

# Trust and Custodial Agreement



THIS TRUST AND CUSTODIAL AGREEMENT ("Agreement") is entered into between \_\_\_\_\_ (the "Trustee"),  
SunAmerica Trust Co. \_\_\_\_\_ (the "Limited Trustee"),

\_\_\_\_\_ (the "Custodian", if applicable),  
and \_\_\_\_\_ (the "Employer")

and Employer's related companies ("*Participating Employers*"), pursuant to its \_\_\_\_\_ (the "Plan").

This Agreement is effective as of \_\_\_\_\_ (mm/dd/yyyy).

The Trustee and the Employer intend that the Plan shall be a qualified plan under section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code") and that the related trust, as defined below, shall be tax-exempt under Code section 501(a) and applicable state law.

The Trustee (or Custodian, if applicable) shall hold in trust all cash amounts or other assets transferred to it pursuant to this Agreement, together with any gains and losses thereon (the "Fund"). The Trustee (or Custodian, if applicable) shall hold and administer the Fund for the uses and purposes and on the terms and conditions set forth in this Agreement. In-kind contributions will be permitted in non-pension plans as long as they are discretionary and unencumbered as determined by the Employer.

## ARTICLE I – RELATIONSHIP OF TRUST TO PLAN

The Plan and this Agreement shall be read and construed together. The terms of the Plan shall prevail over the terms of this Agreement in cases of conflict, except that this Agreement shall prevail in matters relating to the rights, duties, and liabilities of the Trustee (or Custodian, if applicable). Nothing contained in the Plan shall be deemed to impose any additional rights, duties, and liabilities on the Trustee (or Custodian, if applicable).

## ARTICLE II – FINANCIAL ORGANIZATION AS CUSTODIAN

### 2.01 Appointment

The Employer appoints the entity named in this Agreement as Custodian for the Plan and the entity accepts such appointment, subject to the terms of this Agreement. The Employer represents and warrants to the entity that it has all requisite right, power, and authority and has taken all required actions necessary under the Plan and applicable law to designate the financial organization as Custodian of the Plan pursuant to the terms of this Agreement. The Employer, Plan Administrator, any Trustee, any other investment fiduciary for the Plan ("Investment Fiduciary"), and the Custodian so appointed will be bound by all the terms of this Agreement and the Plan. The Investment Fiduciary, as defined in the Plan, means the Employer, Trustee or investment manager with the responsibility and authority to select investment options for the Plan and to direct the investment of the assets of the Fund. In no event will the Custodian or Trustee who is acting solely as a directed trustee be an Investment Fiduciary. Notwithstanding any provision in this Agreement regarding the responsibilities of or granting powers to the Custodian, the Custodian will serve as a nondiscretionary, directed Custodian of the Fund, will have no discretionary authority with respect to the management or administration of the Plan or the Fund, and will act only as directed by the entity or individual who has such authority.

### 2.02 Authorized Actions

Unless further limited by the Plan Trustee(s), the Custodian is authorized and directed to take any action set forth below:

- (a) receive Plan contributions and hold, invest and reinvest, and distribute the Fund as authorized by the Employer or its designee without distinction between principal and interest; provided, however, that nothing in this Agreement will require the Custodian to maintain physical custody of stock certificates (or other indicia of ownership of any type of asset) representing assets within the Fund;
- (b) maintain accurate records of contributions, investments, earnings, receipts, disbursements, withdrawals, and other transactions with respect to the Fund, and all accounts, books, and records relating thereto will be open at all reasonable times to inspection and audit by any person designated by the Employer; provided, however, that the Custodian is given reasonable advance notice of such inspection by the Employer. On direction of the Employer or Plan Administrator, and if agreed to in writing by the Custodian, the Custodian may provide annual or interim accountings, valuations, or other reports concerning the assets of the custodial account subject to payment of all required additional fees for such reports. The Custodian's accounting will be at the custodial account level rather than the participant level, and the Custodian will not be responsible for participant-level record-keeping, reporting, or communication unless it agrees to do so in a separate written agreement with the Employer or Plan Administrator. The Custodian will also furnish the Employer with such other information as the Custodian possesses and which is necessary for the Employer to comply with the reporting requirements of ERISA, as applicable. An accounting will be deemed to have been approved by the Employer unless the Employer or Plan Administrator objects to the contents of an accounting within sixty (60) days of its mailing or electronic transmission by the Custodian. Any objections must set forth the specific grounds on which they are based. Upon approval, the Custodian will be forever released from any and all liability with respect to the Fund;
- (c) make disbursements from the Fund to participants or beneficiaries upon the proper authorization of the Plan Administrator;

