

# Custodial Agreement

## TERMS AND CONDITIONS

The Employer hereby requests FPS Trust Company, LLC, (“Custodian”), a trust company organized under the laws of the State of Colorado, to establish a Custodial Account (the “Custodial Account”) on behalf of the Employer’s Plan. The Employer also hereby requests the Program Sponsor to establish a separate recordkeeping account (“Participant Recordkeeping Account”) under the Custodial Account for each Participant. The Program Sponsor and Custodian agree to furnish system and account services to the Employer and the Participants in the Plan on the terms and conditions set forth below. The Custodian has no investment discretion and provides no investment advice with respect to the Participant Recordkeeping Account or the Custodial Account. The Participant who directs Contributions pursuant to a Salary Reduction Agreement with the Employer, who has Employer Contributions contributed on his behalf or who makes a Rollover, Plan to Plan Transfer or Exchange Contribution from another eligible retirement program does agree, by signing the Participant Enrollment Form, to the terms and provisions of this Custodial Agreement, which is intended to qualify as an eligible funding vehicle under Section 403(b)(7) of the Code.

**This Custodial Agreement is intended to be used by employers that are governmental organizations exclusively, is not intended to satisfy the requirements of ERISA and should not be used if the Employer or the Plan is not exempt from the application of ERISA to this Agreement.**

## 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.

**1.1 Alternate Payee** means a Participant’s or former Participant’s spouse or former spouse, child or other dependent who is granted a right to receive all or a portion of the benefits payable under the Participant’s Recordkeeping Account as a result of a Qualified Domestic Relations Order.

**1.2 Beneficiary** means the person or persons, trust, estate, charitable organization or other non-living entity designated by the Participant, or the Participant’s beneficiary, to receive any payment of benefits pursuant to Article 9.

**1.3 Code** means the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.

**1.4 Contributions** means the sum of all Contributions hereunder made to each Participant’s Account by or for the benefit of such Participants, including Employee Contributions, Employer Contributions, Exchanges, Transfer Contributions and Rollover Contributions, as applicable.

**1.5 Custodial Account** means the group unallocated custodial account established by the Custodian hereunder to hold Participant Recordkeeping Accounts under the Employer’s Plan for the exclusive benefit of Participants.

**1.6 Custodial Agreement or Agreement** means this document, as amended from time to time, and each Participant’s Enrollment Form acknowledging and agreeing to be bound by the terms hereof.

**1.7 Custodian** means FPS Trust Company, LLC and any successors or assignees.

**1.8 Default Investment** means the investment option selected by the Employer to hold and invest amounts deposited into the Custodial Account by or for Employees who have failed to give satisfactory Instructions on where amounts deposited on their behalf should be invested or for whom amounts have been received by the

# Custodial Agreement

Custodian but some other impediment to proper deposit and allocation exists. The Employer shall be responsible for selecting the Default Investment and shall indicate the current Default Investment in descriptive materials relating to investment options under this Custodial Account

**1.9 Disability** means the inability to engage in any substantial gainful activity in accordance with 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.

**1.10 Employee** means any person who performs services or has performed services as a common law Employee of the Employer. Leased employees as defined in Code Section 414(n) or (o) shall not be included as Employees under this Agreement unless otherwise provided under the Employer's Plan.

**1.11 Employee Contribution** means the amount deposited into the Custodial Account on behalf of a Participant pursuant to the Employee's Salary Reduction Agreement. Employee Contributions under this Agreement include both Salary Reduction Contributions and Roth Contributions.

**1.12 Employer** means the organization sponsoring the Plan under which this Agreement is established and any successors thereto. The Employer must also be a State, a political subdivision of a State, or agency or instrumentality of a State or a political subdivision of a State, provided that the Employee performs services for an educational organization described in Code Section 170(b)(1)(A)(ii).

**1.13 Employer Contribution** means the aggregate Contributions made hereunder by the Employer, excluding Employee Contributions and Roth Contributions, for each Employee eligible to receive Employer Contributions.

**1.14 Enrollment Form** means the Participant Account Application, Participant Account Agreement, and Terms and Conditions pursuant to which a Participant Recordkeeping Account is established (or continued) on behalf of a Participant, and under which the Participant agrees to the terms and conditions of the Custodial Agreement, as the same may be amended from time to time.

**1.15 ERISA** means the Employee Retirement Income Security Act of 1974, as amended. This Custodial Account is not intended for use with any Plan that is subject to the requirements of ERISA.

**1.16 Exchange** means the transfer of some or all of a Participant's (or Beneficiary's) interest under one custodial or annuity contract under the Plan to another custodial or annuity contract issued by an authorized Vendor under the Plan, provided the transaction meets the requirements of Treas. Reg. Section 1.403(b)-10(b)(2) and any other applicable legal requirements.

**1.17 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.

**1.18 Hardship** means an immediate and heavy financial need of a Participant, such as unreimbursed medical expenses, higher education tuition expenses for the Participant or the Participant's spouse or children, the purchase of a primary residence for the Participant, the costs of a funeral for the Participant's deceased parents, spouse, or children, or amounts necessary to prevent eviction of the Participant, that can only be satisfied with a distribution from this Custodial Account. All financial Hardships must satisfy the requirements applicable to such distributions under Code Sections 403(b)(7)(A)(ii) and (11)(b), Treas. Reg. Section 1.401(k)-1(d)(2), as applicable to

# Custodial Agreement

403(b) accounts, and other applicable guidance relating to such distributions, as well as the terms of the Plan and any policies and procedures implemented by the Employer thereunder.

**1.19 Instruction** means any oral, written or electronic direction given to the Custodian in a form and manner required or accepted by the Custodian. The Custodian may require that any Instruction be in writing or in an electronic format, and may recognize standing requests, directions, or requisitions as Instructions.

**1.20 Investment Direction** means the instruction of a Participant regarding the manner in which Contributions or transfers to the Participant Recordkeeping Account are to be invested. These instructions may be changed from time to time effective for Contributions received by the Program Sponsor or Custodian after receipt of the new direction.

**1.21 Mutual Fund or Mutual Fund Shares(s)** means one or more shares issued by a “regulated investment company,” as that term is defined in Code Section 403(b)(7)(C).

**1.22 Participant** means an Employee who has established a Participant Recordkeeping Account and whose Enrollment Form has been accepted by the Program Sponsor.

**1.23 Participant Recordkeeping Account or Participant Account** means the individual record established and maintained by the Program Sponsor or its agent hereunder for the exclusive benefit of a Participant and the Participant’s Beneficiary, as applicable.

**1.24 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-forfeitable (except for failure to pay future Contributions) to the extent required by Code Section 403(b)(1)(C) 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.

**1.25 Plan Document** means the written document by which the Employer adopts and maintains a Section 403(b) Plan with respect to which this Custodial Agreement is a part.

**1.26 Program Sponsor or Sponsor** means FPS Services, LLC, a Delaware limited liability company, and any successor thereto, including by merger or acquisition, that makes Participant Recordkeeping Accounts available to qualifying Participants. The Program Sponsor is authorized by the Custodian to establish and maintain a Participant Recordkeeping Account under this Custodial Account in the Participant’s name, accept Contributions, make or direct the making of payments or distributions to the Participant or Beneficiaries, and prepare and mail or electronically transmit to the Participant periodic account statements.

