

# CONSTELLATION TRUST COMPANY

## 403(b)(1)/403(b)(7) Custodial Agreement

### TAX-SHELTERED INVESTMENTS FOR EMPLOYEES OF PUBLIC SCHOOLS AND TAX-EXEMPT ORGANIZATIONS WITH CONSTELLATION TRUST COMPANY AS CUSTODIAN

#### SECTION 1. Definitions

- 1.1 **Agreement:** This instrument setting forth the terms and conditions of the Sponsor's Custodial Account Agreement as set forth herein.
- 1.2 **Alternate Payee:** A spouse, a former spouse, child or other dependent of a Participant who is assigned under a qualified domestic relations order (as defined by Section 414(p) of the Code) a right to receive all or a portion of the benefits payable with respect to a Participant.
- 1.3 **Annuity Contract or Annuity:** The written agreement required under Section 403(b) of the Code between a Participant and an Insurer which establishes a contract into which contributions made for a Participant hereunder are accumulated toward the purchase of a retirement annuity.
- 1.4 **Application:** The written application which incorporates this Agreement and is signed by the Employee and accepted by the Custodian and serves to establish a Section 403(b)(7) Custodial Account for the Employee.
- 1.5 **Beneficiary:** Except as provided in Section 5.5, a person designated in writing by a Participant to receive a benefit under this Agreement in the event of such Participant's death.
- 1.6 **Code:** The Internal Revenue Code of 1986, as amended, including any regulations issued thereunder.
- 1.7 **Custodial Account or Account:** The individual account(s) established and maintained under this Agreement for the Employee pursuant to Section 403(b)(7) of the Code.
- 1.8 **Custodian:** Constellation Trust Company or any successor thereto.
- 1.9 **Disabled:** With respect to a Participant, being unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration, as defined under Section 72(m)(7) of the Code.
- 1.10 **Elective Deferrals:** For any taxable year of an Employee, Elective Deferrals are the sum of:
- Any salary reduction contributions under a qualified cash or deferred arrangement as defined in Section 401(k) of the Code, to the extent not includible in income under Section 402(e)(3) of the Code.
  - Any salary reduction contributions to a simplified employee pension plan as defined in Section 408(k) of the Code, to the extent not includible in income under Section 402(h)(1)(B) of the Code.
  - Any contributions made pursuant to a Salary Reduction Agreement used to purchase an annuity contract or Custodial Account under Section 403(b) of the Code.
- 1.11 **Employee:** Any person regularly employed by the Employer. Neither "leased employees" within the meaning of Section 414(n) or (o) of the Code, nor independent contractors shall be considered to be employees for the purposes of the Agreement.
- 1.12 **Employer:** Any organization that is (i) described in Section 501(c)(3) of the Code and exempt from the tax under Section 501(a) of the Code, or (ii) and educational organization described in Section

170(b)(1)(A)(ii) of the Code which is a State, political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing.

- 1.13 **ERISA:** The Employee Retirement Income Security Act of 1974, as amended, including any regulations thereunder.
- 1.14 **Excess Deferral:** For any taxable year, that portion of any Employee's Elective Deferrals that exceed the limits of Section 402(g) of the Code.
- 1.15 **Exclusion Allowance:** For any taxable year, an amount equal to the excess, if any, of
- The amount determined by multiplying 20% of the Employee's Includible Compensation by the number of his Years of Service over
  - The aggregate of the amounts, which were contributed by the Employer for annuity contracts or custodial accounts for the Employee and which were excludible from the gross income of the Employee for any prior taxable year.
- 1.16 **Financial Hardship:** With respect to a Participant, a present or pending financial need resulting from unusual costs or expenses, such as unusual medical expenses, higher educational expenses or purchase of a residence. Financial Hardship shall be determined in accordance with Section 403(b) of the Code and the regulations thereunder.
- 1.17 **Includible Compensation:** The Participant's wages, salaries or other remuneration received for personal services actually rendered in the course of the employment with the Employer and any other amounts treated as compensation under Section 415 of the Code. Such Includible Compensation shall be determined under the most recent year of service pursuant to Section 403(b)(4) of the Code. For taxable years beginning after 12/31/97, such term includes any elective deferral described in Section 402(g)(3) of the Code and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Sections 125 or 457 of the Code.
- 1.18 **Insurer:** An organization providing Annuity Contracts hereunder into which contributions made for Participants are deposited.
- 1.19 **Investment Company:** Any "Regulated Investment Company" within the meaning of Section 851 of the Code.
- 1.20 **Participant:** An individual who is, or has been employed by the Employer, who has been designated by the Employer as a participant, and who contracts in writing with the Employer for contributions hereto.
- 1.21 **Salary Reduction Agreement:** A binding contract executed by the Employee and the Employer authorizing a reduction in the Employee's future compensation or a waiver of increasing future compensation provided that such amounts shall be contributed to the Employee's Custodial Account by the Employer.
- 1.22 **Sponsor:** Constellation Trust Company or any successor thereto.
- 1.23 **Year of Service:** Each full tax year during which the Participant was a full-time Employee of the Employer. A fraction of a year shall be counted for each part of a full tax year in which the Participant was a full-time or part-time Employee of the

Employer. In no case shall the Years of Service be less than one.

