loan will be made over the outstanding loan balance on the date on which the loan will be made, whichever is less. This limit shall apply in the aggregate to all custodial accounts or annuity contracts established under Code Section 403(b) by either the Participant or

the Employer on behalf of the Participant. In applying this limit, all loans from all plans of the Employer and other members of a group of employers described in Code Section 414(b), 414(c) and 414 (m) are aggregated. An assignment or pledge of any part of the Participant's interest in the Custodial Account shall be treated as a loan under this paragraph.

**8.2.2** The minimum loan amount shall be \$2,000.

### 8.3 Repayment terms

**8.3.1** Any loan shall by its terms require that repayment (principal and interest) be amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan, unless such loan is used to acquire a dwelling unit which within a reasonable time will be used as the principal residence of the Participant.

**8.3.2** Principal and interest paid by a Participant on a loan shall be credited to the Participant's loan account and invested in the same manner as Salary Reduction Contributions, or the most recent investment direction on file, if no Salary Reduction Contributions are being made.

**8.3.3** A Participant's required loan payments during a period of military service may be suspended.

## ARTICLE 9 – DISTRIBUTIONS

**9.1 Distributable Events.** Except as provided in Paragraph 9.2 or 9.5 of this Article, the Participant shall be entitled to distribution of assets in the Participant Account only after the occurrence of one of the following events, subject to any additional limitations applicable under the Plan or other applicable law:

The Participant attains age 59 ½;

The Participant separates from service with the Employer;

The Participant's death, or

The Disability of the Participant.

**9.2 Methods and Timing of Distributions to a Participant.** Distributions to a Participant from the Participant Account must commence by no later than the Required Beginning Date. The Required Beginning Date for a Participant shall be the later of the April 1 after the year in which the Participant attains age 70 ½ or the April 1 after the year in which the Participant actually retires.

A Participant may elect to receive the distribution of assets from the Participant Account to which the Participant is entitled in accordance with Paragraph 9.1 of this Article or which are required to be made as provided in the immediately preceding paragraph in either of the following ways:

**9.2.1** In a single payment; or

**9.2.2** In periodic monthly, quarterly, semi-annual or annual installments over a fixed period.

Single payments and installments must be taken in cash.

When receiving installment payments under clause 9.2.2 above, the Participant may increase the amount of installments or receive a distribution of any part or all of the balance in the Participant Account at any time upon prior written notice to the Plan Provider. The Participant may elect the method and form of distribution either before or after the occurrence of the event which permits payment to be made. Plan Provider will not provide Distribution Instructions to Custodian for payment to the Participant, however, until receipt of written instructions from the Participant.

**9.3 Distributions after the Participant's Death.** If a Participant dies before distribution of the balance in the Participant Account has been completed, the remaining amount, as well as all assets subsequently credited to the Participant Account, if any, shall be distributed to the Participant's Beneficiary in the form, at the time and from among the methods prescribed in Paragraph 9.2 of this Section as elected by the beneficiary, subject to the following clauses:

**9.3.1** If distributions from the Participant Account commenced to the Participant but were not completed before the Participant's death, the remaining amount to be paid to the Participant's Beneficiary may continue to be in the form and over the period for which the distributions were being made to the Participant, but in any event must continue to be made at least as rapidly as under the method of distribution being used prior to the Participant's death.

**9.3.2** If the Participant dies before distributions from the Participant Account to the Participant have commenced, distribution of the balance in the Participant Account must be completed by December 31 of the calendar year in which the fifth anniversary of the Participant's death occurs, except to the extent that an election is made by the

designated Beneficiary involved to receive distributions in accordance with (a) or (b) below:

- a. If any portion of the Participant Account is payable to a designated Beneficiary who is an individual, distributions may be made in a single sum or in periodic installments not greater than the life expectancy, of the designated Beneficiary with distributions to commence on or before December 31 of the calendar year immediately following the calendar year in which the Participant dies; or
- b. If the designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with subparagraph (a) immediately above shall not be earlier than the later of (i) December 31 of the calendar year immediately following the calendar year in which the Participant died or (ii) December 31 of the calendar year in which the Participant would have attained age 70 ½.