**1.27 Qualified Domestic Relations Order (QDRO)** means a domestic relations order issued by a state court that 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 Recordkeeping Account and which meets the requirements of Code Section 414(p) and other applicable law.

**1.28 Required Beginning Date** means the April 1 following the later of:

**1.28.1** the year in which a Participant attains age 70 ½, or

**1.28.2** the year in which a Participant severs service with the Employer or as otherwise required by Code Sections 403(b)(10) and 401(a)(9) and applicable regulations and is the date upon which a Participant is required to take his first minimum distribution under this agreement, the terms of the Plan and applicable law.

# Custodial Agreement

**1.29 Rollover Contribution** means a Contribution made by, or at the direction of, a Participant (or Beneficiary) of an amount distributable to such Participant (or Beneficiary) from an eligible retirement plan, custodial account or annuity or from an Individual Retirement Account, in accordance with Code Section 402(c)(8).

**1.30 Roth Contribution** means a Contribution made by an Employee under a Salary Reduction Agreement that is irrevocably designated by the Employee to be a Roth Contribution, which is being made by the Employee as all or part of the Contributions that the Employee is otherwise eligible to make under the Plan, and which is treated by the Employer as includible in the Employee's income.

**1.31 Salary Reduction Agreement** means an agreement between an Employee and the Employer pursuant to which the Employee's compensation is reduced or a compensation increase is foregone in an amount which the Employer is to contribute to the Custodial Account as either a Salary Reduction Contribution or a Roth Contribution and which is recorded by the Program Sponsor as an allocation to such Employee's Participant Recordkeeping Account.

**1.32 Salary Reduction Contribution** means a Contribution made by the Employer on behalf of an Employee on a pre-tax basis pursuant to a Salary Reduction Agreement.

**1.33 Transfer Contribution** means a direct transfer of all or any portion of a Participant's interest under one employer's 403(b) plan to the 403(b) plan of another employer following a severance from service, provided the transaction meets the requirements of Treas. Reg. Section 1.403(b)-10(b)(3) and any other applicable legal requirements.

**1.34 Vendor** means the providers of annuity contracts or custodial accounts qualifying under Code Section 403(b) that have been authorized by the Employer to offer investment products to participants under the Plan.

## ARTICLE 2 - ESTABLISHMENT OF CUSTODIAL ACCOUNT

**2.1** The Employer hereby requests that the Custodian establish the Custodial Account for and in the name of the Employer's Plan to hold the assets of the Plan Participants. The Employer also hereby requests that the Program Sponsor establish a separate recordkeeping account (Participant Recordkeeping Account) to reflect each Participant Account under this group unallocated custodial account. A Participant may establish a Participant Recordkeeping Account by completing the Enrollment Form and delivering it to the Program Sponsor or by previously having done so and consented to the Sponsor's and Employer's right to select the Custodian and amend this Custodial Agreement. Program Sponsor and the Employer 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 Program Sponsor and the Employer.

**2.2** All Contributions made to the Custodial Account by or on behalf of each Participant shall be applied by the Program Sponsor, in accordance with the Investment Directions of such 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. The Employer and each Participant agree to look solely to the Program Sponsor or other record keeper that Program Sponsor 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 Employer and/or the Program Sponsor of funds into the Custodial Account, and other valuable consideration, hereby agrees to act as custodian of the Custodial Account on the terms and conditions of this Agreement. The Employer and the Program Sponsor, in consideration of the agreement by the Custodian to perform the duties of a custodian under

# Custodial Agreement

this Agreement, hereby designate and appoint the Custodian as the custodian of the Participant Recordkeeping Accounts under the Employer's Plan.

**3.2 Role.** The Custodian, as agent of the Employer, 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 Program Sponsor on behalf of the Participants.

**3.2.1** 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 Program Sponsor 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 to be exercising trust powers in contravention of any state or federal law to which it may be subject.

**3.2.2** 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 the Program Sponsor 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 Employer and the Program Sponsor represent and warrant to the Custodian that the Plan shall be maintained 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 Program Sponsor shall provide direction to the Custodian on behalf of the Employer, as needed and applicable, and on behalf of the Participants. The Employer, and, if the Employer utilizes a third-party administrator ("TPA") to administer the Employer's Plan, such TPA may also provide direction to the Custodian and the Program Sponsor. The Custodian shall have no duty to take any action other than as specified in this Agreement unless the Program Sponsor, the Employer or a TPA designated by the Employer 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 Program Sponsor, the Employer or a TPA that the Custodian believes was appointed by the Employer, 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 and Authority of Program Sponsor.** The Employer hereby designates and authorizes the Program Sponsor to provide Instructions to the Custodian on behalf of the Employer and the Participants in the Plan, including placing orders for the purchase and sale of securities, and authorizes the Custodian to disburse funds on behalf of the Employer or Participants upon Instruction from the Program Sponsor, the Employer or its TPA. The Employer and each Participant also authorize and direct the Custodian to pay for securities and receive payment from the sale of securities or other investment transactions arising out of Instructions of the Program Sponsor, the Employer or a TPA. Designation of the Program Sponsor is subject to the following provisions:

**3.4.1** The Employer agrees that the Custodian may rely on Instructions from the Employer, and the Program Sponsor, and that the Custodian shall be under no duty to make an investigation with respect to any Instructions received from the Program Sponsor or the Employer;

**3.4.2** Each Participant is solely responsible for managing the investment of his Participant Recordkeeping Account and for the directions provided to the Program Sponsor with respect to investment selections. All Instructions, directions, and/or confirmations received by the Custodian from the Program Sponsor shall be deemed to have been authorized by the Participant;

# Custodial Agreement

**3.4.3** The Employer and each Participant agree that the Program Sponsor and its agents, as well as the agents of the Employer, including any TPA or record keeper, are not agents of the Custodian.

**3.4.4** Program Sponsor shall be responsible for the day to day administration of the Participant Recordkeeping Accounts and shall have the power and authority in the administration of the Custodial Account to do all acts, exercise any legal power, execute and deliver all instruments for the benefit of the Participants and their Beneficiaries in accordance with the terms of this Agreement and the Plan. Program Sponsor shall identify the Mutual Funds eligible for purchase under this Custodial Account and selected for the Employer's Plan by the Employer, and shall receive and remit to Custodian all Contribution amounts from the Employer, transmit or provide for the transmission of Instructions, requests and notices between Custodian and Participants, deliver or provide for delivery of prospectuses or other descriptive materials as required under applicable laws and perform such other functions as are elsewhere specified in this Agreement. The Program Sponsor shall not be responsible for any services required to be performed by the Custodian, such as purchasing Mutual Fund Shares, following Participant Investment Directions and liquidating Mutual Fund Shares. Program Sponsor may execute any of its powers under this Agreement and perform the duties required of the Program Sponsor by and through agents, appointed representatives, affiliates or subsidiaries selected by the Program Sponsor, in its sole discretion.

