

**UMB Bank, n.a. Custodian**  
**403(b)(7) and Roth 403(b)(7) Custodial Account Agreement**  
**Lincoln Investment Planning, LLC Agent**

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**SECTION 1. DEFINITIONS**

For purposes of this Custodial Account Agreement, the following terms shall have the meaning set forth thereafter:

- 1.1. Administrator:** The person, committee, or other organization appointed by the Employer in the Employer's 403(b) Plan document to administer the Plan. If no such Entity is named, the Administrator shall be the Employer.
- 1.2. Agreement:** This instrument setting forth the terms and conditions of the Lincoln Investment ("Lincoln") Custodial Account Agreement as set forth hereafter.
- 1.3. Alternate Payee:** A spouse, former spouse, child or other dependent of a Participant who is assigned under a qualified domestic relations order [as defined in Code Section 414(p)] a right to receive all or a portion of the benefits payable with respect to a Participant.
- 1.4. Application:** The written application which incorporates this Agreement and is signed by the Employee and accepted by the Sponsor and serves to establish a Code 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 or IRC:** 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 Participant pursuant to Code Section 403(b)(7).
- 1.8. Custodian:** UMB Bank, n.a. or any successor thereto that satisfies the requirements of Code Section 401(f)(2), and which may be appointed by the Sponsor pursuant to Section 8 below. Unless the context clearly requires otherwise, any reference to the Custodian in this Agreement shall include a reference to the Sponsor, as agent for the Custodian while performing the duties of the Custodian.
- 1.9. Disabled:** With respect to a Participant, that he is 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 Code Section 72(m)(7).
- 1.10. Elective Deferrals:** For any taxable year of an Employee, Elective Deferrals are the sum of:
- (a) any salary reduction contributions under a qualified cash or deferred arrangement as defined in Code Section 401(k), to the extent not includible in income under Code Section 402(a)(8);
  - (b) any salary reduction contributions to a simplified employee pension plan as defined in Code Section 408(k), to the extent not includible in income under Code Section 402(h)(1)(B);
  - (c) any contributions made pursuant to a Salary Reduction Agreement used to purchase an annuity contract or Custodial Account under Code Section 403(b);
  - (d) any salary reduction contribution made to a SIMPLE IRA Plan described in Code Section 408(p).
- 1.11. Employee:** Any person regularly employed by the Employer. Neither "leased employees" within the meaning of Code Sections 414(n) or (o), nor independent contractors shall be considered to be Employees for the purposes of this Agreement.
- 1.12. Employer:** Any organization that is (i) described in Code Section 501(c)(3) and exempt from tax under Code Section 501(a), or (ii) an educational organization described in Code Section 170(b)(1)(A)(ii) which is a State, political subdivision of a State, or any agency or instrumentality of any

one or more of the foregoing; or (iii) a church or convention, or association of churches that is exempt from tax under Code Section 501, or by a church related organization described in Code Section 414(e)(3).

- 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 an Employee's Elective Deferrals that exceeds the limits of Code Section 402(g).
- 1.15. Financial Hardship:** Hardship is defined as an immediate and heavy financial need of the Participant where such Participant lacks other available resources. Unless the Employer maintains a separate Hardship Policy, the following are the only financial needs considered immediate and heavy: expenses incurred or necessary for medical care, described in section 213(d) of the Code, of the Participant, the Participant's spouse, dependents or Primary Beneficiaries; the purchase (excluding mortgage payments) of a principal resident for the Participant; payment of tuition and related educational fees for the next 12 months of post-secondary education for the Participant, the Participant's spouse, children, dependents, or Primary Beneficiaries; the need to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal resident; payment for funeral or burial expenses for the Participant's deceased parent, spouse, child, dependent, or the Primary Beneficiaries; and expenses to repair damage to the Participant's principal resident that would qualify for a casualty loss deduction under Code section 165 (determined without regard to whether the loss exceeds 10 percent of adjusted gross income).
- 1.16. 403(b) Plan Document:** The document maintained by the Employer which shall govern eligibility, applicable contribution limits, benefits, distributions and the approved Vendors and Investment Companies. If there is a conflict between this Agreement and the 403(b) Plan Document, the Employer's 403(b) Plan Document shall govern.
- 1.17. Includible Compensation:** The Participant's wages, salaries or other remuneration received for personal services actually rendered in the course of employment with the Employer and any other amounts treated as compensation under Section 415 of the Code. Such Compensation shall be determined under the most recent Year of Service pursuant to Section 403(b)(4) IRC and which precedes the taxable year by no more than five years. Such term includes any elective deferral described in Code Section 402(g)(3) and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4) or 457 IRC.
- 1.18. Investment Company:** Any "Regulated Investment Company" within the meaning of Code Section 851(a) which has been approved for this Agreement by the Sponsor.
- 1.19. 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 or for whom contributions have been made by the Employer on his or her behalf.
- 1.20. PPA:** The Pension Protection Act of 2006 including any regulations or other guidance issued thereunder.
- 1.21. Pronouns:** Whenever used in this Agreement, the masculine pronoun is to be deemed to include the feminine. The singular form, whenever used herein, shall mean or include the plural form where applicable, and vice versa.
- 1.22. Required Beginning Date:** April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 ½ or retires, or such later date prescribed by Code Section 403(b)(10) and regulations under such Section.
- 1.23. SBJA:** The Small Business Jobs Act of 2010 including any regulations or other guidance issued thereunder.
- 1.24. Salary Reduction Agreement:** A written binding contract executed by the Employee and the Employer authorizing either a reduction in the

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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.