**9.3.3** The Participant's Beneficiary must elect the method of distribution no later than the earlier of (i) December 31 of the calendar year in which distributions would be required to begin under this Paragraph 9.3, or (ii) December 31 of the calendar year in which occurs the fifth anniversary of the date of death of the Participant. If the Participant's Beneficiary does not elect a method of distribution, distribution of the balance in the Participant Account must be completed by December 31 of the calendar year in which occurs the fifth anniversary of the Participant's death. For purposes of this clause 9.3.3 and clause 9.3.2 above, if the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of clause 9.3.2 with the exception of (b) herein, and this clause 9.3.3 shall be applied as if the surviving spouse were the Participant.

For purposes of this Paragraph 9, distributions with respect to a Participant are considered to begin on the Participant's Required Beginning Date (as defined in Paragraph 9.2 or, if the Participant's surviving spouse dies after the Participant but before payments to such spouse begin, the date distribution would have been required to begin to the surviving spouse pursuant to clause 9.3.2).

An election by a Beneficiary under this Paragraph 9.3 is to be set forth in a written statement describing the distribution involved and the date on which the distribution is to be made or commence, which election shall be delivered to the Plan Provider within such period of time prior to the date the distribution is to be made or commence as is acceptable to the Plan Provider.

For purposes of this Paragraph 9.3, any amount paid to a child of the Participant will be treated as if it had been paid to the Participant's surviving spouse if the amount becomes payable to such surviving spouse when the child reaches the age of majority.

After a Participant's death, and until the balance of the Participant Account to which a Beneficiary is entitled has been distributed, that Beneficiary shall be considered to be the Participant with respect to such balance for all purposes of this Custodial Agreement relating to investments as well as for purposes of Article 6 through 15 hereof, except as otherwise specifically indicated.

If a Beneficiary dies while receiving distributions from the Participant Account, the remaining payments shall be made to the estate of the Beneficiary; provided that the executor or administrator of the estate may elect, by proper written instructions given to the Plan Provider, to receive the balance in the Participant Account in a single payment.

**9.4 Beneficiaries.** A Participant may designate in writing, on a form acceptable to and filed with the Plan Provider, one or more persons, including a trust, charitable organization, or other non-living entity or the Participant's estate, as a Beneficiary to whom amounts due from the Participant Account after the Participant's death shall be paid. If the Participant fails to make a proper designation, or if no person properly designated survives the Participant, the Participant's Beneficiary shall be the Participant's surviving spouse or, if none, the Participant's children, if any, in equal shares per stirpes, or if none, the executor or personal representative of the estate of the Participant. No Beneficiary designation made under an annuity contract or some other custodial agreement shall be deemed to be valid under this Custodial Agreement. Notwithstanding any provision of this Paragraph 9.4 to the contrary, if Title I of ERISA is applicable with respect to the Participant Account, the Participant's designation of a Beneficiary other than his spouse must be consented to in a manner consistent with ERISA Section 205(c)(2).

The Beneficiary Designation can be changed at any time by executing and returning to the Plan Provider a new Beneficiary Designation Form.

**9.5 Hardship Distributions.** The Participant who encounters financial Hardship shall be entitled to a distribution from the Participant Account in the form of a single payment of an amount not in excess of the contributions made to the Participant Account pursuant to a Salary Reduction Agreement (but no earnings thereon) if not prohibited by the Plan or any applicable law or regulation. This amount will be distributed to the Participant upon receipt of written notice from the Participant for

reasons of hardship and certification from the Employer to the Plan Provider that the requirements for a Hardship distribution under the Code have been met, the Plan Provider will instruct the Custodian to make the Hardship Distribution to the Participant.

If the Participant Account is subject to Section 205(c)(4) of ERISA, the Participant's spouse, if any, must consent to any withdrawal by the Participant in the manner provided for in that section.

**9.6 Qualified Domestic Relations Orders.** If the Participant Account is subject to Title I of ERISA, a domestic relations order ("Order") shall specifically state all of the following in order to be deemed a Qualified Domestic Relations Order ("QDRO"):

- the name and last known mailing address of the Participant and each of the Alternate Payee(s) covered by the QDRO;
- the dollar amount or percentage of the Participant's benefit to be paid to each Alternate Payee, or the manner in which the amount or percentage will be determined;
- the number of payments or period for which the Order applies;
- the specific plan (by name) to which the Order applies.