- (d) furnish to the Plan Administrator an annual statement that reflects the value of the investments in the custody of the Custodian as of the end of the period and as of any other times as the Custodian and Plan Administrator may agree to in writing, including an agreement regarding the application of additional fees for such additional report;
- (e) invest the Fund only in investment options selected by the Investment Fiduciary. Such selection will be made from among the types of property that the document sponsor of the Plan makes available pursuant to Plan Section 7.22(D). Notwithstanding the first sentence of Plan Section 7.22(D), the document sponsor and not the Custodian is responsible for choosing to make such investments available for investment and for determining the fair market value of each such investment, and the Custodian has determined only that it is functionally and operationally willing and able to provide its services under this Agreement for such investments. The Investment Fiduciary will be responsible for ensuring compliance with all conditions, limitations, and restrictions concerning investment in any investment option. The Custodian shall place monies or other property received by it in such permitted investments as the Custodian will be directed from time to time by instructions of the Investment Fiduciary (or participant, if applicable) provided to it. If participant direction in Plan Section 7.22(B) has been selected, the investment instructions of the participants will be aggregated and delivered to the Custodian by the Plan Administrator or its agent. In the absence of participant direction, the investment instructions of the appropriate Investment Fiduciary will be delivered to the Custodian by the Plan Administrator or its agent. The Custodian may hold the assets attributable to the Fund in omnibus accounts with assets of other retirement plans for which the Custodian serves as custodian or trustee. Nothing in this Agreement will preclude the Investment Fiduciary from otherwise investing any Plan assets as permitted by the Plan, but the Custodian will not be Custodian of or have any duties or responsibilities with respect to such assets;
- (f) the Custodian is not obligated to place orders for the investment of the Fund if sufficient cash is not available in the Fund for use in placing such orders. The Custodian is authorized, but is not obligated, to advance funds or to arrange for another financial organization (which may be an affiliate of the Custodian) to advance funds from time to time for the purchase of investment assets, for distributions from the Fund and for other purposes before receipt of sufficient funds (whether contributions or proceeds of the liquidation of other investments). All such advances will be made subject to the requirements of ERISA and the rules, regulations, rulings, and interpretations thereunder, including but not limited to the U.S. Department of Labor's Prohibited Transaction Class Exemption 80-26, as amended from time to time. If sufficient funds to repay any such advance are not received by the following business day, the Custodian may, in its discretion, then or at any time thereafter before such repayment, sell, redeem, or otherwise liquidate any assets of the Fund in order to repay such advance. Any gain realized upon such liquidation, after payment of any related costs and expenses, will belong to the Plan. The Employer shall reimburse the Custodian on demand for any portion of any such advance and the related costs and expenses not repaid from the proceeds of the liquidation;
- (g) keep such portion of the Fund in cash or cash balances as may be directed from time to time by the applicable Investment Fiduciary. The Custodian will not be liable for any interest on any cash balances so maintained nor for interest on any cash or cash balances maintained in the Fund pending investment in accordance with appropriate directions. Monies being transferred to and disbursed by the Custodian may be held in non-interest-bearing transaction accounts in financial organizations selected by the Custodian (which may be affiliates of the Custodian) for purposes of collections and processing transfers and disbursements. The Custodian may transfer monies from the Fund to such accounts before issuance of wire transfer orders or checks, drafts, or other instruments payable from such accounts. The Custodian will not exercise its powers in Section 2.03(a) of this Agreement except pursuant to the instructions of the Investment Fiduciary transmitted to the Custodian;
- (h) comply with any written instructions from the Investment Fiduciary to use the services of any broker, dealer, employee, or representative of either, or any other person ("Broker") to render services to the Fund or fulfill its obligations pursuant to the Plan. The Custodian shall fully comply with such written instructions until revoked. The applicable Investment Fiduciary will be solely responsible for the selection or designation of such Broker and will be solely responsible for the acts of such Broker;
- (i) be responsible for issuing checks or drafts for payments and disbursements made from the Fund for any purpose and amounts as the Plan Administrator instructs. The Custodian will be fully protected in making such payments pursuant to such instructions from time to time and will be charged with no responsibility whatsoever with respect to the purposes or propriety of such payments or the application of such monies;
- (j) provide any materials received by the Custodian relating to voting securities to the applicable Investment Fiduciary, which will be responsible for voting securities or arranging for such securities to be voted in accordance with the Plan and applicable law. It is understood that the Custodian will exercise the powers described in Section 2.03(b) of this Agreement only pursuant to instructions of the Investment Fiduciary transmitted to the Custodian;
- (k) determine or have determined the value of the Fund as of each valuation date of the Plan. The Custodian shall rely exclusively upon, and will not be responsible for, share and unit values established by third parties, or unit values established by the Custodian in its capacity as a mutual fund recordkeeper, transfer agent, or Custodian to the extent that the Custodian establishes such unit values in reliance on third-party information, including, but not limited to:
  - (i) the net asset value reported to the Custodian by mutual funds or the transfer or other agents of such mutual funds or any generally recognized pricing service;
  - (ii) the unit value as reported by the trustee of bank collective funds or its agent;

- (iii) the book value or other value attributed to policies and contracts with insurance companies or other financial institutions as determined by the insurance company or other financial organization or its agent; and
- (iv) the market price of such publicly traded securities, as reported to the public in a generally available form.

The Custodian will have no liability from the failure or delay of any pricing source to provide a valuation as of any valuation date of the Plan. If values for any investment of the Fund are not generally available, the Custodian shall rely upon instructions provided to it by the applicable Investment Fiduciary as to valuation procedures. With respect to the portion of the Fund that is invested by an investment manager or other named fiduciary, the Custodian may conclusively rely upon the value of any securities or other property in that portion of the custodial account as reported to the Custodian by the investment manager or other named fiduciary, for all purposes hereunder;

- (l) maintain all records with respect to the Fund for such period as may be required under applicable law. Upon the expiration of any such required retention period, the Custodian will have the right to destroy such records. The Custodian will have the right to preserve all records and accounts in original form, electronically, or on microfilm, magnetic tape, or any other similar process pursuant to applicable federal law and subsequent rules promulgated by the IRS or DOL;
- (m) except as otherwise provided in this Agreement, conclusively presume that the Employer, Trustee, Plan Administrator, or other responsible party has made all filings required by law as of the date required. Should the Custodian incur any liability by reason of any party's failure to timely file, the Employer shall indemnify and hold the Custodian, any parent, subsidiary, related corporation, or affiliate of the Custodian, including their respective directors, managers, officers, employees, and agents harmless for any and all liabilities, costs, expenses (including reasonable attorney's fees), and other obligations, including penalties and interest, incurred by the Custodian.