#### SECTION 2. Establishing of Custodial Accounts

- 2.1 The Custodian/Insurer shall open and maintain an Account/Annuity for each eligible Employee who completes an Application; and the Custodian/Insurer shall hold and administer, in accordance with the terms hereof, contributions to the Account/Annuity and any gain or income from the investment thereof. The Employee shall notify the Custodian/Insurer in writing of any change in name, address, or social security number.
- 2.2 **Enrollment:** In order to complete all requirements for participation, eligible Employees shall complete appropriate administrative forms and establish Annuity Contracts and/or Custodial Accounts into which contributions may be deposited prior to active participation in the Plan. The Employer is not required to make contributions hereunder on behalf of an Eligible Employee until eligible Employee has established such Annuity Contracts and/or Custodial Accounts and has notified the Employer where to deposit contributions hereunder.

#### SECTION 3. Contributions

- 3.1 **Contributions to the Plan:** The Custodian/Insurer shall accept cash contributions from the Employer on behalf of Participants in accordance with the Salary Reduction Agreement between the Participant and the Employer. Each such contribution shall be accompanied by specific written instructions from the Employee specifying the accounts to which it is to be credited and the investments which are to be purchased with such contribution. Contributions made by the Employer to the Custodian for any Employee shall not exceed the limitations set forth in sections 415, 402(g) and 403(b) of the Code.
- 3.2 **Make-up Contributions for Qualified Military Service:** Notwithstanding any provisions to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.
- 3.3 **Transfer Contributions:**
- The Participant may transfer cash from another custodial account qualified under Section 403(b)(7) of the Code and/or from an annuity contract qualified under Section 403(b) of the Code to the Custodial Account if the Participant certifies that the transaction meets the requirement for a tax-free transfer under IRS Revenue Ruling 90-24 and other applicable laws or rulings of the Internal Revenue Service, or is a rollover contribution described in Sections 403(b)(8) or 408(d)(3)(A)(iii) of the Code. Once transferred, such assets shall be treated as a contribution on behalf of such Participant for purposes of this Custodial Agreement and shall be invested, distributed and otherwise dealt with as such.
- Such transferred fund shall be accounted for separately and continue to be subject to any distribution rules under the prior 403(b)(1) or (7) plan, which were more stringent than the rules contained in this Custodial Account.
- The Participant may cause the transfer in cash, or all or any portion of the balance credited to a participant's account from this Custodial Account

directly to the custodian of another custodial account qualified under Section 403(b)(7) of the Code or to an insurance company designated by the Participant for the purchase, for the benefit of the Participant, of an annuity contract qualified under Section 403(b) of the Code if the Participant certifies that the transaction meets the requirements for a tax-free transfer under the IRS Revenue Ruling 90-24, and any other applicable laws or ruling of the Internal Revenue Service. Once transferred, such assets shall be treated as a contribution on behalf of such Participant for purposes of the successor custodial account and/or annuity contract and shall be invested, distributed and otherwise dealt with as such.

**3.4 Return of Excess Deferral:** If a Participant makes an Excess Deferral to the Account for any tax year, such Participant must give written notice to the Sponsor of the amount of the Excess Deferral no later than March 1 following the close of the tax year. If the Participant gives such written, timely notice to the Sponsor, the Custodian/Insurer may distribute to the Participant, the amount of the Excess Deferral, together with income attributable thereto, by April 15th of the following taxable year.

**3.5 Return of Excess 415 contributions:**

(a) If as a result of a reasonable error in estimating a Participant's annual compensation; a reasonable error in determining the amount of elective deferrals under Section 402(g)(3) of the Code; or any other circumstances that the Internal Revenue Service shall determine meets the requirements of Section 1.415-6(b)(6) of the Treasury Regulations, an excess annual addition occurs in any Participant's Account, a distribution is permitted of such excess.

(b) Excess annual addition amounts, which are distributed, shall not be deemed annual additions for the limitation year during which such contributions were made, and are disregarded for purposes of Section 402(g) of the Code.

(c) Distributions made under this Section 3.5 include distributions of Elective Deferrals or Employee voluntary contributions. Such distributions will also include the income attributable to the excess annual addition.