The Order shall not be deemed a QDRO if it requires the Plan to provide:

- a type or form of benefit or an option not already provided for in the Plan;
- increased benefits or benefits in excess of the Participant's vested rights;
- payment of a benefit earlier than allowed by the Participant Account's earliest retirement provisions; or
- payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another QDRO.

Promptly upon receipt of an Order which may or may not be qualified, the Employer shall notify the Participant and any Alternate Payee(s) named in the Order of such receipt, and include a copy of this Paragraph. The Employer or Plan Provider shall then make a determination as to the qualified status of the Order and may forward the Order to the Plan's legal counsel for an opinion as to the qualified status and the Participant and any Alternate Payee(s) shall be promptly notified in writing of the determination.

If the qualified status of the Order is in question, there will be a delay in any payout to any payee including the Participant until the status is resolved. In such event, the Employer shall direct the Plan Provider to segregate the amount that would have been payable to the Alternate Payee(s) if the Order had been deemed a QDRO. If the Order is not a QDRO, or the status is not resolved within eighteen (18) months from the date the first payment would have been made under the Order, the Employer shall direct the Plan Provider to pay the segregated amounts plus interest to the person(s) who would have been entitled to the benefits had there been no Order. If a determination as to the qualified status of the Order is made after the eighteen (18) month period described above, the Order shall only be applied on a prospective basis. If the Order is determined to be a QDRO, the Employer shall direct the Plan Provider who will then instruct the Custodian to pay to the Alternate Payee(s) all the amounts due under the QDRO, including segregated amounts plus interest which may have accrued during a dispute as to the Order's qualification.

**9.7 Distribution of Excess Contributions, Excess Deferrals and Excess Aggregate Contributions.** If the Plan Provider receives a written notice from a Participant that an "excess contribution" as defined in Code Section 4973(c) has been made to the Participant Account, the Plan Provider shall send Instructions to Custodian, as soon as practicable thereafter, to distribute such excess by check.

If the Plan Provider receives a written notice from the Participant no later than March 1 next following the end of any calendar year that an "excess deferral" as referred to in Code Section 402(g)(2)(A) was made to the Participant Account for that calendar year, the Plan Provider shall send Instructions to Custodian, by no later than the immediately following April 15, to distribute to the Participant such excess, together with any income or loss attributable thereto to the date of distribution by check.

If Employer contributions in the form of "matching contributions" (within the meaning of Code Section 401(m)(4)) are made to any Participant Account and the Plan Provider receives written notice from the Employer that "excess aggregate contributions" as defined in Code Section 401(m)(6)(B) were made to one or more Participant Accounts for the immediately preceding calendar year, the Plan Provider shall send Instructions to Custodian, no later than the last day of the current calendar year, to distribute those excess aggregate contributions, together with any income or loss attributable thereto to the date of distribution by check.

The income or loss to be included in any distribution pursuant to this Paragraph 9.7 shall be specified in the notice of distribution and determined by the Participant or

Employer, as relevant, in a manner consistent with applicable Treasury regulations, if any.

**9.8 Direct Rollovers.** Notwithstanding any provision of the Agreement to the contrary that would otherwise limit a Distributee's election under this section, a Distributee may elect, at the time and in the manner prescribed by this Custodial Agreement and the Plan, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. The Employer and Plan Provider may establish rules and procedures governing the processing of Direct Rollovers and limiting the amount or number of such Direct Rollovers in accordance with applicable Treasury Regulations. Distributions not transferred to an Eligible Retirement Plan in a Direct Rollover shall be subject to income tax withholding as provided under the Code and applicable state and local laws, if any.

**9.8.1 Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include any distribution that is one of a series of periodic payments (not less frequently than annually), made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and any hardship distribution. Notwithstanding the foregoing, any portion of a distribution that consists of after-tax contributions which are not includible in gross income may be transferred only to an individual retirement account or annuity described in Code Sections 408(a) or 408(b), or a qualified plan described in Code Sections 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution that is includible in gross income and the portion of such distribution which is not so includible.