**1.25. WRERA:** The Workers Retiree and Employer Recovery Act of 2008 including any regulations or other guidance issued thereunder.

**1.26. Sponsor:** Lincoln Investment Planning, LLC, acting as agent for the Custodian, UMB Bank, n.a. Sponsor serves as agent for the Custodian for the acquisition and disposition of investments for the Custodial Account. Sponsor will be the registered Broker/Dealer for such transactions, and may exercise any authority granted hereunder and by any separate agreement with the Custodian. Sponsor also serves as agent for the Custodian for recordkeeping and day to day operation of the Custodial Account.

**1.27. Vendor:** The provider of an Annuity Contract or Custodial Account. The Vendors selected by the Employer shall be specified in the Employer's 403(b) Plan. Such Plan shall indicate the approved Vendors with respect to on-going contributions as well as those Vendors available for transfers and exchanges.

**1.28. 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 full tax year during which the Participant was a part-time Employee of the Employer and for each part of a year during which the Employee was a full-time or part-time Employee of the Employer. In no case shall the Years of Service be less than one (1).

### SECTION 2. ESTABLISHMENT OF CUSTODIAL ACCOUNT

**2.1** The Custodian shall open and maintain a Custodial Account for each eligible Employee who completes an Application; and the Sponsor shall hold and administer, in accordance with the terms hereof, contributions to the Custodial Account and any gain, loss or income from the investment thereof. The Employee shall notify the Sponsor in writing of any change in name, address, or Social Security Number.

### SECTION 3. CONTRIBUTIONS

**3.1 Contributions to the Account:** Sponsor shall accept cash contributions from the Employer on behalf of Participants in accordance with the Salary Reduction Agreement between the Participant and the Employer. Participant shall specify the accounts to which the contribution is to be credited and the investments which are to be purchased with such contribution. Employer may also make Employer Contributions to the Custodial Account for the Participant. Contributions made by the Employer to the Sponsor for any Participant shall not exceed the limitations set forth in Code Sections 415, 402(g), 403(b) and 414(v).

No Participant shall be permitted to have Elective Deferrals made under this Custodial Account Agreement or any other plan maintained by the Employer, during any taxable year, in excess of the dollar limitation contained in Code Section 402(g) in effect at the beginning of such taxable year, except to the extent permitted under Code Sections 402(g)(7) and 414(v), if applicable.

Based on the definition of Includible Compensation (as defined above), the Employer may contribute for a period of no more than five years (referred to as the "5-year post employment contributions") after the Participant has incurred a severance from employment. This Account may also accept contributions that are attributable to accumulated sick and or vacation pay.

**3.2 Plan to Plan Transfer and Exchange Contributions:** Pursuant to the Employer's 403(b) Plan, the Participant may transfer (or request an exchange) 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 Administrator, or Vendor, if applicable certifies that the transaction meets the requirements for a tax-free transfer or exchange under section 1.403(b)-10(b), 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. Plan-to-Plan Transfer or Exchange assets once received shall be applied to the original source from such transferred or exchanged assets, on behalf of such Participant for purposes of this Custodial Agreement and shall be invested, distributed and otherwise dealt with as such. If it is not possible to determine the source of the funds being transferred or involved in an exchange then the assets shall be placed in a restricted source under this Custodial Account and will be subject to the strictest distributable events with respect to sources under this Custodial Account Agreement.

Transferred funds 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. Rollover assets shall be accounted for separately in a rollover account. Unless the Employer has otherwise elected in the 403(b) Plan, rollover assets shall be available for distribution at any time.

**3.3 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.

**3.4 Return of Excess Deferral:** Unless the Employer's 403(b) Plan provides a different method and date for notification of an Excess Deferral, if a Participant makes an Excess Deferral to the Custodial Account for any tax year, such Participant may give written timely notice to the Sponsor of the amount of the Excess Deferral. If the Participant gives such written, timely notice to the Sponsor, the Sponsor 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:** Excess 415 Contributions shall be corrected in the method or methods as outlined in the Employer's 403(b) Plan. If permitted under the Employer's 403(b) Plan, and 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 415 of the Code and the regulations thereunder, an excess annual addition occurs in any Participant's account, a distribution is permitted from this Custodial Account of such excess.

**3.6 Liability for Excess Amounts:** Unless otherwise agreed to in writing, the Sponsor shall not have any duty to determine whether an Excess Deferral, or contribution in excess of the limitations under Code Sections 403(b), 402(g) or 415 ("Excess Amounts") has been made by or on behalf of the Participant. 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 an Excess Deferral absent the request of the Participant. 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 and any income attributable thereto.

**3.7 Acceptance of Direct Rollovers into this Custodial Account:** If the Employer's 403(b) Plan permits, the Custodial Account will accept a Direct Rollover of an Eligible Rollover Distribution from: (a) a qualified plan described in Section 401(a) or 403(a) of the Code, excluding after-tax employee contributions; and (b) an annuity contract described in Section 403(b) of the Code, excluding after-tax employee contributions.

**3.8 Participant Rollover Contributions from IRAs:** If the Employer's 403(b) Plan permits, the Custodial Account will accept a Participant Rollover Contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

**3.9 Allowance of Catch-Up Contributions:** Subject to the elections made by the Employer in the Employer's 403(b) Plan, the special catch-up

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contribution rules applicable to 15 years of service and the age 50 catch-up rules shall or shall not apply.