**3.6 Liability for Excess Amounts:** The Custodian and the Sponsor shall not have any duty to determine whether an Excess Deferral or contribution in excess of the limitations under Sections 403(b), 402(g) or 415 of the Code ("Excess Amounts") has been made by or on behalf of the Participant. The Custodian and the Sponsor shall not be held liable by the Participant or any other person(s), trusts or other entity for failing to determine whether an Excess Deferral or Excess Amounts was made or for failing to distribute Excess Deferrals absent the request of the Participant. The Custodian and the Sponsor shall not be liable to the Participant or any other person(s), trusts or entity for taxes or other penalties incurred as a result of the Excess Deferral or Excess Amounts (including any income attributable thereto) or as a result of a distribution of an Excess Deferral or Excess Amounts and any income attributable thereto.

**3.7 Direct Rollovers:**

(a) Definitions

(i) **Eligible Rollover Distributions:** An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit Distributee, except that an Eligible Rollover Distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of 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 Section 401(a)(9) of the Code; the portion of any distribution that is not includable in gross income (determined without regard to the

exclusion for net unrealized appreciation with respect to employer securities); and any hardship distribution described in Section 401(k)(2)(B)(i)(IV) of the Code.

(ii) **Eligible Retirement Plan:** An Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 403(b) of the Code, or a tax-sheltered annuity plan described in Section 403(b)(7) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(iii) **Distributee:** A Distributee includes an employee or former employee. In addition, the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse.

(iv) **Direct Rollover:** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(b) Notwithstanding any provision of this Agreement to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect at the time and in the manner prescribed by the Custodian, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

**SECTION 4. Investment of Account Assets**

**4.1 Investment of Contributions:** Contributions made on behalf of a Participant shall be invested through one or more Section 403(b)(7) Custodial Accounts or Section 403(b)(1) Annuity Contract(s). Each Participant shall designate the Custodial Account(s) and/or Annuity Contract(s) to which his contributions shall be allocated. Such designations shall be made in writing on forms made available by the Custodian. Any investment made hereunder shall be subject to the terms and the conditions of the Annuity Contract(s) or Custodial Account(s) into which such contributions are deposited.

**4.2 Available Investment:** To control administrative costs, the Employer shall deposit contributions made hereunder into only those Custodial Accounts and/or Annuity Contracts which are sponsored by any mutual fund organization and/or Insurer that is authorized or approved by the Employer.

**4.3 Administration of Investments:** Contributions made by or on behalf of a Participant shall continue to be invested in the manner selected by the Participant until a new designation has been properly completed and filed by the Participant. Unless otherwise restricted by a Custodial Account or Annuity Contract, a designation filed by a Participant changing his investment option may apply to investment of future deposits and/or to amounts already accumulated in his Accounts as the Participant elects. A Participant may change his investment options only as permitted under the applicable Custodial Agreement or Annuity Contracts.

**4.4 Investment of Gains and Dividends:** All dividends and capital gains distributions on shares held in the Participant's Account shall be reinvested in such shares in accordance with the Investment Company's current prospectus.

**4.5 Securities and Mutual Fund Orders:** Without limiting the generality of the foregoing, the Participant understands and acknowledges that the Custodian will act solely as agent for the Participant, and under the instructions of the Participant, with respect to the investment of the assets of the

Account and, acting in that capacity, shall place orders for the purchases of securities, provided that the Participant has sufficient funds in the Account or arranges to make funds available in advance for such purposes, and will also place orders for the sale of securities, provided such securities are held by the Custodian and in deliverable form. The Participant authorizes the Custodian to charge the Account for the cost of all securities purchased or received from the securities sold or delivered against payment.

If the Participant directs the Custodian to place an order for a mutual fund investment and there are insufficient funds in the Account to cover the settlement cost, Participant agrees to deposit in the Account immediately (and in any event not later than the settlement date) sufficient liquid funds to cover the cost of the investment. Participant agrees that the Custodian shall be under no obligation whatsoever to extend credit to the Account or otherwise disburse payment beyond the cash balance of the account for any purchase of a mutual fund investment and that the Custodian is under no obligation to determine whether any such additional deposits that are made are in excess of the limitations under Sections 403(b), 402(g), or 415 of the Code. In the event Participant fails to timely deposit sufficient funds in the Account to cover the cost of any such investment, Custodian, at its option, may cancel the order for the investment or, if the investment already has been acquired, sell the investment and reimburse itself for any costs or expenses incurred by the Custodian in settling the purchase order. Participant agrees that the Custodian shall not be liable for any actions taken in accordance with this provision, and further agrees to indemnify and hold the Custodian harmless for its actions in canceling a purchase order for a mutual fund investment in the Account or selling the investment to reimburse itself as provided above.

**SECTION 5. Distributions from the Custodial Account**

**5.1 Request for Distribution:** Distribution from the Custodial Account shall be made by the Custodian only to a Participant, designated Beneficiary or Alternate Payee, and no purported sale, transfer, pledge or assignment by the Participant, his spouse or Beneficiary of all or any part of an interest in the Custodial Account shall be recognized by the Custodian except as provided in Section 3.3. The interest of a Participant, his spouse or Beneficiary in the Custodial Account shall not be subject to the debts, contracts, liabilities, engagements or torts of such person or to attachment or legal process against such person.