**9.8.2 Eligible Retirement Plan.** An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or an annuity or custodial account described in Code Section 403(b), and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, and which accepts the Distributee's Eligible Rollover Distribution. This definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a QDRO, as defined in Code Section 414(p). If any portion of an Eligible Rollover Distribution is attributable to payments or distributions from a designated Roth account (as defined in Code Section 402A), an Eligible Retirement Plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

**9.8.3 Distributee.** A Distributee includes an Employee, or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is an Alternate Payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.

**9.8.4 Direct Rollover.** A Direct Rollover is a payment by the Plan to an Eligible Retirement Plan specified by the Distributee.

**9.9 Other Distribution Provisions.** If a distribution is payable from a Participant Account to a person with a legal disability or to a minor, the Plan Provider may send Instructions to the Custodian to pay the amount involved to the legal guardian of the individual or, if none, to an individual who is permitted to receive such a payment by the laws of the State in which the disabled individual or minor lives. Such payment shall fully discharge the Custodian, Plan Provider and the Employer from further liability on account thereof.

**9.10 Responsibility for Compliance with Distribution Requirements.** The Plan Provider shall be responsible for insuring that distributions meet the requirements of Paragraphs 9.1, 9.2 and 9.3 above, based on information supplied by the Employer and/or the Participant, upon which it is entitled to rely, and neither the Plan Provider nor the Advisor shall have responsibility for such determination. The Custodian shall be entitled to rely on directions from the Plan Provider as to all distributions and shall have no responsibility or obligation to independently determine when or what amount should or must be distributed at any time.

**9.11 Documents Necessary for Distribution.** Before instructing the Custodian to make a distribution from any Participant Account, the Plan Provider shall receive any and all applications, certificates, tax waivers, signature guarantees, and other documents (including proof of legal representative's authority) that the Plan Provider may deem necessary or appropriate.

**9.12 Small Account Balances.** Distribution requests less than \$5,000 will be made in the form of a lump sum payment to the Participant. If distribution requests for amounts less than \$5,000 are submitted requesting periodic payments, Plan Provider has the right to send Instructions to the Custodian to process the distribution as a lump sum without the consent of the Participant or Beneficiary. In the event the Plan is subject to ERISA, the \$5,000 shall be reduced to \$1,000 each place it occurs in this Section.

## ARTICLE 10 – AMENDMENT AND ASSIGNMENT

This Agreement may be amended by the Custodian, provided notice of such amendment is sent to the Plan Provider at least thirty (90) days prior to the effective date of any such amendment. The Plan Provider reserves the right, with the consent of the Custodian, to amend any or all provisions of this Custodial Account at any time without obtaining the Participant's approval or consent. The Employer and each Participant for whom an Account is maintained, delegate to the Plan Provider the power to amend all or any part of this Custodial Agreement on their behalf, including retroactive amendments, and each such person shall be deemed to have consented to any amendment made by the Plan Provider and Custodian provided that notice in writing of such amendment shall be given to the Employer and each such Participant. Any such amendment shall be effective as specified therein.

No amendment of this Custodial Agreement or the Plan Document shall be effective if it would cause or permit (i) any of the assets held in a Participant Account to be diverted to any purpose other than for the exclusive benefit of the Participant or the Participant's Beneficiary(ies), as applicable, or to revert to or become the property of the Employer, (ii) a Participant or the Participant's Beneficiary(ies) to be deprived of any benefit to which the Participant or Beneficiary was entitled under the Custodial Agreement prior to the amendment, unless the amendment is necessary to conform to, or satisfy the conditions of, any law, governmental regulation or ruling, or to permit the Custodial Account to meet the requirements of the Code or ERISA, or (iii) the rights, duties, responsibilities, obligations or liabilities of the Custodian or the Plan Provider to be affected without the written consent of the Custodian or the Plan Provider, as applicable.

Notwithstanding the foregoing, only the Custodian, the Plan Provider or the Advisor may revise their fee schedule provided for in Article 7, which revision shall not be considered an amendment of this Custodial Agreement. Neither shall a change by a Participant of an Investment Direction or a revocation or change of a Beneficiary designation be considered an amendment to this Custodial Agreement.

## ARTICLE 11 – RESIGNATION OR REMOVAL OF THE CUSTODIAN OR THE PLAN PROVIDER

**11.1 Custodian's Right to Resign.** The Custodian may resign with respect to any or all Custodial Accounts by giving ninety (90) days written notice to the Employer and Plan Provider. The Custodian may designate a qualified successor custodian in its notice of resignation. If no new custodian is appointed by the end of the ninety (90) day notification period, the Plan Provider shall appoint a new custodian. The party entitled to the notice may waive the notice period.