### 3.10 Employer Contributions:

- (a) If elected by the Employer in the 403(b) Plan, the Employer may contribute on behalf of the Participant a matching contribution, a nonelective contribution, or post-employment contributions to this 403(b) that meet the Code requirements.
- (b) Employer Contributions shall include contributions made by the Employer on behalf of the Participant. Such contributions shall not cause the Participant's account to exceed the limitations of section 415(c)(1) of the Code.

**3.11 Mistaken Contributions:** Notwithstanding any other provision herein and to the extent permitted by law, if any Employer contribution made hereto is made as a result of a computational, recordkeeping, data entry or similar ministerial or administrative error, the Sponsor may return to the contributing Employer the amount of such erroneous contribution.

## SECTION 4. INVESTMENT OF ACCOUNT ASSETS

**4.1 Investment of Contributions:** The Sponsor shall as directed by the Participant, invest the amount of the contributions credited to the Participant's Account in full and fractional shares of one or more Investment Companies made available from time to time by the Sponsor. The Sponsor shall be responsible for the execution of such orders and for maintaining adequate records thereof. However, if any such orders are not received as required, or, if received, are unclear in the opinion of the Sponsor, all or a portion of the contribution may be held uninvested, placed in a money market account without liability for loss of income or appreciation, and without liability for interest pending receipt of such orders or clarification, or the contribution may be returned. The Sponsor shall have no duty other than to follow the written investment directions of the Participant, and shall be under no duty to question said instructions and shall not be liable for any investment losses sustained by the Participant.

**4.2 Investment Advisor:** The Participant may appoint an Investment Advisor to direct the investment of all or a portion of this Custodial Account. The Participant shall notify the Sponsor in writing of any such appointment by providing a copy of the instruments appointing the Investment Advisor. The Sponsor shall comply with any investment directions furnished to it by the Investment Advisor, unless and until it receives written notification from the Participant that the Investment Advisor's appointment has been terminated. The Sponsor shall have no duty other than to follow the written investment directions of such Investment Advisor and shall be under no duty to question said instructions, and the Sponsor shall not be liable for any investment losses sustained by the Participant.

**4.3 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.

**4.4 Voting and Other Action:** The Custodian or the Sponsor shall cause to be delivered to the Participant all notices, prospectuses, financial statements, proxies and proxy soliciting materials relating to shares held in the Custodial Account. Participant shall be responsible to vote all proxies.

**4.5 Identification of Accounts:** All shares of the Investment Companies acquired by the Sponsor pursuant to this Agreement shall be held in the name of the Custodian or its nominee for the benefit of the Participant (or the Beneficiary after the Participant's death).

## SECTION 5. DISTRIBUTIONS FROM THE CUSTODIAL ACCOUNT

**5.1 Request for Distribution:** Distribution from the Custodial Account shall be made by the Sponsor only to a Participant, his designated Beneficiary or Alternate Payee. 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 herein. 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. All distributions from this Custodial Account shall be requested on a form approved by the Sponsor.

**5.2 Limitations on Distributions:** The Sponsor shall distribute, or commence distribution of, pursuant to the Participant's (or Beneficiary(ies) in the case of Participant's death) written direction, and approval by the Administrator, the balance credited to a Participant's account only upon receipt of evidence satisfactory to it that one or more of the following events have occurred:

- (a) Participant becomes Disabled;
- (b) Participant's severance from service with the Employer;
- (c) Participant dies;
- (d) Participant attains age 59 ½; or
- (e) Participant encounters a Financial Hardship.
- (f) Termination of the Plan in accordance with Code regulations.
- (g) Participant is eligible for a Qualified Reservist Distribution.

Notwithstanding the foregoing, and if permitted by Employer's 403(b) Plan, any amounts contributed to a rollover account shall be available for distribution at any time and shall not be based on the distributable events listed above.

**5.3 Timing of Distributions:** Distribution from the Custodial Account shall commence within thirty (30) days after the Participant notifies the Sponsor of his entitlement to distributions, unless the Participant makes a prior election to defer distribution or the commencement of distribution to a subsequent date which is not later than the Participant's Required Beginning Date, 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 Sponsor. Notwithstanding this provision, the Sponsor shall not be responsible for making any distribution until such time as it has received proper written notification from the Participant, his or her surviving spouse or Beneficiary of the occurrence of an event described in Section 5.2 herein, and Sponsor has received Administrator's approval.

Unless the Employer's 403(b) Plan indicates otherwise, the Required Beginning Date shall mean the April 1st following the later of the year the Participant attains age 70 ½ or the year in which the Participant retires.

**5.4 Form of Distribution:** Unless otherwise required under applicable laws, distribution shall be made in cash or in kind in any one or more of the following ways:

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

### 5.5 Designation of Beneficiary:

- (a) Each Participant may, by written notice filed with the Sponsor and in a form acceptable to the Sponsor, 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 Sponsor. If no designation has been made, or if no Beneficiary is living at the time of a Participant's death, his designated Beneficiary shall be: his surviving spouse, but if he has no surviving spouse; then his surviving children, or if there are no surviving children; then his

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estate.