**5.2 Limitation on Distributions:** The Custodian shall distribute or commence distribution of, pursuant to the Participant's written direction, the balance credited to a Participant's Account upon receipt of evidence satisfactory to it that one more of the following events have occurred:

- (a) the Participant becomes Disabled;
- (b) the Participant separates from service with the Employer;
- (c) the Participant dies;
- (d) the Participant attains age 59 1/2; or
- (e) the Participant encounters a Financial Hardship.

**5.3 Timing of Distributions**

(a) Distribution from the Custodial Account shall commence within 30 days after the Participant notifies the Custodian of his entitlement to distributions, unless the Participant makes a prior election to defer distribution to a subsequent date which is no later than the required beginning date (defined in (b) below), unless a later date is permitted by the Code, the regulations issued thereunder, or other Internal Revenue Service

pronouncements. Such election shall be made by written notice filed with the Custodian. Notwithstanding this provision, the Custodian shall not be responsible for making any distribution until such time as it has received proper written notification from the Participant, his surviving spouse or Beneficiary of the occurrence of an event described in Section 5.2

- (b) The Required Beginning Date shall mean the April 1st following the later of the year the Participant attains age 70 1/2 or the year in which the Participant retires.

**5.4 Form of Distribution:** Distributions shall be made in cash or in kind in any one or more of the following ways:

- (a) in a single payment; or
- (b) in installments for a period certain not to exceed the life expectancy of the Participant or the Participant's Beneficiary or the joint lives and last survivors expectancies of the Participant and the Participant's designated Beneficiary; or
- (c) in a combination of (a) and (b).

**5.5 Designation of Beneficiary:** Each Participant may, by written notice filed with the Custodian and in a form acceptable to the Custodian, designate a Beneficiary or Beneficiaries to receive the Participant's benefit at the Participant's death. Such designation may be changed or revised from time to time by written instrument filed with the Custodian. If no designation has been made, or if no Beneficiary is living at the time of a Participant's death, his Beneficiary shall be his surviving spouse; but if he has no surviving spouse; then his estate. If the Custodian permits, a surviving spouse Beneficiary may designate a Beneficiary(ies) to receive the remaining balance in the account upon the surviving spouse Beneficiary's death.

**5.6 Minimum Distribution Requirements:**

- (a) **In General:** All distributions required hereunder shall be determined and made in accordance with the proposed regulations under Section 401(a)(9) of the Code, including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the regulations proposed.
- (b) **Pre-1987 Account Balance or Bifurcated Account:** If the Custodian maintains a record of the Participant's balance as of December 31, 1986 ("the pre-1987 account"), such pre-1987 account balance will not be required to be distributed until the end of the calendar year in which the Participant attains age 75.
- (c) **Death Prior to Distribution:** If the Participant dies before he has started to withdraw installments from his Account, the entire interest of the Participant's Account shall be distributed within 5 years after the death of the Participant. However, if any portion of the Participant's interest is payable to a designated beneficiary (within the meaning of Section 401(a)(9)(E) of the Code), then, at the designated beneficiary's election, distributions may be made over the life expectancy of such designated Beneficiary. Such distributions must begin by December 31 of the calendar year of the Participant's death. However, if the sole designated Beneficiary is the surviving spouse of the Participant, distributions need not commence until the later of December 31 of the calendar year in which the Participant would have attained age 70 1/2, or December 31 of the calendar year immediately following the calendar year in which the Participant died.

For purposes of this Section 5.6, payments will be calculated by use of the return multiples specified in Section 1.72-9 of the Income Tax Regulations. Life expectancy of a surviving spouse may be recalculated annually. Life expectancy of any non-spouse may be recalculated annually. Life expectancy of any non-spouse Beneficiary will be

calculated at the time of the first payment without further recalculation.

- (d) **Death After Distributions Have Commenced:** If the Participant was withdrawing his interest in installments over a fixed period, the remaining installments will be continued to the Beneficiary at least as rapidly as under the method of distribution selected prior to death.
- (e) **Required Distribution Default Provisions:**
- (1) Unless otherwise elected by the Participant (or spouse, if applicable) by the time distributions are required to begin, life expectancies shall not be recalculated annually. Such election shall be irrevocable as to the Participant (or spouse) and shall apply to all subsequent years. The life expectancy of a non-spouse may not be recalculated.
- (2) If the Participant does not choose any of the distribution methods under this Section 5.6 by such Participant's Required Beginning Date (defined in Section 5.3(b)), distributions shall be made to the Participant's non-recalculated Single Life Expectancy according to the IRS Code.
- (3) All requests for distributions shall be made on a pro-rata basis among the applicable funds unless directed otherwise by the Participant.

#### **SECTION 6. Nonforfeiture**

6.1 **Nonforfeiture:** A Participant's interest in the balance of his account attributable to his/her salary reduction contributions shall all times be nonforfeitable.