Notwithstanding the provisions of Plan Section 5.11, in connection with the disbursement of assets from the Fund to a participant, the Custodian shall withhold and remit to the IRS and other applicable taxing authorities the amount of any income tax withholding required by law pursuant to instructions provided by the Plan Administrator; and

- (n) except for the disbursement of loan proceeds and reinvestment of loan payments pursuant to instructions received pursuant to this Agreement, under no circumstances will the Custodian have or be allocated any responsibility for the administration of any participant loan program in Plan Section 5.16.

### **2.03 Powers of the Custodian**

The Custodian will have the power, but, in the absence of proper direction from the Employer, Plan Administrator, or Investment Fiduciary, as appropriate, not the duty, to take any action set forth below:

- (a) invest all or a portion of the Fund (including idle cash balances) in time deposits, savings accounts, money market accounts, or similar investments bearing a reasonable rate of interest in the Custodian's own savings department or the savings department of another financial organization;
- (b) vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges or subscription rights and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to pay any assessment or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property;
- (c) hold securities or other property of the Fund in its own name, in the name of its nominee (as allowed under Department of Labor Regulation section 2550.403a-1(b)), or in bearer form; and
- (d) make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

## **ARTICLE III – TRUSTEE**

### **3.01 Appointment**

This Article III of this Agreement applies when either a financial organization has and/or one or more individuals have, indicated in this Agreement that it will serve as Trustee with respect to all or a portion of the assets of the Fund. The responsibilities and powers of the Trustee may not be expanded except with its prior written consent. Notwithstanding any provision of this Agreement regarding the responsibilities of or granting powers to the Trustee, a directed trustee will have no discretionary authority with respect to the management or administration of the Plan or the Fund, and is subject to the proper and lawful directions of the Plan Administrator, who has authority with respect to receipt of the Plan's assets.

### **3.02 Authorized Actions**

The Trustee is authorized and directed to take any action set forth below:

- (a) receive Plan contributions and to hold, invest, and reinvest the portion of the Fund for which it serves as Trustee, as authorized by the Employer or its designee, without distinction between principal and interest; provided, however, that nothing in this Agreement will require the Trustee to maintain physical custody of stock certificates (or other indicia of ownership) representing assets within the Fund;

- (b) maintain accurate records of contributions, investments, earnings, receipts, disbursements, withdrawals, and other transactions under the trust;
- (c) make disbursements from the portion of the Fund for which it serves as Trustee to participants or beneficiaries upon the proper authorization of the Plan Administrator; and
- (d) furnish to the Plan Administrator a statement that reflects the value of the investments in the custody of the Trustee as of the end of each plan year of the Plan and as of any other times as the Trustee and Plan Administrator may agree in writing.

### 3.03 Powers of the Trustee

The Trustee will have the power, but, in the absence of proper direction from the Plan Administrator, not the duty, to take any action set forth below:

- (a) purchase or subscribe for securities or other property and to retain them in trust; to sell any such property at any time held by it for cash or other consideration at such time or times and on such terms and conditions as may be deemed appropriate; to exchange such property and to grant options for the purchase or exchange thereof, and to convey, partition, or otherwise dispose of, with or without covenants, including covenants of warranty of title, any securities or other property free of all trusts; to charge the trust for the cost of all securities purchased or received against a payment and to credit the trust with the proceeds received from the securities sold or delivered against payment. For any trades not settled immediately upon placement, the Trustee will have the right to sell securities from the trust in a reasonably prudent fashion sufficient to recover any funds advanced;
- (b) oppose, or consent to and participate in, any plan of reorganization, consolidation, merger, combination, or other similar plan; to oppose or to consent to any contract, lease, mortgage, purchase, sale, or other action by any corporation pursuant to such plan, and to accept and retain any securities or other property issued under any such plan; to deposit any such property with any protective, reorganization or other similar Plan Administrator; to delegate discretionary power thereto and to pay and agree to pay part of its expenses and compensation and any assessments levied with respect to any such securities or other property so deposited;
- (c) assign, renew, extend, or discharge, or to participate in the assignment, renewal, extension, or discharge of any debt, mortgage, or other lien, upon such terms, including a partial release, as may be deemed advisable by the Trustee, and to agree to a reduction in the rate of interest thereon or to any other modification or change in the terms thereof or of any guarantee pertaining thereto, in any manner and to any extent that the Trustee may deem to be in the best interest of the Fund; to waive any default, whether in the performance of any covenant or condition of any note, bond, or mortgage or in the performance of any guarantee, or to enforce any such default in such manner and to such extent as may be deemed advisable; to exercise and enforce any and all rights of foreclosure and to exercise and enforce, in any action, suit, or proceeding at law or in equity, any rights or remedies in respect of any debt, mortgage, lien, or guarantee;
- (d) exercise all conversion and subscription rights pertaining to any securities or other property;
- (e) borrow money from others, excluding the Trustee in its corporate capacity or any party-in-interest, for the purposes of the Fund, and upon such terms and conditions as the Trustee may deem proper, and for the sum so borrowed or advanced, the Trustee may issue its promissory note as Trustee and secure the repayment thereof by creating a lien upon any assets of the Fund;
- (f) invest all or part of the Fund in interest bearing deposits with a bank or similar financial institution related to the Trustee if such bank or other institution is a fiduciary with respect to the Plan, as defined in ERISA, including but not limited to investments in time deposits, savings deposits, certificates of deposit, or time accounts that bear a reasonable interest rate;
- (g) invest and reinvest all or a portion of the Fund pursuant to an agreement between the Employer and the Trustee establishing a special designated "pooled investment fund" primarily for the purpose of valuing certain trust assets held by the Trustee in a fiduciary capacity;
- (h) hold that portion of the Fund as the Trustee may deem necessary for ordinary administration, the transfer of assets to another trust or fiduciary, pending investment instructions, and for the disbursement of funds in cash, without liability for interest, by depositing the same in any bank (including deposits that bear no interest or a reasonable rate of interest in a bank or similar financial institution supervised by the United States or a State, even where a bank or financial institution is the Trustee, or otherwise is a fiduciary of the Plan, subject to the rules and regulations governing such deposits, and without regard to the amount of any such deposit);
- (i) invest cash balances held by the Trustee, from time to time, in short-term cash equivalents having ready marketability, including but not limited to interest bearing accounts, money market mutual funds, U.S. Treasury bills, commercial paper (including such forms thereof, other than the Trustee's own paper, as may be available through the Trustee's own trust department), certificates of deposit, and similar types of securities; and
- (j) consult with and employ agents and counsel, including legal counsel (who may be counsel for the Trustee, Employer or Plan Administrator) to: (1) assist or advise the Trustee with respect to the interpretation of or controversies under the Plan or this Agreement; and (2) advise the Trustee with respect to, or defend the Trustee against, any action, claim or demand with respect to this Agreement or the Plan. The Trustee may pay such agents and counsel reasonable compensation from the