- (b) Upon the death of the Participant, any Beneficiary may name a subsequent beneficiary(ies) to receive the balance of the account to which such Beneficiary is entitled upon the death of the original Beneficiary. Such original Beneficiary may name a subsequent beneficiary(ies) by completing a Beneficiary Designation form acceptable to and filed with the Sponsor.
- (c) Payments to such subsequent Beneficiary(ies) shall be distributed in accordance with the payment schedule applicable to the original Beneficiary. In no event can any subsequent Beneficiary be treated as a designated Beneficiary of the Participant. The preceding sentence shall not apply with respect to the subsequent Beneficiary(ies) of an original spouse beneficiary where the Participant dies before his or her required beginning date. If the balance of the account has not been completely distributed to the original Beneficiary and such Beneficiary has not named a subsequent Beneficiary or no named subsequent Beneficiary is living on the date of the original Beneficiary's death, such balance shall be payable to the estate of the original Beneficiary.
- (d) Participants may designate primary and secondary Beneficiaries. A secondary Beneficiary and/or Beneficiaries will become entitled to a distribution of any remaining balance of the Participant's Account only after the death of any and all primary Beneficiaries.
- (e) If more than one Beneficiary is named in either category, benefits will be paid according to the following rules:
  - (i) Beneficiaries can be designated to share equally in or to receive specific percentages of, the remaining balance, if any, of the Participant's Account.
  - (ii) If a Beneficiary dies before the Participant, only the surviving Beneficiaries will be eligible to receive any benefits in the event of the death of the Participant. If more than two Beneficiaries are originally named to receive different percentages of the benefits, surviving Beneficiaries will share in the same proportion to each other as indicated in the original designation.
- (f) If upon the Participant's death the Beneficiary designation indicates a class of individuals through use of the terms "per stirpes" or "per capita", it shall be the sole responsibility of the personal representative of the estate of the Participant to determine the individual Beneficiaries entitled to benefit, and the portion thereof, from the balance of the Participant's Account.
- (g) If upon the death of the Participant a Beneficiary who is a minor is entitled to any portion of the Participant's Account, the Sponsor may, in its absolute discretion, transfer assets to an inherited Account for the benefit of the minor Beneficiary. Such inherited Account shall be controlled by such person demonstrated to the Sponsor's satisfaction to be authorized to act on behalf of the minor. Any minor shall be deemed to be a minor until reaching the age of majority under the law of the state of the minor's domicile with respect to the right to own mutual funds and other investments.
- (h) The Sponsor shall not be responsible for determining the identity or interest of any Beneficiary. The Sponsor is fully entitled to rely on any representations made by the personal representative of the estate of the Participant with respect to the identity of the Beneficiary of the Account. It is the responsibility of the Beneficiary or the personal representative of the Participant's estate to notify the Sponsor of the death of the Participant and provide documentation that the Sponsor deems necessary to transfer ownership of the Participant's Account.
  - (i) The Sponsor shall not be responsible for the interpretation of any formula, clause or trust provision contained in any Beneficiary designation filed with the Sponsor, or the determination of the legal effect of any disclaimer or renunciation made by any Beneficiary to the Custodial Account. The acceptance of any Beneficiary designation submitted by a Participant shall not limit the Sponsor's rights or increase its responsibilities under this Custodial Account and under law.
  - (j) The Sponsor reserves the right to request such additional information and documentation from the Participant, the Beneficiary or the personal representative of the Participant as the Sponsor deems necessary.

### 5.6 Minimum Distribution Requirements

#### (a) General Rules:

- (i) **Precedence:** The requirements of this Section will take precedence over any inconsistent provisions of the plan.
- (ii) **Requirements of Treasury Regulations Incorporated:** All distributions required under this Section will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.

#### (b) Time and Manner of Distribution.

- (i) **Required Beginning Date:** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (ii) **Death of Participant Before Distributions Begin:** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (A) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, except as provided in section below, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.
  - (B) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then, except as provided below, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (C) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (D) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this section 5.6 (b)(ii), other than section 5.6(b)(ii)(A), will apply as if the surviving spouse were the Participant.

For purposes of sections 5.6(b)(ii) and section 5.6(d), unless section 5.6(b)(ii)(D) applies, distributions are considered to begin on the Participant's Required Beginning Date. If section 5.6(b)(ii)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 5.6(b)(ii)(A).
  - (E) Notwithstanding sections 5.6(b)(ii) and 5.6(d)(ii), Participants or beneficiaries may elect on an individual

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- basis whether the 5- year rule or the life expectancy rule in sections 5.6(b)(ii) and 5.6(d)(ii) applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under section 5.6(b)(ii), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with sections 5.6(b)(ii) and 5.6(d)(ii) and, if applicable, the elections in section 5.6(b) above.
- (iii) **Forms of Distribution:** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 5.6(c) and 5.6(d) of this section 5.6. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations.
- (c) **Required Minimum Distributions During Participant's Lifetime**
- (i) **Amount of Required Minimum Distribution For Each Distribution Calendar Year.** During the participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
- (A) the quotient obtained by dividing the participant's account balance as of 12/31 of the preceding year by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- (B) if the Participant's sole Designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (ii) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death:** Required minimum distributions will be determined under this section 5.6(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.
- (d) **Required Minimum Distributions After Participant's Death**
- (i) **Death On or After Date Distributions Begin:**
- (A) **Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:
- (l) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (ll) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
- (lll) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (B) **No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (ii) **Death Before Date Distributions Begin:**
- (A) **Participant Survived by Designated Beneficiary.** If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in section 5.6(d)(i).
- (B) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (C) **Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under section 5.6(b)(ii)(A), this section 5.6(d)(ii) will apply as if the surviving spouse were the Participant.
- (D) A Designated Beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