**11.2 Employer's Right to Terminate.** The Employer may remove the Custodian or the Plan Provider by giving thirty (30) days written notice or by transferring the Custodial Account to another custodian at any time upon thirty (30) days advance written notice. Upon the removal of the Custodian, the Employer shall promptly appoint a successor custodian and a new record keeper. The party entitled to the notice may waive the notice period.

**11.3 Plan Provider's Appointment of Successor Custodian.** The Plan Provider has the right to appoint a successor custodian of the Custodial Account at any time by giving at least thirty (30) days written notice to the Employer and may designate a qualified successor custodian. The party entitled to the notice may waive the notice period.

**11.4 Successor Custodian.** Upon the resignation or removal of the Custodian, the Employer will either accept the Custodian's or Plan Provider's appointment of a successor or appoint a successor custodian. The Employer's failure to appoint a successor custodian, on or before the effective date of such resignation and appointment, will constitute the Employer's consent to the successor appointed by the Custodian or Plan Provider. If, within thirty (30) days after the Custodian's resignation or receipt by it of notice of the Custodian's removal, no person has accepted appointment as successor custodian of the Custodial Accounts involved, the Custodian may appoint such successor custodian itself or apply to a court of competent jurisdiction for the appointment of a successor custodian.

The appointment of the successor custodian will become effective at the time the Custodian ceases to act. The Custodian shall promptly transfer all records pertaining thereto, provided that any successor custodian shall agree not to dispose of any such

records without the Custodian's consent. The Custodian shall not be liable for the acts or omissions of such successor whether or not it makes such appointment. The successor will have all rights, powers, privileges, liabilities and duties of the Custodian.

The Custodian will assign, transfer and deliver all assets and liabilities held in the Custodial Account, in kind, directly to the successor custodian on the effective date of the resignation or as soon thereafter as practical. The Custodian is authorized, however, to reserve such Mutual Funds as it deems advisable to provide for the payment of expenses, fees, taxes and other liabilities under this Custodial Agreement, and for the payment of all liabilities constituting a charge on or against the assets of any Custodial Account or on or against the Custodian, and where necessary may liquidate such reserved shares. Any balance of such reserve remaining after the payment of all such items shall be paid over to the successor. The successor custodian shall hold the assets paid over to it under the terms of this Custodial Agreement.

## ARTICLE 12 - TERMINATION OR TRANSFERS

**12.1 Discontinuance of Contributions.** The complete discontinuance of contributions to a Participant Account shall not cause that Participant Account to terminate except as defined in Paragraph 12.5. Termination of a Participant Account shall be effected by a distribution of all assets in the Participant Account to the Participant or, after the Participant's death, to the Participant's Beneficiary, at the direction of the Participant or Beneficiary, as the case may be, or in the absence of such direction, as determined by the Plan Provider, subject, however to the Custodian's right to reserve Mutual Funds in the same manner as provided for in Article 11.

**12.2 Disqualification.** If the Plan Provider receives written notice that the Internal Revenue Service has determined that the Participant's Account fails to meet the requirements of Code Section 403(b)(7) by reason of some inadequacy not capable of being corrected by a retroactive amendment, the Plan Provider shall terminate the Participant Account by distributing the assets thereof to the Participant.

**12.3 Termination of Accounts.** Upon termination of all Participant Accounts in any manner provided for in this Section, this Custodial Agreement shall be considered to be rescinded and of no force and effect and the Custodian, the Advisor, and the Plan Provider shall be relieved from all further liability with respect to this Custodial Agreement, any Custodial or Participant Account, and all assets thereof so distributed.

**12.4 Transfers.** The Participant may direct the transfer of the assets of the Participant Account at any time to another account or annuity established for the Participant pursuant to Code Section 403(b)(7) upon written instructions to the Plan Provider in such form as the Plan Provider may require, subject, however, to the Custodian's right to reserve Mutual Funds in the same manner provided for in Article 11.