#### **SECTION 7. The Custodian and Sponsor**

- 7.1 The Custodian as agent but not as trustee, shall take, hold, invest and distribute all of the assets of the Custodial Account in accordance with the terms of this Agreement, and shall hold the assets of this Custodial Account as agent for the Participant or his designated Beneficiary.
- 7.2 The Custodian shall invest any cash balances of the Custodial Account each day in an interest bearing money market fund or depository bank. The Custodian may convert said money market fund investment to cash whenever it is so directed by the Participant or where The Custodian reasonably determines such conversion to be necessary. Upon written advance notice whereby Participant has the right to object, the Custodian may substitute another short-term money market investment vehicle for the existing money market fund.
- 7.3 The Custodian shall not be liable for any act, omission, or determination made in connection with this Agreement except for its intentional misconduct or gross negligence. Without limiting the generality of the foregoing, the Custodian shall not be liable for any losses arising from its compliance with the Participant's written or oral directions. The Custodian shall be under no duties whatsoever except such duties as are specifically set forth in this Agreement. The Custodian shall be fully protected in acting upon any instrument, certificate, or paper reasonably believed by it to be genuine and to be signed or presented by the proper person or persons, and the Custodian shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.
- 7.4 The Custodian shall not be responsible for, or in any way liable for any loss or expense (including reasonable attorneys fees) arising from claims against the Custodian in connection with this Agreement, including claims for taxes and other governmental charges, and any claims asserted by reason of any act or failure to act, except for such act or failure to act that constitutes gross negligence

or willful misconduct. The Custodian may also retain legal counsel whenever in Custodian's judgment it is necessary or advisable to do so in connection with the discharge of Custodian's duties, and the fees and expenses of such counsel will be paid by the Participant, or in the absence of payment by the Participant, shall be charged against the Account. The Participant agrees that the Custodian will have a continuing lien on and security interest in any and all assets held in the Account as security for any liability, which arises under this paragraph.

- 7.5 The Custodian will not be responsible for the computation and the collection of any contributions under the Account, and shall be under no duty to determine whether the nature or amount of any contribution is in accordance with the Code.
- 7.6 The Participant shall not direct the purchase or sale of a security which is not marketable under the securities laws of the appropriate state, nor without limiting the generality or the forgoing, direct any investment that would be illegal under federal, state or local law. The Participant or Participant's Representative hereby warrants that he will not enter into a transaction, or cause a transaction to be entered into, which is prohibited under Section 4975 of the Code. Participant further warrants that, if a transaction if questionable due to Participant's relationship to the investment sponsor, that he will consult with such counsel and advisors as Participant may deem necessary prior to directing or causing the direction of the transaction. Pursuant to the directions of the Participant or Participant's Representative, the Custodian shall invest and reinvest the assets of the Account without any duty to diversify and without regard to whether such investment is authorized by the laws of any jurisdiction for investment, in securities obtainable "over the counter" or on a recognized exchange, savings media and any other acceptable public or non-standard investment which in the sole judgment of the Participant will not impose an unreasonable administrative burden (with such determination by the Custodian not to be construed in any respect as a judgment concerning the prudence or advisability of such investment).
- 7.7 Without limiting the generality of the foregoing, the Custodian is authorized to collect all interest, dividends, proceeds of sale and other monies due and collectable that arise from the investment of the assets of the Account and to credit such income to the Account and, upon Custodian's receipt, shall become part of the Account.
- 7.8 The assets of the Account shall be held separate from the other funds or properties of the Custodian. The Custodian may, however, commingle the assets of the Account with assets of other custodial accounts managed by it solely for investment purposes, provided that an individual accounting is made to the Participant annually of the fund's share in any common fund or joint investment.
- 7.9 The Participant shall have 60 days after the mailing to the Participant of such statements, to the address of the Participant as shown on the Custodian's records, to file objections in writing with the Custodian with respect to anything contained in any statement. Failure to object in a timely fashion shall be deemed to constitute approval by the Participant of all items contained in the statement.
- 7.10 The Custodian may rely on all written directions and upon the non-written directions described below, given by the Participant or a person designated by the Participant to act on its behalf (such Representative or Authorized Investment Advisor shall be referred to as "Participant's Representative") which the Custodian believes to be genuine, and the Custodian's records of a transaction will be conclusive as to the content of any instructions. The Participant's Representative shall be the authorized agent of the Participant and not of the Custodian. The Custodian shall construe any and all investment directions given by the Participant's Representative, whether written or

oral, as having been authorized by the Participant. The Participant may appoint and/or remove Participant's Representative by written notice to the Custodian provided that removal of Participant's Representative shall not have the effect of canceling any notice, instruction, direction or approval received by the Custodian from the removed Participant's Representative before the Custodian receives said notice of removal from the Participant. Upon application by the Participant, on a form acceptable to the Custodian and upon approval by the Custodian, the Custodian will accept non-written directions from the Participant or Participant's Representative, and such non-written directions may be given orally, by telephone. Without limiting the generality of the foregoing, the Custodian shall not be liable for executing, failing to execute, failing to timely execute or for any mistake in the execution of any non-written directions, unless such action or inaction is by reason of Custodian's gross negligence or willful misconduct.