## 403(b)(7) & Roth 403(b)(7) Custodial Account Agreement

### (e) Definitions.

- (i) **Designated Beneficiary.** The individual who is designated as the beneficiary under this custodial account and is the Designated Beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- (ii) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under section 5.6(b)(ii). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.
- (iii) **Life expectancy.** Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.
- (iv) **Participant's account balance.** The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (v) **Required Beginning Date.** April 1 of the calendar year following the later of the calendar year in which the Participant attains the age of 70 ½ or retires, or such later date prescribed by Code Section 403(b)(10) and regulations thereunder.
- (f) **Calendar Year 2009 Required Distributions.** Notwithstanding the foregoing, a Participant or Beneficiary who would have been required to receive the required minimum distribution (RMD) under section 401(a)(9) of the Code for 2009 but for the enactment of section 401(a)(9)(H) of the Code will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect not to receive the distribution described in the preceding sentence.
- (g) **Rollovers of RMDs.** Plans are permitted to allow Participants and Beneficiaries to make direct rollovers to other plans or IRAs of amounts that would have been 2009 RMDs. However, those distributions are not subject to the 402(f) notice requirements and will not be subject to the 20% mandatory federal income tax withholding. Therefore if the portion that would otherwise be the 2009 RMD is paid as a cash distribution, that portion is subject to 10% federal income tax withholding, unless the participant elects out of withholding. If a plan does not allow participants and spouse beneficiaries to make direct rollovers of amounts that would otherwise be RMDs for 2009, these individuals will still be able to indirectly roll over the portion that would be considered an

RMD within 60 days after receipt of the payment.

### 5.7 Distributions under a Qualified Domestic Relations Order:

- (a) Distributions of all or any part of a Participant's Account pursuant to the provisions of a qualified domestic relations order (QDRO) as defined in Code Section 414(p) are specifically authorized.
- (b) The earliest retirement age shall be the earlier of:
  - (i) The earliest date that benefits are payable under this Agreement to the Participant; or
  - (ii) The later of the date the Participant attains age 50 or the date on which the Participant could obtain a distribution from this Agreement if the Participant had separated from service.
- (c) The Alternate Payee may receive a payment of benefits under this Agreement in any optional form of benefit available under Section 5.4 herein, including a Direct Rollover.
- (d) The Alternate Payee may receive a payment of a benefit under this Agreement prior to the earliest retirement age as defined in Section 5.7 herein if the QDRO specifically provides for such earlier payment. If the present value of the payment exceeds \$5,000, the Alternate Payee must consent in writing to such distribution.

### 5.8 Transfers to State Defined Benefit Plan:

- (a) A Participant may transfer amounts from this Custodial Account to an eligible governmental defined benefit plan of a state. A transfer under this section is not treated as a distribution and therefore may be made prior to severance from employment or any other distributable event.
- (b) A transfer may be made under this Custodial Account if:
  - (i) the defined benefit plan of the state provides for the acceptance of such transferred amounts.
  - (ii) the transferred amount is for either the purchase of permissive past service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan; or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.
- (c) Under Section 821 of Pension Protection Act of 2006, the term permissive service credit may include service credit for periods for which there is no performance of service, and may include service credited in order to provide an increased benefit for service credit which a Participant is receiving under the defined benefit plan.

**5.9 Plan-to-Plan Transfers from this Custodial Account.** The Participant may cause the transfer (or exchange) of 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 Administrator, or Vendor, if applicable certifies that the transaction meets the requirements for a tax-free transfer or exchange under section 1.403(b)-10(b), and any other applicable laws or rulings of the Internal Revenue Service.

**5.10 Beneficiary Direct Rollover:** A direct trustee-to-trustee transfer of any portion of a distribution from an eligible retirement plan may be made to an individual retirement plan described in section 408(a) or (b) (an "IRA") that is established for the purpose of receiving the distribution on behalf of a designated beneficiary who is a beneficiary (whether spouse or non-spouse), and such transfer shall be treated as a direct rollover of an eligible rollover distribution for purposes of section 402(c).

### 5.11 Direct Rollovers:

- (a) Notwithstanding any provision of this Custodial Account or the

## 403(b)(7) & Roth 403(b)(7) Custodial Account Agreement

Employer's 403(b) Plan 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 Sponsor, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover.

(b) **Definitions:**

- (i) **Eligible Rollover Distributions:** 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 substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) 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 Section 401(a)(9) of the Code; any hardship distribution; and any other amounts designated in guidance from the Internal Revenue Service.
- (ii) **Eligible Retirement Plan:**
- (A) An Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a tax-sheltered annuity plan described in Section 403(b) of the Code, or a custodial account described in Section 403(b)(7) of the Code, that accepts the distributee's Eligible Rollover Distribution.
- (B) For distributions made after December 31, 2001, an Eligible Retirement Plan shall also mean an eligible plan under Section 457(b) of the Code 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 Custodial Agreement. The 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 Qualified Domestic Relation Order, as defined in Section 414(p) of the Code.
- (iii) **Distributee:** A Distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is 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 Program specified by the Distributee.
- (v) **Modification of Definition of Eligible Rollover Distribution to Include After-Tax Employee Contributions:** For purposes of the Direct Rollover provisions in this section of the Agreement, a portion of a distribution shall not fail to be an Eligible Rollover distribution merely because the portion consists of After-Tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and

the portion of such distribution which is not so includible.