Fund unless otherwise paid by the Employer, and the Trustee shall have no liability for acting upon the advice of such agents and counsel in such matters; and

- (k) take any other actions that the Trustee may deem reasonably necessary to perform its obligations under this Agreement.

#### **ARTICLE IV – COMPENSATION AND EXPENSES**

The Trustee (or Custodian, if applicable) will receive such reasonable compensation as may be agreed upon by the Trustee (or Custodian, if applicable) and the Employer. The Trustee (or Custodian, if applicable) will be entitled to reimbursement by the Employer for all proper expenses incurred in carrying out their duties under this Agreement, including reasonable legal, accounting, and actuarial expenses. Such compensation will include any earnings on funds retained pursuant to Sections 2.02(g) and 3.03(h) of this Agreement in non-interest-bearing accounts and any such earnings will not become a part of the Fund. The Employer expressly acknowledges that the ability of the Trustee or the Custodian, as applicable, and any affiliated financial organization of the preceding, to earn income on amounts held in such non-interest-bearing accounts has been taken into consideration in establishing the Trustee's or Custodian's fees hereunder. If not paid by the Employer, all such compensation and expenses may be charged against the Fund. Notwithstanding the preceding, a participant will not be entitled to compensation even if they serve in the capacity as a Trustee (or Custodian, if applicable).

The Trustee (or Custodian, if applicable) will be reimbursed by the Employer or from the Fund for all taxes of any kind whatsoever that may be levied or assessed under existing or future laws of any jurisdiction upon or in respect of the Fund. The Trustee (or Custodian, if applicable) shall promptly notify the Employer with regard to any levies or tax assessments that it receives on any income or property maintained in the Fund and, unless notified to the contrary by the Employer within ninety (90) days, shall pay any such levies or assessments. If the Employer notifies the Trustee (or Custodian, if applicable) within said period that it is its opinion or the opinion of counsel that such levies or assessments are invalid or that they should be contested, then the Trustee (or Custodian, if applicable) shall take whatever action concerning payment of the levy or assessment as is indicated in the notice received by the Trustee (or Custodian, if applicable); provided, however, that the Employer, and not the Trustee (or Custodian, if applicable), will be responsible for contesting any such levies or assessments or litigating any such claims.

#### **ARTICLE V – NO OBLIGATION TO QUESTION DATA**

The Employer shall furnish the Trustee (or Custodian, if applicable) and Plan Administrator the information which each party deems necessary for the administration of the Plan including, but not limited to, changes in a participant's status, eligibility, mailing addresses and other such data as may be required. The Trustee (or Custodian, if applicable) and Plan Administrator will be entitled to act on such information as is supplied to them and will have no duty or responsibility to further verify or question such information.

#### **ARTICLE VI – RESIGNATION**

Any person serving as Trustee or Custodian may resign at any time by giving thirty (30) days advance written notice to the Employer. The resignation will become effective thirty (30) days after receipt of such notice unless a shorter period is agreed upon. If the Employer fails to appoint a successor Trustee or Custodian following notice of resignation, the Trustee (or Custodian, if applicable) will have the power to appoint a successor Trustee (or Custodian, if applicable).

The Employer may remove any Trustee (or Custodian, if applicable) at any time by giving written notice to such Trustee (or Custodian, if applicable) and such removal will be effective thirty (30) days after receipt of such notice unless a shorter period is agreed upon. The Employer will have the power to appoint a successor Trustee (or Custodian, if applicable).

In the event the Trustee (or Custodian, if applicable) is removed, resigns, dies, or becomes incapacitated and the Employer or Trustee (or Custodian, if applicable) will not or cannot appoint a successor Trustee (or Custodian, if applicable) within a reasonable period of time thereafter, a majority of participants in the Plan will have the authority to appoint a successor Trustee (or Custodian, if applicable) but will not be obligated to do so if engaging a majority of participants would result in unreasonable time, expense, or administrative burden.

Upon such resignation or removal, if the resigning or removed Trustee (or Custodian, if applicable) is the sole Trustee (or Custodian, if applicable), they shall transfer all of the assets of the Fund, either in-kind or as proceeds after liquidation, then held by such Trustee (or Custodian, if applicable) as expeditiously as possible to the successor Trustee (or Custodian, if applicable) after paying or reserving such reasonable amount as they will deem necessary to provide for the expense in the settlement of the accounts and the amount of any compensation due them and any sums chargeable against the Fund for which they may be liable. If the Funds as reserved are not sufficient for such purpose, then they will be entitled to reimbursement from the successor Trustee (or Custodian, if applicable) out of the assets in the successor Trustee's (or Custodian's, if applicable) hands under this Agreement. If the amount reserved will be in excess of the amount actually needed, the former Trustee (or Custodian, if applicable) will return such excess to the successor Trustee (or Custodian, if applicable).