**12.5 Inactive Accounts with Small Balances.** The complete discontinuance of contributions to a Participant Account shall not cause that account to terminate except when the account value is less than \$2,000. Plan Provider has the right to terminate the account and distribute assets to the Participant only when the account value is less than \$1,000, no contributions have been received for a period of twelve consecutive months and the Participant has received written notification thirty (30) days prior to the distribution.

## ARTICLE 13 - INDEMNIFICATION

Participant and Employer hereby agree to indemnify, defend and hold the Custodian and its affiliates, and their respective directors, managers, officers, employees, agents and other representatives, (collectively referred to as its "Affiliates") harmless from any losses, costs, expenses, fees, liabilities, damages, claims, suits or actions, including but not limited to legal expenses, court costs, legal fees and costs of investigation, including appeals thereof, (collectively or individually, "Claims") resulting from their reliance upon any notice or instruction purporting to have been delivered by the Plan Provider or Advisor, resulting from changes in the market value of the Fund or any exercise of failure to exercise investment direction authority by the Participant or the Plan Provider or resulting from the Custodian's refusal on advice of counsel to act in accordance with any investment direction by Participant or the Plan Provider. Participant and Employer waive any and all Claims of any nature it now has or may have against the Custodian and its Affiliates which arise, directly or indirectly, from any action taken in good faith in accordance with any notice or instruction from the Plan Provider, Advisor, Participant or Employer, or any disqualification of a plan due to any actions taken or not taken by the Custodian in reliance on instructions from the Plan Provider, Advisor, Participant or Employer; or any other act the Custodian takes in good faith under this Agreement or in connection with the administration of the Fund. The Custodian shall not be liable to Participant for any act, omission, or determination made in connection with this Agreement except for its gross negligence or willful misconduct. Without limiting the generality of the foregoing, the Custodian shall not be

liable for any losses arising from its compliance with instructions from the Plan Provider, Advisor, Participant or Employer; or executing, failing to execute, failing to timely execute or for any mistake in the execution of any instructions, unless such action or inaction is by reason of the gross negligence or willful misconduct of the Custodian.

The Custodian shall not be under any obligation to defend any legal action or engage in any legal proceedings with respect to the Custodial Account or with respect to any property held in the Fund. Whenever the Custodian deems it reasonably necessary, the Custodian is authorized to consult with its counsel in reference to the Custodial Account and to retain counsel and appear in any action, suit, or proceedings affecting the Custodial Account or any of the assets of the Fund. All legal fees, costs, and expenses so incurred shall be paid for by the Employer or the Plan Provider or in the absence of payment charged against the Custodial Account. The Custodian may retain legal counsel whenever in the Custodian's judgment it is necessary or advisable to do so in connection with the discharge of the Custodian's duties, and the fees and expenses of such counsel will be paid by the Employer, or in the absence of payment by the Employer, shall be charged against the Account.

The provisions of this Article shall survive the termination, amendment or expiration of this Agreement.

## ARTICLE 14 - REQUIREMENTS OF TITLE I OF ERISA

The Employer or its designee shall be solely responsible for determining whether Title I of ERISA is applicable with respect to the Custodial Account and shall notify the Plan Provider in writing if it determines that Title I of ERISA is so applicable. In such event, the Employer shall take all such actions as are necessary to assure that the Custodial Account is administered in compliance therewith; such action shall include, but shall not be limited to, implementing procedures to ensure that each requested distribution from the Custodial Account is processed in accordance with the requirements of ERISA. Neither the Custodian, the Advisor, nor the Plan Provider shall be under any obligation to determine whether Title I of ERISA is applicable with respect to any Custodial Account. Any determination in that regard shall be the sole responsibility of the Employer and the Custodian, the Advisor, and the Plan Provider shall be entitled to rely on that determination of the Employer. The Custodian, the Advisor, and the Plan Provider shall be entitled to regard each Custodial Account maintained under the Section 403(b) Plan as not subject to Title I of ERISA, unless notified otherwise in writing by the Employer.

## ARTICLE 15 - MISCELLANEOUS PROVISIONS

**15.1 No Diversion of Assets and Nonforfeiture.** At no time shall it be possible for any part of the assets of a Participant Account to be used for or diverted to purpose other than for the exclusive benefit of the Participant and the Participant's Beneficiary, as applicable, or for the payment of expenses and other amounts as specifically provided in this Custodial Agreement. The interest of a Participant in the Participant Account shall be nonforfeitable at all times.