**3.5 Compliance.** The Employer and each Participant agree that the Custodian may execute, as custodian, any declarations or certificates pertaining to a Participant Recordkeeping Account that may be required under any tax law(s) or governmental regulation(s) now or hereafter without prior approval of the Employer or the Participant, and may withhold from any distribution to a Plan Participant or Beneficiary, made at the direction of the Employer, the Participant or the Program Sponsor, all income taxes required by law to be withheld, and pay such withheld amounts to the appropriate taxing authorities. The Employer or the Program Sponsor 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, and shall hold the Custodian harmless with respect to any penalties or excise taxes resulting from such information being incorrect or incomplete. Further, the Employer authorizes the Custodian, the Program Sponsor, and their agents to provide any requested information concerning Participant Recordkeeping Accounts and to cooperate with any governmental agency in connection with its audit or examination of the Plan.

## 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 Participants which it receives from the Employer, as well as any Exchange, Rollover Contribution or Transfer Contribution which it may receive from the Participant, another Vendor or a previous custodian or insurance company, subject to compliance by the Employer and Program Sponsor with applicable Code Section 403(b) regulation transfer and exchange requirements. Each Contribution shall be in a form acceptable to the Custodian. If a Participant Recordkeeping Account to which a Contribution is to be credited has not yet been established, or if in the opinion of the Program Sponsor or the Custodian the documents received by either of them are not clear with respect to any Contribution, the Custodian may invest such Contribution as directed by the Program Sponsor, without liability, pending establishment of the Participant Recordkeeping Account or completion or clarification of the information necessary for proper credit to the Participant Recordkeeping Account, as the case may be.

**4.2 Contributions.** The Participants and 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. The sum of all annual Contributions for any one Participant in the Plan made by the Employer, including all Employee Contributions, 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)

# Custodial Agreement

and 414(v). The sum of all Contributions for any one Participant (except Rollover Contributions), including Employer and Employee Contributions may not exceed the annual limitations of Code Section 415(c), taking into consideration Code Section 414(v). The Custodian has no obligation to verify the correctness of the computation regarding the maximum Salary Reduction Contribution or Roth Contribution that may be made on behalf of a particular Participant, 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 to be made under the Plan to the Custodian, compute any amount to be contributed under the Plan to the Custodian, determine whether amounts received by the Custodian comply with the Plan, the Code, or any other applicable law, or enforce Contribution amounts for sufficiency under the Code. The Custodian will not be responsible for any transferred asset until it receives such asset.

**4.3 Roth Contributions.** If permitted by the Plan, Participants may make Roth Contributions into the Custodial Account. Unless otherwise required, Roth Contributions shall be treated as “elective deferrals” under Section 402(g) of the Code and, as such, shall be subject to the requirements and limitations imposed by that section of the Code. The Program Sponsor or its record keeper shall separately account for Roth Contributions from all other contributions to the Account.

**4.4 Excess Annual Additions.** Any excess annual addition under Code Section 415(c) that remains in a Participant Recordkeeping Account at the end of any Plan year shall be segregated into a separate account established in the name of the Participant and shall not be treated as part of such Participant Recordkeeping Account hereunder. The Plan Sponsor or the Plan’s TPA are responsible for directing Custodian to establish and maintain such separate account(s), and Custodian shall have no liability for failing to segregate such excess contributions. Excess annual additions are not exempt from inclusion in a Participant’s income in the year contributed to the Plan and may be subject to excise taxes for each year in which the excess remains in the separate account.

**4.5 Exchanges.** Custodian may accept assets from another Vendor (an “Exchange”) provided that the transaction satisfies the requirements for a tax-free exchange under Section 403(b) of the Code and applicable IRS regulations and guidance, and the Plan permits Exchanges. If the Custodian is provided with sufficient Instructions and any related information and representations that the proposed transaction qualifies as an Exchange, Custodian shall accept the Exchange and deposit the proceeds into the Participant’s Account based on such Instructions. If the Employer has delegated administrative responsibilities under the Plan to a TPA and that TPA has qualified the transaction as an Exchange, the Custodian shall be entitled to rely on such determination and shall accept the Exchange and deposit the proceeds in the Custodial Account. 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 Exchange. Neither the Custodian nor the Program Sponsor shall be liable for any losses arising from the acts, omissions, delays or failure of any other party involved in an Exchange transaction under this Section.

**4.6 Plan-to-Plan Transfers.** Custodian may accept a Transfer Contribution in a plan to plan transfer provided that the transaction satisfies the requirements for a tax-free transfer under Section 403(b) of the Code and applicable IRS regulations and guidance, and the Plan permits such transfers. If the Custodian is provided with sufficient Instructions and any related information and representations that the proposed transaction qualifies as a plan to plan transfer, Custodian shall accept the transfer and deposit the proceeds into the Participant’s Account based on such Instructions. If the Employer has delegated administrative responsibilities under the Plan to a TPA and that TPA has qualified the transaction as a plan to plan transfer, the Custodian shall be entitled to rely on such determination and shall accept the transfer and deposit the proceeds in the Custodial Account. 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. Neither the Custodian nor the Program Sponsor shall be liable for any losses arising from the acts, omissions, delays or failure of any other party involved in a plan to plan transfer under this Section.

**4.7 Rollover Contributions.** If permitted under the Plan, Custodian may accept Rollover Contributions on behalf of any Participant or eligible Beneficiary that meet the requirements of Code Sections 402(c) and 403(b)(8),

# Custodial Agreement

and shall deposit such amounts into the Custodial Account hereunder. Rollovers of Roth Contributions may only be accepted by the Custodian if the rollover is an eligible rollover distribution from a 403(b) custodial account or annuity contract with qualifying Roth features or from a 401(k) plan with qualifying Roth features that satisfies the conditions in Section 402A(e)(1) of the Code. The Employer or the Plan's TPA shall determine if the rollover qualifies as an eligible rollover distribution under Code Sections 402(c) and 403(b)(8) and, upon such determination, the Custodian shall be entitled to rely on such determination and shall accept the Rollover Contribution in the Custodial Account. The Custodian and the Program Sponsor or Plan's TPA shall at all times be able to identify and separately account for Rollover Contributions made into a Custodial Account. The Custodian shall have no duty or responsibility to inquire into the source of any assets transferred to it in a rollover nor to determine whether the transfer qualifies as a rollover under the Code.

**4.8 Qualified Military Service Contributions.** Notwithstanding any provisions to the contrary, the Custodian shall accept contributions that the Program Sponsor certifies are made in accordance with the requirements of Section 414(u) of the Code relating to special rights of employees returning from qualified military service.

**4.9 Location of Evidence of Ownership.** Except as permitted by applicable law, 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.

**4.10 Unidentified Assets.** If the Program Sponsor 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 Program Sponsor is authorized to either deposit such assets into the Default Investment if there is sufficient information to reasonably determine for whom the deposit was intended or return such assets to the person from whom they were received. Neither the Program Sponsor nor the Custodian will be liable for any assets returned in such circumstances.

**4.11 Return of Amounts to the Participant or Employer.** The Custodian will return Contributions to the Participant or Employer if the Program Sponsor, Employer or TPA provides an Instruction to the Custodian to do so. The Employer, as well as the Program Sponsor or other TPA for the Plan are solely responsible for ensuring that any Instruction to return any amount to the Participant or Employer meets all applicable legal requirements. The Custodian has no duty or responsibility to question, and may conclusively rely upon, any such Instruction.