Upon receipt of the transferred assets, the successor Trustee (or Custodian, if applicable) will thereupon succeed to all of the powers and responsibilities given to the Trustee (or Custodian, if applicable) by this Agreement.

Where a financial organization is serving as Trustee (or Custodian, if applicable) and it is merged with or bought by another organization (or comes under the control of any federal or state agency), that organization shall serve as the successor Trustee (or Custodian, if applicable) of this Agreement, but only if it is the type of organization that can so serve under applicable law. Notwithstanding anything herein to the contrary, the Trustee (or Custodian, if applicable) or any subsequent assignees may, by prior written notice to the Employer, and without the

need for the Employer's consent or prior approval, assign all or any part of its rights and obligations under this Agreement to any affiliate (which term includes, without limitation, any parent, subsidiary, or sister entity) of the Trustee (or Custodian, if applicable) or the assignee.

Where the Trustee or Custodian is serving as a nonbank trustee or custodian pursuant to Treasury Regulation section 1.408-2(e), the Employer will appoint a successor Trustee (or Custodian, if applicable) upon notification by the Commissioner of Internal Revenue that such substitution is required because the Trustee (or Custodian, if applicable) has failed to comply with the requirements of Treasury Regulation section 1.408-2(e) or is not keeping such records or making such returns or rendering such statements as are required by forms or regulations.

#### **ARTICLE VII – DEGREE OF CARE – LIMITATIONS OF LIABILITY.**

The Trustee (or Custodian, if applicable) will be under no duty to take any action other than its express responsibilities under this Agreement unless the responsible party under the terms of this Agreement or the Plan will furnish the Trustee (or Custodian, if applicable) with written instructions; provided that in no event may the Trustee's (or Custodian's, if applicable) responsibilities be expanded except with its prior written consent. Any instructions hereunder may be delivered to the Trustee (or Custodian, if applicable) directly by the responsible party or by other mutually agreed upon parties. The Trustee (or Custodian, if applicable) will not be liable for any action taken or omitted by it in good faith in reliance upon any instructions received hereunder or any other notice, request, consent, certificate, or other instrument or paper reasonably believed by it to be genuine and to have been properly executed. A directed trustee (or Custodian, if applicable) will have no duty to inquire into the purpose or propriety of any order, instruction, or other communication received hereunder and may conclusively presume that any such order, instruction, or other communication is accurate and complete. The Trustee (or Custodian, if applicable) will not be responsible for determining that all instructions provided to the Trustee (or Custodian, if applicable) are being given by the appropriate party and are in proper form under the provisions of this Agreement, the Plan and applicable law. The Trustee (or Custodian, if applicable) may conclusively presume that any instructions received have been duly authorized by the Employer, Investment Fiduciary, Plan Administrator, Trustee, or participant, as applicable, pursuant to the terms of this Agreement, the Plan and applicable law.

The Trustee (or Custodian, if applicable) will not be responsible for the validity or effect or the qualification under the Code or the Plan. The Trustee (or Custodian, if applicable) will not be required to take any action upon receipt of any notice from the IRS or other taxing authority (unless such notice relates to the performance of the Trustee (or Custodian, if applicable) responsibilities in Sections 2.02 or 3.02) except to promptly forward a copy thereof to the Employer. Further, it is specifically understood that the Trustee (or Custodian, if applicable) will have no duty or responsibility with respect to the determination of matters pertaining to the eligibility of any Employee to become a participant or remain a participant hereunder, the amount of benefit to which a participant or beneficiary will be entitled to receive thereunder, whether a distribution to participant or beneficiary is appropriate under the terms of the Plan, the size and type of any policy to be purchased from any insurer for any participant thereunder, or any other similar matters, it being understood that all such responsibilities under the Plan are vested in the Plan Administrator.

#### **ARTICLE VIII – INDEMNIFICATION OF TRUSTEE AND CUSTODIAN**

Notwithstanding any provision of this Agreement, the Employer hereby agrees to indemnify, defend, and hold the Trustee (or Custodian, as applicable), and its affiliates, and their respective directors, managers, officers, employees, agents, and other representatives harmless from any losses, costs, expenses, fees, liabilities, damages, claims, suits, or actions and appeals thereof resulting from their reliance upon any certificate, notice, confirmation, or instruction purporting to have been delivered by a representative of the Employer or the Plan that has been duly identified to the Trustee (or Custodian, as applicable) in a manner required or accepted by such Trustee (or Custodian, as applicable) ("Designated Representative"). The Employer waives any and all claims of any nature it now has or may have against the Trustee (or Custodian, as applicable) and its affiliates, and their respective directors, managers, officers, employees, agents, and other representatives, which arise, directly or indirectly, from any action that it takes in good faith in accordance with any certificate, notice, confirmation, or instruction from a Designated Representative of the Employer. The Employer also hereby agrees to indemnify, defend, and hold the Trustee (or Custodian, as applicable), and any parent, subsidiary, related corporation, or affiliates of the Trustee (or Custodian, as applicable), including their respective directors, managers, officers, employees, agents, and other representatives, harmless from and against any and all loss, costs, damages, liability, expenses, or claims of any nature whatsoever, including but not limited to legal expenses, court costs, legal fees, and costs of investigation, including appeals thereof, arising, directly or indirectly, out of any loss or diminution of the Fund resulting from changes in the market value of the Fund assets; reliance, or action taken in reliance, on instructions from the Employer or its Designated Representative; any exercise or failure to exercise investment direction authority by the Employer or by its Designated Representative; the Trustee's or Custodian's refusal on advice of counsel to act in accordance with any investment direction by the Employer or its Designated Representative; any other act or failure to act by the Employer or its Designated Representative; any prohibited transaction or plan disqualification of a qualified plan due to any actions taken or not taken by the Trustee (or Custodian, as applicable), in reliance on instructions from the Employer or its Designated Representative; or any other act the Trustee (or Custodian, as applicable), takes in good faith hereunder that arises under this Agreement or the administration of the Fund.