7.11 The Custodian shall invest funds received or other instructions received from the Participant (or Participant's Representative), in accordance with the directions from the Participant (or Participant's Representative) within 7 business days of receipt of such funds plus necessary administrative and processing time. The Custodian shall be under no duty to credit interest to earnings on the funds received, and Participant agrees that the Custodian shall not be liable for any market value adjustment which may occur during the period of time the Custodian has control of the funds received from the Participant.

7.12 The Participant understands and acknowledges that the Custodian is not under any duty to supervise the investment of, or to advise or make recommendations to the Participant with respect to the sale or other disposition of any assets of the Account or to advise or recommend the purchase of any assets with the funds available under the Account.

7.13 Without limiting the generality of the foregoing, although the Participant is the owner of all the assets of the Account, the Participant hereby authorizes and instructs the Custodian that, unless instructed to the contrary in writing, all assets of the Account shall be registered in the name of the Custodian or of a nominee for the purposes of simplifying and expediting the handling and administration of such assets. Unless otherwise agreed in writing by the parties, registered securities shall be held in the name of:

Constellation Trust Company, Custodian  
FBO: (Name of Participant) 403(b)

7.14 All proxies received by the Custodian with respect to securities owned by the Participant and other reports to stockholders issued will be forwarded directly to the Participant. In the case of any solicitation received by the Custodian with respect to the Account (including, but not limited to third party tender offers with respect to limited partnership interest in the Account), the Custodian will transmit such materials to the Participant promptly upon receipt of such materials by the Custodian. The Custodian shall have no obligation to transmit any solicitation received or instruction given with respect to the Account by any means other than regular mail, and shall not be responsible for any failure to respond to a solicitation by the deadline specified therein due to (i) delays in the mail or (ii) circumstances where the Custodian has less than ten (10) days from the date instruction is received and the specified date for responding. The Custodian need not honor offers or recognize communications that are not addressed to each Account by name. The Custodian shall not be responsible for any action taken by the Participant, the Designated Representative or the Authorized Investment Adviser as a result of information concerning the Account or any investment that may be transmitted or not transmitted to the Participant or Participant's Representative.

7.15 The Custodian will charge for its services an annual fee based on the fee schedule attached as Schedule "A", unless the Custodian and the Participant have agreed, in writing, on a different fee schedule. Fees, together with out-of-pocket expenses and other charges hereto, if any, shall be computed and billed annually to the Participant.

The Participant understands and agrees that such expenses as transfer costs, postage and other out-of-pocket expenses will be charged to the Account in addition to the Custodian's fees and that expenditures arising from the purchase of securities shall be made only upon receipt of securities, in proper form, or as otherwise provided in writing by the Participant.

Custodial fees according to the fee schedule shall be due and payable annually, upon the anniversary of the establishment of the Account. Custodial fees may be automatically withdrawn from Account assets, if so elected in the Adoption Agreement. Otherwise, custodial fees will be invoiced to Participant. Upon written directions from Participant, any fee invoiced and payable under this Agreement may be withdrawn from the Account. Annual fees not paid within 30 days of the billing due date will be automatically deducted from the Account, plus an additional late payment fee.

Custodial fees as set forth in Schedule "A" attached hereto may be amended at any time by the Custodian, provided written notice is delivered to Participant at least 30 days prior to the effective date of any such amendment.

The Custodian shall have no duty or responsibility to perform any of the custodial services specified in this Agreement while any fee payable remains outstanding. In addition, the Custodian reserves the right to resign as Custodian if past due fees remain outstanding, provided that a written Notice of Intent to Resign as Custodian is delivered to Participant at least 30 days prior to the effective date of resignation.

7.16 The Custodian may maintain omnibus demand deposit and money market cash balances with the depository and fund sponsor to facilitate administration. All sub accounting services for FDIC insurance purposes and crediting of money market interest may be performed by the Custodian. The Custodian may receive compensation for services performed directly from the depository bank and fund sponsor. This compensation will not increase the costs nor reduce the money market return paid on Participant's cash account balances. Participant hereby acknowledges and consents to the Custodian's receipt of compensation from third parties for services performed on behalf of the Participant.

7.17 The Custodian shall not be under any obligation to defend any legal action or engage in any legal proceedings with respect to the Account or with respect to any property held in the Account unless The Custodian is indemnified to the Custodian's satisfaction. Whenever the Custodian deems it reasonably necessary, the Custodian is authorized and empowered to consult with its counsel in reference to the Account and to retain counsel and appear in any action, suit or proceedings affecting the Account or any of the property of the Account. All fees and expenses so incurred shall be for the account and shall be charged to the Account

7.18 This Agreement shall be executed in any number of counterparts each one of which be deemed to be the original although the others shall not be produced.