**4.12 Vesting.** Contributions made to the Plan that are subject to forfeiture under a vesting schedule shall be accounted for separately from amounts that are fully vested and be treated as if they are held under a plan qualified under Code Section 401(a) or other applicable Code Section. Upon becoming nonforfeitable, such amounts shall no longer be separated and shall be considered as Contributions made pursuant to Code Section 403(b).

## ARTICLE 5 - INVESTMENTS

### 5.1 Investment Control.

**5.1.1 General.** Each Contribution to the Custodial Account shall be directed by the Program Sponsor 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. If a Participant fails to provide acceptable Investment Direction or if no Investment Direction is provided to Custodian, Contributions shall be deposited into the Default Investment under the Custodial Account, if any, and if no Default Investment has been designated, the Custodian may hold the Contribution uninvested until an acceptable Investment Direction is received. 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

# Custodial Agreement

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 Custodial Account and allocated to the applicable Participant Recordkeeping Accounts by the Program Sponsor or other TPA. The Participant may direct the Program Sponsor to redeem any or all of the Mutual Fund Shares allocated to his Participant Recordkeeping Account and to invest the proceeds in any other Mutual Fund offered under the Custodial Account to be held in that Custodial 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. If, for any reason, Mutual Fund Shares are not available for investment hereunder, the Custodian or Program Sponsor shall so advise the Participant. Until the Participant submits new written Investment Directions, any Contributions will be temporarily allocated to the Default Investment, if any, or held uninvested until a new Investment Direction is received. A Participant's Contribution will be transferred out of the Default Investment upon receipt by the Custodian of a proper Investment Direction that may be implemented hereunder.

**5.1.3 Investment Adviser.** A Participant may appoint an investment adviser or personal financial consultant to direct the investment of all or a portion of the Participant Recordkeeping Account. Custodian shall follow the written instructions of such appointed adviser only upon delivery to the Custodian of Instructions from the Program Sponsor, confirming documentation establishing the appointment and adviser's acceptance of such appointment. The Custodian shall continue to follow the Instructions of the appointed adviser unless and until the Program Sponsor receives written notification from the Participant or Beneficiary that the appointment has been terminated and, in turn, provides such Instruction to the Custodian. The Program Sponsor and the Custodian shall have no duty other than to follow the written Instructions of the appointed adviser and shall be under no duty to question said Instructions. In addition, the Custodian shall pay any fees to the adviser upon receipt of a proper Instruction to do so. Neither Custodian nor the Program Sponsor shall be liable for any fees paid or investment losses sustained by a Participant Recordkeeping Account resulting from or related to Instructions provided by an appointed adviser.

## **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 will be processed until the Custodian receives an 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 which the Custodian believes to be genuine. The Custodian's records of a transaction will be conclusive as to the content of any Instructions. Unless otherwise agreed, Instructions shall generally be taken from the Program Sponsor. The Custodian may conclusively rely upon, and be indemnified by the Employer and by the Program Sponsor when acting in good faith upon, any Instruction from the Program Sponsor or an authorized representative of the Employer, 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.

**5.2.2** 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 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 either hold uninvested any asset or deposit the proceeds of the transaction into the Default Investment under the Custodial Account without liability until proper directions are received. If Investment Directions are incomplete or unclear, the Custodian must notify the Program Sponsor 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.

# Custodial Agreement

**5.2.3 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.

**5.2.4 Other Limitations.** Except as may otherwise be required by applicable law, the Custodian will invest the Custodial Account as directed, 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 provider of the Instruction 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 applicable law and Section 5.3.7:

**5.3.1** Employer 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 Instructions received by Custodian. The Employer understands and agrees that it is solely the responsibility of the Participants in the Plan to provide Instructions to execute trades or other investments for each Participant's interest in the Custodial Account, and all Instructions, directions, and/or confirmations received on behalf of a Participant shall be deemed to have been authorized by such Participant and by the Employer. The Employer agrees that the Custodian shall not supervise the investment of, or advise or make recommendations to the Participants with respect to the purchase, sale or other disposition of, any assets of the Fund.

**5.3.2** The Custodian may invest any cash balances of the Fund in a demand account at any eligible financial institution, subject to the requirements of Code Sections 403(b)(1) and (7). The Custodian shall invest such funds as directed by the Participant or Program Sponsor. In the event that investment instructions are incomplete or otherwise unable to be executed, Custodian shall deposit affected funds in the Default Investment, if any, or hold such funds uninvested until a new Investment Direction is received. Once sufficient information is provided to complete the investment instruction, Custodian shall follow the Instructions so provided. The Custodian or its affiliate will 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.

**5.3.3** The Custodian is authorized to collect all investment earnings of any nature of the Fund, including interest, dividends, proceeds of the sale and other monies due and collectable that arise from the investment of the assets of the Fund (collectively, "Fund Income") and to credit such Fund Income to the Custodial Account.

**5.3.4** The Custodian will act solely as agent for the Employer, subject to the Instructions of the Program Sponsor. The Custodian shall have no obligation to place orders for the purchase of securities if there are insufficient funds in the Participant Recordkeeping Account. The Employer and each Participant authorizes the Program Sponsor and Custodian to charge the Participant Recordkeeping Account for the cost of all securities purchased or received against a payment and to credit the Participant Recordkeeping 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 Program Sponsor 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.

# Custodial Agreement

**5.3.5** The Employer and the Program Sponsor 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:

**FPS Trust Company, LLC, 403(b)(7) Custodian**  
**FBO: {Name of Plan or Employer}**

**5.3.6** 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 Program Sponsor, who may, in its sole discretion, determine whether or not and how to vote such proxies. The Custodian shall have no responsibility to vote proxies or to deliver reports to the Participants or the Employer.

**5.3.7 Investment Restrictions.** The Program Sponsor 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 Mutual Funds mutually agreed to between the Program Sponsor and the Custodian. The Program Sponsor may limit the available investment options under its investment programs, and may impose separate limitations for different Participant Recordkeeping 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 Recordkeeping Account Records.** The Program Sponsor shall maintain such accurate and detailed records of the Participant Recordkeeping Accounts, including all Contributions, the type of such Contributions, other receipts, investments, distributions, other disbursements and all other transactions in the Custodial Account on behalf of each Participant. The Program Sponsor shall provide a written confirmation to each Participant of each transaction in the Participant Recordkeeping Account as required by applicable law. The Program Sponsor shall regularly furnish to the Custodian, on an agreed upon schedule and format, detailed statements of the Participant Recordkeeping Accounts, showing Contributions, investment earnings, redemption or distributions made from each Participant Recordkeeping Account for any reason, and any fees, benefits or withdrawals paid therefrom.

**6.2 Participant Statements.** The Program Sponsor shall mail or electronically transmit to each Participant, at least once during each quarter in the calendar year, a report of all transactions with respect to such Participant's Recordkeeping Account during the period since that covered by the previous report to the Participant with respect to his Participant Recordkeeping Account, if any, and, if required by applicable law or requested by the Participant, a statement showing the assets held in his Participant Recordkeeping Account as of the end of the calendar year. Upon the expiration of sixty days after such report or statement is rendered, the Program Sponsor 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 Employer or the Participant shall have filed a written objection with the Program Sponsor within such sixty-day period.