The Trustee (or Custodian, as applicable), will not be liable to the Employer for any act, omission, or determination made in connection with this Agreement except for its gross negligence or willful misconduct. Without limiting the generality of the preceding, the Trustee (or Custodian, as applicable) will not be liable for any losses arising from its compliance with instructions from the Employer or its Designated

Representative; for executing, failing to execute, failing to timely execute, or for any mistake in the execution of any instructions, unless such action or inaction is by reason of the gross negligence or willful misconduct of the Trustee (or Custodian, as applicable).

The Trustee (or Custodian, if applicable) will be accountable only for monies or property actually received by it. If any portion of the Fund is held by another custodian or trustee, the term "Fund" in this Agreement will mean only that portion of the Fund from time to time held by the applicable Trustee or Custodian. The Trustee (or Custodian, if applicable) will not be deemed accountable, responsible, or liable for the acts or omissions of any other custodian or trustee of the Plan. The Trustee (or Custodian, if applicable) will have no duty or responsibility for the determination of the accuracy or sufficiency of the contributions to be made under the Plan, the collection thereof, the transmittal of the same to the Trustee (or Custodian, if applicable), or compliance with any statute, regulation, or rule applicable to such contributions. A directed trustee (or a Custodian, if applicable) will have no discretion as to investment of the Fund or administration of the Plan and will not be deemed a "fiduciary" as that term is used in ERISA. The Trustee (or Custodian, if applicable) is signing this Agreement solely to signify its acceptance of appointment as Trustee (or Custodian, if applicable) and the Employer will have sole responsibility for the accuracy, completeness, legal sufficiency, and due execution thereof, including consulting with legal counsel and tax advisors as the Employer deems appropriate in connection therewith.

The provisions of this Section VIII will survive the termination or amendment of this Agreement.

## **ARTICLE IX – LIMITED TRUSTEE**

### **9.01 Responsibilities of the Limited Trustee**

This section of this Agreement applies where either a financial organization and/or one or more individuals has/have indicated in this Agreement that it will serve as a Limited Trustee whose powers, rights, duties and responsibilities are strictly limited to ensuring the timely collection and deposit of employer contributions with respect to the Fund or where one or more individuals has/have indicated in this Agreement that they will serve as individual trustee(s) and a separate Limited Trustee(s) has not been indicated in this Agreement. At no time will a financial organization that is serving as a Trustee be considered a Limited Trustee without their express authorization shown by its signature on this Agreement. The responsibilities and powers of the Limited Trustee may not be expanded except with its prior written consent and, notwithstanding any provision hereof to the contrary, may be further limited by the terms of a separate agreement between the Limited Trustee and the Employer.

### **9.02 Compensation and Expenses**

The Limited Trustee will receive such reasonable compensation as may be agreed upon by the Limited Trustee and the Employer. The Limited Trustee will be entitled to reimbursement by the Employer for all proper expenses incurred in carrying out their duties under this Agreement, including reasonable legal, accounting, and actuarial expenses. If not paid by the Employer, all such compensation and expenses may be charged against the Fund. Notwithstanding the preceding, a participant will not be entitled to compensation even if they serve in the capacity as a Limited Trustee.

### **9.03 No Obligation to Question Data**

The Plan Administrator and/or Employer shall furnish to the Limited Trustee the information that the Limited Trustee deems necessary for complying with its responsibilities under this Agreement. The Limited Trustee will be entitled to act on such information as is supplied and will have no duty or responsibility to further verify or question such information.

### **9.04 Resignation**

Any person serving as Limited Trustee may resign at any time after providing at least (30) days advance written notice to the Employer. The resignation will become effective thirty (30) days after receipt of such notice unless a shorter period is agreed upon. The Employer may remove any Limited Trustee at any time by giving written notice to such Limited Trustee and such removal will be effective thirty (30) days after receipt of such notice unless a shorter period is agreed upon. The Employer will have the power and the duty to appoint a successor Limited Trustee. If the Employer fails to appoint a successor Limited Trustee following notice of resignation, the Trustee will have the power, but not the duty, to appoint a successor Limited Trustee. In no event will the Trustee become a Limited Trustee unless the Trustee acknowledges the appointment by executing the Limited Trustee section of this Agreement.

Where a financial organization is serving as Limited Trustee and it is merged with or bought by another organization (or comes under the control of any federal or state agency), that organization will serve as the successor Limited Trustee of this Agreement, but only if it is the type of organization that can so serve under applicable law. Notwithstanding anything in this Agreement to the contrary, the Limited Trustee or any subsequent assignees may, by prior written notice to the Employer, and without the need for the Employer's consent or prior approval, assign all or any part of its rights and obligations under this Agreement to any affiliate (which term includes, without limitation, any parent, subsidiary, or sister entity) of the Limited Trustee or the assignee.