7.19 For all purposes hereof, the address of the Participant shall be set forth in writing on the Account application, unless the party whose address shall change shall notify the other party in writing and shall obtain or provide such written acknowledgement by certified and registered mail. Any notice or statement that the Custodian is required to give hereunder shall be deemed given

when mailed to the intended recipient at his last known address. Any notice or statement to be given to the Custodian shall be deemed given only when actually received by the Custodian.

7.20 REPRESENTATIVE AUTHORIZATION PROVISIONS: If a Participant designates a Representative in the Account application Participant's designation is subject to the following provisions:

- (a) Participant recognizes that the Custodian is entitled to rely on directions from Participant's Representative, and Participant agrees that the Custodian shall be under no duty to make an investigation with respect to any instructions received from the Participant's Representative.
  - (b) Participant is solely responsible for managing the investment of the Account, and for directing the Participant's Representative. All instructions, directions, and/or confirmations received by the Custodian from the Participant's Representative, shall be assumed to have been authorized by Participant.
  - (c) Participant recognizes that the Participant's Representative is not an agent of the Custodian; and
  - (d) Participant may remove the Participant's Representative and designate a new Participant's Representative by written notice to the Custodian. However, removal of a Participant's Representative will not have the effect of canceling any instruction, direction or confirmation which has been received by the Custodian from the Participant's Representative prior to the date that notice of removal is received by the Custodian.
- 7.21 Participant hereby indemnifies and holds the Custodian harmless from any and all liabilities or claims, including, but not limited to, damages, court costs, legal fees, and costs of investigation as a result of (i) any loss or diminution of the Account resulting from changes in the market value of Account assets; (ii) reliance or action taken in reliance on written instructions received from Participant or Participant's Representative, if one is appointed; (iii) any exercise or failure to exercise investment direction authority by Participant by Participant's Representative; (iv) the Custodian's refusal on advice of counsel to act in accordance with any exercise of investment direction by Participant or Participant's Representative; (v) any other act or failure to act by Participant or Participant's Representative; (vi) any prohibited transaction or plan disqualification due to any actions taken or not taken by the Custodian in reliance on directions from Participant or Participant's Representative; or (vii) any other act the Custodian takes in good faith hereunder.

## SECTION 8. Reports and Returns

- 8.1 The Custodian shall provide the Participant with a quarterly statement setting forth all transactions with respect to the Account and a listing of each asset which comprises a portion of the Account as of the close of the calendar quarter of reference, which statement shall be provided within a reasonable time following the close of each calendar quarter.
- 8.2 The Participant shall have 60 days after the mailing to the Participant of such statements, to the address of the Participant as shown on the Custodian's records, to file objections in writing with the Custodian with respect to anything contained in any statement. Failure to object in a timely fashion shall be deemed to constitute approval by the Participant of all items contained in the statement. To the extent items have been reflected in, and approved by the Participant in a quarterly statement, such transactions may not later be challenged as they are reported on the annual statement.
- 8.3 The Participant shall furnish the Custodian with such information and instruction as may be necessary to carry out the provision of the

Agreement, and to enable the Custodian to make any reports required by this Agreement, law or by regulation.

## **SECTION 9. Amendments and Terminations**

- 9.1 The Participant irrevocably delegates to the Custodian the right and power to amend this Agreement. Except as hereafter provided, the Custodian will give the Participant 30 days' prior written notice of any amendment. In case of a retroactive amendment required by law, the Custodian will provide written notice to the Participant of the amendment within 30 days after the amendment is made, or if later, by the time that notice of the amendment is required to be given under regulations or other guidance provided by the IRS. The Participant shall be deemed to have consented to any such amendment unless the Participant notifies the Custodian to the contrary within 30 days after notice to the Participant and requests a distribution or transfer of the balance of the account. The Custodian's termination fee shall be applicable to any account so distributed or transferred.
- 9.2 This Agreement shall terminate upon the complete distribution of the Custodial Account or in the event that a determination is made by the Internal Revenue Service that the Custodial Account does not satisfy the requirements of Section 401(f)(2) of the Code or that contributions thereto are not treated under Section 403(b)(7)(a) of the Code as contributed for annuity contracts. In the event of termination aforesaid, the balance in the Custodial Account shall be distributed to the Participants (or their respective surviving spouses or Beneficiaries, as the case may be) in accordance with their interests in the Custodial Account.
- 9.3 The provisions of this Agreement are subject to the terms and conditions of separate documents, contracts and agreements, which Participants may enter into with Insurer(s) and/or Custodian(s) as provided herein. To the extent such documents, contracts and/or agreements are inconsistent with the provisions of this Agreement, the provisions of this Agreement, shall govern unless such action would cause this Agreement to fail to continue to qualify under Section 401(f)(2) of the Code.
- 9.4 This Agreement shall remain in force until terminated, and either the Participant or the

Custodian may terminate this Agreement upon 30 days written notice to the other. Upon termination of this Agreement or resignation by the Custodian as Custodian, Participant hereby agrees to name a successor custodian and notify the Custodian in writing of the name of said successor custodian. In the event that participant does not name a successor custodian, the Custodian shall distribute cash directly and/or reregister the assets in the name of the Participant.