**5.12 Automatic Rollover:** To the extent provided under the terms of the Employer's 403(b) Plan, a distribution may be made without the Participant's consent if the Participant's total Account balance under the Employer's 403(b) Plan (as determined by the Employer or Administrator) does not exceed the amount described in Code Section 411(a)(11). Any such distribution shall be made in accordance with Code Section 401(a)(31).

**5.13 Qualified Reservist Distributions:** A Qualified Reservist Distribution is a distribution (1) from an IRA or attributable to elective deferrals under a 401(k) plan, a 403(b) plan, or certain similar arrangements, (2) made to an individual who (by reason of being a member of a reserve component as defined in section 101 of title 37 of the U.S. Code) was ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and (3) that is made during the period beginning on the date of such order or call to duty and ending at the close of the active duty period. A 401(k) plan or 403(b) plan does not violate the distribution restrictions applicable to such plans by reason of making a Qualified Reservist Distribution.

**5.14 Qualified Rollover Contributions.** Participants must be given the option to directly rollover to a Roth IRA as a qualified rollover contribution pursuant to section 408A(e) of the Code. Pursuant to section 402(c)(11) of the Code, for distributions that occur prior to January 1, 2010, a plan may, but is not required to permit Qualified Rollover Contributions by nonspouse beneficiaries, and a rollover by a nonspouse beneficiary must be made in a Direct Rollover to a Roth IRA. A surviving spouse beneficiary who makes a rollover to a Roth IRA from this plan may elect either to treat the Roth IRA as his or her own or establish the Roth IRA in the name of the decedent with the surviving spouse as the beneficiary.

### SECTION 6. NONFORFEITABILITY

**6.1** A Participant's interest in the balance of his account shall at all times be fully vested and nonforfeitable.

### SECTION 7. LOANS TO PARTICIPANTS

**7.1 General Rules:** If elected in the Employer's 403(b) Plan, the following rules shall apply with respect to loans to Participants from their 403(b) account:

- (a) Loans shall be made available to all Participants on a reasonably equivalent basis upon written application to the Sponsor.
- (b) 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 the Participant's entire right, title, and interest in and to his account balance, evidenced by his promissory note for the amount of the loan (including interest).
- (c) Each loan must bear interest at a reasonable rate determined by the Sponsor taking into account interest rates being charged at the time of the loan. There shall be no discrimination among Participants in the matter of interest rates, but loans granted at different times may bear different interest rates and terms if the differences are justified by changes in the general economic condition.
- (d) If a Participant fails to make a loan payment when due, the terms and conditions set forth in the Sponsor's 403(b)(7) Loan Policy shall apply.

**7.2 Loan Limits:** 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 (a) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made, or (b) one-half the present value of the Participant's account or, if greater, the total account balance up to \$10,000. For the purpose of the above limitation, all loans from all plans

## 403(b)(7) & Roth 403(b)(7) Custodial Account Agreement

of the Employer and Related Employers are aggregated.

Furthermore, any loan shall by its terms require that repayment (principal and interest) be amortized in level payments, not less frequently than monthly, 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.

**7.3 Administration of Loans:** The Sponsor shall prescribe any such rules and procedures as from time to time it deems proper in order to administer these provisions and reserves the right to charge an administrative fee for processing and maintaining such loans. All other terms and conditions shall be administered pursuant to the Sponsor's Loan Policy.

**7.4 Suspension of Certain Loan Payments:** Pursuant to the Sponsor's Loan Policy, loan payments may be suspended under this Plan:

- (a) as permitted under Section 414(u)(4) of the Code during Participants' periods of military service; and
- (b) during any Participants' leave of absence, as defined in Section 72(p) of the Code and the regulations thereunder, but in no event shall such suspension exceed one year.

### SECTION 8. THE CUSTODIAN AND SPONSOR

**8.1 Notices:** All notices, requests and other communications to the Sponsor by the Employer or any Participant (or his spouse or Beneficiary) shall be in writing and in such form as the Sponsor may from time to time prescribe. The Sponsor shall be entitled to rely on any such instruments believed by it to be genuine.

**8.2 Custodian's Powers:** Subject to the terms of this Agreement and applicable law, the Sponsor, as Agent for the Custodian, shall have the power and authority in the administration of the Custodial Account to do all acts, to execute and deliver all instruments and to exercise for the benefit of the Participants and their Beneficiaries any and all powers which would be lawful were it in its own right the actual owner of the property held.

#### **8.3 Fees and Expenses of the Account:**

In consideration of its services hereunder, the Custodian and Sponsor will be entitled to receive compensation, including but not limited to maintenance, administrative and custodial fees. Such fee schedule, as amended from time to time, shall be disclosed on the current Fee Schedule Disclosure. The Custodian and Sponsor 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 and Sponsor from the amount of any contribution, transfer or dividend credited or to be credited to an Account or by redeeming Investment Company shares credited to that Custodial Account. Any income taxes or other taxes of any kind whatsoever that may be levied or assessed upon or in respect of the Account shall be paid from the assets of the Account. Any sales charges, brokerage fees, short-term trading fees, investment advisory fees or similar expenses incurred in connection with the investment of the assets of the Account, and all other administrative expenses incurred by the Custodian and Sponsor, in the performance of their duties, shall similarly be paid from the assets of the Account and may be retained by the Sponsor.