### **9.05 Degree of Care – Limitations of Liability**

The Limited Trustee will be under no duty to take any action other than its express responsibilities under this Agreement unless the responsible party under the terms of the Plan shall furnish the Limited Trustee with written instructions; provided that in no event may the Limited Trustee's responsibilities be expanded except with its prior written consent. Any instructions hereunder may be delivered to the Limited Trustee directly by the responsible party or by other mutually agreed upon parties. The Limited Trustee will

not be liable for any action taken or omitted by it in good faith in reliance upon any instructions received hereunder or any other notice, request, consent, certificate, or other instrument or paper reasonably believed by it to be genuine and to have been properly executed. The Limited Trustee will not be responsible for determining that all instructions provided to the Limited Trustee are being given by the appropriate party and are in proper form under the provisions of this Agreement, the Plan, and applicable law. The Limited Trustee may conclusively presume that any instructions received have been duly authorized by the Employer, Plan Administrator, or discretionary trustee, as applicable, pursuant to the terms of this Agreement, the Plan, and applicable law. The Limited Trustee will not be responsible for the validity or effect or the qualification under the Code or the Plan.

#### **9.06 Indemnification of Limited Trustee**

Notwithstanding any provision of this Agreement, the Employer hereby agrees to indemnify, defend, and hold the Limited Trustee, and its affiliates, and their respective directors, managers, officers, employees, agents, and other representatives harmless from any losses, costs, expenses, fees, liabilities, damages, claims, suits, or actions and appeals thereof resulting from their reliance upon any certificate, notice, confirmation, or instruction purporting to have been delivered by a representative of the Employer or the Plan that has been duly identified to the Limited Trustee in a manner required or accepted by such Limited Trustee. The Employer waives any and all claims of any nature it now has or may have against the Limited Trustee and its affiliates, and their respective directors, managers, officers, employees, agents, and other representatives, which arise, directly or indirectly, from any action or act the Limited Trustee takes in good faith hereunder that arises under the Plan or the administration of the Fund.

The Limited Trustee will not be liable to the Employer for any act, omission, or determination made in connection with this Agreement except for its gross negligence or willful misconduct. Without limiting the generality of the preceding, the Limited Trustee will not be liable for any losses arising from its compliance with instructions from the Employer or its Designated Representative; for executing, failing to execute, failing to timely execute, or for any mistake in the execution of any instructions, unless such action or inaction is by reason of the gross negligence or willful misconduct of the Limited Trustee.

The Limited Trustee is signing this Agreement solely to signify its acceptance of appointment as Limited Trustee and the Employer will have sole responsibility for the accuracy, completeness, legal sufficiency, and due execution thereof, including consulting with legal counsel and tax advisors as the Employer deems appropriate in connection therewith.

### **ARTICLE X – MISCELLANEOUS**

#### **10.01 Governing Law**

This Agreement shall be construed, administered, and governed in all respects under applicable federal law and, to the extent that federal law is inapplicable, under the laws of the state in which the Trustee's principal place of business is located. Further, except as expressly stated otherwise, no provision of the Plan or this Agreement is intended to nor shall grant any rights to participants or beneficiaries to any interest in the trust in addition to those minimum rights or interest required to be provided under ERISA and the Code and the regulations under ERISA and the Code.

#### **10.02 Necessary Parties**

To the extent permitted by law, only the Employer and the Trustee (or Custodian, if applicable) will be necessary parties in any application to the courts for an interpretation of this Agreement or for an accounting by the Trustee (or Custodian, if applicable), and no other plan fiduciary, participant, beneficiary, or other person having an interest in the Fund will be entitled to any notice or service of process. Any final judgment entered in such an action or proceeding will, to the extent permitted by law, be conclusive upon all persons claiming in this Agreement.

#### **10.03 Force Majeure**

The Trustee (or Custodian, if applicable) will not be responsible or liable for, and shall not be considered in breach of this Agreement due to, any failure of or delay in performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by events or circumstances beyond its reasonable control, including but not limited to: acts of God, acts of civil or military authority, acts of government, accidents, environmental disasters, natural disasters or events, fires, floods, earthquakes, hurricanes, explosions, lightning, suspensions of trading, epidemics, pandemics, public health crises, quarantines, wars, acts of war (whether war is declared or not), terrorism, threats of terrorism, cyber-attacks, insurrections, embargoes, riots, strikes, lockouts or other labor disturbances, disruptions of supply chains, civil unrest, revolutions, power or other mechanical failures, loss or malfunction of utilities or communications services, delays or stoppage of postal or courier services, delays or stoppage of transportation, and any other events or circumstances beyond its reasonable control whether similar or dissimilar to any of the foregoing (all enumerated and described events in this section individually and collectively, "Force Majeure").

#### **10.04 Limitation on Damages**

The entire liability of the Trustee and its officers, directors, employees, members, agents, licensors, subsidiaries, affiliates, parents and representatives, and the Employer's exclusive remedy in any cause of action based on contract, tort, warranty, negligence, or otherwise in connection with any services rendered pursuant to this Agreement or otherwise furnished by the Trustee, shall be limited to the total fees paid by the Employer to the Trustee.

UNDER NO CIRCUMSTANCES SHALL THE TRUSTEE, OR ITS OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, AGENTS, LICENSORS OR REPRESENTATIVES BE SUBJECT TO OR LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL,

INDIRECT, SPECIAL, EXEMPLARY OR SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, LOSS OF SAVINGS, LOSS OF DATA, LOSS OF REVENUES AND/OR PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, THAT MAY ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR CUSTODIAN OR ADMINISTRATOR COMPLYING WITH EMPLOYER'S DIRECTIONS, REGARDLESS IF SUCH DAMAGES ARE BASED IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

**10.05 Class Action Waiver**

**EACH PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF, REPRESENTATIVE OR CLASS MEMBER IN ANY PUTATIVE CLASS OR REPRESENTATIVE PROCEEDING.** The arbitrator will have no authority to arbitrate a class, collective, representative or group claim/action and will have no authority to make any determination as to the enforceability of this Agreement's class/collective action waiver. Further, unless the Employer and the Trustee agree otherwise, the arbitrator will have no authority to consolidate the Employer's claims with any other claims, and may not otherwise preside over any form of a class or representative proceeding.