**6.3 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 Program Sponsor, 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, the Participants and the Program Sponsor unless any of them objects to the contents of an accounting within sixty (60) days of its mailing or electronic transmission by the

# Custodial Agreement

Custodian. Any objections must set forth the specific grounds on which they are based. Upon approval or deemed approval of the accounting, the Custodian shall be forever released from any and all liability with respect to the Custodial Account.

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

**6.5 Record Retention.** The Custodian will retain its records relating to the Custodial Account as long as necessary for the proper administration of the Custodial Account and at least for any period required by applicable law. Writing, photostatting, photographing, micro-filming, magnetic media, mechanical or electrical recording, or other forms of data retention will be acceptable means of record retention.

**6.6 Actions by the Custodian.** The Custodian may delegate ministerial acts, specifically including, but not limited to, the signing and mailing of checks, and the printing and mailing of statements, endorsement of stock certificates, execution of transfer instruments and any other document, and the signing of tax returns and governmental reports to be done by any agent of the Custodian.

## ARTICLE 7 - COMPENSATION AND EXPENSES

**7.1** Service providers, including the Custodian, the Program Sponsor and the TPA or other record keeper, if any, will be entitled to receive compensation for services provided hereunder. Information on such fees is provided to the Employer and the Participants as provided herein and the Employer and Participants agree to be bound thereby. The fee schedule may be revised from time to time upon at least ninety (90) days prior written notice, which may be provided electronically, to the Employer and the Participants for whom a Custodial Account is maintained. Any service provider may be compensated by deducting the fees from the Participant Recordkeeping Account on a periodic basis.

**7.2** The Custodian shall be compensated for its services in accordance with the Custodian's applicable fee arrangement with the Program Sponsor, 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, Exchange or dividend credited or to be credited to a Fund or by redeeming Mutual Fund shares credited to the Custodial Account. The Custodian or any affiliate 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.

**7.3** Fees, if any, and the manner of calculating such fees are disclosed in the Plan Custodial Account Disclosure Form which can be obtained by accessing your secure online account or by calling the FPS Participant Support phone number. Custodian will charge and withdraw from the Custodial Account the amount of its fees, as well as investment program related charges and expenses, loan and Hardship withdrawal expenses, allocable Custodial Account expenses and extraordinary expenses of the Custodian, including legal, auditing, and accounting expenses incurred in the administration of the Custodial Account. Custodian shall not, however, make any charge, in addition to its agreed fees, for any services by any of its officers or employees in the performance of its duties as Custodian hereunder. Expenses or charges of Custodian attributable to a particular Participant, including loan or withdrawal or distribution expenses and taxes assessed against a Custodial Account interest, shall be assessed against and satisfied from the Custodial Account and may be allocated by the Program Sponsor to the Participant Recordkeeping Account of the Participant for whom such expenses were incurred.

**7.4** The Custodian reserves the right to amend the Custodial fee at any time by giving the Employer ninety (90) days prior written notice. At the sole discretion of the Custodian, the Custodial fee may be reduced or

# Custodial Agreement

eliminated. Sales charges, brokerage fees, certain Plan administrative fees and/or investment fees are considered to be noncustodial fees and are dependent on the investments selected by the Participants. Such charges, fees and expenses are in addition to the Custodial fee.

## 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 Recordkeeping Accounts, unless modified by the Plan:

**8.1.1** If permitted by Employer's Plan Document, Plan loans from a Participant's Account are available in accordance with Code Section 72(p) and regulations issued thereunder. Information on loan requirements and procedures are described in the Plan 403(b)(7) Custodial Account Loan Program available from the Program Sponsor. A copy of the Loan Program may be obtained by accessing your secured online account or by contacting the FPS Participant Support phone number.

**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 Account balance (or the value of the Participant's outstanding loan balance, if less) 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 Program Sponsor shall require.

**8.1.3** 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. If a Participant defaults on a Plan loan, the Participant will not be permitted to have any additional Plan loans unless otherwise permitted by the terms of the Plan.

**8.1.4** The Custodian 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 the Code and shall not be liable to the Employer, the Program Sponsor 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 the lesser of:

**8.2.1.1** \$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 of the new loan, minus the outstanding loan balance on the date of the new loan, or:

**8.2.1.2** the greater of 50% of the Participant's vested Account balance or \$10,000.

**8.2.2** This limit shall apply in the aggregate to all Participant Recordkeeping 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 Sections 414(b), 414(c) and 414(m) are aggregated. An assignment (other than a qualified domestic relations court order) or pledge of any part of the Participant's interest in the Custodial Account shall be treated as a loan under this Section.

**8.2.3** Additional restrictions on the availability of loans and repayment of loans, such as loan minimums or frequency limitations, if any, shall be as set forth in the Plan.

# Custodial Agreement

## 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 as directed in the most recent Investment Direction on file, or, if no Investment Direction is available, in the Default Investment.

**8.3.3** A Participant's required loan payments during a period of military service may be suspended as provided in the Plan and Code Section 414(u).

## ARTICLE 9 - DISTRIBUTIONS

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

**9.1.1** The Participant attains age 59 ½;

**9.1.2** The Participant has a severance from employment with the Employer;

**9.1.3** The Participant's death,

**9.1.4** The Disability of the Participant,

**9.1.5** The existence of a Hardship,

**9.1.6** The Employer terminates the Plan, or

**9.1.7** If permitted under the Employer's Plan, a Participant who is on active duty performing qualified military service for a period of at least 30 days and who meets the requirements of Code Section 414(u) may elect to receive a distribution of the Participant's Employee Contributions as permitted under the Plan. Following such distribution, the Participant is prohibited from making Salary Reduction Contributions for a period of six months.

**9.2** Notwithstanding the foregoing, Rollover Contributions may be distributed at any time without restriction. The Custodian may make distributions hereunder in accordance with Instructions from the Employer, the Program Sponsor or the TPA, if applicable, and may rely on such Instructions in making any distribution from the Custodial Account.

**9.3 Methods and Timing of Distributions to a Participant.** Distributions to a Participant from his Participant Recordkeeping Account must commence by no later than the Participant's Required Beginning Date. A Participant may elect to receive the distribution of assets from his Participant Recordkeeping Account to which the Participant is entitled in accordance with Section 9.1 of this Article or which are required to be made as provided in the immediately preceding paragraph in any one or more or a combination of the following ways:

**9.3.1** In a single lump sum payment; or

**9.3.2** In multiple payments as determined by the Participant; or

**9.3.3** In periodic monthly, quarterly, semi-annual or annual installments over a fixed period not exceeding the life expectancy of the Participant or the Participant's Beneficiary or the joint life and last survivor expectancy of the Participant and the Participant's Beneficiary.