## **SECTION 10. Construction and Governing Law**

- 10.1 The Custodial Account is established with the intention that it qualify as a custodial account under Section 401(f)(2) of the Code and that contributions thereto be treated under Section 403(b)(7)(a) of the Code as amounts contributed for annuity contracts and the provisions of this Agreement shall be construed in accordance with such intention. This Agreement shall be governed by the laws of the state of Nebraska. This Agreement is accepted by the Custodian in, and administered under the laws of the State of Nebraska. All contributions to and payments from the Account shall be deemed to take place in the state of Nebraska. This Agreement and all amendments shall be governed by and construed in accordance with the laws of the State of Nebraska applicable to contracts made and performed therein.
- 10.2 The determination that any provisions of this Agreement are not enforceable shall not affect the validity or enforceability of the remaining provisions of this Agreement. Unenforceable provisions shall be stricken or modified in accordance with such determination only as to such parties and this Agreement, as modified, shall continue to bind the specific parties involved therein and otherwise all other parties in unmodified form.

## **SECTION 11. Arbitration**

- 11.1 THE PARTIES AGREE THAT, UPON THE REQUEST OF EITHER PARTICIPANT OR THE CUSTODIAN, WHETHER MADE BEFORE OR AFTER THE INSTITUTION OF ANY LEGAL PROCEEDING: ALL CLAIMS AND DISPUTES OF EVERY TYPE AND MATTER WHICH MAY ARISE BETWEEN PARTICIPANT AND THE CUSTODIAN SHALL BE SUBMITTED TO BINDING ARBITRATION BEFORE A PANEL OF ARBITRATORS (AS DESCRIBED BELOW),**

PURSUANT TO THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"); THAT SUCH ARBITRATION HEARINGS AND PROCEEDINGS SHALL TAKE PLACE ONLY IN DOUGLAS COUNTY, NEBRASKA OR ANOTHER SITE SELECTED BY CUSTODIAN IN ITS SOLE DISCRETION; THAT THIS ARBITRATION PROVISION AND THE ARBITRATION SHALL BE ADMINISTERED BY THE AAA PURSUANT TO AND CONSTRUED AND ENFORCED UNDER THE FEDERAL ARBITRATION ACT (TITLE 9 OF THE UNITED STATES CODE) ("FAA"); HOWEVER, IF THE FAA IS INAPPLICABLE FOR ANY REASON, SUCH ARBITRATION SHALL BE CONDUCTED PURSUANT TO NEBRASKA LAW; THAT THERE SHALL BE NO CLASS ACTION, CLASS OR CONSOLIDATED ARBITRATION; THAT THE PREVAILING PARTY IN ANY CLAIM OR DISPUTE OF ANY TYPE BETWEEN THE PARTICIPANT AND THE CUSTODIAN SHALL RECOVER REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES, INCLUDING WITHOUT LIMITATION, ARBITRATION FILING FEES, ARBITRATORS' FEES, AND OTHER ARBITRATION FEES; AND THAT THIS ARBITRATION AGREEMENT SHALL GOVERN ANY DISPUTES INVOLVING PARTICIPANT AND THE CUSTODIAN NOTWITHSTANDING ANY PROVISIONS, INCLUDING AND WITHOUT LIMITATION VENUE OR ARBITRATION PROVISIONS, CONTAINED IN ANY AGREEMENT SIGNED BY CUSTODIAN IN ITS CUSTODIAL CAPACITY. ANY ARBITRATION PROCEEDING SHALL BE CONDUCTED BY A PANEL OF THREE NEUTRAL ARBITRATORS SELECTED BY THE PARTIES UNLESS THE PARTIES AGREE OTHERWISE. IF ARBITRATION IS REQUESTED AS DESCRIBED ABOVE, THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO INSTITUTE OR CONDUCT LITIGATION OR ARBITRATION BEFORE ANY OTHER BODY OR TRIBUNAL. THE PARTIES FURTHER AGREE THAT IF A PARTY IS REQUIRED TO ENFORCE THIS ARBITRATION AGREEMENT AGAINST THE OTHER PARTY AND/OR TO COMPEL THE OTHER PARTY TO ARBITRATION PURSUANT TO THIS AGREEMENT, THE PARTY SHALL RECOVER FROM THE OTHER PARTY REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES SO INCURRED. ARBITRATION SHALL BE FINAL AND BINDING UPON THE PARTIES.