**8.4 Termination:** The Custodian may resign at any time upon sixty (60) days notice in writing to the Sponsor, and may be removed by the Sponsor at any time upon thirty (30) days notice in writing to the Custodian. Upon such resignation or removal, the Sponsor shall appoint a successor custodian, which successor shall be acceptable under Code Section 401(f)(2). If, within sixty (60) days after effective date of the Custodian's resignation, the Sponsor has not appointed a qualified successor custodian that has accepted such appointment, the Custodian may appoint, such successor itself. Upon receipt by the Custodian of written acceptance of appointment by the successor custodian, the Custodian, through its Agent, the Sponsor, shall

transfer and pay over to such successor the assets of the Custodial Accounts and all records pertaining thereto, reserving such sum as it may deem advisable for payment of all its fees, compensation, costs and expenses and any other liabilities constituting a charge on or against the assets of the Custodial Account. The successor custodian shall thereafter be the Custodian under this Agreement.

**8.5 Responsibilities:** The Custodian and Sponsor shall not be responsible in any way, except as specifically provided herein, for the collection of contributions, the purpose or propriety of any distribution, or any other action taken at the direction of the Employer, the Participant, or a Beneficiary. Each Participant, Employer or Beneficiary shall at all times fully indemnify and hold harmless the Custodian and Sponsor, its successors and assigns, from any liability arising from the receipt of contributions, payment of distributions, or actions taken at the direction of such Employer, Participant, or Beneficiary.

**8.6 Liability:** The Custodian's and Sponsor's liability under this Agreement and matters which it contemplates shall be limited to matters arising from their negligence or willful misconduct. To the extent permitted by applicable law, the Custodian and Sponsor shall be protected in acting upon any written order from the Employer or Participant or any other notice, request, instruction or direction, consent certificate or other instrument or paper reasonably believed by it to be genuine and to have been properly executed, and, so long as it acts in good faith, in taking or omitting to take any other action. The Custodian and Sponsor may submit any question arising hereunder or in respect of the Account to counsel, including its own general counsel, and shall be protected to the extent permitted by applicable law, in acting on the advice of such counsel.

Subject to the provisions of applicable law, the Participant, his Beneficiary or the personal representative shall have the sole authority to enforce this Agreement on behalf of any all persons having or claiming any interest in the Account by virtue of this Agreement. To protect the account from expenses which might otherwise be incurred, it has been imposed as a condition to the acquisition of any interest in the Account, and it is hereby agreed, that subject to the provisions of applicable law, no person other than the Participant, his Beneficiary or personal representative, or the Employer, to the extent that the Custodian and/or Sponsor owes a duty to the Employer under this Agreement, may institute or maintain any action or proceeding against the Custodian and/or Sponsor in the absence of a determination of a court of competent jurisdiction to the contrary.

**8.7 Information Sharing:** The Sponsor is authorized to provide to, and receive from, an authorized representative of the Employer information relating to the Participant's Custodial Account, including non-public, personal information. Such information includes, but is not limited to, information regarding the Participant's employment status and any plan loans or hardship distributions. The Participant acknowledges that this information exchange is necessary to enable the Employer to satisfy the applicable requirements of Section 403(b) of the Code and regulations issued thereunder, in order to maintain the tax-favored status of the Participant's Custodial Account.

**8.8 Administration of Orphan Accounts:** Notwithstanding any contrary language elsewhere in this Custodial Agreement and pursuant to IRS Revenue Ruling 2007-71 and any subsequent guidance provided by the IRS, the Sponsor shall be responsible for determining and administering certain orphan custodial accounts with respect to distributions, loans, and any other transactions that may arise under such accounts.

**8.9 State Unclaimed Property Laws.** Subject to the terms of the Employer's 403(b) Plan and ERISA, the Account balance and uncashed checks issued from the Account may be transferred to the Participant's resident state unclaimed property administrator if no activity occurs in the Account or the check remains outstanding within the time period specified by the applicable state law.

### SECTION 9. REPORTS AND RETURNS



# 403(b)(7) & Roth 403(b)(7) Custodial Account Agreement

## 9.1 The Sponsor shall:

- (a) maintain separate records of the interest of each Participant (or his designated Beneficiary) in the Custodial Account indicating (i) the amounts and dates of all contributions, (ii) the investment of such contributions, (iii) the earnings on such investments, (iv) the amounts and dates of all distributions and (v) such other data as deemed useful in carrying out its duties hereunder;
- (b) send each Participant, no less frequently than once per calendar quarter, a written statement containing information with respect to the investment of such contributions and activity during the preceding quarter, and the current status and value of the assets in the Custodial Account.

**9.2** The Sponsor shall file such returns or reports with respect to the Custodial Account as are required to be filed by it under the Code and the regulations thereunder, or by the Department of Labor, and the Employer and each Participant shall provide the Sponsor with such information available to them as the Sponsor may require to file such reports.