**9.4** Single payments and installments must be taken in cash. When receiving installment payments under Section 9.3.3, above, the Participant may increase the amount of installments or receive a distribution of any part

# Custodial Agreement

or all of the balance in his Participant Recordkeeping Account at any time upon prior written notice to the Program Sponsor. 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. The Program Sponsor will not provide distribution Instructions to Custodian for payment to a Participant, however, until receipt of written instructions from the Participant and/or the Employer or its TPA.

**9.5 Hardship Distributions.** A Participant who encounters financial Hardship shall be entitled to a distribution from his Participant Recordkeeping 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 applicable law. This amount will be distributed to the Participant upon receipt of written notice from the Participant of the reasons for the Hardship and certification from the Employer to the Program Sponsor that the requirements for a Hardship distribution under the Code have been met, whereupon the Program Sponsor will instruct the Custodian to make the Hardship distribution to the Participant. Following such distribution, the Participant is prohibited from making Salary Reduction Contributions for a period of six months. Notwithstanding the foregoing, effective January 1, 2019, a Participant is no longer prohibited from making Salary Reduction Contributions for a period of six months following a Hardship distribution unless required under the terms of the Employer's Plan.

**9.6 Distribution of Excess Deferrals.** Notwithstanding any provision of this Custodial Agreement to the contrary, the Program Sponsor may direct the Custodian in writing to distribute "excess deferrals," as defined in Code Section 402(g)(2)(A). If the Custodian receives timely written notification of the excess deferral, then the amount of such excess deferral, adjusted for any income or loss allocable thereto, shall be distributed to the Participant no later than April 15 following the close of the taxable year, in accordance with Code Section 402(g)(2)(A) and the regulations thereunder. The Custodian shall have no obligation to independently determine or effect distribution of any such amount.

**9.7 Required Minimum Distributions.** If distributions commence in the calendar year in which the Required Beginning Date occurs, the distribution on the date that distribution commences must be equal to the annual installment payment for the prior calendar year and an amount equal to the annual installment payment for the year in which the Required Beginning Date occurs must also be paid before the end of the calendar year of commencement. By that date, the Participant may elect, in a manner acceptable to the Custodian and in accordance with the terms of the Plan, to have the balance in the Participant Recordkeeping Account distributed in a single sum or payments over a period not longer than the life of the Participant or the joint lives of the Participant and his or her designated Beneficiary, or such shorter period of time permitted under the terms of the Plan.

**9.8** The minimum amount that must be distributed each year, beginning with the year containing the Participant's Required Beginning Date, is known as the "required minimum distribution" and is determined as follows:

**9.8.1** The required minimum distribution for any year, beginning with the year the Participant reaches age 70 ½ is the Participant's Account value at the close of business on December 31 of the preceding year divided by the distribution period in the uniform lifetime table in Treasury Regulations Section 1.401(a)(9)-9. However, if the Participant's designated Beneficiary is his or her surviving Spouse, the required minimum distribution for a year shall not be more than the Participant's Account value at the close of business on December 31 of the preceding year divided by the number in the joint and last survivor table in Treasury Regulations Section 1.401(a)(9)-9. The required minimum distribution for a year under this paragraph is determined using the Participant's (or, if applicable, the Participant and Spouse's) attained age (or ages) in the year.

**9.8.2** The required minimum distribution for a year, beginning with the year following the year of the Participant's death (or the year the Participant would have reached age 70 ½ if applicable) is the Participant's Account value at the

# Custodial Agreement

close of business on December 31 of the preceding year divided by the life expectancy (in the single life table in Treasury Regulations Section 1.401(a)(9)-9) of the Participant's designated Beneficiary or surviving Spouse, as applicable.

**9.8.3** The required minimum distribution for the year the participant reaches age 70 ½ (or has a severance from employment, if later) can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.

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

**9.9.1** If distributions from the Participant Recordkeeping 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 paid 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.

**9.9.2** If the Participant dies before distributions from his Participant Recordkeeping Account to the Participant have commenced, distribution of the balance in the Participant Recordkeeping 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 9.9.2.1 or 9.9.2.2 below:

**9.9.2.1** If any portion of the Participant Recordkeeping Account is payable to a designated Beneficiary who is an individual, distributions may be made in a single sum or in periodic installments over a period 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

**9.9.2.2** If the designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with subparagraph 9.9.2.1 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.

**9.9.3** 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 Section 9.9, 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 Recordkeeping 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 Section 9.9.3 and Section 9.9.2 above, if the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of Section 9.8.2 with the exception of 9.9.2.2, and this Section 9.9.3, shall be applied as if the surviving spouse were the Participant.

**9.9.4** For purposes of this Article 9, distributions with respect to a Participant are considered to begin on the Participant's Required Beginning Date (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 Section 9.9.2).

**9.9.5** An election by a Beneficiary under this Section 9.9 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

# Custodial Agreement

be delivered to the Program Sponsor within such period of time prior to the date the distribution is to be made or commence as is acceptable to the Program Sponsor

**9.9.6** For purposes of this Section 9.9, any amount paid to a child of a 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.

**9.9.7** After a Participant's death, and until the balance of the Participant Recordkeeping 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 Articles 6 through 15 hereof, except as otherwise specifically indicated.

**9.9.8** If a Beneficiary dies while receiving distributions from the Participant Recordkeeping Account, the remaining payments shall be made to a successor Beneficiary designated by the Beneficiary who was receiving or entitled to receive such payments or, if none, to the estate of such Beneficiary; provided that the executor or administrator of the estate may elect, by proper written instructions given to the Program Sponsor, to receive the balance in the Participant Recordkeeping Account in a single payment.

**9.10** **Beneficiaries.** A Participant may designate in writing, on a form acceptable to and filed with the Employer or the Program Sponsor, 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 Recordkeeping 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 determined under the terms of the Plan, or, if the Plan does not so provide, the 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 some other custodial agreement shall be deemed to be valid under this Custodial Agreement, unless otherwise provided under the terms of the Plan. The Beneficiary Designation can be changed at any time by executing and returning to the Employer or the Program Sponsor a new Beneficiary Designation Form in accordance with the procedures of the Plan.

**9.11** **Domestic Relations Orders.** Notwithstanding any other provision herein, Custodian may, at the direction of the Employer or the TPA for the Plan, authorize an immediate distribution to any Alternate Payee named under a court order that the Employer or TPA has determined to be a Qualified Domestic Relations Order.

**9.12** **Direct Rollovers.** 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 Program Sponsor 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.

**9.13** **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

# Custodial Agreement

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.

**9.14 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. In the case of a non-spouse Beneficiary, a Direct Rollover may be made only to an individual retirement account or annuity described in Code Section 408(a) or 408(b) ("IRA") that is established on behalf of the designated Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(1).

**9.15 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 other designated non-spouse Beneficiary, as well as the Employee's or Former Employee's 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 or non-spouse designated Beneficiary.

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

**9.17 Purchase of Service Transfers.** If permitted under the Plan, a Participant or Beneficiary may transfer all or any portion of his Participant Recordkeeping Account directly to the trustee of a defined benefit pension plan sponsored by a governmental employer in which a Participant is or was a participant. A transfer under this Section may only be made in accordance with Section 403(b)(13) of the Code and any applicable guidance provided thereunder by the Internal Revenue Service.