**15.2 Notices.** Any notice from the Plan Provider to the Employer or a Participant provided for in this Custodial Agreement shall be effective on the second day after the day mailed if sent by first-class mail to the last address maintained for each on the Plan Provider's records.

**15.3 Further Agreements.** The parties to, and all persons claiming any interest whatsoever under this Agreement agree to perform any and all acts and to execute any and all documents and papers that may be necessary to carry out this Agreement or any of its provisions.

**15.4 Binding on Successors.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of all parties to the Agreement.

**15.5 Nonassignability of Benefits and Assets.** The benefits provided herein and the assets of the Participant Account shall not be subject, whether voluntary or involuntarily, to alienation, assignment, legal process, garnishment, attachment, execution or levy of any kind (other than with regard to the payment of the Custodian and the Plan Provider's fees and expenses as authorized by this Custodial Agreement), and any attempt to cause such assets to be so subjected shall not be recognized except to the extent as may be required by law or as provided herein. Neither the foregoing nor any provision of this Custodial Agreement, however, shall restrict compliance with a court order determined to be a "qualified domestic relations order" defined in Code Section 414(p). If the Plan Provider so determines, the amount payable with respect to that order shall immediately be distributed in a single sum to the "alternate payee" (as defined in Code Section 414(p)).

**15.6 Qualification and Compliance.** The Custodial and Participant Account is established with the intent that it shall qualify under Code Section 403(b)(7) and,

where applicable, the relevant provisions of ERISA. All terms and provisions hereof shall be interpreted, whenever possible, so as to comply with that Code Section and those ERISA provisions.

**15.7 Governing Law.** This Custodial Agreement shall be construed, interpreted, administered and enforced according to the laws of the State in which the principal office of the Custodian is located except insofar as superseded by ERISA. All controversies, disputes, and claims arising under this Agreement and not otherwise resolved will be submitted to the United States District Court for the district where the Custodian has its principal place of business, and by executing this Agreement, each party hereto consents to that court's exercise of personal jurisdiction over them.

**15.8 Limitation on Claims.** No claim may be made by the Participant, the Employer or the Plan Provider or Advisor against the Custodian for any lost profits or any special, indirect or consequential damages in respect of any breach or wrongful conduct in any way related to this Agreement.

**15.9 Arbitration.** The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. The parties agree that any misunderstandings, controversies or disputes arising from this Agreement shall be decided by binding arbitration which shall be conducted, upon request by either party, in Denver, Colorado, before three (3) arbitrators designated by the American Arbitration Association (the "AAA"), in accordance with the terms of the Commercial Arbitration Rules of the AAA, and, to the maximum extent applicable, the United States Arbitration Act (Title 9 of the United States Code). The decision of the majority of the arbitrators shall be binding and conclusive upon the parties. Notwithstanding anything herein to the contrary, either party may proceed to a court of competent jurisdiction to obtain equitable relief at any time, other than to stay arbitration. Further, any such court proceeding shall only be brought in the federal district court in Denver, Colorado. The arbitration panel shall have no authority to award special, indirect, consequential, punitive or other damages not measured by the prevailing party's actual damages. To the maximum extent practicable, an arbitration proceeding under this Agreement shall be concluded within one hundred eighty (180) days of the filing of the dispute with the AAA. The provisions of this arbitration clause shall survive any termination, amendment or expiration of the Agreement and if any term, covenant, condition or provision of this arbitration clause is found to be unlawful or invalid or unenforceable, the remaining parts of the arbitration clause shall not be affected thereby and shall remain fully enforceable. Judgment on any award rendered by the arbitration panel may be entered in any court having competent jurisdiction. The parties shall each pay one-half of the forum and arbitrators' fees. The prevailing party in the arbitration, or any court proceeding, shall be entitled to its reasonable attorney's fees and expenses from the non-prevailing party.

**15.10 USA Patriot Act Notification.** The following notification is provided to Customer pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT.** To help the government fight the funding of terrorism and money-laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an Account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for you: When you open an Account, the Employer, Custodian or the Plan Provider may ask for information that will allow them to verify your identity. This may include your name, social security number, residential address, and date of birth. The Custodian or the Plan Provider may also ask to see a copy of your driver's license or other identifying documents.