## SECTION 10. AMENDMENTS AND TERMINATION

**10.1** This Custodial Agreement may be amended by the Sponsor by submitting a copy of the amendment to the Participant. The Participant hereby delegates to the Sponsor the power to amend this Custodial Agreement and shall be deemed to have consented to any such amendment. Notwithstanding the above, no amendment shall be made by the Sponsor which shall cause or permit:

- (a) any part of the assets in the Account to be diverted to purposes other than for the exclusive benefit of the Participant or his Beneficiaries; or
- (b) except as may be permitted under Section 3.11 herein, any part of such assets to revert to or become the property of the Employer; or
- (c) any Participant, or his Beneficiary, to be deprived of any benefit to which he was entitled under the Custodial Account by reason of contributions made by the Employer prior to such amendment, unless such amendment is necessary either to conform the Custodial Account to, or to satisfy the condition of, any law, governmental regulation or ruling, or to permit the Custodial Account to meet the requirements of the Code; or
- (d) any responsibilities of the Custodian or Sponsor under the Agreement to be increased without its written consent.

**10.2** This Custodial Agreement shall terminate upon the complete distribution or transfer of assets in 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 Code Section 401(f)(2) or that contributions thereto are not treated under Code Section 403(b)(7)(A) as contributed for annuity contracts. In event of termination as 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.

**10.3** If permitted under the Employer's 403(b) Plan, a distributable event shall also include Plan Termination by the Employer. The Employer by proper action has the right, at any time, to terminate the 403(b) Plan. However, if the Employer does not have any rights under the individual Agreements including this Custodial Agreement, the Employer may not force the distribution of the assets in the individual Custodial Accounts and termination of the 403(b) Plan may not occur.

## SECTION 11. CONSTRUCTION AND GOVERNING LAW

**11.1** The Custodial Account is established with the intention that it qualify as a custodial account under Code Section 401(f)(2) and that contributions

thereto be treated under Code Section 403(b)(7)(A) 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 Missouri, to the extent such laws are not preempted by the laws of the United States, and if applicable the provisions of the Employee Retirement Income Security Act of 1974 (ERISA).

**11.2** The determination that any provision of this Agreement is 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.

**11.3** In the event of any conflict between the terms of the Employer's 403(b) Plan and the terms of this Custodial Agreement, the Employer's 403(b) Plan provisions shall control.

## SECTION 12. ERISA PROVISIONS

**12.1 Impact of ERISA:** In the event this Custodial Account Agreement becomes subject to the Employee Retirement Income Security Act ("ERISA"), the terms of this Custodial Account Agreement shall be modified by the Plan Document or such other comparable written plan documentation that establishes a "plan" under ERISA and includes all provisions necessary to satisfy the requirements thereof. Any such plan documentation, including forms, contracts, agreements or similar documents shall specifically be herein incorporated by reference. Where such documents, may be inconsistent with this Custodial Account Agreement, the provisions of such documents shall govern unless such action would cause this Custodial Account Agreement to fail to continue to qualify under Code Sections 401(f)(2) and 403(b).

**12.2** The Employer or its designee shall be solely responsible for determining whether this Custodial Account Agreement is subject to ERISA and taking all actions necessary to administer in compliance with the requirements of ERISA.

## SECTION 13. ROTH ELECTIVE DEFERRALS

### 13.1 General Application

- (a) If the Employer has elected under the Employer's 403(b) Plan, this section shall apply to contributions beginning with the effective date specified in the Employer's 403(b) Plan but in no event before the first day of the first taxable year beginning on or after January 1, 2006.
- (b) As of the above-referenced effective date, the 403(b)(7) Custodial Account will accept Roth Elective Deferrals made on behalf of Participants. A Participant's Roth Elective Deferral will be allocated to a separate account maintained for such deferrals as described in section 13.2.
- (c) Unless specifically stated otherwise, Roth Elective Deferrals will be treated as Elective Deferrals for all purposes under the Plan.

### 13.2 Separate Accounting

- (a) Contributions and withdrawals of Roth Elective Deferrals will be credited and debited to the Roth Elective Deferral account maintained for each Participant.
- (b) A record of the amount of Roth Elective Deferrals in each Participant's account will be maintained.
- (c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Elective Deferral account and the Participant's other accounts under this 403(b)(7) Custodial Account.
- (d) No contributions other than Roth Elective Deferrals and properly

## 403(b)(7) & Roth 403(b)(7) Custodial Account Agreement

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attributable earnings will be credited to each Participant's other accounts under this 403(b)(7) Custodial Account.

### 13.3 Direct Rollovers

- (a) A direct rollover of a distribution from a Roth Elective Deferral account under this Custodial Account will only be made to another Roth Elective Deferral Account under an applicable retirement plan described in section 402A(e)(1)(B) of the Code or to a Roth IRA described in section 408A, and only to the extent the rollover is permitted under the rules of section 402(c) of the Code.
- (b) If permitted by the Employer's 403(b) Plan, this 403(b)(7) Custodial Account will accept a rollover contribution to a Roth Elective Deferral account only if it is a direct rollover from another Roth Elective Deferral account under an applicable retirement plan described in section 402A(e)(1) of the Code and only to the extent the rollover is permitted under the rules of section 402(c) of the Code.

### 13.4 Definitions of Roth Elective Deferrals

- (a) A Roth Elective Deferral is an Elective Deferral that is:
  - (i) Designated irrevocably by the Participant at the time of the cash or deferred election as a Roth Elective Deferral that is being made in lieu of all or a portion of the pre-tax Elective Deferrals the Participant is otherwise eligible to make under the Plan;
  - (ii) Treated by the employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.