**9.18 Other Distribution Provisions.** If a distribution is payable from a Participant Recordkeeping Account to a person with a legal disability or to a minor, the Program Sponsor 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 and the Program Sponsor from further liability on account thereof.

**9.19 Responsibility for Compliance with Distribution Requirements.** The Employer or TPA shall be responsible for insuring that distributions meet the requirements of this Article 9 based on information supplied by the Employer and/or the Participant, upon which each is entitled to rely. The Custodian shall be entitled to rely on Instructions from the Employer, the Plan TPA and the Program Sponsor 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.

**9.20 Documents Necessary for Distribution.** Before Instructing the Custodian to make a distribution from any Participant Recordkeeping Account, the Employer, the TPA and the Program Sponsor shall receive any and all applications, certificates, tax waivers, signature guarantees, and other documents (including proof of legal representative's authority) that any of them may deem necessary or appropriate.

**9.21 Small Participant 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

# Custodial Agreement

requesting periodic payments, the Employer or Program Sponsor 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.

## ARTICLE 10 - AMENDMENT

**10.1** This Agreement may be amended by the Custodian or Program Sponsor with the consent of the Custodian, provided notice of such amendment is sent to the Employer at least thirty (30) days prior to the effective date of any such amendment. The Program Sponsor 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 Employer's approval or consent. The Employer for whom a Custodial Account is maintained, delegates to the Program Sponsor the power to amend all or any part of this Custodial Agreement on its behalf, including retroactive amendments, and each such person or entity shall be deemed to have consented to any amendment made by the Program Sponsor and Custodian provided that notice of such amendment shall be given to the Employer. Any such amendment shall be effective as specified therein. Notice to the Employer may be given through the U.S. Mail or through electronic means and shall be considered in effect when mailed or electronically transmitted by the Program Sponsor or Custodian to the last known contact address of the intended recipient as shown on the records of the Custodian or the Program Sponsor. Each Participant may also be provided notice of any amendments to this agreement in the same manner.

**10.2** 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 the Custodial Account to be diverted to any purpose other than for the exclusive benefit of the Participants or the Participants' Beneficiaries, as applicable, or to revert to or become the property of the Employer, (ii) a Participant or the Participant's Beneficiary to be deprived of any benefit to which such Participant or Beneficiary was entitled under the Plan and this 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 other applicable law, or (iii) the rights, duties, responsibilities, obligations or liabilities of the Custodian or the Program Sponsor to be affected without the written consent of the Custodian or the Program Sponsor, as applicable.

**10.3** Notwithstanding the foregoing, service providers, including the Custodian, the TPA or the record keeper, if any, may revise their fee schedule provided under 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 PROGRAM SPONSOR

**11.1 Custodian's Right to Resign.** The Custodian may resign with respect to this Custodial Account by giving ninety (90) days written notice to the Program Sponsor. The Custodian may designate a qualified successor custodian in its notice of resignation. If no new custodian is appointed by the end of the first thirty (30) days of the notification period, the Program Sponsor shall appoint a new custodian within the next thirty (30) days and provide thirty (30) days prior written notice of the successor custodian's appointment to the Employer. The party entitled to the notice may waive the notice period.

**11.2 Program Sponsor's Right of Removal and Appointment of Successor Custodian.** The Program Sponsor has the right to remove the Custodian upon ninety (90) days prior written notice to the Custodian and thirty (30) days written notice to the Employer. The Program Sponsor may appoint a successor custodian of the Custodial Account at any time by giving at least thirty (30) days written notice to the Employer and shall designate a qualified successor custodian. The party entitled to the notice may waive the notice period.

**11.3 Successor Custodian.** Upon the resignation or removal of the Custodian, the Employer shall either accept the Custodian's or Program Sponsor's appointment of a successor or appoint a successor custodian. An Employer's failure to appoint a successor custodian, on or before the effective date of such resignation or removal

# Custodial Agreement

and appointment, will constitute the Employer's consent to the successor appointed by the Custodian or Program Sponsor. If, within ninety (90) days after the Custodian's resignation or receipt by it of notice of the Custodian's removal, no person or organization 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.

**11.4** 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 to the Custodial Account, 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.

**11.5** 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 practicable. The Custodian is authorized, however, to reserve such 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 assets. 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 unless and until the same is amended or replaced by a new agreement.

## ARTICLE 12 - TERMINATION OR TRANSFERS

**12.1 Discontinuance of Contributions.** The complete discontinuance of Contributions to a Participant Recordkeeping Account shall not cause that Participant Recordkeeping Account to terminate except as defined in Section 12.3. Termination of a Participant Recordkeeping Account shall be effected by a distribution of all assets in the Participant Recordkeeping 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 Program Sponsor, subject, however to the Custodian's right to reserve Funds in the same manner as provided for in Article 11.

**12.2 Disqualification.** If the Program Sponsor receives written notice that the Internal Revenue Service has determined that the Custodial Account or the Plan 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 Program Sponsor shall terminate the Custodial Account by distributing the assets thereof to the Participants.

**12.3 Termination of Accounts.** Upon termination of the Account 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 and the Program Sponsor shall be relieved from all further liability with respect to this Custodial Agreement, any Participant Recordkeeping Account, and all assets thereof so distributed, subject to the continuing provisions of Article 13, which shall survive such termination.

**12.4 Transfers and Exchanges.** The Participant may direct the transfer or Exchange of the assets of the Participant Recordkeeping Account at any time permitted under the terms of the Plan to another account or annuity established for the Participant pursuant to Code Section 403(b) upon written Instructions to the Program Sponsor in such form as the Program Sponsor may require, subject, however, to the Custodian's right to reserve Funds in the same manner provided for in Article 11.

## ARTICLE 13 - INDEMNIFICATION AND DUTY TO DEFEND

# Custodial Agreement

**13.1** The Employer, to the extent permitted by applicable law, and the Program Sponsor hereby agree to indemnify, defend and hold the Custodian and its affiliates, and their respective directors, managers, officers, employees, agents and other representatives harmless from any losses, costs, expenses, fees, liabilities, damages, claims, suits or actions and appeals thereof resulting from their reliance upon any certificate, notice, confirmation, or Instruction purporting to have been delivered by the Program Sponsor or the Participant.

**13.2** The Employer and each Plan Participant waive any and all claims of any nature any of them now has or may have against the Custodian and its affiliates, and their respective directors, managers, officers, employees, agents and other representatives, which arise, directly or indirectly, from any action that the Custodian takes in good faith in accordance with any certificate, notice, confirmation, or Instruction from the Program Sponsor.

**13.3** The Employer (to the extent permitted by applicable law), the Plan Participants and the Program Sponsor also hereby agree to indemnify, defend and hold the Custodian and any parent, subsidiary, related corporation, or affiliates of the Custodian, including their respective directors, managers, officers, employees and agents, harmless from and against any and all loss, costs, damages, liability, expenses or claims of any nature whatsoever, including but not limited to legal expenses, court costs, legal fees, and costs of investigation, including appeals thereof, arising, directly or indirectly, out of any loss or diminution of the Fund resulting from changes in the market value of the Fund assets; reliance, or action taken in reliance, on Instructions from the Employer, any Participant or the Program Sponsor; any exercise or failure to exercise Investment Direction authority by any Participant or by the Program Sponsor; the Custodian's refusal on advice of counsel to act in accordance with any Investment Direction by the Employer, a Participant or the Program Sponsor; any other act or failure to act by the Employer, a Participant or the Program Sponsor; any prohibited transaction or plan disqualification of a Plan due to any actions taken or not taken by the Custodian in reliance on Instructions from the Employer, a Participant or the Program Sponsor; or any other act the Custodian takes in good faith hereunder that arises under this Agreement or the administration of the Fund.