**10.06 Arbitration**

Any dispute, claim or controversy arising out of, in connection with or relating to the performance of this Agreement or its termination, including the determination of the scope or applicability of this Agreement to arbitrate, will be resolved by binding arbitration before a single arbitrator in the state of our principal place of business, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA"). To the extent that any of the provisions of this agreement conflict with the any AAA rules, the express provisions of this agreement will apply. The arbitrator will be a practicing attorney or retired judge with experience with Individual Retirement Accounts and the other subject matter(s) of the claim. The arbitrator's award will be final and binding on the parties, and judgment rendered thereon may be entered in any court having jurisdiction. The arbitration proceedings and arbitrator's award will be maintained by the parties and arbitrator as strictly confidential, except as is otherwise required by court order, or as is necessary to confirm, vacate or enforce the award, and for disclosure in confidence to the following representatives of a party that have a need to know and agree to keep such information confidential: attorneys, tax advisors and senior management. BY AGREEING TO THIS ARBITRATION PROVISION, THE EMPLOYER AND THE TRUSTEE ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY.

**10.07 Agents**

In performing its obligations under this Agreement, the Trustee (or Custodian, if applicable) will be entitled to employ suitable agents, counsel, sub-custodians, and other service providers.

**10.08 Severability**

If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be fully effective.

**10.09 References**

Unless the context clearly indicates to the contrary, a reference to a statute, regulation, document, or provision shall be construed as referring to any subsequently enacted, adopted, or re-designated statute or regulation or executed counterpart.

**10.10 Headings**

Headings and subheadings in this Agreement are inserted for convenience or reference only and are not to be considered in the construction of its provisions.

**ARTICLE XI – COUNTERPARTS, IDENTIFICATION AND EXECUTION**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one in the same instrument, which may be sufficiently evidenced by any one counterpart.

**EMPLOYER**

Name of Employer \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_  
(signature of Authorized Officer)

11.01 Trustee

1. Trustee Appointment

a. Trustee (Select one.)

Option 1:  Financial Organization as Trustee.

Option 2:  Individual Trustee(s).

Option 3:  Not applicable. A Trustee is not required to be named for this Plan because the Plan is exempt from the trust requirements under ERISA section 403 (e.g., the Plan covers one or more self-employed individuals as defined in Code section 401(c)(1)).

b. Type of Trustee

Will the Trustee of the Plan be a directed or discretionary trustee (select one)?

Option 1:  Directed Trustee.

Option 2:  Discretionary Trustee.

c. Trustee Signature

NOTE: If you are an individual Trustee and no Limited Trustee(s) is named in item 2 below, you will also be deemed to be a Limited Trustee.

Name of Trustee SunAmerica Trust Co.

Address Harborside 5, 185 Hudson Street, Suite 3300 Jersey City, NJ 07311

Telephone (800) 858-8850, ext. 6073

Name of Authorized Officer Thomas Bennett, V.P. Title Vice President

(type or print name if different from name of Trustee above)

Signature 

(signature of Trustee or Authorized Officer)

Name of Trustee \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Name of Authorized Officer \_\_\_\_\_ Title \_\_\_\_\_

(type or print name if different from name of Trustee above)

Signature \_\_\_\_\_

(signature of Trustee or Authorized Officer)

Name of Trustee \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Name of Authorized Officer \_\_\_\_\_ Title \_\_\_\_\_

(type or print name if different from name of Trustee above)

Signature \_\_\_\_\_

(signature of Trustee or Authorized Officer)

Name of Trustee \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Name of Authorized Officer \_\_\_\_\_ Title \_\_\_\_\_

(type or print name if different from name of Trustee above)

Signature \_\_\_\_\_

(signature of Trustee or Authorized Officer)

**2. Limited Trustee**

The Limited Trustee appointed solely for the purposes of ensuring the timely collection and deposit of employer contributions will be:

**Option 1:**  The individual Trustee(s) named above.

**Option 2:**  The party(ies) named below.

Name of Limited Trustee \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Name of Authorized Officer \_\_\_\_\_ Title \_\_\_\_\_  
*(type or print name if different from name of Limited Trustee above)*

Signature \_\_\_\_\_  
*(signature of Limited Trustee or Authorized Officer)*

Name of Limited Trustee \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Name of Authorized Officer \_\_\_\_\_ Title \_\_\_\_\_  
*(type or print name if different from name of Limited Trustee above)*

Signature \_\_\_\_\_  
*(signature of Limited Trustee or Authorized Officer)*

Name of Limited Trustee \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Name of Authorized Officer \_\_\_\_\_ Title \_\_\_\_\_  
*(type or print name if different from name of Limited Trustee above)*

Signature \_\_\_\_\_  
*(signature of Limited Trustee or Authorized Officer)*

Name of Limited Trustee \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Name of Authorized Officer \_\_\_\_\_ Title \_\_\_\_\_  
*(type or print name if different from name of Limited Trustee above)*

Signature \_\_\_\_\_  
*(signature of Limited Trustee or Authorized Officer)*

**11.02 Custodian** *(Both a Custodian and Trustee may be appointed for the Plan. This Section 11.02 must be completed if the Plan is exempt from the Trustee requirements under ERISA section 403 and a Trustee is not appointed in Section 11.01 above.)*

Financial Organization \_\_\_\_\_

Address \_\_\_\_\_

Name of Authorized Officer \_\_\_\_\_ Title \_\_\_\_\_  
*(type or print)*

Signature \_\_\_\_\_  
*(signature of Custodian or Authorized Officer)*