**13.4** The Custodian shall not be liable to the Employer, to any Participant or to the Program Sponsor 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 Employer, any Participant or the Program Sponsor; 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 provisions of this Article shall survive the termination, amendment, or expiration of this Agreement.

**13.5** 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 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 Program Sponsor, or in the absence of payment, shall be charged against the Custodial Account.

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

## ARTICLE 14 - REQUIREMENTS OF TITLE I OF ERISA

This Agreement is not intended to satisfy the requirements of ERISA and is only offered to Plans sponsored by governmental organizations that are exempt therefrom. If this Agreement is issued under a Plan sponsored by an Employer that is subject to ERISA, upon such notification, all assets will be removed

# Custodial Agreement

from the Custodial Account as soon as administratively practicable and transferred to an alternative funding vehicle designated by the Employer. The Employer shall be responsible to designate such alternative funding vehicle within no more than 60 days after the determination that ERISA applies to the Custodial Account. Neither the Custodian nor the Program Sponsor shall be responsible or liable for any failures arising due to the ERISA status of a Plan.

## ARTICLE 15 - MISCELLANEOUS PROVISIONS

### 15.1 Applicable Law.

**15.1.1 Choice of Law.** This Agreement shall be construed and interpreted according to the laws of the State of Colorado to the extent that such laws are not preempted by the laws of the United States of America. All Contributions to, and payments from, the Custodial Account shall be deemed to take place in the State of Colorado.

**15.1.2 Choice of Venue.** 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.

**15.2 No Diversion of Assets and Nonforfeiture.** At no time shall it be possible for any part of the assets of the Custodial Account to be used for or diverted to purpose other than for the exclusive benefit of the Plan Participants and their Beneficiaries, as applicable, or for the payment of administrative expenses and other amounts as specifically provided in this Custodial Agreement. The interest of each Participant in his Participant Recordkeeping Account shall be nonforfeitable at all times except as may otherwise be provided under the Plan and applicable law.

**15.3 Notices.** Any notice from the Program Sponsor or the Custodian to the Employer or to any Plan 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 such on the Program Sponsor's records.

**15.4 Notices from Employee.** Each Employee agrees to notify the Employer, the Program Sponsor and the TPA, if any, in writing of any change in Employee's or a designated Beneficiary's name, address, e-mail contact information or Social Security Number.

**15.5 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.

**15.6 Limitation on Claims.** No claim may be made by any Participant, the Employer or the Program Sponsor 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.

**15.7 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

# Custodial Agreement

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.

**15.8 Nonassignability of Benefits and Assets.** The benefits provided herein and the assets of the Custodial Account shall not be subject, whether voluntarily 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 Program Sponsor'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. If the Program Sponsor so determines, the amount payable with respect to such an order shall immediately be distributed in a single sum to the "alternate payee" (as defined in Code Section 414(p)).

**15.9 Evidence.** Evidence required of anyone under the Custodial Agreement may be by certificate, affidavit, document, facsimile, E-mail or other form which the Person acting in reliance thereon considers to be pertinent and reliable, and to be signed, made, or presented by the proper party.

**15.10 Waiver of Notice.** Any notice required under this Custodial Agreement may be waived in writing by the Person entitled to the notice.

**15.11 Complete Agreement.** This Agreement and any schedule of fees provided by the Custodian or the Program Sponsor embodies the entire agreement and understanding of the parties relating to the subject matter hereof.

**15.12 Inconsistencies with Plan Provisions.** The terms of this Custodial Agreement shall establish the agreement between Custodian, the Employer, each Plan Participant and the Program Sponsor and shall apply to any transaction occurring hereunder unless such terms are clearly inconsistent with the terms of Employer's Plan document(s). In that event, only those provisions under this Agreement that are required for conformity are deemed modified and then only to the extent necessary to conform to the terms of Employer's Plan.

**15.13 Qualification and Compliance.** This Custodial Agreement is established with the intent that it shall qualify under Code Section 403(b)(7). All terms and provisions hereof shall be interpreted, whenever possible, so as to comply with that Code Section.

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

**15.15 Special Provisions for Individual Accounts.** This Section applies and controls in any situation where a single custodial account is not maintained for all Employees who are Participants in the Employer's Plan, and each eligible Employee selects and enters into a separate Custodial Agreement for his account in the Employer's Plan. In that event, this Agreement continues to apply as modified by this Section 15.15.

**15.15.1** The Custodial Account is established as an individual account for the Participant. The Participant's completion of the Enrollment Form (i) is the Participant's request that the Custodian establish the Custodial Account for and in the name of the Participant to hold his assets under the Plan established by his Employer, (ii)

# Custodial Agreement

constitutes the Participant's designation and appointment of the Custodian as the custodian of the Participant's account and (iii) constitutes the Participant's agreement to the terms of this Custodial Agreement. The role of the Custodian shall be the same as otherwise set forth herein. Where authority is given to the Employer, it may also be exercised by the Participant unless prohibited by applicable law or the terms of the Plan, and where obligations are imposed upon the Employer, such obligations shall apply to the Participant individually, as well as to the Employer, to the extent applicable. This Custodial Agreement is a legal, valid and binding obligation of the Participant and the Custodian.

**15.15.2** The Participant hereby designates and authorizes the Program Sponsor to provide Instructions to the Custodian on behalf of the Participant and/or his Employer, as applicable. The Participant agrees that the Custodian may rely on Instructions from the Program Sponsor and from the Employer, and that the Custodian is under no duty to make an investigation with respect to any Instructions received from the Program Sponsor or the Employer or any other authorized party. Provisions in this Agreement that are stated to be approved or authorized by the Employer are hereby authorized by the Participant.

**15.15.3** The Participant will be provided with advance notice of any amendments to the fee schedule or to the terms of the Custodial Agreement as described herein. The Participant also agrees to indemnify the Custodian as provided in Article 13 hereof.

**15.16 USA Patriot Act Notification.** The following notification is provided to the Employer and its Plan Participants pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

**15.16.1** IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW PARTICIPANT RECORDKEEPING 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 a Participant Recordkeeping Account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product.

**15.16.2** What this means for you: When you open a Participant Recordkeeping Account, the Custodian or the Program Sponsor may ask for information that will allow them to verify your identity. If you are an individual, this may include your name, social security number, residential address, and date of birth. The Custodian or the Program Sponsor may also ask to see a copy of your driver's license or other identifying documents. If you are not an individual, The Custodian or the Program Sponsor will ask for your name, taxpayer identification number, business address, and other information that will allow the Custodian or the Program Sponsor to confirm your identity. The Custodian or the Program Sponsor may also ask to see your legal organizational documents or other identifying documents.